To the Graduate Council:

I am submitting herewith a dissertation written by James Mitchell Miller entitled "The Snitch: A Sociology of Confidential Informing." I have examined the final copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Sociology.

Michael L. Benson, Major Professor

We have read this dissertation
and recommend its acceptance:

Accepted for the Council:

Associate Vice Chancellor and
Dean of The Graduate School

The Snitch: A Sociology of Confidential Informing

A Dissertation
Presented for the
Doctor of Philosophy
Degree
The University of Tennessee, Knoxville

James Mitchell Miller
December 1996

Acknowledgements

This dissertation marks an important moral victory. It is largely due to my family's constant support and encouragement that I finished. Several others helped me in various ways. Michael Benson demonstrated, primarily by example, the standards of a university professor and helped me obtain my objective of a research level academic appointment at cost to his personal time and projects. I could not have done it without him. I appreciate Tom Hood for the time he gave me with the Society for the Study of Social Problems when I entered the doctoral program and had little more to offer than enthusiasm. Don Clelland and Sam Wallace provided me with invaluable advice and, more importantly, friendship.

Outside of the University of Tennessee, Dean Champion, Richard Wright, and Albert Cohen went out of their way to bolster my professional development and helped furnish the confidence necessary to publish and compete.

Friends at Laurel Church of Christ, particularly Mike Buckley, and the Knoxville Camp of the Sons of Confederate Veterans always provided moral support. The doctoral program also granted friendships with fellow graduate students and I look forward to knowing many of these people in the future as both friends and colleagues. Of these, I must mention the especial friendship of Kevin Bryant, who both suffered with me through tribulations and celebrated accomplishments.

Abstract

Confidential informing has long been a vital aspect of law enforcement. Reliance on confidential informants, often referred to as snitches, is a particularly consequential and timely issue due to the continued escalation of the war on drugs. Despite its significance, there are no basic descriptions of the practice throughout the social science literature. This void is understandable given the secretive and dangerous nature of the phenomenon. Here, firsthand information is presented that portrays the confidential informant role and the nature of informant-based policing operations. Data was obtained from in-depth interviews with forty former informants identified via a snowball sampling strategy. Confidential informing is depicted as an institutionalized component of a general narcotics enforcement pattern and informants are shown to have considerable influence over police operations. The informant experience is described in three sequential stages: entry, casework, and desistence. Particular attention is given to troublesome aspects of the practice and causes of the problems are identified. The informing function is set in a larger theoretical context as both an integral part and cardinal exemplification of a new trend in the police institution. This trend, termed *the commercialization of the police*, carries unprecedented potential to alter traditional police functions through redefinition and redirection of enforcement objectives. Inextricably linked with the undercover component, the commercialization transformation cannot be understood apart from the practices that propel it, the chief of which is confidential informing. By focusing on the seemingly obscure topic of confidential informing, insight can be gained to this slowly creeping trend that may prove critical for criminal justice.

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Chapter One

Snitching: An Introduction

The sociology of policing is a rapidly developing subdiscipline that systematically analyzes the origins, types, evolution, and functioning of law enforcement. The widespread expansion of undercover operations, *officially* a response to Americans' unquenchable recreational drug appetite and its effects - drug abuse and related crime, has emerged during the last decade as a primary topic within this area of study. While mainly directed against the drug problem, contemporary undercover policing transcends the concerns of narcotics enforcement to affect the general disposition of formal social control (Jenkins, 1994).

Vice policing influences the whole of law enforcement through both its sheer size and ideological outlook. It is clear that covert police operations have been steadily increasing in recent years, although the actual extent of the rise is unknown (Weisheit, 1990; Bernards 1990). In the absence of standard means for measuring undercover practices, generalizations of rapid growth can be made from yearly comparisons of the percentage of officers assigned to detective (i.e., investigation and vice) rather than uniformed patrol work and from law enforcement agencies' budget apportionments (Marx, 1988:13). These indicators show an escalation that reflects, in part, the value currently placed on detective work relative to other modes of policing.

The matter of how vice divisions, the battalions of the drug war, are funded is at the heart of the undercover phenomenon. Vice, like other divisions, traditionally has been dependent on departmental budget allocations, but a new situation has developed wherein vice components generate their own monies (Hirsch, 1986; Burkholder, 1989).

Mainly through asset seizures and forfeitures, vice enforcement units can now offset much if not all of their operational expenses. Although the monetary benefits of liquidating criminal assets was initially only an appealing by-product of drug enforcement, revenue generation has become a primary drug enforcement objective (Stuart, 1990; Miller and Selva, 1994; Trebach, 1987). Many vice divisions are actually self-supporting and some seize revenue in excess of their entire departments' annual budgets (Hyde, 1995).

This development has prompted changes in policing that have only begun to be examined. Much attention has been given to what has become known as the "new undercover", a style of detective work that contrasts with conventional detective methods. Differences between the newer and older styles are most observable in the strategies and tactics employed in casework. The traditional approach was coercive, reactive and predominately crime driven. Arrests, the seizure and eradication of illicit drugs, and other measures of police productivity were clearly consistent with stated drug enforcement objectives.

The new undercover style, by comparison, depends on deception, is proactive, and motivated, at least partially, by revenue considerations (Leo, 1992; Miller and Bryant, 1993). An emphasis on deception often involves providing a drug dealing opportunity to individuals who are only potential criminals rather than known or even suspected ones. The police now target those they perceive to be corruptible, as where in the past they focused on those they perceived to already be corrupt and culpable. Specific changes in street-level enforcement tactics include increased utilization of decoys, reverse stings, and property seizures - sometimes without arrest, as opposed to

the customary service of magistrate approved search warrants ensuing from undercover surveillance. Today, undercover policemen and their informants are just as likely to be selling drugs, under the rationale of policing demand, as they are to be ferreting out primary neighborhood supply sources. This change in focus raises the possibility that the police may actually fabricate or promote crime rather than prevent it.

The shift to this newer undercover style is necessitated by the limitations of the older one to address the structure of today's drug markets according to drug war administrators (Duke and Gross, 1993). Reverse stings or sell operations characterize the ideological and strategic approach of the current drug enforcement strategy and are significant for understanding the complexity of the narcotics policing phenomenon. The traditional approach of "busting up the ladder" of drug rings is based on the uncertain expectation that drugs flow downward through rather fixed outlets passing from drug lords to wholesalers and then from "street slingers" to users. To the extent that drug markets are fluid, responsive to enforcement efforts, and that its participants assume positions on different levels in the flow route at varied periods, dependence on a one dimensional buy and bust up the ladder strategy would seem futile; the general failure of the drug war stands as considerable evidence. Simply put, "the interest in sell operations is an implicit recognition that the shine is coming off the 'big trafficker' mythology" (Dorn *et al.*, 1991).

Because the newer style is a mix of control strategies that polices different levels (supply, distribution and demand) and dimensions (criminal behavior and the rewards it generates), there can be little doubt that drug enforcement, now more than ever before,

casts a broad net. Within the context of current undercover practices, the police function should be examined in much greater detail than it has been to date.

Scholarly attention to the new undercover has been theoretical and conceptual, explaining the types and dimensions of tactics and the range of resulting consequences, both intended and unintended (Marx, 1988; Deflem, 1992; Leo, 1992). Specified hypotheses for examining relationships between police behavior and outcomes haven't been tested, thus conclusions about the actual effects caused by the new forms of policing remain speculative. Explications of the new style simply have not been guided by or based upon empirical research. The leading works on undercover today have reflected, at great length and impressive detail, on the nature and problems of the phenomenon, but without much hard data. In *Undercover: Police Surveillance in America*, for example, the author admits "No ongoing operations were observed; nor were current investigations discussed." (Marx, 1988: xxiii), yet the book is acclaimed by Jerome Skolnick, a leading sociologist of the police, as:

> "the most comprehensive and thoughtful work ever done on undercover policing. It will be the benchmark by which all further scholarship in this area will be judged."

In reality, little has been documented about the actual substance of undercover operations, that is, the clandestine activities performed by near-invisible actors in drug and other criminal subcultures. The news and entertainment media have certainly devoted a great deal of attention to the two most obvious actors in the undercover drama; the criminal suspect and the undercover law enforcement agent. These adversaries have

been frequently glamorized so as to bring about a hero versus villain mystique of the criminal underworld that pervades the popular culture. But there is also a third, often forgotten participant, the confidential informant, who is equally pivotal to the undercover phenomenon.

This study focuses on the *confidential informant* and, more importantly, the practices comprised by his work--*confidential informing*. What exactly is a confidential informant? Most people likely think of someone who simply reveals something useful to the police, but the definition is more complex.

What is a confidential informant?

Confidential informant is but one of several commonly used terms for persons who assist law enforcement. Informer, snitch, stool pigeon, nark, rat, fink, turncoat, traitor, squealer and various other names are used rather interchangeably and with obviously denigrating connotations. While the particular jargon specifying this role seems to vary across region, time, and social group, it is important for definitional purposes to distinguish between an informer and an informant. Differences are more than mere labels for the two terms denote different roles a citizen can assume in relation to the police. The roles differ in regard to: 1) the formality of the relationship between a citizen and the police and 2) the extent of a citizen's involvement in enforcement operations.

The function of the informer is usually limited to revealing information to law enforcement authorities. Typically distanced from criminal environments, this individual may be the good samaritan or a concerned citizen who notifies the police about criminal

activity out of a sense of moral or civic responsibility. Despite the supposed general public reluctance to become involved in police business and prevailing moral opposition to informing, the popularity and success of "Crimestoppers", "Silent Witness", and similar crime prevention programs suggests that many citizens see cooperating with the police as necessary and legitimate (Pfhul, 1992; Rosenbaum, 1989).

Opportunities to inform law enforcement officials about crime have undoubtedly burgeoned during the last decade due to the increased utilization of electronic technologies in investigation and surveillance. Toll-free telephone numbers, public fax machines, and electronic mail are widely available for citizens to turn in drug dealers, wildlife poachers, suspected burglars, and even those who litter. The informer may thus be a respondent to a television or radio newscast soliciting information on a wide range of criminal activity in exchange for monetary rewards and with assurance of confidentiality.

Information isn't always the result of either helpful citizens or opportunistic persons willing to provide the testimony needed to make an arrest or carry out prosecution. Police buffs and eccentric citizens are other sources of information, but their assistance is viewed with much skepticism and, if persistent, usually deemed a nuisance by the police (Lyman, 1987). Regardless of their motives, informers typically do not become actively involved as a participant in undercover operations, and there is no formally structured or specified relationship with the contacted law enforcement agency.

Confidential informants (c.i.'s), on the other hand, are citizens who, due to

various circumstances and diverse motives, assist law enforcement in a more active and involved manner. The essential difference between an informer and a c.i. is that the former merely transmits information which he or she has come across while the latter, in practice if not by official definition, seeks it. The c.i. not only transmits information but is actively involved in developing and seeking out damning knowledge on criminal activity under the direction of the police. The c.i. may thus be thought of as a "citizen-operative" for the police, an "amateur police agent" (Wisotsky, 1986). As such, the label is misleading.

Almost anyone can be a confidential informant. They are male and female, of all racial and ethnic groups, and from diverse stations in life. The only restriction is age and even on occasion juveniles are used in the informant capacity (Herbert and Sinclair, 1977; National Council on Crime and Delinquency, 1971). Recorded stories and newspaper accounts, however, indicate that the overwhelming majority of informants are young adult males. It also appears that a large percentage of informants are from lower socioeconomic backgrounds.

This may be nothing more than a reflection of the correlation between social class and crime, especially drug offenses, since informants frequently assume the role of c.i. to escape prosecution. Undercover operations are heavily narcotics focused and there is considerable evidence of selective enforcement targeting the poor and minorities (Hyde, 1995; Weisheit, 1990; Bernards, 1990). Low class status is important because it tends to reinforce police opinion of informants, already doubly stereotyped as criminals and traitors, as inferior people (Levine, 1990).

The c.i. must operate within a criminal environment, be it a natural one or one fabricated either alone or in conjunction with undercover officers, for it is the c.i.'s ability to do so which is of real value to the police. Not surprisingly then, informants usually are persons charged or convicted of criminal offenses or otherwise engaged in criminal activity. In fact, it is a citizen's criminal record and his or her present extent of interaction with active criminals that determines whether police classify an individual as an informer or informant. Such a classification system is important because it serves to justify officers' assumption of a morally superior and condescending attitude wherein informants are equated with criminals.

The criminal versus non-criminal classification dichotomy seems to be a widespread law enforcement standard. The U.S. Bureau of Justice Assistance distinguishes between criminal informants who are co-participants in criminal activity and non-criminal informants, also called sources (Janzen, 1992:19). Great Britain's National Drug Intelligence Unit differentiates between amateur informers and professional informants. The former are public-spirited individuals not always regarded as welcome; the latter, known as "participating informants", are considered the backbone of detective work (Dorn *et al.*, 1991:125). The U.S. Drug Enforcement Administration categorization method specifies Class I informants as those who have criminal records and/or connections and backgrounds and Class II informants who are mere citizen informers.

Confidential informants enter into exchange relationships wherein their performance is compensated with various tangible and intangible rewards; favorable

discretion concerning pending criminal charges, money, revenge, and, for some, autonomy in unlawful endeavors such as drug use, minor probation violations and even street level drug dealing (Skolnick, 1966). Remuneration, regardless of type, means that a law enforcement agency is contractually involved, to some degree, with a citizen. A confidential informant's behavior is also interwoven with various other legal aspects of an investigation, thus requiring a structured relationship for liability as well as procedural reasons. As Manning (1989:141) notes "the informant must stand in some formal relationship to the police officer and this relationship distinguishes 'citizens' from 'informants'."

The degree of formality in the practice of screening and employing informants seems to vary considerably across jurisdictions and level of enforcement agency (DeGarmo, 1972a). In larger metropolitan police departments and state and federal level agencies, informants are kept on file and must sign forms that: 1) explicitly waive a law enforcement agency's legal liability for their personal safety, 2) loosely state service agreements, and 3) specify violations while in the informant role that could result in dismissal or prosecution (See Appendix A). Though some smaller city police and rural county sheriff's departments catalog and formally negotiate, many continue to operate on a much more informal basis where informants are officially invisible in that there is neither any record of their service nor written departmental promise of any consideration or compensation. Trust, a sort of "gentleman's agreement" becomes the focal point of the agent-informant relationship.

The confidential informant is clearly more vital to narcotics enforcement than is

the irregular informer. Informer calls have long been observed as inconsequential compared to other enforcement patterns. One study found that informer calls accounted for only four percent of all arrests for vice crimes (Skolnick, 1966). Whereas the informer provides momentary assistance sporadically and on a vast range of criminal activities, the confidential informant is a more institutionalized component of vice and narcotics policing and the successful enforcement of crimes assigned to these divisions are considered highly dependent on the informant's performance.

Why study confidential informing?

The importance of confidential informants to detective work, especially drug enforcement, is widely acknowledged by undercover agents experienced in "handling" them as well as by academic observers and justice system administrators (Niederhoffer, 1969; Drug Enforcement Administration, 1982; Fuqua, 1978; Grieve, 1987; Lyman, 1987; Marx, 1988; Pritchard and Laxton, 1978; Skolnick, 1966; Williams and Guess, 1981; Wilson, 1978; Wisotsky, 1986). Consider these assertions:

> "the informant is the life-blood of the good detective" (Westley, 1953)
>
> "The single most important way of making drug cases is the use and development of informants...For drug agents, policing would be virtually impossible without informants" (Dorn *et al.*, 1991:121)
>
> "They [police] have learned to see their possibilities for success as dependent on identifying, cultivating, working, and maintaining their informants...it is part of the traditional lore of the units that informants are the *sine qua non* of narcotics work." (Manning, 1980:141)

"The short summary of the informer from the prosecution point of view is that he is almost indispensable in narcotics cases" (Harney and Cross, 1968:12)

The precise reason that informants have been deemed so necessary centers around three applied functions: 1) source of leads, 2) participation by entering criminal environments or inducing crime within a circumstance of police surveillance, and 3) testimony in court (Wilson, 1968:62). The lack of informant contribution at virtually any stage of a case has the potential to nullify enforcement. From the provision of the knowledge base determining which criminal activities will be selected and prioritized, to precarious undercover work, and then abetting prosecution as a primary witness, the informant is not only relevant, but indispensable to the entirety of a case. It seems indisputable that undercover policing cannot be fully understood without careful consideration of the informant.

Confidential informing constitutes a key type of expansion in covert forms of enforcement through the dimensions of scope and intensity. Informants extend the scope (i.e., the physical size) of the police force, by virtue of placing additional bodies in the field. Neither the identity nor approximate number of informants is ever fully known within a criminal community so their assumed presence theoretically generates a degree of restrictive deterrence. Because informants necessitate criminals' attention to undercover infiltration, illicit transactions are complicated and the regularity of operations may be disrupted (Jacobs, 1993a).

Informants also intensify operations. The c.i.'s close association with criminal

targets enables entry into settings otherwise off-limits to undercover officers and an insider perspective eases interaction. The legal restrictions placed upon informant conduct is less defined than for sworn agents and the likelihood of formal disclosure of an informant's identity is small. Accountability checks, other than by the police agents for whom they work, are unlikely as well, meaning that informants have a great deal of flexibility in maneuvering undercover and can thus achieve things that officers cannot. In short, deeper penetration into criminal operations can be achieved with less time and legal complexity and accountability by informants than detectives.

Since informants are vital to undercover policing, it is reasonable to assume that their numbers have increased relative to narcotics enforcement generally. The statistics are scattered but do suggest the large scale nature of the practice. The FBI, for example, maintains a network of almost three thousand informants (Kleinman, 1980), but it is the DEA that is more informant dependent. A review of all 1989 search warrant affidavits in U.S. District Court in Atlanta, Georgia revealed that confidential informants were used in 90% of the cases, up from 60% in 1980. One fourth of all warrants served were based solely on informants, that is, there was no police corroboration (Ibid).

Journalistic reports also indicate that the use of informers has become big business in U.S. drug enforcement agencies (Curriden, 1991; Luger, 1991). The dramatic increase in the number of informants is directly linked to forfeiture statues that finance them and the amount of money disbursed to informants is staggering. The federal government paid $63 million to confidential informants in 1989, almost double the $35 million paid just two years earlier. In 1994, the U.S. Department of Justice reported that

the DEA, the FBI and U.S. Customs collectively paid $87 million to snitches (Fitzgerald, 1995).

Confidential informing is now so embedded in the undercover mission that individual informants are protected at various levels of the criminal justice system. The protection of informant identity has most often been understood as a basic strategy on the part of an enforcement agency to safeguard its knowledge source and legitimize its informing system within the community by protecting "their people" (Skolnick, 1966; Manning, 1977). In the larger picture of law enforcement as a social institution, the protection afforded narks can be understood as a by-product of the general narcotics enforcement pattern.

Vice work reproduces itself in that informants produce suspects whose arrests place them under legal pressure to also inform in order to avoid or at least lessen the effects of prosecution. All informants are temporary and the duration of a particular informant's service may be shortlived. Thus, the informant pool must consistently be renewed. Should a department or even certain agents obtain a reputation within a criminal community of breaking protection or some other promise, some potential informants may decide not to cooperate. "Burning" snitches, then, adversely affects vice work - so protecting informants is a self-serving action for law enforcement agencies.

Confidential informing is also implicated by the old argument that the legal system is oriented more toward the processing of cases than fleshing out a sound product of justice (Blumberg, 1967). The overcrowding of our criminal court system and the heavy use of plea bargaining means that defendants rarely force prosecutors to produce

informants for questioning. Such a reality exists despite the fact that it is typically the informant's behavior that is most germane to constitutional defense issues such as the establishment of probable cause, entrapment, and other flagrant government actions. The utilization of confidential informants has become so commonplace that the relationship between their participation and the use of plea bargaining has moved critics to argue that the nature of our legal system is being prostituted (Wisotsky, 1986).

To challenge a credible informant means to risk a harsher penalty, thus plea bargains become a more attractive alternative to the accused and also to prosecutors whose caseloads are eased through use of the tactic. However, unchallenged informants may not even exist or may have lied thus violating a defendant's constitutional rights. The standard reliance on plea bargaining, though, protects the informer system and seems to leave the disposition of justice less adversarial through unclear separation and cooperation between defense and district attorneys.

There can be little doubt that confidential informing has become a timely and integral component in our criminal justice system - the practice by which drug enforcement is done. Surprisingly, there are no basic descriptions of confidential informing from the informant perspective. What little is known about confidential informing is based solely upon the police viewpoint. The lack of information on the topic of informing in the social science literature is certainly understandable. How might a group of confidential informants ever be identified, much less approached for the purpose of tapping into their experience? This study overcomes these basic problems by interviewing a sample of informants to fill a void in criminological and criminal justice

science literature.

Purposes and Outline of the Study

The primary objective of this study is to describe the practice of informing from the confidential informant's point of view. What exactly do informants do? Why do they engage in dangerous practices and what risks are involved? How does the informer-detective relationship develop and what sustains it? What degrees and types of control do informants have over police activity? The answers to these questions should provide a basic description of the confidential informant role.

This study addresses the problems typical to the informant process. Why is it that informants are so ungovernable and what are the common problems associated with the practice? Are they attributable to informants' criminal socialization and deviant personality or more to a function of informant system structuring? Why does the informant-detective relationship dissolve, even when apparently successful? Can the system be improved and, if so, how? The answers to these questions should suggest recommendations for better police use of informants.

Additionally, this research will critically evaluate police utilization of confidential informants and specify the practical effects as well as the theoretical implications. Does informing characterize the undercover mission, and, if so, to what extent and how? In what ways does the practice of informing impact the police institution and thus society in general?

This study speaks to the above questions and issues by analyzing information about confidential informing obtained from forty in-depth interviews with former

informants. The next chapter provides an overview of informing in historical, legal, and contemporary contexts.

The police view of informants, the agent-informant relationship, and regular problems associated with the practice are given particular attention. The Third Chapter explains how a previous study enabled the present one before discussing the research design and related issues in detail. Chapter Four addresses the factors and issues that motivate both initial entry into the informant role and continued service. Chapter Five depicts the actual practice of informant work as described by informants themselves. Chapter Six presents and discusses the range of problems common in the practice of confidential informing and considers the causes. The final chapter reports conclusions that can be drawn about the nature of confidential informing and its significance for both narcotics enforcement and the police institution.

Chapter Two

Informing in Historical and Contemporary Contexts

In this chapter I attempt to provide a general overview of confidential informing. This is a difficult task because there simply isn't much of a literature, academic or otherwise, on the topic *per se*. The relevance of informing to other investigative and legal topics has been addressed from time to time, but rarely has it been a chief focus. The majority of information is in the form of a few paragraphs scattered throughout police training manuals, criminal justice textbooks, law review and social science journal articles. By collecting these passages and combining them with two police-authored books (Harney and Cross, 1968; Palmiotto, 1984), a handful of book chapters (Weston and Wells, 1994; Osterberg and Ward, 1992; Lyman, 1987) and chapter sections (Berg, 1992; Eastman and Eastman, 1969; Travis, 1995), a holistic picture of the practice of confidential informing is developed with as much detail as obtainable.

Rather than pursue a grouping approach by academic discipline (law, sociology, etc.), the literature is synthesized by theme so that common properties of the informing phenomenon can be observed in a more holistic fashion. A brief history of informing is presented first, tracing the practice from its origins to the present context. The remainder of the chapter then examines the leading themes suggested by the literature: 1) the managing or "handling" of informants, 2) informing and the law, and 3) problems common to the practice.

The following sections consider how informing has influenced and changed with the development of the police institution and how the history of the practice impacts the

current situation. By tracing the fluctuation in public acceptance of informing and looking to the birth of the formal police force, one can surmise that informing has indeed varied with the evolution of the police function in society.

A history of informing is, in effect, an alternative history of early Anglo systems of criminal justice. The practice was representative of initial styles of policing but then gradually diminished to become a supplemental component. The same historical developments that brought about shifts in policing also mark the unfolding of informing. Some of these are: the end of the feudal era, urbanization and industrialization, the American Revolution, the Communist "Red Scare", and most recently and notably - the ongoing "War on Drugs" (Duke and Gross, 1993). With these events came transition from decentralized, community service oriented police bases to the establishment of officially recognized forces that became the quasi-professional bureaucratic law enforcement agencies of today.

A Brief History of Confidential Informing

The concept of informing is as old as civilization and certainly predates the arrival of formal police departments. There are numerous Biblical and historical examples (e.g., Judas Iscariot, Marcus Brutus, and Benedict Arnold) of informing in the context of war and other states of political and religious unrest. Reputed traitors who forsook allegiances to their native countries, kinship, or ethnic groups, often for some type of personal gain, gave rise to negative turncoat portrayals of informers regardless of circumstance. Even informants who have furthered public interest, such as Anna Sage - the famous "lady in red" who helped the FBI apprehend and gun down John Dillinger,

are loathed for their deception and breach of group norms concerning allegiance. History shows the contrary to be equally true, as in the case of the spy Sam Davis, the "boy hero of the Confederacy", who was hanged for refusing to divulge information that might injure friends.

The use of informers as military and political spies is an ancient means of diffusing challenges to incumbent authority and certainly speaks to the problem of broad scale social control. But such examples do not seriously factor into an explication of the informant role in the address of crime as is the focus here. Still, it is important to note from the start that the negative connotation understandably attached to national traitors carries over to attitudes toward police informants as well. After all, escape of a suppressive system of justice supported by police and informers was a primary reason that our country was founded.

The genesis of informing in a police context is found within Old World crime control efforts, where the practice was the leading law enforcement method (Marx, 1988; Harney and Cross, 1968; Earhart, 1964). Although we think of informing as an aspect of policing, it is just as accurate, if not more exact, to view the police as following and then displacing the practice of informing. Our laws and policing as the means of enforcing them originate from the English and, to a lesser extent, the French experiences of the eighteenth and early nineteenth centuries, so it is from there that contemporary uses of informants can begin to be understood.

Evolution of Informer Systems

Early Anglo-Saxon law was based on the notion that the public and the police

were one and the same. Every adult male member of society was responsible for the control of crime. Informing was seen as an expression of civic service and failure to identify or aid in the apprehension of criminals was a crime itself. More specifically, all free men in medieval England were by law required to notify the twelve major landowners within a district of all known crime. These land owners, the forerunner to the grand jury, were then legally bound to present the information and, if necessary, the sources as evidence of wrongdoing to a sheriff who twice yearly visited each district. Neglect of this charge was likened to the willful protection of criminals and warranted fines or imprisonment (Harney and Cross, 1968).

Sheriffs were appointed by and acted on behalf of the king who typically enjoyed the support of the aristocracy. The well-known phrase characteristic of this crude manner of justice, "the King's law", was just that. While law was inequitable by modern democratic standards in that the interests of common people were grossly under-represented, there was nonetheless a general backing for this loosely structured enforcement system. Support for the law no doubt stemmed from a necessary, if not bona fide, form of patriotism. This was the feudal era when the protection afforded by primary landholders allied with state military could not be jeopardized, thus most people had little choice but to cooperate with the existing setup.

Although the "everyman police" may have had a multitude of lookouts, it was not adequately designed to competently respond to increasing levels of crime. At best, this early community policing model was akin to an ineffective posse' or lynch mob. It nonetheless remained the key policing style for nearly three centuries, mainly because

the idea of a permanent police force was both threatening to individual rights and considered extremely cost prohibitive (Earhart, 1964). On the other hand, this informer-based system produced a general deterrent effect. The fact that every citizen was duty bound to police roused high levels of intolerance and social ostracism for most criminals. Moreover, the certainty, celerity, and draconian severity of punishment for those who were apprehended effected specific level deterrence with convincing finality, the dreaded Tower of London standing as the most prominent example.

The English common law notion of having citizens rather than the state assume the majority of responsibility for everyday crime control outlived the feudal era to further shape the future of law enforcement, partly through well-known concepts that have remained in the criminal justice vernacular. The "hue and cry" and "blood money" are just two examples that have endured over time and mark a degree of continuity between original and subsequent forms of informing. Firsthand observers of crime were compelled to alarm the community with the "hue and cry" of "Out! Out!" and then, in the absence of a formal police, actually give chase. All adult males within earshot of the cry were expected to immediately stop whatever they were doing and join in the pursuit, or risk both official punishment and the stigma of coward. Another standard, "misprision of felony", required under penalty of law the reporting of criminal activity and encumbered citizens with various police tasks (Melville-Lee, 1901).

British criminal justice in the early eighteenth century centered on an informer-based enforcement pattern that more closely approximates contemporary undercover practice in terms of the informant's motivation and performance. As Marx (1988:19)

notes, "Any citizen could become a *thief-taker*, catching criminals and recovering stolen property. In return, he or she could expect a share of the property or a reward." It was from this system the expression "blood money" was popularized, a denigrating term referencing profit from deeds traditionally viewed as civic acts.

Another self-serving incentive to snitch during the thief-taking era is one that is now characteristic of informing - leniency from criminal prosecution. Informing was a workable escape valve from prison or worse with pardons sometimes exchanged for assistance. This incentive was less motivating than loot, however, for a couple of reasons. Pardons were seldom offered to those already apprehended or imprisoned, but to criminals at large. There being a precedent of trickery by promises of deals not kept to simply facilitate arrest made would-be informers highly skeptical (Melville-Lee, 1901). Since there were few rights for the accused and even less separation between sheriff, court, and hangman, surrender on the pledge of leniency was a risky and infrequently selected option. Also, leniency was contingent on legal outcome, an arrangement that encouraged misrepresentation and hindered cooperation:

> "the informer's status was ambiguous at best. An accused felon could confess and inform on others. If they were convicted he was released; if they were acquitted he was hanged" (Graham, 1967:37).

The practice of thief-taking was standardized and significantly altered by Jonathan Wild (1682-1725), the "Thief Taker General of Great Britain and Ireland" (Howson, 1970; Klockars 1970). Wild was a former thief who, in collusion with sheriffs, devised an ingenious and profitable program of legitimized piracy based on deception. He

recruited an undercover band of criminal informants that observed and often helped plan and even commit property crime on a routine basis. They would then return the very merchandise they arranged to have stolen or had received for either reward money or a share of the property. Local thieves who resisted the system were given up to the sheriff or King's police, thus giving an appearance of crime fighting productivity. Although this system was successful for the thief-takers in monetary terms, it plainly promoted as much crime as it thwarted (Marx, 1988). As the watchmen and the thieves became indistinguishable, the citizenry grew increasingly outraged at the obvious corruption and deception that made for a prostituted form of justice.

Wild's "success" only called attention to this malfeasance and proved to be his undoing. Although eventually hanged, a fate he fashioned for over a hundred thieves during his career, the undercover system he launched had taken hold. Two brothers, the Fieldings, further organized the English thief-takers in 1749 as the Bow Street Runners from where they were headquartered in London (Pike, 1962). They were the first collective, apart from royal police squadrons, paid from municipal coiffures for fulltime attention to crime. Ex-criminals who were known for drunkenness and whoremongering, they only further pronounced the need for a police separate from the criminal element.

Francois Vidocq (1775-1857), who directed undercover operations in Paris from 1810-1827, was the French equivalent of Britain's Jonathan Wild (Gerson, 1977; Stead, 1953). The French, lacking the natural defensive protection and crime control benefits of England's ocean boundaries, had established a national police force during Napoleon's reign, a part of which was a secret military police that remained intact after the

Emperor's fall. It was within this branch that Vidocq rose from the position of informant to head a criminal investigation division. Like Wild, he was a former criminal who cut deals with government authorities to further his personal agenda.

Vidocq's division, *La Police criminale* - the criminal police, evolved from this early French intelligence agency but dealt with criminal rather political concerns. As in the British experience, Vidocq recruited former criminals for his detectives on the stance that "it takes one to catch one" (Stead, 1957). And also like the British thieftakers, the invitation for corruption and misconduct eventually lead to the demise of operations employing the criminal informant as policeman. Vidocq fared better than Wild under pressure from both the public and other divisions within the Paris police who resented his criminal past. He resigned to market his skills in the private sector and, continuing to realize profit in a similar fashion, established a successful detective agency that maintained a hand in police affairs (Gerson, 1977). The significance of his time was the further separation of informants from noncriminal officers.

The informant and policeman, in both England and France, were no longer one and the same. Although informing would no longer characterize policing and was relegated to detective division status, it had been permanently embedded as a law enforcement cornerstone and would not disappear. The problems that ousted Wild and Vidocq's early informer systems inevitably uncoupled informing and policing, yet the former remained a primary enforcement pattern.

As policing became strained by conditions conducive to crime (e.g., crowded living conditions and more frequent interaction among strangers) that were brought about

by urbanization and industrialization, it became apparent that informers were not appropriate for public service and general crime prevention functions. Most significantly, the responsibility for crime control had shifted away from the public into the hands of a certain few. The early informer systems had set the stage for a more organized municipal police force, whose formation in the 1820s by Sir Robert Peel is generally considered the forerunner to modern law enforcement agencies (Pike, 1962).

Another important legacy of the early stages of informing is the pervasive societal disdain that developed for informants of any kind. This negative outlook was reinforced early in American history due to loyal British "Torrie" informants that hampered the nation's establishment. Even after the American Revolution, informants were seem as a very real threat to the freedoms for which the country was formed. Congressman Edward Livingston, in 1798, warned:

> "The system of espionage being thus established, the country will swarm with informers, spies, delators, and all the odious reptile tribe that breed in despotic power. The hours of most unsuspected confidence, the intimacies of friendship or the recesses of domestic retirement, will afford no security" (Harney and Cross, 1968).

Nearly another century of wars on American soil extended this attitude which reached an all time high with the rise of socialist thought in the United States after the second World War. The "red scare" of Communism climaxed during J. Edgar Hoover's administration of the FBI and though our justice agencies utilized informants to infiltrate the American Communist Party and combat their "perverted conspiracy" (Ibid), the

public was more apt to view informers of any sort as Communist conspirators. The overlapping of law enforcement and national security interests, then, carried over to perceptions of informers in a way that would impact the practice in the future. Beginning in the civil rights era of the next two decades, the 1960 and 1970s, another occurrence transpired that would set the role of the informant relative to their police handlers and in the public eye - the rise of popular culture recreational drug use.

History has shown a hardening of opinion toward the informant. To the extent that narcotics policing since the late 1960s to date has been a type of generational conflict in that youth consume drugs in light of their elders' objections, one might expect respective pro and con attitudes about informants that help "put away" drug dealers. This hasn't proven so, however, as older generations still connect informants with, if no longer Communism, the insurrection linked to moral decay. Informing is simply un-American.

Younger cohorts popularized the insulting term "nark" for those who sold out fellow users and dealers to "the man" or "narc"(otics) agent in a time when resistance and questioning of authority, expressed in part by using drugs, was more popular than legal conformity. Many within this hippie generation modified their views about drugs as they matured into the elder position, but informants would still be seen as moral inferiors concerned more with self than their fellow man (Marx, 1988).

It seems unlikely that many people would subject themselves to the serious risk involved in confidential informing out of a sense of social altruism in a society where "mind your own business" and "what's in it for me" are ordinary attitudes. One

observer christened 1992 the "year of the rat" upon discovering the regularity of criminal charges dropped for informants (Cotts, 1992). Other commentary, such as "Good times, not hard time" (McCormick, 1993) and "Informants make a bundle" (Saunders, 1992) on payments to informers, further evidences the rise and controversy of snitching in the present drug war context. History's cumulative effect of informer bashing often seems well deserved, but, merited or not, carries real-world implications that shapes the nature of contemporary undercover policing.

Police Utilization of Informants

> "To get the best out of a stool, you gotta train him like you train a dog" (Goddard, 1988:187).

From the police perspective, informants are a necessary, though undesirable and despised, element of detective work. Police work with informants was previously titled just that, "working informants", but now the somewhat more supercilious term "handle" is more common. More than the language of informant-based policing has changed during the modern drug war. Instead of a conventional threefold approach of development, management, and protection, current emphasis seems to neglect the first and last phases. Until recently, there has been little development (i.e., training) for informants or the officers overseeing them, something of a paradox given that informants are the crucial determinant of undercover success (Dorn *et al.,* 1992). As one British narcotics officer realized:

> "Drugs squads is supposed to be specialised, but there's no instructor to tell you what to do. No-one wants to know me. 'Go on. Piss off and get

me some information.' And that's that" (Pritchard and Laxton, 1978:21).

The situation in the United States is all too similar.

> "maintaining their informants. They assume this is the most fruitful way of working, in large part because they have never done anything else, have received little or no formal training" (Manning, 1980:141).

The relatively new objective of addressing police finance via undercover operations, albeit, has stimulated the development and implementation of instruction on informant utilization. Officers are taught how to best manage their informants so as to maximize asset recovery, as evidenced by a U.S. Department of Justice endorsed booklet *Asset Forfeiture: Informants and Undercover Investigations* (Janzen, 1992). Training on informants goes beyond technical particulars; it conveys a clear message of moral superiority and condescension.

In a 1988 training session at the State Police School in Albany, New York, for example, the instructor began with a quote from the Bible:

> "He that goeth about as a tale-bearer revealeth secrets, he that is of a faithful spirit concealeth the matter. The tale-bearer is an abomination to the Lord. It just goes to show how people have hated mother-fucking stool pigeons right back through recorded history" (Goddard, 1988:187).

Selected terminology reinforces a morally superior position in the all important agent-informant relationship. The very language descriptive of and referencing informants is both depreciating and dehumanizing (e.g., tool, dog) and, if only

subconsciously, shapes the policeman's opinion. The typical undercover officer's viewpoint is that informants are to be used and whatever negatives befall them are probably deserved because, after all, most informants are criminals and criminals are the enemy. Nonetheless, callous treatment of informants would appear illogical since people, even when coerced into action, typically better respond to requests when not humiliated and abused, a point previously argued at some length:

> "Perhaps the biggest single weakness in the handling of informants by the American police - as far as we have seen worldwide - is the police's acceptance of the underworld attitude and vocabulary toward the informant. We take our informers where we get them. Many of them are unsavory characters. Some might even be termed despicable, but these again are human beings with some natural, human reactions. Just because it appears true, they do not relish the designation stool pigeon, squealer, fink, rat or whatever similar terminology might come to the policeman's tongue in referring to the person, who, at the moment, may be his greatest ally in making his case" (Harney and Cross, 1968).

To some extent, the labels *confidential informant* and *source* are a responsive effort to address the counterproductivity of derisive language that, as scholars of racism and feminism have noted (Boulette and Andersen, 1985; Brock-Utne, 1985), shapes attitudes and ultimately behavior. While a degradation approach to dealing with informants is not officially endorsed, it isn't prohibited either. Absence of a position thus promotes a negative stance on informants within the police fraternity that is

perpetuated from veteran to rookie through on the job training. Despite warnings that insulting language is tactless, detrimental, and simply unprofessional (Lyman, 1987; Harney and Cross, 1968), modern agents have not heeded it.

At the individual level where officers are concerned with successfully conducting undercover operations, a negative and morally superior attitude toward informants is a direct means of casework facilitation. Just as a jockey understands that without the horse there is no race, the narcotics agent realizes the c.i. is the only means to his directive. Be it the case of the horse or the informant, the handler, through experience, training, and the occupational culture, views a very high level of control as absolutely necessary to achieve the optimum outcome.

It is also widely known that social isolation and a sense of disrespect from the citizens they serve are very real occupational realities for the police. The police fraternity or subculture is a response to these and similar pressures for most officers, but may not always be an option for undercover detectives due to the erratic and secretive nature of their work. While police are often unappreciated and disliked, informants are always viewed much worse thus raising officers' self image in comparison. Informant bashing, then, may serve to elevate officers' self-esteem and have other psychological benefits.

Informant bashing may also be a form of turf protection for the police, a manifestation of a much larger problem. Police aspire to professional status but are kept from attaining it due to their heavy and conflicting mandate (Manning, 1978). The response is the implementation of strategies that best put forth a professional appearance,

one of which is informant utilization. Though little is known of the inside nature of informant work, there have been insinuations that they are increasingly performing undercover duties the public associates with and gives the credit to the police. Degrading their informants may be away of suppressing this reality and preserving the proper appearance.

The emphasis on supervision is evident not only in prevailing opinion regarding informants, but also in the language of police training manuals. Instructional literature on proper informant management purports the identical theme of superiority (Brown, 1985; Nugent *et al.,* 1991; Palmiotto, 1984). Officers are versed on management techniques and directed to capitalize on the informant's disadvantaged position, after all the undercover enforcement pattern revolves around posturing suspects for exploitation.

It is reasonable to conclude that while the degradation of informants appears to serve some purposes, it also invites problems. The range of informants' response to this brusque invitation, chosen from limited alternatives, is one of the main issues taken up in Chapter Six. One fundamental problem of the typical officer attitude is that it makes for an awkward relationship with the informant. Exchanges - often one to one - with the "handling" detective are often the only interaction with a representative of the criminal justice system for informants after initial arrest. The unnecessary creation of resentment in a difficult to supervise worker from the onset only serves to complicate the primary goal in handling informants - *control.*

Strict control is imperative for agent handlers because there is an almost endless number of things, both intentional and coincidental, that an informant might do in the

undercover capacity. Planned or opportunistic misbehavior by conniving or "loose cannon" informants constitute fundamental problems inherent to the practice (discussed in a separate section at the end of this chapter). There are also numerous contingencies that may arise during an undercover case that might jeopardize its outcome or the informant's safety which can be averted through strict accountability and regular communication.

The literature indicates that police attempt to achieve and effect control in three ways: degradation, exchange, and prediction. The degradation of informants is reinforced by the entire criminal justice system of which the officer is a symbol and compels performance through intimidation. The second and third means, exchange and prediction, are intertwined. Exchange refers to what the informant will get (e.g., reduction of criminal charges, money) in return for cooperation. Since the exchange partners are unequal in power, the more dominant police manipulate the desired commodity to their advantage. Initially, a carrot and stick approach is successful in getting someone to assume the informant position, but too blatant and intense an exploitation of the relatively powerless informant may prove counterproductive and thus unprofitable - both literally and in terms of crime fighting.

Agents are taught that success can best be reached and, even more important, embarrassment avoided, by establishing and maintaining power over their informants. Usually, a case can more easily be sacrificed than the public relations damage that a rogue informant causes be repaired. Control of power is specified through who will make decisions concerning the selection of suspects and tactics which, in turn, determines

whether or not objectives will be reached. And because the police and informants often have very different objectives, the guidance of undercover cases is paramount to the interests served by justice. For the agent, power simply means being able to govern the informant's behavior while undercover. The literature suggests one main way officers attempt to keep the upper hand.

Police believe they can best minimize potential problems and maintain control by anticipating informant behavior and then acting preemptively, be it increased pressure or manipulation. This prediction is primarily based upon the informant's motivation to assume the role in the first place, which is demonstrated through a *motivational typology*.

The Informant Typology

Found in virtually every entry on confidential informing in the police science literature (Lee, 1993; Osterburg and Ward, 1992; Fenk, 1990; Katsampes, 1971; Geberth, 1979), a categorization of ideal typical informants separated by motivation serves as the primer for informant usage. If the informant's psyche can be discerned, then police can maintain the upper hand by structuring exchange offers and levying pressure accordingly. Thus, if police want an informant motivated by revenge against suspect(s) A to arrange a reverse sting targeting suspect(s) B, they may simply promise to make suspect(s) A the next case to be worked after the B case. After discerning an informant's motive in the initial meeting, it is generally thought that officers can then outmaneuver informants in a battle of wits - an uncertainty for the police in dealing with informants on their own turf in situations where they often can not be supervised.

The "Hammered" Informant

The majority of informants are "turned" or "flipped" after their arrest. The pending criminal charge is used first as leverage to force a person to cooperate and then to perform once in the informant role.

> "Soon as you flip somebody, make him call his contact, even if they only talk about the weather, because the minute a stool sees you record the conversation and put that cassette in your pocket with his conversation on it, he knows you've got *him* in your pocket. Never fails. You got physical proof of the guy's treachery, and you've bought him with that. He's *yours* (Goddard, 1988:195).
>
> "They put such pressure on the informant that, in effect, you've got him by the nuts. That's even what they call it, the 'nut', working off the nut, or the violation" (Dorn *et al.,* 1991:101).

The Mercenary Informant

The mercenary informant is a type of bounty hunter motivated by money, which to the police is seen as greed. This type of informant frequently works on a contingency fee basis, a situation that can be promising and problematic. Because the informant does not realize any profit unless casework is successful, he is likely to put great effort into planning and participating in undercover operations. The desire for money, however, can take a backseat to legal restrictions and departmental policies and prompt the informant to fabricate situations, give false testimony, or even plant evidence to ensure that a case is "successful." A primary difference between an informant under legal duress and a mercenary informant is the nature of the motivation. Whereas the

hammered informant is spurred into action by negative motivation, mercenary snitches are positively motivated.

The Vengeful Informant

An informant may offer to cooperate to realize revenge in countless circumstances. An inequitable drug deal, reaction to a rumor that the target tried to snitch on a friend, or a scorned partner in an intimate relationship are but a few of the more typical situations that motivate revenge seeking informants.

The "Police Buff"

Eccentric citizens, police fans, and wannabees often attempt to serve as informants. While they may have useful information on occasion, they are not as strongly motivated as flipped or mercenary informants and thus less valuable. The main reason is that this type of informant is usually not submerged in drug or other criminal subcultures. Police buffs and vengeful informants, if used at all, are usually involved for a specific case but not in a continuing capacity. If persistent in their desire to assist, these types of informants are generally considered a nuisance.

Police attempt to gather additional information about informants as soon as they assume the role that, along with knowledge of their motivation to cooperate, provides the background for dealing with each informant. First, informant files are reviewed to see if an informant has worked for a law enforcement agency in the past. This helps in establishing reliability and performance, but registration of such information varies considerably as noted in the introductory chapter. What's his track record? Is he hard to handle? What's his motivation? What's his relationship to the target? Even in this

seemingly routine aspect of working informants the police attitude remains consistent: "Completely debrief the informant-make sure the sonofabitch isn't holding out on you" (Goddard, 1988:112).

In the initial interview, or a second meeting if there is some reason delaying an individual's assumption of the informant role, certain ground rules must be specified to establish a clear understanding of the particulars of the agreement and the procedure to be followed in various undercover tactics. While the method of payment obviously differs according to the informant's motive, it is a particularly crucial point with mercenary informants. Prosecutors and seasoned narcotics officers alike have argued against payment on a case-by-case basis. Such an arrangement strengthens the spirit if not the letter of an entrapment defense and minimizes the chance that an informant might fabricate deals to earn fast money (Osterberg and Ward, 1992).

Yet payment on a per case basis is the standard arrangement in most states that dish out expense money, sometimes a flat "fee", and ten percent of the income generated from the liquidation of seized assets (Miller and Selva, 1994; Schulze, 1990). The trouble with such an arrangement goes beyond inducement to entrap - it suggests that suspects are selected for police attention according to their level of assets. To the extent that informants rather than sworn officers specify cases to be worked, the effectiveness of undercover policing and the nature of criminal justice is affected.

While understanding an informant's motive and setting basic ground rules provide an orienting basis for dealing with informants, there is a fairly standard format for dealing with new informants. The following procedure, from "Working Informants" in

Narcotics and Crime Control (Lyman, 1987:108-110), is recommended for determining an informant's motive, general knowledge, and honesty.

I. Interview the informant for knowledge of drugs in general.

A. Ascertain the informant's knowledge of the general availability of drugs - what types and quantities the suspects are dealing.

B. Determine the informant's past and current drug use by type and amount.

II. Take a separate statement from the informant regarding his personal knowledge of each suspect, as well as any important personal observations.

A. Details regarding the suspect's name, address, phone number, place of employment.

B. Vehicle description, associates, girlfriends/spouse, places frequented.

III. Attempt to verify the informant's information to establish his reliability.

A. Check utility registration for address, and registration for auto tag numbers.

B. Check informant's criminal record:

1. Check NCIC (National Crime Information Center).

2. Check law enforcement agencies wherever informant has previously lived.

Because the agent-informant relationship is recognized as the core of narcotics casework, officers are instructed to treat their snitches fairly, but to always keep the upper hand. Lyman (1987:108) further specifies proper action:

1. Be fair.

2. Be truthful and make no promises or statements that cannot be kept.

3. Keep the informant in his place, but be tactful. Do not let him run the show.

4. Guide the informant in an undercover situation so that he does not entrap the suspect.

5. Try not to let him know too much about you as the interviewer. The more he knows, the less effective you become.

6. The officer must not be tolerant of any crimes committed by the informant.

7. Be careful not to adopt the low moral standards of informants. Do not allow the informant to influence judgements made by the officer.

8. Beware informants of the opposite sex...they may compromise the officer or investigation due to sexual advances.

To further raise the chances of successful casework and provide greater protection for informants and officers while undercover, it is absolutely essential that understanding be reached on several points. There must be exact consistency concerning the cover story so that suspects are not alarmed by conflicting information. The quantities and prices to be negotiated for drugs must be determined and based on the tactic whether buying to establish probable cause or, more likely, selling in a reverse sting. To realize accountability informants are instructed and threatened concerning inside buys, that is, purchases in a suspect's home or elsewhere out of the agent's sight. Multiple buys, from more than one suspect or a sequence of deals with one suspect, can also be problematic and should be planned to minimize the informant's options.

Police are prone to describe all buys made by informants as "controlled buys" that are highly supervised. Control is increased by conducting transactions in public places so that officers can identify suspects and have documentation of the transaction such as photos and tape recordings of the dealer - informant conversation. In large operations

strict surveillance is usually the rule of thumb, but in the initial stages of regular cases informants may be authorized "to take some money and go find some dealers" (Miller and Selva, 1994).

Despite policy and rules for handling informants, then, the practice is ultimately an individual level interaction that both parties enter with beliefs based upon stereotyped expectations of the other. Drug cops and snitches each make the other wary and suspicious. Undercover agents, like most people in society, generally associate confidential informants with traitors and criminals and thus hold them in low esteem. Needless to say, the sentiment is usually mutual if the power is not. But the police as a bureaucratic state institution enjoys the additional support of law in controlling informants. The next section reviews legal aspects of confidential informing, particularly how the law legitimizes informant systems and facilitates police objectives through latitude in undercover operations.

Legal Aspects of Informing

> "At this late date in the annals of law enforcement, it seems to me that we cannot say either that every use of informers and undercover agents is proper or, on the other hand, that no uses are" - Chief Justice Earl Warren, majority opinion from *Hoffa v. United States* (1966)

The general pattern of prosecuting narcotics crime serves to legitimize and maintain the practice of confidential informing (Stone, 1976). Legal support occurs in three sequential steps of a narcotics case. The first is license of the exchange system,

primarily the heavy application of plea bargains that procure police cooperation with leniency - this provides the very basis for informant systems and gives the state legal leverage over defendants' behavior once they assume the informant role. The second form of legal support for informing is the authorization of payments, be they contingency fees or straight bounty, to informants - this ensures mercenary informants and increases the overall informant pool. Last, the law provides great latitude to police in terms of what is considered permissible conduct in undercover narcotics operations.

Many of the leading cases that establish the legal parameters of police behavior are centered on informant raised or related issues and evidence yet another way that confidential informing is significant for the entire realm of criminal justice. It should be made clear that the following treatment of these cases is from a sociolegal rather than pure legal perspective - an explication I am not qualified to make. Accordingly, concern here is with the interrelationship between the law, police ideology, strategy, and tactic, and the practice of confidential informing.

This section looks at the legal aspects of "cutting a deal" to get out of trouble with particular attention to the determination of when the deal is consummated. The practical effects of various informant compensation plans are specified and show the need for police and prosecutor harmony. The leading cases effecting confidential informing are also briefly reviewed by topic: 1) entrapment, 2) probable cause, 3) the exclusionary rule, and 4) stop and frisk.

Cutting a Deal

Implicating others for the purpose of getting out of trouble forms the very

foundation of undercover police work in most states. Although pressure to do so comes from the police, the real power to coerce lies in excessive penalties for drug offenses. In Florida, for example, cocaine traffickers caught with four hundred grams or more receive fifteen year prison terms without probation or parole possibilities, more severe than most sentences given for second degree murder there (Wisotsky, 1986). The only escape is to become an informant.

Understandings with criminal informants, ideally in writing, serve several purposes including clarification of the terms of performance and provision for the agency to withdraw if the informant's work is unsatisfactory. Informants seek some assurance of legal consideration, but must settle for the detective's promise that he'll do all he can. Rarely, except for extremely large federal cases, will enforcement agencies put in writing anything more specific than the informant, upon providing assistance, will be given consideration. If a potential informant insists upon more precise written assurance, the regular response of withdrawing the opportunity to cooperate and receive any chance of leniency sends the message that it is the informant more than the police that is in dire straits.

In most situations the police could forego working with a difficult informant, but their significance from an organizational level perspective suggests that too many can't be lost. Thus, refusing a defendant the chance to assist is usually a bluff because: 1) drug enforcement requires constant renewal of the informant pool (Skolnick, 1966) and 2) negotiation sessions with potential informants are investments of police resources (Manning, 1980). To avoid a stalemate wherein the informant will not work without

guarantee of particular benefits and the state will not promise anything prior to performance, a "no-deals deal" serves the needs of both parties (See Appendix B). This agreement:

> "immunizes the informer's statement, but the immunity does not include the fruits of the statement (e.g., leads, evidence, identified witnesses). Nor does it preclude use of the statement for impeachment" (Janzen, 1992).

Working off the charge means some determination must be made of the state's bargaining power acquired by the informant's pending criminal charges. Under the rationale of the district attorney, the cases an informant produces and facilitates is credited back against his debt to society. In the early days of the modern drug war, a vague and variable point system specified points to be credited an informant's record based on the perceived seriousness of various drugs (e.g. one for marijuana, two for cocaine). Casework continued until a (hopefully) predetermined number of points were accumulated (Marx, 1981). The most obvious problem with this system is the creation of a cushion, a degree of lower or nonenforcement, for dealers of drugs devalued in the point system. Hammered informants would logically focus on whatever would produce the quickest and most points.

Informants must now produce "substantial assistance" in order to satisfy the state's expectation of cooperation and be eligible for recommendations of dismissal, reduction of charges, or probation by the prosecution (Wisotsky, 1986). Substantial assistance is computed as a three to one ratio - the informant must produce three times

the amount of crime for which he is charged. Such a standard is graded easier in theory than practice since carbon copy drug deals are highly irregular.

Here's how the standard of substantial assistance might be met. A defendant caught with an ounce of marijuana can assist substantially by arranging a single deal involving three ounces or three one ounce deals. In reality, the cases an informant creates or expedites often require that determinations be made across types of substances and multiple crimes, making application of the standard extremely subjective and largely guesswork.

Of course, completion of informant work at the point of substantial assistance usually occurs only on paper. In practice, undercover agents "milk" a productive informant for all they can get. Sometimes this is done by playing with the standard, which is all too easy because the above totaling problems are further obscured by the asset forfeiture motive (Grantland, 1993). Most undercover narcotics cases today employ the reverse sting tactic which almost always involves, indeed the tactic is designed for, the seizure of assets (Miller and Selva, 1994). Dollar conversions and comparisons among automobiles, real estate, jewelry, art, and various other items are, or are made to seem, uncertain. The true or approximate value of seized goods, their undecided legal status, and the amount of currency seized in deals are pieces of unknown information kept from informants and their attorneys to prevent accurate assessments of informant contribution to policework. Service, if for only one more case, can consequently be extended.

Payments to Informants

Cash payments to informants are a regular expenditure for the police (Saunders, 1992; Chambers 1987; Burkholder 1989). The literature reports two main methods for paying informants: 1) contingency fees and 2) salary arrangements. Because mercenary informants negotiate with the individual compensating agencies, these methods are only models of which there can be various modifications. The amounts paid average informants are not known, only excessive payments are controversial enough to be newsworthy, and there are plenty of upper-end examples.

David Wheeler, the informant in the joint DEA and U.S. Customs Operation Trifecta, was not prosecuted for possession of over eight hundred grams of cocaine and earned close to half a million dollars in less than six months (Levine, 1990). Anthony Tait, a former Hell's Angel member, earned nearly one million dollars between 1985 and 1988 according to his payment schedule in a FBI document made public by the *Pittsburgh Post Gazette* (Schneider and Flaughtery, 1991). Back in 1990 the highest paid informant, $780,000, realized a salary higher than the combined earnings of both the President and Vice President of the United States (Hyde, 1995). Such sums are possible due to contingency fee arrangements that return a predetermined percentage of seized cash and monies generated from the liquidation of forfeited assets.

Contingency Fees

Contingent fee agreements are exactly what the term implies - payment upon delivery of service. Monetary awards are given, according to a government booklet "contingent on certain outcomes" (Janzen, 1992, p.17). The only outcomes that profit the informant are those for the state - acceptance of a guilty plea or conviction, in the

rare event a case actually goes to trial, or the forfeiture of currency or property. It is the latter that really drives undercover casework. In fact, the use of contingency fee arrangements for informants became standardized shortly after the implementation of forfeiture based operations (Curriden, 1987).

The ordinary cut for most informants is ten percent of money "recovered", but there have been instances where informants realized as much as twenty-five percent (Schneider and Flaherty, 1991). By switching sides, informants are able to remain in their underworld environments and literally make crime pay with some license. There are two main and intertwined issues that arise from paying informants on commission: 1) the replacement of search warrants with reverse stings as the primary drug enforcement tactic and 2) entrapment.

Reverse stings pose the police as sellers rather than the buyers of controlled substances in prearranged deals. The fundamental reason that reverses are preferred to more traditional tactics is clearly the asset forfeiture motive (Miller and Selva, 1994). The service of search warrants may or may not find drugs to validate arrest. Likewise, there is no assurance that a sizeable amount of cash, the preferred asset for seizure by cops and snitches everywhere, will be involved. Because targets bring a predetermined amount of cash to reverse stings, police can be confident of casework "success" (Miller and Selva, 1994). Cash, unlike cars, real estate, or jewelry, need not be warehoused and auctioned - services that cost the state and delay the point of legally realizing profit. Congressman Henery Hyde (1995:47) has recently questioned the connection between reverse stings and contingency fee arrangements:

"Informants prefer arranging deals known as reverse stings. Those deals take cash, but not dope, off the streets. In those stings cash would be forfeited and the informants would get their pre-arranged share."

Reverse stings and contingency fees for the informants that arrange them are sharply controversial. Paying citizens to identify others for police surveillance or facilitating casework by introducing an undercover officer to suspects is questionable enough, but directly ensnaring them invites difficulties. In short, informants profit by situating people to have their cash and assets, typically the car they drove to the deal, seized in state instigated drug deals. To the public, this appears and may well be out-of-control authority totally unconcerned with civil liberties that is headed toward a police state. To the criminologist, the apparent problem is even worse; entrapment is often coupled with state fabrication and facilitation of crime - the ultimate irony for law enforcement (Marx, 1988; 1981; Miller and Selva, 1994; Hyde, 1995).

The interrelated problems of entrapment, contingency fees, and reverse stings have been the basis of numerous appellate cases. Unfortunately, the decisions have been ambiguous, contradictory and vary from state to state and even among the federal district courts (Hirsch, 1986). In *Williamson v. U.S.* (1965), an appelate court reversed a conviction due to the presence of a contingency fee arrangement with an informant who produced damning evidence against the defendants. The gist of that decision was that contingency fees are "offensive", but, surprisingly, not enough to warrant dismissal.

Contingency fees means targeting suspects, an investigative and prosecutorial practice that has generally been upheld by the U.S. Supreme Court. A central issue in

whether a contingency fee-motivated informant's behavior makes the police action too offensive is prior knowledge of a suspect's criminal conduct and potential for lawbreaking. The state will broadly define "potential" thereby affording no real defense, thus the bottom line from the Williamson case was the general rule: An informant who is paid a contingent fee is not competent to be a witness.

This absolute bar to allowing an informant to testify was overruled in *United States v. Cervantes-Pacheco* (1987) where the case specifics were balanced to reach a determination. In *State v. Glosson* (1985) a deal that guaranteed ten percent of forfeiture proceeds to an informant was deemed violative of due process and charges were dismissed. As Janzen (1992) observes in an argument for broader government use of informants in the context of asset forfeiture operations, although the case has not been reversed it is rarely followed. *United States v. Shearer* (1986) upheld that commissions for informants are not automatically a violation of due process, but based on discretionary factors: 1) corroboration of the informant's testimony, 2) strict supervision of the informant, and 3) a ceiling on the amount to be paid. A qualification future courts should consider is whether the target was selected by the vested informant or through previously gathered information. What is crystal clear is that the law currently permits payment to informants based on a percentage of assets seized, forfeited to the state, and ultimately liquidated.

Salary Arrangements

A far less controversial method of paying informants is a straight salary. Payment may be for either a specified time period or number of cases. This arrangement

intends to distance the informant's incentive for cooperating from the state's seizure of personal property under civil forfeiture laws and, of course, liberty for criminal violations. There are fewer examples of informant salaries (Grantland, 1993; Harriman, 1988), but this may be due to the fact that they are a little less shady and simply have not caught the attention of journalists or academic observers.

Under salary arrangements actual informant performance is little affected because case objectives aren't redirected. So it would appear that in reality, the type of payment plan does little to check potentially inflammatory behavior germane to issues such as entrapment. It is only a thinly guised strategy to protect the police image, a constant and important concern to be addressed due to a conflicting mandate in the first place and the police's desire to realize professional status which is, in part, another public relations strategy itself (Manning, 1978). Despite the emphasis police place on appearance maintenance and the obvious point that commission payments on a per case basis is legally and morally offensive, the fiscal benefits of asset hunting are such that contingency fees are the standard rather than the exception.

The ambiguous relationship between informant fees, suspect targeting, and police tactics have produced a confusing line of cases that vary considerably across the states and federal districts (del Carmen and Walker, 1995). These cases, reported below, fail to provide clear guidelines on what police and informant conduct is specifically forbidden, giving law enforcement great leeway.

Entrapment

The most problematic issue raised by confidential informing is entrapment.

Known as "framing" or setting up", it sets law enforcement outside the rule of law and undermines community confidence in police. While drug agents and their informants can plausibly entrap citizens in various situations, the reverse sting tactic provides at the very least a natural opportunity and, as some critics have argued (Marx, 1988; Miller and Selva, 1994; Wisotsky, 1986), invites if not requires the government to involve citizens in crime. The aforementioned *Williamson* case is the legal fountainhead for reverse stings in that the tactic was upheld despite the fact that contingency fees were there judged inappropriate.

Prior to *United States v. Russell* (1973), the occurrence of entrapment was marked by either a subjective or objective component. The subjective component referred to the defendant's state of mind - the key issue was whether the person would have committed the crime without the government's intercession. Objective entrapment focused on police conduct - a scrutiny of the nature of the tactics and the degree of inducement. This objective element is derived from *Sherman v. United States* (1958) where an informant badgered the defendant into a small drug deal. The Supreme Court then felt a defendant is entrapped when the government induces him or her to commit a crime which the defendant would not have otherwise committed. In *Russell* (1973), however, the Supreme Court held that demonstration of a defendant's predisposition to crime alone voids an entrapment defense, thereby validating government enticement and making police conduct a legal afterthought.

Through informants police have great legal latitude in engaging citizens to participate in illicit drug activity. Presumably intolerable informant stunts have not been

condemned such as an informant supplying one of the necessary ingredients for the manufacture of methamphetamine and the promotion of drug transactions through an informant's passing out free samples to prospective reverse sting targets (del Carmen and Walker, 1995). *Hampton v. United States* (1976) is perhaps the most blatant example of the government's autonomy. The defendant, Hampton, was convicted of selling heroin to DEA agents - but the heroin he sold was supplied by the agents' informant. The Supreme Court held that there was no entrapment.

The current majority stand on entrapment, as seen in *Jacobson v. United States* (1992), *Mathews v. United States* (1988), and particularly *Hampton* (1976), is that the protection is composed of three elements: 1) the origination of a criminal design, 2) the implant in an innocent person's mind the disposition to act on the design, and 3) the inducement to commit crime so that the government can prosecute. Law enforcement behavior can show two but not three of these elements. The practical consequence of the line of entrapment cases is that if the suspect is predisposed or can be manipulated to take part in crime, there is no entrapment, regardless of the conduct of the government. It is important to note, however, that the presence of predisposition holds constant only in federal cases, some states still consider police conduct on occasion.

For drug enforcement, the above cases translates into little more than demonstrating that the target initiates or expresses intention of criminal activity. It is here that informants, who are not Government agents, are so valuable. The weight of a successful reverse sting, then, is motivation for the deal from the target, but if this doesn't genuinely exist, the case need not necessarily be sacrificed because the informant

can save it. As Dorn *et al.* (1991:143) reports:

> "It is to safeguard against such difficulties that the police are careful to avoid giving certain forms of direct advice to their informants, and are careful to say nothing that could retrospectively be construed as instruction or encouragement to 'set up' traffickers."

Informants are less constrained than sworn officers, but still a facade, a token stab at propriety, transpires between the agent and the intuitive informant that says "do it" while not technically constituting entrapment. Officers may explain the potential legal problems to the informant in such a way that the informant *knows* not to ask the embarrassing question of whether or not to frame the target. Rather, the informant learns to speak in generalities that suggest it is the targets incentive when proposing cases to be worked or how various deals might be prioritized. Lack of an objection by the informant's handler conveys the clear message to arrange the deal.

Even though entrapment can and obviously does occur, it is the informant and not an official state agent who is responsible. The state is aware and seems to encourage this tainted tactic, but remains, through informants, legally unaccountable. Of course, the informant is an extension of the Government but this point seldom matters because: 1) series of events between agents and informants as described above are, if discovered in open court or even in a judge's chambers, construed in such a way that inappropriate behavior is attributed to the informant's discretion, all of which is usually a moot point for 2) informants are rarely disclosed for cross-examination (See Chapter One for the reasons explaining the informants anonymity). The informant, then, can do what the

sworn officer cannot - legally entrap.

Probable cause

In addition to entrapment, informants have been central to other legal issues expanding police laxity. In *Draper v. United States* (1959) information from an informant that was partially corroborated by an officer established probable cause for an arrest warrant, even though the information was hearsay. Informants, often under pressure of the reality or at least perception of impending incarceration, can lie on a hunch of a suspect's criminality and put a case in motion. If wrong, the informant has the out that it was second-hand information (hearsay) and the police are covered because it was the informant's fault and they attempted to verify. In short, the system allows informants to "roll the dice." This case predates the habitual use of reverse stings and, while still suggestive of an increased police state, may be less of an issue today than in the past.

The concept of reliability is extremely important to confidential informing and often speaks to the question of probable cause (Brown, 1991). In the Draper case, the officer received information from an informant who had provided correct information in the past. Prior accuracy by an informant constitutes reliability that in turn strengthens the police's legal basis to act. It is important to note that a gambling informant who lied in his first case and got away with it is thereafter considered reliable. A scenario where this might happen could involve an informant who, in the past had been in a suspect's home to buy or use drugs. Having been in the house and able to give a description of its layout and perhaps where the owner kept drugs (e.g., a certain closet or under a

couch on a tray), he can later meet the legal requirements of description when lying about being in the same house and witnessing drugs at a certain time when in reality he only heard the owner had "scored."

Other important cases defining an informant's reliability and crucial to the establishment of probable cause are *Spinelli v. United States* (1969) and *Aguilar v. Texas* (1964). These cases specify a two-prong test for probable cause based on an informant: the reliability of the informant and the reliability of the informant's information. Although still valid, police can even bypass this general test with a less demanding one, the "totality of the circumstances" stated in *Illinois v. Gates* (1983). Now, any deficiencies in either the informant's credibility or in corroborating his story can be offset by strength in the other category. This gives considerable rule to informants already judged reliable because what they say need be scrutinized only for operational rather than legal reasons. Also, the case is all important for first time informants because it defines how reliability is established.

Exclusionary Rule

The "exclusionary rule", established in *Weeks v. United States* (1914), basically states that evidence illegally seized by federal law enforcement agents is not admissible in a federal criminal prosecution. *Mapp v. Ohio* (1961) extended the rule to all state proceedings as well. This rule, which provides citizens protection from warrantless police searches and unreasonable seizures, can easily be circumvented by law enforcement via informants. Later cases, while not abolishing the rule, have all but nullified it.

Nix v. Williams (1984) put forth that illegally obtained evidence may be admissible if the police can prove that they would have discovered the evidence anyway through lawful means, such as through the use of an informant. A more flagrant edict was handed down in *United States v. Leon* (1984) where the exclusionary rule allowed the use of evidence obtained by officers who were acting in reasonable reliance on a search warrant that was later declared invalid. In this case, however, the search warrant was obtained on information from a confidential informant, but the informant lied. Nonetheless, the Supreme Court stated that damning evidence seized by service of that bogus warrant was still admissible because the police were not at fault.

Stop and Frisk

Informants must have firsthand knowledge of criminal activity by the letter of the law but, as shown above in the cases establishing probable cause, can gamble on suspicions or intuition. They can likewise authorize an officer to stop and frisk a citizen. The facts in *Adams v. Williams* (1972) involved an officer who was approached by an informant who had proven reliable in the past. The informant stated that Adams, the defendant, who was in a nearby car was carrying heroin and a handgun. The officer approached the suspect and found the gun where the informant said it would be. Adams was arrested for unlawful possession of the gun and further charged for possession of narcotics upon their discovery in a search pursuant to the arrest. This case settles the issue of whether information leading to a stop and frisk can come from an informant rather than police observation.

Another stop and frisk case involving an informant, *Alabama v. White* (1990), is

particularly important to confidential informing. The primary legal issue in this case is the criteria for the two standards of reasonable suspicion and probable cause, with the former being less demanding. Thus, an informant's tip can justify a stop based on mere suspicion. But the broader significance of the case for informing is that the requirement for informant reliability, the gauge effecting the legality of most undercover cases involving informants, is lowered. In short, the Supreme Court reasoned that when an informant is shown to be right about some things, he is probably right about other facts that he has alleged. Germane to the "totality of the circumstances" test, the informant need only be right about some, ideally the majority, aspects of a case to authorize police operations.

The body of law concerning confidential informing, as a whole, endorses the Government's use of informants as well as the reverse sting tactic for which they are most frequently used. Except in the most extreme cases, the law does not give rise to the entrapment defense nor to virtually any other Government misconduct offense (Hirsch, 1984). And even in extreme situations, the police can almost always rely on the good faith exception to the exclusionary rule which is little more than "I thought I was doing the right thing." It would appear that any real protection the law affords a defendant against excessive police behavior can be circumvented with informants - leaving undercover policing operations virtually unrestricted.

A defendant in an undercover operation has the entire panoply of constitutional protections and extra-constitutional protections like the entrapment defense, but no general right to be free from flagrant government conduct (Hirsch, 1986). In sum, this

means police can employ informants, pay them bonuses to facilitate arrests and seizures, and even allow informants to entice targets by handing out free samples of controlled substances provided them from law enforcement agencies' evidence rooms. If the informant is caught in a lie that might lose a case, the police only need say they thought it was the truth.

If the police are free to operate without meaningful constraints, then the above lines of cases may be little more than legal pretense - perhaps to placate the citizenry that operations proceed under rule of law.

The Problematic Nature of Confidential Informing

As a "necessary evil", confidential informing is inherently problematic in several respects. In the literature, the problems with informing are considered almost entirely from the undercover detective's point of view: How does the informant hinder or foil operations, and, how can this be prevented? The possibility that problems stem from various reasons is not considered, it is widely accepted that problems stem from informants' base moral foundation. As noted in the previous section, considerable comment has focused on the necessity of strict control in, sometimes farfetched, hopes of minimizing unexpected and irritating contingencies that may arise in the course of undercover casework. Some consideration has also been given the problems that the practice of informing may cause on a larger societal level in terms of compromising our system of justice and civil liberties. This section briefly reviews these troublesome aspects of informing.

Frustrating Policework

During the last two decades, police administrators have become increasingly nervous about informant systems (Kleinman, 1980). A series of scandals in local police departments, state police agencies and the FBI have led administrators to demand greater accountability in terms of record-keeping, especially in regard to payments, and in supervision. These scandals have ramifications beyond bad public relations. Police departments have been successfully sued for the improper use of informants whose actions the police have been held responsible (Morris, 1983).

The trouble with informants is epitomized in a recent episode reported by *Newsweek* journalist Peter Katel (1995:48):

> "When they shoved a battering ram through the door of the posh suburban San Diego house, the federal agents were expecting to find parcels of cocaine stacked to the ceiling. Reports from a confidential informant had led them to believe they were busting in on a gang of ruthless, transcontinental drugrunners, men with submachine guns and ferocious Rottweilers. Suddenly, someone inside opened up with a pistol. Primed for a shoot-out, the agents blasted back. When the smoke had cleared, the raiders from the U.S. Customs Service and Drug Enforcement Administration found one badly wounded computer executive who thought he was defending his house from burglars in the middle of the night. But no cocaine. No guns. And no Rottweilers.
>
> Despite warnings from another cop, the agents had swallowed an entirely fictitious

tale concocted by informant Ronnie Bruce Edmond, 38. He is jailed now, awaiting sentencing next month on 17 counts of perjury, and still insisting his tip was accurate...embarrassed federal officials paid $2.75 million to homeowner Donald Carlson, 44, who came out of the raid with one quarter of his lung capacity destroyed by federal bullets."

There have been numerous similar situations that have proven costly public relations nightmares for the police (e.g., Miller, 1991; Mount, 1991; Liability Reporter, 1986).

There can be little doubt that informants lie (Thompson, 1988). An obvious but seldom used resolve, be it cost or time prohibitive, to this problem is informant polygraph testing. Verification of information would do much more than achieve accountability; it would minimize if not eliminate embarrassing and legally liable situations for departments and would save an enormous amount of money by appropriate use of resources. Despite the availability of guides specifying particulars such as framing probable-lie and relevant/irrelevant questions (Adkins, 1987), few agencies seem to use them on any kind of regular basis.

The lax situations that allow informants to cause such problems also carry the potential for misbehavior by their handlers. The very practice of using informants furthers the possibility of police misconduct. The above discussion of legal cases concerning the relationship between latitude and police tactics demonstrates expanded police power, but confidential informing has also been a means for obvious police corruption. During 1979 and 1980, members of a rogue narcotics squad in Portland, Oregon invented informants and informants' stories to falsify evidence and obtain search

warrants for the purpose of skimming money and drugs from seizures. They also took clothing, jewelry and other personal items from suspects, defrauded the city thousands of dollars for payments to imaginary informants, and planted evidence (Smith, 1982). Out of seventy-five cases brought by the squad, fifty-eight convictions were overturned and seventeen sets of charges were dismissed prior to trial.

Societal Impact?

The "Informer's Privilege", a criminal license, is an extremely controversial gray area of informing.

> "The informants involvement in the drug subculture creates a moral-legal dilemma for the narcotics officer. On the one hand s/he should apprehend his/her own informant for drug law violations, but s/he needs to allow his/her informant to engage in at least minor criminal activity to gather the needed information" (Williams and Lynn, 1981:240).

Law enforcement agencies deny tolerance of any criminal behavior by their informants; to admit otherwise would be inconsistent with their mandate. But in reality, the matter of informants' petty criminal activity is generally accepted as a given by detectives and, moreover, they don't really care as long as *their* casework isn't hindered or public embarrassment stirred. This nonenforcement can and does produce criminogenic effects through both the informant's conduct and the facilitation of crime by others. As Marx (1981:224) learned from a seasoned detective:

> "The exchange system is most highly developed for drugs. Something of a *de facto* license to deal may be offered ('you don't look too close at

him')...the arrangement was 'one for three.' For every load (of heroin) he gives you, he moves three".

Under an absolute interpretation of the police mandate to enforce *all* law, the toleration of crime by informants may seem shocking and malfeasant, but this is true only in theory for the police mandate is known to be a conflicting and impossible one that necessitates the privilege of discretion (Manning, 1978). On a more practical level, officers may subscribe to the old one in hand versus two in the bush theory as noted by Grosso and Rosenberg (1977:55):

"If he gives us one, it's one we wouldn't have had otherwise, right?"

Convincing argument has been made that police agencies are not readily able to control the licensing of criminals anyway and usable guidelines cannot be devised to cover the kinds of opportunities that police may offer informants (Reuter, 1982).

Confidential informing also contributes to a sustained rise in police power that has significantly diminished personal liberties and challenged our sense of justice by law. The institutionalization of entrapment, in secular if not legal terms, is directly linked to the Government's reliance on informants. As Wisotsky notes (1986:131),

> "some form of enticement of defendants is more or less built into the system of drug enforcement, varying only in its subtlety or blatancy...Informants are paid, in effect to encourage or create crime. In the most blatant cases, the incentive system includes payment contingent upon the making of an arrest, or worse, payment in proportion to the number of pounds or kilos or the value of property seized."

If these fears are founded then informants have an interest in not only the discovery and undercover operational phases of a case, but also in legal outcome as payment is contingent upon legal forfeiture of property to the state. This compensation arrangement sheds light on why reverse stings have become a regular undercover tactic. The sting is noted for generating cash seizures because suspects bring prearranged payments to undercover agents at deals that result in their arrest. Less controversial tactics, like the search warrant, do not guarantee a substantial cash seizure, thus informants have an interest in suggesting and promoting cases suitable to the sting tactic. Informants driven by a mercenary motive and in for a "cut of the take" can only profit, then, by influencing case selection and prioritization according to the value and type of assets that might be seized (Schulze, 1990). Actual crime becomes a secondary consideration.

That even more informants are motivated by legal troubles hanging over them is even worse, for they must manipulate an undercover case and the truth so as to ensure an arrest and conviction. Impelled to furnish an arrest, whether seizure is a factor or not, even amateur informants realize the necessity of false testimony if unlawful activity is either not found or deemed too dangerous to divulge. Outright lies by informants seldom, due to the high frequency of plea bargaining and other pre-trial case dispositions, do not go any further in the criminal justice system than the undercover operation. Should the defendant present a case, and in the unlikely event an informant is made to testify, the informant is married to the fabrication and must again provide false evidence under oath.

It is also reasonable to believe that an ever-present and highly motivated swarm of informants, the majority desperate to set someone up regardless of whether they're really involved in the illicit drug trade, impairs basic social interaction, especially in depressed socioeconomic areas where the drug trade flourishes. Setting aside the point that there is distinct differences in opinion about the legal status of drugs and the moral fabric of users and sellers, recreational drug use is a fact of life for many Americans. For those inside and around the drug subculture, constant distrust and paranoia no doubt precludes the development of friendships and meaningful companionship that is so rare in our acquisitive society. Everyone must be "checked out" when freedom and property are at stake. Of course some may deem this a deserved problem for criminals, but the overall message of deception and exploitation is one that promotes negative social tension and fosters a climate of fear.

Problems for the Informant

The literature doesn't address the problems experienced by the primary figure, but the nature of the position suggests the primary concern - danger. Protection for informants is stressed in most training manuals and undercover events and case structuring are ideally oriented around minimizing danger. The primary means of reducing the likelihood of physical or other types of harm is to maintain the informant's anonymous status.

Protection for informants is a necessary official stance for liability and professionalism purposes, but doesn't seem to be a major worry for the police based on the few recorded accounts (Dunningham, 1994; Stuart, 1990).

"I don't like wearing a wire myself, but there are times when you ought to consider it. And also the risk. If there's a real danger of it being found, don't do it. Have the informer wear it. He's expendable (Goddard, 1988:113).

The majority of problems with confidential informing stem from lies, but it is not just the informants who engage in deceit. Not only are informants mislead about the protection to be afforded them (Miller and Selva, 1994), but also about payments. Eager to facilitate casework and build good numbers, agents can take advantage of the informant's tainted character and the privacy of one-sided agent-informant relationships by promising things that can not be delivered. As the following incident demonstrates, lying to informants, particularly ones not facing criminal charges, promotes the problem of attrition.

"A Jamestown man who says he worked undercover corralling drug suspects for the Tennessee Bureau of Investigation says the bureau misused him by reneging on promises to pay him for his work. Bill Wright, who spent seven months posing as a high-rolling drug connection, says his work resulted in the arrests of more than 25 people suspected of dealing marijuana. But Wright, a disabled building contractor, says TBI won't pay him for past work because he refuses to continue the dangerous undercover work" (Ferguson, 1994).

That undercover agents do not highly prioritize informants' safety or manipulate them is not surprising in the seedy world of vice enforcement, but does illustrate the

issue of moral duplicity. Though we think of law enforcers as principled public servants, selective literature describes drug agents in a different light.

> "The 'professional' narcotics policeman is a man who has learned to reduce his accountability to the courts, to outwit, often successfully, the spirit and the letter of the law" (Skolnick, 1966).

Officers make little distinction in their views of informants and narcotics criminals. It is altogether reasonable that officers would hold such opinions. To think otherwise would sooner or later trouble them. Still, too stringent and open a disdain across individual informants are not only potentially counterproductive, but somewhat hypocritical. Although the literature makes clear undercover detectives' conviction of their moral superiority, it equally raises the question of whether this attitude is founded.

"Justice is none of our business" (Goddard, 1988:111) is certainly not the stance Americans would expect from their drug warriors, but it sooner or later becomes the cynical reality. Too often agents can not ascertain the broad scale effects of their efforts. Unlike homicide or burglary detectives that focus on clearance rates as a productivity indicator, drug enforcement agents have no equivalent set mark of performance. "Good numbers" in categories of arrests and dollar value of assets seized are important to administrators, but become an endless race for drug agents because virtually every informant instigated case generates another. The emphasis on numbers translates into pressure for agents that, because they are the complainants in the cases they work, ironically, is self-created.

Success and satisfaction for officers is instead appraised on a case-by-case basis

in which the tactics and mentality of officers sometimes appears as treacherous as the criminals they are supposed to pursue, as reflected in the following extract from an undercover training session:

> "Those who lie and cheat, well - they're even better equipped for the job (of undercover policeman). See, working undercover is the ultimate form of seduction. Even the terminology is sexual. 'I *did* the guy', you'll hear an undercover say. First the winning of confidence. Then the penetration. But in this seduction it's his *life* you're after. It's the kind of seduction that *always* ends in betrayal. And up close. Watching it in his eyes (Goddard, 1988:79-80).

And as an informant interviewed in this study observed:

> "Hustling is what it's all about. I got over on a lot of people when I was dealing, and now as an informant. But, as a dealer, I had to be straight with some, my main people - regular connections (sources) and steady bulk buyers because they made it all go. Certain dudes would always buy about the same (amount) for the same money and they'd let me break even or maybe make a little. The big money came from screwing the little people on what was leftover. But undercover cops, they're the ones that are the most underhanded. Think about it, dealers are honest some - but *everytime* they're undercover they are being fake, pretending to be somebody they're not and lying like hell to whoever will fall for it."

Perhaps the most morally troublesome contradiction by drug agents is their misuse

of friendship. It is really the betrayal of the concept of friendship that police draw upon to gain moral superiority over informants, yet drug enforcement agents routinely do just the same thing in working informants. A training instructor on informant management clearly evidences the point.

> "I despise them myself, I can't think of a lower form of life than slug-junkies who think nothing of informing on their own families after they've managed to entrap them in their miserable lives. But *good police work*, especially in narcotics enforcement, depends on them. And that's what I'm here to talk about. The *art* of squeezing these vermin dry, like you're juicing an orange then junking what's left. There's not a stool that I've worked with - and we've got to be up in four figures by now - who didn't believe that I really *cared* about him. Or her. They all really believed that I was interested in their lives and their problems. That I was really concerned about their families and their welfare" (Goddard, 1988:188).

While undercover agents' deception is legitimized in that it is state endorsed and situated under the umbrella of the rule of law, it is nonetheless duplicitous and the informant's observation of this fact does not encourage the desired spirit of cooperation. Thus, the police role, as perceived by their informants, as a contributor to problems is one issue addressed in the following chapters.

Chapter Three

Design of the Study

Field research, or ethnography, has proven to be an excellent means for studying a broad range of significant issues in criminology and criminal justice (Sutherland, 1937; Chambliss, 1964; Shover, 1971; 1985; Benson, 1985; Tunnell, 1992; Fleisher, 1995). Commenting on the qualitative style for researching crime and its control, Cromwell (1996:xi) contends that:

> "Only through field research may we observe the everyday activities of offenders, how they interact with others, how they perceive the objects and events in their everyday lives, and how they perceive the sanction threat of the criminal justice system".

The ethnographic style of research ideally results in the popular characterization "thick description" (Glaser and Carpenter, 1985) and is essentially *basic research* that provides fundamental knowledge about a phenomenon. Such descriptions may, and variably do, inform criminal justice policymaking, thus demonstrating the real-world utility of social science field research. Extensions of ethnography beyond the academic world to criminal justice stakeholders constitutes *applied research* or *evaluation research* wherein programs and strategies can be assessed and hopefully improved through concentration on specific problems (Patton, 1990).

Grounded in the theoretical foundations of qualitative inquiry (Glaser and Strauss, 1967; Blumer, 1969; Feyerabend, 1975; Denzin, 1978; Goffman, 1959; 1974), methods of field research can be generally separated into one of two categories: direct observation

or asking questions (Maxfield and Babbie, 1995:243). Whether or not various refinements of these two approaches qualify as distinct research methods does not alter the fact that they are the primary means for gathering data in field research. The data in this study of confidential informing comes from both of these means. Information derived from two different, yet complimentary perspectives naturally enhances a more holistic understanding of a subject by allowing cross-referencing and validating of an otherwise more limited body of knowledge (Becker and Geer, 1957).

The primary source of data herein comes from forty in-depth conversations described in detail below. In-depth interviewing involves asking questions that differ from those posed in survey questionnaires in three basic ways: 1) interviews are generally less structured, 2) specific questions are usually open-ended and void of response options, and 3) there is no intent of converting (i.e., quantifying) responses for later statistical analysis - the uncoded responses *are* the data. A secondary source of data was drawn from fieldnotes taken during a previous study described in detail below in the "Sample" section of this chapter. This information was used primarily for the construction of the questionnaire and as a reliability check on the interviews.

Studying Informing

The problems of studying sensitive areas of policing are well known and thought to be compounded within undercover divisions (Jacobs, 1993b; Miller, 1987; Miller and Selva, 1994; Barker and Carter, 1986). The spirit of police fraternity and its "blue code of secrecy" impede open discussion of departmental tactics with outsiders, making access a fundamental research barrier. Confidential informing, shrouded in mystique and

secrecy, is a particularly difficult domain of policing to study because it carries an element of danger. The phenomenon is hidden not only from the public, but also from effective internal police inspection.

Beyond the obvious reason of its clandestine nature, informing is also difficult to examine because it is inherently problematic. The primary reason that informing is so sensitive is that informants can, and do, cause public embarrassment for law enforcement agencies through misinformation, lies, and "double-dealing." Informant-based nightmares have included an informant planting drugs in an arrestee's car, several settlements over police raids on false tips that focused on innocent citizens, and numerous purchases of narcotics from those proved to be fictional dealers (Katel, 1995; Miller, 1991; Mount, 1991).

The latitude given informants expedites casework and is considered necessary but complicates the control required for accountability, making the practice a highly sensitive one in a time riddled with police misconduct and ineptitude. Police are thus reluctant to initiate or facilitate scrutiny of what is at best deemed a necessary evil that has a great potential to yield negative consequences. The empirical research that has focused on confidential informing comes from policemen-turned-scientists who have relied on their experience and connections. The standard methods of these police scientists have been the analysis of personal casenotes and discussions with other policemen familiar with informants (Dunningham, 1994). There are several problems, however, with this approach to studying informing on different analytical levels.

The Problem with "Police Science"

Foremost, there is the matter of scientific orientation as specified by academic discipline. The handful of previous works on confidential informing from a police science perspective epitomize the well-known criminology versus criminal justice debate (Wright, 1995; Korn 1992). Although major strides have been made in recent years to upgrade criminal justice in terms of theoretical and methodological orientation, virtually all of the informant studies predate these efforts. The overriding theme in this body of works is technocracy, that is, how to better utilize informants toward optimum effectiveness and efficiency (e.g., Adkins, 1987; Dintino and Pagano, 1984; Harney and Cross, 1968; Janzen, 1992; Katsampes, 1971; Katz, 1990; Klienman, 1980). This approach is unconcerned with really understanding the holistic nature of informing and therefore ignores the outlook, opinions, and interpretations of the principal character - the informant.

Assumptions that procedure refinements can make informants more responsive to their police handlers fail to acknowledge that they are people in rather stressful situations conducive to erratic behavior. As evident in the discussion of the motivational typology in Chapter Two, preoccupation with improving control assumes a predictable informant. It is logical to believe that research findings based upon never-examined presumption will have uncertain bearing on real-world narcotics operations.

The applied "police science" approach does not attempt to situate or understand confidential informing within any broader theoretical framework. Much of the realm of informing is suitable for analysis via established sociological and criminological theory.

The decisions facing informants from entry to practice and then desistence (rational choice theory), the duplicity and masks inherent to the informant role (dramatulurgical theory), and the power differential that defines the police-informant relationship (conflict theory) are just a few possible applications.

Worse still, research on informing has not even considered the explanative power of more specified applied theories of police behavior. The departmental-characteristics explanation of variation in case disposition across law enforcement agencies (Wilson, 1968), for example, specifies three distinct styles of policing (watchman, service, and legalistic) that may well speak to variation in informant utilization, but has not been considered. Other well-known explications of policing, such as discretion-based (Bittner, 1967; Black, 1970), interactional (Manning, 1980), subcultural (Westley, 1956; Reiss, 1968) and role conflict (Van Maanen, 1973; Smith, 1984) models, have likewise been ignored. While it is questionable whether all of these perspectives will increase understanding of informing, the point that previous research has overlooked them altogether suggests inattentive scholarship, if not shoddy police science.

Another problem with existing informant studies is linked to the first - the atheoretical approach is coupled with one-sided research designs. What is known about informing is based on information from law enforcement agents. It is doubtful, however, whether veteran officers can exercise objectivity on a subject where they have actually been a part of the phenomenon. The condescending attitude held by most officers toward informants (discussed in the previous chapter) has likely tainted police science interpretations, leaving us with a partial and "official" picture of informing. It is logical

to suspect that police science data on informing will correspond with "proper" practice and policy positions, there being a precedent of objections to relying solely on official criminal justice data sources (Hamm, 1995; Miller and Cohen, 1995; Hagedorn, 1990). Thus portrayals of improper police behavior and the actual level of informant contribution may be downplayed by police researchers in the general spirit of protecting the police institution.

Failing to glean data from informants, though, is the most obvious shortcoming of the police science research conducted to date. No definitive set of statements has been generated about the practice of informing based on knowledge derived from a sample of informants. The "informant literature" is often inaccurately titled; *The Informer in Law Enforcement* (Harney and Cross, 1968), in addition to having no explanation of research design other than the law enforcement service credentials of the authors, provides no information from interviews with nor observations of informants. Closer examination of any other title on informing will equally illustrate the point that no research whatsoever has considered the c.i.'s point of view.

Atheoretical and short on the use of sound methodology, the research on confidential informing suggests police science is an oxymoron. This study offsets the limitations of one-sided, police-based accounts with new information derived from personal, candid interviews with informants who relate firsthand how confidential informing works.

The Sample

A common and expeditious way to locate subjects for criminal justice research is to go through official channels, in this case an undercover police officer might have coordinated meetings with active informants. This strategy was simply not an option due to restrictions placed on this project by the University of Tennessee Office of Research Administration's Human Subjects Committee. Concern was expressed that interviews with active informants might have legal bearing. Consequently, only those informants no longer engaged in casework formed the eligible population from which the sample had to be identified.

Having a police officer, especially one in charge of informants, recruit subjects seemed undesirable anyway because responses would likely be tainted by real and perceived sanction threats (e.g., an informant would avoid discussion of behavior violative of stated conditions). A researcher introduced to an informant by an undercover agent might also be viewed as someone representing law enforcement interests, thus responses would be given so as to minimize trouble. It is also reasonable to suspect that only controllable and satisfied informants would be provided. Furthermore, there is no reason to believe that officers maintain contact with former informants, who very likely wish to minimize contact with police. These objections are a moot point because the informants interviewed in this study were not officially identified.

The sample was built instead by a "snowball" strategy (Patton, 1990; Watters and Biernacki, 1989; McCall, 1978). This sampling technique has often been used to identify participants in deviant, criminal, or esoteric activities where random sampling is not

possible, primarily due to an unknown population (e.g., prostitution, burglary, and embezzlement). The recruitment of often only a very few subjects constitutes a core whose referrals and introductions start the sample "ball" rolling. This referral process continues until an appropriate sample has been developed.

Locating the initial subjects has been considered the most difficult aspect of using snowball sampling (Wright *et al.*, 1992). A variety of strategies have been used to identify subjects and establish an initial rapport, many of which involve a substantial investment of time and money. Fortunately, this common problem was avoided here since the initial contacts had been identified prior to the onset of the study.

Previous work on a Master's thesis during 1991 entailed my assuming the confidential informant role for the purpose of gaining an insider's perspective on the nature of contemporary drug enforcement operations. The primary thrust of that covert participation observation study (Miller and Selva, 1994) was to assess the asset forfeiture motive's effect on the prioritization and selection of narcotics cases and its general influence on the practice of undercover policing. Nearly a year's participation as an informant for a range of metropolitan, rural, and state level law enforcement agencies in over thirty separate cases provided an understanding of the expectations, duties, and problems of the informant role. The most notable finding from this research regarding informants is that they do a great deal more than provide basic leads, their active participation and persuasion in undercover "buys" and "stings" are the quintessence of most drug enforcement operations.

The sequence of events that set the present study in motion is as follows. In the

late Fall of 1992, I accepted an invitation to present a paper on domestic marijuana farming at the Drug Policy Foundation's Sixth International Conference on Drug Policy Reform in Washington, D.C. While there, I noticed an unusual, informal gathering of conference participants discussing their experiences as drug dealers and informants. Analogous to a social support group such as Narcotics Anonymous, conversation regarding informing addressed considerations of paranoia about anticipated reprisals and feelings of guilt stemming from facilitating arrests of people ranging from strangers to friends and even relatives. Having "walked the walk" and being well-versed in the jargon of drug dealing subcultures, I was granted entry into this small group of middle-aged, male social activists as one understanding of the group's problems and concerns.

Returning to the Drug Policy Reform Conference in 1995 in search of data for a dissertation on confidential informing, I found the group of ex-informants to be, for the most part, still intact. Declaring my research interest and objective, the process of conducting and scheduling interviews began. It was soon apparent that many of the procedural and problematic aspects definitive of my experience were common to other informants as well, yet others had weathered additional, seemingly routine conditions that appeared to bear implications for the disposition of criminal justice. Thus, it was a combination of my personal experience as an informant and a chance encounter at a conference that lead to and helped frame this study.

Because the objective of my earlier research centered on asset forfeiture, the informant role and its significance to drug enforcement and beyond was not thoroughly explored. Here, confidential informing is the focal topic. Relying on my previous

undercover casework to gain access and form rapport, in-depth interviews were conducted with forty ex-confidential informants. This study is the first to identify and question a sizable sample of informants in order to depict confidential informing from the informant's perspective. All other works on the topic to date represent only the experience and outlook of law enforcement agents.

The sample core, composed of seven ex-informants turned social activists, posed both practical and methodological trade-offs. These initial subjects were serious drug control policy reformers who grasped sociological research as categorically liberal and attuned with their political agendas, a perception that likely facilitated their participation in this study. Other researchers using the snowball sampling technique have faced the dual problem of not only finding initial subjects, but also neutralizing fears and objections to providing other contacts. Based on a combination of their own experiences as informants and a great deal of exposure to anti-drug war information and rhetoric, the first seven subjects *assumed* that this research would call attention to drug war abuses. Consequently, I believe that this contact group viewed my interest in them as a means of furnishing credibility to their endeavors. Most importantly, this group permitted the research by arranging additional appointments with other informants.

There were, however, methodological and practical problems with this sample nucleus. There is good reason to believe, based on the experiences related to me in the opening seven interviews, that the initial subjects were not average informants. Older and more formally educated than most of the other informants I later met, the initial interviewees were particularly knowledgeable and well-read about a wide array of drug

policy and enforcement issues. This profound interest appeared to effect their recall of events.

Q: So, what sort of things did you do for the police department?

A: Just about all of the regular stuff you read about - making buys, setting people up, you know, all the controversial stuff. You know that account about forfeiture in Steve's (Wisotsky) book? I did a deal just like that...

Interested only in what had actually happened during their tenure as informants, such responses left me wondering to what extent narratives had merged with activist objectives.

A more practical issue stemmed from the fact that the original seven informants were from six different states in three separate regions of the U.S. - South, Midwest, and North. Six of these subjects facilitated contact with other informants from the various drug subcultures in their respective states. While this geographic dispersion increases generalizability, reaching many of these subjects was not easy. Though financial costs were curtailed by combining interviews with other funded travel when possible (paper presentations at professional conferences and job interviews), even confirmed meetings did not always pan out making a few interview efforts unproductive and frustrating. Such problems are not uncommon in studies of deviant topics and, in all, the snowball method was effective generating twenty-eight additional interviews.

The Referrals

Because my goal was to quickly build as large a sample as possible, an effort was made to interview most informants who were identified. Four screening criteria were

used, however, to increase the chances of obtaining data relevant to the research objectives. All of the subjects in this study: 1) were former or idle narcotics informants at the time of interview, 2) had participated in at least three cases, 3) had worked as an informant within the last three years, and 4) were willing to read (or listen to) and then sign an informed consent form (See Appendix C).

I did not attempt to interview other than drug informants, thus the results speak to confidential informing in a narcotics enforcement context. Though all available information suggests that most informants are used for the purpose of drug enforcement, the findings may not be representative of informing in other enforcement areas. The three case limit requirement was to ensure that informants could comment not only on assistance and participation, but also on interaction with undercover agents. The length of time between participation and interview has been proven to be an important validity consideration (Kirk and Miller, 1988; Patton, 1990), thus recency of participation was a consideration.

Each sample member had been a confidential informant in a drug enforcement context. Thirty-three were male, seven female, all but five were white, and their ages ranged from twenty-two to forty-six with a mean age of thirty. All but two had been arrested for one or more drug crimes, but some of these charges were previous to and thus not a factor in their becoming an informant. Eleven of these men admitted to convictions for non-drug crimes, mainly property offenses, and four shared that they were on probation at the time of the interview.

I did not inquire about personal aspects of their lifestyle such as marital or

employment status, educational background, and similar matters for fear of inadvertently seeming offensive and jeopardizing rapport or the interviews altogether. Some of the subjects volunteered information about these and other aspects of their personal lives: thirteen were college graduates; nine were unemployed, eleven were, either previously or at the time of interview, in some type of substance abuse rehabilitation treatment, and twenty-two commented about current drug use, primarily marijuana and cocaine.

Other subjects

Six additional interviews were conducted apart from the snowball design. These subjects were identified from newspaper articles addressing some aspect of informing. It is somewhat surprising that informants are willing to be questioned by news reporters, but some obviously are not worried about the negative consequences that might be associated with disclosure. An April 18th, 1994 Monday morning edition of *The Tennessean* in Nashville (Ferguson, 1984), for example, had a front page article titled "TBI reneging on deal, drug informant says" that went on to list the name, age, and small town where the complaining informant lived. Proceeding on the assumption that such informants wanted to be contacted, I solicited the participation of seven such additional subjects. Only six of these interviews are used - one subject "changed his mind" and regretted having participated in the study for fear of some future negative repercussion.

Data Collection

My earlier covert observation of drug enforcement operations from the informant role was recorded in fieldnotes, some of which were used again as data in this study.

Most of the information analyzed here is new, coming from personal interviews wherein the subjects shared explanations and interpretations of their experiences as informants. There is an extensive specialized literature on how to conduct in-depth personal interviews (McCracken, 1988; Gorden, 1987; Douglas, 1985; Bingham and Moore, 1959; Patton, 1990). This knowledge base can be both a blessing and a curse. Instructional guides are clearly beneficial by providing clarity of purpose in questioning, minimizing potential pitfalls, and emphasizing the relationship between question types and sequence and the quality of data. While these methods manuals provide instruction in basic interviewing strategies and procedures, too much attention to technicalities can create a survey-like rigidity that foils the primary objective - a natural conversation with a purpose (Berg, 1989).

The personal interview as a research method is frequently described in types classified by agenda structure (Denzin, 1978; Babbie, 1996; Gorden, 1987). On a continuum of decreasing formality, there are three general interview types: the standardized interview (formal), the semi-standardized interview (guided-semistructured), and the unstandardized interview (informal). There are pros and cons to be evaluated that can guide the selection of which approach to emulate.

The standardized approach uses a set of predetermined questions on the assumption that the same "ground" will be covered with each respondent thus making answers more comparable and more reliable. This strategy assumes that desired information can be extracted by the kind and order of the questions, which presupposes that the researcher is already familiar with the entirety, or at least the crucial aspects of,

the phenomenon being studied. The obvious drawback is a limited ability to explore and discover new dimensions. The unstandardized approach is quite opposite, assuming an interactional (lack of) structure that, while useful for discovery, is not conducive to theoretical statement development on a given topic because answers (the data) are difficult to compare.

Many qualitative researchers choose the semistandardized interview as a compromise in order to probe the broadest possible range of issues but still maintain enough structure to compare responses. The semistandardized format consists of asking scheduled questions (e.g., Why did you stop being an informant?) that are followed with both scheduled (e.g., Tell me about that.) and unscheduled (e.g., Why was that a consideration?) probes (Berg, 1989:18). This combination of question types ensures that important known facets of a phenomenon will be addressed, yet leaves freedom to pursue additional important points that may arise. Accordingly, the interview strategy in this study approximates a semi-standardized format.

The literature on in-depth interviewing also addresses more subtle nuances of question ordering, content, and style and overall interview schedule development. Instruction on these issues can be important in designing a general questionnaire that best meets the objectives of individual studies. Because there is considerable evidence that meaning is inconstant from one person to another, questions should be posed so that they convey the same meaning, as much as possible, to each subject (Patton, 1990). In other words, the substance and arrangement of questions speak to the worth of the data and attention to these two points can allow the researcher to maintain quality control.

Data quality control

An important concern in qualitative research is that data accurately represents the phenomenon under examination. Two standards by which data can be evaluated are *reliability* and *validity* (Kirk and Miller, 1988). Extensive philosophic consideration of the various meanings and symmetry of these two terms are beyond the scope of this chapter, but a limited utilitarian interpretation is made of them as standard-bearers by which questions were framed toward the end of collecting solid data. Accordingly, reliability and validity here refer, respectively, to consistency and accuracy. Another definition reads:

> "Reliability is the degree to which the finding is independent of accidental circumstances of the research, and validity is the degree to which the finding is interpreted in a correct way" (Kirk and Miller, 1988:20).

Unlike the survey researcher who can address most issues pertinent to validity and reliability before administering a questionnaire, the qualitative researcher as the measuring instrument must closely monitor his behavior. It is important for reliability that questions be asked in a similar way and that the researcher's presence be such that it does not alter the substance of responses. There is a difference between probing for further comment from a subject and posing leading questions or engaging in suggestive dialogue that will likely taint the content of responses. The emphasis on validity is not a matter of whether responses are right or wrong in the sense that each answer coincides or varies from other responses to the same question, but rather that subjects are accurate in portraying what social reality transpired according to their perception and recollection.

In all qualitative research the social scientist is the research instrument to some degree, so the experience and personality of the researcher can factor with research expertise to the outcome of the study. The fact that I had worked as an informant bettered the research design in three important ways: 1) rapport, 2) question content, and 3) question wording.

Most of the informants interviewed were bothered by what they had seen and done and appeared to want to talk. I would have liked to but did not pay for the interviews, still speaking with me may have been an intangible benefit for it seemed to be a way to vent or unload lingering frustration over a secret experience. Before opening up and relating accounts, the subjects "felt me out", which is understandable since I was a stranger dredging up parts of their past that were sometimes painful, embarrassing, and generally unwanted. Knowing that I too had been in a similar role provided a footing for understanding and communication. Most importantly, the subjects perceived that I was neither morally judgmental of them nor someone representing the interests of any criminal justice agency.

Aware of the negative connotation associated with the informing, confidentiality was an important concern because many informants felt their cooperation had gone undetected and wanted nothing whatsoever to jeopardize the fact that they had "pulled it off." Most had managed to avoid not only physical threats and consequences, but also public embarrassment that might have been coupled with disclosure. Empathy to this concern raised assurance in the confidentiality I promised. It is important to note that the names assigned to the many informant quotes in Chapters Four, Five, and Six are

fictitious and primarily used for design consistency. Thus, reference to "Barry" or "Jim" always refers to the same person, regardless where quoted. Subsequent research should explore the use of triangulation, if possible, to assess the reliability of c.i. information.

Question content and wording

My duration as an informant was longer than all but four of the subjects I interviewed and provided a knowledge base from which important aspects and dimensions of the practice were identified. This is not to say that my experience was assumed to be representative of the informants I interviewed, rather that a purposeful and relevant number of issues were addressed in the questions. While individual undercover cases and each informant's experience is unique, there are also realities that assume a flexible sequence. My familiarity of the usual progression of events also enabled exploration of main issues in their natural order.

Being conversant in informant jargon (i.e., drug dealing and drug enforcement vernacular) also furthered rapport and set a stage for the mental reconstruction of events. My phraseology likely made less educated subjects feel more at ease in talking with a "researcher" and convinced them I really had been an informant. Informant jargon is not easily faked as it is more than a hybrid of enforcement and dealing terms. There are certain expressions that only informants would use and understand, for example, "double-dipping" which refers to taking advantage of an authorized buy of narcotics by both keeping part of the drugs for use or resale and lying about the true price in order to keep some of the buy money.

The Interview Schedule

The interviews all began with introduction of my academic credentials and overview of my informant history. I was careful to avoid commenting on particulars of my casework experience for fear that inexperienced, nervous or otherwise noncommunicative subjects would concoct similar narratives. The purposes of the project, subject selection and rights were next explained. I then asked if they had any questions which some did, usually about the degree of anonymity of participation. Subjects were then asked to sign informed consent forms; not having carbon copies, a second form was signed and dated for nine subjects who wanted a copy for themselves.

The interviews were private and lasted from one and a half to four hours. These conversations were held in a variety of settings: hotel rooms, subject's homes, a public library, and two in my car. Referred informants were accompanied in some instances by the initial subjects, who wanted to "sit in" on the interview - this was a touchy circumstance where I thanked the person for setting up the interview, but explained that, for methodological reasons, only the interviewer and subject could be present. When alone and after placing an audio-recorder in plain view, I inquired about each subject's informing experience.

Issue and question sequence

An exact questionnaire was not followed for the reasons discussed above in the choice of interview types. Because of the snowball sampling strategy, the interviews were conducted in two stages - the first seven in a three day (and night) period and then the referrals. I framed several questions based on the casenotes of my own informing experience for the first seven interviews. As noted in the sample section, the initial

subjects were forthcoming and the interviews were far less structured at this point in the study. In order to not exaggerate the importance of my episodes for informing in general, I reviewed transcripts of the first seven interviews and framed a list of questions about seemingly common issues for the subsequent interviews.

While every informant's service is different, all informants must somehow assume the role, do something in the informing capacity, and eventually quit. This *lifecourse*, then, is comprised of three sequential stages (entry, operation, and desistence) that served as a theme for exploring the duration of a subject's informing experience. Questions were also asked that probed the factors that effected how informants made decisions so that the informants' operational calculus could be described. It was also apparent from the early interviews that informants' encountered a range of problems so the interview schedule was reformulated to further explore the range, causes, and frequency of difficulties.

Interviews with the referred subjects began with the additional explanation that I just wanted to talk with them about confidential informing and that there were no correct responses other than the truth. I specified issues and questions addressing the lifecourse and problems in an "interview schedule" which served as a general roadmap for the direction of the interview and ensured that core topics were raised with each subject (See Appendix D).

Data analysis

The audiotaped interviews were transcribed and combined with fieldnotes from my earlier study for analysis. At this stage, I attempted to treat the fieldnotes as

additional data that might have been gleaned from any potential subject. In a cut and paste fashion, I separated the data into categories and sub-categories in order to identify major themes and assess the sum of evidence for various findings. By following the same interview schedule, the transcripts were already set for sorting the individual informing histories into the lifecourse stages and problems grouped into like categories.

Chapter Four

Becoming An Informant

This chapter enumerates the factors that, either unaccompanied or in some combination, explain why people become an informant. The decision to cooperate with the police in an informant capacity is not the same for all informants; there is a distinct contrast between the reasons for initial entry and continued service, as demonstrated below.

Initial Entry

Almost all informants initially assume the position some time relatively shortly after being arrested for a drug offense. Most are petty to mid-level drug dealers, but a few mere users get sucked into reverse stings. After arrest and formal processing, most "cut the deal" to cooperate even before posting bond. While this is the general gateway into informing, the nature of initial entry varies according to the circumstances surrounding arrest and the accused's social class and prior experience with the criminal justice system. The decision to become an informant does not entail lengthy deliberation for naive defendants just arrested for the first time. Not knowing what will happen to them next, be it immediate jailing, the county workhouse until morning, or dealing with an unfamiliar bail bondsmen, agreeing to become an informant provides temporary relief from the intense trauma associated with being busted. Johnny, one of the younger ex-informants I interviewed, remembered his arrest:

> "I didn't really want to do it (inform), but at the time getting out of trouble was all I could think of-guilt or shame wasn't something I thought

about much until it was over."

His experience was echoed in other interviews:

> "I wasn't very cool and acted desperate because I thought I was headed for jail. I offered to do anything they wanted and just kept saying I didn't want to go to jail." Ware
>
> "I didn't really understand what was involved when I agreed. They said cooperate to help myself and at the time I thought all I would have to do is give them information. It was a bad dream and agreeing (to become an informant) was the only way to make it end. Mostly, I wanted to just get out of there and go home." Jack

Sitting in jail is an undesirable situation for just about everyone, but all are not equally stationed to make bail, a well-known strong indicator of conviction. The inability to make bail may explain why so may informants come from lower socioeconomic classes, beyond the more fundamental reality that drug enforcement targets the poor in the first place (Gibbs, 1981). Whereas middle class informants can simply post bail after either refusing or committing to informant service, or voice a desire to consider the option with a private attorney, those from the lower class cannot. If poorer defendants refuse to cooperate, they may go straight to jail until their initial court hearing. But a humble and cooperative attitude usually results in release.

Police typically employ scare tactics oriented toward receiving a commitment to cooperate before release. Some arrestees report threats of prison time that, though exaggerated and excessive for the drug crimes for which they are charged, move them

to capitulate. Others receive conditional promises that some of their seized property, cars more often than currency, might be returned if they "do the right thing". The phrase "do the right thing" was reported by the informants in this study across geographic regions, evidencing the early use of moral superiority by the police.

But moral duplicity emerged just as early. In response to voiced reluctance to cooperate, detectives spoke of prison horrors that terrorized the accused into assuming the informant role. For the very young and white, middle class dealers whose perceptions of incarceration is based on television and sensational prison movies, warnings of daily violence and sodomy produce the commitment police desire. Some arrestees are familiar with scare tactics from previous experience, friends, or business associates and do not automatically agree to cooperate. Instead, they hold out for some assurance of leniency.

Leniency from either real or impending criminal charges was stated as the reason for initial entry by most of the ex-informants participating in this study. However, fear of incarceration is not always the primary concern. Some informants have a general sense of the penalties that might be levied against them. If arrested for the first time or with small quantities of an illicit substance, they know jail time is unlikely. They may nonetheless cooperate for a variety of other reasons that give credence to the legal duress motivation.

One informant, who sold quarter ounces of marijuana at his workplace to minimize the expense of his own use, assumed the role to avoid being formally charged for fear that he would lose his job. His cooperation was secured when an officer

threatened to place a call to his supervisor. Another defendant was a college student that, ironically, aspired to go to law school and knew that a formal criminal record would lessen, if not kill, his chances of acceptance. For others the choice to become an informant was an effort to prevent family and friends from learning of their arrest and thus avoid embarrassment.

Although agreeing to assume the role appears to be a snap decision for most, others are very rational and had rehearsed various contingencies prior to arrest. Unlike the naive, they are not as easily manipulated and while there isn't any real doubt as to whether they will provide informant services, they progress in a more businesslike manner. Those that have been arrested before know what to expect and, even though their past records are used by detectives as leverage, remain surprisingly collected during the agreement session.

> "It was the last place on earth I wanted to be, but I wasn't rattled. I listened to their threats and said I'd cooperate. I just wanted to go home and already knew I'd have my lawyer present or aware of anything formal." Bill

Police put on a show that includes threats that legally cannot be carried out and the game of "good cop, bad cop". In this ruse, two or more officers act threatening and degrading, while another, the hopeful informant handler, appears less hostile and sympathetic to the arrestees' unfortunate situations. Since most readily agree to work as an informant, this charade is primarily performed to set the stage for casework. The idea is to expedite the informant-agent relationship by having the friendly cop become

the informant's handler. The message is clear, "It is okay to trust me, I'll take care of you."

While several of the ex-informants admitted that such ploys deceived them at first, as more seasoned dealers they responded with games of their own. Some prospective informants continue to attempt to manipulate the circumstances surrounding entry to the role with the same hustling mentality that characterized their approach to drug dealing. For example, drug dealers that were also college students claimed to invoke a "schoolboy image" with some success. Elliot, a sophomore marijuana dealer recalled his performance:

> "I wanted them to see me as a college kid that made some bad choices, you know, got mixed up with the wrong people and things. My (supplier) told me how to act if I ever got popped because college kids are worth helping and street dealers don't get as many breaks. It's not that hard-core types don't get to inform, they just get screwed after they do, so I was very apologetic and respectful. Most of all I pretended to be real embarrassed."

Another college student turned informant, arrested for the second time and still on probation, played the clean cut all-American image to its extreme.

> "I knew this time I was in deep shit, more because of being on probation than the weight (of cocaine purchased from an undercover detective). So I *made* myself sit there and cry and acted close to hysterical, like I might kill myself or something. I talked about being kicked out of school,

losing my girlfriend, and being disowned by my family. Jail was what really scared me but I never mentioned it-didn't want to even raise that possibility. Most of them (the detectives) were indifferent and kind of laughed at me, but one younger guy finally sat down and told me it could all work out. He was the one I ended up working for... After it was all over, I think he knew I had scammed him." Kevin

For most informants, assuming the role pronounces a double stigma. They are not only subjected to the label and treatment of criminal-snitch by the police, but also the self stigmatization that comes from knowing the treacherous acts they will soon commit. In an effort to gain psychological relief from this unpleasant state, they employ "techniques of neutralization" (Sykes and Matza, 1957). Informants are at least partially committed to the social order and normative system of the drug subculture and experience guilt or shame when they agree to snitch, one of the most serious deviant acts a person in the drug scene can possibly commit. They contrive rationalizations and justifications for their acts in order to alleviate responsibility and thus guilt.

The informants were also committed to the conventional order and suffered feelings of shame and guilt due to arrest. Accounts (i.e., justifications and excuses) of participation in crime, particularly white-collar crime (Benson, 1985; Rothman and Grandossy, 1982), have been enumerated: denial of responsibility for one's behavior, condemning the condemners, and denial of the extent of injury. Regardless of their educational background, most informants make some sort of an effort to distinguish themselves from the other "real" drug dealers. In the context of confidential informing,

the majority of neutralization techniques seem to be an effort to shift or transfer accountability for deviant behavior to someone or something else.

The excuses range from stories of bizarre sets of circumstances producing dire financial need to peer pressure, but the most common line is drug addiction. The informants were actually unsure of whether they were addicted at their time of arrest. Some spent most of their dealing earnings to support drug habits and were clearly addicts, others dealt for the easy money and lifestyle, yet many insisted they rarely or never sold drugs. Nonetheless, most of the informants see the futility of a continued professed innocence approach and shift the responsibility for their crimes to addiction. They neutralize their behavior with a rationalization of "it wasn't really me, but the drugs acting."

Once informants decide to feign drug addiction, they attempt to exploit others' desire to help users in order to minimize their legal trouble.

> "I was addicted somewhat, I guess, but I wasn't a coke fiend or anything, I got a lawyer to negotiate the informing I had to do and he also lined up an outpatient substance abuse program for me. I went six times for $125.00 a visit and the counselor wrote a letter on by behalf to the judge. I think it made me look like a responsible person and helped me get probation. It was kind of like I bought the letter." Ted

Although many informants try to transfer the responsibility for their actions, it usually makes little difference in the treatment they receive from undercover officers, especially in regard to drug addiction.

"My trying to play my dealing off on addiction didn't work at all. I thought they (the drug squad) would have sympathy if they thought I was strung out. The Sergeant told me 'the only thing you are addicted to is money.'" Jim

It is important to distinguish between the factors motivating initial entry and the reasons for continued service. This study reinforces the general assertion in the informing literature that most snitches are forced into service. For some informants, informing is an unpleasant, necessary situation to be dealt with and then ended as soon as possible. Some express a loss of self-respect from their cooperation and leave the role upon providing the required level of "substantial assistance". Others, even after having worked enough cases to have the charges levied against them dropped or lowered, choose to continue.

Continued Service

The motivating factors for continued service, other than perhaps an additional revenge-based case or two, include: 1)money, 2) friendship, and 3) lifestyle addiction. Friendship and lifestyle addiction do not appear to be reasons for initial entry, but only for extended participation. These factors are not mutually exclusive and any combination of them may be relevant to a particular informant's service.

Money

It seems that very few people are simply hired to become an informant. Instead, snitches work off their charges and then continue, usually under a contingency fee arrangement. Every interviewed informant that worked on a mercenary basis had first

served under pressure of criminal charges. The transition from serving as a hammered informant to working in a mercenary capacity effects the way informants perceive the working relationship. After paying the debt incurred by their arrest through facilitating cases, informants feel they should be treated with more respect and a degree of appreciation. John, a disgruntled mercenary informant still seemed bitter two years after leaving the c.i. role:

> "I didn't owe them nothing. They got a lot more from me than three times what I was caught with before my charges were reduced to simple possession. Without me or somebody else doing what I did, they wouldn't make any arrests or seize any money. But instead of recognizing the deal and treating me like a human being they were still insulting."

He was not the only former informant that felt mistreated:

> "I was treated like I was a scummy criminal. This one cop, though, he was the real loser all the way around. His personal life was all to hell, two or three divorces with kids all over and he was terribly unprofessional. He had a reputation for brutality problems and he was a drunk, even on the job, almost every time I can remember that we met. His behavior toward me stayed completely the same when my charges were worked off. Insulting me and disrespecting me might have made him feel better, but it wasn't the way it should have been. If you are a citizen without charges and you are willing to do this, whether it is for money or not, then you should be treated with some respect. If not with

respect at least without disrespect." Bill

Informants, then, make a clear distinction between their status but undercover agents, acting on the well-defined informant stereotype, may not. Mercenary informants feel that they deserve to be treated fairly and begin to negotiate aggressively, fully expecting the promises made them to be fulfilled. Even if they were manipulated by the police during their previous coerced service, they expected to receive better treatment once on the payroll.

> "Before they had me where they wanted me and got all they could, but everybody expects that that is the deal. If you're not charged with anything, they need to realize it and not keep on like you are a criminal." Jubal

The actual payment informants receive, though promised to be determined by casework productivity, is quite arbitrary. Based on my own experience and the majority experience of the ex-informants I interviewed, two conclusions can be drawn about compensation. First, contingency fee arrangements are frequently made with informants but seldom carried out. The conventional agreement provide c.i.'s ten percent of revenue generated from liquidating seized assets. Most informants are no longer active in the role, however, at the point of legal forfeiture.

In addition to the problem of an average short duration of service, informants' ignorance of the forfeiture process decreases their chances of ever collecting the money they have earned. Most informants do not maintain relations with anyone inside the agencies for whom they worked after leaving the role and simply are unaware of what

is going on. Their efforts to find out the status of a case in which they have a vested financial interest is seen as an annoyance by most law enforcement agencies and action is usually taken to just get rid of them in a number of ways.

The second finding concerning payment, not surprising given the first, is that informants are grossly underpaid. This statement is not an opinion about what c.i's receive relative to their function but an observation of monies distributed against payment promised in verbal and sometimes written contracts. The payment informants do receive are token gestures delivered with an attitude of "you are lucky to be getting anything at all." If an informant appears to be capable of producing a number of profitable cases, there may be a fairly generous disbursement at the onset of his service in an obvious carrot and stick scheme. The exact amount, though, is whatever an agent or his supervisor decides upon rather than by a formula or the ten percent standard.

After taking two state drug agents on a four hour journey deep into a remote wooded area to locate a marijuana farming operation, an informant reported a $500 payment that was said to be for expenses and "to get you started", clearly indicating that more would be forthcoming. The case continued for nearly a month and the informant made another trip to the patch with the growers for the arrest incident. Although three vehicles, several firearms, and an amount of cash unknown to the informant were seized, the informant never received anything beyond the first $500.

When informants complained about not being paid the amounts they were promised, handlers quickly resorted to rehearsed excuses. There were two basic lines, variations of which were mentioned in several of the interviews. One is to blame another

officer. By shifting responsibility to another drug agent the handler relies on his friendship with the informant to glean at least one more case. Another excuse is to pretend miscommunication. Apologetically, the handler explains that the deal was cut very specifically with his supervisor and now on paper cannot be altered, but he wishes something could be done about it and will make it up to the c.i. on the next deal. For the c.i. the payment, even after the next deal, still will likely be withheld.

Miscommunication is construed in a variety of ways. By asking an informant, for example, what additional suspects are linked to the primary target in a given case or what other cases might result from a proposed one in a snowball fashion, the police set the stage to take advantage of the informant before the undercover work is ever provided. Later, the police use this out by telling informants that full payment was meant for not only the immediate case as was the informant's understanding, but also for the other cases or targets that, to the informant, was nothing more than a "bullshit session."

At face value, such a situation is a win-win scenario for the police and lose-lose for informants. If the informant takes the abuse and continues, the police have stolen his services and are apt to do so again. Moreover, they will realize additional seizures and arrests. Should the informant quit, the police avoid payment. But who really gets stung? Perhaps the informant was exceptional in the role but leaves due to mistreatment. And there are the matters of replacing him and establishing a rapport with the new nark. The counterproductive aspects of informant abuse constitute problems for the police and is taken up in the next chapter.

But for the individual unpaid or under-paid informants, there is little they can do.

Beyond the apparent one-sidedness of an informant suing a law enforcement agency for payment on services rendered, a suit would mean certain disclosure and thus possible danger. Moreover, the informant faces an unsurmountable problem of providing evidence of being wronged since most agreements are on a verbal, case-by-case basis and possession of all official casenotes and seizure records are in the same hands that have his money. Though informants are regularly cheated out of modest fees and sometimes considerable sums (one informant was never paid $20,000 on a well-known, highly publicized $200,000 cash forfeiture), there is no record of attempt to recover.

Friendship

Increased popularity and social opportunities were reported as a highly valued and fairly regular benefit of dealing drugs. For some informants this was every bit as important as making money, as reported by one subject.

> "I guess you could say I was a loser back in high school. Not many dates and unpopular friends. When I started selling in college, well things really took off. People were always hanging out, inviting me to parties, and fixing me up. When I hit a bar, almost any one in town, somebody would know me there. If not, I just met people easier-I think my self-confidence went up. Even at the point when I got busted I didn't really have much to show for it, but before I had a good part-time job and my parents sent money every month, you know, the starving college student thing." Danny

Soon after being arrested the informants faced the harsh reality of the falseness of

their social acceptance. Almost all of the informants reported at least a degree of social ostracism following their arrest. Even before beginning informant work, they feared their circle of friends would all but vanish. As news of their arrests and suspicion that they had turned spread, their instant popularity had gone about as quickly as it had arrived.

> "Everyone suspects, and for good reason, that you are either snitching or at least still hot after you're busted. One day the phone was ringing off the hook and the next week nobody wanted to know me." Jamie

Informants often form a new relationship with their police handler to fill the newly created void in their lives. For some informants, their police handler is the only person with whom they could discuss their predicament. The undercover detective often becomes an advisor whose practical advice about how to manage legal problems is highly valued by informants. This is a result of informants' anxiety over the outcome of their cases and social isolation during a period when most are truly afraid.

> "When we met, he'd (the police handler) ask me how it was going and treated me like a friend. One time we had to drive about forty-five minutes to meet a suspect and we jammed out on the way and shared a six-pack. We talked about women and sports and he gave me ideas about what to do with my life when it (confidential informing) was over. Although he was a cop, he was cool with me." Leonard

Drug enforcement agents, whose advice may or may not benefit the informant, can profit from developing a relationship that appears to go beyond just casework.

Specific advantages are increased flexibility and more frequent use of informants. Once informants begin to view the relationship with their handler as friendship, they become more trusting and will agree to perform higher-risk functions. Not only are informants more likely to enter dangerous situations to preserve their "friendship" with their handlers, they may work harder to produce cases. This risk appears to be a clear effort to gain the acceptance and approval of their police friends.

A more basic motivation to produce cases is the opportunity for a meeting. Sympathy for and genuine friendship with informants are considered a potential problem by police administrators. Just as agents can manipulate informants through friendship, so can informants deceive their handlers. To safeguard agents from being compromised, most departments have policy restricting unofficial meetings. This being the case, informants must have bona fide reasons justifying a meet.

The literature on informant handling relates that agent-informant friendships are one-way streets. Informants desire and offer real friendship and most agents capitalize on their social ostracism, exploiting their loneliness by feigning reciprocity. But some of the ex-informants, as shown in a couple of examples below, insisted that the friendships they developed with their handlers were genuine.

> "(The police handler) couldn't meet me because of regulations, but he'd call every few days to check on me. It was a hard time, financially, psychologically, just in general. Just having regular communication with him got me through." Jeff

> "I know most detectives use their informants anyway they can, but John

(a police handler) and I really were friends. We never lied to each other and he wasn't on the take either. Our backgrounds were similar and he knew that without a couple of breaks our roles could have been reversed. I know he wasn't a fake because we still talked after I quit." Ned

Genuine friendships between agents and informants, however, are seldom forged. More often than not an informant comes to view agent interest in their personal life for what it is - a means of gaining the upper hand for the purpose of manipulation. While an unfulfilled friendship can be upsetting to anyone, realization of being "had" is especially inflammatory to informants. Coming from drug dealing subcultures where success and reputation depend on street smarts and intuition, recognition of a handler's duplicity is considered a personal insult by informants.

"If he wanted it to just be business that would have been fine. I would have kept setting deals for the money. There was no reason to pretend like it was anything more. It was a way of saying 'you are a dumbshit nark.' That wasn't the case either practically or formally. If I was an idiot, why did they follow my suggestions for case strategies? Only one of the three detectives had a four year degree, so I was more educated than they were too." John

Informants react to the friendship problem in a variety of ways. Some accept the false relations for a while and concentrate on the money, usually by demanding more. Others blame the individual handler and attempt to work with someone else. But there are additional responses, many of which raise issues that complicate casework. The next

chapter addresses these problems in some detail.

Lifestyle Addiction

Another important motivation for working as an informant is lifestyle addiction. Most informants are criminals and the allure of a criminal lifestyle is seductive (Katz, 1988; Shover, 1996). This motivation, like friendship, better explains continued service than initial entry. Virtually all informants that continue after resolving their legal dilemmas receive money. Although money may be received, it may not be the primary incentive. Many informants simply like "the scene" and will do what is necessary to be in it, not really caring which side of the law they are on.

Some c.i.'s seem to be addicted to the free-wheeling nature, fast action, and partying lifestyles offered by the drug subculture. For them, the thrill of the deal and the adrenaline rush of the hustle provide a type of satisfaction equal to or greater than money or drugs. Will, an informant who was hooked on the scene, tried to explain it:

> "There wasn't any real reasons for me to keep on. The money either didn't come through or if they gave me anything it was maybe half of what they promised. My whole life was a lie, not really a dealer or a cop, but I just couldn't let it all (the drug scene) go."

After two or three arrests, even the most persistent dealers realize that incarceration is a likely next step. No longer able to deal drugs for personal profit *per se*, they simply switch sides. With the exception of restricted autonomy, their lifestyle isn't affected very much. They still make some money as an informant, run in the same circles, and are involved in the illicit drug trade. Mercenary informants must maintain

the lifestyle in order to convince targets they are still bona fide dealers. Police recognize this fact and help informants sell themselves by providing samples of drugs, expense money, and sometimes clothes and jewelry.

> "Real drug dealers have certain things all the time, or at least can get them right away. You've got to have a decent amount of cash, some drugs, a beeper or cellphone, and depending on the situation a gun. If people start noticing that you are without any of this stuff more than once or twice, they might suspect something is up. As long as I had the right stuff, I was good to go and could do anybody I wanted." Jeff

Chapter Five

The Business of Narking

Regardless of the various motives explaining an informant's service, each undercover case begins in a similar manner. Once a target has been selected, casework is then oriented toward negotiating a buy. Informants typically present themselves as middlemen when using the preferred reverse sting tactic. After preliminary meetings that serve to displace a target's reservations about whether the informant is undercover and provide a target with necessary details concerning availability and price, the connection (actually an undercover detective) is introduced.

Final arrangements are made between the target and the detective with the informant usually present in a supporting role. At this point the informant attempts to provide assurance that everything is cool should the target become uneasy. The informant also serves as a communication link between the buyer and seller, but some agents provide suspects with beepers numbers and deal directly in cases where the informant is either new or considered unreliable. The informant generally bows out at the point when a time and place for the actual exchange of drugs for money, which will be the "take-down" and arrest, is set.

Should the suspect insist that the informant be present for the exchange, case plans are for the c.i. to be arrested too, meaning the informant must play an expanded undercover role that involves being booked and released in front of the targets. While this additional step can do a great deal to confuse the target of the informant's true status, some agencies do not bother with it and most informants do not wish to be present

anyway - to witness firsthand the tragedy they have framed.

The above pattern must be altered for other than reverse sting tactics such as in the service of search warrants and buy-busts scenarios where an informant makes a purchase from a street dealer and then both are immediately arrested. The prototype case for the confidential informant, then, entails target selection, deal negotiation, and then introduction to an undercover agent. These steps seem straightforward but involve numerous contingencies that call for split-second decision-making and masterful undercover work.

Target Selection

Whether suspects are people with whom an informant does regular business or strangers, target selection is the first vital point in the undercover function in terms of criminal and social justice. Who does or does not enter the justice system and obtain a criminal record is a grave matter that is controlled to a surprising degree by informants rather than sworn officers. The arrest compelling an informant's service often disrupts a deal in progress, a common example being street-level dealers anxiously awaiting product from their just busted and flipped supplier. To protect the new informant's status and maintain the possibility of arresting his customers, a phone call soon after arrest is often the first in a series of many deceptive acts. The call provides an excuse that the dealer's supplier (really an undercover "take-down" officer) was late or had postponed the deal for a day or two and buys valuable surveillance and planning time as well as minimizing suspicion of a bust.

Police interest in an informant's customers as potential suspects is indicative of

the general problematic nature of drug enforcement. The traditional idea of creating an informant centered on coercing the arrested person into giving up their supplier, thus impacting drug distribution rings. Because the supplier is artificial in reverse stings, a cycle is created wherein middle to low level dealers are arrested and made into informants that, in turn, set up even smaller dealers and users as cases progress *down* the ladder. This strategy is simply not geared to disrupt drug flow, yet a large number of cases can be made because the drug trade, like licit businesses, has more customers than suppliers.

There is immediate pressure on an informant to set up his associates. Informant work begins, then, with case selection. The first major decision after assuming the role is choosing a target. The most natural place is within an arrested dealer's existing network.

Target selection varies considerably from informant to informant, but there are common factors that influence the decision. The considerations to be balanced include: 1) size of the target pool, 2) perceived likelihood of retaliation or dangerousness, 3) nature of relationship with target, 4) likelihood of role disclosure, and most significantly 5) level of seizable assets

Target Pool

The target pool refers to potential suspects. The size of this pool largely depends on an informant's experience, both as a drug dealer and in the informant role. A first time informant that was never really an established drug dealer may have little choice in selecting which of his connections will be sacrificed. Mere drug users that were

positioned into a reverse sting by another informant, seldom have the street savvy to lure acquaintances, much less strangers, into stings. They have little choice but to target a friend in this high stakes game of "tag, you're it."

More experienced dealers, particularly those who have informed before, can choose from a much larger target pool. They rely on the same skills used to negotiate deals in the drug subculture, but now on behalf of the police. As one informant observed:

> "I was still a drug dealer. The only difference was who I worked for. When you think about it, I sold drugs for the police, who made money on the deals instead of me-except for the small fee involved. It's kind of a trip when you think of it this way. The police are supposed to be fighting drugs by hiring people to sell drugs for them." Jake

Experienced informants seek out and involve strangers in drug offenses, an important point in terms of state facilitated crime. Not only are criminals created from among the corruptible, but an informant's real criminal contacts need not be selected and are thus insulated.

Danger

A target's perceived level of dangerousness is an important factor in case selection. Informants make assessments of a target's propensity for violence and reckless abandon based on first hand observation, hearsay, and an impression of the target's psychological make-up. Physical size and successful fighting ability are obvious considerations that are evaluated relative to an informant's own credentials. While large,

aggressive types intimidate some small informants and most naive ones, more experienced informants focus on the person's temper and daring. As shown below, informants consider potential harm when choosing whom they will set up.

> "Steve would have been a pretty easy case, because he was a typical big, jovial, dumb guy. He'd been busted a couple of times before because he trusted people too much and he didn't learn from his mistakes. But he was pretty safe because nobody wanted to mess with him. He was about 6'3", 230 lbs. and solid as a rock. He dressed like a biker dude and did meth (methamphetamine), and everybody knows that even a little dude on meth is aggressive and doesn't stop to think. There was no way in hell I'd have set him up although he probably wouldn't have figured out who did him." Mike
>
> "He was a crazy son of a bitch. A couple of guys he did deals with and him destroyed a guy's car that didn't pay up on a quarter pound that was fronted. If they responded like that over money, I didn't want to find out what would happen over one of them being narked out." Brad
>
> "Bill was real weird, probably from all the years of doing different drugs. He was one of those soldier of fortune kinds that talked about setting booby traps around his marijuana patches. He read a lot of sick, torture crap, wore army outfits, you know, camouflage and stuff and played with guns. He was the type that might freak out and want revenge even if he just suspected you." Elliot

Another important consideration in weighing a person's level of dangerousness and likelihood of seeking revenge was whether they were known to carry a gun. This was a factor that offset other considerations. Even physically small, mild-tempered dealers known to be armed were deemed dangerous and not first choices.

Nature of Relationship

The nature of personal relationships also effect target selections. One informant who was being hard pressed to produce additional cases considered but chose not to target his associates.

> "I just couldn't do it to them. Even if they never found out it was me, I wouldn't have felt right about it. They knew I'd been busted but never treated me differently. They even said 'We are going to help you re-up' (provide drugs on credit to re-sell) because they knew the cops had taken all my money and that I was flat broke. They never considered that I'd nark them."

Not surprisingly, informants prefer to set up strangers and those whom they dislike rather than friends. Many informants realize the moral reprehensibility of their actions and had previously sworn never to snitch if they were ever busted. Now forced to do so, they were afraid that incriminating even one friend would give them a permanent reputation as a nark. Many of the informants, particularly those arrested for just the first or second time, feigned remorse for dealing, but as the police adage goes "they were only sorry they got caught." Many had plans to continue their drug operations as soon as they were out of trouble and a few only slowed down minimally

while informing. For these narks, not targeting business associates was a basic move to protect self-interest more than loyalty to friends.

Genuine friendship was only sacrificed in the total absence of other possible targets and when incarceration was thought to be a certain outcome. The informant role forces placement of virtually everyone a c.i. knows into a target/non-target dichotomy. A commonly used means for making this assignment is the answer to the question: "If the roles were reversed, would he/she do it to me?" Although every informant doesn't pose the question in each incidence of target selection, the observation that the hard decision of who to set up would be unnecessary if someone else had not first narked minimizes guilt. Responsibility for betrayal is shifted backward to whoever created the situation.

Role Disclosure

Another issue in target selection that informants consider is whether they will be identified as a nark. Informal sanctions, particularly shame (Braithwaite, 1989), can be extremely powerful. In the drug subculture, snitching is a cardinal sin even in the eyes of those doing the sinning. Disclosure of informant service would certainly result in negative labelling; perceptions of identity revelation thus acts as a deterrent. There is a body of literature germane to this point that argues informal sanctions are more important than formal ones (Petee *et al.*, 1994; Anderson *et al.*, 1977; Freiberg, 1987; Kasarda and Janowitz, 1974). Informants, like people in practically every context, are more integrated into their social networks than social institutions, such as the bureaucratic criminal justice system. Because they have more vested in the informal

group context, they are responsive to potential sanctions of norm violations.

This determination involves weighing a combination of factors. The informant's perception of the target's ability to figure out what happened is always relevant. Maintaining cover is a primary consideration for many informants because it effects their reputations and personal safety. Detectives, particularly if they are interested in a specific suspect, attempt to minimize informants' concerns over disclosure. Promises that the target will never know for sure "who did him" are made informants with special emphasis on aspects of case strategy designed to cover the informant.

The primary tactic used to protect the informant's identity is the "hand-off". A target is made to maneuver through construed levels of what is made to look like a drug ring. The informant passes him to an agent that poses as a middleman who, in turn, introduces another agent who either cuts a deal or hands off to yet another agent. The basic idea is that having seen multiple faces will confuse the target as to who is the nark. Promises of a hand-off often satisfies inexperienced informants enough to gain their cooperation, but veterans have realized that the target need only trace the trail back to the initial damning introduction.

Ironically, the same mastery of manipulation held by serious dealers serves them well as informants and facilitates the reduction of their legal troubles. A matter that demonstrates informants' scheming outlook and that is also germane to target selection is the "fall guy". Most informants think of snitches in the same negative light as most other people prior to becoming one and had never envisioned themselves in the role. Accordingly, they do not consider targeting others for the police until necessary. Some

informants, however, have calculated various sequences of events concerning their legal defense and informing options prior to arrest.

Some middle level drug dealers identify the targets that will be served up to get them off the hook in the event that they are arrested. These individuals are committed to drug dealing and realize that it is only a matter of time until arrest. Choice of the fall guy is made according to the same criteria used by all informants, but selection prior to arrest is likely more rational, selective, and thus better from the viewpoint of the informant. The informants that preidentify targets see fall guy identification as just another business decision. They associate with various people whom they supply with drugs for resale and it is usually from their "employers" that the victim is selected.

> "There was this one guy we all called 'Super-Dave', he was a freak's freak. Always stoned and tripped out on acid two or three times a month. He was so stupid he just saw everybody in our circle as a partner in kind of a deadhead, hippie, love-everybody way. He had no appreciation whatsoever for hierarchy, you know, who was making the big score, which was me. He bought his own, wanted to trade all kinds of pills and shit for bags (of marijuana) and brought new people around to buy or just smoke a joint. Here we were somedays weighing out two or three pounds of pot and this idiot brings a stranger who could be a cop over to burn a fucking joint. I made him think I scored from somebody else so that when he became a nark all he would be able to say is that we partied a lot, he never saw any big stashes. The cops probably suspected us

somewhat anyhow because of too much traffic at the apartment. Superdave was so stupid, I know of two other people besides me that had him busted." Kevin

Asset Availability

No one factor is more important in regular casework than asset availability. Potential assets to be seized effects target selection and much of what informants do while performing undercover is oriented toward seizure. The following examples, drawn from both the researcher's own covert participant observation of drug enforcement and interview data, involve decisions and acts by informants and narcotics agents that illustrate the asset forfeiture motive's impact on target selection and actual casework. They address forfeiture's influence on both the type of cases selected for undercover operations and the true function of covert policing in society.

I first came to understand how cases were selected and prioritized while working with a medium-sized city police department in 1989. Still unaware of the profit-seeking nature of narcotics divisions, my undercover work began by "feeling out" possible deals and meeting with an undercover narcotics agent to discuss potential cases. I mistakenly believed that a large quantity of drugs or a "known" dealer made a case desirable and, accordingly, proposed two possible deals (in undercover jargon, the terms "deal" and "case" are interchangeable). The first involved the opportunity to buy two and one-half pounds of marijuana from a bona fide drug dealer. The second deal involved a factory worker who was shopping for a half-pound of marijuana for resale to friends and co-workers. The agent asked me to note the license-plate numbers of each suspect's

vehicle, which I believed was for the purpose of gathering essential information, such as addresses and arrest records. However, the primary purpose was to learn if the suspects owned the vehicles or if a lienholder was involved. This information enabled the agent to determine the amount of equity in a suspect's vehicle.

The equity in a vehicle equals the proceeds from which law enforcement agencies will receive a percentage upon liquidation after legal forfeiture to the state. If a person whose car is seized has a clear title, he or she will likely lose the car. It will later be sold at auction, and the seizing agency receives a percentage of the money. Situations where a person is still making payments are more complex. Normally, the defendant has the option of making a "contribution", equal to the level of equity, to the arresting department's drug fund in exchange for the seized vehicle.

The stress on revenue generation trickles down from police administration to drug squad supervisors and detectives and eventually to confidential informants. According to Dan Garner, an undercover narcotics agent in southern California, drug enforcement success is measured by amounts of money seized:

> "You see that there's big money out there, you want to seize the big money for your department. For our unit, that was a sign of whether you were doing good or poorly was how much money you seized, and the kind of cases you did. And my supervisor made it extremely clear that big money cases were a lot more favorable for your overall evaluation than big dope cases" (Stuart, 1990).

When asked by an informant why a search warrant would not be served on a suspect

known to have resale quantities of marijuana in his apartment, a narcotics officer replied:

> "Because that would just give us a bunch of dope and the hassle of having to book him (the suspect). We've got all the dope we need in the property room, just stick to rounding up cases with big money and stay away from warrants" (Miller and Selva, 1994).

Realizing the importance of equity, polished informants attempt to determine if a potential target is still making payments and, if so, the level of equity in order to not waste time on "low money" cases. By complimenting a target's car at the first opportunity, the information is often learned. One informant described how he went about assessing equity.

> "It depends on the situation. You can't just say, 'So, do you own that Mercedes' if you've just met a person in a club. But, after you have seen the car or been in it, then you say something about the car that in a roundabout way involves money. You can't be too obvious. Something like 'This is an ultra-smooth ride, I'd like to have one just like it.' Then you say you couldn't afford it though. You say this after riding around for a while and smoking a joint, which is a sample of what you will offer to sell him if it is going to be a go. You don't say too much right off, it is your grass so the guy is trusting and appreciating things a little and, hey, his guard is down a little more because he's high. I always tried to make sure they were having a good time. If you play it right, you'll learn if the car is paid for or what the payments are. Then I ask if he got it

new. From there it is simple math of how much he's got in it." Garrison Needless to say, successful informants are master manipulators and extremely quick thinkers who have a rare ability to process various contingencies and anticipate behavior.

The agent in charge of the above case involving the two proposed deals, focused on which one would generate more income. The first case involved five times the amount of marijuana as did the second. Also, by working the first deal, police would take two and one-half pounds of marijuana out of circulation because the dealer would be selling. The seller was a full-time drug dealer with two prior drug-related convictions and on probation at the time of the operation. The suspect in the second case had no arrest record and appeared to be a relatively small time user who hoped to realize a comparatively small profit by selling quarter-ounce bags of marijuana. Although the first deal clearly seemed more serious, the second case would guarantee that at least $700 would be seized when the suspect purchased drugs from the agent. Additionally, the latter suspect owned a truck, whereas the professional dealer only had a little equity in a late model sports car. The officer explained that the first case was simply not profitable and would not be pursued.

As the informant in this case, I was instructed to arrange for the latter suspect to meet the "seller". When I voiced concern that the officer was encouraging the suspect to commit a crime, the agent justified the operation by contending that the suspect would secure marijuana elsewhere and eventually become a consequential dealer. This way, according to the agent, the problem would be "nipped in the bud" because the suspect would be deterred from future criminal activity. The deal was consummated with the

agent, the suspect arrested, and his cash and vehicle were seized.

This case provided the agent's department with a small profit. The buyer may or may not have been deterred from future criminal behavior. On the other hand, no drugs were taken out of circulation, and the individual might never have acted upon his intentions to purchase a felonious quantity of drugs had the researcher and the agent not presented him with such an opportunity.

The strategy involved in this case was termed a "reverse" because the regular undercover function of buying narcotics was just the opposite, as officers became sellers. This was the preferred strategy of *all* agencies and departments in this study; plainly because it allowed agents to gauge potential profit prior to investing a great deal of time and effort. Reverses occurred with such regularity that the term became synonymous with the word deal. More importantly, the above case was not an isolated incident. Rather, it was one of many such cases in which the operational goal was profit rather than the incapacitation of drug dealers. The pursuit of profit clearly influenced operational policies on case selection. The interviews provided strong evidence that in no way contradicted this disturbing trend.

Another incident involved a nineteen year old, male college sophomore, who caught the attention of an experienced informant while making routine deliveries of various drugs inside a certain county jurisdiction. Two authorized purchases of two ounces of marijuana were made from the suspect, who turned out to be a "mule", someone who transports drugs and sells small amounts for someone else. The regular procedure in situations such as this was to arrest the suspect and then coerce him into

cooperating with law enforcement by setting up the bigger dealer for whom he was working. Even the informant was surprised when the agent requested that a meeting be arranged with this low level suspect. A few days later, the informant produced him at a bar where the agent was waiting. The agent, having gained the suspect's confidence through conversation and paying for drinks, convinced him to secure a personal loan from a bank by using his vehicle as collateral so that he might purchase five pounds of marijuana. The ploy was successful and the suspect was arrested a few days later. This student was not searching for a large quantity of drugs, nor did he view himself as a dealer until the agent showed him how to become one. Thus, undercover policing at times may actually promote crime by manipulating individuals who are naive, suggestible or corruptible. Such activity not only victimizes ordinary people, but also affects the conduct of police and their function in society.

Many of the interviewed informants shared similar episodes regarding the emphasis on seizing assets and its impact on target and case selection. Sooner or later, most informants are told by their handlers that only exchanges involving a certain amount of money or narcotics would be acceptable. It was apparent that these guidelines came from supervisors who did not want squads working cases that were comparatively small or of low monetary value, when larger options existed. These standards proved to be contrary to the notion of taking distributors off the street. The drug trade, an illicit market, is similar in several ways to licit markets. One likeness is natural price regulation through the mechanics of supply and demand (Manning & Redlinger, 1977). Supervisors had a tendency to mistakenly believe the drug markets in their jurisdictions

were flooded with a particular substance upon seeing a large bust. Consequently, they would set limits for agents and informants. Ironically, the arrest which prompted the decision was often an isolated incident that did not accurately reflect local drug trading activity. These ultimatums are a constant source of aggravation for both informants and officers. A case where an informant had spent a week preparing a suspect for a deal provides a good example.

A relationship had been established with a dealer from whom marijuana had been purchased on one occasion and cocaine on another. The suspect was informed that he could discuss business with the informant's connection, who could supply large quantities of marijuana at a low price. After gaining the suspect's confidence and whetting his appetite for a substantial bargain, a meeting was arranged to introduce an undercover agent as the supplier. A deal was struck whereby the agent would sell two pounds of marijuana to the suspect for $2,500. Prior to the transaction, the deal was canceled because the agent's supervisor decided only reverses of five pounds or more would be worked. The informant was told to give the suspect an excuse as to why the deal could not take place. After two unproductive weeks, the case supervisor realized that a five-pound limit was unrealistic. It was lowered to the previous level of one pound and the agent was ordered to try and recover the deal canceled two weeks earlier. However, the deal could not be saved because the suspect no longer trusted the informant. Undercover work and money spent during the set-up phase were wasted. In addition, the suspect, a recidivist, remained free to solicit illicit substances.

The following example demonstrates the adverse effect that the seizure motive can

have in undermining the police interest of service to the community. The suspect, one of the larger "players" encountered in my casework, dealt in marijuana, barbiturates, cocaine, and stolen property. I had conducted two "buy-walks" in order to establish a relationship with him. A buy-walk occurs when officers or their assistants purchase illegal substances, but an arrest is not made so that a situation may be observed to determine if it will lead them farther up the ladder of a drug ring's hierarchy. The state agent wanted to reverse the suspect, but realized that a reverse strategy was impractical for this situation. The alternative was to serve a search warrant that would ideally occur when the suspect was in possession of a large amount of cash that could be seized. This required me to stay in close contact with the suspect for two days, during which time he received a quarter of a kilogram of cocaine, worth around $7,000 in bulk and a street value of at least $13,000. This information was relayed to the agent in charge of the operation.

In this case the only decision to be made appeared to be when a search warrant should be served, on the assumption that the narcotics division of the involved state agency would desire to intervene before drugs could be resold. Proper police procedure does not mandate that agents immediately act on information that makes an arrest possible. If that were so, valuable surveillance periods could not take place. However, I was surprised when instructed to observe the suspect's transactions in order to determine the rate at which the cocaine was being resold. Less drugs meant more cash, and the agent's objective was to seize currency rather than cocaine. The case was successful in terms of proceeds, but perhaps not in view of the quantity of cocaine

officers knowingly permitted to reach consumers. This incident illustrates that concentrating on revenue requires police to compromise law enforcement in a manner that may harm rather than protect society.

The pressure created by a demand for seizure productivity incites competition among agents from adjacent jurisdictions. Agents consequently become "turf conscious", regarding the arrests of mutual suspects by agents from other agencies negatively because someone else has taken potential profit and time and effort invested on case development has gone for naught. A general spirit can develop that discourages interagency cooperation thus leaving numerous suspects at-large.

One large case collapsed due to this problem. A well-known drug dealer, who traded crack and cocaine in a small, rural town, had been frequenting a nearby jurisdiction to visit a woman with whom the informant became acquainted. The suspect had been delivering drugs on weekly visits and was said to always have a large supply on his person. The primary informant and a second female informant, posing as a date, met with the suspect and another woman for a small party at a residence approximately two miles from the city limit, the agent's jurisdictional boundary. The agent was told when the suspect would arrive and the particular route he would travel. The informants noticed that the suspect was in possession of a kilogram of cocaine and an unknown amount of cash in a gallon-sized plastic freezer bag. An attempt was made to manipulate the dealer into entering the city police department's jurisdiction by suggestions of various bars the group might patronize, but the suspect refused to go and the deal stalled. Other agents were aware of what transpired by monitoring surveillance equipment, hidden

"wires" fixed to each informant. Because of the jurisdictional dilemma, the agents were powerless to act. However, nothing prevented them from contacting the county sheriff's department or notifying the state agency who might have conducted a vehicle stop. The agents took no action, however, and the suspect slipped away with his bag of money and cocaine and the rationalization "we'll get him next time."

A Snapshot of Contemporary Practices

Being an informant requires the wearing of multiple hats simultaneously. An informant must not only fulfil the informant role as officially specified but also continue in, or learn, the activities and lifestyle of a drug dealer, as well as performing unofficial duties previously carried out by sworn officers. This amateur policemen portrayal of informants contends that the informant role is more complex and thus more important than in the past. The cases presented below evidence the expanded role of informants in the current undercover context, which suggests that sworn officers are doing something other than actual undercover work.

The three roles an informant must play are complimentary; continuation of a drug dealer presentation is necessary to successful informant work, and undercover performance by informants is a natural extension of the information generating function traditional to the role. There can be little doubt that informants, through the possible cases they offer a narcotics supervisor for casework, can control police activity.

While naive informants likely lack the experience and foresight to manipulate situations, seasoned c.i.'s determine much of what transpires. Though it is a narcotics division officer that formally decides which cases will be worked, clever informants,

after deducing a particular agency's real objectives and idiosyncracies, can channel police resources and effect decision-making through simply presenting or withholding options. The above discussed presence or absence of obtainable assets is a primary focus for many agencies, a reality that transfers considerable informal, but very real, authority to informants. By emphasizing and exaggerating a target's assets or downplaying them, informants can taint the case options from which supervisors choose. That seasoned informants, by continuing on in a mercenary capacity, are in a position to so manipulate police behavior is consequential because they work more cases than those who quit after providing minimal substantial assistance.

The problematic nature of confidential informant control over police activity through case selection is further compounded by active informant participation in the undercover role. The informant must identify or involve people with seizable assets into criminal activity for which they can be legally charged. The primary undercover function of informants, then, is hustling. To the extent that targets are selected and cases designed to gather assets via the reverse sting tactic, informants are legally sanctioned dealers that sell fabricated deals. Of course, certain props (e.g., beepers, cash, and samples of drugs for sale) are furnished informants to facilitate sale of the "story". Many informants relate that more than just a story is sold. According to the discretion of a jurisdiction's district attorney, some law enforcement agencies deliver the amount of an ordered controlled substance in order to bring a felony charge, possession with intent to re-sell against a suspect as opposed to "conspiracy to distribute."

Now that informants increasingly perform undercover work, they face the

difficulties of detectives in undercover infiltration. Informants, as former drug dealers or at least users, are arguably more knowledgeable about the current perceptual shorthand that dealers use to determine whether buyers or sellers in question are undercover. This perceptual shorthand processes deception clues that the informant must be careful not to demonstrate. Jacobs (1993) has observed that these clues fit into one of two categories, trend discontinuity and interpersonal illegitimacy. The latter refers to physical clues (e.g., illegitimate appearance, inappropriate body language, and bogus props) and verbal clues (e.g., conversational style atypical to specific drug subcultures, overanxiousness to buy drugs without normal concern regarding quality, quantity, and price) and primarily applies to the identification of narcotics agents. One interview, partly related below, specifically addressed the topic of infiltration.

> "Back when I dealt, I looked for things that said if somebody wasn't cool.
>
> Miller: "What sort of things?"
>
> "It wasn't that everytime I went down a checklist or anything but just a natural sort of checking somebody out. Maybe they were a cop, a nark, or just some nerd. Even if they weren't a cop or nark, I still didn't sell because if somebody like that got popped, they'd turn on me in a heartbeat. Some things were just dead giveaways, a real straight dude trying to be cool, people that wanted to buy but wouldn't use and dudes that wanted you to meet somebody else for a deal when they would have done it themselves if they were straight up. Everybody wants a piece of the buy, either to skim some of the money or dope, and you can't do that

if you're not in on the deal. A real dealer makes the deal even if with somebody else's money and then passes it on down the line for a cut. Now, if somebody wants to just introduce me all of a sudden to some person they've never even mentioned before? Get real, no way." Jake

Since most c.i.'s are active in drug scenes, they already are fluent in drug jargon and subcultural behavior and thus largely avoid the legitimacy issue. Trend discontinuity, however, is associated with snitching and is something competent informants are careful to avoid. The two basic trends are: 1) the sudden appearance of a newcomer (i.e., a suspected cop) interested in sizable deals and 2) sudden requests for considerably larger quantities from a known customer (i.e., a suspected snitch).

Increases in the size, but not frequency, of purchases is considered the single most common indicator that someone has flipped. One informant I interviewed explained this clue as a function of a person's request relative to their position in a drug community.

"People are a certain type - user, bag seller, ounce seller, or major quantity mover. Although it isn't too smart and can help get you busted, most people come right out and say, 'I'm selling this and that or for so and so'. They want you to know to basically get your business. If a user or bag level man calls up wanting a pound he's probably turned (informant) because it takes a while to get that many buyers unless you're selling to any-damn-body in public. That pound is a dead giveaway because a lot of cops are told by district attorneys that the deal has to be at least a pound." Monty

It's important to note that these discontinuity trends apply more so to traditional drug enforcement tactics, like search warrants and buy-busts than the current context. Of course, these established tactics are still used in conjunction with reverse stings and are situationally significant.

Despite awareness of the deception clues and the dangers of failing to recognize them, all but two interviewees admitted to making decisions, both formerly as a dealer and then as an informant, based on intuition. Other researchers (Adler, 1993; Moore, 1977) have referred to the dealer vibe, a general sense of whether or not a certain situation "feels right". This vibe carries over to the informant experience and is equally relevant to understanding decision-making. Several informants claimed that vibes saved them from arrest on multiple occasions.

> "There wasn't any one thing the guy did that was alarming, my sixth sense said to me that my number was up and it just wasn't cool. That guy ended up busting two people I knew." Bill

> "This little geeky dude was always around the parties I was at but never partying. He didn't get high with anybody but always was around the people getting high asking if it was good and if he could score. Everybody sensed something was up." Evan

While vibes are not tangible nor can they be empirically documented and assessed, informants place great faith in them and equate the vibe with luck. In their roles as dealers, vibes were thought partially responsible for both avoiding apprehension via undercover infiltration detection and financial success. Excessive drug use and greed

were said to be "vibe-killers" that brought about the eventual arrest of most informants. The consensus opinion concerning being busted was "I got myself busted" or "I should have known better" rather than crediting good policework.

> "The police are a bunch of dumbshits. Most of them are cops because they couldn't do anything else or they think it is cool. The only way they were able to get me was because I got so strung out (on cocaine) that I no longer had the ability to distinguish between safe people and narks. I got sloppy and then I got tagged. In my earlier days, I'd never sold to half of the people I was dealing with at the end." Steve
>
> "I was really rolling at the end and had become very businesslike. I tried to structure things to be careful-three guys sold under me and others through them, some of which I never knew. We did a thousand dollars profit three or four days in a two week period so that became the goal. I did a lot of risky deals to reach that $1,000 mark. I sold an ounce to a nark that a friend of a girl I dated brought over to my apartment once at a party about a month before. I sold it for $140 because that day we only reached $920. It was like I needed to reach that $1,000. Well, it cost me a hell of a lot more than the $80 difference." Barry

Such views not only relate dealer's opinion of the police but also convey the normalcy and expectation of informant presence in drug markets. Self-blame suggests the responsibility for busts rests, not with betraying snitches, but dealers' "uncoolness", an explanation previously seen as failure to follow basic dealing procedures (Langer,

1977; Adler, 1993).

As informants, vibes become significant in avoiding the related unpleasant contingencies of role disclosure and danger. Vibes that something is wrong, that conditions are assuming an unnatural sequence or that there is a basic sense of uneasiness, moved a few informants to terminate individual cases.

> "I'd been working a guy I met in a bar for about a week. I'd smoked a couple of joints with him in the parking lot and gave him a little weed my man (the police handler) had given me. His boss was leaning on him for me to set a deal, but the guy was real cagey and noncommittal. He wouldn't return calls on time and then called out of the blue wanting me to go party with him, and some other guy I'd never met. I think he found out about me from somebody else I'd busted and was going to beat me up." Keno

The next chapter describes some of the common problems of confidential informing that eventually result in the end of an informant's career, either by choice or termination. While difficulties of the practice are frequently discussed in terms of frustrating policework and are attributed to informant misconduct, no one has yet considered the problems of informing from the principal character's perspective.

Chapter Six

Raising Hell, Getting Screwed, Even, and Out

"It is the nature of the jungle, it is the risk you take for being involved and if you are dealing you should know that. If you are dealing and do not anticipate narks trying to get to you, then you are, and probably deserve in a way, going to get popped."

Miller: "What do you mean by 'deserve'?"

"Well, in any other type of a business, if you are ignorant of the realities and dangers of that business, you are either going to get in trouble or at least not do too good. Building contractors, they have to know about building inspectors wanting money for site approvals and how to deal with them - I think it happens some with most things.

Miller: "But how does that make it fair? I associate fairness with deserving something."

"There is nothing fair about it, it is dog eat dog and what I'm trying to tell you is that vice are the most vicious dogs of all because if they mess up they don't pay the price, they just start over with somebody else."

Keno

Confidential informing is a practice that has always been problematic and controversial. Informants regularly hustle, con, and lie to their police handlers. Many of them exaggerate case-related expenses and buy money. Skimming drugs from samples and authorized buys for resale or personal consumption is so commonplace and

uncontrollable that it is expected. As long as informant misconduct does not disrupt casework or a rouse scrutiny it is generally overlooked.

Informants can and do cause serious problems, however, that not only frustrate policework but place law enforcement in embarrassing situations that project unprofessional images. When a rogue informant rolls the dice and lies to the police who then act on that lie, by raiding a wrong address or entrapping citizens, law enforcement can be legally liable. There have, in fact, been several recent suits directly related to informant misconduct (Lee, 1993; Liability Reporter, 1986). Negative public relations is a particularly timely concern for law enforcement because most agencies are currently participating in the National Police Accreditation Program, attempting to come toward the objective of institution wide professionalism.

This chapter briefly surveys the leading problems common to the practice of confidential informing and explains, primarily from the informant's point of view, the underlying reasons. Why do informants lie and steal? How do they get away with it? What are the factors influencing an informant's decision concerning his conduct in the context of undercover casework? These are the questions addressed below.

Informant Misconduct

Confidential informants have considerable latitude in their work more so because of the nature of their function than by design. Police, as we saw in Chapter Two, consistently distrust their c.i.'s and attempt to maintain strict control, but this is impossible due to the clandestine nature of the illicit drug trade. Informants simply cannot be effectively monitored as they go about the business of identifying targets and

setting up deals, tasks that usually must be performed solo and in private settings.

Police resort to intimidation and/or promises in an effort to dictate informants' behavior. Scare tactics may be successful with naive informants but the experienced narks who facilitate the majority of cases come to realize that the police are dependent on them. Though careful not to be too outrageous in their conduct, c.i.'s become immune to agents' bully routine and continue at least for the short term.

Most of the informants I interviewed were "put in their place" from time to time. Coercion, be it real or perceived, makes the agent-informant relationship an awkward one. While some informants were plainly threatened with physical violence or legal penalty, others were unsure of whether they were just paranoid or had actually been threatened. As demonstrated in the following quotes, intimidation is often subtle.

> "He (an undercover narcotics agent) never directly threatened me, but said things that shook me up. I wasn't sure how to take it. He never said 'I'll do this or that if you scam me or lie to me'. It was always how he had to straighten out *another* one of his informants that was fucking around. I was never certain, but I was pretty sure he meant *me* because he knew I'd been completely setting up people that didn't really express or desire to buy and he was worried about entrapment." Melvin
>
> "I think deep down he (a narcotics agent) liked me and appreciated the cases I made for him. I told him that a suspect on a marijuana deal wanted some coke too, just to get the free sample. I sold some of it and did the rest and I think he found out because the guy I sold it to got

busted a little later and mentioned me as a possible suspect. He (the agent) told me I needed to get out after he met the dude who didn't know anything about the coke. My agent asked him 'So what did you think about the blow?' and the dude said 'What blow?' I was busted cold. He wasn't so much mad because I scammed a little coke, but it made him look bad to the other cops. He never said "You need to quit". Instead, he said how dangerous it all was and that I was becoming too well known." Elliot

The threats given the informants seemed deserved. Although they did not view their behavior as morally offensive or as acts of personal dishonesty, they nonetheless admitted to lies and theft in the context of casework. These misdeeds seem to occur at similar points in the progression of a case but do not fit a neat pattern. Every case is different and responsive to the personalities and idiosyncracies of informants, targets, and agents, as well as the dynamics of the rapport between these participants. Accordingly, an informant's lies and pilfering is often opportunism. For many, hustling while in the informant role is simply an extension of their abruptly ended drug dealing lifestyle. Jeff, a hardened dealer forced into informant service on three occasions, explained misconduct as a rather natural way of doing things:

"It isn't that you are trying to screw a certain cop or the cops in general. It is more of a matter of just doing the best you can for yourself and maybe even just trying to survive. You've got to remember that a lot of narks have just been busted and lost all of their money. Dealing is how

they make a living but they can't deal at the moment so they have to take advantage of every chance to make a little."

I asked him how they did it, being careful not to appear judgmental. Although he referred to other informants, it seemed the response was recollection of personal experience:

"Well, there's lots of ways, but you have to be very careful and sort of sense how different people and circumstances fit together. Most informants know a hell of a lot more about drugs and dealing than cops ever will and that lets them get away with things. But the cops still have the advantage cause they have information that the informant doesn't. They are always busting new people and pumping them for new information so they can check up on what their narks tell them without the nark ever knowing. After getting burned a couple of times, they learn how to lie to cops."

Miller: "How do you *learn* to lie to the police?"

"I know a guy that set up a couple of dudes but did it so nobody would believe it was a set-up, you know, entrapment. A real lousy grass patch mostly with male plants was harvested right before Halloween and the two dudes who got busted were just letting the informant dry it and store it there. It was hanging all underneath their house in a full basement. The cops were told they were big growers that had other patches too and had just taken the males to keep the buds from being full of seed. They got

slammed and of course cried it was the informant's stash. But in that case the people that got busted looked like the liars trying to get out of trouble because the informant made sure the cops saw them go with him to help harvest it, so the cops believed it was their pot."

Keno, an inner city informant, described a more common way that targets are set up.

"I don't know about the D.A. and all that, but for the drug fuzz (narcotics squad) entrapment boils down to did he (the target) want it and ask for it or did you talk him into it. A lot of cops cover their asses by having you (the informant) tell the person to call them and you give them his beeper number. If they call the cop it looks like it was their intent to get drugs to deal. That is what matters - whose intention it was. The main thing is to work it so they (targets) will act on the chance to make some fast money."

Miller: "How did you work it?"

"Everybody want money, but won't just put up $2000 or $3000 until they think it's safe and cool. So they are gonna ask a bunch of questions first. So, you sell the dude on doing the deal by saying what he want to hear. Some cops will fuck it up, though, their own cases cause they are control freaks. So, reversing a dude - what do they care if he is willing to go $1100 a pound for ten pounds of grass but not at $1300? I'd just promise the weed for the $11,000, but then have to argue and shit with the damn cops about they not getting two more thousand dollars when in one or two

days somebody is just going to hand over $11,000 and get arrested on a silver platter. So, you have to lie to the cops and say the dude getting busted only can get $11,000."

Miller: "That sounds like more of a problem with the police than with an entrapment issue."

"On the entrapment it just is telling the police it was the person's idea to do it, that's all. They will believe their informant over the dealer because they know you more and they need to make some busts. It ain't straight up lying, mostly just playing things up a little. I'd make it sound like somebody was a fast player whose man just got popped so now he was looking real hard and needed to score in a hurry when I'd have to really talk, kind of persuade, the person to doing a deal with my man (a narcotics agent). I'd always make it have to be in a hurry so the cops can't be checking it all out too much - either they want it or they don't.

In another case, an informant negotiated a reverse sting for a law enforcement agency and attempted to obtain a finder's fee from the target. Before meeting an undercover agent, and a take-down team that arrested him on a Saturday afternoon, the target wrote a $100 check to the informant for arranging the deal. Upon arrest, the target immediately "turned" and disclosed all the details associated with the deal including the check to the informant. The police were able to prevent payment by contacting the bank who kept the endorsed check as proof that the c.i. had received and attempted to cash it. Had the case been on a weekday, the c.i. might have had time to

get his $100 but his reliability was nonetheless gone. The informant, backed into a corner, argued that he deserved the money and, while $100 meant very little to the police, needed it. He was outspoken about the real issue at stake in this situation.

> "They didn't care about the hundred bucks, just that I didn't tell them about it. If I did tell them they would have wanted it. Later it might have showed up in court as evidence which would be total proof that I was involved. They got it anyway and the dude got a plea bargain so it never came out. But it wasn't even about them wanting more evidence for another charge or anything, it was about the cops showing that they have the upper-hand. It was stupid of me to try and cash it in the first place but I needed some money then. The main thing is this, though; if a nark can stay in for a while and not be dropped after making a couple of these kinds of mistakes, he can learn from those mistakes and then know what you can get away with." Jimmy

Informants lie to determine targets, by either exaggerating or minimizing a person's extent of drug dealing and level of assets. The literature on informing emphasizes that a major law enforcement and crime prevention concern germane to informant dishonesty is the protection of fellow criminals. Related to the topic of protecting criminal cohorts is the matter of the informant "double-agent" wherein a flipped man makes the best of his negative situation. The informant position can enable identification of undercover officers and tactics that can be publicized in the drug subculture and thus stymie vice work. This simply was not an objective of the

informants here, except on a personal basis.

> "I learned a lot about narcotics policing and dealing just from being around it. That is a big catch twenty-two, I think, for a lot of narks. They say to themselves, 'I know how they (the police) bust people now and will be able to deal safely because I know how they will come at me!' Cops aren't so much stupid as lazy, so they may rely on the same set up until everybody knows their game and it doesn't work anymore. But if you think about it, an informant can't do much damage people without saying 'He was a nark.' And even the nark is more apt to get busted again if he goes back to dealing because they (the police) know who you are already. I think that is what is really so bad about it (confidential informing). All these people, some of which are altogether set up, are charged with crimes and then the cops know them and are more likely to keep on busting them." Jeff

Most lies by informants are not grandiose schemes but minor untruths that are easily cross-referenced. Informants regularly lie about whether a suspect solicited or responded to a potential drug deal, typically stating or suggesting it was the suspect's intention to secure drugs for resale. The point is to establish a suspect's criminal intent and avoid hints of entrapment. In reality, informants come to know that all that really matters is whether a suspect will pursue the deal to the point of meeting an undercover agent to negotiate a deal. A second meeting demonstrates a suspect's willingness to offend and, for all of the origin of crime. The matter is often handled in a game of "I

won't ask and you don't tell" between handler and c.i.'s.

In addition to lies, informant misconduct often involves theft. Informants exaggerate expense money which, though technically is a misuse of public funds, is generally tolerated by agents if not too excessive or blatant. They also consume drugs both provided them as samples needed to facilitate reverse stings and from authorized purchases from suspects. For many, it is normal to do so since they have been wheeling and dealing to gain every possible advantage. But stealing isn't entirely a desire to obtain money or drugs; some informants seem to enjoy "getting over" on the police. One ex-informant I interviewed claimed to get something extra from every deal.

> "You usually play it straight the first time or two, especially with a cop you don't know just to see how he is going to be. After a couple of cases go down smoothly, he is trusting you and you can predict what is going to happen"
>
> Miller: "What do you mean 'what is going to happen'?"
>
> "Well, some cops search you both before and after a buy or meeting with a dealer, some just before or after, some at first then not when they know you, and some not at all. You have to know what he is going to do. And also how tight he is. Some want to watch or be very close to the scene and be right there two minutes after the dude's left. Others say 'Okay, it's 4:30 now, be there thirty minutes at the most and meet me back at 5:15. I *loved* those types of deals, especially when it was a coke deal. I'd ditch the dude after twenty minutes if it was a buy and get busy."

Miller: "Doing what?"

"One time I bought an ounce from this guy they wanted pretty damn bad. I took half of it and cut the other half with mannitol. The cops don't give a damn if the ounce you bring back is cut up or not - it's going in the evidence room as cocaine. They think more like 'How much is there? Did the c.i. take any?' I made sure it was right on the weight, cut what I took again however much and had at least a couple of eight balls to sell and one to do."

Miller: "Were you ever afraid they would figure out what you were doing?"

"Not as long as I kept making cases for them. They would never admit it in a million years, but you get a little flexibility when you're cranking."

While most of the ex-informants admitted that they enjoyed "criminal license" on occasion in regard to small sums of money and tolerance toward petty dealing and drug use, no evidence emerged of serious criminal involvement such as reported in Skolnick's study (1966). There, drug dealing and burglary was reported to be tolerated, suggesting that undercover men protect the informants that further the interests of their respective divisions. Nor did these interviews reveal any incidents, much less patterns, of obvious police protection. It has generally been thought that too close of a relationship between an agent and c.i. might compromise the agent in various ways, one of which is warning informants of threatening police activity. The informants felt that the opposite was more accurate; that agents hoped their informants would stay in trouble so that service might

be extended.

From the police perspective, typical informant misconduct is egregious because it confirms the anticipated stereotype more than the minute gains involved or the seriousness of the infractions. As one informant was told by his handler who found a couple of grams of marijuana in his shirt pocket taken from a sample to be provided a suspect:

> "I don't really give a damn about the bud. It's two joints worth maybe five bucks. But, if you will lie about this, you'll lie about big shit too and we just can't go on."

Technically, the police have the option of prosecuting informants that steal funds or drugs because both are state property. While there have been incidents of this type of legal action, no such incidents were reported in this study. The consensus opinion of the interviewed informants was that, in addition to the problem of misplaced trust, misconduct is inflammatory to the police because it symbolizes a lack of respect.

> "I think their basic attitude was 'Damn scumbag snitch trying to get over on me'. It was almost like a battle of wits and what really mattered, what it went back to was the control thing. You know, the authority freak mentality." Matt

Examining the Causes of Informant Misconduct

The trouble caused by informants tends to reinforce the negative police stereotype of them as morally inferior and criminal. Their regular lying, stealing and overall projection of a hustle and con behavioral pattern suggests that their misconduct is a

product of internalized criminogenic values and beliefs. The informants in this study did have criminal pasts and were, admittedly, manipulative and opportunistic. While it cannot be refuted that c.i.'s are often unscrupulous, their base moral outlook does not entirely explain the gamut of informant misconduct.

Some informants really do see cooperation with the police as a second chance, a bonafide opportunity to not blunder their futures with a criminal record. For others, the chance to skim drugs and money is tempting and something they would otherwise do if not for their recognition of the one-sidedness of real power in their relationship with the police.

> "There were a lot of times I could have controlled a situation and make a little money, but only an idiot would do it. You're going to get caught. I could sell a guy, say an ounce of coke for $1400 and tell the cop it was $1100, $1200, or however much. But why am I selling it? So the guy will call me back and say "That's some good shit!' and then cut a deal for a key (kilogram) or however much. And what's going to be the first thing that happens after he shows up to buy it and gets busted? He becomes an informant and tells them everything. All good cops ask particular things about the deal that I made $200 or $300. Its just too hard to do." Pat

The majority of informants come to realize that their improper acts are likely to be discovered and that, for many, detection could be disasterious. For a legally duressed informant caught lying or stealing, especially on multiple occasions, police handlers may decide he is just too difficult to work with and send him up on the charges for which he

was arrested. Mercenary informants can ill-afford, literally, to take chances if they hope to continue for any length of time.

Despite having all the cards stacked against them and all the high level of emphasis placed on control, informant misconduct is rampant. It is isn't a simple matter of informants are basically crooks, then why else do they do it. Below, the informants offer an alternative explanation of their underhanded behavior.

Informant work, and drug enforcement in general, revolves around individual agent-informant relationships. Even in relationships judged sound by both parties, a great many informants will cause problems and jeopardize cases. But when informants, particularly mercenary informants who do not "owe" the police anything, begin to observe and sense that they are being treated unfairly it is almost certain that problems are forthcoming. According to informants, then, their behavior is responsive to police mistreatment. This mistreatment can occur in various forms and in countless events, but appears to fit into one or both of two broad, interrelated categories: 1) broken promises and 2) police duplicity.

Broken Promises

Broken promises undermine informants' faith in their handlers and extend beyond the focal point of the assurance. According to the sample of interviewed informants, agents will promise whatever is necessary to ensure an informant's cooperation even if there is no intention of fulfilling the pledge. The two most common unkept promises concern payment and case events. As discussed in Chapter Four, informants are regularly underpaid. Sometimes they are not paid at all, a particularly disturbing point

that greatly irritates informants as related below:

> "Helping them was my job and on some cases I spent a hell of a lot of time. Hanging out with people I couldn't stand and having to pretend to like and agree with what they were doing. Four or five times I worked cases in trailer parks. I watched people shoot up and had to come up with all kinds of excuses why I didn't want to. Rednecks would beat the hell out of their wives or girlfriends right in front of me and then laugh about it. I've seen little kids do drugs and watched backward people actually move their damn furniture back in their living room so that they could fight pit bulldogs with blood flying everywhere. Those type of people play with guns too, so I was very stressed out just being in that scene. And if they ever learned that I was a nark, well it wouldn't have been cool. So, after going through all of that shit and making cases against some of these people that deserved it because they really were sub-human - I took it very personally when they (the police) treated me like one of them and gave me some bullshit excuse why they couldn't pay me or how they were going to pay me later when they promised up front a certain amount for the case." Barry

Based on the experiences of most of the informants, problems with compensation seemed to follow a general pattern. Most informants were paid in full at the very beginning of their service under a fee arrangement. But as soon as they began to exhaust suspects or became known as a nark in their respective drug dealing environments,

payment levels began to trickle off. Monies not delivered were replaced with various promises that shifted blame for the shortage away from the immediate handler to someone else so as to preserve the agent-informant relationship. The informants believed, then, that officers attempted to gauge the length of their productivity and when they could no longer facilitate as many or as large of cases payments were seen as a bad investment.

> "You see, the cops don't see it as just paying you for the work you already did, which they owe you for because you did it. They say 'Okay, let's pay him this time because he can do two or three more.' So, if they don't pay they know they won't get the extra cases." John

Some informants, realizing what was transpiring, resorted to counter-manipulation.

> "They make it so that you *have* to lie just to get them to do what is right. Before a case wrapped up I would always mention one or two deals that were going to be easy and big money. That way, I'd get paid what they owed me because they would want the chance to seize more money. It was a negative thing all the way around because then there was the pressure to go find somebody and construe things like the situation you had already made up. What informants do may be seen as betrayal and all that, but informants are more honest than police. The police plan out in advance, I think probably just about every time, how they are going to use their informant and at what point to do it." Jimmy

Informants voiced that police also regularly broke promises (i.e., lied) about case

events. Informants understandably felt that they had a right to know precisely how a case would progress since they were typically the person most immersed in the undercover setting and thus shouldering most, if not all, of the risk. They related that the police often seemed to enjoy withholding decisions concerning details (e.g., prices of drugs, time/location of meets with suspects) as much out of a sense of perceived spite as for security reasons. An interview with a long-time informant who had worked with seven different law enforcement agencies demonstrated how frustrating such situations can be:

> "They make it very clear that you are not a cop and that they will tell you what is going to happen. It is all kind of bullshit and if they ever stopped and analyzed their own behavior, they would see what fools they make out of themselves. Here I've gone and found the suspect and negotiated the deal and this guy (narcotics agent) all of a sudden storms in like he's done everything and I just maybe told him who to check out or something. As soon as the suspect is willing to meet with the undercover, they treat you like shit because they think they can take over then. up until then they treat you like you are part of the same team, but as soon as they *think* they don't need you they start saying 'we' instead of 'us'."
>
> Miller: "What exactly do you mean when you say they 'think they don't need you'?"
>
> "I have seen the cops fuck up a lot of cases that would have been very easy to work if they would listen to the informant. The police do not like

to listen to an informant's opinion of a situation because they think they are lowering themselves to listen to a snitch when they are these big, important professionals - who are a bunch of dumb-asses that try to do street things by the book. The informant started the deal, has spent a lot of time with the suspects, and knows the cover story real good because it his ass on the line - so he is less apt to contradict himself and mess up the deal." Albert

Although withholding information or changing tactics at the last minute may be counterproductive for casework and make informants feel devalued, a more serious issue is case event changes that put an informant at risk. Sometimes officers change tactics and do not inform the informant. If the change occurs in the context of a reverse sting, it may not physically involve the informant but is still a weighty point. Informants must fabricate stories not only to facilitate a deal but also to provide a cover that diverts suspicion away from them as the nark. When police change the time or location of a take-down or even a preliminary meet, an informant may either be in the wrong place at the wrong time or verbally give himself away with an obvious bogus cover story. Not being informed of such a basic and important change communicates to informants "You are inconsequential, your safety does not really matter, and our relationship is superficial."

In situations where informants are working in deep cover, changes can directly impact their personal safety. The following incident demonstrates how blatant a disregard drug squads sometimes have for informant protection. After facilitating a large

marijuana eradication case by leading growers into a patch where armed agents were waiting, an informant was "burned" -the term in the drug subculture for detectives that expose their informants identity. The informant was promised during planning stages of the case that at the point of arrest he would be ordered to the ground, handcuffed, and treated the same as the other real growers. Moreover, to ensure protection of his identity, he was promised that he would be booked and temporarily jailed in view of and with the others so that there would be no immediate reason to think he was the nark. At the time of arrest, however, the officers came over and said "Good job", calling him by his name and offered a drink of water from a canteen. The c.i. in this case remembered that the growers wanted to kill him and that he was forced to move his family to another town posthaste.

Police Duplicity

After several broken promises, informants begin to question their arrangements with the police. Their realization of agent duplicity is particularly bothersome, especially for informants that believed their association with a handler was one of genuine friendship. This consciousness was not usually an immediate riposte to any one act, but a general summation of officers' actual opinion of them. Of course, certain cases provide the events disclosing agents' *real* inclination toward informants. Barry, a mercenary informant that contacted agents on an occasional basis over a two year period, explained how the reality of his situation surfaced:

> "They talked really bad about informants and dealers all the time when I was with them. They said things like 'neanderthal, scumbag, and loser'

and just basically demeaned people all the time. I sort of always took it like it was the *other* people and not me. One day I was riding down the road with my undercover and he got a call from another undercover. I could hear what the other guy was saying because it was one of those cellphones that sort of echoes enough to hear the conversation. He asked my undercover if his 'fucking snitch' was with him and my guy just said yes. They talked some more and there were a couple of other insulting comments. It let me know that this guy didn't really give a damn about me and that we weren't tight, he was just playing me."

The informants recalled how their handlers feigned friendship in a convincing manner. Telephone conversations and personal meetings often began with agents demonstrating concern about the informant's well-being. Customary inquires about the informant's mindset, family and legal status or progression of his case (when relevant) conveyed a message that the relationship was more than business, especially if it was reinforced with something tangible. One informant reported that an agent helped him out from time to time when he was desperate to provide basic necessities, such as food and diapers, for his family. Several drinking sessions with agents were initially misconstrued as socializing.

"If somebody is partying with you regularly, then you are usually friends - that is how most people become friends. But I caught a clue and knew that this dude wasn't wanting to really be friends, it was a couple of things. One, he thought it would loosen me up and I'd be more

cooperative and agree to whatever he wanted me to do. That is a fucking insult when you think about it, it is kind of like trying to get your date drunk to take advantage. Also, he was a big drunk - a lot of the undercover cops I was around were always drinking beer either in their cars or when meeting somebody to set up a deal. They thought it made them fit in and not be suspected, kind of like a substitute for not doing drugs." Scott

Regardless of the circumstances unique to each case, informants, like any normal person that has been deceived, feel betrayed and used by their agents. The falseness of perceived, and often desired, friendship is a biting affront that is not easily accepted. Upon detecting and then, through experience, confirming hypocrisy, informants must decide a course of action. While some informants just take the abuse and exploitation, others do not. Even those aware of the true police attitude find it increasingly difficult to continue in a faithless and unrewarding relationship. Because so many informants are underpaid or never paid, their continued participation is often a direct result of the friendships they believe have developed with undercover agents.

"I wasn't really making shit, but I liked the action and it made me feel good to help him (narcotics agent) out. I thought he appreciated what I was doing, but he really thought how funny it was he had played me and got me to do what he needed." Kevin

For agents like Kevin, continuing to work as an informant after realizing he was little more than a pawn was disheartening and resulted in a lack of self-respect.

"It is a time in people's lives when things are already not going good. The fact that you are an informant in the first place says you either recently got busted for drugs or you otherwise don't have a decent job. You think of the police as right and law-abiding, you know, all that upstanding citizen crap. So, it makes you very mad at first and then cynical to see how they really are." Jimmy

Because of the power differential inherent to the agent-informant relationship, many informants either quit the role infuriated or decrease the level of assistance provided the police. Others, addicted to the lifestyle or dependent on the money, choose to continue. It seems that it is these informants, the ones who continue even after they feel they have been cheated, manipulated, or otherwise used, that cause serious trouble for the police.

Getting Even

The informants claimed that, because of the unfair treatment they were subjected to by narcotics agents, their misconduct was rarely an act reflective of their personality or life view but a reaction to mistreatment. It is important to remember that even though not all confidential informants are genuine drug dealers, some are clearly users that are legally entrapped and then forced into informant service, virtually all are generally familiar with the drug scene. In this scene, competency, social acceptance, and a certain amount of self-respect are attached with "being in the know." Being dubbed a sucker as someone that is easily cheated in a drug deal, easily lied to, or taken advantage of is considered a meaningful problem.

Informants, as members of the drug subculture, take police deception as a direct

personal insult - a challenge that must be met. Because the police enjoy the support and authority of law, a direct confrontation is not possible, a fact that informants recognize. By remaining in the role, informants attempt to get even, to recover the things promised them but not delivered. They reason that alternative outcomes in prior cases means that something is owed them, often rightly so, and their action is a simple means of taking matters into their own hands. The responsibility for their behavior, then, lies with the police and is a natural response.

> "They made me so damn mad I didn't know what to do. I wanted to screw them anyway I could, but there is only so much you can do in the position. So I started lying to get extra money for this and that and doing more of the drugs I bought for them they I ever delivered. Somedays I didn't really want to even do the drugs, but I knew they would search me and I didn't want them to have it so I just got high." Barry
>
> "If I take $50 or some pot, that is $50 or pot that they are out. But if they promise me protection and then do not provide any at all whatsoever, that is my life at stake very possibly. And that says to me 'You are expendable, your life doesn't mean much to us'. Now if it was one of their fellow officers there would be all the protection that anybody would ever need. I hated them for it, I still do." Keno

I asked one of the above informants how he handled his temper and emotion regarding police mistreatment. In addition to explaining that stealing and lying were reactions to get even, he also admitted to intentionally spoiling cases.

"I wanted to do whatever I could to hurt them after they burned me (exposed identity as an informant). I thought about ways of getting them in a dangerous situation and leaving some cop hanging, but they only showed up to get the money and arrest - I did all the real work. Plus, they always had back-up protection anyway. I thought about giving them the wrong address to serve a warrant but these cops didn't want to do warrants, just reverses. I couldn't just take it and I couldn't really do anything to them, so I just lied about what things cost and got all the money I could out of them until I was ready to quit. Then I sent them on a wild goose chase to meet a dude in another county, it was beautiful."

Miller: "What was beautiful about it?"

"This guy I had busted knew that it was me and wanted to get me back. I had quit dealing but still got high at parties and with old friends so a lot of people thought I was still selling, but just being extra careful and cutting back some since things were hot after my bust. This guy tried to set me up by pointing me out to a (neighboring county sheriff's department) undercover cop. This dude came up to me and bought me a beer and asked after a while about scoring some grass. I told him I knew a dude that could get him all he wanted for $1000 a pound. To make the story a little shorter, I hooked him up with my undercover who thought he was going to sell some dude fifteen pounds, seize a car, get $15,000, and make a big arrest. I enjoyed just fucking with them and knowing that

two cops showed up to bust each other."

The trouble informants cause, then, is not altogether a function of their low moral constitution, but also a reaction to police *triggering mechanisms* that invite, if not ensure, problems. Sooner or later, even the most resilient c.i.'s, despite money they may receive or other intangible benefits, realize the one-sidedness and futility of butting heads with the police.

Desistence

Informants have different reasons for discontinuing. Some can not take the pressure and stress associated with the constant doubt of detection. For a few, this paranoia had been intensified by threatening acts. Although the literature implies that fear of physical harm is a primary consideration, none of the informants I interviewed had been assaulted or involved in physical altercations that they directly attributed to their informant service. A more common form of retribution against them was vandalism, especially damage to their homes and vehicles. Fourteen informants reported damage to their cars (e.g., broken windows, slashed tires, and body damage such as scratched paint jobs and dents) and were quite certain that people they had set-up were responsible. Four related damage to their homes: a bucket of paint thrown on a front door, bricks cast through windows, and two mailboxes destroyed. Several reported a series of telephone calls where the caller would hang-up and five received threats over the phone. Ware remembered how disturbed he became over one such call:

> "A caller whose voice I did not recognize said, 'If the police don't get you then I will. You'll never see your next birthday.' I can still remember

how freaked out I was. I went and got my pistol and looked through every room in the house and then left and went to my cousin's house. I wasn't comfortable staying there again for a long time, never really. I didn't sleep well at night and was generally pretty leery. I got an ulcer too."

Thus, some informants decide that the combination of stress from past cases coupled with present case pressure is just too much and choose to get out.

The alluring lifestyle motive that explains many snitches participation, especially continued service, seems to fade over time. Although snitching keeps a person "in the scene", his participation is still limited. When dealing drugs illegally, the informants had complete control of their operations, from buying bulk quantities, transporting, setting prices, and actually selling. In dealing drugs legally for the police, in contrast, informants are limited to the negotiation of deals meaning they must present a general impression of holistic involvement. This may become so taxing and require such constant justification to former associates that the benefits of the lifestyle are no longer worth staying in the role.

The lifestyle perpetuation motive gives way to the realization that as an informant they can only be partially involved "in the scene". They come to see themselves as the fake's they are.

"At first, I got a rush out of negotiating a deal, working out the problems, and setting people up. It was the same kind of excitement from making a big buy safely or selling a quarter pound of grass to some dumbness for

$500.00 or $600.00. But after a while, you say to yourself 'this is all bullshit.' Everything, even the deal you are trying to sell, is fake. You can control some arrests and seizures as an informant and make a little money, but you can never be a real player or get any bigger." Jeff

As the thrill of being around drug dealing environments is replaced with broken promises and empty pockets from nonpayment, informants decide it is time to leave the role. Desistence is typically an uneventful close to an informant's career; most just simply stop calling their agent and find something new, often legitimate, to do. Despite Hollywood portrayals of undercover men "putting the squeeze" on sleazy, criminal types for information and cooperation, the informants here reported that their agents basically just let them go. A few received requests for additional help with cases and some received phone calls checking on them to see why they had suddenly disappeared. About half of the informants made excuses why they were quitting and about half told their handlers some variation of "It just isn't worth it anymore."

Chapter Seven

Summary and Implications

This study has examined the practice of confidential informing in the context of contemporary drug enforcement. The topic has been virtually ignored by social scientists despite its apparent significance to criminal justice. The study is novel in that it presents the first basic description of confidential informing from firsthand accounts. No where else in the social science literature is there a systematic statement on informing based upon a comparable sample of informants. This chapter summarizes the primary findings and considers their implications for undercover drug enforcement operations and for the sociology of policing.

The findings confirmed much of what is thought to be true concerning the practice of confidential informing but refuted some basic assumptions. The typology of motivations for serving as an informant found in the police science literature, for example, is too encyclopedic and thus misleading. In reality, it appears that nearly all informants assume the role via legal pressure from criminal charges. The primary reasons for continued participation after the general standard of "substantial assistance" to the state has been met are money, lifestyle perpetuation, and friendship. The friendship motive provides insight to both the volatile lifestyle of confidential informants and their police handlers.

The general stereotype of informant as criminal was largely confirmed in this study, but this does not always equate with moral inferiority. Many of the informants I interviewed had been set up, in a sense they had been legally entrapped, and then

forced to participate in the perpetuation of a cycle wherein additional people are involved in drug crime and then too coerced into informant service. Many of the acts performed by these young and middle-aged men were deplorable and treacherous. Not to rationalize their behavior but to more fully understand it, their actions are best explained as the basic human instinct of self-survival. Far worse was the revelation of police duplicity - which is shocking because law enforcement, in dealing with informants, often sinks to a criminal standard and assumes the same traits for which they so regularly and enthusiastically degrade snitches.

At the end of each interview, I asked the ex-informants to comment on the overall significance of their undercover performance. A range of responses revealed remorse for the people they had injured and extreme cynicism for law enforcement in general and drug enforcement in particular. They had been on the inside and had seen the truth of the drug war firsthand. They were its real frontline warriors, little more than cannon fodder, who now knew the futility of it all. The majority provided strong evidence that drug enforcement is busied with concerns other than actually minimizing narcotics and related crime. Witness the following summations:

> "It wasn't about crime. I didn't see it so clearly at the time because I was so caught up in the day to day action. About two months after getting away from it all I realized that after working twenty-two cases and getting almost thirty people arrested and God only knows how much seized, I was the biggest criminal involved in anything I did. We busted people that could be set up, but they were harmless. None of them were dealing at

the level I was when I got sucked in." Dave

"Drug enforcement is absolute and utter bullshit. It is a fishing expedition for whoever will bite. Hell, if a real druglord came up to me and wanted to buy out the evidence room on a front, the case wouldn't go because there wouldn't be any money to get - even though it would be a slamdunk conspiracy case." Jamie

"At the time I was doing it I just kept telling myself that somebody had done it to me whenever I felt guilty. Knowing I fucked up some people's lives really bothers me from time to time. Most people that I had busted probably wouldn't have been arrested if I didn't do them. They were just trusting people that bought into some sort of common bond among everybody in the party scene. A few might have eventually tried to make a big score (of drugs) but they didn't really know anybody. No matter how you cut it, two wrongs don't make a right." Jim

Confidential informing is full of moral ambiguity and duplicity. Most of the informants I met had insulting views concerning narks and, prior to their arrests, had sworn to never snitch. When push came to shove, they all capitulated.

Snitches are despised because they betray others; yet detectives attempt to betray informants anyway they can to secure their cooperation. Whereas informants, because of the current drug enforcement strategy, more often than not seek to involve strangers, narcotics agents routinely feign friendship with informants who are both fearful of and dependent on them. It is ironic that detectives laughingly exploit and betray their c.i.'s

given that it is this same moral offense that marks them subhuman by the standards of the police fraternity.

The concept of friendship is important in other respects as well. Because all of the ex-informants in this study were either previous drug dealers or otherwise engrossed in a drug subculture, information also emerged on the nature of low to mid-level drug dealing. Friendship and desire for social acceptance proved to be a powerful factor that demonstrates once again, the well-known force of informal sanctions. Had the subjects not have been dealers they would have never become informants; a fate that resulted from a quickly found sense of popularity associated with the drug scene. This same social need was a major concern as these men served as informants; detection as a nark was dreaded because of a fear of social ostracism more than fear of physical harm.

The extent of informant involvement in undercover casework is a telling finding enlightening of the controversial and problematic nature of "working informants." Based on the interviews, it appears that it is the c.i. who is performing an increasing amount of undercover tasks while sworn agents assume a more managerial position. According to the ex-informants they were alone in an undercover capacity with suspects in any given case much more than detectives. Thus another irony; while narcotics agents emphasize strict control of their informants, it is actually the informants who seem to control undercover operations.

Undercover casework, from target selection to deal negotiation and manipulation techniques, was clearly shown to be heavily influenced by confidential informants. The manipulative mind set necessary for such work and the neutralization of guilt emerged

as obvious aspects of the informant experience. Criminal and opportunistic, many informants' low moral outlook leads to problems of informant misconduct. The two most common problems are lying and stealing. While most informants enjoyed autonomy in regard to minor legal infractions, no incidents or patterns of serious "criminal licensure" were reported. Likewise, no evidence was found of either gathering information on police operations for dissemination to the criminal community nor attempts to compromise an officer.

Implications for Police Practice

One of the most significant findings concerns police triggering of informant misconduct. Broken promises concerning protection and payment portray the police in a negative light and suggest that not all of the responsibility for problems in the agent-informant relationship and in the practice of informing rests with the "low-life" snitch. Rather, as the interviews showed, many of the problems they caused were acts of frustration over real and perceived mistreatment. In effect, the problems that informants cause are often direct attempts to effect a degree of equity in an unsatisfactory business exchange.

The problems common to confidential informing were shown, not just from the conventional police perspective, but also from the viewpoint of the informants. The study indicates that while a variety of factors, ranging from lifestyle burnout to paranoia, may motivate the end of an informant's career, police instigated problems add up to eventually prompt desistence. Informants and policemen are strange bed-fellows in the first place, but regular comment from different informants from diverse sections of the

country provide compelling evidence of police usury. Of course, confidential informing defined in its most basic terms is a state legitimized form of servitude, but that does not justify unprincipled police behavior.

All informants may be subject to unfair treatment. Should it occur early in an informant's career he will likely leave the role upon having his criminal charges lowered or dropped. It is more significant for the police in technocratic terms when productive mercenary informants are all but driven to quit. The culmination of degradation, little or no payment and protection, and most of all the realization of false friendship moved many seasoned, reliable, c.i's to quit.

Implications for the Sociology of Policing

The evidence presented here strongly suggests that traditional drug enforcement priorities have been replaced with newer, more nebulous, goals. The necessity of employing the controversial, informant-driven sting strategy, to the near exclusion of regular tactics such as serving search warrants and buy-busts, is plainly problematic in terms of state facilitated and even fabricated crime. In this study alone, scores of citizens were involved in crime, some of who were active drug scene participants, but others were clearly not. The informants here demonstrated how, through their cooperation, the police *legally* circumvent protection afforded citizens and render entrapment a non-issue.

More disturbing is the impact of the confidential informing-asset forfeiture symmetry on police ideology. This may seem an overstatement since informants, especially toward the objective of generating revenue, are most institutionalized in drug

enforcement divisions. But the impact of informant-based narcotics policing is such that it radiates beyond the concerns of vice divisions to redirect the outlook of policing as a whole. This general shift can be thought of as a commercialization process wherein crime becomes a commodity rather than an absolute consideration. Largely an unintentional consequence of the drug war (Miller and Selva, 1994), this commercialization and commodification trend has resulted in a situation that tenders police with degrees of political and financial autonomy unprecedented in recent American history. The police, for at least the last five decades, have been regulators of our free market economy but not direct participants in it. That is no longer the case.

In a democratic society the ideal of law requires that police practices, in theory and appearance, be oriented toward the sanctioning entity of legal norms. Historically however, police behavioral patterns have been determined by the interests of larger political systems of which the police are only a part (Haller, 1996). Such a statement might imply that informants are merely used by the police who, in turn, are manipulated by their political superiors to the interests of a stratified social order. But the acquisition and control of some political power by the working and middle classes has increased the accountability of the criminal justice system. Accordingly, the criminal law and its enforcement (including confidential informing) should reflect some of the public viewpoint about the nature of law enforcement (Lynch and Groves, 1989).

In theory, taxation gives the public a voice in police operations, but this voice is hushed somewhat when enforcement agencies become less dependent upon public monies. Police behavior at the local level is known to be a function of a department's amount of

fiscal autonomy (i.e., financial freedom from appropriated funds), the level of which has been seriously linked to informant-based policing strategies, both here and elsewhere (Miller and Bryant, 1993; Janzen, 1992). The more a law enforcement agency is self-funding, the less answerable it becomes to either the upper class or the populace and the more its operations, especially those conducted within undercover divisions, can chase self-serving interests.

Under informant-based policing, law enforcement appears analogous to private sector business. Consider the parallels: 1) criminals are deemed "targets" that, like customers, signify profit, 2) confidential informants as commissioned salesmen, 3) sworn undercover narcotics agents as store supervisors and 4) police administrators as district or regional managers. The negative impact of this commercialization process is veiled by impressions of drug war accomplishments shown to the public on television shows, like "Cops" that glamorize undercover cops as our champion drug "warriors", and in newspapers.

More often than not, the information disseminated to the public via these sources is culled and selected so as to convey the "right" message. A medium level domestic marijuana eradication case from my informant experience evidences the point. Around thirty average sized plants were removed and soon destroyed next to a cleared place in a remote wooded area where they were discovered. Newspaper accounts two days later reported the seizure and burning of a hundred pounds of marijuana, a gross exaggeration and downright invention since the plants were never weighed. Another similar case, in which eradicated drugs were weighed, also shows the intent. A supervising agent told

coworkers to "weigh the rootball and all" so that heavy clumps of dirt would be factored in to the total marijuana eradicated. Beond the obvious goal of generating income, the commercialization trend impacts the police relationship with the public.

Such misrepresentations serve two ideological purposes. First, they give the impression that the drug problem is critical and that resource allocation should be so directed. Second and relatedly, support is created for drug enforcement. This can be judged deserved given the apparent good performance of undercover divisions. There is, then, a problem that we see and, given indications of success in its redress, respond to.

The reason that the commercialization process is out of control and continues to gain momentum stems from law enforcement's ability to maintain the appearance of productivity. Productivity, ironically, in drug enforcement is measured in terms of arrests and, in sync with the true objectives of many operations, seizures. But drug enforcement can arrest with a fervor and in so doing seize a great deal of cash and property without making much impact on the *real* illicit drug industry. A controversial federal case, United States v. Eugenio Llamera, Case N. 84-167 1984), demonstrates the distinction between drug enforcement activity and actual productivity. A female informant successfully "set up" forty men in typical reverse stings. Her scheme followed a pattern of seduction and then pressure, using sexual relations as leverage, to involve the boyfriend in a drug deal. The unsuspecting men were convinced to purchase drugs from undercover agents - the cases resulting in arrests and seizures of the cash they brought to the deals. The informant received ten percent of the seized buy money. All

the public heard about were the number of arrests and some of the seizures.

Unfortunately, untold numbers of additional citizens will likely fall prey to confidential informants. Asset forfeiture is now institutionalized and drives narcotics enforcement budgets and the monies cannot be obtained without informants regularly identifying targets. This study has exposed some of the abuses linked to informant-based policing operations. Because the study was conducted solely within the context of drug enforcement, there is no evidence to claim that the problems are present in other forms of policing; but the precedent for their rise has been established. Hopefully, dissemination of the information presented here will call attention to possible changes occurring within the police institution toward the end of social justice.

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Appendices

JFORMANT LETTER AGREEMENT

:: Investigation of [on-going] [nature of investigation]

:ar _____ :

.is letter is the written assurance and understanding of the State of Ari-
na through the Maricopa County Attorney regarding your cooperation
·th law enforcement in the investigation of the structure and potential
actual criminal activity being done on the part of [insert target].
The State is interested in obtaining accurate and complete information
out the above matters, and is willing to consider cooperation in these
vestigations as a factor in its future decisions regarding possible crimi-
.l charges against you. You are advised of your Constitutional rights to
:main silent and to an attorney, including, but not limited to, the fol-
·wing rights:
That you have a right to remain silent;
That anything you say can and will be used against you in a criminal
osecution, pursuant to and limited by the terms of this Agreement;
That you have a right to the presence of an attorney to assist you prior
questioning and to be with you during questioning if you so desire;
That if you cannot afford an attorney you have a right to have an at-
rney appointed for you prior to questioning at no cost to yourself.
You further acknowledge by signing this that no one has used any sort
violence or threats or any promise of immunity or benefit whatsoever
encourage you to answer questions, and that no representations have
·en made to you other than the representations set forth in this
greement.
You nevertheless agree that the State may use any information, leads,
·idence or witnesses supplied by you, that is, any "fruits" of your coop-
ation, in any way.
Within the limitations above, I assure you and agree with you that if
·ur complete and truthful cooperation implicates you in past crimes,
·ur statements themselves will not be used in evidence against you in
·y State criminal prosecution so long as the following conditions are
et:
1) Your statements are complete and truthful to the best of your
·owledge; and
2) For your information to be useful, law enforcement will need time to
llow up on it before possible defendants are aware you have given
·tements. So, as an additional condition of our Agreement, I will need
·ur assurance that you will not disclose to anyone (except your attorney
you retain one and then only within attorney-client confidence) the fact

that you have given statements or the contents of the statements or questions asked of you unless and until ordered to do so by a court. In consideration of this, and because of danger to yourself, any law enforcement people, including myself, involved in the follow-up will treat you as a "confidential" source, and will not disclose the fact of your statements or their contents unless and until ordered to do so.

3) You commit no criminal act except as specifically requested *in advance* by one of the Interviewers signing this Agreement, who will request such activity only to further the investigation and later prosecution of crime. If you commit any criminal act outside the condition set forth above, you are subject to prosecution for such act and this Agreement is null and void.

4) The State is opposed for reasons of principle to entering into Agreements with people who have directly caused a person's death or serious physical injury, so, although we have no reason to believe you have done so, we specifically exclude liability for directly causing death or serious physical injury from this Agreement. Offenses within these two excluded areas, if any, will have to be dealt with on an individual basis on their individual facts.

I emphasize that the protection against State criminal prosecution granted to you under this Agreement is in no way dependent or conditioned upon the substance of the testimony or other information you may hereafter provide to the State, except for the requirements of complete honesty and truthfulness, nor is it in any way dependent or conditioned upon the return of any indictment(s) or the obtaining of any criminal convictions against any individuals or entities. In short, your obligation hereunder is to tell the truth, the whole truth and only the truth. If you fail to live up to or abide by any of the conditions, these assurances are no longer effective and the State will proceed accordingly, including, if it is determined that you have lied, in a prosecution for perjury or false swearing. Since your fulfillment of your part of this Agreement will constitute a waiver of your Fifth Amendment privilege against self-incrimination, if you violate any provision of this Agreement, you will become subject to prosecution for having violated it, and any statements or information you provide to the State would be admissible in evidence against you, in addition to leads or witnesses gained pursuant to this Agreement.

In return for your cooperation, the State agrees that it [insert benefits] To gain information on [insert target] it is agreed that your cooperation includes infiltration of that group by becoming a full fledged member and that you continue to give information for a minimum of six (6) months from the date you become a member. As stated previously in this Agreement, you are not to commit any crime during this investigation. Furthermore, if you become aware of activity that places another in jeopardy of death or serious physical injury, you are to report that immediately to

one of the Interviewers signing this Agreement. It is also required under the terms of this Agreement that you shall have daily contact with one of the Interviewers signing this Agreement. I fully understand and agree that the State will not file charges on the condition that the terms of this Agreement are fulfilled.

It is also understood that this Agreement binds the Maricopa County Attorney's Office but that other jurisdictions are not bound by this Agreement as they are not parties to the Agreement and the Maricopa County Attorney's Office has no authority to bind other jurisdictions.

Your signature in the space provided below will confirm that the foregoing accurately sets forth the terms of our understanding. Except as set forth above, there are no understandings or agreements of any kind between the State and you in this matter.

This agreement and waiver is to cover all statements made by you and/or actions taken by you at the request of the undersigned Interviewers commencing at the time this Agreement is signed by the Interviewers and continuing until rescinded in writing by you or until superseded by another written agreement; or until the commencement of your trial on charges arising out of the above-mentioned investigation, whichever occurs first. Any modification of this Agreement must be in writing. No oral modification has any force or effect.

Maricopa County Attorney

by _____
Deputy County Attorney

ACCEPTED AND AGREED

_____ _____
Signature of Witness Date and Time

INTERVIEWERS

_____ _____
Date and Time

_____ _____
Date and Time

NFORMANT AGREEMENT AND WAIVER
"No-Deals Deal"]

_____, acknowledge that I have been advised of and fully understand my Constitutional rights to remain silent nd to an attorney, including, but not limited to, the following rights:

1. That I have a right to remain silent;
2. That anything I say can and will be used against me in a criminal prosecution, pursuant to and limited by the terms of this Agreement;
3. That I have a right to the presence of an attorney to assist me prior to questioning and to be with me during questioning if I so desire;
4. That if I cannot afford an attorney I have a right to have an attorney appointed for me prior to questioning at no cost to myself.

I further acknowledge that no one has used any sort of violence or hreats or any promise of immunity or benefit whatsoever to encourage ne to answer questions, and that no representations have been made to ne other than the representations set forth in this Agreement.

My consent to cooperate with the investigation of _____ s limited to consent to derivative use of my statements, and to the direct ıse of my statements for impeachment and to the direct use of my statenents in actions against myself for violations of any of the terms of this \greement. I do not consent to any other direct use of my statements nade pursuant to this Agreement against myself. I agree that the State nay use any information, leads, evidence, or witnesses supplied by me, .e., any "fruits" of my cooperation, in any way.

This interview is being conducted so that the State is made aware of all nformation I have in the matter of _____ \t this point, I understand that the State makes no promises or benefits egarding any future plea negotiations or sentencing recommendations in pending case].

I enter into this Agreement in the hope that my cooperation will be :onsidered as a mitigating circumstance by the State in any future plea ıegotiations in [pending case]. However, I acknowledge that the State re.ains complete discretion in plea negotiations and sentencing recommenlations and that the State has no power to assure that the Court will ·ven consider any particular mitigating circumstances or sentencing rec›mmendations. I agree that any favorable action by the State as a result ›f my cooperation is contingent on the State's evaluation of the truthfulıess, completeness and usefulness of my cooperation and that the State's udgment in all respects is final and binding upon me. In particular, I agree that any untruthfulness on my part will disqualify me from any benefit due to my cooperation whatsoever.

This Agreement and Waiver is to cover all statements made by me and/or actions taken by me at the request of the undersigned Interviewer(s) commencing at the time this Agreement and Waiver is signed by the Interviewer(s) and continuing until rescinded in writing by me or until superseded by another written Agreement or until the commencement of the trial in [pending case], whichever occurs first.

Date and Time	Signature of Witness
Date and Time	Witness's Attorney, if any
Date and Time	Interviewer
Date and Time	Interviewer

Appendix C: Informed Consent Forms

APPENDIX C

Informed Consent

My name is Mitch Miller and I am a doctoral candidate in the Department of Sociology at the University of Tennessee. I am conducting a study of police informing that involves interviewing individuals with knowledge of this subject. This study is scheduled to be completed by August 1995. The objective of this study is to examine informants' experiences with the police to observe the effect informing has on law enforcement. Another purpose is to explore various reasons why informing is so problematic for both informants and the police. Additionally, the study involves determining why people choose to help the police and the reasons effecting their decision to leave the role of informer.

Your decision to be interviewed is completely voluntary and there is no penalty for refusing to be interviewed. Interviews should last three to four hours and will be audiotaped. The researcher may also take notes. You may stop the interview even once it begins for whatever reason you choose without penalty or prejudice. If you choose to terminate the interview, the tape will be destroyed.

There are no risks associated with participation in this study and you may benefit by talking about your experiences and sharing your knowledge about the nature of confidential informing. Others, such as informants and police officers, may also benefit from potential changes resulting from this research.

Your responses will be confidential. Only the researcher, Mitch Miller, will have access to the tapes and knowledge of who was interviewed. This means your identity will not be disclosed. All identifiers (names, addresses, and other locations) will be erased from the tapes and replaced with a number. Within two weeks after the interview, the tape will be transcribed and from then on you will only be referred to as "Respondent #1 or #2, etc."

By signing and dating the form below, you are stating that you understand the above statements and agree to participate in this study. This form will be kept for three years. If you have any questions after the interview is over, you can contact the researcher, Mitch Miller in the Department of Sociology Main Office, 901 McClung Tower, Knoxville, TN 37996-0490 or by telephone (615) 974-6021.

X_____ Date_____
Signature

_____
Printed Name

Appendix D
Interview Schedule

Introduction and explanation of project
Discuss participant's rights and the informed consent form

Demographic questions
How long were you an informant?
For how many cases?
Who did you work with?

Entry
How did you come to be an informant?
Did you consider any other alternative?
What kind of deal was made about your cooperation?

Operation
What did you do at first?
Did the police point out suspects or did you identify them?
What things determined who you chose to set-up?
How were deals negotiated?
How were busts planned?
Tell me about the deal/takedown.
What did you do right after a deal?
Did you get what was agreed upon for cooperating?

Desistence
When did you get out?
Why?

Problems
Were there any problems?
How were you treated by the agent(s)?
Did this treatment effect what you did?
Protection?
Compensation?
How did you respond to unfair treatment?
Did you do anything to "get even"?

Conclusion
How might confidential informing be improved?
What do you think about your work as an informant now that it is over?

VITA

J. Mitchell Miller was born in Nashville, Tennessee on December 22, 1965. He received college preparation at David Lipscomb, graduating in 1984, before entering the University of Tennessee system. He received Bachelor of Science and Master of Criminal Justice degrees from Middle Tennessee State University in 1990 and 1991 prior to entering the doctoral program in Sociology (concentrating in criminology) at The University of Tennessee in Knoxville the Fall of 1991.

During his doctoral program, he served as the Research Associate for the Society for the Study of Social Problems from 1992 through 1994 where he enjoyed interaction with notable criminologists including William Chambliss and Albert Cohen. From the Fall of 1994 until Spring of 1996, he served as a Teaching Associate for the Department of Sociology at the University of Tennessee offering introductory courses in sociology and an advanced course in juvenile delinquency. He also served as a Lecturer at Knoxville College from 1991 through 1995 teaching courses in law enforcement, corrections, and social science statistics.

Highlights of his graduate career consist of selection to the American Sociological Association's National Honors Program (1993), the Academy of Criminal Justice Sciences' Anderson Outstanding Paper Award (1993), the Southern Criminal Justice Association's Outstanding Paper Award (1992) and Outstanding Graduate Student (1994), and a University of Tennessee Chancellor's Citation for Extraordinary Professional Promise (1994). He was also named Graduate Student of the Year by the University of Tennessee, Department of Sociology in both 1994 and 1995. He has published in various journals including the *American Journal of Criminal Justice, Justice Quarterly, Journal of Crime and Justice,* and the *Journal of Contemporary Criminal Justice*. His monograph *Gangs: A Criminal Justice Approach* was released by Anderson Publishing Company in the Spring of 1996. In 1994, he became the first graduate student to be appointed to the Editorial Board of the *Journal of Crime and Justice* and then assumed the position of Book Review Editor in 1995.

He joined the faculty of the Currell College of Criminal Justice at the University of South Carolina as an Assistant Professor in the Fall of 1996. He is currently studying the effects of drug control policy on ideology and practice within the police institution. His next book *Delinquent Behavior*, coauthored with Don Gibbons and Marvin Krohn, is forthcoming from Roxbury Press in 1997.