



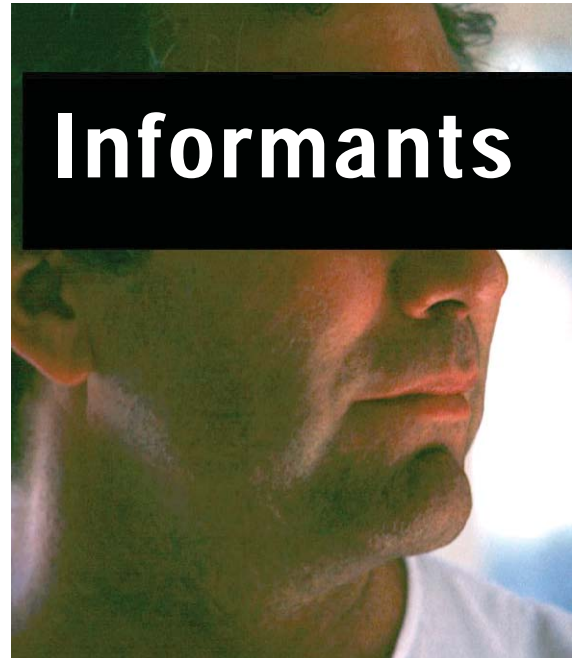
The Criminal Justice Institute's

# Management Quarterly

Fall 2007

## Managing Informants

By Donald H. Kidd



**T**he importance of informants and cooperating witnesses was brought home to the American public on June 23, 1992, when John Gotti, legendary New York organized crime figure, was sentenced to life imprisonment for 13 counts of murder, loansharking, racketeering, obstruction of justice, and tax evasion. One of the individuals who cooperated with the government, furnished information, and testified against Gotti and the Gambino crime family was Sammy "The Bull" Gravano, the highest ranking member of the Mafia ever to break the code of silence.

The inherent potential for dealing with informants has also been the focus of extensive media attention. Legendary FBI Agent John Connolly, an expert on organized crime in the Boston FBI Office, was convicted on May 28, 2002, of racketeering, obstruction of justice, and lying to the FBI. Connolly was charged with these crimes for providing assistance to James "Whitey" Bulger and Steven "The Rifleman" Flemmi, two Boston organized crime figures, who were informants he developed and handled. Connolly was subsequently sentenced to ten years for providing information to these individuals as well as receiving money and gifts from them.

It is widely accepted among all law enforcement professionals that informants are an extremely important asset, but they can also cause damage to officers and their departments. Accordingly, official policy manuals must

contain provisions for informant development as well as for informant management. An effective informant policy provides a comprehensive plan that covers everything from informant recruitment through the termination of the relationship. The policy will also describe the conduct that is expected from officers when dealing with informants, including conduct that is prohibited.

In an effort to ensure tighter management controls and higher levels of review for Federal law enforcement, the United States Department of Justice developed the *Attorney General's Guidelines for the Use of Criminal Informants*, which prohibits Federal law enforcement agents from interfering with or impeding any criminal investigation or arrest of an informant, or revealing to an informant any information relating to an investigation of the informant. In addition, a federal law enforcement officer may not exchange gifts with an informant, provide the infor

mant with anything of more than nominal value, receive anything of more than nominal value from an informant, or engage in any business or financial transactions with an informant. Further, a federal law enforcement agent shall not socialize with an informant except to the extent necessary and appropriate for operational purposes. Many local law enforcement agencies have similar provisions including those which prohibit being sexually involved with, purchasing items from, or borrowing money from informants.

### **Educating Your Officers**

Informants are critical to successful investigations and play a major part in the successful solution of crime. While small and medium size departments may feel that they are overwhelmed by the demands already placed upon them, guidance for officers in the development and utilization of informants is critical. There are too many examples of local, state, and federal law enforcement officer's careers being destroyed by their association with or mishandling of informants.

Officers throughout the department should understand not only the importance and need for informants but also the necessity of recruiting these individuals, properly handling them, and correctly reporting the information they provide. Some law enforcement agencies only utilize their investigative personnel in informant development and handling. Past experience indicates that many individuals assigned to patrol, through their contacts with the public and their personality traits, have exceptional ability to develop and handle sources and informants.

### **Identifying Informants**

There are many classes of individuals who might be utilized as informants, but special considerations will limit their use. Juvenile informants will require written permission from not only the juvenile but also their parents, and the permission of a parole officer may be necessary when utilizing an individual on parole or probation as

an informant. This class of individuals is often referred to as "restricted use-informants." For example, the Denver Police Department in Colorado includes within this definition the following:

**Juveniles:** Officers shall not request or utilize a juvenile as an informant unless extraordinary circumstances exist and written authorization is obtained from the juvenile and the juvenile's parent or legal guardian.

**Violent Persons:** Officers shall not utilize as informants individuals with a known propensity towards violence or with a criminal history indicating violent behavior including but not limited to robbery, aggravated assault, assault to a police officer, sexual assault, etc.

**Active Felons:** The continued use of an informant who is known to have committed a felony, other than making controlled buys of contraband, is prohibited.

**Family Members:** Officers are prohibited from using blood relatives or family members as informants.

**Fugitives:** Officers will not knowingly utilize an informant who is the subject of an active warrant.

**Suspects:** Officers are prohibited from using an informant who is the subject of an active criminal investigation.

**Parole, Probation, and Correction:** Individuals who are on parole and probation may not be utilized without the approval of the appropriate division commander who will determine whether or not the Department of Corrections should be notified concerning the relationship.

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<sup>1</sup> Thetford, Robert. **Informant Liability Issues**. [http://www.icje.org/informant\\_liability\\_issues.htm](http://www.icje.org/informant_liability_issues.htm)

<sup>2</sup> <http://www.usdoj.gov/olp/dojguidelines>

<sup>3</sup> <http://www.denvergov.org/Portals/326/documents/307.pdf> – Confidential Informants

<sup>4</sup> Mallory, Stephen L. **Informants: Development and Management**. Copperhouse Publishing, 2002.

<sup>5</sup> <http://www.fhp.state.fl.us/Manuals/pdfs/2004/080405.pdf>

The Denver Police Department provides some flexibility in all areas of restricted use-informants. When extraordinary circumstances exist and command level approval has been obtained, utilization of these types of informants may be necessary.

### **Creating an Informant File**

Informant documentation is essential to the successful management of an informant program. The informant file should contain a personal history of the informant, a photograph, fingerprints, a search of drivers' license and criminal history data banks, payment vouchers signed by the informant, copies of investigative reports where the informant or his information was needed, and other information deemed relevant by the department.

After collecting the necessary documentation to establish an informant file, the majority of departments then assign a symbol number to the individual. The protection of the identity of informants is extremely important and this is of particular significance with files on informants. There should be both restricted access to these files and a log should be maintained of individuals who actually access or review an informant file.

### **Developing Personal Relationships**

Two major ethical issues exist when law enforcement officers cross the line from a professional relationship with informants to one of a more personal nature. The case of former FBI Agent James J. Smith and his informant, Katrina Leung, is illustrative of this situation. Leung immigrated to the United States in 1970 using a Taiwanese passport. Smith, who pleaded guilty of lying to the FBI, developed Leung as an informant. Leung, who was paid 1.7 million dollars for services and expenses, engaged in a romantic relationship with Smith while at the same time copying classified material from his briefcase, which was passed to the Chinese Ministry of State Security. The "Katrina Leung" case is just another classic example of an individual in law enforcement having a romantic involvement with an informant where the informant is controlling the situation to obtain sensitive law enforcement information.

The Florida Highway Patrol Policy Manual cautions officers to take additional precautions when dealing with an informant of the opposite sex and with informants whose sexual preferences may make an investigation more susceptible to compromise through alleged impro-

prieties, requires the officer to protect him or herself by notifying a superior officer of the time and place where a source contact will be made, and forbids routinely meeting with informants of the opposite sex. Many departments now mandate that two officers be present when meeting an informant of the opposite sex. There are many sound reasons for such policy because informants have been known to induce an officer to a meeting to assault or kill them, make false claims against the officer, or allege that an officer was extorting them for money, drugs, or sex.

### **Paying Informants**

The law enforcement agency must also ensure that the controls over disbursement of confidential funds are adequate to safeguard against the misuse of such funds. A supervisor must normally authorize the payment of nominal amounts of confidential funds, and significant expenditures require approval by higher levels of management. Documentation of payments to informants is critical and requires a receipt for the purchase of information. Payment should be made and witnessed by two law enforcement officers. In all instances, the original signed receipt must be submitted to appropriate supervisory personnel for review and record keeping.

### **Cutting Deals**

A third area of serious ethical concern is individuals who are cooperating with law enforcement in an attempt to either not be charged or have their charges reduced. A law enforcement officer does not have the legal authority to grant immunity or create a class of protected individuals. Situations such as this should not only be closely supervised but also discussed with the prosecutor for appropriate guidance. It must be made clear to these individuals that they are not permitted to engage in any type of unauthorized criminal activity.

### **Developing Policies and Procedures**

Larger departments in Arkansas and throughout the country already have excellent informant policies and procedures developed and in place. Individuals in department who need to improve their guidance in this area can usually obtain the assistance of these departments. The Internet is also an excellent source of information because many departments have their informant policy posted on the internet.

When sound policy is in place, officers throughout the department must be trained on the development and handling of informants. Officers must understand that informants cannot be worked out of their "back pocket," and documentation of the informant, their information, and payments protect both the officer and the department. Management must monitor the program to ensure the necessary understanding and compliance with the program.

### **Conclusion**

A system cannot be devised that will prevent every unfortunate situation. With sound policy, good supervision, and documented compliance with the informant policy, a department will have taken major strides in protecting their officers and the department from unstable informants, allegations of misconduct, and lawsuits.

**Take advantage of the following CJI course to learn more about managing informants:**

## **Managing Informants and Cooperative Witnesses**

This six-hour course will deal specifically with recruitment, documentation, motives, control, legal issues, and other pertinent issues regarding confidential informants and cooperating witnesses, as well as the difference between them. The supervisor's responsibility in the utilization of informants by his or her subordinates will be discussed along with the pitfalls of managing them.

**Criminal Justice Institute  
May 9, 2008**

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