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Study: Witness errors lead juries astray

DNA undoes the mistakes on the stand during trials

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Steve Campbell Chronicle

DNA evidence cleared Josiah Sutton in a rape case.

Most wrongful convictions in Texas stem from mistaken eyewitness identifications, errors that experts say could have been avoided — or even eliminated — with more sophisticated lineup techniques, according to a report released Wednesday.

Since 1994, DNA evidence has exonerated 39 men convicted in Texas of crimes ranging from kidnapping to murder, according to a report Wednesday by the Justice Project, a nonprofit

focused on criminal justice reform.

Six of the cases occurred in Harris County. Each was investigated by the Houston Police Department. Each was built on flawed eyewitness evidence.

“Eyewitness identification is the leading cause of wrongful convictions in Texas and across the country,” said Edwin Colfax, Texas director of the Justice Project, which analyzed the factors that contributed to the wrongful convictions.

“But of law enforcement agencies across Texas, only a tiny fraction have any written policies for these critical investigative procedures and only a tiny fraction have implemented best practices,” he said.

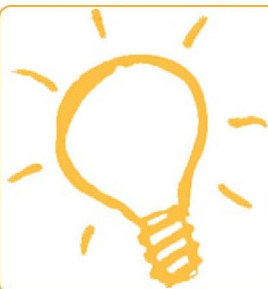
In many of these cases, not only was eyewitness testimony wrong, but DNA evidence was faulty or absent altogether. Three of the Houston cases contained flawed forensics from the HPD crime lab.

Houston Police Chief Harold Hurtt has said he plans to issue written instructions on lineup procedures, but for now, HPD has none.

“Officers are taught standard operating procedures in the academy and from there (procedures) are managed and done by various divisions within the department,” said Craig Ferrell, HPD general counsel. “But we do not have a written general order.”

Lawmakers weigh reform

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The Justice Project report calls on law enforcement agencies to adopt several procedures, such as documenting the entire lineup process and having an uninvolved or "blind" officer conduct a lineup. It also recommends that witnesses see suspects' photos one after another rather than at the same time in an array. The report's release comes as lawmakers weigh a host of legislation aimed at reforming the criminal justice system including:

- Requiring all law enforcement agencies to adopt written policies for conducting eyewitness identification.
- Requiring officers to record interrogations.
- Creating a commission to examine the errors that contribute to wrongful conviction.
- Requiring corroboration for evidence offered by informants.

The bills face opposition from some police and prosecutors, including some who say there is no need to mandate police procedures.

Hurt, however, has said he would support some of the legislation, if he agrees with the prescribed practices.

"The chief is supportive of the concept of developing best practices," Ferrell said. "The biggest point of continued discussion is what the best practice is, whether you use sequential or simultaneous arrays or blind lineups."

Mistaken eyewitnesses have played a role in all

of the Houston DNA exonerations since 1994, including the most recent of Ricardo Rachell, who was released from prison in December after tests proved he was not guilty of the 2002 sexual assault of an 8-year-old boy.

The victim's identification of Rachell, who has a severe facial deformity, served as the primary evidence at trial.

"These mistakes could be prevented with better practices," Sen. Rodney Ellis, D-Houston, said in Austin. "Only 12 percent of law enforcement agencies in Texas even have written procedures and I think that is simply unacceptable."

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