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California's criminal-justice system often convicts innocent people. In recognition of this fact, the state Senate created the California Commission on the Fair Administration of Justice. That commission is now considering the government's use of criminal informants or "snitches," a public policy that has become a disturbing contributor to the wrongful conviction problem.



Snitches, of course, have powerful incentives to lie and often provide false evidence. But their unreliability is just one facet of their challenge to the justice system. Informants often commit new crimes with impunity, they make the criminal process more secretive and they invite official abuses. The commission's recommendations on this subject could thus potentially strengthen the reliability and fairness of many aspects of the criminal-justice process.

The recent wave of exonerations suggests the extent of informant unreliability. A 2004 San Francisco Magazine study estimates that 20 percent of all California wrongful convictions, capital or otherwise, are a result of false snitch testimony. Nationwide, according to Northwestern University Law School's Center on Wrongful Convictions, 45.9 percent of documented wrongful capital convictions flow from false informant testimony, making "snitches the leading cause of wrongful convictions in U.S. capital cases." These statistics reveal not merely that informants sometimes lie, but that juries believe them, that police and prosecutors rely on them, and that the traditional safeguards of the criminal trial process are inadequate to protect against them.

Unlike the law-abiding citizen who calls 911 to report a crime or who testifies at trial, criminal informants face prosecution for their own crimes, and thus have deep incentives to lie. If a snitch can convince the police officer or the prosecutor that his information is useful, he may avoid arrest, avoid the filing of serious charges or obtain a reduced sentence. Snitches may also receive cash, drugs, permission to buy drugs, forgiveness for prior crimes and lenience for new crimes, even those committed in other jurisdictions. In return, law enforcement agents obtain information and convenience: They avoid having to expend time and resources prosecuting the snitch.

These secret deals between the government and criminals can last for years, and they can be very costly to the public welfare. In the worse cases, informants continue to commit new crimes, while government handlers may turn a blind eye as long as the informant is useful. This makes snitching a kind of "get-out-of-jail-free" card.

Using informants also undermines governmental accountability. Police often cut deals informally with informants without creating a written record. The Santa Cruz County

Sheriff's Department, for example, encourages its officers not to "book" or arrest snitches at all. More generally, police and prosecutors have broad discretion to decide which informants to use and reward, and many of these decisions will never be reviewed by a court or made public at all.

In drug investigations, in particular, officials may rely so heavily on snitches that their own integrity is compromised. Some law-enforcement officials complain that informants have become so central to the "war on drugs" that snitches drive their investigations. Others worry that traditional, more reliable investigative methods, such as undercover operations are given short shrift because informants are cheaper and more convenient.

While informants can permit the prosecution of serious criminals, sometimes more serious criminals receive the greatest benefits from snitching. According to the Wall Street Journal, prosecutors tend to reward more serious and knowledgeable offenders. Similarly, some California police departments maintain a "three-arrest" policy under which informants must generate three arrests or warrants before they can be rewarded. This policy naturally favors criminals higher up on the food chain. It also obviously encourages fabrication by informants who lack sufficient information.

Recent news stories have revealed the troubling consequences of using compensated criminals. The Los Angeles Times reported earlier this year on Essam Magid, a snitch who produced numerous wrongful convictions for his handlers before one stubborn defendant finally refused to plead guilty. Recent informant scandals in Dallas and Tulsa, Texas, likewise illustrate the power of corrupt snitches to ruin the lives of dozens of innocent people. The controversial "stop snitching" phenomenon has raised the profile of criminal snitching in the popular culture, and suggests that this problematic law enforcement policy is spilling over into the lives of innocent and law-abiding citizens in dangerous ways.

In recommending improvements to the informant system, the California Commission on the Fair Administration of Justice should consider a variety of factors. California law already imposes some heightened requirements on "in-custody informants" or jailhouse snitches. These should be extended to all criminal snitches, particularly in light of the policies of some police departments to release informants without arrest. Because law-enforcement officials may lack the ability and incentives to check their own informants, judges should play a greater role in ensuring the integrity of informant information by holding hearings on informant reliability.

More generally, the commission should consider requesting more information about law enforcement's use of informants. The California Legislature and the public need to know more about this secretive practice: How law enforcement uses informants, the costs and benefits of doing so, and whether using criminal snitches makes our communities safer or more dangerous. When used properly, informants can be a powerful and appropriate investigative tool. But they can also be destructive, crime-producing and corrupting. The widespread use of informants means that much of the real adjudicative process takes place underground, without rules, records or lawyers, and without public or judicial scrutiny of the fairness and accuracy of the process. The commission has thus already made its first contribution by initiating public scrutiny of this netherworld of criminal deal-making.

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Report due

The California Commission on the Fair Administration of Justice will release its report on

the government's use of criminal informants by 5 p.m., Monday, Nov. 20.

Go to:

[www.ccfaj.org/rr-use-expert.html](http://www.ccfaj.org/rr-use-expert.html)

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