

QUICK REFERENCE: INFORMANTS & SNITCHES

Committee for Public Counsel Services Innocence Program

Informants or snitches give information to police and prosecutors.¹ A jailhouse informant is an inmate who claims to have heard another prisoner make an admission about his or her case.

Informants put innocent people in prison.

Across all DNA exonerees, **more than 24%** were convicted with false informant testimony.^{2,3} In a study of wrongful capital convictions, that number **rose to 46%.**⁴

Reward and punishment drive informants.

At common law, “self-interested witnesses were barred from testifying.”⁵ Today, some informants trade information for **money** or **relief** from prosecution. Some seek **immunity**,⁶ a **plea bargain**, or **future leniency**. See, e.g., *Commonwealth v. Brousseau*.⁷ Others seek **immigration** help or better **prison conditions**. “It is difficult to imagine a greater motivation to lie than the inducement of a reduced sentence.” *United States v. Cervantes-Pacheco*.⁸ One of the best-known informants, **Leslie Vernon White**, fabricated other inmates’ confessions in dozens of cases.⁹ “Every time I come in here, I inform and get back out.”¹⁰

Informants are willing to lie.

Informants may do “almost anything” to avoid prison, including “lying, committing perjury, manufacturing evidence, soliciting others to corroborate their lies with more lies, and double-crossing anyone.”¹¹ Even a principled cellmate may suffer from **self-serving bias**; he “sees what [he] wants to see and conflates what is fair with what benefits oneself.”¹² “Sometimes these snitches tell the truth, but more often they invent testimony and stray details out of the air.”¹³ The use of informants is a “‘dirty business’ [and] may raise serious questions of credibility.” *Lee v. United States*.¹⁴

Informants discover non-public facts.

Confessions procured by informants sound convincing when they include facts only the “real” criminal would know. Leslie Vernon White famously explained to **60 Minutes** how easily he learned **non-public facts** about

other inmates’ cases by making phone calls from prison.¹⁵ Informants use newspapers, legal papers, and conversations to piece together a story.¹⁶ “They will steal files from each other’s cells to get facts to impress the cops.”¹⁷ The **American Bar Association** has resolved that “no prosecution should occur based solely upon **uncorroborated** jailhouse informant testimony.”¹⁸ It may be falsified.

Juries believe informant testimony.

Even when informants are **cross-examined** on their incentives to lie, jurors often believe them. Informant credibility is subtly **bolstered** by the fact that the government called the witness.¹⁹ In one study, knowledge of the informant’s cooperation deal had **no effect** on jurors’ willingness to convict.²⁰

Prosecutors mishandle their informants.

Prosecutors use informants when they need more evidence to prove their case. This leads to **confirmation bias** (seeking confirmatory evidence) and **tunnel vision** (downplaying contradictory evidence).²¹ Informants are rarely prosecuted for **perjury** — unless they recant against the Commonwealth. Prosecutors must disclose inducements made to witnesses,²² but often avoid disclosure by delaying promises until after trial.²³ In 2015, the **Plymouth County Prosecutor’s Office** in Massachusetts came under fire for mishandling informants.^{24,25}

INVESTIGATING AN INFORMANT

Look for these **red flags** to expose deceit.

Open Cases: Informants may face time for **new charges** or old **suspended sentences**, either during the time they **came forward** with evidence or at the time they **testified**.

Favorable Dispositions: Informants may receive lighter **sentences**, avoid violation on **probation**, or get **parole** after cooperating. Hints appear in their criminal records or transcripts of their other court appearances.

Money: Prosecutors or police may **bail out** informants or pay them **cash rewards**.

Prior Testimony: The informant may have testified in **other cases** and seen benefits.

Lengthy Criminal Record: Over time, career informants may pick up hundreds of charges, inform, and get them dismissed.

Public Sources: "Non-public" details in an alleged confession may have been copied from **media coverage** available at the time.

Lack of Opportunity: An informant may have never actually been **housed** with the client.

LITIGATING A NEW TRIAL

Successful challenges to informants have included recantation (45%), new evidence (26%), new witness (13%), and DNA (13%).²⁶

1. Argue: Counsel was ineffective for:

- a. failing to adequately **investigate** and **cross examine** the informant.
- b. failing to **suppress** the statement.
- c. failing to consult an informant **expert**.

2. Argue: The extent of the witness's prior informant activities or subsequent rewards is **newly discovered evidence**. See, e.g. Commonwealth v. Adams.²⁷

3. Argue: 6th Amendment **right to counsel** was violated because the informant was acting as a **government agent**.²⁸ Commonwealth v. Murphy;²⁹ Commonwealth v. Reynolds.³⁰

4. Argue: 14th Amendment **due process** was violated because the Commonwealth:

- a. Knowingly presented **false evidence**. Napue v. Illinois;³¹ Commonwealth v. Hill.³²
- b. Failed to disclose **exculpatory information**. Brady v. Maryland;³³ Giglio v. US;³⁴ Kyles v. Whitley;³⁵ see also Hill.

5. Argue: **Justice may not have been done**. Mass. R. Crim. P. 30(b).

SOURCES CITED

¹ [Abolishing Jailhouse Snitch Testimony](#), 49 Wake Forest L. Rev. 1375 (2014).

² [Convicting the Innocent Redux](#), Brandon Garret (2015).

³ [Miscarriages of Justice in Potentially Capital Cases](#), 40 Stan. L. Rev. 21, 173 (1987).

⁴ [Beyond Unreliable](#), 37 Golden Gate U. L. Rev. (2006).

⁵ [Abolishing Jailhouse Snitch Testimony](#).

⁶ See MGL c. 233 s. 20C-20E.

⁷ 421 Mass. 647, 652 (1996) (examples of each).

⁸ 826 F.2d 310, 315 (5th Cir. 1987).

⁹ [The Snitch System](#), Center on Wrongful Convictions, Northwestern University (2004).

¹⁰ [Jailhouse Snitch Testimony](#), The Justice Project (2007) (Leslie White).

¹¹ [Words of Warning for Prosecutors](#), 47 Hastings L. J. 1381, 1383 (1996).

¹² [Deal Protection Provisions in the Last Period of Play](#), 71 Fordham L. Rev. 1899, 1947–48 (2003).

¹³ [Words of Warning for Prosecutors](#).

¹⁴ 343 U.S. 747 (1952).

¹⁵ [Abolishing Jailhouse Snitch Testimony](#).

¹⁶ [A Primer on Crossing an Informant](#), Vida B. Johnson, The Champion, NACDL (2011).

¹⁷ [No Honor Among Thieves](#), Mark Curriden, ABA (1989) (Judge Stephen Trott).

¹⁸ ABA Res. 108(b) (adopted Feb. 15, 2005).

¹⁹ [Abolishing Jailhouse Snitch Testimony](#).

²⁰ [The Effects of Accomplice Witnesses and Jailhouse Informants](#), Jeffrey S. Neuschatz, 32 Law & Hum. Behav. 137, 142 (2008).

²¹ [Abolishing Jailhouse Snitch Testimony](#).

²² Mass. R. Crim. P. 14(a)(1)(A)(ix).

²³ [The Use of Incentivized Testimony](#), Innocence Project (2013).

²⁴ [Plymouth DA Faces Fire for Witness Deals](#), Michael Rezendes, Boston Globe (2015).

²⁵ [DA's Use, Handling Of Informants Questioned](#), Massachusetts Lawyers Weekly (2015).

²⁶ [Jailhouse Snitch Testimony](#).

²⁷ No. 74652, 2004 WL 1588108, at *5 (Mass. Super. May 20, 2004) (granting new trial).

²⁸ See [Jailhouse Informants](#), Robert M. Bloom, Criminal Justice Magazine (2003).

²⁹ 448 Mass. 452 (2007) (granting new trial).

³⁰ 429 Mass. 388 (1999) (informal agreements).

³¹ 360 U.S. 264 (1959) (lied about promises).

³² 432 Mass. 704 (2000) (granting new trial).

³³ 373 U.S. 83 (1963) ("good faith" is irrelevant).

³⁴ 405 U.S. 150 (1972) (promise newly discovered).

³⁵ 514 U.S. 419 (1995) (police failure to disclose).

³⁶ CPCS Innocence Program (2018).

³⁷ [Resources for the Criminal Defense Trial Lawyer](#), CPCS, MyGideon.

FURTHER READING

- Quick Reference: False Confessions³⁶
- The Snitch Project³⁷