
ASSET FORFEITURE

Developing Plans to Attack Drug Traffickers' Assets

Cameron H. Holmes

July 1989

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance



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Fred Wm. Becker
Asset Forfeiture Program Manager

Prepared under cooperative agreement No. 87-DD-CX-K090 by the Police
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Office of the Director

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Dear Colleague:

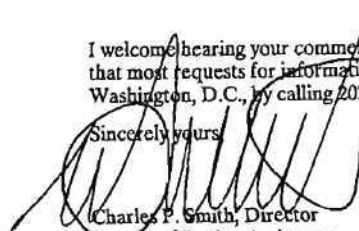
Illicit drug traffic continues to flourish in every part of the country. The cash received by the traffickers is often converted to assets that can be used by drug dealers in ways that suit their individual tastes. Since 1981, federal authorities have increased their attack on these assets through both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

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

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

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

Sincerely yours,


Charles P. Smith, Director
Bureau of Justice Assistance

Acknowledgments

We appreciate the comments and suggestions we received from the staff of the Criminal Division, U. S. Department of Justice, Washington; and those of Thomas V. Brady, an editorial consultant in Reston, Virginia. We also are grateful to our BJA program officer, Fred Wm. Becker, for his patience and encouragement in seeing this idea reach fruition.

Police Executive Research Forum

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Developing Plans to Attack Drug Traffickers' Assets

Introduction

This resource guide is about money and drugs and the relationship between them. It is intended for use by law enforcement professionals—investigators and prosecutors—who want to achieve the greatest impact possible on the narcotic trade using legal remedies, whether criminal or civil.

The guide begins with the basic observation that without money there *is* no illegal drug trafficking. Then, a strategic targeting model that uses financial investigative techniques illustrates how law enforcement can attack drug trafficking more effectively. The model explains the economic structure of the illegal drug delivery industry, shows how that structure works, and outlines strategic law enforcement goals and objectives.

Drug Trafficking Networks

Drug trafficking is a business—big business. The people who engage in it do so for profit. The business structure can be seen by observing the repeated relationships between participants and their dealings with each other. The organizational structure of the narcotics trade tells us much about the motivation of its participants—their goals and vulnerabilities. Understanding the organizational structure of drug trafficking should lead us to new and more successful strategies to attack and contain it.

Organizational Models

Drug trafficking often is perceived as having a formal organizational structure because its participants undertake complex

tasks over long periods of time. If left unexamined, this assumption could lead to mistakes about the motivation and future behavior of the drug trafficking businessmen.

In fact, drug trafficking (especially cocaine distribution) is characterized by an absence of formal corporate- or military-style organization; rather, it is described here by the term "Informal organization." An informal organization is a structure that naturally arises among people carrying on a continuous activity that requires numerous participants. This structure serves the participants well, eliminating the need for a more formal organization.

The Example of Real Estate

An example of a business activity characterized by an informal organization is real estate development. The activity consists of a network of people who interact at various levels of power or authority. No one person is in charge. Certain individuals are recognized as having the power and ability to coordinate large ventures. These elite members may conceive of ventures or, by their power or influence, may assume dominant roles in ventures conceived or begun by others. These power brokers may control directly a group of participants through a formal mechanism, such as their own development company, but they depend heavily on assembling people, capital, and assets controlled by others. This extended group of controlled participants generally is gathered from contacts, acquaintances, past business associates, and other resources. Usually they are recruited for roles they have performed before, such as financier, prime contractor, subcontractor, or sales person. They retain substantial discretion and autonomy in performing their roles. If they do not agree with the methods of operation, or if they believe the venture will not be profitable for them, they may decline the invitation to join or they can withdraw. Participants receive money, generally from the proceeds of the venture itself, for effective performance of their roles.

This secondary level of participants often draws on their own network of contacts. For example, a contractor taps his

own network of subcontractors, a financier approaches his own sources of funding, and so on. The assets needed for the venture are owned, or possessed, by the *participants*; they are not owned by the venture itself. The assets are contributed to the venture with varying degrees of assurance, and they are secured most often by other participants' assets or the promise of those assets.

Opportunities developed by participants during the venture generally are their own to pursue; indeed, the hope of developing and pursuing derivative opportunities is often a major incentive for joining the venture.

This informal organizational structure ideally is suited to take full advantage rapidly of new opportunities as they arise. The fluid formation of projects and partnerships tends to be the norm. Participants, even dominant ones, often do not know the identities of all, or even most, of the other participants, and they may have only a general idea of their roles. The complication of partial or missing knowledge of the activities of other participants in the venture is heightened because each member brings shifting subnetworks into the overall network and deals directly with them rather than as a representative of the venture.

Even highly organized groups, including those with rigidly enforced chains of command, are tempered by the informal instincts of its members. The old boy network operates in even the most formal organizations.

Conversely, highly formal group structures may function within a loose network system; for example, the highly structured firm of a major subcontractor operates within the otherwise informal real estate example. In common experience, the two models coexist and overlap. They are separated here merely for analysis.

The Drug Trafficking Model

Generally, drug trafficking has an informal organizational structure with a network of more dominant and less dominant figures playing various roles in the business venture. As in the real estate industry, with its roles of financing, devel-

oping, construction, and sales, drug traffickers also play definable roles. Cocaine trafficking, for example, requires production, processing, transportation, distribution, and money laundering. Other criminal network participants are necessary to generate the money needed by purchasers, such as fencing stolen goods and fraud.

The real estate industry needs support-service businesses such as specialized legal and financial advice, contract law, tax specialists, and experts in licensing and regulation. The cocaine industry—at least at its higher importing and wholesaling levels—needs support-service businesses such as legal defense, money laundering, and financial advice.

The cocaine industry is not able to rely exclusively on contract law as an internal enforcement mechanism; instead it relies on violence. The comparable real estate experts in licensing and regulation are the cocaine industry's fixers and negotiators for territories. An enterprise within a network may be integrated vertically—that is, it can carry on several specialized roles in one centrally managed organization (such as the Colombian cartels)—or an enterprise may specialize in only one role, such as distribution of drugs in the United States.

Network Motivation

The way a group is structured affects the group's goals and strategies. For example, in a highly organized corporate or military model, one participant's success and financial prospects depend on the future success or failure of the group. The participant works toward a promotion and its resulting raise in status and pay. The participant therefore may be expected to strive for corporate survival beyond the short-term profits or success of a business or individual project.

Based on its structure, the strategies of the criminal network also are predictable to some extent. An individual participant's success depends on his power to reach out rapidly to trusted associates for financing, physical assets, and people to do tasks. He further needs protection from outside competitors and law enforcement. These in turn require protec-

tion from disloyalty within the group. Each network member uses his ability, his *assets*, for the success of the venture. Assets are not limited to money and equipment; they include intangible assets such as leadership qualities and financial expertise. For example, the need to enforce loyalty and get protection makes someone with a reputation for violence a critical asset for the network. Since business contacts take time to develop, that personal attribute also is a key asset.

Beyond personal success in particular ventures, the participant's secondary strategy is to best use the assets of his own organization and those of the network as a whole. The overall goal of the network or particular enterprise is to take advantage of all of its assets, opportunities, and its profitability or economic returns and weigh them against the risks of criminal behavior.

Despite internal competition with each other, network participants have common interests and goals that they pursue in loose (sometimes very loose) cooperation. Similarly, a reputation for violence benefits all of the network members by silencing potential witnesses and scaring away competitors. Of course, cooperation today does not rule out treachery tomorrow. For example, it is not unusual for a drug enterprise member to provide information about a competitor to law enforcement.

An Example: Cocaine Distribution

A cocaine distribution enterprise illustrates the network structure and strategy. A participant, say a wholesaler, seeks to put his assets to work to secure his position as a dominant network member. The assets he needs include dependable sources of good product, trustworthy transportation, and a network of distributors. If he undertakes transportation himself, he may control physical assets such as boats, planes, or autos. He also must control a safe location for cutting and distributing the cocaine and insure a secure method of communication, such as a beeper and mobile phone setup.

His greatest necessity, of course, is to convert cash received from distributors into usable personal wealth through a

secure laundering process. Before he can enjoy his profits, he also must maintain the loyalty of key personnel and others who have sufficient knowledge of the operation to damage it in an investigation. He may cement loyalty by forging personal ties, making high wage payments, or promoting the reputation of the size and ruthlessness of his group. He also may pay special attention to screening potential associates. Outlaw biker groups and La Cosa Nostra, both of which emphasize rigid barriers to membership, carry these tactics to extremes. Other tactics practiced by ethnic drug enterprises reflect variations in familial and financial ties.

Finally the participant must develop favorable relationships with others in the industry; he must cultivate them to become future venture participants. His contacts are important intangible assets. His future power depends directly on his closeness to dominant industry figures and to those who can provide necessary goods and services. He also must cultivate these network ties to prevent competitors from encroaching on his operations and to forestall law enforcement action against himself. The power of each participant is the sum of his net assets, both tangible and intangible.

Component Analysis

Different drug trafficking networks have different components, such as the drug, its source or origin, the background and methods of key participants, and local market factors.

Cocaine distribution organization illustrates drug trafficking with important law enforcement implications. The illustration (p. 14) shows the network as the sum of its components. To begin with, the delivery of drugs to consumers involves a number of tasks. The drug must be produced, processed, transported, and distributed, and the profits must be laundered. Moreover, the entire delivery process must be concealed and insulated from competitors and law enforcement. Each function is a component of the industry as a whole. Successful elimination by law enforcement of any one essential component stops or disrupts the flow of drugs through

the network—even if other components still are capable of functioning well. The idea of attacking vulnerable components of the drug industry is, of course, as old as drug law enforcement. Interdiction of the contraband—attacking the drug transportation component—is the most obvious example of this approach.

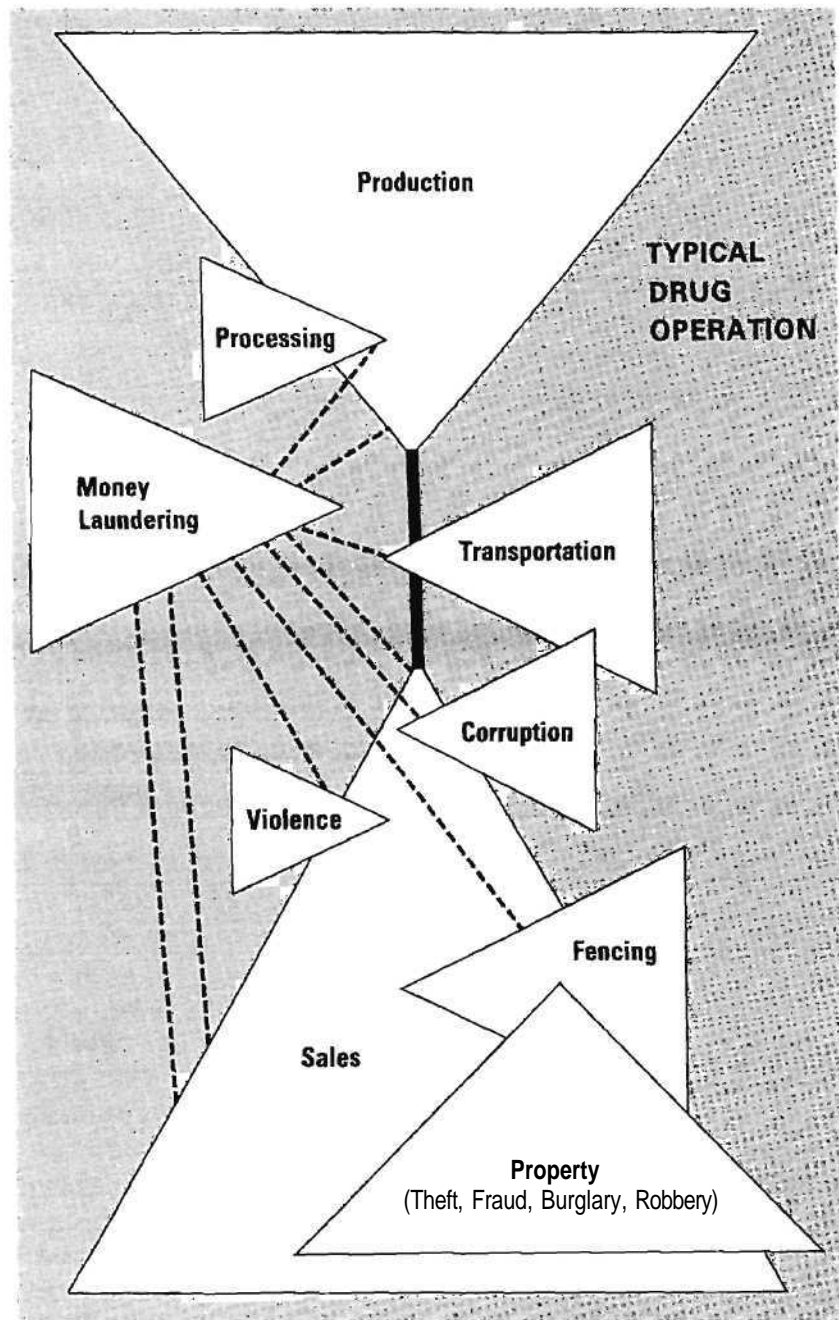
The Network Model

Following is a description of component diagrams and their uses. A diagram of the general network model discussed in the preceding section appears on page 14.

Each drug trafficking industry component is represented as a triangle. The size of each triangle reflects the number of participants in the component. A broad-base triangle represents an organization that has a relatively large number of participants at the lowest level (e.g. street sellers). A tall, narrow triangle represents graduated levels within its component, and a flat triangle represents a relatively shorter spread between high-level and low-level participants.

For example, if marijuana were grown in State A on owner-operator style ranches with a midlevel foreman and a large group of low-paid casual laborers, the production component of the domestic marijuana industry for State A would be a flat, broad triangle. If the marijuana were marketed through a few large dealers, who in turn sell to a somewhat smaller group of wholesalers, who then sell to retailers who sell to user-sellers, the sales component of that same industry in State A would be an elongated (flat and wide) triangle.

The above diagram is a general example meant to capture the more common features of most distribution systems. By contrast, such a diagram of a *specific* drug delivery network in a *given* area would reflect that industry's particular components and their distinct shapes and sizes. A particular diagram geared to local trafficking characteristics can aid in seeing the flow of drugs and money, the component makeup of the industry, and some of the internal dynamics of the components themselves.



Using the Model for Change

Any network diagram is like a candid photograph. That is, it shows the circumstances in a particular drug (or other criminal) network at one moment in a period of time. With market changes, new players, competition, and enforcement incursions, the size and shape of representative triangles can change quickly. With this word of caution, the diagram has several strategic uses as an analytic tool.

Considerable discussion among knowledgeable personnel is necessary to draw a network diagram. The specific network must be examined systematically from different points of view, allowing for compromise and proof of facts before favoring one proposed diagram shape or size over another. In formulating these diagrams/ narcotics officers, supervisors, prosecutors, and analysts need to debate the economic and sociologic circumstances of the network, and their consequent enforcement strategy.

Once the network diagram is complete, it may suggest weaknesses in network participants. Strategies for network control through law enforcement can then be planned.

Three sets of questions for each model should be considered.

First, the network model should be tested for vulnerable components that could be susceptible to law enforcement action. How necessary is the component to the industry? What are its potential vulnerabilities? How could it be attacked using available resources? What are the likely network responses to such an attack?

For example, an organization structure diagram of a methamphetamine network would include as a component precursor chemical supply. If the illicit sale of precursors realistically could be reduced, that would be a goal of law enforcement attack.

Use of the model-testing process also may help prevent errors in assessing component vulnerability. The network diagram can help predict the results of a law enforcement strategy. If, for example, law enforcement attacks the upper echelon of ghetto heroin dealers, only to have them replaced

by long-established organized crime dealers who are less susceptible to prosecution, the unintended result is a net gain in the power of a stronger heroin dealing network.

Second, the model components not only must *function*, they also must *function in concert* if the network is to perform. Links between key components can be vulnerable even if an individual component may not be. Cooperation and communication between components can be disrupted in several ways. Law enforcement strategies should take into consideration opportunities to disrupt links between various components as well as within them.

Third, the network diagram can be used to identify key assets (both physical and personal) of participant components. In this use, the diagram simply is a picture of the net assets approach discussed above. First, strategic assets are identified, then specific items and people are pinpointed as the intelligence develops around them. The designation "key components" depends on judgment calls about which components and links are important to a particular law enforcement strategy.

The purpose of translating factual information about a given drug trafficking network into a model diagram is to examine the model systematically in order to create a plan that can change the operations of the network and make it more hazardous to criminals. As the effort succeeds, the model needs to be revised to reflect the new circumstances surrounding the network participants. The strategy-formation process continues to evolve as the drug trafficking network evolves.

General Strategic Observations

Drug delivery networks are diverse. Resources available to law enforcement units and agencies also vary widely; therefore, it may be difficult to sort out an effective strategy that matches law enforcement efforts to a drug network at a given time. A few general observations can be made about how a strategy is developed.

Components

First, law enforcement recognizes that violent, corruptive organizations are the core component of a narcotics trafficking network. Violence and the reputation for ruthlessness and corruption are indispensable components in longer term, enduring drug trafficking networks—even though this is not always apparent. Several law enforcement responses are suggested here, including aggressive use of the grand jury and civil discovery with use immunity. Law enforcement agencies openly should target obstruction of justice in all its forms and concentrate on networks in which the use or threat of violence is most pronounced. Law enforcement also should place heavy emphasis on investigative techniques that erode the confidence necessary for traffickers to network freely with each other, such as electronic surveillance, undercover operations, and informants. Both the predatory and obstructive violent underpinnings of drug networks can be attacked simultaneously by turning a participant or enterprise against a competitor, taking care to avoid eliminating competition in favor of a more active or powerful group.

Money laundering is close to the heart of any drug kingpin. If profit cannot be enjoyed safely, the risks and effort involved in obtaining it may be better invested in other endeavors. Generally speaking, money laundering is dominated by professional (i.e., white-collar) individuals. These specialists are a fairly scarce resource, and they respond to deterrence. A street dealer, for example, is motivated largely by his own desire for drugs, in addition to money. He sees little alternative to dealing drugs and he is not terrified of criminal penalties, much less civil sanctions. On the other hand, an accountant, banker, or attorney is motivated by profit. Each has apparent alternative means for advancing himself, and each has great fear of legal sanctions.

Money laundering is where the money is; money is the engine that drives the violent, economic, and corruptive aspects of drug trafficking. Money also is the most flexible and powerful single asset in the hands of a criminal; there-

fore, it should be the physical asset targeted first by law enforcement.

The vulnerability of the money laundering component recently has been increased by federal and state legislation. As an investigative target, money laundering has not yet proved itself, but undercover sting operations designed to snare launderers have proved successful. Surveillance of money couriers, courier services, and airports, as well as financial analysis of the laundering paper trail, also appear promising. Some states (e.g., Georgia, Florida, California, and Arizona), through legislation that offers protection from civil penalties, encourage financial institutions to voluntarily report suspicious transactions. States also could offer substantial rewards to bank employees who make such reports, and offer to protect their identities from their employers and others.

Law enforcement has not taken full advantage of financial information available under federal and state monitoring programs. The federal Currency Transaction Report (CTR), Foreign Bank Account Report (FBAR), Currency or Monetary Instrument Report (CMIR), and Cash Payment Report (IRS Form 8300) all provide available information that is useful in certain circumstances to nonfederal enforcement agencies. States may require duplicate filings with a state agency (as in California, Georgia, and Florida), and some states may encourage financial institutions to file reports of suspicious account activity (as in Arizona). Analysis of these documents provides leads for investigation, improves probable cause for further procedures, and may be grounds for independent charges.

Fencing, another economic component of drug trafficking networks, conceptually is similar to money laundering. Most conversion of stolen goods to cash is done to get money for drugs. Often, the fence himself is a drug retailer, bartering drugs for stolen property. Law enforcement control of fencing is an effective means of stopping the flow of money into the drug network.

Networkers

Another focus for planning is on the dynamics of the network structure. First, this focus points out a need for accurate and timely *inside* information about the roles, capabilities, and relative levels of influence (i.e., total assets) of the participants. Law enforcement must know not only an organization's physical assets but also its key personnel.

To target the critical links in the drug trafficking network, law enforcement must go beyond intelligence gathering and analyze the financial systems of the network. This accounting analysis requires both financial records and the expertise necessary to interpret them. The need for more detailed, up-to-date information from participants and financial records can be fulfilled with extensive use of grand jury investigation and civil discovery with immunity statutes used to their fullest.

Information obtained through surveillance should be digested, indexed, integrated into each network data base, and made accessible for future reference. All such information should be available for future use as the basis for search warrants, trial evidence, and intelligence gathering.

Second, law enforcement must attack the key assets, both physical and personal, of the drug kingpin. The physical assets sometimes are difficult to reach. These include offshore bank accounts and other well-concealed hoards of cash that are essential to the functioning of a criminal network. Other physical assets are safe houses and vehicles used in drug importation and money exportation, land for marijuana cultivation, and, above all, cash proceeds. Civil remedies play an indispensable role in effective drug trafficking law enforcement. Removing assets and thereby dissuading potential profit-seekers causes the network to suffer a realistic loss, making the venture an unattractive investment, despite the potential profit.

Removing physical assets through forfeiture recently has become an additional way of harnessing the drug dollar for constructive purposes. States without effective forfeiture statutes that allow law enforcement to remove property from use

in drug trafficking and convert it to use for law enforcement should encourage passage of such legislation.

In rem forfeiture is particularly useful in attacking drug network structures. Among other advantages, *in rem* forfeiture creates a risk of loss even when criminal prosecution of the owner may not succeed. Forfeiture and other civil remedies are ideally suited for attacking the money laundering component of criminal networks.

The removal of personnel assets (i.e., key specialists) eliminates the scarcest and most critical assets in the drug trafficking network. Generally this is effected by vigorous criminal prosecution; at times, civil penalties or injunctions also may be effective. Elimination of money laundering personnel should be a high priority because they are important to the criminal network, relatively scarce, and vulnerable as white-collar professionals. Criminal prosecution and civil remedies should be used vigorously to attack money laundering personnel.

Enforcement Goals and Objectives

The following goals and objectives of a law enforcement program combine both criminal and civil sanctions.

Goal

To assess accurately and describe the economic nature of each significant drug delivery network operating within the jurisdiction.

Objectives

- Fully employ all available means of gathering relevant information, including grand jury investigation, civil discovery, electronic surveillance, financial reporting forms, law enforcement sources, and social science research.
- Assemble the information in a lasting data base for use in establishing probable cause, as courtroom evidence, and for strategic planning purposes.

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- Analyze the information for its economic significance.
 - Upgrade the assessments continually, based on new data and changes in circumstances.

Goal

To formulate effective strategies of control, considering law enforcement priorities and resources.

Objectives

- Identify each component of each network, and isolate key components.
- Consider the potential vulnerability of each component and the likely response to each possible law enforcement strategy.
- Identify key links between components.
- Consider each link's vulnerabilities and the likely result of each possible attack on that link.
- Identify key physical and personal assets within each network by type and, if possible, rank by priority the network's assets for corruptive potential and economic subversion.
- Consider each key asset's vulnerability to removal and the effects that such removal would have on the net assets of the network.

Goal

To defend core governmental functions from subversion by force, fear, or corruption.

Objectives

- Accurately assess and describe the potentially violent and corruptive components of each drug delivery network.
- Place a priority on key individuals within these components and on any drug enterprise of which they are a part.

Goal

To resist subversion caused by drug proceeds of the economy and the values it represents.

Objectives

- Accurately assess and describe the money laundering components of each drug delivery network.
- Advocate and help draft effective legislation governing money laundering.
- Establish effective cooperation with financial institutions on the issue of suspicious financial transactions,
- Establish comprehensive training programs for investigators and prosecutors in detecting money laundering, including asset location, proceeds tracing, and net worth analysis.
- Place a priority on detection of money laundering, including criminal prosecution of key participants, concentrating on drug enterprises in proportion to the amount of money generated.

Goal

To eliminate key physical and personal assets from drug networks in order to reduce the total assets of each network.

Objectives

- Remove physical assets, especially cash, through forfeiture, civil remedies, and fines.
- Remove key personnel assets by criminal prosecution. Target especially people involved in violent enforcement of drug network loyalty, corruption, and money laundering.
- Eliminate the effectiveness of network members by forcing them to testify under use immunity, whether after or in lieu of criminal prosecution.

Goal

To establish effective procedures for the location, seizure, maintenance, and disposition of drug-related assets.

Objectives

- Advocate effective state legislation on forfeiture.

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- Establish comprehensive training programs in asset management.
 - Establish agreements for cooperative asset sharing among law enforcement agencies in drug network investigations and prosecutions.
 - Establish written processing forms for asset sharing among participating agencies.
 - Write guidelines for forfeiture cases, clearly establishing the remedial, nonpunitive objectives of forfeiture and resolve to use forfeiture to destroy drug networks.

Goal

To establish and put into use objective criteria to measure the reduction of net assets of the drug delivery networks affecting the jurisdiction.

Objectives

- Select specific economic and sociologic indicators of network activity, such as federal reserve cash surpluses and overdose hospitalizations.
- Select and target particular types of criminal, forfeiture, and civil cases for priority, based on the analysis of key assets.
- Maintain inventory of network economic strength and changes in net assets over time.
- Apply objective criteria to strategies, adjusting strategies as necessary.

Goal

To work toward maximum coordination among all agencies and levels of government involved in drug-related law enforcement.

Objectives

- Conduct regular meetings for members of agencies with which the team is working.
- Encourage coordination of team cases and projects with all

agencies and levels of government by functioning as an informal clearinghouse of opportunities and resources.

- Provide open, rapid, and well-regulated financial support for cases and projects by using team-generated funds for overtime pay, a revolving fund, and coordination with other revolving funds and funding sources.
- Develop efficient management and share investigative assets through an experienced and knowledgeable asset management and technical assistance component.
- Raise professionalism by developing internal guidelines and training on issues of drug-related law enforcement. Increase acceptance of such standards by seeking the views of the entire law enforcement community and working to accommodate divergent views.
- Provide computerized data retrieval on a case-by-case basis and also on a cumulative basis to share with all agencies.
- Set up long-term constructive relationships with law enforcement agencies by judicious use of written cooperative investigatory agreements that anticipate and avoid potential disagreements and provide for legal distribution of assets and fines.

Application: Targeting of Network Suspects

The principles for selecting cases for intensive investigation should be reduced to a practical set of criteria, including:

- The case involves a group (network) with the structure and continuity that qualifies it as an enterprise for purposes of racketeering statutes.
- The enterprise encompasses five or more individuals or businesses associated in drug-related offenses, including money laundering, or an individual who is a key personnel asset in a drug delivery network.
- The enterprise involves manufacturing or trafficking in drugs at a rate in excess of \$1 million yearly or has laundered money in excess of \$1 million.
- The group has identifiable assets, which are acquired through the proceeds of drug trafficking or are used to operate the enterprise;

such assets have a gross fair market value in excess of \$250,000 or are key assets of the particular drug delivery network.

- The group's base of operations or impact is located within the jurisdiction.

The criteria also may be used to assign priority to cases that:

- Involve violence or the threat of violence against law enforcement, witnesses, or participating members of the target group.
- Involve corruption of, or attempts to corrupt, law enforcement, judicial, or commercial institutions.
- Involve money laundering.
- Promise significant advances in the accurate assessment of the nature of drug delivery networks operating within the jurisdiction.
- Involve people identified as key drug network assets.
- Involve physical assets identified as key drug network assets.
- Present opportunities to promote law enforcement cooperation.
- Present opportunities to develop or transfer technical expertise.
- Present opportunities to establish favorable legal precedent.

Special Methods

Identifying participants in control of significant financial assets is a continuous process. It takes place at all investigative stages, from informant development and grand jury through financial analysis, and after initial seizures are made and civil discovery begins. Undercover operations present special opportunities to get information and evidence. Hearsay information, including informant statements, is admissible to provide the required probable cause for forfeiture. Narcotics traffickers⁷ propensity to brag about their wealth and possessions offers a distinct opportunity to gather information on how assets were acquired.

Direct, pointed questions about the ownership or control of a particular asset often get a negative response from the owner, even if he or she later is tempted to make a claim in a forfeiture action. A so-called "straw," acting on behalf of the real owner, may deny ownership or even may implicate the true owner, defeating the straw's later claim and perhaps providing evidence of concealment that is admissible at the criminal or civil racketeering trial on the substantive offenses.

Denials of ownership serve another purpose as well. The denials most often are thwarted by Fourth Amendment issues in forfeiture actions by failure to prove standing. Proof of standing frequently is defeated by hasty denials of ownership at the scene of the seizure.

Asset seizure depends critically on early involvement in the planning phase of target selection. Careful target selection saves time by preventing poorly planned or improvident seizures, especially those of assets that require special care or present special legal problems, for example, ongoing businesses, commodities accounts, and working farms and ranches.

Net worth analysis is another useful method in financial cases. Analyzing net worth can provide proof of additions to a target's net worth beyond what reasonably can be explained by legitimate income. Beginning and ending dates for the analysis are set and the investigation reveals net worth figures at each time. The difference between the beginning and ending figures is the unexplained net worth. While the beginning date figure may be attacked by allegation of a cash horde or its equivalent, such as investments, advance undercover questions and correct arrest interrogation often can eliminate later spurious claims.

Finally, careful arrest and seizure procedures may prevent lengthy civil litigation. Detailed debriefing on the sources and purposes of cash and untitled assets prevents spurious claims. Correctly serving or explaining notices of pending forfeiture can prevent the assignment of assets to innocent third parties for value. Immediate agreements on substitution of assets, substitute custodianship, and hold-harmless arrangements may prevent later jockeying for advantage. Often, creditors will accept custody of assets in which they have a security interest, such as bar equipment, to avoid the necessity of removing and storing it. Participants with valuable testimony may be eager to share their information with the government when seizures are in progress. Their financial information certainly is worth more at that time than it will be even a day or a week later.

Conclusion

The illegal drug trafficking industry destroys the core functions of government. It enforces its own laws and assesses its own taxes. It is a shadow government that cannot coexist with a democracy.

As a shadow government, however, the illegal drug industry is seriously flawed. It has no legitimate representative base of power or authority in our society. Rather, its ideology is greed, based on the dual acquisition of raw power and wealth.

The drug trafficking industry's strengths are its flexible structure and its ability to generate and control enormous amounts of money. However, we can look to the twisted ideology of the drug trafficking industry for guidance in shaping strategies that control its power and reimpose a civil order free from violence, corruption, and fear. Law enforcement agencies that understand those sources of illicit power can rum the strengths of the narcotics industry against itself.

About the Author

Cameron H. Holmes is an Assistant Attorney General with the Special Investigations Division in Phoenix. He heads a civil remedies program that focuses on disrupting narcotics trafficking at the highest financial levels within Arizona.

Mr. Holmes also directs a BJA project to develop a state anti-money laundering strategy that will use asset forfeiture as a principal technique.