Reverse Sting Operations—The American Hustle: The Unethical Use of Reverse Sting Operations and the Creation of Crime

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Relying on data taken from 45 years of professional experience as a Drug Enforcement Administration (DEA) supervisory agent, U.S. Department of Justice (DOJ) expert on undercover and informant handling procedures, trial consultant, expert witness, and police instructor, the author details the evolution of the Reverse Sting operation and its related informant-handling practices, from a once valuable and effective investigative tool to a headline grabbing scam that has severely damaged our system of justice by obliterating the entrapment defense and turning the Reverse Sting into a way to make money for criminal informants.

The headline of the ABC News Report read, "How Undercover Cops Make Millions Selling Cocaine" (Gutman, Brady, & Smith, 2013). The article, part of a series, pointed out that the Reverse Sting tactic as employed by the Sunrise, Florida, Police was a financial windfall for this small suburban city. For years, undercover officers of this tiny department, which served a population of 85,000, had been posing as drug dealers and using criminal informants[1] (CIs) to lure potential buyers from all over the country to come to their city with wads of cash, from pockets to suitcases full, to *buy* drugs from the undercover cops.

If the Reverse Sting was successful, the buyer would be handed the drugs, relieved of his cash, and busted. He'd be charged with Possession, Conspiracy to Possess, and Possession with Intent to Distribute—charges that carried a potential of many decades in prison if convicted. The cash would go into the coffers of the city, and the CIs would receive large cash awards usually based upon the amount of assets seized and/or the "media value" (headlines) the case garnered. One of them received more than $800,000. And the Sunrise cops didn't do so badly either. The sergeant running the operation made $240,000 in overtime during a three-year period. With the publication of this series of articles, the City of Sunrise shut down the operation. If you are wondering why, read on.

The article offered a brief but much too simplistic peek into a police procedure that is little understood by the administration levels of most of the law enforcement agencies that employ it, the prosecutors and judges who try to enforce it honestly, and the lawyers that are tasked to defend some of its victims.

The trouble with this series is that, like most reporting on this tactic, it only scratches the surface of its dark side. It fails to even touch on how the bastardization of this once legitimate undercover tactic has turned America's law enforcement agencies into fire departments that start their own fires, severely damaging our system of justice by obliterating even the notion of entrapment as a defense and turning it into a cash cow for CIs. And worse, the tactic has created a safe haven for the most inept and/or corrupt of law enforcement officers and prosecutors while at the same time causing a massive nationwide misdirection of resources and manpower resulting in significant damage to our national security, and it is only getting worse.

Typical of the usual media reporting associated with Reverse Sting operations, the series also failed to reveal how the tactic has now been bastardized to widespread misuse in just about every crime known to man, from conspiracy charges related to acts of terror, homicide, and weapons trafficking, to pedophilia, prostitution, and every commercial crime on the books. Most importantly, it failed in identifying the specific police procedures and standards that are often violated in the misuse of this technique.

To understand what I mean when I say "bastardization" and "misuse," I invite readers, in particular those in law enforcement and the legal profession, to first experience the evolution of the Reverse Sting and its concurrent destruction of the entrapment defense through my personal involvement with it from its inception when I took part in the very first reverse sting ever authorized by the U.S. Department of Justice (DOJ) to the current cases that I am party to as a trial consultant and police instructor (see "Michael Levine," 2014). The controls that the DOJ always used and/or counted upon to prevent the misuse of the Reverse Sting operation, based upon the obvious dangers of CIs entrapping victims into its snare, have vanished. There is no better case to use as an illustration of how the entrapment defense has gone missing than *U.S. v. Jorge Olmos* (Goddard, 1998).

U.S. v Jorge Olmos

My undercover tactical instructor at the U.S. Treasury Law Enforcement Academy in 1966, Paul Yates Little, described entrapment to a class comprised of Customs Investigators, U.S. Secret Service, Federal Bureau of Narcotics, Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF), Coastguard Intelligence, and IRS criminal investigators as simply *Any crime that would not have been committed were it not for the actions of the undercover agent or his informant.* In short, as this was further explained, the target had to be *engaged* in committing the crime, not *enticed* into its commission. My first street lesson in entrapment came in 1966.

I was a young street agent with BATF,[2] then an agency struggling to stay alive by enforcing the gun laws: the Federal and National Firearms Acts. It was a year that I worked the streets of New York 24/7, undercover with my first CI, a heroin addict who I'll call Louie, buying guns and drugs; we made so many small street buys that the U.S. Attorneys' Office started to limit my work by only prosecuting the bigger cases. Undaunted, when the federal prosecutors wouldn't accept a case, I brought it to the state for prosecution. But the National Firearms Act (NFA) prohibitions against automatic weapons and sawed-off rifles and shotguns were still accepted by the federal courts.

Louie, who was earning an average of $200 to $300 bounty per arrest, was pretty well burned out in the Bronx and Brooklyn.[3] You can't be a "stool" (short for stool pigeon as we used to call them) for too long without the real criminals knowing who you are, thus causing said stool pigeon to try and entice some mental defective or dupe into committing a crime in order to get paid or to satisfy a cooperation agreement. At this time in my life, I was ignorant of this fact of street life and the horrific damage that a snitch can inflict on the unwary innocent—a fact that most defense attorneys and many judges seem to be ignorant of to this date. But the personal schooling I am sharing was about to begin.

"Got a guy with a sawed-off shotgun," says Louie, sniffling, his eyes red—sure signs that he was needing a fix, which meant he needed money. "I can get this guy to sell it to you for two-hundred and fifty bucks."

Louie tells me the guy is doing stickups with it. He knew the guy's name was Jorge, but didn't know where he lived. He could set the deal up by locating the guy on the street. I'd have to do the deal *dando y dando* on the street—cash on the barrel. I agree to pay Louie $100 if the deal went down. Louie also talked me into fronting him $30 bucks against his "reward."

About four hours later, with a team of backup agents watching me, I did a buy/bust, which was a classic sting operation. The undercover pretends he's there to buy the contraband—usually guns, drugs, or stolen goods. He shows the target a "flash roll" (buy money), and when the target produces the illicit goods, he is arrested. Jorge did indeed deliver the shotgun—a cheap single shot Mossberg with its barrel cut down to about 15"—just outside the NFA limits—and was immediately arrested. Case closed? Not so fast.

The kid, Jorge Olmos, was a clean-cut 18-year-old kid with no police record. He made a full, very tearful statement claiming that Louie had told him that he had some guy who would pay

$250 for a sawed-off shotgun. He said that Louie had gone with him to a sporting goods store on Tremont Avenue, where they bought the gun for less than $20. Jorge swore that it was the first gun he had ever had in his life. They then went to a hardware store where Louie bought a used hacksaw for less than a buck, and directed Jorge to cut it down, making certain that the barrel length was a violation of the NFA.

Jorge was held in the federal lockup on West Street, while I investigated his claims—something that is rarely, if ever, done by BATF agents today. Both the gun store and hardware store owners corroborated Jorge's claim. In fact, it looked like Louie had used the money I had fronted him to finance the crime.

The rest of the story is that Jorge, instead of facing prosecution, agreed to join the Army. From that time on, the U.S. Attorneys' Office refused to even entertain prosecution on an undercover buy of a sawed-off shotgun—a prohibition that lasted at least until the late 1980s. Louie, the stool pigeon, was blackballed, removed from the rolls of paid informants. In those years, this kind of performance was not tolerated. Today, it is encouraged!

The mistake I made was trusting the snitch's word. I did nothing to corroborate his claims *before* setting up a buy/bust. For example, I could have set up an undercover meeting to corroborate Louie's claim or even wired Louie during his meetings with Jorge. Yes, I wanted badly to make the case, get the numbers, get the stats, win some adulation and maybe an award, but not at the price of creating a criminal and then "heroically" arresting him. I would never make that same mistake again.

The failure and/or refusal to document and then corroborate a CI's claims about a target *before* setting up the undercover sting operation are now epidemic.

In one fairly recent case, an elaborate Reverse Sting operation[4] in which I was retained as an expert, a BATF criminal informant with a long rap sheet and tattoos of devil horns on his head did precisely the same as Louie the junkie did in setting up Jorge Olmos in 1966. The prosecution refused discovery demands that would have detailed the snitch's pre-arrest contact with the defendant, and no efforts at controlling or corroborating the snitch were exercised by his BATF handlers. Motions to compel the release of this information to the defense attorney were rejected by the court. As an expert, I was prepared to testify that in my training and experience, a paid CI—if left to his or her own devices—will often engage in entrapment. The judge refused to allow the defense any expert testimony.

This is not an anomaly. Court protection of prosecutors who refuse to furnish details related to the background, payments, and control of criminal informants—Brady materials—is now rampant in our justice system. This is one of the principal reasons that massive amounts of resources and taxpayer dollars are now spent on the entrapment and prosecution of individuals who pose no threat to society while major criminals go untouched. According to Chief Judge Kozinski of the 9th Circuit Federal Court of Appeals, the refusal and/or evasion of prosecutors' duty to turn over these materials has now reached "epidemic" proportions ("Chief Judge Kozinski," 2013).

My experiences as a trial consultant indicate that in some cases in which the prosecutor is too ethical to hide evidence of entrapment, the police agencies that engage in it simply either hide it or refuse—in violation of national and professional standards—to document or record their CI's contact with the entrapped individual—in some cases, even pretending as though the CI did not exist.

In *State of Maryland v. Ronald Raj Kahn*, another of my recent trial consulting cases, a CI was permitted to spend months seducing a friend and associate into obtaining cocaine to be used toward the purchase of a luxury sports car. The target of this Reverse Sting operation was a computer expert named Kahn who badly wanted to buy an exotic sports car at a good price. The snitch told Mr. Kahn that he had a "gangster" friend—in reality, a police undercover officer—who would sell him the car at well below Blue Book value. The deal,

however, was conditional upon Kahn obtaining an ounce of cocaine for the seller. And if this wasn't enough, the snitch wanted Kahn to convince the undercover cop that he could get more cocaine for him on a regular basis or there would be no deal.

It took the snitch about two months of constant telephone calls and personal contact to convince Kahn that the deal was an incredible opportunity. It then took Kahn a couple of weeks to find someone, a barber, who would sell him the ounce of cocaine to complete the first part of the deal.[5]

The snitch then set up a meeting between Kahn and the undercover cop to consummate the deal. The meeting took place in the undercover agent's car, which was equipped with video recording equipment. As directed by the snitch, Kahn did his best imitation of a Hollywood drug dealer and, *voilà*, a criminal was created.

I watched the video and realized that it would take an expert to explain to a jury that Kahn was acting in a manner completely antithetical to that of a real drug dealer. There was no discussion of price, no testing for purity, and the drugs were not weighed or checked out in any manner by the alleged gangster. It was a non-drug deal. Play acting.

When I received the prosecutor's files, furnished to the defense attorney in discovery, I found that they did not contain even a mention of the CI's role in the luxury car reverse sting. Nor was there even a mention that an informant existed. The videotape of Kahn "selling" the drug to an undercover cop was, according to the prosecution, enough to convict. After all, he did commit the crime on screen, didn't he?

I had aided the defense attorney in his formulation of discovery demands relating to what I believed was a hidden CI who, in accordance with national and professional standards, should have been eminently present and well-documented in the investigative file by police, but the prosecution insisted that they had no such reports and that there was no CI in the case.

I was permitted by the judge, as a defense expert, to sit in court during Kahn's trial for a felony drug sale that carried enough mandatory sentencing to keep him in jail for much of his life. In court, I was able to aid the defense attorney in the cross-examination of the undercover officer. Under pointed, knowledgeable questioning, it soon became apparent that all evidence of the role of this unidentified informant and the luxury car sting—in violation of national and professional standards of investigative reporting—had either never been documented and/or had been removed from the files. The judge then halted the trial and dismissed all charges against Khan.

Here, it should be mentioned that, in the majority of these types of cases, defense attorneys themselves have limited understanding of the standards and procedures involved in Reverse Sting operations and the concurrent police duties as they relate to the handling and documenting of CI activities. Consequently, their entrapped defendants end up going to trial without any expert help and, in most cases, are convicted and/or plea-bargained on the basis of nothing more than video or audio-taped evidence.

In law enforcement, the failure at controlling and corroborating snitches and documenting their activities in Reverse Sting operations, or in any undercover sting operation for that matter, has led to innumerable disasters the blame for which, in every one of the hundreds of cases I have reviewed and continue to review at this writing, goes right to law enforcement management in allowing it to happen and media hungry prosecutors even encouraging it (Levine, 2009). And how did it all begin?

Opening Pandora's Box

In 1975, the year the DEA did the first Reverse Sting operation, I was a young Group Supervisor (G/S). All any G/S wanted to know about a newly assigned agent or police officer in those years was *Can he buy dope?*(work undercover) or *Can he work informants?* (control the CI as opposed to being controlled). These abilities were the ultimate measure of a narcotic agent's worth. The saying was, and my own 17 years as

a supervisory agent would bear it out, that *Ten percent of the officers make ninety percent of the cases.*

Finding officers with undercover and/or effective CI-handling talents was not an easy task. They were talents that required a great deal of street experience and street psychology that was simply not educable or trainable to an effective degree. The officer either had the innate abilities to "play" the game at a professional level or, no matter what kind of training and equipment you provided him with, he couldn't possibly do the job without endangering himself and the public he served. In those years, officers who were not handling undercover assignments and/or CIs did their parts as team members: manning wire taps, running surveillance, conducting raids, database checks, handling technical support and recording, doing trash runs, etc. In the end, it was this small cadre of undercover agents and informant handlers who generated most of the stats (arrests and seizures).

One of the jobs of the G/S was, and continues to be, oversight of all group enforcement activities, the most important of which was to ensure that his or her agents were running the CIs and not vice versa. A minor problem in those years was those inept law enforcement officers who used CIs to "manufacture" crime for their own aggrandizement and career enhancement. I say "minor" because it was group pride in our accomplishments at putting real criminals in cages that seemed to neutralize them. Undercover agents and informant-handlers who had to resort to entrapment to "get on the boards" (make stats) were objects of ridicule and scorn.

The G/S also had to ensure that each officer under his or her command was at least as streetwise as the snitch and, most importantly, that he or she was doing everything reasonable to corroborate all criminal information because when the CI was permitted to operate on his own with no efforts at corroboration or control, bad things would happen. *Bad things* included entrapment (creating crime instead of stopping it), flaking (planting of evidence), wrong door raids, and, in some cases, the injury and even the killing of innocent citizens (Fitzgerald, 2007).

An important tactic that is rarely used now, but was utilized *de rigueur* during the 1970s through the 1990s was to direct the CI to "duke in" (introduce) an undercover agent to the violator as a criminal associate. This enabled the law enforcement agency to take control of the course of the investigation away from the CI. The tactic also worked to exclude the dubious testimony of the CI from the witness stand. A good undercover operative could begin with a CI's introduction and work his way through all the tentacles of a criminal organization with global reach.[6] This was tough work requiring skilled and highly ethical professionals working as a team that usually paid off with some of the farthest reaching cases in our history and some of the most dangerous predators known to man being caged (Levine & Kavanau, 2012; also see Goddard, 1998). Sadly, this no longer seems to happen.

If the undercover squad did indeed function as a team, you not only made drug cases, you regularly closed cases involving all sorts of crimes—from homicides and bank robberies to counterfeiting, money laundering, active terrorism, and beyond. The idea was to catch criminals, *not* create them. The more dangerous and devious our target, the more job satisfaction we felt in snaring him. With the advent of the Reverse Sting, all of this would change. The goal of many of the law enforcement agencies involved in undercover operations today is to create the appearance of "victory" with headlines whether the criminals are real or not. Once-effective covert operational tactics have been transformed into Hollywoodesque media-grabbing theatre that casts the desperate, the destitute, the gullible, and even the mentally ill as "arch criminals" and the CIs as A-list actors, all courtesy of a gullible and headline hunting media (Levine, 2002).

U.S. v. Charlie DiPalermo

To document this radical change in law enforcement goals and perspectives, there is nowhere better to start than with the first reverse undercover sting in law enforcement history to illustrate how far we have come in the wrong direction (Goddard, 1988). In 1975, as a young DEA

supervisory agent, I was assigned to play a surveillance role in *U.S. v. Charlie DiPalermo* aka Charlie Beck, a top New York City Mafioso whose organization was next to impossible to penetrate with conventional undercover tactics. DEA Group Supervisor William McMullen came up with a tactic that had never been tried before. The plan was to have an undercover CI introduce three French "heroin smugglers" (undercover officers) to DiPalermo with an offer to sell 20 kilos of heroin. If DiPalermo agreed and brought the money with him to close the deal, he would be arrested and charged with Conspiracy to Possess the drug and he and his money would be seized.

The U.S. Attorneys' Office and the federal court (Eastern District of New York [EDNY]) resisted giving the DEA the go-ahead with this radical new tactic. Law enforcement officers actually *selling* drugs to criminals was unheard of. The classic sting up to this point involved law enforcement officers using trickery and deception to interrupt a crime already in progress. What was being proposed seemed a clear-cut case of entrapment—a crime that would never have occurred were it not created by government agents. We were told that nothing like this had ever been authorized before.

It took the legendary prosecutor Thomas Puccio, who would later win convictions in the Abscam Reverse Sting operation targeting corrupt congressmen, to ramrod the DiPalermo sting through for approval (Morehouse, 1981). Puccio argued that DiPalermo was a documented Mafioso with a record for homicide and heroin trafficking. Most importantly, he pointed out that the DEA had evidence—telephone records and recorded conversations—showing that DiPalermo was involved in heroin trafficking and was actively seeking a new French source. Puccio's argument was simple: Our target was, beyond a reasonable certainty, actively dealing in heroin, and the DEA was only giving him the opportunity to deal with new traffickers. Bottom line: We got the court's okay to proceed.

The DiPalermo sting operation went down textbook perfect. The undercover agents were two French officers of the French National Police assigned to the DEA in New York and Special Agent Ron Provencher, a French-speaking DEA agent. The perps took a sample of an ounce of 99% pure, U.S. government supplied heroin from 20 kilos in the trunk of a car parked in the parking lot of Shea Stadium. The conversations were all recorded, and the first time in history that heroin was "sold" to a drug trafficker by police—a "reverse"—went into the history books.

DiPalermo agreed to meet the undercover smugglers at Point Lookout on Long Island where he and an associate, Joseph "Junior" Salvato, were busted with a trunk full of cash they had brought with them to close the deal along with a couple of handguns. The case resulted in convictions and was a resounding success by any measure.

At first the use of the Reverse Sting was tightly restricted by the DOJ and DEA to the targeting of *only* documented members of organized crime. Gradually, as the years rolled by, the use of the tactic spread, and the safeguards against entrapment relaxed until the present time when Reverse Stings are commonly used by local, state, and federal law enforcement agencies throughout the country with virtually no restrictions or oversight.

I now regularly field cases as a trial consultant in which defendants, including some with IQs lower than my retirement age, and even the mentally ill, have been entrapped into agreeing to commit crimes they would never have dreamed of committing if it were not for an unfortunate meeting with an uncontrolled CI. These cases, all prosecuted as Criminal Conspiracies, include but are not limited to, drug trafficking, money laundering, pedophilia, violations of the weapons laws, and terrorist acts, all of which garner extensive and unquestioning media coverage. Whether or not these "targets" would or even could have done the actual crime—without the urging and help of law enforcement—ceased to matter to either a significant number of judges or mainstream media.

With the absence of oversight, clever, streetwise CIs, many with rap sheets longer than the Dead Sea Scrolls, could now take over the direction of investigations. They quickly learned that if they could convince some gullible dupe who

happened to have a lot of assets to invest in a sham drug trafficking/terror/gun running/money laundering/you-name-it scheme, they could make crime actually pay to the tune of many millions of taxpayer dollars. The more media coverage garnered and/or the more assets seized, the more money was on the table for the CI. All the snitch needed were police handlers and prosecutors who asked few questions about how the case began or what methods had been used to entice the target into taking part in a criminal act. Too many law enforcement agents and prosecutors would even go the extra mile and hide evidence that might reveal the snitch having spent months and even years seducing their gullible targets.

My first experience with the Reverse Sting tactic as a trial consultant and expert witness opened my eyes as to how seriously the unrestricted use of CIs and this tactic was impacting our system of justice (*U.S. vs. Gutierrez-Zamarano*, 1992). It began with a phone call from an attorney received shortly after I left the DEA (Levine, 1996):

> "I'm looking for Mike Levine, ex-DEA," said the man's voice.
>
> "How'd you get this number?" I said. It was close to midnight in 1992. I was in a San Francisco hotel on business.
>
> "Man, you don't know what I went through to find you."
>
> The voice belonged to a well-known California defense attorney who said that he'd tracked me through my publisher.[7]
>
> "I'm in the middle of trying a case," he said. "I need you to testify as an expert witness. The judge gave me over the weekend to find you and bring you here—"
>
> "Whoa! Whoa!" I said. "Back up. I'm not a legal consultant—"
>
> "—But you're a court-qualified expert. I checked you out. I read your books."
>
> "You *read* them?"
>
> "Well, I just got them . . . ."
>
> "When you get around to reading them, you'll know I don't work for dopers. Nothing personal counselor."

Days before this phone call I had turned down a six-figure offer to work as a consultant for a Bolivian drug kingpin who I'd spent half my life trying to put in jail. His lawyer told me I could write my own check.

> "Look, *I'm* defending the guy for expenses," snapped the California attorney, annoyed. "The guy's been working 60 hours a week for the last three years parking cars—does that sound like a Class One cocaine dealer to you?" (*U.S. v. Gutierrez-Zamarano*, 1992)

Class One at the time was the DEA's top rating for drug dealers. You had to be the head of a criminal organization and dealing with tens of millions of dollars in drugs each month to qualify. Pablo Escobar and the fabled Roberto Suarez were Class Ones (Levine & Kavanau, 1993).

He had my curiosity.

> "You can *prove* your guy's a parking-lot attendant?"
>
> "I'll FedEx you his time sheets. Better yet, I'll send you everything—undercover videotapes and DEA's own reports. *You* tell *me* if the guy's a Class One."
>
> "Why me?" I asked.
>
> "DEA couldn't get any dope from Hector, not even a sample. So they charge the poor bastard with a no-dope Conspiracy—did you ever hear of anything like that? A parking-lot attendant on a no-dope Conspiracy? Then they bring in a DEA expert from Washington to testify that a *true* Class One doper doesn't give samples. You and I both know that's bullshit, don't we?"

I flashed back to July 4, 1980. I was in a suite at the Buenos Aires Sheraton working undercover posing as an American Mafioso. I was sitting across a table from one of the biggest dopers alive, Hugo Hurtado Candia, as he handed me a one-ounce sample of his merchandise—99% pure cocaine—as a prelude to a huge cocaine deal (Levine & Kavanau, 1993). The man was part of a cartel that was two weeks away from taking over his whole country. Class Ones had no problems in giving samples.

The lawyer was right: it was BS, but it was the kind of BS that was no different than that of all the federal prosecutors with an eye on public office who exaggerate the importance of their cases to a media that will swallow just about anything. But the DEA flying an expert witness across country to make a parking-lot attendant look like a Class One coke dealer in a federal trial? That was something I'd never heard of—unless things had changed drastically.

"There *must* be something you're not telling me."

"If I'm telling you the truth, will you be here on Monday?"

"How did the thing get started?"

"A CI approaches DEA with a deal. He's wanted in Argentina and Bolivia. He says, 'If I get you a Class One arrest here, will you get the charges dropped against me over there?'"

"How much did they pay him?"

"Over $30,000. And they admitted that he's gonna get a lot more when the trial is over."

"And Mr. Car-Parker, what kind of rap sheet does he have?"

"Nothing!" shouted the attorney. I held the phone away from my ear. "This is his first fucking arrest."

"What kind of rap sheet does the snitch have?"

He laughed. "This guy's been busted all over South America for every kind of con job in the book. He even tried to sell his wife's vital organs while she was in a coma dying."

"Come on, counselor," I said.

"If I'm telling the truth, will you be here Monday?"

The FedEx package was delivered to my room on Saturday morning. The discovery materials were straightforward: DEA-6 reports of the investigation, video of the final undercover meeting, audio files, and the reports of the lawyer's private investigator (PI). I spent the night reviewing it all very carefully.

Here's the story they told: Hector Gutierrez worked for a large, Washington, DC, parking-lot chain punching a time clock for an average of 60-plus hours a week for the past three years at minimum wage. He also had a little side business of delivering lunches to workers in the area. And, as the attorney had claimed, he had no prior criminal record.

One of the first things I noted as being absent from the prosecution file were any reports or recordings detailing the contact between the CI and Hector prior to the DEA in San Diego opening the case. Anyone who has ever worked a drug and/or terror snitch knows that if you allow the snitch to operate on his own without oversight or control, he's going to try to entrap people from whom he has no fear of reprisal. In fact, a review of the whole file received from the prosecution in discovery revealed that no effort whatsoever was made to investigate whether or not Hector's lifestyle, finances, and contacts indicated that he was anything *but* a parking-lot attendant.

The snitch, whom I'll call *Cariculo*, Snakeface, on the other hand, had an extensive file, most of which was provided by the lawyer's

private investigator. Snakeface was wanted in both Bolivia and Argentina for bad checks, petty theft, and every kind of con job in the book. He had a total of *seventeen* charges outstanding against him across South America. His favorite scam was selling cars he didn't own. His other part-time source of income during the last four years was selling drug cases to the DEA and other Alphabet Soup offices throughout the hemisphere.

The guy was a known conman and professional snitch, which should have been a bright red warning sign to both the DEA and the defense attorney that Snakeface would first try to entrap a dupe rather than risk ratting out a real South American drug trafficker who might kill him and every living thing he holds dear, including but not limited to, his parakeets and goldfish. *How could this get by the DEA supervisor?*

As a squad leader, my first thought would be, *What bona fide Class One drug trafficker would trust this green worm?* The other immediate red flag was Snakeface's length of "service" as a snitch for the whole Alphabet Soup—more than ten years. Real traffickers at the level DEA had placed Hector would have an intelligence net a lot more effective than the Central Intelligence Agency's (CIA) and would have pegged Snakeface as a rat in a New York minute—another reason to suspect that he was now in the business of conning money out of his U.S. government handlers rather than earning it.

The full background story that I glean from the PI's file is as follows:

Snakeface first moved to Washington, DC, from Bolivia, bringing with him a wife and a couple of kids who he promptly abandons. He returns to South America to ply his dual trades—U.S. protected conman and criminal and U.S. government snitch. Things don't go too well for Snakeface and in a short time he's back in the U.S. on the lam from police and scam victims in two countries. Hector, the parking-lot attendant, who is unfortunate enough to be a family friend of Snakeface and a fellow Bolivian, tries to help his buddy out by giving him part of his lunch delivery business. In the meantime, Snakeface's wife, who was supported by Hector and his family during the DEA snitch's dubious travels, inexplicably suffers a cerebral hemorrhage and falls into a coma. While she lays dying, her "grieving" husband—just as the attorney said—tries to sell her vital organs. When the sale of his dying wife's heart, lungs, and kidneys doesn't work out, Snakeface decides to sell Hector, organs and all, to the DEA as a Class One Bolivian cocaine dealer.

Snakeface's first move showed me that he—like most of his ilk—was no novice in playing the Alphabet Soup against itself. Instead of calling the local Washington, DC, office of the DEA or the Federal Bureau of Investigation (FBI)—where he and Hector lived— he called the DEA in California. He described Hector to the California DEA agents as someone called "Chama," the "east coast distributor for a huge South American cartel dealing in shipments of thousands of kilos of cocaine into the U.S." and "the head of his own criminal organization"—a description that just happened to fit the criteria for a DEA Class One violator.

Now, here was another little tidbit about which the defense attorney would have to be educated: *Why would a snitch located in Washington, DC, furnish information about an alleged Class One drug dealer living in the nation's capitol to a San Diego DEA office?*

It was a thing of sheer conman beauty. Snakeface's long experience as a professional federal rat had taught him about the voracious competition for headlines, budget, and glory among the myriad of American federal enforcement, spy, and military agencies. He knew that the California agents, afraid that the East Coast DEA agents or some other member of the Alphabet Soup would steal their case, would ask few questions. Their first goal would be to establish Chama, King of Cocaine, as a San Diego case.

And so it was that the San Diego DEA reacted exactly as Snakeface had predicted. Instead of calling the DEA's Washington, DC, office and asking them to check out the information, which would have quickly revealed that this alleged

Class One cocaine kingpin was parking cars for 60 to 80 hours a week, they sent Snakeface taxpayer-funded airline tickets and expense money to fly to California in order to get their first piece of "evidence" —a recorded telephone conversation in which "Chama" would agree to deliver drugs to San Diego—locking the case in as a "San Diego case" and a Class One to boot.

Before leaving for California, Snakeface tells buddy Hector,

> Look, I've got this American Mafioso in California who is dumber than a guava. The guy's so dumb he's even sent me airplane tickets to fly out there and set up what he thinks is going to be a *grande* cocaine deal. I'll tell him you're the *capo de tutti frutti* of all Bolivian drug dealers. You tell this *boludo* that you can deliver all the cocaine he wants. He'll give you a couple of hundred thousand dollars out front. Then you and me take off back to Bolivia rich men.

So Hector, the parking-lot attendant, goes along with the deal. He had failed the U.S. government financed test of his honesty, a test that, according to my training, was once called entrapment, but the big problem with Snakeface's plan, as we shall see, is that Hector didn't have the slightest idea how a Class One cocaine dealer (or any drug dealer for that matter) should act.

Next, we cut to Snakeface in Southern California making his first phone call to "Chama, King of Cocaine" with the DEA agents listening in and tape-recording the call. He makes the call to the Washington, DC, parking lot where Hector works and is supposed to be waiting prepared to play the role of Chama, King of Cocaine, only Hector isn't there:

> "He's home sick," says the woman who answers the parking-lot phone.

Do the DEA agents stop here and say, "What the hell is the east coast distributor of hundreds of millions of dollars worth of cocaine, and the head of his own criminal organization, doing parking cars for a living?" No. They call his house and tape-record this call as well.

This time Hector answers. He's in a bad way. He apologizes to Snakeface explaining that he's home with a terrible hangover. Then, in his anguish at having missed the first call, entirely forgets his role as Chama, King of Cocaine and launches into this long, confused story about some friend of his getting drunk in his room, stealing his pants, and then wrecking his car:

> "Shit," says Chama, King of Cocaine. "In the morning, I come out and I didn't see my car. Man! 'That son-of-a-bitch,' I said. 'Shit! Where's my car?' Shit! I was sad. . . . Shit! It's like the only one I have to go to work."

Snakeface, with some effort and doing all the talking, finally steered the conversation into some garbled code-talk that sounded more like Mike Tyson trying to explain the Monroe Doctrine to Peewee Herman in Spanish than a drug deal:

> **Snakeface**: "Yeah, what I'm trying to is, since it's a matter which is quite serious, big, and from the other things that I've seen like this, when we can't be playing with, with unclear words and . . . that's why what I, what you did, and I asked you if you'd spoken with him because I know that he has the financial capacity and after all he's, he's a partner of, of, of [name of major drug cartel leader] and, and in the end anything will yield a profit if we're hanging on to a big stick that's on a big branch and, and we won't have any problems, right?"
>
> **Chama, King of Cocaine**: "Of course."

That was about as clear as it ever got. If it was a dope conversation, the fact that he was talking across 3,000 miles of telephone wires from his *home telephone*—something a high school crack dealer wouldn't do—didn't seem to bother Chama or the San Diego DEA agents in the least.

At the end of this conversation, did these experienced, highly trained agents say, "Hey this guy doesn't even sound smart enough to be a

pedestrian? or "Hey let's pull the autopsy report on the informant's wife?" Nope! They opened a full-jacketed investigation targeting Hector as a Class One cocaine trafficker and paid the CI his first thousand dollars in expense money. And there were plenty more taxpayer dollars to follow.

The packet of reports I had received via FedEx indicated that the DEA investigation lasted about eight months during which time Snakeface successfully pimped his handlers out of serious taxpayer dollars with his tales of Chama, King of Cocaine. At the same time, he was beguiling his handlers with promises of mountains of cocaine delivered virtually to the San Diego DEA office; and he pimped Hector about "Tony" (a DEA undercover agent), who he described to Hector as the *Dumb-and-Dumber* of the Mafia. During that time, the California DEA did no investigation of Hector whatsoever. They did nothing but write down whatever their CI told them as fact.

This is what experts in police procedures define as "Avoidance of the exculpatory"—evidence of a seriously substandard investigation. It was a "pin-the-tail-on-the-donkey" investigation as opposed to a search for truth.

For eight months, Snakeface continued to stall the California DEA agents, reporting that Chama was in the process of putting together a major shipment of cocaine, and the agents continued to pay him. In all, Snakeface received another $29,000 plus expenses, which included periodic trips back to California from Washington to be "debriefed" on his "progress." For eight months, the agents nagged Snakeface into trying to get Hector to deliver at least a sample of cocaine, any amount would do. Just something to get the bean counters off their backs. Thirty thousand dollars of taxpayer dollars spent with no drugs, people, or assets seized is very upsetting to the DEA accountants.

The sample never came. Hector—surprising for any Bolivian— didn't know anyone in the business from whom he could even buy a tiny amount. And even if he did, he didn't have the money. And Snakeface was afraid that if *he* paid for the sample, even these stat-hungry California agents might get wise to him. So, he came up with a clever solution: he told the agents, "Hey, Class One dealers don't give samples; only small dealers give samples."

When his DEA handlers apparently believed him, the typically enterprising CI took his scam one step further: he told them that Chama was not going to deliver drugs unless the agents put part of the money out front—$300,000. This, he assured the agents, was another sign that Chama was a "true Class One dealer."

Snakeface had enough experience selling Reverse Sting cases to the feds to know that they would never front that kind of money. He also knew that the feds' indecision and the slow-moving bureaucracy, plus agents who didn't really know what they were doing and/or who were only focused on making an arrest and some "victory" headlines, could give him quite a few months on salary—which is exactly what did happen.

After eight months, the California agents finally decided that since "Chama" wouldn't deliver drugs to them without front money, they would get him on videotape promising them cocaine and accepting the money—a Reverse Sting. This was all they would need to prove him guilty of Conspiracy to Possess and Distribute cocaine.

The videotape played before a jury of laymen would be more than enough to convict. They also knew that 99% of criminal attorneys upon simply viewing the videotape would seek to plea bargain. Hector would face enough charges to make him a guest of the American taxpayers for more years than he had left on this earth. The "no-dope conspiracy" arrest would also give the agents their Class One arrest stat and a headline from the ever-gullible press. Case closed. The pattern for the new war on crime is clearly established.

By this time, Snakeface had not only received $30,000 in fees and expenses but also all charges against him in South America had disappeared. Now the snitch had two final duties to perform for his masters: (1) bring Hector

to California for his videotaped agreement to deliver (fill-in-the-blanks) tons of cocaine arrest, and (2) testify against his old buddy at trial. More money was promised Snakeface after Hector's conviction. How much did he finally receive? We'll never know.

Now the stage was set for the final act—the videotaping of the "crime." There was still one remaining snag, however. Chama, the Class One drug dealer, didn't have the money to come to California for his own arrest. In a final irony, the California DEA agents had to pay for his trip.

Finally, dressed up in his best Kmart casuals and prepared to play the role of a Class One cocaine dealer for what he was told by the snitch would be a live audience of Mafiosi, Hector was on his way to California like a big Bolivian turkey on his way to enjoy Thanksgiving dinner. It was close to midnight when I keyed the videotape of the climactic undercover meeting between Chama, King of Cocaine, and "Tony," *capo* of the Three Stooges Mafia family.

The screen flickered to life.

A hotel had been rigged with hidden video cameras. Center screen was "Chama" and "Tony," the undercover DEA agent, facing each other across a table. Between them was a piece of hand luggage containing $300,000 in $100s and $50s.

There were several problems that were immediately apparent. First, they hardly shared a language in common. Tony's Spanish was rudimentary at best, and Hector spoke only enough words of English to locate a men's room. Tony, for example, kept referring over and over to the "Percento"—a word that exists in no language that I am aware of—until Hector finally figured out he was trying to say "purity"—*pureza*—a word anyone who did drug deals in Spanish should have known in his sleep.

Second, neither man knew his role. "Chama" was dressed like the hotel maintenance man on holiday, and "Tony" was dressed like an Elvis impersonator. Neither knew the mechanics of a real Class One drug deal or any real drug deal for that matter. There was no discussion of specific amounts, prices, weights, meeting places, delivery dates, provisions for testing the merchandise before delivery, methods of delivery, or prearranged trouble signals. Nothing happened that even resembled a real drug deal, which is typically a paranoid event that is *all* about specifics. What the agents had on video wasn't authentic enough for a Stallone movie. Yet, to an unschooled jury—like most Reverse Sting videos seen today—it "looked" and "sounded" like a crime.

The only thing clear was that "Tony" was asking Hector to promise him that, if he was allowed to leave the room with the $300,000, he would, within 20 to 30 days, deliver an unspecified amount of cocaine to an unspecified location—not bad for a parking-lot attendant.

Hector, his eyes riveted on the money-laden suitcase on the table in front of him, eagerly assured his new benefactor that he would make said delivery. He was then allowed to examine the money, which he eagerly did with shaking hands, not bothering with a count. The "flash" of the money complete, the undercover DEA agent asked him if he was "happy." Hector, thinking that America truly was a land of gold-paved streets guarded by idiots and that his friend Snakeface was a genius to be compared with Einstein, or at least Howard Stern, assured "Tony" that he was indeed very happy.

With all the elements to the crime of Conspiracy recorded on videotape, "Tony" concluded by saying

> "Whew! Thank you very much, and I'll wait for your call."
>
> "OK," said Hector, his eyes bugged out with disbelief as he got to his feet holding the money.
>
> "Hey! Dude," said Tony, "I'll be here a little while. I have to make a few calls. Bye."

Hector's look as he started to leave with the money only lacked the line *Feet, don't forsake me now.* His feet didn't have far to go—only about a half dozen steps before he was arrested.

I clicked off the video.

Had the agents responsible for this case been working for me or any of the other supervisors who worked alongside of me during the 17 years I was a supervisory agent, not a nickel would have been spent. I would have jerked those who started and approved of this investigation into my office for a private conference: "There are a million real drug dealers in this country," I would have told them. "There's probably a couple of hundred working within a square mile of the office. If you've got to go 3,000 miles to DC and spend a quarter of a million in taxpayer bucks, manpower, and resources to turn a parking-lot attendant into a Class One doper, you don't belong in law enforcement."

Monday morning I was on the witness stand in the San Diego Federal Court testifying. Most of my testimony relied on the defense of entrapment. I was astounded to learn that since the defense attorney had *never* raised the issue of entrapment as his defense theory, the judge would not instruct the jury to consider that what they had just seen on video *might* allow them to vote *Not guilty* on the basis of entrapment.

The jury of laymen quickly found Hector, the parking-lot attendant, "guilty" as charged. If the government said that a parking-lot attendant working 60 hours a week for years at minimum wage was really Chama, King of Cocaine, it must be true.

The judge in this case was, in my opinion, one of the best on the federal circuit. Recognizing what the agents, the prosecution, and the defense attorney had failed to recognize, he set aside the jury verdict and ordered a new trial, now giving the defense attorney a chance to claim entrapment as a defense.

To avoid trial and possibly embarrassing media coverage, the prosecution quickly offered Hector a plea bargain that would allow him to walk free. And that is what happened. Technically, Chama, King of Cocaine, pled guilty. Hector, the parking-lot attendant, was a free man.

I was emotionally blown away by the whole experience. The case was a grotesque bastardization of what the DOJ had first authorized in 1975. What I had just witnessed was contrary to everything the war on drugs and crime had represented to me as well as my role in it. It was a rip-off of the taxpayers, a misuse of valuable manpower and resources that should have been applied to getting dangerous and violent criminals off the street. The cream of the crop in law enforcement had sunk to the bottom, and the worst most inept and/or corrupt elements had risen to the top.

It was still a few years before agencies like FBI, Immigration and Customs Enforcement (ICE), and BATF would use the identical tactics to snare and convict the desperate, the homeless, and the mentally ill for conspiracy to commit the most heinous acts of terrorism and violent crimes imaginable.

FBI and BATF Enter the Arena of the Reverse Sting

If you believe mainstream media headlines, since the first World Trade Center bombing and 9-11, the FBI has now logged an impressive list of "victories" in its war on terror (see Levine, 2009). But what those of us with the training and experience to look past the headlines and the "inside source" statements to so-called journalists find is a frightening picture of misrepresentation, overwhelming evidence of entrapment, and a level of ineptitude that is unforgiveable as simple professional error. The cases indeed follow the pattern identified in the Hector the Parking-Lot Attendant Case. Even cases like my BATF case involving a CI convincing a defendant to saw off a shotgun that caused a New York City federal court to refuse to prosecute similar cases are now being routinely prosecuted by BATF nationwide (Dietrich, 2013).

In *U.S. v. Jesus Nieblas et al.*, one of my own recent Reverse Sting cases in which I was retained as a trial consultant, the BATF CI convinced four undocumented aliens to do a home invasion of what the CI alleged was a drug stash house that did not exist. The big problem was that the

defendants did not own a gun between them. The CI's handlers, some of whom were at that moment taking part in what I would consider one of the most malevolent reverse stings in law enforcement history, Operation Fast and Furious, had to supply all the guns and the transportation for these would-be "home invaders" so that they could show up for their arrest and the "victory" headlines.[8]

One journalist, Trevor Aaronson (2013), completed a careful study of FBI terror "victories" since 9-11 in his book, *The Terror Factory: Inside the FBI's Manufactured War on Terrorism*. He found that

> more than 150 people [the vast majority of the media-anointed terror victories] were these men who were caught in [reverse] sting operations who never had the means and, in some cases, never had the idea for the terrorism plot, and it was the FBI that provided them with everything—the bomb, the transportation, everything they needed to move forward in a terrorism plot that on their own, they never would have been able to do. (cited in Maher, 2013)

He indicates that most cases rely on the FBI's cadre of 15,000 registered informants to originate the (reverse) sting operations whom he has documented as receiving from $100,000 to $400,000 per case. My own opinion, having experienced much alphabet soup and prosecution chicanery in concealing the payments received by CIs (and the Brady materials related thereto) from both the media and defense attorneys, is that the actual figures can conservatively be tripled.

Aaronson (2013) notes another big problem with the FBI's claimed "victories," and their concurrent informant-handling practices:

> . . . that there's a real question of whether the informant is actually a worse criminal than the target of the sting operation could ever be. In these sting operations, the FBI has used drug dealers frequently as informants, they've used an accused murderer, in a Seattle case; they've used a child molester—people who are just odious in every way. And they also have a direct incentive to find terrorists and see them prosecuted because they can make so much money as informants. So when they enter mosques and they look for people who are interested in committing acts of terrorism, they know there's a lot of money riding on it for them to find that person. And as a result of that, what they're ultimately finding in most of these cases are people on the fringes of society who are economically desperate, in some cases mentally ill, and these are people who are easily susceptible to a strong-willed informant. (cited in Maher, 2013)

Aaronson's conclusion, as is mine, is that, to date, the FBI's Reverse Sting operations have yet to yield a single real terrorist with the means and ability to carry out a plot that was not instigated by one of the bureau's 15,000-man army of informants (cited in Maher, 2013).

Fast and Furious and The Underwear Gnomes

No Reverse Sting operation, or any covert operation in U.S. history for that matter, has been more of a blight on law enforcement than BATF's Operation Fast and Furious. The idea behind this reverse sting was for the BATF agents and their CIs to sell guns to criminals with direct ties to the murderous Mexican drug and terror cartels and to then make major cases against said cartels. Before the operation even got off the ground, it was in violation of both common sense and the very laws that BATF was supposed to be enforcing. It also opened all those responsible for the implementation of this plan to charges of homicide based upon a reckless disregard for human life.

To date, the approximately 2,500 BATF weapons provided courtesy of Operation Fast and Furious have been linked to hundreds if not thousands of deaths in Mexico and the U.S., including two massacres of high school students and the murder of two U.S. law enforcement officers.

The big problem for all those involved with its conception, approval, and implementation is

that no one in BATF or the DOJ who approved the plan has been asked to explain how exactly the sale of guns to homicidal criminals was going to result in cases without said guns being used to kill people. This conundrum was best described during an interview with a BATF insider who actually took part in the operation, retired agent John Dodson (2013), who read an excerpt from his long overdue book *The Naked Truth:*

> "It's like the underwear gnomes," my ATF colleague Lee Casa told me one time as we recounted the latest bizarre goings-on in Phoenix.
>
> "What?" I asked.
>
> "You ever watch *South Park*? There's this episode where all the boys get their underwear stolen by these underwear gnomes. They track them down to get it back, and one of them asks why they are stealing everyone's underwear. The gnomes break out this *PowerPoint* and reveal their master plan: Phase One: Collect underpants . . . Phase Two: ? . . . Phase Three: Profit."
>
> "We're doing the same thing," he explained. "We know Phase One is 'Walk guns' and Phase Three is 'Take down a big cartel!' "
>
> Both of us were laughing now; a more fitting and appropriate allegory could never be found. Casa concluded, "Just nobody can figure out what the f–k Phase Two is!"

The fact is that, by any definition, the very implementation of Operation Fast and Furious meets all the requirements for numerous violations of state and federal laws, not the least of which is Homicide based on a craven and reckless disregard for human life, yet mainstream media and Congress in Emperor's New Clothes fashion continue to call it merely a "flawed" operation. This is a premeditated act of BATF management, its agents, and all those who approved it that will continue to cost lives on both sides of the border for an immeasurable time to come.

The best and most poignant examples of how this Reverse Sting operation has resulted in the death and suffering of the innocent are mostly occurring in Mexico and are being covered almost exclusively by Spanish-language media. This perhaps at least partially explains why the individuals who were in any way involved in its conception, approval, and implementation are not being held accountable.

The following is excerpted from a Univision report (Boyle, 2012):

> Near midnight, the assassins, later identified as hired guns for the Mexican Cartel *La Linea,* broke into a one-story house and opened fire on a gathering of nearly 60 teenagers. Outside, lookouts gunned down a screaming neighbor and several students who had managed to escape. Fourteen young men and women were killed, and 12 more were wounded before the hit men fled.

The report went on to cite a Mexican Army document that linked three of the weapons to "a gun tracing operation run by the BATF," also indicating that at least 57 of the Fast and Furious weapons had been linked to murders in Mexico, including "at least one other massacre" (Boyle, 2012).

My review of more than 50 Spanish-language reports of the fallout of Fast and Furious as well as contact with my own sources in Mexico indicate that the murders linked to this U.S. born Reverse Sting operation are on the rise. The "gift" from BATF that keeps giving.

In a sane world, even a superficial review of Fast and Furious should have caused the immediate suspension from duty and a fitness for duty examination of all those who approved it, yet it was loosed on the innocent public. These Reverse Sting operations must be investigated with a view toward restoring the safeguards that were once in place in order to stop this downhill slide of our justice system and the misdirection of massive amounts of law enforcement funds and resources at a time we can least afford it.

I recently saw a movie, *American Hustle,* which won an Academy Award for Best Picture. It's a film that does a good job of capturing everything now wrong with the misuse of the Reverse Sting, particularly the use of CIs. The movie captures all the necessary elements of the scam: the ethically challenged, self-interested FBI agent; the frightened and coerced CI; and the media-hungry prosecutor with his eye on elected office willing to both encourage and protect the whole fraudulent operation.

I was asked with which role in the film I could most identify. My answer was easy. It was a role I had lived during most of my career: the FBI Group Supervisor who, despite his unflattering portrayal, was just trying to stop this tidal wave of wrong now wreaking havoc on both our justice system, our international image, and our national security.

Endnotes

[1] Informants who are given police permission (and protection) to engage in criminal activities are often designated Criminal Informants (CIs) for clarity in police training courses.

[2] Then called ATTD, the Alcohol and Tobacco Tax Division of the Internal Revenue Service.

[3] In those years, informants who worked undercover were referred to as CIs—Criminal Informants or Confidential Informants, used interchangeably. Prosecutors later would call them CS or CW, Cooperating Suspect or Cooperating Witness, to make them a little more believable to juries.

[4] This case is now under appeal and its citation therefore omitted from this draft. Files and videos substantiating statements are in my possession.

[5] Case files received in discovery are in my possession.

[6] *Deep Cover* by Michael Levine (2000) and *The Big White Lie* by Michael Levine and Laura Kavanau (1993) are books that detail exactly these types of cases and are used as reference material for deep cover training instruction for police agencies throughout the U.S., Canada, and South America.

[7] Delacorte Press, publisher of *Deep Cover.*

[8] Translated from the actual recording. Now in my professional files.

[9] I am in possession of all reports and other evidence received as discovery in this case.

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