Prosecuting the Informant Culture

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PROSECUTING THE INFORMANT CULTURE

Andrew E. Taslitz*


INTRODUCTION

Alexandra Natapoff,¹ in her outstanding new book, Snitching: Criminal Informants and the Erosion of American Justice, makes a compelling case for reform of the system by which we regulate police use of criminal informants. Indeed, as other writers have discussed,² law enforcement’s overreliance on such informants has led to a “snitching culture” in which informant snitching replaces other forms of law enforcement investigation (pp. 12, 31, 88–89). Yet snitches, especially jailhouse snitches, are notoriously unreliable.³

Informants snitch in exchange for benefits from the state. These benefits include monetary payments, immunity from prosecution, sentence reductions, and even the freedom to continue criminal activity—most commonly drug-dealing—while police turn a blind eye (pp. 32, 47–54). The lure of such benefits entices many informants into outright lying, and others into exaggeration, contributing significantly to wrongful convictions.⁴ Indeed, so grave is the innocence concern that numerous reformers have recommended a wide array of changes to the law—from pretrial reliability hearings before permitting informants to testify, to corroboration requirements before snitches may testify, to wider discovery, cautionary jury instructions, limitations on informant rewards, and improved police officer training (pp. 190–99).

Courts or legislatures in some jurisdictions have occasionally adopted some of these reforms piecemeal,⁵ while the FBI—though not most state law enforcement agencies—has adopted relatively stringent rules on how police “handlers” may treat their informant subjects (pp. 26, 47–49, 179–80,

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5. Pp. 69–72; see Paul Giannelli & Myrna Raeder, supra note 3, at 70–78.
But compared to many other areas of the criminal justice system, snitching goes largely unregulated (pp. 26, 83–84, 99).

Natapoff reviews all of these concerns concisely and effectively, adding her voice to the call for change. She does not, however, recommend abandoning snitching because she recognizes that certain categories of grave offenders—particularly white-collar offenders and gang-connected criminals—would escape unpunished without this investigative tool (pp. 11–12, 140–41). What she adds to the debate is a recognition that the overuse of snitching in certain geographic areas and for certain types of crimes can have ill social consequences well beyond convicting the innocent. These consequences include increasing crime, decreasing police legitimacy and community cooperation with the law, amplifying racial bias, harming police transparency and accountability, and raising the risk of civil rights violations. Rephrased, even if what law enforcement does in any isolated case seems justified, the cumulative social cost of many such cases can far outweigh the cumulative social benefits. Natapoff argues for righting that balance and thus makes a persuasive and comprehensive case for not missing the forest for the trees.

After reviewing, in Part I, the legal and cultural basics of the informant system, this Review turns in Part II to examining Natapoff’s argument that the social (rather than individual case) cost-benefit analysis requires changes in our current system of informant use. Natapoff’s focus is primarily on police, and secondarily on prosecutors. Her larger purpose, however, is to make the case for change, rather than discussing how to bring those changes about. In Part III, I focus on what I see as one prerequisite for motivating systemic change: recognition of an aspirational ethical obligation of prosecutors to consider the systemic social costs of informant-use policies, rather than only the costs involved in each individual case. I do not, therefore, delve much in this brief Review into the practical politics of reform.

I. SNITCHING BASICS: THE RISKS TO TRUTH AND THE CONSTITUTION IN INDIVIDUAL CASES

A. Incentives

1. For Informants

The dominance of snitching has been actively encouraged by the law. The U.S. Sentencing Guidelines purportedly set presumptive sentences while creating a system of departure from those sentences. The guidelines create several powerful incentives for informants to snitch (pp. 29, 50–54). First, upon the government’s motion, the guidelines grant judges the authority to sentence below the mandatory minimum sentence required for certain

6. Pp. 4–8; see infra Section II.A.

Prosecuting the Informant Culture

If an offender has offered "substantial assistance" in investigating or prosecuting another wrongdoer. Mandatory minimum sentences can be harsh (for example, manufacturing less than two sugar packets worth of crack cocaine carries a five-year sentence (p. 51)). Second, section 5K1.1 of the guidelines permits the court to depart downward from the guidelines sentence for any offense, whether a mandatory minimum applies or not, originally only upon the government’s motion stating that the defendant has provided substantial assistance in investigating or prosecuting another person. Although this latter provision’s applicability is no longer contingent upon the government’s motion (p. 52)—a consequence of a series of decisions in which the Supreme Court rendered the guidelines advisory rather than mandatory—sentencing courts still must compute guidelines recommendations and give them substantial weight.

Federal Rule of Criminal Procedure 35 goes further still, permitting, upon the government’s motion, the reduction of a defendant’s previously imposed sentence if, after sentencing, he provides substantial assistance in investigating or prosecuting another person. This provision incentivizes jailhouse snitches to lie even after their conviction (p. 54). Many states have analogous guidelines provisions, permitting sentencing mitigation for snitch assistance, and states that do not have guidelines reach a similar result on the theory that this kind of assistance demonstrates remorse and reduces culpability (pp. 49–50).

Snitches benefit financially, too: federal forfeiture rules allow courts to award up to one quarter of the take in a drug bust or other property seizure to informants up to $500,000. Local police departments pay snitches in small-time cases too, using vouchers or cash. Some even pay in drugs directly, or indirectly by allowing “skimming” from the drugs used to make the buy (p. 54).

Perhaps the greatest incentive for informants to snitch comes from their desire for the freedom, whether granted officially or unofficially, to continue engaging in crime (pp. 32–33, 43–44, 109–11). Police can refrain from arresting in the first place, or can arrest but consciously omit damning

facts from the police report (pp. 47, 85–86). Some departments flatly ban permitting new crimes, while others bar “condoning” them, but most department rules contain no such prohibitions or effectively permit this kind of conduct for some types of crime, but not others (pp. 47–48). The U.S. Department of Justice Guidelines governing FBI and some other federal investigative agencies’ use of informants fall into this last category, flatly prohibiting, for example, informant violence (other than in self-defense) and obstruction of justice, among others, while permitting illegal activity where authorized in writing, in advance, for a limited time period and where the authorizing agent has determined that the benefits outweigh the risks.\footnote{15. Pp. 47–48; \textit{United States Department of Justice, Guidelines Regarding the Use of Confidential Information}, available at \url{http://www.justice.gov/ag/readingroom/ciguidelines.htm} (last visited Aug. 24, 2010); \textit{United States Department of Justice, Attorney General’s Guidelines Regarding the Use of FBI Confidential Human Sources}, available at \url{www.justice.gov/ag/readingroom/guidelines.pdf} (last visited Aug. 24, 2010).}

Although only prosecutors (not police) can confer immunity, courts often give great weight to promises of immunity by police, declaring the state “estopped” from prosecuting informants who rely on these promises (pp. 48–49). Informants may also snitch in exchange for legitimate immunity agreements or, more worrisomely, to protect third parties, such as family members, from being charged with a crime (p. 49). These “wired” plea deals attach or “wire” the outcome of the family member’s case to the informant’s cooperation (p. 49). Prosecutors may also agree to postpone a case’s disposition to allow an informant to “work off” his charges by continuing to inform (p. 49).

\section*{2. For Law Enforcement}

Law enforcement similarly has broad incentives to use informants. In some instances, such as white-collar or gang crime, criminal activity is so secretive, complex, or hard to detect, or involves such ever-present threats of violence against co-conspirators straying from the criminal fold, that prosecution is impracticable without informants (pp. 29–30, 131–34, 140, 145). In other cases, like drug crimes, informant use is simply easier than alternative investigative methods (p. 73).

and is therefore not in “custody.” Moreover, because informant-handler interactions so often occur outside the formal processes of the law (particularly where no arrest occurs or where key information is omitted from police reports), deals may occur in total secrecy (pp. 83–86, 89–94). This secrecy gives police the freedom to act without judicial scrutiny or prosecutorial oversight (pp. 94–97). This lack of accountability and freedom from seeking search warrants or wiretap orders, or completing cumbersome paperwork, allows police to act quickly, cheaply, and without fear of challenge from other institutions in the criminal justice system (pp. 31, 94–97). That lack of oversight also saves police time and effort in how they monitor informants. Many handlers give free reign to informants to do as they please in committing new crimes, with some actually aiding informants in gathering the resources to engage in criminal conduct or allowing informants to take the lead in running investigations (pp. 20, 27–28, 32–36). Some officers will continue this deferential treatment so long as their informants continue to deliver useful information (pp. 19–21, 32–34).

Police may also make only meager efforts to corroborate snitches’ stories, abandoning the skepticism that reason requires (pp. 73–76). Not only does this enable informants to lie; it also allows them to use snitching as a tool to wreak revenge on enemies or eliminate competitors from criminal markets (p. 36). Police may also be tempted to cut procedural corners or play fast and loose with the truth, confident that lies or distortions will not be uncovered (pp. 37–38, 75–76, 84–89).

Even if an informant is arrested and the case against him proceeds to prosecution, that generally occurs pursuant to a plea deal. Prosecutors are constitutionally obligated, under Brady v. Maryland\(^\text{19}\) and Giglio v. United States\(^\text{20}\), to produce materially exculpatory impeaching information to the defense, including promises made to an informant in exchange for his testimony and, typically, his prior criminal record, prior inconsistent statements, and history of testimony and rewards in other cases (p. 92). However, in United States v. Ruiz\(^\text{21}\), the Court held that Giglio material need not be produced in advance of a guilty plea.

Many state and federal district courts simply track these constitutional minima, though others do add further procedures (pp. 58–59). Often, however, the government exercises its “informers privilege” to hide an informant’s identity entirely in order to protect him or his usefulness as a source (p. 59). This privilege is especially strong in a case’s investigative stage. At trial, however, the privilege is subject to a balancing test, where the public’s interest in the free flow of informant information is weighed against the individual’s right to prepare his defense (p. 59). Furthermore, the ac-

\(\text{19. Pp. 46, 85–86; Henning et al., supra note 16, at 238–39, 251, 276 (summarizing the caselaw).}

\(\text{20. 373 U.S. 83, 87 (1963).}

\(\text{21. 405 U.S. 150, 154 (1972).}

\(\text{22. 536 U.S. 622, 625, 633 (2002).}
cused's Sixth Amendment right to confront the witnesses against him may also require revealing an informant's identity at trial.\textsuperscript{23}

Moreover, in the few cases that actually go to trial, the Jencks Act requires disclosure of one category of impeaching material—prior inconsistent statements—but only \textit{after} the witness testifies at trial, thus limiting the defense's time for investigation to challenge such statements.\textsuperscript{24}

So concerned was a panel of the Tenth Circuit with this system of institutionally sanctioned secrecy that it declared prosecutorial use of charge or sentencing reductions to obtain informant cooperation a crime under the federal antigratuity act.\textsuperscript{25} However, that decision was reversed by the Tenth Circuit sitting en banc, which declared that Congress could not have intended this antibribery statute to apply to prosecutors.\textsuperscript{26} Other purported legal protections against informant abuses, like the subjective entrapment and outrageous government conduct defenses, are so hard to prove that they are paper tigers (pp. 61, 171). Civil suits against the government where handlers purportedly knowingly acquiesced to harm caused by informants are similarly of limited value, partly because of police officer qualified immunity and prosecutorial absolute immunity for conduct “intimately associated with the judicial phase of the criminal process”—including knowingly using false evidence or lying informants, even when that results in wrongful conviction (pp. 62–63).

Natapoff, having reviewed these rules in several tight introductory chapters, summarizes the nature of the informant culture:

The overall picture of American informant law presented in this chapter is one of tremendous official authority and discretion to use and reward criminal informants with few legal limits. The constraints that do exist tend to focus on the government's informational obligations rather than substantive limits on the way the government can use criminal informants, and even those informational obligations are tied to litigation and trials that occur infrequently. The end result of this laissez-faire, unregulated approach is that the American practice of using criminal informants is centrally shaped by individual decisions of police and prosecutors, with few external controls and little judicial oversight or legislative or public scrutiny. (p. 67)

\subsection*{B. Wrongful Convictions}

Barry Scheck and his colleagues Jim Dwyer and Peter Neufeld published \textit{Actual Innocence}\textsuperscript{27} at the turn of this century, the book that sparked modern scholarly interest in wrongful convictions. Scheck and his co-

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{23} P. 59; \textit{see also} Crawford v. Washington, 541 U.S. 36, 68 (2004); United States v. Lombardozzi, 491 F.3d 61, 72–75 (2d Cir. 2007).
\item\textsuperscript{24} Pp. 59–60; 18 U.S.C. § 3500(b) (2006).
\item\textsuperscript{25} Pp. 60–61; United States v. Singleton, 144 F.3d 1343, 1351 (10th Cir. 1998), \textit{rev'd en banc} 165 F.3d 1297 (10th Cir. 1999).
\item\textsuperscript{26} United States v. Singleton, 165 F.3d 1297, 1300 (10th Cir. 1999) (en banc).
\item\textsuperscript{27} \textit{See} \textsc{Barry Scheck} \textit{et al.}, \textsc{Actual Innocence: Five Days to Execution, and Other Dispatches From The Wrongly Convicted} (2000).
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Prosecuting the Informant Culture

authors then estimated that informant testimony influenced verdicts in 21% of capital wrongful convictions. A later report reached a similar estimate of false snitches’ testimony contributing to all mistaken convictions in California. In 2004, Northwestern University Law School’s Center on Wrongful Convictions reached a still-harsher conclusion, linking 45.9% of wrongful capital convictions to lying informants, making them “the leading cause of wrongful convictions in U.S. capital cases.” Professor Samuel Gross recently concluded that nearly 50% of wrongful murder convictions stemmed in significant part from false jailhouse or other snitches’ testimony. Jailhouse snitches are particularly worrisome because they lie about persons already associated with the criminal justice system, predisposing authorities to uncritically believe tales of such persons’ criminal wrongdoing.

1. Loving the Rats

Long-term handler–snitch relationships can lead to the phenomenon of “falling in love with your rat” (p. 73). Police officer or prosecutor dependence on the informant and the long hours spent working together lead the participants to bond emotionally (pp. 73–74). As one prosecutor put it, “[Y]ou spend time with this guy, you get to know him and his family. You like him.” But, because of these “warm and fuzzy” feelings, “you come to believe that you do not have to spend much time or energy investigating the case and you don’t.” That creates “a real danger that you lose your objectivity.”

28. Id. at 156.
33. Id.
34. Id.
on Marion Albert Pruett’s “testimony against a prisoner accused of killing Pruett’s cellmate” (pp. 74–75). They even put Pruett in the federal witness protection program, only to discover that he had killed the cellmate himself and, while under federal protection, engaged in a continuing string of bank robberies and murders (p. 75).

Government ignorance about impeaching evidence can bite the state later, as it did when a Baltimore prosecutor in a 2003 murder trial was unaware that his jailhouse snitch “was also on the Baltimore police payroll as an informant.”6 In Los Angeles, the district attorney’s office consciously decided to avoid tracking its informants or evidence of their unreliability because the office feared that doing so would create discovery favorable to the defense and reveal the sheriff’s department’s violations of offenders’ right to counsel (p. 75). One consequence of this intentional ignorance was the wrongful murder conviction of Tom Goldstein, who spent twenty years in prison because of lying jailhouse snitch Edward Fink’s testimony (p. 75). Unbeknownst to the prosecutor trying the case, Fink “had received lenience for numerous offenses by working as an informant for the local police department for many years”—impeaching information never produced for the defense at trial (p. 75). Some prosecutors have outright concealed known informant lies. In one of the more infamous cases involving such concealment, the prosecution concealed the fact that an informant set up Delma Banks for a murder conviction for twenty years, a fact that the prosecution continually denied, though it knew the allegation to be true (pp. 75–76).

2. Race

Race and purposeful ambiguity can create a snowball effect of errors early in an investigation, leading to further errors later on.37 An empirical study of search warrant practices in San Diego concluded that warrants for evidence of drug crimes were disproportionately granted for black suspects relative to white suspects.38 This disparity occurred even though probable cause affidavits for black and white suspects alike equally relied on vague, boilerplate language or other flawed information, arguably rendering the affidavits insufficient to establish probable cause.39 One reason for this insufficiency is that the vague and conclusory references to informants’ character and bases of information did not justify treating those informants’ tips as reliable.40

6. P. 75; Alisa Bralove, Murder-prosecutor’s ignorance was no excuse for Brady flaw, DAILY RECORD (Baltimore), Sept. 5, 2003.
37. See Taslitz, Wrongly Accused Redux, supra note 2, at 1099–108.
39. See id. at 239.
40. See id.
Yet when warrants were issued for whites, those warrants turned out to be highly accurate (meaning they resulted in obtaining evidence of crime). On the other hand, warrants issued for black suspects were highly inaccurate,\(^4\) suggesting that law enforcement officers and judges were more willing to believe questionable informants in cases involving black suspects than for those involving white suspects. Other research reveals that police willingness to believe ill of blacks, and blacks' fear of just such law enforcement beliefs, leads to a self-reinforcing, escalating system of error.\(^3\) Thus, if police do not uncover evidence of black criminality via search warrants, they may zealously pursue other investigative techniques.\(^4\) If searches do produce such evidence, additional overly zealous investigative tactics may similarly be the police weapons of choice.\(^4\)

Such aggressive and time-consuming techniques lead distrustful blacks to react angrily.\(^4\) Police interpret such anger as concealment, leading to still more aggressive methods and resulting in flawed confessions, mistaken eyewitness identifications, and, finally, more false convictions.\(^4\)

3. Weak Fail-safes

While juries may sometimes accurately detect informant lies, they often fail to do so (pp. 77–78). Recent studies suggest that jurors do not adequately discount the veracity of informants shown to be compensated for their testimony.\(^4\) Jurors also cannot use impeaching information never made available to them—a frequent occurrence, as explained above.\(^4\) Nor do jurors even get a chance to render a credibility judgment in the vast majority of cases, which are disposed of by a guilty plea (p. 77).

It may seem odd to imagine large numbers of innocent persons pleading guilty. Yet it is far from uncommon. The snitch system can result in a case that seems heavily stacked against even an innocent defendant. Sentencing guidelines exact a heavy price for those convicted after trial.\(^4\) Innocent defendants with prior criminal records or associations may have every reason

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\(^4\) See Taslitz, Wrongly Accused Redux, supra note 2, at 1124–31 (analyzing high search warrant error rates for black suspects); ANDREW E. TASLITZ ET AL., CONSTITUTIONAL CRIMINAL PROCEDURE 50–51 (4th ed. 2010) (illustrating such techniques).


\(^4\) See id. at 1099–108 (analyzing eyewitness identification); Taslitz, Wrongly Accused, supra note 42, at 130–33 (analyzing interrogation).

\(^4\) See Taslitz, Wrongly Accused, supra note 42, at 130–33.

\(^4\) P. 77; see Jeffrey S. Neuschatz et al., The Effects of Accomplice Witnesses and Jailhouse Informants on Jury Decision Making, 32 LAW & HUM. BEHAV. 137 (2008).

\(^4\) See supra text accompanying notes 20–24.

\(^4\) See supra text accompanying notes 8–13.
to fear that their protestations of innocence will be ignored.\textsuperscript{50} Overworked public defenders and limited discovery may rob the innocent of the resources to prove their case (pp. 69, 91–94, 206). Cross-examination, discovery, and cautionary jury instructions—the traditional tools of adversarial combat—are thus unlikely to do much good (p. 78). Add in a tempting offer of reduced charges, sentences, or probation by the prosecutor, and a guilty plea can be hard to resist.\textsuperscript{51} The very secrecy of the informant process and much of the plea negotiation process, however, makes it hard to know how many innocent persons fingered by informants have abandoned their fate to the guilty plea (pp. 79–80). Nevertheless, there have been infamous revelations of such abuses, most notably the exonerations of at least 135 defendants framed by police perjury, most of whom pled guilty to drug- or gun-possession-related crimes in Los Angeles, Dallas, and Tulia, Texas.\textsuperscript{52}

Most recommended reforms, which focus on improved procedural protections at trial—such as by corroboration requirements, reliability hearings, and stronger discovery rules—would do little to solve the problem. As Natapoff explains:

> [Such trial procedures] do not directly affect plea bargains, namely, the vast majority of criminal cases. They also do not affect the process of using informants in investigations or to obtain warrants, techniques that lead to thousands of bad searches and arrests every year. Such procedures also do not reduce informants' underlying incentives to lie in the first place. Finally, they leave untouched police and prosecutorial reliance on unreliable informants in shaping investigations, arrests, and charging decisions. (p. 81)

\section*{II. Societal Impact of Widespread Snitching}

Widespread snitching—even when reliable—has broader ill social effects, particularly because snitching is concentrated in neighborhoods heavily populated by vulnerable populations. Natapoff carefully documents the nature of this concentration and its ill effects.

\subsection*{A. Societal Costs of Snitching}

\subsubsection*{1. Disproportionate Punishment}

The consequences of snitch concentration can be grave. Notably, it "skews the system's evaluation of guilt and innocence" (p. 34). Thus one general principle of criminal liability is that "the worse the crime, the worse

\begin{itemize}
  \item \textsuperscript{50} See Taslitz, \textit{Wrongly Accused Redux}, supra note 2, at 1106–07.
  \item \textsuperscript{51} Cf. Andrew E. Taslitz, \textit{Prosecutorial Preconditions to Plea Negotiations: "Voluntary" Waivers of Constitutional Rights}, 23 CRIM. JUST. 14 (2008) [hereinafter \textit{Prosecutorial Preconditions}] (explaining the psychological, economic, political, and cultural forces that make it hard for even innocent defendants to reject guilty plea offers).
  \item \textsuperscript{52} Pp. 79–80; Samuel R. Gross & Barbara O'Brien, \textit{Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases}, 5 J. EMPIRICAL LEGAL STUD. 927, 931 (2008).
\end{itemize}
Prosecuting the Informant Culture

the punishment” (pp. 33). Yet, Natapoff notes, “[t]his foundational rule is routinely flouted in the world of snitching” (p. 33). For example, prosecutors charged not only Crips gang member, drug dealer, and paraplegic Cedric Robertson with drug offenses, but also his girlfriend, Lakisha Murphy, and four active gang members. Lakisha, the sentencing judge agreed, was “not part of the gang or Cedric’s drug business but was only marginally involved because she lived with and cared for her paraplegic partner” (p. 33). Lakisha, however, received a mandatory ten-year sentence, while the four active gang members, whose crimes were far worse, received significantly lower sentences because they cooperated against Cedric while Lakisha did not. So troubling was this topsy-turvy version of justice that the judge apologized to Lakisha, telling her that “it seems unfortunate in this case that you’re doing more time than some of these guys did . . . and there’s nothing I can do about it” (p. 33).

Outcomes like Lakisha’s can be hard to avoid because the most valuable snitches—those with the most information to sell—also tend to be the worst actors.53 Those with the best product to sell (information) can demand the highest price from buyers (prosecutors).54 The result is to turn legislative sentencing schemes on their heads, with the least culpable being treated most harshly, and the most culpable just the opposite (p. 34).

Reliance on informants also tends to worsen racial and geographic disparities. Informants fink on those they know, who tend to be their neighbors, former schoolmates, family, or others within their socioeconomic group or local community (pp. 35–36). This creates a cycle of ever-increasing law-enforcement focus on the nation’s poorest residents. Perceptions of racial disparities can be amplified as well where, for example, less culpable, non-cooperating African American offenders face harsher penalties than cooperating white offenders, the most infamous such example involving white mafia hit man John Martorano in a 1999 case in Boston (pp. 33–34).

2. Disparate Impact on Poor Minority Communities

The degree of snitch concentration is by far the greatest in poor, black, urban communities (p. 205). Much has been written about both the concentration of crime and aggressive police tactics in these communities.55 The result? One in three young African American males, roughly between ages twenty and twenty-nine, are supervised by the criminal justice system at any given time. The figure rises to 50 percent in some major cities like Baltimore and Washington, DC, and rises still higher in certain neighborhoods (pp. 101–02). “The chance of a black man born in 1991 spending


54. See Taslitz, Prosecutorial Preconditions, supra note 51, at 17–18 (explaining plea-bargaining markets).

time in prison at some point in his life,” Natapoff explains, “hovers around one-third—higher than his chances of attending college, getting married, or joining the military” (pp. 101–02).

Although blacks and whites use drugs at similar rates, the rate of incarceration of blacks is “vastly higher . . . than white male offenders” (p. 102). Blacks are also sentenced more harshly than whites for the same offense, even controlling for criminal history (p. 102). Although the data for Latinos is less voluminous than for blacks, the trend seems to be the same for both groups (p. 102). These disparities stem largely from the war on drugs—disparities that were foreseeable, and likely actually foreseen, by the drug warriors at the time their legislative troops voted for the authorizing legislation.56

As is also well-documented, the drug war has been waged primarily against blacks and Latinos, and more specifically against blacks and Latinos in poor, racially segregated, inner-city communities.57 Many explanations for this have been offered, including the fairly common-sense notion that the poor live in small, crowded quarters and, having little money for more expensive entertainments, tend to spend much of their leisure time socializing on the streets.58 That makes it easier for police to detect their drug use compared to middle class users, who are more likely, for example, to snort cocaine in the comfort of their bedrooms with window shades pulled down.59

Law enforcement is thus “the most palpable form of governance to make itself felt in these neighborhoods,” writes Natapoff, making “experiences with police, prosecutors, probation officers, and courts . . . ” routine (p. 103). Because informants are so readily used as a means of investigation in drug cases, and because many drug offenses carry mandatory minimums that can be avoided only by snitching, “ratting” is likely to be pervasive in these neighborhoods (pp. 39, 50–53, 102–08). Although precise data are unavailable, Natapoff analyzes the available data thoroughly. She estimates, perhaps conservatively (p. 107), that about 6 percent of young black men in many of these neighborhoods are snitches (p. 107). Explains Natapoff:

Six percent would be a lot. It would implicate many extended families, apartment complexes, neighborhood events, and church congregations. It would make it likely that someone—maybe more than one someone—in that group or institution or network would have already given information, or might actively be trying to find incriminating information about others, and would have the police’s ear when he does. (p. 107)

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57. P. 115; Taslitz, Wrongly Accused Redux, supra note 2, at 1124–25.
59. Tonry, supra note 56, at 105–06.
Prosecuting the Informant Culture

3. Increased Violence and Other Crime

Informers who have ongoing relationships with handlers who have fallen in love with their rat are readily believed by law enforcement (pp. 73–74). Yet to those snitched on or neighborhood observers, such tales may be questionable. Furthermore, informants engaged in ongoing investigations are free to continue wreaking havoc on their communities. They may threaten crime victims and silence them, thereby aiding informants in hiding their crimes (pp. 38–39). Relatedly, snitches continue to commit new crimes (pp. 32–33, 39–42). Community members come to see snitching as but one cost of doing illegal business (pp. 33–34). “Do the crime, fink on another, don’t do the time” is the law’s new message (pp. 43–44). Those who refuse to turn in others, who simply accept their just desserts, face harsh punishment. Rats do not (pp. 124–25).

Widespread criminal violence against the police would be a difficult way of offenders routinely escaping punishment. Civilian witness intimidation would ordinarily be unlikely as well. But replacing police and ordinary witnesses with snitches generally means turning one criminal against another (pp. 39–42). Violence seems more acceptable in this situation because there are no good guys. Heavy reliance on snitches thus exposes snitches to high levels of threatened and actual violence (pp. 39–42). This in turn creates a culture more accepting of violence generally, raising the number of threats against civilian witnesses and even silencing witnesses who are never threatened directly, but fear the violent consequences of cooperating with the police (pp. 42–43).

4. Preying on the Vulnerable, Destroying Intimate Relationships

Law enforcement, though dependent on its rats, is also often too tolerant of violence against their informants, seeing it as a form of their “getting what they deserve for having broken the law in the first place” (p. 39). Police may also often prey on the most vulnerable suspects, like “addicts, juveniles, people with mental disabilities, or those for whom prison seems life-threatening,” as they are often “more likely to agree to cooperate even if the benefits are uncertain or small, or the risks very high” (pp. 40–41). Lacking counsel or resources, facing arrest, perhaps fearing drug withdrawal, these vulnerable populations “become informants out of fear, ignorance, and their perception that they have no choice” (p. 42). They may for similar reasons, cautions Natapoff, “also be more likely to provide false evidence under pressure to produce information” (p. 41).

Snitching additionally creates pressure to distort or destroy intimate relationships, forcing mothers to testify against sons, wives against husbands, friends against friends—sometimes truthfully, sometimes not (p. 117). This can fray the bonds of social trust. Such bonds are already under significant strain in poor neighborhoods because, lacking strong economic institutions, “people rely on family and informal networks for jobs, income, shelter, child care, and other vital resources” (p. 117). Moreover, as much research
demonstrates, strong social ties facilitate order and safety; weak social ties permit disorder and encourage crime. Yet weak ties simultaneously make it easier for undercover narcotics officers "to penetrate networks of friends and acquaintances," and thus to turn former friends into foes, a cycle further weakening community trust.

5. Procedural Injustice, Community Distrust

Geographically concentrated snitching thus destroys even-handed justice; raises crime generally, and violent crime specifically; frays community bonds; heightens community fear; and does much of this through secret processes that shield participants from accountability. The law rewards the worst, punishing them the least, and undermines punishment's deterrent value as well (pp. 43–44). Justice is for sale; drug addiction thrives (pp. 44, 110–11). All this seems to occur with police tolerance, sanction, or even encouragement. As procedural justice research has long demonstrated, however, persons who perceive processes as unfair—and arbitrary, secret processes like those involving snitches are so perceived (p. 129)—refuse to cooperate with law enforcement and will be more likely to break the law. As crime rises further, identifying and prosecuting true offenders becomes harder (pp. 115–16).

In the view of some observers, community outrage has spawned the "Stop Snitching" movement as a means of protest (p. 121). The movement began with the "Stop Snitching" DVD, circulating in Baltimore since 2004 (p. 122). The DVD follows a local rapper and various interviewees, who complain about corrupt police officers and threaten to harm snitches (p. 22). The video spawned the rise of "STOP SNITCHING" t-shirts, then efforts to ban the t-shirts, followed by the apparent endorsement of the t-shirt's message by some rappers (pp. 122–24). Many members of law enforcement and their sympathizers see the movement as but a modern manifestation of witness intimidation (pp. 123–35). Natapoff apparently agrees that the line between the movement's originally intended message and law enforcement's perceived message of witness intimidation is a fuzzy one (pp. 122–25, 131–35).

Indeed, the Stop Snitching DVD's producer insists that the DVD was not aimed at civilian witnesses, and most commentators agree that this was true of the original Stop Snitching movement overall (p. 125). The moral message to some was that if you do wrong, you should suffer the consequences


61. TONRY, supra note 56, at 106.

Prosecuting the Informant Culture

if caught and refrain from turning on your associates. In other words, it is wrong to save yourself by hurting someone else (p. 125).

Though the Stop Snitching message had its roots in the underworld, Natapoff argues that it readily spread to a noncriminal audience because it became seen as an expression of distrust of the police and the criminal justice system. Writes Natapoff:

Inner-city America has been living with drug informants for the duration of the war on drugs—over twenty years. That represents two decades of twelve-year-olds like my Baltimore student watching the “police let dealers stay on the corner 'cuz they snitchin.'” It represents . . . two decades of the kinds of unreliability and violence that we now know to be associated with informant use. For residents of those communities, it has also been two decades of watching addicts, girlfriends and boyfriends, family members, and other vulnerable acquaintances succumb to police pressure to provide information under threat of increasingly severe mandatory drug sentences. “Stop snitching” is thus not merely a reflection of historic distrust: the public policy of using informants itself contributes to the sense that today’s law enforcement is all too often unreliable or unfair. (p. 128)

Witness intimidation is a vile offense, agrees Natapoff, who bemoans the connection some critics draw between encouraging that offense and the Stop Snitching movement (pp. 133–35). Natapoff thinks it important to understand the movement as a social protest against the communal harm done by the snitching system (pp. 126–28, 136). The costs to community safety and order, egalitarian values, and communal bonds of trust have been high, yet the payoff seems small given that decades of the snitch-abetted war on drugs has yet to bring victory (pp. 119, 138).

B. Methods for Reducing the Societal Cost of Snitching

1. The White-Collar Model

Importantly, however, Natapoff concedes that in other contexts the cost-benefit analysis may be quite different (p. 140). Indeed, informant use in white-collar cases, argues Natapoff, offers a paradigm case of (mostly) using snitches appropriately (pp. 165–66). These cases often expose offenders to both civil and criminal liability, and the civil system heavily regulates businesses in ways that can promote transparency and accountability and provide alternatives to harsh criminal sanctions (pp. 152–53). White-collar offenders, moreover, have the resources to hire counsel. Negotiation thus occurs not between a vulnerable individual and an aggressive officer but between defense counsel and prosecutors (pp. 155–56). This results in a more formal, open, and well-informed process (pp. 165–66).

Defense counsel engage in proffer sessions, discussing what information their client has to offer, but only after reaching clear, written agreements limiting the use of that proffer against the client (pp. 156–57). The terms of any agreement to cooperate are similarly in writing, providing greater clarity as to the obligations created as well as greater transparency for review
should disputes over the agreement arise in the future (pp. 156–58). When the investigation is completed, its details are likely to become public, enhancing transparency and accountability further (though the opposite can happen as well).

Prosecutors are also less likely to act rashly because they recognize the negative collateral consequences of their decisions for corporate shareholders, pension holders, and innocent employees (p. 165). Nor are white-collar criminal prosecutions concentrated in particular geographic areas based on race or class; this minimizes the social harms of snitching (pp. 139–40, 205–06). Prosecutors still retain enormous power, and there may, in the eyes of some commentators, still be much to criticize (p. 166). But relative to snitching in inner-city neighborhoods, corporate snitching occurs with far fewer power disparities, less injury to the innocent, little harm to geographic communities or egalitarian values, little risk of increasing crime or decreasing community trust in law enforcement, greater documentation, more transparency and accountability, and better legal representation (p. 140).

2. Natapoff’s Solutions

Part of Natapoff’s solution for the harms of snitching in inner-city communities is to make this kind of snitching more like that which occurs in the corporate context (p. 141). Thus she would mandate legal counsel for uncharged suspects considering cooperation; limit the use of vulnerable informants like juveniles, the mentally disabled, or drug addicts; allow informants who testify for the defense to apply to an independent authority to receive benefits for their cooperation; widen discovery mandated before entering guilty pleas; and expand and improve community policing and other efforts to enhance trust between police and the communities they serve (pp. 182–200).

Apart from these efforts to level the playing field, Natapoff recommends ways to reduce snitching’s criminogenic effects by legislatively prohibiting those who commit certain particularly heinous offenses from working off their crimes by snitching, flatly banning informants from being authorized to commit any crime of violence, and mandating the reporting of known serious or violent crimes by informants (pp. 180–82). Natapoff would also require law enforcement agencies to collect and publicize data on informant use, including the race, ethnicity, gender, and location of informants and the benefits they received in the hope that doing so will aid the decision maker’s cost–benefit analyses and create communal pressure for change where those analyses are flawed (pp. 179–80). Natapoff also recommends that all jurisdictions adopt detailed informant use guidelines, for both police and prosecutors, that focus primarily (though not exclusively) on minimizing the danger of informant lies or mistakes in individual cases (pp. 179–80, 187–90).
3. Unanswered Questions

Natapoff's beautifully argued book, as with all important works of accessible length, still leaves open a host of related questions. The ones that most concern me involve prosecutorial competence and obligation. Natapoff recognizes that "[p]rosecutorial guidelines are primarily a matter of internal self-regulation," leaving few, if any, remedies for their violation (p. 190). Yet, she concedes, "such guidelines and internal rules are crucial to improving informant practices, since so much of informant use is delegated to the discretion and judgment of such law enforcement actors" (p. 190). If this is so, do prosecutors have an ethical obligation to adopt such guidelines, particularly ones that seek to address the systemic harms of the snitching system, rather than focusing only on the prosecutor's more commonly recognized duty to "do justice" in an individual case? Are prosecutors competent to make such systemic judgments or fix systemic flaws stemming from snitching? Can criminal justice institutions better harness political forces to aid prosecutors in these tasks? How likely are prosecutors to undertake such action voluntarily anyway? This Review now turns to outlining an answer to these interrelated questions.

III. Snitching and the Prosecutors' Systemic Obligations

My argument is two-fold. First the prosecutor's traditional role of "doing justice"—which focuses on the merits of the individual case—must be modified to sensitize the prosecutor to subconscious forces that can contribute to prosecutorial error, a model I call "Do-Justice Adversarialism." Second, this model must be supplemented by a "Medical Model" that focuses on the broader social consequences of the prosecutor's decisions, thus creating a prosecutorial obligation to consider the aggregated social effects of the prosecutor's many individual choices. I see both models as best served by internal self-regulation and perhaps "best practices" aspirational standards, rather than a formal sanctioning system. Along the way, I will illustrate the roots of these models in current practice—thereby demonstrating their political feasibility—and will offer a comment on their technological feasibility. I present the traditional model of prosecutorial obligations and my suggested tweaks primarily to contrast it with, and better explain, the Medical Model, which is my primary concern.

63. See infra notes 65–94 and accompanying text (discussing this question).

1. Modified "Do-Justice Adversarialism"

The adversary system relies on metaphors of market exchange and battle. The market metaphor most aptly applies to plea bargaining, in which the prosecutor may sell, for example, reduced charges against the accused in exchange for the accused's cooperation in investigating other crimes and minimizing the costs of prosecution by avoiding a jury trial. But adversaries may also each be seen as selling a product—a particular legal story—that they want judges or juries to buy. In this sense too, the prosecutor and defense compete with one another. The battle metaphor views the competition as a binary contest—one side wins, one side loses—rather than an exercise in persuasion subject to a range of potential outcomes. Battle imagery also makes clear that the courtroom struggle is expected to be intellectually and emotionally brutal. Yet the difference between these metaphors is ultimately one of emphasis. For both metaphors, the struggle is meant to produce truth, or at least justice. Much like Adam Smith's invisible hand, the selfish struggle of each side to maximize its own interests will end up best serving society.

A lawyer thus does good by serving her client zealously, limited only by the rules of the game. The prosecutor is said to be unique, however, in that her duty is to "pursue justice." The meaning of this term is ambiguous and contested. Yet it clearly refers to prosecutors sometimes tempering their zeal; a tweaking of, rather than a replacement of, the adversarial model's obligations. The primary justification for this tempering is that the state's enormous resources relative to the defense may violate a core assumption of the adversarial model: that the struggle is between equally matched adversaries. "Doing justice" might be given an expansive meaning, which some prosecutors indeed assign it. But the more common conception is a minimalist one, focusing on the prosecutors avoiding conscious, intentional actions that sig-

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66. See Taslitz, Prosecutorial Preconditions, supra note 51, at 17–18.
68. See id.
69. See id. at 103–04.
70. See id. at 103–05.
71. See id. at 103–04.
74. See id. at 634–35 (describing the traditional understanding of the prosecutor's duty to "do justice").
76. See infra notes 106–125 and accompanying text.
Prosecuting the Informant Culture

significantly subvert the adversary system. Although the model might also prohibit some negligent actions, the negligence paradigm’s scope is narrow, and it still generally involves the prosecutor’s failure to properly use information that could have been available to his conscious mind. I call this traditional model “Do-Justice Adversarialism.”

Do-Justice Adversarialism is rooted in the “case processing” model. This strategy evolved from the Wickersham Report on Prosecution, a 1931 effort to professionalize criminal justice, divorcing it from corrupt political influence. The report saw the prosecutor as serving four functions: investigating crime, deciding who shall be prosecuted, preparing cases for trial, and trying those cases and arguing their appeals. The prosecutor’s role was thus to promote efficient, effective case processing from accusation to conclusion. The ideal was to obtain convictions and punishments rather than plea bargains, dismissals, or other less-punitive dispositions.

During the 1950s and 1960s, surveys revealed a far more complex role for many prosecutors in practice, resulting in an important American Bar Foundation Report in 1969. Nevertheless, the more influential report in the coming decades was that of the 1967 President’s Commission on Law Enforcement and the Administration of Justice, which embraced a variant of the case processing model. The influence of that report and its progeny has resulted in a case processing model only marginally different from that embraced by the Wickersham Commission. The new model recognizes a role for plea bargaining, but still expects counsel to treat each case as unique, insisting that like cases be treated alike, with efficient case disposition the prosecutor’s primary goal. Police largely determine prosecutor workload by funneling cases to the prosecutor for resolution. Consistent with re-

77. See Green, supra note 73, at 634 (cataloguing “do justice” obligations that involve primarily conscious prosecutorial choices, though also including prosecutorial negligence avoidance).


81. See id. at 12.

82. Coles, supra note 79, at 183.


84. See Coles, supra note 79, at 183–84.

85. See id. at 183–86.

86. Id. at 185.
source constraints, the greater the number of case dispositions and severity of the sentences received, the better the prosecutor has done her job. Moreover, prosecutors' expertise and public mandate to hold lawbreakers accountable require a certain amount of prosecutorial authority and discretion, which largely shields their decision-making processes from judicial or legislative review or public examination. Reelection pressures are sufficient to prevent prosecutorial overreaching. Otherwise, prosecutors should operate largely free from citizen input or control. Nor should prosecutors, given their unique role, be expected to work with other governmental entities.

Even accepting the wisdom of the case processing model, unmodified Do-Justice Adversarialism simply cannot be squared with modern understandings of the criminal justice system. Everyone, including prosecutors, is affected by subconscious forces. These forces include the ill effects of implicit racial biases, cognitive overload, limited resources, and group polarization on prosecutorial accuracy. Rephrased, blindness about such forces can lead to wrongful convictions, unintentional rights violations, grossly disproportionate punishments, and other forms of prosecutorial error. Surely even the most ardent defenders of the case processing model could not justify it by accepting undeserved punishments. Ample research suggests, however, that too often this is just what happens.

Modified Do-Justice Adversarialism tinkers with the current dominant model by taking these subconscious forces into account. The focus is still on each individual case's disposition, but accuracy requires being aware of the broader psychological and social forces that can lead to erroneous dispositions. Moreover, some tracking of the patterns of case dispositions is necessary, if only to ensure that like cases are treated alike. Modern computer technology makes such tracking relatively easy. Prosecutors need not be able to read minds, but they must be trained in the relevant psychological literature, involved in decision-making processes that expose their preconceptions to critique, and trained in systems that can highlight potential

87. Id. at 186.
88. Id.
89. See id.
92. See Taslitz, Prosecutorial Preconditions, supra note 51, at 21–23.
93. See generally Davis, supra note 72, 123–42 (analyzing consequences of prosecutorial failures).
Prosecuting the Informant Culture

These approaches are not pie-in-the-sky. They are already being tried in various offices—with prosecutors' voluntary cooperation, and often on their own initiative. Detailed models are thus readily available.

As applied to informants, Do-Justice Adversarialism would require prosecutors to be trained in the social science literature concerning the risks of informant lies, jurors' inability to detect them, and methods for minimizing these lies. This new model would also require prosecutors to develop detailed best practices for dealing with informants and create internal mechanisms for implementing those practices and improving them over time. Additionally, the new model would require prosecutors to be aware of the literature governing their own subconscious biases and how to overcome them. Prosecutors have the power and the obligation to act in individual cases to do justice in an informed way, even if they are not compelled to do so by courts or legislatures, and many prosecutors stand ready to do just that.

Perhaps the greater flaw in the traditional model, however, is its failure to recognize that individual decisions, even when justifiable in isolation, do not cumulatively maximize social welfare. Indeed, they may do more harm than good. Prosecutors can often judge when this occurs and take steps to correct it. Nothing in current ethical models—though much in modern prosecutorial practice—addresses the prosecutor's obligation to the broader social good. A different metaphor—that of healer to patient—can fill this role.

2. The Medical Model

The Medical Model views the “patient” as the “body of the people,” an embodied metaphor having its roots in the Framing Era. The healer (the prosecutor) is to treat the patient holistically, recognizing that the health of the mind (conscious or otherwise) and the body interact. Moreover, prevention is better than treatment. Treatment, if necessary, should at least do no harm. The Medical Model thus expressly mandates that the prosecutor consider the impact of her work on the entire social body, making efforts not


97. See Miller & Wright, supra note 95 (giving some examples). The American Bar Association, for example, recently completed a training course for prosecutors and other criminal justice system participants on how to be “culturally competent;” that is, to avoid biased or error-prone decisions based on ignorance of the subconscious forces that can result in miscommunication or misunderstanding of racial and other subcultural variations. See AM. BAR ASS'N, BUILDING COMMUNITY TRUST: IMPROVING CROSS-CULTURAL COMMUNICATION IN THE CRIMINAL JUSTICE SYSTEM 7 (2010). The course includes studying psychological and implicit biases and community perceptions, as well as the sociology of micro-inequalities, unearned privilege, and cross-cultural communication. Id. at 27-67. The course manual includes active learning techniques and a guide to best practices. Id.

only to minimize harm from her ministrations but to prevent other sorts of harm within her purview from occurring in the first place.

The Medical Model has been evolving for some time. Some prosecutors saw reflexive tough-on-crime strategies as doing too little to reduce crime, especially violence. Others found that nontraditional tools, such as forfeiture and civil injunctions, were more effective than criminal prosecution alone in addressing difficult problems like gang activity and organized crime. Organized victims, in the form of the victim’s rights movement, perhaps surprisingly brought pressure on prosecutors not only to pay more attention to victims’ material and emotional needs but also to seek alternatives to traditional punishments. Local, loosely organized minority groups likewise sought creative solutions to both the crime rampant in their neighborhoods and the excessive, sometimes humiliating, law enforcement response. These and other groups sought a greater voice in prosecutorial decision making and more transparency and accountability for law enforcement. Prosecutors, along with progressive police departments, have also become more keenly aware of some key teachings of procedural justice research: fair treatment by law enforcement increases citizen willingness both to obey the law and to cooperate with the police; unfair treatment does the opposite. Additionally, many prosecutors have come to understand that the fate of the individual and her community are strongly linked.

Meetings of the Executive Session for State and Local Prosecutors held at Harvard University in the late 1980s helped to crystallize prosecutorial thinking and practice. Those meetings identified five types of prosecutors, three of which fit the Medical Model. First, “problem-solvers” will use any tool, not merely traditional prosecution, to attack crime-related problems, even if it means mobilizing joint efforts with other government agencies and

99. See Coles, supra note 79, at 188–89.

100. Id.; see generally James B. Jacobs, Gotham Unbound: How New York City was Liberated from the Grip of Organized Crime (1999) (analyzing New York prosecutors’ use of such innovative tactics to defeat the mob’s dominance of certain industries).


102. See Coles, supra note 79, at 189.


seeking funding for novel programs. Brook
d District Attorney Charles Hynes’s creation of the Drug Treatment Alternative to Prison (“DTAP”) Program is perhaps the best-known example. The program extends therap
eutic drug treatment even to high-risk, prison-bound drug sellers. Hynes’s team created the program, established an in-house research unit to monitor and improve the program’s performance, partnered with external researchers, and obtained the funding to create and sustain it.

Second, “institution builders” focus more directly on community institutional vitality—building strong families, schools, and civic and religious institutions. Institution builders might thus reach out to involve the community in crime-prevention efforts like community watches, in enhancing school safety and student performance, and in improving the provision of health and social services. Third, “strategic investors” do not simply take the resources available as a given, but creatively pursue ways to expand those resources to achieve prosecutorial reform goals. These three categories of prosecutor are, of course, ideal types, and they may occur in varying combinations in any single prosecutors’ office.

One of the highest profile consequences of this new model is the rise of community prosecutors, who see their mission as making communities safer by any means necessary. They seek to strengthen the bonds between law enforcement and the local community, respond to discrete problems in particular locations, draw support directly from community leaders and ordinary citizens, and give citizens a “direct line to the prosecutor’s office.” Community members, not only the police, thus become an important source of influence on the nature and degree of prosecutor services. The community prosecutor therefore embraces transparency of operations and decision making and direct accountability for results.

However, results are measured by reduced victimization, increased safety, improved overall communal health, and closer ties among citizens, police, and prosecutors. Prosecutors thus expand their tactics to include

107. Coles, supra note 79, at 190.


109. Id. at 190.

110. Coles, supra note 79, at 190.

111. See id.

112. See KENNEDY SCHOOL REPORT, supra note 106, at 6–7.

113. Nugent-Borakove, supra note 101, at 94.

114. See Coles, supra note 79, at 191, 193.

115. Id. at 193.

116. See id. at 194.

117. See id. at 196; Worrall, supra note 90, at 18–20 (comparing the old “closed” prosecutorial system with the new “open” one).

“targeted and expedited criminal prosecutions, civil remedies, nuisance abatement, code enforcement, establishing new institutions (a day report center, or problem-solving court), crafting legislation, developing working protocols among agencies, and fund-raising for new activities.”

Technological advancements have also made the data gathering necessary for this broadened role feasible. Two efforts are particularly well-known. The first is that undertaken by former New Orleans chief prosecutor Harry Connick, Sr., who had his assistants keep detailed records for more than a decade of their choices and the reasons for them. He used this database to craft office policy. Second, prosecutors in Milwaukee, Charlotte, and San Diego have participated in a prosecutor-management project of the Vera Institute focused on identifying and correcting for the subconscious influence of racial bias. Both of these efforts are clearly relevant to Do-Justice Adversarialism’s focus on justice in the individual case. But they also demonstrate how computer technology can enhance prosecutor information bases in ways that can contribute to judging the broader social impacts that are the Medical Model’s focus.

Prosecutor-specific information on practices and the reasons behind them must, of course, be combined with other databases on broader social impacts. But this observation reflects the wisdom of prosecutors operating under the Medical Model joining with social scientists, as Charles Hynes did with his DTAP program in Brooklyn. One type of impact data concerns community perceptions of law enforcement, partly because of their procedural justice effects, and partly because they may identify problems and solutions that had otherwise escaped law enforcement’s attention. Cincinnati has pioneered such efforts, receiving frequent reports on community perceptions of various policing activities and responding to them.

A Medical-Model-infused ethic would require prosecutors to work with the police more closely. Prosecutors can bring pressure for changes in police practices, educate the police, join them in some investigations, and partner

119. Coles, supra note 79, at 196.
120. See Miller & Wright, supra note 95, at 129, 133–59.
121. See id. at 134–35.
122. See id. at 129–30, 162–66.
123. See Belenko et al., supra note 108, at 116–32.
with them in enhancing law enforcement’s relationship with the community.\footnote{126}

Illustrative Medical Model implications for addressing the broader ill social impacts of our current snitch culture could include prosecutors setting up internal tracking systems to gauge office practices and working with social scientists to monitor the real and perceived impacts of those practices. Prosecutors could track variables such as disparate racial and class impact across communities; the overall percentage of persons in each community who snitch and the likely cumulative impact; and the degree to which informant use is increasing or decreasing crime. Prosecutors could routinely seek community input concerning police and prosecutor policies governing informant use. Moreover, prosecutors could create internal and external review committees to consider, for example, the availability of affordable, effective alternatives to widespread informant use as a means of investigating crime; the expansion of community trust and involvement in crime resolution and prosecution; the coordination of social services with other government agencies to minimize ill effects on families and employment; and the writing and frequent revision of prosecutorial office policies on informant use.\footnote{127} Prosecutors have boldly undertaken similar efforts in other areas\footnote{128} and can succeed here too simply by recognizing their obligation to try and removing the blinders imposed by too narrow a vision of their social role.

CONCLUSION

Natapoff’s book has rightly received the American Bar Association’s honorable mention for the Silver Gavel Award for best criminal justice book of the year.\footnote{129} The book is a concise, powerful summary of the law and social science on informant use, highlighting with more clarity and force than any other source the risk that informant abuses pose in individual cases. Even more importantly, however, the book is the only one to make a convincing case that the cumulation of even the best-intentioned judgments about how to use informants in individual cases can, in the aggregate, do serious social harm. Natapoff makes sound recommendations for law reforms. Here I expand on this last point by arguing that prosecutors have both the obligation and the ability to step up to the plate and find creative solu-


\footnote{127. Cf. Jailhouse Informants, Legal Policies Manual (Los Angeles County District Attorney’s Office), Apr. 2005, at 187–90 (creating an internal Jailhouse Informant Committee that must approve using an informant as a witness and requiring first checking the Central Index of Jailhouse Informants to monitor prior involvement of the witness with the justice system as an informant).}

\footnote{128. See supra text accompanying notes 114–125.}

\footnote{129. Posting of Alexandra Natapoff to Snitching Blog, www.snitching.org (May 1, 2010) (noting that her book received a 2010 ABA Silver Gavel Award Honorable Mention for Books, the awards being given to outstanding communications media that are "exemplary in helping to foster the American public’s understanding of the law and the legal system").}
tions by partnering with the community. Prosecutors who have not already
done so need to cast aside an ill-informed, unduly narrow and archaic vision
of their responsibilities. They have a special role to play in bringing sanity
to informant practices, and I have little doubt that many more of them will
come to embrace that role and view Natapoff's counsel as that of friend, not
foe.