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PRESS RELEASE

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Third Circuit Task Force on Eyewitness Identifications Releases Its Report and Best-Practice Recommendations

Chief Judge D. Brooks Smith of the United States Court of Appeals for the Third Circuit has announced the release of the “2019 Report of the Third Circuit Task Force on Eyewitness Identifications.” The Report was recently published in the *Temple Law Review*, 92 TEMP. L. REV. 1 (2019), and is available for viewing at

https://www.templelawreview.org/lawreview/assets/uploads/2020/01/Third-Circuit-Task-Force_92-Temp.-L.-Rev.-1.pdf.

On September 9, 2016, then Chief Judge Theodore A. McKee appointed a group of prominent judges, lawyers, scholars, and members of the law enforcement community to serve on the Third Circuit Task Force on Eyewitness Identifications. The Task Force was co-chaired by Judge McKee of the Third Circuit Court of Appeals and Judge Mitchell S. Goldberg of the United States District Court for the Eastern District of Pennsylvania. The Task Force was created, in part, in response to scientific developments in the field of eyewitness identification and a recognition that some courts have taken note of these developments and applied them in a number of criminal cases. The Task

Force was charged with making recommendations to promote more reliable practices for eyewitness investigation and to effectively deter unnecessarily suggestive identification procedures, which raise the risk of wrongful convictions. Eyewitness misidentification is considered the single greatest source of wrongful convictions in the United States. At the time the Task Force was formed, no other federal court had undertaken a project aimed at examining the issues raised by eyewitness identification.

In conducting its comprehensive review of the research and scholarship in the field of eyewitness identification, the Task Force held meetings both as a whole and in subcommittees. It eventually drafted provisional reports of its findings, ultimately adopting its 2019 Report setting forth detailed recommendations on best practices to minimize the risk of an erroneous eyewitness identification. The recommendations set forth in the Report include: lineups and photo arrays should be administered “double-blind” or, where that is not practical, at least blinded; standard preliminary instructions should be adopted, reduced to writing, and given to a witness before any identification procedure; witnesses should be physically separated from other witnesses during the entire identification process; witnesses should be instructed not to discuss the matters about which they have been interviewed with one another, and to avoid media and social media accounts of the event; and all law enforcement departments should require training in appropriate procedures for enhancing the probability of an accurate eyewitness identification decision. As the Report concludes, adopting best practices can minimize the risk of a misidentification at the start of the criminal justice process, which is critical

before a case reaches a jury trial because jurors seldom are aware that eyewitness identifications may be unreliable.

Many courts, legislators, prosecutors, and law enforcement agencies have studied the scientific research and already implemented reforms. Judge McKee, as Co-Chair of the Task Force, has expressed the hope that the 2019 Report of the Third Circuit Eyewitness Identifications Task Force will spur further study and reform, which in turn will “help to advance the continuing effort to reduce erroneous convictions based upon inaccurate eyewitness identifications.”