

JOIN THE CONVERSATION ABOUT “SNITCHING”

The new film *Snitch*, starring Dwayne Johnson, shows how those facing long prison terms under mandatory minimum sentencing laws can find themselves sent back into the drug world as reluctant informants in hopes of reducing their sentence. Is this a necessary tool for law enforcement, or a dangerous exploitation of individuals in a desperate situation?

Review the facts. Debate the issues. Take action. For more information, visit takepart.com/snitch.

WHAT IS SNITCHING?

- “Snitch” is a slang term for a criminal informant, and “snitching” occurs when police or prosecutors offer a deal to criminal suspects in exchange for information or cooperation.¹ “Snitching” often occurs in the context of plea bargaining,² and is enabled by determinate sentencing regimes and mandatory minimum sentencing, which make it extremely difficult for defendants to avoid a severe prison term unless they can offer assistance in investigating or prosecuting a case.³
- A defendant who agrees to become a “snitch” may wear a wire, have a conversation with another suspect, or collect physical evidence; they may also agree to testify in court against others. In exchange for this cooperation, a prosecutor can agree not to bring or to dismiss certain charges,⁴ recommend a lower sentence or sentence range to the sentencing judge,⁵ or agree that a specific sentence or sentencing range is appropriate in the defendant’s case.⁶
- Thousands of criminal informants receive more lenient sentences or avoid prosecution by providing information to the government each year.⁷

HOW IT WORKS

- Some criminal informants agree to assist the government as part of a formal cooperation agreement.⁸ Typically, this type of agreement require an informant to be available for testimony and to provide truthful and complete information to law enforcement officials at all times.⁹ It may also require the informant to waive his right to counsel during meetings with the government, as well as his right against self-incrimination. This allows the government to use the snitch’s testimony against them if the snitch breaches the cooperation agreement.¹⁰ In exchange, the prosecutor will generally agree to file a motion for

“substantial assistance” to the sentencing judge.¹¹ The prosecutor reserves discretion to decide what qualifies as “substantial assistance,” and can ultimately choose not to file this motion.¹² It is then up to the judge to ultimately grant the snitch a more lenient sentence.¹³

- However, because the work of criminal informants is “necessarily shrouded in secrecy,”¹⁴ agreements between law enforcement and informants are often highly unregulated. Police can decline to make an arrest in exchange for a snitch’s tip, or prosecutors can drop charges against an informant without official explanation or justification.¹⁵
- According to the Department of Justice’s guidelines for using “confidential human resources,” as informants are called, every informant working with federal law enforcement must undergo a “validation” process. This process includes, among other things, proof of the informant’s real identity, whether the informant has a criminal record, is currently under arrest, investigation, or is reasonably believed to have been involved with a crime, and the informant’s motives for cooperating, including any promises, terms or benefits.¹⁶
- A snitch can be authorized to commit otherwise illegal activities if the “benefits outweigh the risks,” and the illegal activity is either a) necessary to secure evidence essential for the success of an investigation that is not reasonably available without such activity (including circumstances where the snitch must commit a crime to maintain credibility), or b) the activity is necessary to prevent death, bodily injury, or significant damage to property.¹⁷ Depending on how serious the crime is, different levels of authorization are required.¹⁸ All crimes are supposed to be authorized in advance and in writing for a specific period, and the FBI may never authorize a crime of violence.¹⁹

CONSEQUENCES AND CRITICISMS

- There is growing concern that law enforcement officials manipulate low-level offenders—many of them being low-income, minority youth—into becoming informants by threatening them with exaggerated estimates of the sentences they could

face if they don’t cooperate. Also, much of the young informants’ cooperation involves circumstances far more serious than the charges they are facing.²⁰

- Some criminal informants continue to commit crimes while working with law enforcement officials. One of the most notorious examples of informant abuse arose in the case of Stephen Flemmi and Whitey Bulger, two Irish mob hit men who for 20 years committed murder and engaged in kidnapping, racketeering, and other serious crimes while they worked for the FBI.²¹ Although the Department of Justice’s current guidelines are intended to better regulate and track the use of criminal informants,²² recent evidence of mishandling and corruption suggests that serious problems persist.²³
- Critics also argue that informants can be notoriously untrustworthy.²⁴ In a case that led to an ACLU lawsuit, *Kelly v. Paschall*, an informant in Hearne, Texas, provided false information to a federally-funded drug task force that led to the wrongful arrest of almost 15% of the town’s young, black male population on felony cocaine charges.²⁵ In a 2004 study, Northwestern University Law School estimated that false testimony from criminal informants accounted for over 45% of all wrongful capital convictions, making snitches the leading cause of wrongful convictions in U.S. death penalty cases.²⁶

¹ See “Snitching Blog: A Comprehensive Resource on Criminal Informants,” available at <http://snitching.org/resources/>
² Alexandra Natapoff, “Secret Justice: Criminal Informants and America’s Underground Legal System,” *Prison Legal News*, January 12, 2013.
³ See, e.g., The Sentencing Reform Act of 1984, P.L. No. 98-473, 98 Stat. 1987; The Anti-Drug Abuse Act (ADAA) of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986); The ADAA of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988).
⁴ F.R.Crim.Pro. Rule 11(d)(1)(A)
⁵ *Id.* at 11(d)(1)(B).
⁶ *Id.* at 11(d)(1)(C).
⁷ Alexandra Natapoff, “How snitching erodes criminal justice,” *The Washington Post*, March 2, 2010.
⁸ See sample federal court plea and cooperation agreement in *U.S. v. Jackson*, February 2011, available at <http://www.justice.gov/atr/cases/268700/268710.htm>.
⁹ See *id.*
¹⁰ See U.S.S.G. § 5K1.1; 18 U.S.C. § 3553(e).
¹¹ See *Wade v. U.S.*, 504 U.S. 181 (1992); see also, e.g., *U.S. v. Brechner*, 99 F.3d 96 (2d Cir. 1996).
¹² See U.S.S.G. § 5K1.1(a); 18 U.S.C. § 3553(e).
¹³ Sara Stillman, “The Throwaways,” *The New Yorker*, Sept. 3, 2012.
¹⁴ Natapoff, *supra* note 7.
¹⁵ United States Department of Justice, The Attorney General’s Guidelines Regarding the Use of FBI Confidential Human Resources (Dec. 13, 2006).
¹⁶ *Id.*
¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ Stillman, *supra* note 14.
²⁰ U.S. House of Representatives, Committee on Government Reform, Report 108-414: “Everything Secret Degenerates: The FBI’s Use of Murderers as Informants,” 108th Cong. 2nd Sess. (2004).
²¹ Attorney General’s Guidelines, *supra* note 16.
²² United States Department of Justice, Office of the Inspector General, The Federal Bureau of Investigation’s Compliance with the Attorney General’s Investigative Guidelines (Sept. 2005); see also Eric Lichtblau, “FBI Found to Violate its Informant Rules,” *New York Times*, Sept. 13, 2005; “Informants cutting deals to continue lives of crime,” *FOX News*, Feb. 6, 2012.
²³ Natapoff, *supra* note 7; see also Stephen Trotter, “Words of Warning for Prosecutors Using Criminals as Witnesses,” 47 *Hastings L.J.* 1381 (1996).
²⁴ ACLU press release, “In Wake of ACLU Civil Rights Lawsuit Settlement, African Americans Affected by Texas Drug Task Force Scandal Call for Reconciliation at Town Meeting,” June 2, 2005.
²⁵ Rob Warden, “The Snitch System: How Snitch Testimony Sent Randy Steidl and Other Innocent Americans to Death Row,” *Center on Wrongful Convictions, Northwestern Univ. Sch. of Law* (2004).



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