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Thomas Sullivan: Writing new rules to protect innocent

By Thomas Sullivan -

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Timothy Atkins of Los Angeles was released just last February after 20 years in prison, wrongfully convicted of murder based on the false testimony of a "snitch" witness. Eighteen-year-old Harold Hall of Los Angeles went on to serve 19 years in prison after he falsely confessed to a double homicide following a 17-hour interrogation. Peter Rose of Tustin served 10 years for a rape after a crime victim mistakenly identified him. These three men -- just a small sampling of California's wrongfully convicted -- served more than a half-century of hard time for crimes they did not commit.

A trio of bills, informed by recommendations of the California Commission on the Fair Administration of Justice, now sits on Gov. Arnold Schwarzenegger's desk awaiting his signature. Although they offer obvious protections to the innocent, what may be less readily apparent are benefits they provide to law enforcement, the prosecution and the public at large.

Senate Bill 609 by Sen. Gloria Romero, D-Los Angeles, curtails reliance on the notoriously undependable testimony of jailhouse informants, requiring corroboration of such testimony before its introduction in court. The law already requires corroboration for accomplice testimony. This bill simply extends existing law to jailhouse informant testimony, which studies show is even more likely to be false. Moreover, this bill in no way affects the testimony of witnesses actually present during crimes, so it will not hinder prosecutions of crimes committed in prisons or jails.

In 2003 in my home state of Illinois, the state Assembly approved similar legislation and prosecutors have proffered less testimony from jailhouse informants. In function, the new law has strengthened their cases. They now rely less on witnesses who, in the eyes of fact-finders, place their own self-interest before the execution of justice.

Senate Bill 511 by Sen. Elaine Alquist, D-Santa Clara, mandates the recording of custodial interrogations in California's violent felony cases. My associates and I have spoken with seasoned law-enforcement officers in more than 500 jurisdictions -- including several in California -- who record custodial interrogations. Not one officer has told us that he would return to unrecorded interviews.

A recording of an interrogation creates a permanent record that can serve as a strong investigative tool and as a potent piece of courtroom evidence. Furthermore, recording frees the interviewing investigator from meticulous note-taking, allowing him to focus solely upon the interview and identify otherwise overlooked clues. The practice also protects officers from unfounded claims of misconduct or coercion.

Senate Bill 756 by Sen. Mark Ridley-Thomas, D-Los Angeles, creates a task force that would establish voluntary eyewitness identification guidelines based on sound science and proven best practices. The task force would comprise well-rounded representation, including members of law enforcement.

Mistaken eyewitness identification is the single largest contributor to wrongful convictions. In the nation's 205 exonerations proven through DNA testing, more than 75 percent were based, at least in part, on the introduction of eyewitness evidence later proven faulty. Eight of California's nine DNA-proven exonerations involved mistaken eyewitness identifications, and fallible methods yielded tragically inaccurate results.

Still, nothing the task force proposed would be binding on the state. The attorney general would report back to the Legislature a year after guidelines were promulgated. And only after that report, with the hindsight of a year's experience, would the Legislature make an informed decision whether to make the guidelines mandatory.

I have sat on both sides of the table -- prosecuting crimes as a U.S. attorney and representing the accused as a defense lawyer. This broad experience has shown me that if we can bolster the reliability of evidence in the courtroom, we can strengthen our system of justice for everyone's benefit. California now has a vehicle for that brand of change with three significant bills. If enacted, the trio would enhance the overall accuracy of evidence -- and ensure that California heeds the lessons of Timothy Atkins, Harold Hall and Peter Rose.

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