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**Other Sources:**

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prosecutors, ethics, cooperators, 5K1.1, substantial assistance

**Abstract:**

Scholars have often criticized the government for relying on "cooperating" defendant/witnesses in obtaining convictions of other persons. Such scholars contend that cooperating witnesses are powerfully motivated to parrot information a prosecutor wants to hear and that as naturally biased advocates, prosecutors overlook and ignore signs that cooperating defendants are lying.

This article asserts that defendants who "cooperate" with the government by substantially assisting in the prosecution of other crimes and criminals in exchange for a hope of receiving a more lenient sentence are invaluable crime prevention tools and should be encouraged. Nevertheless, the article recognizes the inconsistent manner in which prosecutors assess such witnesses, primarily because of the unfettered discretion prosecutors wield over cooperators. The law imposes no duty on prosecutors to deal critically or carefully with cooperating defendants. If prosecutors bear such a duty, and the article contends that they do, the obligation originates with a prosecutor's ethical duty "to do justice."

The article explores a void in the legal and ethics literature regarding the federal prosecutor's ethical obligations around cooperating defendants. It discusses the nebulous nature of the duty to "do justice" in the context of evaluating, selecting or rejecting cooperation and ultimately concludes that the Department of Justice can further the prosecutor's ethical responsibility of dealing thoughtfully and thoroughly with cooperators by fostering an office culture in which critical and thoughtful assessment of such witnesses is rewarded.