

Harris County's DA Releases Report Critical Of Police, Prosecutors And Public Defenders In Richardo Rachell's Case

On March 11, 2009 Harris County District Attorney Patricia Lykos held a press conference in Houston, Texas during which she publicly released the Rachell Report. The report details the "series of unfortunate events, blunders and omissions" by Houston police, and Harris County prosecutors and public defenders that resulted in Ricardo Rachell's wrongful arrest, prosecution, conviction and six years of incarceration for the sexual assault of an eight-year-old boy. The same DNA tests that freed Rachell in December 2008 pointed to a convicted serial child rapist as the perpetrator. That rapist, who continued preying on children after Rachell's arrest, provided a detailed confession when questioned by Houston detectives in January 2009. He was charged in February 2009 with the assault that Rachell had been convicted of committing.

In response to what the Rachell Report describes as the "cascading, system-wide breakdown" that resulted in Rachell's conviction, DA Lykos announced two major policy changes in the Harris County District Attorney's Office. First, Harris County prosecutors must order DNA testing of biological evidence when it is relevant to prevent a possible miscarriage of justice, when previously the testing was discretionary. Second, copies of relevant police offense reports will be provided to a defendant's attorney, when previously they were only provided access to read and make notes of a report's contents.

The Rachell Report and DA Lykos' two meaningful reforms of procedures in the Harris County DA's Office, are in sharp contrast with the typical blanket denial of wrongdoing by the prosecutors and police involved in an innocent person's wrongful conviction. The following is the Rachell Report that has been edited for length.

Rachell Report

Joint report by the
Harris County District Attorney's
Office and the
Houston Police Department

Released to the public on March 11, 2009

This report is a chronology of events regarding the investigation, arrest, conviction and exoneration of Mr. Richardo Rachell, Cause No. 928275

Initial response to complaint

Sunday, October 20, 2002, the eight-year-old Complainant was observed running down Griggs Road, waving his hands in the air and crying. The Complainant was in a state of intense emotional distress; a witness stated he was almost "convulsive". He just stated that a man had a knife and was trying to kill him.

The citizens brought the Complainant home and patrol officers were called to the Complainant's residence. The details he gave officers that night was that he was offered ten dollars to pick up trash and the man took him on the man's bicycle. The only description of the suspect in the offense report is that he was an unknown black male, age 30.

The next morning the mother of the Complainant kept her son home. She drove her older son to school and when she was returning, she saw an individual whom she believed was the suspect. She returned to her house, gathered two friends and the Complainant, and began looking for the suspect. She located him walking down the street in the neighborhood. She asked her son if this person was the attacker; he replied affirmatively. She followed the suspect to his mother's home and the police were called. ... [Richard] Rachell was placed in the back of the patrol car and the officer pulled the Complainant aside and asked him if Rachell is the person who kidnapped him. The Complainant stated that he was the person. ... ADA James Alston declined to accept charges and requested further investigation. Rachell is released.

HPD Juvenile Division takes over the investigation

Later that day L. Clemons of HPD Juvenile Sex Crimes is assigned the case. She contacts the Complainant's mother and makes arrangements to take the child to the Children's Assessment Center, (CAC).

The Complainant is interviewed by a CAC forensic interviewer and discloses the sexual assault. For the first time he describes his attacker. After the interview the Complainant is given a sexual assault exam.

Officer Clemons interviewed the Complainant's mother. Mother advises Clemons that she saved the clothes he was wearing and put them in a bag. She stated that the underwear had a "yellowish cream substance" in the seat and this disturbed her. Clemons transports the rape kit and the clothes to the HPD property room.

Presentation of case to the District Attorney's Office

On October 23, 2002, Officer Clemons comes to the Harris County District Attorney's Office and presents in person the facts of the case to Assistant District Attorney R. Freyer. Charges are accepted and filed.

Arrest of Rachell, DNA sample and statement obtained

October 24, 2002, Mr. Rachell was arrested at his residence and Officer Clemons requested a voluntary sample of Mr. Rachell's DNA. After Mr. Rachell consented and a sample of his DNA was obtained, Officer Clemons delivered the sample to the Houston Police Department property room. Officer Clemons conducted an audio recorded interview of Rachell wherein he denies assaulting the Complainant and states the Complainant and his family are lying.

Lack of request for DNA comparison by prosecutors

Joanne Musick was assigned the Rachell case. She presented the case to a Grand Jury and Rachell was indicted January 30, 2003. Although there are references in the offense report to the existence of forensic evidence to be compared, there was no request that it be analyzed.

After Mrs. Musick left the Office, Jimmy Ortiz was assigned the Rachell case and he was the prosecutor, who tried the case to a jury in June, 2003. There are notes in the file to indicate that he was aware that a sample of the Defendant's DNA had been obtained; however, he did not request tests be performed to compare that sample to the rape kit and the clothes of the Complainant.

Lack of request for DNA comparison by defense counsel

Ron Hayes was appointed to represent Mr. Rachell. He was the only defense attorney on the case and represented Mr. Rachell through the jury verdict in the case. At no time did he request that his client's DNA be compared to the rape kit or the clothes obtained from the Complainant.

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