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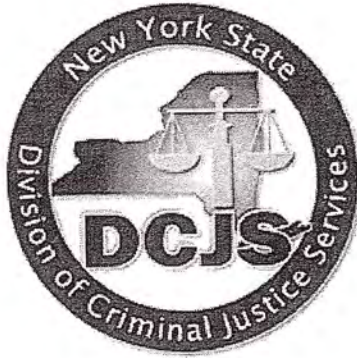


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# **Undercover Operations and Informant Handling**

## ***Student Manual***

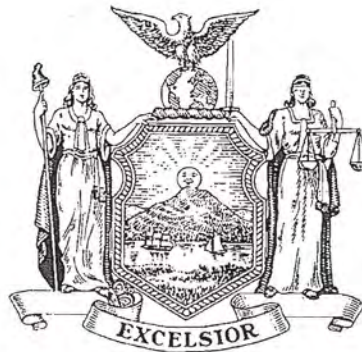


Undercover Operations and Informant Handling

Student Manual



STATE OF NEW YORK  
Division of Criminal Justice Services  
Office of Public Safety



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# Undercover Operations

## Michael Levine



With over 40 years of intensive hands-on, award-winning experience on the streets and in the courtrooms, Michael Levine has acquired the vast insiders' knowledge and razor sharp eye for details that are vital to expert testimony. The details that underlie and support his resume have stood up to the rigorous cross-examination of some of the best prosecutors and attorneys in the nation. One of the most decorated supervisory agents in the history of the Drug Enforcement Administration, Mr. Levine has also served with great distinction with the U.S. Customs Service, BATF, IRS (Criminal Investigations Division) and the FBI/DEA Task Force. Trained and licensed as a police instructor by DEA, his career in police training, now numbering more than 30 years, continues to this day. Mr. Levine's expert testimony (as regards all areas of expertise listed) has been accepted on more than 300 occasions in federal and state courts (both criminal and civil) in 17 states as well as Puerto Rico. He is a widely published, highly skilled professional writer, well known for the effectiveness of his reports and affidavits. His training and experience as a supervisory officer, inspector of operations and police instructor, combined with his insider's anatomical knowledge of law enforcement operations, make him an invaluable asset in a number of important services. As a trial consultant and expert witness commencing with his DOJ retirement in 1990, Mr. Levine has reviewed and commented upon in excess of 200 full case files, relating to both civil and criminal matters, and involving a wide array of areas of expertise. This involves exhaustive and lengthy reviews of the investigative and law enforcement practices of many local and federal agencies, including but not limited to FBI, DEA, Customs, Homeland Security, BATF, IMNS and more than 30 local, state and city police agencies throughout the U.S. This ongoing experience keeps Mr. Levine current and up-to-date on policies, procedures and standards of U.S. law enforcement. A licensed Private Investigator, Mr. Levine is also active as a law enforcement instructor, journalist and investigative researcher. He maintains an extensive and continually updated database of information that relates to each area of his expertise. An important part of this database involves direct contact with more than 200 court-qualified law enforcement experts worldwide, colleagues with whom he consults on a case-by-case basis. Michael Levine has appeared as a guest/expert on dozens of nationally televised shows, including 60 Minutes, Good Morning America, NBC & CBS Morning Shows, MacNeil-Lehrer News Hour, 20/20 and many others. He has also been retained as a technical consultant for multiple television series, and has appeared as an expert on various law enforcement related topics on numerous local television shows around the country. He has made guest appearances on hundreds of local and national radio shows around the country.

## Preface

In Spanish there is an old axiom, *Hay que escarmentar de cabeza ajena*, [One must learn from the mistakes of others]. This is an axiom that could be printed on the tombstone of every undercover agent who died in the line of duty, or on the cell wall of every well-meaning Undercover whose work terminated with a jail sentence, or on the personal checks written by undercover officers to lawyers hired to defend them from civil or criminal accusations emanating from his UC work, or on the termination papers received by well meaning undercover officers for violation of the Rules of Conduct, or on the divorce and separation papers that symbolize the well-meaning Undercover's family destruction . Every commandment, rule and axiom found in these pages came directly from the mistakes of others, and are set forth herein with the hope that those who follow them will not repeat the mistakes that at best resulted in ruined prosecution cases and law suits, and at worst serious injuries and death.

While this manual was prepared as a companion piece for the class on Undercover Tactics, it is also intended as a stand-alone reference document, to be used and/or consulted whenever needed.



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**SECTION 1**

**FIFTEEN COMMANDMENTS OF  
UNDERCOVER SURVIVAL**



## **FIFTEEN COMMANDMENTS OF UNDERCOVER SURVIVAL**

### **Section Objectives**

Upon completion of this section the student will, without reference to notes, be able to:

1. List and explain the fifteen commandments of undercover survival according to Michael Levine.

### **Section Goals**

1. Describe the vital mechanics of running a safe and successful undercover operation in accordance with the team concept.
2. Identify the roles of the Undercover Officer and/or Undercover Informant in accordance with the team concept of undercover tactics and procedures.
3. List the vital roles and principals of leadership in all facets of Undercover Operations.
4. Understand the principals, procedures and standards of informant handling, documentation, and corroboration as they relate to Undercover Operations.
5. Recognize the violations listed in the "commandments" that are Red Flag Indicators of an undercover operation that is about to go bad, i.e. result in death, and/or, injury, and/or, lost careers, and/or law suits.



### Fifteen Commandments of Undercover Survival

#### Commandment #1:

**No case is worth my life, my job or my family.**

This *does not* mean that the undercover should avoid ALL risks. The nature of the work is inherently risky; however, it *does* mean that the undercover and the supervisor have time to consider the logic of the assignment versus the gains. Ways to reduce the risks should be considered and discussed before taking the long dark walk.

This consideration will be discussed, during the class, in reference to real life situations resulting in tragic outcomes.

#### Commandment #2:

**The undercover agent must be a team player—*not* the manager.**

The undercover operation must NEVER be planned with the undercover calling the shots. The “healthiest” undercover is the one who considers him/herself a MEMBER of a team and NOT its Director.

The importance of character, intelligence and stability of undercover operatives will be discussed using real life case examples as illustrations to learn from.

#### Commandment #3:

**The undercover squad supervisor should have extensive experience as an undercover himself and/or the open-mindedness to consult with experienced undercover officers.**

Most cases involving tragic outcomes are the result of inexperienced management and/or lack of training in undercover tactics and/or a lack of leadership skills. This will be discussed in class using documented case histories.

#### Commandment #4:

**Learn everything possible about your target from your informant, with a particular focus on his/her propensity for violence. Consult with officers with a demonstrable talent for informant handling.**

**Commandment #5:**

**Never trust an informant—listen and verify everything that is possible to verify, and above all: control the informant. Keep in mind that there are circumstances wherein the death of the undercover will work to the benefit of the informant.**

For an informant to be effective he/she must be a criminal, a two-faced, duplicitous traitor and a professional liar. You should act as though you trust the informant but you must verify everything that is possible to verify. A high percentage of undercover tragedies, civil law suits and ended careers emanate from the mishandling of informants and/or trusting of informants. The tactics involved in informant handling, debriefing, corroboration and utilization in an undercover capacity are set forth with specificity in the body of this manual for easy reference, and will be discussed utilizing documented case histories as examples.

**Commandment #6:**

**Always have a game plan in written form BEFORE going on to the “set”. It should be arrived at by a group planning session full of as many “what if’s” as the group can think of.**

The undercover operation plan should be in written form and given to every officer who will be taking part. The group of officers who will be involved in the planning of the operation should include all officers who will play a role in the operation as well as other experienced undercovers to provide input. Every officer taking part in an operation MUST know the undercover and the informant by sight. The informant, however, should only see those whom he/she NEEDS to see.

Case histories involving the death and/or serious injury of undercover officers and/or innocent civilians, in which failure to appropriately plan played significant role in the tragic outcome, will be discussed.

**Commandment #7:**

**Always discuss and/or rehearse the takedown ensuring that each officer knows and clearly understands his/her assignment at that critical moment.**

Confusion about your own assignment as well as the assignments of others has caused the death of and/or serious injury to law enforcement and perpetrators alike.

Case histories to be discussed during class.

**Commandment #8:**

**The team leader should always end an operation the instant the game plan is violated.**



Failing to terminate the operation once the game plan has been violated has contributed to the deaths of undercover officers in the past. This possibility **MUST** be discussed during the planning stages of every operation.

Case histories to be discussed during class.

**Commandment # 9:**

**An undercover must never operate on an extended assignment without close supervision, contact and control of a manager who has a demonstrable record of experience in the undercover arena.**

Case histories to be discussed during class

**Commandment #10:**

**An undercover agent must always think "safety"—his safety and the safety of the agents/officers covering him.**

While operating as an undercover you should take note of potential hazards that you and your team may encounter such as weapons, traps, hazardous chemicals, attack dogs, hidden rooms and escape hatches.

**Commandment #11:**

**An undercover agent must always think "testimony"—anyone can "get over," but unless you are prepared to win in court, the whole exercise is pointless.**

The use of both undercover officers and informants must be done keeping, at all times, keeping in mind courtroom presentation. The primary method of defense against an undercover agent is an attack on his character and/or his tactics.

During class and in the continuation of this easy reference manual, suggestions as to preparation and methods and tactics to be avoided, keeping in mind courtroom presentation, will be discussed using true life examples.

**Commandment #12:**

**An undercover agent must always measure every action and statement against the question: Would I do or say what I am about to if I were a real criminal?**

Acting or reacting like ANYTHING BUT what the bad guy thinks you are is a factor found in EVERY case of an undercover's cover being blown and ALMOST EVERY case that ended in an undercover being murdered. Acting your role has been the key factor in the successful outcome of some of the most important undercover cases in our nation's history. A good act can even overcome an unrealistic scenario.

During class and in the continuation of these easy reference manual, suggestions as to preparation, procedures and tactics in this critical area will be discussed utilizing documented case histories

**Commandment #13:**

**Never use equipment (all equipment, from weapons to electronic devices), unless you are thoroughly familiar and well practiced in its use, and certain that it will work under the conditions in which you are about to risk lives. Above all, never go into the arena depending solely on an electronic device for your safety.**

This is another commandment that has been directly linked to tragic outcomes including but not limited to the death of undercover officers.

During class and in the continuation of these easy reference manual, suggestions as to preparation, procedures and tactics in this critical area will be discussed utilizing documented case histories.

**Commandment #14:**

**Always do pre-operation surveillance, particularly in a buy/bust operation. Sooner or later it will save a life. It saved mine.**

This commandment is critical to the extent that in spite of it being covered in the section herein devoted to Planning Undercover Operations, it merits an emphatic mention.

During class real-life examples of its vital need will be discussed

**Commandment #15:**

**It is better to be tried by twelve than carried by six.**

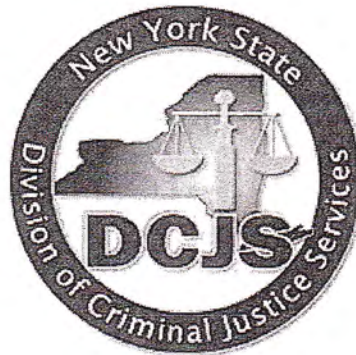
This commandment is NOT to be taken as a license for undercover officers to commit crimes, and it should be considered as part of Commandment 1, "No case is worth my life, my job or my family." However, it is set forth here separately due to the entirely unpredictable nature of undercover work. The only constant is that if you do it long enough, the undercover officer is a lot more likely than the average law enforcement officer, to confront situations where an instant decision in a very unconventional situation wherein the "bad guys" do NOT know he is a law enforcement officer may mean his life. Situations, during which undercover officers in the past have made choices to avoid problems at their jobs that resulted in them sacrificing their lives.

This will be discussed using documented case examples during class



## **SECTION 2**

# **INFORMANT HANDLING TACTICS & PROCEDURES AS THEY RELATE TO UNDERCOVER OPERATIONS**



## INFORMANT HANDLING

### Section Objectives

Upon completion of this section the student will, without reference to notes, be able to:

1. Name four things the officer **MUST** do when working with an undercover "partner."
2. List and explain three tactics of informant debriefings and their importance to a safe and successful undercover operation.

### Section Goals

1. Recognize the basic principals, strategies and standards of Informant Handling, as they pertain to Undercover Operations. (General)
2. List the specific tactics and principles that an informant acting as an undercover for law enforcement should follow.
3. Know and understand the specific tactics of Informant Handling as they pertain to exercising law enforcement control of informant activities and actions and/or prevention of informant criminality such as entrapment, double-dealing and/or other crimes committed while representing law enforcement as an undercover informant.
4. Have a heightened awareness of signs and/or indications of Informant handling situations about to go redline. (result in serious problems).

### Informant Handling

The old adage, used ad-nauseum by law enforcement “experts” is: “A cop is only as good as his informants.” The purpose of this section is to help produce law enforcement officers [informant handlers], supervisors and administrators who are a lot better and savvier than the informants under their control; professional law enforcement officers and administrators who effectively use criminal informants (CI) to apprehend and convict serious criminals with solid prosecution cases. Too often law enforcement officers are used by their confidential informants as protection from prosecution and/or to steal taxpayer dollars in the form of reward payments, while they [the informants] commit serious crimes against the people whom we’ve sworn to serve and protect.

Sub-standard informant handling by the undercover officer has led to a number of undesired outcomes including, false arrests and convictions, planting evidence (flaking), criminal charges filed against the undercover officer and their respective department, civil law suits, and the prosecution of police and prosecutors.

Undercovers who allow the informant to control the operation risk everything. Informants who are poorly handled invite rip-offs by presenting bait that would tempt any criminal. If the informant acts like raw meat, any nearby shark is going to go for him/her and the undercover officer.

The rules and standards set forth in this guide are the product of tragedy and failure, and are set forth herein, again, with the hope that history will not repeat itself

#### Rules of Informant Handling<sup>1</sup>

- RULE # 1.* From the first contact with an informant, of any category, the inviolable rule is, observe closely, assess reactions and control tightly at all times. Note: While you are observing and assessing the informant, he/she is definitely observing and assessing YOU. The methods of observation, checks and controls will be covered in great detail, as they pertain to each of the Rules. Never forget that an informant is a criminal, who, for the moment is working for you. Violate the rules and he will be working against you.
- RULE # 2.* Attempt to learn and document everything you can about your informant’s character, intelligence and personality that would influence their performance before using him/her for any purpose. [\*Particularly important in exigent circumstances and for supervisory officers and/or administrators as to each and every informant assigned to your unit and/or department, for purpose of ensuring an appropriate informant-handler match]:

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<sup>1</sup> Adapted directly from the DEA two-week training school lesson plan



*Areas of immediate concern to Handlers, Supervisors and Administrators are:*

- a. His/her criminal record. Speak to officers/investigators involved in any and all cases resulting in the arrest of your informant. If you don't some defense attorney will.
- b. What the informant has shown him/herself to be capable of: level of treachery; implication in homicides etc... Whatever he/she has done unto others, don't believe for a second that your badge will prevent him/her from doing unto you.
- c. What is the CI's record as an informant? You WANT to speak to prior handler and/or prosecutors who used this informant! This information is a must!
- d. CI's level of intelligence and education. Important to know and assess in matching informant to handler. You NEVER want too much of an imbalance with the "weight" of intelligence going toward the informant! **Critical area for Supervisory Officers and Managers**
- e. The CI must be aware that his operations are being watched, not only by his handler, but by supervisors as well. CI cannot be allowed to be in a position wherein, he/she believes that if the informant "gets over" (seduces the handler); he/she can maintain control of his/her own activities. **Critical area for Supervisory Officers and Managers.**
- f. "Success" in crime. [acquired assets, total jail time, length of time in crime, level of crime activity reached]. Does crime pay for this informant, and why?
- g. How does your informant earn an income? Does his/her explanation for income match his/her life style? If you don't ask these questions, a sharp defense attorney will! The inference is that you looked the other way at your informant's criminality!
- h. His/her presentation during interview: Do they seem deceptive? (*Supervisor should be present during initial interview and during periodic debriefings*).
- i. Assertive personality? Does he/she seem to control the direction of the conversation during interview with handler? **Critical area for Supervisors and Administrators, as well as handlers.**
- j. Does he/she attempt to evade questions?—any questions whatsoever, no matter how seemingly inconsequential.
- k. Is there evidence unearthed during the initial inquiry that is indicative of this informant "shopping" cases—playing one agency against another for his/her own gain/protection?
- l. Is there evidence in the record of this informant "double dealing"—using informant status as protection for criminal activities?



**RULE #3.** [Critical for supervisors]: BEWARE OF INFORMANTS WHO CONTROL THEIR HANDLERS—NEVER FORGET: INFORMANTS ARE CRIMINALS NOT COPS.

**NOTE:** From the first interaction between informant and any officers under your command, you must, at all times, observe and assess the relationship between informant and handler, particularly as to who is running whom!

Clever informants often play dumb; however, over time a supervisor must be alert for signs of the following:

- a. Is informant more streetwise than his handler[s]?
- b. Does the informant's personality dominate the officer's?
- c. Does the informant easily evade or avoid probing questions of his handler?
- d. Is the informant significantly more experienced than the officer?
- e. Is the officer too insecure in his/her own abilities and job performance to handle informants? [Possibly "too dependent" on informant for job production].
- f. Is the informant able to become too "personal" in any manner with the handler[s]?
- g. Does the informant seem to know too much about the handler (s) personal life? [Family names, personal problems, personal gripes, etc].
- h. Does the handler have a tendency to take the informant's side and/or defend the informant when the informant is clearly in the wrong?
- i. Does the informant seem to be in constant control of the direction of investigations?
- j. Does the informant seek to control the direction of his debriefings at ANY time?
- k. Does the informant often claim that close surveillance will "burn" his activities, particularly controlled buy operations?

**RULE #4.** Debrief an active informant periodically [NO LONGER THAN 30 DAY INTERVALS WHILE ACTIVE], whether he/she claims to have information or not. *You may forget that he/she is your informant, but when he/she does wrong, he/she will NOT forget that he/she works for you and/or your department! And if your informant inflicts damage on some unsuspecting party while he/she is working for you, you can count on being named in a law suit.*

- a. The debriefing should cover ALL criminal knowledge. You want to impress on him/her that you want to know everything he/she has even heard rumors of.
- b. The debriefing should be witnessed, as should all contacts with the CI.
- c. The debriefing should cover ALL contacts made by the informant—whether the or not the informant thinks they were productive or not—that were with anyone who might be considered a potential violator and/or a person(s) with criminal records.
- d. The debriefing should cover ALL contacts this informant has made with other police agencies. [Shopping cases].
- e. How has the informant been earning a living?
- f. Be alert for signs of deception.
- g. Be alert for “sensitive” areas.
- h. When the informant seems shy of a subject - that is the subject you want to probe.
- i. The debriefing should be attended by a supervisor, at least periodically, and should—unless there are documented, extenuating circumstances—always be witnessed by another officer.
- j. When the informant supplies actionable information [information that may result in a full investigation, warrant, etc.] be prepared to follow some or all the tactics referred to in RULE 10.

- RULE #5.* Have the informant read and sign an “INFORMANT AGREEMENT” acknowledging that during the informant’s association with you and/or your department the following areas will be agreed to:
- a. I (the informant) acknowledge that I have no police powers under the laws of \_\_\_\_\_ (state) or any local governmental subdivisions and has no authority to carry a weapon while performing active duty as an informant.
  - b. I acknowledge that I am associated with the \_\_\_\_\_ Police Department as an informant on a case or time basis as an independent contractor and that any payment received is not subject to Federal or State Income Tax Withholding or Social Security. All reporting of that income is mandatory under the law and is my responsibility.
  - c. I acknowledge that as an informant I am not entitled to Workman’s Compensation from the state of \_\_\_\_\_ and that I shall not hold \_\_\_\_\_ responsible for any injuries or



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2.7

- damage incurred by reason of [the informant's] association with the \_\_\_\_\_ police department.
- d. I agree to not engage in entrapment activities and acknowledge that these activities have been fully explained to me by officer/prosecutor \_\_\_\_\_ and that I fully understand these instructions.
- e. I agree not to divulge to any person, except the investigator[s] with whom I am associated with, my status as an informant for the \_\_\_\_\_ police department unless required to do so in court and that I shall not represent myself to others as an employee or representative of the \_\_\_\_\_ police department.
- f. I agree not to use the \_\_\_\_\_ police department or any of its officers as credit or employment references unless prior approval is obtained from the investigator[s] with whom I am associated.
- g. I agree that my association with the \_\_\_\_\_ police department does not afford me any special privileges whatsoever.
- h. I agree that I will perform my duties as an informant without any official identification as such and that I will not create and/or attempt to create any "identification" documents that in any way give the impression that I am officially associated with the \_\_\_\_\_ police department, and that I am aware that any attempt to do so may be a violation of State and/or Federal law.
- i. I agree that I will not plan and/or engage in any criminal activity and/or make any criminal contacts that may result in criminal activity without first notifying my controlling officer[s] for approval and instructions.
- j. I acknowledge that, in reference to (i) above, I have been furnished with emergency contact methods and have discussed delaying tactics to be utilized during possibly exigent circumstances.
- k. I agree that should I, in any manner, come into possession of criminal evidence of any kind, that I will immediately contact my handler[s] for instructions.
- l. I agree to maintain a strict accounting of all funds provided to me by the \_\_\_\_\_ police department as part of my activity as an informant. I understand that misuse of department funds could be grounds for criminal prosecution against me.

- m. Finally, I agree that a violation of any of the above-enumerated provisions will be grounds for immediate termination and probable criminal charges.

**RULE #6.** Create an informant file in which you document the informant's history, performance and all your interactions with him/her. This may, indeed, depending on Discovery rulings in each case, furnish defense attorneys with cross-examination materials that may or may not jeopardize a prosecution; however, it may also save your job, your career and the lives of all officers who eventually utilize this informant, as well as the unsuspecting public. The general rule is that "the proper documentation of an informant is essential if the informant is to be effectively utilized. Failures at this critical stage can result in defense claims of prosecutorial misconduct and allegations of Brady violations for failure to disclose evidence that would erode an informant's credibility at trial."<sup>2</sup> The informant file is also a vital source of information and protection for any future handlers of your informant.

**The Informant File, at a minimum, should reflect:**

- a. Full identifying data: name, aliases, physical descriptions, date of birth, fingerprints, current photo, phone numbers, addresses, and Social Security Number.
- b. Criminal Record.
- c. Criminal Reputation and Known Associates. [up to date].
- d. Copies of all debriefing reports.
- e. Records of all payments.
- f. Comments that would be useful to other potential handlers.

**RULE #7.** Keep your finger on the pulse of your informant's motivation. If you know your informant's "true" motivation—why he/she does what they do—then you will know what the real intentions are, which, by the way, are rarely what he/she says they are. Criminal informants' motivations are complicated, multiple and change rapidly without warning. In general they are a combination of the following:

- a. Fear of incarceration.
- b. Mercenary.
- c. Fear of reprisal against himself and/or his family.
- d. Destroy competition
- e. Vengeance
- f. Eliminate creditors
- g. Eliminate competing criminals

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<sup>2</sup> *Informant Law Desk Book*, by Dennis G. Fitzgerald



- h. Protect his own drug trafficking or other criminal activity
- i. Reduction in sentence and/or release.
- j. Police buffs and Wannabes.
- k. Unwitting informants.
- l. Brokered.
- m. Excitement: Thrill or it all.
- n. Perverse.
- o. Good Samaritan
- p. Repentance

JAIL HOUSE INFORMANTS:

- q. Special Privileges
- r. Early release
- s. Informant fees paid to others

*RULE # 8.* Handlers must always seek to maintain control of informants through proper balance of motivation, fear and reward factors. This means that, in dog training, the informant must both fear and respect that handler enough that the "reward" (primary motivation) must come through that handler(s) and only that handler(s). Motivation to "please" the handler and/or adhere to the Informant Agreement, must, at all times, overcome other fears, needs, drives and urges.

To keep your informant "properly" motivated you MUST be constantly aware of his/her true motivation, which, as stated above, is always changing. If the informant's motivation, secretly and/or unnoticed by the handler(s), switches to seeking a "reward" from some source, the informant WILL ALWAYS engage in one or more of the following:

- a. Criminal acts [double-dealing], using his informant status for protection from arrest and prosecution..
- b. Entrapment. Conning "dupes" into the commission of crimes and then "selling" them to his/her handler[s] as "information" and/or criminal cases.
- c. False testimony. Jail House informants are notorious for this. "Montate en la gua gua! - Getting on the bus."
  - I. Cases: US v Noriega. Crown v Mihaylov. (other cases from personal files).
  - II. Falsification of evidence [i.e. doctored and/or selective tape-recordings]. Carslon v US.
  - III. Planting of evidence. US v MATI.
- d. Falsification of evidence [i.e. doctored and/or selective tape-recordings]. Carslon v US
- e. Planting of evidence. US v MATI
- f. Reverse undercover: Setting up the handler(s) and "selling" them to Internal Affairs, with information gleaned from his close association. (US v Sante Bar

- g. Entrapping his handler(s) into misconduct and/or criminal acts. (US v Sante Bario)
- h. "Shopping" bad cases; playing one agency off against the other in search of "easy" handlers. (Carlson v US).
- i. "Down trading"- flipped drug traffickers who turn in lower echelon dealers and users as "big fish" to satisfy cooperation agreements.

*RULE #9.* Be ever alert to "SIGNS" of informant duplicity.

- a. Refusal and/or reticence at making tape-recorded conversations with alleged targets, to corroborate informant information in the presence of controlling officers [vital with "flipped" informants].
- b. Vague and/or deceptive answers to questions during debriefings.
- c. Unexplained and/or vague explanation for anything.
- d. Unreported contacts with criminal associates.
- e. Failure to contact handler[s] through prearranged methods [pagers, cell phones, headquarters, etc.] with any excuse.
- f. Reported contacts with criminal associates wherein "no criminal conversation" is reported.
- g. Unexplained signs of income or enrichment [cars, jewelry, cash].
- h. Indications of drug use.
- i. Usually tries to convince handlers that the use of transmitting and/or recording devices would be dangerous.
- j. Usually tries to convince handlers that surveillance of his activities will "burn" the investigation and/or expose him
- k. Fails to make regularly scheduled contact with vague and/or questionable excuse.
- l. Too many "unplanned" meetings with criminal associates.
- m. Attempts to get personal with handlers.
- n. Attempts to learn information and/or tactics and/or identities that he has no "need" for to fulfill his assignment and/or agreement.
- o. The ability to continue to function as an informant in areas where he/she, by virtue of past performance, is well known as an informant.
- p. Past record of the informant for duplicity (other agency Informant File).



- q. Notification by another law enforcement agency of an informant's arrest and/or criminal activities.
- r. "Sudden" or "new" criminal information about an individual with whom the informant has had an ongoing and unreported relationship of any type.
  - I. Cases: CROWN V MIHAYLOV(Papo case)...CARLSON v US.

**JAIL HOUSE INFORMANTS:**

- s. Access to "criminal information" via purchase and/or grapevine and/or news and Internet.
- t. Uncorroborated [by prison records and/or personnel] access to alleged target[s].
- u. Use of publicly and/or widely available information to "sell" to authorities.
- v. Use of outside contacts to obtain information that he may falsify as having been "told" to him/her directly by a target [false confessions].

**RULE #10:** NEVER, NEVER, NEVER take an informant's word for anything without independent corroboration. In the words of the KGB [Russian version of CIA, who ran rings around CIA in the management of informants] "TRUST BUT VERIFY."

**Keeping your informant honest. Recommended tactics:**

- a. Initiate tape-recorded corroborating conversations whenever possible (vital tactic with "flipped" informants.)
- b. Surveillance of informant, with and without his/her knowledge.
- c. Have the informant introduce the undercover agent.
- d. Use other informants whenever possible to crosscheck and corroborate. (John Miller "in Atlanta" case.)
- e. Full investigative effort at independent corroboration of everything told to you-who, what, when and where, and what documents prove same.

**RULE #11:** NEVER, NEVER, NEVER trust an informant with information that you would not want published on the front page of the New York Times. It may end up there!

- a. When you are with your informant, you MUST imagine him/her as a video-recorder, taking in and recording EVERYTHING he/she is exposed to, for future use.
- b. Lucy in (US v Roberto Suarez et al-*The Big White Lie*), details and embellishes everything she has been

exposed to in the lives of the agents and officers she has been exposed to, giving all a sinister and illegal twist.

- c. Fatal Dreams. US v [DEA agent] Sante Bario, the informant in the Sante Bario case created a falsified case against the unsuspecting DEA agent, who was arrested and died in prison as a result—Bario was exonerated posthumously.
- d. Case: *Deep Cover* – Wheeler in Customs office. Ends up in bed with the lead customs agent. Played the usual informant-baits-cop game, with involvement in world-class case that would be good for her career.

*Rule #12:* Handlers of flipped informants, under exigent circumstances, must carry and use technical equipment (i.e. tape recorder) at every opportunity.

- a. Recorders are used to “ice” the decision to be an informant, as well as to corroborate statements that contain certain likelihood to be false and deceptive! (taken from the DEA. “Informant Handling” training syllabus)
- b. Failure to tape-record calls with alleged co-conspirators, as an example, may be attacked by defense attorneys.

Example Discussion: Expert testimony during SAN DIEGO, Russian Crew case.

- c. INFORMANT CONTROLLED TAPE-RECORDINGS OF TARGETS, from US v “DUPES”, [name changed] Expert Witness Report:

“Informants are often provided equipment to record unsupervised incoming telephone calls from the target[s]. They should be instructed by their control agent to record all calls [emphasis mine] received that pertain to the investigation.”<sup>3</sup> “CI’s [informants] should not initiate telephone calls to the target unless directed to do so by the control agent. This practice avoids the selectively taped argument by the defense and allows the agent to maintain control over the investigation. [emphasis mine].”<sup>4</sup>

<sup>3</sup> *Informant Law Desk Book*, Also see: On Lee v Unites States, 343 U.S. 747, reh’g denied, 344 U.S. 848 (1952); Lopez v united States, 373 U.S. 427 reh’g denied, 375 U.S. 870 (1963); *United States v White*, 401 U.S.745, reh’g denied, 402 U.S.99, on remand, 454 F.2d 435 (7<sup>th</sup> Cir. 1971), cert denied, 406 U.S. 962, (1972); *United States v Caceres* 440 U..C. 71, 79-1 U.S. Tax Cas (CCH)C 9294, 43 A.F.T.R. 2d (P-H) V79-872 (endorsing *White*, plurality

<sup>4</sup> *Id*



Here again, it is important to point out that the substandard permitting of criminal informants to tape their own conversations has resulted in numerous well-documented cases of entrapment and/or enhancement entrapment and/or other criminality, including, but not limited to the submission of “doctored” and/or otherwise falsified tape-recordings to handlers as “evidence.”<sup>5</sup>

**RULE #13:** Handler’s of flipped informants, under exigent circumstances, **MUST** consult with prosecutor for approval.

**Rule #14:** Undercover Operations resulting from an informant introduction, and/or with an informant as the undercover “partner” of an officer, **MUST** address the following issues:

- a. The mental stability of the informant at that moment.
- b. Thorough debriefing of informant with an undercover operation in mind.
- c. The reputation of the informant with the target.
- d. The Informant’s past history with, knowledge of and relationship with the target.
- e. The target’s propensity for violence.
- f. The undercover officer’s ability to control the informant.
- g. Rehearsal.
- h. What if? Scenario—WITH informant—is vital.  
CASES: Deep Cover-Wheeler playing Customs against DEA and controlling the operation, as to control issues. Tumillo Killing. Hatcher killing.

*Example of failure to adhere to this rule occurred when DEA Agent Jay Sylvestro entered the apartment of target Nick Caturrano with an informant who was going to make an introduction. Sylvestro found himself facing a gun in the shaking hand of an enraged Caturrano who wanted to kill the informant, and Sylvestro, the only witness*

**RULE #15:** Informant “controlled buy” situation means “airtight” control by the handler. The less “control” exercised by the handler, the more likely it is that the informant will take personal and/or financial advantage of the situation. (Critical area for supervisory and administrative levels).

- a. FULL debriefing. Do NOT take the CI’s word for why he must make the buy and not an undercover officer.
- b. Use transmitting and/or recording device whenever possible. Do NOT take the informant’s word that he will be searched, without testing him. [Discuss in class].

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<sup>5</sup> *Carlson v U.S.* (as one of many examples).

- c. REALLY search the informant and whatever vehicle he might use, BEFORE and AFTER the buy.
- d. A full debriefing and signed statement AFTER the buy is mandatory.
- e. Surveillance BEFORE and AFTER CI leaves the premises of the buy should be mandatory.
- f. If possible take videos during the pre and post buy surveillance, and have the CI identify the people on video as to involvement.
- g. ROIs should reflect, by-the-book, Controlled Buy procedures.
- h. Supervisory officers should —whenever possible— make personal observations of Controlled Buys, particularly with officers and informants who use the tactic with frequency.

CLASS DISCUSSION: CASE: US V JOHN MULL

*RULE #16:* Know the signs of informant entrapment.

- a. What is entrapment?
- b. What is informant entrapment?
- c. What is enhancement entrapment?
- d. What is the difference between “unwitting” and entrapped?
  - I. What is predisposition?
  - II. Informants of long duration almost always, if allowed, engage in entrapment.
- e. Informants who push to have the freedom engage in and/or, to tape-record criminal conversations with little or no control of handlers.
  - Why?
- f. Targets who are gainfully employed and who have little or no records and/or reputations as criminals.
- g. Targets that have records of violence and/or mental instability and/or robbery, can be easily entrapped into a very deadly drug deal.
- h. Targets that know drug dealers, but never seem to have drugs.

*RULE #17:* NEVER, NEVER allow a flipped informant to “down trade” in a cooperation deal. The following is excerpted from a Department of Justice Mandate: COOPERATION AGREEMENTS: US PROSECUTORS, DUTY TO BE COGNIZANT OF COOPERATING DEFENDANT WITNESSES “TRADING DOWN.” “Make [cooperation] agreements only with ‘little fish’ to get ‘big fish.’... The integrity of government—



indeed our very way of life—demands it.”— Stephen Trott, Assistant Attorney General, United States Department of Justice.<sup>6</sup>

If you allow an informant to protect the Big Fish he knows, while he delivers all the Small Fries—that informant is running you, and there is no telling how far he will run.

**RULE#18:** All money transactions with an informant MUST BE WITNESSED & DOCUMENTED. **Critical area for supervisory and administrative officers.**

**RULE #19:** When in serious doubt, Polygraph your informant. **Critical area for supervisory and administrative officers.**

**RULE #20:** Never hesitate in terminating (firing) and blackballing an uncontrollable criminal informant.

This is a true expression of the phrase, “To Protect and Serve” and you may be doing some other cop and his family and the unsuspecting public a huge favor as well.

### Working Undercover with Informants

Working with confidential informant’s can be a very useful tool in undercover work; however, it is never without its risks. Knowing and understanding the risks could potentially save your life and/or your career and may make the daunting task of handling informants a bit less challenging. Despite this knowledge, there are a number of precautions that need to be taken each and every time you work with informants. Even for the shortest of undercover bits, an undercover partnering with an informant must rehearse the role with the informant paying close attention to the informants claimed history as an informant, the manner with which each of you addresses the other, and the knowledge each has of the other’s life etc. ***If the act is bad—the audience might kill you!***

### Debriefing Informants

Debriefing an informant can provide you with very valuable and at times life-saving information about the target(s), the location or set where you intend to set the sting operation up, other individuals who may need to be controlled on the set, and so forth. Keep in mind, however, as was

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<sup>6</sup> Stephen S. Trott, Assistant Attorney General, Criminal Division, U.S. Department of Justice. “The Successful Use of Snitches, Informants, Co-conspirators and Accomplices as Witnesses for the Prosecution in a Criminal Case; January 1984 Revision FOIA Request #CRM-960224F. The Hon. Stephen S. Trott is currently serving as a Federal Judge in the 9<sup>th</sup> District. Excerpted from *Informant Law Desk Book*



detailed in the Rules of Informant Handling, all information obtained from an informant **MUST** be verified to the extent that it is possible to do so. Also important to keep in mind throughout the debriefing process is that the moment you sense resistance to questions in a particular area; that is the area to probe deeply. The areas to be covered in debriefing an informant are:

- a. ALL criminal activity in which the informant and target had been associated (in great detail)
- b. Target's propensity toward violence (temper/paranoia).
- c. Prejudices (Killing of DEA Agent Hatcher)
- d. Drug and/or alcohol use.
- e. Weapons preferred by the target.
- f. Where the weapons or other contraband are kept.
- g. Associates who might be on the set (with all identifying data known for each).
- h. Record and reputation of each possible associate, as well as ALL criminal activity in which informant participated
- i. Layout of the set—backrooms, stashes, exits etc...
- j. Terms used and meanings of the lingo the undercover should be familiar with.
- k. Description of a typical deal from the informant's personal experience.
- l. Probability of target frisking for electronic devices.
- m. Use of counter-electronic technical measures.
- n. Use of CCTV, prior to allowing entry of undercover.

Ascertain as much information as is possible from the informant about his or her history with this target keeping in mind that no detail is too small. This is an area in which you can expect resistance to which the handlers **MUST NOT** acquiesce. When possible get a complete statistical and psychological profile and family history of the target. Details from this information may prove helpful at any moment. As with all information received from an informant, the undercover will attempt to verify by conducting an independent collateral investigation.

The undercover should also document the criminal history of the informant for his or her own protection as well as for the protection of other law enforcement officials. **Beware** of informants who play one agency against another. This is a common practice for informants and can have horrific consequences.

**Undercovers should also be aware of:**

*Informants whose claims are inconsistent with...*

- a. Their criminal history.
- b. Their cultural background.
- c. Their linguistic capabilities.
- d. Their intelligence.

- e. Their personalities.
- f. Common sense.

There are literally volumes of documented material that outline how an undercover can tactically and effectively corroborate informant-supplied information. Below is a list of the most effective.

### **Informant Corroboration Tactics**

- a. Record staged telephone calls between the informant and the target, prior to the undercover meet.
- b. Conversation should be choreographed in a manner that would establish that the relationship between the informant and the target is consistent with the informant's claims and allegations.
- c. Indices checks of the target and all known associates. (NADDIS etc..)
- d. Independent (spot-check) surveillance of the target and informant (without knowledge of informant)
- e. Telephone tolls (informant and target) and other communications for contact between target and known violators and/or unreported contact with informant.
- f. Corroborate "new" information with choreographed and recorded telephone call.
- g. Wire informant for unannounced meeting with the target.
- h. Use of a second informant to corroborate the first.
- i. **Best: have the informant "duke" in an undercover.**

### **Supervisory Traits Linked to Tragic Outcomes**

- a. Lack of knowledge, training and experience in undercover operations.
- b. Egotistical. Unwilling to listen to contrasting opinion on operational tactics.
- c. Lack of "street smarts". (*Been there, done that—but really hasn't*)
- d. Bureaucratic and/or inflexible (unable to think outside of the box; more concerned with regulations than lives).
- e. Tentative leadership: wants to be "one of the boys" at all costs. Reluctant to take charge.

### **Use of Electronic Equipment**

An undercover should NEVER rely on any piece of electronic equipment as the sole basis for his or her safety. A secondary plan should be drawn

up in the event the equipment fails. You should know the equipment you are using and its limitations. The worst time to test your equipment for the first time is during the actual operation so make the time to do a test run of the operation as close to the actual area as is possible so you know that your equipment will function properly in that location. Signals should be worked out ahead of time between the undercover and the back-up team if the equipment becomes non-functional. There should also be a signal (electronic and/or visual) indicating the need to break off the operation entirely. Make sure that the informant cannot intentionally render the equipment in-operable and explain possible consequences to the informant should he or she attempt to do so.