CENTERPIECE

Undercover work – a necessary evil?

By Ross Gelbspan
Globe Staff

Twenty-five years ago, when he was active in the Congress of Racial Equality, Gary Marx suffered a shock that would exert a profound impact on his professional and intellectual development.

The treasurer of the Berkeley, Calif. chapter of CORE, to which Marx belonged, disappeared with the proceeds of a major fund-raising event.

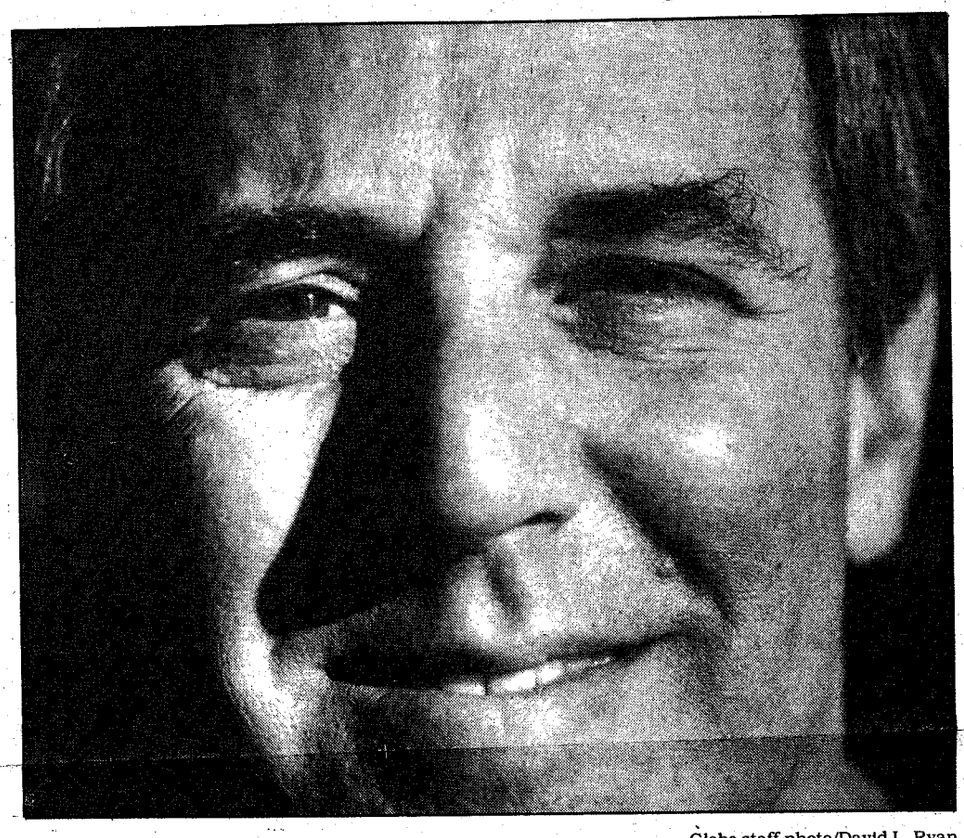
The woman later proved to be an undercover police agent who had infiltrated and disrupted the group.

The revelation dashed Marx's belief in the police as "archetypical Boy Scouts" and helped propel him into a career as one of the country's most respected scholars of criminal justice, surveillance and privacy issues.

Earlier this year, Marx, a sociology professor at the Massachusetts Institute of Technology, completed his most ambitious work to date – an examination of the dramatic growth of undercover police surveillance in the United States.

But the results of the research by Marx, the sociologist, surprised Marx, the moralist.

"In starting the book, I viewed undercover tactics as an unnecessary evil. But in the course of the research, I concluded, however reluctantly, that they are a necessary evil," Marx wrote in his recently published book, "Undercover: Police Surveillance in America."



Globe staff photo/David L. Ryan

Gary Marx, author of "Undercover: Police Surveillance in America."

Morass of ambiguities

Along the way, Marx discovered a morass of moral, social and legal ambiguities involved in the use of undercover operatives that raise questions, not only about the effectiveness of specific law enforcement operations, but about the country's standards of privacy and trust.

"Secret police behavior and surveillance go to the heart of the kind of society we are or might become," Marx wrote in his preface to the book. "By studying the changes in covert tactics, a window on something much broader can be gained."

The most obvious change is the tremendous growth of covert and undercover operations by local and federal law enforcement agencies during the last decade: in 1977, for example, the FBI appropriated $1 million for 53 undercover operations. Seven years later, the bureau alone spent more than $12 million for nearly 400 such operations.

A major impetus for the increase in undercover operations, according to Marx, is the growth of white-collar crime and the need for law enforcement agencies to become more aggressive in anticipating, rather than just reacting to, crime.

"Undercover work grows easily out of an emphasis on planning, prevention and productivity. It offers a means of actively pursuing crime through direct involvement and police initiative. It fits with the notion of the modern police officer prevailing via intelligence, skill and finesse, rather than brute force and coercion," Marx wrote.

Fundamental questions raised

But in analyzing hundreds of undercover operations, ranging from the infamous ABSCAM sting operations of the late 1970s to Operation Falcon, an undercover maneuver run by the US Fish and Wildlife Service in the mid-1980s, Marx found that some of the operations raised – but did not answer – some fundamental questions. Some examples:

inflicted on someone with whom an undercover agent has cultivated an intimate relationship without revealing his true identity?

What about a situation – especially common to undercover operations – in which the police have no specific suspect but target a group of people in order to snag lawbreakers?

What about the violation of an individual's right to privacy by the gathering of personal information about innocent people in the course of an undercover investigation?

What about the ethics of police agents posing as priests, doctors or journalists?

What about an undercover agent who becomes so completely immersed in his cover that he loses his own identity and can not reenter normal life without profound emotional upheaval?

When Marx examines the questions from the point of view of law enforcement administration, an entirely different set of questions and paradoxes emerges.

While critics may demand elaborate guidelines of conduct and tight controls on undercover agents, Marx points out that "the higher the level of supervision, the poorer the quality of information, and the greater the time required for decisions."

Additionally, he notes, the more extensive the controls, the greater the likelihood of leaks that can compromise an operation – and destroy an informer.

Moreover, Marx found, the more deeply an informant is involved in crime, the more useful he is. But that may make him more difficult to control.

The morass of contradictions and paradoxes unearthed by his research led Marx neither to a blanket denunciation of undercover operations nor to an unqualified endorsement.

"I think the alarmists who say 1984 is already here are overstating the situation," than extremists at either end would allow. My work is an effort to unravel that complexity.

Most pressing to Marx is that the debate over such issues as the relationship between the individual and the state, or the viability of our 19th-century notion of privacy amid the realities of 20th-century life, should be decided by the public and not by a small group of policy makers inside the law enforcement community.

A loss of privacy

Americans have already submitted to a loss of privacy and an increase in surveillance with barely a discussion of how and why it has taken place.

In a chapter on "The New Surveillance," Marx notes that government agencies may now monitor the most personal habits of individuals through massive computer data bases.

"People under 25," he said, "assume that metal detectors and closed-circuit video cameras have always been standard equipment in airports."

A range of space-age devices, from computer-enhanced satellite photography to "starlight scope" light amplifiers, computerized telephone registers, and sensors are activated by sound, heat or motion has laid the groundwork, Marx asserts, for a "maximum-security society."

In this context, Marx views the increase in undercover operations as not just another device in the ongoing battle between cops and robbers, but as a significant strand of the new surveillance.

"In a democratic society, covert police tactics, along with many of the other surveillance techniques, offer us a queasy ethical and moral paradox," he notes. "The choice between anarchy and repression is not a happy one, wherever the balance is struck."

In some cases, the use of undercover operations is the "least bad" alternative