

NUMBERS GAME

The Vicious Cycle of Incarceration in Mississippi's Criminal Justice System

A Justice Strategies report by
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MARCH 2011



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Introduction

The people of Mississippi deserve and demand crime policies that promote public safety, treat people fairly—regardless of the size of their pocketbook or the color of their skin—and use public resources wisely.

Unfair, ineffective, financially unsustainable and counterproductive—all terms that, regrettably, apply to significant aspects of Mississippi’s criminal justice policy. Mississippi’s drug law enforcement infrastructure is fundamentally flawed and in dire need of reform. This report undertakes a review and analysis of some of the most troubling aspects of the state’s criminal justice system, with a particular focus on drug law enforcement, and offers recommendations for reform. It is our hope that the findings will both further existing reform efforts and catalyze action towards additional change.

We will begin with a look at Mississippi’s overly harsh **sentencing policies**, which have produced skyrocketing incarceration rates at unsustainable cost, with little benefit to public safety and a host of negative consequences. Secondly, we will investigate the conduct of Mississippi’s expansive **Multi-Jurisdictional Drug Task Forces** and the illogical funding mechanisms that lead them to pursue large numbers of low-level offenders, with predictably poor results. Then, we will turn our attention to the rampant use of **confidential informants**—primarily to apprehend smalltime, nonviolent drug offenders. In addition to identifying why the use of confidential informants fails to achieve law enforcement’s basic goals, we will uncover the destructive consequences of Mississippi’s informant practices—examining how the largely unregulated and unmonitored informant system harms innocent individuals, erodes the rule of law, unravels the social fabric, and disproportionately impacts African American communities. Finally, we will document **stories from Mississippi and beyond** that illustrate both the extent and the depth of injustice in today’s drug enforcement tactics.

Throughout the report, we will witness how these three broken aspects of Mississippi’s criminal justice system interact, generating a vicious cycle of perverse incentives that must first be acknowledged in order to be properly addressed. At base, Mississippi’s criminal justice system has come to be defined by a logically, morally and, increasingly, financially bankrupt “numbers game” that prizes above all else arrest and incarceration of as many as possible for as long as possible.

About the Authors

Justice Strategies, a project of the Tides Center, Inc., is a nonpartisan, nonprofit research organization. Our mission is to provide high quality policy research to advocates and policymakers pursuing more humane and cost-effective approaches to criminal justice and immigration law enforcement. Electronic copies of this and other Justice Strategies reports can be found online at www.justicestrategies.org.

Judith Greene is founder and Director of Justice Strategies. Her areas of expertise include criminal sentencing issues, police practices, correctional policy and prison privatization. From 1985 to 1993 she was Director of Court Programs at the Vera Institute of Justice, where she was responsible for planning and developing of a variety of demonstration programs designed to improve the efficacy of both pretrial release and sentencing practices. Subsequently, she served as program director for the State-Centered Program of the Edna McConnell Clark Foundation, as a research associate for the RAND Corporation, and as a senior research fellow at the University of Minnesota Law School. In 1999 Ms. Greene received a Soros Senior Justice Fellowship from the Open Society Institute. She has presented legislative testimony on criminal justice policy issues in California, Colorado, Connecticut, Georgia, Maryland, Michigan, New Jersey, New Mexico, New York and Texas.

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Acknowledgments

Over the course of research on this complex and important topic, many people made generous contributions of their time, advice, expertise, insights, and wisdom. The authors wish to thank the following individuals and organizations for their help with this report: Nsombi Lambright and the wonderful staff of the ACLU of Mississippi, Anthony Witherspoon, Leslie Lee, Chokwe Lumumba, Jimmy Robinson, Larry Davidson, Robert Johnson, Donna Ladd, and the Innocence Project of New Orleans. We offer special thanks to the many Mississippians who shared their personal experiences (many of whose names have been altered in the report in order to protect their privacy).

This report would not have been possible without generous support from the ACLU Criminal Law Reform Project.

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Executive Summary

Our examination of Mississippi’s drug sentencing scheme, its federally funded drug task forces, its use of confidential informants and the cumulative impact on police-community relations has revealed serious structural problems.

This report documents how the **poorly-structured laws that govern sentencing** in drug cases place enormous pressure on defendants to work as informers, and produce extremely harsh sentences for people convicted of street-level sales involving small amounts of drugs, even though addiction treatment might have produced a more desirable outcome in terms of public safety. We found a troubling degree of racial disparity, with black Mississippians three times more likely than whites to go to prison on drug charges even though drug use rates are virtually identical for blacks and whites.

We also found that Mississippi’s regional **drug task force funding** is contingent on winning the “numbers game,” whereby confidential informants are used indiscriminately to ramp up the quantity of drug arrests, with little regard to the quality of the cases they help to build.

We learned that while use of **informants** is a cornerstone of the state’s regional drug task force operations, the practice is shrouded in secrecy. The ACLU of Mississippi spent almost two years seeking basic information about the nature and extent of the practice from what state officials acknowledged are public files under Mississippi’s Public Record Act, yet no access was gained. Law enforcement justifies the practice—especially in the area of drug enforcement—as an essential means for identifying those who commit crimes and for securing their convictions. But the many perverse incentives embedded in the practice invite abuse and disparity, undermining the fundamental legitimacy of the criminal justice system.

The scope and scale of the problems presented in this report underscore the urgent need for reform of the policies that govern the drug enforcement system as a whole in Mississippi. We submit the following recommendations for consideration by Mississippi policymakers who want to enact genuinely effective criminal justice policies that enhance public safety, protect civil rights and ensure the state’s fiscal solvency.

Recommendations to Reform Mississippi's Harsh Sentencing Scheme:

- Restructure the state's drug sentencing laws to **replace mandatory minimum sentences with a flexible set of sentencing standards and guidelines.**
- **Lower and narrow the prescribed sentencing range for drug sale offenses**, which is currently 0-30 years, and put in place guidelines for judges to apply within the new range.
- **Limit life sentences in prison without the possibility of parole to violent crimes.**
- **Reduce the severity of drug sentencing enhancements.** Specifically, reduce or remove all "zone" enhancements that apply to drug offenses taking place near schools, churches, public parks, ballparks, public gymnasiums, youth centers and movie theaters.
- At the very least, the state should **adopt a "safety valve" within its current sentencing scheme**, allowing judges to depart downward from mandatory minimum sentences when certain conditions are met, such as when the defendant is truthful, played a minor role in the offense and is nonviolent.

Recommendations to Improve Effectiveness of Federally Funded Drug Task Forces:

- **Make information regarding the reporting requirements and evaluations of drug task forces publicly available.**
- **Establish uniform data collection and reporting** requirements for all drug task forces so that case files may be compared across jurisdictions.
- Revise and expand current reporting requirements in such a way that the Department of Public Safety can **measure and evaluate genuine drug enforcement outcomes**, with a focus on redirecting investigative or law enforcement officers from users and low-level distributors to high-level traffickers.
- The Governor should **diversify allocations of federal grant dollars that currently go to drug task forces to other effective methods of combating drug abuse**, and other Mississippi priorities. Federal money now spent on narcotics task forces could produce greater improvements in public safety if it was invested in treatment programs, drug courts, crime lab upgrades, and evidence-based law enforcement training.

- The State should set up an **oversight board** to monitor compliance with the above recommendations.

Recommendations to Curb Abuse within the Confidential Informant System:

- Each law enforcement jurisdiction should maintain an **informant registry** wherein law enforcement officers register specific, anonymized information about each informant that would allow for an analysis of the costs and benefits of informant use in the state. Proper precautions should be taken to protect the identities of confidential informants while allowing for the collection of basic data that would enhance oversight.
- **Any law enforcement officer who obtains information that a confidential informant has committed a serious violent felony in violation of state or federal law should report** such information to the chief state law enforcement officer and the local prosecuting official shall notify the state's Attorney General.
- Require that **warrants for the search and seizure of controlled substances based on information from an informant must contain information that corroborates the information given by the informant** in the affidavit.
- Require the state to **provide all exculpatory material** related to informant information to the defendant, including impeachment evidence pertaining to any government witness or informant, **prior to the court accepting a plea agreement** of guilty or *nolo contendere*.
- Require the government to disclose at a pre-trial conference its intent to introduce the testimony of an informant at trial, and allow for a **reliability hearing** before the judge prior to the introduction of an informant's testimony on the defendant's motion.
- **Require corroboration of testimony by all informants.**

The confidential informant system presents real dangers not only to defendants and the public at large, but also to those recruited to work as informants. The following recommendations would enhance their safety:

- **No law enforcement officer should solicit a person who is currently participating in a drug treatment program to act as an informant.**

- When the person acting as **an informant has never been accused or convicted of a crime of violence** or possession of a firearm, **law enforcement should not employ them as a confidential informant to investigate a violent crime** or suspects known by law enforcement to have employed physical violence and/or firearms in the past.
- **Juveniles should not be used as confidential informants.**
- A person law enforcement solicits to act as an informant in exchange for leniency concerning a criminal offense should be provided the opportunity to **consult with counsel**. If the person is represented at the time of the conversation, the law enforcement officer must contact that attorney.
- **All plea negotiations and offers of leniency to a proposed informant must be in writing** and signed by both parties before the informant undertakes any under cover work, with details concerning what must be provided by the informant and what will be given in return.
- **Officers must evaluate the mental health of any proposed informant**, with professional expert assistance when appropriate, and must consider the relative experience or inexperience of the proposed informant, the seriousness of their offense, the benefit promised to them and the characteristics of the target offender and offense.

A more detailed explanation of these recommendations is presented in the Conclusions & Recommendations section of the report. In the interest of Mississippi's fiscal solvency and the safety of its citizens, we hope that policymakers will act boldly and swiftly to improve the state's criminal justice system by enacting these sorely-needed reforms.

SECTION I

Mississippi's Harsh Sentencing Scheme

Mississippi's grossly punitive sentencing policies make the state an outlier in the nation and furnish a striking backdrop that sets the tone for the state's overall criminal justice system. Relative to the country as a whole, Mississippi sentencing laws mandate extraordinarily high maximum sentences with regard to the sale of drugs and extraordinarily high mandatory minimum sentences with regard to the possession of drugs—meaning that judges are at the same time provided excessive leeway at the “top end” and denied sufficient discretion at the “low end” in drug cases. In drug sales cases, judges are free to apply harsh terms with relatively unfettered discretion, resulting in disproportionate sentencing patterns that allow people sentenced for sale of very small amounts of drugs to receive some of the highest sentences. At the same time, in possession cases, judges are bound by a strict and severe set of mandatory minimum sentences that require enormous penalties for people convicted of low-level, nonviolent drug crimes, even where circumstance and commonsense would counsel otherwise.

This imbalance in discretion positions incarceration as a blunt and indiscriminate sword, subjecting individuals to excessive prison time, which often precipitates a vicious cycle of incarceration. Mississippi's poorly structured drug laws constitute a system of arbitrary justice, breeding conditions that are ripe for racial and geographic disparity. And, as will be explored later in the report, Mississippi's draconian sentencing scheme further aggravates the worst excesses of the state's problematic Multi-Jurisdictional Drug Task Force (MJDTF) and confidential informant (CI) systems. By delivering harsh, yet disparate punishment to the many low-level drug offenders ensnared by the MJDTFs, Mississippi's sentencing laws provide a nearly bottomless pool for the wholesale recruitment of CIs, as countless defendants face overwhelming pressure to enlist as informants in order to escape extreme prison terms.

A “**mandatory minimum**” is a minimum prison sentence, set by statute, which judges must impose for a certain crime.

Mississippi sentencing laws should be reformed in several ways, which are detailed in Section VI of this report. Broadly, the application of a flexible set of sentencing standards or guidelines that allow judges to take into account certain factors, such as the amount of drugs at issue and the defendant's prior criminal record and role in the offense would alleviate some of the most excessive sentences for low-level offenders. Additionally, adjustments to sentencing enhancements for repeat offenses occurring more than ten years prior and “zone” enhancements for drug crimes occurring near various public locations, such as parks and schools, would help to bring greater proportionality and

fairness into the state’s sentencing scheme. Finally, and at the very least, the state should create a “safety valve” provision to protect people with minimal criminal histories from harsh prison terms by allowing judges to depart from mandatory minimums when certain conditions are met, such as when the defendant is truthful and the crime does not involve violence.

Harsh Drug Sentencing Drives Record Incarceration Rates

Mississippi has the second highest incarceration rate in the nation, at 749 prisoners per 100,000 residents. Between 1994 and 2007 the state’s incarceration rate ballooned by 105 percent, compared to just 46 percent for the nation as a whole and 51 percent for the Southern region. By midyear 2008, Mississippi’s prison population had reached a record high of 22,764.¹

Comparison of Mississippi’s Incarceration Rate with the Nation and Southern Region (rate of increase from 1994 to 2007)	
Mississippi	105%
Nation	46%
Southern Region	51%

This astonishing increase in incarceration was spurred by one of the country’s most draconian “truth-in-sentencing” laws. In 1995, Mississippi embraced “truth-in-sentencing” by eliminating parole, whether the crime was violent or nonviolent, requiring all prisoners to serve at least 85 percent of their prison term. The new law was enacted with little consideration of the long-term effect it would have on the state’s prison population.² Between 1994 and 2007 prison expenditures grew by 155 percent.

In 2001, after many years of wrangling about the harsh impact of “truth-in-sentencing” policy, Mississippi legislators took a step back from the abyss and restored parole eligibility to nonviolent, first-time offenders who have served at least one-quarter of their prison sentences. This narrow reform applied to first-time offenders convicted of simple possession of drugs, but not to those convicted of *selling* drugs—even a minimal quantity. Facing financial problems in 2008, legislators took a second step toward rolling back “truth-in-sentencing.” The new law, SB 2136, restored the possibility of parole for many people incarcerated for drug crimes by stipulating that individuals convicted of possession, sale or distribution of drugs under certain weight levels (e.g., less than two ounces of cocaine)

¹ West, Heather C. and William J. Sabol. March 2009. *Prison Inmates at Midyear 2008 – Statistical Tables*. Washington, DC: Bureau of Justice Statistics.

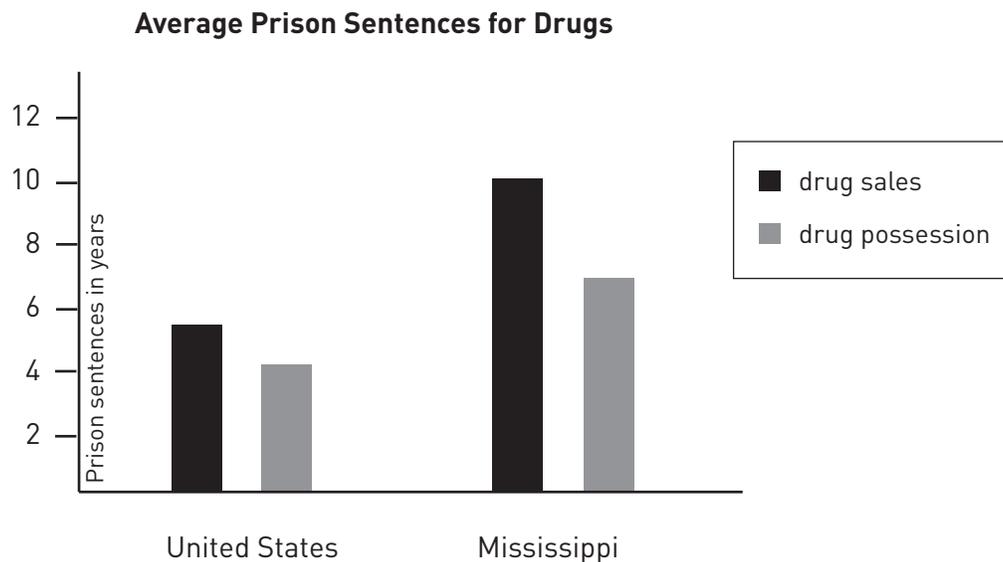
² Wood, Peter B. and R. Gregory Dunaway. 2003. “Consequences of Truth-in-Sentencing: the Mississippi Case.” *Punishment and Society* Vol. 5, No.2.

are parole-eligible after serving one-quarter of their prison sentence.

While officials at the Mississippi Department of Corrections have estimated that the new law will affect parole eligibility for many thousands of people incarcerated for drugs, much remains to be done. Further reform is sorely needed to provide Mississippi judges with appropriate discretion in drug sentencing, and to guide judges toward greater use of drug treatment in sentencing people whose street-level drug sales are driven by addiction. Such reforms would bring the added benefit of mitigating the intense pressures often faced by low-level drug offenders to serve as CIs—an especially acute force owing to the state’s slanted sentencing scheme.

Mississippi as an Outlier

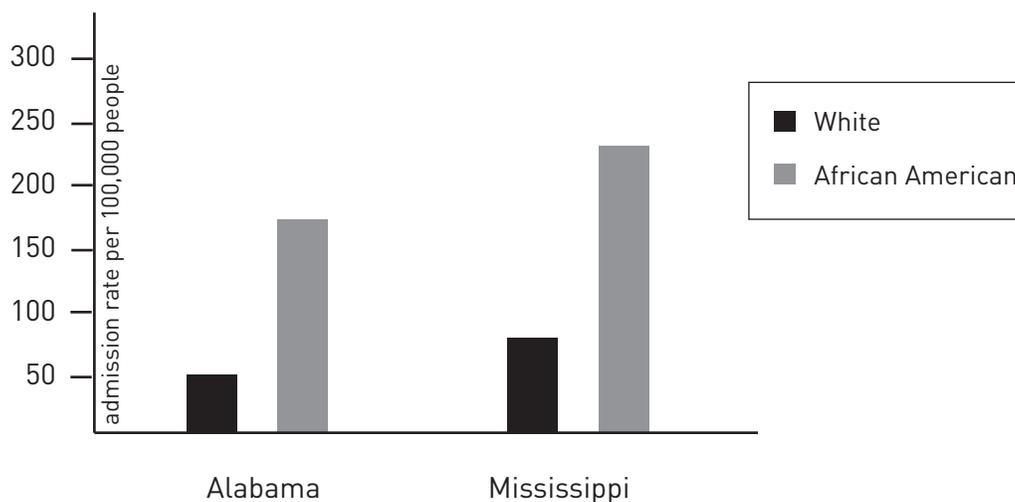
While the reasonable step of restoring parole eligibility for some drug offenders has aided the correctional budget, without further sentencing reform, Mississippi will continue to produce prison terms that are unsustainable, counterproductive and well out of line with national patterns. According to recent national data from the Bureau of Justice Statistics, the average state prison sentence for drug sales in the United States was 5.7 years, compared to the current average of 10.4 years in Mississippi. For drug possession, the average state prison sentence was 4.5 years, compared to 7.2 years in Mississippi.³



³ Data from the Bureau of Justice Statistics’ National Corrections Reporting Program. Downloaded from the BJS website, May 27, 2009, <http://www.ojp.usdoj.gov/bjs/dtdata.htm#corrections>, Table 9.

Prison admission rates for drug crimes are much higher in Mississippi than in the neighboring state of Alabama for both whites (79 per 100,000 residents in Mississippi, compared to 51 per 100,000 in Alabama) and African Americans (239 per 100,000, compared to 177 per 100,000).⁴ And the proportion of prisoners serving time for drug crimes in Mississippi is 35 percent,⁵ compared to 20 percent for the nation as a whole,⁶ and just 18 percent for Alabama.⁷

Prison Admission Rates for Drugs in Mississippi and Alabama



Mississippi's over reliance on incarceration in response to drug offenses may be well-intentioned, but it ignores reality. National data reveals that 72 percent of state prisoners incarcerated for a drug offense had used drugs in the month prior to the offense,⁸ suggesting a sizable level of addiction among the offender population. More than a decade of evaluation research, including studies published by the U.S. Department of Health and Human Services, the RAND Corporation, and the National Center on Addiction and Substance Abuse, have documented the cost benefits and public safety advantages of drug treatment

4 Fellner, Jamie. 2008. *Targeting Blacks: Drug Law Enforcement in the United States*. New York: Human Rights Watch.

5 Mississippi Department of Corrections. *Fiscal Year 2007 Annual Report*.

6 West, Heather C. and William J. Sabol. December 2008. *Prisoners in 2007*. Washington, DC: Bureau of Justice Statistics.

7 Alabama Department of Corrections. *Annual Report: Fiscal Year 2007*.

8 Mumola, Christopher J. and Jennifer C. Karberg. *Drug Use and Dependence, State and Federal Prisoners, 2004*. Washington DC: Bureau of Justice Assistance.

compared to incarceration.⁹ For example, the University of California’s cost analysis of California’s groundbreaking treatment-over-incarceration law, Proposition 36, found that California saved a *minimum* of \$2.50 for every dollar spent on the treatment alternative, \$4 for each person who completed treatment, and a total of \$173.3 million in savings to the California government in the first year alone.¹⁰ In a landmark study, the Washington State Institute for Public Policy estimated that every dollar spent on drug treatment in the community returns \$18.52 in benefits to society.¹¹ A RAND analysis concluded that drug treatment may reduce drug-related crime up to 15 times more effectively than mandatory sentencing.¹²

Excessive reliance on imprisonment in Mississippi’s drug policy is wrongheaded and wasteful, senselessly incarcerating those who do not belong behind bars, at significant taxpayer expense. Public safety and the rule of law would be better served through a health-based solution that provides treatment and counseling to low-level drug offenders—replacing spiteful punishment with reasoned rehabilitation which furthers the best interests of both offenders and society at large.

An Overview of Mississippi’s Drug Sentencing Laws

In its current form, the Mississippi criminal code provides a rigid and excessive schedule of mandatory minimum prison terms for possession of drugs that vary according to the weight of the drugs involved. For example, possession of less than one-tenth of a gram of cocaine (approximately one-tenth of the amount of sugar contained in a single packet of sugar) may be charged as a felony and carries a mandatory minimum sentence of one year in prison. Even possession of a “trace amount” of drugs—mere residue—carries a mandatory year in prison when charged as a felony.¹³ The length of the mandatory prison

9 *National Treatment Improvement Evaluation Study 1997 Highlights*. (March, 1997) Washington, D.C.: U.S. Department of Health and Human Services, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration.; Caulkins, Jonathan P., C. Peter Rydell, William L. Schwabe, and James Chiesa. 1997. *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers’ Money*. Santa Monica, CA: The RAND Corporation.; *Crossing the Bridge: An Evaluation of the Drug Treatment-to-Prison (DTAP) Program*. March, 2003. New York, New York: The National Center on Addiction and Substance Abuse at Columbia University.

10 Longshore, Douglas et al. 2006. *SACPA Cost Analysis Report (First and Second Years)*. Los Angeles: UCLA Integrated Substance Abuse Programs.

11 Aos, Steve, et al., *Evidence-based public policy options to reduce future prison construction, criminal justice costs, and crime rates*. Olympia: WWISP, 2006. <http://www.wsipp.wa.gov>. Also see: Aos, Steve, et al., *The criminal justice system in Washington State: Incarceration rates, taxpayer costs, crime rates, and prison economics*. Olympia: WWISP, 2003.

12 Caulkins, Jonathan P. 1997. *Mandatory Minimum Drug Sentences: Throwing Away the Taxpayers Money?*, RAND, p. 17-18.

13 *Beard v. State*, 812 So.2d 250 (Miss.App. 2002)

term increases as the weight goes up, with possession of 30 grams (little more than an ounce) of cocaine requiring a 10-year mandatory minimum.

When it comes to sentencing in drug *sales* cases, however, Mississippi judges are given a shockingly broad range with no guidance for application, creating a situation ripe for disparity based on factors such as race or geography. Upon conviction for sale or possession with intent to sell of *any* amount of narcotics, no matter how small, a defendant faces a sentence of anywhere from 0 to 30 years.¹⁴ With no structural guidance, a judge may sentence within this range without regard for factors such as the amount of drugs involved or the defendant's role in the crime.

The Mississippi criminal code includes a mandatory life sentence without parole for drug sales involving large amounts (e.g., 10 pounds or more of marijuana, or 2 or more ounces of cocaine) within a single year's time. Of note, the provision includes an escape hatch if the sentencing judge determines that a defendant has furnished information or assistance that would have or should have aided in the arrest or prosecution of others who sell drugs¹⁵—an often irresistible proposition to would-be informants.

Additionally, Mississippi law provides very harsh sentencing enhancements, contributing to the draconian and seemingly arbitrary application of sentencing law. A defendant who sells drugs within 1,500 feet of a school, church, public park, ballpark, public gymnasium, youth center or movie theater may be sentenced to up to 60 years in prison¹⁶—a condition that most frequently applies to residents of denser, urban areas. A defendant who has been convicted previously for any crime involving drugs, including marijuana possession, also faces a sentence of up to 60 years.¹⁷ Two prior felony convictions with prison sentences trigger a mandatory prison term of 30 years,¹⁸ and if one of those felonies was a violent crime a defendant faces a mandatory *life* sentence without parole.¹⁹

14 Miss. Code Ann. §41-29-139(b)(1)

15 Miss. Code Ann §41-29-139(f)

16 Miss. Code Ann. §41-29-142

17 Miss. Code Ann. §41-29-147

18 Miss. Code Ann. § 99-19-81

19 Miss. Code Ann. §99-19-83

Small Fish, Big Sentences

Mississippi case law reveals that judges can, and sometimes do, use their broad sentencing powers to impose very severe and disproportionate prison terms on minor drug offenders—and that, frequently, these crimes are initiated by informants under the direction of law enforcement.

True Stories...

Emmanuel Cook sold three small rocks of crack cocaine to an informant working for the Mississippi Bureau of Narcotics for a total of \$50. Although Cook had a clean criminal record, the judge sentenced him to the maximum 30-year prison term and a \$10,000 fine,²⁰ permitted under the state's harsh and expansive sentencing laws for drug sales. In an even more tenuous case, Roy Colenburg was convicted for the sale of a tiny amount of cocaine to a confidential informant for \$60. The informant testified that Colenburg had assisted in arranging the sale, but that an unidentified person made the actual sale. For his ancillary role in a minor, street-level sale, Mr. Colenburg received a sentence of 30 years in prison.²¹ These sentences were upheld by Mississippi's appellate courts.

The Mississippi Supreme Court recently reversed a life sentence without the possibility of parole in the case of a man convicted of possession of a miniscule amount of cocaine invisible to the naked eye.²² In February 2007, Vincent Hudson was riding with his brother in his brother's car near the small town of Louisville, Mississippi when they were pulled over by a local patrol officer for speeding. Vincent's brother, Hillute Hudson, was arrested for driving with a suspended license, while Vincent was arrested for having an open container of beer. When he was searched, the officer found several types of drugs in Hillute's possession. A narcotics officer called to the scene tried to talk Vincent into taking the rap for his brother, "because he has a family, and you don't," but Vincent refused. From the local jail, Vincent's clothing

²⁰ 728 So.2d 117 (Miss. App. 1998)

²¹ 735 So.2d 1099 (Miss. App. 1999)

²² *Vincent Carnell Hudson v. State of Mississippi* 2007-CT-02016-SCT

Emmanuel Cook

DRUG AMOUNT:

3 small rocks of crack equal to about \$50

ORIGINAL AND UPHELD SENTENCE:

30 years and \$10,000 fine

Roy Colenburg

DRUG AMOUNT:

\$60 worth of cocaine

ORIGINAL AND UPHELD SENTENCE:

30 years

Vincent Hudson

DRUG AMOUNT:

trace amount of cocaine invisible to the naked eye

ORIGINAL SENTENCE:

life without parole

was sent to the Mississippi Crime Lab for testing, where trace amounts of cocaine were found.

Vincent Hudson was charged with four counts of possession—including for the drugs found on his brother. At trial, a forensic scientist from the state crime lab testified that the amount of cocaine found in his clothes was barely sufficient to determine identification. The jury acquitted Vincent of possession of the drugs found on his brother, but found him guilty for the trace amount found in his clothes.

No one claimed that Vincent Hudson was a drug dealer. The amount of cocaine found in his clothes was only visible with the aid of scientific instruments. This amount of drugs was clearly too small to be useable, but Hudson had two prior felony convictions, which were more than 20 years old, so the judge sentenced him to life without parole.

With the average length of prison sentences for sale of drugs in Mississippi running almost twice the national average, and with no shortage of cases where possession or sale of very small amounts of drugs have resulted in grossly excessive prison sentences, it is easy to understand why many—if not most—defendants in drug cases would be willing to do whatever it takes to escape the harshness of the system and win a more favorable outcome at sentencing. It is, in large part, through this prism that the wholesale recruitment of confidential informants and associated fallout, discussed later in the report, must be understood.

Same Crime, Different Time: Racial Disparity in Mississippi’s Drug Sentencing

Many Mississippi residents routinely and rightly complain that defendants charged with similar offenses in similar contexts receive wildly disparate sentences based solely on the county in which they are sentenced or on the proclivities of the sentencing judge. More insidiously, there are widespread allegations that African American defendants receive far longer sentences than do white defendants who commit the same crime in the same context.

Government data consistently shows that African Americans, whites and Latinos use drugs at virtually identical rates, despite stereotypes that may exist about the “average” drug user.²³

However, abundant evidence reveals that Mississippi’s drug enforcement and sentencing policies result in more time for the same crime depending on the color of one’s skin.

²³ SAMHSA and U.S. Office of Applied Sciences, *2008 National Household Survey on Drug Use and Health*, Table 1.58 B.

According to a recent report by The Sentencing Project, “Uneven Justice,”²⁴ in 2005, Mississippi blacks were incarcerated at a rate three-and-a-half times higher than Mississippi whites (1,742 blacks per 100,000, compared to 503 whites). Two reports from Human Rights Watch provide further evidence of disparity specifically related to drug enforcement. The first, “Decades of Disparity,”²⁵ reported that in 2006 Mississippi ranked *fourth highest* in the nation in the proportion of drug arrests comprised of blacks (57 percent, compared with just 36 percent of national arrests). Drug arrest rates for blacks in Mississippi were two-and-a-half times greater than for whites. In an earlier study, “Targeting Blacks,” researchers examined prison admission data from 2003²⁶ and found that black Mississippians were three times more likely than whites to go to prison for a drug conviction.

A Case Study in Necessary Reforms: North Carolina

Section IV of this report details practical reforms that would help bring more fairness and flexibility to the Mississippi sentencing scheme by giving judges discretion and guidance to impose sentences that better reflect the reality of most drug crimes and that allow for the rehabilitation and reintegration of nonviolent defendants—many of whom are struggling with addiction and require months of treatment rather than years of incarceration.

More than a decade of experience tells us that drug sentencing laws can be restructured to better—and more affordably—achieve positive outcomes without compromising public safety. Mississippi policymakers could look, for instance, to North Carolina, where most of the state’s mandatory minimum drug laws were replaced with structured sentences that favor treatment in the community over prison in cases involving possession or sale of less than an ounce of a controlled substance.

North Carolina’s reform model, introduced in 1994 as part of an award winning restructuring of the state’s sentencing laws, has helped to keep the correctional budget within affordable limits. The state’s imprisonment rate is remarkably low: 366, compared to a rate of 599 for the Southern region and 509 for the nation as a whole—an achievement that has greatly helped to limit state spending on prisons.

North Carolina judges use a grid system, with individual defendants assigned according to both the seriousness of the offense (e.g., the weight of the drugs involved) and the

24 Mauer, Marc and Ryan S. King. July 2007. “Uneven Justice: State Rates of Incarceration by Race and Ethnicity.” Washington, DC: The Sentencing Project.

25 Human Rights Watch. March 2009. “Decades of Disparity: Drug Arrests and Race in the United States.”

26 Human Rights Watch. May 2008. “Targeting Blacks: Drug Law enforcement and Race in the United States.”

seriousness of their prior criminal history, if any.²⁷ People who fall into the lowest grid boxes—those convicted of the least serious crimes and with the least serious prior records—are presumed eligible for a community punishment of standard probation or outpatient drug treatment. People convicted in more serious cases, but who have not caused bodily harm, might fall into a grid box that draws an intermediate punishment—intensive probation supervision and rigorous treatment requirements.

Some “border” boxes in the grid offer the judge a choice between an intermediate punishment or an active sentence of prison, or between an intermediate or community punishment. Judges are able to depart from the sentencing presumptions if warranted by legitimate distinctions among defendants and offenses, such as the actual role of the defendant, whether the defendant personally profited from the sale and whether the defendant is struggling with addiction.

The principal strength of North Carolina’s structured sentencing system reform is that it has created a rational means to achieve proportionate sentencing norms. Drug “traffickers” convicted of selling 28 grams (roughly an ounce) or more of cocaine remain outside of the grid system and face a mandatory prison sentence. Even so, the maximum allowable sentence—219 months for trafficking 400 grams or more of cocaine—is far less than the 360-month maximum for such sales in Mississippi. And the vast majority of those convicted for possession or sale of less than an ounce of cocaine in North Carolina are sanctioned in the community, with a primary aim of providing them with supervision and treatment, not punishment for punishment’s sake.

²⁷ A chart compiled by the authors showing how drug cases involving cocaine are handled in North Carolina’s structured sentencing system can be found in the Appendix.

Recent data from the North Carolina Sentencing Commission indicate that judges work within the grid structure to impose relatively short, proportionate prison terms for those they determine warrant a sentence—with the majority of those convicted of sales or possession with intent to sell receiving an “intermediate sanction” (strict supervision, most often with some kind of treatment):

Type of Drug Sentence by Offense Type in Fiscal Year 2008

	Prison		Type of Sentence: Intermediate		Type of Sentence: Community		Minimum Prison Sentence (Months)	Maximum Prison Sentence (Months)	Total
	Count	Percentage	Count	Percentage	Count	Percentage			
Sell/Deliver Drugs	540	33.5%	1,017	63.1%	55	3.4%	14.4	17.7	1,612
Conspiracy to Sell/Deliver Drugs	52	41.3%	66	52.4%	8	6.3%	14.8	18.2	126
Manufacture Drugs	25	18.0%	54	38.8%	69	43.2%	39.4	51.6	148
Possession with Intent	736	27.8%	1,311	49.4%	605	22.8%	9.0	11.2	2,652
Drug Possession	438	10.5%	1,890	45.1%	1,862	44.5%	7.1	9	4,190
Other Drug Felonies	324	26.1%	559	45.0%	358	28.8%	15.4	20	1,241
Total	2,115	21.2%	4,897	49.2%	2,957	29.6%	11.5	14.4	9,969

SOURCE: North Carolina Sentencing and Policy Advisory Commission

The proportion of North Carolina’s state prison population currently made up of people convicted of drug offenses is 16 percent,²⁸ compared to 35 percent in Mississippi. It should be noted that the greatly reduced reliance on imprisonment for drug crimes in North Carolina has not reduced public safety. While crime rates declined across the nation over the past two decades, North Carolina fared particularly well with the rate of violent crime falling by 25 percent and the rate of property crime by 16 percent since 1990—far greater than Mississippi’s drops in violent crime of 14 percent and property crime of nine percent over the same period.²⁹

28 Data obtained through the North Carolina DOC Research and Planning Online Automated System Query, accessed on June 1, 2009.

29 FBI Uniform Crime Reports, as prepared by the National Archive of Criminal Justice Data.

Further evidence of the sizable economic incentives contained in criminal justice reform may be found in New York State, where a long-overdue softening of the state's infamous and severe "Rockefeller drug laws" has combined with marked improvements to the parole system to cut prison rates and correctional costs. With thousands of empty prison beds, New York's correctional managers have been "downsizing" prison capacity and saving money. In the past three years, some 2,700 dormitory beds have been deactivated. This year alone brought the closure of three minimum-security prisons and six prison annexes, saving New York taxpayers some \$26.3 million from next year's budget.

If Mississippi policymakers are not ready to consider the idea of restructuring drug sentences along the lines adopted in North Carolina, Mississippi should at least adopt a "safety valve" to its mandatory minimums in drug cases that allows judges to depart downward from those minimums when certain conditions are met. Mississippi's rigid mandatory sentencing provisions deny judges proper leeway to consider whether an individual actually merits incarceration, condemning defendants to imprisonment when an alternate sentence would better suit the circumstances—chiefly in instances where a defendant, as well as the rest of society, would clearly benefit from substance abuse treatment rather than incarceration.

Federal law has, for example, dealt with this issue by providing a general "safety valve" for mandatory minimum drug laws, allowing that the mandatory minimum be waived when a defendant meets five criteria: the defendant was a low-level participant; had a minimal criminal history; did not use a gun; the crime did not involve violence; and the defendant told the truth about the crime.³⁰ During the 2008 fiscal year, the safety valve was used by judges in 36 percent of federal drug cases where a defendant faced a mandatory minimum sentence.³¹

Reform is needed to help bring fairness, effectiveness and fiscal sustainability to Mississippi's criminal justice system. Unbridled discretion in sentencing leads to an arbitrary and disparate pattern of incarceration, while harsh mandatory minimums lead to over-incarceration and disproportionate punishment. By better structuring the state's drug laws, Mississippi policymakers could bring out the best attributes of judicial discretion while minimizing its worst abuses. Additionally, sentencing reform would alleviate a principal cause of the endemic and counterproductive recruitment of confidential informants—presently fueled, in large part, through the threat of excessive sentences coupled with area law enforcement's over-emphasis on arresting high numbers of low-level drug offenders.

30 18 U.S.C. 3553(f).

31 U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Recommendations At-A-Glance

(Detailed recommendations presented in Section IV)

- Restructure the state’s drug sentencing laws to **replace mandatory minimum sentences with a flexible set of sentencing standards and guidelines.**
- **Lower and narrow the prescribed sentencing range for drug sale offenses,** which is currently 0-30 years, and put in place guidelines for judges to apply within the new range.
- **Limit life sentences in prison without the possibility of parole to violent crimes.**
- **Reduce the severity of drug sentencing enhancements.** Specifically, reduce or remove all “zone” enhancements that apply to drug offenses taking place near schools, churches, public parks, ballparks, public gymnasiums, youth centers and movie theaters.
- At the very least, the state should **adopt a “safety valve” within its current sentencing scheme,** allowing judges to depart downward from mandatory minimum sentences when certain conditions are met.

SECTION II

Federally Funded, Multi-Jurisdictional Drug Task Forces in Mississippi

Drug law enforcement expanded dramatically during the 1980s. Federal-local law enforcement collaboration efforts emerged and federal funding for anti-drug operations increased. Federal authorities began not only to pour greater resources into state and local law enforcement through discretionary and formula grants, but also to work directly with local law enforcement agencies to wage war on illegal drug activity. This federal-local partnership took the form of Multi-Jurisdictional Drug Task Forces (MJDTFs)—entities funded at the federal level and operated at the local level, but, by and large, accountable to neither.

As distribution of federal drug law enforcement funds increased, insufficient attention was given to identify appropriate models for measuring police performance. As a result, federal funding for state and local agencies became largely based on a perverse “numbers game,” encouraging the mass arrest of low-level perpetrators rather than those select few higher up the chain. Under this system, each drug arrest is simply tallied as an output, regardless of impact on crime rates or public safety. In effect, law enforcement are equally rewarded for apprehending a career kingpin or a petty dealer—though the latter requires far less effort. It is, therefore, certainly understandable that MJDTFs would act so as to maximize arrest numbers—and federal funding—by targeting the large quantity of smalltime drug dealers and users, who are frequently addicts and therefore prone to recidivism. Logically flawed, this “numbers game” approach to law enforcement is especially irrational and destructive in the context of drug policing, where there exist essentially limitless quantities of arrestable drug users as well as prospective dealers eager to fill the shoes and take the business of those arrested. Given such a dynamic, law enforcement may presumably arrest without end—or until public sentiment demands otherwise—assured of a steady stream of inputs, in the form of drug users and low-level dealers, with which to reach the desired and preordained stream of outputs of increased drug arrests.

Simply increasing the number of drug arrests has little, if any, positive impact on public safety. This emphasis on quantity over quality to gauge law enforcement success and attendant federal funding—coupled with the state’s excessive sentencing practices—has contributed mightily to the exploding incarceration rate in Mississippi. Premising law enforcement funding on arrest levels has also contributed to the widespread recruitment and deployment of confidential informants (CIs)—indispensable tools in the indiscriminate apprehension of smalltime drug offenders. But even excluding unhealthy levels of imprisonment and informant use, there are clear reasons that it makes little sense to key law enforcement funding to arrest statistics and not to more accurate measurements

of improved public safety. At a minimum, effective means of regulation and oversight—presently absent—must be instituted to accurately track the impact of MJDTF operations and to ensure that they remain accountable to the communities they purport to serve. Section VI of this report details how such mechanisms may be implemented within the state of Mississippi so as to promote quality policing over quantity-driven policing.

The Absence of Accountability and Oversight in Mississippi’s Drug Task Forces

The first Drug Enforcement Administration (DEA) state and local task forces were established in 1978.³² A decade later, the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (Byrne Grant Program)³³ and MJDTFs were established and, the following year, the first High Intensity Drug Trafficking Areas (HIDTA) were created to coordinate drug enforcement efforts among local, state and federal agencies. Increased funding through federal grant support fortified local efforts, enabling law enforcement agencies to acquire audiovisual recording equipment, pay confidential informants, and afford overtime pay for officers. In short, the task force grant programs facilitated a significant expansion of local and state drug enforcement efforts, producing a sizable, entrenched infrastructure operating at the local level but driven by arguably damaging federal funding formulae.

The Byrne Grant Program, created by the Anti-Drug Abuse Act of 1988, is overseen by the Bureau of Justice Assistance (BJA), an agency located within the U.S. Department of Justice’s Office of Justice Programs (OJP).³⁴ In order to obtain federal monies for MJDTF operations, state officials must establish particular operational parameters to account for spending and activities. In turn, state agencies disbursing funds to local law enforcement departments establish their own reporting requirements.

In each state, a State Administering Agency (SAA) is designated to oversee applications and administer the Byrne monies. Byrne funding is awarded to the SAA, which, in turn,

32 Russell-Einhorn, 2003. *Fighting Urban Crime: The Evolution of Federal-Local Collaboration*. Washington, DC: National Institute of Justice.

33 This program, which has recently been renamed the Edward Byrne Memorial Justice Assistance Grant (JAG) Program (42 U.S.C. 3751(a)), is one of the primary providers of federal criminal justice funding to state and local jurisdictions. JAG funds support all components of the criminal justice system, from multi-jurisdictional drug and gang task forces to crime prevention and domestic violence programs, courts, corrections, treatment, and justice information sharing initiatives. See Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2008 State Solicitation, <http://www.ojp.usdoj.gov/BJA/grant/jag.html> (viewed September 11, 2008).

34 United States General Accounting Office, Testimony before the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, “Office of Justice Programs: Problems with Grant Monitoring and Concerns about Evaluation Studies,” March 7, 2002. GAO-02-507T. “OJP’s five bureaus are Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.”

disburses the funds “to state and local units of government as well as to agencies and organizations.”³⁵

In Mississippi, the designated SAA is the Department of Public Safety (DPS). As required by the federal grant terms, DPS has established a reporting system, through which DPS assesses the progress of their subgrantees. DPS, in turn, reports to BJA on the activities of state and local entities that have received Byrne funding. Unfortunately, DPS has closely guarded this critical information, making a full evaluation of the impact of MJDTFs on public safety quite difficult. It is certainly contrary to the public interest to censor information that would accommodate an accurate evaluation of law enforcement policy and practice.

Though Mississippi law requires otherwise, DPS was largely unresponsive to requests for public information on the workings of the MJDTF system. Pursuant to an initial open records request, DPS provided two program documents—a “Program Narrative” and a “Statement of Special Conditions”—as well as a list of the Mississippi MJDTFs that receive Byrne funding. These documents provide an overview of the state’s MJDTF program, but only rudimentary information on the reporting requirements of DPS and its subgrantees to BJA—lacking any details that would allow for an effective evaluation of MJDTF policy and practice.

While the final section of the Program Narrative—entitled “Performance Indicators”—establishes specific data elements that are to be gathered and reported to DPS in order to evaluate effectiveness, including the number of arrests, number of people charged, number of convictions, and length of sentences, DPS refused to turn over this purportedly public information.

The commitments made by subgrantees to DPS in exchange for the funds they receive are established in the “Statement of Special Conditions.” Of great importance for accountability purposes, each “subgrantee agrees to maintain complete and accurate records on transactions involving Purchase of Evidence and Purchase of Information funds and on seized property and funds.” If properly implemented, this provision would do much to bolster the necessary oversight presently absent from the state’s CI system. In addition to “performance indicator” data, these records represent critical information for both DPS and BJA to ascertain the effectiveness of MJDTFs.

A second open records request was made for full disclosure of relevant data and reports from DPS grant files in order to evaluate how well MJDTFs have performed toward the goal of reducing illegal drug activity and increasing public safety in Mississippi communities. However, despite many months of negotiations regarding documents that DPS officials acknowledge are public records, physical access to the grant files has not yet been allowed.

35 BJA, August 2002.

The authors of this report are not the first to have been confronted with the denial or complete absence of information necessary to evaluate the conduct of Mississippi's MJDTFs. A research team at Mississippi State University (MSU) reported that their initial efforts to measure the impact of drug task force operations through monthly reports and surveys of both task force officers and community residents proved "not particularly informative" due to a lack of comparable task force data from year to year, as well as to a lack of comparable data from non-task force jurisdictions.³⁶ To evaluate the effectiveness of MJDTFs in more detail, the MSU researchers obtained 50 randomly-selected case files from local task forces for each year between 1993 and 1997. Review of these files was seriously hampered, however, because "each task force had a different system for compiling and storing their files [and] ...depending on the year and the task force, 50 cases may not have been processed." Almost 50 percent of the cases had to be discarded altogether because the case files were either not yet closed or the records were incomplete:

Unfortunately, many of these files were missing vital information. In some cases we were able to acquire assistance from clerical staff regarding missing information, but in many cases they were also unable to locate the missing data. The variability of case records with regard to their completeness is a serious limitation of our study.³⁷

Without comprehensive and uniform data collection requirements that provide for accurate evaluation of law enforcement strategies and practices, the government's public accountability is diminished. Furthermore, a lack of effective monitoring mechanisms for assessment of MJDTFs—and, particularly, the prevalent unregulated use of confidential informants that afflicts such operations, discussed later in Section III of the report—invites abuse, undermining the public interest and detracting from the ability of law enforcement to effectively meet its underlying goals.

By maintaining accurate, consistent records of task force performance, including use of CIs, and by making such records available to public requests for information, *as is required by law*, Mississippi officials can better prevent the kinds of systemic abuses that are otherwise likely to arise, helping to ensure that the state's drug enforcement policies deliver on their promise of increased public safety.

36 Dunaway, R. Gregory, Terri L. Ernest, and Peter B. Wood. 2004 "Innovative Approaches to Drug Control: An Evaluation of Mississippi's Multi-Jurisdictional Drug Task Force Program." *In Policing and Program Evaluation*, ed. Kent Kerley. Upper Saddle River, NJ: Prentice Hall.

37 Dunaway.

The “Numbers Game,” Ineffective and Unfair

While much relevant information has been withheld concerning Mississippi’s MJDTF system, what has been revealed suggests the sizable shortcomings of task force operations and their often counterproductive effect on public safety. A review of data from the monthly reports for the final evaluation year of the MSU study (October 1997 through September 1998) indicates that a total of 4,025 drug crime arrests were made by Mississippi’s MJDTFs. The typical arrestee was an unemployed male in his late-20s. A disproportionate number (73 percent) were African American.³⁸ Almost 60 percent of arrests were for drug possession, and 38 percent were for sale or distribution of drugs. Barely one percent of arrests were for the manufacturing of illegal substances, while less than seven percent of the charges subsequently filed were for distribution of illegal drugs and just over one percent were filed for manufacturing. Eighty percent of the cases resulted in a conviction, while 46 percent resulted in a prison sentence.³⁹

It is certainly worth highlighting that nearly 90 percent of these convictions were obtained through plea bargains, pointing to both the weighty influence of draconian sentencing schemes in pressuring low-level offenders to not contest charges, as well as to the tendency of MJDTFs toward recruitment of informants—a frequent condition of a plea bargain. Instead of targeting high-level kingpins, the MJDTFs would seem to arrest large quantities of smalltime offenders, the vast majority of whom accept plea bargains rather than face Mississippi’s excessive sentencing statutes—earning freedom in exchange for incriminating information on others in their communities or, possibly, through enlistment as a confidential informant. This is a vicious cycle, and, barring a change in policy, it will continue to ensnare an exponentially growing number of Mississippians.

As the MSU study indicates, a destructive “numbers game” has taken hold in which the number of arrests is a key tool in assessing the effectiveness of Mississippi’s MJDTFs.⁴⁰ Those who have encountered this “numbers game” firsthand understand its powerful sway and deleterious effect. Robert Johnson, a prominent law enforcement consultant who followed his service as Chief of Police in Jackson, Mississippi with a term as Commissioner of the Mississippi Department of Corrections, offers that the volume of drug arrests is the primary measure of success for drug enforcement in Mississippi, adding that “drug arrests help to fuel our prison population.”⁴¹

38 Dunaway.

39 Dunaway.

40 Dunaway.

41 Robert Johnson. Personal interview by Judith Greene and Patricia Allard. Written notes on file with authors.

■ The question, ‘How many arrests or tickets?’ is asked, rather than, ‘Was it wise to write a ticket or make an arrest in this case?’

—GARY MARX, MIT SOCIOLOGIST

Larry Davidson, former head of a federally funded High Intensity Drug Trafficking Area (HIDTA) program in Mississippi, agrees that state allocation of federal funds puts emphasis on quantity over quality for arrests made by Mississippi’s MJDTFs:

Byrne grants are awarded based on the number of arrests rather than on the quality of the arrests. State officials don’t track conviction rates, just arrests. And task force agents are so dependent on confidential informants for their numbers, that they often turn a blind eye to their criminal behavior.⁴²

Despite the increased sophistication of technology and use of appropriate metrics to measure police performance in other areas, measurement of performance in drug enforcement appears to have changed little since the mid-1970s, when Massachusetts Institute of Technology sociologist Gary Marx observed that “[t]he emphasis is too easily put on rates of production, rather than on the quality of the process through which the rates are produced. The question, ‘How many arrests or tickets?’ is asked, rather than, ‘Was it wise to write a ticket or make an arrest in this case?’”⁴³

As is suggested by Davidson, the traditional standards for measuring and rewarding police productivity as determined by quantitative indicators (e.g., arrests made) give rise to informal quota systems for arrests, which intensify pressures on law enforcement—and the informants they regularly deploy—to increase the number of cases through any means necessary, including deception and outright fabrication, as will be documented later in the report.

This approach not only invites exploitation and fraudulent practices, it misses the most critical point: that the number of arrests and the number of convictions so obtained are simply police and prosecutorial “outputs.” Observed “outputs,” while helpful for measuring the intensity of drug enforcement operations, may not prove at all useful for measuring the broader social outcomes—crime control, reduction of criminal victimization, and improvement of our individual and collective lives—we desire from law enforcement.⁴⁴

42 Larry Davidson. Personal interview by Judith Greene and Patricia Allard. On file with authors.

43 Marx, Gary T. “Alternative Measures of Police Performance” In E. Viano, (ed.) *Criminal Justice Research*, Lexington Books. 1976. Even the vaunted COMPSTAT system pioneered by William Bratton in New York City appeared to turn a concentrated spotlight toward police management that was more focused on reducing crime rates than on qualitative assessment of the strategies managers effected to accomplish that end.

44 Moore, Mark H. and Anthony Braga. 2003. “The ‘Bottom Line’ of Policing.” Washington, DC: The Police Executive Research Forum.

- Task force officers did not report a reduction in the volume of illegal drugs available for sale in their jurisdictions, indicating that 80-90 percent of the arrests they made were cocaine-related, but that “both crack/cocaine and pot traffic seem to be relatively stable or on the increase.”

—MSU FOCUS GROUP FINDINGS

Our assumption that the ongoing devotion to quantity-centered policing is largely ineffective is given additional credence through the words of MJDTF agents themselves. As the MSU evaluation reveals, while Mississippi MJDTF agents conduct significant numbers of arrests annually, these same agents told researchers that such tactics have failed to diminish illegal drug activity in their jurisdictions. To gain additional insights about the workings of the MJDTF operations, assess their overall performance, and measure their impact on drug activity in Mississippi, the MSU researchers conducted focus groups with the personnel of four MJDTFs. Task force officers did not report a reduction in the volume of illegal drugs available for sale in their jurisdictions, indicating that 80-90 percent of the arrests they made were cocaine-related, but that “both crack/cocaine and pot traffic seem to be relatively stable or on the increase.”⁴⁵

MJDTF agents reported a decrease in the visibility of the illegal drug trade in public, with a concomitant increase of dealing off the street, within buildings, and said that this led to an increased reliance on undercover operations and use of CIs. Yet neither the cases reviewed for this report, nor the interviews conducted in the course of the research, indicated that “infiltration” of drug organizations resulted in cases involving major dealers. Rather, the CIs we learned about were making very small “buys” for modest amounts of money. Leslie Lee, the Appellate Public Defender in Jackson, Mississippi also pointed out—while discussing the types of cases handled by her office—that it is with these small buys, often conducted numerous times from the same drug seller, and referred to as “case stacking”—that task forces and prosecutors are able to fuel the necessary numbers required to obtain federal funding for their departments. “Case stacking” can be used to create the fiction that a smalltime, street-level seller is, instead, a major trafficker.⁴⁶

One experienced civil rights investigator identified the problem with “case stacking” succinctly: “When someone commits a crime they should be arrested.” The interests of community residents in their public safety would seem best served by swift apprehension of law-breakers—both to stem their criminal activities and to deter others. Current

45 Dunaway.

46 Leslie Lee. Personal interview by Judith Greene and Patricia Allard. Written notes on file with authors.

practice in low-income African American communities, however, often appears to involve providing a criminal informant with small amounts of money and audiovisual recording equipment to conduct multiple drug “buys” from a targeted resident over time—stacking several drug sales involving very small amounts of drugs in order to portray the target as a major player in the drug trade. But—even when repeated—a series of “retail” sales of a few rocks of crack to friends, family members or acquaintances is not the hallmark of a major dealer. Rather, it marks a typical pattern of trade between drug addicts who support their habits by making small sales to close associates.

In truth, the use of CIs in repetitious “buys” of small amounts of drugs from targeted individuals is not a promising strategy for penetrating the drug market so as to net “the big guys,” and the many cases discussed in the following section do not suggest that major cases are being made through this tactic. Once again, the civil rights investigator puts it succinctly: “People don’t just go up to strangers and buy thousands of dollars of drugs.” And, as we shall see, the ineffectiveness of the “numbers game,” so dependent on the use of street-level informants to apprehend low-level drug offenders, is but one of many imperatives for a change in course.

“Case Stacking” refers to the police and prosecution practice of stacking several drug sales involving very small amounts of drugs in order to portray the target as a major drug seller and expose them to long prison sentences, even when the target is a low-level user who only occasionally sells drugs to fund their addiction.

Recommendations At-A-Glance

(Detailed recommendations presented in Section IV)

- **Make information regarding the reporting requirements and evaluations of drug task forces publicly available.**
- **Establish uniform data collection and reporting** requirements for all drug task forces so that case files may be compared across jurisdictions.
- Revise and expand current reporting requirements in such a way that DPS can **measure and evaluate genuine drug enforcement outcomes**, with a focus on redirecting investigative or law enforcement officers from users and low-level distributors to high-level traffickers.
- The Governor should **diversify allocations of federal grant dollars that currently go to drug task forces to other effective methods of combating drug abuse**, and other Mississippi priorities.
- The State should set up an **oversight board** to monitor compliance with the above recommendations.

SECTION III

An Invitation to Abuse: The Confidential Informant System

Drug law enforcement in the United States has grown highly dependent upon the wholesale use of confidential informants (CIs), who are frequently lawbreakers in their own right. Driven by skewed police performance metrics and draconian sentencing policies, and corrupted through perverse incentives coupled with nonexistent oversight, the informant system as operated is antithetical to basic fairness, the proper administration of the justice system, and truly effective law enforcement. The pervasive abuse of the informant system, often by federally funded drug task forces, has had tragic implications for individuals and communities nationwide. Disproportionately targeted by drug law enforcement efforts, African American communities have, unsurprisingly, borne the brunt of this injustice.

CIs are generally people charged with relatively minor drug offenses and threatened with lengthy prison terms, but offered the possibility of leniency provided that they cooperate by helping to incriminate members of their communities. Throughout the process, participants—informants and law enforcement alike—are lured to bend or break the rules with little risk of discovery, let alone reprisal. Encouraged by funding mechanisms keyed to arrest statistics and unbridled by effective oversight, law enforcement has been embarrassed by no shortage of CI-related scandals—from turning a blind eye to fabricated evidence, to allowing known serious offenders to remain free in exchange for continued cooperation of dubious value, and far worse. CIs, for their part, are coerced through excessive sentencing policy and promises of prosecutorial leniency, or, frequently, enticed by offers of drugs or money, or the prospect of knocking off criminal competition. Given such pressures, it is to be expected that CIs have been regularly found to point the finger at innocent individuals or to produce phony evidence—alone or in concert with corrupt law enforcement. We have, in effect, instituted a largely unregulated system—devoid of public oversight—that deputizes low-level drug offenders to generate additional crimes within their communities for the benefit of local law enforcement’s sales pitch to the federal government. Needless to say, problems have emerged in Mississippi and beyond, with little impact on the use, abuse or availability of illegal drugs.

Unlike witnesses, **“confidential informants”** are motivated by self-advancement. CIs work for the government, often undercover, to gather and provide information or to testify in exchange for cash or leniency in punishment for their own crimes.

Section IV of this report offers some specific recommendations to ensure that the use of informants in drug policing enhances—not undermines—public safety.

An Overview of the Informant System

According to Professor Alexandra Natapoff of Loyola Law School in Los Angeles, the nation's foremost legal scholar on the topic:

The use of criminal informants in the U.S. justice system has become a flourishing socio-legal institution unto itself. Characterized by secrecy, unfettered law enforcement discretion, and informal negotiations with criminal suspects, the informant institution both embodies and exacerbates some of the most problematic features of the criminal justice process. Every year tens of thousands of criminal suspects—many of them drug offenders concentrated in high-crime inner city neighborhoods—informally negotiate away liability in exchange for promised cooperation.⁴⁷

The full extent of the practice is not known because there is no systematic national reporting requirement and the data are hard to come by. At the federal level, the practice of rewarding defendants who “snitch” was accelerated by the extreme mandatory minimum sentences provided in the Anti-Drug Abuse Act of 1986 and by the adoption of notoriously harsh federal sentencing guidelines in 1987. Together this legislation introduced a powerful incentive for defendants to cooperate with law enforcement in order to receive sentences that, upon motion by the prosecution, may be set below the harsh prison terms otherwise required—a situation closely mirrored through Mississippi’s blatantly excessive sentencing policies.

Although there is no official, legal definition of the term “**substantial assistance**,” it generally refers to information provided to the government by a defendant in exchange for leniency in sentencing.

Data regarding the use of CIs in Mississippi has, unfortunately, been blocked from public view, preventing a much-needed evaluation of the system’s efficacy. For more than two years, the American Civil Liberties Union (ACLU) has repeatedly attempted to access public information regarding the use and treatment of CIs by Mississippi law enforcement under the Mississippi Public Records Act. The ACLU adhered to all of the statutory requirements of the Public Records Act, submitting multiple written requests, complying with all requests for information from the Mississippi Department of Public Safety, and engaging in repeated follow-up communications by telephone and email. Although Mississippi’s Public Records Act mandates that properly requested documents are made available within 14 days of a request, over 22 months have passed since the initial

request, and the ACLU has still not been able to access the requested documents. Such lack of transparency and appropriate public accountability is a primary area in need of reform.

⁴⁷ Natapoff, Alexandra. “Snitching: the institutional and communal consequences.” *University of Cincinnati Law Review*, Vol. 73, 2004. Available online at SSRN: <http://ssrn.com/abstract=613521>.

- In 2000, the DEA was reported to have twice as many informants (4,500) as agents.

Though scarce, a handful of studies and reports provide a window into the practice of informant use at the federal level. A study published by the U.S. Sentencing Commission in 1998 found that substantial assistance motions in drug trafficking cases rewarded cooperating defendants with an average sentence reduction of more than five years—a substantial prize.⁴⁸ Tempted by the prospect of reduced time, more than one in seven of the 72,462 defendants sentenced in the federal courts during the federal fiscal year 2005 won mitigation by providing substantial assistance to prosecutors. Cooperation is most prevalent in drug cases, which, in turn, are the most frequent type of conviction offense—comprising more than a quarter of the federal sentencing caseload.⁴⁹ Drawing on this hefty recruiting pool, in 2000, the DEA was reported to have twice as many informants (4,500) as agents.⁵⁰

Pressure to Plea and its Implications

Since the vast majority of drug cases handled in both federal and state courts result in negotiated pleas, the recruitment and deployment of CIs occurs largely without judicial review. Secret negotiations between a generally overmatched defendant and prosecutor result in vaguely worded cooperation agreements that can enmesh the defendant in an open-ended term of undercover servitude in an effort to escape excessive charges and imprisonment. The lack of transparency and accountability in the process invites abuse.

The incentive provided to defendants to cooperate with prosecutors erodes the legitimacy of the adversarial criminal justice system, which is already compromised by the contingencies of plea bargaining: A criminal informant is obliged to waive his or her Fifth Amendment right against self-incrimination at entry to the process of cooperation and then faces intense pressure to win the favor of the prosecutor, who holds a vast degree of unchecked and unreviewable discretion in their case. In counseling a cooperating defendant, the defense attorney's role can be turned 180 degrees from the stance of zealous representation toward angling for an amicable understanding with the state. Moreover, as

48 United States Federal Sentencing Commission. "Substantial Assistance: An Empirical Yardstick Gauging Equity in Current Federal Policy and Practice." Online at <http://www.ussc.gov/publicat/5kreport.pdf>.

49 United States Federal Sentencing Commission. "2005 Federal Sentencing Sourcebook" Online at <http://www.ussc.gov/ANNRPT/2005/SBTOC05.htm> Federal fiscal year 2005 ran from October 1, 2004 through September 30, 2005.

50 Smith, Mark. "Rampant use of informants in drug cases coming under fire." *Houston Chronicle*, August 7, 2000.

- “Criminals are likely to say and do anything to get what they want, especially when what they want is to get out of trouble with the law.”

—THE HONORABLE STEPHEN S. TROTT, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

relationships develop between the state and long-serving CIs, the prosecutor’s objectivity can become seriously compromised, skewed by the desire to protect the reputation of an informant at the heart of numerous past convictions.

Adina Schwartz, an academic expert on law and philosophy at the John Jay College of Criminal Justice at City University of New York, argues that as the use of testimony from criminal defendants to prosecute others has become a primary means of securing criminal convictions, the line between prosecution and defense has become blurred:

[A]s cooperation becomes increasingly prevalent, defense attorneys are increasingly obligated to assist their clients to become “signed on” to assist the government in prosecuting others. Thus, an adversarial relationship between prosecution and defense is increasingly replaced by an exchange relationship in which defendants and their attorneys are enlisted on the prosecution’s side.

...

[I]t becomes a matter of self-interest for the typical defendant to enter into a cooperation agreement as soon as possible. Unlike pleading guilty, cooperating does not only involve relinquishing one’s own trial rights and presumption of innocence. Cooperating defendants switch from shielding themselves with the presumption of innocence to joining with the prosecution in depriving others of that shield.

This shift in defendants’ interests threatens the systemic defense role of challenging government power. Defense attorneys cannot fulfill their duty of loyalty to individual defendants by assisting them to become and remain part of the prosecution team without abandoning their traditional function of asserting the presumption of innocence and insisting that rights be protected during investigations and prosecutions.⁵¹

Moreover, Professor Schwartz points out that defense attorneys are barred from rewarding or paying lay witnesses to provide testimony that would assist their clients, and she argues

51 Schwartz, Adina. 2004. “A Market in Liberty: Corruption, Cooperation, and the Federal Criminal Justice System,” in William Heffernan and John Kleinig (eds.), *Private and Public Corruption*. Lanham, MD: Rowman & Littlefield.

that a system which allows prosecutors to be the only parties able to “buy” testimony against others creates a “market that is biased in the sense that payments are made for inculpatory, but not exculpatory, information.”⁵²

Legal scholar Graham Hughes has warned that a system that grants leniency at sentencing for cooperation with prosecutors is very likely to induce false testimony:

Terms in a cooperation agreement to the effect that the degree of leniency depends on a government appraisal of the value of the cooperation . . . dangle almost irresistible temptations before witnesses to lie or enhance testimony and invest the government with an unfailing capacity to apply coercion.⁵³

On this score, Schwartz cites a warning from jurist Stephen S. Trott, a U.S. Court of Appeals judge who headed the Criminal Division of the Justice Department during the Reagan years, that reliance on the testimony of people facing criminal charges to convict others undermines the function of the trial as a forum for determining guilt or innocence:

Criminals are likely to say and do anything to get what they want, especially when what they want is to get out of trouble with the law. This willingness to do anything includes not only truthfully spilling the beans on friends and relatives, but also lying, committing perjury, manufacturing evidence, soliciting others to corroborate their lies with more lies and double-crossing anyone with whom they come into contact, including—and especially—the prosecutor.⁵⁴

Law professor Ellen Yaroshefsky at the Benjamin Cardozo School of Law interviewed former Assistant U.S. Attorneys about the role of cooperators and how it leads to problems regarding reliability of informant testimony. She cites many reasons that prosecutors may be duped by false CI testimony:

These reasons are lack of corroboration for cooperator’s information, particularly in small narcotics and historical gang cases; lack of thorough investigation; insufficient evidence; unwarranted trust of cooperators; the development of a rigid theory of a case; cultural barriers between defendants and prosecutors; attitudes of individual assistants; and lack of experience of many assistants.⁵⁵

52 *Ibid.*

53 Hughes, Graham. 1992. “Agreements for Cooperation in Criminal Cases,” *Vanderbilt Law Review* 45.

54 Schwartz.

55 Yaroshefsky, Ellen. 1999. “Cooperation with Federal Prosecutors: Experiences of Truth Telling and Embellishments.” *Fordham Law Review*, Vol. 68.

The “cooperation paradox” describes a perversion of justice wherein the lowest level defendants get the harshest prison sentences in a criminal conspiracy because they have little or no information of value to the government to trade for leniency, while the highest level defendants trade information and turn in associates in return for reduced or no prison time.

But even undertaken by the most diligent of prosecutors, the plea practice effectively “licenses” or even compensates the continued criminal activities of informers, as well as providing them with ample opportunities and the means to diminish or eliminate competition from others engaged in the drug trade. Moreover, in communities that bear the brunt of heavy drug enforcement, the practice of granting leniency for testimony against others tends to decrease respect for the legal system overall. People come to believe that prosecutors give unfair advantages to those who agree to cooperate in prosecution of their often less culpable associates. Legal scholar Stephen Schulhofer coined the term “cooperation paradox” to explain how the practice distorts and undermines the basic value of fundamental fairness:

Defendants who are most in the know, and thus have the most ‘substantial assistance’ to offer, are often those who are most centrally involved in conspiratorial crime. Minor players, peripherally involved and with little knowledge or responsibility, have little to offer and thus can wind up with far more severe sentences than the boss.⁵⁶

When informants are, in effect, licensed to continue their criminal activities while helping to build cases on others in the community, cynicism about the workings of the justice system only increases. Adina Schwartz recounts the effect of one such situation:

Empirical researchers have not addressed the question of whether the substantial assistance provisions have delegitimated the law in the eyes of defendants and/or others in their communities. My belief that such delegitimation has occurred and is occurring is based on a conversation that I had when I was a federal public defender in 1989 with the girlfriend of a defendant who had been sentenced to six years’ imprisonment for various cocaine trafficking offenses. While the defendant’s appeal was pending, the girlfriend, who was employed as a beautician in the neighborhood in the Bronx in which I grew up, came to my office and asked why, by contrast to the defendant, the “big guy” in the drug operation was free and still supervising drug sales. While not condoning the defendant’s illegal conduct, his girlfriend angrily described the “big guy” as strutting around the neighborhood, bragging that he would never be caught for his crimes. I explained that the “big guy” was probably free as a result of a cooperation

56 Schulhofer, Stephen J. 1993. “Rethinking Mandatory Minimums,” *Wake Forest Law Review*, Vol. 28.

agreement, and that to enter into such agreements, people usually needed to be high up enough in the drug business to have information to “sell.” When the girlfriend asked how that could be the law, I explained that the law was not necessarily fair.⁵⁷

On a practical and strategic basis, one can argue that the use of CIs to infiltrate tightly-knit communities is the only method currently available to law enforcement to ferret out drug offenders. Yet policymakers and governmental administrators have a responsibility to consider whether the benefits accrued through the highly-concentrated use of informants in targeted communities outweighs its detrimental impact on social cohesion, as well as on the community’s confidence in the judicial system and the law enforcement agencies that exist to serve and protect them.

In 1976, when promulgating the first set of guidelines intended to govern the use of CIs in federal law enforcement, U.S. Attorney General Edward H. Levi addressed the dangers inherent in their use and urged that the practice be both prudently limited and circumscribed with necessary safeguards:

Courts have long recognized that the government’s use of informants is lawful and may often be essential to the effectiveness of properly authorized law enforcement investigations. However, the technique of using informants[,] . . . since it may involve an element of deception and intrusion into the privacy of individuals or may require government cooperation with persons whose reliability and motivation may be open to question, should be carefully limited. Thus[,] . . . it is imperative that special care be taken not only to minimize their use but also to ensure that individual rights are not infringed and that the government itself does not become a violator of the law.⁵⁸

As the following CI system scandals highlighted in Sections IV and V of the report make clear, adequate safeguards are not presently in place.

57 Schwartz.

58 Attorney General’s Guidelines for FBI Use of Informants in Domestic Security, Organized Crime, and Other Criminal Investigations (Dec. 15, 1976), *reprinted in* FBI Oversight: Hearings Before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 95th Cong., 1st Sess. 50-53.

Recommendations At-A-Glance

- Each law enforcement jurisdiction should maintain an **informant registry** wherein law enforcement officers register specific yet anonymized information about each informant that would allow for an analysis of the costs and benefits of informant use in the state.
- **Any law enforcement officer who obtains information that a confidential informant has committed a serious violent felony in violation of state or federal law must report** such information to supervisors.
- Require that **warrants for the search and seizure of controlled substances based on information from an informant must contain information that corroborates the information given by the informant.**
- Require the state to **provide all exculpatory material** related to informant information to the defendant, including impeachment evidence pertaining to any government witness or informant, **prior to the court accepting a plea agreement** of guilty or *nolo contendere*.
- Require the government to disclose at a pre-trial conference its intent to introduce the testimony of an informant at trial, and allow for a **reliability hearing** before the judge prior to the introduction of an informant's testimony on the defendant's motion.
- **Require corroboration of testimony by all informants.** Although a corroboration requirement could take several forms, at the very least, no person should be convicted of a drug offense based solely on the eyewitness testimony of an informant.

The confidential informant system presents real dangers not only to defendants and the public at large, but also to those recruited to work as informants. The following recommendations would enhance their safety:

- **No law enforcement officer shall solicit a person who is currently participating in a drug treatment program to act as an informant.**
- Where the person acting as an **informant has never been accused or convicted of a crime of violence** or possession of a firearm, **law enforcement shall not employ them as a confidential informant to investigate a violent crime** or suspects known by law enforcement to have employed physical violence and/or firearms in the past.

- **Juveniles should not be used as confidential informants.**
- A person law enforcement solicits to act as an informant in exchange for leniency concerning a criminal offense shall be provided the opportunity to **consult with counsel.**
- **All plea negotiations and offers of leniency to a proposed informant must be in writing.**
- **Officers must evaluate the mental health of any proposed informant,** with professional expert assistance when appropriate, and must consider the relative experience or inexperience of the proposed informant, the seriousness of their offense, the benefit promised to them and the characteristics of the target offender and offense.

SECTION IV

The Targeted Impact of Confidential Informant Practices on African American Communities

As discussed, the use of CIs has become an essential instrument of drug law enforcement. Due to potent institutional injustice, low-income African American communities constitute the primary terrain upon which law enforcement wages war against drugs. The result is the pervasive deployment of CIs in African American communities, with dire implications for community cohesion and a functional relationship with law enforcement.

By design, CI use takes advantage of the open, informal and lifelong relationships that exist in close-knit communities. Professor Alexandra Natapoff of Loyola Law School rightly points out that the ease with which community members, unlike police officers, can obtain information on the affairs of their neighbors, friends and family serves as a focusing mechanism:

In relying on snitches, police and prosecutors receive information about the community of that informant, thereby ensuring a concentration of resources directed not by independent law enforcement decision, but by the identity and choices of the informant. To put it another way, snitches can only rely on people they know.⁵⁹

Use of CIs thereby compounds the problem of racial disparity in the criminal justice system. Recruitment of informants within a single criminal network can create a dragnet across communities of color, as successive targets are turned and pressured to identify and build cases across an ever-broadening span of the social network. A relentless drive for quantity over quality in making drug cases—as dictated through MJDTF funding policy—pressures both law enforcement agents and CIs to draw more and more individuals into the net—with new prey picked from an existing set of personal associates.

The lenient treatment afforded to those who enlist as informants does not necessarily pay off in the long-term, however. As a veteran investigator at a prominent civil rights law firm in Mississippi attested:

Around here it's a high percentage of young black people being recruited to be CIs. Most are arrested and threatened, but if they help the cops get somebody else for drugs, they get 20 years of probation or house arrest instead of 20 years in jail. Twenty years is a long time for an addict, so they

59 Natapoff.

also eventually get arrested, convicted and imprisoned.⁶⁰

Given the concentration of drug enforcement operations in urban communities where residents are comprised of low-income people of color, heavy use of criminal informants creates a “police state” atmosphere. Professor Natapoff estimates that 25 percent of African American men in these communities are likely to face the pressure to become a confidential informant because of their contact with the criminal justice system. “Assuming that thirty percent of those succumb, approximately one in twelve men in the community are active informants at any given time.”⁶¹

Professor Natapoff maintains that these circumstances cause African Americans to lose faith in the state’s commitment to community safety and well-being:

Active informants impose their criminality on their community, while at the same time compromising the privacy and peace of mind of families, friends, and neighbors. Informants also are a vivid reminder that the justice system does not treat suspects evenhandedly and may even reward antisocial or illegal behavior.⁶²

The concentrated deployment of informants in particular communities causes tremendous damage to social solidarity, risking higher levels of violence among those inclined to retaliate against informants or their loved ones, undermining unity and organization, and greatly diminishing the legitimacy of policing in the eyes of community residents.

A Look Back: Informants in Mississippi’s Past

The use of informants in Mississippi did not begin with the advent of the “war on drugs.” For many veterans of the civil rights era, the practice resonates with bitter memories of state and federal surveillance of civil rights activists and of CI use to disrupt struggles for political inclusion and racial justice. During the 1950s, when U.S. Senator James O. Eastland fought to preserve racial segregation as chair of the Internal Security Sub-Committee, his close relationship with FBI director J. Edgar Hoover helped to direct federal law enforcement to investigate “communist subversion” in Mississippi.

Segregationist Governor Ross Barnett tooled up the State Sovereignty Commission (SSC) to investigate and undermine the civil rights movement in Mississippi. Many supporters of integration were targeted, and the offices of organizations working to support interracial alliances across the South were raided by local police. As organizing for voting rights

60 Anonymous interview with staff at a Mississippi law firm. Written notes on file with authors.

61 Natapoff.

62 Natapoff.

- Active informants impose their criminality on their community, while at the same time compromising the privacy and peace of mind of families, friends, and neighbors.

intensified in the early 1960s, the SSC responded with yet more concentrated efforts to investigate activist organizations and to infiltrate their ranks with informers. As activists broadened their efforts to address economic inequality, community-based anti-poverty efforts were infiltrated by SSC informers, who assisted Eastland—then chair of the Senate Judiciary Committee—to crack down on their efforts and deny them federal funding.⁶³

Federal surveillance and disruption of freedom struggles across the nation reached its zenith with implementation of COINTELPRO, the FBI's covert operations campaign against groups they deemed to be "subversive." A congressional investigation launched in 1976 revealed that COINTELPRO had swept far beyond the normal scope of federal law enforcement authority in targeting organizations such as the nonviolent Southern Christian Leadership Conference as a "Black Nationalist-Hate Group."⁶⁴

COINTELPRO tactics included widespread use of police powers for political repression. FBI agents were instructed to compile evidence that African American and New Left activist leaders were using drugs and to have them arrested by local police on drug charges.⁶⁵

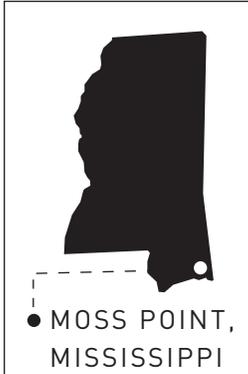
While the drug enforcement activities documented in this report may not be aimed at suppression of political and civil rights, in many respects, today's confidential informant practices resemble the destabilization strategies of the 1950s and 60s and must be understood in this context. African American men and women whose addiction to drugs could be more cheaply and effectively addressed in the public health system are regularly harassed and arrested. Fear is instilled in them by military-style raids and crackdown campaigns in their neighborhoods. Those arrested for low-level, nonviolent drug crimes find themselves threatened with excessively long sentences unless they cooperate with law enforcement by turning in their friends and neighbors. Some are paid a bounty to set up drug "buys," instigating illegal activity within their social circles and drawing a police dragnet down upon them.

63 Asch, Chris Myers. 2008. *The Senator and the Sharecropper: The Freedom Struggles of James O. Eastland and Fannie Lou Hamer*. New York: The New Press.

64 United States Senate. April 23, 1976. "COINTELPRO: The FBI's Covert Actions Against American Citizens," *Final Report of the Select Committee to Study Governmental Operation With Respect to Intelligence Activities*. <http://www.icdc.com/~paulwolf/cointelpro/churchfinalreport111a.htm>.

65 Memo from FBI Director Hoover to all field offices dated July 5, 1968.

Present Day Problems: The Informant System and Drug Task Forces in Mississippi



Recent drug task force activity in Moss Point, Mississippi, a town of 17,000 predominately African-American residents located near Pascagoula in Jackson County, presents a vivid, contemporary example of a Mississippian community living under “police state” conditions created by overly aggressive drug law enforcement. The threat of a law enforcement dragnet was no secret to the residents of Moss Point. In fact, the clampdown involved highly publicized fear-mongering campaigns, dubbed “Operation Frostbite” and “Operation Heat Stroke,” loudly hyped by public officials in the local media. Many residents came to live in constant apprehension, day and night, of sting operations, law enforcement sweeps and drug raids of their homes. Traffic stops mushroomed, with traffic infractions—reported along with drug arrests—used to inflate the actual impact of the law-and-order crusade.

Frequent coverage in the Gulf Coast media broadcast the law enforcement crackdown in Moss Point:

I was coming through the stop sign and I saw the flashing lights and I was like, ‘Golly they got me.’ But I ain’t have anything. Good thing,’ Moss Point resident Demetrius Rodgers said.

Rodgers and more than 100 other people in Moss Point felt the sting of Operation Frostbite Wednesday night.

When asked if he was scared when he was pulled over, Moss Point resident Clay Rodgers said, ‘Yeah! Who wouldn’t be? Somebody came up to you with blue lights, you have no choice but to be scared.’

That fear is something the Narcotics Task Force hopes sends chills to suspected drug dealers throughout the county. In the process, it reminds everyone the Task Force means business.

‘Whatever y’all doing, y’all better straighten up because they ain’t playing,’ Rodgers said.

The Moss Point mission was one of five stings in the county this year. This round of Operation Frostbite brought 32 arrests and 46 traffic tickets.

‘It keeps them scared, it keeps them on their toes, it makes them change tactics. It’s been stopping them from hanging out at the convenience stores, walking down the street dealing drugs, it keeps them on their toes,’ Chad

Heck, Assistant Commander of the Narcotics Task Force of Jackson County said.

Agents say Operation Frostbite has been one of their most successful crackdown campaigns in recent years. And even though the weather is warming up, you can count on many other operations like Frostbite in the near future.⁶⁶

In spring 2008, “Operation Heat Stroke” was launched as the second wave of the anti-drug campaign in Moss Point:

[N]arcotics agents and local police made 15 misdemeanor and four felony arrests Wednesday night in Moss Point. Twenty-five traffic citations also were issued. Wednesday’s sting is the first in a series of details planned as part of Operation Heat Stroke, expected to run continuously at any given time, day or night, in Jackson County throughout the year. It is intended to pre-empt possible drug or criminal activity. ... Anyone who suspects illegal-drug or other criminal activity in their neighborhood should call their local law enforcement agency.⁶⁷

Such hyper-aggressive drug enforcement tactics and community-wide dragnets, combined with the increasingly routine reliance on informants, bring massive upheaval to afflicted communities—as evidenced by the experiences of Moss Point residents. One mother shared her experience, recounting how her sons came to be arrested, convicted and sentenced to excessively long sentences. In both her sons’ cases, it was a neighbor and longtime family friend who turned in her children—a consequence of his own troubles with the Narcotics Task Force of Jackson County.

Tracey, the mother of Jordan and Bill, is a hardworking, middle-class African American parent. Jordan and Bill were arrested in July and August 2007, respectively. Bill was arrested at his workplace, while Jordan was scooped up with more than a dozen other young men in one of Operation Heat Stroke’s sweeps.

Tracey indicates that sting operations have been occurring for years; Operation Heat Stroke represents just one anti-drug campaign among many. She estimates that dozens of Moss Point residents are rounded up annually through these sting operations. Typically, law enforcement agents pressure people who live in the community to inform on friends and neighbors to build cases, and such was the case with respect to Tracey’s sons:

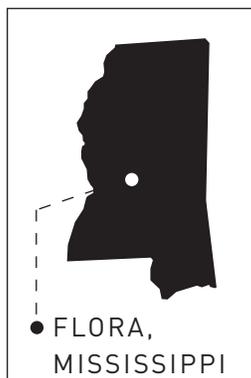
66 Rabon, Keli. “Operation Frostbite Blows Through Moss Point.” *WLOX ABC 13*, April 5, 2007.

67 Margaret Bakerm, Margaret. “Moss Point drug sweep arrests 19.” *Sun Herald*, March 14, 2008.

The informer was a friend down the street. [Ben] told me that the task force caught him with crack, and threatened to take his kids if he didn't set my boys up.⁶⁸

Tracey's sons grew up with Ben. As a youth he was known as a "gang-banger" and an addict, using both crack cocaine and heroin. In the early summer months of 2007, Ben was arrested for a drug offense. Under intense pressure to protect his family, he became an informant for the Narcotics Task Force of Jackson County. He arranged to buy crack cocaine several times from Jordan and Bill, which the three of them then smoked together. This situation represents a common example of low-level drug activity within a neighborhood where young men hang out, use, and share drugs among friends with whom they have grown up. Arrests and convictions of young people, such as these, fall far short of making a desired dent in the drug trade, but they provide vital statistics to show that the drug task force is on the job.

Ben's recruitment as a confidential informant has forever damaged the personal relationships between these two families. Nonetheless, Tracey feels empathy for him, and for his family. "[Ben] is torn up about having had to snitch on my sons and told me so."⁶⁹ While supporting her sons through their legal battles, Tracey is able to recognize that Ben was caught between a large rock and a very hard place.



A similar pattern and practice of using neighbors and friends as confidential informants is occurring in Flora, Mississippi, a tiny town of some 1,500 residents in Madison County—an area where complaints of racial profiling are common. While there is no Multi-Jurisdictional Drug Task Force in Madison County, local police frequently threaten low-level drug users and sellers, coercing them to "snitch" on their friends.

Josephine, is a grandmother and lifelong Flora resident. According to her, Flora has never experienced a significant drug problem:

The old people here are afraid of the cops. We've never had a serious drug problem. And now, it's the same. People have a few rocks to smoke or sell but not much else—but nobody's stealing from us. Addicts ain't hurting us.⁷⁰

Josephine maintains that there are at least three known informants among the young people in Flora, and that many residents are frustrated with the local police because they

68 Anonymous interview with a Moss Point resident. Written notes on file with authors.

69 Anonymous interview with a Moss Point resident. Written notes on file with authors.

70 Anonymous interview with a Flora resident. Written notes on file with authors.

- They use people [who] already [have] a felony conviction and should be in prison, and give them ‘paper time.’ The week before they arrested my son, they search and arrest this guy. He had weed, crack and money on him. They gave it back to him and let him go on ‘paper time’ for snitching on my son.

—A MISSISSIPPI MOTHER

are forcing young people to turn each other in. With considerable nostalgia, she recalls that people in Flora used to be very neighborly; they would talk about their families, joys and troubles, but now, “everybody don’t fool with each other anymore. People keeping to themselves and not inviting each other in their homes.” She says that people are afraid to go out at night. “Most young guys are scared to walk the streets at night because the cops mess with them.” When her 20-year-old nephew does go out at night, she fears for his safety, not because of other Flora residents, but because of law enforcement agents: “Cops know how to scare you into snitching.”⁷¹

When natural community patterns are disrupted, such as has been described in Flora, the streets are left more dangerous. Dina Rose and Todd Clear have studied the impact of incarceration on community life, documenting the effect of law enforcement on crime rates. They found that concentrated patterns of arrest and incarceration can backfire, resulting in *higher* rates of criminal activity—not less crime. They maintain that in high-incarceration neighborhoods where large numbers of individuals are sent off to prison for often petty offenses, incarceration disrupts the social networks that provide informal social control, removing the benefits these individuals normally provide that are unrelated to their criminal behavior: personal and economic support for their family members and positive association with their neighbors.⁷²

Law enforcement presence in communities represents—at best—an intermittent form of crime prevention. Consistent and strong involvement of community residents as monitors and influencers of social interaction and as first-responders to troublesome behavior is the primary source of community safety. When police operations create a climate of fear and mutual distrust, community involvement is diminished. Neighbors are fearful to talk to one another. Many young men are removed from their communities and others are afraid to go out at night. Harsh and relentless law enforcement practices chip away at the informal self-regulating structure of control, threatening community safety.

71 Anonymous interview with a Flora resident. Written notes on file with authors.

72 Rose, Dina R. and Todd R. Clear. 1998. “Incarceration, Social Capital, and Crime: Implications for Social Disorganization Theory.” *Criminology* 36:3.

The corrosive effect of recruiting community members as CIs is compounded by aggressive enforcement tactics, such as those deployed in Moss Point's Operations "Heat Stroke" and "Frostbite." Expressly designed to instill fear in communities as a whole, a campaign of random traffic stops, questionable searches, and intense pressure on young people to inform on others deepens resentment and diminishes the legitimacy of policing in the eyes of those who—not surprisingly—perceive themselves to be under siege. The sense of being under siege may be felt even more deeply in rural communities, where social networks are smaller and people have often known each other intimately for many years.

Some community residents view the use of CIs as not only tolerating criminal activity, but also enabling it—greatly diminishing the legitimacy of policing in their eyes. Another Mississippi mother, Sandra, says that her son's informer was allowed to continue his own criminal enterprise while turning in her son:

They use people [who] already [have] a felony conviction and should be in prison, and give them 'paper time.' The week before they arrested my son, they search and arrest this guy. He had weed, crack and money on him. They gave it back to him and let him go on 'paper time' for snitching on my son.⁷³

Residents in Flora and Moss Point say that they are all too aware of how young men and women beset with addictions are compelled to turn in their friends and family members. They watch as their friends and associates are sent out into the communities with money to buy drugs, perpetuating antisocial behavior. They see firsthand how—as Professor Natapoff contends—such police tactics generate crime and violate "the spirit of 'zero tolerance' and 'quality of life' community policing policies aimed at improving the communal experience in high-crime communities."⁷⁴ Adding insult to injury, they see informants treated leniently or allowed to continue in criminal activity, while their family members face lengthy prison sentences. Faith in the criminal justice system erodes accordingly.

Under intense pressure by police to identify private homes where drug activity is taking place, CIs may inadvertently give the wrong address, or give one based on incomplete or inaccurate knowledge. But law enforcement will rely on such information, organize a SWAT team, and conduct a raid. Many Mississippians recount stories of a neighbor or a family member's home invaded in the middle of the night—with elders and children held at gunpoint, facing police officers dressed in paramilitary gear. SWAT teams are trained to act first, and ask questions later—searching people's homes for drugs and drug paraphernalia, ransacking their closets and cupboards, tearing down walls and ripping mattresses, couches and sound systems. A veteran investigator at a prominent Mississippi civil rights law firm has reviewed many such cases. He says that it is not uncommon for

73 Anonymous interview with a Mississippi resident. Written notes on file with authors.

74 Natapoff.

law enforcement to target the wrong residence: “Seems like they’re *always* going to the wrong house.”⁷⁵ The raid at Cory Maye’s home detailed later in the report illustrates how harmful such mistakes can be for all parties involved.

The widespread recruitment of community members as informants, coupled with aggressive police tactics and excessive sentencing policies, results in a “police state” atmosphere that should not be tolerated anywhere in America, and that must not be tolerated in Mississippi. The current state of affairs, detailed throughout the report, points to the need to reform specific policies, as well as to engage in a rethinking of the overall approach to drug law enforcement in Mississippi.

⁷⁵ Anonymous interview with staff at a Mississippi law firm. Written notes on file with authors.

SECTION V

True Stories from Mississippi and Beyond

The vicious cycle of incarceration described in this report—from an excessively harsh drug sentencing scheme, to numbers-driven policing that creates perverse law enforcement incentives to focus on smalltime criminals, to the unregulated and dangerous use of informants—is by no means limited to the state of Mississippi. Unfortunately, this trifecta exerts its pernicious influence across the nation and at the local, state and federal levels. The following stories from Mississippi and beyond paint a frightening picture of how modern drug enforcement has, in many cases, done more to harm than to help the very communities it purports to protect.

Professional Informants in League with the DEA

Andrew Chambers (the “two million dollar man”):

While the typical informant is a criminal defendant who is pressured to “flip” by prosecutors, some are freelancers, drawn to the role by the money paid for their work to generate criminal cases. Andrew Chambers, an ex-marine without the credentials necessary to become an agent of the DEA, instead worked as a paid DEA informer for 16 years, making 300 cases involving 445 arrests, with drug seizures totaling 1.5 tons. Working cases from Boston to San Diego, Chambers made some \$2.2 million before he was “deactivated” by his handlers.⁷⁶ Chambers’ career with DEA was demolished by a federal defender in Los Angeles who dug up information indicating that Chambers had repeatedly lied on the stand about his own criminal record—claiming he had never been arrested, when in fact he had been arrested 12 times over a decade-and-a-half on charges ranging from forgery to assault.

Worse, DEA agents *knew* he had lied in at least 16 sworn depositions. They had bailed him out of jail repeatedly, and persuaded judges and prosecutors in case after case to drop charges against him, but they hid this information from prosecutors and defenders. Chambers was dropped from the rolls of paid DEA informants, yet none of the federal agents who put him on the witness stand—knowing he was perjuring himself—were disciplined by the agency for doing so, including then-agent Michele Leonhart, who at the time of the publication of this report has been confirmed as Head Administrator for DEA.

⁷⁶ Murr, Andrew. [headline unknown] *Newsweek*, July 3, 2000; Thompson, Cheryl. *Washington Post*, July 19, 2001; Thomas, Jo. “Drug Agency Looks Again At an Informer’s Career.” *The New York Times*, June 28, 2000; Sorkin, Michael J. “DEA won’t punish agent who failed to disclose lying by informer Chambers.” *St. Louis Post-Dispatch*, September 30, 2001.

Jimmie Ellard (drug dealing for the DEA):

In another case, the DEA denied knowing anything about a former sheriff's deputy named Jimmie Ellard when he was nabbed smuggling marijuana into Florida in 1998. Ellard's defense was that he was working for the DEA, and he presented the court with a tape recording of one of his handlers telling him that "we really can't know" how the drugs he smuggled were brought in. Ellard has admitted smuggling more than 25 tons of cocaine over his career while informing on his customers. After the marijuana smuggling charges were dropped, he told a reporter that the DEA cannot avoid disregarding agency guidelines about use of criminal informants from time to time: "If they didn't, they would never make a case."⁷⁷

Federally Funded Drug Task Forces Run Amok

Hearne, Texas (a big scandal in a small town):

In 2000, a massive drug sweep in the tiny town of Hearne, Texas resulted in the wrongful arrest of more than two dozen African Americans on charges of possession or distribution of crack cocaine. Drug task force officers involved in this operation had, for years, openly joked about such sweeps, saying it was "time to round up the niggers." In this case, they had compiled a written list of 20 specific people they intended to target. Officers coerced a drug-addicted, mentally-ill man who had been arrested for burglary shortly after his release from prison to serve as a confidential informant, threatening to send him back to prison for a term of 60 to 99 years if he did not comply. They supplied the informant with drugs and instructed him to say that the drugs had been obtained from the desired targets. Over the course of nine months, the informant implicated 28 people.⁷⁸

A number of the defendants who were arrested in the sweep were able to produce verifiable alibis, however, and the sweep itself stirred an intense media spotlight. Nonetheless, after three months in jail and faced with the possibility of severe prison terms if convicted, some defendants opted to enter guilty pleas. But some of the accused would not be cowed and remained determined to fight the erroneous charges despite the prospect of a harsh prison term. When the first case was brought to trial, the jury returned a hung verdict in favor of acquittal by eleven votes to one. Within days, the ACLU filed complaints with the Civil Rights Division of the U.S. Department of Justice and the Texas Attorney General's Office. One week later, all charges were dropped against the 17 defendants who had held out to contest the charges at trial, rather than accept a plea deal.⁷⁹ A subsequent civil case against county officials was settled in 2005 with the county agreeing to pay financial damages to the plaintiffs. The scandal has since been the topic of a Hollywood movie,

⁷⁷ Smith, Mark. "Fighting crime with crime" *The Houston Chronicle*, August 7, 2000.

⁷⁸ Second Amended Complaint for Injunctive Relief and Damages and Jury Trial, *Kelly v. Paschall*, Civ. 02-A-02-CA-702 JN (W.D. Texas, May 15, 2003).

⁷⁹ *Ibid.*

“American Violet,” which opened in theaters nationwide in 2009.

Dallas, Texas (the sheetrock scandal):

In 2001, 70 Mexican immigrants (mechanics and day-laborers) in Dallas, Texas, who did not speak English or know their rights and who were too poor to pay a lawyer, found themselves indicted and jailed on charges of possessing huge quantities of drugs. Again, these immigrants had been swept up in a special drug enforcement effort by a Byrne-funded regional narcotics task force.

A paid drug informant had planted fake cocaine on dozens of the immigrants, manufacturing more than 80 cases. The informant made \$1,000 for every kilo of “cocaine” seized from his tips.

Again, many of the defendants had pled guilty, and some were already deported by immigration authorities, before an enterprising defense lawyer finally demanded that the drugs in question be sent to a lab for analysis. The reports came back negative—the alleged drugs turned out to be pool-hall chalk and gypsum. As a result, half of the cocaine busts effected that year in Dallas were dismissed overnight. In April 2005, Mark Del La Paz, a former Dallas narcotics detective, was sentenced to five years in prison for his role in the scheme. That same year, the *Dallas Morning News* reported that three years before this scandal broke, a police lieutenant had issued a scathing report on the Dallas Police Department’s informant system, noting that informants were frequently paid under false social security numbers, some informants were never documented at all, and, in many cases, supervisor signatures approving the use of informants were forged, post-dated or never obtained.⁸⁰

Motivated by the negative publicity of such repeated, outrageous conduct, Texas legislators enacted a law requiring that corroboration of all informant testimony be required in order to secure a drug conviction. This was followed, in 2005, with Texas Governor Rick Perry shifting federal Byrne Grant funding for drug task force operations to other law enforcement priorities.

State and Local Police Misconduct

Kathryn Johnston (grandmother gunned down because of a “ghost” informant story):

The unregulated use of CIs may facilitate outright fabrication by law enforcement, confident that the courts will not challenge their claims or even require that an actual informant be produced to back them up. Such was the cause of a botched “no-knock” raid of the Atlanta,

80 “Fake Drugs, Real Lives: The Evolution of a Scandal” *Dallas Morning News*, <http://www.dallasnews.com/s/dws/spe/2003/fakedrugs/fakedrug1103.html> and Dugan, Paul. “Sheetrock Scandal hits Dallas Police.” *Washington Post*, January 18, 2002.

Georgia home of 92-year-old Kathryn Johnston in 2006, resulting in the woman's death.⁸¹

When police in riot gear broke down her door and barged into her home, they found Johnston clutching a gun she kept for protection in her high-crime neighborhood. Johnston shot one round, which lodged in the roof of the house. Police fired 39 rounds, striking Johnston five times. Three narcotics officers were wounded in the crossfire. After the shooting, police claimed an informant had provided information of drug dealing at the location. But the confidential informant in question soon confessed that this story was concocted after the fact, and that he had never bought drugs at the location.⁸²

Federal investigators determined that the raid had been justified based on false paperwork by the local police, who had fabricated testimony they claimed had come from an informant who never provided it. The scandal prompted an overhaul of the Atlanta Police Department's drug unit. Three Atlanta police officers pled guilty to conspiracy to violate Johnston's civil rights. Two officers also pled guilty to voluntary manslaughter, and one admitted he had planted bags of marijuana in Johnston's home after the killing in an attempted cover-up. The three were sentenced to prison terms ranging from five to ten years for their roles in the tragedy.⁸³

Cory Maye (a deadly mistake in Mississippi)

A series of recent cases points to the misuse of CIs in Mississippi, the predictable outcomes of the perverse incentives inherent to the system, and the connection to drug task force practice and harsh sentencing policy. It is clear that the scandals which have made national headlines would feel quite at home in Mississippi.

Concerned citizens around the country have raised concerns over the fate of Cory Maye, an African American man with no prior criminal record, who was convicted of killing a police officer and imprisoned on Mississippi's death row. As chronicled thoroughly by journalist Radley Balko, the story concerns a poorly planned late-night drug raid executed by insufficiently trained police using "unnecessarily violent and confrontational 'dynamic entry' tactics." The raid was undertaken based on the word of an unreliable and avowedly racist confidential informant.⁸⁴

Maye occupied half of a duplex-house in Prentiss, Mississippi with his girlfriend, Chanteal Longino, and their infant daughter, Ta'Corrianna. The other half of the duplex, which had a separate entrance, was occupied by a man who was the primary target of the raid. Police had a search warrant for the neighbor that also covered Maye's side of the duplex, but, as

81 Goodman, Brenda. "Police kill woman, 92, in Shootout at Her Home." *New York Times*, November 23, 2006.

82 Rowson, Kevin. "Two cops plead guilty to manslaughter." *Eleven Alive*, April 27, 2007.

83 "Ex-Atlanta officers get prison time for cover-up in deadly raid." *CNN.com*, February 24, 2009.

84 Balko, Radley. "The Case of Cory Maye." *Reason Magazine*, October 2006.

Balko chronicles, the process that was used to obtain the search warrant indicates that Maye had not himself been identified:

According to the affidavit, a confidential informant told [Officer Ron] Jones there was a 'large stash' of marijuana in each of the duplex apartments. Though there appear to have been two warrants, it also seems clear that Jones was primarily interested in a man named Jamie Smith, who lived in the apartment opposite Maye and Longino. Smith already had drug charges pending against him from four months before. On the warrant affidavit, Jones described Smith as a "known drug dealer." By contrast, neither Maye nor Longino was mentioned by name in any of the affidavits or warrants, and other than the alleged assertions of the confidential informant, there's no reason to suspect that either was selling drugs.

On the evening of the day after Christmas, 2001, Chanteal had left for work on the night shift at a nearby chicken processing plant. Maye had put his daughter to sleep and was dozing in front of the television. Officer Jones and five other officers split into two teams as they approached the duplex. One team was deployed to arrest Jamie Smith, and the other, led by Jones, to arrest "person(s) unknown" in the apartment on the other side. Jones was dressed in a dark shirt, vest and pants. The only marking on the outfit was a small police patch on the sleeve.

Balko reports that when the raiding team crashed through the door on Maye's side of the house, Jones rushed into Maye's bedroom, where Maye's infant daughter lay sleeping. Maye—who thought his home was being invaded by robbers or worse—grabbed his gun to defend himself and his daughter and pulled the trigger. When someone shouted, "Police! Police! You just shot an officer!" Maye dropped his gun and surrendered.

Maye had no criminal record and, while a tiny amount of marijuana was found in his apartment, there was no evidence that he was dealing drugs. Maye's trial for capital murder hinged on whether he had recognized that Jones was a police officer, or had believed that his home was under invasion by criminals. Though Balko says that the evidence strongly supported his claim of mistaken self-defense, the jury rejected Maye's testimony and gave him a death sentence.

The confidential informant whose tip had given Officer Jones the basis for a warrant was Randy Gentry, a white man who had been active with the local drug task force in generating several other drug raids. When the legal team handling Maye's appeal tracked Gentry down to appear as a witness in appeal efforts, Gentry was outraged that he might be compelled to testify. He left the following message on the lead attorney's answering machine:

Yeah, this is Mr. Randy Gentry. Hey, I got to thinkin' about my friend. I got yo' message this morning, Bob. Y'all - y'all threaten me all you want to and everything. I don't like fuckin' niggers from jump street but call me or whatever and I'll—but the day I burn five cents on gas to help that fuckin' cocksucker Cory Maye get out of jail is going to be a hell of a damn day. But—uh—if you want to talk to me like a fuckin' white man, you talk. But don't threaten me on bullshit. Get your NAACP motherfuckers—I don't give a fuck—niggers, bro, fuck niggers!...

The racial animus apparent in Gentry's seething tirade is, sadly, in step with the racial polarization that persists in many parts of rural Mississippi. Balko paints a vivid picture of the local culture around Prentiss:

The most striking impression I get is the pervasive, suffocating role race plays in everyday life. The fear and paranoia from black residents can be overwhelming. But even to someone generally skeptical about claims of racial discrimination (as I am), it's utterly convincing. When people in the area talk about why they don't trust law enforcement, you hear the same cops named over and over again. You hear about many of the same incidents, then learn that the officers involved never really stop policing; they just move from one department to another. It takes me just a few hours in Prentiss to find another woman who says she too was on the receiving end of a violent, forced-entry drug raid. Though the police didn't find the meth lab they were looking for, they nevertheless jailed her brother for months (he couldn't afford bond) before releasing him without explanation. The Monticello County Sheriff's Department, where the man was jailed, claims he was bound over to circuit court for trial. But eight months later, he has yet to be charged or tried.

And it's not just civilians who make such accusations. One black officer warns me not to trust what I hear from white cops in the area. "The badge and the gun don't mean anything," the officer says. "It doesn't mean they found what they say they found."

After a determined crusade by Balko to exonerate Cory Maye, attorneys who took up his case on appeal were able to win him partial relief. A judge of the Pearl River County Circuit Court denied Maye a new trial on the capital murder charge, but he ruled that Cory Maye received incompetent legal representation during the sentencing phase of his trial and ordered a new sentencing hearing. The prosecutor decided to not again seek the death penalty, and in November 2007 Maye was resentenced to life without parole—the only sentencing option open since his capital murder conviction still stands. Maye was removed

from death row, but remains incarcerated at Parchman prison.⁸⁵ Maye's lawyers, however, continued to press for a new trial, and in November 2009, their request was granted by the Mississippi Court of Appeals.⁸⁶

The Corrupt Southeast Mississippi Drug Task Force

In August 2006, residents of Southeast Mississippi may have been surprised to learn that three Jones County Sheriff's Deputies, all former members of the Southeast Mississippi Drug Task Force, had pled guilty to charges of assault, embezzlement, and planting evidence on suspects they had arrested during the previous year.⁸⁷ The Task Force, which was based in the Jones County Sheriff's Department, covered Jones County, as well as Covington and Simpson Counties.

The Jones County District Attorney's Office revealed that two agents of the Mississippi Bureau of Investigation (MBI) had commenced a five-month investigation of Task Force members earlier in the year, and that operations had already been disbanded. Drug charges against 27 people who had been arrested and indicted by Task Force officers were dismissed, as were charges brought against an undisclosed number of other individuals who had been arrested, but not yet indicted.

The commander of the Task Force, Deputy Roger Williams, and his two accomplices—Deputies Randall Parker and Christopher Smith—had terrorized and abused many people in the course of their crime spree. Complaints filed by some of their targets in subsequent civil actions charging police misconduct reveal the details.

Marty Breazeale:

Mr. Breazeale had been arrested by local police in Ellisville, Mississippi in June 2005. He was charged with possession of drug paraphernalia. The arresting officers called in Deputy Smith to speak with Breazeale about working as a confidential informant with the Task Force in exchange for dropping the charges against him. Deputy Smith instructed Breazeale to meet him at a predetermined location where he would be given "buy money" and surveillance equipment.

Breazeale agreed to the deal and went to the location at the appointed time. Deputy Smith did not show up, however, so he left. He then telephoned Smith, who told him to return to the location. But by then Breazeale's car had run out of gas and he was unable to return.

85 The long saga of Cory Maye is depicted in numerous posts by Radley Balko on his blog, "The Agitator," archived at <http://www.theagitator.com/>.

86 Mitchell, Jerry. "Venue was wrongly changed." *Clarion Ledger*, November 18, 2009.

87 Maute, Nikki Davis. "Ex-task force members face charges," *Hattiesburg American*, August 19, 2006.

He was outside his home sitting in his car when Smith drove up. Deputy Smith grabbed him by his hair, pulled him out of his car through the window, and beat him. He was then arrested, cuffed and taken to the Jones County jail—where, still handcuffed, Smith pulled him into the “sally port” and continued the beating. Bleeding and coughing up blood, Breazeale was taken to the local hospital by jail staff.⁸⁸

Matthew Boutwell:

Mr. Boutwell was arrested on November 2, 2005, shortly after leaving a substance abuse treatment program located just outside of Laurel, Mississippi. He was riding with a friend, Connie Pittman, in her rental car when they were pulled over by Deputy Parker. After asking Pittman for her license and proof of insurance, Parker proceeded to ask Boutwell to step out of the car. Conducting a search of Boutwell, Parker found only drugs—Lortab and Xanax—for which Boutwell had a prescription.

Deputy Parker asked Pittman for permission to search her car. When she refused, Parker placed a call for a K-9 unit. Before the dogs arrived on the scene, Deputy Smith turned up and pulled Boutwell, who was handcuffed, into the back seat of Parker’s patrol car, where he proceeded to shock him repeatedly with a Taser gun. Struggling to get away from Smith and the Taser, Boutwell broke the side mirror on Parker’s car. At some point during his arrest, Boutwell was asked if he knew a woman named Crystal Bunch.

Boutwell was taken to jail and charged with possession of methamphetamine. Boutwell was held in the Jones County jail for six months. He claims that while he was in custody Commander Williams and Deputies Parker and Smith entered his cell with a syringe and injected him with an unknown substance they referred to as “dog hormones” that would make him “fight better.”⁸⁹

Commander Williams and Deputy Parker pled guilty to planting drugs on Boutwell and presenting false evidence to the District Attorney’s Office. Deputy Smith pled guilty to conspiring with them to arrest Boutwell, as well as assaulting him with the taser gun.⁹⁰

Dennis Donald:

Mr. Donald was driving to Ellisville, Mississippi on a cold night in December 2005 when he was pulled over by Deputy Parker, who opened the passenger door and shouted, “Where’s the dope?” Deputy Smith and Commander Williams arrived on the scene shortly thereafter, whereupon Smith grabbed Donald by his throat and slammed him to the pavement. While

88 Complaint at 6, *Boutwell et. al. v. Jones County, Mississippi et. al.*, No. 00-269 (S.D. Miss. filed Dec. 18, 2006).

89 Complaint at 5, *Boutwell et. al. v. Jones County, Mississippi et. al.*, No. 00-269 (S.D. Miss. filed Dec. 18, 2006).

90 Plea Petition, *Mississippi v. Williams*, No. 2006-254-KR2 (Miss. Cir. Ct. 2006); Plea Petition, *Mississippi v. Parker*, No. 2006-240-KR2 (Miss. Cir. Ct. 2006); Plea Petition, *Mississippi v. Smith*, No. 2006-246-KR2 (Miss. Cir. Ct. 2006).

Parker and Williams searched the truck for drugs, Smith proceeded to stomp on Donald's head and grind his face into the asphalt.

Deputy Smith then handcuffed Donald to the grill of his patrol car. Donald was stripped naked and exposed to the freezing cold. For the next two hours the deputies took turns beating and kicking him until he was unconscious. Commander Williams pounded Donald with an object he had removed from a bag in the trunk of his patrol car. Booked into the Jones County jail, Donald was charged with possession of methamphetamine, though no drugs had been found in his truck or on his person. He spent eight weeks in jail.⁹¹

Commander Williams and Deputy Parker pled guilty to falsely arresting Donald, planting evidence on him, and presenting false evidence to the DA's Office. Deputy Smith pled guilty to conspiring in his arrest and to beating him.⁹²

Kelvin Nixon:

In mid-November 2005, Task Force agents came to Mr. Nixon's home and—though they produced no warrant—proceeded to conduct a search. Nixon says that the deputies ripped his home apart—smashing dishes and television sets, breaking furniture, knocking pictures off the walls, and destroying his children's toys—and then left with a number of items they had seized, including a digital camera, a camcorder, some knives, his son's sword collection, his wedding ring and his cell phone.

Nixon was not arrested at the time of the raid, but soon after he began receiving messages from Deputy Parker, who claimed that they had found drugs in his home and that he had to come to work as a confidential informant for the Task Force. In December 2005, the agents came back to his house and arrested him. Once handcuffed, Nixon was kicked and thrown into the side of a patrol car. Charged with possession of methamphetamine while in possession of a firearm, Nixon managed to bond out the next day. He says that, in the meantime, Parker had used his seized cell phone to send text messages pretending to be him.⁹³

Both Commander Williams and Deputy Parker pled guilty to conspiring to arrest Nixon and to planting the evidence they used to bring charges against him.⁹⁴

91 Complaint at 8, *Boutwell et. al. v. Jones County, Mississippi et. al.*, No. 00-269 (S.D. Miss. filed Dec. 18, 2006).

92 Plea Petition, *Mississippi v. Williams*, No. 2006-254-KR2 (Miss. Cir. Ct. 2006); Plea Petition, *Mississippi v. Parker*, No. 2006-240-KR2 (Miss. Cir. Ct. 2006); Plea Petition, *Mississippi v. Smith*, No. 2006-246-KR2 (Miss. Cir. Ct. 2006).

93 Complaint at 9, *Boutwell et. al. v. Jones County, Mississippi et. al.*, No. 00-269 (S.D. Miss. filed Dec. 18, 2006).

94 Plea Petition, *Mississippi v. Williams*, No. 2006-254-KR2 (Miss. Cir. Ct. 2006); Plea Petition, *Mississippi v. Parker*, No. 2006-240-KR2 (Miss. Cir. Ct. 2006).

Robert Dean Cooley:

Here, the plot thickens. Responding to a civil action brought against him later by Cooley, Deputy Parker admitted that on November 16, 2005, a phone call had been placed to Cooley. He was told to meet a woman, Crystal Bunch, at the Mt. Vernon Methodist Church. When he arrived at the church, Parker and a second deputy took Cooley into custody, cuffing his hands behind his back. Commander Williams then arrived at the scene with Ms. Bunch in his patrol car. Parker says that Williams retrieved an axe handle from his car and beat Cooley with it. Cooley was taken to the jail and charged with possession of cocaine.⁹⁵

A local attorney familiar with the details of these abuses relayed some information about Crystal Bunch. According to the attorney, Bunch had been enrolled in a local law-enforcement training academy, but she had “washed out” before graduation. Bunch had become involved with the Task Force Commander, Roger Williams, and she was also involved with Matthew Boutwell and Robert Dean Cooley. It was this web of personal relationships that drew people into the Task Force dragnet. Once people were placed under arrest, they were pressured to cooperate. If they refused, the deputies became physically abusive.

The local attorney claims that Task Force deputies had been using Bunch to sell drugs that had been stored in the evidence room, and that she had been selling and/or supplying the drugs to men she was involved with. From time to time these relationships would sour. Bunch would then use her role to tip off the Task Force that “this might be a good time to pull in so-and-so, because he’s got drugs on him.”

And More...

While no details are known about their cases, Deputy Smith also pled guilty to assaults against a Mr. Bently and a Mr. Calloway. He admitted kicking Bently while he was handcuffed and to shocking Calloway “in his private parts” with a taser gun.⁹⁶ Additionally, Commander Williams and Deputy Parker pled guilty to embezzlement of task force money.⁹⁷

In January 2007, the Task Force deputies were sentenced for the crimes they committed when the Task Force was in operation. Commander Roger Williams was sentenced to 15 months in prison, followed by 15 months of house arrest. Randall Parker, who had agreed to help MBI agents build cases against Williams and Smith during the investigation, was sentenced to serve one year under house arrest, and ordered to perform 624 hours of community service. Christopher Smith, apparently the most brutal of the three, received a sentence of one year in prison, followed by a second year under house arrest.

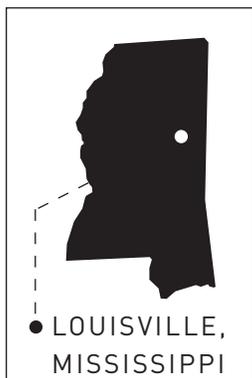
95 Complaint at 5, *Cooley v. Jones County, Mississippi et. al.*, No. 00-251 (S.D. Miss. filed Nov. 30, 2006).

96 Plea Petition, *Mississippi v. Smith*, No. 2006-246-KR2 (Miss. Cir. Ct. 2006).

97 Plea Petition, *Mississippi v. Williams*, No. 2006-254-KR2 (Miss. Cir. Ct. 2006); Plea Petition, *Mississippi v. Parker*, No. 2006-240-KR2 (Miss. Cir. Ct. 2006).

In a September 2007 primary election, Jones County Sheriff T. Larry Dykes ran for re-election. He was defeated. That same month the police misconduct cases were settled for an undisclosed amount of money.

The Miller Cousins: Caught on Camera with No Drugs and No Money



Chris and Selentro Miller are cousins who were both arrested for selling crack cocaine in Louisville, Mississippi in 2005. Both were convicted solely on the word of an informant, Bobby Wayne Goodin—a man whose career as a confidential informant in drug cases stretched back to 1994.⁹⁸

Goodin claimed to have made separate purchases of crack cocaine from both cousins at the same location on Miller Avenue in Louisville. Both cousins assert that they are innocent of the charges. Appeal briefs submitted by the Mississippi Office of Indigent Appeals for each cousin raise serious issues about Goodin’s credibility, and about the total inadequacy of video evidence introduced at the Miller trials to corroborate his testimony.

Agents of the Mississippi Bureau of Narcotics (MBN) testified that on June 13, 2005 that they had equipped Goodin with audio and video recording devices, searched his person and his car, provided him with \$60 dollars, and sent him to make a “controlled buy” of cocaine.

Goodin testified that when he drove up to the designated location, he only knew the target as “Chris.” He said he had asked if he could “double up,” and gave the suspect \$60. Later analysis by staff at the Mississippi Crime Lab found the weight of the drugs he claimed to have purchased to be just 0.52 of a gram of crack cocaine. At trial, Goodin identified Chris Miller as the man who sold him the drugs.

Testimony from the MBN agents indicated that during their search of Goodin they had failed to make him remove his pants or to search his underwear, as proper procedure requires. Furthermore, the video recording they submitted to corroborate Goodin’s testimony did not show a clear exchange of money for drugs.

Miller was convicted on the basis of Goodin’s testimony, but the trial transcript raises issues about his credibility. He was evasive about his own use of narcotics and denied the existence of his extensive criminal record until his memory was forcefully prodded on cross-examination by Miller’s defense attorney.⁹⁹

⁹⁸ Brief of the Appellant at 1, *Miller v. Mississippi*, No. 2007-KA-00798-SCT (Miss. Ct. App. filed Aug. 28, 2007).

⁹⁹ Brief of the Appellant at 4, *Miller v. Mississippi*, No. 2007-KA-00798-SCT (Miss. filed Aug. 28, 2007).

Chris Miller's defense attorney pointed out that the videotape submitted at trial to corroborate Goodin's claim that Miller had sold him crack cocaine did not actually show his client taking money or giving drugs to Goodin. The prosecutor responded that it was not necessary that these elements of the crime be visible on the tape:

You may not see every little step along the way on video tape. Ladies and gentlemen, you don't have to. The videotape is there to corroborate the testimony of Bobby Wayne Goodin...and everybody else who testifies.

...You are not going to see. You are not going to have five camera angles and you can see every little thing and you can get a close-up and see the dope happening. It's just not—it's not going to happen like that. It's not possible.

In an effort to shore up Goodin's testimony the prosecutor argued that he would not lie because that might jeopardize his lucrative relationship with MBN agents:

Is he going to risk compromising a case just to try to set somebody up or to lie to somebody? What did he say? He said he did over 20-something different purchases in a month or so period. \$100 a purchase. That's over \$2,000 that he is getting going and making these buys.

Chris Miller was sentenced to 20 years in prison.

Silentro Miller's trial began the day after Chris Miller's concluded. MBN agents again testified that they had equipped Goodin with audio and video recording devices, provided him with \$40, and sent him to make a second "controlled buy" of cocaine at the same location.

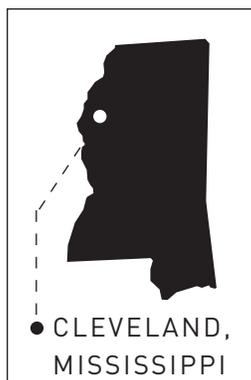
Goodin testified that when he reached the location he asked for Chris, indicating that he wanted to buy \$40 worth of crack cocaine. He said that another man told him that Chris was not there, that \$30 worth of crack was all that was available. Goodin said that the man placed the rocks on a table, and he handed the man \$40 and was given \$10 in change. The Mississippi Crime Lab report indicated the weight of the drugs to be just 0.17 of a gram.

At trial, Goodin identified Selentro Miller as the man who had sold him the drugs. He testified that he had been paid \$100 for making the buy. This time he admitted to his extensive criminal record, including a Florida drug charge in 2003, which had occurred well after he took up a career as a confidential informant. Goodin testified that he had been thoroughly searched by narcotics agents before making the buy, and that a search of his car had lasted almost a half-hour. However, the agents' testimony specified that these searches had been far more cursory.

Again, the video recording admitted into evidence to corroborate Goodin's testimony did not show any exchange of money for drugs. Neither Goodin's nor Miller's hands were visible at any point in the recording.

Silentro Miller was convicted solely on Goodin's testimony. Although Miller had no prior record, he was also sentenced to 20 years in prison. Chris Miller remains incarcerated at the Kemper-Neshoba County Regional Correctional Facility, and Silentro Miller is in a private prison in Marshall County.

Jimmy Bass: Framed by a Youngster with Big Problems



Misuse of confidential informants is by no means restricted to drug enforcement operations in Mississippi. In 1988, Jimmy Bass was convicted of armed robbery and aggravated assault. He served 18 years in prison for these crimes, although he did not commit them. His conviction was set aside in 2006 by a Mississippi Circuit Court Judge, who ordered a new trial and released him from prison.¹⁰⁰

Shortly before 10:30 pm on July 17, 1988, Mary Townsend—the wife of a deputy sheriff, who worked as a clerk at the *61 Quiki*, a convenience store on Highway 61 in Cleveland, Mississippi—was shot by one of three young African American men who robbed the store. She was treated for her wounds at a local hospital emergency room.

Over the course of the next two weeks, Townsend was shown a total of five photographic, video and in-person lineups of young black men from the area. Jimmy Bass was in three of these lineups (one photograph, one VCR shot and one in-person lineup). Townsend identified Markius Thomas as the shooter and twice identified Larry Thompson as a second robber, but she did not recognize Jimmy Bass, nor did she suggest that Bass was connected to the crime in any way. Later on, she decided that Larry Thompson's skin-color was too dark for him to have been the second perpetrator.

On July 19, 1988, two days after the incident at the *61 Quiki*, Markius Thomas robbed the nearby Regal Lounge with two accomplices: Anthony Keaton and John Jackson. Keaton and Jackson were thought by the police to be capable of committing the *61 Quiki* robbery, but apparently the lead was never pursued.

Markius Thomas claimed he was with Jimmy Bass on the night of July 17th, and he denied having been involved in the *61 Quiki* shooting. Bass told the police that he *had* been with Thomas in the early evening, but that he had gone home before the time of the crime. When interviewed by the lead police investigator, Bill Quinton, Bass's mother, sister and

¹⁰⁰ Brief of the Appellant at 3, *Mississippi v. Bass*, No. 2006-KA-1059-SCT (Miss. Ct. App. filed February 28, 2007).

girlfriend all corroborated his alibi. In his investigation report, Quinton wrote that he believed the victim could “recognize and identify” Mr. Thomas, but, “It would be difficult to identify the other parties involved.”

On August 3, Keith Thompson, a 14-year-old juvenile offender, gave a statement to the police that he had seen Jimmy Bass flee the crime scene with Markius Thomas. Keith Thompson was the brother of Larry Thompson, the youth that Townsend had first identified, but then discounted as an accomplice. Keith Thompson had already been questioned twice about the *61 Quiki* robbery. The first time he was questioned by police he denied knowing anything about the crime. Questioned a second time, he implicated someone other than Thomas and Bass. Two days after he claimed that Jimmy Bass was involved, his sister, Anita Thompson, gave a statement to the police claiming that prior to the crime Bass told her he was going to “rob me a store” and then later told her he had shot the clerk for not giving him money.

Jimmy Bass was tried with Markius Thomas for the *61 Quiki* robbery on December 7, 1988. Attorney Boyd Atkinson had been appointed to represent Bass just 16 days before the trial. Atkinson filed no pretrial motions and did not request a continuance to prepare. He interviewed no witnesses and performed no pretrial investigation whatsoever. Atkinson was simultaneously representing Anthony Keaton, one of Markius Thomas’s co-defendants from the Regal Lounge robbery.

Mary Townsend did not identify Bass at the trial. After identifying Thomas as the shooter, she was asked, “Are you able to pick out the others, or do you know?” She replied, “No, sir.” She did admit to a resemblance between Bass and the shooter’s accomplice, but at no point did she identify Bass as that individual. On cross-examination, Atkinson did not reveal that Townsend had failed to pick Bass out from three separate lineups, or to even suggest that he resembled the accomplice.

The only person who placed Jimmy Bass at the scene of the crime was Keith Thompson. During the trial it emerged that twice prior to his August 3rd statement, police had questioned Thompson and he had not inculpated either defendant. In his trial testimony, Thompson gave a bungled timeline for the night of the crime. He said that he had left home at 9:30 pm; witnessed Thomas and Bass fleeing the scene at 8:30 pm; and returned home at 10:45 pm, after having been out for about 15 minutes. Thompson’s testimony was impeached by his friend, Fredrick Norman, who testified that he had spent the night of the crime watching television with Keith.

Anita Thompson testified as a witness, but made it clear that she did not stand by the statement she had given four months earlier. She said that the police and the District Attorney had pressured her. “They told me I was going to jail if I don’t answer the questions. They scared me too . . . it wasn’t on no tape. You know he don’t put nothing like that on no tape.” She went on to twice ask, “Why they making me say what I don’t want to say?” and added that “[w]hen I tried to correct y’all on that paper—what’s that investigator’s name,

the fat one [Officer Quinton...] he say 'no, but you said this'" and "[h]e pressured me to say the dude told me that he was going to rob the store." Eventually, a brief testimony was squeezed out of Ms. Thompson before she broke down in tears.

Jimmy Bass testified in his own defense that he was at home with his family when the robbery occurred. Four family members corroborated his testimony, recalling that he was at home talking to his girlfriend on the telephone when his older sister, Brenda Bass, returned from the Shell Station on Martin Luther King Drive sometime between 10:00 and 11:00 pm on the night of the crime and told her family that the clerk there told her that the *61 Quiki* had been robbed. Bass's defense attorney neglected to call six other witnesses, who were not family members and stood ready to corroborate Bass' alibi. Bass was convicted by the jury and sentenced to a 50-year prison term.

Later on, Boyd Atkinson represented Keith Thompson when he made his own guilty plea to armed robbery stemming from a separate incident. He received a lenient sentence from a judge who cited his role in the Bass case: "And the Court is aware that you were a witness in a case and if you had not been a witness in that case, we could have very possibly not obtained a conviction because you identified the persons who were involved." At the time he secured a lenient sentence for Thompson, Atkinson was representing Bass in his appeal of the conviction in the *61 Quiki* shooting. The Mississippi Supreme Court affirmed the conviction.

In 1993, Keith Thompson was incarcerated at Parchman prison for armed robbery. He gave Jimmy Bass a notarized affidavit stating that he had been paid \$250 by a police investigator to provide false testimony at his trial. After learning of the case and conducting an extensive investigation. The Innocence Project New Orleans filed a post-conviction petition on behalf of Bass in 2006. The Mississippi Supreme Court remanded the matter to the Circuit Court for further proceedings. Many new facts about Keith Thompson surfaced that had not been known at trial.

Thompson had a history of juvenile arrests starting at age eight. He was on juvenile parole—and in violation of parole conditions—when he gave the police a statement implicating Bass. Although he had a reputation in the community for dishonesty, he had a prior relationship with law enforcement as a confidential informant.

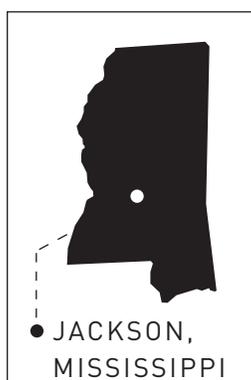
Thompson had a history of serious mental illness involving auditory and visual hallucinations stretching back to early childhood. In testimony, he revealed the extent of his problems: "I don't know if I was born like that or what. But that—I've been just, you know, seeing things and I hear voices. I do that right today. Ever since I can remember that I've been doing it. I can't recall what age it started." He said that at the time he implicated Bass and testified at the trial he was drinking cough syrup every day to get high.

He testified that he had expected a reward for his testimony and had only given Bass's name to the police because they had suggested his name.

I heard that is was a reward out. I went up there and I talked to George Serio and I told him that I had seen somebody running. He said, “well, we got Jimmy Bass and Markius Thomas. Could it have been them?” I said, “I don’t know,” just like that. So he said, “Well, will you be willing to testify in court that you seen somebody running from the 61 Quiki?” I said, “Yeah, I’ll testify in the court. But am I going to get the reward money?”

In addition to the \$250 paid by police to Keith Thompson, his sister Anita received \$50.

Cedric Willis: Framed for Murder on a Fabricated Informant Tip



Cedric Willis was wrongly convicted for homicide and robbery and spent 12 years behind bars. He was falsely identified in a lineup, which the police subsequently excused by claiming that a confidential informant had tipped them off that Willis was the perpetrator.

Willis was arrested in Jackson, Mississippi after a crime spree erupted in June 1994, with a series of robberies, rapes and shootings—all committed in a similar pattern and tied with ballistics tests to a single gun. On June 12, a husband and wife had been attacked as they parked their car in the driveway of their home. The assailant robbed the couple, raped the wife, and shot the husband in the leg.

Four days later a different family was attacked and robbed in their driveway and the father, Carl White, was shot in the leg. Six days later White died.¹⁰¹

Police never recovered the gun, but they arrested Willis and charged him with aggravated assault, rape, robbery and murder for two of the attacks. Willis claimed innocence. Two hours before the time of the first robbery, Willis was at the hospital witnessing the birth of his son, C.J. Three armed robberies had been committed on the same day that White was shot and with the same gun, but none of those victims identified Willis as their robber. Eyewitness accounts of the other robberies produced descriptions indicating that Willis was not the perpetrator. His mother and grandmother said that he had been with them at home at the time of the other crimes.

The police detectives involved in the investigation claimed that Willis had been identified both by the White family and the rape victim in a photo lineup. No records were ever found to document the methods used or to verify the accuracy of the results—but one detective claimed that a confidential informant had identified Willis, and the case moved forward.¹⁰² When Willis was placed in another lineup, he was the only person in street-clothes

101 Johnson, Brian. “Deepest Midnight: Cedric Willis and the Failure of Mississippi Justice.” *Jackson Free Press*, July 26, 2006.

102 Gates, Jimmie E. “Freed Inmate Sues City over Jail Time.” *Clarion Ledger*, October 29, 2007.

positioned among men dressed in jail fatigues, none of whom looked anything like Willis. The rape victim and the White family survivors again identified him as their assailant.

Willis volunteered a blood sample for testing against DNA material from the rape kit. When testing showed that Willis was *not* the rapist in the June 12 crime, the police ordered a second test. It came back negative again, conclusively proving that the rape victim had wrongly identified him. But instead of ordering further investigation, the prosecutors simply dropped that case and proceeded to try Willis for the murder of Carl White.

At trial, prosecutors moved to exclude the DNA test results, which would have cast doubt on the eyewitness identification. They also managed to exclude evidence showing that the victims in other crimes—including another armed robbery and a rape—committed with the same gun on the same night as White’s murder had failed to identify him. They offered no fingerprint evidence and no gun, yet Willis was convicted and sentenced to life for the murder of White, and 90 years on top of that—three 30-year sentences to run consecutively for robbery of White’s wife and each of his two children.

Twelve years later, the Innocence Project of New Orleans won the release of Cedric Willis from Parchman Prison. And in March 2006, all charges against him were dismissed when Jackson Judge Tommie Green declared that the eyewitness identification against him would be inadmissible in a new trial. The confidential informant whose “tip” was used by police to justify the lineup denied ever having identified Willis as the perpetrator of the crime. In March 2009, the Mississippi legislature created a state compensation fund for people who are wrongly convicted. Willis will receive \$500,000 in restitution for the years he spent behind bars.

The practice of building cases through dubious and unchallengeable confidential informant claims, the pressure of harsh prison sentences and the unregulated behavior of drug task forces disregards fundamental precepts of justice in order to arrest, charge and convict more and more people from within highly vulnerable communities in Mississippi. As has been detailed above, the corrosive impact across Mississippi of these practices on the safety and well-being of community residents—those it is meant to protect—signals an urgent need for reform.

SECTION VI

Conclusions and Recommendations

Our examination of Mississippi's drug sentencing scheme, its federally funded drug task forces, its use of confidential informants and the cumulative impact on police-community relations has revealed serious structural problems.

We saw how the poorly-structured laws that govern sentencing in drug cases place enormous pressure on defendants to work as informers, and produce extremely harsh sentences for people convicted for street-level sales involving small amounts of drugs, even though addiction treatment might have produced better outcomes in terms of public safety. We documented a troubling degree of racial disparity, with black Mississippians three times more likely than whites to go to prison on drug charges even though drug use rates are virtually identical for blacks and whites.

We found that Mississippi's regional drug task force funding is contingent on winning the "numbers game," whereby confidential informants are used indiscriminately to ramp up the quantity of drug arrests, with little regard to the quality of the cases they help to build.

We learned that while use of informants is a cornerstone of the state's regional drug task force operations, the practice is shrouded in secrecy. The ACLU of Mississippi spent almost two years seeking basic information about the nature and extent of the practice from what state officials acknowledged are public files under Mississippi's Public Record Act, yet no access was gained. Law enforcement justifies the practice—especially in the area of drug enforcement—as an essential means for identifying those who commit crimes and for securing their convictions. But the many perverse incentives embedded in the practice invite abuse and disparity, undermining the fundamental legitimacy of the criminal justice system.

We uncovered cases where informants with long criminal records of their own were put on the witness stand at trial without adequate corroboration for their testimony. We found cases where innocent defendants were unjustly convicted on information given by patently unreliable informants—and one where a police officer fabricated informant information in order to justify targeting an innocent man for arrest and prosecution for murder.

We found instances of abuse and outright corruption by drug task force officers who conspired to fabricate evidence, used a female informant to plant drugs on men within her personal relationship networks, and abused and tortured their targets if they offered resistance to these criminal activities.

We interviewed residents in African American communities where heavy use of informants turns neighbor against neighbor, and where harsh, militarized drug enforcement tactics have amounted to a reign of terror. They gave first hand accounts of the damage done to friends and family, and some spoke movingly about how the use of confidential informants recalls bitter memories of state and federal surveillance during the civil rights era.

The scope and scale of the problems presented in this report underscore the urgent need for reform of the policies that govern the drug enforcement system as a whole in Mississippi. We submit the following recommendations for consideration by Mississippi policymakers who want to enact genuinely effective criminal justice policies that enhance public safety, protect civil rights and ensure the state's fiscal solvency.

Recommendations to Reform Mississippi's Harsh Sentencing Scheme:

Mississippi's uniquely harsh drug sentencing scheme has driven its unsustainably high incarceration rate. While such policies may have been intended to provide ammunition against the highest level drug dealers, over a decade of these laws' application reveals that low-level, nonviolent offenders—many of them in need of drug treatment—are in fact the ones bearing the greatest brunt. Policymakers rightly acknowledged that laws passed in 1995 eliminating parole to nonviolent offenders proved counterproductive and ineffective, and they repealed those provisions in 2007. Building on such reasoned reevaluation, the state should also institute the following reforms to its drug sentencing statutes:

- Restructure the state's drug sentencing laws to **replace mandatory minimum sentences with a flexible set of sentencing standards and guidelines** that allow judges to take into account certain case-specific factors, such as the amount of drugs at issue, the defendant's prior criminal record, role in the offense and whether violence accompanied the crime. This set of guidelines would allow for treatment in the community instead of prison sentences for cases involving possession or sale of less than an ounce of a controlled substance. (Miss. Code Ann. §41-29-139, throughout).
- **Lower and narrow the prescribed sentencing range for drug sale offenses**, which is currently 0-30 years, and put in place guidelines for judges to apply within the new range. This would make sentences more proportional to the severity of the crime and eliminate the wildly disparate sentences that judges can impose for drug offenses. (Miss. Code Ann. §41-29-139 (g)(1)).
- **Limit life sentences in prison without the possibility of parole to violent crimes.** Specifically, repeal the mandatory life sentence for repeated, large volume drug sales within one year and modify the mandatory life sentence for those defendants with two previous felonies, one of them violent, by prohibiting life sentences for

defendants whose violent felony is more than 10 years old. (Miss. Code Ann. §41-29-139 (f)(i-iv)).

- **Reduce the severity of drug sentencing enhancements.** Specifically, reduce or remove all “zone” enhancements that apply to drug offenses taking place near schools, churches, public parks, ballparks, public gymnasiums, youth centers and movie theaters. (Miss. Code Ann. §41-29-139(b)). Reduce the severity of enhancements for drug defendants with two prior felonies, or limit such enhancements to those with only recent felony convictions. (Miss. Code Ann. §41-29-147).
- At the very least, the state should **adopt a “safety valve” within its current sentencing scheme**, allowing judges to depart downward from mandatory minimum sentences when certain conditions are met, such as when the defendant is truthful, played a minor role in the offense and is nonviolent. (Miss. Code Ann. §41-29-139, throughout).

Recommendations to Improve Effectiveness of Federally Funded Drug Task Forces:

The Mississippi Department of Public Safety has a significant role to play in enhancing public safety by developing stringent and pragmatic performance measures for the local drug enforcement entities that receive the federal funds it administers. Because DPS is the gatekeeper to these funding streams, it can incentivize effective drug policing by requiring that local law enforcement prioritize large-scale dealers over street-level users. Even though DPS’s failure to provide researchers with key information about its current reporting requirements and evaluations of local subgrantees limits a comprehensive analysis, it is clear that DPS should:

- Make information regarding the reporting requirements and evaluations of drug task forces publicly available.
- **Establish uniform data collection and reporting** requirements for all drug task forces so that case files may be compared across jurisdictions.
- Revise and expand current reporting requirements in such a way that DPS can **measure and evaluate genuine drug enforcement outcomes**, with a focus on redirecting investigative or law enforcement officers from users and low-level distributors to high-level traffickers. Suggested revisions may include:
 - Recipients of funds must assess and report on the number of **“Drug Traffickers”** and **“Drug Trafficking Organizations”** (DTOs) that exist and that have been dismantled in their jurisdiction. The definition of a “Drug

Trafficker” should be: “a person who works to illegally sell drugs with profit or income as the primary motivation.” The definition of a DTO should be: “five or more drug traffickers who work to illegally sell drugs outside of their immediate conspiracy.”¹⁰³

- Recipients of funds must report how many “**End Users**” they arrested. The definition of an “End User” should be: “a person who is the intended user of illegal drugs and generally motivated by addiction.”¹⁰⁴
- In addition to reporting the total number of “End Users” arrested, recipients must also report on the number of drug sales for which each person was arrested and/or charged and/or convicted of making. Such reporting would **shine a light on the practice of “case stacking,”** whereby police and prosecutors may inflate statistics by focusing efforts on a few low-level users, who occasionally sell drugs to fund their addiction, by sending in an undercover informant to make numerous drug buys, thereby “stacking” drug sale offenses on the target of the investigation.
- Failure of jurisdictions to comply with new performance measures reporting requirements must result in **denial of funds.**
- The Governor should **diversify allocations of federal grant dollars that currently go to drug task forces to other effective methods of combating drug abuse,** and other Mississippi priorities. Federal money now spent on narcotics task forces could produce greater improvements in public safety if it was invested in treatment programs, drug courts, crime lab upgrades, and evidence-based law enforcement training.
- The State should set up an **oversight board** to monitor compliance with the above recommendations.

Recommendations to Curb Abuse within the Confidential Informant System:

Taken together with the state’s uniquely harsh sentencing scheme and its unregulated drug task forces awash in federal funds, the use of confidential informants in drug policing has reached a fever pitch, not only in the frequency with which they are used but also with the corruption that accompanies their use. While confidential informants may be critical tools in some drug investigations, Mississippi should institute the following safeguards to

103 The definitions of “Drug Trafficker” and DTO come from Congressional testimony delivered on July 19, 2007 by J. Patrick O’Burke, Deputy Commander, Narcotics Service, Texas Department of Public Safety. Available at: <http://judiciary.house.gov/hearings/July2007/O’Burke070719.pdf>.

104 *Ibid.*

ensure that the benefits of using informants outweigh the costs to public safety and police integrity. Without these oversight mechanisms, the state's informant system delivers a powerful invitation for abuse:

- Each law enforcement jurisdiction should maintain an **informant registry** wherein law enforcement officers register specific, anonymized information about each informant that would allow for an analysis of the costs and benefits of informant use in the state. Proper precautions should be taken to protect the identities of confidential informants while allowing for the collection of basic data that would enhance oversight. Suggested characteristics to include in the registry would be:
 - The neighborhood or zip code where the informant was used
 - informant's gender
 - informant's race
 - any crimes committed by the informant
 - for each crime committed by the informant, whether the informant was arrested, charged, and/or convicted
 - the number of arrests and/or prosecutions in which the informant's information was used
 - whether the informant's testimony was corroborated by other evidence in securing arrest and/or conviction
 - the length of time the informant has been cooperating with the government
 - how much the informant has been paid by the government

Failure of jurisdictions to comply with new data collection and reporting requirements would result in denial of significant funding that would otherwise be allocated.

- **Any law enforcement officer who obtains information that a confidential informant has committed a serious violent felony in violation of state or federal law should report** such information to the chief state law enforcement officer and the local prosecuting official shall notify the state's Attorney General. Investigative or law enforcement officers who fail to inform their superiors and the local prosecuting official when they obtain information that a confidential informant has committed a serious violent felony should be fined or imprisoned, or both.
- Require that **warrants for the search and seizure of controlled substances based on information from an informant must contain information that corroborates the information given by the informant** in the affidavit. Such warrants should also contain

detailed information on the informant, including identifying information (that would not jeopardize the informant's safety), criminal history, compensation, accuracy of information used from the same informant in previous warrant applications, and, where relevant, a statement describing the necessity of a forced entry raid.

- Require the state to **provide all exculpatory material** related to informant information to the defendant, including impeachment evidence pertaining to any government witness or informant, **prior to the court accepting a plea agreement** of guilty or *nolo contendere*.
- Require the government to disclose at a pre-trial conference its intent to introduce the testimony of an informant at trial, and allow for a **reliability hearing** before the judge prior to the introduction of an informant's testimony on the defendant's motion. During a reliability hearing, both the government and the defendant shall be entitled to offer evidence relating to the informant's credibility, such as compensation, criminal history, motivation to be untruthful, nature of informant's relationship with the defendant, history of substance abuse and/or addiction, or any information that would corroborate the informant's testimony. If the judge determines that there is not a preponderance of evidence that the informant is a reliable witness, he or she shall be prohibited from testifying against the defendant.
- **Require corroboration of testimony by all informants.** Although a corroboration requirement could take several forms, at the very least, no person should be convicted of a drug offense based solely on the eyewitness testimony of an informant.

The confidential informant system presents real dangers not only to defendants and the public at large, but also to those recruited to work as informants. The following recommendations would enhance their safety:

- **No law enforcement officer shall solicit a person who is currently participating in a drug treatment program to act as an informant.** This shall include, among others, all persons in drug court or similar diversion programs or under a sentence of parole or probation which includes drug treatment.
- When the person acting as an **informant has never been accused or convicted of a crime of violence** or possession of a firearm, **law enforcement shall not employ them as a confidential informant to investigate a violent crime** or suspects known by law enforcement to have employed physical violence and/or firearms in the past.
- **Juveniles should not be used as confidential informants.**
- A person law enforcement solicits to act as an informant in exchange for leniency concerning a criminal offense shall be provided the opportunity to **consult with**

counsel. If the person is represented at the time of the conversation, the law enforcement officer must contact that attorney.

- **All plea negotiations and offers of leniency to a proposed informant must be in writing** and signed by both parties before the informant undertakes any under cover work, with details concerning what must be provided by the informant and what will be given in return. These negotiations must be approved by a prosecutor and counsel representing the informant.
- **Officers must evaluate the mental health of any proposed informant**, with professional expert assistance when appropriate, and must consider the relative experience or inexperience of the proposed informant, the seriousness of their offense, the benefit promised to them and the characteristics of the target offender and offense. Officers must document in writing this evaluation and the decision to employ the person as an informant.

Like all Americans, the people of Mississippi want drug policies that promote public safety, fairness and fiscal responsibility. Over 40 years of a “lock ‘em up and throw away the key” approach has proven ineffective, unfair and financially unsustainable. In the interest of Mississippi’s fiscal solvency and the safety of its citizens, policymakers must act boldly and swiftly to improve the state’s criminal justice system by enacting these recommendations.

Appendix

The authors have compiled a chart of North Carolina's sentencing presumptions for cases involving cocaine:

Source: "North Carolina Courts Felony Punishment Chart," <http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/felonypunishmentchart.pdf>

Prior Record Level							
		I 0 points	II 1-4 points	III 5-8 points	IV 9-14 points	V 15-18 points	VI 19+ points
Sales/Intent <28 grams	Penalty Type	C/I/A	I/A	I/A	I/A	I/A	A
	Aggravated	6-8 months	8-10 months	10-12 months	11-14 months	15-19 months	20-25 months
	Presumptive	5-6 months	6-8 months	8-10 months	9-11 months	12-15 months	16-20 months
	Mitigated	4-5 months	4-6 months	6-8 months	7-9 months	9-12 months	12-16 months
Possession Any Amount		C	C/I	I	I/A	I/A	I/A
					8-11 months	9-11 months	10-12 months
					6-8 months	7-9 months	8-10 months
					4-6 months	5-7 months	6-8 months

Penalty types:

C = Community sanctions (Probation, Restitution, Fine, Community Service)

I = Intermediate Sanctions (ISP/House arrest, Day reporting, Residential treatment, Drug court)

A = Active sanction (Prison)

Prior Record:

Class A Felony 10 points

Class B1 Felony 9 points

Class B2/C/D Felony 6 points

Class E/F/G Felony 4 points

Class H/I Felony 2 points

Class A Misdemeanor* 1 point

* Class 2 and 3 misdemeanors do not count

When the grid system was designed, certain types of cases were set aside to be treated differently than those that were subject to the grid system’s normal presumptions. “Habitual felons,” those convicted of three prior felonies (each on separate occasions), with two of these more serious than those offenses graded within the guidelines’ two lowest ranks, could be charged separately and sentenced to prison as a Class “D” felon. And while most drug offenses were classified within the grid, the guidelines did not cover drug trafficking, leaving mandatory sentencing provisions in place. This table shows the sentencing ranges for cases involving cocaine:

Offense level:	Mandatory Prison Term:
Trafficking 400 grams or more	Minimum 175 months Maximum 219 months
Trafficking 200 - <400 grams	Minimum 70 months Maximum 84 months
Trafficking 28 - <200 grams	Minimum 35 months Maximum 42 months

Source: “North Carolina Courts Felony Punishment Chart,” <http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/felonypunishmentchart.pdf>.

If the court finds “substantial assistance,” the court may impose any lesser minimum and corresponding maximum sentence, or suspend the sentence and enter any sentence within the court’s discretion. Suspended sentences for cooperation are relatively rare, however, and most of those convicted of trafficking are sent to prison.

The principal strength of North Carolina’s structured sentencing system reform is that it has created a rational system of sentencing norms. The vast majority of those convicted for drug possession or for sale of less than an ounce of cocaine are sanctioned in the community, with a primary aim of providing them with supervision and treatment, not punishment. Those who receive prison sentences are not subjected to the harsh, disproportionate sentences meted out by Mississippi judges. A useful bottom-line measure of its advantages can be seen by simply comparing the proportion of the state prison population made up of people convicted for drug offenses:

Mississippi	35%
50 state average	20%
North Carolina	15%

Source: FBI Uniform Crime Reports, as prepared by the National Archive of Criminal Justice Data.