

UNDERCOVER OPERATIONS PLAN

Of all police assignments, probably the one that is least understood is that of the undercover officer. Many people visualize this role as similar to the super spies characterized in the movies. Others see the undercover officer as a self sacrificing individual who cuts himself off from his family and friends for extended periods of time so that he can live within the illegal community until the completion of his assigned task. Both of these views are somewhat extreme and unrealistic. While undercover assignments are hazardous and require extensive preparation and training, the actual contact with the criminal and his associates is kept to a minimum. Typically, in most municipal, county, and state operations, the undercover assignment calls for making a contact and a quick buy, a waiting period, and then the arrest.

Normally, an undercover investigation should not be attempted until other investigative techniques have failed or are deemed impractical. Similarly, the investigator should begin an undercover assignment only after receiving authorization from his commanding officer. This ensures coordination of operations and increases the safety of the officer. It should be remembered that successful investigations are the result of undercover officer should fully understand the objective of the particular mission and if possible, should assist in developing investigative policies.

PERSONNEL & SUPERVISION:

The Criminal Investigation Unit Supervisor or his designee shall have the responsibility of supervision and planning the operation. Planning for undercover operations shall include:

1. Choosing personnel for the operation.
2. Providing guidelines for arrests.
3. Providing back-up security for officers.
4. Determining legal ramifications.
5. Establishing means for routine and emergency communications.
6. Supplying officers with equipment.
7. Supplying officers with expense funds.
8. Supplying and maintaining confidentially of officers false identity and necessary credentials.
9. Identifying and analyzing suspects.
10. Analyzing the neighborhood or target area where officers will work.

OPERATION PLANNING:

The first step in planning an undercover operation should be identifying the problem, identifying and analyzing suspects, and analyzing neighborhood or target areas. The officers should be knowledgeable about the scope and extent of crimes and activities in which the suspects are involved. The Criminal Intelligence Unit should be contacted to furnish information concerning suspects and target areas.

A study should be made of files relating to suspects, their activities and crimes, their working and neighborhood environment, and vehicles used. Surveillance and intelligence investigations should be used to gather information.

Officers who will be doing the undercover work should be supplied with the necessary false identities and credentials needed for the operations. The Cover Story section of this plan will go into more detail concerning false identities and credentials.

Officers involved in undercover operations shall obtain operating funds from the Criminal Investigations Unit Supervisor. The use of these funds shall be governed by General Order 200.20 (Confidential Funds Accounting).

Equipment needed by undercover officers is available through the Criminal Investigation Unit. A list of equipment available is located in General Order 600.10 (Vice, Drugs and Organized Crime). All equipment must be logged out by the Criminal Investigation Division.

A plan should also be developed to establish routine and emergency communications. Back-up security officers shall always be used in case of emergency or unusual occurrences. Signals or other communication mediums should be developed to address operational and safety needs.

The commander in charge of the operation shall consider all legal ramifications associated with the operation. He/She should seek advice from the Attorney General's Office and/or the City Attorney concerning matters involving legal issues.

The Criminal Investigation Unit Supervisor shall be responsible for close supervision of the operation. He/She may appoint a person involved in the operation to be in charge and perform close supervision duties.

The Operations Division Commander should also establish guidelines for arresting suspects taking into consideration the different situations discussed in this plan.

BUY OPERATIONS:

Ultimately, the arrest of a suspect will probably stem from a "buy." Illegal items may be purchased directly from the suspect by an undercover police officer; an informant may make the purchase; or police surveillance units may observe a purchase made by a third party.

The agent buy case directly involves the undercover officer in purchase of illegal items. This type

of case is ideal for prosecution because the trafficker has sold directly to a law enforcement officer, and that fact usually convinces a jury of the suspect's guilt. Generally, the only way that this type of case can be lost in court is if the buy was made through illegal methods (see later material in this manual on entrapment). The agency buy case is almost always initiated through an informant who introduces the undercover officer to the suspect.

The controlled informant buy is the least prosecutable of buy cases because the informant is usually involved in criminal activities himself. Since such a case requires the testimony of the informant, it becomes a matter of one criminal's word against another's. Still, sometimes the informant buy is the only route available to officers. If a controlled informant buy is to be made, the following procedure should be followed:

- a. Thoroughly debrief the informant.
- b. Make some independent effort to authenticate the informant's information.
- c. Make no promises to the informant. His participation must be completely voluntary.
- d. Have the informant telephone the suspect while the call is monitored.
- e. Attempt to set the meeting for daylight hours in the out-of-doors to allow the continual surveillance of the informant.
- f. Thoroughly debrief all assisting officers.
- g. Strip search the informant.
- h. Give informant official funds in marked bills.
- i. Thoroughly brief informant.
- j. Wire the informant with a body wire and tape the operation.
- k. Advise surveillance officers about the informant's appearance.
- l. Set pre-buy surveillance at least one hour before the meeting between the informant and the suspect.
- m. After the buy, pick up the informant and secure the evidence.
- n. Strip search the informant after the buy.
- o. Take a written statement from the informant, giving emphasis to details occurring while he was out of sight or hearing.
- p. Return the informant's personal belongings and get a receipt.

- q. Corroborate the purchase by taping a call from the informant to the suspect in which the informant complains about, or praises the quality of narcotics purchased.
- r. Advise informant how and when to maintain contact with the unit.

The buy operation can be further classified with reference to the anticipated arrest strategy. Generally, the police may use either the "buy/bust" technique or the "walk-away" buy.

The buy/bust operation is a very useful procedure. By using a buy/bust, the unit does not have to actually spend its buy money. After a number of small preliminary buys have been made from a suspect, the investigator can negotiate a purchase for a much larger quantity. The dealer is arrested at the time of sale without actually turning over the buy money. The greatest advantage of the buy/bust is that it is economical. It allows the unit to make arrests for major sales while expending funds for only one or two small preliminary buys.

The "walk-away" buy is made by an officer, but an arrest warrant is obtained at a later time. There are three major advantages to using the walk-away buy. The identity of undercover officers or an informant is not given away by making the arrest at the time of the buy. All arrests in an area can be delayed until a simultaneous series of raids can be conducted. If a unit has made several buys from a suspect and learns that a major shipment is arriving, it may be able to synchronize the service of the warrant with the receipt, cutting, or distribution of the shipment. The main disadvantage of the walk-away buy, beside the fact that each buy will have to be small in order to minimize the loss of unit funds, is that execution of simultaneous arrests is expensive in terms of manpower and unit resources. Secondly, many drug traffickers are highly transient and may be difficult to locate after the first buy has been made.

Officers should always try to minimize the amount spent on these buys. Officers will usually run out of buy funds long before it runs out of criminals. Therefore, officers must sometimes undertake buy/bust operations where their preference may be for walk-away buys. When the unit decides that it must make a large walk-away buy in order to get to the dealer's source of supply, the amount of money needed may be too large for its resources. In this case, the local unit might consider going to a state or federal agency for assistance in obtaining the buy money.

The number of buys that are needed for a particular case will depend on a number of variables, including the prevailing attitude of the local court, the relative size of the buys, the likelihood that the seller may move away, the desire of the unit to remove an informant from any connection with the sale, or the possibility of catching the seller with a large cache of contraband. When time becomes a factor, the unit may consider making an additional buy shortly before warrants are obtained in order to keep the case current. Better still; the undercover officer might make contact with the suspect wherein the officer determines that the suspect is still conducting illegal activity. The officer might schedule another buy, although it will never be made, so that he can testify to the fact that the suspect was still dealing prior to arrest. Even though a unit intends that two or three preliminary buys will be made, it may subsequently become necessary to seek a conviction on the basis of one of these preliminaries, if the larger case must be abandoned for some reason. Therefore, report writing should be conducted each time with the intention of going to court with every buy if necessary.

Undercover officers may make small undercover buys at their own discretion without prior approval but is not recommended. The disadvantages of using this technique should be considered. First, there is a danger to the officer since he has not surveillance team to assist him if something goes wrong. Second, a large number of buys may be wasted because, lacking any preparatory information gathering, the suspect may not be found after a "John Doe" warrant is issued. Third, a good defense attorney might claim that an undercover officer who makes 15 or 20 opportunistic buys a month cannot effectively remember details about a defendant who sold drugs to him several months ago. In spite of these disadvantages, in response to pressure brought upon a unit regarding a large number of street-level dealers within a particular geographical area, some police departments use unsupervised buys of this type for several weeks to diminish trafficking activity in that area. All in all, unsupervised buys, whether they are "John Doe" buys or buys where the suspect is known are not recommended because of these disadvantages.

The observed sale case is another variation of a buy case applicable to street level enforcement. The officers observe an illegal transaction, arrest the parties, and charge the seller with selling an illegal item as well as possession. As one can imagine, this type of case is difficult to make. However, cases can be developed on suspects who can be observed selling on the street or where the unit has received reliable information on a pending sale.

USE OF FLASHROLLS:

A very essential part of unit operations is the use of the "flash roll," which is the money shown to the criminal to induce him to make a sale. The appropriate size of a flash roll needed by a unit depends on local sales and distribution patterns. Flash rolls used by many units range up to \$50,000 or higher amounts. Reference general order 200.20 (Confidential Funds Accounting) for procedures in use of flash rolls.

Recognizing the police officers have been killed for a flash roll, the undercover officer should know the suspect's criminal background and his potential for attempting a robbery. In narcotics cases the officer should determine if the suspect has been dealing in large quantities for some time, or if he just started. Moreover, the preliminary meetings with the suspect will enable the investigator to learn if the suspect is habitually armed or not. One possible indicator as to whether a situation may be a rip-off attempt is the relative scarcity of the drug being purchased. If the items have been very scarce, there is a strong possibility that the suspect may not be able to deliver and, in fact, may have no intention to deliver the narcotic. Officers should also know the current value of what they are dealing for prior to the transaction. If the value of the narcotic to be sold is too high or too low, they should be wary. Moreover, the officer should be cautious if the suspect is adamant about setting up the sale under conditions conducive to a rip-off or, on the other hand, the suspect is too willing to agree to conditions which are clearly disadvantageous to him. In short, the officer must sometimes rely on a "feeling" that conditions are not "right."

When agreements are made for the "show" of a flash roll to convince a seller that the undercover buyer does, in fact, have enough money to make the purchase, the operation should take place at a location that has the following characteristics:

- a. It is well lighted.
- b. Surveillance agents have ready access to the buy scene and a vantage point to observe it.
- c. The suspect's escape routes can be easily blocked.
- d. The involvement of unknowing citizens is minimized.
- e. When a motel is used, two rooms with an adjoining door for rapid access by officers should be employed.
- f. The area or room must not be easily accessible or easily seen by the suspect's associates.

When a flash roll is being shown, an electronic listening device should be utilized. This may be either a room listening microphone, a body transmitter on the undercover officer, or a listening microphone in a car being used for the "show." The bills used in the flash roll should be recorded by either recording the serial numbers or by making photo static copies of all the bills.

To ensure that a flash roll is not "ripped off" at the scene of a buy, narcotics units have developed various means of protecting the money. One such method is as follows.

After the details about the item to be purchased and the price to be paid have been negotiated, the suspect is told that the "buyer" (the undercover officer) will telephone the suspect when the money is to be shown to him. After plans have been developed by unit personnel, the undercover officer telephones the suspect from a phone close to the suspect's residence. The suspect is told that he will be picked up in five or ten minutes to look at the money. The short time frame is important in preventing the suspect's setting up a rip-off operation. The undercover officer then picks up the suspect to take him to see the money. The suspect is then driven to a predetermined spot, such as a large parking lot, where other officers have a surveillance vantage point. The suspect is then taken to a second car, and the trunk is opened. The money is shown to him and he is allowed to count it. If the suspect balks or argues, the buyer simply states that he has shown good faith; he has shown the money. Any argument that the dealer's connection also wants to see the money can be resolved by having a Polaroid picture taken of the money alongside a newspaper with the day's date indicated. The arrest and seizure can be made either when the undercover officer is taken to the illegal item or when the illegal item and money are brought together at another location, which should also be out in the open where escape routes can be blocked and the back-up teams have ready access.

If at any point the dealer appears to be placing too many conditions on the "show" operation, the officer should back off the buy. There is no reason why the unit should take large risks of losing money or getting an officer injured. Usually, the sight of the money and the possibility of losing the sale are sufficient inducement for the dealer to agree with the buyer's conditions.

Briefly, another technique is showing a flash roll is to rent a safety deposit box at a bank under the officer's fictitious name. The suspect is then taken by the officer to see the money, which has been placed in the safety deposit box. The officer, after the money is shown, then demands to see the

narcotics. In summary, the money must be protected at all items.

THE COVER STORY:

The cover story that is used by the undercover officer should be such that it offers something attractive to the suspect. This might be the purchase of contraband goods, assistance in criminal activities, or even friendship. For example, the undercover officer might tell the suspect that he, the officer, has a load of stolen televisions that he is will to sell if the price is right. Effective gathering of intelligence on the suspect is important in determining what "activities" are attractive to the suspect. The officer must do everything he can to make the story believable. He must anticipate questions that may be asked so that he can formulate answers in advance.

The undercover officer must abandon his official identity by removing his badge and all credentials, cards, letters, notebooks and all other items that might cause suspicion or which might conflict with his cover story. Some personal items may actually verify his cover. For example, if the undercover officer uses his real name in an undercover buy, he may want to keep his credit cards or identification bracelet as "verification" of his identity.

The fictitious role that is assumed by the undercover officer should allow compatibility with both the suspect and neighborhood involved. A good background story should include names, addresses, and descriptions of assumed places of employment, associates, and neighborhoods. The fictitious information should be of such a nature that it cannot be easily checked by the suspect. The background city should be one with which the officer is familiar but, if possible, not known to the suspect. Newspaper clippings from the city which the officer "just happens" to be carrying with him can be used to help establish his undercover identity.

In fact, at one time the fact that a "buyer" was carrying a gun was an indication that he was a police officer. Over the last ten years, this has changed. Now, people engaging in illicit trafficking are not suspected of being officers if they carry a gun, since many traffickers carry them. The type of gun that is carried depends on the officer's preference. He may wish to carry a short barrel (snub nosed) .38 revolver or a different caliber revolver, or an automatic pistol. In fact, an automatic pistol may be appropriate as it is flat, more easily concealed and not readily identified with law enforcement. The officer shall be trained with any and all weapons that he carries into undercover operations or even off duty.

Personal possessions such as clothes, wallets, rings and watches, and the amount of money carried should be appropriate to the chosen character. Clothes and method of dress should conform to appropriate standards and degree of cleanliness. Laundry marks and clothing labels must either be obliterated or made to agree with the city or local in the background story. Altered identification cards and letters bearing the assumed name and address will help to establish the legitimacy of the officer's story.

In an operation where time does not allow the careful development of a complete background story, the officer can obtain small cover objects, such as a savings or checking bankbook. Usually, a local bank will aid the officer in building his background story by providing a false bankbook which shows deposits of large amounts of money, although the book usually has a control number which

guards against money actually being drawn from the account. The officer can then allow this bankbook to be seen, and thereby give the impression that he is able to make a large purchase or that he is a large dealer himself.

The undercover officer should not select a profession to impersonate unless he is familiar with all operations and terminology involved. If a trade or profession that requires tools is selected as a cover story, any tools or carrying cases should not be new, since this might arouse suspicion. Pretended deformities or infirmities are dangerous as they are difficult to maintain for any length of time and may compromise the investigator's true identity. Employment of female counterparts to create the impression of a couple, in certain situations, is an effective method of reinforcing the cover story.

In summary, the undercover officer must build a background story in which he can be comfortable. The officer, in essence, must be able to say to himself, "I am this other person."

PENETRATION TECHNIQUES:

After all of the necessary preparations and precautions have been completed and thoroughly understood, the officer must then concentrate on becoming acquainted with the suspect. This can be accomplished by various means, the most common and easiest being the use of informants to introduce the officer to the suspect. The undercover officer can also make contact by living in a locality or frequenting places where close association can be had with the suspect or his friends, or by discreetly disseminating information or creating a situation which will cause the suspect to become interested in the undercover man.

Once contact has been made, it is essential to gain the confidence of the suspect as soon as possible but in a way which will not create suspicion. The undercover officer should always remember to act as natural as possible. Asking questions usually arouses suspicion. By the same token, however, the suspect may also want to ask the officer many questions. The officer should act "suspicious" of the dealer and his questions. He may also act angry.

The undercover officer should refrain as much as possible from drinking. The officer can give various excuses for not drinking, or not drinking to excess, such as the fact that he has stomach ulcers or that he is still sick and hung over from the night before. The reasons should be obvious. Testimony in court that an undercover officer had a number of drinks may damage his own testimony on the case. If it is necessary for the investigator to take a drink, he should never leave his drink unguarded since it may be tampered with, either as a practical joke or to test his authenticity.

An undercover officer must, in every respect, live the part which he plays. To do this, the officer must not make too many explanations and should not talk, bluff, or give any more information than is absolutely necessary. Normally, it is unwise to display too much interest in the wives or girl friends of suspects. A simple expression of interest may result in the suspect becoming jealous, thereby jeopardizing the success of the case.

If the suspect appears to be suspicious about the officer's identity and begins asking questions or

demanding information, the officer should demonstrate strong anger, contempt, sarcasm, or dismay.

The suspect can be placed on the defensive by the officer's insistence that he is not completely satisfied with the suspect's identity and demand more proof. Indifference is another technique. By acting as if he does not care what the suspect thinks and raising the basic question of whether the suspect is going to "do business or not," the officer may induce the suspect to make the sale.

It may be expedient or necessary in some instances for the officer to avoid contact with the suspect for a few days. He may do this by pretending to be going out of town for a given period. If this plan is used, the officer can reinforce his cover story by agreeing with the suspect to send a post card or letter from his destination to the suspect to set up the next meeting. The thought that an officer must keep foremost in his mind is that the dealer is not only suspicious of everyone, but he is probably just as clever as the officer. The biggest factor working against the dealer is greed. Greed makes many dealers sell to agents even though a dealer may suspect that the buyer is an officer. A good undercover officer can work on this greed by "flashing" his money or by threatening to take his business elsewhere.

The officer should bear in mind always that lying, deception, and double-crossing are normal conduct for many of criminals. Therefore, he should be cautious and try to avoid creating disfavor or being forced into a defensive position. He should be skeptical, never relying on or trusting a suspect, and he should cautiously assess all developments.

It is suggested that officers make two or more buys from each suspect. By doing this the suspect is thereby shown to have sold on a continuing basis, and he did not merely engage in one rare impulsive act. The consequences of the second buy policy are numerous. It forces the unit to spend additional funds on initial walk-away buys. First buys may be lost on suspects who leave the local jurisdiction after the first transaction. Suspects may become suspicious between the first buy and the second attempted buy and refuse to sell to the officer. Undercover officers are transferred or their cover "blown" by other large cases made in the jurisdiction. Generally, it is preferable that the unit retain at least the option of making a buy/bust when considered appropriate.

In the case of narcotics the officer must always request a lab test of the quality of the purchased substance. This is because he will want to make a second or third buy off the suspect. If the suspect sells him a diluted bag of narcotics, and there is not outrage expressed by the buyer after the narcotics have been consumed, the dealer will become suspicious. If lab results indicating purity factors are not known before the officer sees the dealer again, he will have to improvise. He might go on the offensive and accuse the suspect of dealing in weak stuff. Even if it was not weak, the suspect may think he sold this individual a "bad" bag or that the "user" has a stronger habit than he supposed. If asked about the quality by the dealer, the undercover officer can say that he mixed the bag with another purchase, or that he himself cut the narcotics another time for resale. The best approach, however, is to avoid situations wherein the officer must make comments about the purchased narcotics until the lab results are known. Then, if the narcotics were weak, the officer should express outrage and demand a better deal next time.

Although an officer will make buys in many different places, a great number of the buys he makes are made inside houses or apartments. Such places give the dealer privacy from the view of others, a place to hide his supply, safety for maintaining weapons he needs to protect himself, and--through

the toilers--a disposal system for ridding himself of illegal items if it becomes necessary. Buys made in a house or apartment is perhaps the most dangerous because the officer's backup team is not able to see what is happening. Also, if good police intelligence is lacking, the officers may not know how many lookouts the criminal may have, the types of locks on the doors, or the room, apartment or floor where the sale is taking place. In some urban areas, a criminal may change daily the apartment or the floor from which he sells in order to confuse the police.

The value of sound intelligence notwithstanding, quite often the officer and his backup team will have to work in a fluid situation with minimum advance information. In these instances, time limits should be established. If the officer does not emerge or give a pre-arranged signal to indicate that his is all right, the backup squad will quickly enter and locate the undercover officer. Furthermore, there should be guidelines established for those situations where the suspect sets unexpected stipulations. The officer should be briefed regarding what he can and cannot do in changing plans.

When an undercover officer enters a house or apartment, he should quickly survey the physical layout of the room, concentrating on doorways and windows which permit exit of the dwelling or the breaking of a window to indicate to the support team that he needs help. Doors also present a problem because the officer does not know if there is someone behind them who may be armed. Recognizing that he can do very little in such situations, the undercover officer should position himself in such a way that a possible assailant cannot approach him from behind and attempt to prevent suspects from coming between him and his access to one of the exits.

In the case of narcotics dealer may minimize the time that he handles narcotics by placing the narcotics at various locations and then directing the undercover buyer to the place. The officer's strongest counter-move in these situations is his refusal to "front" or give up his money prior to receiving the goods. Situations where narcotics and money are exchanged simultaneously at different places by the principals and their confederates do not present a problem since a sale case is still made against the dealer.

SUPPORT SURVEILLANCE:

During the undercover operation, there is a need for the undercover officer to be supported by a backup or cover team of officers whose primary function is to protect him and assist him in making the buy. Although the most hazardous part of the operation is that of the undercover officer, the importance of the support team should not be minimized. The safety of the undercover officer is in the hands of the support officer during the operation, and in a buy/bust situation they are responsible for making the necessary arrests. For these reasons, the members of the support team and the undercover officer must have a close working relationship. This relationship must be almost intuitive, that is, they must know each other and have insight into each other's personality sufficiently well to enable them to complement and reinforce each other in what is often a very fluid environment. They must have a plan of action, not only for expected occurrences, but also contingency plans for as many situations as possible.

When the undercover officer enters a building to make a buy, the surveillance officer should maintain a vantage point that will allow him to note the description of each person enters and leaves

the building, as well as descriptions of any vehicles in which they arrive. The guise and conduct of the surveillance officer in conducting an auxiliary surveillance must be typical and natural for the neighborhood. A particular employment or occupation can usually be used as a pretext.

The undercover man must always try to move slowly and cause such delays as may be necessary for the surveillance officers to maintain contact. Change in location should be made only if there is a strong probability that the backup team will be able to follow. Secret signals should be pre-arranged between undercover officers and the surveillance detail. The following, for example, can be used as signals: to indicate movement to the suspect's home, his car, or other known location.

- The method of wearing or carrying a coat or hat
- The method of carrying a newspaper or magazine
- Smoking or not smoking

Before any officer goes into an extended undercover operation, arrangements for communicating with headquarters and fellow officers should be devised. When calling headquarters by telephone, it is best to use a telephone which is not connected to a local switchboard operator. In some instances there is less risk if official contact is maintained by telephoning a fellow officer at his home. The undercover officer may also call headquarters in the presence of the suspect by pretending to call a girl friend or by using a similar pretext. At no time should the officer simply duck out to make a call--he should always give a logical reason for departing.

During extended undercover assignments, notes should be made by an officer, whenever possible, as later he will have to remember and testify as to who said and did things. Moreover, places, times, and dates will have to be recalled. Notes or reports should not be written until the undercover officer is ready to mail them or make a drop to his backup officers. These notes or written reports may be addressed to a prearranged general delivery address which is under the control of headquarters. To preclude the possibility of the reports or notes falling into improper hands before mailing, they may be written in the post office and mailed there. The importance of sound reports notwithstanding, the undercover officer should only make those notes which are necessary to provide information for the reports.

A pre-buy meeting permits a last-minute conference to be held between the undercover officer, his backup team, and the informant. The officer should thoroughly review his own plans, paying particular attention to his relationship with the suspect, negotiated price, method of delivery, and proposed cover story. The informant should be briefed on what he is to do; and say during contact with the suspect. Such planning will ensure that no omissions in the operational plans exist and will reduce the anxiety of all the officers regarding the possibility of injury. An out of the way location is both a basic safety precaution and another way of overcoming an informant's fear of disclosure, since it indicates that every effort is being made to conceal his identity.

Throughout the pre-buy briefing, the officer should not allow the informant to learn more than is absolutely necessary about their plan. Police officers should realize that the more knowledge an informant has on how the unit works its cases and plans and makes buys, the more effectively he

can use this information against the unit at a later date. Similarly, other officers who are also used as undercover operators should not be exposed to the informant.

POST-BUY PROBLEMS WITH NARCOTICS:

One of the most difficult moments in an undercover operation occurs when an officer has made a buy and it is stipulated that he use a part or all of a drug before he leaves the apartment, house, or building. In this type of situation, the undercover officer must bluff his way out and still maintain credibility.

In cases where the undercover officer is offered marijuana, he should make every effort to avoid its use. However, if the occasion arises and the officer feels that his cover will be blown if he does not smoke grass, he can simulate its use. Because this simulation process is dangerous, the officer should exercise extreme caution when attempting this procedural. Basically, the techniques involve the following:

1. As the officer places the cigarette between his lips, he EXHALES slowly--causing the fire end of the cigarette to burn lightly.
2. As the officer removes the cigarette from his lips, he deeply inhales through his lips, holding the air in his lungs. This gives the impression that the marijuana was inhaled through the mouth. He holds the air deep in his lungs as a grass smoker will.
3. The officer then repeats this process rapidly.

A possible situation that may occur is that, after a sale, a heroin dealer may insist that the officer not leave until he injects himself with the drug. The dealer explains that he is not motivated by any distrust of the buyer, but that it is in the best interest of all concerned that no one leaves the premises "dirty." Realizing that he may encounter this difficulty, the officer should avoid making a minimal buy. Instead, he should purchase enough narcotics to satisfy the demands of more than one habit. Thus, he prepares the dealer for his leaving unchallenged with at least some contraband, so he may as well take it all. Another story is that the officer to return with the narcotics so they can share it. The officer may also pose as a non-using pimp who is buying narcotics to satisfy the needs of his girls. Because it is common street practice for pimps to keep their girls in line by addicting them and becoming their source of supply, this story is sufficiently credible to allow the officer to leave the area. A dealer will also avoid antagonizing someone whom he believes is dangerous, such as someone he thinks is part of a stick-up team. Through his acting ability, the officer may create doubt in the dealer's mind about the wisdom of challenging an officer who is portraying this type of role.

Despite his attempts to avoid the situation, the undercover officer does sometimes make a minimal buy and then finds that he is expected to use the dealer's shooting gallery. In this instance, the officer should decline by stating that he doesn't have his works with him and that he will not use anyone else's implements. He may relate that he has been hospitalized twice because of dirty needles, and that he cannot take another bout with an infected needle. The dealer may ask the officer to show some physical evidence, such as track marks to prove that he is an addict.

Another problem may occur if the informant isn't actually as close to the dealer as he led the undercover officer to believe. As the pressure begins to mount, the informant may become anxious. If he panics, he may attempt to save himself by disclosing the officer's true role or by siding with the dealer and agreeing that the officer should use the narcotics before he leaves the premises. An officer confronted with this situation should stall for as long as possible, recalling that his backup unit will enter the building if he exceeds a predetermined time limit. The principal advantage of this technique over attempting to escape is that the undercover officer may not necessarily have his role uncovered. When the rescuers arrive, they can place everyone under arrest, including their undercover man. They can transport everyone to the police station where it may be conveniently discovered that the undercover man is wanted for a more serious crime in another jurisdiction.

After the buy has been made and the undercover officer leaves the scene, he should meet his surveillance team at the predetermined location where he can mark, count, and seal the evidence, and write down the details of the buy. Unfortunately, it is here that many narcotics officers let down. The investigator must recognize that in many cases the eventual success or failure of the prosecution rests with the degree of thoroughness with which each member of the team applies himself to this post-buy work. In multi-bag buys, each bag must be marked by the undercover officer (see Chapter on Evidence Handling). It is not unusual for the dealer to try to cheat a transient customer by giving him a short count. When the officers are satisfied each bag has been properly marked and the count is accurate, the evidence is then placed in a property envelope and sealed according to department policy. The officers should perform this phase of the operation away from the area where the buy occurred. If an informant is being used in the operation, he should not be present while the marking, sealing and transcribing are taking place. The less he knows about the mechanics of this phase of investigations, the better.

ENTRAPMENT:

Entrapment is the procurement of one to commit a crime that he did not contemplate or would have committed, for the sole purpose of prosecuting him. It is a defense to criminal prosecution in most states.

As indicated, most courts recognize the defense, but some have refused to extend it to certain crimes such as bribery. Others have simply held that the officer was an accomplice, and demand corroborative evidence of the offense before a conviction can be obtained.

Although entrapment is often pleaded in narcotics cases, the plea is not as common as it might be, due to the following reasons:

1. Many sellers have prior records;
2. The sale was immediately consummated;
3. The seller had a large supply of narcotics, inferring a presumption of possession for future sales;

4. First-offenders are often used for controlled purchases from steady suppliers;
5. Many arrests are for possession only, to protect an informant, and the plea has no relevance;
6. Many possession defendants prefer to challenge the affidavit of probable cause supporting the search warrant upon which entry was made.

Regarding specific conduct by law enforcement officers, the following acts have been held lawful:**

1. Giving an informant marked money with which to consummate a purchase;
2. Having an informant introduce a police officer as a relative;
3. Posing as "being sick" from narcotics withdrawal;
4. Introducing oneself as an international "smuggler" representing others;
5. Informing a physician that a drug prescription is needed for a non-existent friend;
6. Conversing in the "jargon of the trade;"
7. Using decoy letters to consummate the sale;
8. Presenting a valid search warrant, and then asking the defendant to save the officers the trouble of searching for the narcotics, and voluntarily giving them up;
9. Telling minor lies, concealing one's occupation as a policeman or giving others the false impression of criminal connection;
10. Wearing old clothes, having grease on one's hand and nails, and acting intoxicated;
11. Dressing as a hippie, using an alias, being introduced to the defendant by one of his friends, or misrepresenting the purpose for which the drugs are sought.

On the other hand, the following acts exhibit facts tending to show entrapment:

1. Involving a first-offender in a scheme where the illegal act is only incidental to the plan. Example - the informant, a low character individual, enticed a physician referred him to the defendant, name, the defendant was persuaded to buy the heroin from a dealer--induced by the chances of making large winnings.
2. Playing on the sympathies of a first-offender to alleviate pain or other suffering. Example - an addict placed under arrest and promised release for results, persuaded a first-offender to procure morphine for him--at no personal profit--to enable the addict to keep his job.

3. Giving narcotics to a first-offender, and inducing him into selling it, over his objections. Example - an undercover officer gave 25 marijuana cigarettes to a 17-year old high school student and told him to sell them. The student tried to return them, but the officer refused. He was subsequently arrested for possession. No prior possession was shown.
4. Using a woman informant of questionable virtue who suggests sexual favors as added inducement for the sale. Example - the police sent a young girl to see two men to purchase an illegal drug. In addition to the price, she offered her personal virtues. The defendants posed a successful defense, testifying that they were influenced to commit the crime, based on promise of her sexual favors.
5. Selling a suspect drugs through one operative, then buying it through another, to perfect a charge of sale.

When entrapment is pleaded, the court will usually make a determination whether the essence of the plea is legal or factual. If the events indicate entrapment as a matter of law, the court will direct a judgment for the defendant. More often, the facts are in dispute, and must be submitted to the jury for a test of predisposition or credibility. In a few cases, the conduct complained of is so innocuous, that the court can refuse to submit the issue to the jury. Four things will always tend to contravene the plea of entrapment.

1. When the defendant fixes the price of the drug sought on his own;
2. When the defendant immediately supplies the drug to the purchaser;
3. When the defendant has a recent record of a conviction for a related offense; and
4. When the agent or informant testifies that the sale charged was the last of many recent sales to him.