



September 19, 2006

John Van de Kamp, Chair
Gerald Uelmen, Executive Director
California Commission on the Fair Administration of Justice
900 Lafayette Street, Suite 608
Santa Clara, California 95050

RE: Hearing on Informants

Dear Commissioners:

The ACLU of Northern California appreciates the opportunity to submit this letter to the Commission on the issue of informant use in California. Informants—jailhouse informants, accomplice informants, and out-of-custody confidential informants—are used by police and prosecutors throughout the criminal justice system, in some instances, with little policy or oversight regulating their use. Yet, the use of informants can have high-stakes consequences for individuals, communities, and the pursuit of justice. In this letter, we offer several recommendations for reform of the informant system. We urge the Commission to adopt them.

Overview

According to the Center for Wrongful Convictions, false testimony by informant witnesses is the leading cause of wrongful convictions in death penalty cases in the United States.¹ These wrongful convictions result not just from jailhouse informants—who purport to hear incriminating statements by a defendant—but also from street-level confidential informants and co-participants in the crime charged. What these witnesses all have in common is that they receive benefits from the prosecution or police as a “quid pro quo” for the information or testimony they provide. Some of these witnesses are given staggering benefits, ranging from dismissal of murder charges for which a death sentence might have been sought,² to cash payments totaling thousands of dollars.³ As a result of their testimony, innocent men and women have been sentenced to die in this country.

The harm caused by informant witnesses goes beyond the wrongful conviction of the innocent. Informant witnesses have a detrimental impact on the community at large. Too often, confidential street-level informants continue to engage in criminal activity, including drug sales,

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pimping and pandering, identity theft, and illegal gun sales.⁴ Law enforcement “handlers” either knowingly turn a blind eye to this conduct or fail to keep track of the criminals they have intentionally unleashed on the community.⁵ Worse yet, these informants most frequently engage in this criminal activity in low income communities of color, the very communities most in need of law enforcement protection.

Given these documented risks to individuals and local communities, it is troubling that informants appear to be used by police and prosecutors in California with, in some instances, little policy or oversight regulating their use. As discussed more fully below, in May 2006, the ACLU of Northern California submitted Public Records Act requests to 48 District Attorney Offices, 83 police departments, and 28 sheriff’s departments in Northern and Central California. While the District Attorneys’ Offices were almost uniformly unresponsive, we did receive hundreds of pages of documents from local law enforcement agencies related to their use of informants. Our review of these records and interviews with defense attorneys and former prosecutors leads us to conclude that the use of informant witnesses is a serious problem in California.

Reforms are needed to prevent wrongful convictions and wrongful executions based on false information from informants and to protect our communities from the illegal conduct and harmful impact of informant witnesses. Such reforms include, but are not limited to, making the death penalty “off limits” when informant witnesses are used and independent corroboration is not available; reporting *Brady* violations to the State Bar and imposing discipline; holding reliability hearings on informant witnesses; sentencing informants before providing testimony; and disclosing information about use of confidential informants.

In this letter, we describe the results of our Public Records Act requests, answer the “Focus Questions for Hearing on Use of Informant Testimony” posed by the Commission, and make several recommendations for policy reform.

Results of ACLU of Northern California Public Records Act Requests

On May 17, 2006, the ACLU of Northern California submitted Public Records Act requests to 48 District Attorney Offices, 83 police departments and 28 sheriff’s offices in Northern and Central California, requesting policies and procedures, training materials and other information regarding the use of informants. (See Exhibit 4, PRA request sent to District Attorneys; Exhibit 5, PRA request sent to law enforcement; Exhibit 6, list of all agencies receiving PRA request). Following is an overview of the results of these requests.

District Attorneys’ Offices

The district attorneys’ offices were almost uniformly unresponsive to our request for information.

Of the 48 district attorney offices in Northern and Central California sent requests, only one returned a substantive policy or procedure in response to this request and that policy was only

two paragraphs in length. (See Exhibit 7, Response from Mendocino County District Attorney.) Another provided two sample forms. (See Exhibit 8, Response from Kings County District Attorney.) Twenty-nine offices responded by sending a nearly identical form objection letter, asserting that any responsive documents were either: (1) copyrighted materials, published by non-county sources, or (2) exempt from disclosure by the deliberative process privilege. (See Exhibit 9, Response from Amador County District Attorney, a typical example.)

None of the district attorney offices provided any training materials. Instead, they generally asserted that all training materials used by their offices were provided by the California District Attorneys Association (CDAA) and subject to copyright restrictions.

Similarly, none of the offices provided any substantive response to the request for information regarding their history of informant use.

The lack of responsiveness from the District Attorneys makes it difficult to broadly assess the use or misuse of informants by prosecutors in California. Nonetheless, based on the minimal information we received, it appears that the best practices recommended in the 1989-1990 Grand Jury Report have not been adopted on a consistent statewide basis. For example:

- Alameda County, one of the largest district attorney offices in the state, apparently has no policies or procedures related to informant witnesses. The District Attorney's Office flatly stated in its response to our request, "This Office does not maintain policies or procedures in the area or of the type described in your request." (See Exhibit 10, Response from Alameda County District Attorney.)
- Mendocino County, on the other hand, has adopted a policy that it disclosed in response to our request. We are encouraged by the perspective expressed in the District Attorney's Office response letter that its role is "to prove criminal conduct" and it does not "buy" testimony. However, the two-paragraph policy provided fails to encompass the full range of Grand Jury recommendations. (See Exhibit 7.)
- Kings County also provided some responsive information. On a positive note, the documents provided reflect many of the policy concerns underlying the Grand Jury recommendations. We received copies of two sample informant agreements from Kings County; one for use with street-level confidential informants and the other for co-participants and jailhouse informants. (See Exhibit 8.) These agreements remind the informant of the duty to speak truthfully at all times and to obey all laws; identify exactly what benefits the informant will receive in exchange for his or her testimony; and require the signature of the informant's attorney.

The fact that other district attorneys' offices disclosed no similar forms is disconcerting. It begs the question of whether such agreements are even being documented or used across the state. Moreover, criminal defense attorneys have informed us that, in ten or more years of practice, no such forms have ever been disclosed to them. This includes defense attorneys who have

represented cooperating witnesses, without ever being presented with a document spelling out the agreement between their client and the district attorney.

The Commission should request policies, procedures, forms and training materials related to informant witnesses from all 58 district attorneys' offices across the state. Without this information, there is no way to determine how prosecutors are using informants and whether they are complying with best practices.

Police and Sheriff's Departments

We received a wide array of substantive responses from local law enforcement agencies in Northern and Central California; we appreciate their timely compliance with the Public Records Act.

We sent requests to a total of 111 agencies (83 police and 28 sheriff's departments) of varying sizes. The majority of departments providing a substantive response had some policies, training materials or forms related to their use of informants. Unfortunately, however, these materials reveal that at least some law enforcement agencies in California are actively using informant witnesses without adequate regulation.

The highlights include:

- Most encouraging, the Mendocino County Sheriff provided training materials, but also stated that the office policy was *not* to pay or plea bargain with witnesses in exchange for information. (See Exhibit 11, Response from Mendocino County Sheriff.)
- Most disturbing, the Stanislaus County Sheriff reported that they had no responsive policies or training materials, yet they have used 19 informants in a total of 57 cases since 2001. (See Exhibit 12, Response from Stanislaus County Sheriff.)
- The Lake County Sheriff's Department also has no policies or training materials, but appears to use informants insofar as they provided a sample form used to document payments to informants. (See Exhibit 13, Response from Lake County Sheriff.)
- Ten other departments responded that they had no policies or training materials—only three of these departments stated that they do not use informant witnesses.
- Several departments have adopted a version of "608 Confidential Informants," a policy document created by Lexipol.⁶ (See Exhibit 14, Response from Eureka City Police Department, a typical example.) While each department may tailor 608 for its own use, generally 608 provides that: (1) a file must be maintained on each confidential informant, with specified background information and assessments of the informant's reliability; (2) supervisors must approve use of an informant; (3) juvenile informants may be used only under limited conditions; (4) all informants must "sign and abide by the Departmental Informant Agreement;" (5) officers must follow specified guidelines regarding their

relationships with informants; and (6) payments to informants must be documented and approved.

- The Santa Clara Police Department stood out as one of the few offices with an extensive policy that appeared to have been developed by their office. (*See Exhibit 15, Response from Santa Clara Police Department.*) This department also has some of the most comprehensive training materials.
- Departments with comprehensive training materials alert law enforcement to the risks of using informant witnesses.⁷ These materials caution officers to consider the motivation of the informant, corroborate all information provided, keep in close contact with the informant, and take action if the informant engages in illegal activity.
- Likewise, some of the sample forms showed careful attention to the risks that informants could be engaged in illegal activity harmful to the community and to the need to carefully track informants. These sample forms included: contracts for street-level confidential informants; disclosure forms for use with street-level confidential informants; check lists of necessary steps for officers using confidential informants; redacted versions of logs for tracking active informants; redacted payment forms for cash payments to informants; and a sample letter to district attorneys advising of assistance.⁸

In general, the material we received and reviewed from law enforcement agencies raise five concerns:

- 1) The policies, training materials and sample forms we received are limited to street-level confidential informants. None of the materials address co-participant or jailhouse informants;
- 2) The variety of responses demonstrates that best practices are not being consistently applied across the state;
- 3) No attention is given to the risk of false information from co-participant witnesses;
- 4) The “standard rate” of three arrests per informant creates an incentive for witnesses to lie; and
- 5) The vast majority of street-level confidential informant use avoids scrutiny by the courts, without even the involvement of district attorneys or defense attorneys representing the witness.

We are particularly concerned about the last two problems. We received several law enforcement agreements and forms stating that in order to receive the benefit of the promised deal, street-level confidential informants must provide information leading to three arrests. (*See Exhibit 16, Response from Monterey Police Department—Special Agreement, providing that informant*

must introduce the officer to three dealers; Exhibit 17, Response from Concord Police Department—Checklist, noting officer must advise that “normal contract is three dealers for one case.”) One notable exception was the Kings County District Attorney’s Office; their sample agreement provides a blank line for specifying a number of *investigations* that the informant must assist with, not a standard number of *arrests* that the informant must produce. This “going rate” creates obvious incentives for confidential informants to provide false information. If the informant only honestly knows of one or two local drug dealers, that information is insufficient for a deal. Instead, the informant must find (or fabricate) additional evidence for a third case.

This incentive structure is even more pernicious because of the underground, undisclosed and unsupervised nature of street-level informant use. Since the vast majority of drug cases are resolved through plea bargains rather than trials, the informant’s information will likely never be tested in court.⁹ Indeed, the confidential informant’s identity will rarely, if ever, be disclosed. Moreover, at least some law enforcement policies actively eliminate involvement of the district attorney or counsel for the informant. For example, the Santa Cruz County Sheriff encourages officers to avoid booking potential informants. (See Exhibit 18, Response from Santa Cruz County Sheriff—Policy, page 4.) In this manner, the district attorney’s involvement is precluded and the informant is prevented from ever speaking to a lawyer of his or her own.

Responses to Commission’s Focus Questions

- 1. Many District Attorney Offices have implemented the 1989-90 Grand Jury recommendations by requiring supervisory approval, corroboration, past history, and full disclosure in any case where a prosecutor proposes to use an in-custody informant as a witness. Are these “best practices” being followed on a state-wide basis? Should these “best practices” be implemented for all informant testimony in which any consideration is promised to or received by the testifying informant?*

District attorneys’ offices are not forthcoming about their policies and practices, so it is difficult to broadly assess whether best practices have been adopted and are being followed consistently. The few substantive responses we received in response to our Public Records Act requests suggest that the 1989-90 Grand Jury’s recommended “best practices” regarding in-custody informants are not being applied consistently throughout the state. For example, one of the largest district attorney offices in the state, Alameda County, reported that they have no official policies or procedures regarding the use of informants at all. Another district attorney office responded with a two-paragraph policy.

Best practices in the use of informants should be implemented across the board for all incentivized witnesses because the risks of false testimony and wrongful conviction are just as great with any witness who receives a benefit from law enforcement in exchange for providing incriminating information. Moreover, the vast majority of cases involving street-level confidential informants do not result in contested trials because these cases often end in guilty pleas without adequate disclosure. Thus, reforms that target only *testifying witnesses* will not prevent wrongful convictions based on false information from street-level informants. Yet, there

is real concern, with California's harsh sentencing laws, that innocent people implicated by a confidential informant may plead guilty to avoid prison or reduce their sentences.

The Commission should recommend consistent statewide policies regarding the use of *all* incentivized witness, including street-level confidential informants and co-participants in the charged crime, not just in-custody informants.

2. *The California Penal Code currently requires that (1) a written statement describing the consideration received by an in custody informant be filed with the court and provided to the defendant or his counsel when the witness is called, (2) notification be given to the victims of any crimes in which the prosecutor proposes to offer a modification or reduction of sentence to an in custody informant, and (3) a cautionary instruction be given to the jury in any case in which an in custody informant testifies as a witness. Should these safeguards be extended to all informant testimony for which any consideration is promised to or received by the testifying informant?*

The Commission should recommend extending these safeguards to all informant testimony. Cooperating co-participants and street-level confidential informants may have the greatest incentives to lie and may inflict even greater harms on the community than jailhouse informants.¹⁰ Greater disclosure to the defense and a cautionary instruction to jurors are simple reforms to help protect against wrongful convictions based on false testimony by any type of informant. In addition, prosecutors should be precluded from providing undisclosed benefits to informants after they have testified, a ruse commonly used to avoid disclosure of benefits before trial to the defense or at trial to the jury.¹¹

Notice to victims of these informants should be required in all cases. This is especially true for co-participant informants, where the individual escaping punishment is actually an accomplice to the crime involving the victim. If the person who inflicted harm receives leniency, the victim deserves to know why. Further, requiring district attorneys to confront the negative impacts on victims of using incentivized informants may make district attorneys more cognizant of the broader range of negative impacts that flow from their decisions to use informant witnesses.

Reforms applicable to non-testifying informants are equally important. Again, because the vast majority of cases are resolved through plea bargains, reforms that focus solely on the trial setting are insufficient.

3. *There may be prisoners still serving sentences in California prisons who were convicted based upon the testimony of in custody informants prior to the implementation of current best practices and prior to the enactment of current Penal Code safeguards. Should a remedy be available to facilitate the reopening of such cases, similar to the Innocence Commission recently established by the State of North Carolina?*

The Commission should recommend a mechanism for reopening cases prior to 1990 in which the conviction was based on the testimony of a jailhouse informant. In the 1980s, jailhouse

informants were most frequently used in homicide cases, especially high profile capital cases. More than one third of the people currently on death row are there for convictions arising out of Los Angeles County.¹² More than 70% of death row cases come from Southern California counties.¹³ Many of these counties used the same jailhouse informants as Los Angeles. Most of the cases now reaching execution involve convictions prior to 1990; the majority of these convictions or death sentences rely heavily, if not entirely, on the testimony of jailhouse informants.¹⁴

Habeas corpus review fails to adequately address the problems with jailhouse informants in these cases. In some cases, critical witnesses have died or become unavailable to the defense because of fears of retaliatory prosecution for perjury.¹⁵ In other cases, necessary funds have never been allocated for investigation and evidentiary hearings have been denied.¹⁶ Frequently, therefore, the problems with jailhouse informants in death penalty cases have simply eluded review by the courts.

At a minimum, we should not execute anyone if the conviction or death sentence is substantially based on the testimony of a jailhouse informant. In addition, further steps should be taken to identify those people who are actually innocent or whose convictions simply can no longer be trusted. A review mechanism such as the North Carolina Innocence Commission should be established.

4. *Should police and prosecutor interviews of informant witnesses be electronically recorded?*

The Commission should recommend that all interviews with informant witnesses be electronically recorded. Recording of informant interviews has been recommended by legal commentators such as Judge Stephen S. Trott¹⁷ and former Assistant United States Attorney George C. Harris.¹⁸ Electronic recording is a simple and effective means of documenting informant witnesses' statements, discouraging misconduct by police, and dispelling accusations of misconduct by either informants or police.

5. *Should corroboration be legally required for the testimony of in custody informants? For the testimony of all informants for which any consideration is promised to or received by the testifying informant? If so, what degree of corroboration should be required? Should it exceed the "slight" corroboration currently required for accomplice witnesses? [Cf. California Penal Code Section 1111, CALCRIM No. 334, 335].*

The Commission should recommend that substantial corroboration be required for all informant testimony and should recommend pre-trial hearings at which the judge would determine whether there is sufficient corroboration to allow the informant to testify. Other review bodies, including the bipartisan Constitution Project and the Illinois Governor's Commission on Capital Punishment, have recommended that corroboration be required at least for informant testimony in death penalty cases.¹⁹ The "slight" corroboration requirement currently applied to accomplice testimony is simply insufficient. Co-participants, jailhouse informants and street-level

confidential informants all may easily shape their testimony to satisfy the “slight” corroboration requirement.²⁰ In order for the requirement to have any meaning at all, a higher standard of corroboration must be required.

6. *Should additional training be required to acquaint investigators, prosecutors, judges and defense lawyers with the risks and dangers presented by the use of informant testimony?*

The Commission should recommend additional training for prosecutors, judges and defense lawyers on the risks and dangers of the use of informant witnesses.²¹ Such training should not be limited to the risks and dangers of informant *testimony* but should also include the risks and danger of information provided by informants that might result in innocent individuals pleading guilty to avoid the risks of trial. Moreover, prosecutors, judges, defense lawyers, and law enforcement officers should be educated on the harms informant witnesses may inflict on the community at large when they abuse their relationship with law enforcement to continue engaging in criminal activity.

Additional Policy Reform Recommendations

- 1. The death penalty should be “off limits” when informant witnesses are used and independent corroboration is not available.**

We must emphasize the imminent need for one critical reform not addressed in the Commission’s line of questioning: as the bipartisan Constitution Project concluded, the death penalty should be “off limits where the guilt of the defendant or the likelihood of receiving a capital sentence depends upon these types of evidence and where independent corroborating evidence is unavailable.”²²

As the Constitution Project observed, “co-defendants are prone to lie and blame other participants in order to reduce their own guilt or sentence, and jailhouse informants frequently have the opportunity and the clear motivation to fabricate evidence to benefit their status at the expense of justice”²³ It is not surprising that false testimony by informants would be a critical factor in wrongful convictions. It is, however, deeply disturbing that informant witness testimony would play such a large role in death penalty cases when the risks of this type of evidence are widely recognized. At least one judge opines that informant witnesses may be used more frequently in death penalty cases because: (1) often there are no non-participant witnesses to murder, and (2) police and prosecutors are under extreme pressure to secure convictions and death sentences in cases where the death penalty is sought.²⁴ Thus, in the very cases where prosecutors should be most skeptical of informants, they may depend upon and use them most.

The Commission should consider the particular risk of informant testimony in death penalty cases and recommend safeguards and restrictions on the use of such evidence in capital cases.

2. *Brady* violations should be reported to the State Bar for discipline.

The most fundamental procedure for protecting against misuse of informant witnesses is full disclosure to the defense of the benefits the informant is receiving and of the informant's criminal history. Yet, reversals based on *Brady* violations continue to occur routinely, with little or no consequence to the individual prosecutor.²⁵ Moreover, we have no way of knowing how many *Brady* violations have gone undetected. The failure to impose severe consequences for known *Brady* violations sends the wrong message to prosecutors about the significance of compliance. Prosecutors should be reported to the State Bar when a court finds a *Brady* violation and appropriate discipline should be imposed. In addition, district attorney offices should create internal methods of review to ensure that all prosecutors are complying with their discovery obligations.

3. Reliability hearings should be conducted on informant witnesses.

Several commentators have recommended that courts conduct pre-trial reliability hearings with informants.²⁶ At such hearings, the informant would be required to testify, allowing the defense to cross-examine and probe for undisclosed benefits or criminal history. The judge would then assess whether the informant is sufficiently credible to present to the jury and whether there is independent corroboration to support the testimony. Pre-trial reliability determinations also benefit the prosecution, allowing them time to continue building their case should the court find the informant unreliable.

4. The informant should be sentenced before testifying.

Several practitioners we spoke to suggested that informant witnesses be sentenced before they testify. By sentencing the informant before the trial in which he or she will testify, all deals will be a matter of public record. The prosecution will not be able to offer additional, undisclosed incentives, and the defense will be able to check court records to verify that the information provided by the prosecution is accurate.²⁷ More importantly, the informant himself or herself will not have the same incentives to lie or embellish.

5. The government should be required to disclose information about confidential informant use and should be required to show that informant use actually helps reduce crime.

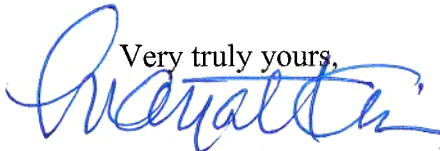
Professor Alexandra Natapoff recommends more openness and accountability regarding the use of street-level confidential informants.²⁸ The government should be required to disclose information about confidential informant use, including the number of informants released into high crime neighborhoods and summaries regarding the crimes informants have committed but for which they escaped punishment in return for information provided to law enforcement. Further, the government should be required to show that informant use actually helps reduce crime. Such information could be reported to the Legislative Analysts Office, the Assembly and/or Senate Public Safety Committees, or the Attorney General. The agency receiving the

information could then be asked to prepare a report summarizing the data received and make the report available to the public.

Tasked with recommending how to make California's criminal justice system "just, fair and accurate," we urge the Commission to consider the full range of effects informant witnesses have on our communities and adopt the foregoing reforms.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your consideration.

Very truly yours,



Maya Harris
Associate Director



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¹ Center on Wrongful Convictions, *The Snitch System: How Snitch Testimony Sent Randy Steidl and Other Innocent Americans to Death Row*, p. 3 (2005), available at <http://www.law.northwestern.edu/wrongfulconvictions> (viewed September 19, 2006).

² See *The Snitch System*, *supra* note 1. For example, Randall Dale Adams was wrongfully sentenced to death in Texas based on the testimony of a jailhouse informant who was granted immunity for capital murder. The informant later confessed that he, not Adams, was the true killer. *Id.* at p. 3. Perry Cobb and Darby Tillis were wrongfully sentenced to death in Illinois based on the testimony of an accomplice. The accomplice was released as a result of her cooperation. Cobb and Tillis spent 10 years on death row before receiving a pardon based on innocence; the accomplice/ informant was never charged. *Id.* at p. 7. Darryl Moore was granted immunity in Illinois for a contract killing in exchange for repeated cooperation with police. *Id.* at p. 13.

³ See *State v. Ring* (2001) 25 P.3d 1139, 1150 (defendant testified to receiving more than \$100,000 in payments from federal government when he was acting as an informant; holding of case overruled in *Ring v. Arizona* (2002) 536 U.S. 584); *United States v. Meredyth* (1999) 188 F.3d 520 (Table Decision) (uncontested evidence that informant was paid more than \$10,000 in cash by federal government).

⁴ See Exhibit 1, article by Jaxon Van Derbeken, *Danger in Trusting a Gangland Snitch*, San Francisco Chronicle, August 13, 2006 (police and prosecution agreed to release of confidential informant with long history of identity theft crimes; as a result, he illegally sold a gun to a man now suspected of murdering police officer); Exhibit 2, Jaxon Van Derbeken, *Informant in Killing of Officer Arrested*, San Francisco Chronicle, September 14, 2006 (same informant re-arrested and implicated in more than 60 burglaries); Exhibit 3, Glenn Chapman, *Self-Professed Pimp Walks Free After Dodging Charges in Court*, Oakland Tribune, February 8, 2003 (pimp of underage girls acquitted after evidence presented that he has a confidential informant for DEA and that federal agents knew of his illegal activities). See also *United States v. Bear* (2005) 439 F.3d 565, 568 (defendant, while working as a confidential informant, was manufacturing methamphetamine).

⁵ See discussion of informant supervision by law enforcement, or lack thereof, in Exhibits 1-3.

⁶ Lexipol is a private corporation that many law enforcement departments in the State of California use to develop policies and procedures.

⁷ We have not included these materials as attachments because they are quite lengthy. However, we would be happy to provide copies to the Commission on request.

⁸ Again, we have not included the actual forms due to the cumulative length. But we are happy to provide the Commission with any and all sample forms requested.

⁹ See generally Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. Cin. L. Rev. 645.

¹⁰ *Ibid.*; see also Exhibit 19, Fredric Tulskey, *The Trouble with Jailhouse Informants*, Mercury News, September 17, 2006.

¹¹ See Exhibit 19, describing the common practice of avoiding specific deals with an informant witness prior to testifying.

¹² See the California Department of Corrections and Rehabilitation, Condemned Inmate Summary List, available at <http://www.corr.ca.gov/ReportsResearch/docs/Summary.pdf> (viewed September 19, 2006).

¹³ *Ibid.*

¹⁴ See Exhibit 20, Natasha Minsker, *Misconduct Cases Reveal Death Penalty's Random Nature*, Daily Journal, March 29, 2005; Exhibit 21, Natasha Minsker, *Call Off the Killing Season: Put Executions on Hold*, Daily Journal, November 21, 2005 (both articles describing then impending executions that involved informant witnesses). Indeed, the jailhouse informant in the Stanley Tookie Williams case was known to be a protégé of Leslie Vernon White. See summary of facts in *Williams v. Calderon* (1998) 48 F.Supp.2d 979, 1004 (holdings superseded by subsequent proceedings).

¹⁵ See *Williams v. Calderon* (1998) 48 F.Supp.2d 979, 1004: "Petitioner intended to have several jailhouse informants testify at the second evidentiary hearing, including [George] Oglesby and Leslie White. . . . Oglesby died the night before the hearing and the rest of the witnesses, including White, invoked their Fifth Amendment right not to incriminate themselves and declined to testify." (Case superseded by subsequent proceedings.)

¹⁶ In the case of Michael Morales, the federal district court only granted a total of \$2,000 for investigation of the case and no evidentiary hearing was ever held. (Conversation with attorney of record, David Senior.)

¹⁷ Judge Stephen S. Trott, *Words of Warning for Prosecutors Using Criminals as Witnesses*, 47 Hastings L.J. 1381, 1405.

¹⁸ George C. Harris, *Testimony for Sale: The Law and Ethics of Snitches and Experts*, 28 Pepp. L. Rev. 1, 62.

¹⁹ See Illinois Governor's Commission on Capital Punishment, *Report of the Governor's Commission on Capital Punishment* (2002), Recommendation 52, available at <http://www.idoc.state.il.us/ccp/ccp/reports/index.html> (viewed September 19, 2006); the Constitution Project, *Mandatory Justice: The Death Penalty Revisited* (2006), Recommendation 29, available at

<http://www.constitutionproject.org/deathpenalty/article.cfm?messageID=136&categoryId=2> (viewed September 19, 2006).

²⁰ See Exhibit 19, in which Leslie Vernon White explains that "it is too easy to make up confessions."

²¹ See, e.g., Steven Cohen, *Effective Screening for Truth Telling: Is it possible? What is True? Perspectives of a Former Prosecutor*, 23 Cardozo L. Rev. 817, 826 (2002); Stephen S. Trott, 47 Hastings L.J. 1381, 1405.

²² Constitution Project, *supra* note 17, p. xxxiii.

²³ *Ibid.*

²⁴ Comments by Judge Starr at Faces of Wrongful Conviction Conference, April 9, 2006, available at <http://facesofwrongfulconviction.com/videos.htm> (viewed September 19, 2006).

²⁵ See Zacharias, *The Professional Discipline of Prosecutors*, 79 N.C. L. Rev. 722, citing many examples of misconduct and lack of resulting discipline.

²⁶ See, e.g., Alexandra Natapoff, *Beyond Unreliable: How Snitches Contribute to Wrongful Convictions*, forthcoming Golden Gate University Law Review, September 2006; George C. Harris, *Testimony for Sale: The Law and Ethics of Snitches and Experts*, 28 Pepp. L. Rev. 1, 62; see also Illinois Governor's Commission, *supra* note 17, Recommendation 52.

²⁷ See Exhibit 19, discussing the problem of undisclosed benefits.

²⁸ Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. Cin. L. Rev. 645; Alexandra Natapoff, *Bait and Snitch: The High Cost of Snitching For Law Enforcement*, Slate.com, December 12, 2005.