

CRIMINALS AS WITNESSES

October 2006

DOs and DON'Ts Pitfalls

1. Never "trust" a criminal.
1. There are no secrets, everything will come out in its worst possible light.
3. In attempting to secure cooperation, do not give away the farm when a daisy will do.
4. Never give away a big fish to get a little one.
5. Don't make a deal with the ultimate devil. Some criminals should be dealt with as the end of the line no matter what they can do for you.
6. Do not let the informant control you: Do not become the "juice man."
7. Use informants primarily to develop additional incriminating evidence that does not require their testimony. Calling a codefendant to the stand might actually make your case worse!
8. Do not let paralegals and amateurs near your informant witnesses. Amateur managers will say and do things that will ruin your case.
9. Watch out for the "represented persons" rule.
10. Don't invade "the defense camp" when you debrief a codefendant.
11. Don't make a mistake with the polygraph.
12. Jail house informants are inherently unreliable and make terrible witnesses.

13. Don't be stingy on discovery of material that weighs on an informant's credibility everything goes. Live up to your Kyles v. Whitley duty.
14. Your rough notes of a conversation with an informant, and those of the agents, are probably discoverable.
15. Do not contaminate an informant in debriefing with "key" inside information.
16. Do not be timid in testing the informant's story.
17. Include on direct everything that might impeach your witness on cross.
18. Expect the worst on cross.
19. Don't let the Witsec subsistence payment kill you on cross as "a bribe."
20. Protect yourself against turncoat behavior.
21. Jurors hate informants, don't believe otherwise.
22. A jury will not rely on the word of an informant without corroboration.
23. Figure out why the jury can believe your informant witness. Get your jury arguments ready long before voir dire.
24. Never compromise your integrity, your office, or the ideals of justice.
25. If trouble arises, handle it fast, and handle it well. Otherwise, it will be turned against you!