REPORT OF THE 1989-90 LOS ANGELES COUNTY GRAND JURY

Investigation of the Involvement of Jail House Informants in the Criminal Justice System in Los Angeles County

1989-90 LOS ANGELES COUNTY GRAND JURY

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A. THE INVESTIGATION.

On or about October 24, 1988, a jailed informant demonstrated for the Los Angeles County Sheriff's Department how he and others could obtain confidential information and then fabricate confessions of fellow prisoners. As the evidence in this investigation reveals, this was not the first notice of such a practice that officials were offered. It became, however, a significant event, followed by further public disclosures[1] and appeals for an independent investigation.

In an effort to examine the causes of the problem internally and assess the impact upon of the criminal justice system, high-ranking District Attorney officials announced efforts to review case files and memoranda from deputies who had encountered or who had involved such informants in their cases.

On December 15, 1988, California Attorneys for Criminal Justice and the Los Angeles Criminal Courts Bar Association filed

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[1] From October 29, 1988, through December 17, 1988, the Los Angeles Times alone published at least 15 articles (editorials excluded in the count) on the subject of the disclosures and issues related to jail house informants.

application with the Presiding Judge of the Superior Court requesting a Grand Jury investigation into the jail house informants matter. The application further called for appointment of special counsel to advise the Grand Jury in its investigation. A supplement to the application was filed in February, 1989. Pursuant to Section 936 of the Penal Code of the State of California, the Attorney General formally appointed the first Special Counsel in May, 1989, and the second Special Counsel in December, 1989.

B. THIS REPORT AND SCOPE OF THE INVESTIGATION.

This report of the 1989-1990 Los Angeles County Grand Jury is the result of an intensive investigation and the presentation of evidence by Special Counsel. One hundred twenty witnesses testified before the Grand Jury and 147 exhibits were introduced into evidence.

Witnesses included jail house informants, public officials, judges, prosecutors from the Los Angeles County District Attorney's Office and the California Attorney General's Office, county and state public defenders, members of the Bar, including representatives of defense bar organizations, law enforcement officials from the Los Angeles County Sheriff's Department, the Los Angeles Police Department, and other police agencies within the county, custodial officers at both the local and state level, and private citizens.

In addition, it is estimated that the number of additional interviews ranges into the hundreds. Among the categories of persons interviewed by Special Counsel staff are: designated informants and other county jail and state prison inmates, parolees and other ex-offenders, private attorneys, private investigators, county and state public defenders, law enforcement officers including sheriff's deputies, detectives and higher-ranking officials, police officers detectives and higher-ranking officials from police departments, jail and prison officials, staff and custodial officers, Department of Corrections officials, investigators, correctional officers and staff, parole agents and supervisors, probation officers and supervisors, ranking officials within the Office of the District Attorney, Deputy District Attorneys, District Attorney investigators, supervisors and staff, attorneys and staff of the Jailhouse Informants Litigation Team, ranking officials within the Office of the Attorney General, Deputy Attorney Generals, State Department of Justice special agents and investigators, and county auditors. Scores of others were contacted regarding specific matters and calls and correspondence were received from all interested sources.

Thousands of pages of documents were received including court transcripts, court records, jail records, internal memoranda of various governmental agencies, records and files of the Los Angeles County District Attorney's Jailhouse Informant Litigation Team, correspondence received in response to general

mailings requesting information from organized bar groups, written responses from private counsel and prosecutors to requests for information from the office of the District Attorney and the office of Special Counsel.

The investigation is believed to be the most comprehensive inquiry into this topic that has ever been conducted. Criminologists, legal scholars and others who have studied the matter extensively generally would not have had access to official proceedings wherein witnesses could be subpoenaed to appear and testify under oath to the issues in question.

A question remains with regard to the number of criminal cases affected by the involvement of jail house informants. The period of inquiry by the Grand Jury spans from approximately January, 1979, to the present.[2] That roughly parallels the period of review by the District Attorney's Jailhouse Informant Litigation Team which has identified 153 cases wherein jail house informants were called to testify during the ten years prior to October, 1988.

Certain members of the defense bar who have likewise inquired locally into the matter of jail house informants estimate at least 250 cases were so affected. That number was derived from official and independent solicitations.

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[2] There are in evidence some incidental references from as early as 1976.

Even using the larger number, it is in a practical sense impossible to assure that every case has been enumerated. Inconsistencies in the count would result from informants who appeared at the preliminary hearings and not at the trials of defendants, and informants who offered information to investigators, but were not called for court proceedings. Contact with some defendants or their trial or appellate counsel was precluded because of deaths or relocations. The same may have been the case with certain public defenders, prosecutors and judges. Some defendants who may have acted in pro per could have been released from custody and have no further interest in pursuing the matter with renewed litigation.

The purpose of this Grand Jury investigation has not been to make judgments in particular cases. Rather, the focus has been to conduct an overall inquiry as to how and why the system went wrong, and to recommend policies and procedures that will prevent or curtail the emergence of such practices in the future.

II. THE FINDINGS OF THE LOS ANGELES COUNTY GRAND JURY IN THE MATTER OF THE INVOLVEMENT AND USE OF JAIL HOUSE INFORMANTS IN THE LOS ANGELES COUNTY CRIMINAL JUSTICE SYSTEM

A. The Los Angeles County District Attorney's Office 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.

B. The Los Angeles County Sheriff's Department failed to establish adequate procedures to control improper placement of inmates with the foreseeable result that false claims of confessions or admissions would be made.

III. THE JAIL HOUSE INFORMANT

The term "jail house informant"[3] as used in this report comports with Section 1127a of the Penal Code of the State of California, which was enacted in 1989. The statute refers to "in custody informant" as "a person other than a co-defendant, percipient witness, accomplice, or co-conspirator whose testimony is based upon statements made by the defendant while both the defendant and the informant are held within a correctional institution." For the purposes of this report, the Los Angeles County Jail, other local custodial facilities, courthouse holding cells, and in-custody transportation within the County were included within the term "correctional institution."

The Grand Jury heard testimony from six self-professed informants. Grand Jury investigators interviewed 19 additional informants, both in and out of custody. These informants testified about their own experiences, as well as their observations on the experiences of other informants. Based on other evidence presented to it, the Grand Jury believes

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[3] Unless otherwise indicated, "jail house informant" and "informant" are used interchangeably in this report.

that the experiences and perceptions of these informants generally reflect those of the informant population at large.

Inasmuch as the evidence heard by the Grand Jury was replete with examples of informants' own descriptions of perjuring themselves or otherwise fabricating information, this Grand Jury has refrained from making any findings based solely on the testimony of the informants.

The testimony that is discussed in this section was given under oath, the same oath each informant took when testifying on behalf of the People of the State of California as prosecution witnesses. Because of its nature, no suggestion is intended one way or the other as to the integrity of the content. This consideration is left to the reader following the review of the entire report. Whether or not the informants' testimony is believed, the conclusion must necessarily be disturbing: either 1) egregious perjurers have been used as prosecution witnesses, or 2) law enforcement officials committed shocking malfeasance.

Regardless of how this testimony is evaluated, it cannot be ignored. But for one informant's public exposure of these practices the Special Counsel would probably not have been appointed to investigate and present evidence before the Grand Jury and the extent of this problem within Los Angeles County would not have been examined by the Grand Jury.

Within the Los Angeles County Jail are housed, at any one time, as many as 80 to 90 inmates who have been classified and physically tagged (by a red wristband) as Los Angeles County Sheriff's Department designation "K-9" and placed, ostensibly, for security purposes, in special confinement quarters because of their identification as "informants". Within the jail, this designated area is commonly referred to as the "snitch tank" or "informant tank". The status conferred upon them results in significantly different treatment in their handling within the custodial system.

A. THE INFORMANT AS A CRIMINAL.

All jail house informants are incarcerated. They necessarily are charged with, or have been convicted of, a crime. These crimes include the most serious and often heinous crimes. The informants who testified before the Grand Jury had been charged with or convicted of such crimes as rape, kidnap by firearm, arson, armed robbery, burglary, assault with a deadly weapon and murder. One had at one time been determined to be a mentally disordered sex offender. The types of crimes committed by the informants who testified before the Grand Jury are not dissimilar to those committed by others of the informant population in Los Angeles County.

Each informant who testified before this Grand Jury had a tendency toward recidivism. One informant was convicted of two counts of arson in 1975, convicted in 1979 for attempted rape, convicted of rape in 1981 or 1982, rearrested in 1985 and thereafter convicted of multiple counts of rape, kidnap, robbery and other sexual offenses. Others had criminal records from the early 1970s. Most of the informants who testified were still, or again, incarcerated at the time of their testimony before the Grand Jury.

These recidivistic tendencies comported with the profile of other informants derived from other non-informant testimony, documentation and transcripts of interviews presented to this Grand Jury.

By definition, jail house informants have been deprived of a substantial and cherished right -- their liberty, their freedom. Because of the serious nature of the charges pending against informants, and their history of recidivism, informants often face potentially lengthy prison terms.[4] As such, these individuals are highly motivated to curry favor with the authorities perceived to have control over their destiny.

The myriad benefits and favored treatment which are potentially available to informants are compelling incentives for

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[4] Prior convictions for serious felonies lengthen the imprisonment an informant will face upon a conviction for a pending charge. See, e.g., Penal Code Section 667.

them to offer testimony and also a strong motivation to fabricate, when necessary, in order to provide such testimony. This premise is a basic concept to the understanding of the jail house informant phenomena. The courts have sometimes lacked adequate factual information to fully realize the potential for untrustworthiness which is inherent in such testimony because of the strong inducements to lie or shape testimony in favor of the prosecution.[5] [6]

Jail house informants want some benefit in return for providing testimony.[7] The more sophisticated may attribute their

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5 "Whatever consideration a jailhouse informant may expect for testifying, the direct, compelling motive to lie is absent." People v. Alcala, 36 Cal.3d 604, 624 (1984). In Alcala, the court rejected the defendant's contention that jailhouse informant testimony should be corroborated, just as accomplice testimony must be. The Legislature in 1989 amended Penal Code Section 1127a(b), requiring courts to give cautionary instructions on the testimony of jailhouse informants upon a party's request.

6 "No Deputy [District Attorney] has ever supposed that such testimony springs from the prisoner's sense of good citizenship or moral duty." -- (From District Attorney Special Directive 88-12, November 4, 1988).

7 Informants are thrust into a jail population which generally disdains inmates who cooperate with law enforcement against another defendant in a case unrelated to his own. Their physical well-being, and even life, is at risk merely because they are deemed to be an informant.

Official recognition of this threat to informants is evident in the jail policy of segregating informants from other inmates. Informants testified that they will take measures to hide their informant status from other inmates by turning their wristbands around or scratching the K-9 designation off the wristband. According to informants who testified before the Grand Jury, bombs made of matches have been thrown, and prison-made guns have been fired at inmates for informing or attempting to inform on other inmates.

Nonetheless, informants choose to break the code within the prison population and provide information, and

willingness to testify for law enforcement to other motives, such as their repugnance toward the particular crime charged, a family member having been a victim of a similar occurrence, the lack of remorse shown by the defendant, or other explanation to account for their assistance to law enforcement. Nevertheless, in the vast majority of cases it is a benefit, real or perceived, for the informant or some third party that motivates the cooperation.

The benefits can range all the way from added servings of food up to the ultimate reward, release from custody. According to an officer at the central jail, inmates who provide information about problems within the jail might be rewarded with an extra phone call, visits, food or access to a movie or television. A former high ranking official with the California Department of Corrections described:

> "[Informants] want something, especially if you are that kind of a person and I don't know anybody that has ever come forward with information inside of a prison or criminal justice system that didn't want something for himself or for some friend of his."

Following are some of the informants' own allegations of benefits according to their Grand Jury testimony:

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testify, against other inmates. Informants become outcasts within the jail population.

1. For past cooperation, an officer arranged for the informant's transfer to a cell with a TV, coffee pot and other amenities generally unavailable to other inmates.

2. A benefit bestowed upon a third party. According to one informant, as part of his bargain for his activities as an informant, his girlfriend who was being held on a million dollar bail was released on her own recognizance.

3. Another informant believes that law enforcement officials, knowing that the action was not justified, had witness-protection money paid to his wife.

4. Another informant testified that during the time he was cooperating with the authorities on a high publicity case, the Deputy District Attorney dropped charges filed against him for assault on a police officer and burglary, and agreed to a three year sentence on his remaining robbery charge. Thereafter, three law enforcement officers allegedly appeared at his sentencing hearing requesting that this informant be sentenced to only one year in the county jail, plus three years probation, because of his cooperation with law enforcement.

5. An informant claimed that his sentence was reduced by one year, thereby allowing his immediate release, in exchange for his fabricated testimony.

6. Another claimed that the Los Angeles Police Department arranged for his release four months early.

7. One informant claimed that he was released ten days after his sentencing on a manslaughter charge. Allegedly, based

on representations of a prosecutor, the sentencing court ordered that his time to be served for the manslaughter charge would run concurrent with his time, almost completely served, on an unrelated burglary charge.

8. One informant alleged that his sentencing had been postponed until immediately after testifying against another defendant. According to the informant's testimony, the Deputy District Attorney walked to the courtroom next door to the informant's sentencing hearing immediately after the informant testified, in order to represent to the court the informant's participation.

9. Informants have come to expect other types of benefits accruing from their informant activities. Informants testified to receiving pocket change (from $10-$50) from various officials with whom they work, greater access to telephones, coffee, candy, donuts, cookies and "smokes."

10. Two informants testified to instances where they or some other informant was transferred to a jail perceived to be more desirable in exchange for his informant activities.[8]

11. Another informant testified that based on his informant status, he sought and received a transfer from a cell

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[8] Law enforcement officials confirm these movements. One informant was successful in being moved from the county jail to the Long Beach Jail. After his testimony he claimed he was not safe at the county jail and then was moved to the Burbank Jail. He became disruptive at that facility, destroying property and was thereupon transferred back to the county jail.

placement where he was being regularly beaten by a Deputy Sheriff and his lackey.

12. One informant testified that informants are spared the disciplinary measures imposed upon other inmates for the same type of activity.

13. Another informant testified that he was taken to lunch outside the jail facilities.

14. One testified to having received the equivalent of several thousands of dollars and housing and expenses once released from jail; for at least eight months he received free rent valued at $525 per month, $200 per other living expenses and $100-$300 intermittently as requested.

15. An informant testified that he received free rent at $300 per month for seven months; the informant claimed he received this money after his release by telling the authorities that his neighbors, who knew from the newspapers that he was an informant, were harassing him. (See Part IX of this report for further discussion regarding informants' receipt of funds.)

16. An informant allegedly received $300 for his testimony in one case and $900 paid to his wife for his cooperation in another.

17. An informant testified to his belief that another informant's family received money for the informant's services.

B. INFORMANTS' NON-COMMITMENT TO TRUTH.

Generally, informants are incarcerated for violation of society's laws. By becoming an informant they violate the code of the criminal world, the so-called "honor among thieves." They are not bound by the values of either community, that of the law abiding or that of the criminal.

Informants do not tend to follow mores. According to one informant, "in the old days" informants abided by a rule not to act as an informant against other informants, but presently informants "will even book their own mother."[9]

This disinclination to follow societal rules extends to their willingness to defile an oath. Informants testified before the Grand Jury to repeated instances of perjury and providing false information to law enforcement. With one exception, each informant who testified claimed he himself had committed perjury or provided false information incriminating another inmate one or more times.

In the mid-1970s, one informant even falsely confessed to a crime he had not committed. In 1979, a psychiatrist described this informant as a pathological liar. According to the informant, the prosecution thereafter used his perjured testimony in five or six cases.

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[9] "Book" is a term used by informants to mean "to provide law enforcement with evidence against an inmate." Informants testifying before the Grand Jury tended to use this term when the information provided was fabricated.

Another informant claims that he has testified for the prosecution in Los Angeles County 10 times, and provided information to law enforcement over 100 times. Documentary evidence revealed that in 1979 this informant failed a polygraph test conducted by the Long Beach Police Department concerning a tip on a case in which the informant was neither a suspect nor a witness. In that same year, this informant notified the Los Angeles District Attorney's Office that Deputy District Attorneys were setting-up suspects and paying off witnesses. The informant identified a Deputy District Attorney who suborned his perjury. Later in the year, the informant filed with the courts two separate petitions, both contending that various governmental agencies were failing to investigate his allegations of subornation by law enforcement officials of perjury. During the Attorney General's investigation of these allegations, another polygraph was to be administered to the informant. The informant changed his allegations immediately prior to the polygraph examination, rendering any polygraph evaluation inappropriate. The Department of Corrections also notified the Attorney General's Office that this informant was "a real flake." This individual's career as an informant was just beginning to blossom.

The informants also testified that other informants had lied under oath or misreported information to law enforcement officials. Cases where there is a battle of informants at trial -- some informants testifying for the prosecution and others

attempting to discredit the prosecution's informants -- were the subject of three informants' testimonies before the Grand Jury. Two informants testified to having "switched sides," i.e, offering evidence favorable to the prosecution and later offering inconsistent evidence favorable to the defense.[10] One informant testified that he was physically assaulted by two other informants for disclosing the falsehood of these other informants.

In highly publicized cases, informants declared that "if we get this case, we'll all go home" -- according to one informant. That informant explained how informants will work as follows: One informant acquires some information on the case. He may then relay that information to another informant who disseminates it to other informants. Each informant will then try the story out on police, changing a word here and there for slight variation. When an inmate previously unknown to other informants arrives in the informants' area in the jail, the informants will discuss "booking" him all day.

An appalling number of instances of perjury or other falsifications to law enforcement during the past ten years were described by informants. Undeniably, a significant number of informants do not tend to feel constrained by external or

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[10] The Grand Jury heard testimony that informants also seek favors when testifying for the defense, either from the defendant himself, his counsel or his family.

internal values to refrain from lying, regardless of the consequences to other inmates.

C. THE INFORMANTS' VIEW OF HOW "THE SYSTEM" OPERATES.

The informants' perception of their role is significant to the evolution and continuation of the informant system in Los Angeles County. Whether or not true, many informants believe that law enforcement officials have directly or indirectly solicited them to actively conduct themselves to secure incriminating statements from other defendants. Some informants claim that various law enforcement officials supply informants with information about crimes, in order that they (the informants) may fabricate a defendant's confession.

In exchange for providing evidence for the prosecution, the informants expect significant benefits from the government. Based on this expectation, informants supply information favorable to the prosecution, often irrespective of its truth.

Informants' claims concerning the pervasiveness of perjury and falsifications reflects a belief, at least among some informants, that this is how informants ply their trade. The belief that this is how the informant game is played can only encourage other informants to follow suit.

1. Indoctrination into the World of Informants.

Informants claim that experiences with other informants and/or with certain law enforcement officials led to their informant activities. The following are examples of informants' claims as to how they became involved in the informant world.

Certain informants claimed to have learned from other informants in the informant tank:

Claim No. 1:

One inmate, before he became an informant, was inexplicably placed in the informant tank one day. Thereafter, an informant with whom he had been placed, appeared before the court and falsely testified against him.

Claim No. 2:

After his arrest, this informant cooperated with police by teaching them how burglars operate. He was then housed with other informants. Another informant then told him that the other informants were trying to "book" him. This informant, who the others were trying to "book", had no inkling what these other informants were trying to do to him.

Claims of Informant No. 3:

While residing with the other informants, this informant observed that informants who had serious charges pending and several prior convictions, would have charges dismissed, and even receive money, after cooperating on some other defendant's case.

Other informants claimed to have been pressured by law enforcement officials to become an informant:

Claim No. 4:

A Sheriff Liaison Officer made constant announcements directed to the inmate over the public address system in the jail in order to create the appearance that the inmate was an informant.[11] These announcements were designed to create the impression among the jail population that this inmate was an informant. Once an inmate is known in the jail population as an informant, that inmate will be forced to seek the security provided by protective custody offered to informants. After that inmate is among other informants, he may also begin to perform as an informant.

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11 A Sheriff Liaison Officer is a Sheriff Deputy who is responsible for placement and classification of inmates at the Hall of Justice Jail or the Central Jail.

Two informants claimed to have acceded to requests by law enforcement officials to fabricate a confession incriminating another:[12]

> Claim No. 5:
>
> The informant was initially arrested in connection with a burglary. Informant admitted committing the charged crime as well as numerous other burglaries, but denied involvement in one particular crime. Police officers began feeding the informant information about that crime, taking him to the scene of the crime (without knowledge of the informant's counsel) and showing him pictures of the victim and the layout of the house. Then the police officers threatened to claim to have evidence of the informant's fingerprints at the scene of the crime, unless the informant would say that he was the lookout for two acquaintances suspected of having committed the crime. The informant falsely confessed to being the lookout during the crime. The prosecution allegedly never charged the principals

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[12] Each informant who participated in the investigation after the appointment of Special Counsel in December 1989, was told at the onset that Special Counsel had no authority to secure special favors or treatment in exchange for the informant's cooperation. Following their testimony a number of the informants phoned the office of Special Counsel, requesting further contacts. These requests were not pursued by Special Counsel staff.

identified by the "confession," and later admitted to never having found the informant's fingerprints.

Claim No. 6:

Police promised this informant benefits and threatened him with physical torture unless he cooperated providing evidence against his prior employer, among others, in connection with certain check-cashing robberies and murder. The informant was taken out of jail numerous times, shown the scenes of various crimes and given police files. During one trip in the police car, the informant made a taped confession identifying the targeted suspects. The informant merely repeated on-tape statements fed to him off-tape by police officers.

Informants also testified to the pressure from law enforcement to remain an informant:

Claim No. 7:

After fabricating a confession known by law enforcement to be false, one informant attempted to withdraw from further services as an informant. Deputy Sheriffs refused to accept his efforts to withdraw, placing him with other targeted defendants and demanding compliance

if the informant expected to receive fair treatment in his own case.

Claim No. 8:

Another informant told the authorities that he was no longer interested in acting as an informant. Nonetheless, the authorities continued to plant him for the purpose of obtaining incriminating statements against certain defendants. When he failed to obtain such statements, he was stripped of his protective status as an informant, and placed in general population.

Claim No. 9:

A Deputy Sheriff purposefully broke this informant's prescription glasses because the informant intended to expose the informant system in Los Angeles County, and law enforcement's complicity.

The pressure to maintain the informant system allegedly also comes from other inmates:

Claim No. 10:

An informant was beaten by two other informants for attempting to tell the authorities that those two informants were lying.

Claim No. 11:

Informants feel hostility from other informants for participating in the Grand Jury investigation into the use of jail house informants in Los Angeles County.

2. Mission to Acquire Evidence.

According to several informants, Sheriff Liaison Officers have total discretion to place informants where they see fit. One informant testified that one Sheriff Liaison Officer would disregard instructions from his superiors and blatantly admit to ignoring court orders.

Several informants testified that they were "sent on a mission" by law enforcement officers to acquire information from other defendants. Informants testified that they believed law enforcement officials explicitly or implicitly would request them to obtain information from other defendants.[13]

The following represents some of the ways informants claim law enforcement officials ask them to obtain incriminating statements from other inmates:

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13 Informants believe that the Sheriff's Department changed informants' wristbands. Several informants testified to having the wristbands temporarily changed from a K-9 status to a K-10 while in the company of a defendant classified as a K-10. One informant testified that an official, while changing his wristband to a K-10 designation, admitted that the informant should still be labelled a K-9.

1. Being placed on a bus or in a hospital room with a defendant in a highly publicized case;
2. Having a Sheriff Liaison Officer describe a particular inmate as "hot";
3. Being given advance notice by an official that a new inmate is arriving.

One informant stated that after an official announces the expected arrival of a new inmate, all the informants would discuss with each other how to "book" the new arrival.

Another informant testified to confirmation of his belief that law enforcement placed him with defendants with the expectation of supplying information by the following incident:

> Shortly after being placed with a particular defendant, he merely stated "yeah" to the Sheriff Liaison Officer passing by his cell. The Sheriff Liaison Officer then patted him on the back, gave him the phone number of the prosecutor on the defendant's case, and removed him to another cell.

Another informant testified to his belief that leaving an informant alone in an office with a copy of another defendant's papers or a police report, is an oblique way of asking him to assimilate the information contained in the writing for future use.

No informant testified that he was cautioned not to directly or deliberately elicit information from the targeted defendant. Assuming that law enforcement officials did admonish an informant not to directly elicit evidence from another inmate, informants are unlikely to heed the instruction. The widespread belief held by informants that law enforcement officials solicit fabricated testimony would tend to negate the effect of any such admonishment. Furthermore, the favorable treatment informants expect for obtaining information is an overwhelming incentive to disregard such an instruction. The willingness of many informants to perjure themselves, and otherwise lie, will prevent these informants from acknowledging their roles in eliciting information from a defendant.[14]

3. Means of Procuring Information.

The methods used by informants to acquire information about another defendant's case are numerous. The following are allegations made by informants concerning ways they obtain information on cases:

a. Law enforcement officials assigned to a case,

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14 Should defendant contend that the informant was a government agent, the word of the defendant will be pitted against the word of the informant. The defendant's testimony may very well be given less credence based on the perception that the defendant has a greater motive for lying.

including Deputy District Attorneys, supply information on their case to informants.

Copies of arrest reports, case files, and photographs of victims are shown to informants. Police remove informants from the jail and drive them to the scene of the crime charged against the targeted defendant. Law enforcement officials also orally equip informants with information necessary to falsify a defendant's confession.

Sometimes law enforcement are less blatant when feeding informants facts about a case. An example of the indirect method of furnishing information arises after an informant denies hearing incriminating evidence. The official then responds, "Don't you remember about . . .", supplying critical facts about the particular case. The informant can then piece together enough details of the crime to fabricate a confession.

After one informant truthfully reported hearing a defendant confess, law enforcement officials supplied him with additional facts about the crime. The informant interpreted this as a request to bolster his testimony against the defendant, a request to which he willingly complied.

b. Informants impersonate law enforcement officers to tap into knowledge of facts already in law enforcement's hands.

Informants made allegations that they sometimes memorize badge numbers of police officers so as to be able to impersonate an official authorized to obtain the information requested. According to one informant, there was, at least at some time, a phone number that informants used to tap into a computer containing law enforcement information.[15]

c. The coroner's office is another source of data relating to crimes.

Facts such as the type of weapon used and the location of the victim's injuries may be identified from this agency.

d. Informants rely on the media as a source of information on a case.

e. Friends and relatives of informants supply information on various cases.

Informants ask non-incarcerated associates to attend the targeted defendant's court hearings, such as his preliminary hearing, to gather information on a case. The informant's friends and relatives can also provide other private investigative services.

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15 The investigation attempted to trace this but could find nothing which would support this claim as described.

f. Informants read transcripts from the targeted defendant's court hearings.

g. Informants share knowledge about case facts among each other.

In one such instance, each of a number of informants presented a police detective with slightly different versions of the facts which the defendant supposedly confessed. The detective allegedly corrected each informant where the informant's story deviated from the facts known to the authorities. The informants then shared with each other the detective's feedback, thus allowing the informants to develop knowledge of the true facts.

h. Informants also procure information on a crime from the defendant himself, and then use that information to falsely accuse the defendant of having confessed.

In one case, a defendant described a crime he had witnessed. The informants then used that knowledge to claim the defendant admitted committing the murder. In another incident, an informant lured a defendant into writing down the allegations

against him. The informant allegedly modified the language of the statement slightly and professed it to be a confession.[16]

In sum, informants profess, and indeed have demonstrated, the astonishing ability to discover information about crime in order to concoct a confession by another inmate. Their incarceration does not prevent them from accessing information on other defendant's cases. Indeed, their familiarity with the criminal justice system permits them to fully exploit information held by its various components.

D. ELEVATED STATUS OF INFORMANTS.

Some inmates were able to achieve an elevated status because of their activities as informants. One top administrator acknowledged in his testimony to the Grand Jury his expectation that a criminal defendant, particularly one with a bad criminal history, would not be able to contact prosecutors with the District Attorney's Office, but instead be referred as a matter of course to the public defender. The Grand Jury heard evidence that informants, at least certain informants, were permitted an unusual degree of contact with prosecutors.

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16 According to one defense attorney, it is particularly perilous to place a juvenile, who will be tried as an adult, with adults because of the ability of adults to prey on the naivete of the juvenile. Obviously, less astute inmates could be similarly tricked. Such inmates are an especially enticing opportunity to a wily informant - who might, for example, offer to assist the defendant in his case and thereby elicit the defendant's knowledge of law enforcement's version of the crime.

The following represents some evidence of the elevated status afforded to some inmates because of their relationship with the District Attorney's Office as informants:

Example No. 1:

One top administrator in the District Attorney's Office recalled for the Grand Jury an incident in 1986. The administrator received a call "out of the blue" from a jail house informant claiming to be unable to reach a certain Deputy District Attorney. The informant stated that he was seeking a favor from that Deputy District Attorney, and asked the administrator to help him instead. The informant identified himself as "a snitch over here in the county jail" with "the assertiveness that one might do when presenting credentials that you were a member of the F.B.I."[17]

Example No. 2:

According to the testimony of one deputy, one of her fellow deputies complained that his superior had appointed him to act as one informant's "social secretary," to accept all of the informant's calls from the jail and act as an intermediary between the informant and the District Attorney's Office.

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[17] According to the testimony of another administrator, soon after his appointment to a new position, he received a phone call from an inmate who introduced himself as "perhaps the most well-known informant in Los Angeles County."

Example No. 3:

Testimonial and documentary evidence also revealed that another high-level management official with the District Attorney's Office complied with an informant's request for letters written to the Board of Prison Terms. An informant drafted a letter to the Board of Prison Terms for signature by a high-level management official setting forth the informant's alleged cooperation in nine cases in Los Angeles County. The informant sent the draft of the letter to a Deputy District Attorney. This deputy revised the letter eliminating reference to one case, and forwarded the revised copy of the letter on to the management official. The management official testified that he believed another official verified the contents of the letter. Included in the list of cases in which the informant cooperated was a case in which the judge declined to rely on the informant's testimony, questioning his credibility.

Example No. 4:

One administrator of the District Attorney's Office, newly appointed at the time of the incident, testified to the following: An informant asked the administrator to "present a matter" to a particular judge. The administrator declined to so act since the informant was represented by counsel on a pending case. He agreed, however, to "present" a petition drafted by the informant to a particular court. The court refused to review the

petition, stating that the petition should be filed where the defendant's (informant's) case was pending.

Example No. 5:

One administrator testified that he instructed a deputy to appear at a hearing on an informant's petition for a writ of habeas corpus "to make sure [the informant] got a fair hearing."

Other unusual actions by prosecutors in favor of informant/defendant include efforts to obtain an informant's temporary release from custody. The following are examples brought to the Grand Jury's attention:

Example No. 6:

In 1981, a deputy obtained two or three orders for an informant's release from custody for five days at a time. The deputy testified that such orders would have only been sought under instruction from his superiors.[18]

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[18] The deputy testified that the releases would have been sought in furtherance of a police investigation, but police officers involved testified that they neither sought nor needed informant's release from custody for any investigation.

Example No. 7:

Another deputy testified that in 1986 an informant began calling him recounting the number of cases in which he was cooperating with the District Attorney's Office. After verifying the informant's cooperation with a superior, the deputy was instructed by the superior to walk the informant to court and inform the court of the informant's usefulness to the District Attorney's Office. The court executed an order temporarily releasing the informant on his own recognizance. The informant was arrested while out of custody pursuant to this court order.

Example No. 8:

According to testimony, in 1986 pursuant to the direction of a management-level official, another deputy appeared before a judge at a hearing for the temporary release of an informant. The deputy informed the court that this particular management-level official had personally approved the petition for the court's release; that the informant had personal problems outside the jail; that the informant was incarcerated on a parole violation; that he was a prosecution witness in several high-profile cases; and that another judge had executed similar release orders.[19] Notwithstanding that the court had no legal file revealing the informant's case history and that no proper declaration or affidavit or other evidence of good cause was

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19 The supervisor testified that the deputy misunderstood that he was only to represent the District Attorney's Office at the hearing.

submitted, the judge ordered the release of the informant for five days.

After the informant's parole officer contacted the court to object to the informant's release, the court revoked its release order. The informant returned to custody.

A few days later another deputy, upon instruction from the same management-level official, appeared before the court on the informant's motion for release on his own recognizance in conjunction with a writ of habeas corpus. This deputy understood, according to his testimony, that he was to aid the informant to obtain a release from custody for safety reasons (i.e., until the authorities could supposedly find a safe jail for him). The deputy approached the court with a minute order; no petition for a writ was filed with that court. Neither was the judge informed that within the past week another judge had ordered this informant released on his own recognizance and then revoked the order. (The deputy claims that the management official never informed him of this fact.) Records indicate that the court had no legal file on the informant's case. The informant was temporarily released.

IV. THE DEFENSE ATTORNEYS

A. SPECIFIC CASES.

The Grand Jury heard testimony from numerous defense attorneys, including publicly and privately retained counsel, about their experiences in cases in Los Angeles County involving jail house informants. The attorneys were uniformly critical of the use of such informants in their cases.

The general feeling among the defense attorneys was that jail house informants seemed to invariably be available to testify in important cases. One attorney testified she had conducted a study of all cases from 1978 forward where defendants received the death penalty and had determined that jail house informants were used in about one-third of these cases.

The defense attorneys described various problems caused by jail house informants:

Case No. 1:

An attorney described his experience in a case involving jail house informants. The attorney testified most of his cases were "white-collar" matters and that prior to this

case he had had little experience in dealing with jail house informants.

The attorney's client witnessed an altercation in the general population section of the Central Jail and was classified as a K-9 and placed with other K-9's at the Hall of Justice Jail. At the client's preliminary hearing, eight jail house informants (all K-9s) testified for the prosecution and claimed the client had made incriminating statements to them.

The attorney said the "onslaught of informants" was "the most incredible thing I had even seen." During the preliminary hearing, the attorney received calls from other jail house informants who claimed to have information. The attorney testified:

> "I would go down to the Hall of Justice Jail to interview these people, and it seems like they were sort of playing off one side against the other.
>
> "They were either asking for special things or telling me that other informants were lying. It was the most bizarre experience I have ever gone through, in terms of these people giving me statements, then repudiating the statements; then the witnesses being called against us."

The attorney called a jail house informant as a witness during the preliminary hearing. The informant testified about

the "informant system" in the jail. He described how jail house informants obtained information which they used to concoct confessions and the unwritten understanding between prosecutors and informants as to the benefits to be derived from their testimony. The attorney likened this to a "secret society" where even though nothing is said, the prosecutors and the informants know that some benefit will flow to the informant for his testimony.

The defense attorney explained it was extremely difficult to try to impeach jail house informants when there was nothing in the record relating to benefits they were to receive from their testimony.

In his contacts with the informants, the attorney became concerned that the informants could try to set him up by lying about his conversations with them. The attorney explained:

> "I'm thinking to myself, am I being set up here by these informants? Are they going to try to prosecute me for suborning perjury or something?
>
> "It gets real frightening. It's a world you don't want to be in because you become at the mercy of these people."

The preliminary hearing became "a dream world where everybody was either lying or fabricating or then recanting a prior lie or then making something up. It got to be a nightmare where you couldn't believe one person or the other."

Based on this experience, the attorney believes that the law should forbid the use of any oral admission or confession allegedly obtained by a jail house informant from a defendant in custody.

Case No. 2:

A defense attorney recounted his experience in a case which involved a jail house informant. The attorney's client was charged with murder. An informant claimed that during a twenty minute period when he was confined with the client in a holding cell, the client made a detailed confession, which included the client's motive, how the murder occurred, where the body was dumped, and other facts.

A prosecutor on the case told the attorney she did not trust the informant and he would not be used as a witness. The case was later transferred to a second prosecutor, who called the informant as a witness. The attorney recalled the prosecution's theory was inconsistent with the informant's testimony regarding the type of gun used in the murder, the location of the murder, and the client's motive.

The attorney's client was convicted. The attorney believes the case was a "finely balanced case" and that the informant's testimony likely influenced the jury's verdict. The attorney believes "any time you get anything that smacks of a confession, whether it is to a police officer or . . . your

cellmate or whoever, that juries place a very strong reliance on that kind of statement."

Case No. 3:

An attorney testified he represented a defendant in a case where two jail house informants offered to testify for the prosecution, but the Deputy District Attorney believed they were untruthful and declined to use them. The informants then offered to testify for the defendant, but the attorney also believed they were not credible and refused to use them.

Case No. 4:

An attorney described a case in which an informant testified against a defendant at a preliminary hearing. After testifying, the informant demanded his immediate release. The prosecutor offered to drop some charges which were pending against the informant, but refused his demand for release. The informant thereafter wrote the prosecutor a letter in which he said that the more he thought about it, the more he believed his conversation with the defendant never took place.

B. OTHER CONSIDERATIONS.

Two attorneys, testified that they usually refused to allow a defendant in custody to have copies of case materials such as transcripts and police reports pertaining to his case.

The attorneys said they feared other inmates would obtain access to such materials and use them to fabricate a confession.

The threat that jail house informants might use a defendant's papers against him greatly inhibits the ability of the defendant and his counsel to prepare for trial. It is important for defendants to know what is being said about them in order to cooperate fully in their defense. The Deputy Public Defender testified that the refusal to provide copies of case materials causes "a strain on the attorney/client relationship because they [the defendants] feel that they can't trust us because we won't give them the paperwork." The lack of trust is often magnified in cases involving the public defenders because many defendants harbor a latent distrust of counsel who are provided at public expense.[20] The Deputy Public Defender explained:

> "Some of them [the defendants] want to see it [the evidence against them] in black and white rather than take it from this counsel they didn't pay for [and] that they are not sure they trust anyway, and so if you do want them to be able to see this report in order to help you, you have to sit there

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[20] The attorney said that many clients "although not successful, believe in the capitalist system. They believe you get what you pay for, and since they have personally paid nothing for a public defender, they often believe that that means the public defender is worthless." He explained the public defender often has to spend a great deal time with a defendant in order to build the defendant's confidence in him.

some point in time had been represented by the Public Defender's Office. The introduction of a jail house informant often created a conflict of representation which caused the Public Defender to be disqualified and withdraw from the case. The attorney described two cases where this had occurred. In one case, the attorney was at a trial setting conference and was ready to try the case when advised that a jail house informant would be called as a prosecution witness. Since the Public Defender's Office years earlier had represented the informant, the attorney was forced to withdraw from the case. In the second case, the Public Defender learned that the prosecution was going to call a jail house informant immediately before the voir dire of the jury was to commence. The Deputy Public Defender had expended a great deal of time and energy preparing for the case, and was very disappointed at having to withdraw.

The attorney also described the difficulties faced by a defense attorney who attempts to investigate an alleged jail house confession by his client. The attorney must determine where the alleged confession occurred and what other inmates might have been in a position to hear the confession. Due to the frequent movement of prisoners, the difficulties encountered in investigating jail house confessions are severe and become nearly impossible with the passage of time.

really across the table or the bar[s] from them while they read the police report. Because otherwise there is no way that they can really help you. [Sometimes] reading it can help jog their memory and give you some information you really need to investigate to help them in their case."[21]

The Deputy Public Defender also testified that the use of jail house informants often resulted in delays of cases and considerable wasted public expense. He explained that Public Defenders are often assigned to represent defendants in death penalty cases. These cases require extraordinary preparation and investigation. The Public Defenders and investigators visit the crime scene, interview witnesses, examine scientific evidence, often hire psychologists, and begin preparation for the potential penalty phase by contacting and interviewing members of the defendant's family. The attorney likened the case preparation to preparing a detailed biography. Much of the work is done very early in the case.

It was the attorney's experience that jail house informants were often introduced into a case after considerable time and energy had been expended by Public Defenders. The jail house informants often had lengthy criminal backgrounds and at

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[21] This burden of non-access to one's papers is unevenly placed only upon those unable to afford bail, assuming their eligibility.

V. THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

A. ANY CONSIDERATION OF THE JAIL HOUSE INFORMANT PROBLEM IN LOS ANGELES COUNTY REQUIRES SOME UNDERSTANDING OF THE OPERATIONS OF THE SHERIFF'S DEPARTMENT.

The Los Angeles County Sheriff's Department is a police agency which is responsible for maintaining police services in unincorporated areas of Los Angeles County, and in municipalities which contract for its services. The Sheriff's Department is also responsible for maintaining order in the six facilities which comprise the Los Angeles County jail system: the Central Jail, the Hall of Justice Jail, Biscailuz Center, the Peter J. Pitchess Honor Rancho, Mira Loma, and the Sybil Brand Institute (which houses women prisoners).

The operation of a jail system of this size is an enormous and complex undertaking. Each new Deputy Sheriff is ordinarily assigned to work in the jail system for about one year. At the present time, approximately 2,800 deputies and other Sheriff's personnel are employed in the jail system.

The Grand Jury's investigation of the use of jail house informants focused on the Central Jail and the Hall of Justice Jail. The Los Angeles County Central Jail, located at 441

Bauchet Street, houses more than 6,800 prisoners and is believed to be the largest custodial facility of its type in the free world. The Hall of Justice Jail, at 211 W. Temple Street, houses approximately 1,800 inmates. These facilities provide housing primarily for unsentenced male prisoners who are charged with non-bailable offenses or who are financially unable to post bail. Some of the inmates are serving sentences, some even under sentence of death, and are housed in the jail for various other proceedings. Others may have been transported from prison to the jail where they wait to be called as witnesses in on-going matters.

In addition to maintaining order in the jail system, the Sheriff's Department is responsible for transporting inmates throughout Los Angeles County to various court appearances. Approximately 2,000 prisoners are transported daily to various court buildings where they are housed in holding cells before and after their court appearances.

The Grand Jury examined claims that jail house informants had obtained confessions from fellow inmates in a wide variety of locations in addition to their assigned cells, including in food lines, on buses,[22] in the day room, in the jail

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[22] There appeared to be an unusual number of claims of defendants confessing on buses while being transported to and from court. Some of these confessions were alleged to have occurred in very short time intervals, such as during movement from the Hall of Justice Jail to the Central Jail (both located within the central downtown area). Although transportation records reflect the identity of inmates on a bus, the records do

infirmary, and in courthouse holding cells. Due to the large number of prisoners, the limitations of space, and the constant movement of the prisoners to court and throughout the jail, it is virtually impossible to, at all times, completely isolate particular inmates from would-be informants.

B. INMATE CLASSIFICATION PROCEDURES.

The Los Angeles County Jail houses a wide variety of inmates who require special handling, including: members of rival gangs, gang drop-outs (who are endangered by present gang members), homosexuals, transsexuals, present and former law enforcement officers and relatives of those with law enforcement affiliations, escape risks, suicide risks, accused child molesters, defendants accused in high publicity cases, and informants.

To maintain order and provide for the safety of the prisoners, all inmates upon entering the jail system are brought to the Central Jail and processed through the Inmate Reception Center ("IRC"), where they are classified. An inmate's classification determines where and with whom the inmate will be housed, and whether the inmate must be escorted separately from other inmates.

An inmate is designated for special handling based on a form entitled "Inmate Special Handling Request" which is filled

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not show where the inmates were seated.

out by jail personnel or an outside law enforcement officer. In addition to the inmate's name, booking number, and charges against him, the form provides space for the names and booking numbers of inmates who are to be kept away from the subject inmate, and the reason for the requested special handling status. Jail Liaison Deputies are responsible for verifying the information on special handling requests and making recommendations regarding inmate classifications to the IRC Watch Commander, who has final authority for approving all special handling requests, and who generally relies on the recommendations of the Jail Liaison Deputies.

Inmates receive colored wristbands as part of the classification process. A white wristband denotes an inmate in the jail's general population; blue wristbands are placed on inmates who are considered to be suicidal or who are believed to have mental problems; red wristbands are assigned to suspected escape risks, condemned prisoners, "noteworthy inmates" (i.e., inmates whose cases receive an inordinate amount of publicity), dangerous inmates (who have assaulted or resisted officers), and informants. The color of an inmate's wristband immediately alerts a deputy to whether the inmate must be escorted separately from other inmates.

In addition to colored wristbands, inmates receive special handling codes designated by letters and numbers. For example, an inmate labeled an "E" is considered to have escape tendencies due to a prior escape or attempted escape. A "K"

designation means "keepaway." K-1 means the inmate should be kept away from all other inmates except other K-1s (this classification is used primarily for inmates with significant relationships to law enforcement agencies or employees). Inmates classified K-2 through K-5 are housed in specific sections of the general population along with other similarly numbered inmates, separating them from inmates of unlike numbers who are housed in other general population sections. (Co-defendants are frequently separated by using K-2 through K-5 designations. For example, a K-2 designation might be given a defendant who agrees to testify against a co-defendant, who might be classified as a K-3.)

A K-6 designation is given to an inmate being held on an extremely high bail. The designations of K-7 and K-8 are reserved for members of different gangs. Efforts are made to house gang members together and to keep them separate from other inmates.

Pursuant to long-standing policy, informants are designated as K-9s and are supposed to be housed together, away from all other inmates. The designation K-10 is reserved for inmates who are to be kept away from all other inmates, including other K-10s, "as much as practical." As a general rule, inmates charged in notorious cases are classified as K-10s.

1. The Classification of Informants (K-9s).

There are no clear guidelines to determine whether an inmate should be classified as an informant (K-9). In an official response to the Grand Jury, the Sheriff's Department stated that the decision to classify an inmate as an informant is "predicated on a perception of jeopardy due to his informant activities."

One Jail Liaison Deputy testified that an inmate is given a K-9 classification when he has a "background of being an informant for police agencies" or if he has testified against another defendant. A second Liaison Deputy testified the K-9 classification generally means the inmate "is an informant or has been an informant at one time . . . or he's going to testify in a criminal case [for the prosecution]." The deputy explained, however, the mere fact an inmate is going to testify against a former crime partner does not require a K-9 classification.

A supervisor of the Jail Liaison Deputies testified that the classification of an inmate as a K-9 depends on the types of information the inmate has provided, the notorious nature of the case on which the inmate provided information, and the degree of risk created if the inmate was placed in the jail's general population.

2. Questionable Classifications of Inmates as Informants.

The absence of clear guidelines for informant classification has led to the classification of some inmates as informants under questionable circumstances.

Case No. 1:

In this case, an inmate was arrested on drug charges and was unable to post bail. Shortly after his arrest in mid-1986, the inmate was classified as a K-9 allegedly because he was a witness in a murder investigation. The inmate was placed in the informant section with other K-9s. Subsequently, three informants advised the police that the inmate had made statements which implicated him in the murder. Ten days after being classified as a K-9, the inmate was reclassified as a K-10, and moved out of the informant section.

Case No. 2:

In this case, an inmate in the general population witnessed an altercation between two other inmates. The inmate testified at a hearing involving the altercation. He was then reclassified as a K-9, and placed in the Hall of Justice Jail. Thereafter, eight informants at the Hall of Justice claimed to have obtained incriminating information from the inmate, and testified at the inmate's preliminary hearing.

Case No. 3:

In this case, a defendant in a highly publicized murder case was arrested in 1983 and housed in the jail's general population. A few months later he was released. In 1988, he was again arrested on the same charges. A Los Angeles Police Department detective requested the defendant be classified as an informant allegedly because years earlier he had testified in a receiving stolen property case and had given information to a Los Angeles Police Department detective about auto thefts. A Jail Liaison Deputy approved the request. A second Jail Liaison Deputy questioned the defendant's informant classification, believing that placing the defendant in with informants would be like throwing "a lamb into the lion's den" because the informants would say he had confessed to them.

Q: And that's what kind of concerned you; knowing what you did about [the defendant], you felt initially that this was a case where clearly [the defendant] should be classified as a K-10?

A: My first impression was [that] making him a K-9, sending him to the Hall of Justice, would have been like throwing a lamb into the lion's den.

Q: And that's because the number of jail house informants who would be around [the defendant] and be in a position to say that [the defendant] had made some confession to them, is that it?

A: Yes, sir.

Q: And that immediately came to your mind, did it not?

A: Yes, it did.

The second Jail Liaison Deputy reluctantly went along with the classification of the defendant as an informant when he learned a recently published magazine article reported the defendant had testified against his criminal associates and been granted immunity six years earlier. There was no evidence that the defendant had given information to law enforcement authorities in over six years, or that the defendant felt he was in danger due to his earlier testimony or to publication of the fact in the magazine article.

The defendant was transferred to the tenth floor of the Hall of Justice Jail. An informant on the fourteenth floor of the jail contacted a Jail Deputy and said the defendant was in danger on the tenth floor and should be transferred to the fourteenth floor. The Jail Deputy testified he "knew something was wrong" so he reclassified the defendant as a K-10 and sent him back to the Central Jail.

At about this time, the Los Angeles Police Department detective received a call from an informant on the fourteenth floor of the Hall of Justice Jail, inquiring as to the whereabouts of the defendant. The detective testified the informant requested that the defendant be placed in his cell.

The detective denied that when he requested the defendant be classified as an informant that he had been trying to arrange for the defendant to be placed near the informant at the Hall of Justice Jail.

Case No. 4:

The Grand Jury investigated two cases where a law enforcement officer arranged for an inmate to be classified as an informant by intentionally falsely representing to jail personnel that the inmate was an informant. In the first case, the idea of arranging for the inmate, who was not an informant, to be placed with informants was specifically approved by a Deputy District Attorney and a supervising Deputy District Attorney in the hope the informants would obtain incriminating information from the inmate.

In the fall of 1986, an inmate was arrested for murder and booked into the Central Jail where he was placed in the general population. Five days later, a Deputy D.A. dismissed all charges against the inmate due to insufficient evidence.

Approximately two weeks later, the inmate was arrested for assault with a deadly weapon in an unrelated case. He was again booked into the Central Jail and placed in the general population.

After additional investigation, a Los Angeles Police detective persuaded a second Deputy District Attorney to refile

the murder charges against the inmate. The murder charges were refiled several weeks later.

After the murder charges were refiled, the detective and the second Deputy District Attorney discussed the idea of placing the inmate in the "informant tank" at the Hall of Justice Jail in the hope one or more of the informants would "come up with information" to strengthen the case against the inmate. The Deputy District Attorney replied it sounded "like a good idea," but she wanted to obtain the approval of her supervisor. She thereafter contacted her supervisor who approved the idea.[23]

On a Friday, seven days after the murder charges were refiled, the detective went to the Central Jail and filled out a special handling request for the inmate on which he wrote, "Inmate is an informant for LAPD detectives," and signed his name as the person requesting the special handling. In his testimony to the grand jury, the detective admitted this statement was knowingly false and that the inmate was not an informant. The detective said he lied because he wanted the inmate placed with informants.

In response to the special handling request, jail personnel classified the inmate as a K-9 and transferred him to an informant section at the Hall of Justice Jail later that

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23 The supervisor testified that he had no recollection of this matter, but he did not dispute the deputy's version of events. The supervisor further testified that his understanding at the time was that the Sheriff's Department maintained a "snitch tank" and that "on occasion they would put people in that area . . . hoping that the accused would cop out to somebody in the tank."

afternoon. Within twenty-four hours of the inmate's arrival at the Hall of Justice Jail, an informant called the Los Angeles Police Department and left a message for the detective that he had information about the inmate. On Monday, three days after arranging for the inmate to be placed with informants, the detective interviewed three informants, each of whom claimed to have obtained incriminating information from the inmate.

(At the inmate's preliminary hearing on the murder charges, his defense attorney persuaded the court to suppress the statements the inmate allegedly made to the informants on the grounds the statements had been obtained in violation of the inmate's constitutional rights. After the court ruled the informants could not testify, the District Attorney's Office dismissed the case.)

Case No. 5:

In this case, which also involved a false representation that an inmate was an informant, a former Sheriff's homicide sergeant testified she lied when she told jail personnel an inmate might testify against a co-defendant and that he should be made a K-9. She claimed she made this false representation because: (1) she wanted the inmate separated from the co-defendant and that making the inmate a K-9 was the only way to make sure they were kept apart, and (2) she hoped the co-defendant would believe the inmate was providing information to law enforcement. The former sergeant testified she "assumes" her

act of making a false statement to jail personnel was "a departure" from jail rules, however she could not identify any rule that was violated.

C. THE SHERIFF'S INTENTIONAL PLACEMENT OF INFORMANTS FOR THE PURPOSE OF ELICITING INCRIMINATING INFORMATION FROM JAIL INMATES.

The K-9 population at the Los Angeles County Jail usually ranges from sixty to eighty inmates. The Central Jail Liaison Deputies are responsible for assigning housing for the K-9s and K-10s. In the mid-1980s notorious K-9s were often reclassified as K-10s and housed in the so-called "High Power" section with other K-10s. Most K-9s are today housed at the Hall of Justice Jail.

The Grand Jury heard testimony that the Jail Liaison Deputies sometimes became involved in the investigation of inmates' charged cases. One Jail Liaison Deputy acknowledged he accepted collect calls from informants who were in custody at the Hall of Justice Jail because, "Every now and then you might get -- you just might get something worthwhile that you can work on." The deputy testified he acted merely as a conduit between informants and investigating officers and did not further involve himself in the actual investigation of such cases. The Liaison Deputy testified he permitted Los Angeles Police Department

detectives to interview an informant in the deputy's office, which is outside of the Central Jail's security area.

It has long been suspected that Sheriff's Department deputies intentionally placed informants with inmates "from whom law enforcement could use a confession."[24] The Sheriff's Department denies such a practice has ever existed, however, the Grand Jury received evidence which indicated the placing of inmates for the purpose of gathering information has occurred.

1. The Law Forbids the Placing of Its Agents For the Purpose of Deliberately Eliciting Incriminating Statements from Inmates about Their Cases.

As discussed in greater detail in the section entitled "Legal Considerations," case law has long held that the placing of an agent for the purpose of deliberately eliciting incriminating information from an inmate about the inmate's charged case, violates the inmate's constitutional rights.

2. The Sheriff's Department Denies Intentionally Placing Inmates to Obtain Incriminating Information from Fellow Inmates.

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[24] November 1, 1988, letter from a supervisory Deputy District Attorney to the District Attorney's Director of Bureau, Branch and Area Operations.

In an official response to the Grand Jury, the Sheriff's Department acknowledged that law enforcement agencies have requested that known informants be housed with inmates for the purpose of eliciting information about the inmates' crimes. The Sheriff's Department denied granting such requests. Past and present Jail Liaison Deputies testified to having received requests from law enforcement agencies, including the Sheriff's Department and the Los Angeles Police Department, to intentionally place informants next to certain inmates. Except for one instance which involved a court ordered surveillance of an inmate, the deputies denied ever placing an informant next to an inmate for the purpose of obtaining information from the inmate.

The Grand Jury heard testimony from a number of past and present Jail Liaison Deputies. The deputies testified it was an unwritten policy of the Sheriff's Department to not place informants to obtain information. No one could say when the alleged verbal policy came into existence. The deputies testified they had received no formalized training or instruction on the appropriateness and legality of placing informants to obtain information from other inmates.[25]

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25 On January 2, 1990, the Sheriff's Department promulgated a written policy which states, "Custody Division personnel shall not house any inmate with another inmate(s), in any housing area, for the purpose of obtaining information for a criminal case. Exceptions to this policy will be made by court order only." This policy conforms to Penal Code §4001.1, which became effective on January 1, 1990.

3. Evidence That Intentional Placing of Informants Occurred.

The Grand Jury investigated several cases involving alleged placing of informants.

Case No. 1:

In early 1987, an inmate (who was classified as a K-10) told a Jail Liaison Deputy that he desired to be housed on 1750 F row near some inmates who were classified as K-10s. According to the inmate, the Jail Liaison Deputy agreed to move him on condition he cooperate and obtain information from the K-10s. The inmate agreed to do so, and on January 28, the inmate was moved to Cell 8 on 1750 F row.

The inmate wanted to be next to the inmate #2 in Cell 11. The inmate wrote a message to the Jail Liaison Deputy indicating he wanted to be placed in Cell 10. He also expressed concern in the message that his name not be mentioned as an informant in an unrelated case, as such disclosure could put "a big damper on my ability to speak to F-11 [inmate #2]." Shortly after writing this message, the inmate was moved to cell 10.

Three months later, all inmates on Row F were moved to Row D. The inmate from F-10 was placed in Cell 1, while inmate #2 was placed in Cell 19. The inmate wrote the Jail Liaison

Deputy another message which indicated he had obtained information from inmate #2. In the message the inmate stated, "I'm getting real close to him," and, "If you want to notify whatever agency that is investigating [inmate #2] . . . I've got some stuff. . . ." The message also asked that the inmate again be placed next to the inmate #2. Shortly after writing the letter, the inmate was moved to Cell 18, next to inmate #2, who was in Cell 19.

Due to a disciplinary problem, the inmate was placed in a disciplinary module called "the hole." Three days later, the Liaison Deputy called a Los Angeles Police detective who was investigating inmate #2's charged case and told the detective the inmate would be coming out of "the hole" soon and "may want to talk" about inmate #2.

The detective subsequently interviewed the inmate, who declined to cooperate.

The Jail Liaison Deputy denied placing the inmate next to inmate #2 for the purpose of obtaining information. He also claimed he never read the inmate's messages even though he testified he accepted collect calls from informants in the Hall of Justice Jail because, "Every now and then you might get -- you just might get something worthwhile that you can work on."

Case No. 2:

In 1982, a Sheriff's Department homicide investigator was contacted by an inmate who relayed information he had learned from a fellow inmate about the latter's murder case. The inmates had been separated after the inmates had talked. The first inmate told the investigator he believed he could obtain additional information from the second inmate if he was placed near him.

The investigator called the jail and requested the first inmate be placed with the second inmate. This was done, and the first inmate was able to obtain additional information. Due to the passage of time, the investigator could not recall who he contacted at the jail to arrange for the inmates to be placed together.

Case No. 3:

An inmate who was arrested in late 1984 on burglary charges cooperated with the Inglewood Police and provided information about several burglaries he had committed. The inmate was then booked into the county jail and classified as a K-9.

In mid-1985, while still in jail, the inmate confessed to having been a lookout in a case involving an eighty-year-old woman who was brutally sexually assaulted and murdered during a burglary. (The inmate claims he was tricked by Los Angeles

Police detectives into making a false confession.) Two months after making this confession, the inmate was reclassified as a K-10.

In early 1986, following a preliminary hearing, the inmate was held to answer on murder and rape charges, and faced a possible death penalty. The inmate testified before the Grand Jury that in mid-1986, he was approached by Los Angeles Police Department detectives who asked him to gather information from two brothers whom the detectives believed had committed the rape and murder of the woman. The inmate, who was still a K-10 and housed in the Central Jail, agreed to cooperate. According to the inmate, the detectives said they would arrange with a Jail Liaison Deputy for the inmate to be placed at the Hall of Justice Jail to be near the brothers.

Two weeks later, the inmate, who was still facing a possible death penalty, was reclassified from K-10 to "GP" (general population) by the Jail Liaison Deputy. The written reason for the reclassification was that an Inglewood police detective said the inmate could be housed in the general population. Thereafter, the inmate was placed in the general population section at the Hall of Justice Jail. Not long afterwards, one of the brothers was placed in the same general population section at the Hall of Justice Jail.

The Liaison Deputy testified he reclassified the inmate in 1986 when he received a call from an Inglewood police detective who said the inmate could be housed in the general

population. The Inglewood detective testified he had no contact with the inmate after December 1984, and there would have been no reason for him to have called the Jail Liaison Deputy in 1986.

The inmate was later reclassified as a K-9, and testified against the brothers and other inmates. Due to the informant's cooperation, a Deputy District Attorney permitted him to plead guilty to a charge of voluntary manslaughter and dismissed the murder and rape charges. The Deputy District Attorney told the court the reason for the reduced charge was that the inmate had been "helpful in at least three major criminal prosecutions." The inmate was sentenced to four years imprisonment to be served concurrently with a four year sentence the inmate had earlier received on burglary charges. Due to his cooperation, the inmate was sentenced to no additional time in custody for a case in which he had confessed to having been involved (as a lookout) in the vicious rape/murder/burglary of an eighty-year-old woman.

Case No. 4:

The inmate who in years past had been classified as a K-9, was arrested on a parole violation in August 1988. He was immediately classified as a K-9 by a Jail Liaison Deputy. The inmate was released a few days later.

On December 7, 1988, the inmate was booked into Central Jail following an arrest for burglary. During the booking procedures he told jail personnel he was a K-9. The inmate

testified that the same Jail Liaison Deputy who had classified him as a K-9 on two prior occasions (May 22, 1987 and August 23, 1988) came to the booking area and greeted him. According to the inmate, the Liaison Deputy said there were some suspects in the K-10 section and that the inmate should "go to work." The inmate claimed that the Liaison Deputy specifically mentioned a doctor who had been charged with killing his son, and suggested the inmate could help himself by obtaining incriminating information from the doctor. Thereafter, the inmate was classified as a K-10 and placed in the same module as the doctor. The inmate was unable to obtain incriminating information from the doctor, and at the inmate's request, the Liaison Deputy caused the inmate to be reclassified to general population and sent to the Peter J. Pitchess Honor Rancho.

Case No. 5:

In early 1984, an inmate arrested on child molestation charges was booked at the Central Jail. Due to the high publicity surrounding his case, the inmate was classified as a K-10 and housed in a single man cell in the hospital section of the jail.

A few days later, a Sheriff's Department Deputy caused the inmate to be moved from his one man cell to a two man cell. The deputy also caused a second inmate, who was a known informant and classified as a K-9, to be placed in the cell with the first inmate. Within twenty-four hours, the informant

contacted the deputy and claimed the inmate had made several self-incriminating statements to him.

The deputy contacted a sergeant for a local police agency who traveled to the jail and interviewed the informant. During the interview, the informant was asked to obtain additional information about specific areas of inquiry from the inmate. Thereafter the informant returned to the cell he shared with the inmate.

The deputy testified before the Grand Jury that it was "an error" to have placed the informant with the inmate, but he claimed he had done so because he needed the inmate's room for someone else, and he feared the inmate possibly had suicidal tendencies and that the informant could prevent a suicide by notifying jailers if the inmate attempted to take his own life. The deputy testified he could not recall who, if anyone, was placed in the vacated room.

Case No. 6:

In mid-1986, an inmate in the general population at the Central Jail became an informant against a fellow inmate who was charged with child molestation violations. The informant was reclassified as a K-2 and was separated from the fellow inmate.

Two weeks later, a Jail Liaison Deputy reclassified the informant to K-10, stating on the reclassification form that a Homicide Deputy requested the informant be classified as a K-10

and housed in 1700 only. The Homicide Deputy told the Grand Jury that he intended only that the informant be kept away from the fellow inmate, and that he did not request he be made a K-10 and placed in 1700.

One day after being classified to K-10, the informant was moved to 1700 A row. Two days later, a defendant in a well-publicized child molestation case was moved from the hospital section to 1700 A row and placed in a cell next to the informant. Approximately two weeks later, a District Attorney investigator interviewed the informant and asked him if he had obtained information from the defendant.

Case No. 7:

In 1983, a Sheriff's Deputy assigned to the jail arranged for an inmate to be placed next to an informant in the jail's hospital section. According to the deputy, the inmate was placed next to the informant "so [the informant] could listen to what [the inmate] was saying." The informant testified at an ancillary hearing that his classification had been changed from K-9 to K-10 to facilitate the move.

The deputy played an active role in the on-going investigation of the inmate, a former Los Angeles Police Department officer. The deputy had a number of contacts with the informant about the information the informant was obtaining from the inmate. The deputy coached the informant on what to tell the inmate if he became suspicious about being moved to a location

near the informant. The deputy met with the investigators who were responsible for the inmate's case, and discussed with them the information obtained by the informant and information the investigators wanted the informant to elicit from the inmate.

D. THE SHERIFF'S KNOWLEDGE OF THE ABILITY OF INFORMANTS TO FABRICATE CONFESSIONS.

In early 1988, a deputy assigned to the Hall of Justice Jail alerted his superiors to claims made by three informants that they were able to obtain information from law enforcement sources which could be used to fabricate jail house confessions.

The deputy was contacted by an inmate who claimed the informants were attempting to "book" him. The deputy investigated the matter and interviewed the informants, who described their technique for obtaining information by making telephone calls to the District Attorney's Office and representing themselves as members of law enforcement. The informants also explained how they could arrange to be placed with an inmate on the same bus or in the same courtroom so there would be a record of contact with the inmate to substantiate a fabricated confession.

The deputy wrote a three page report concerning his investigation and presented it to a Sheriff's Department lieutenant. No action was taken as a result of the deputy's report.

In October 1988, Sheriff's Department deputies at the Hall of Justice Jail learned that an informant was writing an article for California magazine in which he planned to expose the fact that informants were using the telephone to acquire detailed knowledge of criminal cases and construct jail house confessions from inmates they had never met.

At the invitation of a Sheriff's Department sergeant, the informant agreed to demonstrate his technique for gathering information. The demonstration, which was tape recorded with the informant's consent, occurred on October 24, 1988, at the Hall of Justice Jail.

The sergeant gave the informant the name of an inmate who was being held in the Hall of Justice Jail on murder charges. The informant, representing himself to be an employee of a bail bond company, called the jail's Inmate Reception Center and was able to obtain the inmate's booking number, date of birth, color of eyes and hair, height, weight, race (Caucasian), bail ($100,000), case number, date of arrest, arresting agency (Sheriff's Special Enforcement Bureau), next court date, and where the inmate was housed in the jail.

The informant next called the records section of the District Attorney's Office. He said he was a Deputy District Attorney and asked for information on the inmate's case. He was given the name of the Deputy District Attorney prosecuting the

case, the Deputy District Attorney's telephone number, and the name of a witness.

A few calls later, the informant called Sheriff's Homicide and said he was "Sergeant Stevens" at the Central Jail. He was able to obtain the name of the murder victim, and the victim's age and race.

The informant then called the Deputy District Attorney who was handling the case, initially identifying himself as "Sergeant Williams" with the Los Angeles Police Department. The Deputy District Attorney responded to the informant's questions by stating, "I'll tell you anything you want to know about the case," and proceeded to provide details about what the victim was wearing, where his body was found, the fact that the coroner's report said that death resulted from suffocation and/or drugs, that the victim's blood contained a fatally high amount of methamphetamine, that the defendant confessed to stuffing the victim in a trunk, and the prosecutor's personal opinion of the likely defense in the case. Near the end of the conversation, the informant gave his name as "Sergeant Johnson."

At this point, the informant said he had obtained enough details about the case to enable him to fabricate a jail house confession which would be accepted by detectives. He then proceeded to demonstrate how he could arrange for contact between himself and the inmate to support the fabricated confession.

The informant called a department of the Superior Court in Van Nuys, identifying himself as Deputy District Attorney

"Michaels" with the Organized Crime Unit downtown. In response to the informant's request, the court bailiff ordered the informant and the inmate to be transported to Van Nuys the following day.

The informant described the success of his demonstration:

> "[I've got the] complete description of the crime, including the method of death, method of homicide, how the crime occurred, what the victim was wearing . . . the fact the victim was stuffed in a steamer trunk, I've got the date of death and location of death, I have date of birth, I have enough information to put a story together that's very believable, accurate, detailed story. Like I said, any homicide detective is gonna go for, cause they're gonna think the only way I could get these facts is to get 'em from the suspect. Secondly, I now have the defendant or whatever ordered out to a court where I can say that I was with him . . . ."

The informant speculated that normally, he would probably be able to trade his fabricated confession to a homicide detective for "a hell of a deal" such as time served on his case. He observed, "Actually the system becomes a game, whereas homicide and the DA's Office they want to win." He went on:

"[T]he key thing is they want to win. So if I come forward with the information as detailed as that they're gonna use it. Because the jury not knowing the system or how it works, is going to believe when I get up there with all these details and facts, that this guy sat in the jail cell, or he sat on the bus, or he sat in the holding tank somewhere, or told me through a door or something, they're gonnna believe me."

In response to the informant's demonstration, on October 28, 1988, the Sheriff's Department circulated a directive[26] to all personnel to "verify" the identity and need to know of any person requesting criminal history or sensitive information by telephone. The directive suggested that verification could be accomplished by obtaining a call back number or by confirmation through the caller's supervisor.

The Los Angeles Times reported on the informant's demonstration, and the District Attorney's Office established new policies designed to prevent unauthorized telephone access of information.

In January 1989, the informant conducted a similar demonstration in a hotel room for a television crew from the program 60 Minutes. The informant was given the name of a

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[26] This apparently reaffirmed existing policy.

defendant whose arrest and arraignment for a homicide were reported in a local newspaper. Posing as a Deputy Sheriff, a Deputy District Attorney, and a Los Angeles Police Department detective, the informant called various agencies, including the Sheriff's information bureau and the coroner. He was able to learn the cause of death, the date of the shooting, the age and race of the victim, and that there were multiple gunshot wounds to both of the victim's thighs. The informant also demonstrated his ability to arrange for himself and the defendant to be transported together on a bus to court.

VI. DISTRICT ATTORNEY

A. THE DISTRICT ATTORNEY AND THE INFORMANT.

Very little effort was expended by the District Attorney's Office to investigate the background and motivation of most jail house informants in order to assess their credibility prior to presenting them in court as witnesses. Numerous accounts were given by Deputy District Attorneys that the only investigation of this nature consisted of asking other Deputy District Attorneys how the informant performed in other cases.

There is no central index containing such relevant information as the number of times in the past the witness had testified on behalf of the prosecution and what benefits, if any, were bestowed upon or requested by the informant. Absent such central index, discussion of the informant's prior testimony with another Deputy District Attorney who presented the informant as a witness provided an inadequate basis to evaluate and determine the informant's believability.

Most of the Deputy District Attorneys who testified to having negative feelings regarding the use of jail house informants, expressed their beliefs in terms of juries not favoring such testimony. This attitude, of course, suggests the question, why don't juries like them. The Grand Jury heard many

testimonies referring to jurors stating after a trial, that they did not believe the jail house informant witness.

The institutionalization of the benefit system is confirmed by the testimony of Deputy District Attorneys in their responses to written inquiries from their own office and from Special Counsel. The benefits informants receive are varied. The most significant rewards obviously involve dismissal of charges, imposition of a lesser sentence, or reduction of a sentence already imposed.

It should be emphasized at the outset that the Grand Jury is not in any way suggesting that some favorable treatment not be given in return for valuable assistance in appropriate cases.[27] In the interest of proper law enforcement and prosecutions, the prosecutor must have the discretion to determine what consideration is appropriate for assistance. Prosecutors rightfully point to serious cases in which informants' testimony was of major significance in successful prosecutions.[28]

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[27] At the same time, the Grand Jury does not suggest favorable treatment is advisable. One expert summarized his philosophy as, "I don't reward anybody for anything." Based on his experience, he opined that offering rewards for information to convicts merely encourages them to fabricate information. He stated, "Ninety-five percent of the stuff [information] you get is bogus."

[28] Notorious Manson Family case. First breakthrough in case was credited to jail house informant.

It is the lack of proper controls and supervision concerning these benefits and the inadequate disclosures of the benefits or expected benefits which have raised grave concerns regarding these practices.

The difficulties are apparent in two specific areas:

1. There has been no policy or understanding among individual prosecutors regarding how far they may go in extending benefits. This decision has often been left to the individual prosecutor's discretion and can result in unjustified rewards to criminals who testify for the prosecution.

2. The entire circumstances regarding benefits and the expectations of benefits, in many cases, are not adequately presented to the judge or jury for them to have the necessary factual basis to evaluate the testimony of the informant. This is particularly so when no agreement on the extent of benefits is made with the informant until after the testimony.

The following are illustrative of these points:

Case No. 1:

A 17-year-old boy was charged with murder and attempted murder. An informant testified that he had obtained a

confession on an in-custody bus trip. He testified to the confession and that he was shocked at the defendant's lack of remorse. He further testified that he had asked for nothing and that the District Attorney would not even discuss favorable treatment with him.

Within a day of this testimony he provided the Deputy District Attorney with a sample form for a letter he wished written to the Department of Corrections requesting an early release. The jury was never apprised of this request but was advised that benefits are not awarded for testimony.

Following the conviction, a letter was written to the Department of Corrections requesting an immediate release.

Case No. 2:

A Deputy District Attorney was contacted by an informant who was very "professional and straight forward." He testified to a confession given on a sheriff's transportation bus. The informant explicitly stated he wanted nothing in return for his testimony except that, if he did testify and if the Deputy District Attorney felt the testimony helped the case, the Deputy District Attorney would write a letter or otherwise communicate with other authorities as to the informant's credibility.

After the trial, a letter was written to the Board of Prison Terms describing the informant's cooperation ("sometimes

at great personal risk") and requesting the informant's actions be considered in any parole decision.

Case No. 3:

Three informants were used as prosecution witnesses to testify to alleged admissions by a defendant charged with murder and attempted murder. They were informed that no benefit would be given in exchange for their testimony, other than a letter to those inquiring as to their testimony and cooperation. They were also placed in protective custody during the trial at their request.

Following the conviction, letters were written to the Board of Prison Terms describing one of the informants as deserving consideration for modification of his term of imprisonment. Reference was also made to information regarding a planned armed break-out from the courthouse and that precautions were taken to prevent adverse consequences.

Another letter was sent to the Parole Administrator by a local police agency describing the same informant's cooperation.

A second informant in the same case testified that nothing had been promised him except protection for his wife. He had two letters written on his behalf following the trial. One

letter from a police detective characterized his testimony[29] as "expert quality" which enabled a guilty verdict and that the department, as well as another police agency with whom the informant was cooperating, would appreciate any consideration which could be given. It was also stated they would not be opposed to an early release from the "minimal" days left to serve.

The third informant who had four prior felony convictions (three burglary convictions and one conviction for armed robbery) was facing three different felony burglary cases. The informant testified as a prosecution witness in two murder cases and a rape case about jail house confessions he allegedly obtained from the defendants in those cases. In each case, the informant testified he had received no promises in exchange for his cooperation.

Following his cooperation, the informant was able to resolve his three burglary cases by pleading guilty and receiving a suspended sentence of twenty-six years imprisonment on condition he serve ten years probation. A memo written by a supervisor in the District Attorney's Office described the informant's sentencing and stated the commissioner who imposed the sentence had been advised of the informant's cooperation.

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[29] The Deputy District Attorney also wrote describing the case in some detail and asking for consideration in "evaluating" the conditions of his sentence.

Case No. 4:

In a capital case, an informant testified that he was only promised protection in exchange for the testimony about a conversation he allegedly had with the defendant. In a post trial hearing, findings were made that inducements had been made by law enforcement officers, for his testimony. The inducement was that his cooperation and testimony would be made known to two separate judges, one of whom was presiding in a pending criminal case against him and another who had already sentenced him. The hearing officer noted that it was obvious that such information would be given for the purpose of providing those judges with a basis for favorable treatment.

There was further testimony that the prosecutor had promised to write letters on behalf of another informant who testified. The hearing officer included in his report that such was a clear case of concealment and that disclosure of these inducements to the jury could have resulted in them giving little or no credence to their damaging testimony. After the trial, the sentence of six years in prison was modified to four years probation.

Case No. 5:

Prior to his testimony regarding an alleged jail house confession, the informant insisted that he did not want anything in return for his testimony, that he just did not like rapists because his sister had been raped. Following his testimony,

he requested that the Department of Corrections be advised of his role when he became a candidate for an early release program. A letter was written by the Deputy District Attorney requesting "favorable consideration" to his request for an early release.[30]

Case No. 6:

The informant testified at trial that no benefits had been promised to him and that he did not expect to receive favorable treatment in the future. After he testified, he requested consideration with regard to a pending burglary case. Arrangements were made to have the informant ordered by the court to report to his nearest parole office for placement on parole rather than having him processed for parole purposes at the California Institution for Men at Chino. Telephone calls were made to the Department of Corrections and to the local parole office.

Case No. 7:

Informant was permitted to plead guilty to a pending grand theft charge with the understanding that the sentence run concurrent to a federal prison sentence he was serving.

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[30] Since this prisoner was sentenced under the determinate sentencing law, the Board of Prison Terms advised they did not have discretion to alter his sentence. They did, however, send a letter on to the institution for staff to review "his placement ... needs including protective custody. They can also pursue the possibility of work furlough placement, additional granting of work incentive credits or emergency temporary release." September 25, 1986.

Informant also requested a letter be sent to the Federal Parole Board advising of his cooperation in a Los Angeles County murder prosecution. The first request was made prior to trial and made known to the defense. The second request was made well after the trial. A letter was sent to the Parole Board after the trial and therefore never known by the trier of fact.

Case No. 8:

An informant's sentence for kidnapping was modified to run concurrently rather than consecutively to a 15 year to life sentence for second degree murder. A letter was written to the Board of Prison Terms advising of his cooperation. These matters were brought out in the informant's testimony during the defendant's trial.

Well after the trial, the informant requested assistance in a commutation request to the governor's office, and a letter was written in support of that request.

Case No. 9:

The informant was in custody on a charge of sale of cocaine and a parole violation. Before his testimony, it was represented to him that the Deputy District Attorney would advise the judge handling his case of his participation as a prosecution witness. After the case in which he testified was concluded, the Deputy advised the court that the informant had testified as a prosecution witness but had lied under oath as to

a collateral matter, further explaining that the informant probably could not keep himself from lying.

Case No. 10:

The informant requested $1,000 "start-up" money upon his release from custody; informant also requested "leniency" for a friend of his charged with murder. The only representations made were that if he were cooperative, the situation would be looked into and the authorities would do what they could for him.

After his testimony, the sentencing judge was contacted. The judge agreed to an early release from custody of about 30 days. Sheriff's Homicide detectives appropriated about $300 from the Sheriff's Department Special Fund for the informant as "start-up" money when he was released from custody.[31]

Subsequently, a judge was contacted on the informant's behalf regarding a probation violation related to positive drug testing. On this occasion the Deputy District Attorney secured additional county jail time for the informant in lieu of a state prison sentence. The 30-day early release and the $300 "start-up" money occurred soon after the conclusion of the preliminary hearing. The probation violation intervention occurred subsequent to the trial testimony. The defense was aware of the early release and money payment prior to the trial. The

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[31] No legal authorization for providing "start-up" money to a witness was located.

informant also testified to receiving occasional miscellaneous bus money and lunch money from the Sheriff Homicide detectives.

From the above cases, one could conclude that the more clever informant, realizing that his successful performance will be enhanced if it appears that he is not to benefit therefrom, will testify that he has not been promised anything and will then wait until after his testimony to make his request for favors, oftentimes successfully.

Another area of unspecified benefits may occur when an informant is seeking to build up a reserve of credit to be used as future needs may require. Examples:

Case No. 1:

An informant testified at a preliminary hearing and did not ask for anything in return. By the time of the trial, his own case had already been resolved. The Deputy District Attorney had the impression at the time of the preliminary hearing that the informant was seeking to build a reservoir of good will for the future.

Case No. 2:

An informant testified on behalf of the prosecution and did not request any benefits or favorable treatment in that particular case. Later, the Deputy District Attorney received a

phone call from other prosecutors stating that the same informant was offering testimony in another case. It is the first deputy's belief that the informant was trying to establish credibility and a "track record" so that he could testify in other matters in the future.

The second case in which the informant wanted to testify was a very high profile case in Los Angeles County. The first deputy believes the informant, in this second case, was also setting up his track record to obtain favors at a later date. A private attorney later advised that he was negotiating for favors for the informant. However, the informant became evasive and untrustworthy so negotiations came to an end.

Case No. 3:

Approximately one year after an informant testified in a major case, he was rearrested on a marijuana charge and was given probation. This was direct consideration for his earlier testimony.

Other problem areas are the seemingly overly generous references given by some prosecutors to the acts of the informant. Examples:

1. An informant offered testimony in a capital case which related to both admissions by the accused and information regarding a planned escape from the courthouse. The offered

testimony was not used at trial because of its questionable value, but the warnings as to the breakout were relayed to the appropriate sheriff's personnel. Precautions were taken, but no escape was attempted. Nothing was done to check out the background of this informant other than to determine that he was being held on a parole violation.

A letter was written to the Board of Prison Terms by the Deputy District Attorney requesting an early release date. The informant was released several months early. Strangely enough, this letter was supplemented by a letter from a ranking agent with the State Department of Justice describing assistance in an internal investigation involving another agent. The agent the informant had accused denied the allegations of wrongdoing by the informant and was vindicated of the charges made by the informant.

2. This same informant claimed knowledge of an alleged breakout plan in another case. Similarly, there was no breakout attempted nor evidence discovered which would otherwise support the claim. Nonetheless, a letter was written crediting the informant with this warning. See Case No. 3 Supra.

Later, the Deputy District Attorney testified that he subsequently believed that the information had been fabricated.

3. A letter was written on behalf of an informant crediting him with testimony in a number of felony cases. No

verification of this information was made, and in at least one of these cases a judge had found the testimony not believable.

4. This same informant was the beneficiary of a letter from another Deputy District Attorney who pointed out that the informant was a witness in five different felony cases. The D.D.A. wrote that he "agreed" with the informant that the informant would be considerably safer if released.[32] The letter described that the informant assured the Deputy District Attorney that he had given up his life of crime and was prepared to earn a proper living and lead an exemplary life.

This informant is presently serving time for subsequent crimes.

5. Two months later, the same informant was awarded with still another letter by a third Deputy District Attorney stating that any consideration in allowing him the opportunity to participate in a live-in drug rehabilitation program in lieu of state prison time, would be "most appreciated."

Favorable consideration has been requested by prosecutors for violent offenders. One informant had been involved in armed robberies, stabbings, and shootings in which

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32 The concept of the informant being safer out of custody was alluded to in several references, and it would seem to improperly shift the concern of safety from the community to the informant.

his victims were terrorized. He had also been involved in the stabbing of another inmate and in a major disturbance in which two inmates were killed, according to prison records. He received numerous disciplinary notices for violent behavior.

Because of his "significant cooperation" in several prosecutions, the Attorney General's Office requested that he receive a sentence reduction of two years. (He had already received a one year reduction.) A letter written on his behalf stated:

> "I view it as important to signal to the prison and criminal community that persons who attempt to turn over a new leaf and cooperate in a candid and complete fashion will not suffer for such efforts but rather benefit in a manner commensurate with their service."

According to records, this same informant was subsequently arrested for corporal injury to his wife, assault with a deadly weapon and for other robberies. The last armed robbery was in 1988 for which he received a four year sentence.

In 1974 an informant was determined to be a mentally disordered sex offender and sentenced to a state hospital. The year following his release, the informant was arrested for attempted rape. According to the informant his sentencing was postponed for one year while he cooperated on another case. Prior to sentencing, two psychiatrists separately evaluated the

informant to be a mentally disordered sex offender who was a "danger to the health and safety of others," and recommended he be sent to a state hospital for treatment. The probation department concurred that the informant belonged in an in-patient facility. However, a Deputy District Attorney advised the informant's sentencing court of his cooperation in another case, and the court sentenced the informant to five years probation. Within seven months, the informant's psychiatrist notified the informant's probation officer that the informant was only attending 50% of his counseling sessions, in violation of a condition of his probation.

Within one year of sentencing, the informant was reincarcerated on a charge of assault with intent to commit rape. The informant claims that he stayed in the county jail while he cooperated on another case (by supplying false testimony). According to the informant, directly after his testimony as an informant, a Deputy District Attorney accompanied him to an adjacent courtroom for his sentencing. The informant received the low term (2 years) to run concurrently on two cases, and was credited with time served.[33] He was thereby almost immediately released on parole.

Most recently, this informant was reincarcerated and

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[33] The informant testified that he complied with the request of law enforcement officials and, during his testimony as a jail house informant, denied being promised any benefits for his testimony.

later convicted of multiple counts of rape, kidnap, robbery and other sexual offenses.

The willingness to fabricate information and evidence has undoubtedly been encouraged by the lack of prosecutions for such conduct. The investigation failed to identify a single case of prosecution of an informant for perjury or for providing false information, despite the fact that numerous cases of this nature were discovered during this inquiry.

Cases have been described where an informant has testified to two sets of diametrically opposite facts in the same trial and also wherein testimony is given which is completely contrary to earlier taped statements. Cases have been identified where judges, after hearing testimony of informants, have stated their disbelief.

Still other cases establish informants have testified in one fashion, and then later either said that they lied or testified under oath in other proceedings that they had lied.

In another case, an informant's testimony was impeached based on the fact that he had claimed that he and the defendant talked while next to each other in adjoining cells. It turned out that the defendant, a female, was held on another floor of the courthouse for a substantial period of relevant time. In his argument to the jury, the Deputy District Attorney concluded that it was "not necessarily likely" that the testimony was true and

asked the jury to simply disregard the informant's testimony and focus on the remaining evidence in the case.

The informant was not prosecuted for perjury. The District Attorney's Office assisted him in arranging a release on his own recognizance and in disposing of his misdemeanor charges.

One defendant was held to answer in a preliminary hearing on testimony which the Deputy District Attorney, after the hearing, determined to be not true. (Various versions of the testimony had been given prior to the informant taking the witness stand.) The case was subsequently dismissed after the defendant spent five to six months in jail based upon this testimony. There was no perjury prosecution.

An informant gave information in an attempted murder prosecution. He also gave information regarding a possible attempt on the life of an undercover operator. A letter providing this information for their consideration was sent by a Deputy Attorney General to the Department of Corrections "at the request of" the informant. The Deputy Attorney General stated in the letter that the information had proven to be reliable. The informant later admitted to the Deputy Attorney General that he had lied about these matters. No letter was written by the Deputy Attorney General to correct the record.

Many additional claims and allegations of providing false information occur throughout this report. Reference to the

above examples, of course, is not a determination that each or any of the specific instances could have been used to successfully prosecute the informant. The Grand Jury recognizes that it lacks all the facts which the prosecutors may have possessed and which would be necessary to make that determination. The point is simply made that in the face of the extraordinary number of such apparent instances of perjury and false information, that surely some cases would have warranted successful prosecution. Such prosecutions could have provided a substantial deterrent.[34]

Many cases were identified where the direct consideration for the testimony was clear. What was not always clear was at what stage of the proceedings this was made known, if at all, to the defense.[35] Examples:

Case No. 1:

Informant received a promise of no immediate state prison on an insufficient funds check case. He was also released without bail in return for his testimony.

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34 Under separate cover, the Grand Jury is referring several matters that suggest provable criminal cases to the District Attorney for consideration.

35 The final action on favorable dispositions is left to the courts. However, as discussed elsewhere, great reliance is placed on the recommendations of the prosecutor.

Case No. 2:

An informant was charged in four felony forgery cases. In return for his testimony, he was allowed to plead to and received a low-term state prison sentence of 16 months.

Case No. 3:

Informant was charged with possession of PCP for sale and was promised straight probation if he testified in a homicide case.

Case No. 4:

First degree murder charges were reduced to voluntary manslaughter in return for an informant's testimony.

Case No. 5:

An informant was charged with robbery and requested a dismissal of the case in return for his testimony. He was successful in avoiding a state prison sentence, although he spent over two years in county jail awaiting resolution of the case.

Case No. 6:

A Deputy District Attorney appeared in court and made representations which resulted in nine months taken off his sentence in return for information provided to law enforcement.

Case No. 7:

Another Deputy recalls appearing in court on behalf of informants at their sentencing and describing their cooperation. He believes he asked a judge specifically to reduce the time in terms of years on behalf of an informant.

Case No. 8:

A letter was sent to a parole board requesting two years to be taken from a sentence in return for testimony. This letter was described, however, in the trial transcripts.

Case No. 9:

Another informant was facing probation violations on a number of cases and had a pending burglary charge against him. In exchange for his testimony, he received a suspended sentence and was placed on probation.

In some of these cases the entire consideration was described in detail on the record and thus well known to the trier of fact. This is as it should be and conforms to the newly enacted legislation.

Other informants had their offenses reduced from felonies to misdemeanors, received probationary sentences, received county jail sentences instead of state prison, avoided parole violations, and received releases without bail on their own cases. Still others were successful in being relocated to

another institution which for various reasons they deemed preferable.[36]

Modifications of sentences and reductions in sentences ranged from days, to months, to years following their testimony on behalf of the prosecution.

The practice of waiting until after the testimony is provided, before the informant's pending case is dealt with, may lend itself to some troubling results. This may provide the informant with a basis for assuming that his sentence will be measured by the assistance he provides the prosecution by his testimony. In view of the benefits that he may be seeking by his testimony, the potential for perjury or shading of testimony for the prosecution must be recognized.

When the cooperating informant is told that it will be reported in his favor if he gives "truthful" testimony, it is only reasonable that "truthful" to the informant means consistent with the prosecution's theory of the case. Otherwise, of course, there is no point in calling the informant as a witness. Such an incentive to provide testimony may have a significant influence on the integrity of the fact-finding process.

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[36] According to a former prison official, there is a "myth" within state prison that federal prison is more desirable.

Secondly, the trier of fact cannot properly evaluate what influence the benefits or expected benefits may have on the testimony. When the trier of fact hears the informant testimony, the potential favorable result to the informant is not yet determined. There is no counterpart, nor should there be, on the defense side of the case, wherein some undefined reward can be used as an inducement for favorable testimony. This issue may have been resolved by the present legislation which requires that when the prosecution calls an in-custody informant as a witness, they must file a written statement with the court setting out all consideration promised to or received by the informant. (This assumes that potential letters or statements fairly describe the full extent of the consideration and no further consideration is given.)

Again, for the purposes of the foregoing, it is not the consideration, in and of itself, which is being questioned, but only the potential for its full impact not being clearly understood.

B. DISTRICT ATTORNEY STAFF KNOWLEDGE OF INFORMANT ABUSES BEFORE PUBLIC DISCLOSURES

Evidence exists to establish knowledge within the office of the Los Angeles County District Attorney, prior to the revelations of October, 1988, of abuses concerning jail house informants, and the failure of staff to record, report or disseminate that knowledge.

1. Early Claims To District Attorney By Informant Of Improprieties.

In the late 1970s, two prosecutorial agencies conducted inquiries into claims by a jail house informant that he knew of improper conduct by law enforcement and District Attorney personnel. Despite the investigative resources committed, the agencies could never verify the allegations. It was therefore concluded that the informant, who then was a state prisoner, had lied, possibly in an effort to attain more favorable conditions of custody. Nevertheless, the record of the informant's activity and the conclusion of the investigation was never indexed or widely distributed within the agencies, and the informant surfaced repeatedly as a witness in criminal litigation.

In a memo addressed to upper District Attorney management, one Deputy District Attorney wrote that the informant made allegations that several members of the District Attorney's

Office were engaged in unethical conduct with various jail house informants. One claim was that certain prosecutors were allowing informants, before their court appearances, to look over crime information gathered by police.

The Deputy D.A. and a bureau investigator interviewed the informant and found much of what he had to say difficult to accept, according to the investigator. The investigator stated that he believed the informant was the type of person who would do anything or say anything to get favorable treatment in the jail system.

In May or June of 1980, an administrator in the District Attorney's Office saw a letter from January 1979 to his office predecessor from an informant advising how he and another informant participated [offered information] falsely in several cases. Another letter from the same man, dated January 31, 1979, added to his claims. The administrator reviewed the file containing these letters after learning from the Attorney General's Office that an investigation into the allegations contained in the letters had been completed. In June or July of 1980, the administrator received a letter from the Attorney General's Office finding the informant's claims not credible.

The administrator then telephoned and wrote a memo to the Deputy D.A. who had had significant contact with the informant and instructed him to terminate the association. The

administrator advised a few others, but never disseminated information on this informant generally.

2. Knowledge Of Informant Practices Before 1988 Demonstration.

The District Attorney's Office already knew some of the methods of a particular informant by the time he demonstrated for the Sheriff's Department in October 1988 how he could obtain enough confidential information to fabricate the confessions of criminal defendants. As many as five years ago, a Deputy District Attorney relayed word to persons in the District Attorney's investigative bureau that the informant had a reputation for not being reliable. There was no formal investigation. Rather, it was "just something that people were aware of," according to one witness from the District Attorney's Office.

In October, 1986, a private investigator addressed a letter of concern and recommendation to the District Attorney's Office. He alleged that jail house informants are supplied copies of arrest reports and are given "prep" sessions by investigators or prosecutors to make sure the informants know what the defendant has supposedly confessed to.

The investigator described a "variation on the theme" wherein Deputy D.A.s and their investigators have called "class

sessions" at the Hall of Justice Jail so that several informants could testify on different aspects of a case. The "program," he wrote, is commonplace and "out of hand."

The investigator stated in his letter that, if an informant happens to be located with another prisoner, all the informant needs to do is look at the inmate's wristband, get his name and booking number and then call the Sheriff's internal inmate information line to find out the court case number. Then the informant contacts the Deputy D.A. on the case who, according to the investigator's letter, "will be glad to send over a copy of the arrest report and any other information necessary for the snitch to conjure up a purported confession . . . ."

The investigator asserted in his letter that an investigation should be conducted. He claims he received no response from the District Attorney's Office.

No District Attorney witnesses were able to account for what happened with the letter and why no inquiry was made regarding the allegations.

3. Early Published Disclosures of Knowledge Within The Office.

Commencing on March 19, 1987, the first in a series of articles on the subject of jail house informants appeared in the Hermosa Beach periodical, Easy Reader. The report was purported

by its writer to be the product of some three weeks' research. This was more than a year and a half before public concessions by the District Attorney's Office that the informant matter had sparked widespread concern throughout the office.

"A Rat in the Hall of Justice," addressed the issue of jail house informants and how they operate and are used by officials. Among the allegations raised by the article were:

> 1) informants were being "planted" by jail authorities near criminal defendants in high-publicity cases with instructions to elicit confessions, and the constitutional rights of defendants were being violated.
>
> 2) jail house informants frequently fabricated confessions and were not credible witnesses, and
>
> 3) a Sheriff's sergeant offered an informant the favor of getting him a release from prison if he obtained information that would implicate a certain defendant in a murder.

"Con or Confession?," on April 2, 1987, related how an informant supposedly was fed information on a defendant by someone in the police department or District Attorney's Office.

"Mr. Rat's Wild Ride," on October 15, 1987, detailed how one informant received a substantial sentence reduction and other benefits upon his release in exchange for his testimony.

Arrested later, the man was put back to work as a jail house informant eliciting information from high-profile defendants at the request of a Sheriff's jail official.

After his first story on the subject appeared, the reporter was contacted by the press officer for the District Attorney's Office who said [certain] Deputy District Attorneys were claiming there were inaccuracies in the article. The reporter, however, was able to document that what the deputies were saying were misrepresentations of their positions. No correction or retraction was ever requested.

District Attorney witnesses questioned about the articles could provide no explanation as to why a further inquiry into the published allegations wasn't conducted.

4. Early Concern Expressed About Informant Activity.

One Deputy District Attorney knew of a particular jail house informant and some of his improper conduct before she became a member of the District Attorney's staff. She was assisting the defense in a serial murder case when the informant appeared and claimed that the defendant had said a number of things which implicated him in the crimes. The witness said she thought that was not possible because this particular defendant "didn't talk to anybody." The prosecutor from the Attorney

General's Office went back to talk to the informant who, in fact, recanted the whole story.

Concerned over the repeated use by the District Attorney's Office of this informant, and that he might be giving evidence in cases elsewhere in the county or state, this Deputy D.A. approached a colleague and asked him to convey her concerns to the staff at the downtown office insofar as he was about to be transferred there. She and another prosecutor wanted to promote the concept of a central index on informants. More than that, they found this particular informant to be an acknowledged liar and perjurer and wanted to make sure at least the information on him was disseminated.

The Deputy District Attorney who was transferred to the Central Bureau had an opportunity to discuss the issue of this particular informant with a District Attorney administrator. It reportedly was a very brief discussion conducted toward the end of 1987, possibly early 1988, while waiting for someone else to be present in a meeting. When the Deputy D.A. mentioned that he had heard the administrator was being kept abreast of the situation with regard to the informant, the administrator acknowledged he was "keeping on top of it."

Another Deputy District Attorney was questioned by colleagues about his use of this informant. The prosecutor replied that he was very much aware of what a danger the

informant presented. He stated he wouldn't consider using the informant where his credibility was at issue, but that he would only be used to authenticate some physical evidence in a case.

In late 1986, the same informant was used in a case by another Deputy District Attorney who later described the informant as a "total flake." The defendant in the matter was charged with separate and unrelated murder and robbery incidents. The murder was believed to be the result of a gang-related drive-by shooting. The informant appeared at the defendant's preliminary hearing and claimed to have heard him confess to commission of the murder. Either because of an earlier experience with the informant and/or because of the character of his testimony at the preliminary hearing, the judge found the informant not to be a credible witness.[37] [38] Also, according to another prosecutor, a police detective who assisted in the investigation eventually placed the informant on a police unreliable informant list.[39]

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[37] A District Attorney administrator was not aware of the judge's finding at the time he wrote a letter to prison authorities requesting consideration on behalf of the informant. The administrator doesn't believe that his staff would deliberately have kept the information from him, but that the validity of the informant's testimony wouldn't have been entered into a computerized tracking system.

[38] Other instances were noted where informants were found by judges not to be credible witnesses. Although those opinions were expressed from the bench, no record of them generally was maintained nor was the information disseminated throughout the District Attorney's Office.

[39] The Los Angeles Police Department maintains an "undesirable informant" file which lists a brief dossier on informants who are believed to have: (1) supplied information

The trial deputy stated in a memo "to the file" that the judge's finding was not unreasonable in light of the experience the District Attorney's Office had had with the informant. For that reason, the decision was made not to proceed in Superior Court on the murder case. It was dismissed.

Disposition of the case was discussed with and the memo was approved by the Deputy D.A.'s supervisor.

5. Limited Inquiry And Conscious Avoidance Of Knowledge.

One Deputy District Attorney received a letter from a colleague expressing her opinion and warning him about his anticipated use of a particular jail house informant. The Deputy D.A. wrote to the defense lawyer and attached his colleague's

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which endangered someone; (2) jeopardized investigations by such acts as divulging the identity of an undercover officer; or (3) caused conflict between two law enforcement agencies.

False information provided by an informant will not cause the informant to be classified as undesirable unless the false information resulted in harm to an investigation. However, an officer would not have access to the fact that an informant had given false information in the past as no such record is kept of that information.

Any LAPD officer who intends to use an informant is required to notify his commanding officer. If the informant has not been used before, the officer must review the informant's criminal record and fill out a form which requires detailed information about the informant, including the informant's known associates, addresses, employment history, etc. After the personal information about the informant is obtained, the officer and his commanding officer decide whether the informant is appropriate to be used for the intended investigation.

letter of opinion on the informant. In his cover letter, the prosecutor wrote that he was committed to using the informant and didn't intend to investigate the matter any further. The letter stated:

> "Since I am committed to using [the informant] as a witness and have no personal or professional interest in the L.A.P.D.'s assessment of [the informant], I am passing this information on to you without further investigation or inquiry into the matter on my part."

(It should be noted, however, the informant about whom the negative opinion was expressed was subsequently not used by the prosecutor.)

6. Other Instances Of District Attorney Staff Knowledge of Problems With Informants.

Case No. 1:

One Deputy District Attorney claims to have always approached (or responded to) informants assuming that they weren't telling the truth. He believes in two early cases involving informants, that they didn't make a significant contribution to the prosecution, and that he would have obtained convictions in the cases even without the informants.

This Deputy District Attorney had intended to use a particular informant in a perjury prosecution. In an undercover capacity, the informant conducted conversations with the defendant which were recorded. The informant testified at a proceeding and was later released from custody, but not because of this testimony. He subsequently was rearrested and called this Deputy District Attorney to help him get out of jail. The prosecutor refused to provide such assistance, so the informant told him he then wouldn't testify in his perjury case. The Deputy D.A. said, "fine." The informant said, "just kidding." The prosecutor said, "I wasn't."

The informant then testified for the defense at the preliminary hearing and claimed that he had been paid by police to set up the defendant. Later, the informant contacted the Deputy District Attorney and asked him to "lay down a motion for reconsideration of his sentence." In exchange, the informant would testify that the defendant had given him $16,000 to make it look like he had entrapped the defendant.

The Deputy District Attorney set forth the informant's offer in a memo to the file and sent copies to the defense attorneys. Another copy was sent "through to the office," but there was no indication that the matter ever was subject to further review.

Case No. 2:

One of the Deputy District Attorneys who was asked by another to consider writing the Board of Prison Terms on behalf of an informant expressed concern that he was addressed in a memo for this purpose. He was prosecuting a defendant at whose preliminary hearing, handled by another Deputy D.A., the informant had testified. It occurred to this prosecutor that the informant's testimony was suspiciously similar to the information disclosed in newspaper accounts. The opinion that the informant was manipulative and not truthful was strengthened during an interview with him at the Hall of Justice Jail (around June 1988). The prosecutor recalls that the informant told him he could trip a telephone using a paper clip and enter a code which allowed calls to anywhere in the country.

Case No. 3:

A Deputy District Attorney managed a case in late 1985 and early 1986 wherein a police detective had been ambushed and killed. Some 20 informants came forward with information. All were interviewed by investigators, but a decision was made to use only one informant whose story could be fully corroborated. The Deputy D.A. said he knew informants had ways of obtaining information in jail.

Case No. 4:

Six informants were called to testify in a case in which as many as nine or ten jail house informants claimed knowledge of a defendant's confession. The Deputy District Attorney determined he would not use one particular informant because he was paid $20 by detectives for information regarding an alleged plot on the Deputy District Attorney's life. However, this same informant surfaced as a witness for the defense in the case. There, he testified about how informants "book" others and get information out of an inmate and trade it for favors with the District Attorney's Office.

The informant's testimony wasn't believed by the prosecutor. He may have related it to other District Attorney personnel, but he didn't write any memo about it. Rather, the prosecutor said he believed the informant had placed himself up for sale and that he, the prosecutor, would not call him as a witness.

Case No. 5

The same informant offered information in a case being handled by another District Attorney Deputy. She decided not to use him at the preliminary hearing, but when he called again later with supposedly new information, she had an investigator conduct an interview with him. She believed the informant was either lying or that the defendant in her case set the informant up with false information.

When this Deputy District Attorney learned about the informant's testimony for the defense and how informants generally could fabricate confessions, she forwarded a copy of the transcript from the proceedings to a District Attorney administrator. She received no reply. Since he doesn't remember receiving the transcript and had no knowledge of the matter until after the start of this investigation, the administrator believes the materials may have been forwarded by his office to the case file, or they may have been filed with paperwork relating to other considerations in the case.

Case No. 6:

Sixteen jail house informants offered to testify that they heard one or both co-defendants in a particular case make incriminating statements. The Deputy District Attorney handling the case didn't believe any of the stories and therefore didn't use informant testimony at the trial. Before his involvement in the case, however, the Deputy D.A. noted that one informant appeared before a Grand Jury which returned an indictment. At the post-indictment preliminary hearing, the informant testified that what he had told the Grand Jury was all lies. The informant had apparently switched sides out of anger toward a sheriff's sergeant who he felt had double-crossed him in some way.

7. Emergence Of Multiple Informants.

As has already been illustrated, some of the most celebrated criminal prosecutions in the county have prompted the greatest numbers of informants to come forward with reports of incriminating evidence against defendants. Several Deputy District Attorneys tried major cases and, often early in the course of their work, heard from informants numbering from six to 20. The usual course for prosecutors and investigators was to screen these candidates, weighing what they had to offer against corroborative evidence and their appearance of credibility.

Frequently, the informants being considered for testimony in these major cases were narrowed to a very few, sometimes to only one or two witnesses. No record was kept of those who were rejected and the reasons for that determination. If the informants were again to offer testimony in other cases, there existed no systematic means to review the knowledge obtained by the earlier prosecutor.

C. MANAGEMENT'S FAILURE TO ACT.

By January 1987, senior management of the Los Angeles County District Attorney's Office was cognizant of a concern within the office that a central repository of information on informants should be established.

On October 9, 1986, a Head Deputy sent two senior management officials a memo recommending the creation of an informant file wherein basic information on an informant would be logged. The memo was prompted when one prosecutor called the author of the memo for information on an informant the author had previously used. The memo states:

> "Often, prosecutors are called upon by other prosecutors to give their impressions of previously used jail house informants who want to provide information in new cases. Amazingly enough, many of the same informants pop-up every few years. Often, an honest recommendation can't be made because it's hard to recall details about how they did on the stand, their provable reliability, etc."

The Head Deputy concluded that an informant file could be a real asset to the District Attorney's Office. He added that careful screening of the type of information recorded would prevent problems associated with discovery by the defense.

Thereafter, an administrator was asked to prepare a memo analyzing the idea of creating an informant index. The memo was assigned so as to be used by management staff in discussing the pros and cons of setting up such an index. The administrator informally solicited comment on the subject from some Deputy District Attorneys. The content of these discussions touched on unreliability of informants, their credibility and their impact on a jury. During his 8-9 year tenure at the District Attorney's

Office, this administrator had also participated in other discussions on the use of informants. Based on these experiences, the administrator drafted a two-page memo on the subject.[40]

The memo recommended establishing an informant file. According to the memo, all deputies questioned by the administrator believed that an informant index could be invaluable. The memo recognized that information on an informant's prior contacts with the District Attorney's Office existed only in the unrecorded collective experience of deputies, and was not readily accessible to individual deputies.

Based on the belief that some or all of the contents of an informant file would become discoverable by defendants, the administrator advised recording only the minimum information, i.e., the informant's name, the Deputy District Attorney's name and the number of the case affected. Any other information should be in a shorthand form, it was suggested. "Opinions and characterizations should be avoided." A sample form designed for recording data on an informant provided spaces only for basic identifying information on the informant and the case, the dates of the first and final contacts, and a two-word description of the type of contact (such as "case investigation" or "planned witness" or "trial testimony").

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40 The administrator had never himself used a jail house informant in any case. He believed that at the time he wrote the memo, he was aware of only one jail house informant who had testified in more than one case.

The memo warns that "[r]egardless of the amount and type of information recorded, its discovery by the defense may lead to evidence which could impeach the informant." It continues as follows: "At the very least, the defense and our deputy will both be better informed as to the informant's proclivity to assist law enforcement and other sources of information. Most deputies would agree that it is better for everyone to be aware of this information early in the proceeding rather than to learn of it during trial."

The analysis of the administrator also addressed a concern that information contained in the informant's index might be the basis of Massiah motions (i.e., motions based on violations of the defendant's rights to counsel). "It is suspected that snitches are housed close to arrestees whose statements we would like to obtain."[41]

On January 27, 1987, several senior management officials of the District Attorney's Office discussed together whether to form an informant index.[42] The substance and degree of recollections of those attending the meeting varied. The

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[41] In his Grand Jury testimony, the administrator contended that the suspicion that the Sheriff's Department was intentionally placing informants next to inmates was based solely on his own experiences, and not on statements made by any deputy.

[42] One senior management official already had a file on confidential informants (i.e., informants who supplied information on crimes, but would not be called as a witness).

following represents recollections of various senior management officials, and their reasons for positions taken on the issue.[43]

The participants of the discussion decided against instituting a system of recording information on informants.[44] One or two reasons were cited for this decision: 1) the defense might discover information in the index, and 2) the Sheriff's Department might be deemed to be violating defendants' rights to counsel.

The reason consistently offered by officials for deciding against the informant system was that defendants might discover information contained in the index. Some senior management officials testified before the Grand Jury that the discussion at the meeting failed to clearly distinguish between confidential informants and jail house informants. However, notes taken by one senior management official during the meeting state, "Limit it to jailhouse snitch?"

Two aspects of the perceived problem with a defendant's discovery of information in the informant index were mentioned. One was the time consumed fighting discovery motions. The other was safety risks created for informants, and the consequent unwillingness of informants to come forward. In justifying to

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[43] In late 1988, various members of senior management staff were directed to memorialize certain recollections related to the jail house informant issue. Most, but not all, responded to the request. In addition to reviewing the writings, the Grand Jury also heard oral testimony of various senior management staff and reviewed notes taken at the January 27, 1987 meeting.

[44] One official did not recall any decision being made on the subject.

the Grand Jury their decision to not form an informant index, several senior management officials who attended the January 27, 1987 meeting stated that management was concerned with disclosures related to confidential informants, not to jail house informants.

No management staff official testified that disclosure of information on informants who testify, or will be called to testify, jeopardizes the safety of such an informant. (The identity of such informant becomes a matter of public record.) Similarly, according to one management official, concern expressed about the burden on deputies to respond to discovery motions arose from a belief that the defense would make discovery motions directed at mere percipient witnesses who the defense might suspect of having ties to law enforcement.

According to testimony, the discovery problem that the management staff perceived was that information on confidential informants (informants who did not offer or intend to testify) would be disclosed to the defense. However, no management staff member who testified about the January meeting denied that existing law would prohibit a defendant from discovering portions of an informant file pertaining to informants for unrelated cases. One senior management official testified that while improper at this time, the law might change to allow such discovery; based on that potentiality the management staff might rightfully decide against an informant index. According to a head deputy, another official that attended the meeting similarly

explained the reason for declining to establish an informant index: given the liberal persuasion of the existing judiciary, the District Attorney's Office should avoid exposing itself to a discovery order based on a heretofore unrecognized legal theory.

Neither a defendant's rights to know about information affecting the credibility of an informant, nor a prosecutor's obligation to disclose such information to a defendant, was ever mentioned during the discussion of the pros and cons of an informant index, according to all sources of evidence presented to the Grand Jury. In testifying before the Grand Jury, no management personnel who attended the January meeting denied that a defendant should be entitled to find out 1) the number of times an informant testified as a prosecution witness and 2) all benefits received or to be received for such testimony.

Certain staff management officials testified to their belief, at the time of the January 1987 meeting, that defendants could gather relevant information on informants. Some testified to their belief that the information would be contained in public records. Another testified to his belief that the defense could obtain needed information from the District Attorney's Office's case files on the informant. (This manager assumed that a Deputy District Attorney would note all benefits received, including benefits after sentencing, in the informant's case file.) However, according to one senior management official, each person at the meeting had copies of the above-referenced memos on informants from October 1986 and January 1987. These memos

stated that information on informants was not even readily accessible to Deputy District Attorneys, or that the information on informants was stored in individual deputies' heads.

In addition to issues of discovery, the issue of the potential impact of an informant index on Sheriff's activities was discussed at the January 1987 meeting, according to one senior management official. As stated in the memo drafted for management staff's discussion on establishing an informant index, and as explained by the senior management official's Grand Jury testimony, the Sheriff's Department was suspected of placing informants next to defendants in order to obtain incriminating statements. The concern was that information contained in an informant file established by the District Attorney's Office would be imputed to the Sheriff's Department, and that this might lead to defense motions based on the violation of the defendant's right to counsel.

Other officials who testified to having attended the January meeting denied any recollection of any discussion about the Sheriff's Department. Whether all participants at the meeting suspected the Sheriff's Department of intentionally placing informants next to defendants was also disputed by some Grand Jury testimony. However, one management official who attended the meeting testified as follows:

"[I]t is just my experience that over the years in tough cases where . . . we have filed a case and we know the defendant did it, but the amount of available evidence that we can present in court is a little on the thin side and a statement would certainly be helpful, that sooner or later those statements become available to us. . . . That is my suspicion that it is a fairly common practice [of the Sheriff's Department to intentionally place inmates in proximity to obtain incriminating evidence]."

According to testimony, management staff decided to hold a Saturday seminar as an alternative to the informant index, to educate less experienced deputies on the unreliability of informants and their affect on juries. The Grand Jury heard testimony about the seminar subsequently conducted. The seminar did not appear to address ethical issues relating to disclosure and the defendant's entitlement to know the number of times the informant testified as a prosecution witness and the benefits received therefor. Rather, the seminar appeared to focus on the use of jail house informants as it relates to winning cases.

Informant credibility problems were again brought to the attention of a group of management staff in May 1987, according to testimony heard by the Grand Jury. In May 4, 1987, a senior deputy reported to a senior management official that a

certain jail house informant (hereafter, in this part, "Informant X"), characterized as "a bad guy," was being "overused" as a prosecution witness. The senior deputy referred his superior to two other deputies who could verify Informant X's unreliability. The management official contacted these Deputy District Attorneys, both of whom were critical of Informant X.

According to testimony, this senior management official investigated the District Attorney's Office's use of Informant X and discovered ten cases wherein he had appeared as a witness. That management official then called a meeting of certain Head Deputies in his bureau and requested each to determine the number of cases in which Informant X had participated. He believes that he also instructed the head deputies to seek his approval before using Informant X. Only one of the ten cases in which Informant X was participating was within this management official's bureau; he directed the Deputy District Attorney on the case not to use Informant X.

In early to mid May, 1987, this senior management official raised concerns about use of Informant X at another meeting of senior management officials of the District Attorney's Office. Shortly thereafter, one official who attended the meeting obtained a copy of the list of cases in which Informant X was involved.

Another senior management official -- who is alleged to have attended the May 1987 meeting, but disclaims recollection of the same -- admitted being aware of the unreliability of

Informant X as far back as 1985. According to this official, one could never tell whether Informant X was telling the truth, and his demands were not worth what he offered. While this official believed that Informant X was unreliable and should not be used as a witness, he never informed others because he assumed everyone knew it.

On a more general note, a senior management official testified as follows before the Grand Jury:

> "I knew that informants, especially those in the jailhouse variety, were liable to say anything that would get them any advantage, and so I never even got to the point . . . . I just pretty well assumed they were all untrustworthy and that anything that they ever gave me or I ever used would have to be in some manner very thoroughly corroborated. I guess, in short, I never believed anything any of them said . . . ."

This official admitted that prior to October 1988, he was aware that informants endeavored to find out information about cases in order to claim to be witnesses.

In mid-January 1988, a senior management official who testified to participating in the January 1987 meeting, but did not recall the May 1987 meeting, received from a Deputy District Attorney another memo advocating the institution of a centralized repository for information on informants used by the District Attorney's Office. The author of the memo described

being "struck by the number of instances in which professional jail house informants are utilized as prosecution witnesses by Deputy District Attorneys without full access being available as to background information on them." This memo suggests that Deputy District Attorneys be required to consult the index, and seek prior approval of the head deputy, before using a jail house informant. No action was taken on the memo.

According to testimony before the Grand Jury, one senior administrator decided that the author of the above-referenced memo should not be told of reasons for rejecting the informant index idea; this decision was based on fear that the author might divulge these reasons to friends in the defense bar.

Not until late October 1988 did management staff act to deal with the informant problem. (See Grand Jury Report, Part V).

VII. JUDICIAL INVOLVEMENT

The Grand Jury heard testimony from certain judges and prosecutors, and reviewed documents, concerning apparently improper temporary releases from incarceration granted certain informants. In granting such a release, certain judges exhibited an unusual willingness to rely on the reputation of a member of the District Attorney's Office, rather than on factual evidence before the court.

One judge testified that he ordered the release of an inmate (an informant) on his own recognizance without any supporting documentation, an admittedly "very unusual" act never taken by the judge before or since. According to the judge's testimony, in so ordering, he relied totally on the integrity and good faith of the District Attorney's Office. The judge respected the Deputy District Attorney who appeared before him; that deputy allegedly informed the judge that a top administrator in the District Attorney's Office had sanctioned his appearance before the court to obtain the inmate's release.

Another judge similarly testified that in granting an order temporarily releasing an inmate (an informant) on his own recognizance, he (the judge) relied on the good faith of the District Attorney's Office. According to the judge's testimony,

he also assumed that the District Attorney's Office would not file an improper request. The judge further stated that but for the Deputy District Attorney's representation that a certain reputable top administrator of the District Attorney's Office instructed the deputy to seek the informant's release, he would have refused to sign the order.

Another judge testified before the Grand Jury that if he ordered an inmate released from in-jail custody, he expected that inmate to remain in the custody of law enforcement officers at all times. Nonetheless, the Grand Jury saw evidence that an order drafted by the District Attorney's Office and executed by this judge granted an informant's release on his own recognizance -- without any restraints.[45]

A fourth judge testified that he felt taken advantage of with respect to an incident where the District Attorney's Office appeared at a hearing on an informant's request for his release on his own recognizance.

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45 One Deputy District Attorney testified to the following regarding orders executed for the release of this informant: The deputy learned that a court had signed an order transferring an inmate (an informant), who had been sentenced to state prison, to Long Beach, and was then signing orders allowing his temporary release on to the streets. The deputy understood from another deputy that the District Attorney's Office was securing these orders to allow the informant to work with law enforcement on an investigation. Concerned that that County might be liable for any crimes committed by the informant while out of custody, and concerned that the court may not have jurisdiction over an inmate sentenced to state prison, the Deputy District Attorney spoke to a supervisor. The supervisor then told the deputy that he was unaware of any investigation which required the services of this informant and asked the deputy to see that the informant was reincarcerated and returned to state prison.

VIII. ATTORNEY GENERAL STAFF KNOWLEDGE OF INFORMANT ABUSES

The knowledge within the Office of the California Attorney General of apparent abuses concerning jail house informants appears to have run concurrently with similar knowledge within the Office of the Los Angeles County District Attorney. The events described in this section all relate to the activities of the same informant.

Case No. 1:

In January 1979, a state prisoner offered notice of alleged improprieties to the Los Angeles County District Attorney's Office. Within days, and at his own request, the inmate was interviewed by a correctional investigative officer. During the prison interview, the same or similar allegations were raised by the inmate who had been a jail house informant in several Los Angeles County criminal cases.

According to a memo written by the investigative officer, the inmate stated that his false testimony in several instances was instrumental in effecting convictions; and that authorities were aware of the false testimony and had, in some cases, supplied him with information [to be] used in the testimony. The inmate wasn't specific but related that "at least

four of the cases involved convictions under section 187 of the Penal Code."[46]

Significantly, the investigative officer directed a copy of his memo to a Deputy Attorney General, and stated also that the Deputy A.G. had been advised and would receive a copy of the information.

There was no evidence that the Attorney General's Office conducted any investigation regarding the claimed perjury in the murder cases, or any effort even to identify those cases.

An investigation into related claims by the informant was initiated by the Los Angeles County District Attorney's Office. Because of potential conflicts, the matter was referred to the Office of the Attorney General for follow-up investigation.

On May 22, 1979, the Deputy Attorney General assigned to the matter filed a memorandum chronicling the investigation to that date for an Attorney General administrator at Los Angeles. In relevant part, the memo notes the assignment in March 1979 of a Special Agent to investigate the matter, and his departure from the matter the following month when the inmate filed a civil rights complaint against him. The complaint apparently was based on the inmate's claim that the Agent wasn't

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[46] The crime of murder is defined in California Penal Code §187.

acting quickly enough in the investigation, particularly as it related to assuring the secure housing of the inmate.

Another Special Agent was assigned to the case and, in May 1979, caused the inmate/informant to submit to a polygraph examination. According to the memo, the agent "had insufficient facts," "[the inmate] proved to be somewhat unsuitable," and the test was deemed "unsatisfactory."

The Deputy A.G. concluded the memo to his superior by stating that the investigation was continuing with certain officials in Los Angeles being interviewed. Among those was a Deputy District Attorney who was one of the persons against whom the inmate made accusations. Also interviewed was a judge and certain officers of the Sheriff's Department and the Los Angeles Police Department.

The Deputy Attorney General could not verify the credibility of the inmate nor find corroboration for what he had said. The Deputy A.G. was of the opinion that the information offered by the inmate lacked credibility and was tainted by his anxiety to obtain more favorable circumstances of incarceration. The Deputy A.G. didn't believe the inmate was a person who could be used as a witness. "I just felt he could whipsaw anybody if he wanted to."

The Deputy Attorney General wrote to the Department of Corrections to state that the matter was closed. It was concluded that the inmate's lack of credibility represented an insurmountable barrier to further action.

Sometime thereafter, the Deputy Attorney General provided the District Attorney's Office with the conclusion of his investigation. In significant part, it states:

"After having exhausted all reasonable avenues of approach, we concluded that there was no credible evidence supporting the allegations of [the inmate] and our final appraisal was that [the inmate] . . .lacked credibility."

The Deputy Attorney General's notice to the District Attorney's Office and his expression of opinion about the reliability of the complaining inmate was addressed at least in letter form to a ranking District Attorney administrator. The Deputy A.G. "assumed [the administrator] was going to share that [opinion] with all the [District Attorney] people that were involved."

Case No. 2:

The informant later claimed to have information in a high-profile murder case. He was interviewed by the Special Agent who was the first to investigate the earlier allegations and who was the defendant in the informant's civil rights suit. He recalls that the informant's attitude was:

> "'I'll do whatever you want.
>
> "'Tell me what you want me to testify to, I will testify to it.'"

At some point the investigator let the informant know he wouldn't be considered as a witness and that the Deputy

Attorney General didn't consider the informant to have any credibility.

Case No. 3:

Another Deputy Attorney General handled a case in either late 1986 or early 1987 wherein two men were accused of attempting to murder or assault with a deadly weapon a Los Angeles County Deputy District Attorney.

The Deputy A.G. believes that it was after the preliminary hearing in the matter that he heard from a particular jail house informant who claimed to have information on another jail house informant who was slated to testify for the defense. The informant contacting the Deputy A.G. claimed he had a signed statement from the other inmate indicating that he was going to give perjured testimony on behalf of the defense. The Deputy A.G. testified that he never saw such a document.

The informant's claim against the prospective defense witness was turned over to defense counsel, but the Deputy A.G. doubts it influenced the decision to enter a plea insofar as the prosecution case was very strong to being with.

Later, the informant claimed even more information: what, in essence, amounted to a confession by one of the defendants. Claiming to be somewhat skeptical, the Deputy Attorney General asked the informant to take a polygraph test. The informant initially agreed, but vacillated quite a bit.

Finally he told the Deputy A.G. not to waste his time because he had lied and wouldn't pass the polygraph.

The informant was never used as a witness insofar as the matter never came to trial. (The two defendants entered a plea of guilty some time after the preliminary hearing.)

Case No. 4:

The informant made charges of improper conduct by a Special Agent in the Attorney General's Office. The Agent would subsequently be vindicated in an internal affairs investigation. Before the resolution of the matter, however, the Agent's superior wrote to the superintendent of the state prison where the informant was incarcerated:

> "Please be informed the above-identified Department of Corrections inmate has been exceptionally cooperative with this department, relative to an internal affairs investigation."

The writer continued by expressing his understanding that the inmate could be in line for a sentence reduction under a certain Department of Corrections provision.

> "I support this provision and encourage any favorable consideration given to [the inmate] . . . ."

Case No. 5:

A Special Agent with the California Department of Justice had contact with the informant in late 1986. He claimed to have knowledge that an ethnic/political gang had a contract on the life of another Department of Justice investigator. Arrangements were made to have the informant submit to a polygraph examination. On December 23, 1986, the informant called the Special Agent and advised that he could not pass the polygraph examination; that, in fact, he had fabricated the story and had done so because of his isolated housing situation. The informant claimed he was in fear of his life from another county jail inmate who held him responsible for a disrupted escape plot.

Case No. 6:

In January, 1987, the informant was interviewed by a Special Agent at the L.A. County Jail because he supposedly had been told by another inmate about a plot to kill a Department of Justice investigator. The plot allegedly involved the same investigator as in Case No. 5.

A polygraph exam of the informant was conducted wherein he reportedly professed to having perjured himself as many as nine times in other cases. The polygraph operator later stated that it is not unusual to hear admissions of perjury from subjects confined in Protective Custody. It's "what they do for a living, if you will . . . ."

No further inquiry was made by the Attorney General's office into the informant's claims of perjury, and no attempt was made to identify the cases.

IX. FUNDS FOR JAIL HOUSE INFORMANTS

The Grand Jury investigated allegations of payments made to jail house informants, or on their behalf, and considered a number of programs which provide funds for various law-enforcement-related activities. The Victim-Witness Assistance Program is one source of such funds.[47] The actual fund available is the Witness Protection Fund.

For the current fiscal year, 1989-1990, the State Office of Criminal Justice Planning approved a grant for a total sum of $2,756,781 for Los Angeles County, which includes the sum of $664,195 designated for the Los Angeles City Attorney. The Victim-Witness Assistance Program budget for the county grant provides:

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[47] The investigation disclosed the existence of several other funds. However, there was no direct evidence that any of these funds were used for that purpose. These funds include: the District Attorney's Special Appropriation Fund, the Sheriff's Special Appropriation Fund, the Narcotic Enforcement Special Fund, and the Sheriff's Special Appropriation Narcotics Fund.

	District Attorney	City Attorney
Net Salaries[48]	$1,324,156	$469,340
Employee benefits	368,115	114,940
Travel	12,000	6,100
Office Operating Expenses & Equipment	132,900	18,461
Audit expenses	15,000	6,500
Witness Protection Fund	100,000	
Victim Emergency Fund[49]		1,920
Emergency Services Fund2	8,000	
Indirect costs (10% of salaries)	132,415	46,934
	2,092,586	664,195
	664,195	
Total	$2,756,781	

The purpose of the Victim-Witness Assistance Program is to provide comprehensive services to victims and witnesses of all types of crimes. The bulk of the grant is to provide a system to assist victims and witnesses to crimes in coping with the

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48 Primary spending for the program is for salaries of District Attorney employees, and Los Angeles City Attorney employees stationed in courts, Police, Sheriff and District Attorney offices throughout their respective areas of responsibility, having been assigned duties to assist victims of and witnesses to crime. Among the services provided are crisis intervention, counseling, and emergency assistance.

49 The emergency funds are to provide immediate financial intervention in response to a victim's basic needs -- according to the county employee in charge of administering the Victim-Witness Assistance Program.

judicial process. Penal Code §13835(a). All local law enforcement agencies in the county have access to the Victim-Witness Assistance Program administered by the District Attorney.

Attention is focused on the use of the $100,000 allocated annually to the Witness Protection Fund. That fund is intended to provide lodging, meals, transportation for relocation, utilities, and other essential expenses related to the security of the witnesses and/or witnesses' families. (Current District Attorney Guidelines citing §13835 Penal Code.)

Law enforcement agencies, prosecutors and their investigators are authorized to have their representatives apply to the District Attorney's designated representatives on behalf of victims or witnesses to crimes for funds from the Witness Protection Fund. Applications may be made where:

a. a witness or family member has been threatened; or

b. an actual threat exists; and

c. criminal charges have been filed against a defendant; and

d. the witness will be called to testify in the case.

(District Attorney Guidelines re: Witness Protection Fund applications, ¶C 3; Penal Code §13835.5(b)(8).)

Under the Victim-Witness Assistance Program, the application for funds is made to the District Attorney's Bureau of Investigation by the officer, who generally is the investigating officer on the case where the witness is to

testify. The system requires the requesting officer to fill out a form request on behalf of the person said to need the protection.[50] Approval for funds is based purely upon statements made by the requesting officer. The officer is not required to obtain proof of the alleged threat, nor conduct any investigation. A crime report need not be made to a law enforcement agency having jurisdiction over the alleged threat. No follow-up investigation must be conducted on the alleged threat. Not even the identity of the threatening person must be determined.[51]

The approving officer must depend on the applying officer for validity of the claimed threat. The applying officer relies on the statements of the requesting victim or witness or family member for the validity of the need for assistance.

Case No. 1:

Testimony of a crime investigator before the Grand Jury indicated that an in-custody witness claimed that he was threatened while riding in a Sheriff's Department bus on

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50 In February and March 1990, the District Attorney revised the forms previously used to require considerably more probative information from applicants for money from this fund.

51 Upon approval of a request for funds, the investigating officer's department provides the funds up-front, obtains receipts for the expenditures, and then presents the receipts with a request for reimbursement to the fiscal office of the District Attorney. That reimbursement is to be in the sum of the receipts, not more than the authorized amount. Only if a problem arises does the paying officer contact the authorizing officer.

October 21, 1986, and that his wife was also threatened on October 27, 1986. On February 11, 1987, the wife moved from her mother's home to a hotel. The investigator who applied for funds to assist in the relocation could not account for the lapse of time from the date of the threat to the wife to the date of her move. The investigator testified no thought was given to whether the alleged threat was serious, no investigation of the threat was conducted, and no crime report was made on the threat alleged. Yet this threat was the basis of the request for $850 to relocate the wife nearly four months after the alleged threat was received and at a time the wife was living with her mother.

Case No. 2:

An investigating officer testified to the Grand Jury that an in-custody witness moved his wife and children to Arizona when he felt they were in jeopardy. The inmate alleged his personal notebook containing telephone numbers was stolen from him, and thereafter unknown persons began making threats to his wife over the telephone. The investigating officer had no first-hand knowledge of the alleged phone book, did not know the substance of the threats, and never investigated the threats. Yet this officer filed an application for, and obtained, $850 for the inmate to reimburse him for relocating his family to Arizona because of the alleged threats to the wife. It just so happened that the informant had a criminal action pending against him in Arizona.

Case No. 3:

In January 1984, an accused's brother appeared at a lineup in which an informant participated. The investigating officer, who was present at the lineup, applied for payment from the Witness Protection Fund based solely on the appearance of the brother at the lineup. This was apparently determined to be a sufficient threat against the informant. Two days after the lineup, payment of $1,450 was paid to the informant.

Case No. 4:

On November 5, 1986, an informant received $1,040 from an investigating officer who applied for and obtained reimbursement from the Witness Protection Fund. This sum was claimed for the purpose of relocating the informant's wife, who claimed to have received threatening telephone calls at her place of employment. (The informant also claimed to have received threats while in jail.) The wife claimed she relocated her residence but not her place of employment where the threats were received from an unidentified person. The investigating officer testified to the Grand Jury that the threats alleged were not specific; that no investigation was conducted concerning the threats; no investigation was conducted to verify where the wife lived or where she was relocated, or if she relocated; that no crime report was made regarding the threats; and that no attempt was made to verify the authenticity of receipts received allegedly for rent payments.

Case No. 5:

A jail house informant contacted an investigating officer, advising that an inmate was going to have the officer murdered, and that an attorney wanted the informant to commit perjury in a court case. On March 10, 1988, the officer obtained approval for $2,000 from the Witness Protection Fund for the informant, based on the informant's allegation that he was in fear because on two occasions during early morning hours, suspicious persons were prowling his neighborhood, knocking on doors, and asking for him. The informant did not, nor was he asked to, make a crime report on these incidents.

X. LEGAL CONSIDERATIONS

A. THE DUTY OF THE PROSECUTOR TO SEEK THE TRUTH.

"The duty of the district attorney is not merely that of an advocate. His duty is not to obtain convictions, but to fully and fairly present to the court the evidence material to the charge upon which the defendant stands trial . . . . [Citations omitted.] In the light of the great resources at the command of the district attorney and our commitment that justice be done to the individual, restraints are placed on him to assure that the power committed to his care is used to further the administration of justice in our courts and not to subvert our procedure in criminal trial designed to ascertain the truth.

". . . Although our system of administering criminal justice is adversary in nature, a trial is not a game. Its ultimate goal is the ascertainment of truth, and where furtherance of the adversary system comes in conflict with the ultimate goal, the adversary system must give way to reasonable restraints designed to further that goal."

In re Ferguson, 5 Cal.3d 525, 531 (1971).[52]

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[52] See also Ethical Consideration 7-13 of the ABA Model code of Professional Responsibility ("The responsibility of a public prosecutor differs from that of the usual advocate; his

B. THE PROSECUTOR'S DUTIES TO DISCLOSE EVIDENCE.

"A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the defense, or reduce punishment." ABA Disciplinary Rule 7-103 of the Model Code of Professional Responsibility; see also California District Attorneys' Association, "Professionalism, An Outline of Ethics and Civil Liability, Principles for Prosecutors Conducting Investigations and Trial" page IV.1 (1988); ("The prosecutor should assume an affirmative role in protecting against the withholding of information and in correcting misinformation.").[53]

Throughout the period investigated by the Grand Jury, the prosecution has had a duty "to disclose all substantial material evidence favorable to an accused, whether such evidence relates directly to the question of guilt, to matters relevant to punishment, or to the credibility of a material witness." People v. Rutherford, 14 Cal.3d 399, 405 (1975); People v. Morris, 46 Cal.3d 1, 30 n. 14 (1988) ("The duty of disclosure

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duty is to seek justice, not merely to convict.")

53 See also California Rule of Professional Conduct 5-220 ("A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce.") (Rule 7-107(A) prior to May 1989).

extends to all evidence that reasonably appears favorable to the accused, not merely to that evidence which appears likely to affect the verdict."); see also California District Attorneys' Association, "Professionalism, An Outline of Ethics and Civil Liability, Principles for Prosecutors Conducting Investigations and Trial," Page IV.1 (Prosecutors are advised to "[m]ake all informant benefits' known to the court and defense counsel.").[54]

C. THE PROSECUTOR'S DUTY TO CORRECT MISLEADING TESTIMONY OF AN INFORMANT.

The prosecution has an affirmative duty to correct misleading testimony of its witness. Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959); Giglio v. U.S., 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972); People v. Westmoreland, 58 Cal.App.3d 32, 42 (1976).

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[54] See also Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (duty not to suppress evidence material to guilt or innocence); Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972) ("When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within the general rule [of Brady].").

The newly-passed Proposition 115 seeks to limit judicial construction of the California Constitution. The courts are to construe the California Constitution to afford no greater rights to defendants than those afforded by the United States Constitution. While the courts obviously have not yet interpreted this constitutional amendment and its affect, the Grand Jury notes that it may impact the nature of a prosecutor's duties to disclose evidence relating to the credibility of a jailhouse informant.

"[A] conviction obtained through use of false evidence, known to be such by a representative of the State, must fall under the Fourteenth Amendment. (Citations omitted.) The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Napue v. Illinois, 360 U.S. at 269, 79 S.Ct. at 1177.

D. PROBLEMS WITH THE FAILURE TO LIMIT BENEFITS BY A PRE-TESTIMONY AGREEMENT.

The California Supreme Court has recognized two potential problems in the prosecution's failure to specify for an incarcerated witness before his or her testimony what benefits that he or she will receive in exchange for that testimony. First, the jury, which should be charged with resolving issues of the credibility of witnesses, is denied information to aid it in performing its function. People v. Phillips, 41 Cal.3d 29, 47 (1985). Second, the witness "may be so influenced by his hopes and fears that he will promise to testify to anything desired by the prosecution" in order to obtain his release or reduce his time behind bars.[55] Id. at 47-48.

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55 While in the Phillips case, the witness was an accomplice, the reasoning of the Phillips case is equally applicable to a case in which jailhouse informant testifies. Cf. People v. Morris, 46 Cal.3d 1 (1988) (applying Phillips to non-accomplice incarcerated witness).

Penal Code Section 1127a(c), enacted in 1989, requires the prosecution to file with the court at the time a jail house informant is called as a witness a statement setting forth all consideration promised to, or received by, the informant. This statute however fails to restrict benefits to those promised or bestowed before the informant testifies. Prosecutors are still able to maintain a system of conferring benefits after testimony, including writing letters to the prison authorities requesting consideration of the informant's actions. To alleviate this problem, legislation might be proposed to require law enforcement officials to seek judicial approval, based on good cause and after notice to the defendant against whom the informant testified, before providing any favors not set forth in the filed statement mandated by Section 1127a.

E. DISSEMINATING INFORMATION THROUGHOUT THE PROSECUTOR'S OFFICE.

The prosecutor's office should establish procedures and regulations to insure communication of relevant information to individual prosecutors who have an obligation to disclose such information to the defense. Cf. Giglio v. U.S., 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972).

"[W]hether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor.

The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government. See Restatement of Agency § 272. See also Am. Bar Assn., Project on Standards for Criminal Justice, Discovery and Procedure Before Trial §2.1(d). To the extent this places the burden on the large prosecution offices, procedures and regulations can be established to carry the burden and to insure communication of all relevant information on each case to every lawyer who deals with it." Id.

See also In re Imbler, 60 Cal.2d 554, cert. denied, 379 U.S. 908, 85 S.Ct. 196, 13 L.Ed.2d 181 (1963) (knowledge of a fingerprint expert testifying for the state imputed to the prosecutor).

Law enforcement agencies other than the District Attorney's Office should comply with the spirit of disclosure with respect to benefits given or promised to informants. Where officials of other law enforcement agencies promise, or give, significant benefits to an inmate in exchange for his services as a jail house informant in some case, that official should notify the District Attorney's Office of these promises or rewards.[56]

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56 Penal Code Section 4004.1(a) limits only the amount of monetary consideration a law enforcement official can provide a jail house informant in exchange for his testimony. (No more than $50 may be rewarded.)

To the extent such law enforcement agencies fail to share this information with the District Attorney's Office, the search for the truth may be compromised.

F. THE VEIL OF CREDIBILITY FOR THE PROSECUTOR'S INFORMANTS.

"[J]uries very properly regard the prosecuting attorney as unprejudiced, impartial and nonpartisan, and statements made by him are apt to have great influence." People v. Perez, 58 Cal.2d 229, 247 (1962) (case questioned on other grounds in People v. Green, 27 Cal.3d 1, 32 (1980)). In a similar vein, juries might consider informants who testify for the prosecution inherently more credible than those called by the defense. The jury perceives the prosecutor's purpose in calling his witnesses to be only to seek the truth.

G. INTENTIONAL PLACEMENTS OF AN INFORMANT NEXT TO A DEFENDANT.

Once a defendant's right to counsel has attached, law enforcement officials are prohibited from using an informant to deliberately elicit incriminating statements from that defendant. Henry v. United States, 447 U.S. 264, 269-70, 100 S.Ct. 2183, 218665 L.Ed.2d 115 (1980); Maine v. Moulton, 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481 (1985); Kuhlmann v. Wilson, 477 U.S.

436, 106 S.Ct. 2616, 91 L.Ed.2d 364 (1986).[57] "[T]he defendant must demonstrate that the police and their informant took some action beyond their merely listening, that was designed deliberately to elicit incriminating remarks."[58] Kuhlmann, 477 U.S. at 459, 106 S.Ct. at 2630. Merely planting an informant next to another inmate is not improper.[59] Id.

This area of the law, surrounding the intentional placement of informants, is still developing. No case has considered the intentional placement of jail house informants under circumstances approximating those uncovered by this Grand Jury in Los Angeles County. The Grand Jury does not intend to predict future developments or advise the courts how to proceed.

Whatever the legal developments, application of the analysis of Henry and its progeny to the circumstances in Los Angeles County underscores the defense's need for adequate discovery. The defendant has the burden of proving that the

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57 See also People v. Howard, 44 Cal.3d 375, cert. denied, 109 S.Ct. 188, 102 L.Ed.2d 157 (1988); People v. Hovey, 44 Cal.3d 543, cert. denied, 109 S.Ct. 188, 102 L.Ed.2d 157 (1988); People v. Williams, 44 Cal.3d 1127, cert. denied, 109 S.Ct. 514, 102 L.Ed.2d 549 (1988).

58 The Legislature in 1989 codified this limitation on the use of jail house informants acting as agents for law enforcement. See Penal Code Section 4001.1(b). That section states: "No law enforcement agency and no in-custody informant acting as an agent for the agency, may take some action, beyond merely listening to statements of a defendant, that is deliberately designed to elicit incriminating remarks."

59 In Kuhlmann, the informant was placed with the defendant in order to find out the identity of the defendant's crime partners. The government already had positive evidence of the defendant's involvement.

jail house informant deliberately elicited his incriminating statement. To determine whether the defendant's statements were "deliberately elicited," the defendant's word will likely be pitted against the informant's word. The defense needs information about the informant's past and present experiences relating to providing informant services and benefits received therefor. Without this information, the defense cannot adequately attack the credibility of the informant who denies having directly elicited information.

XI. RECOMMENDATIONS

A. THE DISTRICT ATTORNEY'S OFFICE.

1. The District Attorney's Office should maintain a central file which contains all relevant information regarding the informant. As a minimum, the file should include information regarding the number of times the informant has testified or offered information in the past and all benefits which have been obtained.

2. A complete record should be maintained describing all favorable actions taken on behalf of an informant, including copies of all relevant letters written. This information should be contained in a central index.

3. No consideration should be provided to an informant beyond that set forth in the written statement required by Penal Code Section 1127a[60], except as may be authorized by leave of court.

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60 Section 1127 provides, in part, states, "When the prosecution calls an in-custody informant as a witness in any criminal trial, contemporaneous with the calling of that witness, the prosecution shall file with the court a written statement setting out any and all consideration promised to, or received by, the in-custody informant. . ." Added 1989.

4. The District Attorney should give increased consideration to the prosecution of charges of perjury and other crimes related to the conduct of jail house informants.

5. The District Attorney should conduct regular training of its professional staff regarding the specific ethical responsibilities of prosecutors.

B. THE SHERIFF'S DEPARTMENT.

1. The Sheriff's Department should more clearly define the criteria which determines K-9 or informant classification for jail personnel.

2. A law enforcement officer requesting an inmate to be classified as an informant should be required to provide information as to the reasons for the requested classification. The reasons stated and the identity of the requesting officer should be recorded.

3. When an informant advises jail personnel of a claim to have heard an incriminating statement by a fellow inmate, the jail deputy should record the location of the involved persons at the time of the alleged occurrence.

4. The Sheriff's Department should place greater adherence to its policy to keep inmates who are classified as K-9s away from inmates who are classified as K-10s.

5. Due consideration should be given to determine if there is a practical means by which an inmate's legal papers can remain exclusively within his control.

XII. CONCLUSION

A program is in place within the Los Angeles County Superior Courts wherein application may be made for the appointment of counsel to represent convicted defendants who seek review of their cases because of claims of wrongful convictions due to the involvement of jail house informants. The application may be made by the convicted individual or an attorney acting on his behalf.

Because the judgments are final, the review must be sought by Petition for Writ of Habeas Corpus. In filing such petitions, certain factual allegations must be made which are legally sufficient to support the relief sought. It is difficult and in some cases likely not possible to allege sufficient facts without discovery. The present ruling law in California is that the Superior Court lacks jurisdiction to grant post-conviction discovery. People v. Ainsworth (1990) 217 Cal.App.3d 247, mod., 217 Cal.App.3d 1450a, rev. den. March 22, 1990. The issue is presently before the California Supreme Court.

During the investigation by the Grand Jury, the Office of the District Attorney and the Sheriff's Department have fully cooperated in providing all information and materials requested. In addition to the letters sent by the District Attorney to determine what cases may have been affected by jail house

informant involvement, another letter calling for additional information at the request of Special Counsel was sent to individual Deputy District Attorneys by their office. The information supplied in this fashion was significant.

In the event post-conviction discovery is denied by the Supreme Court, it is hoped that the District Attorney will be equally cooperative in considering the needs of affected parties for the information necessary to pursue their remedies. All materials developed by the Grand Jury during their investigation will be preserved under secure conditions.