



Wrong-Door Raids, Phantom Informants, And the Controlled Buy

"I'm not saying we willfully violate people's rights. It's just that you get caught up in a whirlwind where the only thing that's important is to make seizures, and you end up cutting corners."

— Unidentified customs agent following the shooting of an innocent homeowner during a wrong-door raid¹

During the last 20 years, police have killed at least 40 innocent people while conducting wrong-door raids.² According to a study by the Cato Institute, "Because of shoddy police work, over-reliance on informants, and other problems, each year hundreds of raids are conducted on the wrong addresses, bringing unnecessary terror and frightening confrontation to people never suspected of a crime." The Cato Institute called the botched paramilitary police raids "an epidemic of isolated incidents."³

There have been at least three investigations of botched search warrant raids that offer far more troubling explanations for the home invasions. The blame is placed on:

- ❖ Willful disregard for police standard operating procedures governing the use of informants⁴ and conducting controlled buys;⁵
- ❖ Use of "cookie cutter" affidavits containing boilerplate language from a computer program;⁶
- ❖ Blatant lies in search warrant affidavits;⁷
- ❖ Creation of phantom informants;⁸
- ❖ Supplying drug exhibits "purchased" by a phantom informant;⁹ and
- ❖ Planting drugs in homes when no drugs are discovered during a search.¹⁰

The Kathryn Johnston Case

Remarkably, one botched raid was the direct result of all of the above examples of police malpractice.¹¹ In 2006, 92-year-old Kathryn Johnston was murdered by Atlanta police during a no-knock search warrant. Shot six times in a hail of over 40 bullets, she was handcuffed as she lay dying. Three officers were hit by friendly fire.¹²

Editor's Note: This guide to best practices regarding the way the police should conduct a controlled drug buy is tantamount to a manual for minimizing the tragedy of wrong-door raids. It is also an invaluable tool for defense attorneys that suggests areas of inquiry when cross-examining law enforcement officers. The government manuals referenced in the article are subject to change and should be verified before citing as authority.

BY DENNIS G. FITZGERALD

An FBI investigation into the shooting revealed that all of the probable cause recited in the Johnston affidavit was false.¹³ The informant was a phantom; he did not exist. The “controlled buy” never occurred. The drugs “purchased” by the phantom were supplied by the police, seized during an earlier arrest. Money used for the purported buy was pocketed by the affiant police officer. Drugs found in the Johnston home were planted by members of the raid team, seized in an earlier, unrelated investigation.¹⁴

Four detectives involved in the case¹⁵ have been found guilty of a multitude of crimes.¹⁶ The victim’s family has filed suit against the city of Atlanta seeking \$18 million.¹⁷

The brazenness of the Atlanta detectives’ actions stemmed from their recognition that search warrants are rarely challenged in court. Defendants almost always plead guilty.¹⁸ One study concluded that the search warrant process has become too easy and is vulnerable to abuse. The researchers found the mechanisms for ensuring accountability and integrity exist only in theory rather than practice.¹⁹

The Controlled Buy: Never Trust an Informant

There is an investigative technique known as the controlled buy that can ensure accountability. Far from theoretical, it is a practical approach to corroborating²⁰ the probable cause used to obtain a search warrant. If mandated for all search warrant investigations, it could put a stop to wrong-door raids and exorcise phantom informants.

One of the first skills taught to detectives newly assigned to drug enforcement units is recruiting and utilizing confidential informants. During training investigators receive what appears to be a nearly universal law enforcement admonition: *never trust an informant*.²¹ The warning is the underpinning for successful controlled buys and uncompromised search warrants.

Agents routinely receive information from informants regarding criminal activity and the location of contraband. The illegally possessed items are usually narcotics, stolen property, or illegal weapons. All are available for sale to trusted customers including informants. The investigation that follows will usually develop information intended to establish probable cause²² to support the issuance of a search warrant.²³

The controlled buy²⁴ is the investigative technique used to corroborate²⁵ the claim of a confidential informant (CI) that contraband is

located at a particular location. The controlled buy is also referred to as an undercover buy,²⁶ a controlled informant buy,²⁷ or an informant buy.²⁸

While the rules may vary slightly between law enforcement agencies,²⁹ what follows should be standard police practice for controlled buys:

- ❖ Fully identify and document the informant;³⁰
- ❖ Thoroughly debrief the CI;³¹
- ❖ Search the CI and his vehicle if used to travel to the targeted location;³²
- ❖ Provide CI with buy money and install recorder or transmitter;³³
- ❖ Follow CI to the buy location;³⁴
- ❖ Observe the CI enter and exit the targeted premises;³⁵
- ❖ Follow CI directly to a pre-arranged location for a meeting that occurs immediately after the buy;³⁶
- ❖ Collect evidence and electronic equipment from the CI;³⁷
- ❖ Search the CI and vehicle again for any contraband or money;³⁸ and
- ❖ Debrief the informant and obtain a written and signed statement.³⁹

The procedure corroborates the informant’s account of the events occurring before, during, and after the controlled purchase of evidence. The practice also ensures that police officers, not the informant, identify the residence or business to be raided. Each step must be followed. There should be no short cuts.⁴⁰

The events are recounted in the affidavit in support of the search warrant and sworn to by the affiant officer. The procedure allows the issuing magistrate judge to determine how the informant came by the information or evidence and how the affiant corroborated the account.⁴¹

Documenting the Informant

Procedures for fully identifying and documenting new informants can vary dramatically between agencies. Some police departments require as little as a criminal background check to determine if the informant is a fugitive.⁴² The informant’s file may be nothing more than an index card kept in the control agent’s desk.

More progressive police departments and federal agencies have comprehensive

informant guidelines that require the equivalent of a full field background investigation for prospective informants. In those agencies a file is maintained that contains the CI’s true identity, fingerprints, photograph, and any code names or code numbers assigned to protect the informant’s identity. The file also tracks the informant’s productivity and payment records. The file is kept in a secure location with access limited to specified officers and supervisors.⁴³

The complexity of the documenting process usually indicates how many times the department has been burned by its informants. Whether or not an individual is authorized to become an informant is a decision generally made by the recruiting agent’s immediate supervisor.

The Phantom Informant

The documenting requirement also ensures that the source actually exists. The creation of “phantom informants” is a practice that has plagued police departments for decades.⁴⁴ Some officers resort to creating informants in an effort to streamline the search warrant process.⁴⁵ Their *ends justifies the means* approach to law enforcement is often referred to as noble cause corruption.⁴⁶

There have been cases where phantom snitches were employed by detectives in “home invasion by warrant” schemes. The search warrant was a means of gaining entry into homes with armed police support to steal drugs, drug money, and other valuables.⁴⁷

Using a phantom informant for a controlled buy is only as difficult as departmental informant guidelines permit. Stringent guidelines make the practice nearly impossible. Loose guidelines make the practice an appealing and profitable alternative.⁴⁸

Initial Informant Debriefing

The control agent must conduct a complete debriefing of the informant. The initial interview begins the process of evaluating the value and veracity⁴⁹ of the source. During the interview, it is imperative that the officer remember the number one rule in informant handling mentioned above, namely, never trust an informant.⁵⁰

All meetings with CI’s should be attended by a second officer.⁵¹ Informants have proven to be the leading cause of integrity complaints against agents. Nothing leaves an officer more vulnerable to allegations of wrongdoing than meeting with or paying a cooperating individual alone. The second agent minimizes the risk of unfounded accusations

being made by a disgruntled informant.⁵²

The investigator must determine what motivated⁵³ the informant to come forward with information.⁵⁴ When a spouse or paramour informs on a partner, revenge as a motive should be suspected.⁵⁵ The CI could be attempting to use the police as a lever in a domestic quarrel or a custody dispute. An informant holding a grudge and with access to the targeted location could easily plant drugs to further his or her own agenda.

Following the debriefing, the value of the CI's information is assessed by the control agent's supervisor. The case will move forward if the criminal conduct described by the informant meets the agency's requirements for initiating an investigation. The criteria for advancing search warrant cases often center upon whether real or personal property can be seized. Valuable and forfeitable property will quickly move the investigation up the agency's ladder of importance.⁵⁶ Policing for profit can become the underlying motive for the investigation.⁵⁷

The debriefing also begins the process of fully identifying the location where contraband is believed to be possessed. All that is required of police is that the description of the targeted structure be detailed enough that the officer assigned to execute the search warrant can, with reasonable effort, identify the place intended to be searched.⁵⁸ Yet the frequency of wrong-door raids⁵⁹ illustrates the obvious — verifying the exact address does not always occur.⁶⁰

During the planning stage, the informant should be taken into the field by the control agent to point out the exact location where the buy is going to take place. If the buy is to be made from a duplex or an apartment building with multiple doors, the CI must point out to the agent which door he will use. Remarkably, these steps are often ignored.

The process need not expose the CI's role. He can be driven to the location in a surveillance vehicle with darkened windows. The investigator will then be able to obtain both a physical address⁶¹ and description⁶² of the targeted location.

A thorough debriefing⁶³ assists in fully identifying the trafficker before the buy occurs. The informant may not know the suspect's full name but only refer to him by a nickname or an alias. The nickname may be recognized by the interviewer⁶⁴ and thus result in full identification of the subject. Other officers may recognize both the nickname and the address as having a reputation for criminal activity. Their knowledge can serve to corroborate the informant's account in assessing whether the

case should move forward.⁶⁵

The informant may also have a residential telephone number or cell phone number for the suspect. Subscriber information⁶⁶ can be obtained through a criss-cross directory. Nonpublished telephone numbers and toll records can be obtained from the service provider with a subpoena. The same holds true for cellular telephone numbers and records.⁶⁷ When the exact address is determined, utility companies can be contacted to determine the name of the individual receiving services. A subpoena may be required to obtain the information and a copy of the original credit application.⁶⁸ While the named applicant may not be the suspect, the information often provides investigative leads.

After a verifiable name and date of birth for the subject are obtained, photographs also become available. Law enforcement agencies can request copies of the color photograph taken for a driver's license. Targets of investigation without licenses may have identification cards or arrest photographs on file with a local police agency. Upon receipt of the photograph, the informant is given the opportunity to identify the subject from a group of photos.⁶⁹

The CI should also be questioned about vehicles the subject has been seen driving or that are routinely located at the target location. Agents can conduct surveillance⁷⁰ and obtain license numbers of vehicles frequenting the residence or business.⁷¹ The information can serve to further corroborate the source's accounts of criminal activity.⁷² The Supreme Court has recognized the value of corroborating the informant's tip by independent investigation.⁷³

To maximize the effectiveness of a search warrant, the informant must be effectively questioned regarding the illegal items he has observed while inside the premises. Obviously, in a narcotics search warrant the objects to be searched for are drugs. Because drugs are easily concealed, agents are allowed wider latitude in the extent of their search. An agent lawfully searching for narcotics may inadvertently discover an illegal firearm. Although weapons were not listed as an item to be searched for in the warrant, seizure of a gun is constitutionally allowed under the plain view doctrine.⁷⁴

Agents often get tunnel vision in their debriefing approach. A detective assigned to recover stolen motorcycles may debrief his informant only about the location of the stolen vehicles. The informant should also be questioned about other contraband items used or

possessed within the premises to be searched.⁷⁵ A warrant directing agents to search only for motorcycles would not allow officers to open desk drawers.⁷⁶ If the informant reports having observed narcotics⁷⁷ on the premises in addition to the stolen motorcycles, drugs⁷⁸ should be listed as items to be seized.⁷⁹

A thorough debriefing can also elicit information ensuring that items having evidentiary value that might be overlooked will be included as items to be seized. Many criminal enterprises utilize traditional paper files or personal computers to track their business activity. Those items need to be identified as objects of the search.⁸⁰

The full inquiry of what was observed inside the premises by the informant addresses valid officer safety issues. Many residences used for drug dealing are heavily fortified. Steel doors, bars across ordinary doors and windows, and booby traps are common. The entry team needs to be aware of any impediments to a fast and effective entry. A no-knock search warrant may be necessary.⁸¹

Some agencies have forms that include a full range of questions for the interviewing detective to ask the informant. The questions, combined with the detective's experience, can illicit far more detailed information than a rambling interview.⁸²

What is the nature of the informant's relationship with the suspect? How long have they had this relationship? These questions must be answered. The longer the relationship and type of relationship will have a bearing upon the credibility of the informant's information. A live-in paramour should know more about a criminal operation than an occasional visitor.⁸³

Search of Informant and Vehicle

A thorough search of the informant prior to the buy is the only method that reasonably ensures he does not supply the contraband himself. The size of the item the informant is instructed to purchase dictates the extent of the search. Many agencies require only a pat down.⁸⁴ Others require a strip search, particularly when the informant is purchasing a concealable amount of drugs or other small item.⁸⁵ If that is the case, and policy dictates, body cavities should be checked. An officer of the same sex as the CI should conduct the search. Many agents do not like strip-searching informants. Some agents resist the process because it is time-consuming. Others find the procedure distasteful. Officers have committed perjury when

called to testify about the extent of their search. According to a former detective convicted of perjury in the Johnston shooting, “I have never seen anyone searched before they go into a house. I’ve never seen that done.”⁸⁶

The CI should be required to surrender the contents of pockets or purse to the control agent until after the buy is completed.⁸⁷ Unless specifically authorized, the informant should not be allowed to carry a firearm during a controlled buy or while performing any activity supervised by the police.⁸⁸

Informants do not like to be searched. CIs with a “police buff” mentality find the procedure degrading.⁸⁹ Some object to the search because it makes it either difficult or impossible to supply the drugs themselves instead of making the purchase from the target.⁹⁰

The informant’s vehicle,⁹¹ if used to drive to the buy location, must also be thoroughly searched. Agents should make every effort to determine whether there are concealed compartments in the vehicle.⁹²

Probable cause requires the affiant to provide enough information so there exists a fair probability⁹³ of the existence of criminal activity at the location to be searched. The search of the informant and his vehicle serves to further that probability. It allows the magistrate judge to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place.⁹⁴

Funds Provided for the Purchase of Evidence

The case agent provides the informant with the funds for the purchase of evidence. The informant should sign for the money. The term *marked money* is often mistakenly used to describe the buy money. The currency is not marked. The serial numbers are recorded on paper or memorialized in a report. Some agencies simply Xerox the notes.⁹⁵

Buy money, or official advanced funds (OAF),⁹⁶ is serialized for two purposes. During a search warrant, all funds discovered in the premises or on the person of the target are seized. The serial numbers on the seized funds are compared with the prerecorded notes used during the controlled buy. The discovery of OAF during the execution of the search warrant is extremely damaging evidence.

The notes are also serialized to assist in recovery efforts in the event of theft by either the informant or the target of the investigation. Robbery is a common occurrence during a buy operation.⁹⁷

Recording Devices And Body Wires

The informant may be required to wear either a concealed tape recorder or a transmitter⁹⁸ during the controlled buy. The tape recording produced during the purchase is maintained as evidence. When properly utilized, concealed recorders produce a far superior tape recording than that produced via a concealed transmitter.⁹⁹

Generally, transmitters are used for the security of the individual wearing the device. The equipment allows monitoring agents to hear what occurs during the undercover meeting and to react accordingly. Unfortunately, body bugs are notoriously unreliable.¹⁰⁰ If a tape is produced, it may be unintelligible.

Many informants are reluctant to wear body wires or recorders. They argue that the devices, if discovered by the target of the investigation, place them in a life-threatening situation. Advances in technology, however, have made the devices nearly undetectable.¹⁰¹

Observing Informant Entering And Exiting the Location

Once the informant and the informant’s vehicle have been searched, both must be surveilled until the operation is completed. Constant surveillance eliminates the possibility that the informant obtained contraband from any place other than the targeted location. The informant must be directed to make no stops en route to the buy location.¹⁰² The surveillance team should personally observe the informant prior to the buy. If that is not possible, they should be provided with a photograph of the CI. Surveillance agents are often given little more than a clothing and physical description of the informant. This is a mistake that can undermine the investigation.

Members of the control agent’s team should establish pre-buy surveillance of the targeted address. The agent following the CI to the buy location is directed to maintain radio or cell phone communication with the surveillance team. It is the agent’s job to alert them of the CI’s impending arrival. The surveillance team must make every effort to observe the informant enter the targeted location.¹⁰³

Agents must maintain surveillance of the premises until the informant exits. The CI should then be followed from the buy location to the predetermined meeting place. The surveillance team verifies that the informant met with no one from the time he or she departed the targeted address until the post-buy meeting occurs.¹⁰⁴ Following the informant’s

departure, at least one agent should maintain short-term surveillance of the buy location. Accomplices and sources of supply are often identified through post-buy surveillance.¹⁰⁵

The events observed during the surveillance should be memorialized in a report for the case file. The surveillance report should identify which agent observed each event during the controlled buy.¹⁰⁶

Post-Buy Meeting and Informant Search

Upon arrival at the post-buy meeting, the informant surrenders the evidence and electronic equipment to the control agent.¹⁰⁷ Original containers holding evidence should be submitted to the agency’s laboratory for latent fingerprint examination.¹⁰⁸ Once again, the informant must be thoroughly searched.¹⁰⁹ It is not unusual for informants to attempt to steal some of the buy money or evidence.¹¹⁰ If the informant’s vehicle was used to travel to the buy location, it should also be thoroughly searched.

The control agent may have the CI telephone the target during the post-buy meeting.¹¹¹ The call is tape recorded and used to elicit conversation about the transaction that just transpired.¹¹² The

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post-buy telephone call tactic is usually employed if the CI had not consensually tape recorded the earlier transaction or if the recording equipment malfunctioned. The tape recording of the telephone conversation is retained as evidence.

Follow-Up Informant Debriefing And Statement

The informant must be debriefed following the purchase.¹¹³ Obtaining the names or physical descriptions of all persons present and participating in the transaction is essential.

The amount and location of contraband observed during the controlled buy must be determined. The information assists in assessing the immediacy for obtaining the search warrant. Undue delay may allow the information to become stale¹¹⁴ or for evidence to be sold or moved. Many law enforcement agencies require the informant to provide a written statement. The practice memorializes in the informant's own words the events that occurred during the undercover purchase. The statement makes it more difficult for the recalcitrant CI to claim witness amnesia.¹¹⁵

Federal law enforcement agencies each have their own policies on informant statements. As an example, the Drug Enforcement Administration (DEA) requires a statement when the informant has provided information or has participated in any activity that may require his testimony. All relevant information must also be reported in the investigative report.¹¹⁶ The DEA uses the format below.¹¹⁷

*Heading: The heading should contain the informant's code number or code name; the date, time, and location of the statement; the names of the agents taking the statement; and a brief description of the events covered.*¹¹⁸

*Body: The body of the statement should be in the informant's own words. If prepared by the agents for the informant, it should be reported in the body of the statement.*¹¹⁹

Conclusion: The conclusion should state that the informant has read the foregoing statement consisting of ___ pages; that he or she has initialed each page and all corrections; that it is true and correct to the best of his or her knowledge and belief; and that the informant gave the

*statement freely and voluntarily, without threats, coercion, or promises.*¹²⁰

*Signatures: The agents sign all copies, and the informant signs only the original.*¹²¹

Agents routinely prepare statements for informants who are unable to write their account. The original statement should be signed by the CI and witnessed by two agents. The original is held in the informant's file.¹²² State and local agencies have promulgated their own policies regarding informant statements. The practice appears more prevalent among departments that have grown dependent upon informants and have experienced difficulties in their use.¹²³

Informant Payments

Cash payments made to an informant by his control agent for services rendered must be witnessed by at least one other agent.¹²⁴ Police are prohibited from paying informants with drugs or other contraband. However, the unauthorized practice of rewarding CIs with narcotics does occur. A "drugs for information" scandal led to the January 2008 arrest of two Brooklyn, N.Y., narcotics detectives and the transfer of four high-level supervisors.¹²⁵

Conclusion

Wrong-door raids are the direct result of inadequate internal supervision of investigators utilizing informants, conducting controlled buys, and obtaining search warrants. Coupled with an absence of meaningful judicial or prosecutorial oversight of search warrant investigations,¹²⁶ the number of wrong-door deaths will continue to rise.

Notes

1. Alford, *Snitches: License to Lie?*, SAN DIEGO UNION TRIB., May 30, 1995; See *Carlson v. United States*, 93-953G.

2. CATO INSTITUTE, *BOTCHED PARAMILITARY POLICE RAIDS: AN EPIDEMIC OF ISOLATED INCIDENTS* (2006); see Gregg Aamot, *Botched Raid Terrorizes Minnesota Family*, Associated Press, December 24, 2007.

3. *Id.*

4. The Federal Bureau of Investigation's Compliance With the Attorney General's Investigative Guidelines, U.S. Dep't of Justice, Office of the Inspector General (Sept. 2005).

5. See Testimony of Professor Alexandra Naapoff Before the House of Representatives Joint Hearing on Law Enforcement Confidential Informant Practices (July 19, 2007).

6. Laurence A. Benner & Charles T. Samarkos, *Searching for Narcotics in San Diego: Preliminary Findings From the San Diego Search Warrant Project*, 36 CAL. W.L. REV. 239 (2000).

7. Steve Visser, *Ex-Cop: Officers Routinely Lied to Obtain Search Warrants*, ATLANTA JOURNAL-CONSTITUTION, May 8, 2008; Beth Warren, *Prosecutors: Officers Admitted Lying About Botched Drug Raid*, ATLANTA JOURNAL-CONSTITUTION, May 8, 2008.

8. Sean Gaffney, *Police Sergeant Faked Drug Warrants*, THE MONITOR, July 10, 2008; Mark Curriden, *Secret Threat to Justice*, NAT'L L.J., Feb. 20, 1995 (examination of 1,212 warrants in four selected cities).

9. Steve Visser, *Prosecution Rests: FBI Agent Says Police Officer Feared Being Labeled a 'Rat'*, ATLANTA JOURNAL-CONSTITUTION, May 13, 2008.

10. Department of Justice Report, *Three Atlanta Police Officers Charged in Fatal Shooting of Elderly Atlanta Woman*, April 26, 2007 (finding that police planted three baggies of marijuana in woman's home following shooting).

11. ED CRAY, *THE ENEMY IN THE STREETS: POLICE MALPRACTICE IN AMERICA* (1972).

12. Bob Evans, *Shooting Draws Questions From Lawmakers*, Associated Press, March 3, 2007.

13. Steve Visser, *Ex-Cop: Officers Routinely Lied to Obtain Search Warrants*, Atlanta Journal-Constitution, May 8, 2008.

14. Press Release, Department of Justice, Atlanta Police Officers Plead Guilty to Civil Rights Conspiracy: Defendant Was Sergeant Over Narcotics Team (May 24, 2008).

15. *Two Plead Guilty in Atlanta Police Shooting Death; Manslaughter Pleas Come After Three Officers Indicted for Killing Elderly Woman*, Associated Press, April 26, 2007; See R. Balko, *Botched Raids Not Rare*, ATLANTA JOURNAL-CONSTITUTION, December 6, 2006; See also Katel, *The Trouble With Informants*, NEWSWEEK, Jan. 30, 1995, at 1, 48.

16. Press Release, Department of Justice, Atlanta Police Officers Plead Guilty to Civil Rights Conspiracy (May 24, 2008).

17. Eric Sturgus, *No-Knock Victim's Family Seeks Deal*, ATLANTA JOURNAL-CONSTITUTION, Nov. 22, 2008.

18. See Testimony of Professor Alexandra Naapoff Before the House of Representatives Joint Hearing on Law Enforcement Confidential Informant Practices, July 19, 2007; ("The Atlanta police could invent an informant to get a warrant because the culture of snitching assured them they would never have to produce an actual person in court.").

19. Laurence A. Benner & Charles T. Samarkos, *Searching for Narcotics in San Diego: Preliminary Findings From the San Diego Search Warrant Project*, 36 CAL. W.L. REV.

239 (2000).

20. *Illinois v. Gates*, 462 U.S. 213, 241 (1983) (emphasizing the value of corroboration of details of an informant's information).

21. ROBERT L. SNOW, *TERRORISTS AMONG US: THE MILITIA THREAT* 11 (2002) (An unwritten but ironclad rule exists in law enforcement ... never trust an informant); ROD SETTLE, *POLICE INFORMERS: NEGOTIATION AND POWER* 196 (Australia) (1995) (Never trust any criminal, more particularly, never trust an informant); NICHOLAS DORN, *TRAFFICKER: DRUG MARKETS AND LAW ENFORCEMENT* 23 (1992) (never trust an informant); See STEPHEN H. RUTLEDGE, *IMPERIAL INQUISITIONS: PROSECUTORS AND INFORMANTS FROM TIBERIUS TO DOMITIAN* (2002) (depicting informants as cruel and heartless mercenaries responsible for the tyranny of the era).

22. *Ortega v. United States*, 897 F. Supp. 771, 780 (S.D.N.Y. 1995).

23. U.S. CONST. AMEND. IV.

24. JOHN M. BURKOFF, *SEARCH WARRANT LAW DESKBOOK* § 5.2 (2007).

25. DEA Office of Training, *Informant Interaction, Use of a CI to Make an Undercover Buy*; See *United States v. Khownsavanh*, 113 F.3d 279, 285 (1st Cir. 1997), quoting *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968).

26. DEA Office of Training, *Informant Interaction, VIII (A), Use of a CI to Make an Undercover Buy*.

27. *Narcotics Investigators Manual*, IACP, DEA (1974).

28. *Street Level Narcotics Enforcement*, Bureau of Justice Assistance, Apr. 1990, at 11.

29. *Undercover Operations and Informant Handling Student Manual*, New York State Division of Criminal Justice, Section 3.5 (December 2007).

30. James E. Hight, *Avoiding the Informant Trap: A Blueprint for Control*, FBI LAW ENFORCEMENT BULL., (Nov. 1988).

31. DEA Office of Training, *Informant Interaction, VIII (A) (4), Use of a CI to Make an Undercover Buy*.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*; See *United States v. Tirinkian*, 502 F. Supp. 620, 630 (D.N.D. 1980) (officers corroborate informant by their own observations).

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *United States v. Sanchez*, 689 F.2d 508, 513 (5th Cir. 1982) (every detail corroborated).

41. *Stanley v. State*, 19 Md. App. 507, 313 A.2d 847, 851 (1974).

42. *United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993) (undercover agents utilizing an informant not knowing

that he had murdered two people).

43. See Dennis G. Fitzgerald, *Inside the Informant File*, THE CHAMPION, May 1998 at 14.

44. See Mark Curriden, *Secret Threat to Justice*, NAT'L L.J. 1, 29 (Feb. 20, 1995).

45. *Commonwealth v. Lewin*, 542 N.E.2d 275, 286 (Mass. 1989); See also *Franks v. Delaware*, 438 U.S. 154, 155 (1978); *Commonwealth v. Nine Hundred & Ninety-Two Dollars*, 383 Mass. 764, 767, 422 N.E.2d 767 (1981) (Boston police detectives used a phantom informant in approximately 30 cases. The scheme was revealed following the shooting death of one of the officers during the execution of a search warrant).

46. ROGER BILLINGSLEY, *INFORMERS: POLICING, POLICY, AND PRACTICE* (2001).

47. Mark Curriden, *Secret Threat to Justice*, NAT'L L.J. (Feb. 1995), at 29 (Feb 20, 1995) (Miami-Dade police officer used unsuspecting police officers to assist in execution of bogus search warrants).

48. James E. Hight, *Avoiding the Informant Trap: A Blueprint for Control*, FBI LAW ENFORCEMENT BULL. (Nov. 1988).

49. *United States v. Harris*, 403 U.S. 573 (1971); *People v. Cooks*, 141 Cal. App. 3d 224, 190 Cal. Rptr. 211, 261, cert. denied, 464 U.S. 1046 (1983); *State v. Burton*, 416 So.2d 73, 74-75 (La. 1982) (*disapproved by Illinois v. Gates*, 462 U.S. 213 *reh'g denied* (1983)); *United States v. Bush*, 647 F.2d 357, 363 (3d Cir. 1981); *People v. Cooks*, 141 Cal. App. 3d 224, 190 Cal. Rptr. 211, 261, cert. denied, 464 U.S. 1046 (1983); *Showmaker v. State*, 52 Md. App. 463, 451 A.2d 127, 134-35 (1982); *Commonwealth v. Salvaggio*, 307 Pa. Super. 385, 453 A.2d 637, 641 (1982); *People v. Kilmer*, 87 App. Div. 2d 949, 451 N.Y.S.2d 244, 245 (1982).

50. ROBERT L. SNOW, *TERRORISTS AMONG US: THE MILITIA THREAT* (2002) (An unwritten but ironclad rule exists in law enforcement ... never trust an informant); ROD SETTLE, *POLICE INFORMERS: NEGOTIATION AND POWER* 196, (1995) (Never trust any criminal, more particularly, never trust an informant.); NICHOLAS DORN, *TRAFFICKER: DRUG MARKETS AND LAW ENFORCEMENT* 23 (1992) (never trust an informant).

51. See *Denver Police Department Operations Manual*, Section 307.08.

52. Integrity Assurance Notes, Drug Enforcement Administration, Planning and Inspection Division, Vol. 1. No.1.

53. See *Thompson v. State*, 16 Md. App. 560, 298 A.2d 458 (1973); *United States v. Harris*, 403 U.S. 573 (1971); *People v. Rodriguez*, 52 N.Y.2d 483, 438 N.Y.S.2d 754, 420 N.E.2d 946 (1981); *State v. Lair*, 95 Wash. 2d 706, 630 P.2d 427 (1981).

54. See *Thompson v. State*, 16 Md. App. 560, 298 A.2d 458, 461-62 (profit motive of CI provided circumstantial degree of reliability).

55. See *Wesley v. State*, 162 Ga. App. 737, 293 S.E.2d 27, 28 (1982) (informant did not reveal how he knew facts he reported).

56. 18 U.S.C. §§ 981, 982.

57. Eric D. Blumenson & Eva S. Nilssen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 UNIV. CHI. L. REV. 35 (1998).

58. *Steel v. United States*, 267 U.S. 498, 503 (1925).

59. *Commando Unit Mistake Leads to Terror for Minneapolis Family, Informant Got the Address Wrong*, Associated Press, December 18, 2007.

60. See Radley Balko, Cato Institute Policy Paper, *Overkill: The Rise of Paramilitary Police Raids*; see also Cato Institute's interactive map of botched raids, available at <http://www.Cato.org/raidmap/index.php?ty pe=1>.

61. *United States v. Dancy*, 947 F.2d 1232 (5th Cir. 1991).

62. *United States v. Barnes*, 909 F.2d 1059, 1068 n.11 (7th Cir. 1990).

63. DEA Office of Training, *Informant Interaction, VIII (A), Use of a CI to Make an Undercover Buy*.

64. *United States v. Harris*, 403 U.S. 573 (1971) (the officer's own knowledge can serve to corroborate the informant's account).

65. See, e.g., *United States v. Ventresca*, 380 U.S. 102, 110 (1965); *Illinois v. Andreas*, 463 U.S. 765, 771 n.5 (1983). See also *United States v. Tirinkian*, 502 F. Supp. 620, 627 (D.N.D. 1980).

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66. *United States v. Ordonez*, 737 F.2d 793, 807 (9th Cir. 1984) (detective obtains telephone subscriber information).

67. 18 U.S.C. § 2703(c).

68. *Id.*

69. See *People v. Simmons*, 569 N.E.2d 591 (Ill. App. 2d Dist 1991); *State v. Taylor*, 889 S.W.2d 124 (Mo. Ct. App. 1994); *Mayfield v. State*, 800 S.W.2d 932 (Tex. App. 1990).

70. *United States v. Ordonez*, 737 F.2d 793, 808 (detective obtaining photograph through surveillance of suspect).

71. *United States v. Luck*, 560 F. Supp. 258 (N.D. Ga. 1983) (officers may supplement tip by surveillance).

72. *Illinois v. Gates*, 462 U.S. 213, 241 (1983) (recognizing the value of corroboration of details by police investigation).

73. *Id.* See *Jones v. United States*, 362 U.S. 257 (1960); *Draper v. United States*, 358 U.S. 307 (1959); see *State v. Amerman*, 581 A.2d 19, 33-36 (Md. Ct. Spec. App. 1990); but see *People v. Paquin*, 811 P.2d 394, 398 (Colo. 1991) ("While police corroboration of significant aspects of an informant's tip is an important factor in the probable cause calculus ... it is not an indispensable component of the probable cause determination. ...").

74. *Horton v. California*, 496 U.S. 128, 141 (1990); *Maryland v. Buie*, 494 U.S. 325, 330 (1990); *Arizona v. Hicks*, 480 U.S. 321 (1987); *Texas v. Brown*, 460 U.S. 730, 741-44 (1983); *Coolidge v. New Hampshire*, 403 U.S. 443, 466-71 (1971).

75. *Stanford v. Texas*, 379 U.S. 476, 486 (1965); *Steel v. United States*, 267 U.S. 498, 504 (1925).

76. *United States v. Klein*, 565 F.2d 183 (1st Cir. 1977) (controlled substances); see *United States v. Rome*, 809 F.2d 665 (10th Cir. 1987).

77. *United States v. Lunt*, 732 F. Supp. 599, 603 (W.D. Pa. 1990).

78. *Morris v. United States*, 977 F.2d 677, 680-82 (1st Cir. 1992), cert. denied, 113 S. Ct. 1588 (1993).

79. See *State v. Herbst*, 395 N.W.2d 399 (Minn. App. 1986) (warrant containing no description of narcotics to be seized found defective); see also *Massachusetts v. Sheppard*, 468 U.S. 981 (1984).

80. See *Searching and Seizing Computers in Obtaining Electronic Evidence in Criminal Investigations*, Computer Crime Section, Criminal Division, U.S. Department of Justice (July 2002).

81. See *United States v. Ramirez*, 118 S. Ct. 992 (1998) (the Fourth Amendment does not require a stricter standard for "no-knock" entries that result in the destruction of property).

82. See D. FITZGERALD, INFORMANTS AND UNDERCOVER INVESTIGATIONS 184 (2007).

83. See FBI Law Enforcement Bulletin, September 1993, at 11.

84. See *Watson v. State*, ___ N.E. 2d ___ (Ind. App. 2005); *Wright v. State*, 836 N.E. 2d 283 (Ind. App. 2005); *Flaherty v. State*, 443 N.E. 2d 340 (Ind. App. 1982); *Whirley v. State*, 408 N.E. 2d 629 (Ind. App. 1980).

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86. Steve Visser, *Ex Cop: Officers Routinely Lied to Obtain Search Warrants*, ATLANTA JOURNAL-CONSTITUTION, May 8, 2008.

87. See *Iddings v. State*, 772 N.E. 2d 1006 (Ind. Ct. App. 2002).

88. See *BATF Investigative Priorities*,

Procedures and Techniques, Ch. D, Section 36 (j) (for an example of informant firearm restrictions).

89. See D. Fitzgerald & G. Smith, *Informants: Handle With Care*, NARC OFFICER MAGAZINE, Mar./Apr. 1995, at 49.

90. Press Release, Department of Justice, Former Dallas Police Department Drug Informant Pleads Guilty to Civil Rights Violations for Planting Fake Drugs (September 5, 2002); see Beth Warren, *Prosecutor: Officer Admitted Lying About Botched Drug Raid*, ATLANTA JOURNAL-CONSTITUTION, February 27, 2008.

91. *United States v. Cuomo*, 479 F.2d 688 (2d Cir. 1973).

92. See *United States v. Conception-Ledesma*, 447 F.3d 1307 (10th Cir. 2006).

93. *Illinois v. Gates*, 462 U.S. 213, 238, 246 (1983), rejecting *Aguilar v. Texas*, 378 U.S. 108 (1964) and *Spinelli v. United States*, 393 U.S. 410 (1969). See also *Massachusetts v. Upton*, 466 U.S. 727, 733 (1984). However, see *Texas v. Brown*, 460 U.S. 730, 742 (1983) (plurality opinion of Rehnquist, J.) (probable cause "does not demand any showing that such a belief be correct or more likely true than false"); *United States v. Wayne*, 903 F.2d 1188, 1196 (8th Cir. 1990) (same).

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95. Use of CI to Make an Undercover Buy, VIII (A) (2), Cooperating Individual Management, U.S. Drug Enforcement Administration Office of Training, Quantico, Va.

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THE NACDL INDIGENT DEFENSE COMMITTEE INVITES NOMINATIONS FOR THE 2010 Champion of Indigent Defense Award

The NACDL Champion of Indigent Defense Award recognizes an individual for exceptional efforts in making positive changes to a local, county, state, or national indigent defense system. Although the outstanding representation of every indigent defendant is one of NACDL's foremost goals, this award is intended to highlight efforts toward positive systemic changes through legislation, litigation or other methods and not the outstanding representation of individual clients.

The Champion of Indigent Defense Award is awarded annually at an NACDL quarterly meeting.

Nomination Guidelines

Nominations may be made by any individual or group and must include:

- the name, title, address and phone number of the nominated person/group
- the name, title, address and phone number of the nominating person/group
- a summary, not to exceed two (2) single-spaced pages, of:
 - the problems that exist(ed) in the relevant indigent defense system
 - the efforts made by the nominee to improve the system (e.g., coalitions

formed, legislation proposed, task forces created, litigation initiated)

- the number of years the nominee has been involved in efforts to improve indigent defense and a brief history of the nominee's career
- any changes that have been made in the system as a result of the nominee's efforts.

Any supplementary materials — such as brochures, reports, or news articles — also may be included. Unlimited letters of support may be submitted. Nominations must be postmarked by **January 30, 2010**, and mailed to: NACDL Champion of Indigent Defense Award, Attn: Maureen Dimino, 1660 L Street, N.W., 12th Floor, Washington, D.C. 20036.

Eligibility and Selection:

The recipient shall be selected by the Co-chairs of the NACDL Indigent Defense Committee upon the recommendation of the Indigent Defense Award Subcommittee. It is not necessary that the nominee be a lawyer; non-lawyer advocates and reformers will be considered. The Co-chairs of the Indigent Defense Committee and the members of the Indigent Defense Award Subcommittee are not eligible to receive this award but may submit nominations.

TIMES, October 21, 2000.

98. *On Lee v. United States*, 343 U.S. 747 (1952).

99. D. FITZGERALD, *INFORMANTS AND UNDERCOVER INVESTIGATIONS* 201 (2007).

100. J. Portman, *Experts Examine Questionable Decisions That Left Rachael Hoffman Dead*, TALLAHASSEE DEMOCRAT, August 3, 2008 (concealed transmitter fails during drug buy, informant robbed and murdered).

101. See the DTC Communications Surveillance Technology Web site "Hear All Evil, See All Evil, Track All Evil."

102. Use of a CI to Make a U.C. Buy, VIII (A), *Cooperating Individual Management*, U.S. Drug Enforcement Administration Office of Training, Quantico, Va.

103. *Id.*

104. See Alan Fier, *Officers' Arrests Put Spotlight on Police Use of Informants*, N.Y. TIMES, January 27, 2008 (quoting NYPD Major Case Squad detective regarding controlled buy procedures).

105. *Id.*

106. *United States v. Hodge*, 539 F.2d 898 (6th Cir. 1976).

107. *Undercover Operations and Informant Handling Student Manual*, New York State Division of Criminal Justice, Section 3.5 (December 2007).

108. *Latent Print Evidence Field Manual*, New Jersey State Police Special and Technical Services Section, V.4 (A)(B)(C) at 12.

109. See *United States v. McMillan*, 508 F.2d 101, 106 (1974).

110. See A. Hepler, *Defendants: Informant Stole From Police*, MOUNT VERNON NEWS, Jan. 4, 2008 (informant kept portion of buy money and drugs purchased from target).

111. Mike Carter, *Drug Case Dismissed, Defendant Framed Informant*, SEATTLE TIMES, December 24, 2007 (informant outwits agents during controlled buy).

112. *Narcotics Investigators Manual*, *Undercover Operations*, Ch. 10 (produced by U.S. Drug Enforcement Administration and International Association of Chiefs of Police).

113. Use of a CI to Make a U.C. Buy, VIII (A), *Cooperating Individual Management*, U.S. Drug Enforcement Administration Office of Training, Quantico, Va.

114. *United States v. Miles*, 772 F.2d 613, 616 (10th Cir. 1985), *cert. denied*, 476 U.S. 1158 *reh'g denied*, 478 U.S. 1032 (1986) (considering totality of evidence, warrant was not stale; property was shown to be stolen only two weeks before, so it was likely still there; omission of when informant saw it thus not fatal; where the object held does not have a ready market or has an enduring personal use, the standards of staleness are somewhat relaxed. *Gerdes v. State*, 319 N.W.2d 710, 713 (Minn. 1982); *Evans v. State*, 161 Ga. App. 468, 288 S.E.2d 726, 729, *appeal after remand*, 166 Ga. App. 602, 305 S.E.2d

121 (1982) (that defendant was chopping up cars 10 days ago was not stale); *United States v. McCall*, 740 F.2d 1331, 1336-37 (4th Cir. 1984) (two-month delay in looking for gun found to be close question, but nature of gun — being governmental property — made it probable it was still there); *United States v. Shomo*, 786 F.2d 981, 984 (10th Cir. 1986) (10 days in gun case not stale); *United States v. Batchelder*, 824 F.2d 563 (7th Cir. 1987) (information nine months old concerning the purchase of silencer was not stale since affiant indicated that of 21 similar searches, 19 resulted in seizures)).

115. See *United States v. Di Caro*, 772 F.2d 1314 (7th Cir. 1985) (dealing with witness "amnesia").

116. *DEA Agents Manual*, Ch. 66.

117. *Id.*

118. *Id.*

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About the Author

Dennis G. Fitzgerald is the author of *In-*



formants and Undercover Investigations: A Practical Guide to Law, Policy, and Procedure, CRC Press (2007) and *Informant Law Deskbook*, West Publishing (1998).

He is a retired U.S. Drug Enforcement Administration special agent and former Miami police narcotics supervisor. He is a graduate of Seattle University Law School and a member of the Florida and Washington Bar Associations.

Dennis G. Fitzgerald

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Susan W. Van Dusen
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