

G A R Y T. M A R X

UNDER

Police Surveillance in America

COVER

A Twentieth Century Fund Book

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Police Surveillance in America

Gary T. Marx

A TWENTIETH CENTURY FUND BOOK

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Undercover

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I'll be very honest with you. I'm troubled by it. Most of our investigations involve surveillance, paid-for information and search warrants, and I think that's the best way to go. However you can't get by without undercover officers. They are a necessary evil.

—*A police supervisor*

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Foreword

The Abscam scandals drew public attention to the use of undercover agents. There is of course nothing new about this practice. It has in fact been around long enough to become a staple of fact and fiction. G. K. Chesterton had an undercover agent in his *The Man Who Was Thursday*. The New York Police Department had an undercover man on its force who infiltrated the so-called Black Hand Society around the turn of the century and was later assassinated. And the Federal Bureau of Investigation has at times been extremely well-represented in the Communist party.

Nowadays covert action by law enforcement agencies on the local level has become so commonplace that few of the many operations each year are even given much coverage by the media. This increase in the use of covert action is partly due to the changes that have taken place in the nature of crime. It is doubtful that much could be done about apprehending drug dealers or uncovering the high-stakes skulduggery in business dealings without using covert action. To be sure, there are risks involved in such activity: sometimes undercover agents are found out; and sometimes they are corrupted and “turned,” themselves becoming criminals instead of trapping them.

The Twentieth Century Fund, in pursuing its interest in urban social problems, found that the issue of urban crime loomed large. We sought an author who would examine the broader problems posed by crime and the measures taken by the police to combat it. In Gary T. Marx, professor of sociology at the Massachusetts Institute of Technology, we

found a scholar who, after twenty years of studying criminal justice, understood the broader issues. He was prepared to look at the moral and social questions raised by the use of deceptive tactics on the part of official agencies.

His study provides a thoughtful analysis of why our nation is making such extensive use of covert operations and their effects on law enforcement. He also carefully investigates their effects on the rest of us. The Fund is grateful to him for carrying out so useful an investigation, and so I think should be his readers.

*M. J. Rossant, Director
The Twentieth Century Fund
March 1988*

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I am grateful to the National Institute of Justice for rejecting a proposal to fund this project. Had they done otherwise, I would never have had the good fortune to work with Gary Nickerson and the other people at the Twentieth Century Fund. Gary was an able guide and critic who helped me always keep larger audiences and issues in mind. Carol Kahn was a superb and caring editor.

I was fortunate to have two of my former students—Professor Nancy Reichman (now with the University of Denver) and Dr. Jay Wachtel (now with the United States Treasury Department)—as research associates. Their intelligence, dedication, and friendship greatly enhanced the book. Nancy helped write chapters 6 and 9. Other work we have done on computer matching and profiling helped me in thinking about new directions in social control. Jay carried out a majority of the police interviews at the local level. His extensive law enforcement experience, moral concerns, and intellectual honesty provided significant insights otherwise unavailable to the outsider.

Much of the literature on controversial police topics breaks down into two categories—uncritical work by well-informed insiders and critical work by uninformed outsiders. Whether this book is seen as sufficiently critical or uncritical depends on the values of the reader. What I hope is not at issue is the informed nature of the analysis. In that regard, I am particularly grateful to Floyd I. Clarke, Assistant Director of the Criminal Investigative Division of the FBI, and to Bob Lill, Chief of the FBI's Undercover and Sensitive Operations Unit, for the access and in-

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Finally, there are some broad debts that I am glad to have the chance to acknowledge: to my parents, Ruth and Don Marx, for providing me with a loving upbringing in which honesty with oneself and others was a central value. My sons, Joshua and Benjamin, were respectful of my need to work, even though the door to my study was always open and they knew they came first. With respect to privacy and liberty, I hope their world and that of their children will remain the one we are familiar with, in spite of the harrowing potentials noted in the last chapter. I am

1. W. Heffernan and T. Stroup, *Police Ethics: Hard Choices in Law Enforcement* (New York: The John Jay Press, 1985).

2. J. Short, *The Social Fabric* (Beverly Hills, Calif.: Sage, 1986).

grateful to my wife Phyllis for being all that I could ask for in an emotional and intellectual companion. Although she is a thoroughly modern woman with her own career, she also managed to provide a home environment rich in the support, protection, and tolerance said to have been enjoyed by Talmudic scholars of old.

Preface

The French poet Paul Valéry observed that “in truth there is no theory which is not a fragment . . . of an autobiography.”¹ My initial interest in covert police tactics grew out of an incident in Berkeley, California, in 1963 when I was a student. I was active in CORE (the Congress of Racial Equality), an organization dedicated at that time to integration through nonviolence. After a major fund-raising effort, an event occurred that severely damaged the group—our treasurer disappeared with the money. It turned out she was a police agent, as were several other disruptive members.

I felt betrayed by the treasurer, a person I had respected and trusted. I was shocked and angered that a peaceful democratic organization dedicated to ending racial discrimination could be a target of such police action. The youthful image I held of police as archetypical boy scouts, derived from participation in a scout troop sponsored by the Los Angeles Police Department, was challenged.

At the same time, my graduate studies were posing questions and presenting perspectives that made these kinds of actions of more than personal interest. In studying the creation and presentation of social reality, it was clear that things are often not as they appear, that rule breaking and rule enforcement could be intricately intertwined. Were police best seen as paragons of virtue beyond reproach or as morally pragmatic figures enmeshed with the forces of evil? Social reality,

1. P. Valéry, *Oeuvres* (Paris: Editions Gallimard, 1965).

particularly when secrecy is involved, could have paradoxical elements that complicated efforts at understanding and action. Democratic social orders are fragile. They might be threatened by extremist political groups, as well as by the state.

My personal and professional interests came together in 1967 when I studied police behavior in riots as a staff member of the National Advisory Commission on Civil Disorders. One of the commission's findings was that, in responding to disorders, police may contribute (whether intentionally or unintentionally) to the very conditions they seek to control.²

Not long after this, police accountability and the duality of social control received widespread public attention through revelations regarding the "dirty tricks" campaigns directed at the civil rights, antiwar, and other movements, and through Watergate and its aftermath. These events made clear the dangers of a secret political police and the ease with which the state could engage in practices abhorrent to a free society.

The issues were relatively straightforward. The excesses noted by the Senate's Church Committee and the Presidential Rockefeller Commission have no place in a democratic society.³ The question posed by William Butler Yeats: "What if the Church and the State are the mob that howls at the door?" suggested a research agenda. My initial research on covert police sought to document and explain such behavior.⁴

This book, then, grew out of that interest in political policing. As the social movements of the 1960s subsided and police reforms appeared, the use of undercover tactics against legal political groups greatly declined. But undercover tactics took on new life elsewhere. I took the same values and concerns to the study of secret police tactics directed at conventional criminal activities as I had to those directed at legal political activities. As this study progressed, my feelings changed. Social con-

2. President's National Advisory Commission on Civil Disorders, *Report of the National Advisory Commission on Civil Disorders* (Washington, D.C.: GPO, 1968); G. T. Marx, "Civil Disorder and the Agents of Social Control," *Journal of Social Issues* 26, no. 1 (1969): 19–57.

3. U.S. Congress, Senate, 94th Cong., 2d sess. Church Committee (Select Committee to Study Governmental Operations with Respect to Intelligence Activities), *Supplementary Detailed Staff Report on Intelligence Activities and the Rights of Americans*, Book III, Final Report (Washington, D.C.: GPO, 1976); Rockefeller Commission Report, *Report to the President by the Commission on CIA Activities Within the U.S.* (Washington, D.C.: GPO, 1975).

4. G. T. Marx, "Thoughts on a Neglected Category of Social Movement Participant: Agents Provocateurs and Informants," *American Journal of Sociology* 80, no. 2 (1974): 402–42, "External Efforts to Damage or Facilitate Social Movements: Some Patterns, Explanations, Outcomes, and Complications," in *The Dynamics of Social Movements*, ed. M. Zald and J. McCarthy (Cambridge, Mass.: Winthrop, 1979), pp. 94–125.

trol directed at serious violations (robbery, consumer fraud, or corruption) for purposes of prosecution is very different from that directed at the expression of unpopular political beliefs for purposes of disruption.

To some extent, the good guys and the bad guys changed places. The sympathy I felt for civil rights and peace activists confronted by the likes of Bull Connor and agents provocateurs did not translate into sympathy for rapists and corrupt politicians. The indignation that could so easily be directed at the misuse of secret police during early labor struggles and against later civil rights and peace activists could not be automatically transferred to the new infiltrators of the 1980s.

Of course, a key civil liberties principle is that official behavior ought to be judged according to law and policy, not according to whether or not one is sympathetic to the group that is the subject of police actions. Personal feelings aside, the problem of much of the political policing of the 1960s and early 1970s was that its targets were engaged in dissent, not crime. This helps explain why disruption was a much more important goal than prosecution.

In starting this book, I viewed undercover tactics as an *unnecessary evil*. But, in the course of the research I have concluded, however reluctantly, that in the United States they are a *necessary evil*. To be sure, the analysis goes much further in documenting problems and pitfalls of covert tactics than it does in singing their praises. This is partly because good news has a way of taking care of itself, while secrecy makes it all too easy to cover up the bad news. It is also because the tactic is inherently risky and involves costs not present with more conventional tactics.

However, it is still sometimes difficult to separate the heroes from the villains. The issue is complicated by the striking paradoxes, ironies, and trade-offs that are, or might be, present: to do good by doing bad—preventing crime or apprehending criminals by resorting to lies, deceit, trickery; preventing crime by facilitating it; seeking to reduce crime by unintentionally increasing it; preventing harm at a cost of uncertainty about whether it would in fact have occurred; seeing police who pose as criminals become criminals; seeing criminal informers act as police; seeing restrictions on police use of coercion lead to an increase in the use of deception; seeking rational control over emerging and unpredictable events through secret intervention into settings where information is limited; and witnessing the double-edged nature of a tactic ever ready to backfire.

I have sought to describe and explain some fascinating changes that have occurred in American policing. Even if these changes had not oc-

curred, the topic of covert investigations is important because it involves fundamental social processes of trust, lying, deception, and the interdependence of rule enforcers and rule breakers. Secrets and covert intelligence gathering and testing are found in all organizations from the corporation to the family. The offering of quiet little temptations is inherent in child rearing. It is also an element in building up the trust found among friends. Studying deception and temptation in face-to-face encounters and organizations can yield insight into basic elements of social life. To set up a fake organization or to present a fake identity, one must understand how real organizations and identities are constructed. This is the heart of the sociological enterprise. Police are, in a sense, lay sociologists and psychologists. Investigating how they create reality can contribute to our understanding of society and the individual.

I have approached the topic of covert practices as a sociologist interested in the criminal justice system and in the nature of social control. My interest is in the nature of the work and the persons involved in it and in the organizational and societal contexts in which it is carried out. This inquiry casts a broad net: social, historical, legal, technical, ethical, and policy aspects are considered. My analysis is not restricted to one level of government, to a given enforcement agency, to a crime problem where undercover means are central, or to a particularly celebrated investigation. I have looked for themes that are applicable to all of these, assuming that the fundamental techniques used and issues raised are similar. Although each United States law enforcement agency is unique, they have much in common as they operate within the same broad socio-cultural framework. There is a greater interchange of ideas, resources, procedures, and personnel among and between federal and local agencies than at any previous time in American history. Undercover practices are one factor in this.

My emphasis is more on the new forms of covert operation, such as the property sting and corruption investigation, than on the traditional, better-understood forms involving political groups or narcotics. The book deals with domestic law enforcement (both federal and local), rather than foreign intelligence and counterintelligence activities. While there is some overlap, the latter raise significantly different issues and are subject to different laws and policies. The book focuses on public rather than private police. This restriction is a function of resource limitations rather than a belief that the undercover activities of private police are unimportant or uninteresting. As the historical record of the Pinkerton and Burns detective agencies or the contemporary record of