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Editorial: Jailhouse informants

Justice demands extreme caution

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If you're looking for an arcane fact to dazzle your dinner companions, here's one: False testimony from jailhouse informants is the leading cause of wrongful convictions of death-row inmates.

According to the Center on Wrongful Convictions at the Northwestern University School of Law, false testimony was a factor in close to half of the 111 death-row exonerations across the country since 1973.

Although none of the exonerations involved California death-row inmates, lawyers who defend the condemned in this state report that jailhouse informants are frequently used here, too. Rarely do they testify about guilt involving the underlying crime. Rather they tend to provide crucial testimony used to prove that a death-row inmate showed lack of remorse or other aggravating circumstances necessary to persuade juries to choose execution over life imprisonment.

Because death-row convictions get more comprehensive reviews, the improper use of jailhouse informant testimony tends to be well documented in those cases. But thousands of nondeath-row inmates are serving long prison terms based on such testimony as well. One of the most notorious jailhouse informants, Leslie Vernon White, confessed in 1989 to giving false testimony in more than a dozen Los Angeles cases.

The California Commission for the Fair Administration of Justice, a panel of experts convened by the state Senate to review weaknesses in our criminal justice system, recently proposed a series of common-sense rules for courts and prosecutors on the use of jailhouse informants. Such witnesses are either incarcerated or charged with crimes themselves. They often receive a reward for their testimony: lenient sentencing, reduced charges, better confinement conditions or, in some cases, cash. Their testimony is notoriously unreliable.

To better ensure that justice is administered fairly, the commission recommends that whenever feasible a written agreement should describe the range of rewards or benefits offered by prosecutors in exchange for truthful testimony. A member of the DA's supervisory staff, someone other than the deputy assigned to the trial in question, should review the use of jailhouse informant testimony. Whether the testimony is used or not, all contacts with in-custody informants should be maintained in a central file. And all interviews with in-custody informants by DA personnel should be recorded and preserved.

Finally, and most important, the commission recommends that, before jailhouse testimony is

used, there be corroborating evidence that independently tends to connect the defendant with the crime to which the informant testifies. Such corroborating evidence is already required for accomplices who testify against co-defendants. Given the enormous incentives for jailhouse informants to lie, it makes sense to require corroboration for their testimony as well.

Four of California's five biggest counties have written rules to guide prosecutors on the use of in-house informants. Unfortunately, Sacramento County has not.

Chief Deputy District Attorney Cindy Besemer says that current office policy disfavors the use of in-house informants, that such testimony is rarely used and, therefore, a written policy is unnecessary.

We disagree. Given the known risk of jailhouse testimony, anytime it is used it needs to be regulated, documented and recorded. The Sacramento DA's policy should be written down for the protection of prosecutors, defendants, the public and justice.

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