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CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE

REPORT AND RECOMMENDATIONS
REGARDING FALSE CONFESSIONS.

The California Commission on the Fair Administration of Justice was established by California State Senate Resolution No. 44 “to study and review the administration of criminal justice in California, determine the extent to which that process has failed in the past,” examine safeguards and improvements, and recommend proposals to ensure that the administration of criminal justice in California is just, fair and accurate. On April 13, 2006, the Commission issued its first Report and Recommendations, addressing the problem of mistaken eyewitness identifications and proposing statewide guidelines for the conduct of lineups and the presentation of photographs to eyewitnesses. [See *Commission Website*, www.ccfaj.org/r-eye-official.html]. This Report will address the extraction of false confessions during police questioning of suspects. False confessions were identified as the second most frequent cause of wrongful convictions in a national study previously reviewed by this Commission.¹

The Commission studied the reports of commissions and task forces assembled in other states addressing this issue, as well as the research documenting 125 cases of false confessions by suspects who were indisputably proven to be innocent. [See *Drizin & Leo*, “The Problem of False Confessions in the Post-DNA World,” 82 No. *Carolina L. Rev.* 891 (2004)]. The Commission convened a public hearing in Los Angeles on June 21, 2006 to hear the testimony of acknowledged experts,² the exonerated victims of false confessions,³ the mother of the victim of a crime in which a

¹ Gross, Jacoby, Matheson, Montgomery and Patil, *Exonerations in the United States 1989 Through 2003*, 95 *J. of Crim. Law & Criminology* 523, 544-545 (2005). They report that defendants confessed to crimes they had not committed in 51 of the 340 exonerations identified, or 15% of the total. Overall, 55% of all the false confessions they found were from defendants who were under 18, or mentally disabled, or both.

² Professor Richard A. Leo of the U.S.F. School of Law, who co-authored the Drizin & Leo article, and Thomas Sullivan of Jenner & Block, Chicago, Illinois, who served as Co-Chair of Illinois Governor George H. Ryan’s Commission on Capital Punishment.

³ Harold Hall of Los Angeles and Chris Ochoa of Madison, Wisconsin.

false confession was elicited,⁴ representatives of police, prosecutor and criminal defense agencies, and concerned citizens regarding false confessions.

Although it may seem surprising that factually innocent persons would falsely confess to the commission of serious crimes, the research provides ample evidence that this phenomenon occurs with greater frequency than widely assumed. The research of Professors Steven Drizin and Richard A. Leo identifies 125 cases which occurred between 1972 and 2002, with 31% of them occurring in the five years previous to 2003. Eight of these examples, or 6% of the sample, occurred in California cases.⁵ The

⁴ Jeanette Popp, the mother of Nancy DePriest, the victim of the rape-murder of which Chris Ochoa was wrongfully convicted, described her ordeal of suffering nightmares for twelve years based upon an account of her daughter's rape and murder that was factually untrue.

⁵ None of the California cases cited by Drizin and Leo resulted in wrongful convictions. In all eight cases, the charges were dismissed prior to actual conviction:

Diane Colwell was charged with murder in the death of a 76 year old patient whom she was serving as a caregiver in 1995. During a five hour interrogation, she told police investigators that she had 300 personalities, and two of them suffocated the patient with a pillow and tried to make it look like an accident. The charges were initially dismissed when a trial judge suppressed her confession because *Miranda* warnings were not administered until after she had been interrogated for five hours. Darlene Himmelspace, *Murder Charge Dismissed Against Caregiver in Death of Her 76-Year Old Patient*, SAN DIEGO UNION-TRIBUNE, May 6, 1995, at B3. When that ruling was reversed by the Court of Appeal in 1997, the charges were reinstated. In preparing for trial, investigators learned of a Food and Drug Administration Safety Alert suggesting that a number of deaths had occurred in similar circumstances, when elderly patients became entangled in the rails of their beds and became asphyxiated. The charges were then again dismissed on motion of the Prosecution. Moran, *Murder Charge Against Woman in 1994 Patient Death is Dropped*, SAN DIEGO UNION-TRIBUNE, May 23, 1998, at B5.

Michael Crowe, Aaron Houser and Joshua Treadway were charged with the murder of Crowe's sister in San Diego County in 1998, after she was found stabbed to death in her bedroom in the family home. Crowe was 14, Houser 15 and Treadway 16 at the time they were interrogated. The interrogations of Houser and Treadway were video-taped in their entirety, as was most of the interrogation of Crowe. The charges were dismissed in 1999 when DNA testing revealed blood spatter from the victim on the clothing of Richard Tuite, a transient who had been seen in the neighborhood the night of the killing. Tuite was subsequently convicted of voluntary manslaughter in the case. *Crowe v. County of San Diego*, 303 F.Supp.2d 1050 (2004); *Crowe v. County of San Diego*, 359 F.Supp.2d 994 (2005); *Crowe v. County of San Diego*, 2005 U.S. Dist. Lexis 7355 (2005).

Eugene "Rufus" Dykes falsely implicated himself and others in the murder of three visitors to Yosemite National Park in 1999. He lied to the FBI in a bizarre attempt to gain leniency for other crimes he did commit. Meanwhile, Cary Stayner, the actual perpetrator of the Yosemite murders, murdered a fourth victim. Dykes, who was in prison at the time he misled the FBI, was never charged with the murders. Christine Hanley, *Man Says He Misled FBI in Yosemite Deaths*, COLUMBIAN (Vancouver, Washington), Aug. 6, 1999 at A4.

Jorge Hernandez was charged with the rape of a 94 year-old victim after a ring, which belonged to his older brother, was found at the scene. Police claimed he admitted the rape during police interrogation. The case was dismissed prior to a preliminary examination when DNA testing confirmed that he did not rape the victim. Sean Webby & Kristen Berry, *DNA Test Clear PA Man in Rape of 94-Year-Old*, SAN JOSE MERCURY NEWS, Aug. 10, 2002 at 1A; Sean Webby, *Teen Admits Rape, or Did He? False Confession Debate Ensues*, SAN JOSE MERCURY NEWS, Aug. 9, 2002 at 1B.

overwhelming majority of the false confession cases identified by Drizin and Leo occurred in very serious cases: 81% were homicide cases, followed by 9% rape cases.

Not all false confessions lead to conviction. Of the eight California cases identified by Drizin and Leo, none of the defendants charged was convicted of the crimes to which they falsely confessed. It should be noted, of course, that even where charges do not result in conviction, the pendency of charges based upon false confessions can impose tremendous burdens upon the accused and their families, as well as the victims and their families. The accused is often in custody for months prior to being released.

The research suggests that false confessions are often extracted from the most vulnerable suspects. One-third (33%) of the Drizin and Leo sample were juveniles; another 22% were mentally disabled, and at least 10% were mentally ill. But even fully competent and rational persons may be victimized by coercive interrogation techniques. Excellent examples were presented to the Commission in the testimony of Harold Hall and Chris Ochoa.

Harold Hall spent nineteen years in prison for a rape and double murder he did not commit in Los Angeles. At the age of eighteen, he was subjected to seventeen hours of interrogation, and confessed when he concluded a confession was the only way he could end the interrogation. In 2004 he was exonerated by DNA testing that established his innocence. He earned his G.E.D. in prison and is now employed by the Los Angeles County Bar Association.

Chris Ochoa was convicted of rape and murder in Texas, and served 12 years in prison before a confession by another person and DNA tests

Johnny Massingale was charged with the murder of two victims whose throats were slashed in their San Diego home in 1984. He confessed to San Diego detectives who traveled to Kentucky to interrogate him. He was jailed for ten months awaiting trial. Charges were dismissed on the eve of trial, when evidence implicated another man awaiting trial for similar murders. Scott Harris, *Suspect in 2 Slayings Leaves Jail; Attorneys Say Evidence Points Toward Man Held in 3 Other Throat-Slashings*, LOS ANGELES TIMES, Jan. 5, 1985 at 23.

Geoffrey Meyers was charged with arson after he confessed to setting a blaze that destroyed \$4 million in business property in Sonoma in 2000. Police continued their investigation although they had a previously convicted arsonist in custody, and concluded that the true culprits were two juveniles who had no connection with Meyers. The charges against Meyers were dismissed after two days. Pamela Podger, *Convicted Arsonist Cleared in Sonoma Fire: He Recants Confession After Story Disproved*, SAN FRANCISCO CHRONICLE, Feb. 8, 2000 at A19.

confirmed that he had not committed the crime. Ochoa confessed after he was threatened with execution under the Texas death penalty law if he did not admit his participation in the crime and implicate an innocent co-defendant. After his exoneration, he entered law school and recently graduated from the University of Wisconsin School of Law.

Both Mr. Hall and Mr. Ochoa told the Commission that they doubt they would ever have been convicted if their interrogation had been electronically recorded, and a judge or jury was able to see the coerciveness of the interrogation techniques that were used. While it is unlikely that all false confessions can ever be eliminated, the risk of harm caused by false confessions could be greatly reduced if police were required to electronically record the entirety of custodial interrogations of suspects in serious criminal cases.

There are a number of reasons why the taping of interrogations actually benefits the police departments that require it. First, taping creates an objective, comprehensive record of the interrogation. Second, taping leads to the improved quality of interrogation, with a higher level of scrutiny that will deter police misconduct and improve the quality of interrogation practices. Third, taping provides the police protection against false claims of police misconduct. Finally, with taping, detectives, police managers, prosecutors, defense attorneys and judges are able to more easily detect false confessions and more easily prevent their admission into evidence.

Because of these benefits, over 500 police departments throughout the country require the taping of interrogations. Thomas Sullivan described for the Commission his efforts to document the police experience with recording custodial interrogations.⁶ He informed the Commission that a substantial number of police departments in California already report that they currently record a majority of custodial interrogations.⁷ Experienced detectives from these departments report great satisfaction with the results of

⁶ See Sullivan, "Police Experiences with Recording Custodial Interrogations," Special Report No. 1, Northwestern University School of Law Center on Wrongful Convictions (Summer, 2004); Sullivan, "Electronic Recording of Custodial Interrogations: Everybody Wins," 95 *Journal of Criminal Law and Criminology* 1127 (2005); Sullivan, "Electronic Recordings of Custodial Interrogations," XIX *The Chief of Police*, No. 6, p. 17 (Nov./Dec. 2005).

⁷ These departments include the County Sheriffs of Alameda, Butte, Contra Costa, El Dorado, Orange, Placer, Sacramento, San Bernardino, San Joaquin, Santa Clara (including all police agencies operating in Santa Clara County), Ventura and Yolo Counties, and the municipal police departments for Sacramento, San Diego, San Francisco, and San Jose.

recorded interrogations, including but not limited to higher conviction rates, less time litigating unwarranted suppression motions, and fewer claims of police misconduct.

The only objection to mandating the recording of police interrogation heard by the Commission was to the potential cost of video recording, as compared to audio recording.

The tentative recommendation released by the Commission was to mandate the video recording of all custodial interrogations in homicide cases. While the Commission remains convinced that video recording is the best means of detecting false confessions, we have been persuaded that the cost of implementing this recommendation at this time would be prohibitive. Instead, we recommend that a fund be available to support the implementation of video recording by Police Departments that choose to do so. We are optimistic that improved technology will reduce these costs in the future, and that positive experience with a requirement that all custodial interrogations in serious felony cases be audio recorded will convince all concerned that eventual conversion to video recording is well worth the cost.

The cost of recording custodial interrogations must be measured against the cost of false confessions, which takes a devastating human toll upon those who are wrongfully charged, their families, the victims of crime, and their families. Closing a case with conviction of the wrong person based upon a false confession also leaves the real perpetrator at large, to victimize others. The costs of litigating claims of police misconduct that might have been deterred by taping,⁸ and the savings in avoiding false claims of police misconduct should, in the long run, more than pay the costs of implementation of a mandate that all custodial interrogation in serious criminal cases be electronically recorded.

⁸ Chris Ochoa and his co-defendant settled their claims of civil rights violations against the Austin, Texas Police Department for more than \$16 million dollars.

RECOMMENDATIONS

1. The Commission recommends that the state legislature enact the following statute to require the recording of the entirety of custodial interrogations of individuals suspected of all serious felonies:

The People of the State of California do enact as follows:

Section 1: Definitions.

(a) "Electronic Recording" or "Electronically Recorded" means an audio, video or digital audio or video recording that is an authentic, accurate, complete, unaltered record of a custodial interrogation, including a law enforcement officer's advice of the person's constitutional rights and ending when the interview has completely finished.

(b) "Serious Felony" means any of the offenses listed in Section 1192.7(c) of the California Penal Code.

(c) "Statement" means an oral, written, sign language or nonverbal communication.

Section 2: Electronic Recording Required.

All Statements made during custodial interrogation relating to a Serious Felony shall be Electronically Recorded.

Section 3: Cautionary Instruction Required.

If any Statement is admitted in evidence in any criminal proceeding which occurred during custodial interrogation which was not Electronically Recorded in its entirety in compliance with Section 2, the court shall, at the request of the defendant, provide the jury with an instruction in a form to be recommended by the California Judicial Council, which advises the jury to view such statements with caution.

Section 4: Handling and Preservation of Electronic Recordings of Custodial Interrogations relating to a Serious Felony.

(a) Every Electronic Recording of a Custodial Interrogation shall be clearly identified and catalogued by law enforcement personnel.

(b) If a juvenile or criminal proceeding is brought against a person who was the subject of an Electronically Recorded Custodial Interrogation, the Electronic Recording shall be preserved by law enforcement personnel until all appeals, post-conviction and habeas corpus proceedings are final and concluded, or the time within which they must be brought has expired, or the sentence has been completed.

(c) If no juvenile or criminal proceeding is brought against a person who has been the subject of an Electronically Recorded Custodial Interrogation, the related Electronic

Recording shall be preserved by law enforcement personnel until all applicable state and federal statutes of limitations bar prosecution of the person.

2. The Commission urges all California law enforcement agencies to videotape the entirety of all custodial interrogations of felony suspects or, where videotaping is impractical, to audiotape the entirety of such custodial interrogations.
3. The Commission recommends that the State Legislature appropriate funds, to be administered by the Attorney General, to provide grants to California Police Agencies that wish to implement programs to videotape custodial interrogations.
4. The Commission recommends that training programs should be provided and required to train police, prosecutors, defense lawyers and judges about the causes, indicia and consequences of false confessions. Police interrogators should receive special training in how to identify and interrogate persons with developmental disabilities and juveniles.

Respectfully submitted,

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