

Introduction

A Tale of Three Snitches

Ninety-two-year-old Kathryn Johnston was dead, which meant big trouble for Officers Smith and Junier.

Three hours earlier, everything had looked so promising. Atlanta police had busted Fabian Sheats for the third time in four months, and the local drug dealer-turned-informant had tipped them off to a major stash at 933 Neal Street—an entire kilo of cocaine. Sheats wasn't one of their registered informants so they couldn't use him to get a warrant, but Smith and Junier applied for a warrant anyway by inventing an imaginary snitch. They called him a “reliable confidential informant” and told the magistrate judge that this nonexistent snitch had bought crack cocaine at the Neal Street address. The fabrication wouldn't matter in the end, after they got the warrant, busted in, and grabbed the kilo. It would be a major victory.

But nothing went the way it was supposed to. Sheats's tip was bad—there was no kilo at that address. Once inside the house, the officers opened fire. Now Mrs. Johnston was lying at their feet riddled with police bullets with no cocaine anywhere to be found. So Smith and Junier turned to one of their regular informants, yet another snitch named Alex White. They offered him \$130 to say that he'd bought drugs at Mrs. Johnston's Neal Street home and to corroborate their false warrant application. It wouldn't bring Mrs. Johnston back, but at least no one would learn that they'd gambled everything on a weak lead from a bad snitch and that the informant in the warrant didn't exist.¹

Although it rarely comes to light, criminal informant use is everywhere in the American legal system. From warrants to surveillance to arrests, police routinely rely on criminal suspects to get information

and to shape investigations. From charging decisions all the way through sentencing, prosecutors negotiate with defendants for cooperation in exchange for dropped or reduced charges and lighter punishment. Especially in the expansive arena of drug enforcement, turning suspects into so-called snitches has become a central feature of the way America manages crime, while the secretive practice of trading lenience for information quietly shapes major aspects of our penal process.

This clandestine law enforcement tool has penetrated the popular consciousness, and the ensuing public debate embodies some of the deepest political and cultural tensions of life in high-crime urban neighborhoods. In 2006, the same year in which Atlanta police killed Mrs. Johnston, a group of well-known artists, Tats Cru, painted on an East Harlem building a mural of a cartoon rat with a noose around his neck and a sign that said "Stop Snitchin." Two years later, neighborhood leaders rallied to paint over what they considered to be the mural's antipolice message promoting a street code of silence. The Reverend Al Sharpton exhorted residents to reject the "stop snitching" message and to speak out against crime, while one city commissioner called the mural a "symbol of hate." Local teenagers took a somewhat different view of the mural's meaning. "It's not because it's not cool to snitch," explained a fourteen-year-old girl. "People are afraid they might get killed." Tats Cru, whose work has been featured by the Smithsonian, sued the city, arguing that the mural was designed to "get discussion going" over the state of police-community relations and that erasing it violated their First Amendment rights.²

The "snitching" phenomenon has political, cultural, and even personal dimensions, but it starts with the criminal system. Criminal informants are a potent and sometimes necessary crime-fighting tool. They can permit the infiltration of gangs, drug cartels, corporations, terrorist conspiracies, and other organizations otherwise impervious to law enforcement. Offering lenience to low-level offenders is sometimes the only way to get information about high-level criminals. From the challenges of international terrorism to those of gang-dominated city streets, criminal informants can be uniquely productive helpmates for the government.

The idea behind snitching is simple—a suspect provides incriminating information about someone else in exchange for a deal, maybe the chance to walk away, or a lesser charge or sentence. In practice, however, informant deals are as varied as the crimes they involve. Some are quick, informal, and routine. In the so-called buy, bust, flip technique, a police officer might release a drug addict or dealer in exchange for a tip. Other informant deals are complex, high-profile, and span many years. In 2006, corrupt lobbyist Jack Abramoff avoided decades in prison by agreeing to snitch on the politicians he bribed. Fifteen years before that, hit man “Sammy the Bull” Gravano testified against mafia boss John Gotti in exchange for drastically reduced punishment and witness protection. The power and flexibility of the informant deal has made it a ubiquitous weapon in the law enforcement arsenal.

At the same time, using criminal informants exacerbates some of the worst features of the U.S. justice system. The practice is clandestine and unregulated, inviting inaccuracy, crime, and sometimes corruption. It inflicts special harms on vulnerable individuals such as racial minorities, substance abusers, and poor defendants who lack robust legal representation. Because of its secretive and discretionary nature, it evades the traditional checks and balances of judicial and public scrutiny, even as it determines the outcomes of millions of investigations and cases. And finally, like the criminal system itself, it is rapidly expanding.

The most dangerous versions of snitching tend to occur when law enforcement deploys criminals to generate new cases. In the economically troubled town of Hearne, Texas, for example, 27-year-old criminal informant Derrick Megress wreaked havoc. In November 2000, a federally funded drug task force swept through the town arresting twenty-eight people, mostly African American residents of the Columbus Village public housing project. Megress, a suicidal former drug dealer on probation facing new burglary charges, had cut a deal with the local prosecutor. If he produced at least twenty arrests, Megress’s new charges would be dropped. He’d also earn one hundred dollars for every person he helped bust. One of his innocent victims was waitress Regina Kelly, mother of four, who steadfastly refused to plead guilty and take a deal for probation even as she sat in jail

for weeks. Another target, Detra Tindle, was actually in the hospital giving birth at the time when Megress alleged that she had sold him drugs. A lie detector test finally revealed that Megress had lied—mixing flour and baking soda with small amounts of cocaine to fabricate evidence of drug deals. Charges against the remaining Hearne suspects were dropped, although several had already pleaded guilty.³

While the Hearne case was unusual in that it garnered national attention and an ACLU lawsuit, the Texas task force's heavy reliance on its informant was par for the course. Federally funded drug task forces are large-scale consumers of snitches. A similar Massachusetts drug task force reported using over two thousand informants in fiscal years 2005 and 2006, who in turn conducted 45 percent of all the task force's drug transactions.⁴ As a result, there is ongoing potential for Hearne-type disasters.

Unlike civilian witnesses, criminal informants represent a tense compromise with the core goals of the justice system—crime prevention and punishment. After all, informants trade information with the government in order to escape liability for their own crimes, and can even earn the ability to continue offending. Informants may work both ends of the deal, maintaining relationships with the police and turning in other offenders even as they continue to break the law. In this sense, using criminal informants by definition requires the toleration of crime. Indeed, the ability of cooperating drug dealers to remain at large has made snitching a well-recognized fact of life and a subject of heated debate in communities from Atlanta to East Harlem.

Moreover, unlike other investigative tactics, turning suspects into informants has implications that extend beyond the criminal process. The practice has political, cultural, even intimate dimensions, particularly when the government uses the informant deal to manipulate private relationships. For example, when police threatened first-time offender Amy Gepfert with a forty-year sentence for drug distribution, they offered to drop all charges if she engaged in oral sex with another suspect in exchange for money so that police could charge him with prostitution. She did; no charges were filed against her.⁵

Sometimes the creation of an informant disturbs an entire community. The orthodox Jewish community in Los Angeles was shaken

when a prominent member of the well-known Beth Jacob congregation turned state's evidence against a Hasidic rabbi in exchange for lenience in his own fraud case. The betrayal was deemed all the more traumatic because traditional Jewish law prohibits informing against another Jew.⁶

Informant use disrupts vulnerable communities more than others. Because police make disproportionately more drug arrests in black neighborhoods,⁷ the practice of “flipping” drug arrestees, i.e., turning suspects into snitches, naturally creates more criminal informants in those communities. This means that such neighborhoods must routinely bear the costs of snitching—including informant crime and unreliability. One study, for example, found that innocent black and Hispanic households in San Diego were disproportionately the target of bad search warrants, 80 percent of which relied on confidential informants.⁸ Such neighborhoods must also contend with significant numbers of criminal offenders actively seeking information in order to “work off” their own charges.

Because the criminal system occupies such a central place in our social fabric, law enforcement tactics like snitching are not merely penal policies: they are influential features of the way we govern. Not only do criminal practices shape our social relationships; it is through the penal system that we collectively distinguish between right and wrong, punishing offenders and vindicating victims. The criminal system educates the public about the state of the law and about current events. It can instill public confidence in government, or send fear coursing through a neighborhood.

The penal system, moreover, is a multi-billion-dollar industry controlling the lives of millions of offenders, employing millions of law enforcement workers, and affecting the local economies of thousands of communities. Over the decades, it has altered the shape of American government itself, investing it with increasingly vast powers to investigate and punish.⁹ Using criminal informants is an integral part of this matrix, with many of these same weighty governance, educational, moral, and equitable dimensions.

Our penal system is also famously flawed. It is the most punitive system on the planet, incarcerating more people than any other

nation. It is expensive, pulling billions of dollars into prisons and away from social services and schools. It is secretive and sometimes sloppy, often unaccountable and inaccurate. And it is racially skewed, punishing African Americans and Latinos more often and more heavily than whites, and deforming the life trajectories of individuals and communities of color.¹⁰ Snitching practices are intimately tied to many of these failings as well.

Understanding the U.S. criminal system in its complex entirety is one of the great challenges of modern legal and social studies; understanding criminal informant use is central to that challenge. This is because, paradoxically, informant use is both unique—with its own special subcultures and rules—and paradigmatic of the system as a whole. On the one hand, snitching cases comprise a special, albeit large, subclass: many nondrug criminal investigations and prosecutions do not involve trading guilt for information. In this sense, informant use creates a unique zone in the criminal system with its own rules, dynamics, and significance.

On the other hand, this zone exerts a strong influence on the rest of the system while revealing many of the system's core features. Snitching is paradigmatic of the American criminal process because it embodies three of its distinctive characteristics: secrecy, discretion, and the dominance of plea bargaining. Informant deals are mostly confidential; they are crafted at the sole discretion of police and prosecutors; and they resolve criminal liability through private negotiations largely without rules, trials, or judicial or public scrutiny. The increasing use of such deals has transformed key aspects of the adversarial process, including the roles of defense counsel, disclosure, plea bargaining, and trial. It also drives the entire system further underground. Unearthing the full story of criminal informant use is thus revelatory precisely because it uncovers significant features of the legal process that usually remain hidden. By understanding snitching, we can learn deep truths about how our entire penal system really functions.

The past five years have seen a spate of diverse reforms at the local, state, and federal levels as government officials struggle with the costs and benefits of using criminal informants. Illinois has instituted

“reliability hearings” for jailhouse snitches. Texas now imposes corroboration requirements on undercover operatives.¹¹ The next five years will see more such legislation.

This growing interest in informant reform is fueled by several related developments. One is the “innocence movement”: that collection of organizations, lawyers, students, professors, exonerees, and families who over the past decade have uncovered hundreds of wrongful convictions.¹² Their advocacy, particularly in connection with improved access to DNA technology, has starkly revealed the unreliability of compensated witnesses who are promised lenience. According to Northwestern University Law School’s Center on Wrongful Convictions, 45.9 percent of documented wrongful capital convictions have been traced to false informant testimony. This makes “snitches the leading cause of wrongful convictions in U.S. capital cases.”¹³ As a result of such revelations, several states, including California and New York, have considered new legislation limiting the use of informant testimony and demanding more accountability from prosecutors who wish to reward their criminal witnesses.

Interest in reform has also been prompted by the steady stream of news stories publicizing the violence, corruption, and injustice that often accompany the use of criminal informants. In one widely noted exposé, the *Dallas Morning News* revealed a “fake drug scandal” in which paid informants set up innocent Mexican immigrants with fake drugs (gypsum), while police falsified drug tests in order to inflate their drug-bust statistics.¹⁴ Such evidence of police-informant collusion has galvanized numerous advocates and officials to reconsider the unregulated use of criminal informants.

Popular culture has also zeroed in on snitching. In 2004, a homemade DVD entitled “Stop Snitching” circulated through the streets of Baltimore, exhorting criminals to stop cooperating with police in exchange for lenience deals. Because NBA basketball star Carmelo Anthony appeared briefly in the video, it garnered national media attention and concern over the antipolice connotations of the “stop snitching” motto. A line of “stop snitching” t-shirts spread rapidly to other cities. These shirts—popular among urban youth and hip hop fans—were widely seen as promoting a street “code of silence” and

triggered a public backlash. Years later, the “stop snitching” motto remains a subject of deep contention. Resonating in cities such as East Harlem, Boston, and Pittsburgh, it has become part of the historic dialogue over the distrust between police and residents of high-crime minority communities.

Public reactions to criminal informant use have been passionate and diverse: from new rules of evidence to graffiti to community rallies. The astonishing breadth of response indicates how deep-seated and influential this clandestine law enforcement practice is, its importance to the overall integrity of the criminal process, and its relevance to fundamental questions about how we choose to police and govern ourselves. As this debate progresses, it cries out for more and better data.

Documenting criminal informant use, however, is easier said than done. The practice is secretive and informal, typically taking place off the record in unrecorded conversations between suspects and law enforcement. Because most criminal cases in the United States never go to trial, public records are sparse. Even when records do exist, court files involving informants may be sealed. Informing is also unregulated and uneven: practices vary from jurisdiction to jurisdiction, even from officer to officer. Importantly, while the benefits of informant use are often well recognized, its down sides and dangers typically remain invisible. As a result, the public has little information, and many misunderstandings, about this important arena of public policy.

This book is an effort to remedy that deficit of public information and understanding. It describes what we do know about the official use of criminal informants and the way it works. While it acknowledges the well-known strengths of the practice as a conventional crime-fighting tool, the bulk of the book is spent in the shadows, uncovering the hidden realities and troubling implications of informant use. The aim is not to present an unbalanced view, but to even out what has been a largely one-sided debate. By analyzing informants both as a law enforcement tool and as an engine of social influence and public governance, the book reveals the pervasive and often disturbing significance of this secretive law enforcement practice.

Importantly, this is *not* a book about everyone who gives information to the police. It does not address civilian witnesses, whistleblowers, undercover police officers, or even noncriminal paid informants, although these groups can be importantly affected by criminal informant policies. It is also not a book about “snitching” or loyalty in noncriminal arenas of society, such as schools, workplaces, or families. Rather, it addresses the very specific but widespread governmental practice of *rewarding informants who have broken the law*.

This book focuses heavily on street crime and drug enforcement because it is in those arenas that the human costs and social consequences of snitching are most profound. But the book also examines the wide range of other law enforcement arenas, such as white collar crime, in which informant use has become central. Chapter 1 gives an overview of the practice and its most important implications for individuals, communities, and the criminal system as a whole.

Chapter 2 lays out the contours of “informant law,” namely, all the legal rules that govern criminal informants, from investigations to sentencing rewards to discovery rules to civil rights. While this chapter is written for anyone curious about how our legal system actually regulates the process of snitching, it is also designed to be useful to lawyers, judges, and legislators who professionally engage this body of law. Because there are so many facets of criminal informant use, the chapter covers a broad range of laws not usually associated with one another: it analyzes police and prosecutorial authority to create and reward informants as well as Fourth Amendment search and seizure law, defendants’ rights when informants are used against them, as well as informants’ civil rights against the government. Taken together, this collection of rules and practices comprises a body of law characterized almost uniformly by unfettered law enforcement discretion, pervasive informality, secrecy, and toleration of lawbreaking—characteristics of the American legal process that distinguish it from many other democratic nations.

Chapter 3 covers one of the best-known dangers of criminal informant use: its unreliability. It analyzes not only the data on wrongful informant testimony but also the way police and prosecutorial practices undermine the system’s ability to check informant misinformation.

Chapter 4 explores a far less recognized consequence of informant use, which is its tendency to render the entire criminal process more secretive and less publicly accountable. Because informant practices tend to remain undocumented, investigations and cases involving informants recede from public view. On the theory that confidentiality is necessary to protect investigations and witnesses, courts and legislatures have been willing to tolerate high levels of executive secrecy. As a result, numerous disclosure rules involving discovery and public record keeping have been rolled back to accommodate informant confidentiality, with widespread impact on governmental transparency and accountability.

Of all the problematic aspects of informant use, the consequences of the practice for poor communities of color have been the least recognized, even though they pose serious obstacles to the viability and legitimacy of the practice. Chapter 5 examines the impact of pervasive informant use on high-crime, low-income urban communities, and in particular on the African American men who live there. This chapter estimates the extent of the snitching phenomenon and discusses its harmful effects on crime control, law enforcement, youth, families, and community stability.

Chapter 6 describes the “stop snitching” cultural phenomenon, and traces how a slogan on a homemade rap DVD and some knock-off t-shirts made its way into national consciousness. The chapter explores the problems of witness intimidation, police-community distrust, and the provocative political and cultural issues raised by the “stop snitching” theme.

Drug, street, and violent crime make up the bulk of the criminal system, and chapters 5 and 6 address informant use primarily in those contexts.¹⁵ Particularly at the federal level, however, informants are used in the investigation and prosecution of all sorts of crimes, including fraud, embezzlement, antitrust, forgery, political corruption, bribery, and, of course, organized crime offenses such as racketeering and money laundering. Chapter 7 examines informant use in the prominent arenas of organized crime, political corruption, white collar crime, and terrorism. Each of these arenas has its own snitching histories, practices, and challenges; together they reveal the

pervasive influence of criminal informant practices throughout the entire American system. The survey also reveals that while all forms of snitching retain some core problematic features, informant use can nevertheless operate more reliably, transparently, and fairly in more regulated law enforcement environments characterized by wealthier, better-represented defendants.

Because this book exposes the many harmful, sometime shocking consequences of snitching, it poses serious questions about the validity of the practice. Nevertheless, the book does not advocate eliminating informant use: this is for both pragmatic and principled reasons that are discussed throughout. Pragmatically, snitching flows from two dominant characteristics of our criminal system: plea bargaining, and a tolerance for a high level of law enforcement discretion. These structural features not only make snitching possible; to some extent they make it inevitable. As long as police and prosecutors have complete discretion over whom to target, useful suspects will evade arrest and prosecution. And as long as law enforcement can freely negotiate with suspects over what crimes to charge, some suspects will be able to trade cooperation for better treatment. In other words, banning snitching altogether would effectively require restructuring fundamental aspects of the American criminal process, a project that exceeds the scope of this book.

While some horse trading over guilt and information may be inevitable in a system like ours, however, the complete lack of regulation and oversight of the practice is not. Nor are the destructive and inegalitarian effects of the practice. Chapter 8 thus proposes a global approach to regulating and improving, not eliminating, informant use and describes the exciting array of reforms currently emerging at the federal, state, and local levels. These proposals promote increased accountability, reliability, and fairness within the existing frameworks of our criminal system.

The principled reason why this book does not advocate a ban on snitching is that our criminal system does not yet provide enough information about the practice to reveal its full implications—good and bad. This book itself represents the most comprehensive collection of publicly available information regarding informant use, and the most

far-ranging analysis of its implications to date, and yet throughout it acknowledges that the lack of systemic data makes many of its conclusions provisional at best. Because the criminal process is primarily designed to conceal, not to evaluate, informant use, it prevents rigorous conclusions about, for example, when snitching practices become so unfair or destructive of law enforcement integrity that they should be eliminated, or, alternatively, when their crime-fighting benefits are worth important compromises. We do not know with any certainty how many neighborhoods have been devastated by snitches or how many innocent people have been convicted by false informant testimony, although we know that both things happen. Conversely, we do not know how many criminal organizations have been disabled or how many crimes have been prevented or solved by the practice, although we know that these things happen too. It is precisely this kind of information that is needed for an informed democratic debate over the phenomenon, one that can address the fundamental principles of justice at stake as well as the crime-fighting cost-benefit analysis.

Of all the proposed reforms in chapter 8, therefore, the most important is the most difficult: changing the culture of secrecy and deregulation that permits informants and officials alike to bend rules, evade accountability, and operate in secret. It is this culture that fosters snitching's worst dangers: wrongful convictions, unchecked criminal behavior, official corruption, public deception, and the weakened legitimacy of the criminal process in the eyes of its constituents. It is also the feature that prevents us from addressing the ultimate public policy questions with clarity. The system currently handles the problem by asking us to accept on faith that unregulated snitching is worth its risks, without either demonstrating its full benefits or revealing its true costs. For a public policy of this far-reaching importance, such faith is not enough.

The book concludes that criminal informant use is intimately connected to many of the greatest challenges facing our justice system. Because the practice touches nearly every aspect of the criminal process, from policing to plea bargaining to public perceptions of law enforcement, it provides a unique and yet revealing window into the deepest workings of the penal system. From the government's ability

to pressure and deceive its constituents to the violence and social devastation that afflicts poor African American communities, the national dialogue over snitching implicates some of the hardest issues raised by modern-day policing. As we delegate ever greater authority to our overextended criminal process, grappling with this bedrock feature becomes more vital than ever.