

JOINT LETTER TO THE UNITED STATES  
DEPARTMENT OF JUSTICE

Request for Federal Investigation in  
Orange County, California

VOLUME I



November 17, 2015

The Honorable Loretta E. Lynch  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**RE:     REQUEST FOR FEDERAL INVESTIGATION IN ORANGE COUNTY, CALIFORNIA**

Dear Attorney General Lynch:

We the undersigned share a firm belief in our criminal justice system and its overall ability to produce fair and reliable results. Compelling evidence of pervasive police and prosecutorial misconduct in Orange County, however, has caused us grave concern. We write to urge the Department of Justice to initiate an investigation into the actions of the Orange County Sheriff's Department ("OCSD") and the Orange County District Attorney's Office ("OCDA") in connection with the use of jailhouse informants and the concealment of informant-related evidence.

EVIDENCE OF MISCONDUCT IN ORANGE COUNTY: AN OVERVIEW

On September 30, 2015, *The New York Times* published an editorial addressing the situation in Orange County, which stated, in part:

In a scheme that may go back as far as 30 years, prosecutors and the county sheriff's department have elicited illegal jailhouse confessions, failed to turn over evidence that is favorable to defendants and lied repeatedly in court about what they did . . . Among other things, the defense argued, deputies intentionally placed informants in cells next to defendants facing trial . . . and hid that fact.

The informants, some of whom faced life sentences for their own crimes, were promised reduced sentences or cash payouts in exchange for drawing out confessions or other incriminating evidence from the defendants. This practice is prohibited once someone has been charged with a crime. Even when using an informant is allowed, defendants and judges must be told of the arrangement. That did not happen in Orange County. As [one] defense lawyer discovered, the sheriff's department kept secret a computer file showing where jailhouse informants were placed that went back decades. The prosecutor's office kept separate files of data on informants and their deals.

Referring to the misconduct at issue as both “blatant” and “systemic,” *The New York Times* concluded that “[t]he Justice Department should conduct a thorough investigation.”<sup>1</sup>

As of the writing of this letter, it is fair to say that the criminal justice system in Orange County is in a state of crisis: charges in extremely serious cases have been reduced or dismissed; violent crimes—including murders—have gone entirely uninvestigated; to date, four law enforcement officers have refused to testify in pending criminal matters, citing their Fifth Amendment privilege against self-incrimination;<sup>2</sup> and at least one prosecutor has been found by a court to have given “incredible” testimony under oath.<sup>3</sup> More troubling still, this all appears to be the tip of the iceberg.

Given this state of affairs, as well as the scope of the misconduct at issue, the Department of Justice is the only entity with the capacity to conduct the investigation required.

### ***Initial Hearings Before Judge Goethals & August 4, 2014 Ruling***

Beginning in March of 2014, the Honorable Thomas Goethals held extraordinary evidentiary hearings in the capital murder case of *People v. Scott Dekraai*. Witnesses were questioned about the use of an informant in Mr. Dekraai’s case, and about allegations of wide-scale informant-related misconduct in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Massiah v. United States*, 377 U.S. 201 (1964).<sup>4</sup> Over the course of a year, twenty-eight prosecutors and law enforcement officers testified under oath.

The defense alleged that members of the OCSD had a longstanding practice of secretly coordinating the movements of informants, in order to position them to obtain incriminating statements from targeted defendants. Informants would then actively elicit statements from charged defendants, going well beyond the constitutionally permissible role of “listening posts.”<sup>5</sup>

---

<sup>1</sup> *Dishonest Prosecutors, Lots of Them*, [http://www.nytimes.com/2015/09/30/opinion/dishonest-prosecutors-lots-of-them-in-southern-calif.html?\\_r=0](http://www.nytimes.com/2015/09/30/opinion/dishonest-prosecutors-lots-of-them-in-southern-calif.html?_r=0).

<sup>2</sup> *With Deputies Refusing To Testify Under Oath In Snitch Scandal, It's Time For A Federal Probe*, [http://blogs.ocweekly.com/navelgazing/2015/10/orange\\_county\\_snitch\\_scandal\\_informant.php](http://blogs.ocweekly.com/navelgazing/2015/10/orange_county_snitch_scandal_informant.php); and *Deputies Take the Fifth, Complicating Yet Another Jail Snitch Case*, <http://www.ocregister.com/articles/attorney-688078-case-deputies.html>.

<sup>3</sup> *People v. Dekraai* Supplemental Ruling, <http://big.assets.huffingtonpost.com/SUPPLEMENTALRULINGDekraai03122015.pdf>.

<sup>4</sup> *Dekraai Motion to Dismiss the Death Penalty*, <http://bit.ly/1MCpnNe>; and *How Tony Rackauckas Took a Slam Dunk Death Penalty Case and Turned It into His Worst Crisis*, [http://blogs.ocweekly.com/navelgazing/2015/03/scott\\_dekraai\\_seal\\_beach\\_salon\\_murder\\_tony\\_rackauckas\\_district\\_attorney.php](http://blogs.ocweekly.com/navelgazing/2015/03/scott_dekraai_seal_beach_salon_murder_tony_rackauckas_district_attorney.php).

<sup>5</sup> *U.S. v. Henry*, 447 U.S. 264, 271 (1980), finding that a jailhouse informant who was “not a passive listener” but engaged in “some conversations” with an in-custody defendant violated his Sixth Amendment right to counsel

In numerous cases, informants were said to have coerced confessions from targeted defendants with threats of physical violence and death.

Prosecutors, the defense maintained, consistently concealed information about these practices, despite a clear duty of disclosure. Instead, prosecutors repeatedly presented informants—to defense attorneys, judges, and even juries—in an identical fashion: as lucky listeners who happened to end up in the presence of talkative defendants. The defense further alleged that in some instances, in order to conceal the misconduct, prosecutors went so far as to suborn perjury. Prosecutors were said to have routinely concealed evidence damaging to the credibility of their informants, even when such evidence suggested that the informants were extraordinarily unreliable.

Over the course of the hearings before Judge Goethals, OCSJ Special Handling Unit deputies testified under oath about the placement of informants.<sup>6</sup> The OCSJ deputies denied that the placement of informants next to Mr. Dekraai and other high-value inmates was intentional, repeatedly testifying that, to the contrary, the housing arrangements were entirely coincidental. Over the course of their testimony, OCSJ deputies went still further, denying the very existence of a jailhouse informant program in Orange County. The OCSJ endorsed the testimony of OCSJ witnesses, who denied any wrongdoing. In his ruling issued on August 4, 2014,<sup>7</sup> Judge Goethals concluded, *inter alia*:

- “This court believes that the discovery rules arising out of *Brady* are clear and unequivocal. With that in mind this court finds that substantial evidence supports a number of the defendant’s allegations concerning potential *Brady* violations.”
- “[T]his court finds that working informants and targeted inmates were at times intentionally moved inside the Orange County jail by jail staff, often at the request of outside law enforcement agencies, in the hope that inmates would make incriminating statements to those informants. Such intentional movements were seldom, if ever, documented by any member of law enforcement. Therefore little or no information concerning those intentional movements was ever created or turned over to defense counsel as part of the discovery process. This court also

---

under *Massiah*. See also Cal. Pen. Code § 4001.1(b), a law passed in 1990 in response to the Los Angeles informant scandal discussed below, prohibiting any act “beyond merely listening” by in-custody informants.

<sup>6</sup> The Special Handling Unit is staffed by a small group of deputies working in the jail, whose assignments, as described in a search warrant written by Deputy Seth Tunstall in the case of *People v. Zorich*, include “[g]athering gang intelligence on shot caller/representatives, gang rivalries in and out of custody, narcotic trafficking within the system, [and] *developing confidential informants*” (emphasis added). The search warrant that includes this description of Special Handling’s role in “developing confidential informants” was not uncovered by the *Dekraai* defense team until after the close of the initial hearings in the case.

<sup>7</sup> *People v. Dekraai* Ruling, <http://big.assets.huffingtonpost.com/RulingbyGoethals.pdf>.

finds that false documentation was requested by, and likely provided to, jail informants to enable them to increase their credibility with target inmates. All of these activities should . . . have been disclosed to defense counsel pursuant to *Brady* in order to facilitate a defendant's investigation of possible *Massiah* violations."

- "This court also finds that, despite their testimony to the contrary, express or implied promises were made to both of the informants whose conduct is here at issue and from whom this court heard extensive testimony . . . . As the District Attorney's own training materials . . . suggest, this is *Brady* material."
- "This court further finds that, without legal justification or excuse, in different cases involving the same informant significantly different quantities of informant related discovery material were turned over by Orange County prosecutors to defense counsel . . . . The missing material includes dozens, sometimes hundreds, of pages of handwritten informant notes which summarized incriminating statements allegedly made by targeted inmates. After considering all of the evidence presented on this subject, this court is not convinced that these chronic discovery failures were the result of any improper intervention by federal authorities. The missing discovery constituted *Brady* material."
- "Many of the witnesses who testified during the course of this hearing were credibility challenged. These witnesses include current and former prosecutors, as well as current and former sworn peace officers. Some perhaps suffered from failure of recollection. Others undoubtedly lied."

Judge Goethals concluded that Mr. Dekraai's statements to informant Fernando Perez had been obtained in violation of *Massiah*, a point ultimately conceded by the State at the hearings.<sup>8</sup> On the other hand, "the court [found] that a key misconduct allegation related directly to this defendant [had] not been sustained." Noting that "[a]s unlikely as it may seem in light of the foregoing findings and the healthy skepticism developed by this court over the years related to coincidence and criminal prosecutions," Judge Goethals reluctantly credited the representation of the OCDA and the OCSD that Mr. Dekraai and the informant Fernando Perez were not housed in neighboring cells "as a result of a specific plan by law enforcement," but instead as a result of "a confluence of independent events."

---

<sup>8</sup> On the day that former Deputy DA Erik Petersen was scheduled to testify, *Dekraai* prosecutors announced that they would concede the *Massiah* violation involving Perez, and asked that Judge Goethals limit any further testimony in the case and prohibit the defense from calling Mr. Petersen. Judge Goethals rejected that request. *D.A. Won't Use Jailhouse Recordings in Seal Beach Mass-Murder Case*, <http://www.latimes.com/local/lanow/la-me-ln-jailhouse-recordings-seal-beach-shooter-20140422-story.html>.

Though Judge Goethals did sanction the prosecution,<sup>9</sup> he declined to recuse the District Attorney. Calling it “troubling” that “throughout this pending litigation additional materials that appear to have been subject to this court’s January, 2013 discovery order have continued to emerge from various sources,” Judge Goethals nevertheless concluded that, “[o]n balance, this court has not lost confidence that the duly elected District Attorney of this county has the ability to competently and ethically complete the prosecution of this serious matter.”

### ***Reopened Hearings Before Judge Goethals & March 12, 2015 Supplemental Ruling***

Following the conclusion of the initial portion of the hearings, the defense uncovered significant new evidence, including the existence of a secret computer database maintained by the OCSD since 1990, called “TRED.”<sup>10</sup> A TRED file contains entries that Judge Goethals later described as documenting “significant information about cell movements and the reason for such transfers.” Judge Goethals concluded that this newly discovered evidence was significant enough to merit reopening the hearings and revisiting his prior ruling. As he explained in his supplemental ruling, “[t]he defense had developed new evidence suggesting that one or more of the witnesses who testified during the initial phase of the hearing lied during their testimony.”

The very existence of a database with information about inmate movements and other critical information, considered alongside the contents of several key TRED files, directly contradicted substantial portions of OCSD testimony presented at the initial hearings. Over the course of the reopened hearings it became clear that, contrary to the State witnesses’ prior sworn testimony, a secret jailhouse informant program has long existed in Orange County’s jails.<sup>11</sup> The revelation of the TRED files also exposed one of Judge Goethals’ key findings—made in reliance on the State’s representations in testimony and argument—as incorrect. This key finding was the determination that “intentional movements were seldom, if ever, documented by any member of law enforcement. . . . Therefore, little or no information concerning those intentional movements was ever created . . . .” With the discovery of the TRED files, law enforcement’s documentation of inmate movements was uncovered. The TRED files also contradicted sworn testimony from OCSD deputies regarding the reasons why Mr. Dekraai was housed with an informant.

The decision to conceal TRED files, along with the *Brady* material contained within them, suggests that law enforcement officials in Orange County have been willing to go to great lengths

---

<sup>9</sup> Determining that “a significant sanction is appropriate as a result of the misconduct involved here,” Judge Goethals excluded “all evidence related to their misconduct, in other words, the exclusion of the defendant’s custodial statements for all purposes during a penalty trial.”

<sup>10</sup> *Sheriff’s Department Use of Jailhouse Tracking System Under Scrutiny*, <http://voiceofoc.org/2015/02/sheriffs-department-use-of-jailhouse-tracking-system-under-scrutiny/>.

<sup>11</sup> *People v. Dekraai* Ruling, <http://big.assets.huffingtonpost.com/RulingbyGoethals.pdf>.

not only to circumvent the constitutional protections afforded criminal defendants,<sup>12</sup> but also to ensure that their efforts remain secret. Judge Goethals underscored this concern, emphasizing the consistent refusal of OCSO deputies in earlier testimony to so much as mention the TRED files, even when “such information was called for by questions asked of them under oath in court.”<sup>13</sup>

On March 12, 2015, after considering the new evidence before him, Judge Goethals ordered the recusal of the entire OCDA and imposed significant additional sanctions on the prosecution.<sup>14</sup> Judge Goethals specifically found that:

[D]eputies Tunstall and Garcia have either intentionally lied or willfully withheld material evidence from this court during the course of their various testimonies. For this court’s current purposes, one is as bad as the other and it is therefore not necessary to engage in the semantical analysis required to determine which of these possibilities has occurred. This court will leave that evaluation to prosecutors employed by the executive branch of government.

Judge Goethals also made clear that he “did not believe” the testimony of Deputy District Attorney Erik Petersen with respect to the claim that a former federal prosecutor was responsible for one

---

<sup>12</sup> OCSO deputies appear to have employed the following tactics, among others, to achieve this end: (1) the maintenance of informant tanks, in which jailhouse informants and high-value inmates are intentionally placed in the same housing areas; (2) the orchestrated movement of informants to housing locations near targets, including the fraudulent manipulation of the housing and security levels of informants, designed to induce the trust of targets; and (3) the active encouragement of informants to secure statements from represented targets. Tr., *Dekraai Hearing*, February 9, 2015, at 6355-6360; Tr., *Dekraai Hearing*, February 17, 2015, at 6637-6348, 6748.

<sup>13</sup> In his opinion, Judge Goethals stated that Deputy Tunstall and Deputy Garcia “have either intentionally lied or willfully withheld material evidence from this court during the course of their various testimonies . . . even when such information was called for by questions asked of them under oath in court.” *People v. Dekraai* Supplemental Ruling, <http://big.assets.huffingtonpost.com/SUPPLEMENTALRULINGDekraai03122015.pdf>. Judge Goethals wrote that “[t]his court did not believe the earlier testimony of either Tunstall” or Deputy DA Erik Petersen “when they unsuccessfully tried to shift responsibility for a serious discovery breach in another case to the shoulders of a former federal prosecutor.”

<sup>14</sup> As a sanction for the significant concealment of evidence, Judge Goethals excluded all penalty phase evidence other than “1) evidence directly related to the acts committed by this defendant on October 12, 2011; 2) statements made by the defendant before his booking at the Orange County Jail; and 3) victim impact evidence.” See *You’re All Out*, [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2015/05/orange\\_county\\_prosecutor\\_misconduct\\_judge\\_goethals\\_takes\\_district\\_attorney.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2015/05/orange_county_prosecutor_misconduct_judge_goethals_takes_district_attorney.html); *When District Attorneys Attack*, <http://www.nationalreview.com/article/419110/criminal-justice-mess-orange-county-kevin-d-williamson>; *Judge Disqualifies All 250 Prosecutors in Orange County, CA Because of Widespread Corruption*, <http://www.dailykos.com/story/2015/05/29/1388819/-Judge-disqualifies-all-250-prosecutors-in-Orange-County-CA-because-of-widespread-corruption>; *Critics: Orange County DA Needs “Cleansing with Bleach and Firehoses,”* [http://www.huffingtonpost.com/2015/04/03/orange-county-da\\_n\\_6993390.html](http://www.huffingtonpost.com/2015/04/03/orange-county-da_n_6993390.html); *OC District Attorney’s Team Barred from Seal Beach Shooting Case*, <http://voiceofoc.org/2015/03/oc-district-attorney-barred-from-dekraai-death-penalty-hearing/>; and *Caught Backing Lying Sheriff’s Deputies, Orange County Prosecutors Get Booted In Murder Case*, [http://blogs.ocweekly.com/navelgazing/2015/03/seal\\_beach\\_salon\\_massacre.php](http://blogs.ocweekly.com/navelgazing/2015/03/seal_beach_salon_massacre.php).

of the serious discovery breaches. In making the decision to reverse course and recuse the District Attorney, Judge Goethals reasoned as follows:

[T]he District Attorney cannot or will not in this case comply with the discovery orders of this court and the related constitutional and statutory mandates that guarantee this defendant's right to due process and a fair trial. Therefore, the defendant's motion to recuse the office of the Orange County [D]istrict Attorney must be and is granted.<sup>15</sup>

The evidence adduced at the hearings, along with Judge Goethals' findings, raises the specter of a decades-long, wide-scale constitutional crisis. Given that evidence from the TRED database was apparently concealed for some twenty-five years, there is certainly reason to believe that countless TRED files created during the past quarter century might include *Brady* material that was never disclosed to defendants. This in turn raises additional questions: how often were TRED notations suppressed when they ought to have been disclosed? Are there cases where the hidden TRED files could have made the difference between acquittal and conviction, freedom and incarceration, or perhaps even life and death?

### ***Evidence Pointing to Prosecutors' Central Role***

The evidence suggests that law enforcement does not bear exclusive responsibility, or even primary responsibility, for the suppression of critical impeachment and exculpatory information in Orange County. Rather, the documented evidence indicates that prosecutors have played a central role—for decades.

#### *The OCDA's Potential Knowledge of the TRED System*

In a recent interview, OCSD Sheriff Hutchens stated that, "There's no secret about [the TRED System]. Certainly, the District Attorney's office has known about it for years."<sup>16</sup> Mr. Rackauckas responded by flatly denying that the OCDA had been aware of the system's existence, stating that TRED files had only been disclosed by the OCSD in one of its cases. These conflicting representations merit additional inquiry.

---

<sup>15</sup> *People v. Dekraai* Supplemental Ruling,  
<http://big.assets.huffingtonpost.com/SUPPLEMENTALRULINGDekraai03122015.pdf>.

<sup>16</sup> *Jailhouse Informant Scandal Rocking Criminal Justice System in Orange County*,  
<http://abc7.com/news/jailhouse-informant-scandal-rocking-oc-criminal-justice-system/1046811/>.

*The Suppression of Brady Evidence from the Orange County Informant Index*

Significant evidence emerged in a second capital case, *People v. Daniel Wozniak*,<sup>17</sup> which suggests that the OCDA has routinely suppressed *Brady* evidence contained in the Orange County Informant Index (“O.C.I.I.”). The O.C.I.I. is managed by the OCDA, and is intended to serve as the countywide database of informant files for law enforcement and the OCDA. The index documents assistance from “cooperators,” as well as concerns regarding cooperator conduct and reliability. The O.C.I.I. system appears to have been in existence for at least thirty-five years.

The OCDA should have known about its failures to disclose *Brady* evidence within the O.C.I.I. no later than 1990, during post-trial habeas litigation in the death penalty case of *People v. Thomas Thompson*.<sup>18</sup> Mr. Thompson was executed in 1998, but the case has been haunted by compelling allegations about both the concealment of evidence and misconduct by the prosecution.<sup>19</sup> At Mr. Thompson’s trial, the prosecution never disclosed that an O.C.I.I. file existed

---

<sup>17</sup> On August 26, 2015, Mr. Wozniak, who is awaiting trial in a death penalty case, filed a Motion to Dismiss the Death Penalty, alleging and analyzing thirty years of purported informant-related misconduct in Orange County. *People v. Wozniak* Motion to Dismiss, Super. Ct. Orange County, No. 12ZF0137, filed Aug. 26, 2015, <http://voiceofoc.org/files/2015/08/Wozniak-Defense-Motion-to-Dismiss-as-filed-08-26-2015.pdf>.

<sup>18</sup> In 1990, appellate counsel finally obtained from the OCDA a key informant’s O.C.I.I. file, which included information that would have substantially undermined his credibility. Declaration of William J. Arzbaeher, III, Oct. 25, 1990.

<sup>19</sup> At the preliminary hearing of Mr. Thompson and his co-defendant David Leitch, the prosecutor called three informants who claimed Mr. Thompson confessed that he was directed by Mr. Leitch to kill the female victim, because Mr. Leitch feared the victim would interfere with his efforts to reconcile with his wife. When former assistant DA Michael Jacobs took over the case, he decided to try the two defendants separately. At the *Thompson* trial, Mr. Jacobs called two new informants as witnesses, both of whom testified that Mr. Thompson admitted his sole responsibility for the rape/murder. Mr. Thompson was convicted and sentenced to death. At the Leitch trial, Mr. Jacobs returned to the theory from the preliminary hearing, arguing that the defendant directed Mr. Thompson to kill the victim. Mr. Jacobs did not pursue the death penalty against Mr. Leitch, who was convicted of second degree murder. As Judge Stephen Reinhardt made clear in one of his discussions of *Thompson* over the years:

The incompatibility of the two presentations could not have been more evident. As Judge Betty Fletcher of our court later wrote, “little about the trials remained consistent other than the prosecutor’s desire to win at any cost.”

The prosecutor’s contradictory presentations were so blatantly unethical that, in a wholly unprecedented action, seven former California prosecutors with extensive death penalty experience subsequently filed an amicus brief on Thompson’s behalf in the United States Supreme Court, arguing that “this is a case where it appears that our adversarial system has not produced a fair and reliable result.” This group of top prosecutors included the individual entrusted with the decision whether to seek the death penalty in all capital-eligible cases in Los Angeles County during 1979-1991, his counterpart in Sacramento entrusted with the same decisions in that county during 1989-1995, and the drafter of the California death penalty statute under which Thompson was convicted and sentenced. These highly respected prosecutors severely criticized the egregious conduct of Thompson’s prosecutor and observed that “the use of three informants to support one

for informant Edward Fink, even though he was described within that file as an “unreliable operator.” The file also included an entry stating that Mr. Fink escaped custody while acting as an informant with the Long Beach Police Department.<sup>20</sup>

In the past year, the concealment of informant Fink’s O.C.I.I. file in *Thompson* sparked a broader investigation by the *Wozniak* defense. This probe appears to have only scratched the surface of the scope of non-disclosure stemming from prosecutors’ handling of this critical database of informant information. Mr. Thompson’s prosecutor, Michael Jacobs, admitted in a 1999 deposition for another condemned defendant, William Charles Payton, that he did not turn over the O.C.I.I. file for a key informant in that case, Daniel Escalera. Jacobs further testified that he was unaware of even the *existence* of the O.C.I.I. system during the first two decades of his career. At the time of his deposition, the veteran murder prosecutor was the chief of the OCDA’s homicide unit.<sup>21</sup>

A document discussed for the first time in a *Wozniak* pleading signals that the non-disclosure of evidence from the O.C.I.I. files does not appear to be a problem unique to Mr. Jacobs, but rather the result of long-term, and long-concealed, OCDA practices. A 1999 letter sent from a high-ranking official within the California Attorney General’s Office (“AG”) to current Orange County District Attorney Tony Rackauckas<sup>22</sup> describes efforts by multiple prosecutors designed to prevent defendant Payton from obtaining O.C.I.I. entries relating to informant Escalera.<sup>23</sup> According to the AG’s letter, the OCDA only agreed to turn over critical entries after being advised that “if [the OCDA] did not disclose this material in the informant index, the Attorney General’s office had an independent ethical obligation to disclose it to the defense under *Brady*.”

Perhaps the most remarkable aspect of this discovery is the following: *not even this communication* appears to have been enough to spur Mr. Rackauckas to investigate whether there were systemic discovery violations underway in connection with the use and potential abuse of the O.C.I.I. Thus, it is not surprising that other cases have also been located, predating and

---

prosecution theory and then two new informants to support another demonstrates how easy it is to manipulate facts when the prosecutor’s goal is to win at all costs.”

Judge Stephen Reinhardt, *The Anatomy of an Execution: Fairness vs. Process*, [http://www.law.nyu.edu/sites/default/files/ECM\\_PRO\\_059248.pdf](http://www.law.nyu.edu/sites/default/files/ECM_PRO_059248.pdf).

<sup>20</sup> *People v. Wozniak*, Motion to Dismiss, at 240-241.

<sup>21</sup> *People v. Wozniak*, Motion to Dismiss, at 38.

<sup>22</sup> Letter dated June 16, 1999, from Chief Assistant AG David Druliner to Orange County District Attorney Tony Rackauckas, <http://bit.ly/1Xf14gf>.

<sup>23</sup> According to his O.C.I.I. file, Escalera was “a member of EME [*i.e.*, the Mexican Mafia] and has put out a [contract] on an informant’s life.”

postdating the AG's letter, in which it appears that *Brady* evidence from the O.C.I.I. was not turned over and, instead, substantial efforts were made to prevent its disclosure.<sup>24</sup>

*Additional Concerns About the OCDA's Conduct and Response to Revelations*

The motions to dismiss the death penalty filed in *Dekraai* and *Wozniak* identify numerous defendants as having had significant informant-related evidence suppressed by the OCDA. We are deeply troubled that much of the evidence allegedly suppressed extends well beyond the O.C.I.I.

For instance, there is evidence that in multiple cases, informants extracted confessions from targeted defendants with threats of physical violence and death.<sup>25</sup> Such actions squarely violate a United States Supreme Court case on that very point, *Arizona v. Fulminante*, 499 U.S. 279 (1991). However, neither prosecutors nor members of local law enforcement needed to be familiar with that particular holding to realize that confessions should not be coerced with threats of violence and death. It is concerning that such an operation could occur on a single occasion, let alone repeatedly. The fact that in some instances, the prosecutor elected to hide any and all evidence of the confessions, despite an unambiguous duty of disclosure,<sup>26</sup> strongly indicates an appreciation of the illegality of such conduct.

*Profound Impact on the Administration of Justice and the Response of Local Authorities*

The behavior of the OCDA since the *Dekraai* Motion to Dismiss was filed in January of 2014 has done nothing to dispel our concerns. Rather than conducting a full and fair investigation of these serious allegations,<sup>27</sup> and analyzing the scope of cases potentially tainted by past

---

<sup>24</sup> For example, Mark Cleveland, a prolific informant whose jailhouse cooperation spanned nearly 30 years, was described on the first page of his O.C.I.I. file as a "problem informant." *People v. Wozniak*, Motion to Dismiss, at 205. Additionally, the first entry describing Mr. Cleveland's informant efforts states: "Subject cannot be trusted." *Id.* at 205. Mr. Cleveland allegedly broke into a home and stole money while operating as an informant with a local police department. *Id.* The O.C.I.I. file for Fernando Perez—the informant who obtained statements from both Mr. Wozniak and Mr. Dekraai—includes the following entry, based upon information provided by a local detective in 1999: "Perez was terminated as a C.I. – Do not use as a C.I." The prosecutors in *Dekraai* claimed not to have examined Mr. Perez's O.C.I.I. file until January of 2013, fifteen months after Mr. Perez elicited a confession from the defendant. *Id.* at 67, 162.

<sup>25</sup> *People v. Wozniak*, Motion to Dismiss, at 527-532, 613-615, 660-671.

<sup>26</sup> This duty emanates both from *Brady* and California statutory discovery provisions. See Cal. Pen. Code § 1054.1(b), the scope of which exceeds *Brady* when it comes to statements by defendants and witnesses. ("The prosecuting attorney shall disclose to the defendant . . . [the] (b) [s]tatements of all defendants . . . [and] (f) [r]elevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial . . .") That is, any statement made by the defendant or a trial witness, whether it is exculpatory or not, must be disclosed.

<sup>27</sup> The OCDA conducted what it described as an "internal investigation" before the *Dekraai* hearings began, in which numerous witnesses named in the Motion to Dismiss were interviewed. But investigators did not record a single interview or create a single report. Tr., *Dekraai* Hearing, March 24, 2014, at 997-998. Not only was the chief of

misconduct, the OCDA apparently turned its energies to preventing Judge Goethals from hearing more of its cases.<sup>28</sup>

The recent decision by another court to deny the *Wozniak* Motion to Dismiss the Death Penalty, a 754-page filing with more than 20,000 pages of supporting exhibits, without allowing any witness testimony, is further evidence of the need for federal intervention.<sup>29</sup> Individual trial courts are neither inclined nor equipped to conduct wide-scale investigations into systemic misconduct. Judge Goethals' decision to go as far as he did was nothing short of anomalous, and even he limited his inquiry to the facts as they related to the individual criminal case before him.

---

the homicide unit and the lead prosecutor on *Dekraai*, Assistant DA Dan Wagner, never interviewed, but he actually helped lead the investigation, despite being a focus of the defense allegations of wrongdoing. During his testimony in *Dekraai*, when he was asked why investigators did not create any reports related to the witness interviews, Assistant DA Wagner stated, "I guess I could answer from my own standpoint. There was nothing—there was no new information. There was nothing that was contrary. There was nothing that was *Brady* material." *Id.* at 998.

<sup>28</sup> "Since February 2014, the district attorney's office has asked to disqualify Goethals—a former homicide prosecutor and defense attorney—in 57 cases, according to court records. In 2011, records show, prosecutors made disqualification requests against Goethals just *three* times. In 2012, *zero* times. In 2013, only *twice*." *O.C. Prosecutors Steering Cases Away from Judge Thomas Goethals*, <http://www.latimes.com/local/orangecounty/la-me-jailhouse-snitch-20150314-story.html>.

<sup>29</sup> Judge John Conley, whom the defense twice sought to recuse based upon issues surrounding his own use of a jailhouse informant when he was a homicide prosecutor at the OCDA, declined to hold hearings in the *Wozniak* case, reasoning as follows:

[Wozniak] cannot use what he claims happened in more than 40 other cases at other times to show outrageous government misconduct in his own case, and he has not shown that any alleged misconduct in those other cases would affect his right to a fair trial.

That leaves the defendant's assertion that he has established "a thirty year history of law enforcement surreptitiously violating defendant's constitutional rights and of the District Attorney's Office failing to turn over constitutionally and statutorily mandated discovery." This is the real thrust of his argument.

The court is not persuaded by this argument. Based on this record it can neither criticize nor approve the conduct of the District Attorney and law enforcement in each of the other 40 cases defendant cites. This record is not clear enough either to condemn or to exonerate—with the exception of those cases handled by former Deputy District Attorney Eri[k] Petersen, where the District Attorney concedes that errors were made. To resolve this issue would take months and months of testimony—in a case which was first filed 5 ½ years ago and is set for trial on 10/30/15, today.

*People v. Wozniak*, Decision on Motion to Dismiss the Death Penalty, <http://bit.ly/20xTolv>. The defense and prosecution pleadings are available at: Motion to Dismiss the Death Penalty, 8/26/2015, <http://bit.ly/20xSyeT>; D.A. Preliminary Response to Motion to Dismiss, 8/27/2015, <http://bit.ly/1RZ6xUI>; D.A. Opposition to Motion to Dismiss, 9/16/2015, <http://bit.ly/1St4jhm>; and Defense Reply to Prosecution Response to Motion to Dismiss, 10/15/2015, <http://bit.ly/1RZ7bl4>. The second disqualification motion is available at: <http://bit.ly/1kx2wfv>.

Moreover, efforts by the OCDA to publicly minimize the seriousness of the situation have remained consistent, as has the apparent refusal to so much as consider the potential consequences to countless accused who may have been deprived of critical evidence.<sup>30</sup>

The staunch refusal of the OCDA and the OCSJ to acknowledge the possibility that members of their respective agencies may have intentionally deprived defendants of evidence, or that scores of as yet unidentified defendants have been denied due process, would appear to be driven more by concerns about self-preservation than impartial analysis. Indeed, the interest in avoiding further scrutiny appears to have repeatedly influenced or precipitated the resolution of serious cases implicated in the scandal. One defendant now faces less than four years in prison after first being sentenced to life without the possibility of parole for murder;<sup>31</sup> another defendant, who allegedly admitted to two separate murders, recently received a sentence that allowed him to be released on probation;<sup>32</sup> and a number of other defendants received reduced sentences after an OCSJ deputy found to have provided misleading testimony in *Dekraai* refused to testify for the prosecution in their cases.<sup>33</sup>

The repeated efforts to minimize or even evade these questions entirely, leaving investigations and cases to fall by the wayside,<sup>34</sup> have had other implications for the

---

<sup>30</sup> The OCDA, instead of proposing its own investigation into the 40-some cases brought to its attention by the *Wozniak* defense—faced with a decision by the court finding that the “record is not clear enough to condemn or exonerate [the OCDA and law enforcement]”—elected instead to issue a press release stating that “The Honorable John D. Conley found today that the accusations of outrageous governmental conduct by the Orange County District Attorney’s Office (OCDA) were untrue.” This response is consistent with other recent public statements. *O.C. District Attorney Official Calls Claims of Intentional Misconduct in Use of Jailhouse Informants “Baloney,”* <http://www.ocregister.com/articles/attorney-685527-office-district.html>.

<sup>31</sup> *DA’s Misconduct Leads to Reduced Sentence for Convicted Murderer*, <http://voiceofoc.org/2015/02/das-misconduct-leads-to-reduced-sentence-for-convicted-murderer/>.

<sup>32</sup> *Calif. Prosecutors Opt for Freeing Accused Murderers Instead of Transparency*, <http://www.washingtonpost.com/news/the-watch/wp/2014/10/15/calif-prosecutors-opt-for-freeing-accused-murderers-instead-of-transparency/>; and *Here Is Why an Admitted Killer Walked Free*, <http://www.ocregister.com/articles/palacios-639481-moriel-informant.html>. In explaining the resolution of the case, a supervising prosecutor stated that his office’s considerations for the resolution included that “[w]e didn’t want to go through another one of those [*Dekraai*] hearings.”

<sup>33</sup> *Thin Blue Lies: Orange County Pays Price for Law Enforcement Perjury*, [http://blogs.ocweekly.com/navelgazing/2015/06/tony\\_rackaukas\\_prosecutors\\_oc\\_snitch\\_scandal\\_ocda.php](http://blogs.ocweekly.com/navelgazing/2015/06/tony_rackaukas_prosecutors_oc_snitch_scandal_ocda.php); *Informant Fallout: O.C. Sheriff’s Deputy Refuses to Testify in Mexican Mafia Cases*, <http://www.ocregister.com/articles/tunstall-664879-deputy-cases.html>; and *OC Deputies’ Snitch Scam Playbook Revealed*, [http://blogs.ocweekly.com/navelgazing/2015/06/oc\\_deputies\\_snitch\\_scam\\_playbook\\_revealed.php](http://blogs.ocweekly.com/navelgazing/2015/06/oc_deputies_snitch_scam_playbook_revealed.php).

<sup>34</sup> *Murders Forgotten: How Far Did Prosecutors Go to Hide Informants Network?*, <http://voiceofoc.org/2015/03/murders-forgotten-how-far-did-prosecutors-go-to-hide-informants-network/>; *Misconduct In Jailhouse Snitch Program Letting Murder Suspects Walk Free*, [http://www.huffingtonpost.com/2014/10/21/california-jailhouse-informants\\_n\\_5999674.html](http://www.huffingtonpost.com/2014/10/21/california-jailhouse-informants_n_5999674.html); and *Gang Member’s*

administration of justice in Orange County. For instance, the OCDA and local law enforcement failed to investigate as many as six murders admitted to by one key informant.<sup>35</sup> A signed agreement with that same informant, as well as recorded police interviews with him, remained hidden with a local police agency for five years—and were never turned over to defendants in three potential “life” cases in which he testified.<sup>36</sup> In one of several interviews that were not disclosed, the informant told police investigators, as he tried to negotiate a resolution of his own attempted murder case, that “I might be able to help you out if my memory can fall back in place, it might not be able to fall back in place because it's a long time ago. People forget. If I can grab spots of my memory and make it seem like it was yesterday . . . .” In another case involving what appears to be a wrongfully incarcerated 14-year-old, the prosecution withheld exculpatory evidence in the form of separate statements made by two accomplices to the jailhouse informant. (The OCDA has said that it cannot confirm what materials came into its possession, because the case file disappeared.<sup>37</sup>) That same informant, who is still expected to testify for the government in a federal case, allegedly told a Los Angeles-based news program in recent weeks that he believed “[p]eople’s constitutional rights have been violated.”<sup>38</sup>

### ***L.A. County Informant Scandal***

The situation in Orange County is especially troubling, considering that in the late 1980s, Los Angeles County, its neighbor to the north, endured what was previously the most serious jailhouse informant scandal in the nation’s history.<sup>39</sup> The highly publicized revelations of

---

*Reduced Sentence is Sixth Case Altered by Jailhouse Informants*, <http://www.ocregister.com/articles/islas-679349-informant-attorney.html>.

<sup>35</sup> Oscar Moriel testified in one case that “it might be up to five, maybe six” murders that he has committed. *People v. Dekraai*, Motion to Dismiss, at 387. Mr. Moriel, who has still not resolved his own attempted murder case or proceeded to trial since he was charged and incarcerated ten years ago, admitted that no one has questioned him about his murders. Tr., *Dekraai* Hearing, April 7, 2014, at 1641.

<sup>36</sup> *Jailhouse Snitch Tapes Reveal How Cops Recruited Serial Murderer to Be Their Informant*, [http://www.huffingtonpost.com/2015/06/12/orange-county-jailhouse-informants\\_n\\_7566928.html](http://www.huffingtonpost.com/2015/06/12/orange-county-jailhouse-informants_n_7566928.html); and *Recordings Reveal How Informant Ring Operated in Orange County Jails*, <http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/5/28/orange-county-snitch-scandal-audiotapes.html>.

<sup>37</sup> *How OC Law Enforcement Locked Up an Innocent 14-Year-Old Boy for Two Years*, [http://blogs.ocweekly.com/navelgazing/2014/12/luis\\_vega\\_santa\\_ana\\_shooting\\_gang\\_andy\\_alvarez.php](http://blogs.ocweekly.com/navelgazing/2014/12/luis_vega_santa_ana_shooting_gang_andy_alvarez.php).

<sup>38</sup> *Did Orange County Law Enforcement Break Law by Using Jailhouse Informants?*, <http://abc7.com/news/did-oc-law-enforcement-break-law-by-using-jailhouse-informants/1047095/>.

<sup>39</sup> It is worth noting that the current Sheriff and Undersheriff of Orange County, Sandra Hutchens and John Scott respectively, are both transplants from the Los Angeles County Sheriff’s Department (“LASD”). Sheriff Hutchens worked at various levels in the LASD for 30 years before joining the OCSD in 2008. <http://www.sheriffhutchens.com/about-sheriff-hutchens>. Likewise, Undersheriff Scott worked in the LASD from 1969-2005, and in 2008 joined Sheriff Hutchens’ administration as Undersheriff.

misconduct in the Los Angeles jails prompted a special grand jury investigation that culminated in recommendations for reforms intended to guard against future abuses.<sup>40</sup> Those recommendations appear to have gone unheeded in Orange County. In fact, OCSD officials introduced the computerized TRED system the *very same year* that the Los Angeles County Grand Jury issued its report—while simultaneously initiating a practice of concealing TREDs and the favorable evidence contained within them.

### ***The Need for a Federal Investigation***

The language found in a 1990 *Los Angeles Times* editorial calling for a federal investigation—published after the Los Angeles County Grand Jury issued its report—resonates as strongly, if not more so, in Orange County, 2015:

Unfortunately, it now appears that only the intervention of federal authorities can restore public confidence in a criminal justice system in which officers of the law and the court have tolerated and, in some instances, possibly encouraged perjury.

What is at stake are fundamental questions of constitutional rights and the basic integrity of a court system to which the voters of California have assigned the power of life and death.

Failure to resolve these issues will open the administration of justice in this county to doubts so corrosive that their consequences are difficult to calculate.<sup>41</sup>

The response to the Los Angeles County scandal, which did not include federal intervention, failed to address perhaps the most important issue: how to bring justice to defendants whose convictions and sentences were wrongfully secured through the use of dishonest informants and unlawful informant-related practices.<sup>42</sup>

---

<http://shq.lasdnews.net/pages/pagedetail.aspx?id=2222>. Both were LASD employees when the Los Angeles informant scandal erupted.

<sup>40</sup> Report of the 1989-90 Los Angeles Grand Jury, <http://www.ccfaj.org/documents/reports/jailhouse/expert/1989-1990%20LA%20County%20Grand%20Jury%20Report.pdf>.

<sup>41</sup> *Make It a Federal Case: Grand Jury Report on Informant Scandal Doesn't Go Far Enough*, [http://articles.latimes.com/1990-07-11/local/me-4\\_1\\_grand-jury](http://articles.latimes.com/1990-07-11/local/me-4_1_grand-jury).

<sup>42</sup> *Informant-Aided Convictions Going Unchallenged: Justice: Few Defense Lawyers Are Accepting an Invitation to Appeal Murder Convictions Obtained with the Help of Jailhouse Snitches*, [http://articles.latimes.com/1989-10-20/local/me-399\\_1\\_defense-lawyers](http://articles.latimes.com/1989-10-20/local/me-399_1_defense-lawyers).

Orange County requires a thorough investigation by an independent entity, one with the authority to investigate long-concealed evidence in the custody of the OCSD and OCDA. The unwillingness of the OCSD and OCDA to acknowledge the due process implications of the alleged misconduct has become only more entrenched as attention to the situation has grown. Nearly two years have passed since many of these issues were first brought to the attention of the OCDA and OCSD, allowing them ample time to demonstrate their ability to bring themselves into conformity with core constitutional principles.<sup>43</sup> It is our firm belief that the Department of Justice is the only entity equipped to conduct this investigation<sup>44</sup> and restore public confidence in the criminal justice system in Orange County.<sup>45</sup>

---

<sup>43</sup> *Sheriff Clicks Her Heels but OC Snitch Scandal Won't Go Away*, [http://blogs.ocweekly.com/navelgazing/2015/07/sheriff\\_sandra\\_hutchens\\_thinks\\_her\\_department\\_is\\_innocent\\_in\\_ocs\\_snitch\\_scandal.php](http://blogs.ocweekly.com/navelgazing/2015/07/sheriff_sandra_hutchens_thinks_her_department_is_innocent_in_ocs_snitch_scandal.php).

<sup>44</sup> In addressing the OCDA's recently empanelled investigative committee, legal professionals and experts have expressed serious concerns about the decision to create a panel comprised of members selected by the District Attorney. With regard to the California AG's investigation—announced on the same day that the agency also declared it would appeal Judge Goethals' ruling in *Dekraai*—the Sheriff and the Chairman of Orange County's Board of Supervisors have joined in raising concerns about the AG's ability to impartially analyze the role that different agencies have played in the wrongdoing. The AG's recently filed legal brief, which takes the position that the OCDA bears no responsibility for the misconduct and concealment found in Judge Goethals' ruling, has corroborated the belief of many that the agency's investigatory findings will necessarily be consistent with the analysis and conclusions set forth in its brief. *See, e.g., Experts: No Hope for Justice in Orange County Prosecutor Scandal with Current Investigations*, [http://www.huffingtonpost.com/entry/orange-county-district-attorney\\_55a6fc50e4b0c5f0322c5b8e](http://www.huffingtonpost.com/entry/orange-county-district-attorney_55a6fc50e4b0c5f0322c5b8e); *OCDA's Office Thinks Review Committee Will Save It from Snitch Scandal*, [http://blogs.ocweekly.com/navelgazing/2015/07/tony\\_rackaukas\\_snitch\\_scandal\\_washington\\_post\\_2015.php](http://blogs.ocweekly.com/navelgazing/2015/07/tony_rackaukas_snitch_scandal_washington_post_2015.php); and *Watchdog: Is Panel Reviewing Use of O.C. Jailhouse Informants Really Independent?*, <http://www.ocregister.com/articles/office-671724-county-attorney.html>.

<sup>45</sup> News reports have suggested that the Department of Justice extended a job offer to one of the prosecutors central to the situation in Orange County, Erik Petersen, a prosecutor identified by Judge Goethals as having provided testimony under oath which he deemed "incredible." *People v. Dekraai Supplemental Ruling*, <http://big.assets.huffingtonpost.com/SUPPLEMENTALRULINGDekraai03122015.pdf>; and *California Prosecutor, Embroiled in Controversy Over Use of Informants, Won't Be Coming to Omaha*, [http://www.omaha.com/news/metro/california-prosecutor-embroiled-in-controversy-over-use-of-informants-won/article\\_6f6130be-f890-5bb3-bd03-7fcbeb7c43a3.html](http://www.omaha.com/news/metro/california-prosecutor-embroiled-in-controversy-over-use-of-informants-won/article_6f6130be-f890-5bb3-bd03-7fcbeb7c43a3.html). Moreover, attorneys from the United States Attorney's Office in Orange County recently indicated that they may call Deputy Tunstall as an expert witness at a forthcoming Mexican Mafia trial, and will seek to block questioning regarding his testimony at the *Dekraai* hearings—despite evidence of dishonesty during those hearings and Judge Goethals' findings. *Suspected Mexican Mafia Leader Backs Out of Plea Deal, Headed to Federal Trial*, <http://www.ocregister.com/articles/ojeda-686395-mexican-mafia.html>. To avoid the appearance of any conflict, the Department of Justice may wish to consider an investigation by the Inspector General. Irrespective of what the Department concludes in that regard, there can be no doubt that the Department of Justice has jurisdiction to consider these questions.

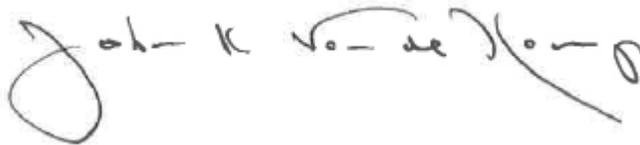
**Conclusion**

Accordingly, the undersigned respectfully request that the United States Department of Justice commence an investigation of the Orange County District Attorney's Office and the Orange County Sheriff's Department.

**Signed:**

Handwritten signature of Erwin Chemerinsky in black ink.

**Erwin Chemerinsky:** Erwin Chemerinsky is the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at the University of California, Irvine School of Law, with a joint appointment in Political Science. His areas of expertise are constitutional law, federal practice, civil rights and civil liberties, and appellate litigation. In January 2014, National Jurist magazine named Dean Chemerinsky the most influential person in legal education in the United States.

Handwritten signature of John Van de Kamp in black ink.

**John Van de Kamp:** John Van de Kamp is counsel at the Los Angeles office of the law firm Mayer Brown, where he is a member of the Government practice. In a governmental career spanning some 30 years, he has served as U.S. Attorney for California's Central District, the first Federal Public Defender for the Central District, Los Angeles County District Attorney (1975-1983), and California Attorney General (1983-1991).

**Co-signed by the below listed individuals and organizations:**

**Robert Bloom**: Robert M. Bloom, Professor of Law at Boston College, is an expert on criminal informants and the author of the book *Ratting: The Use and Abuse of Informants in the American Criminal Justice System*. Professor Bloom has had legal experience as a criminal attorney—both as a prosecutor and a defense lawyer—as well as in legal services and civil rights law.

**Paul Butler**: Paul Butler is a Professor of Law at Georgetown University Law Center, where he researches and teaches in the areas of criminal law, race relations law, and critical theory. Professor Butler's work has been profiled on 60 Minutes, Nightline, and the ABC, CBS, and NBC Evening News, among other places. Prior to joining the academy, Professor Butler served as a federal prosecutor with the U.S. Department of Justice, where his specialty was public corruption. His prosecutions included a United States Senator, three FBI agents, and several other law enforcement officials. While at the Department of Justice, Professor Butler also worked as a Special Assistant U.S. Attorney, prosecuting drug and gun cases.

**Tucker Carrington**: Tucker Carrington is the founding director of the Mississippi Innocence Project and Assistant Professor of Law at the University of Mississippi School of Law. Before that, Professor Carrington was an E. Barrett Prettyman Fellow at Georgetown University Law Center, a trial and supervising attorney at the Public Defender Service for the District of Columbia, and a visiting clinical professor at Georgetown.

**Jack Chin**: Gabriel "Jack" Chin is the Martin Luther King, Jr. Professor of Law at the University of California, Davis School of Law, where he teaches criminal law and procedure. He has extensive experience prosecuting and defending criminal cases in state and federal courts. His scholarship has appeared in the University of Pennsylvania, UCLA, and Cornell law reviews, the *Harvard Civil Rights-Civil Liberties Law Review*, and the Yale, Duke, and Georgetown law journals, among others. His work has been cited in four U.S. Supreme Court opinions, and by many other courts.

**Angela Davis**: Angela J. Davis is a Professor of Law at the American University Washington College of Law, where she teaches criminal law, procedure, and defense. She has served on the adjunct faculty at George Washington, Georgetown, and Harvard Law Schools. Professor Davis researches and writes on prosecutorial discretion and racism in the criminal justice system. Her book won the Association of American Publishers 2007 Professional and Scholarly Publishing Division Award for Excellence in the Law and Legal Studies Division. Professor Davis has also served as the Executive Director of the National Rainbow Coalition and the Director of the Public Defender Service for the District of Columbia, where she previously worked as a staff attorney.

**Richard Drooyan:** Richard Drooyan served as the Chief Assistant United States Attorney under United States Attorney Nora Manella from January 1997 to January 1999. In addition to general oversight responsibility for over 235 Assistant United States Attorneys, he had direct supervisory responsibility for certain priority criminal investigations and cases. In 1991, Mr. Drooyan served as a Deputy General Counsel for the Independent Commission on the Los Angeles Police Department (the “Christopher Commission”). In 2000, he served as General Counsel of the Rampart Independent Review Panel. Mr. Drooyan was a member of the Los Angeles Police Commission from 2010 to 2013, and served as President from 2011 to 2012.

**Ingrid Eagly:** Ingrid Eagly is a Professor of Law at UCLA. Her primary research and teaching interests include immigration law, criminal adjudication, evidence, and public interest lawyering. Immediately prior to joining the faculty at UCLA, Eagly served as a trial attorney for the Office of the Federal Public Defender in Los Angeles. At UCLA, Professor Eagly teaches the Criminal Defense Clinic and serves as faculty advisor to the Criminal Justice Society.

**Laura Fernandez:** Laura Fernandez is a Research Scholar and Senior Liman Fellow in Residence at Yale Law School, where she focuses on questions of prosecutorial misconduct and accountability. Prior to that, she was an attorney with the Public and Charitable Service Department of Holland and Knight.

**Mary Ellen Gale:** Mary Ellen Gale, a Professor of Law at Whittier Law School, was an elected member of the ACLU National Board of Directors from 1987 to 2015, and served on its Executive Committee for sixteen years. A member of the ACLU of Southern California Board of Directors since 1977, she co-chaired its Legal Executive Committee for twenty years. Professor Gale has authored ACLU appellate briefs for the Supreme Courts of the United States and California, congressional testimony on criminal justice, and articles on the death penalty and police misconduct. She researches and writes on constitutional law, civil liberties, and civil rights.

**Gil Garcetti:** Gil Garcetti served 32 years in the Los Angeles District Attorney’s office, including two terms as the District Attorney for Los Angeles County, from 1992-2000. Prior to his election, he served as a trial prosecutor in the office and was also appointed chief deputy district attorney.

**Brandon Garrett:** Brandon Garrett is the Thurgood Marshall Distinguished Professor of Law at the University of Virginia. Professor Garrett’s research and teaching interests include, among others, criminal procedure, wrongful convictions, habeas corpus, scientific evidence, civil rights, and constitutional law. Professor Garrett is the author of the book *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*, published by Harvard University Press, and *Too Big To Jail: How Prosecutors Compromise with Corporations*, also published by Harvard University Press.

**Bennett Gershman**: Bennett Gershman is one of the original faculty members at Pace Law School and has taught as a visiting professor at Cornell Law School and Syracuse Law School. A former prosecutor with the Manhattan District Attorney's office for six years, he is the author of numerous articles as well as two books on prosecutorial and judicial ethics. He served for four years with the Special State Prosecutor investigating corruption in the judicial system. He is one of the nation's leading experts on prosecutorial misconduct. He is active on several bar association committees, and is a frequent *pro bono* litigator.

**Bruce Green**: Bruce Green is the Louis Stein Chair at Fordham Law School, where he directs the Louis Stein Center for Law and Ethics. He teaches primarily in the areas of legal ethics and criminal law. He has written extensively in these fields, including the chapter on prosecutors' ethics in *Professional Responsibility: A Contemporary Approach* (2d ed. 2014). Professor Green is a past chair of the ABA Criminal Justice Section. He also served as a member of the ethics committees of the ABA and the bar associations of New York State, City and County. Before joining the Fordham faculty, Professor Green was a federal prosecutor in the Southern District of New York, where he served as Chief Appellate Attorney. While at Fordham, he served part-time as Associate Counsel in the office of the Iran/Contra prosecutor.

**Samuel Gross**: Samuel R. Gross is the Thomas and Mabel Long Professor of Law at Michigan Law, where he teaches evidence, criminal procedure, and courses on wrongful criminal convictions. His published work includes articles and books on evidence law, the death penalty, false convictions, racial profiling, eyewitness identification, and the relationship between pretrial bargaining and trial verdicts. Professor Gross is the editor of the *National Registry of Exonerations*, which was launched in May 2012 and maintains a detailed online database of all known exonerations in the United States since 1989.

**Kaaryn Gustafson**: Kaaryn Gustafson is Professor of Law at the University of California, Irvine School of Law and is Co-Director of the Center on Law, Equality and Race. Her research and scholarship is interdisciplinary and explores the role of law in both remedying and reinforcing inequality. Her publications have appeared in numerous journals, including the *Journal of Criminal Law & Criminology*. Her 2011 book, *Cheating Welfare: Public Assistance and the Criminalization of Poverty*, was awarded the Herbert Jacob Book Prize.

**Paul Heaton**: Paul Heaton is a Senior Fellow at the University of Pennsylvania Law School and Academic Director of the Quattrone Center for the Fair Administration of Justice. Much of his research aims to apply methodological insights from economics to inform issues in legal and criminal justice policy. An expert on legal and regulatory program and policy evaluation, Dr. Heaton's research has been published in leading scholarly journals such as the *Yale Law Journal*,

*New England Journal of Medicine, Journal of Law and Economics, Journal of Labor Economics, and American Journal of Public Health.*

**Donald Heller:** Prior to forming his own law firm in 1977, Donald H. Heller was an Assistant District Attorney in Manhattan. Mr. Heller later served as an Assistant United States Attorney in the United States Attorney's Office in Sacramento, California, and was the author of the ballot initiative that reinstated the death penalty in California in 1978. Mr. Heller was one of several former prosecutors who signed an amicus brief in *People v. Thomas Thompson*.

**Peter Joy:** Peter A. Joy is a professor at Washington University Law. Professor Joy is well known for his work on legal ethics, criminal justice, and clinical legal education. He has written extensively and presented nationally and internationally on legal ethics and lawyer and judicial professionalism. His recent articles include *Constructing Systemic Safeguards Against Informant Perjury* and *Prosecutors' Disclosure Obligations in the U.S.* (with Professor Bruce Green).

**Miriam Krinsky:** Miriam Aroni Krinsky spent 15 years as an Assistant U.S. Attorney, where she served as LA's Chief of the General Crimes Sections, Chief of the Criminal Appellate Section (overseeing over 1,000 criminal appeals), chaired the national Solicitor General's Advisory Group on Appellate Issues, and served on the Attorney General's Advisory Committee on Sentencing. She has taught at the UCLA School of Public Policy and Loyola and Southwestern Law Schools, served as the Executive Director of Los Angeles County's Citizens' Commission on Jail Violence (investigating allegations of excessive force in County jails), and served on the Los Angeles Ethics Commission (serving as Commission President for three years). She also served on the California Judicial Council and was appointed by the California Supreme Court to the State Bar Board of Trustees, the regulatory body that oversees all California lawyers.

**Daniel Medwed:** Professor Daniel Medwed teaches Criminal Law, Evidence, and Advanced Criminal Procedure: Wrongful Convictions and Post-Conviction Remedies at Northeastern University School of Law. His book, *Prosecution Complex: America's Race to Convict and Its Impact on the Innocent* (New York University Press, 2012), explores how even well-meaning prosecutors may contribute to wrongful convictions because of cognitive biases and an overly deferential regime of legal and ethical rules.

**Alexandra Natapoff:** Alexandra Natapoff is the Associate Dean for Research and Professor of Law at Loyola Law School, Los Angeles. Professor Natapoff is a nationally recognized expert on the subject of criminal informants. She has testified before Congress, contributed to federal and state reform legislation, and her book about informants, *Snitching: Criminal Informants and the Erosion of American Justice* (New York University Press, 2009), won the 2010 ABA Silver Gavel Award Honorable Mention for Books.

**Charles Ogletree**: Charles Ogletree, the Harvard Law School Jesse Climenko Professor of Law and the Founding and Executive Director of the Charles Hamilton Houston Institute for Race and Justice, is a prominent legal theorist who has made an international reputation by taking a hard look at complex issues of law and by working to secure the rights guaranteed by the Constitution for everyone equally under the law.

**Lauren Ouziel**: Lauren Ouziel is an Assistant Professor at Temple University Beasley School of Law. Prior to entering academia, she was a federal prosecutor for eight years, serving in the United States Attorney's Office for the Southern District of New York and later the Eastern District of Pennsylvania. Professor Ouziel's research and teaching interests include criminal procedure, evidence, criminal federalism, and perceptions of legitimacy in criminal enforcement and adjudication. Among other work, she has studied how federal intervention in local criminal enforcement, both through oversight of and partnership with state and local authorities, influences perceptions of legitimacy.

**L. Song Richardson**: L. Song Richardson is a Professor of Law at the University of California, Irvine School of Law. Prior to that she was a state and federal public defender, and an assistant counsel at the NAACP Legal Defense and Educational Fund, Inc. Professor Richardson's interdisciplinary research uses lessons from cognitive and social psychology to study criminal procedure, criminal law, and policing. Professor Richardson's scholarship has been published by law journals at Yale, Cornell, Northwestern, the University of Southern California, and the University of Minnesota, among others.

**Cookie Ridolfi**: Kathleen "Cookie" Ridolfi is a Professor of Law at Santa Clara University School of Law and the cofounder and former Director of the Northern California Innocence Project. In 2004, she co-founded the Innocence Network, an affiliation of organizations dedicated to pursuing exonerations on behalf of wrongfully convicted prisoners and working to redress the causes of wrongful conviction. She was lead researcher and co-author of "Preventable Error, A Report on Prosecutorial Misconduct in California 1997-2009." From 2004-2008, she served on the California Commission on the Fair Administration of Justice, which was tasked with the study and review of the administration of criminal justice in California.

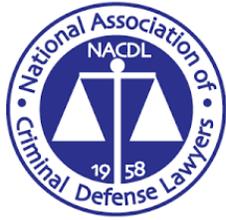
**Elisabeth A. Semel**: Elisabeth Semel is a Clinical Professor of Law at the University of California, Berkeley, School of Law and the founding Director of its Death Penalty Clinic, which represents individuals facing capital punishment at all stages of the proceedings. In her early legal career, Professor Semel worked as a deputy public defender in Solano County and a staff attorney at Defenders, Inc., a non-profit community defender office in San Diego. She later formed the San Diego firm of Semel & Feldman, which represented clients accused of crimes of violence, including capital offenses, at the trial level. Professor Semel has also served as the Director of the ABA Death

Penalty Representation Project. Her research focuses on race discrimination in the administration of capital punishment, particularly as it concerns jury selection.

**Jonathan Simon**: Jonathan Simon is the Adrian A. Kragen Professor of Law and Director of the Center for the Study of Law and Society at Berkeley Law. His scholarship concerns the role of crime and criminal justice in governing contemporary societies. His past work includes two award-winning monographs, *Poor Discipline: Parole and the Social Control of the Underclass* and *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. His most recent books are *The Sage Handbook of Punishment and Society* and *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America*.

**Alex Whiting**: Alex Whiting is a Professor of Practice at Harvard Law School where he teaches, writes, and consults on domestic and international criminal prosecution issues. From 2010 until 2013, he was in the Office of the Prosecutor at the International Criminal Court (ICC) in The Hague where he served first as the Investigations Coordinator, overseeing all of the investigations in the office, and then as Prosecutions Coordinator, overseeing all of the office's ongoing prosecutions. Before going to the ICC, Whiting taught for more than three years as an Assistant Clinical Professor of Law at Harvard Law School, again with a focus on prosecution subjects. From 2002-2007, he was a Trial Attorney and then a Senior Trial Attorney with the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague. He was lead prosecution counsel in *Prosecutor v. Fatmir Limaj, Isak Musliu, and Haradin Bala*; *Prosecutor v. Milan Martić*; and *Prosecutor v. Dragomir Milošević*. Before going to the ICTY, he was a U.S. federal prosecutor for ten years, first with the Criminal Section of the Civil Rights Division in Washington, D.C., and then with the U.S. Attorney's Office in Boston.

**Ellen Yaroshefsky**: Ellen Yaroshefsky is a clinical professor of law at Cardozo Law and the Executive Director of the Jacob Burns Ethics Center. She is an expert in legal ethics, co-chair of the A.B.A.'s Ethics, Gideon and Professionalism Committee of the Criminal Justice Section, and chair of the Ethics Committee of the National Association of Criminal Defense Lawyers. She also serves on ethics committees of state and local bar associations, and was a Commissioner on the State Joint Commission on Public Ethics.



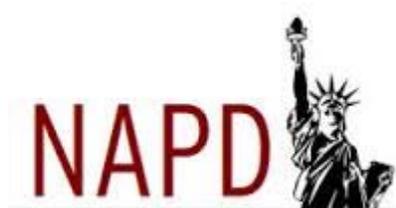
### **The National Association of Criminal Defense Lawyers**

The National Association of Criminal Defense Lawyers is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's approximately 9,200 direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.



### **The Constitution Project**

The Constitution Project is a nonpartisan advocacy and government watchdog organization that brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time. The organization undertakes original research, develops policy positions, publishes reports and statements, files amicus briefs, testifies before Congress, and holds regular briefings with legislative staff and other policymakers. TCP's work has been cited by numerous government agencies, as well as leading law and policy organizations.



### **The National Association of Public Defense**

The National Association of Public Defense is a membership organization comprised of almost 11,000 practitioner-members within 76 organizations (including 14 statewide systems) and another 600 individual members through many more jurisdictions in all 50 states. NAPD promotes strong criminal justice systems, policies and practices to ensure effective public defense; pursues system reform that increases fairness for indigent clients; and delivers education and support of

public defenders/advocates and public defender leaders. NAPD is member-led and its agenda is member-set. NAPD is committed to building a community that is inclusive of members of the many diverse professions that are essential to public defense delivery, and to be able to contribute information and solution as the voice of practitioners themselves.



### **California Attorneys for Criminal Justice**

California Attorneys for Criminal Justice (CACJ) was formed in 1973. Today, it has grown to over 2,000 members. CACJ is the country's largest statewide organization of criminal defense lawyers. The CACJ works to defend the rights of the accused, provides quality continuing legal education courses, preserves due process, and protects the independence of the criminal defense lawyer.



### **California Public Defender Association**

The California Public Defenders Association (CPDA) is the largest organization of criminal defense attorneys in the State of California. Our membership includes over 3,000 attorneys who are employed as public defenders or are in private practice. CPDA has been a leader in continuing legal education for defense attorneys for over 30 years and is recognized by the California State Bar as an approved provider of Mandatory Continuing Legal Education. We regularly provide continuing legal education in all areas of criminal practice, including legal ethics. CPDA also contributes to the development of law in both the legislative arena, through advocacy before the California Legislature, and in the judicial arena, through its amicus work before the California Supreme Court, the United States Supreme Court, and the lower state and federal appellate courts.



**The ACLU of California, with support from ACLU National and Washington Legislative Offices**

The three California affiliates—ACLU of Northern California, ACLU of Southern California, and ACLU of San Diego & Imperial Counties—have a long, successful history of working together to protect and promote civil liberties. Though each affiliate is autonomous and has the exclusive right to guide the work in its jurisdiction, we come together to maximize our statewide impact on issues for the benefit of civil liberties. When our work is done on behalf of all three affiliates, particularly in high-impact statewide litigation and collaborative legislative efforts, it is more powerful and effective in conveying the strength of the statewide ACLU presence. While this letter originates in the ACLU of California affiliates, the ACLU National and the Washington Legislative Offices, are also in support.