



CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

731 K Street, Third Floor • Sacramento, CA 95814 • (916) 443-2017 • www.cdaa.org

*Chris or
Prof Delmen*

May 3, 2007

FLOOR LETTER

OFFICERS

President
GERALD T. SHEA
San Luis Obispo County

First Vice-President
JOHN POYNER
Colusa County

Second Vice-President
BONNIE DUMANIS
San Diego County

Secretary-Treasurer
GARY LIEBERSTEIN
Napa County

Sergeant-at-Arms
MICHAELA A. RAMOS
San Bernardino County

Past President
JAN SCULLY
Sacramento County

BOARD OF DIRECTORS

CARL ADAMS
Sutter County

PHILLIP CLINE
Tulare County

ALLISON DANZIG
Alameda County

ELIZABETH EGAN
Fresno County

MICHAEL FERMIN
San Bernardino County

SUZANNE GAZZANIGA
Placer County

KAREN GUIDOTTI
San Mateo County

THOMAS A. JOHNSON
Sacramento County

WILLIAM MITCHELL
Riverside County

CATHERINE STEPHENSON
San Diego County

GREGORY D. TOTTEN
Ventura County

EXECUTIVE DIRECTOR
DAVID LABAHN

**SENATE BILL 609 (Romero)
AS INTRODUCED, 2/22/2007
CORROBORATION OF IN-CUSTODY INFORMANTS
POSITION: OPPOSE
SENATE THIRD READING
FILE ITEM #82**

The California District Attorneys Association (CDA) opposes SB 609 (Romero). This bill provides that a judge or jury may not convict a defendant of a charged crime, find a special circumstance true, or use a fact in aggravation based on the uncorroborated testimony of an in-custody informant. Such a requirement reverses the common law tradition of assigning to judges and juries the responsibility for assessing the credibility of witnesses and determining the weight to be given to the testimony of any particular witness. By broadly prohibiting an entire class of evidence, SB 609 will make it more difficult to prosecute offenders, especially those who commit crimes while incarcerated.

To remedy the perception of a potential problem in a small number of criminal cases in California that rely solely on the uncorroborated testimony of an in-custody informant, SB 609 creates a sweeping prohibition on the use of such evidence. The premise underlying the measure is that such evidence is inherently suspect because in-custody informants have a strong incentive to manufacture false statements. While logically true in the abstract, the concrete reality is that current criminal procedure provides adequate safeguards in every actual case. The uncorroborated testimony of any witness is either evaluated by a judge, who has the wisdom and experience to evaluate such evidence; or it is evaluated by a jury, which is instructed by the judge on how to evaluate uncorroborated testimony. Every jury confronted with the testimony of an in-custody informant is provided with the instruction found at CALCRIM 336, or something substantively similar, which reads:

The testimony of an in-custody informant should be viewed with caution and close scrutiny. In evaluating such testimony, you should consider the extent to which it may have been influenced by the receipt of, or expectation of, any benefits from the party calling that witness. This does not mean that you may arbitrarily disregard such testimony, but you should give it the weight to

Fax from : 916 443 0540

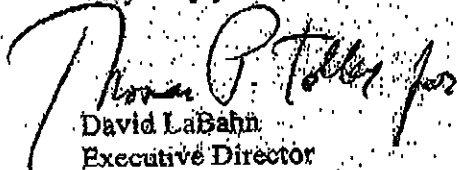
CDA A Floor Letter
Re: SB 609 - Oppose
Page Two

which you find it to be entitled in the light of all the evidence in the case.

The requirement of corroboration flies in the face of common law tradition, which has always accepted the sufficiency of the testimony of a single, uncorroborated witness with a few well-defined constitutional or statutory exceptions, notably treason (because of the seriousness of the offense); perjury (because falsehood is the gravamen of the offense); and accomplice testimony (because the incentive to inculpate the defendant and exculpate oneself is not merely theoretical). By requiring corroboration that independently links the defendant to the commission of the crime, and explicitly prohibiting the use of another in-custody witness to provide corroboration, SB 609 places significant burdens on prosecutors, particularly in proving crimes that were perpetrated in jails or prisons. Assaults, murders, and the smuggling of contraband will rarely be witnessed by correctional facility personnel. These crimes are usually only discovered in their aftermath. Under such circumstances, and absent a confession or admission by the defendant, the only witnesses who can testify to statements by the defendant will more often than not come within the definition of an in-custody informant prescribed by SB 609. This may be the only reliable evidence of guilt if percipient witnesses refuse to testify or cooperate with investigators either out of fear of retaliation or from a general animus against law enforcement.

For all these reasons, CDA A urges a "No" vote on SB 609 (Romero).

Very truly yours,


David LaBahn
Executive Director