LEGISLATION ONLY WAY TO GET EYEWITNESS ID REFORM

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Author: Donald E. Wilkes, Jr., Professor of Law, University of Georgia School of Law.

LaGrange Police Chief Louis M. Dekmar's opinion piece in the Athens Banner-Herald last Friday, October 5, 2007, opposing proposed legislation to reform Georgia police eyewitness identification procedures, rests on two unwarrantable assertions: more research is needed, and rather than passing laws we should trust the police themselves to make any needed reforms.

Chief Dekmar, a former president of the Georgia Association of Chiefs of Police, is a leading spokesman for the law enforcement establishment's predictable, bare-fisted opposition to the proposed legislation. He claims that additional empirical studies are needed to ensure any change to eyewitness procedure are based on sound research. This is mere foot-dragging. The scientific studies already exist; many have been available for decades. They repeatedly point out the dangers to innocent suspects posed by current police identification practices and the specific reforms that are needed. We don't need to waste our time engaging in research regarding matters already adequately investigated. What's s needed is prompt implementation of the reforms that Georgia police have stubbornly refused to implement on their own.

Claiming that further study is required is a common delaying tactic of those opposed to reform. When a law enforcement's spokesman resists needed reform by pretending there must first be more research, we may rightly be skeptical of the profession's professed commitment to reform.

Chief Dekmar's claim that proposals to require police to conduct sequential (as opposed to simultaneous) lineups are "based on erroneous or faulty research" is dead wrong. Overwhelmingly, the scientific literature demonstrates the superior reliability of the sequential lineup.

Chief Dekmar's article evinces minimal comprehension of the focal point of the suggested law–the problem of convictions of innocent persons. Since the 1930s, mistaken eyewitness identification has been acknowledged as the principal reason why innocent persons are sometimes convicted. Three-quarters of the over 200 persons exonerated by DNA evidence in recent years (including all 6 of Georgia's DNA exonerees) were the victims of eyewitness misidentification.

These misidentifications nearly always stemmed from suggestive police identification procedures, which police do not videotape but conduct under circumstances of secrecy and in defiance of numerous scientific studies demonstrating that these procedures are apt, whether intentionally or not, to result in mistaken eyewitness testimony harmful to an innocent accused.

Police routinely ignore the dangers of what psychologists call the Experiment Expectancy Effect by suggesting to the witness, usually covertly, which suspect they want identified or which suspect they think the witness should have identified. If the police are in fact wrong about whether that suspect is guilty, their conduct may have the effect of erasing the witness' previous memory, with the result that the witness actually comes to believe in good faith that his or her identification, although in actuality mistaken, is reliable. And when police display confidence in

this mistaken identification, the result is the Confidence Malleability Effect–the tendency of the eyewitness to enhance his or her confidence that the misidentification was correct, making it extremely likely that a trial jury will convict.

The passing reference Chief Dekmar's article makes to erroneous convictions resulting from mistaken eyewitness testimony in Georgia is the laconic observation that these "tragic cases ... involve misidentifications ... 15 to 20 years old." Yet noticeably he makes no showing that police identification procedures have significantly improved during the last 20 years, and he gives us little reason to doubt that, absent reform legislation, in 20 years we will learn of wrongful convictions resulting from the unfair identification procedures that continue today.

If a law enforcement spokesman displays so little concern about the plight of innocent persons who have been or will be imprisoned due to defective police identification practices, can we have confidence that police, acting on their own, will ever correct their own practices?

Chief Dekmar's article is full of feel-good generalizations about what the police, acting on their own, "should" do to improve their identification procedures. The question, however, is not what they should do, but why they didn't do it long ago. The scientific evidence concerning the defects in police identification procedures has been around for over thirty years. Convictions of innocent persons due to these defects have continued to occur.

Yet, as the Atlanta Constitution reported last month, 83% of 293 Georgia police agencies responding to a Georgia Innocence Project questionnaire "have no specific guidelines governing the collection of eyewitness evidence." Furthermore, 130 other Georgia police agencies failed to respond when asked whether they had such guidelines.

Georgia should follow the example other states that have recently enacted laws to reform the way police conduct lineups. The North Carolina legislation, enacted last August, should be the model for Georgia. It requires sequential lineups of individuals or photos; sets forth other specific procedures relating to the content and conduct of lineups; and requires that training and educational materials explaining the new statute be provided to police.

Experience shows that unfortunately Georgia police will not, if left to themselves, cease engaging in practices that unnecessarily increase the possibility that innocent persons will be convicted, imprisoned, and even executed. Therefore they must be compelled to do so by statute.