

# Confidential Informants: Protecting Their Identity

*Once an informant is known, the drug traffickers  
are quick to retaliate. Dead men tell no tales.<sup>1</sup>*

Utilizing confidential informants to obtain incriminating information has been described as “dirty business.”<sup>2</sup> And it certainly is. After all, the average CI is a “denizen of the underworld”<sup>3</sup> who is assisting officers because he wants something, usually a break in a pending criminal case. As the court noted in *U.S. v. Bernal-Obeso*, “Criminals caught in our system understand they can mitigate their own problems with the law by becoming a witness against someone else.”<sup>4</sup>

It is also dirty business because CIs—known in the trade as “snitches,” “stool pigeons,” “turncoats,” “snakes,” “rats,” and much worse—are “cut from untrustworthy cloth”<sup>5</sup> and will lie and exaggerate when it suits their purposes. “Our judicial history,” said the Ninth Circuit, “is speckled with cases where informants falsely pointed the finger of guilt at suspects and defendants, creating the risk of sending innocent persons to prison.”<sup>6</sup>

That being said, it is also true that CIs play a vital role in the investigation of many types of crimes, especially drug trafficking and other varieties of criminal collusion.<sup>7</sup> That’s because the people involved in illicit enterprises are naturally obsessed with secrecy. As a result, in many cases the only people who can obtain the inside information that will support arrests and search warrants are fellow felons and hoodlums.<sup>8</sup> Furthermore, the information they furnish tends to be quite accurate, as demonstrated by the high percentage of productive search warrants based on their tips. As the United States Supreme Court summed it up, “[T]he informer is a vital part of society’s defensive arsenal.”<sup>9</sup>

<sup>1</sup> *Roviano v. United States* (1957) 353 U.S. 53, 67 (dis. opn. of Clark, J.).

<sup>2</sup> *On Lee v. United States* (1952) 343 U.S. 747, 757.

<sup>3</sup> *On Lee v. United States* (1952) 343 U.S. 747, 756.

<sup>4</sup> (9<sup>th</sup> Cir. 1993) 989 F.2d 331, 334. ALSO SEE *People v. Hambarian* (1973) 31 Cal.App.3d 643, 655 [“Many informers are themselves charged with or under investigation for criminal activity and give information to the police in the hope or expectation of receiving favorable treatment.”].

<sup>5</sup> *U.S. v. Bernal-Obeso* (9<sup>th</sup> Cir. 1993) 989 F.2d 331, 333. BUT ALSO SEE *U.S. v. Cook* (7<sup>th</sup> Cir. 1996) 102 F.3d 249, 252 [“Informants are tempted to manufacture or exaggerate evidence of crime, but law enforcement agents, aware of this, try to control them. An informant hired to buy drugs from a suspect will be searched before and after the transaction (to ensure that he has not brought his own drugs or kept the ‘buy’ money). An informant hired to negotiate a criminal transaction often will be wired for sound”].

<sup>6</sup> *U.S. v. Bernal-Obeso* (9<sup>th</sup> Cir. 1993) 989 F.2d 331, 334.

<sup>7</sup> See *U.S. v. Bernal-Obeso* (9<sup>th</sup> Cir. 1993) 989 F.2d 331, 335 [“Without informants, law enforcement authorities would be unable to penetrate and destroy organized crime syndicates, drug trafficking cartels, bank frauds, telephone solicitation scams, public corruption, terrorist gangs, money launderers, espionage rings, and the likes.”]; *People v. Pacheco* (1972) 27 Cal.App.3d 70, 81 [the “informer system” is “regarded as a necessity for law enforcement and which has existed from the very beginning of police work.”]; *On Lee v. United States* (1952) 343 U.S. 747, 756 [“Society can ill afford to throw away the evidence produced by the falling out, jealousies, and quarrels of those who live by outwitting the law.”].

<sup>8</sup> See *U.S. v. Dennis* (2<sup>nd</sup> Cir. 1950) 183 F.2d 201, 224 [“[I]t is usually necessary to rely upon [CIs] or upon accomplices because the criminals will almost certainly proceed covertly.”].

<sup>9</sup> *McGregor v. Illinois* (1967) 386 U.S. 300, 307.

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