

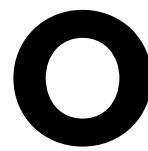
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RECOGNITION

How a travesty led to criminal-justice innovation in Texas.

BY PAUL KIX



One Sunday night in March, 1985, Michele Murray, a sophomore at Texas Tech University, tried to find a parking space near her dorm. In the preceding months, four women had been raped on or near the Texas Tech campus, in the small plains city of Lubbock; local newspapers speculated about a “Tech rapist,” but the police had no solid leads. As Murray parked in a church lot, a man wearing a yellow terry-cloth shirt and bluejeans approached the car. She felt a pang of fear, but at second glance the man seemed harmless—not particularly tall or muscular, with gaunt cheeks and bulging eyes. She rolled down the window.

“You want your witnesses to be credible,” a Lubbock police officer said.

ILLUSTRATION BY ANNA PARINI



“Do you have jumper cables?” he asked. She said no. For a moment, the man stared vacantly up at the night sky.

Then, in one quick motion, he forced the door open, pulled out a pocketknife, pushed Murray into the passenger seat, and held her in a headlock. He put the car in gear with his left hand and drove out of town, pressing her head down so that she could not see where they were going. Eventually, he stopped in a field. Murray could see the lights of downtown Lubbock in the distance. Threatening her with the knife, he ordered her to take off her sweatsuit. Despite her panic, she tried to memorize every detail of his appearance.

A couple of hours later, the man drove back toward town, took Murray’s gold ring and watch, left cigarettes in her car, and fled. She drove back to Texas Tech and reported the rape. Then she went to the hospital, where she was met by a Lubbock police officer. He asked

her to describe her assailant, and she told him everything she remembered: he was a black man with close-cropped hair, dark skin, and bulging eyes.

Later that week, Murray went to the police station to meet a detective named Joe Nevarez. He flipped through the department's book of mug shots and asked Murray if any of the men resembled her assailant; none did. The police commissioned a composite sketch based on Murray's description, and they compared her statement with those of the other victims. In each case, the attacker, identified as an African-American man, had confronted a lone white woman in or near a car, threatened her with a small pocketknife, driven her to a secluded spot outside the city limits, and raped her. The similarities among these accounts led the police to believe that there was, in fact, a single "Tech rapist."

During the next two weeks, the police attempted a sting operation. For three nights, Rosana Bagby, a young plainclothes officer, walked back and forth between the church parking lot where Murray had been approached and the dorm across the street. Bagby strolled for hours, but nothing unusual happened. On the third night, Nevarez, watching from a nearby car, saw one thing that struck him as salient: an African-American man in a brown Buick stopped to chat with a white woman, then drove away. In all the incidents, the assailant had approached on foot, not in a car; nevertheless, Nevarez ran the Buick's license-plate number and saw that the car was registered to Timothy Cole, a twenty-four-year-old Texas Tech student and an Army veteran.

Nevarez followed Cole's Buick to a nearby pizzeria. Bagby went in, sat in a booth in front of Cole, ordered a Dr Pepper, sipped it for ten minutes, and left. As Bagby walked north on University Avenue, Cole pulled up behind her.

"You shouldn't have left," he said. "We could have had some beers or something."

They flirted for a few minutes. Bagby noticed that he had close-cropped hair, slightly protruding eyes, and a thin build. He asked for her phone number, but she said no.

"That's what they all say," he said, and drove away.

Bagby thought that Cole resembled the composite sketch of the “Tech rapist.” He became the primary suspect.

The police wanted to assemble a series of mug shots that they could show to Murray. Cole’s mug shot was already on file. A few months earlier, he had been robbed at gunpoint while trying to buy marijuana. He flagged down a Lubbock police officer, who promised to investigate the robbery but also arrested Cole for marijuana possession and for unlawfully carrying a weapon. In mug shots, most people wear a blank expression or a scowl, but Cole posed with a loopy smile.

Worried that the smile would be a distraction, another detective, George White, went to Cole’s house with a Polaroid camera and asked him to pose in front of a wood-panelled wall. White didn’t mention that Cole was a rape suspect; instead, he said that the police were still looking for the people who had robbed Cole, and that another photograph would help with that investigation. Cole found the request strange, but he consented.

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Later, the police affixed the new shot of Cole to a piece of paper along with five other photographs, arranged in a “six-pack” formation—two rows of three. Then the detectives met with Murray in her dorm and showed her the spread. Five of the six photos

were standard mug shots: men in police custody, holding up placards and gazing away from the camera. Murray’s eyes were immediately drawn to the Polaroid shot of Cole, in front of wood panelling, looking directly at the lens.

Murray deliberated for a few seconds. Then she pointed to Cole and said, “I think that’s him.”

“Are you positive?” Nevarez asked. He seemed pleased with her choice.

“Yes,” she said. “I’m positive that’s him.” Murray initialled Cole’s photo.

The next day, a few minutes after Cole returned from class, four officers detained him at his house, a half mile from the Texas Tech campus. While searching the bedrooms, they found a woman's gold ring, a pocketknife, and a yellow shirt—the color that Murray had described the rapist as wearing. In Cole's car, they found an empty pack of Winston cigarettes, the same brand the rapist was said to have smoked. Reggie Kennard, Cole's brother and one of his roommates, accompanied Cole to the police station, where he was asked to consent to a live lineup. Cole was nervous, but he waived his right to an attorney and joined the lineup. (The Lubbock Police Department declined to comment on the conduct of the investigators.)

Nevarez and White led five men into the lineup room, which was flooded with light. A third detective, Ronnie Goolsby, stood behind a one-way mirror in a darkened viewing room. First, the detectives brought in another woman who had been assaulted by the “Tech rapist.” She deliberated for three minutes. Then she identified Cole, although, according to a police report, she “could not be sure.” Still, the investigation seemed to be nearing a conclusion.

Murray entered the dark room and noticed the man she'd identified in the photo spread the day before. She was suddenly certain that he had raped her; she pinpointed him immediately after stepping into the room. As the officers around her celebrated, she signed an affidavit that read, in part, “I am positive of my identification of this man and there is no doubt in my mind.”

Tim Cole was reared in a small town in central Texas, the oldest of seven children. His mother, Ruby Cole-Session, worked at a drive-through restaurant. “Tim was the man of the house,” Kennard told me. While Ruby was at work, Cole made sure his siblings did their homework. Occasionally, when they misbehaved, he whipped them with a leather belt.

Ruby took night classes at Texas Christian University, earning a bachelor's degree in education, and then worked at several schools in Fort Worth, teaching in both English and Spanish. She often told Tim and her other children that, no matter what hardships they faced, they were expected to go to college. Tim enlisted in the Army and served for two years, mostly at Fort Dix, New Jersey. In January,

1985, he enrolled in the undergraduate business program at Texas Tech, where Kennard was also a student, and the brothers rented a house together off-campus.

In September, 1986, Cole went on trial for aggravated sexual assault. On the first day of jury selection, Jim Bob Darnell, the District Attorney of Lubbock County, offered Cole a plea bargain: five years of probation, with no prison time. It was a stunning deal, given the severity of the crime, and it suggested that the prosecutors had lost confidence in their case. But Cole turned it down. He said that he could not plead guilty to a crime he didn't commit.

Darnell's key witness in the trial was Michele Murray. He questioned her for several hours. During particularly traumatic parts of her testimony, she got so quiet that the judge asked her repeatedly to speak up. When Darnell asked her to identify her assailant, however, she spoke clearly, gesturing at Cole: "He is sitting right there, and he is in a blue suit."

While cross-examining Murray, Mike Brown, Cole's lawyer, asked Cole to stand up and remove his shirt, which he did, displaying a large birthmark on his upper arm and scarring on his back. Why hadn't Murray mentioned any birthmarks in her testimony? "I was looking at his face," she said, emphatically. Two days later, the Lubbock *Avalanche-Journal* described Murray's demeanor on the stand as "unshakable."

During the next week, Brown made the case for Cole's innocence. He called four witnesses, each of whom testified that on the night of the rape they were at Cole's house, drinking and socializing, and that Cole was there all night, studying for a biology exam. Murray's rapist was a smoker; Cole, who had asthma, did not smoke cigarettes. (The Winstons in his car, he said, had been left there by a friend of Kennard's.) The shirt recovered from Cole's house had been examined, and it did not match the shirt the rapist had worn. The gold ring belonged to Kennard's girlfriend. Murray had said that her rapist was between five feet eight and five feet ten; Cole was six feet. Darnell did not contest most of these facts. Instead, he repeated the heart of his argument: Murray was the only eyewitness to the crime,

and she had identified her assailant with utter confidence. “Is identification a bad way to prove a case?” he asked. “If it is, ninety per cent of the people that are in the penitentiary, you just let them go.”

The jury, which included no African-Americans, deliberated for six hours before issuing a guilty verdict. Cole was sentenced to twenty-five years in prison.

*“Excuse me,
have you heard
how great I
am?”*



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In a dissenting opinion in 1981, Supreme Court Justice William Brennan wrote that “eyewitness identification evidence is

notoriously unreliable.” Dozens of scientific studies support this claim. Nevertheless, eyewitness testimony continues to be used widely, and

many criminal cases hinge on it almost exclusively. Since 1989, two hundred and eighty people have been exonerated of sexual-assault charges in the U.S. Nearly three-quarters of those wrongful convictions relied, in whole or in part, on a mistaken identification by an eyewitness.

Psychologists have long recognized that human memory is highly fallible. Hugo Münsterberg taught in one of the first American psychology departments, at Harvard. In a 1908 book called “On the Witness Stand,” he argued that, because people could not know when their memories had deceived them, the legal system’s safeguards against lying—oaths, penalties for perjury, and so on—were ineffective. He expected that teachers, doctors, and politicians would all be eager to reform their fields. “The lawyer alone is obdurate,” Münsterberg wrote.

In Tim Cole’s letters home from prison, he often insisted on his innocence. “It’s just not fair to me,” he wrote to his mother. “My future has been destroyed.” Still, he tried not to lose hope. He asked his mother to open a bank account in his name, so that he would have savings with which to start a business when he got out. “I want to become vindicated as well as totally exonerated in order to receive a pardon from the Governor of the state of Texas,” he wrote. He would hang the written pardon “on my wall in my future office or in the den of my home.”

In 1990, Cory Session, Cole's half brother and Ruby's youngest child, was a student at the University of Texas at Austin. The campus is less than a mile from the Texas capitol, and Cole encouraged Session to work in state government, telling him, "You can make changes." Garfield Thompson, a state representative from Fort Worth, hired Session as a legislative aide. He worked at the capitol for four years, discussing his brother's case with anyone who would listen, including Ann Richards, the Democratic governor, and Rick Perry, a Republican, who was the commissioner of agriculture.

Cole was denied parole in 1993. With eighteen years left in his sentence, he grew pessimistic, and his letters became terse and cynical. "I don't have any more dreams," he wrote. Later letters began to sound unhinged. "The Corleone Organization is ours, they can't kill it," he wrote. "It's the second government." In 1998, Cole was prescribed Thiothixene, an antipsychotic drug. The following year, he had an asthmatic fit and was taken to the infirmary. He died there, of respiratory failure, at the age of thirty-nine.

After her assault, Michele Murray dropped out of Texas Tech. "I was kind of messed up and traumatized," she told me. She joined the Navy on a whim, hoping for a change; six weeks later, she was honorably discharged. "They realized that I had a lot of emotional problems to work out," she said. She moved to Boston, then New York, then Chicago, working mostly as a nanny. She was consumed by fear, and troubled by thoughts of what might happen if Cole escaped from prison and went looking for her. To this day, she feels compelled to lock every door behind her.

In 1990, she married a metalworker named Jim Mallin, and they later moved to Baytown, Texas, Michele's home town. "I would work some, but mostly I was a housewife," she said. She now goes by Michele Mallin. Over time, her fear became less acute, and she started to plan for the future. She and Jim tried to have a baby, to no avail. She enrolled at the University of Houston, studying fitness, and her busier schedule left less room for thoughts of Tim Cole.

One Wednesday in 2008, she returned from grocery shopping at Walmart to find a message on her answering machine. It was George White, one of the investigators in her rape case. She felt a familiar

rush of panic. Perhaps Cole was up for parole. Perhaps he had already been released. She was home alone; she tried to remember whether she had locked the front door.

On the phone, White told her that Tim Cole had died nine years earlier. She was relieved, but also confused. “Why are you telling me this now?” she said.

“Tim Cole did not rape you,” White said. Mallin was stunned into silence. “You shouldn’t feel bad about this,” he went on. “He let himself be in that lineup.”

The previous year, Ruby Cole-Session had received a neatly typed letter from a Texas inmate named Jerry Johnson, addressed to Cole. “I have been trying to locate you since 1995 to tell you I wish to confess I did in fact commit the rape Lubbock wrongly convicted you of,” Johnson wrote. “It is very possible that through a written confession from me and DNA testing you can finally have your name cleared of the rape. . . . Whatever it takes, I will do it.”

Johnson was in a prison near Snyder, Texas, serving a life sentence for two rapes he had committed near Lubbock. For a few days in 1985, he was held in a jail cell across the hall from Cole. “I’d followed newspaper coverage of Tim’s trial from jail,” Johnson wrote to me. “I was able to make out who he was because I heard him crying and telling other inmates he hadn’t done the rape.” Johnson did not speak up at the time, but he resolved that one day he would.

*“I see a couple of
chairs over there
by the naked guy
working on his
laptop.”*

JUNE 2, 2003

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In 1995, after the statute of limitations for Mallin’s rape ran out, Johnson says that he wrote a letter to a court in Lubbock, asking for a lawyer who could help him confess. He heard nothing for six years, then received a pro-forma denial. He also says that he wrote at least ten letters to various journalists and criminal-justice officials, including the prosecutor of Cole’s case, who had become a district judge in

Lubbock; but his requests led nowhere. Eventually, Johnson found Cole's home address and wrote to him directly, believing that he was still alive.

Jeff Blackburn, a lawyer with the Innocence Project of Texas who was helping the Cole family pro-bono, contacted the Lubbock D.A. and asked him to reopen the case. The D.A. took no action at first, but after a few months he agreed to order a test of the rape kit, which was still in an evidence locker. The test result confirmed Johnson's confession.

When Mallin heard the news, she told me, "I felt horrible." It was almost like being victimized again. "The police tried to shift the blame to her, to make her feel guilty," Blackburn said. Mallin's friends describe her as highly empathetic. Blackburn told me that, in the days after she heard the news, she took "a two-dimensional viewpoint on things": Cole was dead, and she was to blame. She spent hours on the phone with her mother, trying to piece together what had gone wrong.

The Session family wanted Cole to be pardoned posthumously. Blackburn, who was teaching at Texas Tech Law School, told the family that this would require an arduous legal process, but he agreed to try. He assigned one of his students, Sarah Hegi, to advise the family, and she told them that their argument would be stronger if Mallin agreed to appear in court and recant her initial testimony. Hegi was pessimistic—in cases like this, victims were rarely willing to revisit old traumas—but she passed on Cory Session's phone number, and, surprisingly, Mallin made the call.

"I was flabbergasted when I heard," Mallin said in a voice mail to Session. "Words can't even begin to describe how sorry and how horrible I feel." The next night, Session returned the call, with his mother on the line, and the three of them made nervous small talk. Some members of the family had misgivings about talking to Mallin, but Cory and Ruby heard genuine remorse in her voice. Ruby told stories about Tim: how he had eased the family's financial burden by enlisting in the Army; how he had been a father figure to his younger siblings. The police and the prosecutor had portrayed Cole as a thug; for the first time, Mallin was being given a true characterization.

Cory Session invited Mallin to his house in Fort Worth. Mallin's mother, Ann Broussard, warned her that the Sessions might be angry. "I really tried to dissuade her from going," Broussard said. "I didn't know these people." Mallin, too, worried about how the family would react to seeing her in person; a single phone call had been tense enough. Still, her guilt outweighed her fear. She and her husband flew to Dallas. Hegi and Blackburn met them at the airport and drove them in a rental car to Cory Session's house. On the way, Mallin asked, "Are you sure that they don't hate me?"

They pulled into the driveway. Ruby Cole-Session stood on the front porch, her short gray hair parted on the side, her posture straight. Mallin approached timidly, with downcast eyes. When she reached the top of the steps, Ruby put a finger to Mallin's chin, lifting up her gaze. Then Ruby opened her arms, and Mallin, crying, embraced her. They stood like that for a few moments. "You've got to get over this," Ruby told her. "You didn't do anything wrong. You are a victim just like my son was."

In the living room, Mallin seemed nervous and fragile, tapping her wedge-heeled shoe on the floor. She complimented Ruby on her earrings and asked Cory questions about his children. Eventually, the conversation turned to Tim. Mallin expressed regret that she and Tim never met when they were students at Texas Tech. "He sounds like someone I would have been friends with," she said.

"Tim is just a couple of blocks away, if you want to tell him yourself," Cory said. They all got into his S.U.V. and drove to the cemetery. Ruby, holding Mallin's hand, led the way to Cole's grave. The tombstone, flush with the manicured lawn, noted Cole's military service but contained no other epitaph. Ruby stood next to Mallin for a moment, then walked away, giving her privacy. Mallin looked down at the grave for several minutes, sobbing quietly. Then they returned to Cory's house, ordered dinner from Kentucky Fried Chicken, and talked for hours. When Mallin got up to leave, Ruby gave her the earrings she had been admiring earlier in the day.

*"Does this poison
smell weird to
you?"*

OCTOBER 26, 2009



Gary Wells, a psychology professor at Iowa State University and an expert on eyewitness testimony,

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has spent decades researching ways in which police lineups can be made more accurate. In 1998, Wells was the principal author of a paper suggesting a few simple reforms. Lineups should be “blind,” a standard borrowed from scientific experiments: the officer administering the lineup should know nothing about the case, so as to avoid unconsciously influencing the proceedings. In photographic lineups, images should be presented sequentially rather than simultaneously, allowing witnesses to compare each image against their memory instead of choosing from among a group. And witnesses should be instructed that a lineup might not include the perpetrator. In 1999, Wells was part of a federal panel that published a report elaborating on these findings. The report was non-binding, but a few jurisdictions—New Jersey, Tucson, Minneapolis—took up its recommendations.

In 2001, Texas passed a law allowing inmates to request DNA testing of evidence relevant to their convictions. Rick Perry, then the governor of Texas, was cautious about criminal-justice reform, but he signed the bill. Since 2001, DNA testing in Texas has led to more than forty exonerations, a greater number than in any other state. Misleading or inaccurate eyewitness identification was a factor in a vast majority of overturned convictions in those cases.

Texas had never offered a posthumous pardon; there was not even a clear protocol for how one might be granted to Tim Cole. But Jeff Blackburn found a legal loophole. The state code of criminal procedure allowed any Texan with a legal grievance, even a posthumous one, to request a special Court of Inquiry, which could then clear the person’s name—not a pardon, technically, but the next best thing. Blackburn filed a motion in Lubbock, but it was rejected. He then petitioned in Austin, a more liberal jurisdiction, and a judge there agreed to hear the case.

Mallin, the Sessions, and Blackburn assembled for the hearing. Blackburn called Gary Wells as an expert witness, and Wells pointed out that the detectives who had administered Mallin’s photo lineup were also investigators in the case. It was possible that, through a raised eyebrow or a well-timed smile, they had unintentionally steered

Mallin toward her identification. After Mallin pinpointed Cole in the live lineup, the police had audibly rejoiced, boosting her confidence and perhaps influencing her memory retrospectively.

Mallin testified next. “The reason I’m here is because he didn’t deserve to be convicted,” she said. “If they”—the Lubbock detectives—“did anything to persuade me to do that, then there need to be laws written to change the way they do witness identification, because I’m only human. I did the best I could as far as giving the description, and that’s all I could really do.”

The judge, Charlie Baird, told Mallin that she shouldn’t blame herself for what had happened to Cole.

“I’m trying not to,” she said. “But it’s still hard, because that’s a human being. He’s a person, and he didn’t deserve this.”

Finally, Jerry Johnson took the stand. He read from a written statement, his bulging eyes obscured behind thick glasses. “I’m responsible for all this,” he said. “I’m truly sorry for my pathetic behavior and selfishness.”

Judge Baird allowed Mallin to address Johnson, and, to her surprise, she expressed some of the anger she had been carrying for two and a half decades. “I’m a very strong forty-four-year-old woman, and I love knowing that you’re going to be spending the rest of your life in prison,” she said, her voice cracking. “What you did to me is reprehensible. No woman deserves it.” She gestured at a poster-size photograph of Cole, which stood on an easel in the middle of the courtroom. “And no person deserves what that young man got.” Ruby Cole-Session also stood and addressed Johnson. Then she sat, wrapped an arm around Mallin, and drew her close. When Johnson was led out of the courtroom, Ruby asked a bailiff to thank him for testifying.

“I’ve been doing this for almost thirty years, and this is the saddest case that I’ve ever seen,” Judge Baird said. “I find that Timothy Cole’s reputation was wrongly injured, that his reputation must be restored, and that his good name must be vindicated.”

While Tim Cole's family was trying to clear his name, twenty-nine state legislators, both Republicans and Democrats, had joined forces as the authors of three related bills: House Bill 498, which would establish the Timothy Cole Advisory Panel on the prevention of wrongful convictions; Senate Bill 117, which would require state police to be trained in more advanced lineup practices; and the Tim Cole Act, which would increase the amount of money the state owed to exonerated ex-convicts. Texas's policy was to pay fifty thousand dollars for each year of wrongful incarceration—already one of the highest rates in the country. The bill would increase the amount to eighty thousand dollars per year spent behind bars, plus funds for college tuition.

It seemed unlikely that any of the bills would pass. Like most states during the recession, Texas was short on money, and its legislature was both fiscally and socially conservative. Representative Ruth McClendon, of San Antonio, one of the main proponents of the reforms, told me, "When you talk about criminal-justice issues here, people don't think they can happen in their lifetime."

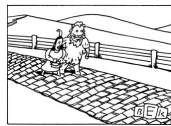
Cory Session, calling on his old connections in Austin, scheduled a meeting with Governor Perry. Cory and Ruby visited Perry's office, and they talked for forty-five minutes. Ruby dominated the conversation. Though she was no longer a teacher, she still had a commanding presence; there was a reason her students had called her the Queen. "Their efforts personalized and humanized the issue for me," Perry later wrote to me in an e-mail. "Ruby was truly a dynamic woman."

"I want this legislation to pass," she told Perry. He listened to her story, then crouched next to her chair and hugged her. "If any legislation comes to my desk with Tim Cole's name on it, I'll sign it," he said.

"There are probably a lot of great bravery workshops out there."

APRIL 30, 2007

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With Perry's support, two of the three bills—the one calling for an advisory panel, and the one increasing relief for exonerees—won majorities in the state House, and then in the Senate. "Texas is tough on crime, but we're also smart on crime," Perry told

me. “For the system of criminal justice to work appropriately, it needs to be fair and accurate.” By 2008, Perry said, he was “beginning to see the problems with eyewitness I.D., and Timothy Cole’s case tipped the scale.” When the bills passed, he kept his promise and signed them into law.

After the exoneration hearing in Austin, Perry echoed Judge Baird’s ruling and granted Tim Cole the first posthumous pardon in Texas history. At the pardoning ceremony, Perry cited Proverbs 22, which “begins with a really simple truth. It says that a good name is more desirable than great riches, to be esteemed is better than silver or gold.”

The third bill, which would require police departments to reform their identification practices, had yet to pass. Most law-enforcement agencies in the state had no written policies regarding lineups; officers simply relied on old habits. Blackburn and Cory drove to the capitol every week to advocate for the bill. They were often joined by Mallin, who had grown so close to Session’s children that they called her Aunt Michele. Again, Perry said, “If it gets to my desk, I’ll sign it.”

On June 17, 2011, more than two decades after Tim had urged Cory to go to the capitol and “make changes,” the Tim Cole Act passed. Mallin attended the final Senate hearing on the bill, wearing the earrings that Ruby had given her. New York, California, and other left-leaning states have failed to pass similar legislation.

Recently, Tal English, a police sergeant in Lubbock, administered a photo lineup. It was a homicide case—a thirty-six-year-old man had been shot and killed outside a night club in East Lubbock—but English was not involved in the ongoing investigation. He would be the “blind” administrator.

He drove to the witness’s house and turned on an audio recorder. (Most lineups take place at police headquarters, but this witness was bedridden, having been wounded during the incident.) English read instructions from a form: “Remember, it is just as important to exclude innocent persons as it is to identify the suspect. The person or

a photograph of the person who committed this crime might not be included.” English held up one image at a time, soliciting a reaction to each.

The witness looked at the first photograph and, without hesitation, said, “No.”

He lingered over the second image. “The guy looks familiar,” he said. English waited, and eventually the witness said that it wasn’t a match. He asked to see the next photo—another no.

When English flipped to the fourth image, the witness immediately said, “That’s the guy.”

English asked the man to state his level of confidence. “High,” he said. According to Wells, a witness’s confidence at the moment of identification is far more accurate than a re-constructed assertion at trial, weeks or months later. When Michele Mallin first pointed to Tim Cole’s photo, her words were “I think that’s him”; later her recollection hardened into certainty.

The reforms that have been instituted in Texas “are all good changes, and it’s not something that’s difficult,” Jason Lewis, a sergeant in Lubbock, told me. “This actually helps the investigation, because you want your witnesses to be credible and you want them to be correct.” Research carried out in Austin between 2008 and 2011 shows that the use of sequential lineups substantially “reduces mistaken identifications with little or no reduction in accurate identifications.” Jeff Blackburn said, “In terms of conducting eyewitness identification, Texas is doing better than any state in the Union.”

Not long ago, I visited Ruby Cole-Session at her ranch house, in Fort Worth. We sat in her tidy living room, which had two framed photographs of Tim on the wall. Outside, horses grazed in a neighbor’s pasture. Ruby was seventy-six, but she retained her authoritative bearing; only her unsteady gait belied her age. (She died shortly after our meeting.) We talked for a couple of hours about Tim’s legacy. I told her how radically the Lubbock Police Department had changed, and she narrowed her eyes in thought. “My son died so they could do that,” she said. “He was the one who had to uncover the darkness.” ♦

Paul Kix, a senior editor at *ESPN The Magazine*, is at work on a book about a French Resistance fighter's three escapes from the Nazis.
