

# U.S. runs byzantine informant system

by Leo F. Scanlon

Befitting its status as one of the "superpowers of incarceration," the United States has developed an internal spy apparatus which is approaching the dimensions of the secret police machines in China and the former Soviet Union. Between 1987 and 1989, the U.S. government increased its criminal informant payroll from \$35 million to over \$63 million, with state law enforcement agencies matching that amount. Although figures for subsequent years are not yet available, the rate of increase in the number of highly paid secret informants has continued to expand, putting the officially reportable payroll in the range of \$250 million per year.

Lying, cheating, stealing, dealing drugs, and committing murder on behalf of law enforcement agencies frequently provide six-figure incomes and, Internal Revenue Service (IRS) records show, occasionally makes a millionaire of the informant—who is now the uncrowned king of the Bush-Thornburgh criminal justice system. According to information published in the *American Bar Association Journal*, the Atlanta office of the FBI alone supervised more than 257 informants during the cited period. And the FBI is not the largest user of such informants. The Customs Service and the Drug Enforcement Administration both spend more than the FBI on informants, and all are dwarfed by the Department of Justice (DoJ), which reported in 1989 that it carried a \$24 million informant payroll in the Federal Witness Protection Program. In addition, the IRS, the Bureau of Alcohol, Tobacco and Firearms, the Secret Service, and the Immigration and Naturalization Service utilize secret informants. CIA activities in this area are classified.

The figures for monies paid to the informant network are undoubtedly understated. Federal law allows government agencies to share up to 25% of the value of assets seized, and the "incentive plan" allows a lot of maneuver for deflated reporting and inflated payments. This typically involves contraband which can be re-sold on the drug market by the immunized informant, pushing the per-case payment above the \$250,000 cap imposed by federal rules.

## Informant apparatus corrupts justice system

Contrary to prosecutors who are "addicted" to the informant apparatus, this network does not facilitate the prosecution of the organizers of the drug trade, who bargain their way out of sentences and onto the payroll; instead, it captures

the lowly couriers and street dealers who have no information to trade and no one to hand over. These wretches face mandatory prison sentences of 10 years or more, which is longer than the average sentence for a rapist (five years), a murderer (six years, eight months), or a robber (eight years).

In addition, the informant system allows cash-short local police agencies to engage in the lucrative business of entrapping victims targeted by informants, seizing and disposing of assets (in many cases before any trial ever occurs), and using the proceeds to finance operations.

The unsubstantiated word of an informant is now grounds for a search warrant, effectively bypassing constitutional restraints against illegal search and seizure. The legal press is full of stories of searches conducted on the basis of fraudulent statements by informants, and where the evidence is planted by the informant, since the rules against entrapment which constrain police do not apply to an informant.

While the Supreme Court has agreed to consider whether the Constitution limits how the government may choose its targets (*Jacobson v. United States*), the Rehnquist Court has already upheld the constitutionality of guidelines and rules established by the U.S. Sentencing Commission in 1987. These allow the "script" written by the authors of a sting to determine the sentence of the victim. Under the new sentencing guidelines, and the "modified real offense" sentencing, the sentence is based both on the severity of the offense and on other acts merely alleged. These other offenses, used in computing the sentence, do not have to be proven at trial or charged in an indictment; they may never have been committed, but simply reported or made up by an informant.

In designing a sting, prosecutors decide who to target, what crime to entrap them with, when and where, and how long the operation will run; each of these elements is an "enhancement factor" which has a specific quantifiable bearing on the sentence—even though the conduct is created by the government itself.

Mandatory sentencing, asset forfeiture laws, and the witness protection program were all passed by Congress as part of the so-called "war on drugs." These devices are destroying what is left of legitimate law enforcement, and are now turning on the judiciary itself. One DoJ official told the *Legal Times* that "using lawyers as snitches . . . is something we think we ought to do, it is among the tools we have, and it is a perfectly valid one." Increasingly, "defense attorneys" are actually government informants, often set up by their own clients, who are in turn framing other clients, attorneys, and judges.

The implications are staggering for a system in which judges rule on issues ranging from the conduct of elections to the health policies of local hospitals. It is documentable that virtually every state and federal legislator is the subject of some investigation. Now, judges have been brought under the same system—it might be called "government by blackmail."