
The use of snitch testimony is a huge red flag signaling the distinct possibility of a wrongful conviction. Witness incentives, i.e., creating the expectation of leniency, cash rewards, compensation or other consideration in exchange for factual testimony, “create fertile fields from which truth-bending or even perjury could grow, threatening the core of a trial’s legitimacy.” Alexandra Natapoff, Beyond Unreliable: How Snitches Contribute to Wrongful Convictions, 37 Golden Gate U. L. Rev. 107, 121 (2006). Prof. Natapoff is right to be concerned; snitches account for 45.9% of the wrongful convictions among the first 111 death row exonerations (The Snitch System, Northwestern Innocence Project, http://www.law.northwestern.edu/wrongfulconvictions/issues/causesandremedies/snitches/SnitchSystemBooklet.pdf (last visited March 15, 2010), which is nearly twice the number of wrongful capital convictions based on erroneous eyewitness identifications (25.2% of wrongful convictions in death cases are based on mistaken eyewitness identification.) The American Bar Association urges that “no prosecution should occur based solely upon uncorroborated jailhouse informant testimony.” ABA Resolution, Feb. 14, 2005.

Consideration of the risks inherent in the use of incentivized witnesses is necessary to understand the burden that we must carry when basing a case of actual innocence on recanted testimony by such witnesses. In a short-lived opinion, a panel of the Tenth Circuit Court of Appeals concluded, “If justice is perverted when a criminal defendant seeks to buy testimony from a witness, it is no less perverted when the government does so. The judicial process is tainted and justice is cheapened when factual testimony is purchased, whether with leniency or money.” United States v. Singleton, 144 F.3d 1343 (10th Cir. 1998) vacated by rehearing en banc, 165 F.3d 1267 (10th Cir. 1999), cert. denied, 527 U.S. 1024 (1999). One judge has observed that “[t]he most dangerous informer of all is the jailhouse snitch who claims another prisoner has confessed to him.” Judge Stephen S. Trott, Words of Warning for Prosecutors Using Criminals as Witnesses, 47 Hastings L. J. 1381, 1394 (1996).

In spite of the well-justified skepticism, the prosecution continues to make frequent use of incentivized witnesses. The Supreme Court put its stamp of approval on such testimony:

The petitioner is quite correct in the contention that Partin, perhaps even more than most informers, may have had motives to lie. But it does not follow that his testimony was untrue, nor does it follow that his testimony was constitutionally inadmissible. The established safeguards of
the Anglo-American legal system leave the veracity of a witness to be tested by cross-examination, and the credibility of his testimony to be determined by a properly instructed jury.


While courts and juries commonly accept the prosecution’s reliance on such testimony, a prisoner’s use of an un-incentivized recantation by such a witness is met with even greater skepticism, almost as if there is a hard-and-fast rule that snitches are only believable when they testify for the government. Thus, in Larry Griffin’s case, a jury believed Kerry Caldwell when he testified for the government that he and three other men, not including Larry Griffin, killed Quentin Moss, even though he had everything to gain by his testimony. A federal judge, on the other hand, disbelieved the same witness giving the same testimony on behalf of death row inmate Larry Griffin because he had nothing to lose by giving such testimony on Griffin’s behalf. Carolyn Tuft, _Lawyer’s Appeal Seeks to Prevent Execution_, ST. LOUIS POST-DISPATCH, June 16, 1995, 2B. Unfortunately, the missing corroboration of Caldwell’s testimony—the eye-witness account of a surviving victim of the drive-by shooting and other physical evidence—did not surface until ten years after Griffin’s execution, Terry Ganey, _Case is Reopened 10 Years After Man Was Executed_, ST. LOUIS POST-DISPATCH, July 12, 2005, A1, and the debate about Griffin’s guilt or innocence remains unresolved. Heather Ratcliffé, _Prosecutor’s Finding: Review Defends Execution_, ST. LOUIS POST-DISPATCH, July 12, 2007, A1.

The burden of proving innocence based on recanted testimony is heavy indeed, though not impossible to shoulder. Some courts have applied a more even-handed approach to recantations tendered in support of actual innocence claims. A recantation by a witness who testified for the government at trial qualifies as “new evidence” supporting a claim of actual innocence. _Amrine v. Bowersox_, 128 F.3d 1222, 1228-29 (8th Cir. 1997) (en banc), citing _Schlup v. Delo_, 513 U.S. 298 (1995). See also, _Reasonover v. Washington_, 60 F. Supp. 2d 937, 961, n. 24 (E.D.Mo. 1999), finding that recantations qualify as “new evidence” that satisfied the _Schlup_ standard. Similarly, the Tenth Circuit has described recantations as “substantial evidence.” _United States v. Ramsey_, 726 F.2d 601, 604 (10th Cir. 1984). Judge McKay explained the importance of recanted testimony:

Where, as here, the recanting affidavit is from the critical witness in the case, great danger lies in letting the verdict stand even if the recantation is subsequently recanted. . . The danger of an erroneous conviction based on such unreliable testimony is great indeed. As the Supreme Court has indicated, 'the dignity of the United States government will not permit the conviction of any person on tainted testimony.'” _Mesarosh v. United States_, 352 U.S. 1, 9 (1956).
726 F.2d at 605. According to Judge McKay, there is no reason to view recantations as inherently less credible than the witness' incentivized testimony at trial. “The temptation to perjure in the first instance to satisfy the government, which controls future prosecution and sentencing, is so great that suspicion of the original testimony ought at least to have equal dignity with the suspicion of recanted testimony.” Id. at 606.

In a death row exoneration, Missouri Supreme Court Judge Michael Wolfe explained the relationship between incentivized trial testimony and recantations:

With the witnesses' recantations, we do not know whether Amrine is actually innocent. We similarly do not know whether he is guilty, despite the final judgment in his case. The question is: which time were these three witnesses lying? When they testified against Amrine, or when they recanted? As Judge Benton aptly notes, facts do not prove themselves.

What we do know is that all three witnesses - upon whom Amrine's conviction and sentence of death solely depend - are liars.

Judge Benton would appoint a master who would serve this Court by listening to testimony and making an assessment of credibility to guide this Court in determining which time these witnesses were lying. In a proceeding with this Court's master, Amrine would have the burden of showing that the original testimony was false. It would be Amrine's burden to overcome the respect that is due to the final judgment against him. If the finder of fact is unpersuaded - that is, that this Court through its master cannot know for sure which time the witnesses were lying - Amrine's original judgment would stay in force.

The circumstances of this case favor the remedy of a new trial, if the state chooses not to release Amrine but to try him again for this killing. The remedy chosen in the principal opinion seems more suitable, because if there is a credibility determination to be made, it will be made by a jury. There is no physical evidence linking Amrine to the murder. The correctional officer, Officer Noble, identified another man as the killer, and six inmates testified that Amrine was playing cards in another part of the recreation room when the attack occurred.
In the peculiar circumstances of this case, the state should get no benefit from the original judgment because it is based solely on the testimony of liars. The state, not Amrine, should have the burden of persuasion.

If the state chooses to call the three recanted witnesses, the state can use their original trial testimony as impeachment, if they testify consistently with their recanting. Prior inconsistent testimony can be received and used as substantive evidence of a criminal offense. Section 491.074; State v. Blankenship, 830 S.W.2d 1 (Mo. banc. 1992). The state may have other evidence that it did not choose to use at the original trial; it may use the evidence if it decides to try Amrine again for this crime. From the record as it appears here, however, it seems that the state only has the testimony of these three witnesses - now factually if not legally discredited - to seek to convict Amrine.

Should the state again try Amrine? From this record, he does not look guilty. But perhaps the state has a better view.

Amrine v. Roper, 102 S.W.3d 541, 550 (Mo. 2003) (Wolfe, J., concurring). See also, Carriger v. Stewart, 132 F.3d 463 (9th Cir. 1997), finding that Paris Carriger met the actual innocence standard even though the recanting witness attempted to recant the recantation; the physical evidence established the credibility of the version supporting Carriger’s innocence.

Of course, for any party relying on the testimony of an incentivized witness, the primary concern is the integrity of the information. The shoe is on the other foot; the former snitch is now the prisoner’s best hope to prove his innocence, but what are the implications of a recantation-based actual innocence claim? Are we ready to vouch for this witness’ credibility? Is it enough to brand him a liar? Is there a middle ground? Valuable lessons can be learned from examining the studies that have been conducted following successful actual innocence cases based upon recanted testimony, and from looking at cases in which decision-makers were persuaded by recantation-based actual innocence cases.

II. Reducing the Risk of Wrongful Convictions Based on Incentivized Witnesses.

In Los Angeles in 1992, Clarence Chance and Benny Powell, were exonerated after serving seventeen years in prison when three informants all recanted, claiming they were pressured by police to give false testimony at their trial. Sheryl Stolberg, Judge Apologizes, Frees Two Men in 1973 Murder, THE LOS ANGELES TIMES, March 26, 1992, p. A-1. District Attorney Ira Reiner agreed that Chance and Powell were innocent and
joined the defense request to release them and expunge their records, acknowledging, “This was a terrible thing that happened.” Id. Neither prosecutors nor defense attorneys knew that the jailhouse informants on which the convictions were based had implicated two other people in the murder before making deals to testify against Chance and Powell.

Four years prior to the exonerations of Chance and Powell, career criminal informant Leslie Vernon White made headlines by admitting that he repeatedly avoided prosecution for serious crimes by trading “information” for freedom. He told Time Magazine reporters, “Every time I come in here [jail], I inform and get back out.” A Snitch’s Story, TIME, Dec. 12, 1988. He described how he researched his targets:

From the jail, posing as a law enforcement officer, he would call the prosecutor, the coroner and the police to get details about the defendant’s arrest, the evidence against him, and the manner of the victim’s death. He would even call the defendant’s family and the victim’s family for additional details. He would use that information to concoct a believable story.


Studies of snitch testimony after high-profile exonerations have produced suggestions for reforms to reduce the risk that reliance on incentivized testimony will result in a miscarriage of justice. We can take a lesson from these proposed reforms to assess the reliability of innocence claims based upon recantations to guide the investigation and presentation of innocence claims based on recantations.

The Justice Project has published comprehensive analysis of the use of incentivized witness testimony and recommends specific reforms to reduce the danger of wrongful convictions. See, The Justice Project, In-Custody Informant Testimony: A Policy Review, available online at http://www.thejusticeproject.org/wp-content/uploads/pr-in-custody-informant-testimony.pdf (last visited March 15, 2010). The specific statutory reforms recommended by The Justice Project include requiring the prosecution to produce:

A. A written statement of all consideration promised to informant from all sources
B. A complete criminal history of the informant.
C. The names/addresses of any and all persons with information concerning the defendant’s alleged statements, including law enforcement, prison officials, other persons
named or included in alleged statement, other persons who were witnesses and who can be reasonably expected to have witnessed the alleged statement
D. Any prior cases in which the informant testified, and any consideration received in those cases.
E. Any and all statements by the informant concerning offense charged
F. Any information tending to undermine the informant’s credibility
G. Compliance with all federal and state discovery obligations

See, the Justice Project’s Model Bill for Increasing the Evidentiary Value of Jailhouse Informant Testimony, Id. These also make good suggestions for the investigation of a claim of actual innocence where a prisoner’s conviction was based on the testimony of such witnesses.

Canada, too, has experienced miscarriages of justice based on the use of incentivized witnesses. The case of Guy Paul Morin is said to have “effectively ended” the use of jailhouse informants in Ontario. Kirk Makin, Jailhouse Informants Virtually Phased Out, THE GLOBE AND MAIL, April 14, 2009, A5. Morin’s exoneration led to the creation of a commission to look at the use of jailhouse snitches. It concluded that cooperating informants are notorious for their untruthfulness, and are motivated largely by self-interest. The commission concluded that the prosecutor should review the following factors before relying upon snitch testimony:

1. The extent to which the statement is confirmed
2. The specificity of the alleged statement.
3. The extent to which the statement contains details or leads to the discovery of evidence known only to the perpetrator.
4. The extent to which the statement contains leads which could reasonably be assessed by an in-custody informer, other than through inculpatory statements of the accused [and accounting for the ingenuity informers have demonstrated in past cases!]
5. The informer’s general character, which may be evidenced by his or her record or other disreputable or dishonest conduct known to authorities.
6. Any request the informer has made for benefits or special treatment (whether or not agreed to) and any promises which may have been made (or discussed with the informer) by a person in authority in connection with the provision of the statement or agreement to testify.
7. Whether the informer has, in the past, given reliable information to authorities.
8. Whether the informer has previously claimed to have received statements while in custody. [i.e. “recidivist informant”]
9. Whether the informer has previously testified in any court proceeding, and any findings in relation to the accuracy and reliability of that evidence.
10. Whether the informant made some written or other record of the words allegedly spoken by the accused, and if so, whether the record was made contemporaneously to the alleged statement.
11. The circumstances under which the informer’s report of the alleged statement was taken (e.g. was it made immediately after the alleged admission? Was more than one officer present?)
12. The manner in which the report of the statement was taken by the police (e.g., through the use of non-leading questions, thorough report of the words spoken by the accused, thorough investigation of the circumstances with might suggest opportunity or lack of opportunity to fabricate a statement)
13. Any other known evidence that may attest to or diminish the credibility of the informer, including the presence or absence of any relationship between the accused and the informer.
14. Any relevant information in the registry of informers.


A common theme running through the recommendations of various commissions and studies of informant testimony is that such witnesses are inherently untrustworthy, and can only be relied upon if their story is “strongly corroborated” by independent evidence, not simply another informant. See, The California Commission on the Fair Administration of Justice, Report and Recommendations Regarding Informant Testimony, available online at http://www.ccfaj.org/documents/CCFAJFinalReport.pdf (last visited March 15, 2010).

III. Successful Cases in Which Recantations Established Actual Innocence.

Once a defendant is found guilty based upon incentivized testimony, he had the burden to convince a decision maker that he is actually innocent. It is a difficult burden to carry under any circumstances, but it is especially difficult if it depends upon a recantation by the incentivized witness. Cases in which actual innocence has been established to the satisfaction of judges, juries, governors and even prosecutors based in part on recantations by incentivized witnesses have one thing in common: All recantations were persuasively corroborated, although the corroboration takes many
different forms. Actual innocence has been established based on recantations in the following circumstances:

1. **The recantation admits guilt of the crime.**

   - **Verneal Jimerson** (Ford heights Four): Killer’s confession corroborated by DNA.
   - **Randall Dale Adams**, Texas
   - **Anthony Siliah Brown**, Florida (Killer confessed on witness stand at retrial)
   - **Joseph Burrows**, Illinois (two snitches, both recanted, one confessed to the crime)
   - **Jeremy Sheets**, Nebraska

2. **The snitch’s recantation is consistent with pre-trial audio-taped statements in the possession of the prosecution.**

   - **James Creamer**, Georgia (The Marietta Seven)
   - **Ellen Reasonover**, Missouri

3. **The prosecutor admits knowing the snitch lied.**

   - **Albert Ronnie Burrell** and **Michael Ray Graham, Jr.**, Louisiana
   - **Perry Cobb** and **Darby Tillis**, Illinois (snitch admitted guilt to prosecutor before he went to law school)

4. **The snitch admits to independent witnesses that he/she lied**

   - **Willie Brown** and **Larry Troy**, Florida (secretly recorded conversation)
   - **Gary Beaman**, Ohio (five witnesses testified the snitch admitted lying).

5. **The prosecution presents multiple snitches, and most or all of them recant.**

   - **Joe Amrine**, Missouri (3 snitches, 3 recantations, corroborated by a prison guard who identified one of the snitches as the perpetrator)
   - **Joseph Burrows**, Illinois (two snitches, both recanted, resulting in a retrial, at which one snitch confessed to the crime and charges were dismissed.)
   - **Larry Hicks**, Indiana (2 snitches, 2 recantations)

6. **The snitch’s recantation is accompanied by a Brady violation**
Shabaka Brown, Florida (recantation plus Brady violation—secret deal for leniency)

Neil Ferber, Pennsylvania (recantation accompanied by discovery of police conspiracy to frame Ferber)

7. The recantation is corroborated by physical evidence

Dennis Williams: recantation plus DNA
Verneal Jimerson (Ford heights Four): Killer’s confession corroborated by DNA.

In each of these success stories, the innocence team gave consideration to the same factors that, in theory, prosecutors should be using to screen informant testimony prior to trial. While a good argument can be made against the government should never use incentivized testimony, e.g., United States v. Singleton, supra, a prisoner who was convicted based on such testimony has no choice but to pursue the truth and, if possible, a recantation. The key ingredients to success are exhaustive investigation and absolute integrity.