

Agent Provocateur

by SGT. W. H. KELLY

THE term "*agent provocateur*" originated in France, probably about the end of the 18th century, and is linked closely with political (foreign and domestic) espionage. It was applied to persons who resorted to the then very common form of political tyranny which encouraged, procured or counselled others to commit overt actions so that these others would be liable to arrest. In those days every citizen was regarded as a potential traitor and anyone who could be persuaded to commit an offence was considered disloyal to the State.

Agents provocateur were recruited from among persons of doubtful character who were ready to do anything for money. The sinister interpretation of the words, which no doubt is due to this connection, prevails in the minds of some people to this day. A person who persuades another to commit an offence, which *except for persuasion would not have been committed*, solely to have him punished for it, is still rightly called an *agent provocateur*. But our courts have enlarged the meaning of these words by applying them to peace officers who in certain circumstances carry out legitimate police investigations, investigations which if not undertaken would make it possible for persons to engage in illegal practices without fear of prosecution.

There is a tendency to put policemen working on such investigations in the category of those whom the expression was first meant to describe. Thus applied the expression is a misnomer and every policeman should object to it. True the methods used in police investigations and in the activities which originally gave rise to the words in question are similar. But—and this point is all important—the motives behind them are entirely different.

If in the interests of justice a peace officer misrepresents his true occupation he does no more than his proper legal duty.

AFTER making sure that offences are being committed and that no other form of investigation is likely to stop them, the peace officer usually must, through disguise or misrepresentation of his official status, participate in one of them. This procedure, which is known to some as "the test purchase method" and to others as "making a buy", often is the only way to close a "source" of certain kinds of illegal traffic and to bring the perpetrators to justice.

The test purchase method enables an investigator to get directly at the root of a crime. Without someone "on the inside" it is virtually impossible to detect parties responsible in the drug and liquor traffic, black market activities and so on, or in various forms of continuing offences, and the test purchase method has been used with marked success in combating these evils.

When the test purchase method is used the investigator resorts to pretence, sometimes even to false statements. He must conceal the fact that he is a policeman or an agent collaborating with the police—this in the interests of justice, for otherwise he will be unable to prove the existence of activities defeating the ends of justice.

But the use of subterfuge in the detection of crime is quite a different thing than its use in the instigation of crime.