

## 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.

#### Rachell Report cont. on p. 9

## Rachell Report cont. from p. 8

### Jury trial of Ricardo Rachell

The mother of the Complainant testified at the trial. She was asked, how she thought Rachell was the person who attacked her son. She stated it was based on the description that her son had given her the night before.

The Complainant positively identified Mr. Rachell in the courtroom as his attacker.

On June 3, 2003, A Jury convicted Mr. Rachell and assessed his punishment at forty years in prison. The conviction was affirmed, September 30, 2004.

### Pro se habeas corpus

Mr. Rachell filed his Petition for Writ of Habeas Corpus, September 11, 2005. It was denied, November 7, 2007.

### Post-conviction activity

Mr. Rachell filed a *Pro Se* Chapter 64 request in the 185<sup>th</sup> District Court asking for DNA testing. Judge Brown appointed Deborah Summers on April 19, 2007 to represent Mr. Rachell in the Chapter 64 request.

Defense attorney Summers failed to file a Chapter 64 motion that would begin the process that would result in the testing of biological evidence; therefore Assistant District Attorney Sally Ring ... filed a motion in the 185<sup>th</sup> District Court on March 10, 2008 requesting that the trial court find that Mr. Rachell met the requirements of Chapter 64 and the trial court order DNA testing in the case. Evidence was sent to DPS testing on March 11, 2008.

DPS issued a report on October 28, 2008 stating that the DNA of the Defendant did not match the evidence collected in this case. Mark Donnelly, who replaced Sally Ring, requested that Mr. Rachell be bench warranted so that the District Attorney's Office could agree to a personal bond releasing Mr. Rachell from custody while a Writ was prepared and filed that would lead to the case being dismissed.

December 12, 2008 DPS Lab reports that the DNA evidence identified Andrew Wayne Hawthorne as the Complainant's attacker. [Mr. Rachell was released on a personal recognizance bond on December 12.]

### Andrew Wayne Hawthorne

Andrew Wayne Hawthorne, in unrelated cases, was investigated by HPD Juvenile Sex

Crimes. He committed the sexual assault of boys in the same area of town and the method of luring the boys included the same MO. He approached the boys on a bicycle and offered them money for chores, then took them to a secluded area, and then anally raped them.

November 16, 2002, an eight-year-old boy was sexually assaulted in the same area as the Complainant in the Rachell case. ... October 23, 2003, HPD Juvenile Sex Crimes identified this case, via crime analysis, as the same MO as other sexual assaults against children in the southeast part of Houston.

Andrew Wayne Hawthorne pleaded guilty April 8, 2004 to all three cases and received 60 years in prison. [Hawthorne was dubbed the "Yellowstone Park Serial Rapist."]

Hawthorne was interviewed at the Hughes Unit in Amarillo, Texas, January 13, 2009, by Harris County District Attorney investigators. The investigators obtained a written confession from Hawthorne that he was the assailant in the crime for which Rachell was convicted. A buccal swab was obtained and tested; it was a match for the forensic evidence in Complainant's case.

The Harris County District Attorney's Office filed Aggravated Sexual Assault Against a Child charges against Hawthorne, February 24, 2009; the victim being the Complainant in the Rachell case.

### Conclusion

- The wrongful conviction of Ricardo Rachell and the length of his incarceration was the result of a series of unfortunate events, blunders and omissions. There was a cascading, system-wide breakdown.
- The closure of the Houston Police Department's DNA Crime Lab was the most egregious system failure. This lab was closed from December 2002 until May 11, 2005.
- Prosecutors did not request DNA testing.
- Mr. Rachell's trial attorney made no request for DNA testing. Rachell's Chapter 64 lawyer did not prepare and file the requisite motion requesting testing, this prolonged Rachell's imprisonment almost a year.
- The responding police officers did not document a description of the Complainant's assailant; this omission may have contributed to the mis-identification of Rachell.
- The officer who secured the forensic evidence requested testing, tagged the evidence in the property room, but there was no follow through with procedures to ensure testing.

## \$1.3 Million To LA Man Falsely Accused Of Murder

Edmond Ovasapyan was eating lunch with a cousin on November 1, 2005, at the exact time a man was shot to death in a Glendale, California home by three intruders.

The next day the 24-year-old Ovasapyan was arrested for the murder after being identified by the victim's mother in a photo lineup. He was charged with the murder with special circumstances, which made him eligible for the death penalty.

Ovasapyan, a tile contractor, languished for eight months in the Los Angeles County Jail until his attorney, Mark Garagos, was able to convince prosecutors that he had been mistakenly identified. Not only did crime scene evidence point to other men as the assailants, but Ovasapyan's cell phone records corroborated his alibi of being with his cousin. The charges were dropped and he was released in June 2006. He told reporters, "I feel great. But I shouldn't have gone through this for no reason."

In January 2008 Ovasapyan filed a federal civil rights lawsuit in Los Angeles against the City of Glendale and three police officers. The suit alleged that he had been falsely imprisoned and maliciously prosecuted.

The defendant's motion to dismiss the lawsuit was denied, and on February 25, 2009 a jury awarded Ovasapyan \$1.31 million: \$1.16 million in compensatory damages from the City of Glendale, and \$150,000 in punitive damages from Glendale police Det. Arthur Frank and Lt. Ian Grimes, the officers who headed the investigative team.

After the verdict Ovasapyan told reporters, "I thought this was never going to happen. I thought I was going to be in jail for the rest of my life. Justice prevailed."

Mark Garagos was also Kazuyoshi Miura's attorney. See p. 17.

### Sources:

Man Cleared of Murder Charges in Robbery, *LA Daily News*, July 11, 2006.  
Glendale man falsely accused of murder gets 1.3 million, *Los Angeles Times*, February 26, 2009.

- Juvenile Sex Crime investigators did not discern a pattern in attacks on children virtually identical to the victim in the Rachell case, the first of which occurred less than a month after Rachell's arrest. Eventually, crime analysis determined the pattern and Hawthorne was arrested and successfully prosecuted; but no one took a second look at Rachell's file.