

DEVELOPING AND USING
UNDERWORLD POLICE INFORMANTS

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INTRODUCTION

The "Underworld Informant" is a person who is engaged in criminal activities or who, if not so engaged, maintains a close relationship with persons involved in crime and vice activities. Their use by the police for the purpose of conducting investigations has always been quite controversial. The American public, by and large, has a strong belief in "fair play" and the use of such informants is generally considered as being somewhat unfair to persons under investigation. Furthermore, civil libertarians believe that the use of underworld informants, especially in vice and narcotics investigations, lends itself to the entrapment of the persons under investigation, a violation of their constitutional rights. Finally, the prosecution's case may be tainted in the eyes of a jury whenever an underworld informant played a substantial role in the investigatory process, since the defense attorney will almost surely lead the jurors to suspect that the informer was permitted to continue his criminal activities during the course of the investigation.

Today, most of the written training materials on informants cover their motives, the way they should be treated by the officer, and how they can be developed. Unfortunately, these materials usually do not address themselves to the real "nitty gritty" of using informants, namely the operational procedures involved, precautions to be taken by both officer and administrator, and special problems which may be encountered through the use of certain types of informers. This document contains information not usually found in the available materials on informants. It is specifically designed to be used by officers of local police agencies or regional law

enforcement units. The lack of expertise in the use of informants is most evident at the local level and this document should be helpful to city or county law enforcement officers and agencies.

The Federal Bureau of Investigation and most other federal law enforcement agencies have always made extensive use of underworld informants, usually paying them for their services. On the local level, the New York City Police Department is one of the few agencies that has relied heavily on paid informers. While the budgets of federal agencies and that of New York City may contain ample funds to pay informants, most local police agencies can ill afford such expenditures. Furthermore, as the reader will see, there are other good reasons why local officers should avoid paying their informants. One reason that federal agencies use informants so extensively, is to infiltrate organized crime groups, such as the "Mafia" and large scale drug importing/dealing organizations, or subversive groups, such as the Ku Klux Klan and extremist/terrorist organizations. Local agencies will use informants to facilitate investigations, not as a substitute for them, and as such, will not have to rely as extensively on underworld informers as the federal agencies. Thus, the operational procedures of using informants will be somewhat different for local police agencies than for federal law enforcement agencies.

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NARCOTICS INVESTIGATIONS: DEVELOPING AND USING INFORMANTS

Narcotics offenses are usually categorized as "victimless crimes" by criminologists because they consider the offender and the victim to be one and the same. In murder, rape, robbery, burglary and theft cases there is always a complainant whose report will initiate the police investigation. On rare occasions, a close relative or friend will report the drug activities of a loved one to the police. However, in almost every case there will be no such complaint filed and thus the investigation of narcotics offenses must be initiated by the officers of a narcotics unit.

Because of the clandestine nature of illicit drug activities, the narcotics investigator will have to develop sources of information other than those used in routine criminal investigations. There will be occasions when police reports and other records, police officers from the investigator's own agency or agents from other narcotics units, and public spirited reputable citizens can serve as valuable sources of information for narcotics investigations. However, in most instances the narcotics officer will have to rely on the underworld informer commonly referred to as a "snitch". The value of this type of informant is that he is already a member of, or has access to, the secret society of the illicit drug trade.

While total reliance on the use of informants must be avoided, the underworld informer should be used to:

1. Obtain information on drug dealers, how and where they operate, and where they conceal the illicit drug supplies commonly referred to as "stashess".

2. Introduce an undercover agent to drug dealers and, if possible, to middle and upper echelon suppliers, sometimes referred to as "duking" the agent into the operation.
3. Make drug buys and conduct negotiations with dealers which will lead to the purchase of drugs by undercover agents.
4. Conduct surveillances in localities where unknown persons would not be able to operate or obtain neighborhood acceptance of and establish "covers" for agents by being seen hanging around with them.
5. Develop intelligence information for use in future narcotics investigations.
6. Serve as prosecution witness, but only if his courtroom testimony is absolutely vital in bringing about the conviction of a narcotics dealer.

Underworld informers will work with a narcotics enforcement agent for any number of reasons, but they will do so primarily for either revenge, money, or to avoid or lessen pending punishment. If it is for revenge, he may want to get even with a competitor, or with a dealer who sold him some bad drugs or cheated him out of some money, or with someone who may have done him some harm. The reliability of the informer whose motive is revenge or money tends to be rather questionable as he may fabricate information in order to achieve his ends.

The most productive and probably the least unreliable of the underworld informers is the one whose motive is avoidance or lessening of some pending

punishment. The drug offender awaiting trial, whether in jail or out on bail, is the easiest informant to develop. He will often approach the arresting officer and offer to work for him in exchange for a promise of leniency in his pending criminal case. Regardless of whether the informant makes the initial offer or the agent makes it, there are certain ground rules that the officer must follow:

1. Charges for which he was arrested must be filed and judicial proceedings should be carried forth.
2. The officer cannot make any promises other than to contact the District Attorney in the informant's behalf and any promises made, must be made by a member of the District Attorney's staff.
3. If the informant is still in jail and cannot make bail, the District Attorney must contact a judge and arrange for a reduction of bail.
4. Reduction of bail and release from jail must be arranged in such a way that other jail inmates will not suspect that he will serve as an informant.
5. Before any deal is made, the officer together with the staff member from the District Attorney's office must advise the informant what is expected of him and what will happen to him if he does not produce or double-crosses the officer.
6. It must be made perfectly clear to the informant that he will not be afforded immunity from arrest and prosecution for any

crimes he may commit during the time he serves as an informant.

Once a deal has been made, the officer must establish a harmonious relationship with the informant. The officer should strive to attain an atmosphere of mutual trust. He should never use such terms as "snitch" or "informant" in the presence of the informant or even when talking to other officers. Instead of using such derogatory terms, the officer would be well advised to use an inoffensive term such as "operator". In order to enhance a good working relationship, the agent must dig deeply into the informant's background. He must be tolerant of any cultural differences and avoid personality clashes. He should always be truthful with the informant and he must always treat him fairly. If there is a possibility that the informant will have to testify in court or if his identity as an informant may have to be revealed in some other manner, he should be so advised before he starts to work on any case to which he is assigned. He must be given enough information about the investigation and who is involved in order for him to be an effective operator. On the other hand, he should never be given any more information than absolutely necessary. If any arrests are made when the informant is present, he should also be arrested for his own protection. If he were not arrested, the others would quickly suspect him of being a police informer. His subsequent release should be carefully handled so as not to arouse the suspicions of those with whom he was arrested.

The informant who works for an agent in order to avoid punishment should not be compensated for his efforts. Once an agent starts paying his informant, he has set in motion a process that will continue as long as they work together. Occasionally, however, the officer may have to give

his informant some pocket expense money for the purchase of gasoline and other necessary expenses without which he would not be able to operate. If the informant has a family and is without an income, there may even be occasions when the agent will find it advantageous to purchase groceries for the family. In such cases, the agent should buy the groceries himself and then deliver them to the informant. If the officer were to give the grocery money to the informant, there is little likelihood that it would be spent for its intended purpose. If the informant is productive, such expenditures can and should legitimately come out of the agency's undercover operation funds.

Most officers would never dream of giving their home telephone number to their informants. However, once they have established a good working relationship, the chances of any harm accruing from the agent giving his home telephone number to the informant are infinitesimal. There will be occasions when the informant may have to contact the officer immediately at a time when the agent is off duty. If the call is urgent and needs immediate attention, valuable time will be lost by making the informant call the police station to request that the dispatcher or another officer contact the agent so that he can then telephone the informant. The dispatcher, or even another narcotics officer, may not see the same urgency in such a call as would the agent who is very familiar with the informant. Failure to give out his telephone number could actually hurt the agent. It could also cost him the opportunity to make a significant undercover drug buy or to make a substantial seizure of contraband.

Many officers believe that no one, including their unit commander, has the right to know the identity of their informants. While it would generally be unwise to reveal an informant's identity to a fellow officer, it is in the best interest of the agent for his commanding officer to know the identity of all of his informants. As a matter of fact, it should be departmental policy that the unit commander must maintain a file on all informants. If an agent were to be killed in the course of an undercover investigation, his informant might be the only one who could help to bring about the arrest of the killer. The unit commander's file should include a list of all active and former informants; their names, addresses, fingerprints, photographs, descriptions, and criminal records; the identification number of any cases on which they have worked; and of course, the name of the agent for whom they are working. In order to protect the informants, it is absolutely essential that the file be kept under lock and key, with only the commanding officer having access thereto.

The officer should keep similar records on each of his informants as well as a record of all of their contacts and all of the informant's activities in every investigation in which he participates. This will protect the officer if he ever has to justify his association with the informant. Such records may also keep the agent from being reprimanded by his supervisor if the informant proves to be unreliable. Furthermore, if the agent gives the informant any buy money, any money for expenses such as gasoline, or if he purchases any groceries for the informant's family, he should in each instance obtain a signed receipt from the informant. This will enable him to account for any funds disbursed to the informant and helps to protect him from charges that he is misappropriating undercover

operation funds. By keeping all such records with the knowledge of his informants, the officer is less likely to be double-crossed, especially when he uses informants who do not have criminal charges hanging over their heads.

Considerable caution must always be exercised in the use of informants. In informant buys, there is always the possibility that the informer may use part of the buy money to supply his own need for drugs or, if the amount is large enough, he may abscond with all of it. The agent must also guard against the temptation to let a really productive addict-informer keep a portion for personal use, of any narcotics he obtained in making a buy. The use of undercover operation funds to supply the drug needs of an addict-informer can never be justified. Furthermore, such a practice makes the agent a party to the illicit use of narcotics.

The narcotics officer must be very leery of the "walk-in" informant. What are the ulterior motives of the person who comes to the narcotics unit and volunteers his services as an informant? Has he been planted as a "double agent", giving information on one illicit operation, while keeping another group of dealers advised of any police activities against their organization? Is he setting up the agent to be "ripped off" (robbed) during a large purported undercover drug buy? These are only a few of the questions that must be asked when considering the use of a "walk-in" informer. This type of informant is the one who is most likely to get an undercover agent killed.

When using informants, the agent must constantly check and recheck all information in order to prove informer reliability. The untested informant

should be asked to identify any drug dealers he knows. Any information he gives can be verified by checking through the narcotics files, or by contacting other drug enforcement units, including state or federal agencies. The agent can also ask the untested informant to obtain a quantity of contraband in order to determine whether or not he really has a connection with an illicit drug dealer. With the informant who has been used on several previous occasions, reliability is established by the number of cases he worked on in which convictions were obtained, or the number of arrests and the amount of contraband seizures made that were based on information which he furnished.

Among women, prostitutes can make good informants because of their connections to the underworld. Unfortunately, in return for her help, the prostitute must be offered immunity from arrest for prostitution. The agent must, however, make it quite clear that crimes against her clients, such as extortion, robbery or theft, will not be tolerated and that she will be prosecuted for these and any other offenses she may commit while serving as an informant. The officer must also avoid any sexual involvement with such an informant or he will end up working for her, rather than the other way around. The wives of addicts can also serve as good sources of information. The wife whose family is dependent on her husband for food, clothing and shelter, will want to keep him off of drugs and out of jail. An agent should not hesitate to contact the wife of an addict when her husband is in jail on a minor charge or when he is about to be released from prison. She will usually know who has been selling drugs to her husband, where the transactions take place, and other details of such operations. She may agree to work for the officer if he can convince her that she can trust him and that he will try to help keep her husband out of jail. In such cases,

the officer should never meet the addict's wife at her home. Instead, they should meet in supermarkets or department stores. While the prostitute informant can be used to the same extent as any other underworld informer, the use of the addict's wife will be limited to the furnishing of information on neighborhood narcotics activities.

In most instances, informant buys are undesirable. If called upon to testify in court, the informer will have little credibility in the eyes of the jury. The use of informants is held to be repugnant by most Americans. Furthermore, drug users are known to be convincing liars and those working as informants are likely to have long criminal records, facts which a defense attorney will quickly point out to a jury. Generally, informant buys should be used only to "duke" an undercover agent into the illicit operation or to detect illicit drug dealers not yet known to the police. On rare occasions, however, circumstances may force a law enforcement agency to prosecute a case on informant buys. In such cases, very thorough pre-buy and post-buy searches of the informant and his automobile are necessary to raise his credibility as a witness. Even if the informant will not be used as a witness in court, any buys he makes must be preceded by and followed up with such searches. The informant must be strip searched in order to allow a detailed examination of his body, clothing and belongings. His automobile must be searched as meticulously as possible. The object of such pre-buy searches is to make sure that the informant did not already have drugs in his possession. At the time of the pre-buy search, all money and other valuables belonging to the informant must be taken from him and held by the agents until after the post-buy search has been completed. This is done to make sure that any drugs obtained could only have been purchased

with the buy money furnished by the agents. The post-buy searches are conducted in the same manner as the pre-buy searches and will enable the officers to testify as to the exact amount of narcotics purchased. They must also be able to testify that upon his return, the informant had no money in his possession. If he had any money at that time, he must have obtained the drugs without purchasing them. All searches must be conducted as close as possible to the place of transaction and as close as possible to the time of the transaction. If the informant uses his own automobile, there is some risk that the searching officers will not find drugs that may be concealed therein or that he will stop off on his way to the purported buy and obtain drugs from a source other than the one under investigation. If the informant is to testify, he should be required to submit a detailed written statement describing the transaction, including the time, location and names of all persons present. If all of these procedures have been followed, the informant's testimony will usually hold up, provided that the transaction took place within the view of surveilling officers. It helps if the agent provides the informant with buy money consisting of small bills and change so that the surveilling officers can observe the money being counted by both the buyer and the dealer. The surveilling officers will then be able to appear in court to corroborate the informant's testimony.

An underworld informant will be useful only as long as his identity remains a secret. Every informant should be assigned a code number which he can use when telephoning his agent at the police station and which the agent should use when referring to the informant in the investigation reports. "X-15" is an example of such a code number. When using the informant in buy cases, his identity may be protected by:

1. Not filing cases for prosecution where the informant was present when the agent purchased drugs.
2. Delaying the grand jury presentation long enough so that the dealer will not remember for certain who introduced him to the agent.
3. Having the agent make several buys after which he introduces another agent to the dealer. The second agent will also make several buys and will subsequently testify thereto. The identity of the original agent will have to be revealed in court while the informant's identity will have been protected.

Because the accused has a right to confront any witnesses against him in a court proceeding, his attorney can compel disclosure of the informant's identity if:

1. The informant was present at the time of the illicit transaction.
2. He played a material part in bringing about the transaction.
3. He might be a material witness as to whether the defendant committed the offense.

In order to protect the informant under such circumstances, the agent should have a prior agreement with the prosecuting attorney that he will move to dismiss the case against the defendant at that stage of the trial where the court rules that the informer must be named and produced as a witness.

The use of informants is controversial, repugnant to the general public, and always under attack by civil libertarians. The contemptuous attitudes

that will be generated by the mere use of the term "police informer", require that officers must always be judicious and ethical in developing and using informants. Obviously, there will always be serious questions about the ethics of arrangements, such as those that would allow a prostitute to ply her illegal trade in return for her services as an informant. Officers must always be on guard against the possibility that the informer was guilty of entrapment in making an informant buy. The rules on entrapment which govern the conduct of officers apply equally to the informant, since he is actually serving as a police agent. Ethics also demand that the police must exercise the precaution necessary to protect the informant from reprisals by the underworld. The use of informants should serve to facilitate police investigations and should never serve as a substitute for such investigations. Like it or not, the use of informants is vital to the suppression of clandestine narcotics activities.

THE USE OF JUVENILES AS POLICE INFORMANTS

In a comprehensive article on narcotics informers,¹ the author did not discuss the use of juveniles as police informants. The use of adult informants, a necessary evil in narcotics and vice investigations, is not nearly as controversial as the use of juvenile informers under similar circumstances. Juvenile peer group pressures, attitudes and behavior, and the "child protection" aspects in our juvenile laws, must be taken into careful account before considering the use of juveniles as underworld informers, regardless of the type of criminal investigation which may be involved.

The following cases will serve to illustrate some of the problems which are unique to the use of juveniles as police informants:

Several years ago, the body of a high school student was found hanging from a small tree on a golf course adjoining the homes of an upper-middle class neighborhood near the Lyndon B. Johnson Space Center. The victim's arms and legs had been bound with rope, his head was covered with a plastic bag, and the rope was tied around his neck and around a branch of the tree. The adults in the community were convinced that the boy had been murdered by

¹ Katz, Howard A., "Narcotics Investigations: Developing and Using Informants", *POLICE LAW QUARTERLY*, (April 1978), Vol. 7, No. 3, pp. 5-12.

some kind of "maniac." The high school kids in that community were just as convinced that the victim must have been a police informer who was killed out of revenge by the local "dope dealers." The police agencies in that area had not used the victim as an informant and, in fact, had never even heard of him. Actually, the forensic pathologists of the medical examiner's office determined that this was an accidental death caused by sexual asphyxia.²

Recently, a police lieutenant made extensive use of a female juvenile informant while he headed up the investigation of a high school drug ring. This investigation led to the arrest and conviction of several persons on drug possession and sales charges. The convictions were obtained mainly because the juvenile informant testified in court. At the conclusion of the trial, the informant and her family moved to a distant location. Defense attorneys have appealed the convictions on the grounds that the police had no right to use this

² Sexual Asphyxia - a loss of consciousness resulting from the type of sexual deviation wherein sexual arousal and gratification is achieved by choking oneself. When death occurs under these circumstances, it is often mistaken for suicide or murder. It is, however, an accidental death, disclosed by the ejaculation of semen in male victims.

juvenile as an informant, even though the lieutenant had obtained prior written parental permission to use her in such a capacity.

While the sexual asphyxia case had nothing to do with the use of a police informant, it should serve to illustrate that:

1. A police informant paranoia permeates throughout the student population where there is widespread drug abuse in the schools.
2. The death of a student under homicide-like circumstances will be quickly attributed to a suspicion that he had been a police informant.
3. Juveniles firmly believe that "dope dealers" will harm anyone they suspect of having been a police informant.
4. Considering all of these factors, and taking into account the "get even" mentality of juveniles, there is a real good chance that harm would befall the police informer once his role has been discovered by his peer group.

The case involving the lieutenant's school drug ring investigation illustrates the fact that, parental permission notwithstanding, the police can be faced with serious legal problems or technicalities through the use of a juvenile police informer.

If at all possible, the police should avoid using juveniles in the role of underworld informers. It is far better to use an adult informant or a police undercover officer when conducting investigations involving the

illicit activities of juveniles. Of course, this will require that the adult informant or the undercover officer must be young enough looking so that they will be able to pass for high school students. In those extreme cases where this cannot be done, and where the use of an informant is most essential to the investigation, a juvenile could be used, provided that:

1. Written parental permission has been obtained.
2. Official juvenile court authorization has been obtained.

It is important to note that both parental permission and juvenile court authorization should be obtained in order to protect the investigator and to assure the successful prosecution of any persons tried in court as a result of the investigation.

Parental permission will usually protect the officer from being sued by the ~~parents~~. However, it should be noted that parental permission actually has little, if any, legal significance. Legally, parents cannot sign away any of their children's rights, nor can they jeopardize the well-being of their children. Should the juvenile be injured while acting as a police informant, he can, through his parents, file a civil law suit to recover damages from:

1. The officer who used him as an informant.
2. Any superior officer who may have approved his use as an informant.
3. Any superior officer who, if it can be shown that he was negligent in his supervisory responsibilities, may have failed to approve the use of that juvenile as an informant.

4. The government entity for the police agency which used him as an informant.

Juvenile court authorization is absolutely essential since the juvenile underworld informer will have to associate with delinquents and will most likely be involved in delinquent activities. Under such circumstances, it is conceivable that, without court authorization, the officer using a juvenile informant could be charged and prosecuted for Contributing to the Delinquency of a Minor. Because our juvenile justice system exists for the protection of the child, juvenile court judges are very reluctant to grant official authorization for the use of a juvenile as a police informant. Without such authorization, a prosecutor would be most reluctant to go to trial in a case where the juvenile informant played a material part in the investigation. When such a case is tried, the defense attorney will attack the use of the informant without juvenile court authorization, and any convictions which may be obtained will surely be appealed.

Even when parental permission and court authorization have been secured, the police officer must take into consideration what may likely happen to the juvenile informant once his police role becomes suspected or is discovered by his peer group. There is the possibility that he could be killed. There is a good possibility that he will be subjected to violent reprisals. He and his family are likely to become victims of the most vicious types of harassment and their property will be damaged or destroyed by acts of malicious mischief. At the very least, due to the contemptuous attitudes associated with the term "police informer", he will almost surely be ostracized by those members of his peer group who are ordinarily good citizens and law abiding individuals.

The same rules and procedures that apply to adult informants must be followed in developing and using juvenile informants. The juvenile informant is more likely to fabricate information than his adult counterpart and thus he will be even more unreliable than most other informants. Accordingly, this will require that informant reliability be checked, double-checked and re-checked throughout the investigation. In addition to the normal procedures followed in the use of adult informants, the officer desiring to use a juvenile should, for his own protection, secure the written approval of his immediate supervisor. His supervising officer should grant this approval only on the condition that parental permission and official court authorization will be obtained by the investigator. The use of juveniles will require the tightest controls and closest supervision by police managers of the criminal investigation division.

For crime prevention purposes, law abiding juveniles should be encouraged to step forward and report any suspected illegal activities and the perpetrators thereof. This type of informant is highly desirable and the confidentiality of his identity can usually be maintained. Beyond that, the use of juvenile informants is quite questionable and the extensive use of juveniles as underworld informers is certainly not desirable. It really does not make good sense to use juveniles in such a manner when one considers the legal aspects involved and the personal risks that the informant is likely to face. Thus, the use of juvenile informants should be avoided if at all possible, and only the most emergent circumstances would justify using a juvenile as an underworld police informer.

THE USE OF PROBATIONERS AND PAROLEES AS POLICE INFORMANTS

Due to the special problems involved in the use of probationers or parolees as police informants, no reference was made to such persons in an extensive article on the use of underworld informers.¹ Convicted offenders who have been granted probation or parole are usually required to:

1. Obey all state and federal laws, and all local ordinances.
2. Refrain from associating with persons who have a criminal record or who are engaged in criminal activities.
3. Avoid associating with individuals of bad reputation.

These requirements may be included among the formal written rules comprising the Conditions of Probation or the Conditions of Parole, or they will be included in the oral instructions given to the probationer by the probation officer and to the parolee by the parole officer. Probation or parole may be revoked if the offender fails to abide by these conditions. The probation officer is required to report all violations to the judge who granted probation, and the parole officer must report them to the parole board. The violation report will usually have to include a recommendation for revocation or continuance of probation or parole. The judge or parole board is not bound by the recommendation of the reporting officer.

¹ Katz, Howard A., "Narcotics Investigations: Developing and Using Informants", POLICE LAW QUARTERLY, (April 1978), Vol. 7, No. 3, pp. 5-12.

In the course of their investigations, the police will often come across probationers and parolees who are engaged in criminal activities. Recidivism studies² have revealed that:

1. More than 30 percent of the California inmates paroled in 1972 had been returned to prison within two years of their release.
2. More than 30 percent of the federal parolees released in 1970 had been returned to prison within two years.
3. According to the FBI, more than 60 percent of all federal prisoners released in 1965 had been rearrested within four years of their release.

Actually, recidivism statistics are rather unreliable because most states differ in their interpretation of the type of anti-social behavior constituting recidivism, and because correctional authorities are inclined to publicly downplay the failure of their programs. Thus, a recidivism rate of 50 percent would appear to be much more realistic than the 10 percent claimed by some states or the 30 percent revealed in the California and federal studies. Since the most productive underworld informer is the one whose motive is avoidance or lessening of some pending punishment, the recidivist probationer or parolee can easily be forced to serve the police as an informant. At the moment of arrest this offender will often identify himself as a probationer or parolee and volunteer to serve as an informant, provided that

² Carney, Louis P., PROBATION AND PAROLE: LEGAL AND SOCIAL DIMENSIONS, New York: McGraw-Hill, Inc., 1977, pp. 205-210.

the officer will agree not to advise his probation or parole officer of the arrest or of his illicit activities. If the arrestee does not volunteer to act as an informer, the officer can, if he so chooses, "persuade" the offender to serve as an informant by promising not to let the probation or parole officer find out about the arrest and its circumstances. If the offense is serious, or if the arrest process has gone beyond the point where it can be kept from the probation or parole officer's knowledge, the police officer can still promise to intercede in the offender's behalf by urging his case worker to continue him on probation or parole. The offender will be motivated to serve as an informant only if he believes that this will prevent the revocation of his probation or parole.

When an officer tries to develop an arrestee into an informant where the offender is not on probation or parole, he must remember that:

1. Arrest charges must be filed and judicial proceedings should be instituted.
2. Any promises made to the arrestee, must be made by a District Attorney's staff member.

Without these steps, the arrestee would be under no compulsion to serve as an informant. However, when the offender is on probation or parole, the officer does not need to follow these two ground rules. The circumstances surrounding an arrest, even on a minor charge, are violations of his conditions of probation or parole and may constitute grounds for the revocation of his probation or parole. Obviously, the arrest must always be absolutely legal. For the probationer, the compulsion to serve as an informant will be much greater if he is on probation for a felony, rather than for a misdemeanor.

At first glance, developing and using probationers and parolees as police informants would appear to be highly desirable. However, such a course of action may well turn out to be problem plagued. To begin with, the very nature of probation and parole must be considered by the police officer. Because the terms probation and parole are often confused, the following simple definitions are offered to clear up any misunderstandings thereof:

Probation is an alternative to confinement in a jail or prison, wherein the convicted offender is released by the court under the court's supervision for a specified time during which imposition of the sentence is suspended.

Parole is a correctional method of rehabilitation wherein a state or federal prison inmate is released to serve a part of his prison sentence outside of the prison under the supervision of a parole board.

The probationer remains under the jurisdiction of the court. The probation officer is required to report any violations of the conditions of probation to the court. Such violations may be grounds for revocation of probation. Revocation will result in reimposition of the suspended jail or prison sentence. The parolee, on the other hand, remains in the legal custody of the state or federal correctional authorities. The parole officer is required to report any violations of the conditions of parole to the parole board. If parole is revoked as the result of such violations, the parolee will be returned to prison for the remainder or part of his sentence. Furthermore,

most parole boards require their agents to place a "parole hold" detainer on the parolee with the jail as soon as they find out that he has been arrested. This detainer is designed to keep the parolee from being released on bail so that he cannot abscond from parole. Once the detainer is in place, it will effectively prevent an officer from using the arrestee as an informant.

Probation and parole policies generally do not permit the use of probationers or parolees as police informants. Some probation agencies include this prohibition in their written policy manuals. Probation officers, from agencies having no written policy on informants, will have been instructed that a probationer cannot serve as a police informer without the permission of the court. When a probation officer learns that one of his probationers is serving as an informant, he must immediately so notify the court. Almost without exception, judges will not authorize a probationer to serve as an informer. Rarely ever have the police been able to persuade a judge that he should permit a probationer to be used as an informant. Before granting such permission, the judge would have to be convinced that the offense police were investigating was of an extremely serious nature and that the use of the probationer would be crucial to the successful outcome of their investigation. Parole agencies also prohibit the use of parolees as informants. At the time of his release, a federal parolee signs an agreement to abide by the conditions of parole, one of which reads:

"You shall not enter into any agreement to act as an informer or special agent for any law enforcement agency."³

³ Condition 7, Parole Certificate, United States Board of Parole.

The concepts of probation and parole are being attacked by an ever increasing number of credentialed critics and political office holders or seekers, all responding to or feeding on the public's concern for "law and order." For years, the Parole & Community Services Division (P&CSD) of the California Department of Corrections was precluded by policy from allowing parolees to be used as informants except under the most emergent circumstances, and then only with the personal authorization of the parole chief. The attacks on parole led to a recent revision of P&CSD parole supervision policies which included a liberalization of the policy on informants. The revised policy justifies such use of parolees as a means of cooperation with police agencies.

"P&CSD should cooperate with other law enforcement agencies regarding the use of informers. In order to keep parole supervision as safe and as effective as possible and to share pertinent information with the other law enforcement agency, the parole agent should remain aware of a parolee's activities as an informer."⁴

The new liberalized policy does, however, contain certain restrictions. A police agency desiring the services of a parolee as an informant must so notify the parole officer in writing on its official letterhead and the request must be signed by an official of that agency. The request must specify the proposed duration and scope of informant activities and whether the parolee will be required to travel beyond the geographical

⁴ Section 570, Chapter 5, Article 7 - Informers, PAROLE PROCEDURES MANUAL, California Department of Corrections.

confines imposed on him by his parole conditions. Receipt of the request requires a case conference between the parole officer and the parole unit supervisor. The parole officer then prepares a confidential report on the circumstances of the case and submits it, together with the official agency request, to the district parole headquarters. Ordinarily, after an appropriate review of the submitted materials, the District Administrator may approve or deny the request for use of the parolee as an informer. However, under the following circumstances, the District Administrator cannot approve the request and must forward it to the Parole Board for their review and action:

- "(1) The parolee is in custody under a parole hold;
- (2) the parolee has been suspended by the board; (3) a pending violation requires a report to the board; or (4) the board has ordered revocation or placement proceedings scheduled."⁵

P&CSD will not allow a parolee to act as an informant if he expresses an unwillingness to do so. P&CSD policy requires that all recommendations and decisions must be determined by whether or not the value of the parolee as an informer exceeds the threat he poses to society by not being held in custody.

Even though the proclivity for recidivism by probationers and parolees will provide officers with frequent opportunities to develop underworld informers, the use of these offenders will often be precluded by probation and parole policies, regardless of whether such policies are rigid like

⁵ Section 571(c), Chapter 5, Article 7 - Informers, PAROLE PROCEDURES MANUAL, California Department of Corrections.

those of the United States Board of Parole, or liberal and flexible like those of the California Department of Corrections. For instance, attacks by civil libertarians against the indeterminate sentencing system and attacks by law and order advocates against parole led to legislative acts which drastically changed the California parole process. Currently, the parole period for California felons not under a life sentence will not exceed one year, while the parole period for "lifers" will not exceed three years. Furthermore, a parolee returned to prison upon a parole revocation, must be released again within six months of his reconfinement. These limitations will make it much more difficult to persuade the California parolee to serve as an informer if he has been arrested on charges that do not involve a serious offense.

Relationships between police officers and probation and parole officers will also effect the development and use of probationers and parolees as police informants. The development of these offenders as informers will be enhanced where this relationship is a good one. Unfortunately, all too often the police and the probation and parole officials view each other with varying degrees of suspicion, distrust and animosity. The mere mentioning of probation/parole or police will result in a "knee-jerk" reaction of one group to the other in many instances. The relationships between the police and correctional authorities will usually be determined by how the police officer views the correctional case worker. There are two extreme types of case workers who can be described in the following manner:

1. The "Social Worker" type. Obsessed with serving his clients (probationers/parolees) and meeting their needs. Goes out of his way to avoid the use of authority. Does not trust

the police. Wants to believe and trust his clients.
Is easily manipulated by his clients. Is referred to
as a "sissy" by his clients. May be liked, but is not
respected by his clients.

2. The "Cop" type. Obsessed with protecting society.

Is really a "frustrated policeman." Resorts to the
excessive use of negative authority. Goes out of his
way to please the police. Is constantly suspicious
of his clients. Is referred to as a "cop" by his
clients. Is feared and disliked by his clients.

Fortunately, most probation and parole officers fall about halfway between
the two extremes, and that is as it should be. The police often use the
term "social worker" in a derogatory manner because of their experiences
with the "sissy" types in that profession. Officers tend to see all but
the "cop" types in a negative manner because, like most other people, they
will judge a whole group by the few misfits therein. Such negative police
attitudes are self-defeating in that they certainly do not foster a spirit
of cooperation between the officers and the case workers. The police would be
well advised to aggressively cultivate a good relationship with probation
and parole authorities since the cooperation of the case worker could be a
critical factor in any attempt to use a probationer or parolee as an informer.

An officer desiring to use a probationer or parolee as an informant
is under no legal obligation to so notify the offender's case worker. How-
ever, the officer who uses an informant known by him to be on probation,
may very well place himself in jeopardy if he fails to so notify the court.
The judge who granted the offender probation, has every right in such cases

to hold the police officer in contempt of court. However, when an investigator, through the use of his discretionary prerogative, does not file charges against a probationer for a minor offense, and the offender, nevertheless, agrees to act as an informant, a judge would be unlikely to issue a contempt citation if the officer failed to so notify the probation officer. The lack of communication or cooperation between police officers and case workers is the result of an atmosphere of mutual distrust and dislike based on misconceptions each group has about the other's professional roles and personalities.

Ethical considerations must also be regarded in the use of probationers and parolees as informants. From an ethical viewpoint, the legal aspects notwithstanding, a police officer should usually notify the appropriate authorities that he wants to use a probationer or parolee as an informer and under what circumstances the offender came to his attention in the first place. Regardless of what the police officer does in such cases, he should always be guided by:

1. His conscience.
2. The legal aspects, ethical considerations and professional conduct.
3. The seriousness of the case being investigated.
4. The importance of the prospective informant to the successful conclusion of the investigation.

When one considers the special problems involved in the use of probationers and parolees as police informants, the desirability of this practice becomes somewhat questionable. Certainly, the use of such offenders as informers should never become a common practice, and it should always require a cautious and prudent approach.

APPENDIX A

CONFIDENTIAL INFORMANT FILE FORM

The Commanding Officer of a police unit which uses any underworld informant should keep a comprehensive file on the police informer. A sample form is included in this document on the following page. This form or a similar form can be used by any agency desiring to establish a Confidential Informant File. In order to protect the confidentiality of the informants, such files must be kept secure under lock and key, with access available only to the commanding officer. The supervising agent should keep a duplicate record of his informants in his own files, which must also be kept under lock and key, and to which only he has access.

APPENDIX B

FISCAL ACCOUNTABILITY FORMS

Any police unit using underworld informants, must maintain a set of good fiscal records if it plans to expend any funds on its informant operations. Such records will enable the unit to account for the use of these funds and preclude the overspending thereof. Cash flow ledgers should include a form for individual informant expenditures. Anytime an informant is given any money, or funds are expended to purchase groceries for his family, he should be made to sign a receipt for the amount of such expenditures. Whenever the informer signs a receipt, he must use his real name, not his code designation. Of course, all such receipts and other records must be maintained by the unit commander under the strictest security.

Sample forms of a receipt and an individual informant expenditure ledger sheet are contained on this and the following page.

CASE NO. _____	DATE _____, 19 _____
RECEIVED FROM _____,	\$ _____
THE SUM OF _____	DOLLARS
FOR _____	
_____	(True Signature of Agent or Operator)

INDIVIDUAL INFORMANT EXPENDITURES LEDGER

Year: 1978

Informant: X-15

Code: X - Purchase of Contraband
 Y - Expenses of Informant
 Z - Payment for Information

Agent: HILLMAN

EXP. NO.	DATE	CASE NO.	SUSPECT	CODE	AMOUNT	SUM TOTAL
78-1-13	1-9	77-4604N	O'GRADY	X	50.00	50.00
78-1-19	1-14	78-0071N	"CHAFUNDI"	X	30.00	80.00
78-2-8	2-11	77-4604N	O'GRADY	Y	25.00	105.00
78-2-12	2-13	77-4604N	O'GRADY	X	50.00	155.00
78-2-18	2-17	78-0071N	RAMIREZ	X	30.00	185.00
			AKA "CHAFUNDI"			
78-2-25	2-20	78-0071N	RAMIREZ	Y	25.00	210.00

END