
Exhibit 1

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**DANGER IN TRUSTING A
GANGLAND SNITCH**
**Informant in officer's slaying, gang
killings was repeatedly freed to pursue
life of crime**

- Jason Van Derbeek, Chronicle Staff Writer
Sunday, August 13, 2006



Three years ago, after getting caught running an identity-theft ring, Marvin Jeffery Jr. made a deal with San Francisco authorities: He would act as an informant if they gave him a break.

Jeffery, then 22, was released on probation and began to build an even larger identity-theft operation. In return, authorities got next to nothing.

Then on April 10, 2004, Officer Isaac Espinoza was gunned down with an AK-47 while on patrol in the Bayview. The next day, the deal with Jeffery finally seemed to pay off: He called the police and offered up their suspect, David Hill, who was quickly arrested.

Only later did authorities learn that the deal with Jeffery came at an unimagined price: Jeffery, while free in return for serving as an informant, had provided Hill the illegal AK-47 just days before Espinoza's killing.

And only last week, at a pretrial hearing in the Hill case, did authorities announce that Jeffery, free again because of his role as an informant, despite pending federal fraud charges, had disappeared.

Prosecutors had not only lost Jeffery as a key witness in the killing of an officer, but also in a second case, a drug-related double murder prosecution involving gangs in the Bayview that had been touted by federal authorities as a major success in their war on violence.

As they search for their witness, federal and local authorities must now reconcile Jeffery's actions as an informant -- one who continued his criminal activity and is an uncharged accessory to an officer's killing -- against their need for help in piercing the gang and drug wars that afflict the Bayview and other neighborhoods.

"It's a calculated risk you take when you are dealing with a community under siege," said Inspector Toney Chaplin, a gang investigator who has been involved in the Hill case. "What do you do? You've got to start talking to folks -- even the unsavory ones."

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CREDIT SCORE	INTEREST RATE
720-850	5.892%
700-719	6.017%
675-699	6.555%
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560-619	8.531%
500-559	HIGH RISK 8.288%

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Young man finds trouble

Marvin Jeffery was known as the well-dressed "Money Man" in the Sunnydale and Bayview areas of San Francisco. He drove a gold Cadillac Escalade as he organized willing dupes to carry out fraud schemes, and was known as someone who could get money fast for people in need.

According to interviews, police records and court documents, Jeffery's early life as a criminal and strong ties to the Hill family made him the ideal informant.

Born on April 29, 1980, he grew up in the Bayview. As a boy, he met David Hill and his older brother, Willie, whom he considered a close friend. Jeffery regularly went over to the Hill apartment in the Westpoint housing project, where Daisy Hill was raising eight children largely on her own.

After being kicked out of Balboa High for fighting, Jeffery graduated from an alternative school, Downtown High, which Willie Hill also attended.

Records show Jeffery was first arrested in 1998, when he was 18. He and Willie Hill were charged with receiving stolen property after they used a stolen credit card to buy coats at Nordstrom that they then returned for cash. Jeffery was put on probation.

He got arrested in a gun case, but it was dismissed. Still 18, he was arrested for credit card fraud and served 45 days in jail.

In April 1999, he was put on probation again for an auto burglary case. Two years later, he was caught stealing cases of cigarettes from a Costco. He got probation again and a four-month suspended jail term.

By this time, Jeffery had graduated from low-level crime. He now headed an identity-theft ring in San Francisco and the Peninsula, police say.

Investigators say the group stole checks from at least 10 homes, created bogus checks and cashed them at the victims' banks. They also arranged for check verification calls from banks to be rerouted to one of their cell phones.

San Francisco and Daly City police set up surveillance of the group, and it was caught in the act in August 2001. Jeffery and seven others were arrested.

The others went to prison. But in January 2003, Jeffery made a deal, agreeing to act as a police informant. In return, he received credit for 126 days time served and was released on probation. And his case was sealed.

He would later claim that the case "really didn't involve me," and that he pleaded guilty only because the police were "helping me to keep out of prison."

Jeffery soon fell through the cracks. His police contact, a member of San Francisco's gang unit, was reassigned. Left alone, Jeffery continued his criminal activity, police say.

Within a month, Jeffery was arrested on Feb. 22, 2003, after he crashed into a corner

market, tied a chain to an ATM inside and began to haul it away. Officers caught him in the act.

Even though he had just been put on probation, his bail was only \$3,000. He quickly posted it and skipped out on court.

Picking the wrong victim

It didn't take long for Jeffery to start a new identity-theft operation. He was hitting so many victims, however, that by May 2003, he picked the wrong target.

A woman working under the guise of being a temporary housekeeper got access to the home and bank information of the newly appointed U.S. attorney in San Francisco, Kevin Ryan, police say.

Ryan soon went public with the news that his family had been victims of \$20,000 in identity theft. At a news conference, he complained that he and his wife, Ann, were forced to re-create their financial information. "We're dealing with that," he said. "It's not fun."

Typically, a case like this would not get high priority. But an angry Ryan went to Alex Fagan, the city's acting police chief and a friend, and demanded action. Fagan assigned a veteran investigator, Rich Moses.

Moses was just starting his investigation when Jeffery was arrested in Danville for check fraud in October 2003. He was sent back to San Francisco to answer for skipping bail on the ATM theft case and should have been held on a probation violation.

But the required warrant was not in the system, so he again posted bail -- and later again failed to appear in court.

By late 2003, a \$200,000 warrant was issued for his arrest. But even though a fugitive, Jeffery began to act as an informant, by all accounts. His cooperation led to three weapons possession cases in the Bayview, authorities say.

In one case, the man who was caught with a gun claimed that Jeffery told him to hold a weapon while Jeffery went into a McDonalds. Police swooped in minutes after the gun changed hands and arrested the suspect, a parolee.

By this time, Jeffery also had a new police contact at the Bayview station, Officer Shaughn Ryan. It was Ryan, an undercover officer, who repeatedly met with Jeffery in late 2003, including one day in November when Officer Espinoza was working with him.

Jeffery was detained in a weapons investigation that day and provided information so he could stay out of custody on the warrants. Police knew that he was a wanted man, but they wanted his information more.

It was about then that Inspector Moses, on the trail of the thieves who targeted the U.S. attorney's home, realized Jeffery's ring was responsible. It turned out Moses had been part of the surveillance team that arrested Jeffery for identity theft in 2001.

Unaware of Jeffery's secret deal, Moses figured he was in prison for that case. But in examining a bank security photo of a bogus check being passed by the woman who had been the Ryans' temporary housekeeper, Moses recognized Jeffery with her.

Moses now figured Jeffery's identity-theft network involved as many as 40 people.

"He's an identity-theft master," said Moses, who is now retired. "He has a knack to finding people who have IQs one or two points higher than a rock -- then he uses these people and gets them to cash checks for him, using their own names and their own bank accounts."

Brooke Prather, one of Jeffery's victims, said she was "still going through some hell" years after the ring stole \$10,000 from her. "It's still bad -- these people know my phone number, my Social Security card, they know everything about me, they know where I live. It's creepy."

Prather said Jeffery's invulnerability left her frustrated.

"I do everything legally," she said. "I vote. My credit is clean. I try to do all the right stuff, follow all the rules. Then there's this guy, driving around in a gold Escalade, laughing it up, cashing my checks."

Tip in cop killing

On April 11, 2004, Jeffery called police with much-needed news. It was Easter Sunday, the day after Espinoza was gunned down on a street in the Bayview.

Jeffery said he was with the suspected gunman, David Hill, and was about to drop him off at a hospital in San Ramon, where Hill planned to feign mental problems.

Officers quickly arrested Hill. Jeffery met up with police that day.

"This is Marvin," one investigator said during the debriefing. "He's our hero today."

Jeffery told police that Hill knew he had killed a cop after going out that night with an AK-47, gunning for a member of Big Block, a Westmob gang rival. "Somebody was gonna get it," he told officers.

Jeffery said Hill told him he opened fire on police who were harassing him. "He told me like he rather go out like that than be caught with an assault rifle," he said. "That's what he told me."

He said that Hill also told him: "Man, that's what they get for tryin' to -- for tryin' to ah, harass me for nothing, like they had no reason to -- to even jump out on me to, to harass me."

At the time, Jeffery told authorities that all he knew about the AK-47 was what Hill had told him -- that it was black and had a 30-round clip.

It seemed that the deal the authorities had made with Jeffery had paid off handsomely. Moses figured that was the end of the identity-theft case he had against Jeffery. "Finally, I

find out who the guy is," he said, "and he brings in a cop killer."

In June 2004, a reluctant Jeffery met with federal authorities and told them what he knew of the Westmob gang. Jeffery said he was not really a member, but was affiliated with the group.

"I don't do nothing but tell the truth," he said, but he feared his government cooperation would become known. "I feel like a toy, man. I feel like I'm being played table tennis with, man. For real."

He eventually told authorities what they wanted to hear: that two key figures in a federal investigation into the Westmob gang, David Hill's brother James Hill and David George, had boasted to him about shooting a gang rival on Interstate 280 on Dec. 20, 2000, and the killings 10 days later of two other gang rivals, Brian Williams and Curtis Layne.

He said he got a text message after the freeway shooting that said, "One down, Ninety Nine to go" and Hill and George came to his place, laughing and recounting the shooting in detail. The victim, however, survived.

As for the two killings, he said the two men not only boasted to him about the shooting the day after the crime, but then got into a fistfight in front of him over who was the best shot.

"I want them guys off the street, you know?" Jeffery said of Hill and George.

With his testimony secured, the FBI relocated Jeffery to Nevada for his protection in the summer of 2004.

But Jeffery's criminal activity did not stop, authorities say. In August 2004, he was caught in an identity-theft scheme in Henderson, Nev. By this time, his fraud in both states had netted as much as \$3 million, officials say.

He was also indicted on federal bank fraud charges stemming from his Bay Area identity-theft ring, in a case based on what Moses provided to federal authorities.

Facing a maximum term of 30 years to life in prison, Jeffery returned to California in September. He immediately entered a sealed plea agreement and, in October, testified before a federal grand jury about James Hill and David George.

Assistant U.S. Attorney George Bevan told the grand jury about an arrangement that would free Jeffery after his testimony and enter him in a witness protection program. Jeffery said his cooperation was now known in the community and it put him in "great danger."

"There is a code of, you know, part of being accepted," he said. "That's how I gained my trust, because they thought, you know, I wouldn't ..."

"Squeal," Bevan interjected.

"Yeah," Jeffery said.

In February 2005, Jeffery met again with police and prosecutors. For the first time, he told

them he had provided David Hill the AK-47 that Hill allegedly used to kill Officer Espinoza.

"I knew he had a AK-47, I helped him get it," he said, adding that Hill called and thanked him for helping him pay for the gun.

He said the "third party" go-between on the transaction was Berry Adams. But Adams soon told police that Jeffery personally gave Hill the AK-47 in exchange for three 9mm handguns.

Adams said the gun deal took place at Jeffery's home in San Ramon just days before Espinoza was killed. Faced with Adams' account, Jeffery eventually admitted that he gave Hill the weapon, claiming he had bought it from someone named Ali out of a liquor store in Oakland.

Star witness disappears

In May 2005, thanks in part to Jeffery's testimony, James Hill and David George were federally indicted in the 2000 drug-related double murder, a case that could carry the death penalty.

Bob Waggener, a defense attorney who had been involved in the Westmob case, said Jeffery was apparently the key to the prosecution on the double murder case.

"He was the one witness allied with Westmob that they had recruited to testify against Westmob," he said. "He was the only supposed Westmob insider."

In October, Jeffery was freed on his own recognizance, federal court records show, and went into witness protection. He was yet to be sentenced in the bank fraud case.

In May, federal officials learned Jeffery -- living under an assumed name in another state -- had once again been arrested in an identity-theft case. Once again, he had skipped bail.

"Why they let him out -- that is stunning," Waggener said. "He was locked up for some time."

He said Jeffery's disappearance is a "pretty big" blow to prosecutors. "They put a lot of reliance on him -- he was going to be their star witness."

It is unclear whether San Francisco prosecutors would have called him to testify in the Hill case, however.

Moses said Jeffery's many roles show the tradeoffs of dealing with informants.

"This guy is a snake -- he's a crook, a cheat, a liar," Moses said. "But," he said, speaking of David Hill, "the one day he brought this guy in, he was telling the truth."

Gail Shifman, an attorney for David George in the federal double murder case, called Jeffery a "classic con artist."

"He played both sides, he played the cops, and played people on the street, effectively, to protect the middle, to protect his own ass."

Samantha Sue Spangler, the federal prosecutor in the Jeffery bank fraud case, said federal authorities are vigorously looking for Jeffery. "We do want to get him back into custody," she said.

Moses said he is confident the law will eventually catch up to Jeffery.

"He's an identity-theft king -- he can slip in the woodwork as fast as anybody I know," Moses said. "But even if he changes his identity every two weeks, he will eventually be caught."

Deadly rifle's path

The semiautomatic weapon used to kill Officer Isaac Espinoza was a Chinese-made Norinco SKS version of an AK-47 assault rifle, shipped to the United States into the state of Georgia in 1987. Because it was not fully automatic, it was not subject to government restrictions on assault weapons at the time. In 1994, the U.S. banned import of all Chinese-made weapons.

Federal records show that the weapon was passed through the hands of gun dealers in Sacramento and Elk Grove before being bought in March 1987 by a man with an Oakland address. He later told authorities he bought it at a gun show. The last legally registered owner, he told federal officials in 2004 that he couldn't remember what he did with the weapon.

In early 2004, Marvin Jeffery Jr. -- a convicted felon on probation who was free as part of an agreement to be a San Francisco police informant -- bought the weapon for \$1,500 from a man he identified as "Ali" at a liquor store in Oakland. Authorities later interviewed the man, who said he did not remember where he got the weapon.

In late March or early April 2004, Jeffery exchanged the AK-47 for three 9mm handguns in a deal with David Hill at Jeffery's home in San Ramon.

On April 10, 2004, Hill allegedly used the AK-47 to shoot Officer Isaac Espinoza, then discarded it nearby. Jeffery, who alerted police to Hill's whereabouts, at first concealed his role in providing Hill the rifle. He has since acknowledged trading the gun to Hill several days before the killing.

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Print This Article

SAN FRANCISCO
Informant in killing of officer arrested

Suspect in burglaries, credit card thefts in N.C.

- Jason Van Derbeek, Chronicle Staff Writer
 Thursday, September 14, 2006

A key informant in the slaying of a San Francisco police officer spent most of this year committing burglaries and running up charges on stolen credit cards in North Carolina after federal authorities moved him there as a protected witness, law enforcement officials said Wednesday.

Marvin Jeffery Jr., 25, was arrested in Raleigh, N.C., on Friday and is expected to be returned later this month to California. Federal authorities plan to keep him in custody while he awaits sentencing in the Bay Area on bank fraud charges dating from 2004.

Jeffery had been released in the bank-fraud case after agreeing to testify for the prosecution in two major cases, including the trial of the man accused of murdering police Officer Isaac Espinoza in April 2004.

Jeffery dropped out of sight in May, missing court dates in the Bay Area at which he was to have testified in pretrial proceedings against Espinoza murder defendant David Hill as well as in a federal case charging two men with killing suspected gang rivals.

The U.S. Marshals Service, which moved Jeffery out of California last October as a protected witness in the murder cases, had been looking for him since he failed to appear in North Carolina to answer charges that he had broken into cars and run up charges on stolen credit cards.

"We put in a significant amount of time to locate this gentleman," said Tom Figmik, chief deputy U.S. marshal in San Francisco. "Our people in North Carolina did a very good job of locating him."

"I'm glad he is back in custody," said Assistant U.S. Attorney Samantha Sue Spangler, the federal prosecutor in Sacramento who is handling the fraud case against Jeffery. "The whole thing was frustrating."

Federal authorities agreed to a plea deal on the bank-fraud charges that led to Jeffery's release, even though he acknowledged he had given Hill the AK-47 assault rifle that was used to kill Espinoza. Jeffery was supposed to testify at an evidentiary hearing last month in the Hill case, but local prosecutors were forced to admit that he had vanished.

His disappearance also threatened the federal prosecution of Hill's brother James Hill and

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CREDIT SCORE	INTEREST RATE
720-850	5.892%
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675-699	6.555%
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500-559	HIGH RISK 9.289%

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another man, David George, each of whom is charged with two counts of murder. Jeffery had told prosecutors that the two men admitted the crime to him the day after it was committed in 2000.

In April, Jeffery was arrested in the Raleigh suburb of Cary, N.C., on felony charges of breaking into a car and using a credit card he stole from the owner's purse. Police say they suspect that Jeffery, who has a history of running identity-theft operations, committed several similar crimes beginning in January, three months after federal authorities moved him to North Carolina.

Jeffery got out of jail immediately after his April 6 arrest, even though federal authorities in charge of witness relocation had been notified of his arrest.

He made at least one court appearance. Then, on April 27, police searched Jeffery's apartment in Morrisville, N.C., and car and allegedly found a fraudulent \$4,000 check. He was arrested and posted \$5,000 bail.

Jeffery then failed to show up for his next scheduled court date in the Cary case May 24, authorities said.

"Somehow or other he slipped through the cracks and got loose," said Detective Luke Marcum of the police department in Wilson, N.C., which was also investigating Jeffery in several burglaries and stolen credit card cases.

Federal prosecutors in California went to court to revoke his conditional release and, in June, U.S. District Judge Claudia Wilken issued a warrant for his arrest.

While he was on the lam, Jeffery committed as many as 60 auto burglaries in North Carolina, authorities said.

Over the Labor Day weekend, Jeffery called FBI agents and police in San Francisco, said police homicide Inspector Holly Pera. "He said he was thinking of turning himself in, but he didn't want to do any hard time," Pera said.

Jeffery was finally caught after a woman with whom he was staying at a motel in Wilson was arrested for alleged credit card fraud. Jeffery gave police a false name and told them he had nothing to do with the crime, Marcum said.

Police later concluded that Jeffery had run up a \$500 food bill on a stolen credit card, tracked him to a home in Raleigh and arrested him.

"As soon as he saw the lieutenant, he dropped his head down," Marcum said.

Hill is set to go on trial for murder later this month.

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Oakland Tribune, The (CA)

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February 8, 2003

Self-professed pimp walks free after dodging charges in court

Narcotics officers 'entrapped' him into infiltrating gang, he says

Author: Glenn Chapman, STAFF WRITER

Section: Local News

Estimated printed pages: 4

Article Text:

OAKLAND -- Mandingo Hayes, a self-professed pimp, is back on the streets after a jury acquitted him in a trial marked by closed doors and by a defense attorney granted the last word.

Alameda County Superior Court Judge Julie Conger barred the public from her courtroom three times at the prompting of Assistant Public Defender William Locke.

The attorney feared Hayes otherwise would have exposed himself to danger by telling jurors he got into the sex trade to infiltrate a criminal gang for narcotics officers.

Hayes was charged with being a pimp who, along with Crystal Givens, kidnapped a runaway prostitute at gunpoint from an Oakland home last April.

Deputy District Attorney Scott Jackson had played for the jury a tape-recorded call from a neighbor who fearfully described the victim being dragged unwillingly from an Oakland house and whisked away in a car.

A woman's screams were audible in the background during the call.

The woman was taken to an apartment and later beaten for trying to break away from Hayes' group of prostitutes, according to the case presented by Deputy District Attorney Scott Jackson. Conger capped the proceedings by giving Locke the final word in closing arguments, a right that routinely goes to prosecutors because they have the burden of proving their cases beyond reasonable doubt.

The jurors returned to Conger's courtroom Jan. 30 and announced they could only agree that Hayes, 30, and Givens were guilty of misdemeanor assault.

Hayes faced criminal counts of pimping, pandering, kidnapping and assault with a deadly weapon.

Conger sentenced Hayes and Givens to the time already served in jail since their arrest last year.

"It's absurd," Jackson said after the verdict.

"We have no real recourse," Alameda County District Attorney Tom Orloff said of the way Conger conducted the proceedings. "Basically, the rule is the defendant can appeal, the prosecutor can't."

While jurors agreed Hayes was pimping women, four of the panelists reportedly were swayed by Hayes' testimony that he was "entrapped" by federal and local police, who allowed him to manage a crew of street prostitutes.

Conger sporadically closed her courtroom to the public during Hayes' testimony. Jackson confirmed Hayes told jurors he volunteered to give information to narcotics investigators in a local task force comprised of agents from the Federal Bureau of Investigation, Drug Enforcement Agency and Oakland Police Department.

Hayes testified he was being pressured to provide credible tips to the agents and became a pimp to gain credibility in criminal circles, Jackson confirmed. His goal was to infiltrate a Bay Area gang, Hayes said. Hayes testified he went to narcotics agents with his plan and swore they endorsed the idea, Jackson confirmed.

That is a lie," Agent Richard Meyer, a DEA spokesman, said of Hayes' claim. "No supervisor or agent would tell him he could pimp to work with us. That does not happen."

Meyer said a federal agent would be fired for encouraging an informant to break the law.

An agent would be risking his or her career," Meyer said. "Our mission is to protect the public from dangerous drugs, not turn a blind eye to other crimes."

Hayes lobbied to become an informant, but he was unreliable and his tips were inconsequential, narcotics agents testified during the trial. Hayes was not signed on as a credible street source and agents knew nothing of his pimping activities, according to task force members called to the stand.

Asked after the trial how he would interpret Conger's banishing of the public from her courtroom without allowing for objections, David Greene, executive director of the First Amendment Project, said it appears to have violated Supreme Court precedent and Constitutional principles.

"The judge has to know that she can't do that," Greene said. "The judge can't just say 'We are closed.'"

The Constitution assures public access to criminal trials for the good of the community, as well as the accused. Grounds such as witness safety or insuring fair proceedings can be used to justify closing trials to the public. However, such a request must be made on the record and debated before a judge, who is obliged to explain why the only viable recourse is to override the right of public access to the courts, Greene said.

Conger closed her courtroom after private discussions at the bench or in her chambers, and without a court reporter taking notes. A record of the actions was made near the end of the trial, after an Oakland Tribune reporter requested an explanation for what was happening.

Conger said "judicial codes of ethics" prevented her from discussing the constitutional issue with the reporter.

"I've always supported public access to the trials, in all phases of a jury trial," Orloff said when asked his reaction to Conger closing her courtroom. "The public and the press have a right to be there."

By granting defense attorney Locke the final say in closing arguments, Conger went against a law that states whoever has the burden of proof on the "ultimate issues" argues last, Orloff explained. "It's real clear," Orloff said. "I've never seen a situation where it was anything other than the prosecutor having the final argument in the guilt phase of a criminal trial."

Locke argued in court he was entitled to the last word because he had the onus of proving Hayes was entrapped by narcotics police.

The jury deadlocked over the pimping and pandering charges against Hayes. It acquitted him of kidnapping, assault with a deadly weapon and being a felon in possession of a gun. Prosecutors can retry Hayes on the pimping and pandering charges.

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Record Number: 1166934

Exhibit 4



May 17, 2006

Tom Orloff
District Attorney
County of Alameda
1225 Fallon Street
Room 900
Oakland, CA 94612

Dear Mr. Orloff:

The ACLU of Northern California would like to learn more about your policies, procedures and practices for using persons other than expert witnesses who are given benefits for providing information or testimony. This includes jailhouse informants, accomplice informants, and out-of-custody confidential informants (hereinafter "informants"). We are not seeking information related to civilian witnesses who voluntarily provide information or testimony to law enforcement and are placed in witness protection programs, if these witnesses have not been provided with any other benefits, deals or inducements for their information or testimony.

Accordingly, please consider this a formal request pursuant to the California Public Records Act (Government Code Section 6250 et seq.) for copies of various materials and information that would help us become more informed. Thank you in advance for your anticipated timely cooperation with this request.

Specifically, we request copies of the following:

1. **Policies and procedures** related to the use of informants, including but not limited to criteria, recruitment, background checks, supervision, awarding of benefits, interrogation, corroboration, investigation and/or documentation of informant-provided information.
2. **Training manuals and materials** regarding use of informants.
3. **Documentation**, for each year from 2001 to the present, reflecting benefits, deals or inducements offered and/or awarded to informants, financial or otherwise (e.g. plea agreements, reduced sentences, early release, in-custody housing benefits), including but not limited to contractual agreements, reports, notes, memos, account ledgers, payment vouchers or receipts.
4. **Documentation**, for each year from 2001 to the present, reflecting the number of informants used and the number of cases cleared for each informant.

QUINN DELANEY, CHAIRPERSON | LUZ BUITRAGO, BOB CAPISTRANO, SUSAN FREIWALD, JIM WESTON, VICE CHAIRPERSONS | NANCY PEMBERTON, TREASURER
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STEPHEN V. BOMSE, GENERAL COUNSEL

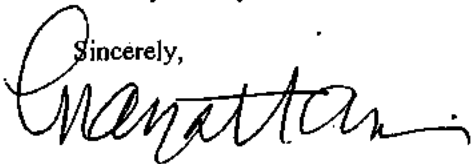
5. Documentation reflecting the number of active informants your office is currently working with.
6. Documentation, for each year from 2001 to the present, reflecting credibility determinations about informants.
7. Documentation, for each year from 2001 to the present, reflecting results from polygraph tests administered to informants.
8. Documentation, for each year from 2001 to the present, reflecting instances where an informant recanted or otherwise substantially changed his/her information or testimony.
9. Documentation, for each year from 2001 to the present, reflecting instances where an informant gave inaccurate or false information or testimony.
10. Documentation, for each year from 2001 to the present, reflecting complaints about the conduct of informants, including but not limited to citizen complaints about informants.
11. Documentation, for each year from 2001 to the present, reflecting tracking or monitoring of the use of individual informants in multiple cases and/or informant performance over time.

As used above, "policies and procedures" includes but is not limited to codes, regulations, policies, rules and regulations, bulletins, memoranda, directives, and training materials. "Documentation" includes but is not limited to any electronic information, reports, evaluations, field cards, memoranda, letters, charts, graphs, meeting agendas and minutes, diagrams, DVDs, audio or video tapes, CDs, or other similar materials. In addition, we would appreciate being informed if any of these policies, procedures, or documents are currently being updated or revised.

Upon identifying responsive records, we request that you make copies of the records and forward them to us. Because the ACLU is a nonprofit civil rights organization, we request that you waive any fees that would be normally applicable to a Public Records Act request. If you are unable to waive such fees, we will reimburse your agency for the "direct costs" of copying these records (if your agency elects to charge for copying) plus postage. Please notify me if such costs will exceed twenty dollars (\$20), prior to incurring the costs.

As you know, the California Public Records Act requires a response be provided within ten (10) days. If you have any questions, please feel free to contact me at 415.621.2493 ext.309 or mharris@aclunc.org. Thank you for your assistance.

Sincerely,



Maya Harris
Associate Director
ACLU of Northern California

Exhibit 5



May 12, 2006

Sheriff Charles C. Plummer
Alameda County Sheriff's Department
1401 Lakeside Drive, 12th Floor
Oakland, CA 94612

Dear Sheriff Plummer,

The ACLU of Northern California would like to learn more about your policies, procedures and practices for using non-expert witnesses who are given benefits for providing information or testimony. This includes jailhouse informants, accomplice informants, and out-of-custody confidential informants (hereinafter "informants"). We are not seeking information related to civilian witnesses who voluntarily provide information or testimony to law enforcement and are placed in witness protection programs, if these witnesses have not been provided with any other benefits, deals or inducements for their information or testimony.

Accordingly, please consider this a formal request pursuant to the California Public Records Act (Government Code Section 6250 et seq.) for copies of various materials and information that would help us become more informed. Thank you in advance for your anticipated timely cooperation with this request.

Specifically, we request copies of the following:

1. **Policies and procedures** related to the use of informants, including but not limited to criteria, recruitment, background checks, supervision, awarding of benefits, interrogation, corroboration, investigation and/or documentation of informant-provided information.
2. **Training manuals and materials** regarding use of informants.
3. **Documentation**, for each year from 2001 to the present, reflecting benefits, deals or inducements offered and/or awarded to informants, financial or otherwise (e.g. plea agreements, reduced sentences, early release, in-custody housing benefits), including but not limited to contractual agreements, reports, notes, memos, account ledgers, payment vouchers or receipts.
4. **Documentation**, for each year from 2001 to the present, reflecting the number of informants used and the number of cases cleared for each informant.
5. **Documentation** reflecting the number of active informants your office is currently working with.
6. **Documentation**, for each year from 2001 to the present, reflecting credibility determinations about informants.

QUINN DELANEY, CHAIRPERSON | LUZ BUIRAGO, BOB CAPISTRANO, SUSAN FREIWALD, JIM WESTON, VICE CHAIRPERSONS | NANCY PEMBERTON, TREASURER
DOROTHY M. EHRLICH, EXECUTIVE DIRECTOR | MAYA HARRIS, ASSOCIATE DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR
ANN BRICK, MARGARET C. CROSBY, TAMARA LANGE, JULIA HARUMI MASS, JORY STEELE, STAFF ATTORNEYS
CHERI BRYANT, DEVELOPMENT DIRECTOR | ERIKA CLARK, COMMUNICATIONS DIRECTOR
NATASHA MINSKER, NICOLE A. DZER, MARK SCHLOSBERG, POLICY DIRECTORS
STEPHEN V. BOMSE, GENERAL COUNSEL

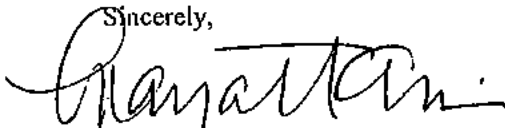
7. **Documentation**, for each year from 2001 to the present, reflecting results from polygraph tests administered to informants.
8. **Documentation**, for each year from 2001 to the present, reflecting instances where an informant recanted or otherwise substantially changed his/her information or testimony.
9. **Documentation**, for each year from 2001 to the present, reflecting instances where an informant gave inaccurate or false information or testimony.
10. **Documentation**, for each year from 2001 to the present, reflecting complaints about the conduct of informants, including but not limited to citizen complaints about informants.
11. **Documentation**, for each year from 2001 to the present, reflecting tracking or monitoring of the use of individual informants in multiple cases and/or informant performance over time.

As used above, "policies and procedures" includes but is not limited to codes, regulations, policies, rules and regulations, bulletins, memoranda, directives, and training materials. "Documentation" includes but is not limited to any electronic information, reports, evaluations, field cards, memoranda, letters, charts, graphs, meeting agendas and minutes, diagrams, DVDs, audio or video tapes, CDs, or other similar materials. In addition, we would appreciate being informed if any of these policies, procedures, or documents are currently being updated or revised.

Upon identifying responsive records, we request that you make copies of the records and forward them to us. Because the ACLU is a nonprofit civil rights organization, we request that you waive any fees that would be normally applicable to a Public Records Act request. If you are unable to waive such fees, we will reimburse your agency for the "direct costs" of copying these records (if your agency elects to charge for copying) plus postage. Please notify me if such costs will exceed twenty dollars (\$20), prior to incurring the costs.

As you know, the California Public Records Act requires a response be provided within ten (10) days. If you have any questions, please feel free to contact me at 415.621.2493 ext.309 or mharris@aclunc.org. Thank you for your assistance.

Sincerely,



Maya Harris
Associate Director
ACLU of Northern California



May 12, 2006

Chief Dave Douglas
Eureka Police Department
604 C Street
Eureka, CA 95501

Dear Chief Douglas,

The ACLU of Northern California would like to learn more about your policies, procedures and practices for using non-expert witnesses who are given benefits for providing information or testimony. This includes jailhouse informants, accomplice informants, and out-of-custody confidential informants (hereinafter "informants"). We are not seeking information related to civilian witnesses who voluntarily provide information or testimony to law enforcement and are placed in witness protection programs, if these witnesses have not been provided with any other benefits, deals or inducements for their information or testimony.

Accordingly, please consider this a formal request pursuant to the California Public Records Act (Government Code Section 6250 et seq.) for copies of various materials and information that would help us become more informed. Thank you in advance for your anticipated timely cooperation with this request.

Specifically, we request copies of the following:

1. **Policies and procedures** related to the use of informants, including but not limited to criteria, recruitment, background checks, supervision, awarding of benefits, interrogation, corroboration, investigation and/or documentation of informant-provided information.
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4. **Documentation**, for each year from 2001 to the present, reflecting the number of informants used and the number of cases cleared for each informant.
5. **Documentation** reflecting the number of active informants your office is currently working with.
6. **Documentation**, for each year from 2001 to the present, reflecting credibility determinations about informants.

QUINN DELANEY, CHAIRPERSON | LUZ BUITRAGO, BOB CAPISTRANO, SUSAN FREIHALD, JIM WESTON, VICE CHAIRPERSONS | NANCY PEMBERTON, TREASURER
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NATASHA MINSKER, NICOLE A. OZER, MARK SCHLOSSBERG, POLICY DIRECTORS
STEPHEN V. BOMSE, GENERAL COUNSEL

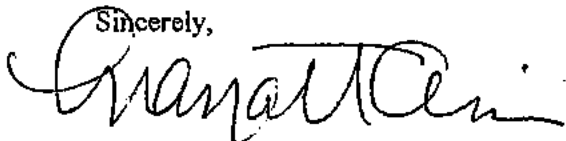
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8. **Documentation**, for each year from 2001 to the present, reflecting instances where an informant recanted or otherwise substantially changed his/her information or testimony.
9. **Documentation**, for each year from 2001 to the present, reflecting instances where an informant gave inaccurate or false information or testimony.
10. **Documentation**, for each year from 2001 to the present, reflecting complaints about the conduct of informants, including but not limited to citizen complaints about informants.
11. **Documentation**, for each year from 2001 to the present, reflecting tracking or monitoring of the use of individual informants in multiple cases and/or informant performance over time.

As used above, "policies and procedures" includes but is not limited to codes, regulations, policies, rules and regulations, bulletins, memoranda, directives, and training materials. "Documentation" includes but is not limited to any electronic information, reports, evaluations, field cards, memoranda, letters, charts, graphs, meeting agendas and minutes, diagrams, DVDs, audio or video tapes, CDs, or other similar materials. In addition, we would appreciate being informed if any of these policies, procedures, or documents are currently being updated or revised.

Upon identifying responsive records, we request that you make copies of the records and forward them to us. Because the ACLU is a nonprofit civil rights organization, we request that you waive any fees that would be normally applicable to a Public Records Act request. If you are unable to waive such fees, we will reimburse your agency for the "direct costs" of copying these records (if your agency elects to charge for copying) plus postage. Please notify me if such costs will exceed twenty dollars (\$20), prior to incurring the costs.

As you know, the California Public Records Act requires a response be provided within ten (10) days. If you have any questions, please feel free to contact me at 415.621.2493 ext.309 or mharris@aclunc.org. Thank you for your assistance.

Sincerely,



Maya Harris
Associate Director
ACLU of Northern California

NORTHERN CALIFORNIA POLICE DEPARTMENTS

Alameda Police Department
Anderson Police Department
Antioch Police Department
Arroyo Grande Police Department
Atascadero State Hospital Police Services
Atwater Police Department
Auburn Police Department
Belmont Police Department
Berkeley Police Department
Bishop Police Department
Brentwood Police Department
Ceres Police Department
Chico Police Department
Clovis Police Department
Coalinga Police Department
Concord Police Department
Crescent City Police Department
Daly City Police Department
Dinuba Police Department
Eureka Police Department
Fairfield Police Department
Folsom Police Department
Fortuna Police Department
Fremont Police Department
Fresno Police Department
Galt Police Department
Gilroy Police Department
Grass Valley Police Department
Grover Beach Police Department
Hanford Police Department
Hayward Police Department
Hercules Police Department
Hollister Police Department
Jackson Police Department
Lakeport Police Department
Lindsay Police Department
Los Gatos Police Department
Madera Police Department
Manteca Police Department
Merced Police Department
Modesto Police Department
Monterey Police Department
Novato Police Department
Oakdale Police Department
Oakland Police Department
Oroville Police Department
Patterson Police Department
Petaluma Police Department
Pinole Police Department
Pittsburgh Police Department
Red Bluff Police Department
Redding Police Department
Redwood City Police Department
Reedley Police Department
Richmond Police Department
Rocklin Police Department
Sacramento Police Department
Salinas Police Department
San Carlos Police Department
San Francisco Police Department
San Jose Police Department
San Mateo Police Department
Santa Clara Police Department
Santa Rosa Police Department
Selma Police Department
Sonora Police Department
St. Helena Police Department
Stockton Police Department
Suisun City Police Department
Sunnyvale Police Department
Susanville Police Department
Tracy Police Department
Ukiah Police Department
Union City Police Department
Vacaville Police Department
Vallejo Police Department
Visalia Police Department
Watsonville Police Department
Weed Police Department
West Sacramento Police Department
Willits Police Department
Woodland Police Department

NORTHERN CALIFORNIA SHERIFF'S DEPARTMENT

Alameda County Sheriff's Department	San Francisco County Sheriff's Department
Butte County Sheriff's Department	San Joaquin County Sheriff's Department
Contra Costa County Sheriff's Department	San Luis Obispo County Sheriff's Department
El Dorado County Sheriff's Department	San Mateo County Sheriff's Department
Fresno County Sheriff's Department	Santa Clara County Sheriff's Department
Humboldt County Sheriff's Department	Santa Cruz County Sheriff's Department
Inyo County Sheriff's Department	Shasta County Sheriff's Department
Kings County Sheriff's Department	Solano County Sheriff's Department
Lake County Sheriff's Department	Sonoma County Sheriff's Department
Marin County Sheriff's Department	Stanislaus County Sheriff's Department
Mendocino County Sheriff's Department	Sutter County Sheriff's Department
Merced County Sheriff's Department	Tulare County Sheriff's Department
Monterey County Sheriff's Department	Yuba County Sheriff's Department
Placer County Sheriff's Department	
Sacramento County Sheriff's Department	

NORTHERN CALIFORNIA DISTRICT ATTORNEY'S

Alameda	Madera	San Mateo
Alpine	Marin	Santa Clara
Amador	Mariposa	Santa Cruz
Butte	Mendocino	Shasta
Calaveras	Merced	Sierra
Colusa	Modoc	Siskiyou
Contra Costa	Mono	Solano
Del Norte	Monterey	Sonoma
El Dorado	Napa	Stanislaus
Fresno	Nevada	Sutter
Glenn	Placer	Tehama
Humboldt	Plumas	Trinity
Inyo	Sacramento	Tulare
Kings	San Benito	Tuolumne
Lake	San Francisco	Yolo
Lassen	San Joaquin	Yuba

NORMAN L. VROMAN
DISTRICT ATTORNEY

Keith Faulder
ASSISTANT DISTRICT ATTORNEY



OFFICE OF THE
DISTRICT ATTORNEY



COURT HOUSE
P.O. BOX 1000
UKIAH, CA 95482
(707) 463-4211
Fax (707) 463-4687

WILLITS OFFICE
125 E. COMMERCIAL ST., SUITE 230
WILLITS, CA 95490
(707) 459-6128
Fax (707) 459-7747

COAST OFFICE
700 S. FRANKLIN ST.
FORT BRAGG, CA 95437
(707) 964-5624
Fax (707) 961-2429

May 23, 2006

Maya Harris
Associate Director
ACLU of Northern California
1663 Mission Street, Suite 460
San Francisco, CA 94103

RE: Access to District Attorney Records on Informants

Dear Ms. Harris:

The Mendocino County District Attorney's Office received your request for documents about our policies, procedures and practices for the use of informants.

Our official written policy on the use of informants is:

"Informants are those who assist law enforcement in return for consideration on pending or potential criminal charges. Generally, the District Attorney's Office will be involved only where charges have been or will be filed against the informant or where the informant will testify as a witness against another criminal defendant. Promises made by law enforcement are not binding on this office without the written concurrence of the District Attorney's Office.

If charges are pending or are going to be filed against the informant or if the informant will be testifying as a witness in a criminal case against another defendant, the District Attorney's Office will make the final decision on any consideration given to the informant. This office will not grant immunity, reduce charges, or reduce a sentence in situations involving serious crimes of violence, residential burglary, or substantial loss in absence of extraordinary circumstances."

Our actual office policy is based on the recognition of our duty to present the court and jury with only competent and reliable evidence in every case we prosecute. Our office procedure to carry out that policy and duty is to require each Deputy evaluate the reliability of the evidence, including the testimonial evidence, in every case assigned to them. That procedure includes giving each Deputy the discretion to dismiss any case they believe in good faith cannot be proved beyond a reasonable doubt.

Our duty is to prove criminal conduct, not get convictions, which means that an accomplice or informant must take responsibility for their own criminal conduct before we would consider using their testimony in the trial of any other defendant. If we can't look each juror in the eye with confidence that the testimony of each witness is given as the truth, that testimonial evidence will not be presented.

If an accomplice or informant can offer relevant and reliable testimony at the trial of another, the only "benefit, deals or inducements" for that testimony would be that the cooperation of the accomplice or informant should and would be considered by the court at the informant's or accomplice's sentencing.

For example, I am currently in trial on a "murder-for-hire" shooting. Shooter/defendant was hired by his employer to kill the employer's political rival. The best evidence of the employer's guilt is the shooter/defendant's offer of testimony. The shooter/defendant is looking at a 25-to-life sentence and wants to plead to a determinate sentence in exchange for his "truthful" testimony against his employer. I refused to make or accept any plea agreement with shooter/defendant for his testimony against his employer that does not accurately describe shooter/defendant's own criminal conduct. I may lose the case against employer without the shooter/defendant's testimony, but in accordance with both office policy and prosecutorial duty, I will not "buy" the testimony of a witness.

As a result, our office rarely uses the testimony of a jailhouse informant or accomplice informant in trial.

As to your specific requests:

1. Written policies and procedures provided above.
2. Training manuals and materials – none.
3. Documentation – none. No "benefits, deals or inducements offered and/or awarded to informants" have been made by the District Attorney's Office since 2001.

I can be reached at the address or phone number listed above if you have any questions.

Very truly yours,


Keith Faulder
Assistant District Attorney



Office of the District Attorney
County of Kings



Ronald L. Calhoun
District Attorney

May 25, 2006

Maya Harris
ACLU
1663 Mission Street, Suite 460
San Francisco CA 94103

Re: May 17, 2006 request for documents:

Dear Ms. Harris:

I received your letter of May 17, 2006 requesting certain documents pertaining to citizen informants made under the Public Records Act.

The records you seek either do not exist, are privileged and/or must be withheld under Government Code section 6255. Disclosure of the records we do have would create a substantial risk of death or physical injury to those persons who have testified.

What we can provide you is a copy of our standard informant and cooperating witness agreements. These generic agreements are enclosed for your review.

I regret that we can not be more helpful, but you must understand that the health and security of those who have assisted law enforcement must be given greater weight than the ACLU's general interest in the subject.

Sincerely,

Michael J. Reinhart
Chief Deputy

COOPERATING WITNESS AGREEMENT

This is an agreement between the Kings County District Attorneys Office and _____ (hereafter referred to as "the witness"). This agreement is made with the full knowledge and consent of the witness' attorney _____.

This agreement becomes effective only upon the signatures of the witness, his attorney, and a Deputy District Attorney of the Kings County District Attorneys Office.

The witness currently has pending a criminal action being prosecuted by the Kings County District Attorneys Office. The case against the witness is:

This document memorializes any and all terms of the agreement with the witness.

The witness acknowledges that he has been advised by his attorney that he does not have to answer questions or make statements of any kind in connection with any investigation.

The witness acknowledges that he has a right to remain silent and to have the witness' attorney present during any conversations with law enforcement officers or any member of the Kings County District Attorneys Office.

By entering into this agreement, the witness agrees to give up his right to remain silent and to have his attorney present during any conversations between the witness and any law enforcement officer or member of the Kings County District Attorneys Office. The witness agrees to speak with law enforcement officers and members of the Kings County District Attorneys Office.

By signing this agreement, the witness' attorney authorizes and consents to members of the Kings County District Attorneys Office and law enforcement officers to speak ex parte with the witness.

The witness waives his 5th and 6th amendment rights and agrees to appear and testify at any and all hearings and trials, including, but not limited to the trial of _____.

The witness understands and acknowledges that overriding all else, the witness' most important obligation is to tell the truth. At all times, during interviews with law enforcement officers and members of the Kings County District Attorneys Office and while testifying before any court or grand jury, the witness is required to tell only the truth, no matter who asks the question and no matter whether the testimony helps or hurts law enforcement, the prosecutor or the defense in any case. If the witness intentionally misstates any fact or withholds relevant evidence, such acts and omissions VOIDS THIS AGREEMENT and causes the witness to LOSE all benefits given by this agreement.

It is understood by all parties herein that should the witness disobey any law of the United States or of the State of California during the course of this agreement, the witness shall LOSE all benefits under this agreement. Disobedience of a law shall not be limited to mean a conviction, but shall also include acts or omissions which in the discretion of the Kings County District Attorneys Office amount to a violation of law.

In consideration of the terms and obligations set out above, the witness will receive the following: The witness will be allowed to plead guilty to _____.

No offers of "deals" have been made regarding anything other than the pending criminal case against the witness mentioned in this agreement. The witness understands that he is not entitled to any immunity or promises of dismissal for any charge of perjury, false swearing, contempt, or subornation of perjury arising from actions under this agreement.

WITNESS: _____ DATE: _____

WITNESS'
ATTORNEY: _____ DATE: _____

DEPUTY
DISTRICT ATTORNEY: _____ DATE: _____

INFORMANT AGREEMENT

This is an agreement between the Kings County Narcotics Task Force, the Kings County District Attorneys Office and _____ (hereafter referred to as "the informant"). This agreement is made with the full knowledge and consent of the informant's attorney _____. This agreement becomes effective only upon the signatures of the informant, his or her attorney, an authorized investigator of the Kings County Narcotics Task Force and a Deputy District Attorney of the Kings County District Attorneys Office.

The informant currently has pending a criminal action being prosecuted by the Kings County District Attorneys Office. The case against the informant is: _____

This document memorializes any and all terms of the agreement with the informant.

The informant acknowledges that he or she has been advised by representatives of the Kings County Narcotics Task Force that he or she does not have to answer questions or make statements of any kind in connection with any investigation.

The informant acknowledges that he or she has a right to remain silent and to have the informant's attorney present during any conversations with law enforcement officers or any member of the Kings County District Attorneys Office.

By entering into this agreement, the informant agrees to give up his or her rights to remain silent and to have his or her attorney present during any conversations between the informant and any law enforcement officer or member of the Kings County District Attorneys Office. The informant agrees to speak with law enforcement officers and members of the Kings County District Attorneys Office.

By signing this agreement, the informant's attorney authorizes and consents to members of the Kings County District Attorneys Office and law enforcement officers to speak ex parte with the informant.

It is understood by all parties to this agreement that the informant has represented to law enforcement officers that he or she has information regarding persons and organizations involved in narcotics trafficking, trading in stolen property and illegal weapons. This agreement is conditioned upon the truth of these representations made by the informant.

The informant agrees to assist the Kings County Narcotics Task Force in at least _____ separate investigations which result in the seizure of controlled substances, stolen property and/ or illegal weapons. These investigations will be completed by _____.

The informant agrees that he or she will be required to testify truthfully before any court or grand jury having jurisdiction over any crimes uncovered by the informant's work with the Kings County Narcotics Task Force.

The informant understands that he or she must make all scheduled court appearances. Failure to do so may result in the issuance of a bench warrant for the informants arrest, and nullification of this agreement.

The informant understands and acknowledges that overriding all else, the informant's most important obligation is to tell the truth. At all times, during interviews with law enforcement officers and members of the Kings County District Attorneys Office and while testifying before any court or grand jury, the informant is required to tell only the truth, no matter who asks the question and no matter whether the testimony helps or hurts law enforcement, the prosecutor or the defense in any case. If the informant intentionally misstates any fact or withholds relevant evidence, such acts and omissions VOIDS THIS AGREEMENT and causes the informant to LOSE all benefits given by this agreement.

It is understood by all parties herein that should the informant disobey any law of the United States or of the State of California during the course of this agreement, the informant shall LOSE all benefits under this agreement. Disobedience of a law shall not be limited to mean a conviction, but shall also include acts or omissions which in the discretion of the Kings County District Attorneys Office amount to a violation of law.

In consideration of the terms and obligations set out above, the informant will receive the following: _____

No offers of "deals" have been made regarding anything other than the pending criminal case against the informant mentioned in this agreement. The informant understands that he or she is not entitled to any immunity or promises of dismissal for any charge of perjury, false swearing, contempt, or subornation of perjury arising from actions under this agreement.

INFORMANT: _____ DATE: _____

INFORMANT'S
ATTORNEY: _____ DATE: _____

KCNTF
INVESTIGATOR: _____ DATE: _____

DEPUTY
DISTRICT ATTORNEY: _____ DATE: _____



Todd D. Riebe
District Attorney

Criminal Division	(209) 223-6444
	FAX (209) 223-6304
Investigations	(209) 223-6444
Public Conservator	(209) 223-6450
	FAX (209) 223-6478
Victim Witness	(209) 223-6474
	FAX (209) 223-1953

June 9, 2006

Maya Harris
American Civil Liberties Union
1663 Mission Street, Suite 460
San Francisco, CA 94103

Dear Ms. Harris:

This is in response to your request by letter, dated May 17, 2006, and received by this office May 22, 2006, under the California Public Records Act (PRA). You requested eleven categories of records relating to informants. Our determination as to each of these requests is set out below.

Request No. 1: Policies and procedures related to the use of informants, including but not limited to criteria, recruitment, background checks, supervision, awarding of benefits, interrogation, corroboration, investigation and/or documentation of informant-provided information. "Policies and procedures" includes, but is not limited to, codes, regulations, policies, rules and regulations, bulletins, memoranda, directives, and training materials.

Determination as to Request No. 1:

To the extent this office maintains "codes, regulations" and the like published by non-county sources, such documents are copyrighted materials and not county public records for purposes of production under the PRA.

To the extent you are requesting records that were produced from county sources, the items you are requesting are exempted from disclosure by the deliberative process privilege. (Government Code section 6255; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) In addition, the courts have ruled that written policies concerning how prosecutors will exercise their discretion in charging and sentencing are not subject to discovery. (*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478.) Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code section 6254(k).

Further, to the extent you seek this material for use in some litigation, it should be sought through the discovery process in that litigation, rather than through a PRA request. The PRA should not be used to obtain items from a party that cannot be obtained through the

discovery procedures in the litigation. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.)

To the extent this request seeks training materials, see the Determination to Request No. 2, below.

Request No. 2: "Training manuals and materials regarding use of informants."

Determination as to Request No. 2:

The District Attorney's Office has prepared no training manuals and materials regarding the use of informants, but does have such materials that were produced by the California District Attorneys Association (CDAA). These materials are covered by copyrights held by CDAA. CDAA objects to the documents being copies and released, so we cannot copy them for you without violating federal law. Thus, we are unable to duplicate either of these documents for you.

In addition, we are informed by CDAA that these materials are included among a group of CDAA publications and materials that are produced specifically for use by prosecutors and law enforcement agencies, and include tactical and strategic information. Consequently, it is the position of CDAA, with which we concur, that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. They are therefore exempt from PRA disclosure under Government Code section 6255. You may wish to contact CDAA directly to determine whether they are willing to make copies of these items available to you. Advising CDAA of the purpose behind your request and the use you plan to make of the material may lead that organization to conclude that it will release the material to you. You should contact Thomas Toller, Director of Publications, at CDAA, 731 K Street, 3rd Floor, Sacramento, CA 95184, telephone (916) 443-2017.

Further, to the extent you seek this material for use in some litigation, it should be sought through the discovery process in that litigation, rather than through a PRA request. The PRA should not be used to obtain items from a party that cannot be obtained through the discovery procedures in the litigation. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.)

Request No. 3: "Documentation, for each year from 2001 to the present, reflecting benefits, deals or inducements offered and/or awarded to the informants, financial or otherwise (e.g. plea agreements, reduced sentences, early release, in-custody housing benefits), including but not limited to contractual agreements, reports, notes, memos, account ledgers, payment vouchers or receipts."

Determination as to Request No. 3:

The District Attorney's Office does not have a public record by year or any other time

period either comprehensively or generally summarizing any of the information you request. The PRA does not require the District Attorney's Office to create such a document to meet your request. To the extent that your request asks for documents contained in investigatory case files, those public records are exempt from disclosure under section 6254, subdivision (f), of the Government Code. (See also *Williams v. Superior Court* (1993) 5 Cal.4th 337.) In addition, locating these records would require attorneys to conduct a detailed examination of thousands of case files. The undue burden of such an effort would be a justification in itself for withholding the records under section 6255 of the Government Code. (See also *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) Further, in many instances informants gave information to law enforcement and prosecution agencies in confidence. Production of those documents would reveal the identities of informants and the information they provided in confidence. Such documents are privileged and exempt from disclosure under section 6254, subdivision (k), of the Government Code and sections 1040 and 1041 of the Evidence Code. Finally, to the extent you seek this material for use in some litigation, it should be sought through the discovery process in that litigation, rather than through a PRA request. The PRA should not be used to obtain items from a party that cannot be obtained through the discovery procedures in the litigation. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.)

Request No. 4: "Documentation, for each year from 2001 to the present, reflecting the number of informants used and the number of cases cleared for each informant."

Determination as to Request No. 4:

The District Attorney's Office does not have a public record by year or any other time period containing this information. The PRA does not require the District Attorney's Office to create such a document to meet your request.

Request No. 5: "Documentation reflecting the number of active informants your office is currently working with."

Determination as to Request No. 5:

The answer is the same as the answer contained in Determination as to Request No. 4.

Request No. 6: "Documentation, for each year from 2001 to the present, reflecting credibility determinations about informants."

Determination as to Request No. 6:

The answer is the same as the answer contained in Determination as to Request No. 3. In addition, to the extent this request seeks the impressions, opinions or conclusions of an attorney, it is protected from disclosure as attorney work product under Government Code sections 6254(k), 6273 and 6276.04 and Penal Code section 1054.6.

Request No. 7: "Documentation, for each year from 2001 to the present, reflecting results from polygraph tests administered to informants."

Determination as to Request No. 7:

The answer is the same as the answer contained in Determination as to Request No. 3.

Request No. 8: "Documentation, for each year from 2001 to the present, reflecting instances where an informant recanted or otherwise changed his/her information or testimony."

Determination as to Request No. 8:

The answer is the same as the answer contained in Determination as to Request Nos. 3 and 6.

Request No. 9: "Documentation, for each year from 2001 to the present, reflecting instances where an informant gave inaccurate or false information or testimony."

Determination as to Request No. 9:

The answer is the same as the answer contained in Determination as to Request Nos. 3 and 6.

Request No. 10: "Documentation, for each year from 2001 to the present, reflecting complaints about the conduct of informants, including but not limited to citizen complaints about informants."

Determination as to Request No. 10:

The answer is the same as the answer contained in Determination as to Request No. 3.

Request No. 11: "Documentation, for each year from 2001 to the present, reflecting tracking or monitoring of the use of individual informants in multiple cases and/or informant performance over time."

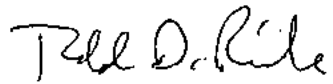
Determination as to Request No. 11:

The answer is the same as the answer contained in Determination as to Request Nos. 3 and 6.

For the foregoing reasons, your request for release of records is denied. While we have attempted to give a full explanation for the denial, the short period allowed by statute for our response does not permit adequate time to prepare a fully comprehensive reply. We reserve the right to present additional theories and authority for non-disclosure in the future.

If you disagree with the positions I have taken in this letter, I am willing to reconsider my views based on any reasons you wish to present or any legal authorities you wish to cite.

Sincerely,

A handwritten signature in cursive script that reads "Todd D. Riebe". The signature is written in dark ink and is positioned above the typed name.

TODD D. RIEBE
District Attorney



Alameda County
District Attorney's Office
Thomas J. Orloff, District Attorney

June 7, 2006

Maya Harris
ACLU of Northern California
1663 Mission St.; Ste. 460
San Francisco, CA 94103

RE: Public Records request for "Informant" related documents

Dear Ms. Harris:

This is in response to your letter of May 17, 2006, received by this Office on May 19, requesting information under the California Public Records Act (CPRA).

You requested eleven categories of records relating to informants. Our determination as to each of these requests is set out below.

Request No. 1: Policies and procedures related to the use of informants, including but not limited to criteria, recruitment, background checks, supervision, awarding of benefits, interrogation, corroboration, investigation and/or documentation of informant-provided information. "Policies and procedures" includes, but is not limited to, codes, regulations, policies, rules and regulations, bulletins, memoranda, directives, and training materials.

Determination as to Request No. 1:

This Office does not maintain policies or procedures in the area or of the type described in your request.

To the extent you are requesting records that were produced from county sources, the items you are requesting are exempted from disclosure by the deliberative process privilege. Government Code Section 6255; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136. In addition, the courts have ruled that written policies concerning how prosecutors will exercise their discretion in charging and sentencing are not subject to discovery. *Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478. Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code Section 6254(k).

Further, to the extent you seek this material for use in some litigation, it should be sought through the discovery process in that litigation, rather than through a CPRA request. The CPRA should not be used to obtain items from a party that cannot be obtained through the discovery procedures in the litigation. *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.

To the extent this request seeks training materials, see the Determination to Request No. 2, below.

Request No. 2: "Training manuals and materials regarding use of informants."

Determination as to Request No. 2:

The District Attorney's Office has prepared no training manuals and materials regarding the use of informants, but does have such materials that were produced by the California District Attorneys Association (CDAА). These materials are covered by copyrights held by CDAА. CDAА objects to the documents being copied and released, so we cannot copy them for you without violating federal law. Thus, we are unable to duplicate either of these documents for you.

In addition, we are informed by CDAА that these materials are included among a group of CDAА publications and materials that are produced specifically for use by prosecutors and law enforcement agencies, and include tactical and strategic information. Consequently, it is the position of CDAА, with which we concur, that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. They are therefore exempt from CPRA disclosure under Government Code section 6255. You may wish to contact CDAА directly to determine whether they are willing to make copies of these items available to you. Advising CDAА of the purpose behind your request and the use you plan to make of the material may lead that organization to conclude that it will release the material to you. You should contact Thomas Toller, Director of Publications, at CDAА, 731 K Street, 3rd Floor, Sacramento, CA 95184, telephone (916) 443-2017.

Further, to the extent you seek this material for use in some litigation, it should be sought through the discovery process in that litigation, rather than through a CPRA request. The CPRA should not be used to obtain items from a party that cannot be obtained through the discovery procedures in the litigation. *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.

Request No. 3: "Documentation, for each year from 2001 to the present, reflecting benefits, deals or inducements offered and/or awarded to informants, financial or otherwise (e.g. plea agreements, reduced sentences, early release, in-custody housing benefits), including but not limited to contractual agreements, reports, notes, memos, account ledgers, payment vouchers or receipts."

Determination as to Request No. 3:

The District Attorney's Office does not have a public record by year or any other time period either comprehensively or generally summarizing any of the information you request. The Public Records Act does not require the District Attorney's Office to create such a document to meet your request. To the extent that your request asks for documents contained in investigatory case files, those public records are exempt from disclosure under Section 6254, subdivision (f), of the Government Code. See also *Williams v. Superior Court*

(1993) 5 Cal.4th 337. In addition, locating these records would require attorneys to conduct a detailed examination of thousands of case files. The undue burden of such an effort would be a justification in itself for withholding the records under Section 6255 of the Government Code. See also *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588. Further, in many instances informants gave information to law enforcement and prosecution agencies in confidence. Production of those documents would reveal the identities of informants and the information they provided in confidence. Such documents are privileged and exempt from disclosure under Section 6254, subdivision (k), of the Government Code and Sections 1040 and 1041 of the Evidence Code. Finally, to the extent you seek this material for use in some litigation, it should be sought through the discovery process in that litigation, rather than through a CPRA request. The CPRA should not be used to obtain items from a party that cannot be obtained through the discovery procedures in the litigation. *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.

Request No. 4: "Documentation, for each year from 2001 to the present, reflecting the number of informants used and the number of cases cleared for each informant."

Determination as to Request No. 4:

The District Attorney's Office does not have a public record by year or any other time period containing this information. The Public Records Act does not require the District Attorney's Office to create such a document to meet your request.

Request No. 5: "Documentation reflecting the number of active informants your office is currently working with."

Determination as to Request No. 5:

The answer is the same as the answer contained in Determination as to Request No. 4.

Request No. 6: "Documentation, for each year from 2001 to the present, reflecting credibility determinations about informants."

Determination as to Request No. 6:

The answer is the same as the answer contained in Determination as to Request No. 3. In addition, to the extent this request seeks the impressions, opinions or conclusions of an attorney, it is protected from disclosure as attorney work product under Government Code Sections 6254(k), 6273 and 6276.04 and Penal Code Section 1054.6.

Request No. 7: "Documentation, for each year from 2001 to the present, reflecting results from polygraph tests administered to informants."

Determination as to Request No. 7:

The answer is the same as the answer contained in Determination as to Request No. 3.

Request No. 8: "Documentation, for each year from 2001 to the present, reflecting instances where an informant recanted or otherwise substantially changed his/her information or testimony."

Determination as to Request No. 8:

The answer is the same as the answer contained in Determination as to Request Nos. 3 and 6.

Request No. 9: "Documentation, for each year from 2001 to the present, reflecting instances where an informant gave inaccurate or false information or testimony."

Determination as to Request No. 9:

The answer is the same as the answer contained in Determination as to Request Nos. 3 and 6.

Request No. 10: "Documentation, for each year from 2001 to the present, reflecting complaints about the conduct of informants, including but not limited to citizen complaints about informants."

Determination as to Request No. 10:

The answer is the same as the answer contained in Determination as to Request No. 3.

Request No. 11: "Documentation, for each year from 2001 to the present, reflecting tracking or monitoring of the use of individual informants in multiple cases and/or informant performance over time.

Determination as to Request No. 11:

The answer is the same as the answer contained in Determination as to Request Nos. 3 and 6.

For the foregoing reasons, your request for release of records is denied. While we have attempted to give a full explanation for the denial, the short period allowed by statute for our response does not permit adequate time to prepare a fully comprehensive reply. We reserve the right to present additional theories and authority for non-disclosure in the future.

If you disagree with the positions I have taken in this letter, I am willing to reconsider my views based on any reasons you wish to present or any legal authorities you wish to cite.

Very truly yours,

THOMAS J. ORLOFF,
District Attorney

by:

Micheal O'Connor
Sr. Deputy District Attorney
Custodian of the Record



COUNTY OF MENDOCINO
OFFICE OF THE SHERIFF-CORONER

May 18, 2006

Maya Harris, Associate Director
ACLU of Northern California
1663 Mission St Ste 460
San Francisco CA 94103

Dear Ms. Harris:

The Sheriff's Office received your Public Records Act request on May 17, 2006. Just to reiterate our conversation on that date, the Mendocino County Sheriff's Deputies and Detectives do not pay informants or conduct pleas bargains with co-defendants or witnesses. Plea bargains are the District Attorney's decisions.

In response to your request:

1. **Policies and procedures** related to the use of informants, including but not limited to criteria, recruitment, background checks, supervision, awarding of benefits, interrogation, corroboration, investigation and/or documentation of informant-provided information.

No material (known)

2. **Training manuals and materials** regarding use of informants.

Refer to Legal Resource Book provided by State of California

3. **Documentation**, for each year from 2001 to the present, reflecting benefits, deals or inducements offered and/or awarded to informants, financial or otherwise (e.g. plea agreements, reduced sentences, early release, in-custody housing benefits), including but not limited to contractual agreements, reports, notes, memos, account ledgers, payment vouchers or receipts.

No knowledge -- Refer to Mendocino County District Attorney

4. **Documentation**, for each year from 2001 to the present, reflecting the number of informants used and the number of cases cleared for each informant.

No documentation -- Refer to Mendocino County District Attorney.

5. **Documentation**, reflecting the number of active informants your office is currently working with.

Unknown -- Not Documented

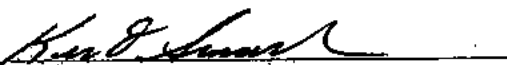
6. Documentation, for each year from 2001 to the present, reflecting credibility determinations about informants.
No Record
7. Documentation, for each year from 2001 to the present, reflecting results from polygraph tests administered to informants.
No Record
8. Documentation, for each year from 2001 to the present, reflecting instances where an informant recanted or otherwise substantially changed his/her information or testimony.
No Records – Refer to Mendocino County District Attorney
9. Documentation, for each year from 2001 to the present, reflecting instances where an informant gave inaccurate or false information or testimony.
No Record – Refer to Mendocino County District Attorney
10. Documentation, for each year from 2001 to the present, reflecting complaints about the conduct of informants, including but not limited to citizen complaints about informants.
No Record
11. Documentation, for each year from 2001 to the present, reflecting tracking or monitoring of the use of individual informants in multiple cases and/or informant performance over time.
No Record – Refer to Mendocino County District Attorney

I am enclosing the Mendocino County Sheriff's Office, Corrections Division, Policy and Procedure 501.00 – *Inmate Classification*.

If I can be of any further assistance, please contact me at 707/463-6536.

Sincerely,

KEVIN BROIN
SHERIFF-CORONER

By: 
Captain Kurt O. Smallcomb
Field Services Division Commander

KOS/dkm

Encl

Cc: File 03-06



STANISLAUS COUNTY COUNSEL
1010 10th Street, Suite 6400
Modesto, CA 95354
Phone: 209.525.6376
Fax: 209.525.4473

Michael H. Krausnick
County Counsel
John P. Doering
Assistant County Counsel

DEPUTIES
Wm. Dean Wright
Linda S. Macy
Vicki F. de Castro
Carle M. Stephens
Edward R. Burroughs
Deirdre E. McGrath
Thomas E. Boze
Merc M. Hartley

June 14, 2006

Ms. Maya Harris, Associate Director
ACLU of Northern California
1663 Mission Street, Suite 460
San Francisco, CA 94103

RE: PUBLIC RECORD ACT REQUEST CONCERNING NON-EXPERT WITNESSES

SUBJECT: RESPONSE TO REQUEST

Dear Ms. Harris:

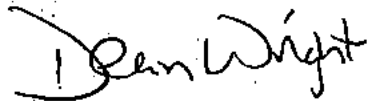
This follows my letter to you dated June 6, 2006, regarding the above-referenced Public Record Act request. Based upon the information I have received from my client, our responses to your request are set forth below and are numbered to correspond with each of your eleven requests:

1. There are no documents responsive to your request.
2. There are no documents responsive to your request.
3. There are no documents responsive to your request.
4. Nineteen informants in fifty-six cases over the past five years.
5. The Sheriff's Office is not currently utilizing any informants.
6. There are no documents responsive to your request. However, I am informed that since 2001, the nineteen informants have participated and/or made purchases of illegal substances on fifty-seven different occasions.
7. There are no documents responsive to your request.

8. There are no documents responsive to your request.
9. There are no documents responsive to your request.
10. There are no documents responsive to your request.
11. Although there are no documents responsive to your request, I am informed that the nineteen informants utilized by the Sheriff's Department during portions of the time frame you have requested were deemed to reliable.

Yours very truly,

MICHAEL H. KRAUSNICK
County Counsel



By:
Dean Wright
Deputy County Counsel

DW/jw

cc: Mark Puthuff, Assistant Sheriff
Captain Doug Leo, Sheriff's Department
Lt. Bryan Markum, Sheriff's Department
Michael H. Krausnick, County Counsel



LAKE COUNTY SHERIFF'S DEPARTMENT

1220 Martin Street • Lakeport, California 95453

Administration
(707) 262-4200

Central Dispatch
(707) 263-2331

Coroner
(707) 262-4215

Corrections
(707) 262-4240

Patrol/Investigation
(707) 262-4200

Substation
(707) 994-6433

Rodney K. Mitchell
Sheriff / Coroner

May 30, 2006

American Civil Liberties Union
Attn: Maya Harris
1663 Mission St., Suite 460
San Francisco, CA. 94103

Re: Public Records Act Request

To Whom It May Concern:

You have requested copies of public records of the Lake County Sheriff's Department. Specifically, your office has requested our departmental policies and procedures regarding the practices for using non-expert witnesses, who are given benefits for providing information or testimony.

Enclosed with this cover letter, please find the single use form created by this department as a receipt for the payment of informants. This department does not have a policy, or procedure to provide, nor does the department provide formal training for the use of the form. The only requirement is that it be completed.

If you have any questions about any of the above, please do not hesitate to call.

Sincerely,

Rodney K. Mitchell,
Sheriff / Coroner

By:


Russell E. Perdock,
Chief Deputy

cc: File

Confidential Informants

608.1 PURPOSE AND SCOPE

The purpose of this policy is to standardize procedure when dealing with police informants. An informant is any person who provides information to a law enforcement agency. Many investigations cannot be successful without the use of informants. To protect the Eureka Police Department and its officers, it shall be the policy of the department to take appropriate precautions by developing sound informant policies.

608.2 DEFINITION

For the purpose of this policy an informant is of two classes: (1) a criminal informant, and (2) a citizen informant. A criminal informant is an informant who has a history of criminal activity and who most often provides information for one of the following reasons:

A "citizen informant" is a person who for whatever reason is in a position to provide information to the department regarding criminal activity, but whose lifestyle does not include criminal activity.

608.3 PROCEDURE

The Operations Commander shall cause to be maintained a master file of informants utilized by the Eureka Police Department during sensitive investigations when money or other considerations are given. Investigators shall be responsible to maintain records on all informants that they utilize and to obtain prior approval from the Operations Commander, or designee, when monies or other consideration are given. Officers/Investigators are also responsible to obtain as much background information on the informants as reasonable.

608.4 INFORMANT HANDLING

The following guidelines shall be followed:

- (a) Officers shall not withhold the identity of an informant from their superiors.
- (b) Identities of informants shall otherwise be kept confidential.
- (c) Criminal activity by informants shall not be condoned. Persons with warrants for their arrest shall not be utilized as informants.
- (d) Informants shall be told they are not acting as police officer, employees or agents of the Eureka Police Department, and that they shall not represent themselves as such.
- (e) The relationship between officers and informants shall always be ethical and professional.
- (f) Social contact shall be avoided unless necessary to conduct an official investigation, and only with prior approval of the Operations Commander.
- (g) Officers shall not meet with informants of the opposite sex in a private place unless accompanied by at least one additional officer or with prior approval of a supervisor.

EUREKA POLICE DEPARTMENT

Confidential Informants

- (h) In all instances when Department funds are paid to informants, documentation shall be completed itemizing the expenses and entered in the Operations Commander's log book. The senior investigators should also enter their payout in their log book.

608.5 PAYMENT PROCEDURE

The officer/investigator will discuss the level of payment with the Investigations Supervisor and Operations Commander to arrive at a recommended payment which may be subject to the approval of the Chief of Police.

In all instances when Department funds are paid to informants, documentation shall be completed itemizing the expenses and entered in the Operations Commander's log book with the case number. The Senior Investigator should also enter the payout in their log book.

608.6 JUVENILE INFORMANTS

The use of minor informants under the age of 13 is prohibited. Except as provided for in the enforcement of the Tobacco Enforcement Act, Business & Professions Code §~22950, et seq., the use of any minor informant between the ages of 13 and 18 years is only authorized by court order obtained pursuant to Penal Code § 701.5.

For purposes of this policy, a "minor informant" means any minor who participates, on behalf of this agency, in a prearranged transaction or series of prearranged transactions with direct face to face contact with any party, when the minor's participation in the transaction is for the purpose of obtaining or attempting to obtain evidence of illegal activity by a third party and where the minor is participating in the transaction for the purpose of reducing or dismissing a pending juvenile petition against the minor.

608.7 EXCEPTIONAL HANDLING

An officer shall not promise any person any form of leniency or immunity from prosecution as a reward for any assistance. This can only be granted by a Judge or District Attorney.

An officer desiring to alter the judicial process affecting an informant in any way shall first obtain the approval of the Operations Commander, or designee, for the proposal. It shall then be presented in writing or in person to the District Attorney's office. Depending on the case, it may involve written approval of a judge.

608.8 USE OF INFORMANTS ON PAROLE

An officer wishing to use an informant who is currently on parole or probation must obtain approval from the probation or parole departments.

608.9 CHIEF'S STATEMENT

The use of informants is a judicially recognized source of information and assistance for law enforcement. The use of informants is a difficult task at best and must be undertaken with great caution and care. This policy is designed to provide guidelines for dealing with informants, but since we will be dealing with a human resource, not all of the situations can be covered in a written order. Therefore, the use of common sense and discretion must be constantly applied by all officers dealing with informants. The primary considerations are the safety of the public and our personnel and the integrity of the Department.

**SANTA CLARA POLICE DEPARTMENT
ADMINISTRATIVE GENERAL ORDER**

42.3

INFORMANT CONTROL POLICY

This order contains the following numbered sections:

42.3.1 General Informant Information/Practices

42.3.2 Informant File Forms

42.3.1 General Informant Information/Practices

A. Informants Defined

For the purposes of this policy, the term "informant" shall include those persons who provide information about criminal activity and/or actively assist law enforcement under the specific direction of a police officer for reasons other than good citizenship. These informants usually have some expectation of compensation or consideration.

B. Selection of Suitable Informants

Not every person contacted is a suitable candidate for an informant. The Department's overall responsibility to the community must be balanced against the need to gather criminal intelligence. As a general rule, persons charged with crimes of serious violence or sexual misconduct (other than prostitution related offenses) should not be considered as potential informants.

C. Management/Control of Informant

The use of informants to assist SCAT (Specialized Crime Action Team) is allowed with the permission and at the discretion of the unit Sergeant and Detective Lieutenant.

D. Authorization to Use Informants

No Patrol Officer/Detective shall use the services of an informant without the explicit permission of the SCAT Sergeant, Investigations Lieutenant or Captain. The unit Sergeant will determine which Detective will be assigned to "handle" individual informants. This assignment is subject to change at the discretion of the unit Sergeant. Informants loaned to other Divisions for investigations will continue to be the responsibility of the

informant. If a conflict does arise as to whether or not to reveal an informant, the matter will be resolved by the Division Lieutenant.

G. Use of Parolees or Probationers as Informants

The unit Sergeant, Division Lieutenant or Captain must approve the use of parolees or probationers as informants. Unless unusual circumstances exist, Detectives must get approval from the parole or probation officer prior to utilizing parolees or probationers as informants.

H. Juvenile Informants

The use of juveniles as informants should be avoided. If an investigation necessitates the use of a juvenile, prior approval must be obtained from the unit Sergeant and the Division Lieutenant or Captain. Approval must also be obtained from the courts or parents/guardian, whichever is applicable.

Officers seeking to use a juvenile as an active informant will obtain written, signed permission from the parent or a guardian of said juvenile. The content of the document must include, in general terms, the type of activity the juvenile is expected to perform. In the case of a juvenile who is a ward of the court, written permission must be obtained from the Court. If the juvenile has a probation officer, they must be contacted prior to using the juvenile as an informant.

Nothing in this section prohibits an officer from obtaining criminal intelligence information only, from a juvenile, during an initial interview.

I. Informants with Pending Criminal Matters

Department members interviewing a potential informant with a pending criminal matter shall not make any promises, actual or implied, as to the eventual sentence or disposition in the informant's case. Only the courts and the District Attorney may enter into agreements that affect the outcome of a defendant's case. Detectives shall not make any independent agreements for assistance or compensation with informants.

In the event an attorney in any criminal matter represents an informant, the attorney must be contacted prior to the informant's services being utilized.

J. Processing the Case (Arresting Officer)

Officers who have arrested an informant or a potential informant for a criminal violation, other than a warrant, will report all details of the arrest in an Offense Report. Reports shall be forwarded to the District Attorney's

All payments to informants must have the prior approval of the Division Lieutenant or Captain.

O. **WSIN Checks on Informants**

The Detective assigned to the informant is responsible for making WSIN inquiries on all informants they utilize, even if they are solely for information purposes.

P. **Unreliable Informants**

If it is determined that the informant is unreliable, our Department shall immediately cease using that informant. The Detective assigned to the informant will submit an unreliable informant card to WSIN and notify any other known criminal justice agency that may be affected by the informants unreliable information.

Q. **Tracking of Informants**

It is the responsibility of the Detective assigned to the informant to make reasonable efforts to stay updated as to the whereabouts of the informant until all cases involving the informant have been adjudicated.

R. **SCAT Office**

With very rare exception, no informant shall be permitted in the SCAT office or appraised of its whereabouts.

S. **Informant Buys**

When an informant purchases evidence, other contraband or otherwise expends Department funds, the following guidelines will apply:

1. All informant buys will be under the direct control of an SCPD Detective.
2. Anytime funds are provided to an informant, at least two officers must be present to witness the furnishing of funds. These two officers will sign and witness the expenditure of funds on a voucher.
3. All funds must be pre-recorded prior to the buy.

The unit Sergeant of SCAT shall maintain the Confidential Informant File of all informants working for that unit. This file will contain the Personal History Sheet, the Conduct of Confidential Informant Form, photograph of the informant, fingerprints of the informant (if not already on file), an Informant Performance Record, copy of NCIC, CLETS and local warrant inquiries, copy of DMV inquiries, copy of criminal history and any correspondence or other relevant information concerning the informant. The SCAT Sergeant will insure that the Intelligence Sergeant is provided with a complete list of all informants so a master list for the Department can be kept in a central location.

In like manner, the Intelligence Sergeant shall maintain the Informant File for all informants being used by that office. The SCAT Sergeant shall be notified of the names of all informants being used by the Intelligence Sergeant, and in this way both units using informants will be kept apprised at all times of the names of all current informants in the Department.

These files are to be maintained in a secure, locking cabinet and separated into ACTIVE and INACTIVE sections.

Each confidential informant will be assigned a C/I number and thereafter, in case reports or other correspondence, the individual will be referred to by that number only. The information will be considered confidential and will only be released to members of the Santa Clara Police Department on a need-to-know basis. With the authority of the Investigations Division Commanding Officer, information may be released to other law enforcement agencies that are working on related cases, but only when necessary for effective enforcement.

D. Informant File Review

It shall be the responsibility of the Division Lieutenant or Captain to review the informant files on a quarterly basis. Either individual will review for completion of the forms on a timely basis (Personal History Form, Informant Performance Record, etc.) and to ensure the informant control policies are being adhered to.

Issued: 3-1-99

By the authority of:


Charles R. Arolla, Chief of Police

SCGO42-3.DOC

Attachment A

SANTA CLARA POLICE DEPARTMENT
C/I PERSONAL HISTORY
FACE SHEET

NAME: _____ C/I #: _____

DATE INITIATED: _____ DET: _____

DATE CLOSED: _____ DET: _____

Required documents and checks: (initial when completed)

_____ Recent Photograph _____ Fingerprint Card

_____ Local & CII Record _____ DMV History

_____ Warrant Check _____ WSIN Check

_____ Parole/Probation Status:
Parole/Probation Officers Name & Agency

_____ Pending Case? yes/no
Violation:
Agency:

_____ Custody Status: (circle one)
Bail
O.R.
Citation
N/A

_____ Prior use as C/I yes/no
Agency:
Date:

Approved for use: _____ Date: _____
Unit Sergeant

Lieutenant Quarterly Review: _____ / _____ / _____ / _____
initial and date

Attachment B: Continued

FAMILY/RELATIVES:

Name _____ Relationship _____

Address _____ Phone _____

Name _____ Relationship _____

Address _____ Phone _____

ASSOCIATES:

Name: _____ Address _____

Name: _____ Address _____

Informant

Motivation: _____

Photograph

ADDITIONAL INFORMATION/CLOSURE SUMMARY:

SUBMITTING DETECTIVE: _____ DATE: _____

_____ I understand that in exchange for any consideration on a pending case I agree to:

_____ In agreeing to work with the Santa Clara Police Department, I understand that no Police Officer may make any explicit or implicit promises or predictions regarding the likely disposition of any criminal proceedings that are pending against me. The Officer will provide the District Attorney's Office with information regarding my assistance to the Santa Clara Police Department and the degree to which I fulfilled my portion of the agreement.

_____ I hereby release and acquit the Santa Clara Police Department and their officers from any injury or liability which I may suffer or sustain in the future as a result of these investigations.

_____ I will, until all cases are completed, notify SCPD of my whereabouts.

SIGNED: _____ DATE: _____

DETECTIVE: _____ DATE: _____

WITNESSED: _____ DATE: _____

MONTEREY POLICE INVESTIGATIONS
SPECIAL AGREEMENT

I, _____, was arrested by the Monterey Police Department on _____, in case # _____ for a violation of section 11550(a) of the California Health and Safety Code; as a result of this case the Monterey County District Attorney filed the charge of 11550(a) H+S.

I have been cited to appear in Salinas Municipal Court on February 26, _____ at 8:15 a.m. I am aware I must appear in Court at that time.

I am also on three years probation in Monterey Municipal case # _____. On September 16, _____ I pled guilty to a violation of PC 12020 (a). I completed parole in October 1997 for two separate cases, violations of PC 459 second degree and 487.1.

I wish to assist the Monterey Police Department in making a minimum of three controlled substance purchases that will allow the Monterey Police Department to obtain search warrants for the person(s) and premise(s) involved. If I introduce a police officer to a person that sells controlled substances, and that introduction results in a sale of controlled substances to that officer, this will count as one of my purchases.

As a consequence of my Special Agreement to assist Monterey Police, the Monterey County District Attorney's Office will request the Court continue my arraignment date to April 21, _____ at 8:15 a.m. At that time, I will plead guilty to a violation of H&S code section 11550 and admit violation of probation in Case # _____. In exchange, the District Attorney's Office will recommend a term of 90 days in jail, which is the mandatory minimum for a violation of 11550. If the Court imposes any time on the probation violation, the District Attorney's Office will recommend that it run concurrently to the 11550.

I am not presently represented by an attorney on either of my cases. I do not wish the assistance of an attorney in any matter covered by this Special Agreement.

I understand that if I miss any of my court appearances, or choose to not plead guilty, any representations made by the District Attorney's Office or Monterey Police Department are null and void. I also understand that any sentence is within the discretion of the Court, and that the District Attorney cannot guarantee me any particular sentence.

I am also aware and agree that this contract affects only the charge(s) pending in the above mentioned cases, and no other criminal charges, offenses, or actions will be affected by this agreement.

I agree that if less than three controlled substance purchases are completed at the direction of the Monterey Police Department, that if I plead guilty to, or am found guilty of, the charges pending in this case, that the judge will be informed of my assistance to law enforcement by the Monterey Police Department at the time of sentencing.

No other promises or representations have been made to me by the Monterey Police Department or the District Attorney's Office.

I will complete the three controlled substance purchases for the Monterey Police Department prior to _____.

DATE: _____ SIGNATURE: _____

Witness: _____ A.D.A.: _____

Name:	
Address:	
Phone #:	
Case #:	
CI Number:	
Date:	
Officer:	

CONDITIONS OF AGREEMENT:

- Signed up as CI
- Not signed up as CI
- Provided information to work off case
- Provided information on suspects only to get out of jail today
- Provided information on suspects for money
- Provided information on suspects to assist law enforcement
- Not promised or guaranteed anything on their case
- Advised D.A. has final decision on charges filed
- Advised normal contract is 3 dealers for 1 case
- Advised they might have to testify
- Advised they might have to do introduction, buy, phone call, etc.
- Advised case would be filed if they didn't follow through or complete contract
- Advised case would be filed if information could not be corroborated or used
- Advised case would be filed if search warrant produced negative results
- Advised case would be filed and status deactivated if re-arrested on separate charges
- Advised case would be filed regardless of information provided due to CHS and case, but recommendations would be made to D.A.
- Advised case already filed "in-custody" status and D.A. might not bargain
- Advised to contact me when released from jail
- Other:

SPECIAL CONSIDERATIONS:

- Violent offender
- 2 or 3 strike offender
- Parolee
- Valid or Suspended CDL

DISPOSITION:

- Working off case/Worked off case
- Never recontacted me, case filed
- Has no information needed by SIB
- Provided information but not able to corroborate or use for search warrant
- Search Warrant obtained with negative results
- Other: _____

I have read the above conditions and restrictions and agree to the terms.

Signature _____

Date _____



Santa Cruz County Sheriff-Coroner

Number: O.62
Date: 01/31/06

SUBJECT: USE OF INFORMANTS

POLICY

It shall be the policy of this office to encourage the development of informants as an aid in the apprehension of criminals and the suppression of criminal activity.

PURPOSE

One of the most effective ways to gain knowledge concerning criminal activity, events which may pose a law enforcement problem, intelligence information, is through the use of informants. Informants can be anonymous persons, law-abiding citizens, or persons within the criminal element. The purpose of this policy is to provide guidelines regarding the active use of informants in criminal investigations, taking into consideration legal concerns and the informant policy of the Santa Cruz County District Attorney's Office.

REFERENCES

Informant Policy, Santa Cruz District Attorney's Office
Evidence Code Sections 1041 and 1042, Disclosure of Information

DEFINITIONS

An "informant" is a person who supplies law enforcement with information and/or actively assists in an investigation. For the purpose of this policy, informants may be anonymous persons, law-abiding citizens, or persons directly involved in the criminal subculture.

"Anonymous persons" are individuals who call the Sheriff's Office Tip Line, County Communications, write unsigned letters, or by some other method contact the Office to provide information without identifying themselves in any manner.

"Citizen Informants" are considered to be any member of the community who wishes to provide

information to law enforcement for purely civic-minded reasons with no ill motive or desire for any consideration.

“Criminal informants” are considered to be persons who have a known prior criminal history, are currently involved or associated with criminal activity, or who have been arrested for a crime and indicated a desire to provide information to law enforcement.

“Reliability,” as used in this policy, means the degree with which the informant’s information was found to be truthful, accurate or corroborated by the deputy receiving the information or investigating the validity of the informant’s statements.

PROCEDURE

I. Use of Informants

A. Anonymous Tips

1. Anonymous tips are considered, on their face, to be fairly unreliable in that a deputy cannot be certain as to the truthfulness or accuracy of the information. Anonymous tips, however, can and often do provide the necessary leads for a deputy to begin an investigation which ends with desirable results. It is therefore necessary to take investigative steps which will prove or disprove the information provided. An anonymous tip may be only a starting point in an investigation or an aid to further inquiry in a matter already under investigation.

B. Citizen Informants

1. Citizen informants are considered to be reliable and are therefore an excellent investigative resource. It still may be necessary to confirm the information provided and conduct further investigation depending upon the type of case.

C. Criminal Informants

1. Criminal informants are initially considered to be unreliable. It is therefore necessary to establish the reliability of the criminal informant. The mere fact that the criminal informant has a past arrest record, was recently involved or associated with criminal activity, or was arrested for a crime does not automatically preclude the use of such person as an informant. In fact, such a person may be a very reliable resource due to involvement with the

criminal sub-culture. When considering whether or not to pursue an investigation with the active participation of an informant, (i.e., controlled purchases of narcotics, having the informant sell purported stolen property to a fence, and the like), the following should be considered:

- a. What is the informant's motivation?
- b. Does the informant expect some form of consideration in exchange for services, such as monetary, reduction or dismissal of any pending criminal charges, reduction of sentence, etc.?
- c. Has the informant provided information previously to law enforcement, which has proven reliable?
- d. Is the information or services of the informant really necessary to pursue or continue an investigation?
- e. Will the investigation involving the informant's assistance rise to a level where seeking some form of consideration is appropriate, given the informant's criminal history or pending charges?
- f. Is the informant currently on any form of probation, parole, or have outstanding warrants of any kind?
- g. Is the informant willing to testify in court or have his or her identity disclosed in any way?

D. Juvenile Informants

- 1) It shall be the policy of this office that informants must be 18 years of age. However, there are occasions where deputies discover juvenile involvement in a certain criminal activity. In these instances juveniles may be interviewed as victims, witnesses or suspects in the same manner as adults. Deputies may obtain information from juveniles during such interviews. Deputies will not employ juveniles to purchase contraband during controlled buys, gather information on behalf of law enforcement, or other related activity without the approval of the deputies immediate supervisor, District Attorney's Office and the Superior Court.

E. Upon considering the above and any other known factors, a deputy deciding to

actively utilize the services of a criminal informant should proceed as follows:

1. The Deputy or Correctional Officer shall inform their supervisor of the intention to utilize a criminal informant, providing as much information as necessary for the supervisor to determine that this policy is being adhered to.
2. The supervisor will grant or deny permission to utilize the criminal informant PRIOR to any active participation by the informant or finalization of any agreements between the deputy or detention officer and informant.
3. When the criminal informant has a pending criminal case, the deputy or corrections officer should attempt to contact the Deputy District Attorney assigned to the prosecution of the informant's case. During other than normal office hours of the District Attorney, the "on-call" Deputy District Attorney may be contacted and consulted.
4. When a deputy has arrested a person for a crime and believes they may have information that may be of value, he or she should determine the status and criminal history of the informant. If the potential informant is not being currently prosecuted for any crime, the deputy may:
 - a. Elect to have the individual waive the right to be booked, to make three phone calls, and to be brought before a magistrate. In this way, the deputy can use the services of the informant before any criminal charge(s) are filed and before the informant becomes represented by counsel.
 - b. Contact a Judge and request that the informant be released on his own recognizance and given a future court date.
5. The deputy or correctional officer choosing to work with an informant who has pending criminal charges shall make no representation concerning the disposition of the informant's own case. If the informant is on probation, no promises of any kind will be made as to what effect, if any, their cooperation might have in a probation violation proceeding. The deputy is permitted to tell the informant that his information, actions, and results of his assistance will be made known to the District Attorney's Office.
6. It is recommended that any agreement made with a potential informant be committed to writing. This agreement should describe what was discussed between the deputy or detention officer and informant, any consideration

that will be given to the informant, what is expected of the informant, etc. and the document dated and signed by the involved parties. If the deputy is trying to protect the identity of the informant, this contract should be stamped "confidential" and retained by the Narcotic Enforcement Team Supervisor. The contract will not be attached to investigative or other reports which might disclose the informant's identity to persons who should not have such knowledge.

7. If the deputy or corrections officer wishes to have the informant's identity remain confidential, it is appropriate to refer to the informant by some reference other than true name in all investigative reports. Examples could include "C.I." to mean confidential informant, a number such as "Informant #123", or simply called an informant. All efforts to protect the informant's identity should be considered including a request for "in-camera" hearings as described in Evidence Code Sections 1041 and 1042.
8. A person on active state parole will not be actively used as an informant, in the sense that his actual participation is required to conduct an investigation, without first receiving permission from the person's parole agent, on-call agent or officer of the day. Simply receiving information from the parolee does not require this prior approval.
9. Should a deputy or correctional officer who has used an informant discover that the informant has provided untruthful, incorrect or misleading information, he shall inform the District Attorney's Office of such as it relates to any cases involving the informant.
10. Should there be any question as to whether or not an informant should be used, it is suggested that the District Attorney's Office be contacted and consulted.
11. It is recommended whenever practical that a deputy or correctional officer should consult with the prosecuting attorney prior to any court proceeding that is the outcome of the informant's information. This will allow the prosecuting attorney to be prepared when the deputy or correctional attorney claims the privilege pursuant to Evidence Code 1041 and 1042 regarding informant information.
12. It shall be the policy of the Santa Cruz County Sheriff's Office that the relationships between deputies and/or correctional officers with informants are of completely ethical and professional nature. Fraternization with an

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informant in any way other than an official capacity is prohibited.

When practical it is recommended that when contacting informants, deputies and/or correctional officers should have another deputy/correctional officer or law enforcement officer present. Deputies or correctional officers shall not accept gifts or gratuities from an informant or engage in any business or financial dealings with the informant.

Occasionally deputies or correctional officers will utilize citizen informants who may be a relative or personal friend. It is not the intent of this order to regulate such a relationship; however, if the relative or friend's lifestyle is characteristic of someone involved in criminal activity, deputies and/or correctional officers must be aware of the same concerns as when dealing with any other criminal informant.

STEVE ROBBINS, Sheriff-Coroner

Posted on Sun, Sep. 17, 2006

The trouble with jailhouse informants

By Fredric N. Tulsky
Mercury News

When jailhouse informant Timothy Villalba first told a jury that Roy Garcia had implicated himself in a killing, there were reasons to doubt Villalba, a convicted murderer looking for a way out of prison.

Now, with Garcia heading for a second trial this week, there is far more reason.

Since he testified against Garcia six years ago, Villalba has said he heard another jailhouse confession from another inmate. It, too, involved a killing. But after hearing from Villalba in that case, a federal judge ruled that he had no credibility and overturned the conviction of Glen "Buddy" Nickerson in a notorious 1984 drug-related double homicide.

Nevertheless, as he prepares to retry Garcia, Deputy District Attorney Javier Alcalá has said in court that the federal judge is wrong about Villalba.

Garcia's case is the latest in a series of Santa Clara County prosecutions that raise questions about the use of jailhouse informants who report confessions from other inmates, a Mercury News investigation revealed. This week, a state commission will study ways to guard against the potential for wrongful convictions in cases based on informants with no connection to the crime.

The Mercury News examined eight local cases involving jailhouse informants, reviewed how easily inmates can invent confessions from other prisoners, and studied the steps Santa Clara County and other jurisdictions have taken to guard against false testimony.

"Clearly, the jailhouse informant has great incentives to do something to reduce his time," said George Harris, a professor at the McGeorge School of Law and former federal prosecutor. "You are talking about people who have nothing but time on their hands, and learning details of the crime turns out to be not that difficult."

The review found:

- In some cases, including Garcia's, prosecutors rely on jailhouse informants despite specific reasons to doubt the confessions they say they heard.
- Informants who testify that they heard jailhouse confessions have received favorable outcomes in their own cases -- outcomes that exceed the explicit promises revealed to jurors.
- Though the Santa Clara County District Attorney's Office has enacted procedures to protect against false testimony from jailhouse informants, they fall short of rules adopted elsewhere. Outside legal experts say more protections are necessary.

Local officials say that although they use jailhouse informants infrequently, they recognize the problems informants pose.

Said Assistant District Attorney David Tomkins: "We do not use their testimony if we are not satisfied that they are truthful."

Tomkins noted that his office has developed policies to guard against the misuse of informants and takes additional steps, such as reviewing the details of information from informants, to ensure reliable testimony.

Crucial evidence

• Informant doubted as trustworthy

Roy Lopez Garcia was an obvious suspect after the body of mental health therapist Deborah Gregg was found in 1998

near the line separating their Morgan Hill properties, two shotgun blasts in her back. The two had been feuding since Garcia bought 250 adjoining acres and began to bulldoze the land.

Neighbors had heard Garcia call Gregg an enemy. Garcia, a successful businessman, was an avid hunter and owned shotguns and other weapons. But there was a shortage of physical evidence pointing to Garcia, who has maintained his innocence. The guns in his home did not match the weapon used in the killing. There was no eyewitness, no fingerprint, no DNA match.

That made Timothy Flores Villalba a crucial piece of the case.

Lawyers in the office of District Attorney George W. Kennedy know to be skeptical of jailhouse informants, and Villalba was no exception. Villalba was a heroin user who avoided a possible death sentence by pleading guilty to first-degree murder after he beat a man to death with a baseball bat during a robbery. He was sentenced to 25 years to life in prison, where he became a member of the notorious Nuestra Familia gang, ordered prison stabbings and was repeatedly disciplined for drugs.

In late 1999, Villalba wrote to authorities saying that during a chance encounter two months earlier, Garcia had implicated himself in Gregg's murder. Villalba repeated at trial what he told authorities: Garcia said they would never find the shotgun used in Gregg's killing.

Villalba testified that he came forward because Garcia described the victim as a "cuerpesito," which he interpreted to mean a child was killed.

But defense attorneys noted that Villalba first came forward after he was notified he could be eligible for parole as soon as 2003 if he improved his conduct. In return for Villalba's testimony, trial prosecutor Javier Alcalá agreed to inform parole officials of his cooperation but made it clear he would not explicitly recommend Villalba's release.

The trial ended with Garcia's conviction. Less than a year later, Villalba told Alcalá that he long ago heard "Buddy" Nickerson admit to starting the shootout that ended in the deaths of an alleged drug dealer, John Evans, and his stepbrother, Mickie King.

Villalba came forward a second time just as Nickerson's conviction was unraveling. DNA had linked someone new to the crime, raising questions about the identification of Nickerson. A co-defendant had come forward to say Nickerson had nothing to do with the crime.

At a 2002 hearing, Villalba testified that Nickerson told him long ago that he instigated the shootout as revenge. But U.S. District Judge Marilyn Patel found the testimony "entirely without credibility" and overturned Nickerson's conviction.

Her assessment was no surprise to Nickerson attorney M. Gerald Schwartzbach, who had raised a series of discrepancies in Villalba's testimony. They included Villalba's refusal to answer questions in both the Garcia and Nickerson cases about his own charges "on the advice of my attorney" because his case remained on appeal. Court records showed his statements were not true: The appeal had been denied more than a decade earlier.

If the defense saw reasons to disbelieve Villalba's testimony, the prosecution saw the opposite. To Alcalá, Villalba was a credible witness who had tried to put gang life behind him.

He contended that Villalba provided details to establish his credibility, such as the name of an attorney Garcia was preparing to hire. To the defense, such details proved nothing. By the time Villalba revealed them, the attorney's name was already public.

Villalba has appeared before the parole board twice. Both times, the district attorney's office informed the board of his cooperation. Both times, parole was denied. His next hearing is set for 2011.

Last year, the state Supreme Court overturned Garcia's conviction, ruling that the trial judge erred by allowing jurors to visit the crime scene without either the defendant or his attorney.

As he prepares to try Garcia again, Alcalá has said in court that he stands by Villalba and plans to use him as a witness again in the Garcia case. Alcalá testified that he had not bothered to read either his informant's federal court testimony or the judge's opinion. He declined to comment for this article.

Tomkins, the assistant district attorney, said he had discussed "many things" about the case with Alcalá and is satisfied. "We are prepared for trial," he said, adding that decisions about which witnesses to call will be made as the

trial proceeds. "We have a witness list, and we'll go from there."

Manufactured

• **'Too easy to make up confessions'**

One man who found Villalba's testimony implausible is Leslie White. "I wouldn't believe what anybody in custody says about another inmate," said White, whose long career as an informant has made him an expert on the topic. "There are too many motivations to lie, and it's too easy to make up confessions," he said in a recent interview.

White knows as well as anyone how easily a confession can be manufactured. A man with a history of repeated brushes with the law in the 1980s for drug offenses, robbery, car theft and kidnapping, White provided authorities with information he contended had come from other inmates in "numerous" cases -- as many as 40, he testified -- for more than a decade.

The help he offered law enforcement -- which he said provided a "get out of jail free card" -- ended abruptly in 1988 after White provoked a nationwide scandal when he decided to share with authorities just how easily he had made up such stories.

When skeptical Los Angeles sheriff's deputies provided White with the name of an inmate, White easily gathered details about the inmate and his case from a jail telephone by falsely identifying himself to clerks and police officers as a bail bondsman, a prosecutor or a cop.

The exercise prompted a grand-jury investigation and national media attention. White was convicted of perjury. Officials in Los Angeles County reviewed every case involving informants and adopted new rules to guard against over-reliance on informants. The state adopted one law requiring that jurors be told to treat informant testimony with caution and another requiring prosecutors to notify victims when a suspect becomes an informant for the prosecution.

After the Leslie White debacle, Los Angeles County adopted an extensive set of protections against the misuse of jailhouse informants. The office policy is designed to "strictly control" the use of informants as witnesses, it states. Any trial prosecutor seeking to use an informant must submit a written request detailing the case to a committee of top-ranking officials. That committee will approve only if strong corroboration -- beyond details of the crime that authorities believe are not public -- exists.

The office maintains an index of jailhouse informants and the cases in which they testify. The policy also protects against future Leslie Whites by restricting information that attorneys may reveal by telephone.

The policies have made a "tremendous difference," said John K. Spillane, chief deputy district attorney in Los Angeles. Since the standards were enacted, the number of applications to use jailhouse informants has dwindled, as police and trial prosecutors realized the high standard set by the committee, he said.

In the 1980s, jailhouse informants were routinely used in major criminal trials, said Spillane. But in the past five years, the office has used them in five out of more than 12,000 criminal trials, he said.

The Los Angeles policy goes far beyond the policy in Santa Clara County. The local office directs attorneys to follow laws and court regulations regarding the use of informants. There is no committee. The policy requires approval of an assistant district attorney if the informant is receiving immunity.

In practice, Tomkins said, Santa Clara County prosecutors go through a checklist before deciding to use informants: Are they necessary to the case? Are they credible? Have they committed a crime so serious that the office will not use them as a witness? Prosecutors will not use informants unless they are satisfied with the answers, he said.

Unlike Los Angeles, an exact number of cases relying on jailhouse informants in Santa Clara County is not readily available, though officials say the number is small. The office has no special database for informants. It has introduced a new computer system to identify all witnesses, Tomkins said. That database is not yet complete and some lawyers use it more diligently than others, Tomkins said.

Sorting out truth

• **'Prosecutorial tunnel vision'**

Ellen C. Yaroshefsky, an expert in criminal law and ethics at the Benjamin N. Cardozo School of Law in New York City, says she believes more needs to be done. The professor said existing protections are often inadequate, even though authorities have known for years that jailhouse informants are unreliable and have been responsible for wrongful

convictions.

She says she believes jurors should be given specific reasons to look skeptically at Informant testimony and told that even if there are no explicit promises of leniency, inmates may still expect -- and receive -- rewards later.

Yaroshefsky, who will be appearing before the California Commission on the Fair Administration of Justice when it meets Wednesday to consider informant testimony, cited a new step mandated in Illinois death-penalty cases: Before a trial, a jailhouse informant's reliability is the subject of a hearing.

Inmates who contact prosecutors to say they have overheard a confession put law enforcement officials in a dilemma. Certainly some inmates are telling the truth and provide evidence to convict dangerous criminals. The challenge is how to reliably sort out which informants are telling the truth.

The problem is compounded by the fact that prosecutors, like anyone, tend to believe information that fits with their theories, a phenomenon Yaroshefsky calls "prosecutorial tunnel vision."

She explained: "Because prosecutors believe they have the right person and are looking for corroboration of that fact, they don't look critically enough at the reliability of the statement. It is easy for inmates to make up such stories. And prosecutors are too ready to believe them, especially in cases where the stakes are highest."

Rick Walker's case demonstrates the problem. Walker is the East Palo Alto man exonerated after spending more than 11 years in custody for the murder of a former girlfriend, Lisa Hopewell. He was convicted after prosecutors too readily believed one of the two killers, who said Walker was involved, and a woman facing drug charges who provided incriminating information about Walker that she later admitted making up.

Before Walker was sentenced in 1992, a jailhouse informant wrote officials to say another man, Mark Swanson, had confessed that he, not Walker, killed Hopewell. It took officials 11 years to discover the informant was telling the truth.

Assessing the honesty of a jailhouse informant is difficult because inmates can easily learn details about a crime or a suspect's personal life. Those details can in turn mislead authorities into thinking the informant is truthful.

"I could send my girlfriend to a preliminary hearing and gather details of a crime," White said, describing one of several techniques he had used in his days as an informant. "Then I could talk to the inmate and learn the name of his sister, the name of his pet. Suddenly, I could put those details together in a way that officials would readily believe."

White, who has been out of custody for two years and now lives under a new name, said he believes that the only thing that will prevent manufactured confessions is banning the use of jailhouse informants.

No promises

• Jury doesn't know benefits come later

By law, jurors must be told the terms of any deal with informants. But lawyers and inmates alike know jurors will be more skeptical of inmates who are promised favors in exchange for testimony.

"When an inmate testifies, everybody in the courtroom may know there will be a benefit except the jury," Yaroshefsky said.

In the assault case against James Evans, jurors heard that no promises had been made to informant Alton King, a convicted child molester who was facing new charges when he testified that Evans had confessed to him in jail.

King provided his information about Evans after first telling authorities about the confession of another inmate: Curtis Dean Anderson, who later pleaded guilty to the highly publicized molestation and murder of 7-year old Xiana Fairchild, King's attorney said.

King testified at Evans' 2005 trial that prosecutors did not promise him anything in return for his cooperation. Nevertheless, he testified he still was hopeful of getting some benefit in his case, which is still pending.

"It is how these things are done. No promises are made. Inmates have hope," said King's attorney, Allen Schwartz.

Like King, inmate Homer Resendez testified that he received no promises when he came forward with information that accused child molester Vassar Smith had incriminated himself when the two shared a jail cell in 1999. But in a pending

federal appeal, Smith contends jurors were deceived about the benefits Resendez would get.

Resendez, a gang member with a long criminal history, was facing a murder charge at the time he cooperated. At Smith's trial, Resendez testified that he had been wrongly accused and was not worried about his own case.

The next month, prosecutors dropped the murder charge against Resendez -- which carried a potential life sentence -- and he pleaded guilty to being an accessory. He received an eight-month sentence.

Resendez has since been convicted of new felony charges and is back in prison.

Risky deals

• A 'chilling' demeanor

The case of Eric Duarte shows the pitfalls of deals with informants.

A member of Nuestra Familia with a long record of crimes that included arson and burglaries, Duarte was arrested after four South Bay banks were robbed in 1994.

Duarte began cooperating with authorities, offering them rich insights into Nuestra Familia in return for a promise that he would be prosecuted in federal court, where he felt safer from gang retribution, rather than in state court. In federal court, Duarte pleaded guilty to armed-robbery charges that carried a potential life sentence. He hoped for, but was not promised, a reduced sentence in return for his cooperation.

Duarte testified at the trial of Eddie Perales that he and Perales had organized the robberies to raise money to fund gang operations. He testified that Perales had been behind other crimes as well.

Duarte was subject to extensive cross-examination from Perales' attorney, Daniel Barton, who confronted Duarte with a series of lies that he had told. Soon after Duarte's testimony, Perales' trial ended abruptly in a plea bargain. Rather than the life in prison that prosecutor Michael Fitzsimmons initially sought, Perales would receive less than 22 years with the possibility of parole.

Duarte helped authorities in other matters as well. He said he had heard two gang members admit their roles in murders. One was his cellmate, Alberto Guillen. Duarte testified at Guillen's trial; Guillen was convicted.

After he had finished cooperating, prosecutor Fitzsimmons wrote to federal authorities urging that Duarte be given a break in sentencing, saying the informant had provided "invaluable information" despite the risk of "great peril." He added, "Based on his cooperation, and in the interests of justice, I believe that Mr. Duarte is deserving of favorable consideration in his upcoming sentencing."

Federal officials were wary. Assistant U.S. Attorney Gary Fry contended that, despite Duarte's cooperation, he deserved a 25-year prison sentence. Duarte, Fry wrote, was dangerous. Not only did he have a lengthy and serious criminal history, Fry wrote, Duarte's "matter-of-fact demeanor during his description of violent crimes can only be called chilling."

That left county prosecutors with a dilemma: Duarte was facing a longer prison sentence than Perales, the man he had testified against. A deal was struck, according to state and federal officials. The federal charges were dropped in 2001. Duarte was permitted to plead guilty to the robberies in state court and was given immediate parole seven years after his arrest.

Fry's concerns became clear soon enough: Duarte was arrested for the armed robbery of a San Jose Wells Fargo bank. He was convicted in 2004 and sentenced to spend 223 years to life in prison.

Former Mercury News Staff Writer Noam Levey contributed to this report.

Forum Column

By Natasha Minsker

Two death penalty cases are tried in the same county, at the same time, and are marred by the same illegal conduct by the prosecutor. Both involve false testimony by informant witnesses to whom the prosecutors gave valuable benefits. Why is one defendant getting a new trial and the other rushing towards a date with death?

On March 1, the 9th U.S. Circuit Court of Appeals denied Michael Morales' petition for an en banc hearing, leaving only one petition for certiorari to the U.S. Supreme Court standing between Morales and an execution date. Six days later, the same court reversed the death sentence and conviction of Blufford Hayes because the prosecutor knowingly presented the false testimony of an informant witness. The San Joaquin County district attorney's office tried Hayes and Morales within the same year. The prosecutor in the Morales case committed the same misconduct as his colleague in the Hayes case.

We now know that the risk of wrongful convictions is greatly increased by the double-headed hydra of illegal conduct by prosecutors and their reliance on informant witnesses who have something to gain from their testimony. San Francisco Magazine recently reported that "[s]ince 1989, at least 200 inmates have been released from California prisons after courts found that they were unjustly convicted." Of these cases, "50 percent entailed misconduct or serious error by prosecutors at trial ... [and] 20 percent involved false testimony by an informant at trial." The Illinois Commission on Capital Punishment found that, of 13 death row exonerations, six involved false testimony by jailhouse informants or accomplice informants.

Indeed, the abuse of jailhouse informants and the ease with which informants may fabricate "confessions" has been well documented in the largest county in California. A Los Angeles County grand jury report concluded that from 1979 to 1989, the Los Angeles County district attorney "failed to fulfill the ethical responsibilities required of a public prosecutor by its deliberate and informed declination to take the action necessary to curtail the misuse of jail house informant testimony." (Report of the 1989-1990 Los Angeles County Grand Jury, Investigating the Involvement of Jail House Informants in the Criminal Justice System in Los Angeles County.)

What has only recently come to light is the prevalence of this problem in death penalty cases in San Joaquin County during the 1980s. In Blufford Hayes' case, the prosecutor from the San Joaquin County District Attorney's Office entered into a secret deal with the attorney representing an informant witness, agreeing to dismiss felony charges pending against the witness. The prosecutor then hid the deal from Hayes' attorneys, the court and the jury.

At trial, the prosecutor elicited false testimony from the witness to the effect that he was receiving nothing in exchange for his testimony. The prosecutor not only failed to correct this false testimony, he affirmatively represented to the court that there was no deal, going so far as to argue to the jury that this demonstrated the witness' credibility.

The prosecutor consistently concealed the truth, writing a letter to the California Supreme Court during Hayes' appeal reaffirming that he never made "a specific offer of any particular disposition" to the informant. It was not until 1997, 16 years after Blufford Hayes was convicted and sentenced to death, that the prosecutor finally acknowledged the existence of the deal, and then only because he was forced to testify in another San Joaquin County proceeding and was confronted with evidence documenting the secret deal.

Hayes had to wait eight more years for the court to review and reverse his conviction.

Michael Morales is still waiting and may be running out of time. The Morales case prominently featured the testimony of a jailhouse informant who claimed that Morales had confessed to him. This purported confession was the only evidence to support the special circumstance; it was crucial to securing Morales' death sentence.

It was later discovered that, prior to trial, Morales' prosecutor, also from the San Joaquin County district attorney's office, entered into a secret agreement with jailhouse informant Bruce Samuelson. In exchange for Samuelson's testimony, the prosecutor agreed to dismiss four of six felony charges pending against Samuelson in another case. The prosecutor also secured court approval of a minimal county jail

sentence for Samuelson, and then hid this deal from Morales' attorney, the judge and the jury.

Even more disturbing, the prosecutor promised Samuelson these benefits before Morales allegedly confessed to him.

When asked on the stand whether he had received anything in return for his testimony, Samuelson falsely stated that the prosecutor would be making only a "recommendation" on his behalf. The prosecutor let this false testimony stand in front of the jury, without correction or clarification.

Beyond covering up the deal, the circumstances surrounding Morales' so-called confession to Samuelson are questionable at best. Samuelson was never housed in the same jail cell with Morales. Given the physical layout of the jail, in order for Morales to confess to Samuelson, other inmates would have heard the conversation. Yet no other inmates ever corroborated Samuelson's story. Inmates also knew that guards monitored all of their conversations with an intercom system.

In 1993, the California attorney general's office confronted Samuelson with these facts. Samuelson stated that he and Morales spoke together in Spanish so others would not listen in. Unbeknownst to Samuelson, however, Morales does not speak Spanish. His parents do not speak Spanish. He is a fourth-generation American.

An FBI expert who examined Samuelson's polygraph test years later concluded that the test unequivocally established that Samuelson was lying when he said Morales confessed. But the polygraph report that the prosecutor gave Morales' attorneys at the time of the trial claimed that Samuelson was telling the truth.

The California Supreme Court and a federal court of appeals relied on Samuelson's testimony to uphold Morales' death sentence.

Yet every organization and commission to investigate the problem of wrongful convictions has concluded that this is just the type of testimony that should not be relied on in death penalty cases. The Constitution Project, a bipartisan organization including former prosecutors and judges, observed that informants "frequently have the opportunity and the clear motivation to fabricate evidence to benefit their status at the expense of justice."

The Illinois Commission on Capital Punishment and the Constitution Project recommend that the death penalty should not be sought in cases based solely or substantially on the testimony of a jailhouse informant. In addition, both recommend reforms to prevent illegal conduct by prosecutors, including "open file" discovery, depositions of prosecution witnesses and greater judicial review of the discovery process in death penalty cases, practices that California has yet to adopt.

In August, the California Senate established the California Commission on the Fair Administration of Justice. The commission's mandate is to investigate the problem of wrongful convictions in California and whether the death penalty is administered in an arbitrary and unfair manner. The commission must investigate the widespread abuse of informant witnesses and related illegal conduct by prosecutors.

In the meantime, the question remains, will Michael Morales be the next to lose the death penalty lottery?

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Call Off Killing Season; Put Executions on Hold

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Forum Column

By Natasha Minsker

Picture this: It's 1979, you're 21 and you've just been charged with capital murder. Worse, the team assigned to keep you from the execution chamber doesn't seem to know what it's doing. Your court-appointed attorney has never tried a death penalty case nor been trained to handle one. Your expert witness and the judge are winging it too.

Welcome to California's death penalty laboratory. You have been selected as one of the guinea pigs. It may sound like a bad plot line for the next Fox TV series, but it's a frightening reality for many today on California's death row who now face imminent execution.

Indeed, San Quentin's execution chamber is gearing up for prime time. Barring any gubernatorial pardons or last-minute reprieves, lethal injections could begin as early as Dec. 13. That's the date chosen for the execution of 51-year-old Stanley Tookie Williams, founder of the Crips street gang and Nobel Peace Prize nominee for his redemptive efforts to steer kids away from violence.

Next on the list is Clarence Ray Allen, a 75-year-old Fresno man convicted in 1982 of instigating a triple murder. His appointment with the execution chamber is set for Jan. 17.

And Michael Morales, 45, convicted of raping and killing a teenager in 1981, is likely to get a date with death in February.

As prosecutors, defense lawyers and judges, it's incumbent on us to ask how executing these guinea pigs will reflect on our criminal justice system given that they were all tried at a time when death penalty cases were riddled with incompetence, flaws and disparities.

A lot has changed in the 28 eight years since California reinstated the death penalty, about the people of California, about the law, and about these men. In fact, so much has changed that it's hard if not impossible to trust the verdicts in these cases.

These and other concerns spurred the creation of a bipartisan commission to investigate the problems of wrongful convictions and wrongful executions in this state. The California Moratorium on Executions Act, AB 1121, calls for a temporary suspension of lethal injections while the California Commission on the Fair Administration of Justice does its work. Executions would resume on Jan. 1, 2009. The bill would not preclude prosecutors from seeking death sentences, nor would it prevent juries or judges from imposing death sentences. It would simply allow for a thorough investigation to prevent the death of innocents.

Should California be carrying out any executions while the legislatively mandated Justice Commission examines flaws in our death penalty system and our criminal justice system in general? There's a lot of ground to cover.

Take, for example, the issue of racial bias in jury selection. In 1986, the U.S. Supreme Court issued the seminal opinion of *Batson v. Kentucky*, holding that racial bias in jury selection violates the Constitution. More than half of the attorneys currently practicing in California were admitted to the bar after the *Batson* decision. By now, *Batson* is a well-established, even dog-eared precedent. It is difficult for many of us who have tried criminal cases to imagine a day when racial bias in jury selection was not hotly contested.

Yet, in the three aforementioned cases facing imminent execution, all of the trials were held before *Batson* was even decided. The Williams case was particularly marred by racial bias, not just in jury selection but in venue choice and in the prosecutor's closing arguments. In fact, later, the same prosecutor who tried the Williams case was sanctioned twice by the California Supreme Court for racially biased jury selection. The Morales case also presented compelling evidence on appeal that Ventura County's jury selection process was racially skewed, causing one Supreme Court justice to vote for reversal on this basis.

While the law and our awareness of racial bias in criminal trials has evolved over the past 28 years, jury instructions used in death penalty trials have undergone an even more dramatic transformation. Here is the original jury instruction given at the trial of Williams, Allen and Morales that explains when a death sentence is appropriate:

"If the aggravating circumstances outweigh the mitigating circumstances, you shall impose a sentence of death. However, if you determine that the mitigating circumstances outweigh the aggravating circumstances, you shall impose a sentence of confinement in the state prison for life without the possibility of parole."

Compare this to the newly approved Judicial Council instruction on when a death sentence is appropriate:

"Determine which penalty is appropriate and justified by considering all the evidence and the totality of any aggravating and mitigating circumstances. Even without mitigating circumstances, you may decide that the aggravating circumstances are not substantial enough to warrant death. To return a judgment of death, each of you must be persuaded that the aggravating circumstances both outweigh the mitigating circumstances and are also so substantial in comparison to the mitigating circumstances that a sentence of death is appropriate and justified."

That's a substantial change.

Another major revelation since California reinstated the death penalty is that informant witnesses lie on the stand. In 1989, the CBS show, "Sixty Minutes" aired an interview with notorious jailhouse snitch Vernon White, who showed how he could easily fabricate a "confession" from a defendant he had never met. A Los Angeles County Grand Jury report later concluded that false testimony by jailhouse informants was a substantial problem and that the Los Angeles County district attorney's office had violated its ethical obligations through the knowing misuse of such testimony. As a result, new laws were passed requiring additional disclosures to the defense and mandating that the jury be warned about the unreliability of informant witnesses.

All the cases with pending execution dates were tried before these modest reforms were adopted. And all relied heavily on informant witnesses - jailhouse snitches, cooperating codefendants, or both.

More recently, we have learned that the leading cause of wrongful convictions in death penalty cases in the United States is false testimony by informant witnesses. Of 111 death row exonerations investigated by the Center on Wrongful Convictions, 45.9 percent involved false testimony by informant witnesses. Similarly, the Illinois Commission on Capital Punishment found that of 13 death row exonerations in that state, six involved false testimony by jailhouse informants or accomplice informants. As a result, the Illinois Commission, the bipartisan Constitution Project, and others have concluded that a death sentence should not be sought where the evidence is based largely on the testimony of informant witnesses.

If that rule were applied to the three pending cases, none of these executions would proceed.

The death penalty, under the best of circumstances, puts a moral strain on our legal system. In every other case, civil or criminal, we instruct jury members that they are not to be guided by sympathy; they are to decide the case based on the facts and the law. But when it comes to the ultimate decision - life or death - we throw that guiding principle out the window. If you know the facts and understand the law, then any person should be able to reach a correct decision as to whether the defendant committed the crime charged. But there is no "correct decision" as to whether a man or woman should live or die. Thus, the penalty phase becomes a pure contest of emotion. It is the one area of the law where we reject what is otherwise a foundational premise of our legal system: that a just society is one "ruled by laws not by men."

Consider the growing evidence that the system is generally plagued with flaws and disparities:

Since 1976 when the U.S. Supreme Court lifted its prohibition on the death penalty, 121 men and women have been freed from death rows around the nation after being found innocent. In California, six death row inmates have been freed since the state reinstated the death penalty. The state of Georgia recently apologized for an execution it called "a grievous mistake." And the St. Louis county prosecutor currently is conducting an investigation to determine whether the state of Missouri executed an innocent man when Larry Griffin was put to death in 1995.

Race and geography also determine who gets the death penalty in California. A recently released statewide study found that a defendant whose victim was white is three times more likely to be sentenced to die than one whose victim was African-American, and four times more likely than one whose victim was Latino. Also, a person convicted of first-degree murder in a rural, predominately white county is three times more likely to be sentenced to death than a person convicted of a similar crime in a diverse, urban community.

Similar biases and legal flaws tainted the cases of Williams, Allen and Morales. However the courts decided they were not enough to warrant a reversal, though in each case, some judges disagreed.

That presents a dilemma to those of us in the legal community and to society in general: How many mistakes are we willing to live with to see a person executed?

With so many questions unanswered, let's hold off on executions and let the Justice Commission do its work.

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