

# Arrest and Prosecution Made Easy

Snitching: Criminal Informants and the Erosion of American Justice by Alexandra Natapoff; NYU Press, 2009. 259 pages. \$29.95

## Reviewed by Greg Goldman

Reformers often call the War on Drugs a “mistake,” but it is not a mistake—it is a rational, successful policy—for its short-term beneficiaries. The drug war has been a financial boon for pharmaceutical manufacturers, law enforcement agencies, and the prison-industrial complex. Add to this list that special breed of human, devoid of conscience and beholden only to him or herself, the police informant.

In this revealing book, Alexandra Natapoff, who began her career as a federal public defender and is now a professor at UCLA School of Law, documents and criticizes the increasing reliance on snitches by cops and prosecutors in recent decades.

By “snitch,” Natapoff refers to those criminals who, for cash or leniency, work with the police and prosecution to convict those who commit the exact same crimes as themselves. Criminals who snitch on their friends and colleagues often avoid years in prison, or they may escape a prison sentence altogether. And they get paid! In 1993, Natapoff notes, the federal government doled out \$100 million to informants.

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The use of snitches increases the rate of corruption and police malfeasance, while it further erodes the trust between the police and low-income and minority communities. Snitches are allowed to continue preying on the community at large. Their handlers are often aware that they continue to commit crimes. Or that a snitch has caused the arrest or death of an innocent person to save his own hide, or settle a score. Natapoff accurately describes a “culture of secrecy and deregulation that permits informants and officials alike to bend rules, evade accountability, and operate in secret.”

Governmental use of snitches can create a crime where there otherwise would have been none. I learned this in law school when I assisted a lawyer who represented a woman charged with importing 50 kilos of cocaine. The FBI used an informant—a drug smuggler who decided to “work off” his own charges—to make contact with a certain “Flaco” in Colombia.

“Flaco” informed the snitch that he really wanted to work with him, but that he had no means to bring the kilos of cocaine into the country. So the agents of our government sent an airplane down to Colombia to get the cocaine! Our client had agreed to purchase the cocaine, and suffered an arrest when she drove to the warehouse to pick it up. She was sentenced to nine years in federal prison—for a crime that she could not have committed without the help of the FBI.

Natapoff describes the typical street-level snitch deal as one in which the po-

lice handler has full control. The handler decides on the informer’s activities, and whether or not he or she has “worked off” his or her part of the bargain. Street-level snitches are typically the most vulnerable of suspects, such as drug addicts. Yet once they’ve exhausted their usefulness to police, their handlers (at least on the state level) offer them no protection, save a few nights in a hotel room prior to the day of testimony.

The cops have as little regard for a rat as the rest of us—maybe less. Why, then, do they so often give credence to the least trustworthy snitch of all, the jailhouse informant?

The jailhouse informant is typically a criminal with a long conviction record and who presently faces decades or even life in prison. Police detectives will often place this individual in the cell of someone else who has a strong defense against murder charges. The hope is that the snitch will elicit incriminating statements from his cellmate.

Stories abound about how this type of informant (who has an obvious, strong incentive to lie and embellish) often makes up “statements” from his cellmate out of whole cloth. Natapoff thinks the use of unreliable informants is not always the result of cynicism but can represent blindness to the snitch’s perfidy. In any case, desire to obtain convictions factors into all prosecutorial decisions.

I currently represent a 60-year-old man who has never been in trouble and is extremely ill. He used to sell very small amounts of marijuana to a few friends who also were sick. He now faces charges that he sold a quarter ounce of Cannabis to an undercover police operative. One of those friends, a man who also found work as a speed dealer, must have gotten arrested and agreed to “work off” his case... By giving my client’s name to narcotics officers.

Another client, an admitted heroin dealer, addict and thief, kept getting himself arrested. By the time I represented him, he had just suffered an arrest resulting in his fifth probation violation. He would phone me repeatedly during the day with instructions: “Call Officer So-and-So. I work with him. He’ll get me out of jail right away.”

This sense of self-importance—pathetic narcissism—has been characteristic of every informant I have represented. Their shpiel begins the minute I walk into the jail interview room: “You must call this officer right away, so that I can get out of here ASAP!” is the usual refrain. I translate this into, “I’ll do whatever it takes to get out of jail promptly, so that I can get high (on crack or speed) right away.”

In supposedly progressive San Francisco—and throughout the U.S., according to Natapoff—police and prosecutors essentially exclude defense lawyers from

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the informer contract negotiations.

On occasion, the lawyer will contact a given narcotics officer whose name has been provided by the potential informer. Otherwise, we have neither control over nor input into the process. The duration of the period of informing, the determination of whether our client has kept his or her part of the bargain, whether the police keep their part of the

tween police and criminals rather than by public rules.”

On only one point would I quibble with Natapoff. She describes snitches as the “most defenseless players in the criminal justice drama,” and (quoting a sociologist) “vulnerable people.”

This may be true of the underclass in general, but in my 15 years as a criminal defense lawyer, I have not been struck by the vulnerability of snitches as individuals. The same type of people who lie, cheat, and steal in order to maintain their addiction before they got arrested are the same people who will lie, cheat, and steal to avoid incarceration. They rationalize their behavior. They consider themselves “survivors” in the rat race.

In San Francisco, police mainly use snitches to help them arrest and convict street-level drug dealers. The sale of drugs remains the most common felony on the courts’ dockets. This means that the typical case at the Hall of Justice involves a victimless crime and depends on the help of hopelessly unreliable individuals.

## Reform Options?

Natapoff points out two main distinctions between street-level informants and informants in cases involving organized crime, white collar crime, political corruption, and terrorism.

1. State police officers deal with the street, while federal law enforcement officers deal with the rest.

2. Federal guidelines minimize the risk of abuse (although they also pose problems).

Federal guidelines help ensure that handlers don’t have free rein over the rules of the agreement, and over the types of crimes an informer may continue to commit. Formal, written agreements help create the boundaries of the deal, limiting power that could otherwise go to the handler. Also, federal prosecutors often make white collar suspects aware of impending charges prior to actually filing them. This allows for the suspects to hire a lawyer, who can then ensure greater fairness and openness in the process.

Without such safeguards, corruption, malfeasance, and injustice will continue to characterize narcotics investigations and prosecutions in U.S. cities and counties. Natapoff suggests reform measures, some of which have been implemented in whole or in part by various states. They include limiting the types of charges a suspect can face and still earn credits by informing; limiting the types of crimes that informants may commit; reporting of informant crimes; strengthening witness protection programs; heightened judicial scrutiny of the handling of informants; and prosecution guidelines.

While I agree with all of the proposals Natapoff lists, I can’t help wondering: wouldn’t it just be easier to medicalize the use of all drugs, so that addicts can be treated by doctors?

“Snitching” is a book worth buying. To defense lawyers, community activists, and drug legalization advocates it will provide added intellectual ammunition—or proof of what you already know. And for friends who work in government, law enforcement, and prosecutors’ offices, it will make the perfect gift.



“STOP SNITCHING” campaign begun by rappers and graffiti artists in East Harlem targeted the hypocrisy of cops allowing informants to continue dealing drugs.

bargain—all of these things remain out of reach of the defense lawyer.

The criminal justice system recognizes the possibility of police malfeasance and limits it by excluding at trial illegally obtained evidence and by requiring a judge’s signature on search warrants. But there is no limit on police malfeasance when defense lawyers are excluded from the informer-contract process.

The government’s use of snitches causes prosecutors to rely on witnesses who for the most part lack even a rudimentary moral compass. How often does their testimony result in wrongful verdicts? Given that appellate courts most often uphold jury verdicts (wrongful or not), no one can quantify how many innocent people suffer convictions through false testimony. The book at hand is filled with anecdotal evidence of its regular occurrence.

Police reliance on snitches breeds divisions in the community. Mistrust grows when everyone knows that people charged with crimes can avoid punishment by “working off” their cases. Mistrust can lead to violence against those perceived (correctly or not) as betrayers.

Use of snitches also fosters distrust of the police and for the law itself, according to Natapoff. Use of snitches “represents the open toleration of crime by the very people charged with enforcing the law.” And it can “make the legal process secret and unpredictable, governed by personal relationships be-