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Wendy Pamela Heath, Joshua Robert Stein, Sneha Singh et Da'Naia Lynnette Holden

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Résumé de l'article

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Sometimes the Snitch Recants: A Closer Look at the Use of Jailhouse Informants in DNA Exoneration Cases

Wendy Pamela Heath*
Professor of Psychology, Rider University
Lawrenceville, New Jersey
U.S.A.

Joshua Robert Stein, Sneha Singh, Da'Naia Lynnette Holden
Undergraduate Students, Rider University
Lawrenceville, New Jersey
U.S.A.

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- I. Introduction
- II. The Types of Informants
- III. Information from Informants can be Unreliable
- IV. Research Regarding Jailhouse Informants
 - A. How Influential are Jailhouse Informants?
 - B. Does Knowledge of an Informant’s Incentives to Testify Matter to Mock Jurors?
 - C. Does Knowledge of an Informant’s Testimony History Matter to Mock Jurors?
 - D. Can Informant Testimony Affect Perceptions of Other Evidence?
 - E. Is it Possible to Decrease the Influence of an Informant?
- V. Jailhouse Informant Recantations
 - A. Previous Research on Recantations
- VI. The Present Approach
- VII. Method
 - A. Sample of DNA Exonerees
- VIII. Results

- A. Cases with Jailhouse Informants
 - B. Cases with Recanting Jailhouse Informants
 - C. Cases with Jailhouse Informants Who Did Not Recant
- IX. Discussion
- A. Limitations
 - B. Suggested Reforms
 - C. Future Research
 - D. Conclusion

*Corresponding Author: Wendy P. Heath, Rider University, 2083 Lawrenceville, NJ 08648, USA (e-mail: heath@rider.edu). A version of this work was presented at the Association for Psychological Science Conference in 2019.

I Introduction

In 1994 Donna Meagher was working the late shift at a saloon in Montana. As she was closing up, one or more individuals entered the saloon, emptied the Keno machines, kidnapped Meagher, killed her, then dumped her body in Colorado. The crime went unsolved until a jailhouse informant, hoping to collect a Crime Stoppers reward, told investigators that his son-in-law, Freddie Joe Lawrence, had admitted to committing these crimes with a man named Paul Jenkins. Based on this tip, police investigators interviewed Lawrence. He denied his involvement, but implicated Jenkins and attempted to implicate Jimmy Lee Amos, a mentally-challenged man whom Jenkins and his wife, Mary, cared for. In return for this information, Lawrence, who was in jail because of a traffic violation, asked to be moved to a different jail. Once he was transferred, Lawrence recanted his statement, but the police continued to pursue these leads.

The police interviewed both Paul and Mary Jenkins as well as Amos. Mary Jenkins was interviewed for eight hours during which time she detailed the crime the three of them committed against Meagher. Mary Jenkins had dementia and an IQ of only 70 but was found competent, and her testimony was seen as an important part of the prosecution's case. Amos was declared as incompetent to testify because of his diminished mental capacity. Ultimately, despite a lack of physical evidence linking either man to the crimes, both Jenkins and Lawrence were convicted and each was sentenced to 100 years in prison.

Twelve years later, the Montana Innocence Project filed a motion to seek DNA testing of the physical evidence in the case of Meagher's murder. While this testing was being conducted, a man named Fred Nelson reported to law enforcement that his uncle, David Nelson, had admitted to committing these crimes. Fred Nelson said that he had known this since 1994 and had revealed this information to lawyers and law enforcement in 1998, but was told that nothing could be done due to lack of evidence. However, in 2017, forensic analysis revealed that the DNA left at the crime scene matched David Nelson and not Paul Jenkins and Freddie Joe Lawrence. In 2018, a judge vacated the convictions of Jenkins and Lawrence. They had spent 24 years in prison for crimes they did not commit (online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5339>).

We have recounted the cases of Paul Jenkins and Freddie Joe Lawrence because these cases included unreliable jailhouse informants, one of whom recanted his incriminating statement upon receiving the incentive he requested. We have chosen to focus this exploratory investigation on jailhouse informants in the United States, with a special focus on recanting jailhouse informants. To do this, we have examined the Innocence Project's ("IP") first 375 DNA exoneration cases. Each of the people in this database have been exonerated with the use of DNA; they are all factually innocent, thus the informants have all provided at least some false information. Before we examine the details of jailhouse informant use in these cases, we will review evidence which demonstrates the influence of jailhouse informants despite their potential unreliability."

II The Types of Informants

There are three kinds of informants: 1) a jailhouse informant (one who provides information about a crime obtained while incarcerated); 2) a co-conspirator informant (also known as an accomplice witness, a co-defendant or a co-perpetrator); and 3) an informant that is a member of the community (i.e., not in jail—also known as a cooperating witness or an incentivized witness). All types of informants offer information about crimes to authorities, typically in exchange for incentives such as money or a reduced sentence. Often the information provided is a confession allegedly made by the suspect. These confessions are called "secondary" confessions, as opposed to a "primary" confession which is provided by the suspect directly (Neuschatz et al., 2012a).

All three types of informants have been found to contribute to wrongful convictions. For example, Garrett (2011) analyzed 250 U.S. DNA exoneration cases and found that 52 of these cases (21%) included informants: 28 were jailhouse informants, 23 were alleged co-perpetrators, and 15 were cooperating witnesses (some cases included more than one type of informant). Additionally, Warden (2004) found that informants, most of whom were jailhouse informants, provided false information in 45% of 111 wrongful convictions in the U.S. in which the defendants had been assigned a death sentence. In 2015, The National Registry of Exonerations stated that 8% of all exonerees in their U.S. Registry ($N = 1,566$) included testimony from a jailhouse informant with severe crimes (e.g., murder) being more likely to include such testimony (online: <https://www.law.umich.edu/special/exoneration/Pages/Jailhouse-Informants.aspx>). Thus, while these researchers have considered the presence of informant testimony in different ways, it is clear that informants have played a substantial role in wrongful convictions in the U.S. We will use the present research to focus on the role that jailhouse informants (both recanting and not recanting) have played in DNA exoneration cases across the country.

III Information From Informants Can be Unreliable

Although not all informants lie (see Neuschatz et al., 2020), some cannot resist the offered incentive and will fabricate a secondary confession. Swanner et al. (2010) found that incentives actually increased the number of false secondary confessions. In other words, incentives motivated informants to lie. In particular, scholars such as Natapoff (2018) have questioned the credibility and truthfulness of jailhouse informants, who may have more to gain from providing information

that is useful to authorities. Authors of a policy review on jailhouse informants made the point well: “jailhouse snitches are so desperate to attain sentence reductions, snitch testimony is widely regarded as the least reliable testimony encountered in the criminal justice system” (*Jailhouse snitch testimony*, 2007, p. 1).

Providing convincing and incriminating evidence as an informant is not necessarily a difficult task. In some cases, the informant will actively work to gain information about a case. Consider Leslie Vernon White, a convicted criminal who frequently acted as an informant. He would pose as a law enforcement official and call various government agencies to learn about a defendant’s case. On the U.S. TV news program, *60 Minutes*, he demonstrated how easy it is to get the information needed to concoct a convincing secondary confession (Rohrlich, 1988). Another way for an informant to get information is to obtain details about the crime from the defendant themselves, and then use this information to craft a detailed story (Garrett, 2011). Alternatively, an informant can follow the lead of the investigating officer or prosecutor and simply confirm information that was provided by law enforcement (see Gershman, 2002). In some cases, the police have been said to deliberately feed information to an informant for their future use in testimony. Obtaining information from sources such as the police or the prosecutor may explain why an informant’s statement sometimes seems to be crafted to fill any holes in the prosecutor’s litigation strategy (Garrett, 2011).¹

IV Research Regarding Jailhouse Informants

A. How Influential are Jailhouse Informants?

A multitude of reputable studies have found the information obtained from jailhouse informants to be very influential. Several research teams have found, for example, that hearing testimony from a jailhouse informant (as opposed to not hearing such testimony) leads to more guilty verdicts. This is true in decisions by individual jurors (e.g., Golding et al., 2020; Wetmore et al., 2020), and in decisions made after deliberation by juries (Golding et al., 2022). Moreover, Wetmore et al. (2014) found that secondary confessions led to a similar percentage of guilty verdicts as primary confessions and both were generally seen as more influential than eyewitness evidence.

B. Does Knowledge of an Informant’s Incentives to Testify Matter to Mock Jurors?

Several researchers have investigated how knowledge that the informant received an incentive affects mock jurors’ decisions. For example, Neuschatz et al. (2008) found that those

¹ Raeder (2007) questions whether there are times that the lies in the testimony of jailhouse informants should be obvious to prosecutors. She wonders whether prosecutors are at fault for using informants that provide testimony that seems “too good to be true when it fills in the gaps that otherwise would likely derail the prosecution’s case” (p. 1416). She encourages prosecutors to think about their ethical obligations to innocent defendants and “self-regulate prosecutorial reliance on such witnesses so that their appearance at trial is the exception, rather than the norm” (p. 1417). In other words, only use such witnesses when the “need is great and the factors support a reasonable belief that the jailhouse informant is telling the truth” (p. 1437).

presented with a secondary confession (from a jailhouse informant, an accomplice, or a community member (a classmate)) were more likely to vote guilty than those who were not privy to this information. Further, the percentage of guilty verdicts did not vary as a function of informant incentive, such as a reduction in sentence for the jailhouse informant and the accomplice or a reward for a community member. On the other hand, Maeder and Pica (2014) found that the presence versus the absence of an incentive *did* lower the likelihood of guilty verdicts, however the size of the incentive (amount of sentence reduction) did not have an effect on verdicts. Maeder and Yamamoto (2017) also found that when an informant received an incentive versus not, participants in the study were less likely to render a guilty verdict.

Although researchers have not consistently found that the knowledge of an informant's incentive has an impact on jurors' decisions, courts have recognized that the incentive may have an impact on the informant's motivation to testify honestly. Therefore, if a prosecutor provides an incentive to an informant, that incentive must be disclosed to the defense (*Brady v. Maryland*, 1963).² In an analysis of trial transcripts of DNA exoneration cases, Neuschatz et al. (2020) found that while a majority of informants (most of whom were jailhouse informants) were asked if they received an incentive in exchange for providing their testimony, very few (12.5%) admitted to receiving an incentive. It should be noted that often informants are not *explicitly* promised an incentive before the trial, but incentives are nevertheless expected. Thus, a statement in court that they have not received anything is technically true (see Natapoff, 2009a).

C. Does Knowledge of an Informant's Testimony History Matter to Mock Jurors?

Although legal scholars have argued that a person with a history of provide secondary confessions is the most "doubt-inducing" (see Lillquist, 2007, p. 922), Neuschatz et al. (2012b) found that conviction rates did not vary with the informant's testimony history. Neuschatz et al. (2020) found that most of the informants who testified for the prosecution (69%) were not asked for their testimonial history. In one case, during closing, the prosecution argued that since their informant had testified repeatedly, they knew that the information he provided was reliable.

D. Can Informant Testimony Affect Perceptions of Other Evidence?

Another concern is that informant testimony has been shown to have the power to influence perceptions of other forms of evidence. This has been demonstrated in at least two ways. Mote et al. (2018) had participants watch a video of a crime and then select a person from a line-up, after which participants received post-identification feedback. Some of the participants learned that a lineup member confessed, claimed he was innocent or was implicated by a jailhouse informant, while others did not receive feedback. Many participants who had originally made a line-up choice and received feedback about the potential guilt of another individual changed their choice after hearing that another lineup member was implicated. Similarly, Jenkins et al. (2021) found that an informant's testimony could change the perception of forensic evidence. Specifically, they found that information from a "reliable" jailhouse informant (as opposed to an "unreliable" one who did

² Note that defense attorneys are not allowed to provide incentives to informants. "Because the government rewards only those informants who provide evidence supporting the government's case, there is a strong disincentive for informants to reveal information that might help the defense" (Natapoff, 2009a, p. 186).

not provide details that mirrored the known details of the crime) affected how participants interpreted handwriting samples. Participants were more likely to perceive a match in the handwriting samples of a bank robbery note and the *Miranda* rights waiver after reading about a secondary confession from a reliable jailhouse informant. Thus, information from an informant has been shown to alter eyewitnesses' identification decisions and judgments regarding forensic evidence.

E. Is it Possible to Decrease the Influence of an Informant?

Given the often incorrectly incriminating and influential word of a jailhouse informant, researchers have searched for ways to dim the influence of an informant's testimony in the eyes of jurors. For example, Wetmore et al. (2022) found that a defendant's testimony that a jailhouse informant was lying reduced the number of guilty verdicts delivered by juries. DeLoach et al. (2020) found that when a defense attorney pointed out inconsistencies in statements made by a jailhouse informant or provided an alternative explanation for how the informant had come to know about the incriminating information, mock jurors' guilty verdicts decreased, although this was mediated by whether the mock jurors made dispositional ("he's testifying because it's the right thing to do") or situational attributions (e.g., he's testifying in exchange for a reduced sentence) for the informant's behavior.

Some researchers have explained belief in informant testimony within the framework of Ross' (1975) fundamental attribution error ("FAE") in which observers tend to discount the influence of situational factors (e.g., incentive) on an actor's actions and tend to attribute causes of behavior to dispositional factors (e.g., a desire to do the right thing). As indicated above, DeLoach et al.'s (2020) work suggested that testimony inconsistencies and alternative explanations led participants to believe their informant was situationally motivated (i.e., motivated by incentive), eventually leading them to see the defendant as less guilty. Interestingly, Neuschatz et al. (2020) found that in an analysis of real cases in which jailhouse informants testified for the prosecution, 78% explicitly provided a dispositional reason for their testimony, and 72% denied receiving something in return for their testimony (potentially explaining the strong influence of informant testimony in these cases).

Other attempts to diminish the influence of secondary confessions have not been as successful. For example, DeLoach et al. (2020) found that having the defense attorney point out the ulterior motives of the jailhouse informant (i.e., he was motivated by incentive) did not impact guilty verdicts. Wetmore et al. (2020) found that providing jurors with cautionary instructions about jailhouse informants did not decrease guilty verdicts. Neuschatz et al. (2012b) found conviction rates did not vary with the presence (versus absence) of testimony from an "expert" for the defense who explained how he, as an informant, previously provided false testimony. Neuschatz et al. (2008, 2012b) cite these results as support for Ross' (1975) FAE. Maeder and Pica (2014) further pursued this line of reasoning by having an expert explain the FAE to mock jurors and describe how jurors tend to ignore the influence of informant incentives. Despite this intervention, the jurors' verdicts were unaffected by the presence of this testimony. Collectively, this body of evidence suggests that some, but not all, attempts to impeach an informant's testimony may have an impact on jurors' verdicts.

V Jailhouse Informant Recantations

Informants, such as Darryl Moore, sometimes recant. Moore was a jailhouse informant who agreed to provide testimony against three murder defendants in return for cash, dropped charges, and immunity for a contract murder in which he acknowledged participation. Moore's mother testified for the defense, indicating that her son's word shouldn't be trusted. Even so, they were trusted, and all three defendants were convicted. Moore later recanted his testimony, claiming that he had no knowledge of the murders (Warden & Haller, 1987).

Courts have not generally looked favorably upon recantation (see e.g., Berman & Carroll, 1990). They are also typically reluctant to grant new trials after witnesses recant because inherently, recantation challenges not just the original testimony, but the personal credibility of the witness. Courts generally consider statements given in the courtroom, under oath, with cross-examination possible and witness demeanor available for properly-instructed jurors to judge, as sufficiently persuasive. Unfortunately, people do lie under oath. In addition, the use of witness demeanor as a reliable cue to deception has been questioned (see Heath, 2009; Kassin, 2022).

In some cases, the court has considered recanted testimony, but has found it to be unconvincing. Consider Troy Davis' case. Years after Davis was convicted of shooting a police officer, multiple prosecution witnesses recanted or changed their testimony. Three of the nine witnesses for the prosecution were jailhouse informants who all recanted, while four of the other witnesses recanted as well (*Amnesty International*, 2007). One of the two remaining witnesses who did not recant is suspected to be the actual killer (Natapoff, 2009b). When a judge did finally consider Davis' actual innocence claim, the judge rejected the recantations as insignificant. Davis was subsequently executed after serving more than 20 years in prison (see McDonnell Hill, 2011 for a summary of this case). As Davis lay on the gurney in preparation for a lethal injection, he proclaimed his innocence one last time (Rankin, 2011).³

Courts are also reluctant to consider recantation evidence when other evidence supports the conviction. If the other evidence tying the defendant to the crime is physical evidence, upholding the verdict is considered more defensible. However, an analysis of 22 trial transcripts by Neuschatz et al. (2020) that included informants found that the second most-often cited factor supporting conviction was unvalidated/improper forensics. Neuschatz et al. (2020) found that the third most often contributing factor in these cases was eyewitness misidentification. As discussed earlier, both forensic evidence (Jenkins et al., 2021) and eyewitness testimony (Mote et al., 2018) have been shown to be potentially influenced by the word of an informant, and both have been demonstrated to be prone to error (online: <https://innocenceproject.org/#causes>).

The justice system's reluctance to consider recantation evidence is in line with a general tendency to prefer their original choice when making decisions. In other words, information that has affected judgments has been shown to continue to influence those judgments even after that information has been undermined (e.g., Ross et al., 1975). In the legal realm, the determined verdict could influence the decision-makers' subsequent thinking (i.e., confirmation bias—

³ Note that Davis is not part of the current dataset (i.e., he was not exonerated). Still, there are those who question whether or not an innocent man was executed (e.g., Selby, 2020).

Nickerson, 1998), leading them to discount information that does not support the already-made decision. Pair these tendencies with the legal system's desire for finality in decisions, and it is not surprising that the result is often a rejection of recantations.

A. Previous Research on Recantations

A few researchers have attempted to estimate the general prevalence of recantations in cases in which the defendant has been exonerated. For example, Gross and Gross (2013) examined the incidence of recantation in cases from the National Registry of Exonerations (NRE) (i.e., those exonerated in the U.S. since 1989, not just those exonerated with the use of DNA). In an examination of 1,068 cases from the Registry's database, Gross and Gross found that 250 cases involved recantations (23%). Most of these cases were murder cases (56%), most often with recantation by eyewitnesses. Gross and Gross do note that some of these murder cases involved co-defendant and jailhouse informants who had been pressured by police and prosecutors to make statements that they later recanted, although they do not go into detail regarding the prevalence of these types of recanting witnesses. Warden (2004) did note that approximately 20% of the informants who implicated defendants in 50 reviewed capital cases had an informant who recanted.

VI The Present Approach

We reviewed the Innocence Project (IP) information relevant to jailhouse informant testimony for the first 375 U.S. DNA exoneration cases. We supplemented the information relevant to these cases from the IP with that from the NRE and the Convicting the Innocent (CTI) databases. Since we know definitively, as a result of DNA exoneration, that all the defendants within the IP database were wrongly convicted, we know that it is very likely that the informants in these cases provided at least some false information; these informants were certainly wrong when they incriminated these defendants.

We documented the percentage of cases that included jailhouse informants and cases in which the jailhouse informants recanted (to our knowledge, the latter has scarcely been investigated). After documenting the demographics of the cases in which jailhouse informants (recanting or not) played a role, we documented the evident reasons (whenever available in the examined databases) why the jailhouse informant incriminated the defendant. We also documented what other contributing factors (beyond the jailhouse informant(s)) played a role in the convictions. We provide these details both for recanting and non-recanting informants.

VII Method

A. Sources of Information

We used three sources of information: 1) the IP website (www.innocenceproject.org), the NRE website (<https://www.law.umich.edu/special/exoneration/>) and Garrett's CTI website (www.convictingtheinnocent.com).

The IP was the original source of information for the first 375 DNA exonerees. However, the IP *currently* only provides in-depth information for the exonerees whose cases they have worked on.⁴ Although the IP still contains basic details for most of those 375 early cases, they now refer users to the NRE for more information on all non-IP cases. The NRE has information about those exonerated with the use of DNA and those exonerated by other means. At the time of this writing, the NRE has 3,290 exonerations represented in its database. The CTI website contains information regarding 367 DNA exoneration cases, most of which are represented in the first 375 DNA exonerees of the IP, and in many of these cases, trial materials such as materials from prosecutors or post-conviction attorneys. Thus, the three websites occasionally differ regarding the depth of details they contained.⁵

The IP, NRE and CTI websites each typically provide a multi-paragraph summary (the "long summary") detailing major components of each exoneree's case. In addition, for each exoneree, there is an abbreviated overview of the major details of the case (the "margin summary"). We considered a case to have one or more jailhouse informants if the NRE tagged a case as having a jailhouse informant or if the long summary at either the IP or the CTI websites indicated the presence of a jailhouse informant.

We first documented the demographics of the cases in which jailhouse informants played a role (e.g., was the defendant a juvenile). We documented the apparent reasons (i.e., an incentive was mentioned in one or more of the three databases reviewed for this project) why the informant incriminated the defendant and documented other contributing factors which played a role in the convictions. The summaries from the IP include "contributing causes of conviction." According to the IP's classification system at the time of this writing, the following items are considered contributing causes of conviction: eyewitness misidentification; false confessions; the use of informants; unvalidated or improper forensic science; inadequate defense; and government misconduct. The IP's classification system was our source of information regarding contributing causes of conviction. Finally, we then considered all the details stated above for the subset of cases in which at least one jailhouse informant(s) recanted and those in which the informant(s) did not recant.

⁴ In 2020, the IP changed its approach to tracking DNA exonerations nationwide. Prior to this date, all cases in the nation in which DNA testing was central to exoneration were counted in the IP's total. As of early 2020, the IP decided that they would only track cases in which the IP played a role (e.g., DNA exonerations and exonerations with other evidence). Thus, after the first 375 cases, the IP stopped tabulating nationwide DNA exonerations (Vanessa Meterko, personal communication, February 10, 2022). This change in the IP's focus occurred as we were working on this project. When we originally presented this data in 2019 at a conference, we had data from the 362 exonerees listed on the IP's website. Given the above-noted change, we decided to update our project to include the IP's first 375 cases.

⁵ It is also important to note that there are differences between our three sources of information with regard to informants. The NRE only indicates that a case had an informant if the informant was a jailhouse informant. CTI lists three types of informants: 1) jailhouse informants, "co-defendants," and "incentivized witnesses." The IP, on the other hand, does not include co-defendants in their counts of informants. Thus, the three sites differed in their counts of cases involving informants.

The second and third authors were trained by the first author to code while navigating the IP, NRE and CTI websites. Once coders were trained, they pilot-coded a sample of 10 exonerees. There were no coding disagreements. The demographics for all exonerees with jailhouse informants were independently coded by the second and third authors; inter-rater reliability was acceptable (Cohen's $k = .95$). The remaining items were coded by the first author.

VIII Sample of DNA Exonerees

Demographics. As noted above, the IP's first 375 DNA exoneration cases were used as our sample. This list of exonerees is available from The NRE (<https://www.law.umich.edu/special/exoneration/Pages/DNA.aspx>). Basic information about this sample is included at the following website: online: <https://innocenceproject.org/dna-exonerations-in-the-united-states/>. This sample of 375 exonerees was composed of 370 males and 5 females. Approximately 61% were Black ($n = 227$), 31% were White ($n = 116$), 8% were Hispanic ($n = 29$), less than 1% were Asian ($n = 1$), and less than 1% was Native American ($n = 2$). Eleven percent ($n = 41$) were juveniles at the time the crime was committed. Thirty-four percent ($n = 126$) were given a life sentence, and 6% ($n = 21$) of the 375 exonerees had been given the death penalty. Overall, these exonerees served 5,284 years. The average time served for all 375 exonerees was 16.30 years ($SD = 7.97$).

We note that some defendants were given a sentence so lengthy that it had the practical effect of being a life sentence (e.g., Lawrence McKinney was assigned a 100-year-sentence); these sentences were not considered "life sentences" in the statistics noted above. We also did not include sentences that included 'life' as a potential extended option (e.g., 25 years to life). A defendant was only considered as having been assigned a life sentence if the starting point was "life" (e.g., life + 20 years; life + \$5,000; 2 life sentences).

IX Results

A. Cases With Jailhouse Informants

Demographics. Fifty-five exonerees (15%) had at least one jailhouse informant involved in their case. Of the 15%, 29% of these cases ($n = 16$) had more than one jailhouse informant involved. See Appendix A for a list of these 55 exonerees and details regarding their cases. Fifty-five percent of the exonerees who were implicated by jailhouse informants were White ($n = 30$), 38% were Black ($n = 21$) and 7% were Hispanic ($n = 4$). Only 5% of these exonerees ($n = 3$) were juveniles at the time the crime was committed. All together, these 55 exonerees served 901 years (range = 36 years, $M = 16.38$ years, $SD = 7.92$). Fifteen percent of these exonerees ($n = 8$) had been sentenced to death and 35% ($n = 19$) had been sentenced to life in prison.

We sought to determine if there was a greater tendency for informant usage by race. Twenty-six percent of White defendants (30/116 White defendants had informants), 14% of Hispanic defendants (4/29 Hispanic defendants had informants) and 9% of Black defendants had cases that included informants (21/227). When Black defendants were compared to White

defendants and Hispanic defendants, the chi-square was significant, $\chi^2(1, N = 372) = 16.84, p < .0002, \phi = .21$. Further analysis revealed that White defendants were more likely than Black defendants to have an informant involved in their case, $\chi^2(1, N = 343) = 15.45, p < .0001, \phi = .22$. On the other hand, Black defendants were equally likely to have informants as Hispanic defendants, $\chi^2(1, N = 256) = .20, p = .65, \phi = .04$; and Hispanic and White were also equally likely to have cases with informants, $\chi^2(1, N = 145) = 1.27, p = .26, \phi = .11$.

There was also a greater tendency for those with informants to be given the death penalty, $\chi^2(1, N = 375) = 7.87, p < .005, \phi = .16$ (note that this is a statistically significant relationship, however it is relatively small—approximately 15% of the defendants who were implicated by at least one informant received a death penalty, while only 5% of those who were not implicated by an informant received a death penalty). There was not, however, a greater tendency for cases involving informants to result in life sentences, $\chi^2(1, N = 345) = .01, p = .91, \phi = .005$ (with informant: 35% received a life sentence; without informant: 34% received a life sentence). In addition, informants were equally likely to be used in cases in which the defendant was a juvenile (5%) versus an adult (12%), $\chi^2(1, N = 375) = 1.38, p = .24, \phi = .07$.

Evidence of Incentive. We considered whether there was evidence of an incentive for the jailhouse informant to provide testimony. Reasons were only available in 53% of cases ($n = 29$). In 51% of the cases in which a jailhouse informant was included, the informant was offered a deal ($n = 28$).⁶ In 5% of cases ($n = 3$), a jailhouse informant cited police pressure as the reason for testifying in some cases included both a deal and police pressure.

Contributing Causes of Conviction. We also considered the causes contributing to conviction for cases that included jailhouse informants. We gathered this information from the IP. If that information was not available from the IP, we consulted the NRE. We first wondered what percentage of exoneration cases with at least one jailhouse informant relied on *just* the informant's testimony to convict. Overall, of the cases that included a jailhouse informant, 13% had *only* the informant providing evidence supporting a conviction. The seven men who were imprisoned based on just the word of a jailhouse informant spent a total of 121 years in prison ($M = 17.30$ years, $SD = 10.10$). Eighty-six percent of these men received a sentence of at least 40 years in prison.

Twenty-nine percent had at least one jailhouse informant and only one other type of evidence contributing to a conviction. In five cases this was a confession. In another five cases this was mistaken eyewitness identification and in six other cases, unvalidated or improper forensic evidence was the additional evidence.

Thirty-one percent of the exonerees ($n = 17$) had at least one jailhouse informant and two additional types of incriminating evidence, and the remaining 27% ($n = 15$) had at least one jailhouse informant and three or more additional types of evidence contributing to a conviction.

⁶ An informant was considered to have been involved in a deal if there was information suggesting that a deal took place even if the informant was said to have denied the existence of a deal (e.g., in Miguel Roman's case, the jailhouse informant denied obtaining any additional leniency—however, he received [an] offer to plead guilty to burglary, drop larceny, get one year –and received time served" (online: <https://convictingtheinnocent.com/exoneree/miguel-roman/>).

B. Cases with Recanting Jailhouse Informants

Demographics. We then looked at cases in which a jailhouse informant recanted. Twenty-four percent of the 55 cases ($n = 13$) that included jailhouse informants had at least one jailhouse informant recant. Fifty-four percent of the exonerees who were implicated by jailhouse informants who later recanted were White ($n = 7$), and 46% were Black ($n = 6$). No juvenile had a recanting jailhouse informant. These 13 exonerees served 255 years (range = 32 years, $M = 19.60$ years, $SD = 9.59$). Eight percent of these exonerees ($n = 1$) had been sentenced to death and 46% ($n = 6$) had been sentenced to life in prison.

We attempted to determine if cases in which the informant recanted were different from cases in which the informant did not recant. There was not a significant difference as a function of race, $\chi^2(1, N = 51) = .01, p = .92, \phi = .06$, life sentences, $\chi^2(1, N = 55) = .45, p = .50, \phi = .14$, or death sentences, $\chi^2(1, N = 55) = .12, p = .73, \phi = .11$.

For these 13 cases in which the informant recanted, most of the jailhouse informants (69%) had testified in exchange for a deal. One additional jailhouse informant had cited both a deal (he avoided prison after being charged with rape) and pressure from police as the reason for their testimony. A reason for implicating the defendant was not evident for 31% of these recanting informants.

We considered the types of evidence contributing to a conviction in cases in which the jailhouse informant recanted. Most notably, in three out of the 13 cases, once the jailhouse informant recanted, there were no other forms of evidence supporting a conviction; these three men collectively spent a total of 63 years in prison. An additional 23% of the 13 cases in which at least one jailhouse informant recanted had only one other type of evidence supporting conviction (one had an eyewitness, one had unvalidated forensic evidence, and one had a confession). Another 23% of the 13 cases in which at least one jailhouse informant recanted had two additional types of evidence remaining that supported conviction (all three of these cases had both eyewitness misidentification and unvalidated forensic evidence). The remaining 31% of cases in which at least one jailhouse informant recanted had three or more additional types of evidence remaining that supported conviction.

C. Cases With Jailhouse Informants Who Did Not Recant

Demographics. We also considered cases in which at least one jailhouse informant was involved, but none of the jailhouse informants were known to have recanted; this accounted for 76% of cases ($n = 42$). Fifty-five percent of the exonerees who were implicated by jailhouse informants who did not recant were White ($n = 23$), 31% were Black ($n = 15$), and 10% were Hispanic ($n = 4$). Three of these exonerees were a juvenile at the time the crime was committed. These 42 exonerees served 646 years (range = 32 years, $M = 15.40$ years, $SD = 7.17$). Seventeen percent of these exonerees ($n = 7$) had been sentenced to death, and 29% ($n = 12$) had been sentenced to life in prison. See Table 1 for a comparison of the demographics and sentencing for all considered groups.

For these 42 cases, 45% of the jailhouse informants ($n = 19$) had testified in exchange for a deal. Another 2% ($n = 1$) claimed to have testified because of pressure. An additional jailhouse informant had cited both a deal and pressure from police as the reason for their testimony. A reason for implicating the defendant was not evident for 52% of these informants.

We considered the types of evidence contributing to a conviction in cases in which the jailhouse informant testified and did not recant. Most notably, in 10% out of the 42 cases ($n = 4$), the jailhouse informant was the only evidence supporting a conviction; these four men collectively spent a total of 58 years in prison. An additional 31% of the 42 cases that had at least one jailhouse informant had only one other type of evidence supporting conviction (four had an eyewitness, five had unvalidated forensic evidence, and four had a confession). Another 33% of the 42 cases ($n = 14$) that included at least one jailhouse informant had two additional types of evidence remaining that supported conviction. The remaining 26% of cases ($n = 11$) that included at least one jailhouse informant had three or more additional types of evidence remaining that supported conviction.

X Discussion

With this research, we have taken a closer look at the use of jailhouse informants in the first 375 DNA exoneration cases in the U.S. It remains clear that jailhouse informants played a role in wrongful conviction as 15% of the cases in the IP database included incriminating testimony from at least one jailhouse informant.

Informant testimony proved to be very influential. We see this influence in at least a couple of ways beyond the fact that these defendants were wrongly convicted. In 13% of the cases, informant testimony appeared to be the only major evidence supporting a conviction. In another 29% of cases, the defendant had the word of an informant and only one additional contributing factor (e.g., confession, eyewitness misidentification, unvalidated/improper forensic evidence), evidence that can be potentially influenced by the words of an informant (Jenkins et al., 2021; Mote et al., 2018), and/or has been demonstrated as prone to error (online: <https://innocenceproject.org/#causes>). We also see evidence of the influential nature of informants when you consider that there was a greater tendency for defendants incriminated by informants to be given the death penalty.

Interestingly, White people were more likely than Black people to have an informant involved in their case. The reason why is not immediately apparent; however, one possible reason may be revealed when one considers the other evidence present in the cases. Jailhouse informants are often called upon when there would be little evidence other than their testimony (cf. Neuschatz & Golding, 2022). Future researchers may wish to investigate this further. Note also that it is not unusual to find racial inequities in those wrongly convicted and exonerated with DNA in the U.S. (e.g., see online: <https://innocenceproject.org/news/facts-racial-discrimination-justice-system-wrongful-conviction-black-history-month/>). For example, while Blacks represent about 13.6% of the overall population in the U.S. (census.gov), we have noted that 61% of the current sample of those wrongly convicted in the U.S. and exonerated using DNA are Black (see Gross et al., 2017 for more on the topic of race and wrongful conviction).

Interestingly, we found that multiple jailhouse informants were used in 29% of cases,⁷ presumably to strengthen the prosecution's case (see Natapoff, 2018 for information about a case that involved 30 jailhouse informants, all of whom fabricated evidence to benefit themselves). One prosecutor even quoted the bible to drive home the point about how the jury should view multiple witnesses: "I believe the old rule is that in the mouth of two or three witnesses shall everything be established. This defendant committed those crimes." Fessinger et al. (2020) and Neuschatz et al. (2020) also found multiple informants in many of the reviewed DNA exoneration cases. Fessinger et al. (2020) found that their analyzed cases representing 28 defendants included 55 informants; Neuschatz et al. (2020) reviewed cases with 22 defendants that involved 53 informants. In both cases most were jailhouse informants.

We also considered the prevalence of recantation on the part of jailhouse informants. Overall, we found that 24% of cases included informants recanting the statement that implicated the defendant. In three of the cases in which at least one informant had recanted, informant testimony had been the only evidence supporting a conviction. In another three cases, only one type of additional evidence was said to have contributed to a conviction.

Thus, it is clear that jailhouse informants have contributed to the problem of wrongful conviction, and that some jailhouse informants have been willing to recant their false testimony. Unfortunately, these defendants still spent years of their lives behind bars, which is a testament to how powerful informant testimony can be. The seven men who were imprisoned based on *just* the word of a jailhouse informant spent a total of 121 years in prison.

Jailhouse informants are highly incentivized to lie, and thus the risk to innocent defendants can be great, but we did find that some informants do recant. Should we find a way to encourage more informants to recant? Informants are not typically prosecuted for perjury (Natapoff, 2018).⁸ The threat of perjury may act as one form of encouragement against providing false testimony, although police and prosecutors have been known to threaten perjury charges against witnesses who wish to recant prior statements; this ultimately could lead to false statements in testimony (Covey, 2015). Perhaps we should strive to halt the problem where it appears to sometimes begin—at the officers or prosecutors who pressure or otherwise encourage the informant to lie (see e.g., *Bechtol v. Prelesnik*, 2012). For example, in Calvin Washington's case, a jailhouse informant suggested he felt forced to provide information when an investigator said he "might be charged with Capital Murder" if he didn't provide information (online: <https://convictingtheinnocent.com/exoneree/calvin-washington/>).

Pressuring an informant clearly is inappropriate; however, we did not find a lot of evidence here to indicate that this is a frequent occurrence. It is possible that this kind of activity does not readily come to light. Far more frequent was the case in which an informant was offered a deal in

⁷ Note that our initial research plan did not include a consideration of whether cases included more than one jailhouse informant. However, during the analysis, we saw that a number of cases did have more than one jailhouse informant. Thus, information about this variable is not included in the introduction, but is presented in both the Results and the Discussion section.

⁸ This is a far cry from what would happen in ancient Athens if an informant's information was determined not to be true; the informant would be put to death (Neuschatz & Golding, 2022).

exchange for testifying, and the informant chose to provide false information in light of that incentive. Is it possible to craft an incentive that does not compel a prospective informant to lie? The American Psychological Association maintains that “psychologists make reasonable efforts to avoid offering excessive or inappropriate financial or other inducements for research participation when such inducements are likely to coerce participation” (online: <https://www.apa.org/ethics/code>).

Certainly, we are not suggesting that research participation is akin to providing informant testimony, but the question we are posing is this: is offering an excessive incentive a form of coercion? Can a deal sometimes be too attractive to ignore? An exceedingly attractive offer to a jailhouse informant obviously can hurt a potentially innocent defendant, but there are risks to society as well. At times, jailhouse informants have been released because of a deal, only to go on and commit additional crimes. Often the punishment for these later crimes is reduced when the informant informs again and again. See, for example, the case of informant Paul Skalnack, who sent over 30 defendants to prison, even some to death row, while he continued to commit crimes each time that he was released (Colloff, 2019).

A. Limitations

There are some limitations to the research presented here. Since we limited our work to an examination of the summaries in the IP, NRE, and CTI, it is possible that the available information was not complete (e.g., a jailhouse informant recanted, but that recantation was not entered in any of these databases).

Another limitation is the fact that we only analyzed the circumstances in 375 U.S. DNA exoneration cases. We cannot tell, from this analysis, how often jailhouse informants are used overall, how often they are providing false testimony, and how often they are recanting their statements. There are ways to extend this analysis. For example, The National Registry of Exonerations (online: <https://www.law.umich.edu/special/exoneration/Pages/about.aspx>) includes additional U.S. DNA exoneration cases and cases of exoneration that are not based on DNA evidence. As of this writing, there are over 3,200 cases within this database. Researchers may wish to expand the present analysis to investigate the role of informants in both DNA and non-DNA exoneration cases. Researchers may also wish to investigate the role of jailhouse informants in other countries (see e.g., High, 2021).

Researchers may also want to explore further the role of jailhouse informants in DNA exoneration cases by reviewing case documentation such as trial transcripts. This general approach has been taken by Neuschatz et al. (2020) and Fessinger et al. (2020), who analyzed trial transcripts from 22 and 28 cases respectively. In addition, the CTI database included information from available trial transcripts. However, additional cases could still be considered. Prior to 2020, the Innocence Record was a searchable database of available public records for DNA exonerees (e.g., trial transcripts); it is not currently available. Future researchers may wish to consult this database or its yet-to-be announced replacement as an additional source of information.⁹ Still, this just

⁹ As of this writing, the Innocence Record website has been unavailable for at least the past two years as the website is currently in the process of undergoing reconstruction.

provides information regarding the use of informants in U.S. cases in which the defendant has been exonerated. It is, of course, possible that informants are inappropriately incriminating defendants who do not have the benefit of being able to establish their innocence definitively.

B. Suggested Reforms

Recently, there has been an effort in some jurisdictions for reform with regard to informant testimony, and different states have taken different approaches to this issue. Given our focus on jailhouse informant recantation, we will present examples of U.S. states which include a consideration of recantation in their rules.

For example, in recent years, Oklahoma and Nebraska created new rules for jailhouse informant testimony. These rules require that prosecutors reveal an informant's criminal history and informant history, and any incentives promised in exchange for testimony. Oklahoma and Nebraska also require that prosecutors reveal any information regarding whether the informant has recanted (Zavadski & Syed, 2019).

As of 2019, Illinois requires a hearing to determine the reliability of jailhouse informants in murder, sexual assault and aggravated arson cases before such testimony can be presented at trial. The information provided is required to include the informant's criminal history, what incentive was provided for the testimony, and details of any previous informant activities (Schoenburg, 2018). In addition, at least 30 days before the hearing, prosecutors must provide this key information to the defense (*Informing injustice*). Illinois's statute also requires the court to consider whether the informant had recanted and if so, requires a consideration of the circumstances surrounding that recantation (e.g., names of those present at the recantation) (online: <https://codes.findlaw.com/il/chapter-725-criminal-procedure/il-st-sect-725-5-115-21.html>).

California, Connecticut, Oklahoma and Utah also now require that certain jury instructions be used when jailhouse informant witnesses are included in a trial. These instructions are designed to encourage jurors to apply greater scrutiny when assessing the credibility of jailhouse informants. Thus, the instructions detail factors that jurors should consider including the informant's criminal history and history as an informant, expected incentives and whether the informant has recanted or changed his or her statements (*Informing injustice*).

Thus, as you can see, some of the recently enacted laws indicate that whether an informant has recanted should be considered when evaluating an informant's credibility. In 2018, the American Legislature Exchange Council put forth a proposal of model jailhouse informant reform legislation (online: <https://alec.org/model-policy/jailhouse-informant-regulations-2/>).

This document proposes evidentiary standards regarding the admissibility of jailhouse informant testimony, including a recommendation to consider whether the informant modified or recanted his or her testimony at any time. The results of the present work suggest that any reform should include a consideration of whether any informants in a case have recanted, and as noted above, some jurisdictions have followed this recommendation. We maintain that, at the very least, a freely offered recantation should provide sufficient basis to vacate a conviction if the state could not have won its case without the recanted testimony. This approach to informant testimony shows

promise as it would alleviate one of the problems seen in the DNA exoneration cases in the U.S. in which an exoneree was convicted *just* on the word of an informant.¹⁰ Beyond that, the motive for recantation and the circumstances in which the recantation occurs should be evaluated in an effort to evaluate the credibility of the recanting witness. If one determines, for example, that the witness was pressured either to provide testimony, or to recant, that should help determine which statement is the more trustworthy (Covey, 2015).

C. Future Research

The recantation of jailhouse informants has scarcely been considered by researchers, thus there are still unaddressed questions. For example, one component of recantation that may be important is when the recantation occurs. Although information regarding the length of time before recanting is not typically provided in these summaries, we could ascertain that some informants recanted after a relatively short amount of time (e.g., in Paul Jenkins' case and in Freddie Joe Lawrence's case, the informant asked to be moved to a different jail, and once he moved, he recanted), while others waited years (e.g., the informant in William Dillon's case waited 27 years to recant (Garrett, 2011)). Would these differences matter to jurors and judges? Future researchers need to determine more definitively under what conditions recanting witnesses will likely be and should be believed.

Another area that needs further consideration is how people view other types of informants. All three kinds of informants (jailhouse, community and co-perpetrator) have played a role in the conviction of those who were wrongly convicted (see Fessinger et al. (2020); Neuschatz et al. (2020)). Indeed, other types of informants have also recanted. For example, in 2000, David Ayers was arrested for the murder of Dorothy Brown. Among the evidence against him was the word of a community witness, Kevin Smith, a friend of Ayers, who said that Ayers had called him prior to the body being discovered to report that Brown had been murdered. Ayers later recanted this statement indicating that he had been pressured by the police to make this statement (online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3868>). This is just one example of a cooperating witness incriminating a defendant and then recanting; there are others, however few researchers have considered cooperating witnesses and co-perpetrator witnesses at all (as Roth, 2016 has noted). In addition, to our knowledge, no one has considered the effects of the recantation of these types of informants. Of course, all types of informants may be incentivized to lie and to recant, and thus researchers need to continue to consider how jurors view them and they need to understand how to help jurors become more discerning in their evaluations of this type of testimony.

¹⁰ Note that California, among a few others, has enacted legislation indicating that a defendant may not be convicted solely on the basis of the "uncorroborated testimony of an in-custody informant" (see Cal. Penal Code § 1111.5 (West 2016), para 1). In addition, some states have "corroboration requirements for accomplice testimony in criminal trials" as well (see Saverda, 1990, p. 787). Roth (2016) maintains that such corroboration rules are not sufficient to protect against wrongful conviction as it is relatively easy to come up with other evidence to support a conviction (e.g., the word of another informant).

D. Conclusion

Jailhouse informants clearly have played a role in wrongful conviction, and the present research has revealed that sometimes the informant has recanted. While the number of jailhouse informants who have recanted is not large, the amount of time that exonerees spent in prison as a function of, at least in part, recanted informant testimony, certainly is. This work is meant to add to the call for reform with regard to the way the legal system works with jailhouse informants; any reform with regard to informants should consider the case of the recanting informant. We are not suggesting that courts should automatically see recantations as credible or incredible. Both extremes are unwarranted. As Heder and Goldsmith (2012) argue, there needs to be “a system in place, which automatically weeds out clearly unreliable recantations” but will “force courts to consider the veracity of a recantation independent of its historic untrustworthiness” (p. 130). Courts should not continue their tendency to disregard informant recantations, especially in cases in which the convictions are based solely on the word of an informant.

XI References

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Table 1. A Comparison of Demographics and Sentences for All Considered Groups

	Demographics	Sentences
Full Sample of DNA Exonerates ($N = 375$)	Asian $n = 1$ Black $n = 227$ Hispanic $n = 29$ Native American $n = 2$ White $n = 116$ Juveniles $n = 41$	Life Sentences $n = 126$ Death Sentences $n = 21^{**}$ Average time served: 16.30 years
Cases with Jailhouse Informants ($n = 55$)	Asian $n = 0$ Black $n = 21^*$ Hispanic $n = 4$ Native American $n = 0$ White $n = 30^*$ Juveniles $n = 3$	Life Sentences $n = 19$ Death Sentences $n = 8^{**}$ Average time served: 16.38 years
Cases with Recanting Jailhouse Informants ($n = 13$)	Asian $n = 0$ Black $n = 6$ Hispanic $n = 0$ Native American $n = 0$ White $n = 7$ Juveniles $n = 0$	Life Sentences $n = 6$ Death sentences $n = 1$ Average time served: 19.60 years
Cases with Jailhouse Informants That did not Recant ($n = 42$)	Asian $n = 0$ Black $n = 15$ Hispanic $n = 4$ Native American $n = 0$ White $n = 23$ Juveniles $n = 3$	Life Sentences $n = 12$ Death Sentences $n = 7$ Average time served: 15.40 years

Note. * White defendants were more likely than Black defendants to have an informant involved in their case, $p < .0001$; ** There was a greater tendency for those with informants to be given the death penalty, $p < .005$.

Appendix A. Cases with Jailhouse Informants

Cases with Jailhouse Informants (<i>n</i> = 55) Compiled From the First 375 DNA Exonerees From the Innocence Project		Race of Defendant	Type of Incentive	Did Jailhouse Informant Recant?	Number of Jailhouse Informants Involved in Case	Factors Contributing to Conviction Beyond Informants
Last Name	First Name					
Adams	Kenneth	Black	Deal	yes	1	E,C,F
Allen	Donovan	White			2	C
Avery	William	Black		yes	3	C
Ayers	David	Black			1	
Barnes	Steven	White	Deal		1	E,F
Brown	Roy	White	Deal		1	G,F
Camm	David	White			3	C
Cruz	Rolando	Hispanic	3 Deals		3-5*	C,G,F
Davis	Ricky	White			1	C,F
Davis	Jeramie	White			1	
Davis	Cody	White			1	E
Dedge	Wilton	White	Deal		1	E,F
Dillon	William	White	Deal, Pressure	yes	1	E,F
Fain	Charles	White			2	F
Fogle	Lewis	White	Pressure		3-5*	C
Frey	Joseph	White			1	E
Fritz	Dennis	White	Deal		1	C,F
Gagnon	Richard	White		yes	1	
Gates	Donald E.	Black	Deal		1	F
Godschalk	Bruce	White	Deal		1	E,C,G
Gray	David A.	Black	Deal	yes	1	E,F
Gray	Paula	Black			1	E,C,I,F
Halstead	Dennis	White	2 Deals		2	C,F
Heins	Chad	White			2	F
Hernandez	Alejandro	Hispanic	2 Deals		5	C,G,F
Hicks	Anthony	Black			1	E,I,F
Hunt	Darryl	Black	2 Deals		2	E
Isbell	Teddy	Black			6	E,C,G
Jenkins	Paul	White	Deal	yes	1	
Jimerson	Verneal	Black			1	E,C,G,F
Kogut	John	White	Deal		1	C,F
Kussmaul	Richard	White		yes	1	E,G,I,F

Lawrence	Freddie Joe	White	Deal		1	
McCarty	Curtis	White			1	G,F
Mills	Damian	Black			1	E,C,G
Peterson	Jamie Lee	White			1	C
Peterson	Larry	Black	Deal		1	F
Rainge	Willie	Black	Deal	yes	1	E,C,I,F
Restivo	John	White	2 Deals		2	C,F
Rivera	Juan	Hispanic			1	E,C,F
Roman	Miguel	Hispanic	Deal		1	
Saecker	Frederic	White			1	C,F
Sagin	Jack	White		yes	1	
Sledge	Joseph	Black	Deal	yes	2	F
Tribble	Santae	Black	Deal		1	I,F
Wallis	Gregory	White			1	E
		Black	2 Deals, 1		2	F
Washington	Calvin E.		Pressure			
Watkins	Jerry	White	Deal	yes	1	G,F
Whitley	Drew	Black	Deal		1	E,F
Wilcoxson	Robert	Black			6	E,C
Williams	Dennis	Black	Deal	yes	1	E,C,I,F
Williams, Jr.	Larry	Black			1	E,C,G
	Ronald	White			2	C,G,I,F
Williamson	Keith					
Wyniemko	Kenneth	White	Deal	yes	1	E
Yarris	Nicholas	White	Deal		1	E,C

Note. *Sources disagree on the number of jailhouse informants involved. E = Eyewitness Misidentification. C = False Confessions or Admissions. G = Government Misconduct. I = Inadequate Defense. F = Unvalidated or Improper Forensic Science.