

# The Boston Globe

## Police update evidence gathering

### Suspect identification is focus of changes

By Suzanne Smalley, Globe Staff | July 20, 2004

After nine men were convicted here for crimes they did not commit, Boston police and the Suffolk County district attorney's office have agreed on a series of reforms on how evidence is gathered, especially from witnesses to a crime.

The changes revamp the way witnesses are shown photos and lineups of possible suspects. Eight of the nine people exonerated by DNA here in the past decade were convicted at least in part on the basis of a witness who was wrong, according to the Suffolk County district attorney's office.

"These reforms put Boston at the forefront of the country," said Barry Scheck, codirector of the Innocence Project at the Cardozo School of Law.

"There's no question in my mind that these reforms will reduce the number of mistaken identifications without substantially reducing the number of correct identifications," said Scheck, who represented several of those exonerated here.

The new guidelines, which were agreed upon after months of work by a task force convened by Suffolk County District Attorney Daniel F. Conley, seek to eliminate pressure witnesses may feel to reach conclusive identification of a suspect when shown possible suspects by police. The guidelines also aim to avoid instances where police officers can, even unconsciously, lead a witness to pick a suspect police believe is guilty.

Under the new rules, witnesses shown photos of possible suspects will view the photos one by one and will be asked each time whether the person in the photograph is the person they saw commit the crime. Previously, witnesses were shown a number of photographs simultaneously, leading some to pick the person who most resembles the perpetrator because they are eager to help solve a crime.

In addition, now the police officer handling the photo arrays and lineups will not know who the suspect is, eliminating the possibility of passing along clues to witnesses. Police will also ask witnesses at the time of the identification how confident they are in their choice, and the answer will become a part of the record if the case goes to trial.

Finally, witnesses will be given the choice "none of the above," which officials hope will discourage emotional witnesses from feeling compelled to make a choice even if they do not see the offender in a lineup or in the photo array.

The reforms to be unveiled in tomorrow's report will put Suffolk County ahead of most of the rest of the country.

Only New Jersey and Madison, Wis., now use some or all of the tactics described above. In Minneapolis-St. Paul, a pilot program testing some of the reforms is under way.

In North Carolina, a state Supreme Court-chaired and a public commission recommended similar reforms, after some controversy, but local law enforcement has the option of implementing them.

The report urges prosecutors to closely examine what witnesses who do not make any identification say and to never solely rely on witness identifications in building a case.

"Even when you have the best procedures in place, there still is some risk of a mistaken identification, so it's important that prosecutors nevertheless keep a critical eye," said Gary Wells, the nation's leading witness misidentification scholar, a Department of Justice consultant, and a member of the Suffolk County task force.

The reforms would have made a difference in several prominent wrongful convictions cases, defense lawyers said.

Stephen Hrones, a lawyer for Anthony Powell, Ulysses Rodriguez Charles, and Donnell Johnson, all of whom were wrongfully convicted on the basis of mistaken witnesses, said the proposed reforms may have kept his clients out of prison.

While there is a large body of science underpinning the proposals Suffolk County is implementing, as well as a 1999 National Institute of Justice set of guidelines which includes several of the proposed reforms, most law enforcement agencies have not adopted them.

More than 70 percent of the 145 total postconviction DNA exonerations in this country were based on witness misidentifications, Scheck said.

Boston Police Commissioner Kathleen O'Toole called the reforms the first in a wave of planned changes meant to address the recent spate of wrongful convictions. The witness misidentification taskforce will also begin developing specific procedures for recording interrogations, she said.

The department is now requiring for the first time that Boston fingerprints and ballistic labs be certified nationally by the American Society for Crime Lab Directors, which sets standards for training and procedures.

A technician's misidentification of a fingerprint led to the wrongful conviction of a Mattapan man, Stephen Cowans, on murder charges.

All detectives who handle lineups will immediately begin receiving two-day training seminars so that they know how to apply the new rules and, over the next several months, everyone in the department will be trained, O'Toole said.

"I think we're breaking ground here," O'Toole said. "Out of all bad should come some good."

The changes seem little comfort to Powell who was recently exonerated by DNA after spending 12 years in prison on murder charges. A mistaken witness led to his conviction.

"They already ruined my life," Powell said when asked how he felt about the reforms. "I was only 19. You can just imagine how I feel. I lost all my teens . . . It would make a big difference for this not to happen" to someone else. ■

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