

Bills Aim to Prevent Conviction of Innocents

By Natasha Minsker

Ruben Cantu was only 26 years old when he was executed by the state of Texas for a murder and robbery. A single eyewitness identified Cantu as the killer. Now the eyewitness says he made the identification under pressure from the police — and that he knows Cantu was innocent. Sam Millsap, the district attorney who prosecuted Cantu and asked the jury to sentence him to death, now believes that he was responsible for executing a man who was most likely innocent. Millsap says he never should have asked for death in a case based on one eyewitness.

In 1985, then 18-year-old Harold Hall sat in a Los Angeles interrogation room and confessed to a double homicide he did not commit. He had been interrogated for 17 hours. Much of the information he gave the police did not match the details of the crime; nevertheless, he was convicted. The prosecution asked for the death penalty. But after Hall took the stand and protested his innocence, the jury sentenced him to life without parole. After serving 19 years in prison, Hall's conviction was overturned and DNA evidence proved him innocent.

Mistaken eyewitness identification is the leading cause of wrongful convictions and an important factor in wrongful executions. False confessions are the second-leading cause of wrongful convictions. Yet both of these problems have effective, straightforward solutions.

Two bills in the California Assembly would reform processes for eyewitness identification and interrogation of suspects to reduce the chances that an innocent person will be convicted.

SB 1544, sponsored by Sen. Carole Migden, D-San Francisco, would require the state attorney general to issue guidelines for eyewitness identification procedures in California.

SB 171, the Truth in Prosecution Act sponsored by Sen. Elaine Alquist, D-San Jose, would require law enforcement agencies to electronically record all interrogations.

Both bills are based on the recommendations of the California Commission on the Fair Adminis-



not know which person is the suspect. Experts such as Professor Gary Wells of the Institute of Forensic Science and Public Policy, who testified before the commission, have identified double-blind lineups as the single most important reform for minimizing mistaken eyewitness identifications.

Other reforms recommended by the commission include minimizing the use of one-person field show-ups (in which officers show witnesses a single suspect rather than a lineup), recording certainty

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statements from witnesses, and giving such witnesses cautionary instructions as the suspect may not be in the lineup and the investigation will continue whether or not the witness makes an identification.

Decades of peer-reviewed, scientific research on mistaken eyewitness identifications have led to these recommended best practices that have now been endorsed by the California Commission on the Fair Administration of Justice, similar commissions in other states, and the National Institute of Justice. Best practices for eyewitness identification procedures have been adopted by jurisdictions in New Jersey, Wisconsin, Virginia and North Carolina through guidelines issued by attorney generals or changes to law enforcement training.

positive.

SB 1544 would simply follow the lead of these jurisdictions, bringing the benefits of modern science to law enforcement across the state of California.

At the commission's second hearing, three witnesses with firsthand knowledge of false confessions testified. Harold Hall was joined by Chris Ochoa, wrongfully convicted of a murder and rape in Texas. Ochoa confessed and even testified against his co-defendant because police officers threatened him with

the death penalty.

Twelve years later, the true killer came forward and DNA evidence proved that he, not Ochoa, had committed the crime. Ochoa was released in 2001, after spending a dozen years in prison for a crime he did not commit. This year Ochoa graduated from the University of Wisconsin Law School.

Standing with Ochoa on the day he was released from prison, and testifying with him before the commission, was the mother of the young woman whom Ochoa had falsely confessed to murdering. Jeanette Popp told the commission of the added pain and suffering she experienced as a result of the lies the police convinced Ochoa to tell. Family members of victims

This recommended reform has been endorsed by every other commission to consider the issue. The California Commission on the Fair Administration of Justice joined that chorus, recommending that the Legislature pass a bill requiring that all interrogations of people in police custody for serious felonies be recorded.

Electronic recording of interrogations is already mandated by statute in Illinois, Maine, New Mexico, Wisconsin and the District of Columbia, and by order of the state's highest court in Alaska, Minnesota, and New Jersey. As with the proposed eyewitness identification procedures, every law enforcement agency that has adopted electronic recording has found it to be an effective law enforcement tool. In Minneapolis, where electronic recording of interrogations is mandated by a state court ruling, district attorneys report that videotapes of interrogations have made the conviction process more effective and reduced challenges to the admissibility of confessions.

By mandating new guidelines for eyewitness identification procedures and electronic recording of interrogations in California, SB 1544 and SB 171 will bring much-needed consistency to law enforcement practices across

the state. Some California police departments have already adopted these procedures voluntarily. For example, Santa Clara County already adheres to the identification procedures recommended by the California Commission on the Fair Administration of Justice and records all interrogations. The county adopted these procedures because District Attorney George Kennedy viewed them as critical to improving law enforcement practice — protecting the innocent and catching the guilty.

Despite these successes, most California law enforcement agencies continue to follow outdated procedures. They are unlikely to change without statewide legislation. SB 171 and SB 1544 are simple, straightforward steps that will bring uniformity and professionalism to law enforcement across the state. They are among

tration of Justice. Led by former Attorney General John Van de Kamp, the commission was created by the California Senate to investigate the problems of wrongful convictions and wrongful executions and to recommend reforms to make California's criminal justice system just, fair and accurate.

The commission's first report contained 12 recommended reforms for eyewitness identification procedures, including double-blind lineups, a procedure in which the officer conducting the lineup does

Every law enforcement agency that has adopted these reforms has praised them as being effective law enforcement tools. The attorney generals of Wisconsin and New Jersey have traveled across their states to demonstrate the value of these eyewitness identification procedures to local law enforcement. Santa Clara Deputy District Attorney David Angel told the California Commission on the Fair Administration of Justice that his office's experience with double-blind lineups has been uniformly

are further harmed, she said, when they learn that an innocent man is imprisoned while the true killer remains on the streets.

While many reforms would help prevent false confessions, the witnesses agree that one reform is absolutely critical: complete electronic recording of interrogations.

As with the proposed eyewitness identification procedures, scientists and scholars have uniformly recognized that electronic recording of interrogations is the best method for identifying false confessions.

the most basic reforms necessary to make our criminal justice system just, fair, and accurate.

We can't give Harold Hall or Chris Ochoa back the lost years of their lives. But we can adopt these simple reforms to make sure another innocent man or woman does not go to prison for someone else's crime.

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