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GOVERNOR TO CCFAJ: DROP DEAD

Bowing to cops and victim groups, the Governor nixes justice reforms

By Julius (Jay) Wachtel. Bowing to heavy pressure from prosecutors, police and victims' rights organizations, Governor Arnold Schwarzenegger vetoed the entire work product of the obscure California Commission on the Fair Administration of Justice, an organization created by the State Senate in 2004 to address concerns about wrongful convictions.

In 2007 the CCFAJ sponsored three bills: SB 756, asking that Cal DOJ and POST develop guidelines for the administration of photo and live lineups; SB 511, requiring that police record in-station interrogations of those suspected of violent crimes; and SB 609, requiring corroboration of jailhouse informants. Similar measures have been recommended and enacted in about a dozen States. For example, North Carolina requires, among other things, that officers showing photo lineups take special precautions to avoid influencing witnesses and that photographs be displayed sequentially rather than as a group. (These provisions go far beyond SB 756, which only calls for a study.)

Echoing the shrill views of nay-sayers, the Governor called CCFAJ's proposals unnecessary, unduly restrictive and burdensome. Perhaps the most rabid opposition was to the lineup bill. Opponents led by L.A. County District Attorney Steve Cooley [claimed](#) that California's system of justice is so accurate -- 99.9999%, the proportion of all convictions *not proven wrongful* -- that we don't need a bunch of do-gooders and know-nothings poking their head into the serious business of crime-fighting.

California law requires that accomplices be corroborated, so asking the same for snitches behind bars seems perfectly reasonable. Even so, the California State District Attorney's Association came down hard against the measure. Maybe they missed a [report](#) by the American Bar Association that called for exactly what the CCFAJ recommended. Or maybe they forgot that the most notorious jailhouse liar in American history (informant is much too nice a word for this guy) was -- yes! -- a California guy, Leslie Vernon White, a career criminal who repeatedly made up bogus confessions to use against cellmates by calling around from a jail phone pretending to be a cop.

Still not convinced? In March 2007 the U.S. Ninth Circuit Court of Appeals ordered that a Federal civil rights lawsuit against Long Beach PD detectives and the L.A. County District Attorney proceed to trial. The plaintiff, Thomas Goldstein, had

been released in 2002 after serving twenty-four years for a murder he did not commit. His conviction was based on a mistaken eyewitness ID and false testimony from infamous jailhouse informant Edward Fink (yes, that's his real last name.) Although the eyewitness later said he was pressured by police, and Fink was conclusively proven a liar, prosecutors refused to free Goldstein: as far as they were concerned he was convicted, his conviction was upheld on appeal, and that was that! It took a [lengthy investigation](#) by a Federal magistrate and concurrence by a District judge and a three-judge Federal panel to finally force the innocent man's release.

And here we come to the heart of the matter. Personal interests aside, some judges and prosecutors are so in thrall to *process* that they resist any challenges to the "finality" of judgments -- even those clearly based on lies. How high does the misplaced confidence go? During his confirmation hearings Supreme Court Justice (then nominee) Samuel Alito repeatedly [refused to agree](#) that wrongfully *executing* someone was unconstitutional. The best he could do was to say "it is unconstitutional to execute someone who has not been *proven guilty* beyond a reasonable doubt." In other words, once convicted, forever damned. His response, or rather, non-response, caught Senator Pat Leahy, himself a former prosecutor, completely off guard. Such attitudes help explain why, in a [5-4 ruling](#), the U.S. Supreme Court overruled a last minute [stay](#) halting the planned execution of Thomas Thompson. (He was gassed on schedule.) Thompson's alleged crime? An Orange County rape/murder. The key evidence? Testimony of two jailhouse informants, both declared liars by the appeals court.

Oh, yes. One of the informants was Edward Fink.

Post-adjudication claims of innocence must meet exceedingly high standards. It's not enough to show that key trial evidence was false or mistaken, or that the remaining evidence clearly doesn't meet the "beyond a reasonable doubt" standard required to convict in the first place. To be heard a petitioner must present newly-discovered, reliable evidence that demonstrates it is more likely than not that they are factually innocent. Proving a negative -- that one is *not* guilty -- is tough. Most who succeed do so with DNA; for example, by showing that semen or pubic hairs are not theirs. But DNA is only recovered in twenty percent of violent crimes, usually rapes. Even where key trial evidence has been completely discredited (e.g., [West Memphis Three](#), L.A.'s [Bruce Lisker](#)), the absence of extraordinary proof of innocence such as DNA means that convicted persons are out of luck.

Rabid opposition from law enforcement and victim rights organizations has overwhelmed all efforts at reform. What can be done? Most convicted persons are poor. Those with plausible claims of innocence should be given funds for lawyers, investigators and forensic experts. Petitioners must not be forced to prove a negative;

to be freed it should suffice that, considering all the evidence in the light of what is presently known, one would not be convicted anew. Grand juries can take on some of the burden of providing post-conviction relief. That was the approach in the 2004 murder of [Amy Yates](#) where jurors impaneled long after the trial exonerated one falsely convicted youth and indicted another. And since wrongful convictions are often traced back to mistakes by police and prosecutors, they must accept responsibility as well, developing practices and instituting training programs that greatly improve the accuracy of their work.

Confidence in American justice is starting to fray. While we can't expect absolute perfection, the many miscarriages of justice brought to light by innocence projects around the country suggest that preventive and remedial measures are urgently in order. The next victim of flawed justice could be you.