



TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

S.C.R. NO. 149, S.D. 1,

ENCOURAGING THE STATE ATTORNEY GENERAL AND STATE AND COUNTY LAW ENFORCEMENT AGENCIES TO ADOPT NEW EYEWITNESS IDENTIFICATION PROCEDURES TO DECREASE THE RATE OF ERRONEOUS EYEWITNESS IDENTIFICATIONS AND TO CONDUCT CRIMINAL INVESTIGATIONS IN ACCORDANCE WITH THE NEWEST AND BEST PRACTICES AVAILABLE FOR EYEWITNESS IDENTIFICATIONS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, April 14, 2011 TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General ("the Department") provides the following comments.

This resolution encourages the Department and the various state and county law enforcement agencies to adopt "new" eyewitness identification procedures, as outlined in the resolution, to decrease the rate of erroneous eyewitness identifications.

The Department strives to always conduct its investigations fairly and thoroughly and will definitely consider any ideas that might improve operations.

With respect to this resolution, the Department informs the Committee that the Investigations Division of the Department has already adopted many of the eyewitness identification procedures it proposes.

LATE TESTIMONY

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April 13, 2011,

Via: E-mail: senhee@Capitol.hawaii.gov; and

Via: Facsimile: Senate Sergeant at Arms; 586-6659

COMMITTEE: JUDICIARY AND LABOR

Chair: Sen.: CLAYTON HEE

Vice Chair: Sen.: MAILE S.L. SHIMABUKURO

DATE: Thursday, April 14, 2011

TIME: 10:00 AM

PLACE: Room 016

BILL NO.: SUPPORT SCR149 SD1

Honorable Senator's: Clayton Hee, Maile S.L. Shimabukuro and members of the Committee on Judiciary and Labor.

Thank you for providing me this opportunity to offer written testimony on behalf of the Hawai'i Innocence Project and the Eyewitness Identification Reform Litigation Network in strident Support of **SCR149 SD1**.

The Problem

The need for eyewitness identification reform has been borne out in both reality and research. The Innocence Project has found that mistaken eyewitness identification played a role in the vast majority of the 212 mistaken convictions in the United States overturned by DNA evidence. Studies of eyewitness identification over the past three decades have consistently shown the fallibility of eyewitness identifications as well as the unwitting contamination of witness recall through many standard eyewitness identification procedures.

Judiciary and Labor

April 13, 2011

Page 2

Experts have recently acknowledged the problems with eyewitness identification. According to the Illinois Governor's Commission on Capital Punishment, "The fallibility of eyewitness testimony has become increasingly well-documented in both academic literature and courts of law." (Report of The (Illinois) Governor's Commission on Capital Punishment, April 2002) Mario Gaboury, director of the Crime Victim Study Center at the University of New Haven stated, "Eyewitness testimony is often inaccurate. I don't think anyone understood the magnitude of the problem until the past few years." (New Haven Register, "U.S. Navy Study: Eyewitnesses Unreliable," June 21, 2004).

Erroneous eyewitness identifications unintentionally distract police and prosecutors' attention from the true culprit, mislead and undercut witness credibility, and sometimes result in convicting and imprisoning innocent people. It is imperative that states improve their eyewitness identification procedures.

The most common way to conduct police line-ups is to have multiple persons appear before a witness at the same time and the officer conducting the line up knows who the suspect is. Police officers conducting these line-ups can suggest to the witness either through intonation or attitude who the suspect is. Since defense counsel is usually not present during a line-up, there is little the suspect can do to protect his or her rights and ensure a fair procedure.

The good news is that procedures proven to improve the accuracy of eyewitness identifications are readily available and easy to implement. For instance, research and experience shows that "blind" administration of the lineup (where the lineup administrator is unaware of who the suspect is within the lineup) prevents subtle, unintentional cues from influencing the witness's identification. Further, providing specific instructions to witnesses, such as information about the procedure and the potential that the culprit may or may not be in the lineup, greatly reduces the potential for a false identification. Additionally, showing the witness one person at a time reduces the likelihood of witness suggestibility. Studies show that using all three of these procedures *together* provides the greatest accuracy in eyewitness identifications

Where implemented, these changes have proven successful. The state of New Jersey, large cities such as Minneapolis, MN and small towns such as Northampton, MA, and others have implemented these practices and have found that they have improved the

quality of their eyewitness identifications, thus strengthening prosecutions and reducing the likelihood of convicting the innocent. Numerous other jurisdictions, such as the states of North Carolina and Illinois, as well as Boston, Massachusetts, and other cities, are now beginning to implement these procedures. It is our hope that with continued experience and evaluation, police departments and prosecutors around the country will agree that taking advantage of the emerging research and best practices will further enhance their ability to swiftly and surely convict offenders, and avoid being misled into pursuing others – or convicting the innocent.

In the late 1990s, the National Institute of Justice (NIJ) convened a technical working group of law enforcement and legal practitioners, together with researchers specializing in the issue, to explore the development of improved procedures for the collection and preservation of eyewitness evidence within the criminal justice system. In 1999, the NIJ group issued *Eyewitness Evidence: A Guide for Law Enforcement*, and in 2003 followed up with *Eyewitness Evidence: A Trainer's Manual for Law Enforcement*. These manuals recommend the techniques referred to in the model legislation, and will serve as an excellent resource for any law enforcement agencies interested in improving the accuracy of eyewitness identifications.

Across the country, experience implementing these improvements has shown that if these procedures are to be successful in Hawai'i, they must be meaningfully adopted by law enforcement. Change comes easily to no one, and thus it is important to work with the people being asked to change in order to foster it. We hope to reach out to prosecutors and police to gain their support for a version of this model legislation, find resources to educate and train their forces on the proper techniques, and credit them for making these changes.

Improving eyewitness identification procedures is not about the adversarial process or political power; it's about apprehending the guilty and protecting the innocent. In short, it's just good law enforcement.

For proof positive of the inherent problems with faulty eyewitness identification one needs only to look in our own backyard. The troubling case of *State v. Shaun Rodrigues* is a prime example of what can happen when eyewitness identification goes awry. Attached are two (2) editorials from the Honolulu Advertiser and the Star Bulletin that poignantly set forth the tragedy of the Rodrigues case. A tragedy which

Judiciary and Labor
April 13, 2011
Page 4

may have been prevented if Senate Bill **SCR149 SD1** was the law at the time of the Rodrigues case. Unfortunately, Shaun Rodrigues remains incarcerated to this day.

The Solution

Hawai'i must have eyewitness identification procedures in concert with the most up-to-date protocols, such as those put forth by the National Institute for Science. *Senate Bill SCR149 SD1 would go a long way in remedying the problems inherent in Hawaii's current eyewitness identification procedures.*

Accordingly I offer my strident support of this bill.

If you have any questions or need further clarification please feel free to contact me.

Sincerely,



William A. Harrison
Adjunct Professor, William S. Richardson School of Law, Hawaii Innocence Project
Hawaii Point person – The Eyewitness Identification Reform Litigation Network

Attachments

- (1) Honolulu Advertiser Editorial
- (2) Star Bulletin Editorial

Attachment "1"



Sunday, September 19, 2004

Rodrigues' conviction was hardly convincing

By Robert Rees

What most distinguished the recent criminal trial of Hawaii vs. Shaun C. Rodrigues was the failure of our judicial system to fulfill the mandates for a speedy trial and that guilt be proven beyond a reasonable doubt.

In this case, if the defendant goes to jail, it will be an injustice. An injustice not because we know he is innocent but because we know there is reasonable doubt as to his guilt.

...

On March 1, 2002, following a nonjury or bench trial requested by defense attorneys because of pre-trial publicity, Circuit Court Judge Virginia Crandall pronounced defendant Shaun C. Rodrigues guilty of two counts of kidnapping and two counts of first-degree robbery.

Eighteen months later, Crandall belatedly filed her findings and decision with sentencing still to come. Last month, while still awaiting sentencing, Rodrigues was activated and nearly deployed to Iraq by the National Guard. On Sept. 10, two and one-half years after she had found him guilty, Crandall sentenced Rodrigues to a prison term of 20 years maximum. He will remain free pending his appeal to Hawaii's Supreme Court.

Buried in these chronological facts and much more astounding than the delays and near military deployment of an officially guilty but unsentenced felon is the reasonable doubt that permeates the finding of guilt. Rodrigues has never stopped maintaining his innocence.

In a meeting with this writer on the morning after he was sentenced, with copies of the Sept. 11 Honolulu Advertiser that featured his photo on the front page scattered about the premises of Starbucks in Kailua, a depressed and emotional Rodrigues said, "I'm not the person who did this."

Star-Crossed Lives

Rodrigues, then 20 years old, spent the late hours of July 7, 2000, dancing away a Friday night in Waikiki with friends. He didn't return to his home in

Kailua until 2 a.m. the next morning. According to Rodrigues and family members, he slept on the futon in the family room until about 10:30 a.m.

Rodrigues' mother later testified she saw her son sleeping when she left for breakfast that Saturday morning at 7:40 a.m. He was still sleeping, she asserted, when she returned from Brent's Restaurant at 8:50 a.m. Rodrigues' younger brother testified he was sitting in the family room where Rodrigues was sleeping during the time his mother was at breakfast.

On that same Saturday morning, on the other side of the Pali, another family was going about its affairs. Law student Dawn Sugihara, today an attorney in Honolulu, had breakfast with her father at the Hungry Lion. Dawn's mother, Dianne, didn't join the breakfast but was up watching CNN and was in the shower by 8:45 a.m.

When Dawn returned from breakfast to the Sugihara home in Manoa, the nightmare began with the unannounced suddenness that so often characterizes the bleak side of life. Dawn recalled that suddenness in her statement to the Honolulu Police Department:

"On July 8, 2000, around 9:10 a.m. I came home from breakfast. I parked the car in the garage and went to the front yard to put a letter in the mailbox. I let the dog out with me in the front yard. ... Then I walked upstairs to ask my mom when she would be ready to leave. When I got up to the bathroom door, a man with a gun stepped out from behind the wall."

The man with the gun forced the mother and daughter to lie on the floor, tied their hands and covered their heads. He told the mother that if she didn't remove her wedding ring, he would cut off her finger. He rummaged through the home for 45 minutes and left. Dawn Sugihara freed herself and called 911.

Detective Robert Cravalho of the Honolulu Police Department found it noteworthy that the Sugihara home and another residence robbed just four days before on July 4 had only recently had their burglar alarms updated by Hawaii Alarm Systems.

Cravalho noticed also that a young man from Kailua, Shaun C. Rodrigues, had worked as an employee on both installations. Rodrigues had joined the company after graduating with an associate's degree in electronic technology from a business trade school.

Lt. Henry Nobriga of HPD, working on the deduction of Cravalho, used a computer-generated photo apparently taken from Rodrigues' driver's license database to prepare a photo spread or line-up with six side-by-side photos of similar looking males. The use of this photo line-up will be a central point in the appeal of Rodrigues to the Hawaii Supreme Court.

appearance was the photo of Rodrigues. (The four-color photos actually used in the line-up are still in evidence pending appeal, but even black-and-white reproductions illustrate the differences between the photos. In addition, says Rodrigues, "Everybody else has a much darker complexion. I stand out.")

The Identification

When Dawn Sugihara phoned 911, she was asked repeatedly if she could describe the perpetrator. Some of her various responses were:

Answer: "Ummm. I didn't really see him. I ... I saw his feet a lot. He put us on the ground and we were tied up."

Answer: "(Inaudible) he might have had a little mustache. I didn't think to look at him until I was tied up. He made us put clothes over our head."

Answer: "He had like, a silver with ... silvery kinda ... I don't know anything about guns. It looked kind of like a pistol. It didn't look that big. It was a handgun. He had a black, leathery looking bag that he took all our stuff in."

Nevertheless, Dawn in her subsequent written statement on that same morning said she was "pretty sure" she could identify the perpetrator.

In her statement to the police, Dawn's mother wrote, "Because I was about to shower I did not have my contacts on and could not clearly see the suspect. ... I did not look up when he was in the house as I was very scared. ... I don't think I would recognize him again."

Yet both mother and daughter, two days after the robbery, separately and independently identified Rodrigues as the perpetrator after looking at the photo line-up prepared by Nobriga. Dawn told Nobriga that the face of Rodrigues, who by the way did not have the "little mustache" she thought she might have noticed, "jumped out" at her. Dianne said the face "just came to her."

Even though Dianne had served Rodrigues a cold drink in her kitchen when he installed the Sugihara's new alarm system only two weeks earlier on June 27, she did not recognize him as the worker in her home. Following her identification of Rodrigues in the photo line-up, she had to be told he was the same person with whom she had spent time in her own kitchen.

Because Dawn's and Dianne's identifications were quick and seemingly certain, police thought they had their man even though they had used a photo line-up procedure that was increasingly under scrutiny.

According to the ABA Journal, one state, New Jersey, had replaced its side-by-side photo line-up because of "the growing number of innocent prisoners who have been exonerated through post-conviction DNA testing." New Jersey's new system requires that photos be shown one at a time by officers

who have no knowledge who the suspect is.

HPD Taints the Alibi

HPD had no physical evidence linking Rodrigues to the 45 minutes of rummaging through the Sugihara home. They did find one latent fingerprint on a jewelry box in Dawn's bedroom but it wasn't Rodrigues'. Based solely on the photo line-up, Rodrigues was arrested at his home on July 10 at 6 p.m.

With the consent of Rodrigues, HPD searched his home for a silver-colored handgun, a black backpack (described by Dawn not as a backpack but as a "black leathery looking bag"), jewelry, tan boots, a blue-colored aloha shirt and, apparently covering all bases, a black handgun. The police did recover a silver-colored plastic toy pistol from the bedroom of the younger brother, then 15 years old, but both victims testified the toy was not the gun they had seen.

HPD found no construction boots and in fact did not find one piece of evidence that could be used to link Rodrigues to the crime.

It was at this point that HPD made it nearly impossible for Rodrigues to defend himself with an alibi. Inexplicably, Detective Glen Muramoto provided Rodrigues' mother with a summary, complete with specific dates and times, of recent home invasions for which Rodrigues was now a suspect.

As Lt. Nobriga wrote after Rodrigues was found guilty, this error "made it impossible for me to determine the guilt or innocence of Mr. Rodrigues. ... Specifically, by Detective Glen Muramoto providing a key witness — the suspect's mother — a complete summary of recent home invasions, this investigation was seriously hampered and its integrity prejudiced."

Judge Crandall noted in her Findings of Fact that Muramoto observed the mother recording these dates and times in her day planner. It was then that she had offered the alibi that her son had been at home sleeping at the time of the July 8 robbery. She at first said she left the house at 8 a.m. and returned home at 10:30 but later changed these times to 7:40 a.m. and 8:50 a.m., respectively.

Apparently, it was this discrepancy and the fact that Rodrigues' mother had been told the dates and times of the crimes that led Crandall to discount the alibi and to conclude, "The defense witnesses are not credible witnesses in this case."

On the other hand, Crandall gave the victims high marks for credibility even to the point of contradicting her own findings. The judge, for example, noted that Dianne immediately identified Rodrigues but also ruled, "Dianne looked at Rodrigues for a while at the preliminary hearing because Dianne did not

identification."

Crandall seemed to go out of her way to bolster the mother's testimony. Dianne, in her own statement to HPD, had specifically said that without her contacts she could not see the suspect clearly. The judge's interpretation of this was, "Although not wearing her glasses, the lighting in the bathroom and bedroom area was sufficient such that Dianne could clearly see Rodrigues' face."

Second thoughts

What's most astounding about the verdict is not the delays and even buffoonery that ensued but the reasonable doubt that immediately engulfed it. On the day of the verdict, for example, Deputy City Prosecutor Russell Uehara confessed, "We were hopeful, but it wasn't a clear-cut case." Uehara had advised the victims not to be in court lest they be "traumatized" by a verdict of not guilty.



Toni Kurihara, left, defends her son, convicted Manoa home invader Shaun Rodrigues, right, by repeating that she and her family were not lying when they said Rodrigues was at home at the time of the crime. At middle is defense attorney William Harrison.

Shaken by the decision and convinced of his client's innocence, attorney William Harrison had a polygraph or Psychophysiological Detection of Deception administered to Rodrigues and his mother on May 4, 2002. Concluded the report from Clarke & Associates, "It is the opinion of this examiner that (Rodrigues and his mother) were truthful in answering. ..."

Richard Ambro • The Honolulu Advertiser

On top of all this, Lt. Nobriga stated in a letter he signed on Feb. 5 of this year, "It is my honest belief that despite Mr. Rodrigues' conviction, our investigation was not thorough enough to prove Mr. Rodrigues' guilt beyond a reasonable doubt."

Nobriga, in a newspaper interview on Sept. 9 of this year, claimed one sentence from a long conversation had been taken out of context and stuck into his letter by Rodrigues' attorneys.

Said Nobriga, "Taking one sentence out of an hour-and-half-long conversation is ... not exactly truthful. I know (Rodrigues) was guilty."

However, the fact is that Nobriga's letter contains four full paragraphs devoted to why, "As I stated, that guilt or innocence has never been proved to my satisfaction. Under penalty of perjury, I declare the foregoing statement to be true and accurate."

On March 29 of this year, Harrison filed a motion for a stay of judgment and for a new trial. The motions, denied on Sept. 10 by Judge Crandall, offered Nobriga's sworn statement and also proffered that a chance encounter with an inmate at the Diamondback Prison Facility in Oklahoma has led to the identification of a new suspect.

According to the inmate in a phone conversation with Harrison on Feb. 6, 2004, the alleged new suspect tried to interest the inmate in assisting on the robbery. Among other information supplied by the inmate was that the alleged new perpetrator, an ice addict, is known to keep a silver pellet pistol in his car and was working near the Sugihara home on a construction job at Manoa Elementary School in early July, 2000, but didn't show up for work on the day of the invasion of the Sugihara home.

Harrison has been able to independently confirm some of the inmate's story and has tracked down the employer, whose records show that the alleged new suspect didn't show up for the construction job at Manoa Elementary on July 8. Crandall, on Sept. 10, ruled this testimony to be vague and inadmissible as evidence.

There are other lingering and disturbing questions. Rodrigues has never been linked to the robbery of July 4, 2000, at the other residence where he helped to install a burglar alarm. Yet this was the connection, proffered as more than coincidence by the prosecution, that placed him under suspicion to begin with.

Rodrigues became a popular suspect and at one point was under investigation for 10 other robberies, including one on July 12 where the perpetrator was described as a 6-foot Caucasian. For that one, Detective Cravalho actually opined to the press that the suspect was either a copycat of or connected to Rodrigues.

On July 18, 2000, on St. Louis Drive, there was a robbery that to HPD must have reeked of Rodrigues. The perpetrator was described as 5 feet 4 and brandishing a silver handgun. The victims were tied up on the floor of the home. There was one problem: Rodrigues didn't make bail until July 21.

Under suspicion for nearly the entire epidemic of home invasions then occurring, Rodrigues was charged with only one other crime, terroristic threatening, that probably won't go to trial.

On July 6, 2000, two days before the Sugihara robbery, a family encountered a strange male just outside their home. When confronted, the stranger removed a small silver-colored handgun from his pocket and fled. Of the six witnesses, one identified the photo of Rodrigues but indicated the perpetrator had a "darker complexion." Harrison believes the prosecutor charged Rodrigues with that crime in an attempt to bolster a weak case in the Sugihara incident.

What can we learn?

A friend of Rodrigues had it right on the day of the guilty verdict when she said to the Advertiser, "I think they just took his life away." Besides facing 20 years in prison, Rodrigues has been discharged from the National Guard

unit he joined when he graduated from Kailua High School in 1998. In addition, his plan for a career in electronics after putting himself through a trade school has been derailed.

What we have here is an injustice illustrative of the dangers inherent in eyewitness identifications without one iota of physical evidence. Those identifications are usually well intended and even careful but often wrong. As the ABA Journal reports, "More than 4,250 Americans per year are wrongfully convicted due to sincere, yet woefully inaccurate, eye-witness identifications."

The Rodrigues verdict is illustrative also of the danger of combining overzealous prosecutors, uninhibited either by a dearth of evidence or by sloppy police work, with a judge who may have allowed her subjective feeling about the credibility of witnesses to become a factor in determination of guilt.

It's possible that a gnawing recognition of reasonable doubt and a realization of the unconscionable delays in the trial may have led Judge Crandall on Sept. 10 to try to rectify the situation by having it both ways.

In granting Harrison's motion that Rodrigues remain free on bail while appealing to the Hawai'i Supreme Court, Crandall had to rule the very person she had found guilty of kidnapping and of threatening to cut off a woman's finger is not a threat to the community.

That sounds an awful lot like reasonable doubt, and Crandall may be hoping that the Hawai'i Supreme Court comes to the same conclusion.

Robert M. Rees is moderator of 'Olelo Community Television's "Counterpoint" and Hawaii Public Radio's "Talk of the Islands."

Attachment "2"

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Star Bulletin

Vol. 11, Issue 15 - Sunday, January 15, 2006



My Turn Jim Borg

Nagging questions remain in Rodrigues case

Authorities say they will take another look at fingerprint evidence

IN JUNE 2000, Dianne Sugihara, a librarian at McKinley High School, arranged for the alarm to be checked at her house in Manoa, which had recently been burglarized.

Arthur Lee, owner of Hawaii Alarm Systems, came over to handle the job. With him was an employee, Shaun C. Rodrigues, then 20, a graduate of Kailua High School and a Hawaii National Guard soldier. Together, Lee and Rodrigues worked on the inspection, and then Rodrigues returned by himself on June 27 to set up a second alarm speaker.

Sugihara by then was calling Rodrigues by his first name and served him a soft drink while he worked.

Just over a week later, around 9 a.m. on July 8, 2000, Sugihara was home alone and taking a shower upstairs when she heard a noise outside the bathroom. She was expecting her daughter, Dawn Sugihara, then a law student, because the two had planned to go shopping.



STAR-BULLETIN

Shaun Rodrigues, right, talks with an attorney before his sentencing in a Manoa robbery. He maintains his innocence.

When she looked outside the bathroom, she saw a man aiming a small silver handgun at her.

Dianne did not have her contact lenses in and later told police she did not get a good look at the intruder.

She then realized that Dawn also was in the bedroom. The gunman ordered both women to lie face-down on the floor. He allowed Dianne to put a towel around herself first, assuring her that he was not a rapist.

Once they were prone, the intruder tied the women's hands with cord and tossed a pair of shorts over Dianne's face.

Dawn Sugihara later told police she got a two-to-five-second look at the man, who wore no mask, before she went down on the floor, from where she noticed he was wearing baggy blue denim jeans and yellow work boots and that he placed items into a black backpack.

The women heard the intruder rummage around the house for about 20 minutes and then, emboldened by silence, untied themselves and dialed 911.

Detective Robert Cravalho was struck by the fact that this was the second Manoa area burglary in a week in which a burglar alarm had apparently been circumvented. Both alarm systems had been upgraded by the same worker from Hawaii Alarm, Shaun Rodrigues.

So when Dianne and Dawn Sugihara came down to the police station on July 10 to give a description of the suspect to an artist, they were instead shown a set of six photographs. One of the six was Rodrigues' driver's license photo.

Separately, both women picked Rodrigues' photo, telling detectives that this was the man who had robbed them two days earlier.

Curiously, however, Dianne Sugihara did not recognize the photo as belonging to the man who installed her burglar alarm.

When Cravalho pointed out the connection, she looked puzzled. When the realization hit her, she began to "shake uncontrollably," according to court documents.

On strength of the Sugiharas' identification, in March 2002 Rodrigues was convicted in a nonjury trial of five felonies, including first-degree robbery. He was sentenced to 20 years in prison and, after the conviction was upheld by the Hawaii Supreme Court on Dec. 7, began serving time last week.

Rodrigues continues to insist he is innocent, claiming he was home in Kailua at the time of the robbery.

In finding him guilty, Circuit Court Judge Virginia Crandall chose to believe the Sugiharas' identification over the testimony of Rodrigues' mother, stepfather, brother and other family members that he was asleep in plain view on the family room futon during the relevant hours.

With his state appeals exhausted, Rodrigues' attorney, William Harrison, plans to turn to the federal courts for relief in a case that continues to present nagging questions.

» If Rodrigues is the culprit, why did he not wear a mask when he went to burglarize a home where he was known? The intruder's possession of a gun suggests he was prepared to run into someone.

» From a ransacked black Chinese jewelry box in Dawn Sugihara's room, a police evidence specialist lifted a clear fingerprint. It does not match Rodrigues. Whose is it?

No other physical evidence was found at the scene.

A search of Rodrigues' house turned up nothing to link him to the crime: no stolen goods, no denim jeans, no work boots. Police did find a big pellet gun that the Sugiharas later said was not the one used in the robbery.

All the while, Rodrigues' family has insisted he was home. His mother, Antoinette Kurihara, and her husband, Todd Kurihara, went out to breakfast at some point in the morning. The exact time became an issue at trial, but they say Shaun was sleeping in the family room when they left and when they returned.

They said he was on the futon because his sister, who has asthma, was using Shaun's room, which is air-conditioned.

Shaun's brother, Royce, told police he was there in the room with Shaun the entire time.

When their grandmother, Esther Specht, called from California, Royce informed her that Shaun was asleep. Phone records show that call came in at 8:56 a.m.

The case is all the more frustrating to Harrison because he has identified another possible suspect.

After the trial was over, on a tip from a Hawaii inmate at the Diamondback Correctional Facility in Oklahoma, Harrison was given the name of man convicted of a home invasion robbery of an elderly woman in Kailua.

That man was working on a construction job at Manoa Elementary School, just blocks from the Sugihara home, in July 2000. When Harrison contacted the company, Suncrete, he confirmed that the individual in question did not show up for work on the day of the robbery.

Meanwhile, Harrison ran newspaper ads earlier last month appealing to the public for any more leads. He says he got one promising response, but no follow-up from the caller.

Some of the residual questions in the Manoa robbery case might never be answered. But in researching the case this week, the Star-Bulletin learned that the fingerprint recovered from the jewelry box has never been compared to the prints of the second potential suspect.

That seems like a loose end that could easily be tied up.

And on Friday, after an e-mail request, the Honolulu Prosecutor's Office agreed to make the comparison.

The Sugiharas have been shown photos of the second potential suspect and have said he is not the intruder.

But law enforcement officials have long known that eyewitness identification is far from infallible.

"Even the most honest and objective people can make mistakes in recalling and interpreting a witnessed event," the U.S. Justice Department advised in a 1999 position paper. "It is the nature of human memory."

Jim Borg, a veteran reporter and magazine editor, is a Star-Bulletin copy editor.

My Turn is a periodic column written by Star-Bulletin staff members expressing their personal views.

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COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice Chair

Thursday, April 14, 2010

10:00 a.m.

Room 016

SCR 149 SD1 - ENCOURAGING NEW EYEWITNESS IDENTIFICATION PROCEDURES SUPPORT

<http://www.capitol.hawaii.gov/emailtestimony>

Aloha Chair Hee, Vice Chair Shimabukuro and Members of the Committee!

My name is Kat Brady and I am the Coordinator Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars, always mindful that almost 1,800 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SCR 149 SD1 encourages the attorney general and the law enforcement coalition to adopt new eyewitness identification procedures to reduce the rate of erroneous eyewitness identifications.

Community Alliance on Prisons supports this measure in the name of justice. The Hawai'i Innocence Project recently represented Alvin Jardine, a gentleman on Maui¹ who was imprisoned for twenty years. Mr. Jardine was convicted on eyewitness identification for a crime that the DNA evidence now says he did not commit. This and many other cases around the U.S. have highlighted the problem with current eyewitness identification procedures.

Experts have recently acknowledged the problems with eyewitness identification.

According to the Illinois Governor's Commission on Capital Punishment, *"The fallibility of eyewitness testimony has become increasingly well-documented in both academic literature and courts of law."*²

Mario Gaboury, director of the Crime Victim Study Center at the University of New Haven stated, *"Eyewitness testimony is often inaccurate. I don't think anyone understood the magnitude of the problem until the past few years."*³

¹ Years of toil led to freedom for innocent man *The release of a Maui inmate is the first success by the Hawaii Innocence Project*, By Michael Tsai, POSTED: 01:30 a.m. HST, Feb 13, 2011.

http://www.staradvertiser.com/news/20110213_Years_of_toil_led_to_freedom_for_innocent_man.html

² Report of The (Illinois) Governor's Commission on Capital Punishment, April 2002.

³ New Haven Register, *"U.S. Navy Study: Eyewitnesses Unreliable,"* June 21, 2004.

The National Institute of Justice Journal No. 258⁴ stated:

“At its most basic level, a police lineup involves placing a suspect among people not suspected of committing the crime (fillers) and asking the eyewitness if he or she can identify the perpetrator. This can be done using a live lineup of people or, as more commonly done in U.S. police departments, a lineup of photographs. Live lineups typically use five or six people (a suspect plus four or five fillers) and photo lineups six or more photographs.⁵”

There are two common types of lineups: simultaneous and sequential. In a simultaneous lineup (used most often in police departments around the country),⁶ the eyewitness views all the people or photos at the same time. In a sequential lineup, people or photographs are presented to the witness one at a time.

Typically, the law enforcement official or lineup administrator knows who the suspect is.⁷ Experts suggest that lineup administrators might—whether purposefully or inadvertently—give the witness verbal or nonverbal cues as to the identity of the suspect. For instance, if an eyewitness utters the number of a filler, the lineup administrator may say to the witness, “Take your time Make sure you look at all the photos.” Such a statement may effectively lead the witness away from the filler.⁸ In a “double-blind” lineup, however, neither the administrator nor the witness knows the identity of the suspect, and so the administrator cannot influence the witness in any way.⁹ (See following graphic, “Live Police Lineups: How Do They Work?”)

Community Alliance on Prisons supports having Hawai‘i’s law enforcement agencies evaluate their current line-up procedures to ensure that they are in compliance with the most up-to-date protocols, such as those put forth by the National Institute for Science.

Community Alliance on Prisons asserts that in the interest of justice, we should always be looking at ways to update our system to ensure that justice is served. Mahalo for this opportunity to share our support for this measure.

⁴ *Police Lineups: Making Eyewitness Identification More Reliable*, NIJ Journal No. 258 • October 2007, by Beth Schuster, Managing editor of the *NIJ Journal*.

<http://www.ojp.usdoj.gov/nij/journals/258/police-lineups.htm>

⁵ Wells, G.L., A. Memon, and S.D. Penrod, “*Eyewitness Evidence: Improving Its Probative Value*,” *Psychological Science in the Public Interest* 7 (2) (November 2006): 45–75.

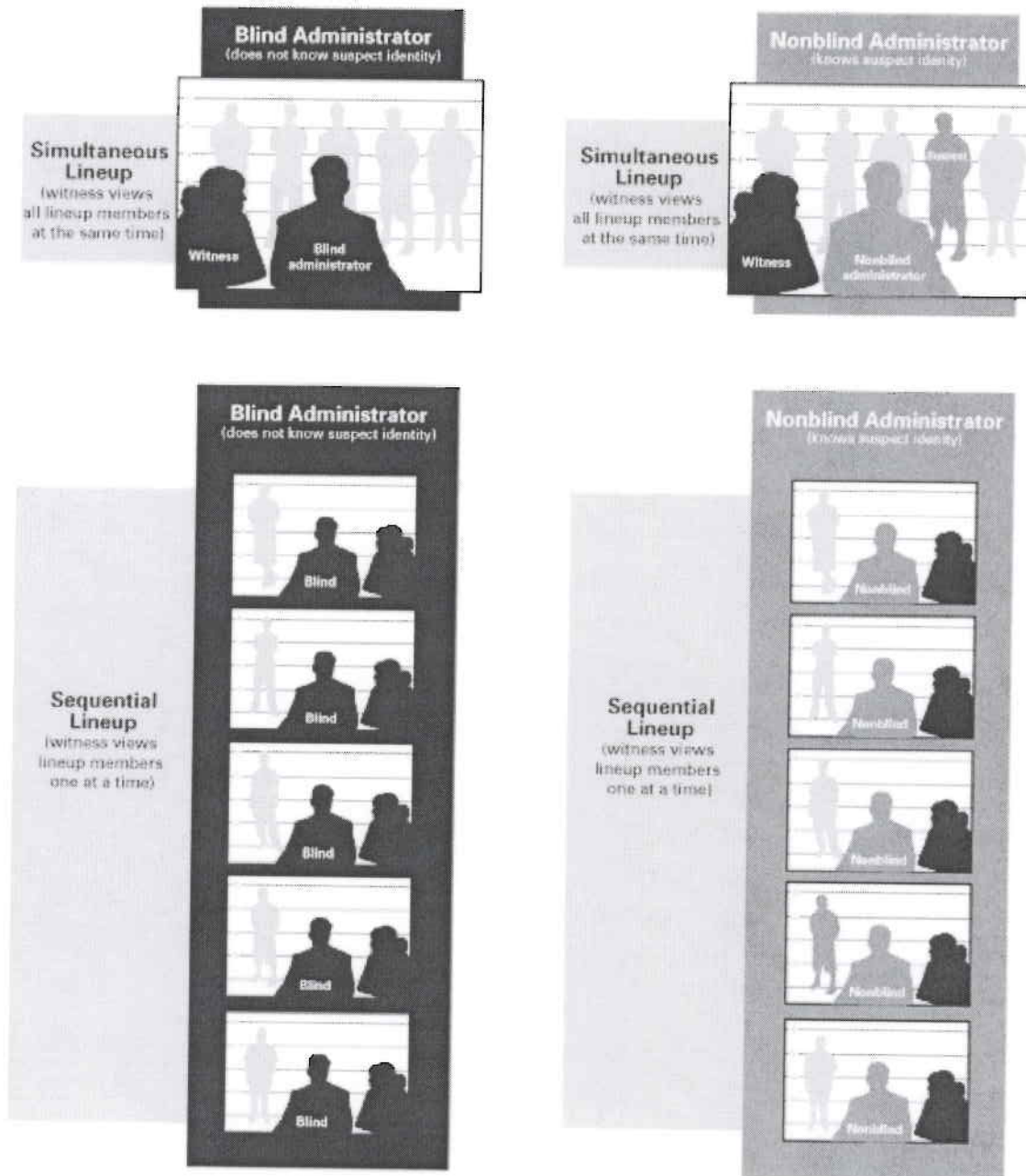
⁶ Wells, G.L., and E. Olson, “*Eyewitness Testimony*,” *Annual Review of Psychology* 54 (2003): 277–295.

⁷ Wells, Memon, and Penrod, “*Eyewitness Evidence: Improving Its Probative Value*,” 63.

⁸ Gary L. Wells’ comments on the Mecklenburg Report (see note 8), available at www.psychology.iastate.edu/faculty/gwells/Illinois_Project_Wells_comments.pdf (accessed June 19, 2007).

⁹ Mecklenburg, S.H., *Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures*, submitted March 17, 2006, available at www.chicagopolice.org/IL.%20Pilot%20on%20Eyewitness%20ID.pdf.

Live Police Lineups: How Do They Work?*



* Most U.S. police departments use photo lineups. The same concepts depicted in this graphic—simultaneous and sequential, blind and nonblind—apply in photo lineups.



LATE TESTIMONY

Committee: Committee on Judiciary and Labor
Hearing Date/Time: Thursday, April 14, 2011, 10:00 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Support of S.C.R. 149, SD1

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of S.C.R. 149, SD1.

The two most common causes of wrongful conviction are mistaken eyewitness identification and false confessions. Modern DNA evidence has proven that innocent people are sent to prison for crimes they did not commit far more often than we think.

S.C.R. 149 would improve Hawaii's eyewitness identification procedures using scientific standards. Improving these procedures will simultaneously decrease the rate of wrongful conviction and increase our ability to convict those who are truly guilty.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,
Laurie Temple
Staff Attorney
ACLU of Hawaii

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