

September 19, 2006

AMENDED 9/19/06

To: John Van De Kamp, Chair, CFAJ  
Jerry Uelmen, Executive Director, CFAJ  
Chris Boscia, Executive Assistant, CFAJ

From: Michael P. Judge  
Public Defender, County of Los Angeles  
Commissioner, CFAJ

Re: Los Angeles County Public Defender Informant ("Snitch") Testimony Survey

The data as to questions 1-3 in the survey from Los Angeles is not regarded as a complete tally, as many Deputy Public Defenders did not respond. In fact, the response rate did not exceed 10% of the lawyers in the office.

Moreover, there appeared to be some confusion among responders regarding the scope of the inquiry, e.g. was it intended that informants providing information used as probable cause for search warrants and arrests be included? Of course, such "informants" were not the subject of our inquiry, and an effort was made within the Los Angeles County Public Defender's Office to contact the responders after the survey results seemed very far out of line with expectations. The original data was adjusted to attempt to eliminate informants not intended to be included. However, not all responders could be identified so there may be some extant over counting.

The survey posed the question as: How many cases is one aware of in which informant testimony was involved? That was done intentionally to capture cases that were handled by lawyers who for whatever reason did not submit answers to the survey. That could allow some double counting. Conversely, substantial undercounting is likely due to the low response rate.

The low number of cases reported from 1980-89 is likely to be due in part to the fact many of the Deputy Public Defenders who were doing felony trials in that era are no longer with the office. Furthermore, a practice developed within the Public Defender's Office of declaring conflicts on known informants during that period, to avoid the phenomenon of being compelled to declare multiple double conflicts later once the role of the jailhouse snitch would surface in other cases involving Public Defender clients.

I. Despite the above caveats the survey results do provide some clear revelations. There is a paucity of knowledge among Los Angeles Deputy Public Defenders about even the existence and provisions of District Attorney policy regarding use of informant testimony.

55 of 68 respondents did not know if the District Attorneys Office had such policies, procedures or guidelines.

63 of 65 respondents did not know if the District Attorneys policy required corroboration of the informants testimony

58 of 63 did not know if the District Attorneys policy required electronic recording of any conversations between the informant and the defendant.

II. There is very little awareness among Los Angeles Deputy Public Defenders regarding compliance by courts, prosecutors, law enforcement and informants with the reform legislation enacted in the wake of the jailhouse snitch scandal and Grand Jury Report.

59 of 67 respondents did not know if bench officers routinely give the cautionary jury instruction upon request in cases involving jailhouse informants.

55 of 67 respondents did not know if District Attorneys routinely filed a written statement setting out all consideration given/promised to jailhouse informants.

27 of 29 respondents did not know if prosecutors attempt to notify victims of jailhouse informants of consideration offered to such informants.

65 of 66 respondents did not know if law enforcement limited money compensation to jailhouse informants to \$50.00.

60 of 64 respondents did not know if law enforcement avoided action deliberately designed to elicit incriminating statements.

62 of 66 respondents did not know if informants avoided action deliberately designed to elicit incriminating statement.

III. There is an overwhelming consensus among Deputy Public Defenders regarding certain issues:

63 of 64 respondents believe that apart from any District Attorney policy corroboration should be legally required for both in custody and out of custody informant testimony.

48 of 50 respondents who had an opinion believe the standard of corroboration for informants should be higher for informants than for accomplices.

Of those respondents who had an opinion it was unanimous that there is a need for more training regarding the use of informant testimony for judges, prosecutors and law enforcement, and 51 of 53 respondents who had an opinion thought defenders also need more such training,

IV. Of those respondents with an opinion most did not believe the District Attorneys Office provided discovery regarding informant testimony promptly (17 vs. 7). However, a much larger number (41) did not know the answer to that question.

1) How many cases are your aware of in which informant testimony was involved?

	<u>2000-2006</u>	<u>County</u>
A) Informant and purported declarant/defendant both in custody	# <u>83</u> # _____	<u>Los Angeles</u> _____
B) Informant in custody, purported declarant/defendant not in custody	# <u>9</u> # _____	<u>Los Angeles</u> _____
C) Informant not in custody, purported declarant/defendant in custody	# <u>100</u> # _____	<u>Los Angeles</u> _____
D) Neither informant nor purported declarant/defendant in custody	# <u>16</u> # _____	<u>Los Angeles</u> _____
E) Custody status not sure/unknown	# <u>24</u> # _____	<u>Los Angeles</u> _____

2) How many cases are your aware of in which informant testimony was involved?

	<u>1990-1999</u>	<u>County</u>
A) Informant and purported declarant/defendant both in custody	# <u>48</u> # _____	<u>Los Angeles</u> _____
B) Informant in custody, purported declarant/defendant not in custody	# <u>4</u> # _____	<u>Los Angeles</u> _____

- C) Informant not in custody,  
purported declarant/defendant  
in custody  
# 41 Los Angeles  
# \_\_\_\_\_
- D) Neither informant nor  
purported declarant/defendant  
in custody  
# 5 Los Angeles  
# \_\_\_\_\_
- E) Custody status  
not sure/unknown  
# 0 Los Angeles  
# \_\_\_\_\_

3) How many cases are your aware of in which informant testimony was involved?

- |   | <u>1980-1989</u> | <u>County</u> |
|---|------------------|---------------|
| A) Informant and purported<br>declarant/defendant both<br>in custody<br># <u>20</u> <u>Los Angeles</u><br># _____       |                  |               |
| B) Informant in custody,<br>purported declarant/defendant<br>not in custody<br># <u>0</u> <u>Los Angeles</u><br># _____ |                  |               |
| C) Informant not in custody,<br>purported declarant/defendant<br>in custody<br># <u>8</u> <u>Los Angeles</u><br># _____ |                  |               |
| D) Neither informant nor<br>purported declarant/defendant<br>in custody<br># <u>0</u> <u>Los Angeles</u><br># _____     |                  |               |
| E) Custody status<br>not sure/unknown<br># <u>0</u> <u>Los Angeles</u><br># _____                                       |                  |               |

4) Does the District Attorneys Office in your County have written policies / procedures / guidelines re the use of informant testimony?

13 yes      0 no      55 don't know      County  
Los Angeles

[If the District Attorney has a written policy please transmit it to Michael Cantrall ASAP. Kindly do not delay sending in survey responses while waiting to obtain written policy.]

5) Do the policies / procedures / guidelines under #4 require corroboration of the informants testimony?

1 yes      1 no      63 don't know

6) Do the policies / procedures / guidelines under #4 require electronic recording of the statement of declarant/defendant and informant?

1 yes      4 no      58 don't know

7) Does the District Attorneys Office provide discovery regarding informant testimony promptly (i.e. far enough in advance of trial to provide a reasonable opportunity to thoroughly investigate the veracity of the informant, the details of the statement and circumstantial evidence that would be helpful in determining the accuracy of the alleged statements of the accused)?

7 yes      17 no      41 don't know

8) Do the bench officers routinely give upon request the cautionary jury instruction regarding jailhouse informant testimony provided in PC Section 1127a(b)?

5 yes      3 no      59 don't know      County  
Los Angeles  
— yes      — no      — don't know      \_\_\_\_\_

9) Do the prosecutors routinely file a written statement with the court setting out all consideration promised to and received by jailhouse informants? In compliance with PC 1127a(c)?

0 yes      12 no      55 don't know      County  
Los Angeles  
— yes      — no      — don't know      \_\_\_\_\_

10) Do the prosecutors routinely make good faith efforts to notify victims of jailhouse informants of prosecution's intent to offer such an informant a modification or reduction in sentence, or dismissal, or early parole release in exchange for the informants testimony in compliance with PC 1191.25??

0 yes      2 no      27 don't know      County  
   yes         no         don't know      Los Angeles

11) Do law enforcement officers routinely comply with PC 4001.1(a) which prohibits monetary payment (other than expenses) in excess of \$50.00 in return for in custody informants testimony?

0 yes      1 no      65 don't know      County  
   yes         no         don't know      Los Angeles

12) Do law enforcement officials routinely comply with PC 4001.1(b) which prohibits taking any action (beyond merely listening to statements of a defendant) that is deliberately designed to elicit incriminating statements?

0 yes      4 no      60 don't know      County  
   yes         no         don't know      Los Angeles

13) Do in custody informants routinely comply with PC 4001.1(b) which prohibits taking any action (beyond merely listening to statements of a defendant) that is deliberately designed to elicit incriminating statements?

0 yes      4 no      62 don't know      County  
   yes         no         don't know      Los Angeles

14) Apart from District Attorney policies, should corroboration be legally required for:

A) In custody informants      63 yes      1 no  
B) Out of custody informants      63 yes      1 no

15) Should the standard of such corroboration be "slight" such as currently is required for accomplice witnesses (P.C. Sec. 1111, CALCRIM No. 334, 335)?

A) In custody informants      3 yes      59 no  
B) Out of custody informants      4 yes      56 no

16) Should the standard be higher in cases of informants because there are greater indicia of reliability in the cases of accomplice testimony, as accomplice witnesses are making statements against their own penal interest?

48 yes      2 no      18 don't know

17) Is there a need for more training regarding the use of informant testimony for:

				County
Judges	<u>47</u> yes	<u>0</u> no	<u>18</u> don't know	<u>Los Angeles</u>
Prosecutors	<u>48</u> yes	<u>0</u> no	<u>18</u> don't know	<u>Los Angeles</u>
Defenders	<u>51</u> yes	<u>2</u> no	<u>12</u> don't know	<u>Los Angeles</u>
Law Enforcement	<u>46</u> yes	<u>0</u> no	<u>18</u> don't know	<u>Los Angeles</u>

MPJ:ij  
8/31/06