

# CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE

Minutes of Commission Meeting, September 20, 2006, submitted by Chris Boscia.

Commission Chair John Van de Kamp convened the meeting at 10:30 a.m. at the County Board Chambers of San Mateo County Hall of Justice, 400 County Center, Redwood City.

Those present included Vice-Chair Jon Streeter, Executive Director Gerald F. Uelmen, Commissioners Michael P. Judge, Michael Gennaco (representing Sheriff Baca), Jim Fox, Michael Hersek, John Moulds, Michael Laurence, George Kennedy, Cookie Ridolfi, Diane Bellas, Bill Hing, Scott Thorpe (for Attorney General Lockyer), and Harold Boscovich.

Bill Haney, of the Ventura County District Attorney's office, attended in place of Greg Totten.

Commissioners not present were Alejandro Mayorkas, Gerry Chaleff (for Chief William Bratton), Rabbi Allen Freehling, Douglas Ring, Greg Totten, and Glen Craig.

John Van de Kamp (JVD) welcomed the group.

- I. Introduction of Members and Guests
  - A. Thanks to Supervisor Rose Jacobs Gibson for hosting us and for DA Jim Fox for his hospitality in the afternoon.
  - B. Guests include:
    - i. Senior Deputy Attorney Bill Haney is visiting from Ventura County in place of Greg Totten.
    - ii. Students from Golden Gate Law School with Professor Susan Rutberg
    - iii. NCIP students from Santa Clara Law School accompanied by Linda Starr, Director.
- II. Update on Legislation
  - A. Background
    - i. On Oct. 31, Legislature amended both bills to embody the Commission's recommendations
    - ii. Both bills were passed on last day of legislative session; votes were narrow.
  - B. SB 1544—Migden bill that deals with eyewitness ID.

- i. Guidelines to be developed by July 1, 2007 to be adopted by all law enforcement agencies by Dec. 31, 2007.
    - ii. Bill is on the Governor's desk; no word on his action. We are urging him to sign the bill.
    - iii. Unanimous recommendation from Commission for double-blind procedures—person conducting lineup does not know if suspect is in the lineup or not. Reduces suggestibility of investigating officer. Most important reform that could be made in conduct of lineup
  - C. SB 171—Alquist bill that deals with electronic recording of interrogations
    - i. Mandate electronic recording of interrogations in all serious felonies.
    - ii. Bill embodied the requirement that custodial interrogations should be electronically recorded in all *violent felonies*, and if not recorded, a cautionary instruction should be given to the jury.
    - iii. Some opposition from law enforcement community; PD and DA's groups supported; peace officers offered some resistance. Witnesses in LA from law enforcement were favorable at the public hearing. Tom Sullivan testified that up to 500 law enforcement agencies have adopted the recording procedure with great success and alacrity.
    - iv. State mandate for audiotaping, not at a substantial cost.
- III. Issue today: False convictions based on the use of informant testimony
  - A. Why do false convictions based on informant testimony occur?
    - i. History of informants coming into court to testify against suspects.
    - ii. How are these people used? LA County had a bad situation in the 1980s where jailhouse informants were trading bargains and favors in return for information about potential suspects.
    - iii. There was subsequent legislation to reform the situation
  - B. What are the reforms that have been taken? What can we do about it?
  - C. Prof. Ellen Yaroshefsky—Cardozo Law School in NY; Director of Jacob Burns Center
    - i. Brief Overview
      - 1. The risk of lies by informants has been recognized for a long time.
      - 2. Are the existing safeguards efficient in a system that needs informants to solve and prove criminal conduct?
      - 3. Are there reforms that can ensure that the information extracted and used can be more reliable?

4. The data shows that since the 1970s, the use of informants has risen significantly (in the wake of the War on Drugs). At the fed level, most of the information gathered is from informants
5. Current state of data
  - a. Very difficult to get data about informant testimony and false convictions related to it
  - b. The first 60-70 exonerations had 22% use of snitch testimony.
    - i. In capital/death penalty cases, the highest risk of error was perjury.
    - ii. Many of those cases involved informants
  - c. The study out of Northwestern (111 capital cases that were exonerations, only DNA evidence)
    - i. Of the 111, 45% of cases involved snitch testimony, a great number were jailhouse snitches.
    - ii. Cause for alarm
- ii. What are the reasons for these errors? (Put aside prosecutorial misconduct and police error, small number of cases anyway)
  1. Assumptions at interrogations—studies demonstrate that the ability to tell truth from fiction is as good as a flip of a coin. People in law enforcement get it right about 55% of time. We have a high confidence of our ability and the higher the confidence, the lower the ability.
  2. Assumptions that we can tell truth from fiction through body language, etc is not proven and not true
- iii. Errors
  1. Inadequate corroboration—some states require more corroboration. Prosecutors generally don't need corroboration when there is an informant. Only in cases with little testimony is there a need for an informant.
  2. Informants that came forward to give false testimony with regards to guilt or innocence, but rather gave an embellishment of the truth
  3. Extent of corroboration
    - a. Best practices ask for corroboration.
    - b. Nature of corroboration—inability of prosecutors to get information that connects defendant to crime itself

4. Lack of training in social psychology—we don't understand how memory works.
  5. Rigid Theory of the Case
    - a. Prosecutors/Law Enforcement might have a pre-conceived notion of what info they want from informant.
    - b. Way in which the question is asked is determinative of answer.
    - c. Some prosecutors don't tolerate inconsistencies. Some prosecutors will seek to dispel some of those inconsistencies.
  6. Getting too close to snitch—falling in love with your rat
  7. Cultural Barriers
    - a. Eye contact—for many of us, if a person makes eye contact, they are more likely to be truthful.
    - b. In some cultures, that's not true.
- iv. Recommendations
1. Grand Jury recommendations—should they be extended beyond jailhouse?
    - a. Supervisory approval for use of jailhouse snitches; oversight in any prosecutor's office is critical.
    - b. This is a workable and significant achievement. Goal would be to create disincentive for using jailhouse informant and incentives for hard corroboration.
  2. Disclosure by prosecution
    - a. IL statute 115-21: calls for additional items when a jailhouse informant is called forward, including history of informant, time and place of statements made, and other cases in which informant has testified.
    - b. No data on this yet.
  3. Corroboration
    - a. Requirement needs to be strengthened
    - b. Connecting D to crime, not oak-tree corroboration
  4. Penal Code
    - a. Written statement of consideration should be provided to court earlier
    - b. Most cases are guilty pleas, defense lawyer should have statement well in advance of guilty plea to see how reliable

- c. Look to state of WA where there is more open discovery processes. Will not decrease ability to prosecute those who are guilty.
- v. Additional Recommendations
  - 1. Consideration to jailhouse informant
    - a. Rarely are there circumstances where bargains are made in advance.
    - b. When cases do go to trial, everyone is aware that informant will get a significant bargain, except for jury.
    - c. Should there be a recommendation that a range of bargains for informants should be known to juries?
    - d. In the alternative, should there be a stronger cautionary instruction to explain the role of the informant?
  - 2. Instructions for accomplices
    - a. Canada Vetrovic Instruction—two wrongful convictions commission (Marin and Sofano Commissions)
      - i. Kaufman inquiry—jailhouse informants are often motivated by self-interests, can produce miscarriage of justice
      - ii. This is a warning issued to jury
      - iii. P. 763 of volume from Cardozo law review has list of other factors
- vi. Question 3 of recommendations
  - 1. Should there be a NC Innocence Commission remedy? Hard to say; it's new.
  - 2. NY has new standards for prosecutors as to their obligation to the factually innocent. *New* and *Material*, not newly discovered, should prompt prosecutor to investigate. They would need to disclose any Brady material that hadn't been disclosed. Motion to set aside verdict if the evidence exonerated.
  - 3. US District Attorneys are in general agreement with those principles.
- vii. Question 4: electronic recording by police
  - 1. Most controversial proposal—well-intentioned prosecutors bring in an informant. Presumption is that informant will lie the first few times. Prosecutors don't document.

2. Documentation holds off until informant's information is closer to circumstances of case.
  3. Prosecutors should record all information and it should be handed over to defense. Inconsistent testimony would be turned over to defense.
- viii. Question 5: corroboration should be legally required for all informants; this is the essence of a criminal justice system, connecting defendant to crime.
1. ABA report—no prosecution should occur solely on uncorroborated jailhouse testimony.
  2. What about two jailhouse informants? They should not be able to corroborate each other.
  3. IL—in death penalty cases, they can question pre-trial the reliability of informants
- ix. Question of training
1. Nothing more important than training for police and prosecutors
  2. Good informant sessions can be taught; Judge Trott has created a list for training.
  3. Bring in defense lawyers to talk to prosecutors.
  4. Use simulations—we learn from making mistakes. Use videotapes of informants that have lied (what can we learn?). Bring in social psychologists, etc. It is up to police and prosecutors to get it right.
  5. Our system is administrative, not adversarial b/c most cases are resolved through pleas.
- x. Questions from Commissioners
1. JVD—good corroboration standard? One that connects the defendant to crime is more likely to get significant corroboration. What is important is not having one jailhouse informant corroborate another.
  2. M. Laurence—in capital cases, informants testify about important aspect of case and defendant's state of mind, how does corroboration apply in special circumstance case? Not sure that corroboration standard can solve this case. It must be used in tandem with jury instruction and ????
  3. Hing—opportunity to examine for taint as a supplement? Yes, in IL it's used in all capital cases. In Canada, they allow reliability/taint hearings where prosecutor must prove by preponderance of evidence that informant is reliable

4. Haney—expand guidelines from jailhouse informants to all informants, what is the definition beyond custodial? You should use the definition that includes accomplice testimony.
5. JVD—shouldn't it be more inclusive?
6. Haney—statistics on prosecutorial issue? Very little statistics. People who have studied Brady issues have cases, but not a lot of data. Anonymous interviews with prosecutors study provided information. It's mostly experience from around the country. If the prosecutor doesn't take notes during informant interview in the beginning and the prosecutor waits to write down truthful information, that leads to leaving out information.
  - a. Personal experience from NY
  - b. Anecdotal from CA
7. Thorpe—are prosecutors trained not to take notes during the first few interviews with informant? Judge Trott has documented this. Practices differ throughout the country. If we train people not to take notes, there needs to be consciousness about turning over Brady material.
8. Uelmen—causes of wrongful conviction in conjunction with defense lawyer incompetence. Do you think there is a problem with defense lawyer incompetence with respect to exposing false testimony of informants? More training for defense lawyers? Problems go beyond training, including staffing, etc. Failing to adequately investigate a jailhouse snitch and demanding info to cross-examine is part and parcel to adequate defense lawyer.
9. JVD—are there many jurisdictions with central files on informants? Article by Alexander Napitov that documents the secrecy in use of informants. Deals never get in the public record. Prosecutors can't even get it some times. One recommendation might be a consideration of how we organize a central file that would be accessible by prosecution. Make sure that informants that testify under different names are compared.
10. Thorpe—IL standard is that prosecutor should turn over file if there is a reasonable possibility that they can find file? Is there any state where prosecutors have a file that they can share?

D. John Spillane of LA County DA's Office, Chief Deputy

- i. How LA County dealt with informant testimony? Started in the 70s and watched the development of the scandal in LA. Chief Deputy is Chairman of the Informant committee
- ii. Protocol for Informants
  1. Whenever deputy DA becomes aware of jailhouse informant whether through phone call or law enforcement officer, he/she is required to conduct an interview if that info is marginally relevant to case. Interview to be recorded, sometimes at jail and sometimes outside of jail.
  2. Incumbent upon deputy DA to make several evaluations of testimony:
    - a. Can evidence be independently corroborated? Standard is strong evidence.
    - b. What is strong evidence? Evidence outside of the police reports. Must be outside of sphere of material already known to police department; additional information to that known by police department (ex. of murder victim body being found where an informant says it is) (ex. murder weapon not located. Informant indicates that suspect told him where evidence was. Police can then go investigate, identify weapon, and forensically connect weapon to crime)
  3. Jailhouse informant committee looks at record of informant, consideration requested/expected, and then evaluated in totality. Committee makes a decision on whether deputy DA can use informant
- iii. How has this impacted DA's office?
  1. In late 70s and early 80s, jailhouse informants were used regularly in cases. Law enforcement commonly brought informants to prosecutors. Individuals were offering to testify against defendants who had obtained info from other means than through speaking to defendant.
  2. DA's office implemented policy in wake of grand jury recommendations. Long process of evaluating and re-evaluating convictions in those cases.
  3. Since 1990's, this policy has been in effect. In the last six months, the Committee has not approved one. Last year LA had zero; the year before they had 2, and in the preceding years 4, 6, and so on. Less than a half-dozen on average

since the 1990s. Large office with 1000 prosecutors. 42 different DA offices throughout county. They appear in 18-19 separate courthouses.

- iv. Policy of DAs office is what is stated above. History over last several years is to implement grand jury recommendations
- v. 1127A of Penal Code
  - 1. If informant is used, a jury instruction is in place: the testimony of an informant should be evaluated with close scrutiny. Benefits to informant should be considered. If there has been any type of material consideration given to informant, including plea negotiations, that is to be written down and given to defense prior to testimony.
  - 2. In LA county, prescriptions in penal code right now plus policies in county have addressed many of the issues with regards to jailhouse informants.
- vi. CDAA Handbook—many of the LA policies have been adopted or expressed as best practices for offices in State of CA. No harm in having a written policy like LA has.
- vii. LA needed a written policy. Training has been a big issue as well. Deputies are tested for every grade promotion. Training happens on a routine basis.
- viii. Judge Trott does training
- ix. With regards to questions asked by Commission
  - 1. Although several habeas requests were granted, in the last five years, there has been one case in which habeas was granted and office decided not to re-try defendant.
  - 2. In the vast majority of cases, evidence was reviewed, informant removed, and D was tried again.
  - 3. Prosecutors are happy to have informant interviews recorded. No problem to make it mandatory.
  - 4. There is a problem with other informants.
    - a. Many informants are citizen informants, relative of a suspect, etc. They are concerned about being identified as an informant. We need to protect witnesses.
    - b. Def. of other informants—anyone who comes forward and gives info to police about identity of perpetrator or info about perpetrator.

- c. Can Commission identify what an informant is? The LA County DAs office is not in favor of broadening prescriptions in this area
- 5. Testimony is already viewed with caution. Jurors are more sophisticated today. Informants are viewed with caution by everyone. Any type of remuneration to a witness should be turned over to defense—mandated by CA Code of Prof. Conduct.
- 6. Additional training? Yes. Whenever possible, we should take the opportunity to train everyone, including defense counsel. In LA County, Public Defenders are vigorous about investigating informants.
- x. JVD—is there a central file? Yes. What about non-custodial informants? No, it is extremely difficult logistically to keep citizen informants on file. Some informants are only used for probable cause, not used in case itself. How do we distinguish between those used for probable cause and those used in case? Informants with criminal history have privacy rights and a database might violate that. Concern for safety of citizen informants. Central file includes informants who have received in-custody statements about defendants?
- xi. Hing—difference with Prof. Yaroshefsky: Jury should be aware of bargain with informant. Lawyers have rules of Prof. Conduct that govern behavior. One deals with duty of prosecutors to reveal to defense exculpatory evidence. This duty continues beyond conviction. This includes Brady. But does it include information that a deal has been struck? Cases in CA are on point.
- xii. JVD—is the real quid pro quo made specific, even after-the-fact actions by prosecutors? Should potential for this happening be disclosed on the record? If remuneration is given, prosecutor is under a duty to provide to defense and court. What about if it's after the jury has returned a verdict? Duty continues after case is decided.
- xiii. M. Laurence—if deal is made after trial, circumstances of deal are forwarded to the defense? Yes, there would be the expectation that prosecutor had that duty. Is it possible to define informant as someone who receives benefit in exchange for their testimony, such that Commission could recommend that informants who received benefit would be tape-recorded? Difficult to define benefits. There are financial benefits, but also benefits to citizen-

- witnesses of ridding their neighborhood of drugs. What if we used the definition of benefit used by LA County? Would have to see the language that Commission uses.
- xiv. Uelmen—how do you distinguish informant who receives info in custody and one who stands to gain but wasn't in custody at time of gain of information? Evidence of pending charges or any remuneration should be turned over to defense for cross-exam and jury determination of credibility. Is there supervisory review of prosecutor's ability to use this material? It gets to a head-deputy level, but not to the informant committee. Committee exists only for jailhouse informants.
- xv. Ridolfi—are DAs forbidden to make any offer when informant approaches them? Are they instructed to make clear that nothing will be offered? DAs are not forbidden in every case, but there is a review by a head deputy in every office. For offers of immunity, that's at a director's level. Grants of immunity are not offered unless reviewed by a director (6 out of 1000 DAs). In the exceptional circumstance, there may be some type of offer made to an informant. It's reviewed similarly to jailhouse informants (what is the person looking for? What type of evidence? How important is evidence?) Are tapes turned over to defense during discovery? Yes. When you learn that offer has been made, are there any disciplinary measures taken against deputy DA? It depends on the severity of misdeed. It can include discharge if it's egregious.
- xvi. M. Judge—Tension between timing of disclosure of role of informant and issue of safety for informant. How do you strike a balance between timely disclosure to defense and need to provide protection for alleged informant? This is a continuing problem in practice, especially with regards to gang informants. Over the last 18 months, 3-4 informant witnesses have been killed. Sometimes, the DA takes this information in camera or ex parte to request assistance on timeliness requests and security concerns and let judges decide. If office is contacted by someone in custody, claiming to have information, and after interview the information is determined not to be usable, and the same person contacts you later to say they have additional information, at what stage would the DA feel compelled to give over to defense even if informant was not being used? As soon as the evidence was determined to be exculpatory. Does DA's office have any supervisory responsibility to ensure that police are not making any promises to informants?

In LA county, there is no supervision of police. Prosecutors sometimes offer training. Is there any method for tracking and disclosing to defense that there are witnesses that may qualify for private or public reward? Not sure how this would happen. He is familiar with rewards from County and Board of Supervisors. Private companies also offer rewards. There is no way of tracking that information.

- xvii. J. Streeter—has any thought been given to a flat prohibition on informant testimony? Info provided can be extremely valuable. In 1999 and 2000, a body was found because of an informant testimony in one case and in another the murder weapon was found. We have a right and responsibility to communicate that to jury and defense.
  - xviii. Boscovich—1191.25 requirement to notify victims. The prosecutors assigned to the case are required to notify, but the law enforcement agency is generally required. Only a letter goes out to victim? Letter addresses that victim has right to come in for sentencing. Many of in-custody defendants are not violent and serious felons. Most are in custody on property and drug related crimes. Would Committee explain to victim? Required procedure is letter, but he assumes phone calls are made.
  - xix. JVD—we want copy of protocol at LA County DAs office. What are other offices in the state doing?
- E. Gigi Gordon—Director Post Conviction Assistance Center
- i. Was one of two original petitioners to LA County Grand Jury in 1988 to investigate jailhouse informant controversy. They wanted a neutral entity to investigate with outside counsel. Leslie White demonstrated for LATimes how someone can abuse informant system.
  - ii. Legislation was later passed. Originated in LA, but became a statewide issue. 3 pieces of legislation passed, including victim notification issue.
  - iii. She teaches criminal defense lawyers how to investigate informants. The fact that she gets asked to do this is a sign that the problem still exists. Informants can be very creative today. Sidney Storch, an informant, used to run a service for informants through LA Times archives. Today, inmates can just Google it.
  - iv. Recommendations for Defense Lawyers

1. How do they find out more info about informant? Use computerized database searching. Very basic investigation is not done by law enforcement.
  2. Make sure that person/informant is who they say they are, especially in gang cases.
- v. She doesn't keep statistics outside of LA. Informants are used so rarely that she didn't even know Spillane was the head of the committee.
  - vi. Her policy is to give prosecution any information she finds on informant. Out-of-state rap sheets need to be checked.
  - vii. People v. Jesse Gonzales—right to get post-conviction discovery in a capital case. Could she go back to court and get Brady information that hadn't been disclosed at trial? No.
    1. 1054.9 of Penal Code does now allow for post-conviction discovery in LWOP and capital cases.
    2. Statute was enacted in 2004-2005. Anyone prior to this was unable to get that same benefit.
  - viii. Model in LA has resulted in a small number of informants being used. Now, a small number of informants offer to testify.
  - ix. Questions:
    1. JVD—what would you recommend in terms of corroboration on a statewide basis? Informant filling in the gap of mental state is too nebulous to be considered corroborating evidence (she sees a number of these cases). But an informant that gives evidence that leads to the body or the murder weapon, we shouldn't turn away from that. FBI definition of informant is anyone who gives information, testifying accomplice, fellow gang member in on murder, etc. There should be tangible evidence to corroborate.
    2. Haney—do we invite intense pre-trial investigation that implicates every prosecution witness as a possible informant? We need to define terms. Informant should not include every citizen informant. If DAs office gives a person money to relocate, it's a benefit that should be disclosed. The location of the move is not important. Ex. a gang member from D's gang needs to be corroborated.
- F. Dennis Fritz—Kansas City, MO (wrongfully convicted in OK for murder in 1<sup>st</sup> degree)
- i. Co-defendant was also wrongfully convicted.

- ii. Main basis rested on uncorroborated jailhouse testimony.
  - iii. Worked to study the law. He had been a middle school teacher. Murder occurred in 1982. He was asked to resign his teaching position. In 1987, he was arrested.
  - iv. Accepted a court-appointed defense counsel (a civil bankruptcy, personal injury attorney).
  - v. State's evidence: body fluid evidence that he was a non-secreting individual.
  - vi. Co-defendant was bipolar.
  - vii. Some of the female inmates wrote jailhouse letters of a sexual nature. Co-defendant wouldn't go to preliminary hearing. He went to see who accusers were.
  - viii. Bombarded by snitches
  - ix. JVD: Were you exonerated by DNA tests that matched Glen Gore? Yes. Gore was given the death penalty and is now in LWOP.
  - x. JVD: the snitches testified against you in trial? Two of the snitches were law enforcement snitches who were trying to climb the ladder of informants within the jail. None of the snitch conversations were recorded. Were the advantages to the snitches disclosed? No. Were any of the snitches released early? Not to his knowledge. This information was not known at the time of trial.
  - xi. Prosecution needed snitch testimony for the case. Attorney never put a witness on that would corroborate that Mr. Fritz didn't say anything about the crime.
  - xii. Does OK require corroboration of jailhouse informants? Not then. Unsure now.
  - xiii. Wrote the book Journey Toward Justice with John Grisham. His case was featured in the US Senate Judiciary Committee
- G. Terry McCaffrey—Amnesty Int'l
- i. Two cases:
    - 1. Michael Morales case—snitch gave testimony against Morales. Person said that Morales confessed in Spanish even though Morales didn't speak Spanish.
    - 2. Gloria Killian case—prosecutors wrote a letter on behalf of the snitch
  - ii. IL Statutes on Jailhouse snitches
    - 1. Reduce conversations to writing and disclose to defense

2. Background and identity of witness should be given over to defense
  3. Prior to trial, judge should hold evidentiary hearing to determine reliability of in-custody informant testimony:
    - a. Prosecutors bears preponderance of evidence for reliability
    - b. See handout
- H. Pat Foley and Charles David from Campaign to Abolish the Death Penalty
- i. Recommend a hold on executions while we study problem
  - ii. JVD: Commission does not have a position on moratorium of death penalty.
- I. Natasha Minsker—ACLU
- i. Tommy Thompson—5 informants in his case. He is now executed.
  - ii. See letter.
  - iii. Critical question to death penalty cases that happened before 1989 LA County Grand Jury report.
  - iv. Several witnesses have discussed how difficult it is to find informant information.
  - v. Of the DAs, of 48 counties requested, only 3 provided a substantive response. Mendocino had a policy. Kings County had model forms. Alameda DAs office has no policies or procedures with regards to informant testimony. Law Enforcement agencies have information in letter. Stanislaus County used 19 informants in 48 cases.
  - vi. JVD: are these custodial or just any witness? Any witness receiving a benefit from a prosecutor or law enforcement agency.
  - vii. Much use of informants doesn't make it to court, to a DA, or to defense attorney. The street-level informant is evading supervision or review. In Santa Cruz, they can avoid booking suspects to have easier dealing with informants.
  - viii. Informant use impacts communities. Informants given a pass for illegal activity in exchange for info to police. That harms communities. This directly impacts people of color and low-income communities.
  - ix. What are the benefits and risk of informant testimony? Is this an effective way to reduce crime? There is a role for more disclosure and more questioning.

- x. Uelmen: Is there a copyright problem in disclosing this information by DAs offices? ACLU may go to court to get this information. CDAA was sometimes named as a holder of intellectual property copyright over the informant material. Fox—procedures are disclosable under Public Records Act if it's in writing. What is the deliberative process privilege?
- xi. Thorpe: Are the DAs who claimed copyright privilege listed in the letter? No, but they will supply the information. How do you define informant? Someone receiving a benefit from the prosecutor. Should informants who don't testify still have electronic recording? Once there is a determination of quid pro quo, there should be recording. There is ambiguity though. So much of the use of informants never reaches the level of prosecutors. Law enforcement works with street-level agents. Vast majority of informant use is not being reached by remedies that can be solved at the trial level.
- xii. Boscovich: training materials were provided by CDAA. Policies were also asserted under copyright.

J. Michael Judge

- i. Two surveys conducted
  - 1. Getting information about informants who are willing to testify against defendants.
  - 2. Not intended to go after confidential informants in warrant area.
- ii. Sent out a re-survey
  - 1. Paucity of knowledge statewide about existence of provisions and local policies of DA about use of informants.
  - 2. 108 of 163 offices did not know of DAs policies. Of 163, 38 thought that DAs didn't have policies.
  - 3. 64 of 76 respondents did not know if DAs policies required corroboration.
  - 4. 50 of 76 did not know if there was an electronic recording requirement.
  - 5. See M. Judge surveys.

K. Susan Rutberg

- i. Peter Rose case
- ii. When looking to create a definition of informant, be broad that any beneficial result given to a witness' criminal justice situation should be turned over to defense.