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## **Crime commission work derailed by the governor**

### **REJECTION OF TWO SUSPECT IDENTIFICATION SAFEGUARDS IS MISGUIDED**

#### **Mercury News Editorial**

Chalk it up to the mad crush of bills on his desk, subpar legal advice and maybe, just maybe, a bit of pre-election pandering.

How else to explain why Gov. Arnold Schwarzenegger vetoed two bills last weekend that would have put into law practices that many police departments are already doing to prevent innocent people from being convicted?

One would have created safeguards to prevent mistaken identifications. The other would have required police interrogators to electronically record jailhouse interviews in cases involving violent crimes. Both were based on extensive recommendations of the California Commission on the Fair Administration of Justice, which is chaired by former Attorney General John Van de Kamp and administered by Santa Clara University Law School Professor Gerald Uelmen.

The reasons Schwarzenegger gave in rejecting both bills were baffling.

Mercury News reporter Frederic N. Tulsy's ongoing series this year on errors in the criminal justice system proved -- and the Van de Kamp Commission agreed -- that misidentification of suspects in lineups was a serious problem and a significant factor behind overturned convictions. SB 1544, sponsored by Sen. Carole Migden, D-San Francisco, would have required the Department of Justice to set up fair and impartial procedures for photo and physical lineups, like those already adopted by every police agency in Santa Clara County.

Schwarzenegger objected that the bill would have given the Justice Department "unprecedented authority" to circumvent the Legislature. But lawmakers delegate rule-making powers to agencies and departments all the time. The Legislature always has the right to pass laws overriding or modifying them.

The governor had a technical complaint with SB 171, sponsored by Sen. Elaine K. Alquist, D-San Jose. It would have required police departments to record the full jailhouse interviews of suspects in serious crimes -- a protection against both coerced confessions and charges of police coercion. Juries would have been instructed when the recordings were not made.

Schwarzenegger said wording problems would have created a loophole, but Van de Kamp said the governor's staff, which didn't consult the commission, misread the bill.

The Van de Kamp Commission will soon take on even more difficult topics -- prosecutorial misconduct, defense incompetence and the death penalty -- so it is disappointing to see its initial work derailed. Although its members include prosecutors and police representatives, Schwarzenegger chose to listen to the politically powerful state sheriffs' association, which opposed the two bills.

The commission plans to resubmit them next year. Freed from the pressures of electioneering, the next governor should sign them.

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