



NARCOTICS / SPECIAL ENFORCEMENT UNIT CONTROL AND AUDITS



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It is almost becoming a common occurrence when the news reports that some law enforcement special unit's personnel are indicted or being investigated for criminal misconduct. These types of special units come in various forms and names: HIDTA, street crime, narcotic enforcement, special enforcement, FLEX, CRASH, etc.

The common thread for the misconduct can be traced back to four factors. First, and the least common, is that the members of these units are simply criminals carrying a badge. Second, and probably more common, is that these officers are engaging in what they believe is "noble cause" and that cutting corners is okay if the bad guys are taken off the street. Another motivator with some units is the pressure to produce whether it's in seizures or arrests. The last factor, and the thrust of this article, is that supervisory and agency control and audit functions are either not being used or are ineffective.

There are nine (9) principal sources for reasonable control and successful audits for these types of units that can safeguard your officers and agency:

1. Informant control
2. Probable cause affidavit preparation
3. Evidence inventory and control
4. Investigator case files documentation
5. High risk warrant service
6. Mission clarification
7. Effective administrative investigations
8. Early Identification and Intervention Systems
9. Reasonable selection processes

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Informant control: There are various forms of informants, but the one who is the source of most of these special unit issues is the “confidential reliable informant.” There are very specific, well defined, and generally accepted guidelines for the development, use and documentation of these types of informants. The day has long passed when an informant is considered the personal property of any one investigator. Informant files should be audited for completeness. When an informant has not been used for a considerable period of time, s/he should be placed in an inactive file or the unit should conduct an updated background investigation.

Use of informants and their file maintenance has become an issue during *Brady* disclosures. This has surfaced most of the time in some of the wrongful conviction cases that end up in civil lawsuits 10 to 20 years after the original arrest and prosecution. The principal issue has been when the prosecutor wasn't informed how the informant was being used to focus on the suspect and that the informant being used was also being paid.

The informant file itself should contain very specific information to document the reliability of the informant and establish the necessary departmental control of their actions. Good strong policies and procedures (such as those recommended by the IACP in its model policy and the DEA in its training programs) in this area should include the following:

- The file should contain the fingerprints, photograph, driver's license, rap sheet, address changes, e-mail addresses, marital status, newly established gang affiliation, tattoos, and other identifying information, payment receipts and contract with the informant.
- The informant should be admonished in writing that they are not to engage in criminal behavior and that they have no law enforcement authority.
- Supervisors should meet the informant and be required to be briefed on all contact and use of an informant.
- When an informant has failed to follow the established guidelines, their actions should be documented in the file and they should be de-activated.

Probable cause affidavit preparation: The major issue coming back to haunt agencies when trouble occurs within a specialized unit is the probable cause affidavit. There are two major problems with actual probable cause affidavits in the units that have been engaged in misconduct. The first is that the officer preparing the affidavit cuts corners in the specifics of the content to save time or make it “easier” for the prosecutor or judge who reviews the document. This corner cutting has been when surveillance is narrowed to just certain dates, information gathered from multiple sources is framed as being from only one source, and the officer states that s/he observed the criminal actions when it was actually from an informant or untested person. The second, more significant deficiency, is when the officer lays out a convincing case that s/he knows did not occur, but the subject of the warrant is known or believed to be dirty. A reasonable audit to validate probable cause affidavits would be to randomly dissect one affidavit each quarter. Evaluate the content against the investigator case file. Pull the documentation of the informant being used to see whether the informant file is current and there is documentation supporting this specific use. Double check the documentation against the confidential money logs.

Evidence inventory and control: Evidence inventory simply means that the evidence collected can be located and the can be validated to be what the reports indicate. What creates problems is when

the evidence, specifically narcotics, is stored either at the officer's home or in the special unit's office/desk. Some departments utilize a chemist to perform a periodic random sampling of seized narcotics by conducting a qualitative and quantitative analysis of the contraband. This ensures that the seized narcotics hasn't been replaced or diluted with flour.

Another issue which has plagued specialized narcotic units especially is the handling of cash seizures. Bundling up the cash and then throwing into the sergeant's vehicle until it can be counted later is not advisable because it provides almost no integrity of the seizure. A more controlled process would require photographing or videotaping the seizure, sealing the money in tamper proof evidence bags, and then transporting the money in a caravan to a secure money counting location. At that point, all actions in the money counting room should be videotaped including the breaking of the seals and counting of the money.

Investigator case files documentation: Investigator case files become a problem when expected documentation is absent. In many of the featured special unit problems, the investigator doesn't maintain any articulated, up-to-date documentation of what s/he did on the case. Handwritten notes are discarded. Detailed surveillance logs are not kept. These create a definite *Brady* violation potential.

Records management is always an issue in a narcotics/special enforcement unit. Due to the secrecy and "need to know" nature of the work, these officers are sometimes reluctant to blend their files into the records management system of the department. Informant files are routinely kept in file cabinets that are out of the reach of the administration. These records should be maintained along with other critical documents held by the department. It is well understood that the identities of the persons who cooperate with the police do so a considerable risk to their own safety and keeping their identities shielded from those who do not need to know is critical. However there are appropriate security measures that can be installed on any records management system to ensure that the privacy and sensitivity needs of the informants are met.

Financial records within a narcotics unit should also be monitored closely by the department administration. Certain asset forfeiture funds can only be utilized in an effort to combat drug trafficking. Therefore these monies are not accessible to other bureaus within the department. A mentality can develop in narcotics units that "we seized it so we'll spend it how we see fit, it's not taxpayer money". Software programs are available to the bureau commander which can easily organize the financial expenditures of the unit by showing how much money is spent, where the money is going, how much is paid to each informant, or each detective in the unit. Spreadsheets and charts can be produced to demonstrate the use of the money, how much for each controlled hand to hand buy, how much for informant maintenance, how much for each purchase of illegal drug matched to the weight received. This type of insight is useful for gaining an overall look at the productivity of each detective as well as evaluating relationships between detectives and informants. These records should be part of the administration's regular review and auditing.

High risk warrant service: High risk warrant service protocols are designed to identify those cases that need special units and equipment to safeguard the entry team. These tactics, however, are the most volatile approaches for an agency. When properly used these entry tactics normally protect all persons including the subjects of the warrant. But use of these tactics also has a high liability

potential. Probably the most essential tool for proper oversight is the use of some form of risk assessment. Use of this type of tool will identify whether the location of the warrant service requires high risk entry tactics or not. It will also determine whether a special entry team should be employed. In some agencies any narcotic warrant service automatically enlists one of these high risk entry teams and some form of dynamic entry. This will increase the agency's liability potential. The agency should audit each use of a special high risk entry operation to ensure that there is justification for this level of force potential. When an agency does decide to employ a dynamic entry service of a warrant, they should consider utilizing the attached checklist which will prevent the potential liabilities of a wrong house warrant execution.

Supervision and mission clarification: The authors have reviewed hundreds of cases of police corruption and a common thread almost always encountered is the failure of supervisors to recognize the problem. Both first line supervisors (usually sergeants) and mid-level supervisors (usually lieutenants) are too often asleep at the switch and fail to ensure their personnel are accounted for and engaging in appropriate behavior. Supervisors are clearly the first line of defense in preventing corruption in a law enforcement organization because they control and drive the culture. This is especially true in specialized units because they tend to have more freedom during their shift, allowing them to engage in misconduct, undetected, if they are inclined to do so.

Effective administrative investigations: In a perfect world, officers would never engage in misconduct because they have a high internal value system which provides them with a moral compass to make ethical decisions. In the real world, however, the only thing that prevents some officers from engaging in misconduct is the fear of being caught. In many scandals involving specialized units, officers have testified that they had no fear of being caught because the internal affairs unit in their department was dysfunctional and lacked the necessary experience and resources to catch them engaging in corrupt acts. If there is no fear of sanctions or the possibility of being detected, some officers will cross the line believing they will never be caught. An audit of an agency's internal affairs process is an important part of any audit concerning potential police misconduct.

Another common issue facing administrative investigations involving personnel assigned to these types of special enforcement units occurs when your employees become part of a task force. When an agency assigns someone to one of these multi-jurisdictional task forces, consideration should be given to who will conduct any administrative investigation, what policies will be applicable and who will be in a position to adjudicate the allegations against the assigned officer. How to divide up the seized assets is often written into the task force agreement, but this other point often is not. You don't want to decide what to do when a significant allegation arises or when there is a fatal shooting.

Early Intervention Systems: Many law enforcement agencies around the country have recognized the importance establishing an Early Identification and Intervention System (EIS) which identifies officers who are suddenly receiving complaints or engaging in excessive force, due to personal stress or for a myriad of other reasons. While many of these systems have been effective in monitoring individual officer's behavior, none of them have specifically been designed to monitor group behavior. If a specialized unit is suddenly receiving a high number of theft complaints, they will fly under the radar of the departmental EIS because these systems have not been designed to focus on group behavior. An audit of the department's EIS would be able to evaluate the capability of their system.

Reasonable selection processes: Proper selection of officers assigned to a narcotics/special enforcement unit is essential to overall success and integrity of the unit and agency. Officers who are chosen should be above reproach and have a service record that backs that up. Therefore, officers seeking assignment to the drug/narcotics unit should have a sufficient number of years within the organization in order that they have an established record of honesty and work ethic that has been tested over time. The use of the early warning system and personnel evaluations along with recommendations from supervisors are necessary. Prosecutors who routinely investigate, charge, and prosecute cases for the agency have a different perspective of these officers. These prosecutors review reports, statements, affidavits and investigative documents that are prepared by officers who may be applying for a position in a narcotics unit. These attorneys have an insight into the work, demeanor, and credibility of these officers as they prepare for hearing and trials. They observe them testify and watch them think on their feet. The ability to be a good prosecution witness is a necessary attribute of a narcotics/special enforcement unit officer. Because of this relationship and the thoroughness necessary for trial preparation they act in a supervisory role over officers while in the judicial setting. Their insight into the officer's overall performance while "away" from the department can prove invaluable and their advice should be sought during the selection process.

The mission of a law enforcement agency is to protect the community by detecting crime, interdicting crime, identifying criminals and prosecuting them. Having said that there are many ways to accomplish this goal, and as many ways to establish a narcotics enforcement unit. Because of the potential for corruption associated with these units due to the nature of officers dealing in cash, drugs, prostitution and the relationships built with informants, many of whom are motivated by financial gain or revenge, it is important that those officers maintain their integrity. Officers can become entrenched in narcotics units for years due to policies and practices within the agency that discourages rotating officers out of a unit. There can be a department wide impression that if an officer is re-assigned from the narcotics unit then there must be something wrong, resulting in unwarranted damage to the officer's reputation. It is well understood that there are long term investigations into high level drug traffickers that must be addressed. Many of these investigations are done with the cooperation of state and federal narcotics units such as HIDTA. Other local drug issues relate to street corner dealing, prostitution, and street crime associated with it. Most local officers address crime of the later. Therefore these officers can be rotated out easier than officers conducting long term investigations. It can be beneficial to the department to consider rotating officers on a regular basis. The agency can let it be known that assignment to the narcotics/special enforcement unit is a "stepping stone, not a career" and the officers selected will be re-assigned after a predetermined amount of time. This allows for officer development and growth department wide as all officers would be eligible for consideration to the unit.

Officers assigned to these types of units should be randomly drug tested and subjected to yearly financial background checks/credit reports (when not precluded by state statute or bargaining agreement). Officers that are experiencing financial difficulties should be supervised closely and offered financial planning advice and assistance from the peer support unit if necessary. Gambling and lotteries often are at the center of financial troubles for civilians and officers alike and should be taken into consideration when dealing with this issue.

Conclusion: As pointed out in this article, supervisory and agency control and audit functions evident in the various incidents from throughout the country involving tragic outcomes of narcotic/special enforcement units are either not being used or are ineffective. The authors recognize the dangerous

and difficult assignment narcotics/special enforcement officers face every day. It is in the spirit of protecting both their safety and their integrity that we have offered these suggestions.

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