Boston College Journal of Law & Social Justice

Volume 32
Issue 2 *The Way to Carnegie: Practice, Practice, Practice— Pedagogy, Social Justice, and Cost in Experiential Legal Education*

Article 9

April 2012

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Ian Leson
ian.leson@bc.edu

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Recommended Citation
Ian Leson, *Toward Efficiency and Equity in Law Enforcement: "Rachel's Law" and the Protection of Drug Informants*, 32 B.C.J.L. & Soc. Just. 391 (2012), http://lawdigitalcommons.bc.edu/jlsj/vol32/iss2/9

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TOWARD EFFICIENCY AND EQUITY IN LAW ENFORCEMENT: "RACHEL'S LAW" AND THE PROTECTION OF DRUG INFORMANTS

IAN LESON*

Abstract: Following the murder of Rachel Morningstar Hoffman—a 23-year-old college graduate—Florida passed "Rachel's Law," which established new guidelines for the police when dealing with confidential informants. Immediately prior to its enactment, lawmakers stripped Rachel's Law of key provisions. These provisions required police to provide a potential informant with an attorney before agreeing to any deal. Opponents of these provisions argue that they hamstring law enforcement agencies in their efforts to prosecute drug crimes. Rather than serving as an obstacle to effective law enforcement, the attorney provision in the original version of Rachel's Law enables efficient prosecution of crimes and protects minor drug offenders who may be unsuited for potentially dangerous undercover informant work. This Note recommends that the attorney provision be restored to Rachel's Law, and encourages other states to enact similar statutes.

INTRODUCTION

In 2008, police arrested Rachel Hoffman, a 23-year-old Florida State University graduate, after they found ecstasy pills and marijuana in her apartment.[1] Facing multiple drug charges, she became an informant for the police department in Tallahassee, Florida.[2] As part of a drug sting, Rachel attempted to buy cocaine and a firearm from two

* Managing Editor, BOSTON COLLEGE JOURNAL OF LAW & SOCIAL JUSTICE (2011–2012).

[1] *See* Jennifer Portman, *Father Pushes for 'Rachel Law': Irv Hoffman Aims to Protect Young Informants*, TALLAHASSEE DEMOCRAT, May 20, 2008, at 1A; Alex Leary, *House Passes 'Rachel's Law' to Protect Police Informants*, MIAMI HERALD BLOG (Apr. 27, 2009), http://miamiherald.typepad.com/nakedpolitics/2009/04/house-passes-rachels-law-to-protect-police-informants.html.

[2] *See* Portman, *supra* note 1.

felons targeted by the police.[3] Police recovered her body thirty-six hours later; Rachel had died from a gunshot wound.[4]

The public heavily criticized the Tallahassee police department for its handling of Hoffman, particularly for failing to provide her with proper training in her role as an informant.[5] Soon after her death, Hoffman's parents and Florida lawmakers lobbied for the passage of confidential informant reform legislation.[6] As a result, Florida passed "Rachel's Law" in 2009, becoming the first state to provide new policies and procedures for the use of informants by law enforcement.[7] Rachel's Law requires the police to consider an informant's suitability for a particular agreement, including age, maturity, and the attendant risks of harm.[8] The law requires police to inform suspects that police officers are not authorized to decide whether criminal charges are

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[3] *See* Julian Pecquet, *AG to Review Hoffman Case: TPD Informant Procedures to Be Examined*, TALLAHASSEE DEMOCRAT, May 13, 2008, at 1A; Leary, *supra* note 1; Alexandra Natapoff, *Regulating Criminal Snitching*, LOYOLA L. SCH. L.A. DAILY J., http://media.lls.edu/CivDisc091509.html (last visited Feb. 7, 2012). Police searched Hoffman's apartment after another informant told them she was dealing marijuana. Pecquet, *supra*.

[4] *See* Portman, *supra* note 1; Leary, *supra* note 1.

[5] *See* Michael L. Rich, *Coerced Informants and Thirteenth Amendment Limitations on the Police-Informant Relationship*, 50 SANTA CLARA L. REV. 681, 683–84 (2010) (providing an overview of criticism in the aftermath of Hoffman's death).

[6] *See* Portman, *supra* note 1; Mike Salinero, *'Rachel's Law' Loses Major Provisions*, TAMPA TRIBUNE, Mar. 19, 2009, at 6.

[7] *See* FLA. STAT. § 914.28 (2010); Natapoff, *supra* note 3. In addition to Florida, other states have developed guidelines regarding police informants, but these state laws are focused on ensuring the reliability of information rather than the safety of the informants themselves. *See* ALEXANDRA NATAPOFF, SNITCHING: CRIMINAL INFORMANTS AND THE EROSION OF AMERICAN JUSTICE 193–97 (2009). Local police departments have varying levels of internal regulations that address the use of informants. *See id.* at 187–88. For example, the Las Vegas Police Department has written guidelines that require officers to keep files on their informants and advise them that they are not permitted to commit crimes while gathering information. *See id.* at 188. Some states, such as New Jersey, regulate the use of juvenile informants, with an eye toward their well-being. *See* THE NEW JERSEY SCHOOL SEARCH POLICY MANUAL, at A10-1 app. 10 (1998), *available at* http://www.state.nj.us/lps/dcj/school/school1.pdf. The New Jersey regulations prohibit the use of juvenile informants who are participating in substance abuse treatment or have a history of mental illness. *See id.* at A10-2. They explicitly aim to address "the danger to the juvenile of acting as an informant." *Id.* On the federal level, the Department of Justice (DOJ) has issued comprehensive guidelines that are used to regulate the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) in their use of confidential informants. *See* JOHN ASHCROFT, ATT'Y GEN., THE ATTORNEY GENERAL'S GUIDELINES REGARDING THE USE OF CONFIDENTIAL INFORMANTS 1 (2002), *available at* http://www.ignet.gov/pande/standards/invprg1211apph.pdf. In 2006, the DOJ issued even more specific guidelines regulating the use of FBI informants. *See* ALBERTO R. GONZALES, ATT'Y GEN., THE ATTORNEY GENERAL'S GUIDELINES REGARDING THE USE OF FBI CONFIDENTIAL HUMAN SOURCES 1–3 (2006), *available at* http://www.justice.gov/oip/docs/ag-guidelines-use-of-fbi-chs.pdf.

[8] *See* FLA. STAT. § 914.28(5)(a)–(h).

dropped or altered.[9] It also legislates for more efficient investigations, such as a provision requiring law enforcement to consider "[t]he risk the person poses to adversely affect a present or potential investigation or prosecution . . . ."[10]

While applauded in many circles, lawmakers stripped the final version of Rachel's Law of certain key provisions.[11] Among them was a requirement that suspects be told they can see an attorney before agreeing to deals.[12] Other provisions would have prohibited the use of individuals participating in substance abuse programs as informants without obtaining court approval.[13] Lawmakers also removed a prohibition on using nonviolent offenders in operations targeting violent felons.[14] While these provisions disappeared in concession to law enforcement interests in Florida, they were the ones most aggressively lobbied for by Rachel's parents.[15] State Senator Mike Fasano, a proponent of the bill, explained that "'if you want to keep a bill moving, you have to give a little something . . . .'"[16]

In general, the law enforcement community has been reluctant to embrace informant reform.[17] Informants are an essential element in criminal prosecution and law enforcement officials argue that they risk a disadvantage when informant interactions are slowed.[18] Thus, they

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[9] *See id.* § 914.28(3)(a).

[10] *Id.* § 914.28(5)(b).

[11] *See* Salinero, *supra* note 6.

[12] *Compare* FLA. STAT. § 914.28, *with* S.B. 604, 2009 Fla. S. § 5(b), Reg. Sess. (Fla. 2009).

[13] *See* S.B. 604, 2009 Fla. S. § 4(a).

[14] *Compare* FLA. STAT. § 914.28 (2010), *with* S.B. 604, 2009 Fla. S. § 4(a).

[15] *See* Salinero, *supra* note 6. General counsel for the Florida Department of Law Enforcement testified to the State Senate Committee on Criminal Justice that "the original bill would bring drug investigations using confidential informants to a 'screeching halt.'" *Id.* Florida newspaper reports alleged that the provisions disappeared at the behest of law enforcement agencies. *See id.*; Leary, *supra* note 1.

[16] Salinero, *supra* note 6.

[17] *See Law Enforcement Confidential Informant Practices: Joint Hearing Before the Subcomm. on Crime, Terrorism, & Homeland Sec. & the Subcomm. on the Constitution, Civil Rights, & Civil Liberties of the Comm. on the Judiciary House of Representatives*, 110th Cong. 76–78 (2007) [hereinafter *Joint Hearing*] (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition) ("[I]n the vast majority of the thousands of . . . investigations that I have conducted or supervised there would not have been a successful conclusion had it not been for the information provided or access gained through the use of an informant.").

[18] *See* United States v. Bernal-Obeso, 989 F.2d 331, 334–35 (9th Cir. 1993) ("[O]ur criminal justice system could not adequately function without information provided by informants . . . ."); Rich, *supra* note 5, at 688–89; *see also* Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. CIN. L. REV. 645, 655 (2004) ("Our justice system has become increasingly dependent on criminal informants over the past twenty years, primarily as a result of the confluence of several related trends: the United States Sentencing Guidelines (USSG), mandatory minimum sentences, and the explosion of

argue, the crime-fighting enterprise is harmed when police officers must offer an offender the opportunity to speak with an attorney before making a deal.[19] This perspective, however, ignores the fact that informants—such as Rachel Hoffman, a nonviolent drug offender with no training—are too often put at risk.[20]

Evidence shows that Hoffman's situation was not an isolated incident.[21] In 1998, seventeen-year-old Chad MacDonald was pulled over for speeding by California police and the officers found methamphetamines.[22] After arresting him, they gave him a choice between prosecution and working as an informant.[23] The police failed to tell him that, as a first-time offender, he could have enrolled in a drug rehabilitation program.[24] The day before MacDonald's birthday, after two months of

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drug crime enforcement efforts."); Salinero, *supra* note 6. In particular, informants are essential to the prosecution of drug crimes. *See Joint Hearing*, *supra* note 17, at 66 (statement of Alexandra Natapoff, Professor of Law, Loyola Law School) ("Informants are a cornerstone of drug enforcement. It is sometimes said that every drug case involves a snitch."). Law enforcement officials argue that restrictions on the use of informants would make these prosecutions more difficult. *See id.* at 87 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition).

[19] *See Joint Hearing*, *supra* note 17, at 87 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); Salinero, *supra* note 6.

[20] *See Joint Hearing*, *supra* note 17, at 66 (testimony of Alexandra Natapoff, Professor of Law, Loyola Law School) ("The government's use of criminal informants is largely secretive, unregulated, and largely unaccountable."); Natapoff, *supra* note 18, at 670–671 (discussing the problem of broad law enforcement discretion); Portman, *supra* note 1.

[21] *See, e.g.*, Michael Beebe, *Walking Thin Line in Village of Attica: Would-Be Informant Says Police Coerced Her into Cooperation*, BUFFALO NEWS, Nov. 8, 2009, at A1 (describing the story of Bianca Hervey, who was recruited as an informant after being stopped for driving with a suspended license); Scott Martelle & Bonnie Hayes, *Fatal Deception: Web of Lies May Have Snared Young Drug-User-Turned-Informant, Killed Allegedly by People Who Knew of His Ties to Police*, L.A. TIMES, Apr. 5, 1998, at A3 (describing the story of Chad MacDonald, who was killed after becoming an informant); *see also* Rich, *supra* note 5, at 682–83 (citations omitted) ("Hoffman's situation is typical of those faced by an increasing number of civilians who assist police in exchange for leniency."). In September 2009, in the town of Attica, New York, police pulled over a twenty-year-old college student named Bianca Hervey for driving with a suspended license. *See* Beebe, *supra*. Handcuffed to a bench and told by police she would spend the night in jail, Hervey agreed to become a confidential informant for the county drug task force. *Id.* Hervey's situation is especially alarming because, unlike Rachel Hoffman, Hervey had no association with drugs. *See id.*; Salinero, *supra* note 6. Attica Police Chief William Smith made clear to the young woman's father, a lawyer who rushed to her aid before she was harmed, that he had no plans to change the practice. *See* Beebe, *supra*. "'[Hervey's father] doesn't like the way police do things, I guess . . . . He doesn't like the way it's done . . . . It is what it is.'" *Id.*

[22] *See* Michael R. Santiago, Comment, *"The Best Interests of the Child" —Scrutinizing California's Use of Minors as Police Informants in Drug Cases*, 31 MCGEORGE L. REV. 777, 778 (2000); Martelle & Hayes, *supra* note 21.

[23] Santiago, *supra* note 22, at 778.

[24] *See id.*

police informant work, the police recovered a "tortured and battered body . . . ."[25] MacDonald's mother filed a missing persons report five days after she last saw him, and using that information, the police identified the recovered body as MacDonald's.[26] As a result of MacDonald's case, California adopted legislation protecting juvenile informants.[27]

While Rachel's Law is an important step toward meaningful reform, the protection of informants requires even more attention.[28] This Note argues that reinstating some of the fundamental considerations included in the original version of Rachel's Law will protect the less-than-ready informant and make law enforcement more efficient.[29] Part I provides a brief history of the police practice of using confidential informants. Part II looks at the current state of the informant system. It describes the flaws in the system and the ways in which the system implicates the Constitution. Part III examines the differences between the original and final versions of Rachel's Law, and focuses on the provisions providing a right to counsel and protection for informants in drug rehabilitation programs. Part IV argues for reinstating the stripped provisions and explains why restoring them, at least in part, would serve the needs of both informants and law enforcement. The Note concludes by encouraging other states to enact legislation similar to the original version of Rachel's Law.

I. The Use of Criminal Informants in Law Enforcement

The use of informants can be traced back from ancient Greece, through Judas Iscariot, to Britain in the Middle Ages, and onward through modern times.[30] The reasons behind the use of informants have changed over time, but one persistent theme is the rooting out of anti-government sentiment and activity.[31]

By the thirteenth century Britain employed what was known as the "approver system," where "a person accused of treason or a felony could

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[25] *Id.*

[26] *See* Martelle & Hayes, *supra* note 21.

[27] *See* Santiago, *supra* note 22, at 781.

[28] *See* Rich, *supra* note 5, at 682–85; Portman, *supra* note 1; Natapoff, *supra* note 3.

[29] *See* Natapoff, *supra* note 7, at 183–84 (explaining that making counsel available to informants will "improve the fairness and regularity of the process"); Rich, *supra* note 5, at 694–96, 698–99 (describing how law enforcement agencies become less able to recruit new informants when they develop a reputation for "burning" them).

[30] *See* Robert M. Bloom, Ratting: The use and Abuse of Informants in the American Justice System 1, 3, 5, 7 (2002).

[31] *See id.* at 2, 5, 7.

confess and inform on any remaining accused persons."[32] If successful, the approver could be pardoned and exiled.[33] If the information was false, however, the approver could be executed.[34] For those accused of murder, there were few reasons not to risk informing, thereby raising questions of reliability and leading to the system's abuse.[35] After all, the informant risked execution either way.[36] By the eighteenth century, the approver system gave way to the informal practice of confessing to a crime and revealing one's accomplices in the hopes of receiving leniency.[37] The use of confidential informants then increased as law enforcement in Western Europe began to "professionalize."[38]

American courts addressed the use of informants in the middle of the twentieth century when defendants alleged that confidential informant testimony violated the Fourth, Fifth, and Sixth Amendments.[39] In an oft-quoted passage, Judge Learned Hand explained, "[c]ourts have countenanced the use of informers from time immemorial . . . it is usually necessary to rely upon them or upon accomplices because the criminals will almost certainly proceed covertly. Entrapment excluded, . . . decoys and other deception are always permissible."[40] In 1966, the Supreme Court sanctioned the use of informants, calling the practice "not *per se* unconstitutional."[41] The Court explained that "[t]he established safeguards of the Anglo-American legal system," such as cross-examination and jury determinations of credibility, addressed any constitutional concerns about informant evidence.[42]

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[32] *Id.* at 5; *see also* Graham Hughes, *Agreements for Cooperation in Criminal Cases*, 45 VAND. L. REV. 1, 7 (1992).

[33] BLOOM, *supra* note 30, at 5.

[34] *Id.*

[35] *See id.*

[36] *Id.*

[37] *See* Hughes, *supra* note 32, at 7 ("This practice was rife in the nineteenth century when the lack of an organized police force often made it essential to procure accomplice testimony in order to track down or build a case against a major criminal.").

[38] BLOOM, *supra* note 30, at 2.

[39] *See* Hoffa v. United States, 385 U.S. 293, 310–11 (1966); United States v. Dennis, 183 F.2d 201, 224 (2d Cir. 1950), *aff'd*, 341 U.S. 494 (1951).

[40] *Dennis*, 183 F.2d at 224.

[41] *See Hoffa*, 385 U.S. at 311.

[42] *Id.* In his dissent, however, Chief Justice Warren questioned the blanket approval of the use of informants in criminal trials. *See id.* at 315 (Warren, C.J., dissenting). Warren explained:

> At this late date in the annals of law enforcement, it seems to me that we cannot say either that every use of informers and undercover agents is proper or, on the other hand, that no uses are. There are some situations where the law could not adequately be enforced without the employment of some guile or

Modern law enforcement agencies focus their use of informants on ferreting out individual criminals.[43] Informants permeate every level of the criminal justice system, particularly in the investigation of drug crimes.[44] Indeed, the U.S. government's "War on Drugs" increased the use of informants in the prosecution of drug crimes.[45] Professor Alexandra Natapoff explains that "approximately one-third of criminal offenders are under the influence of drugs at the time of their offenses, while as many as 80 percent of inmates have a history of substance abuse."[46] These offenders have information and contacts that make them ideal informants.[47] Informants are "irreplaceable" in the context of "the investigation of narcotics, prostitution, and other vice crimes, because inside information is often necessary for police to learn about their occurrence."[48]

There are several categories of informants.[49] Some are paid by the police for their cooperation.[50] Others are voluntary, sharing information with police out of "feelings of civic duty" or for other various rea-

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> misrepresentation of identity . . . . However, one of the important duties of this Court is to give careful scrutiny to practices of government agents when they are challenged in cases before us, in order to insure that the protections of the Constitution are respected and to maintain the integrity of federal law enforcement.

Id.

[43] *See* BLOOM, *supra* note 30, at 7.

[44] *See* United States v. Bernal-Obeso, 989 F.2d 331, 335 (9th Cir. 1993) (discussing the importance of the use of informants to "penetrate and destroy" drug cartels); *Joint Hearing*, *supra* note 17, at 77 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); BLOOM, *supra* note 30, at 7 ("In order for law enforcement authorities to solve crimes such as drug dealing . . . they need information from individuals who are either closely aligned with the participants or are participants themselves."); Natapoff, *supra* note 18, at 655; *see also* Shawn Armbrust, *Reevaluating Recanting Witnesses: Why the Red-Headed Stepchild of New Evidence Deserves Another Look*, 28 B.C. THIRD WORLD L.J. 75, 93 (2008) ("In recent years, the practice of rewarding informants has become more pronounced and more entrenched in the justice system.").

[45] *See* Natapoff, *supra* note 18, at 669 (stating that "the war on drugs made snitches a law enforcement fixture").

[46] NATAPOFF, *supra* note 7, at 106.

[47] *Id.*; *see also* Natapoff, *supra* note 18, at 671 ("'I can't tell you the last time I heard a drug case of any substance in which the government did not have at least one informant,' related District Judge Marvin Shoob.").

[48] Rich, *supra* note 5, at 688–89; *see also* Susan S. Kuo, *Official Indiscretions: Considering Sex Bargains with Government Informants*, 38 U.C. DAVIS L. REV. 1643, 1650 (2005) (calling these victimless crimes "invisible offenses").

[49] *See* Natapoff, *supra* note 18, at 652; Rich, *supra* note 5, at 690.

[50] *See* Rich, *supra* note 5, at 690 (describing informants "against whom the police do not have evidence of other crimes to use as leverage").

sons.[51] The third category—into which Rachel Hoffman fell—is composed of offenders trading cooperation in exchange for leniency.[52] Professor Michael Rich calls this subcategory "coerced informants" because the government claims to have sufficient evidence for a conviction.[53] Most active informants are coerced informants.[54]

Coerced informants are subject to intense pressures to cooperate.[55] For instance, an offender's uncertainty is highest immediately following arrest.[56] This "mak[es] her most likely to agree to cooperate at that time."[57] When the individual does not readily offer information, "the most powerful motivational tool available to the police or prosecutor is the fear of criminal charges and a long prison sentence."[58] The promise of leniency, sometimes vague and uncertain, can be enough to "flip" an offender.[59]

Critics often overlook the issue of coercion, instead focusing on the inherent unreliability of information generated by informants.[60] This focus solely on reliability concerns, however, masks other flaws in

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[51] *Id.* Other reasons may include a desire to associate with the police or a wish to eliminate criminal competition. *See id.* Professor Robert Bloom discusses the many theories behind what may have motivated Judas Iscariot, who "remains the epitome of betrayal and informing to many," and suggests that the same motivations continue to influence informants. BLOOM, *supra* note 30, at 4–5. These motivations include greed, hate, jealously, and altruism. *See id.* at 4.

[52] *See* Rich, *supra* note 5, at 690.

[53] *Id.* at 691–92.

[54] *Id.* at 695.

[55] *See id.* at 691–92.

[56] *Id.* at 694.

[57] Rich, *supra* note 5, at 694.

[58] *Id.* In some cases, informants who stop cooperating may be placed in jail for a night to think it over. *Id.* at 700. This is not, however, the only tool at law enforcement's disposal. *See* Alexandra Natapoff, *Deregulating Guilt: The Information Culture of the Criminal System*, 30 CARDOZO L. REV. 965, 969 (2008) ("Police and prosecutors create criminal informants using everything from threats to friendship to deceit to sex."). Informants may even earn the permission to commit new offenses. *Id.*

[59] *See* Natapoff, *supra* note 18, at 652; Rich, *supra* note 5, at 682–83. Officers and prosecutors tend to have broad discretion when making offers to informants. *See* Natapoff, *supra* note 18, at 652–53. Sometimes, rather than a promise of outright forgiveness for a crime, the informant is told the prosecutor will make a non-binding recommendation to impose a lower sentence. *Id.* at 652. In other cases, the informant is promised nothing at all at the outset, with any reward being contingent on the quality of the work or information the informant eventually provides. *See id.* For example, Tallahassee police told Rachel Hoffman that "she only had to provide 'substantial assistance' or do 'one big deal' to avoid charges . . . ." Rich, *supra* note 5, at 682.

[60] *See* Natapoff, *supra* note 18, at 651, 663–64. Addicted informants and informants with mental health issues are especially prone to unreliability because of their vulnerability to coercion. *See* NATAPOFF, *supra* note 7, at 184–85.

the informant system.[61] For example, Rachel Hoffman provided officials with labor rather than information or witness testimony, so the question of reliability did not apply in her case.[62] Focusing too much on the unreliability of snitches as witnesses "obscures the nature of the mechanisms by which that unreliable testimony is created."[63] The informant institution's biggest flaw is arguably the controversial and secretive mechanism by which informants are coerced into informing.[64]

II. Fundamental Flaws in the Informant Institution

Informants generally have little recourse when wronged or harmed by law enforcement and, therefore, are in need of an attorney when they first consider becoming an informant.[65] Some see an informant agreement as "an extreme form of plea bargain[ing]" and, even though pleas in court are a product of counsel, none is provided to informants making similar decisions on the street.[66] Lack of counsel particularly affects those with substance abuse or mental health problems.[67]

A. *The Coerced Informant and the Constitution*

The process of flipping an alleged offender into an informant circumvents the protections of the Bill of Rights because it lacks uniform rules and is unchecked by outside scrutiny.[68] Unlike someone who engages in a plea agreement, a coerced informant is generally not given the benefits of judicial review, formal documentation, or assistance of counsel.[69] While the lack of constraints may be preferable for law en-

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[61] *See* Natapoff, *supra* note 18, at 664.

[62] *See id.*; Portman, *supra* note 1.

[63] Natapoff, *supra* note 18, at 664 ("[W]hile informants may well be inherently unreliable, that is not their worst feature. Rather, their use is problematic because it undermines the uniform application of criminal liability rules, the accountability of law enforcement, and, for some neighborhoods, the well-being of a community.").

[64] *See id.* at 659; Rich, *supra* note 5, at 684–87. Professor Alexandra Natapoff suggests a series of public accountability reforms for the informant institution generally because of the "informal, ad hoc way it eliminates or reduces criminal liability off the public record." Natapoff, *supra* note 18, at 658, 696–98.

[65] *See* Natapoff, *supra* note 18, at 667; Rich, *supra* note 5, at 694, 701.

[66] Natapoff, *supra* note 18, at 664.

[67] *See* S.B. 604, 2009 Fla. S. § 4(a)–(b), Reg. Sess. (Fla. 2009); Natapoff, *supra* note 18, at 664–66; Natapoff, *supra* note 3.

[68] *See* Rich, *supra* note 5, at 685–86. For example, Professor Rich theorizes that coerced informants are subject to involuntary servitude in violation of the Thirteenth Amendment. *Id.*

[69] *See id.* at 695; *see also* Natapoff, *supra* note 18, at 667–68 (contrasting cooperation deals with plea bargains). Professor Natapoff explains:

forcement as a way to remain unrestrained, their absence places the rights of informants at risk.[70] Officials use this unrestrained expediency to keep potential informants isolated and off-balance.[71] By its nature, expediency raises questions of due process and fairness to the informant.[72]

At times, the criminal informant institution functions as an informal and covert adjudication of criminal liability.[73] Nevertheless, informants who later claim that the process of being flipped violated their Sixth Amendment right to counsel are unlikely to have success.[74] The Supreme Court held that this right does not attach until the government has initiated adversarial proceedings against a defendant.[75] Yet, without the benefit of counsel, an alleged offender may not be able to understand the strength or weakness of the evidence.[76] A fearful sus-

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> [T]he suspect approached by police and invited to snitch has no right to counsel, even though the decision to inform may have a greater and more lasting impact on his life than the decision whether or not to plead guilty. By contrast, the defendant who decides to exercise his constitutional right to proceed to enter a guilty plea without counsel will receive a lecture from the judge on the heavy risks of doing so and a probing inquiry as to whether he understands those risks.

Natapoff, *supra* note 18, at 667 (citations omitted).

[70] *See Joint Hearing*, *supra* note 17, at 87 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); Rich, *supra* note 5, at 685–86.

[71] *See* Rich, *supra* note 5, at 696 ("Shortly after an arrest, police maximize the arrestee's fear of a long sentence by emphasizing the maximum penalties for the crimes with which she might be charged and suggesting that the only easy way out is for her to cooperate.").

[72] *See* Natapoff, *supra* note 18, at 663–64; Rich, *supra* note 5, at 685–86, 695–96. The combination of fear tactics and the secrecy inherent in the informant recruitment process almost encourages ethically questionable behavior on the part of police. Rich, *supra* note 5, at 696 (citations omitted) ("[B]ecause many criminal defense attorneys will discourage their clients from becoming informants, police make arrests at night, when defense counsel are least likely to be available, or discourage arrestees from contacting their attorneys.").

[73] *See* Natapoff, *supra* note 18, at 658. For example, police in the Hoffman case did not take her to jail or inform the local prosecutor of the evidence found in her apartment. Pecquet, *supra* note 3. A spokesman for the Tallahassee Police Department said "the practice is not uncommon." *Id.* In the weeks after Hoffman's death, a lobbyist for the ACLU in Tallahassee, Larry Helm Spalding, said, "'[w]hen police make the decision (whether to charge someone with a crime), they're making the prosecution decision for the prosecutor . . . . You have a system here that while it is very effective, it is also very subject to abuse.'" *Id.*

[74] *See* United States v. Gouveia, 467 U.S. 180, 187 (1984) (holding that the right to counsel does not attach until after indictment).

[75] *See id.*

[76] *See* Rich, *supra* note 5, at 682–83 (citations omitted) (noting that Hoffman "lacked a meaningful understanding of the charges she could face as a result of the drugs found in her apartment, or what she had to do in order to receive leniency"). For instance, an offi-

pect unaware of the law may agree to cooperate without knowing that the officer has no valid case.[77] Indeed, even in cases with insufficient evidence against a suspect, officers may nevertheless claim that charges are going to be filed.[78]

When informants are wronged by police, they have two potential remedies: claiming a substantive due process violation or suing in tort.[79] Substantive due process claims may be possible under the "state-created danger" doctrine.[80] Such claims, however, face several hurdles.[81] An informant must demonstrate that the state was obligated to provide protection and that its failure to do so shocked the conscience.[82] Yet, even if an informant is able to meet this burden, such claims often fail in light of the qualified immunity of law enforcement officials.[83]

A wronged informants may also "assert state-law tort claims against the individual officers" or agencies for which they worked.[84] An infor-

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cer claiming to have incriminating evidence against a suspect may have obtained it illegally. *See* Katz v. United States, 389 U.S. 347, 358–59 (1967) (defining the expectation of privacy for purposes of the Fourth Amendment and refusing to adopt the government's position on the legality of its actions).

[77] *See* Rich, *supra* note 5, at 682–83. For some informants, knowledge of police tactics comes after repeated arrests. *See* Richard Rosenfeld et al., *Snitching and the Code of the Street*, 43 Brit. J. Criminology 291, 300 (2003). One interviewee described the wisdom he had accrued after several encounters with the police:

> 'We'll let you go by eight tonight' [if you tell us what we want to know, said the police], and I'm like, the warrant got to get issued . . . if the warrant don't get issued, you gonna get out anyway by 8 o'clock tonight. They don't think I know that, but I've been locked up so much I know all that shit . . . got out that night . . . .

Id. Another interviewee claimed to know that the police were not in a position to offer deals at all. *Id.*

[78] *See* Rich, *supra* note 5, at 696. Due process concerns frequently arise when law enforcement uses informants, but the concern is over the rights of the defendant and not the informant. *See* Natapoff, *supra* note 18, at 663–64.

[79] *See* Rich, *supra* note 5, at 701–02.

[80] *See id.* at 702–03; *see also* Butera v. Dist. of Columbia, 235 F.3d 637, 647, 654 (D.C. Cir. 2001) (noting that police may violate substantive due process by failing to protect a police informant).

[81] *See* Rich, *supra* note 5, at 702–03.

[82] *See Butera*, 235 F.3d at 650–51, 654; Rich, *supra* note 5, at 702–03. Courts have held that the state-created danger doctrine is most applicable in the context of custody, where the state has a greater responsibility for the individual. *See Butera*, 235 F.3d at 647–48. Acknowledging that the concept of custody is itself difficult to clarify, *Butera v. District of Columbia* held that a wronged informant may have a claim over a third party's violent act if the police "affirmatively act to increase or create the danger that ultimately results in the individual's harm." *Id.* at 651.

[83] *See Butera*, 235 F.3d at 652, 654 (dismissing claims on qualified immunity grounds).

[84] Rich, *supra* note 5, at 701.

mant may also bring a claim under contract law because state-informant agreements are treated as contracts.[85] But, due to the differing social positions of the parties and for reasons of public policy, courts in these disputes tend to make credibility determinations in favor of law enforcement.[86]

The dearth of effective legal remedies for a wronged or harmed informant is not common knowledge among potential informants and shows that legal counsel is necessary before cooperating.[87] The moment of initial confrontation with law enforcement is the "least transparent and therefore most problematic" for the informant.[88] At this point, the pressure to cooperate is greatest, and potential informants are most at risk of making a damaging decision.[89]

B. *The Absence of Counsel*

"Lawyers play a particularly important role" for defendants contemplating cooperation after being charged "because so much turns on predictions about the relative benefits of the uncertain path of cooperation, compared to taking an ordinary plea or going to trial."[90] The same array of problems faces an informant denied the presence of counsel at the key moment of negotiation.[91] Secrecy, a key ingredient of the informant relationship, is a strong argument for requiring participation of counsel because many informants likely base their decisions on fear and powerlessness.[92] Therefore, suspects like Rachel Hoffman who contemplate becoming confidential informants would benefit from the expertise of counsel.[93]

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[85] *Id.* at 700.

[86] *Id.* at 701.

[87] *See* Natapoff, *supra* note 18, at 659; Rich, *supra* note 5, at 694.

[88] Natapoff, *supra* note 18, at 659.

[89] *See id.*; Rich, *supra* note 5, at 694 ("A civilian's uncertainty about her future is highest in the hours after being arrested, thus making her most likely to agree to cooperate at that time.").

[90] Ian Weinstein, *Regulating the Market for Snitches*, 47 Buff. L. Rev. 563, 593 (1999); *see also* Daniel C. Richman, *Cooperating Clients*, 56 Ohio St. L.J. 69, 89 (1995) ("[E]ven for the most knowledgeable defendant, the decision to cooperate will be a leap into the unknown. In this situation, the advice of a defense attorney will be critical, perhaps dispositive.").

[91] *See* Natapoff, *supra* note 18, at 667; Rich, *supra* note 5, at 695–96; *see also* Ellen Yaroshefsky, *Cooperation with Federal Prosecutors: Experiences of Truth Telling and Embellishment*, 68 Fordham L. Rev. 917, 936 (1999) (quoting a prosecutor who referred to the time cooperators spend alone with agents as a "black hole").

[92] *See* Natapoff, *supra* note 18, at 658–59; Rich, *supra* note 5, at 694.

[93] *See* Natapoff, *supra* note 18, at 659; Rich, *supra* note 5, at 694; Richman, *supra* note 90, at 89; Weinstein, *supra* note 90, at 593. As Professor Graham Hughes explains, however, cooperation deals can be seen as "exotic plants that can survive only in an environment

For some, the informant agreement is "an extreme form of plea bargain[ing]."[94] Generally, the extensive use of plea bargaining in the U.S. criminal justice system is justified by the numerous safeguards in place.[95] These safeguards include "specificity, completeness, finality, enforceability, judicial review and publicity, and . . . counsel."[96] Further, if a defendant pleads guilty, the court confirms that she is knowingly and voluntarily waiving her right to trial.[97] Such safeguards, however, are absent in the formation of informant agreements.[98]

Professor Richman characterizes plea bargains as relatively certain, while he calls the cooperation process "a leap into uncertainty."[99] In the context of a plea bargain, the suspect enjoys the benefits of legal counsel's experience.[100] Counsel generally knows the "market" and "price" for a given offense, and serves as an "educated purchasing agent" who negotiates for the government's best offer.[101] Because of these safeguards, the defendant has "no particular need to trust in the government's good faith."[102]

In contrast, informant agreements are frequently open-ended and unspecific, and their details rarely committed to record.[103] In the absence of a formal written contract, "[c]ourts treat an agreement between an informant and the state like any other contract . . . ."[104] Thus, informants who draft agreements without the assistance of counsel "will be at considerable risk."[105] Often, the size of an informant's reward is contingent on the quality of the work.[106] Moreover, the vital question of whether an offered deal of leniency or immunity will travel between jurisdictions makes the assistance of counsel "virtually indispensible."[107]

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from which some of the familiar features of the criminal procedure landscape have been expunged." Hughes, *supra* note 32, at 3.

[94] Natapoff, *supra* note 18, at 664.

[95] *Id.* at 665.

[96] *Id.*

[97] *Id.* at 666–67. This will often include questions about "whether the defendant has been threatened or coerced in any way." *Id.* at 667.

[98] *See id.* at 667.

[99] Richman, *supra* note 90, at 91, 94.

[100] *See id.* at 92–93.

[101] *Id.*

[102] *Id.* at 92.

[103] *See* Natapoff, *supra* note 18, at 665–66.

[104] Rich, *supra* note 5, at 700.

[105] *See* Hughes, *supra* note 32, at 41.

[106] *See* Natapoff, *supra* note 18, at 666.

[107] Hughes, *supra* note 32, at 42 (noting the value of an attorney who can explain the risks of cooperation to a potential cooperator).

Both plea bargains and informant agreements are coercive, and the procedural safeguards in place for plea bargains—including the availability of counsel, exist in part to counteract that aspect.[108] This concern with coercion underpinned the Supreme Court's criminal procedure cases during the Warren era.[109] Yet, the coercive aspects of informant agreements remain largely overlooked.[110]

One potential explanation for this lack of concern is the unregulated nature of the prosecution of "common and diverse" drug crimes, which are prosecuted at the state, local, and federal levels.[111] As a result, informant handling practices for drug crime prevention are non-uniform and crafted on a case-by-case basis.[112] In contrast, U.S. attorneys in federal criminal practice inform white collar suspects that they may consult an attorney while considering a cooperation agreement.[113] The lengthy war on drugs also contributes to the lack of regulation of drug crime informants because, as mandatory sentencing laws tighten, police pressure intensifies and more people become informants.[114]

Without procedural safeguards and the assistance of counsel, informants like Rachel Hoffman are forced to face these obstacles on their own.[115] Uninformed about the choices before her, Hoffman agreed to cooperate, likely based upon a fear of incarceration.[116] As a

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[108] *See* Natapoff, *supra* note 18, at 664–65; Rich, *supra* note 5, at 691–92.

[109] *See, e.g.*, Miranda v. Arizona, 384 U.S. 436, 470 (1966) (establishing minimum standards by which police officers must inform suspects of their constitutional rights). Chief Justice Warren wrote in *Miranda v. Arizona*, "[t]he presence of counsel at the interrogation may serve several significant subsidiary functions as well . . . . With a lawyer present the likelihood that the police will practice coercion is reduced, and if coercion is nevertheless exercised the lawyer can testify to it in court." *Id.* Even as the Supreme Court later narrowed the holding of *Miranda*, the notion of coercion has remained central. *See* Colorado v. Connelly, 479 U.S. 157, 159, 170 (1986) (holding that coercive police conduct precludes a finding of voluntariness in the context of confessions).

[110] *See* Natapoff, *supra* note 18, at 664–65; *see also* Salinero, *supra* note 6 (explaining how lawmakers removed provisions of Rachel's Law—in place to safeguard against the coercion of informants—at the behest of law enforcement).

[111] *See* NATAPOFF, *supra* note 7, at 26.

[112] *See id.*

[113] *See id.* at 183. Federal suspects receive attorneys due, in part, to the organization and uniformity of the Federal Bureau of Investigation and Department of Justice guidelines governing federal prosecutors. *See* ASHCROFT, *supra* note 7, at 17, 19; GONZALES, *supra* note 7, at 27–28; NATAPOFF, *supra* note 7, at 26, 141–45 (contrasting unregulated state practices with the DOJ's extensive guidelines).

[114] *See* NATAPOFF, *supra* note 7, at 128; Natapoff, *supra* note 18, at 696 ("The war on drugs and concomitant legislative enactments of the 1980s raised the profile of informants in the criminal justice system without increasing protections against their overuse.").

[115] *See* Natapoff, *supra* note 18, at 665; Pecquet, *supra* note 3.

[116] *See* Rich, *supra* note 5, at 682–83; Natapoff, *supra* note 3.

result, Rachel's parents pushed for a law requiring police, among other things, to advise a potential informant of his or her right to counsel prior to making a cooperation agreement.[117]

C. *The Use of Informants Enrolled in Drug Rehabilitation Programs*

The prevalence of informants in drug cases also has societal consequences.[118] In particular, the practice where "people routinely negotiate their fates directly with police on street corners or in local jails" affects those with substance abuse or mental health problems.[119] These informants "are more subject to coercion, less likely to be able to make good decisions on their own behalf, and as a result more likely to enter into bad deals or to get hurt as a result of their cooperation."[120] Lack of counsel further worsens the situation for an addicted or mentally disabled informant.[121] These informants "can be the most defenseless players in the criminal justice drama" because of the unequal bargaining positions of the two sides.[122] As a result, the information or assistance these informants provide may be especially unreliable.[123]

Removing drug addicts from substance abuse rehabilitation programs and turning them into informants is not worth the resultant reduction in crime.[124] At the same time, drug informants are, by some accounts, the backbone of the system.[125] These informants serve a particular utility because they have the most knowledge about, and the

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[117] *See* Salinero, *supra* note 6.

[118] *See* Natapoff, *supra* note 18, at 685. Professor Natapoff stresses that the informant institution has a particularly negative effect on poor black communities. *See id.* at 684–87 ("With half the male population under supervision at any given time, and with more than half of this group connected with the illegal drug trade, it is fair to estimate that more than one quarter of the black men in the community are under some pressure to snitch."). The use of drug informants also leads to official toleration of large amounts of crime. *See id.* at 647–48 (noting that "not only do informants' past crimes go unpunished, but authorities routinely tolerate the commission of new crimes . . . as part of the cost of maintaining an active informant"). This practice does little to improve the conditions in high-crime communities. *See id.* at 687.

[119] Natapoff, *supra* note 3.

[120] NATAPOFF, *supra* note 7, at 184–85.

[121] *See id.* at 39–41.

[122] *Id.* at 40.

[123] *Id.* at 184–85.

[124] *See id.* (proposing a limit on using drug addicts as informants). In some cases, police give drugs directly to informants or allow them to "skim" drugs from their deals. *Id.* at 54, 184–85.

[125] *See Joint Hearing*, *supra* note 17, at 77 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); BLOOM, *supra* note 30, at 7; Rich, *supra* note 5, at 688–89.

most access to, drug communities.[126] Using informants solely for this reason is difficult to justify in high-crime communities because the "net crime-fighting benefit" wanes where informants "facilitate" and "generate" more crime than they prevent.[127]

III. Rachel's Law—Before and After

In March of 2008, police received a tip from a confidential informant regarding Rachel Hoffman's involvement in drug activity.[128] Police searched her trash and found a ledger with names and amounts of money.[129] In April, police searched Hoffman's apartment.[130] They found 151.7 grams of marijuana, six ecstasy pills, and other drug paraphernalia.[131] Police did not take Hoffman to jail or notify the prosecutor's office about the drugs.[132] Instead, Hoffman—in a drug treatment program at the time—agreed to assist the police.[133]

On May seventh, the police gave Hoffman thirteen thousand dollars and sent her on a controlled drug buy to purchase both drugs and weapons.[134] She approached two suspected criminals, who then unexpectedly changed the meeting plan and directed her to a remote location not under police surveillance.[135] At this point, the police lost contact with Hoffman.[136] They found her body two days later.[137]

The aftermath of Hoffman's murder saw meaningful discussions on reforming informant regulations.[138] Newspapers reported that Governor Charlie Crist said he would "possibly support a proposed legislative fix."[139] State senators also expressed their condolences and outrage

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[126] *See Joint Hearing*, *supra* note 17, at 77 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); Bloom, *supra* note 30, at 7; Rich, *supra* note 5, at 688–89.

[127] *See* Natapoff, *supra* note 18, at 688–89.

[128] *See* Pecquet, *supra*, note 3.

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *See* Rich, *supra* note 5, at 682; Leary, *supra* note 3; Pecquet, *supra* note 3.

[134] *See* Salinero, *supra* note 6; Leary, *supra* note 3.

[135] *In re* Homicide of Rachel Morningstar Hoffman on May 7, 2008 During a Controlled Drug Operation Being Conducted by the Tallahassee Police Department, Grand Jury Presentment, 2d Judicial Cir., Leon County, Fla. (Aug. 1, 2008) [hereinafter Presentment], *available at* http://www.tallahassee.com/assets/pdf/CD11437281.pdf.

[136] *Id.* The police department's audio surveillance equipment failed, and the airplane supplied by DEA was unable to monitor the situation from above because of tree-cover. *Id.*

[137] Salinero, *supra* note 6.

[138] *See* Portman, *supra* note 1.

[139] *Id.*

at the events surrounding Hoffman's death.[140] The Leon County grand jury, which issued indictments charging the two suspects with first degree murder, was also extremely critical of the Tallahassee Police Department.[141] "Letting a young, immature woman get into a car by herself with $13,000.00, to go off and meet two convicted felons that they knew were bringing at least one firearm with them, was an unconscionable decision that cost Ms. Hoffman her life."[142]

In 2009, the Florida State Senate introduced "Rachel's Law."[143] Over the course of its evolution, the bill changed in several key ways.[144] The legal counsel provision of the originally filed bill read as follows:

> Each person who is solicited to act as a confidential informant must be given the opportunity to consult with legal counsel before entering into a substantial assistance agreement. If the person is not represented by legal counsel at the time of the solicitation, the law enforcement agency must advise the person of his or her right to consult with legal counsel before entering into the substantial assistance agreement.[145]

The legal counsel provision in the final version of the bill does not require law enforcement officials to advise potential informants of their right to counsel.[146] It reads as follows:

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[140] *See id.*

[141] *See* Presentment, *supra* note 135.

[142] *Id.* ("Confidential Informants should not be used in transactions of this magnitude without a long term working relationship in which they have demonstrated trust, credibility and an understanding of what is required to complete such work in a safe manner.").

[143] *See* Salinero, *supra* note 6.

[144] *See* FLA. STAT. § 914.28 (2010); S.B. 604, 2009 Fla. S. § (4)–(6), Reg. Sess. (Fla. 2009); *see also* Salinero, *supra* note 6 (describing the provisions that were removed as the bill passed through the Senate Committee on Criminal Justice).

[145] *See* S.B. 604, 2009 Fla. S. § 5(b). Another provision absent from the final version concerned substantial assistance agreements, and read as follows:

> Before a proposed confidential informant provides any assistance to a law enforcement agency, all plea negotiations and consideration offered to the proposed confidential informant must be reduced to a written substantial assistance agreement that is executed by the law enforcement agency and the confidential informant and approved by the state attorney prosecuting the case. The substantial assistance agreement must include a description of the work that the confidential informant will be doing, the length of service, and the consideration that the confidential informant will be receiving.

Id.

[146] *See* FLA. STAT. § 914.28(3)(c).

> A law enforcement agency that uses confidential informants shall . . . [p]rovide a person who is requested to serve as a confidential informant with an opportunity to consult with legal counsel *upon request* before the person agrees to perform any activities as a confidential informant. However, this section does not create a right to publicly funded legal counsel.[147]

The original version of the bill included a provision concerning the use of informants in substance abuse programs.[148] It specified that a confidential informant participating in a court-ordered substance abuse treatment program could not be an informant without the permission of a supervising circuit judge.[149] It also required potential informants participating in voluntary substance abuse treatment programs to receive express approval of a state attorney before accepting.[150] The state attorney would have had to consult with treatment providers to discuss whether working as an informant would jeopardize an individual's success in the program.[151]

The final version of the bill, however, allows law enforcement agencies to "establish policies and procedures to assess the suitability of using a person as a confidential informant by considering" eight factors.[152] One of these factors is "[w]hether the person is a substance abuser or has a history of substance abuse or is in a court-supervised drug treatment program . . . ."[153] This provision lacks the original bill's express concern with the success of the informant's treatment.[154]

Another concern initially addressed by Rachel's Law is a police department's ability to send a nonviolent informant into a drug deal

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[147] *Id.* (emphasis added).

[148] *See* S.B. 604, 2009 Fla. S. § 4(a)–(b).

[149] *Id.*

[150] *Id.*

[151] *Id.*

[152] FLA. STAT. § 914.28(5)(a)–(h) (2010).

[153] *Id.* § (5)(d).

[154] *Compare id., with* S.B. 604, 2009 Fla. S. § 4(a)–(b), Reg. Sess. (Fla. 2009). The ultimate motivation for this provision may be the success of the investigation and not the well-being of the informant because it is placed among other provisions expressly concerned with an informant's adverse effects on the investigation. *See* FLA. STAT. § 914.28(5)(a)–(h). Another provision requires assessment of "[t]he risk the person poses to adversely affect a present or potential investigation or prosecution . . . ." *Id.* § (5)(b). The law is also concerned with "[w]hether the person has shown any indication of emotional instability, unreliability, or of furnishing false information." *Id.* § (5)(f).

with violent felons.[155] The original version required law enforcement agencies to consider "[t]he propensity of the target offender for violence."[156] This provision, however, fails to appear in any form in the final version of the bill.[157]

IV. Restoring the Right to Counsel and Bolstering the Efficiency of Law Enforcement

Fully restoring Rachel's Law to its original form is not a realistic ambition, but the goals of the original bill can still be realized.[158] Under pressure from Florida law enforcement, Senator Fasano removed the contested provisions from the original Rachel's Law.[159] Fasano heeded to law enforcement officials' explanation that restrictions on informants obstruct crime fighting.[160] Although attempts to impose wide-ranging restrictions on the use of informants will likely see resistance, restoring the attorney provision addresses the system's many inherent problems and helps achieve its original goals.[161]

A. *An Attorney Will Serve as a Catch-All*

Access to counsel for informants would serve as a potential safeguard against the coercive nature of the informant relationship and help protect their constitutional rights.[162] This benefit is already seen with defendants who negotiate cooperation agreements with prosecu-

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[155] S.B. 604, 2009 Fla. S. § 6(c); *see* Salinero, *supra* note 6. Hoffman's father said, "'[h]ow do you send a kid in to do a deal like this? . . . . Rachel was not an undercover police officer. This is not a civilian job.'" Portman, *supra* note 1.

[156] S.B. 604, 2009 Fla. S. § (6)(b)(7).

[157] *See* Fla. Stat. § 914.28.

[158] *See Joint Hearing*, *supra* note 17, at 76–78 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); Hughes, *supra* note 37, at 41–43 (describing the importance of counsel at the early stages of the informant process).

[159] *See* Salinero, *supra* note 6.

[160] *See Joint Hearing*, *supra* note 17, at 76–78 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); Salinero, *supra* note 6.

[161] *See Joint Hearing*, *supra* note 17, at 76–78 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); Hughes, *supra* note 32, at 41–43 (noting the various ways an informant can benefit from counsel and discussing the importance of counsel in the cooperation process in the context of defendants already charged with a crime and represented by counsel); Salinero, *supra* note 6; *see also* Natapoff, *supra* note 7, at 40 (discussing the unequal bargaining power between informants and law enforcement); Richman, *supra* note 90, at 89; Rosenfeld et al., *supra* note 77, at 291 (stating that "street criminals . . . have great difficulty staking a legitimate claim to victim-status"); Weinstein, *supra* note 90, at 593.

[162] *See* Natapoff, *supra* note 7, at 183; Rich, *supra* note 5, at 690–92.

tors.[163] An attorney familiar with the workings of the criminal justice system on a local level serves as a catch-all that counsels the individual and monitors law enforcement.[164] Attorneys may help informants assess situations, communicate with courts, and understand their participation in drug rehabilitation programs.[165]

Furthermore, an attorney would ensure that nonviolent offenders are not employed in the targeting of violent felons.[166] The attorney's knowledge would help an informant realize a particular assignment's scope and suitability.[167] Therefore, an attorney's presence would honor much of the original wording of Rachel's Law, which considered an informant's substance abuse rehabilitation efforts, criminal background, and naivety.[168]

B. *How Restoring the Right to Counsel Serves the Interests of Law Enforcement*

If informants had access to counsel, the attorney could ensure adherence to Rachel's Law, protect the informant, and provide law enforcement with informants capable of the task set forth.[169] This, in turn, helps law enforcement by maintaining informants and minimizing their losses.[170]

1. Shifting the Perspective of Law Enforcement Officials

An informant's attorney would ensure adherence to Rachel's Law, protect the informant, and serve law enforcement's interests by providing only capable informants.[171] The government's one-sided cost-benefit analysis places fighting crime above the interests of marginal-

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[163] *See* Hughes, *supra* note 32, at 41–43; Richman, *supra* note 90, at 89; Weinstein, *supra* note 90, at 593.

[164] *See* Richman, *supra* note 90, at 89 ("In this situation, the advice of a defense attorney will be critical, perhaps dispositive.").

[165] *See* NATAPOFF, *supra* note 7, at 184–85 (noting the special vulnerability of drug users); Richman, *supra* note 90, at 89–91.

[166] *See* Natapoff, *supra* note 18, at 667–68; Richman, *supra* note 90, at 91.

[167] *See* Richman, *supra* note 90, at 91 (describing the attorney's role "as a monitor, even a guarantor, of the government's performance").

[168] *See* S.B. 604, 2009 Fla. S. § (4)–(6), Reg. Sess. (Fla. 2009); Natapoff, *supra* note 18, at 667–68.

[169] *See* FLA. STAT. § 914.28(5)(a)–(h) (2010) (listing provisions which protect both informants and investigations); Richman, *supra* note 90, at 91 (discussing counsel's ability to "monitor . . . the government's performance" in the context of defendants already charged with a crime and represented by counsel).

[170] *See* Natapoff, *supra* note 18, at 666; Rich, *supra* note 5, at 698–99.

[171] *See* FLA. STAT. § 914.28(5)(a)–(h); Richman, *supra* note 90, at 91.

ized informants subject to criminal charges if they do not cooperate.[172] This analysis, however, does not acknowledge that there are various classes and abilities of informants.[173] The classes include: coerced informants—like the inexperienced Rachel Hoffman; paid informants; those motivated by duty, revenge, jealousy, or business interests; and those similar to the coerced informant class who make a plea-style agreement with prosecutors in exchange for leniency in sentencing.[174] Therefore, consideration of an informant's class and the consequences of their abilities—or lack thereof—would keep informants safe and further the fight against crime.[175] Rachel's Law in its original form aimed to remedy these problems.[176]

The informant institution has utility and value but law enforcement officials fear that more rights for informants would impede effec-

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[172] *See Joint Hearing*, *supra* note 17, at 83–84, 89 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition). Without informants, Brooks says that "law enforcement would have very few significant successes, organized criminals would operate with impunity, and the safety of our Nation would be in jeopardy." *Id.* at 78. He describes informants as a class most frequently motivated by greed, and says that "most of these informants would not qualify as productive members of society and you probably would not want them as your next-door-neighbor." *Id.* at 83–84.

[173] *See* Rich, *supra* note 5, at 690 (explaining that "[i]nformants assist the police for a variety of reasons"). Professor Rich further defines the classes: the coerced informant is promised leniency in exchange for cooperation, the paid informant is one on whom the police have no evidence of other crimes, and motivated informants may have "feelings of civic duty . . . a desire for revenge, jealousy, or the hope of using the police to eliminate criminal competitors." *Id.*

[174] *See* Natapoff, *supra* note 18, at 658–59; Rich, *supra* note 5, at 690. Defendants who enter into a plea agreement may sign what is known as a "5K." *See* Natapoff, *supra* note 18, at 658 (stating that a defendant may receive a downward departure for providing substantial assistance to a government investigation). The decision whether to provide a departure is still left to the discretion of the prosecutor and the court. *Id.* Cooperation agreements involving 5Ks are considered to be relatively transparent. *Id.* On the other hand, "the least transparent and therefore most problematic informant arrangement occurs where the informant is 'flipped' by a law enforcement agent at the moment of initial confrontation and potential arrest." *Id.* at 659. This arrangement depends on the "idiosyncrasies of the particular officer" and is marked by its secrecy. *Id.*

[175] *See* Natapoff, *supra* note 18, at 658–59 (discussing the problems inherent in secrecy); Rich, *supra* note 5, at 683 (discussing Hoffman's case and the scrutiny it brought on the actions of the Tallahassee Police Department). Hoffman, in preparation for her fatal controlled buy, received "no training in conducting undercover police operations . . . ." Rich, *supra* note 5, at 683. Apart from the tragedy of her death, the case brought harsh criticism to the Tallahassee police. *See* Presentment, *supra* note 135 ("[T]hrough poor planning and supervision, and a series of mistakes throughout the Transaction, T.P.D. handed Ms. Hoffman to Bradshaw and Green to rob and kill her as they saw fit.").

[176] *See* S.B. 604, 2009 Fla. S. § (4)–(6), Reg. Sess. (Fla. 2009); Salinero, *supra* note 6 (describing elements "stripped" from the original bill).

tive law enforcement.[177] Prior the contested provisions' removal from Rachel's Law, a Florida Department of Law Enforcement representative told the State Senate Committee on Criminal Justice that encouraging informants to consult with counsel would bring drug investigations to a "'screeching halt.'"[178] Testifying before Congress in 2007, Ronald E. Brooks, President of the National Narcotic Officer's Associations' Coalition, said, "[a]ltering law enforcement's ability to use confidential informants would tie the strong hand of state and local law enforcement behind its back."[179] Informant rights, however, could save lives and stem inefficient and counterproductive crime fighting measures.[180]

Resistance to informant system reform may be due to law enforcement's general "aversion and nauseous disdain" of informants, but respecting their humanity would further improve the system.[181] Even the compromised form of Rachel's Law is focused both on how informants serve investigations and how law enforcement serves informants.[182] Police officers may, in their haste, sometimes utilize informants who are unsuited to particular assignments.[183] In these situations, drug stings

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[177] *See Joint Hearing*, *supra* note 17, at 69 (statement of Alexandra Natapoff, Professor of Law, Loyola Law School) ("The practice is, in many ways, a necessary evil. Without it, some kinds of cases could never be prosecuted or solved."); Natapoff, *supra* note 3 (citing Rachel's Law as the first bill a state legislature has passed to address the issue of regulating criminal informants); Salinero, *supra* note 6. The guidelines enacted by New Jersey are concerned solely with the use of juveniles as confidential informants. *See* THE NEW JERSEY SCHOOL SEARCH POLICY MANUAL, *supra* note 7, at A10-1–A10-4. Professor Natapoff proposes "sunshine reforms" for the informant institution in order to improve overall public accountability, but she makes clear that her proposed measures are not intended to erect "substantive limits on informant use." Natapoff, *supra* note 18, at 697. The only limits she proposes are to "informant rewards rather than informant activities." *Id.*

[178] Salinero, *supra* note 6 (quoting Michael Ramage, General Counsel for the Florida Department of Law Enforcement).

[179] *Joint Hearing*, *supra* note 17, at 87 (statement of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition).

[180] *See* Presentment, *supra* note 135 (calling the actions of the Tallahassee police "unconscionable"); Natapoff, *supra* note 18, at 696 (calling for reform of the informant institution); Pecquet, *supra* note 3. Tallahassee Police Chief Dennis Jones called Hoffman's murder "such an unusual occurrence," and said that extensive review was necessary because of "the public attention that's been called to it." Pecquet, *supra* note 3.

[181] *See* Richard C. Donnelly, *Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs*, 60 YALE L.J. 1091, 1093 (1951); Natapoff, *supra* note 18, at 658–59; *see also* BLOOM, *supra* note 30, at 3 (citations omitted) (noting that Judas Iscariot "has become 'synonymous with betrayal' and likened to Benedict Arnold"). While negative connotations may attach to informants looking to eliminate competition, they may fit for coerced informants like Rachel Hoffman. *See* Rich, *supra* note 5, at 685, 691–92.

[182] *See* FLA. STAT. § 914.28 § 1(5)(a)–(h) (2010).

[183] *See* Rich, *supra* note 5, at 683; Salinero, *supra* note 6 (quoting the general counsel for the Florida Department of Law Enforcement, who said "'informants must often be recruited for an undercover operation quickly'").

may go awry, leaving law enforcement's interest in efficient crime fighting unsatisfied.[184] If law enforcement officers adhere to Rachel's Law, however, both parties benefit.[185] For instance, the provision requiring consideration of an informant's emotional stability protects both the informant's well-being and law enforcement's interest in successful operations.[186] Likewise, the provision requiring consideration of age and maturity protects the safety of ill-prepared informants and the integrity of criminal investigations.[187]

2. Minimizing the Likelihood of "Burning" Informants

Supplying informants with counsel would help them to understand their abilities and expectations, thereby limiting the "burning" of snitches and improving relations between police and informants.[188] Law enforcement departments try to avoid burning snitches because those that send unsuited informants into dangerous situations or reveal identities may have difficulty recruiting informants in the future.[189] This type of integrity maintenance is present in most cooperation relationships.[190] Professor Graham Hughes wrote about informants who testify at trial:

> The cooperating witness is not a strong candidate for sympathy . . . . But, whatever his moral worth, his fate under and after the cooperation agreement deserves attention because it is an important index of the fairness and integrity of the prosecutorial system. A bargain is, after all, a bargain. Double dealing by the State will create doubts about the rectitude of the criminal justice process.[191]

The events surrounding Rachel Hoffman's death, sparked community outrage.[192] A lasting repercussion of her death, however, is the likelihood that future offenders recruited by the Tallahassee Police Depart-

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[184] *See* Rich, *supra* note 5, at 683; Pecquet, *supra* note 3; Salinero, *supra* note 6.

[185] *See* FLA. STAT. § 914.28.

[186] *See id.* § 914.28(5)(f); Presentment, *supra* note 135 ("[Hoffman's] inexperience, coupled with obvious immaturity and a carefree attitude, made it highly unlikely that Ms. Hoffman could successfully complete a transaction of this magnitude.").

[187] *See* FLA. STAT. § 914.28(5)(a); Presentment, *supra* note 135.

[188] *See* Natapoff, *supra* note 18, at 666; Rich, *supra* note 5, at 698–99.

[189] *See* Natapoff, *supra* note 18, at 666; Rich, *supra* note 5, at 698–99.

[190] *See* Hughes, *supra* note 32, at 40.

[191] *Id.*

[192] *See* Pecquet, *supra* note3; Natapoff, *supra* note 3.

ment will be more hesitant to cooperate.[193] These individuals may find the criminal justice system less risky than being mishandled as an informant.[194]

While Hoffman's situation illuminated inequities in informant recruitment, the case of Chad MacDonald highlights problems with police practices during and after an informant's use.[195] Police released MacDonald as an informant after a traffic stop turned into charges for methamphetamine possession.[196] After police released him from his duties, and without the protection and secrecy provided by his handlers, word spread that he snitched and he was then murdered.[197] To make matters worse, MacDonald's assailants also raped and murdered his sixteen-year-old girlfriend.[198] Retaliatory attacks like these discourage potential informants from cooperating by forcing a choice between becoming lifelong informants, forever under police protection, or death.[199]

The fear of retaliation affects the lives of many police informants.[200] For example, Sammy "The Bull" Gravano—a mafia hit man-turned informant—entered the federal witness protection program, likely to evade retaliation.[201] Having an identity revealed "seems more worrisome to street criminals than jail time, and for good reason."[202] The dangers of exposure and retaliation may worsen after the informant relationship terminates because police sometimes punish informants who stop cooperation or run out of information.[203] Police may punish informants by revealing identities to suspects or picking up informants and driving them through their own neighborhood, making

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[193] *See* Natapoff, *supra* note 18, at 666 (noting that agencies which mishandle informants may have difficulty recruiting new ones); Rich, *supra* note 5, at 698–99.

[194] *See* Rich, *supra* note 5, at 698–99; Rosenfeld et al., *supra* note 77, at 304.

[195] *See* NATAPOFF, *supra* note 7, at 41; Santiago, *supra* note 22, at 778; Martelle & Hayes, *supra* note 21.

[196] Martelle & Hayes, *supra* note 21.

[197] *See id.*

[198] *See id.*

[199] *See* Rosenfeld et al., *supra* note 77, at 304. Informants believe that "[o]nce you give information to the police, you will have to keep providing it, 'or else.'" *Id.* "The shelf life of an informer is only as long as the leads s/he provides are worthwhile . . . . Snitches who no longer fulfill their end of the bargain reportedly are given cases or exposed as payback for a 'break' that is no longer justified." *Id.*

[200] *See id.* (quoting an informant who said, "'[a]n informer is always in jeopardy of retaliation from other offenders'").

[201] *See* NATAPOFF, *supra* note 7, at 26.

[202] *See* Rosenfeld et al., *supra* note 77, at 304.

[203] *See id.*

others see their cooperation firsthand.[204] One informant explained, "'the police come and get you . . . and drop you off in the middle of the fucking neighbourhood where everybody's at. "Thank you!" They ride the fuck off and throw $50 out the window.'"[205]

Some police officers believe in making examples of uncooperative or misbehaving informants, thereby providing better control over them.[206] This tactic can backfire, however, when criminals become convinced that cooperating with particular law enforcement agencies is not a worthwhile endeavor.[207] In these circumstances, "the discipline of the marketplace" serves to protect informants.[208] One study of informants found that "[a] number of interviewees implied or declared outright that the authorities would promise one thing and do another, going back on their word and leaving them, as 'tattletales', in the lurch. Informing, in this sense, was pointless."[209]

Restoring the original legal counsel provision of Rachel's Law would address the problems attendant to informant burning.[210] An attorney may warn the potential informant about a particular law enforcement agency's penchant for burning informants.[211] As a "repeat player," counsel is more likely to know the history of an agency.[212] Particularly, counsel could supplement an informant's knowledge about an agency's tendency to punish and would help in deciding whether navigating the criminal justice system is safer and more prudent.[213] A lawyer's advice on appropriate punishments will guard against police coercion by negating an officer's threats of impossible or nonexistent charges.[214]

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[204] *Id.*

[205] *Id.*

[206] *See id.* (proposing that such law enforcement tactics may be intended to "threaten or extort or punish").

[207] *See* Natapoff, *supra* note 18, at 666; Rich, *supra* note 5, at 698–99; Rosenfeld et al., *supra* note 77, at 300.

[208] Richman, *supra* note 90, at 109–10 (discussing situations where the government fails to satisfy bargains made with testifying informants); *see also* Natapoff, *supra* note 18, at 666 (stating that "one of the most powerful protections available to informants may not be the court but the market").

[209] Rosenfeld et al., *supra* note 77, at 300.

[210] *See* S.B. 604, 2009 Fla. S. § 5(b), Reg. Sess. (Fla. 2009); Natapoff, *supra* note 18, at 666; Rich, *supra* note 5, at 698–99.

[211] *See* Richman, *supra* note 90, at 74 (discussing the expertise of counsel in the context of represented individuals who consider cooperation agreements).

[212] *See id.*

[213] *See id.*; Rosenfeld et al., *supra* note 77, at 304.

[214] *See* Rich, *supra* note 5, at 696; Richman, *supra* note 90, at 74.

Police departments may resist the change that an attorney's advice would bring to the informant system because of its potential impact on tactics.[215] If informants as a class become accustomed to police mistreatment and deceit, however, they may choose to take their chances in the criminal justice system.[216] As a result, law enforcement would then lose an irreplaceable tool for fighting crime, particularly in minority communities where distrust of the police is already high.[217]

C. *Reform Similar to a Restored "Rachel's Law"*

Adopting an attorney provision similar to the one excluded from Rachel's Law reduces the likelihood of harm to unsuitable informants, benefits law enforcement agencies, and protects communities.[218] Unfortunately, informant handling tragedies have preceded reform legislation in the few states that have enacted it.[219] The murders of Hoffman and MacDonald, for example, led to legislation in Florida and California, respectively.[220]

Texas, too, enacted "output measures" to buoy the reputation of its law enforcement agencies after many embarrassing, fraudulent, and

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[215] *See Joint Hearing*, *supra* note 17, at 78 (testimony of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); Santiago, *supra* note 22, at 782; Salinero, *supra* note 6.

[216] *See* Natapoff, *supra* note 18, at 666; Rich, *supra* note 5, at 698–99; Rosenfeld et al., *supra* note 77, at 300–04.

[217] *See Joint Hearing*, *supra* note 17, at 78 (testimony of Ronald E. Brooks, President, National Narcotic Officers' Association Coalition); Natapoff, *supra* note 18, at 666, 672; Santiago, *supra* note 22, at 782; Salinero, *supra* note 6. According to Professor Natapoff's statistics, roughly eight percent of men in poor black communities are cooperating with the police. *See* Natapoff, *supra* note 18, at 666, 685. She notes in comparison that during the height of its power, the East German secret police, "one of history's most infamous deployers of informants," employed approximately one percent of the East German population. *Id.* at 685. Police appear to tolerate and perhaps even encourage criminality in black communities. *See id.* at 689. Professor Natapoff explains:

> Not only does this dynamic potentially increase crime, but it degrades those communities' experience of the criminal justice system. If the immediate costs of snitch use outweigh its benefits, or even if community members perceive the official use of snitches as devaluing the security of the community, the informant institution may be eroding law enforcement effectiveness and legitimacy.

Id.

[218] *See* S.B. 604, 2009 Fla. S. § 5(b), Reg. Sess. (Fla. 2009); Richman, *supra* note 90, at 74 (noting the benefits of counsel when defendants are negotiating cooperation agreements).

[219] *See* Santiago, *supra* note 22, at 781 (describing recent California legislation); Salinero, *supra* note 6 (describing recent Florida legislation).

[220] *See* Santiago, *supra* note 22, at 781; Salinero, *supra* note 6.

botched drug stings.[221] For instance, a Hearne, Texas drug task force arrested twenty-eight people after a November, 2000 tip by suicidal drug informant Derrick Megress.[222] He had accepted a prosecutor's offer of clemency in exchange for producing at least twenty arrests.[223] Prosecutors exonerated each suspect arrested at Hearne's behest, though some had already pleaded guilty.[224]

The Texas Department of Public Safety enacted new output measures as a means of altering its priorities in drug enforcement.[225] Patrick O'Burke, Commander of the Texas Public Safety Commission Narcotics Service, explained that output measures have traditionally been defined by "[t]he number of investigations and/or investigative reports written[,] [t]he number of arrests for narcotics law violations[,] [and] [t]he amount of illegal drugs seized."[226] The previous output measures emphasized overall volume of arrests but did not reduce drug activity.[227] O'Burke instead recommended a definition of success based on the disruption of drug distribution.[228]

Thus, the new output measures emphasize the "[n]umber of Drug Trafficking Organizations dismantled[,] [p]ercentage of arrests defined as 'targeted' Drug Trafficking Organization members[,] . . . . [and] [p]ercentage of total arrests that are defined as 'End Users.'"[229] Law enforcement should desire a reduction of end user arrests, opting instead to enroll them in "treatment, corrections or rehabilitation op-

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[221] *See Joint Hearing*, *supra* note 17, at 11–12 (testimony of Patrick O'Burke, Commander, Texas Public Safety Commission Narcotics Service) (describing new procedures); NATAPOFF, *supra* note 7, at 196; Ross E. Milloy, *Fake Drugs Force an End to 24 Cases in Dallas*, N.Y. TIMES, Jan. 16, 2002, at A14. In Tulia, Texas, in 1999, a drug informant falsely accused sixteen percent of the town's black population with drug dealing "[w]ith no corroboration or physical evidence . . . ." NATAPOFF, *supra* note 7, at 196. In Dallas, in 2001, officers planted fake drugs on twenty-four individuals to inflate drug bust statistics. *See id.* at 7; Milloy, *supra*. "All the cases involve a single unidentified informer who has received at least $200,000 from the Dallas Police Department over the last two years . . . ." Milloy, *supra*. In 2001, almost half of the cocaine and a quarter of the methamphetamines seized by the Dallas Police Department was actually gypsum from wallboard. *See id.*

[222] *See* NATAPOFF, *supra* note 7, at 3–4.

[223] *See id.* at 3. Officers also promised Megress payment of one hundred dollars for each name he provided. *See id.*

[224] *See id.* at 4.

[225] *See Joint Hearing*, *supra* note 17, at 14–15 (statement of Patrick O'Burke, Commander, Texas Public Safety Commission Narcotics Service).

[226] *See id.* at 14.

[227] *See id.*

[228] *See id.* at 15.

[229] *See id.*

tions."[230] Therefore, "investigations against these individuals should receive no priority from drug enforcement initiatives that seek to disrupt illegal trafficking."[231]

The new Texas output measures demonstrate a recalibration of priorities, favoring efficiency and community protection over gross drug-related arrests.[232] Officers will be more properly focused on "identifying and disrupting [the] illegal distribution of drugs," thereby creating efficiencies and protecting the community.[233] The output measures implicitly encourage police to improve informant control and management, thus reducing the tendency to burn informants and creating more trust in law enforcement.[234]

Texas' paradigm shift suggests that other states may also welcome informant reform.[235] Enacting reform before its precipitation by tragedy and community outrage would save lives, ensure efficient crime fighting, and protect vulnerable community members.[236] Restoring the legal counsel provision stripped from Rachel's Law would further enhance the efficacy of each of these factors.[237]

Conclusion

Informants are an essential tool to law enforcement and must be protected. They are invaluable because their credibility enables them to infiltrate criminal organizations, especially in the context of drug crimes. The lack of informant regulations on the state level, however, leaves informants and communities unprotected. In particular, granting legal counsel to potential informants before cooperating with police would make them knowledgeable about their circumstances and

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[230] *Joint Hearing*, *supra* note 17, at 15 (statement of Patrick O'Burke, Commander, Texas Public Safety Commission Narcotics Service).

[231] *Id.*

[232] *See id.*

[233] *See id.*; Natapoff, *supra* note 18, at 666; Rich, *supra* note 5, at 698–99.

[234] *See Joint Hearing*, *supra* note 17, at 11–16 (testimony and statement of Patrick O'Burke, Commander, Texas Public Safety Commission Narcotics Service) (discussing how "end-users" should not be the priority of law enforcement); Natapoff, *supra* note 7, at 128 ("[T]he public policy of using informants itself contributes to the sense that today's law enforcement is all too often unreliable or unfair."); Natapoff, *supra* note 18, at 666; Rich, *supra* note 5, at 698–99.

[235] *See Joint Hearing*, *supra* note 17, at 11 (statement of Patrick O'Burke, Commander, Texas Public Safety Commission Narcotics Service) (acknowledging the need for "sweeping reform").

[236] *See* Santiago, *supra* note 22, at 780–81; Salinero, *supra* note 6; Pecquet, *supra* note 3.

[237] *See* Natapoff, *supra* note 7, at 183; Hughes, *supra* note 32, at 41–43; Richman, *supra* note 90, at 89; Weinstein, *supra* note 90, at 593.

options. Furthermore, an attorney's advice would benefit law enforcement by providing only those informants competent for the assigned task. A right to counsel would also minimize instances where informants are mistreated or burned by law enforcement agencies. Preventing informant burning increases the public's trust in law enforcement and ensures that future informants remain willing to cooperate. Despite these arguments in favor of proper informant treatment, Florida stripped provisions granting an informant the right to counsel from "Rachel's Law," the first informant protection legislation passed in the United States. The legal counsel provision should, however, be restored to Rachel's Law and other states should adopt similar legislation to further protect the rights and lives of informants across the country.