

ORANGE COUNTY DISTRICT ATTORNEY
NEWS RELEASE
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ORANGE COUNTY GRAND JURY DEBUNKS PHONY NEWS OF PROSECUTORIAL CORRUPTION IN ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

***Allegations characterized by the Orange County Grand Jury as "witch-hunt"**

OCDA is addressing only the parts of the report pertaining to the Office and defers inquiries regarding the Orange County Sheriff's Department to Sheriff Sandra Hutchens.

SANTA ANA, Calif. – The Orange County Grand Jury's (OCGJ) report released today entitled "The Myth of the Orange County Jailhouse Informant Program," confirms the steadfast position of the Orange County District Attorney's Office (OCDA) both in court and in the media regarding informant matters. The OCGJ debunked the media "witch-hunt" for agency corruption, in examining *People v. Dekraai* and *People v. Wozniak*.

"The OCGJ is confident there is **no** program of jailhouse informant use for criminal investigation in the Orange County jails." (p. 19). Furthermore, the OCGJ found that "Allegations of intentional motivation by a corrupt district attorney's office ... to violate citizen's constitutional rights are unfounded. Disparate facts have been woven together and a combination of conjecture and random events have been juxtaposed to create a tenuous narrative insinuating nefarious intent. That narrative does not stand up to factual validation." (p. 5)

Key points and findings include:

- "To date, there has been significant media coverage, finger pointing, and much speculative rhetoric published, but the actual *facts* surrounding the use of in-custody informants remain unreported." (p. 5)
- "While the trial court in *Dekraai* has stated that the question of the existence of a 'jailhouse informant program has left the station,' the OCGJ disagrees. The mere existence of informants in the jail is not conclusively indicative of a program." (p. 12)
- "The OCGJ uncovered no systemic or wide-spread use of jailhouse informants by the OCDA, nor any intentional attempts to violate defendant's rights through the use of jailhouse informants." (p. 15)
- "The vast majority of prosecutors we spoke with are ethical, hard-working individuals who have not, and will not, file a case if they do not believe in the guilt of the accused." (p. 24)
- "The OCGJ found no evidence to support claims of a systemic, widespread informant program, and reports of such have been exaggerated in the press." (p. 24)
- "The current search to get to the bottom of potential discovery violations in the *Dekraai* case has devolved into a witch-hunt for agency corruption; a search that after 5 years and more than 40,000 pages of court documents remains fruitless." (p. 24)

- “The OCGJ found no concerted effort by personnel in either the OCDA or the OCSD offices to circumvent the law in order to ensure successful prosecutions.” (p. 24)
- “Violations in discovery and/or *Brady* disclosure in the *Dekraai* case are limited to the actions of a few members of the OCDA and a few OCSD personnel. This does not represent a conspiracy between the OCSD and OCDA.” (p. 25)
- On Local Law Enforcement (LLE): “LLE Agencies are, and continue to be, a weak link on the prosecution team. While OCDA has no authority over these agencies, they can certainly use the bully pulpit to raise awareness of the problem and encourage participation and commitment to proper legal standards.” (p. 25)
- “Hiring an independent monitor to oversee work recommended by IPPEC and already completed by the OCDA is a waste of County money.” (p. 25)

“The title of the report says it all. On behalf of our prosecutors, district attorney investigators, and every hard working employee at the OCDA, I want to thank each of the members on the panel for their hard work and pursuit of the truth,” said Orange County District Attorney Tony Rackauckas. “The OCGJ was diligent in their efforts and spent more than 3,500 hours seeking out and reviewing evidence, they read over 40,000 pages of documentation, of which our office provided more than 8,000 pages, listened to dozens of hours of informant tape recordings, and interviewed more than 150 people during their investigation into the criminal justice system in Orange County. They issued a well-researched and fact-driven report in which each piece of evidence was triple-corroborated and reviewed by subject matter experts,” said Rackauckas.

This controversy was created by a public defender desperate to spare a mass-murderer the death penalty after the OCDA secured the guilty plea and, at a minimum, a sentence of life without the possibility of parole. The media, despite being presented with the truth on multiple occasions by the OCDA, reported whatever the public defender said, which was then parroted by law professors and retired politicians without doing any investigation.

In regards to the OCDA, the OCGJ reviewed the structure and use of jailhouse informants as well as the operations surrounding the use of in-custody informants and found there were discovery violations that had occurred in a “small number of cases.” OCGJ recognized that the OCDA has already implemented organizational changes in remediation. The report also made mention of discovery failures in a few cases where informants were used, and “The IPPEC characterized these types of failures as a result of a ‘win-at-all-costs’ mentality. However, the OCGJ spoke with many credible witnesses who disputed the existence of such a mentality.” (p. 15)

Informant Policies and Practices Evaluation Committee Report (IPPEC)

The IPPEC report was limited in scope and not inclusive of changes already in place. “The OCGJ found that the interviews conducted by the IPPEC were primarily limited to lower level staff and, in fact, only one of the executive staff was interviewed. Many of the recommendations of the IPPEC were already being implemented prior to their investigation and including them as unique recommendations does a disservice to the work the OCDA had already implemented, particularly in the training unit.” (p. 15)

“As the IPPEC team had to rely solely on public documents and voluntary witnesses, they further recommended that *“an entity with document subpoena power and the ability to compel witnesses to be questioned under oath”* conduct an actual investigation into the truth of informant use.” (p.8)

Methodology

This OCGJ conducted the most thorough examination of the matter involving the informant issue in Orange County’s history. “All of the facts contained in this report had a minimum of three corroborating pieces of evidence and the OCGJ believes this investigation has been thorough and comprehensive in its attempts to speak with all sides of the criminal justice system ... It is also important to note that both the OCDA’s office and the OCSD command staff were cooperative and transparent with the OCGJ team throughout the investigation.” (p. 7)

Information OCGJ Gathered and Reviewed (P.6)

- 2,000 pages of initial court documents as related to the *People v. Dekraai* and *People v. Wozniak*
- Articles from several local and national publications

- Informant Policies and Practices Evaluation Committee Report (IPPEC report) and other reports about the OCDA
- More than 8,000 subpoenaed pages from OCDA and 3,000 from OCSD including policy and training manuals, discovery documents in informant cases
- Hundreds of hours of tape-recorded informant conversations and the OCSD special handling log
- From the OCDA, interviewed dozens witnesses including active and retired prosecutors, investigators and executive staff
- From the OCSD, dozens of retired and current deputies and command staff interviews
- Interviewed nationally recognized legal scholars, public defenders, private criminal defense attorneys, local law enforcement both line and command staff, judges, members of the Board of Supervisors, “as well as authors of various reports and audits to gain additional insight on previous recommendations, the current and legal use of jailhouse informants, and application of relevant case law.”
- The Orange County Informant Index (OCII) in the OCDA and inmate classification records (aka TRED) and the jails.
- Hearings they attended in *Dekraai* and *Wozniak*, training sessions, compared other district attorney and sheriff’s departments regarding jailhouse informant activity
- “Legal Counsel dug into previous Orange County cases where illegal informant use had been alleged, in an attempt to verify the allegations of systemic prosecutorial misconduct.”
- Law review articles

The OCGJ was aided by outside legal counsel secured by the California Attorney General, who thoroughly reviewed previous Orange County cases where illegal informant use had been alleged in an attempt to verify the allegations of systematic prosecutorial misconduct. The outside counsel included Ms. Andrea S. Ordin and Mr. Fredric Woocher, both of whom have extensive resumes in both the private and public sectors:

- Ms. Ordin was the first woman to be appointed United States Attorney for the Central District of California and Los Angeles County Counsel. She served as Chief Assistant Attorney General for the State of California, as the President of the Los Angeles Board of Police Commissioners, and as Los Angeles County Assistant District Attorney. She served for 18 years as partner and senior counsel for the international law firm Morgan, Lewis & Bockius.
- Mr. Woocher served as Special Counsel to California Attorney General John Van de Kamp for two years before entering into private practice. In addition, Mr. Woocher spent seven years with the Center for Law in the Public Interest, litigating a broad range of public interest issues involving land-use, environmental law, hazardous substances regulation, First Amendment protection, and civil rights cases.

The OCGJ Found the Following in Regards to *People v. Scott Dekraai*

Despite the fact that Dekraai confessed to the largest mass murder in Orange County history, the prosecution was concerned that he would successfully plead insanity and escape justice. In an effort to gather evidence to counter an insanity defense, the prosecution interviewed an inmate who, according to OCSD, reportedly had an in-custody conversation with Dekraai. Ultimately, this interview “formed the basis for the defense allegations of civil rights’ violation in *Dekraai*.” (p. 8)

The OCGJ report accurately corroborated the procedural history of the *Dekraai* case: “The prosecution, who has steadfastly held that they were unaware of the informant’s background during this initial interview, immediately decided they would not use his testimony and set up a secondary legal method for capturing Dekraai’s in-custody conversations by recording his conversations with the informant.” The report further mentioned that, “While it’s true that the prosecution did not readily provide the requested informant background information to the defense, they argued the defense was not entitled to it because they had no expectation of using the informant’s testimony at trial.” (p. 9)

When ordered by the court to produce the documents, the OCDA complied fully. However, several documents were in possession of the federal government and this caused a substantial delay in production of discovery materials. “The OCGJ

subpoenaed documents from the federal government relevant to this investigation and also experience a substantial delay in receiving them. The OCDA's complaints of slow actions on the part of the federal government ... appear to be credible." (p. 9)

People v. Daniel Wozniak

In the case of Wozniak, the defense attempted to avoid the death penalty by accusing OCDA of misconduct and filed an "extensive brief again alleging a secret informant program that undermined Wozniak's rights." (p. 9)

The defense claimed that the OCDA and OCSD intentionally placed an informant next to Wozniak in order to solicit information from him. However, the OCDA openly notified the defense in the early stages of the case that they did not find the informant, who independently contacted a special handling deputy from OCSD, to be credible and therefore the informant would not be used in any capacity at trial.

One year later, the defense requested background information on the aforementioned informant during the discovery process. This request was denied, and "the prosecution team argued that because the informant would not testify directly in court and no information presented in court came from the informant ... they were not bound by *Brady* or *Rules of Evidence* to release any informant information to the defense." (p. 9)

Wozniak was found guilty and sentenced to death in September 2016. The OCGJ "did not find any persuasive or material evidence that the informant was intentionally placed near Wozniak and the OCDA and OCSD version of the events seems credible. The court did not find any violation of Wozniak's rights and no information was used in his prosecution." (p. 9)

Recommendations

The OCGJ report made eight recommendations pertaining to the OCDA (p. 26), including:

- **Technology / Clerical**
 - Update case management system to better track all constitutional and statutory requirements and better interface with law enforcement agencies and the OCII.
 - Standardize discovery record-keeping system for recording and tracking discovery materials and ensure all prosecutors are aware of and use the new uniform system.
- **Communication**
 - Send a clear message to local law enforcement agencies that successful case prosecution relies on the sharing of information and agencies should be encouraged to share all informant information with the OCDA for input into the OCII.
 - Review management and communication to improve inter-office communications.
- **Training**
 - Implement standardized management hiring and training practices for all supervisory personnel and review employee disciplinary practices to ensure they are sufficient.
 - Ensure prosecutors continue to do their due diligence in background checks witnesses and not rely solely on OCII.
 - Continue to improve and prioritize its training program by designing and implementing follow-up measurements to determine the effectiveness and impact.
- **Contractual**
 - The Board of Supervisors should review and consider canceling, within the next 90 days, the OCDA independent monitor contract implemented on recommendations from the IPPEC.

"The OCGJ made many very valuable suggestions and we look forward to reviewing and considering each for implementation. The OCDA intends to respond in writing as required within 60 days and will make our response available to the public," concluded Rackauckas.

To review the Grand Jury report, "The Myth of the Orange County Jailhouse Informant Program" in full, click here: http://www.ocgrandjury.org/pdfs/2016_2017_GJreport/2017-06-13_Informant_Report.pdf

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