

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

TODAY

SEARCH/BACK to search results

Bookmark Reprints

Copyright 2012 Daily Journal Corp. Reprinted and/or posted with permission.
This file cannot be downloaded from this page.

Monday, October 8, 2012

Bringing the DA's office into the 21st century

Dan Simon is a professor of Law & Psychology at the Gould School of Law at USC. His Book "In Doubt: The Psychology of the Criminal Justice Process" was recently published by Harvard University Press (www.indoubt.net). He can be reached at dsimon@law.usc.edu.



To its credit, the Los Angeles district attorney's office did not ignore the cry for freedom from a condemned inmate. As a result, convicted murderer John Edward Smith is a free man after a DA investigation learned that the sole prosecution witness had falsely identified Smith as the perpetrator in a 1993 drive-by shooting. The accuser now claims that he pointed the finger

at Smith only after being misled and pressured by Los Angeles police detectives.

Smith's ordeal demonstrates how our criminal justice process can go wrong, and it highlights why fixing the process should be at the center of the race between Jacky Lacey and Alan Jackson for office of the DA.

Los Angeles County has had its fair share of faulty criminal prosecutions. Since 1989, 26 Angelinos have been declared factually innocent after having been convicted and sentenced to prison. That's about double the rate of exonerations in the rest of California, and it doesn't include more than 100 false convictions produced by the Rampart scandal in the late 1990s. The true number of false convictions is no doubt much greater. Smith was exonerated only because his new lawyer managed to locate his accuser, and he was eager to recant. Likewise, Brian Banks of Long Beach was exonerated months ago of his conviction for rape only because his accuser "friended" him on Facebook, agreed to meet with him, and recanted her accusation on camera.

False convictions shatter the lives of innocent people. Smith spent more than half his life behind bars, and his grandparents mortgaged their house to cover his earlier legal expenses (to no avail, as his release was obtained by the non-profit organization Innocence Matters, based in Torrance). The conviction of an innocent person allows the true perpetrator to live with impunity and to continue his criminal endeavors. False convictions also take a toll on the reputation of the criminal justice system and on the morale of its loyal agents, and occasionally, they result in hefty monetary payouts at the public's expense.

The newly elected DA should follow the lead of a handful of district attorney offices across the country - including Dallas County, Texas, Manhattan Borough in New York, and Cook County, Ill. - that have established internal Conviction Integrity Units, which are designed to correct for miscarriages of justice. These units assist defendants in pursuing claims of innocence, seek evidence that was not available at trial, and search for mistaken prosecutions. Thanks to its Conviction Integrity Unit, Dallas County has exonerated 28 innocent people since 2007, four times as many as Harris County, which has twice the population of Dallas.

Since 1989, 26 Angelinos have been declared factually innocent after having been convicted and sentenced to prison.

An even greater contribution to the integrity of the process can be achieved by reducing the incidence of investigative error in the first place. Here too the role of the chief prosecutor is indispensable. Craig Watkins, the DA of Dallas County, Texas, has worked jointly with the Dallas Police Department to reform its investigative procedures with the goal of producing the most accurate evidence possible. The reforms, all based on scientific research, include conducting lineups by officers who are blind to the identity of the suspect, and present suspects to the witness one at a time, rather than simultaneously. Other reforms include more sophisticated ways to interview witnesses and more nuanced methods for interrogating suspects. One of the most important reforms is videotaping the investigation and sharing the tapes with the all actors, including the defendant's counsel.

We all wish that a recording of the police's interview with Smith's accuser was available at the time of his trial. Exposing the coercive tactics reportedly used by the detectives to elicit the false testimony might well have prevented Smith's conviction and perhaps it might have helped find the actual shooter. By the same token, that recording could have shown that the police behaved immaculately and did nothing to induce the false testimony (after all, Smith and his accuser were members of rival gangs). The habitual opacity of police investigations deprives the process of these important and easily-discernible truths.

Providing the most accurate and reliable evidence to police supervisors, prosecutors, defense attorneys, judges and juries is bound to reduce the incidence of both faulty prosecutions and frivolous defense claims. Such a regime promises also to curb the number of appeals, habeas corpus proceedings, civil suits and multi-million dollar payouts for damages. The precious resources of the court system would no longer be expended on conjecturing what transpired at the police station or in the back seat of a patrol car. Those quandaries would be solved rather by a simple click on the playback button of a video recorder.

Typically, voters look to their DA for promises to be tough on crime and to throw more criminals behind bars. Thankfully, both Lacey and Jackson are not resorting to that kind of rhetoric, and at a debate hosted by KPCC, both candidates expressed a commitment to the accuracy of the convictions obtained by the County. Such a commitment entails making Los Angeles County's criminal justice process more professional, conscientious and accurate, in short, more like Dallas. It is imperative that this commitment become part of the debate leading up to the election, and that we hold the winner's feet to the fire once she or he is elected.