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# ASSET FORFEITURE

127188

Methods and  
Coverage Investigations



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# ASSET FORFEITURE

## Informants and Undercover Investigations

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Sandra Janzen

U.S. Department of Justice  
National Institute of Justice

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U.S. Department of Justice  
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Washington, D.C. 20531

Dear Colleague:

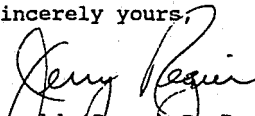
Illicit drug traffic continues to flourish in every part of the country. The cash received by the traffickers is often converted to assets that can be used by drug dealers in ways that suit their individual tastes. Since 1981, federal authorities have increased their attack on these assets through both criminal and civil forfeiture proceedings with remarkable success. The recent passage and use of state asset forfeiture laws offers an excellent means for state and local jurisdictions to emulate the federal success.

The Bureau of Justice Assistance (BJA), in the Office of Justice Programs, has funded a nationally focused technical assistance and training program to help state and local jurisdictions facilitate broader use of such laws. BJA selected the Police Executive Research Forum to develop and administer this program because of its history of involvement in practical, problem-oriented research to improve police operations and the Forum's central role in developing training materials for use by police agencies and chief executives.

As part of this project, the Forum has contracted with experts in the area of asset forfeiture and financial investigations to prepare a series of short manuals dealing with different concerns in the area of asset forfeiture. We hope these manuals help meet the rapidly unfolding needs of the law enforcement community as more and more agencies apply their own forfeiture laws and strive to learn from the successes and problems of their peers.

I welcome hearing your comments about this program. We have this project so that most requests for information or assistance can be handled through the Forum staff in Washington, D.C., by calling 202/466-7820.

Sincerely yours,

  
Gerald (Jerry) P. Regier  
Acting Director

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## Acknowledgments

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Police Executive Research Forum

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# Informants and Undercover Investigations

## Introduction

Too often, the strategy of convicting and incarcerating leaders of a criminal enterprise fails to achieve its goal of closing down the operation. The enterprise continues despite removal of key members because its economic infrastructure—the glue that holds it together—remains substantially intact.

To attack the economic base of drug-trafficking and other criminal enterprises, legislators have enacted statutes authorizing the seizure and forfeiture of specified assets of those organizations. For example, the Federal Racketeer Influenced and Corrupt Organizations (RICO) statute<sup>1</sup> and similar Federal and state legislation contain asset-seizure and forfeiture provisions. Designing investigations around those laws has resulted in forfeiture of the following types of assets, among others<sup>2</sup>:

- Property that is used or intended for use in the commission of a crime.
- Property acquired or maintained as a result of a crime.
- Property purchased with the proceeds of a crime.
- Enterprise interests acquired, controlled, or conducted through racketeering.

Informants and undercover investigations play critical roles in helping law enforcement agencies identify, seize, and forfeit such assets. This investigator's guide describes procedures for using informants and undercover operations, as well as investigative tools, in efforts to seize assets and thereby disable drug-trafficking enterprises.

## Forfeiture-Oriented Proactive Investigations

Here a *proactive* investigation is one that strategically targets violators and focuses on their assets, with the goal of dismantling a criminal enterprise. A proactive drug-related investiga-



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tion addresses five basic questions pertaining to traffickers' assets and their forfeiture potential:

1. Who possesses identifiable and seizable assets, and in whom does ownership of the assets legally vest? .
2. How extensive are the assets?
3. How are the funds that are used to acquire the assets being laundered?
4. What is the legal basis for forfeiture?
5. What role does the targeted trafficker play in the drug offense or in a larger enterprise, and what impact will forfeiture have on the enterprise?

The information gained from answering these questions can help investigators decide where to invest their time and resources—that is, which investigations most likely will result in forfeiture of assets, thus disrupting and dismantling the illegal enterprises.

Drug dealers are very good at hiding assets, disguising their ownership, engaging in money laundering, and operating under a veneer of legitimacy. That secrecy helps explain why *reactive* investigations sometimes produce disappointing results. A proactive investigation penetrates the first line of defense erected by key drug dealers—layers of individuals, such as street dealers, who help insulate them and their assets from law enforcement. The strategy involves the use of informants and undercover operations as well as a variety of investigative tools, as described in the next section.

### **Preliminary Investigative Steps**

Initially, little may be known about an enforcement target, and what is known likely is uncorroborated. Investigators should contact all law enforcement agencies likely to have information—the Customs Service, Immigration and Naturalization Service, Federal Bureau of Investigation, Drug Enforcement Administration, Internal Revenue Service, and local and state narcotics intelligence and enforcement units. Their information may help determine the scope of the criminal enter-

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prise and identify possible informants. Other filed cases may be discovered, and they may support a forfeiture case based on the legal principle of *collateral estoppel*.

Investigators also may be able to determine the structure and scope of a criminal enterprise by using such investigative tools as mail covers, analysis of trash, public records, and telephone tolls, and physical surveillance. The following sections review these tools as preliminary steps to the most effective use of informants and undercover techniques.

### *Mail Covers*

Mail covers are used to obtain information from mailed envelopes, such as name of addressee and sender, return address, postmark, and date of mailing. The information is recorded by postal employees at local post offices before the mail is delivered. Mail covers can be obtained for all classes of U.S. mail.<sup>3</sup> They remain in effect for a maximum of 30 days, a term that can be extended. No court order is necessary.

Mail covers can be obtained through the regional postal inspector's office, which coordinates mail covers with the local delivery station. A sample request form is included as appendix A.

The contents of mail also can be obtained, from the mail stream or from residential mail boxes. A Federal search warrant is required because state courts do not have jurisdiction over U.S. mail.

As drug dealers have become more sophisticated, they increasingly have resorted to using private mail-receiver agents. Once mail has been delivered to a private mail-receiver agent, it no longer is considered to be in the Postal Service mail stream, but becomes personal property. Significantly, this means that the delivered mail is subject to state processes, including subpoenas and search warrants.

Users of mail-receiver agents are requested to complete an application for delivery of mail through an agent (U.S. Postal Service Form 1583 can be obtained by contacting the nearest Regional Office of the U.S. Postal Inspection Service.). The application asks for the name, address, and signature of the

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applicant and agent, among other information. Although compliance is voluntary, the incentive to complete the form is substantial because postal inspectors can withhold mail delivery until the form is filed properly.

Private mail-receiver agents may be willing to talk with law enforcement personnel, so they should not be overlooked. Nor should Postal Service mail carriers be overlooked as information sources. Carriers tend to have regular routes, and thus may have useful information. Discretion in contacting mail carriers is advisable, especially in small towns and rural areas, as the carrier may be friendly with the target.

### *Trash Analysis*

Discarded trash often yields insights into a target's finances and assets, and inspection of it is perfectly legal, as the courts have ruled that warrantless searches and seizures of trash left in public areas, such as at curbside, do not violate the Fourth Amendment.<sup>4</sup> Trash may contain circumstantial evidence, such as drug packaging materials, narcotics paraphernalia, or records, that could be useful at a trial or could serve as the basis for obtaining a search warrant. Leads may also be obtained from other types of trash, such as discarded bank statements, credit card receipts, bills, canceled checks, and envelopes. In one investigation, the target threw away credit card receipts, which led to the target's bank accounts and ultimately to drug-operation proceeds in those accounts.<sup>5</sup>

### *Public Records Analysis*

A systematic search of public records<sup>6</sup> not only can identify potential assets but also can prepare investigators to serve appropriate seizure warrants.\* Public records of ownership can identify assets as well as recorded liens. Domestic relations and civil case files often contain useful information. A target's employment history is critical to a financial net-worth analysis. The history may be available from the State Department of

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\*See Frank R. Booth, *Finding Public Records and Other Information on Hidden Assets* (Washington, D.C.: Bureau of Justice Assistance and Police Executive Research Forum, November 1988). Available from the Police Executive Research Forum.

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Economic Security. The State Department of Revenue may, under applicable state law, be able to disclose a target's reported income. Many targets do not report income or vastly under-report it. Low income, together with numerous assets, may support a reasonable inference that a target has an illicit, or at least unexplained, source of income. If a target identifies a particular source of income,<sup>7</sup> there should be related evidence of employment or other sources of income. If there is no related evidence, the logical inference is that the reported income is illicit. A rebuttable presumption exists that a person's property is subject to forfeiture if it is acquired during conduct justifying forfeiture or within a reasonable time thereafter, assuming no other likely source of income with which to acquire the property.<sup>8</sup>

The following is a comprehensive list of public records that should be checked:

- **Superior Court**
  - Civil and criminal litigation
  - Domestic relations
  - Probate
  - Notary bonds
  - Marriage licenses
- **Assessor**
  - Property ownership records
  - Maps
  - Value (cash and assessed)
  - Docket/page and date of purchase
- **Recorder**
  - Real-property deeds
  - Homestead recordings
  - Deeds of trust (mortgages)
  - Judgments/liens
  - Fictitious names (dba, or doing business as)
  - Some corporate records
  - Uniform Commercial Code (U.C.C.) financing statements
  - Financing/equity (mortgagor-mortgagee transactions)
- **State Department of Transportation**
  - Vehicle registrations/liens
  - Drivers' license records
    1. Photos
    2. Applications

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- 3. Driving records—5-year history
  - Airplane registrations
  - **State Corporation Office**
    - Incorporating records
      1. Annual reports
      2. Officers/directors
      3. Lawsuits/bankruptcies
      4. Articles of incorporation and bylaws
    - Securities
      1. Brokers
      2. Salesmen
      3. Offerings
    - Property tax returns
  - **Secretary of State**
    - Trademarks/tradenames
    - Partnerships
    - U.C.C. financing statements
    - Notary registrations
  - **U.S. District Court**
    - Civil and criminal cases
  - **U.S. Bankruptcy Court**
    - Bankruptcy files
      1. Claims
      2. Adversary files
  - **State Department of Revenue**
  - **Department of Economic Security (Unemployment office)**

*Telephone Records Analysis: Billing Statements, Pen Registers, and Clone Pagers<sup>9</sup>*

Billing statements of a customer's intra- and interstate long-distance telephone calls can help identify co-conspirators and other members of a narcotics organization and can be used to corroborate other information. Obtained from the telephone company by subpoena, these records are available only after the billing cycle is complete. This may mean a frustratingly long wait, especially if some calls occurred early in the cycle.

Pen registers record outgoing local and long-distance calls that are made from a target's telephone, at the time they are dialed or pulsed. The information is available immediately.

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Wiretap (Title III) orders are not necessary under Federal laws and most state laws.<sup>10</sup>

Since the U.S. Supreme Court has determined that individuals do not have reasonable expectations of privacy regarding numbers dialed from a telephone, a pen register need not comply with the requirements of the Fourth Amendment.<sup>11</sup> However, the Electronic Communications Privacy Act of 1986 specifies procedures for obtaining a pen register. Investigators must submit a written application to a judge and, under oath, state that the information likely to be obtained from the pen register is relevant to an ongoing criminal investigation. Applicants need not present facts meeting evidentiary standards.<sup>12</sup> Nor is a factual affidavit required; however, the type of investigation must be described.

A pen register is a valuable tool because it can help identify other drug operation participants—buyers, sellers, dealers, sources of drugs, or money launderers—and can reveal a pattern of calls among them. This pattern can lead to money launderers and can help determine how the proceeds are transferred.

A clone pager is a beeper with the same pager number as the target's. Because many drug transactions are conducted on pay phones to avoid pen registers, most narcotics traffickers use pagers to alert them to incoming calls. They then return the call using a pay phone. A clone pager can identify and document an incoming call and, in effect, the outgoing call—assuming the return call is to the number indicated by the pager. Unlike a pen register, a clone pager does not provide a permanent record of the calls received. Thus, the device must be monitored continuously. Some pagers have storage capability, usually storing the numbers of a few calls but not their dates or times.

By logging a trafficker's incoming calls, investigators can determine which pay phone to put under surveillance and can establish calling patterns on which to base surveillance. Individuals can then be identified as they use the pay phone. This technique is especially useful when the organization uses code numbers for its members. Code numbers can be linked to individuals, and those individuals later may be tied to specific dis-

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tributions, money, or assets, or may be identified during subsequent wiretaps.

### *Physical Surveillance*

Physical surveillance can establish a target's associates, residence, cars, place of work, banks, safe-deposit boxes, attorneys, accountants, and private contractors who service his or her residence. Physical surveillance also can help corroborate information obtained from pen registers, clone pagers, and electronic surveillance.

If title to a property is in the name of a nominee, the true owner can be ascertained by having an investigator pose as a buyer.

When a target is arrested, surveillance often is terminated. However, because the target may urgently need money for bond, continued surveillance of the target's close associates (spouse, girlfriend or boyfriend, or business partner) could turn up hidden assets.

## **Use of Informants in Asset Recovery**

### *Criminal Informants*

Co-participants in criminal activity are a traditional source of information for law enforcement personnel. As essential to a successful investigation as criminal informants are, however, their use—often secured through a negotiated plea or an agreement not to prosecute—presents several potential problems.

Because a criminal informant usually is reluctant to cooperate, he or she may not reveal full knowledge of criminal activity to law enforcement officers. That individual's loyalty may be in doubt as well. Moreover, even the most cooperative criminal informant may not be the best source of information about a target's financial activities. The informant may know of only one type of forfeitable property—assets used or intended for use in criminal activities—rather than, for example, the proceeds of crime or the property purchased with those proceeds.

Investigators can use the leverage of forfeiture, in addition to

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traditional incentives, to induce criminal informants to cooperate. The approach must be cautious, however, and should follow the same guidelines as for contingent-fee agreements, discussed later.

### *Uses*

Criminal informants can be used in a variety of ways, depending on the individual's position relative to the target and on the requirements of the investigation. The informant can sponsor the recruitment of an officer into the drug enterprise, or can play a more active role. (In Arizona, if an informant who is not a material witness helps an undercover officer become accepted by the criminal group, the informant is not subject to later disclosure.<sup>13</sup>)

Informants may be able to provide information on forfeitable assets. For example, they may be able to tape record traffickers as they boast of their good fortune, the extent of their asset holdings, the profitability of their business, their endurance in the business, and the overall scope of their operations. Statements by violators that their property was derived through narcotics dealing often are sufficient to support a forfeiture. If a violator has shielded assets through a foreign corporation, admissions to a criminal informant on tape may be the only evidence available to the government in overcoming concealed-ownership and tracing issues. In *United States v. 1982 Yukon Delta Houseboat*, 774 F. 2d. 1432 (9th Cir. 1985), defendant Roy Parker told the informant that *all* his houseboats, personal possessions, and money came from dealing in narcotics and that the properties were in the name of another party because Parker had no visible means of legitimate income. This was sufficient to satisfy the government's burden of proof,<sup>14</sup> inasmuch as at the Federal level and in many states, individual properties do not have to be linked to a specific identifiable illicit drug transaction before forfeiture can be initiated.<sup>15</sup>

As the informant takes a more active role in the undercover investigation, greater consideration needs to be given to his or her trial testimony. To avoid pitfalls, the investigator must determine the informant's motives for cooperating. The stronger an informant's incentive, the greater the need for neutral cor-



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roborating evidence, for example, tape recordings, secondary witnesses (such as an undercover officer), or documentary evidence. If tape recording a particular conversation or event is impossible, the informant should try to work references to the conversation or event into a later tape recording. For example, if the target sold contraband to the informant in the past, the informant could discuss in a subsequent taped conversation the quality of that contraband. The recorded words of violators preclude them from later, in a trial, recalling a different version of the events.

### *Agreements*

All understandings with a criminal informant should be put in the form of a written agreement. Written agreements serve several purposes. They clarify the understanding between parties, set out the terms of performance, and serve as a yardstick against which to measure informant cooperation. Although agreements will vary from situation to situation, all should include provisions allowing law enforcement officials to withdraw if the informant does not comply with the agreement's terms and stating that the agreement can be modified only in writing. Officials should guard against placing undue pressure on informants, as such pressure could lead to perjury, entrapment, or unreliability, or could provide incentives for the informants to frame others. However, all agreements should make it clear that the informant is not to commit crimes, and that the agreement may be invalidated if he or she is not completely honest.

Some agreements cover one-time statements by informants, while others contemplate continuing active cooperation. Instances in which the informant is to make a one-time statement can have one of two focuses: (1) the informant wants to share information, but asks for immunity before sharing it, or (2) the informant wants a benefit—a promise of nonprosecution, a reduced charge, or sentence reduction—and is willing to make a statement to get it. Regardless of the informant's primary concern, the situation may result in a stalemate: The investigator wisely will not promise a particular benefit before hearing the informant's statement, and the informant will not

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talk before being assured of a benefit. A practical solution to this stalemate is the "no-deals deal." The no-deals agreement immunizes the informant's statement, but the immunity does not include the fruits of the statement (e.g., leads, evidence, and witnesses identified in the statement). Nor does it preclude use of the statement for impeachment. No promises are made about future charges, plea negotiations, or sentencing recommendations. The no-deals deal serves the needs of both the investigator and the informant: The informant receives adequate assurances, and the investigator can assess the value of the informant's information without having made unconditional promises to the informant. A sample no-deals deal statement is attached as appendix B.

If the informant is expected to work with law enforcement officers on a continuing basis, the written agreement may be quite different. A benefit may be specified, though most likely it would exclude immunity for violent crimes (as is the policy in Arizona). The agreement also should specify how compliance will be measured, for example, daily check-in with a specific individual. A sample informant agreement is attached as appendix C.

#### *Contingent-Fee Agreements*

The motives of criminal informants are always suspect. Agreements that grant benefits to the informant increase the concern about informant reliability. Perhaps most scrutinized are agreements that grant benefits, particularly monetary awards, contingent on certain outcomes. At least one state (Florida) and one Federal Circuit (Fifth) have condemned such "contingent-fee agreements." In *State v. Glosson*, 462 S. 2d 1082 (1985), the Florida Supreme Court held that an agreement that guaranteed the informant 10 percent of all civil forfeiture proceeds violated due process, and the court allowed dismissal of the charges. That case is followed rarely but has not been reversed. In *Williamson v. United States*, 311 F. 2d 441 (5th Cir. 1962), the Federal court established a *per se* rule: An informant who is paid a contingent fee is not competent to be a witness. That absolute bar to allowing an informant to testify was overruled in *United States v. Cervantes-Pacheco*, 826 F. 2d 310 (5th Cir.

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1987); nevertheless, the court did engage in a balancing test to determine whether the informant could testify.

What is clear from these cases is that agreements that are contingent on the conviction of a particular individual are violative of due process, and that informants who are party to such agreements will not be allowed to testify (courts require disclosure of such agreements). All other agreements are evaluated as to whether they violate due process. The greater the corroboration of the informant's testimony and the closer the supervision of the informant, the greater the likelihood that the agreement will be found to be not violative of due process.

The courts consistently have upheld payments to informants for expenses as well as payments of set sums for information provided. The sticking point is when the informant is guaranteed a percentage of forfeited property. The informant involved in *United States v. Shearer*, 794 F. 2d 1545 (11th Cir. 1986) had been promised, among other things, eligibility for up to 25 percent of all monies obtained through forfeiture, up to a maximum of \$50,000. The amount paid was to depend on a number of discretionary factors, including the class of violation involved, the number of people arrested, and the value of the assets seized. The agreement was held to be valid because the amount to be paid was not specified but was dependent on a number of factors. The court also noted that there was a maximum limit on what could be paid.

Federal law 28 U.S.C. 524 provides for the payment of awards to informants. Subsection (c)(2) provides that award payments are at the discretion of the Attorney General or his delegate. However, awards of more than \$10,000 can be authorized only by the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. The statute limits awards to either \$150,000 or one-fourth of the amount realized through forfeiture, whichever is less. The safeguards built into this statute reflect a close reading of the cases. That is, payment is subject to a maximum limit, the award is discretionary, the authorizing person is at a managerial level in the agency, and the agency may formulate its own criteria for payment.

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The issue of how much to pay an informant may be particularly thorny. The courts have left open the question of whether a contingent-fee agreement would be struck down if the payment were exorbitant. Certainly, an informant and his or her family face danger, and the more valuable the information, the greater the danger. For assuming that risk, informants are justifiably compensated, as both an encouragement and a reward. Nevertheless, the terms of the agreement should not result in undue enrichment.

One final caution: Just because an agreement is legal does not guarantee that the informant will be believed. If the terms of a proposed agreement seem likely to damage an informant's reliability and credibility, a different agreement is needed.

The following factors should be considered when setting the amount of payment and other terms of a contingent-fee agreement:

- The relative significance of the violator
  - The length of time he or she has been dealing
  - The amount of drugs dealt
  - The type(s) of drugs dealt
  - The amount of money the criminal group made through illegal activity
  - A history or indication of violence
  - The presence of weapons during the investigation
- The payment already received by the informant
- The importance of the informant's information to the investigation
- The extent to which the informant's information was corroborated
- Whether the target was selected by the informant or through previously gathered intelligence
- The maximum that can be paid, as determined by a high-level authority

### *Noncriminal Informants*

Noncriminal informants—that is, cooperative citizens, called “sources” by many agencies—are mainly of two types: (1) those who know the target's pattern of living, and (2) those

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who have business or commercial dealings with the target. The first group includes girlfriends or boyfriends, neighbors, friends, and others familiar with a target's lifestyle. They may or may not know that the target is a criminal, but they are likely to be familiar with the target's spending patterns, property, favorite places of entertainment, means of transportation, shopping habits, vacation spots, and so forth—all of which can lead investigators to assets that the target controls or has an interest in.

The second group of noncriminal informants includes bankers, tax-return preparers, business associates, and financial advisers. These individuals generally are motivated to cooperate not by promises of nonprosecution but by values they share with society's law-abiding elements.

Informants from the financial/business community can help locate a wide range of assets, including proceeds (before or after money laundering), profits, and substituted assets.<sup>16</sup> Bankers, especially in small communities, may be aware of suspicious financial activity. They are likely to know whether the target has a real business, and, if so, its estimated income, activity that generated that income, and overall business volume. Even in large communities, bankers can identify out-of-the-ordinary commercial businesses. Most bankers are willing to give this information to law enforcement officials. Relationships with leaders of local financial institutions should be cultivated to encourage this cooperation.

Information about large cash transactions at financial institutions is routinely reported to the Internal Revenue Service on Currency Transaction Report (CTR forms). The IRS Criminal Investigation Division (IRS-CID) encourages financial institutions to report suspicious currency transactions on a separate suspicious transaction form. Unlike tax-return information, which is subject to strict tax nondisclosure laws (Title 26 U.S.C. 6103), this information can be obtained from the IRS-CID or Customs Service.\* However, under the Federal Right to

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\* See William Lenck, *Tracking Drug Proceeds: Bank Secrecy Act Reports* (Washington, D.C.: Bureau of Justice Assistance and Police Executive Research Forum, September 1989). Available from the Police Executive Research Forum.

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Financial Privacy Act, banks may divulge only certain information, such as the name and address of the individual conducting the transaction, account name and address, amount of currency involved, and the identity of the bank employee handling the transaction. Bank employees should not be encouraged to provide information and records not allowed by this act, as doing so would subject them to criminal and civil penalties. Exactly what information can be divulged under the Right to Financial Privacy Act can be clarified by a bank's legal counsel or the local IRS-CID office.

A third group of noncriminal informants consists of hotel and motel employees. Drug traffickers frequently patronize hotels and motels, which they believe offer greater safety, present more barriers to physical and electronic surveillance, and afford greater anonymity. In 1985, the Los Angeles Police Department pioneered in the use of hotel employees to identify narcotics traffickers.<sup>17</sup> Trained narcotics investigators taught hotel employees to observe and report indicators of criminal drug activity. Also, hotels maintain logs of all local and long-distance calls dialed from hotel rooms. This type of alliance can be very successful—in 1988, approximately 1,500 pounds of cocaine was seized and more than \$1.5 million was forfeited in Los Angeles, based on hotel-motel cooperation with police there.

Noncriminal informants are valuable not only because of the information they can provide, but also because they have greater credibility than criminal informants. Moreover, they can be cultivated easily because they are generally supportive of law enforcement agencies.

Once rapport has been established, individuals might be asked if they are willing to assist in undercover operations. For example, a cooperative banker might be willing to have money laundered through his or her bank.<sup>18</sup> At the outset, the issue of whether the informant will be expected to testify at a trial should be addressed explicitly. Another issue that must be addressed is payment. Although most noncriminal informants do not expect financial remuneration, payment may be appropriate and well deserved in certain instances.

A frequent problem with noncriminal informants is fear of

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retaliation. Many have knowledge of the drug world only through television or movies, which tend to highlight violence for dramatic effect. Certainly, the names of noncriminal informants should remain confidential whenever possible. If they are reluctant to testify owing to fear of retaliation, an explanation of how they fit into the overall case may ease their concern (for example, an explanation that they would be asked to testify only about financial transactions). Of course, no one can guarantee that intimidation or retaliation will not occur.

### *Debriefing*

During debriefing, informants should be questioned about the following topics:

*Members of the criminal organization:* Who belongs to the organization, and what are the duties of these individuals? What are their positions in the organization's hierarchy? For example, a low-level street distributor usually is not as important as a mid-level wholesaler, a close friend, the girlfriend or boyfriend of the main organization member, or an interstate courier. Identification of all individuals and their roles in the organization can provide an initial gauge of the operation's complexity and may help establish an income or profit picture of the organization and its main suspect(s). The investigation should focus on key personnel and assets that the organization needs to keep operating.

*Product of the organization:* What are the quantity, quality, and price of the drugs involved? Is the target/organization involved in manufacturing, importing, or distributing? This information can provide insight into the income received by a dealer, the main violators, or the total organization. If the target receives and distributes drugs on consignment there may be records of transactions, which can help in establishing probable cause for a financial-document search warrant.\*

*Finances:* Where do violators bank? Do they have personal

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\* See Richard S. Stolker, *Financial Search Warrants* (Washington, D.C.: Bureau of Justice Assistance and Police Executive Research Forum, February 1989). Available from the Police Executive Research Forum.

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bankers, accountants, and stockbrokers, and who are they? Do they have investments? (Accountant information can be compared with data on tax returns and other financial history.) Questions should focus on purported lending, especially by foreign organizations, and other common money-laundering techniques.

*Business records:* All records, even records of legitimate businesses, can help form a picture of how an organization operates. An informant should be questioned about all sorts of financial records. When and where were records seen, and who was present? What records of legitimate businesses are kept, and what other businesses and suppliers does the legitimate business deal with? For example, if the organization runs a restaurant or a bar, who are the liquor distributor, food vendors and other suppliers, the remodeling or renovation contractor, the vending-machine owner, the bookkeeper, and the business manager? Where are records and files kept? What sort of trash removal arrangements does the organization have?

*Receipts:* What sort of purchases (e.g., clothing and jewelry), does the target make? Does the violator make substantial cash expenditures?

*Personal telephone books:* Who are the associates and friends the violator contacts while conducting personal and business activities?

*Real estate:* Can the informant provide a list of real estate owned, leased, rented, or frequently used by violators or members of their organization? These properties, both business and personal, may be in the name of the violator, but more often they will be in the name of foreign or domestic corporations, associates, relatives (including children), friends, paramours, or attorneys.

*Personal property:* Does the target have valuable assets—vehicles, jewelry, or cash? Where might these assets be found (e.g., safe deposit box, private storage locker, safe)? Questions should explore violators' methods of concealing property ownership and should focus on statements made by violators or close associates about assets and about sources and methods of payment for them.



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*Visits to casinos:* Individuals tend to patronize a particular casino in order to get the best package of complimentary benefits offered to good customers. Most casinos now use sophisticated computer equipment to track customers' activities for purposes of credit and complimentary benefits. Information on a violator's total play, wins and losses, credit applications, and complimentary benefits, as well as other records, can be obtained from casinos. Casinos also are required to file special casino currency transaction reports. Nevada casinos file a state, rather than a Federal, form.

*Travel:* What are the violator's travel habits—hotels, airlines, rental car firms, and travel agencies? Dates of travel, at least the month and year, are important, as they can be helpful in reviewing hotel records.

*Telephone calls:* What individuals or businesses has the violator contacted from *hotels* or *motels*? Long-distance calls placed to individuals, residences, and businesses that are owned, operated, or used by the violator should be checked. Does the target use a long-distance service or card, beeper, or car phone? Are collect calls received from correctional institutions? Most prisons log and record these calls; however, immediate action is required, as prisons reuse the tapes.

*Employment:* An employment history for the violator should be established. Where and for whom did the violator work? What were his or her positions and duties?

*Mail:* Where does the violator receive personal and business mail? Did the informant ever mail anything to the violator? Was it sent to a post office box, or was a private mail service used?

*Illegal business assets:* The informant should be questioned about properties the violator used in the commission of an offense. Where were drugs stored, prepared for sale, or sold? What conveyances were used to distribute drugs?

*Spending patterns:* What are the target's spending habits? What businesses, hotels, and resorts has the violator visited or stayed at? On whom did a violator spend money?

*Motives of informant:* Why is the informant assisting law en-

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forcement personnel? Is the motivation financial, emotional, spite, or a desire to work off charges? Could the informant benefit from the violator's downfall?

### **Role of Undercover Operations in Asset Recovery**

An undercover officer can adopt several roles in an undercover operation—receiver of information, participant in a reverse sting, or infiltrator in an organization that supports the target enterprise.

The officer's role as receiver of information is extremely important. For example, statements by a target that property was used for or derived from narcotics activity usually are sufficient to support a forfeiture. An undercover officer should encourage the target to discuss the following:

- Their prosperity.
- Their activities (how long they have been in business; where they do business, and with whom they do business; how they avoid detection by law enforcement; and how they protect themselves from competitors).
- Other sources of income (or lack thereof).
- Their assets.
- Methods of shielding assets (in whose name assets are held, and how they are controlled; how money is made to look legitimate; what real estate agents, and banks and title companies, are used; where money is stored; and how Federal reporting requirements are avoided).

At an early stage of investigation, the undercover officer should anticipate defenses that might be used at trial. For example, if the target might be expected to assert lack of knowledge, the officer could attempt to develop the target's knowledge. Placing a person of social or professional stature equal to that of the target's in an undercover operation has proven successful in this regard. In one instance, an informant in a money laundering investigation advised an undercover officer that there was an attorney who was willing to launder money. Shortly thereafter, the attorney called the undercover officer,

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who described how his money was being laundered by another attorney with whom he was unhappy. The target attorney more than willingly assumed the role of money launderer. The undercover officer asked the target attorney how to avoid police detection, how to protect himself from undercover operations, and what papers should be drawn up to make the laundering appear to be legitimate. Eventually in this case, the involvement of the cooperating attorney contributed to the success of the undercover investigation.<sup>19</sup>

If the target might be expected to assert entrapment as defense, the undercover officer could develop conversations demonstrating that the target's motivation was to deal drugs and that the crucial decisions were made by the target. In an investigation of an attempted homicide, an undercover officer posed as a professional hit man. The target was actively involved in the decisionmaking. The officer gained the intended victim's cooperation, then bound, gagged, and photographed him. The officer then showed the photographs to the target and told him the victim had pled for his life. Saying that it made no difference to him one way or the other because he had covered his trail, the officer asked the target what should be done. Although this gave the target the opportunity to spare the victim's life, the target's response was to kill the victim. This choice cemented the target's fate and foreclosed the defense of entrapment.<sup>20</sup>

An undercover officer also should think about the search warrant that will be served at the end of the investigation. To this end, the officer might give the target specific items that will be searched for later. These could be either documentary or physical—receipts, business cards, or marked property—or other items that are easily identifiable, such as the officer's pager number. These can easily be included in a search warrant.

As an undercover operation progresses, an officer can participate in reverse stings. Guidelines for these stings are included as appendix D. Reverse stings usually involve supplying the drug, but the undercover officer might supply something else, for example, a service such as money laundering. The undercover officer might offer to provide that service by posing as a realtor, mortgagor, banker, or business executive. Such an op-

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eration requires expertise and should be coordinated with the financial community.

When adopting the role of a drug supplier, the undercover officer should consider the advantage of accepting payment not in cash but in the form of collateral, deeds of trust, car titles, real estate, or a percentage of business assets. That would help a forfeiture case by identifying assets and establishing their true ownership.

A different type of undercover operation focuses not on the drug trafficking enterprise itself, but on those who aid the drug trade in various ways. The officer may work to identify and infiltrate organizations that financially or otherwise assist drug traffickers. For example, drug traffickers frequently use leased vehicles to transport drugs. If certain leasing companies are used regularly by a narcotics trafficker, the undercover officer can pose as a narcotics dealer needing to lease vehicles.

The success of undercover investigations will depend, in large part, on three factors: (1) networking with other law enforcement agencies, (2) sharing forfeited property, and (3) seeking the support of the private sector.

By networking with other law enforcement agencies, the undercover officer can detect patterns, effectively use intelligence information, obtain greater resources, and forge a spirit of camaraderie.

Through sharing forfeited property, agencies may be able to recover at least part of their investigative costs. An inventory of all forfeited property could serve as a resource bank for the next undercover operation. Forfeited property (as contrasted with cash) could be used to serve a variety of purposes. For example, clothing and jewelry could help an undercover officer look like a narcotics trafficker, certain forfeited assets could be useful in stolen-property stings, and some property could be used as if it were proceeds of drug dealing in order to penetrate other financial crimes, such as money laundering. This sharing of forfeited property requires communication among agencies and a willingness to attack the drug industry with a united front rather than on a fragmented basis.

Finally, the private sector should be approached for assistance. Most businesses are run by honest, hard-working indi-

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viduals who are fed up with drug traffickers. They are only too eager to help. If a tractor-trailer is needed as a prop so that the undercover officer can pose as a major mover of stolen property, a large grocery chain might be contacted. If an officer needs to pose as a wholesale jewelry broker, a jewelry store owner might be willing to consign jewelry to the agency. The ideal list is endless. In most instances, an indemnification letter should be offered, stating that the business will be reimbursed for loss or damage to the loaned property.

### **Conclusion**

The recent development of nontraditional approaches to drug enforcement has been driven by the economic basis of the illicit drug industry. Investigators must think of the drug industry as a network of criminals who have leveraged economic power through building the illicit enterprise and who seek additional criminal opportunities in many other areas. The underlying foundation for this network is financial wealth. The financial resources must be identified and attacked through the use of proactive investigations using enhanced investigative techniques.

## Endnotes

1. RICO 18 U.S.C. §§1961, *et seq.*
2. It is beyond the scope of this guide to discuss the differences between criminal and civil forfeitures. This is a crucial distinction, however, because criminal forfeitures are punitive, whereas civil forfeitures are remedial. Criminal forfeitures are subject to all constitutional guarantees afforded criminal defendants, and they are governed by the rules of criminal procedure. Civil forfeitures are not subject to those constitutional guarantees because they are not criminal proceedings, and they are governed by the rules of civil procedure. It is also beyond the scope of this guide to distinguish between *in rem* forfeitures and *in personam* actions. In *in rem* proceedings, the property must be before the court; in *in personam* proceedings, the person must be before the court. Usually there is no jury in *in rem* proceedings, but there is a jury in *in personam* proceedings. The burden of proof in *in rem* actions is probable cause, whereas the burden of proof in *in personam* actions is by a preponderance of the evidence.
3. Categories of mail are as follows: First Class: all letters except registered and special delivery letters. The delivery station is the routing station for most mail; obtaining information from registered mail and special delivery letters must be coordinated with the general postal station. Second Class: newspapers and magazines. Third Class: bulk. Fourth Class: packages (only those being delivered by the U.S. Postal Service; does not cover packages being sent by other services, such as United Parcel Service and Federal Express).
4. *California v. Greenwood*, 100 L. Ed.30, 108 S. Ct. 1625, 566 U.S.L.W. 4409 (1988).
5. *State v. Bral*, C 584503 (Maricopa County, AZ 1986).
6. Federal reports (including IRS Form 4789, Currency Transaction Report (CTR); Customs Form 4790, Currency Monetary Instruments Report (CMIR); and IRS Form 8300: Report of Cash Payment Over \$10,000 Received in a Trade or Business) are not covered in this section on public records. Those reports help uncover a target's large cash transactions. The CTR form requires banks to report to the IRS all transactions involving more than \$10,000. The CMIR form reaches people who physically transport more than \$10,000 in or out of the United States on any occasion. IRS Form 8300 reaches people who are engaged in a trade or business and receive in the course of their business more than \$10,000 in one transaction. For an excellent discussion of this subject, see *Tracing Illegal Money: Gaining Access to Federal Reports on Currency and Monetary Transactions*, by Richard Stolker and published by the Police Executive Research Forum, September 1988.
7. In *State v. M.F. Pigg*, CR 88-00819, a state RICO gambling case, an individual reported in his tax return that he had earned \$25,105 in gambling income and that he was a gambler.
8. 21 U.S.C. §853(d).
9. The Electronic Communications Privacy Act of 1986 (ECPA of 1986), Public Law Nov. 99-508, 18 U.S.C. §§2510-2521, §2701, and §§3121-3126, is a comprehensive revision of Title III of the Omnibus Crime Control and Safe Streets Act of 1968. This guide does not address the area of electronic communications, except as it relates to pen registers.
10. 18 U.S.C. §2511(2)(h).
11. *Smith v. Maryland*, 442 U.S. 735 (1979).
12. 18 U.S.C. §§3122. See also 18 U.S.C. §§3123-3125.
13. *United States v. Diaz*, 655 F. 2d 580 (5th Cir. 1981).
14. In *United States v. \$250,000.00*, 808 F. 2d 895 (1st Cir. 1987), the claimant bragged to an undercover officer about his drug earnings. This, coupled with his lack of legitimate income, resulted

in the forfeiture of a \$250,000 cash bond.

15. Tracing the asset to a particular drug transaction is not required because commingled funds do not insulate drug proceeds from forfeiture. If the government can prove that an amount of money was made through drug dealing, the government can recover that amount. See *United States v. Banco Cafetero Panama*, 797 F. 2d 1154 (2nd Cir. 1986); *United States v. Benevento*, 836 F. 2d 601 (2nd Cir. 1987); *United States v. \$364,960 in U.S. Currency*, 661 F. 2d 319 (5th Cir. 1981); and *United States v. Four Million Two Hundred Fifty-Five Thousand*, 762 F. 2d 895 (11th Cir. 1988). See also *Civil Forfeiture: Tracing the Proceeds of Narcotics Trafficking*, by Michael Goldsmith and published by the Bureau of Justice Assistance and the Police Executive Research Forum, November 1988.

16. Federal law covers the substitution of other assets of a defendant when, through an act or omission of the defendant, the original property subject to forfeiture cannot be located, has been transferred to a third party, is beyond the jurisdiction of the court, has been substantially diminished in value, or has been commingled with other property that cannot be divided without difficulty. 21 U.S.C. §853(p).

17. This hotel squad was started by Detective Danny Lott. Originally, it was a five-person squad. In 1989, a second squad was being added. For more information, contact Danny Lott or Bill Lewis at (213) 485-4504.

18. This technique was used by Federal agencies and the Los Angeles Police Department in Operation Pisces. In that investigation, law enforcement personnel, with the cooperation of banks, actually laundered more than \$52 million. A total of 106 money pick-ups, with an average of \$490,000 per pick-up, was made. There were 62 spin-off cases from these money drops. From these spin-off cases, \$19 million in cash was seized along with 59 vehicles. There were 234 arrests. For further information, contact Eugene S. Stephens, Los Angeles Police Department, Narcotics Division, (213) 485-3835.

19. This investigation was conducted by phone until the day of the arrest. The attorney was charged with attempted money laundering, convicted by a jury, and sentenced to five years in prison. *State v. Vickers*, CR 87-10392.

20. The target was arrested promptly and charged with attempted murder, to which he entered a plea of guilty. He was sentenced to 18 years in prison. *State v. Miller*, CR 163693.

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- U.S. v. Stowell*, 133 U.S. 1 (1890).
- U.S. v. Turkette*, 452 U.S. 576 (1981).



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*U.S. v. \$250,000*, 808 F. 2d 895 (1st Cir. 1987). (Footnote 21, p. 36.)

*U.S. v. 1982 Yukon Delta Houseboat*, 774 F. 2d 1432 (9th Cir. 1985).

*Williamson v. U.S.*, 311 F. 2d 441 (5th Cir. 1962), p. 25.

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# Appendix A

## RESTRICTED INFORMATION

### REQUEST FOR ISSUANCE OF A MAIL COVER WORK SHEET

Request Taken By: \_\_\_\_\_  
(Print Name and Title)

Date of Request: \_\_\_\_\_ Time of Request: \_\_\_\_\_

Requestor: \_\_\_\_\_  
(Name, Domicile, Division, Phone)

Name(s) To Be Covered: \_\_\_\_\_

Address To Be Covered: \_\_\_\_\_

Length of Cover (Days): \_\_\_\_\_

Classes of Mail To Be Covered: \_\_\_\_\_

Specific Violation & Penalty: \_\_\_\_\_

SUSPECTED NARCOTICS Profile Applied? Yes \_\_\_\_\_ No \_\_\_\_\_ By: \_\_\_\_\_

Canine Alert? Yes \_\_\_\_\_ No \_\_\_\_\_

Specific Reason(s) For Cover: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and Address of Attorney (If Any): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Under Indictment? \_\_\_\_\_

Fugitive: (Spell Out Name) \_\_\_\_\_

APPROVAL:

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## Appendix B

### INFORMANT AGREEMENT AND WAIVER ["No-Deals Deal"]

I, \_\_\_\_\_, acknowledge that I have been advised of and fully understand my Constitutional rights to remain silent and to an attorney, including, but not limited to, the following rights:

1. That I have a right to remain silent;
2. That anything I say can and will be used against me in a criminal prosecution, pursuant to and limited by the terms of this Agreement;
3. That I have a right to the presence of an attorney to assist me prior to questioning and to be with me during questioning if I so desire;
4. That if I cannot afford an attorney I have a right to have an attorney appointed for me prior to questioning at no cost to myself.

I further acknowledge that no one has used any sort of violence or threats or any promise of immunity or benefit whatsoever to encourage me to answer questions, and that no representations have been made to me other than the representations set forth in this Agreement.

My consent to cooperate with the investigation of \_\_\_\_\_ is limited to consent to derivative use of my statements, and to the direct use of my statements for impeachment and to the direct use of my statements in actions against myself for violations of any of the terms of this Agreement. I do not consent to any other direct use of my statements made pursuant to this Agreement against myself. I agree that the State may use any information, leads, evidence, or witnesses supplied by me, i.e., any "fruits" of my cooperation, in any way.

This interview is being conducted so that the State is made aware of all information I have in the matter of \_\_\_\_\_ . At this point, I understand that the State makes no promises or benefits regarding any future plea negotiations or sentencing recommendations in [pending case].

I enter into this Agreement in the hope that my cooperation will be considered as a mitigating circumstance by the State in any future plea negotiations in [pending case]. However, I acknowledge that the State retains complete discretion in plea negotiations and sentencing recommendations and that the State has no power to assure that the Court will even consider any particular mitigating circumstances or sentencing recommendations. I agree that any favorable action by the State as a result of my cooperation is contingent on the State's evaluation of the truthfulness, completeness and usefulness of my cooperation and that the State's judgment in all respects is final and binding upon me. In particular, I

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agree that any untruthfulness on my part will disqualify me from any benefit due to my cooperation whatsoever.

This Agreement and Waiver is to cover all statements made by me and/or actions taken by me at the request of the undersigned Interviewer(s) commencing at the time this Agreement and Waiver is signed by the Interviewer(s) and continuing until rescinded in writing by me or until superseded by another written Agreement or until the commencement of the trial in [pending case], whichever occurs first.

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Date and Time

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Signature of Witness

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Date and Time

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Witness's Attorney, if any

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Date and Time

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Interviewer

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Date and Time

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Interviewer

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# Appendix C

## INFORMANT LETTER AGREEMENT

RE: Investigation of [on-going] [nature of investigation]

Dear \_\_\_\_\_ :

This letter is the written assurance and understanding of the State of Arizona through the Maricopa County Attorney regarding your cooperation with law enforcement in the investigation of the structure and potential or actual criminal activity being done on the part of [insert target].

The State is interested in obtaining accurate and complete information about the above matters, and is willing to consider cooperation in these investigations as a factor in its future decisions regarding possible criminal charges against you. You are advised of your Constitutional rights to remain silent and to an attorney, including, but not limited to, the following rights:

- 1) That you have a right to remain silent;
- 2) That anything you say can and will be used against you in a criminal prosecution, pursuant to and limited by the terms of this Agreement;
- 3) That you have a right to the presence of an attorney to assist you prior to questioning and to be with you during questioning if you so desire;
- 4) That if you cannot afford an attorney you have a right to have an attorney appointed for you prior to questioning at no cost to yourself.

You further acknowledge by signing this that no one has used any sort of violence or threats or any promise of immunity or benefit whatsoever to encourage you to answer questions, and that no representations have been made to you other than the representations set forth in this Agreement.

You nevertheless agree that the State may use any information, leads, evidence or witnesses supplied by you, that is, any "fruits" of your cooperation, in any way.

Within the limitations above, I assure you and agree with you that if your complete and truthful cooperation implicates you in past crimes, your statements themselves will not be used in evidence against you in any State criminal prosecution so long as the following conditions are met:

- 1) Your statements are complete and truthful to the best of your knowledge; and
- 2) For your information to be useful, law enforcement will need time to follow up on it before possible defendants are aware you have given statements. So, as an additional condition of our Agreement, I will need your assurance that you will not disclose to anyone (except your attorney if you retain one and then only within attorney-client confidence) the fact

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that you have given statements or the contents of the statements or questions asked of you unless and until ordered to do so by a court. In consideration of this, and because of danger to yourself, any law enforcement people, including myself, involved in the follow-up will treat you as a "confidential" source, and will not disclose the fact of your statements or their contents unless and until ordered to do so.

3) You commit no criminal act except as specifically requested *in advance* by one of the Interviewers signing this Agreement, who will request such activity only to further the investigation and later prosecution of crime. If you commit any criminal act outside the condition set forth above, you are subject to prosecution for such act and this Agreement is null and void.

4) The State is opposed for reasons of principle to entering into Agreements with people who have directly caused a person's death or serious physical injury, so, although we have no reason to believe you have done so, we specifically exclude liability for directly causing death or serious physical injury from this Agreement. Offenses within these two excluded areas, if any, will have to be dealt with on an individual basis on their individual facts.

I emphasize that the protection against State criminal prosecution granted to you under this Agreement is in no way dependent or conditioned upon the substance of the testimony or other information you may hereafter provide to the State, except for the requirements of complete honesty and truthfulness, nor is it in any way dependent or conditioned upon the return of any indictment(s) or the obtaining of any criminal convictions against any individuals or entities. In short, your obligation hereunder is to tell the truth, the whole truth and only the truth. If you fail to live up to or abide by any of the conditions, these assurances are no longer effective and the State will proceed accordingly, including, if it is determined that you have lied, in a prosecution for perjury or false swearing. Since your fulfillment of your part of this Agreement will constitute a waiver of your Fifth Amendment privilege against self-incrimination, if you violate any provision of this Agreement, you will become subject to prosecution for having violated it, and any statements or information you provide to the State would be admissible in evidence against you, in addition to leads or witnesses gained pursuant to this Agreement.

In return for your cooperation, the State agrees that it [insert benefits] To gain information on [insert target] it is agreed that your cooperation includes infiltration of that group by becoming a full fledged member and that you continue to give information for a minimum of six (6) months from the date you become a member. As stated previously in this Agreement, you are not to commit any crime during this investigation. Furthermore, if you become aware of activity that places another in jeopardy of death or serious physical injury, you are to report that immediately to

one of the Interviewers signing this Agreement. It is also required under the terms of this Agreement that you shall have daily contact with one of the Interviewers signing this Agreement. I fully understand and agree that the State will not file charges on the condition that the terms of this Agreement are fulfilled.

It is also understood that this Agreement binds the Maricopa County Attorney's Office but that other jurisdictions are not bound by this Agreement as they are not parties to the Agreement and the Maricopa County Attorney's Office has no authority to bind other jurisdictions.

Your signature in the space provided below will confirm that the foregoing accurately sets forth the terms of our understanding. Except as set forth above, there are no understandings or agreements of any kind between the State and you in this matter.

This agreement and waiver is to cover all statements made by you and/or actions taken by you at the request of the undersigned Interviewers commencing at the time this Agreement is signed by the Interviewers and continuing until rescinded in writing by you or until superseded by another written agreement; or until the commencement of your trial on charges arising out of the above-mentioned investigation, whichever occurs first. Any modification of this Agreement must be in writing. No oral modification has any force or effect.

Richard M. Romley  
Maricopa County Attorney

by \_\_\_\_\_  
Deputy County Attorney

**ACCEPTED AND AGREED**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date and Time

**INTERVIEWERS**

\_\_\_\_\_

\_\_\_\_\_  
Date and Time

\_\_\_\_\_

\_\_\_\_\_  
Date and Time

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## Appendix D

### Arizona Attorney General's Guidelines for Drug Reversal Operations

#### I. BACKGROUND

The "reversal" technique was pioneered by DEA as a response to the overwhelming volume of drug distribution in South Florida in the late 70's and early 80's. It has since become a well-established law enforcement tool. Florida still leads the nation in experience with it, and forfeitures of drugs and drug monies have actually become a substantial source of law enforcement funding there due to legislation allowing the use of seizures for local law enforcement purposes.

In March, 1981, Maricopa County Attorney Tom Collins initiated legal research in the technique, and at about the same time DPS scheduled special training for some of its officers in the subject. In August, 1981, the Maricopa County Attorney's Office promulgated guidelines on reverse undercover operations to the Phoenix Police Department.

In October, 1982, the Pima County Attorney's Office oversaw a DEA/DPS test case, which resulted in the *State v. Gessler* decision in July, 1984.

These guidelines reflect consultations with the DEA Agent who conducted the *Rehman, Savage, and Rogers* operations in Florida; a city attorney in Ft. Lauderdale who works full time on drug forfeitures, many of which arise from reversals; an attorney in the Florida Department of Legal Affairs who's formulating guidelines for Florida officers now; the supervisor of the Florida Attorney General's Economic Crimes Litigation Unit, which includes Florida's RICO section; the Commander of Metro-Dade Police Department's Organized Crime Bureau; and officers of the PPD, DPS, and MCSO. These guidelines are intended to incorporate their suggestions, concerns and written guidelines. These guidelines are not adopted pursuant to the Administrative Procedure Act and are not a regulation of the Attorney General. They are intended as a guide only and do not in any manner create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the State of Arizona.

#### II. GUIDELINES

##### A. Objectives

1. To expose and dismantle major drug distribution networks by gathering evidence, stripping them of substantial assets and prosecuting their key financiers;
2. To disorganize the financing of drug operations by concentrating on the sources of financial resources rather than on the sources of drugs;
3. To assure judicial and public support of the techniques used and maintain professional police operational standards;



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4. To minimize the physical danger to participating officers and others; and

5. To minimize the risk of inadvertently allowing confiscated drugs to re-enter the marketplace.

*B. Personnel*

1. Experienced or specially trained officers should be used.

2. Advance review should be obtained of all plans, both operational and tactical, with all prosecutors involved in the matter and with the Chief Assistant.

a. on all new operations, and

b. wherever possible on all tactical revisions of previously reviewed operations.

*C. Operational considerations*

1. Pre-disposition:

Substantial admissible evidence should exist of the suspect's pre-disposition for possession for sale of drugs prior to the "sale".<sup>1</sup> This pre-disposition should be reflected in written items and reports collected and reviewed by the case attorney prior to the execution of the operation.

2. Substantiality

The reversal technique will be used by the Attorney General's Office personnel only in cases in which the suspect is or is capable of becoming a substantial or particularly destructive dealer. Factors that will be considered include the dollar value of the planned transaction(s), the suspect's experience and sophistication, the social danger of drugs reaching the

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<sup>1</sup> Examples of some types of useful evidence that may be available include:

a. prior convictions for sale or possession for sale (the more recent the better);

b. prior arrests for sale or possession for sale that are useful as evidence. Factors:

- (1) local
- (2) recent
- (3) confession
- (4) available key witnesses
- (5) physical evidence available if necessary to case;

c. probable cause for search warrant or arrest has been documented;

d. informant information where informant is available to testify;

e. statements of suspect to sellers, preferably

- (1) large cash deposits;
- (2) large cash purchases; or
- (3) off-shore banking or similar evasive financial measures;

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h. association with other known drug traffickers, suppliers or customers, shown by such methods as:

- (1) surveillance;
- (2) pen register;
- (3) court-ordered wiretap; or
- (4) search warrant proceeds.

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suspect's clientele, the suspect's own potential for abuse of his social or economic power, the suspect's source of funds, and the suspect's criminal history.

### 3. Reliability

- a. Where the predisposition of the defendant and the substantiality of the defendant depend on uncorroborated informant information, the informant should have no stake in the outcome. The informant should never have a direct stake in the outcome, as payment on a "contingent fee" or "percentage" regardless of the demonstrable truth of his information.
- b. Informants should be instructed that they are to keep absolutely no brokerage or other fee given to them by a suspect; all payments to informants will come from regular undercover funds.
- c. Informants should be instructed on the law of entrapment to avoid impermissible inducements of potential defendants.
- d. Informant contacts with suspects should be minimized, and, to the extent possible, should be monitored or controlled by the investigator. The informant should be thoroughly interviewed about all contacts with any suspect, whether they occurred before or during the operation.
- e. Sworn officers and/or consensual tape recorders should be used wherever practicable.

### 4. Security

- a. Officers should coordinate with other police agencies as necessary on a "need to know" basis to avoid police/police confrontations. Particular care should be taken when operating within the jurisdictional boundaries of other agencies.
- b. The suspect and his associates should be fully described and officers should make all reasonable efforts to verify their identity.<sup>2</sup>
- c. Officers should arrange sufficient security and the negotiation/transfer site to prevent loss of money or drugs by robbery, ruse or escape.<sup>3</sup>
- d. The arrest team should include at least one uniformed officer.
- e. Wherever possible, the selling officer(s) should be equipped with a transmitter or alarm or danger signal(s).

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<sup>2</sup> For example: a. license plate checks; b. driver's license photos; c. criminal history research; d. public records/utilities checks; e. surveillance; and/or f. questioning of suspects to assure that they are not officers.

<sup>3</sup> Proven devices include: a. use of visible armed guards pointed out to the buyer as "protection"; b. concealed beeper in marijuana bales or on suspects' vehicle for tracking in event of escape attempt; c. physical set-up that prevents easy escape; d. arrest scenario that emphasizes police presence to dispel thoughts of a "rip-off"; and e. sufficient number and training of arresting officers.

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## 5. Integrity

### a. Samples

- (1) Officers should have substantial evidence that the buyer(s) are drug dealers prior to allowing the buyer(s) to sample drugs.
- (2) Samples should not be offered by officer but should only be given on request.
- (3) The sample should be no larger than necessary for the buyer to determine the availability, genuineness and quality of the drug(s) offered for sale.
- (4) Officers should request that any testing or "tasting" take place at the negotiation scene wherever possible, or should attempt to accompany the buyer to the testing location.

### b. Drugs

- (1) Drugs used should be available for destruction at the time, either because they have been released from a pending prosecution by the prosecutor in that case or because there is no pending prosecution.
- (2) Qualitative and quantitative control of the drugs will be maintained, and adequate security provided for its storage.

### c. Money

- (1) Monies received will be counted, photographed and photocopied as soon as practicable after receipt by the case agent, preferably in the presence of a person who will deposit it (e.g., a bank teller), or a property custodian.
- (2) Monies will be deposited into an interest-bearing account as soon as possible after seizure.

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## About the Author

Sandra L. Janzen

After graduating from the Arizona State University College of Law with a J.D. degree in 1977, Ms. Janzen joined the Office of the Maricopa County (Phoenix) Attorney as a deputy county attorney. During her tenure there she was assigned to the Organized Crime and Racketeering Division, where she focused on asset forfeiture actions and large scale narcotics investigations. Ms. Janzen is currently an assistant attorney general with the Arizona Attorney General's office, specializing in civil forfeiture and related actions designed to dismantle Northern Mexico's drug distribution organizations.

Ms. Janzen co-authored Arizona's forfeiture statute which became effective in 1986. She trains personnel on this legislation for the Arizona Prosecuting Attorneys Advisory Council. Additionally, she lectures nationally and writes on asset forfeiture, money laundering, financial investigations, and conspiracy issues for the National College of District Attorneys, the Police Executive Research Forum, and other national law enforcement organizations.

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## Police Executive Research Forum

The Police Executive Research Forum is the national professional association of chief executives of large city, county, and state police departments. The Forum's purpose is to improve the delivery of police services and the effectiveness of crime control through several means:

- the exercise of strong national leadership;
- public debate of police and criminal justice issues;
- research and policy development; and
- the provision of vital management and leadership services to police agencies.

Forum members are selected on the basis of their commitment to the Forum's purpose and principles. The principles which guide the Police Executive Research Forum are that:

- Research, experimentation, and exchange of ideas through public discussion and debate are paths for development of a professional body of knowledge about policing;
- Substantial and purposeful academic study is a prerequisite for acquiring, understanding, and adding to the body of knowledge of professional police management;
- Maintenance of the highest standards of ethics and integrity is imperative in the improvement of policing;
- The police must, within the limits of the law, be responsible and accountable to citizens as the ultimate source of police authority; and
- The principles embodied in the Constitution are the foundation of policing.

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