

PROSECUTING ATTORNEYS' COUNCIL OF GEORGIA

Presentation On

“DRUG INVESTIGATIONS”

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DISCUSSION NOTES AND DETAILED OUTLINE

This lecture concerns drug investigations and proactively handling the issues inherent in such cases from the prosecutor's perspective. These cases often have small amounts of drugs, no actual possession of the drugs, and a complete lack of shock and interest value for the jury due to overexposure to the media. Teaching our agents proactive steps to take during investigations can help us with these issues. Following are some typical street level cases and defensive theories, along with suggestions on how to enhance your case understanding and presentation.

We will then provide an overview of the different types of informants, their motivation for working for law enforcement, and the practical problems associated with informants. We will also discuss the legal and ethical issues involved in using informants in narcotics cases and proper policies for the use of informants.

I. TYPICAL STREET LEVEL CASES AND DEFENSES

A. Small amount of narcotics found on person of defendant

1. You see these cases when a defendant is arrested for an offense, and the dope is found in a pocket, sock, shoe, mouth or other orifice.
2. The defensive theory will be to undermine the importance of this type of case, appeal to those who think this is a waste of time to prosecute and think the police are letting the “big fish” get away.
3. The second defensive theory will be to portray the defendant as a victim of both socioeconomic forces and of their addiction.
4. The third defensive theory, especially in marijuana cases, is that this should not be a crime because everyone has done it and it doesn't hurt anyone.

B. Drugs found in area of defendant

1. When officers are in a high crime area, or in pursuit of an individual, the defendant may drop or dispose of the drugs.
2. The first defensive theory will always be this is not my stuff, often they will attempt to provide a name for who owns the drugs. Amazingly enough they never know his real name, where she lives, or anything else that would help.
3. Defensive focus may be anti-police, that officers “put” this on the defendant.
4. Also see this type of case during execution of search warrants or recovery of drugs in car or in public near defendant.
5. Defensive theory will focus on fact that defendant did not have the item in hand, on clothes, just “happened” to be in close proximity to the contraband. Equal access will always be raised and there is a pattern jury charge concerning equal access and mere presence at the scene of a crime.

C. Delivery to undercover officer

1. Very common street level case, one or two rocks or baggies will change hands.
2. The defense will often argue that all officers lie (we’ve all seen television and movies) and bolster this by the fact that undercover officers “lie” for a living when working on the street. Therefore your witness has no credibility.
3. Entrapment will often be raised, even if it does not apply. This is particularly true when a confidential informant is used in the case.
4. The defense may hit on all defenses (Who Cares, Cops Lie, Entrapment, Defendant is a Victim), quite often they will focus on lack of credibility of undercover officer, a person who “lies for a living”

II. FIRST STEP – GO ON A RIDE-ALONG!!!

A. As your experience is enhanced, you can help educate the jury

1. If you try numerous narcotics cases, you may become jaded and begin to see “just another small dope case.” You may develop a disconnect with your officers when they believe a small case is very important and you want to plea it.
2. You will see the amount of courage, effort, and persistence these operations take. In particular you will understand the risks these agents take every day.
3. You will never look at a narcotics case the same again

B. A ride-along is a way for you to see the all of the resources used in street level operations, not just the paper the report is written upon.

1. Locations of operations

a. Not randomly targeted, often due to specific leads

- 1.)Citizens’ complaints
- 2.)Anonymous tips
- 3.) Confidential informant information
- 4.)“High narcotics activity” or “Open air drug markets”

b. Most tips will have a timetable

- 1.) The supervisory/administrative personnel at the narcotics unit should pull all the prior complaints and cases dealing with the same address, vehicle, or person.
- 2.) Supervisor will assign officer/agent to investigate complaint.
- 3.) Require response within specific period and have a procedure for insuring that complaint is worked.

- 4.) If source named, may require response to caller.
- c. Narcotics activity will often be in the midst of legitimate activity, especially on commercial property
 - 1.) Street level exchanges can be very covert, so
The activity appears harmless, especially on film.
 - 2.) However, the citizens suffer from after effects including burglaries, thefts, assaults committed to get more drugs or money as well as any violence occurring during the drug deals.
 - 3.) You will see drug activity near schools, churches, Businesses, parks and housing projects (does your jurisdiction have enhancement penalties for this activity?)
2. Manpower – not just the two or three names in the offense report, often a cooperative effort between several units or forces
 - a. Case agents that do all the background on the case and organize the investigation.
 - b. Undercover officers – several may pose in different parts of target area or conduct buys over a period of time.
 - c. Surveillance officers – look for counter-surveillance; maintain safety of undercover/raid team. Also needed to follow targets out of the area to other locations.
 - d. Raid/take down team – fully marked, armed and armored to conduct arrests on the scene
 - e. Patrol officers – needed to book and transport inmates
 - f. K-9 handler

C. The most compelling reasons to do a ride-along:

1. You mentally get on the same page as your witnesses. You will understand exactly what they're talking about and you will learn the details in police procedure that will help you ask the right questions later.

2. Your officers will respect and like you more because you took the time to learn what they do.
3. You get to wear a bulletproof vest and a jacket that says “Police” on it. **REMEMBER LIABILITY AND ETHICAL RULES!** A recusal or lawsuit where you have lost your immunity takes the fun out of the experience.
4. You have great stories to tell at parties.

III. DEVELOP A “DEFENSIVE DIRECT”

A. Your Officer as an Expert Witness

1. Street officers are underutilized as to their expertise
2. We have a tendency to put them on as fact witnesses only, but they are experts in street level narcotics activity, such as high drug areas, trafficking techniques, concealment techniques, law enforcement avoidance methods, packaging, currency denominations, price, slang, drug trends, violence associated with the drug trade, etc.
3. If established as expert, will add credibility to testimony, and emphasize the professionalism of the operation to jury.
4. Will be able to explain why actions taken by the defendant are consistent with narcotics activity, especially actions that may seem innocent to the lay person.
5. General questions to ask:
 - a. Length of time as peace officer/time in narcotics.
 - b. Education, training, courses, certifications.
Remember to cover on the job training as well as all formal classes.
 - c. Prior police assignments.
 - d. Number of narcotics cases investigated and what type of narcotics were involved and on what level.

- e. Types of investigations: surveillance, search warrant execution, undercover, patrol.
- f. Familiarity with narcotics as far as looks, smell, paraphernalia, etc.
- g. Familiarity with the habits and practices of street level users and dealers.
- h. Familiarity with sales techniques, concealment techniques, linking evidence, etc.
- i. Familiarity with any particular practices specific to your city/neighborhood/street.
- j. Actions taken as a result of viewing these behaviors.
- k. Results after actions taken on this particular day.
- l. Consistent with the experience of other law enforcement officers, agencies, etc.

B. Defense Du Juor

- 1. Similar defenses in most street level scenarios.
- 2. The key to a successful prosecution is to anticipate defenses, and load up your case-in-chief with facts and testimony that rebut it before the defense can bring it up.

C. Small quantity found on person

Defensive theory: Who Cares?

- 1. Defense may minimize importance of case, push for nullification angle or simply for sympathy.
- 2. You want to show jury that the miniscule amount of narcotics on the defendant is just a piece of a larger puzzle or a link in the chain. No one in any business makes money without customers and retail sales at some point in the business.

3. Remind the jury that the war on drugs involves much more than just the two or three officers that might testify in this case.
4. A good witness to use is your Case Agent, though he or she may not have had active participation in this arrest.
 - a. Case Agent may be a unit commander, and oversees the operation. If not make sure they know all policy and procedure and can answer “why?”
 - b. Case Agent can be “face guy” – the leader that will deflect any credibility or testimonial issues with less polished witnesses. If he cannot serve this function, bring a unit supervisor who can.
 - c. Ask about narcotics unit, how many in the department, number of officers, tasks, duties, and training.
 - d. Ask how individuals are selected for the narcotics unit. What type of person is selected? Stress background checks, financial checks, and drug screens.
 - e. Ask why this area of arrest was focused on: citizen complaints, anonymous tips, informant information, or luck.
 - f. Ask about “tip sheets” or “complaint sheets” and “zone patrols” which are requests from higher-ups to patrol this area and report any criminal activity within a specified period of time
 - g. If search warrant is used, ask the Case Agent to explain the procedure involved in getting one issued. Include the affidavit, presentation to the judge, execute within certain time frame, and the return.
 - h. **Street value of drugs** – this is your witness! Very important to get this information to the jury, helps with “knowing possession” issue. Include a primer on the drug in question, including origin and processing.

- 1.) Ask how is the drug divided into hits/doses.
- 2.) What is the price per hit or dose.
- 3.) Number of hits/doses in your case.
- 4.) Total street value in your case.

5. Focus on magnitude again, see outline above II. B.

D. Drugs not on person

Defensive theory: The Dope Fairy brought it and left it here!

1. Ask Arresting Officer questions to bolster his credibility.
 - a. Focus on training and experience on the skill of **observation**, that is what cops do the most, they look for criminal behavior that may seem innocuous to the untrained eye and they remember details.
 - b. Ask how long the officer has worked this area? Why? (inevitable response of “high narcotics and criminal activity area”).
 - 1.)If a residential area, get Arresting Officer to describe main thoroughfares or landmarks to orient the jury, and to show proximity to where jurors may live or work. Remember the residents may not be the ones conducting the criminal activity so point that out for the jury.
 - 2.)Focus on time of day – is it a time when children would be out and about?
 - 3.) Focus on proximity to churches, day cares, community centers, parks, etc. Indict for these charges if your jurisdiction allows for the extra charge.
 - 4.)If the case occurred in commercial area, ask about businesses nearby, were they open at the time?

- c. Common behavior when police officers approach (i.e., discard any contraband, so can say, “didn’t find anything on me and also “geeing” or running.)
 - d. This specific defendant - what did he DO when he saw the officer? Run, hide, drop items, call out a warning to others?
 - e. What did he SAY when he saw you? Beware of constitutional issues – make sure the statement is not one made pursuant to custodial interrogation
 - f. If the agent used binoculars to view activity, get officer to bring to court so jury can use them, provides visual stimulation, and increases officer credibility
 - g. Ask if defendant’s address was near the area of arrest? If the answer is no, the insinuation is that defendant is there to either buy or sell dope
 - h. Ask if the officer has seen this defendant again? Next day, same corner, perhaps? Beware of issues involving introducing the defendant’s character if it is against your rules of evidence.
2. Focus on amount of time, effort, paperwork needed to complete entire process from observation of criminal activity to booking to completion of offense report as well as the work of the crime lab.
- a. Time first came to area? Time saw activity? Time arrested? Time booked into jail?
 - b. How many officers were actually involved in the surveillance, arrest, evidence recovery, transport, booking, evidence to laboratory, and testing?
 - c. Paperwork booking sheet, evidence submission sheet, offense report, supplemental reports, surveillance logs, and crime lab reports.
 - d. Want to show the jury that this incident was not quick and easy to complete, the process is lengthy, and therefore credible

3. Focus on links to the contraband.

- a. Bills, mail, traffic tickets, drivers license with defendant's name on it, carrying that address or telephone number.
- b. Clothes of the size and gender of the defendant
- c. Keys on defendant's person that open doors or other locks at location.
- d. If clearly a "dope house," show all of your proof. If there is no running water, no electricity, no cable, no appliances, twelve adults in same place in the middle of the day then they are most likely there for drugs.
- e. Accessories in location that indicate drug dealing include measuring cups, microwave, scales, packaging, cell phones, pagers, "client" list, drug notes, very small baggies, cutting agents, cover scents, used packaging materials. Remember you can have residue tested.

4. Links on defendant's person

- a. Money in small denominations, especially 10's, 20's, and 50's are common denominations for drug sales, ask your Case Agent or Arresting officer while they are on the stand.
- b. Where was that money kept? In sock, multiple pockets, underwear, or other unusual places?
- c. Did the drug dog later "hit" on the money? Your K-9 officers should proof train on money and do money lineups when you find cash.
- d. Other items found on defendant such as gun, pager, cell phone, and "baling" but no proof of employment.
- e. Narcotics paraphernalia including needles, tubing, steel wool, pipe, bottle cap, rolling papers,

methamphetamine materials, blunts, pipes, bongs, hemostats, etc.

- f. Physiological signs of abuse on defendant – yellowed fingers, burned lips, burned fingers, track marks.
5. “Somebody must have left that there” otherwise known as **SOME OTHER DUDE DONE IT** or **THE DOPE FAIRY WAS HERE AGAIN!**”
- a. Stress the street value of drugs – the primary argument is that no one, especially a drug dealer or user, would leave an item of that value just lying around (in someone else’s car, someone else’s house, under a cinderblock in a parking lot). Also, no addict would leave their drugs laying out for someone else.
 - b. If in a covert location, like behind sheetrock, trap in an automobile, etc., ask Case Agent or Arresting Officer if they were surprised to find drugs in location like that.
 - c. Obviously, the location may be suspect due to prior criminal investigations so very clearly tie this Defendant to the drugs.

E. Hand-to-hand delivery

Defensive theory: Undercover Officers Lie for a Living

- 1. Focus on magnitude of work and price of drugs, see above.
- 2. Undercover Officer – need to focus on keeping him/her on track in front of the jury.
- 3. Clean him up, or explain why he is dressed in torn jeans and WWE shirt.
- 4. Get U/C to tell about why he chose to apply for the narcotics unit, and detail the training and experience needed to work undercover.

5. Discuss the risks of working undercover, i.e. getting ripped off, cover blown, shot at while not wearing body armor or carrying a radio.
6. Effects on private life: must have certain type of hair/clothing/piercing/tattoos to look “authentic.” Also the hours for all cops are different, but narcotics agents have bad hours and lots of overtime.
7. How get “buy money” – accounting to department before buy, recording of serial numbers, accounting after buy.
8. Number of buys made per week and documentation kept for each one.
9. How do the agents respond when asked “are you a cop?” Cover all possible issues such as verbal response, fake i.d., false name, nickname, false occupation, etc.
10. Ask percentage of time the buy money is actually recovered, are they surprised if it is not recovered, and the amount of time defendant out of sight.
11. Use supervisors to clear up questions and reiterate policy to corroborate Undercover Officer.

IV. ALL ABOUT WHAT OFFICERS DIDN'T DO!

- A. In case-in-chief, focus on what *could* have been done (in a larger case, a perfect case, a case on TV – Thank you CSI!) to take wind out of defense’s sails
 5. No **wiretap** – officer can explain that street level cases are very transient, not done in one fixed location and explain the problems with phone cards and prepay cell phones; further, explain these procedures are costly, both in equipment and personnel costs.
 6. No **tape recording** – get witness to explain why not done on each case because of time, expense, lack of equipment; especially for patrol officers on possession cases.
 7. Same with **videotape** – juries expect footage of each crack rock being dropped!

8. No **drug test** – ask why this was not done on the defendant. Make sure jury understands that this has to be a voluntary act by the defendant, can't force a needle in arm or to urinate without a Court order. Discuss infeasibility of doing this for each defendant.
9. **Written or taped confession** – that is for cases where officers did not watch the offense occur, yet juries always want it. Do not violate the Defendant's Fifth Amendment rights; might be infeasible to do due to cost, time, and the high volume of recordings.
10. **Fingerprints, fingerprints, fingerprints!!!** All juries want fingerprints!
 - 1.) Whenever a small quantity dope case is set for trial, **SUBMIT** the evidence to the print lab to be tested for prints, even though results are unlikely.
 - 2.) Have print expert testify, even when no print results pointing to your defendant
 - 3.) Ask your print experts to explain why they wouldn't expect to find prints including size, surface texture, heat from a pipe, etc.
 - 4.) If "no identifiable" prints, do hypothetical that parallels your case, where numerous people have definitely touched the item, but left no prints (recovering officer, tagging officer, chemist) – this adds credibility to your officers as the above witnesses have **ADMITTED** touching the evidence
 - 5.) If not tested, be prepared to have your officer testify as to why not (can you say "woodshed?") – surface not conducive to holding prints, too much handling, and of course, "I saw him touch it, why do I need to have it dusted for fingerprints?"

V. VISUAL/DEMONSTRATIVE AIDS

- A. Rarely will you have any exhibits prepared by the officers, you will have to make your own.

- B. Need to create exhibits that will stimulate the jury and appeal to commonalities as well as their sense of a proper trial as portrayed by television.
- C. Jurors need to have things to feel and see
 - 1. Photographs
 - i. Go to the scene with officers or your investigator and photograph and video the area of arrest.
 - ii. Go at time of day when the arrest was made so jurors can see lighting, pedestrian traffic, vehicle traffic, and visibility.
 - iii. Photograph street signs, thoroughfares, nearby schools, day cares, community centers, playgrounds, etc.
 - 2. Make a map of the area to show jury chase route, location of arrest – MapQuest, Key Maps, Google Earth, county GIS, or even a hand-drawn map will be fine.
 - 3. Make a chart of street terms and definitions to help the jury understand, especially when part of offense is on tape.
 - 4. Diagram of witnesses with nicknames and roles during investigation, including the structure of the entire organization.
 - 5. Booking photo of defendant. His attorney will be “cleaned up” for trial, and can show level of intoxication of defendant at arrest, injuries or lack of injuries, and emaciated state following heavy drug use.
 - 6. Pretrial booking papers and bonding documents.
 - i. Look at the defendant’s address. Is it same as execution of search warrant, or recovery of drugs?
 - ii. Look at the defendant’s occupation. “Self-employed” may equal “dope dealer” or his employer may be a coconspirator.
 - iii. Look at the defendant’s income. How much does the defendant make in his “lawn service/detail shop?” How does he afford his life style?

- iv. Look at defendant's references and jail visitors. Do the lists contain people arrested at location?
7. Look for things jurors can feel: field testing kit, binoculars, container that drugs were recovered in, body armor, needle proof gloves, or other police gear.

VI. DID I MENTION THAT YOU SHOULD DO A "RIDE ALONG???"

VII. Why Use Informants?

- A. Informants provide needed intelligence.
- B. Informants can provide probable cause.
- C. Informants can introduce agents into criminal organizations.

VIII. Types of Informants and Why We Corroborate Them.

A. Concerned Citizens

1. These are community members who are interested in the community in which they live or work.
2. Concerned citizens do not need to be revealed in court.
3. You may know the identity of a concerned citizen.
4. Concerned citizens usually have no incentive to fabricate information.
5. Make sure this is a concerned citizen and that his/her information is reliable.

B. Anonymous Tipsters

1. These informants have a variety of motives and are therefore considered unreliable until corroborated.
2. Tipsters do not need to be revealed in court.
3. What is their motive?
 - a) Revenge – either a rival dealer, customer, debtor, social

rival, prior target, etc. Never discount this motive, and always be wary of these informants.

- b) Fear – Persons threatened by a target will often provide anonymous tips to the police.
- c) Greed – Competition will lead targets to turn on each other.

C. Professional Informant

- 1. These informants often regard “snitching” as their job and expect to be paid. Some federal informants earn their entire livelihood this way.
- 2. The potential financial gain provides a bias in the case so this informant’s information must be corroborated.
- 3. Remember, these are criminals who know the drug world and have been involved in it.
- 4. All payments must be well documented and explainable for the jury.

D. Defendant Informant

- 1. This informant is facing criminal charges and is working in return for leniency. This type of informant is very common in narcotics cases.
- 2. This informant can provide excellent intelligence about the organization with which he was involved. This informant was either a member of the organization or a customer and will know the organization’s method of operation. Additionally they will often know about other organizations as well.
- 3. This informant’s motive is to reduce exposure in the charging and/or sentencing of their case. Therefore this informant has no reliability. Everything must be corroborated.
- 4. This informant is often a product of an ongoing investigation or other cases. The informant should be “signed up” and put to work before he is out of circulation too long. See the informant rules in section IV as well as the attachments.

IX. Deciding Whether to Use the Informant

- A. Investigate the potential informant's background, especially any prior violence. This is usually the agent's responsibility.
 - 1. NCIC
 - 2. Local MNI (Master Name Index)
 - 3. NADDIS (Narcotics and Dangerous Drugs Information System, run by DEA)
 - 4. EPIC (El Paso Intelligence Center, run by ICE and DEA)
 - 5. TECS (Treasury Enforcement Communication System, run by ICE)
 - 6. Institutional knowledge within the narcotics unit
- B. Evaluate the informant's background.
 - 1. Does the potential informant have a violent history?
 - 2. Does the informant have a history of "double dealing" any narcotics unit?
 - 3. Are there other factors making this potential informant dangerous, exceptionally unreliable, or a liability risk?
- C. Debriefing the Potential Informant
 - 1. The potential informant should be interviewed by the controlling agent and ideally with you present.
 - 2. Tape record the debriefing for later use.
 - 3. Does the potential informant have counsel?
 - a) If potential informant has counsel he must be notified of his client's desire to work and give his consent to the interview. (except for d below).
 - b) Allow counsel to be present for the signing of all agreements and paperwork. Optimally, the counsel should then leave and wait in a nearby area to avoid conflicts of interest with any potential targets named in the debriefing. The potential

informant should be allowed to consult with his/her lawyer whenever he wishes.

- c) Always obtain counsel's permission for their client to meet with agents in the future without the attorney present. This is necessary for the proper running of operations and investigations.
 - d) If there is reason to believe the attorney represents the organization, not the client, have a judge appoint "shadow counsel."
 - 1. The potential informant must be aware and on board with this idea.
 - 2. This information is extremely sensitive and must be kept confidential. Your staff and court staff should also be excluded from knowing about "shadow counsel."
4. Does the potential defendant have a right to counsel?
- a) Check your jurisdiction's laws and rules.
 - b) When in doubt, have counsel appointed. No case is worth sacrificing your professionalism, reputation, or bar license.
5. Substance of the debriefing
- a) Evaluate the potential informant's veracity by asking questions to which you know the answers.
 - b) Make sure the potential informant names their targets, not you or the agent.
 - 1. This avoids the defense later impeaching the informant on the case by claiming it was a police "witch hunt" for their client.
 - 2. This also allows you to judge the informant's credibility by determining if they will work targets close to them.

- c) Make sure the potential informant knows you will walk away if they are not completely truthful and open at this debriefing and in the future.
 - 1. Walk away if that is required. Defense attorneys and potential informants will learn to be open in the first debriefing.
 - 2. The potential informant needs you. You can always get another informant.
- d) Explain all the rules to the potential informant, in detail.
- e) Corroborate everything the potential informant tells you or the controlling agent.
 - 1. This may take additional time after the debriefing.
 - 2. Use financial records (FINCEN), telephone records, institutional knowledge, utility records, surveillance, complaint files, etc.
- f) Following the debriefing, if not before, have the police supervisors agree for the agent to work this potential informant.
- g) Always consider civil liability as well as how this particular, potential informant effects your case.

X. Controlling the Informant.

- A. The informant must sign the informant contract and agree to the rules (See attached Informant Agreement and Marietta/Cobb/Smyrna Organized Crime Unit Informant Documentation). If you are in a jurisdiction with plea agreements prior to the informant working, do them in writing.
- B. It is the agent's job to control the informant on the street. An informant is not a colleague or a friend, they are employees and criminals.
 - 1. Always search an informant before he works.
 - 2. Continue to corroborate informant's information.
 - 3. Set goals and timelines.

4. All contact must be professional, not personal.
 5. Any violations of agreement are handled pursuant to written policy. (See attached sample policy).
 6. The informant belongs to the unit, not the agent. The informant is an asset just like a gun or body armor. – **THIS IS NOT A PERSONAL RELATIONSHIP, YOU NOR YOUR AGENT SHOULD LET YOUR GUARD DOWN!**
 7. The informant must not be exposed to more agents, vehicles, technology, or investigative methods than absolutely necessary. The informant should never be exposed or introduced to other informants.
 8. There should never be any physical contact with an informant other than a thorough and professional search.
 9. Police supervisors should be kept informed of the informant's progress and activities.
- C. It is your job to insure all informants are properly controlled.
1. You have the last word on the disposition of the informant's case or their status.
 2. Set a timetable with the informant and controlling agent to guarantee progress.
 - a) If the informant can make no progress, fire him.
 - b) Reasonable time must be allowed, but the longer the informant is inactive, the less chance he will produce evidence.
 - c) The faster an informant is "signed up" and working, the less chance the targets have influenced or are controlling him.
 3. Any violation of the contract or agreement results in immediate dismissal. The informant's credibility (in a legal as well as practical sense) is destroyed if he violates policy.
 4. Any actions which are close to violating the agreement should immediately be addressed with the informant's lawyer, the informant, and the controlling agent.

5. An informant can work from jail to earn the privilege to be bonded out and be an informant.

XI. Ethical, Professional, and Moral Obligations

- A. Keep your word.
 1. Assure the informant that you will keep your word and be up front with him as long as he follows the agreement and rules. This means keeping promises to help him and promises to punish him if they violate the agreement.
 2. You will earn a reputation, good or bad, among the defense bar. This is particularly true of lawyers who represent drug dealers. If you make promises you cannot or refuse to keep, defense attorneys will advise their clients not to cooperate with you. This will prevent you and your agents from making significant narcotics cases and dismantling criminal organizations. If you are a person of your word, you will be respected and attorneys will encourage their clients to work with you.
- B. Confidentiality is essential.
 1. This can be a life and death situation for an informant or his family.
 2. Practice “need to know”, this includes other agencies, your office, and court staff. No information that might identify an informant while he is working should be disclosed.
 - a) Once an investigation is completed, the defense will have a right to know of the informant’s involvement. The informant’s identifying information should not be part of any report.
 - b) As an officer of the court you are obligated to meet the requirements of Brady, Giglio, and your local law. While protecting an informant is important, they knew the risk when they signed up. Do not compromise your integrity to protect an informant.
- C. The investigation should be conducted in such a way as to minimize the informant’s risk of testifying.
 1. Use the informant to introduce an agent into an organization. Do not charge any crimes to which the informant is a testimonial witness.

This not only protects the informant, it avoids you having to defend the informant or their activities during the trial. Only officers will be testifying.

2. Use controlled buy operations to secure search warrants.
 3. Use intelligence gathered as probable cause for a Title III warrant.
 4. “Arrest” the informant at the same time as the targets if he is on the scene.
 5. Always check your local law.
- D. Litigate to protect the informant’s identity.
1. Use sealed orders and warrants if possible.
 2. File motions in limine and protective orders and make the defense litigate and carry their burden to gain an informant’s identity. They are not automatically entitled to it.
 - a. You may be entitled to an ex parte hearing on portions of the defendant’s motion to reveal the confidential informant.
 3. Charge so as to avoid bringing the informant to court.
- E. Notify the informant if his identify is revealed or if a threat is made against him.

XII. Common Problems with Informants

- A. Entrapment
1. Entrapment does not exist if the target was predisposed to commit the crime. If predisposition is shown, then the target, now defendant, should not be allowed to present an entrapment defense. Show predisposition by acts and claims of the target such as the quality of their drugs; their claimed ability to get larger amounts of drugs, how long they have been dealing; paraphernalia and physical evidence; or by their history.
 2. Litigate entrapment issues pretrial to prevent the jury from hearing any claims made by the defendant.

- B. Informant wants to quit
 - 1. Discuss the informant's issues with him and his counsel. Explain the informant will only receive credit for what he has done, not for effort. **ALLOW THE INFORMANT TO QUIT.** If you force the issue you put the informant and your agents at greater risk and incur civil liability.

- C. Informant's testimony at trial is a disaster.
 - 1. Prepare the informant thoroughly. Remember this is not a person who testifies as often as your agents and chemists. Stress they must tell the truth, not try to help you.
 - 2. You need to remember the perceived danger the informant feels when put on the stand in open court. Watch for attempted intimidation tactics by the defendant or other members of the organization. This can include "throwing" gang signs, bringing enforcers to sit in the courtroom, etc. Be prepared to handle these issues and control the resulting nervous witness.

- D. Informant is caught double crossing or double dealing.
 - 1. Game over. Fire the informant and prosecute him for every crime legitimately available and seek maximum jail time. No deals, no second thoughts. This informant endangered not only your investigation, but more importantly the lives of your agents.

MARIETTA/COBB/SMYRNA ORGANIZED CRIME UNIT
INFORMANT DOCUMENTATION

C.I. Number _____

Name: _____
Last First Middle

Home Phone: _____ Work Phone: _____ Beeper: _____

Address: _____
Number & Street City State Zip

Aliases or Code Names: _____ Identification Marks: _____

Date of Birth: _____ Place of Birth: _____ Citizenship: _____

Sex: _____ Race: _____ Height: _____ Weight: _____ Eyes: _____ Hair: _____ Ethnic Origin: _____

Miscellaneous Physical Characteristics: _____

Social Security Number: _____ Occupation: _____

Employer's Name and Address: _____ How long Employed: _____

Education Level: _____ Military Branch: _____ Military Service Number: _____

Driver's License Number: _____ State: _____ Expiration Date: _____

Criminal History Info: _____ FBI Number: _____

Automobile Make: _____ Model: _____ Year: _____ Tag Number: _____

Criminal Associates: _____ Photo: (attach here)

Intelligence Files Mentioned In: _____

Places Frequented: _____

Source of Supply: _____

Spouse: _____

Spouse's Address: _____

Father's Name: _____ Phone: _____

Mother's Name: _____ Phone: _____

Address: _____

Signature of Informant: _____

Assigned MCS Agent: _____ Date: _____

**MARIETTA/COBB/SMYRNA ORGANIZED CRIME UNIT
INFORMANT CODE OF CONDUCT**

Informant Name: _____ C.I. Number: _____

I, _____, the undersigned, understand that while I am cooperating with and assisting the Marietta/Cobb/Smyrna Organized Crime Unit am forbidden to do any of the following:

- A. Sell or deliver any controlled substance, dangerous drug, marijuana, or any substance purported to be same, to any individual.
- B. Never sell or deliver or cause to be sold or delivered any controlled substance, dangerous drug, marijuana, or any substance purported to be same, to any person who would then in turn sell or deliver said controlled substance, dangerous drug, marijuana, or any substance purported to be same, to any member of the unit or any other individual.
- C. Never use my sex, sexuality, or sexual activity to induce or persuade any individual to sell or deliver a controlled substance, dangerous drug, marijuana, or any other substance purported to be same to any member of the unit.
- D. I further understand that I may never search any suspect, person, house, papers, or personal effects.
- E. I may never become involved in any activities that would constitute entrapment.
- F. I further understand that I may not engage in any illegal or improper conduct so long as I am working with the Marietta/Cobb/Smyrna Organized Crime Unit.
- G. Further, I understand that any violations arising from my actions in violation of the above circumstances will result in an investigation of matters and if the charges are substantiated, appropriate action (including the possibility of criminal prosecution) will be taken.
- H. I am agreeing to cooperate with the Marietta/Cobb/Smyrna Organized Crime Unit of my own free will and accord, and not as a result of any intimidation or threats.

In agreeing to work with the Marietta/Cobb/Smyrna Organized Crime Unit, I understand that no unit agent may make any explicit or implicit promises or predictions regarding the likely disposition of any criminal proceedings that are pending against me, but that unit agents will make their best efforts to arrange a meeting with prosecutorial authorities at which time such matters can be discussed.

Signature of Informant: _____ Date: _____

Witness: _____ Place: _____ Time: _____

MARIETTA/COBB/SMYRNA ORGANIZED CRIME UNIT
INFORMANT SOURCE STATEMENT

Informant's Name: _____

C.I. Number: _____

I, _____, have volunteered to be an information source for the Marietta/Cobb/ Smyrna Organized Crime Unit. I have been informed, and I understand that being a confidential information source for the Marietta/Cobb/Smyrna Organized Crime Unit does not give me authority to violate any local ordinance, State Law or Federal Law.

I also understand that I am not empowered to exercise police authority in any manner or fashion. I understand that should I violate any local ordinances, state law or federal law, I will receive no special treatment or consideration by virtue of my status as an information source for the Marietta/Cobb/Smyrna Organized Crime Unit.

I further understand that I am specifically not authorized to carry, possess or to use any firearms, other weapons, or items of contraband.

I also understand that I may not use any sexual act or promise of any sexual act to further an investigation while acting as an information source for the Marietta/Cobb/Smyrna Organized Crime Unit.

Signature

Date

Witness

Witness

PRINTED ON LETTERHEAD

**CONSENT TO INTERCEPT ORAL COMMUNICATION VIA
BODY MOUNTED ELECTRONIC TRANSMITTING DEVICE**

My name is _____ and today's date
is _____ at _____ [] AM / [] PM.

I hereby give my permission to the District Attorney of Cobb County and/or the
MCS Organized Crime unit to record and monitor conversation(s) with _____
_____ and others which will occur on _____ at _____.

I consent to the use of a body mounted electronic transmitting device
and I understand that the conversation(s) may be utilized in a criminal
proceeding.

Witness

Signature

Witness

Date and Time

Witness

PRINTED ON LETTERHEAD

Warrant No. _____

DEFRIEFING AGREEMENT

With respect to the meeting of A. Jason Saliba and agents of the MCS Organized Crime Unit with **(INSERT INFORMANT'S NAME)** to be held on the date of this memorandum, the following understandings exist:

1. Should any prosecutions be brought against **INFORMANT** by this Office, this Office may offer as evidence in its case-in-chief any statement made by **INFORMANT** at the meeting should **INFORMANT** fail to abide by any terms of the agreement with the State.
2. Should either **INFORMANT** or State decide at the conclusion of this meeting not to sign the Confidential Informant Agreement and Contract, this Office will not use any statement made by the Client in its case-in-chief in the cases denoted by the warrant numbers above.
3. Notwithstanding paragraph one and two, (a) this Office may use information derived directly or indirectly from **INFORMANT'S** statements at the meeting for the purpose of obtaining leads to other evidence, and if any such evidence is developed, it may be used in any prosecution of **INFORMANT**; and (b) should any prosecution of **INFORMANT** be undertaken, this Office may use statements made by **INFORMANT** at the meeting and all evidence obtained directly or indirectly therefrom for the purpose of cross-examination should **INFORMANT** testify, or to rebut any evidence offered by or on behalf of **INFORMANT** in connection with the prosecution.
4. This agreement is limited to the statements made by **INFORMANT** at the meeting held on this date, and does not apply to any oral, written or recorded statements made by **INFORMANT** at any other time. No understandings, promises, agreements, or conditions have been entered into with respect to the meeting other than those set forth in this agreement, and none will be entered into unless in writing and signed by all parties.

Agreed to this _____ day of _____, 2005.

A. JASON SALIBA
Assistant District Attorney
Cobb Judicial Circuit

INFORMANT

Attorney for Informant

09-00.00 Informants and Sources

It is the policy of the [REDACTED] Unit to cultivate the use of individuals wishing to cooperate in the furtherance of law enforcement functions. It is also the policy of this Unit to carefully control the nature, manner and means in which these individuals are utilized.

09-00.01 *The following defined terms will be used when referring to individuals when writing reports, completing forms, etc.*

Confidential Informant, (C.I.) - *An individual who through close or criminal association with others involved in criminal conduct, provides information or assistance of investigative significance, usually but not necessarily, in an ongoing capacity.*

Confidential Source, (C.S.) - *An individual who through legal business or personal connections, provides information of investigative significance as it is encountered or at the request of an investigating officer. Usually motivated by friendship or civic concern.*

Concerned Citizen, (C.C.) - *A citizen, with no criminal connection to an investigative target who, usually on a one time basis, cooperates with this unit in an investigation. This individual is characterized as an ordinary citizen, usually with no criminal history or background, with firm ties to the community and motivated by a civic concern to assist law enforcement.*

09-00.02 *All individuals meeting the definition of or being used in the capacity of a **Confidential Informant** will have an individual informant file and a unique C.I. number.*

09-01.00 Confidential Informant Files

All individuals meeting the definition of or being used in the capacity of a Confidential Informant will be documented and all records of the informant's use will be kept in a confidential file.

09-01.01 *Agents will complete a Confidential Informant Package in its entirety prior to use of an individual as a C.I. All requirements, as outlined in this chapter, must be met. The C.I. package consists of forms **15-09.01, 15-09.02, and 15-09.03.***

09-01.02 *A thorough background investigation, which includes a photograph of the informant and a complete criminal history, shall be conducted on each and every informant by the narcotics unit, by the agent assigned to be the contact agent for that informant. These documents will become a permanent part of the informants file.*

09-01.03 *An [REDACTED] Agent will thoroughly debrief the informant, obtaining detailed information of his knowledge of criminal activity and his basis for such knowledge.*

09-01.04 *Each confidential informant will be assigned a unique C.I. number by the Unit Commander or his designee. The informant will then be*

referred to by this assigned number in all future documents. Agents shall document the C.I. number of the informant utilized on each case in the appropriate case log book in the space between the case number and the date.

09-01.05 *All informant files are considered highly confidential and will be kept under lock and key by the Unit Commander or his designee. No information is to be released from these files without the approval of the Unit Commander.*

09-01.06 *Informant files will include all informant documentation as outlined in Chapters 5 and 9, (financial accountability forms and other pertinent documents).*

09-02.00 Use of a Confidential Informant

No informant will be used in any capacity until final approval has been given by the Unit Commander or a designated supervisor, subsequent to their review of the completed informant file.

09-02.01 *The presence of any informant in or around the Unit Office is strictly prohibited.*

09-02.02 *All contacts with informants will be in an official capacity and will require the presence of two agents.*

09-02.03 *No [REDACTED] agent will meet with any informant at the agent's residence or the residence of any other unit member.*

09-02.04 *No relationship will be developed with any informant which is or may be construed by continuing circumstances to be "social" or other than strictly business in nature.*

09-02.05 *Informants will not be a party to information concerning investigations conducted by this or any other agency or information derived as a result of any such investigation.*

09-02.06 *Informants will not meet or view any undercover officer or meet any member of the department in their capacity as an informant other than those officers designated for such purpose on a case by case basis.*

09-02.07 *No informant will be allowed to knowingly meet or view any other informant from this or any other agency unless for a specific law enforcement purpose.*

09-02.08 *All phone conversations and personal contacts with the informants are to be conducted as if they are being taped.*

- 09-02.09 *No contact will be made with a terminated informant without the express permission of the Unit Commander or his designee. Accidental or non-planned contact will be documented and reported to a supervisor immediately.*
- 09-02.10 *No person under 17 years of age will be used as an informant, in any capacity, without written consent of the parents or guardian and the express approval of the Unit Commander. The use of such persons will be approved only in the most unusual of circumstances and then only after full discussion of the case with the District Attorney's Office.*
- 09-02.11 *Informant fees will be negotiated on a case by case basis. Agents will not use a scale type system for determining informant fees.*
- 09-02.12 *A periodic search of an informant, without warning, will be made by case investigators during routine contacts with the informant to insure compliance with the Code of Conduct provisions. (FORM 15-09.03) Failure of the informant to submit to a search will result in the immediate termination of his informant status.*
- 09-02.13 *Upon receiving information from an informant, agents will determine if the same information has been given to any other law enforcement group by the informant. Informants will be advised that this practice will not be acceptable nor tolerated. If the information has been disseminated to another law enforcement organization, then the agent will contact that agency prior to acting on the information, as a precaution. This will be done for the safety of [REDACTED] personnel, as well as the safety of the other organization. Any [REDACTED] supervisor may opt to assist the other group or to pass the investigation on to that group, however if both entities work the investigation, it shall be done jointly, to avoid future conflict or hazards.*

09-03.00 Use of Informant as a Special Operative

The use of an informant as a special operative, where he actually purchases evidence or is otherwise involved in transactions concerning drugs or other contraband is to be resorted to only when the use of an agent for such a purpose is impossible or impracticable. Such use of an informant will be subject to strict controls and the handling of evidence by the informant will be kept to a minimum.

09-03.01 *All informants used as special operative's will meet all the requirements of being a confidential informant as outlined in this chapter.*

09-03.02 *Any informant used as a special operative will be subject to the following controls:*

(a) A thorough search of the special operative and his vehicle will be conducted prior to use to purchase drugs and/or weapons.

(b) A close and continued surveillance will be conducted on the special operative beginning when he leaves the presence of the agents, during travel to the transaction location, during the transaction, and as he travels from the transaction location.

(c) *A thorough search of the special operative and his vehicle will be conducted following the delivery of evidence to the case agent.*

(d) *The case agent will conduct a complete debriefing concerning the circumstances of the transaction.*

09-03.03 *A body transmitter may only be worn by an informant in strictly controlled circumstances where the informant will be confined to one area and covered by at least two agents. The informant will not be allowed to leave the area while wearing the transmitter.*

09-03.04 *The agent will place a body transmitter on the special operative, if appropriate, prior to each and every transaction for which his conversation is to be monitored. The operative will sign a consent form each and every time a transmitter is placed on his person. (Form 15-09.04)*

09-04.00 Other Operatives

On rare occasions circumstances may require individuals other than those defined as informants to be used in an operative capacity. In these circumstances the informant package and the background investigation will not be required prior to use of this individual.

09-04.01 *Agents will take all the necessary actions to protect the operative individual, the integrity of the case and the Unit*

09-04.02 *No individual will be used in this capacity without the knowledge and approval of the Unit Supervisor.*

09-05.00 Discontinuing the use of an Informant

The services of any informant who's behavior is detrimental to the Unit, who misrepresents himself or case information, violates his contract, or causes the Unit concern will be discontinued.

09-05.01 *Upon discontinuing the use of an informant, a memorandum detailing the reasons will be placed in the informant's file.*

09-05.02 *The Unit Commander will be informed immediately if an informant repeatedly fails to keep appointments, fails to return phone calls, or fails to follow through on legitimate requirements affecting the outcome of an investigation. The number, nature and seriousness of each infraction will be considered and all infractions will be documented in writing.*

09-05.03 *The Unit Commander will be notified immediately if an informant violates any portion of his informant contract. The supervising agent will document the violation in writing and place that documentation in the informant's file.*

09-05.04 *The Unit Commander will be notified of the discovery of any misrepresentation of fact by an informant. The misrepresentation will be documented in writing.*

09-05.05 *Failure of an informant to follow instructions will be grounds for discontinuing the use of said informant.*

09-05.06 *Any incident, circumstance or information which causes concern or alarm regarding the actions of the informant will be documented in writing and submitted to the Unit Commander. The Unit Commander will determine whether use of the informant should continue.*

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA

V.

«Defendant»

*
*
*
*
*

«WarrantIndictment»«CaseNo»

PLEA AND COOPERATION AGREEMENT

THE PARTIES HEREBY STIPULATE AND AGREE THAT:

This writing embodies the entire agreement between «Defendant» (hereinafter “DEFENDANT”) and the Cobb County District Attorney’s Office (hereinafter “PROSECUTOR”) relevant to Defendant’s plea and cooperation.

I. TERMS OF COOPERATION

1. The Defendant agrees to cooperate fully with PROSECUTOR and, with PROSECUTOR’s prior knowledge and consent, to cooperate with any other law enforcement office or agency as PROSECUTOR shall direct (collectively referred to as PROSECUTOR in subparagraphs (a) through (e) below).¹ The Defendant’s cooperation shall include, but shall not be limited to, the following:

- a) giving complete and truthful information regarding the Defendant’s knowledge of, and participation in, any matter about which PROSECUTOR or Controlling Agent may inquire;
- b) providing all items or documents that may be relevant to an investigation or prosecution and that are in the Defendant’s custody or control;
- c) maintaining contact with PROSECUTOR and Controlling Agent, when and as required by PROSECUTOR and Controlling Agent;

¹ The Defendant will not receive credit for cooperation with any other law enforcement office or agency that is not authorized by PROSECUTOR.

d) engaging in any activity that PROSECUTOR and Controlling Agent determine to be necessary and appropriate to an investigation or prosecution, or to the apprehension and prosecution of target(s) of an investigation, including, but not limited to, contacting targets of an investigation or other persons in the manner prescribed by PROSECUTOR and Controlling Agent and introducing members of law enforcement to targets of an investigation or other persons designated by PROSECUTOR and Controlling Agent;

e) testifying truthfully and completely at any grand jury presentation, hearing, trial, or any other proceeding as requested by PROSECUTOR;

2. All information and testimony provided by the Defendant must be complete and truthful. The Defendant must also provide complete and truthful information about all of his prior criminal activity and other bad acts.

3. The Defendant must not commit, attempt to commit, or conspire to commit, any crime after entering into this agreement.

4. The Defendant may not undertake any action which endangers the safety of others.

5. The Defendant waives any rights he may have to counsel's presence during the course of his cooperation, including but not limited to any rights the Defendant may have to counsel's presence at debriefings and meetings. In addition, the Defendant waives any rights he may have to require that counsel be given notice of events that occur during the course of the Defendant's cooperation, including but not limited to, debriefings and meeting. However, if the Defendant is called upon to give testimony at a trial, hearing or grand jury presentation as part of his cooperation, or if the defendant is required to appear in a court proceeding to which he himself is a party, the Defendant retains any rights he may have to have counsel notified of, and to have counsel present for, such testimony or required appearance.

6. PROSECUTOR and Controlling Agent agree to attempt to preserve the confidentiality of Defendant's cooperation, and to give due regard to the safety of the

Defendant and the Defendant's family, although PROSECUTOR reserves the right to require Defendant's testimony pursuant to paragraph 1(e), above, should PROSECUTOR determine, in its sole discretion, that such testimony would be helpful or necessary to a prosecution or investigation. The Defendant understands that these safety and confidentiality considerations may limit the Defendant's ability to cooperate earn a reduction in his negotiated sentence under this agreement.

7. The Defendant's cooperation will continue for as long as PROSECUTOR, Controlling Agent, and the Defendant determine it should continue. At any time, any party may terminate the Defendant's cooperation, except that the Defendant shall be obligated to testify about matters occurring during the period of the Defendant's active cooperation.

8. PROSECUTOR agrees that, except as provided in paragraphs 10 and 12, no criminal charges will be brought against the Defendant for his past participation in criminal activity, provided that the Defendant has disclosed such participation to PROSECUTOR prior to signing the agreement.

9. Should the Defendant be paroled, released on bail, or temporarily released into the custody of law enforcement officers, the Defendant shall return to court as required and, if in the custody of law enforcement officers, shall remain in custody until returned to jail as required.

II. PLEA AND SENTENCE

10. At the conclusion of the Defendant's cooperation, he will be sentenced in accordance with the terms of this agreement.

a) In exchange for the Defendant's full and complete cooperation, PROSECUTOR and Controlling Agent will make a good faith assessment of the value, truthfulness and completeness of the Defendant's cooperation and, in PROSECUTOR's sole discretion, will determine what, if any, reduction in sentence or other consideration should be recommended on Defendant's behalf.

i) With the sentencing court's consent, the Defendant will be sentenced as pursuant to a sentence recommended by PROSECUTOR and agreed to by defendant.

ii) If PROSECUTOR determines that the Defendant's cooperation has proved fruitless but that the defendant has not otherwise violated the terms of this agreement, the PROSECUTOR may consent to allow the Defendant to plead guilty to a recommended sentence less than or equal to the Defendant's currently recommended sentence. (This paragraph allows a well-meaning, but unproductive cooperator to take the offer made by the Prosecutor at the time the Cooperation Agreement was entered into. For example, assume the offer on the table at the time of the Agreement was 5 years. Also assume that four months later, the defendant's cooperation has not been fruitful and the offers

to the rest of the defendants are now 10 years. The unsuccessful cooperator may have the offer of 5 years to life, rather than 10 years so as not to be punished for attempting to cooperate).

b) If PROSECUTOR determines that the Defendant has failed to abide by any of the terms of this agreement, the Defendant's cooperation may be terminated, and , unless PROSECUTOR agrees otherwise, PROSECUTOR will recommend that the Defendant receive any lawful sentence deemed appropriate under the circumstances, including the maximum sentence permitted under the law, an indeterminate term of imprisonment of «MaxSentence».

11. The Defendant understands that a good faith determination by PROSECUTOR as to whether the Defendant has cooperated fully, as to the value of the Defendant's cooperation, and as to whether the Defendant has abided by the terms of this cooperation agreement, shall be binding on the Defendant. Such determination shall not be reviewable by any court, barring arbitrary and capricious conduct on the part of PROSECUTOR. The Defendant further understands that his good faith efforts at cooperation that do not lead to a prosecution or seizure will not be rewarded.

12. The Defendant's failure to abide by any term of this agreement may be considered a breach of the entire agreement. If PROSECUTOR determines that the Defendant has intentionally provided false, misleading or incomplete information or testimony, that the Defendant has endangered the safety of others, that the Defendant has committed, attempted to commit or conspired to commit any further crimes, or that the defendant has otherwise violated any provision of this agreement, then paragraph 10(b) will apply and the Defendant may receive the maximum sentence therein permitted under the law. In addition, the Defendant may thereafter be subject to prosecution pursuant to state or federal law for any crime the Defendant may have committed, including, but not limited to, perjury, obstruction of justice and contempt. Prosecutions of the Defendant that are not time-barred by the applicable statute of limitations on the date of signing of this agreement, may be commenced against the Defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement of any such prosecutions. Furthermore, the Defendant waives all claims under the United States Constitution, Georgia State Constitution, or any other State or Federal statute or rule, that statements made by him before or after this agreement, or any evidence derived therefrom, should be suppressed.

III. USE OF STATEMENTS

13. If the Defendant breaches this agreement, any and all of the following may be used against the Defendant:

- a) any statement made by the Defendant to PROSECUTOR, or to any other law enforcement office or agency, either before or after this agreement;
- b) any testimony given by the Defendant before any grand jury or other tribunal, either before or after this agreement and any evidence derived from such statement.

14. Provided that PROSECUTOR determines that the Defendant has not violated this agreement, PROSECUTOR agrees that any prosecution brought against the Defendant by PROSECUTOR, PROSECUTOR will not offer in evidence on its case-in-chief any statements made by the Defendant during the course of, and in furtherance of, the Defendant's cooperation. However, in any such prosecution of the Defendant by PROSECUTOR, PROSECUTOR specifically reserves the right:

- a) to use information derived directly or indirectly from the Defendant's statements for the purpose of obtaining leads to other evidence, which evidence may be used against the Defendant; and

- b) to use statements made by the Defendant during the course of his cooperation and all evidence obtained directly or indirectly therefrom:
 - i) in connection with the sentencing of the Defendant; or
 - ii) for the purpose of cross-examination should the Defendant testify on his own behalf; or
 - iii) to rebut any evidence offered by or on behalf of the Defendant in a trial or other proceeding.

IV. TRAVEL AND EXTRADITION

15. The Defendant cannot leave the State of Georgia without obtaining PROSECUTOR's and Controlling Agent's prior consent. Should PROSECUTOR and Controlling Agent give consent, the Defendant will be obligated to return to Georgia at PROSECUTOR's request. The Defendant's refusal to return to Georgia upon PROSECUTOR's request for any reason will be deemed a violation of this agreement. The Defendant also waives all rights that might arise during the course of his cooperation with respect to extradition from any state or territory of the United States or any foreign country.

V. WAIVER OF RIGHT TO APPEAL

16. The Defendant waives all rights to appeal any aspect of his prosecution, conviction, and sentence, including any aspect of this plea and cooperation agreement. Specifically, the Defendant waives his right to appeal any issues pertaining, but not limited to: (a) his arrest, indictment and arraignment; (b) the issuance of any search warrants or eavesdropping warrants leading to the Defendant's arrest and indictment; (c) the issuance of any protective orders or orders postponing notice of eavesdropping; (d) the Defendant's plea, staying of his plea, and possible additional pleas entered under the circumstances described in paragraph 10; (e) the imposition of consecutive sentences under the circumstances described in paragraph 10 (a) (ii); and (e) the Defendant's ultimate sentence. Excluded from this waiver is the Defendant's right to appeal arbitrary and capricious conduct by PROSECUTOR.

17. By signing this agreement, the Defendant acknowledges that the waivers described herein are knowing and voluntary, that he/she has been afforded ample opportunity to discuss this agreement and waivers with his/her attorney, and that he/she has, in fact, discussed this agreement and the waivers herein with his/her attorney. The Defendant acknowledges that he/she fully understands the consequences of this agreement and these waiver provisions, and states that the agreement and waivers are made of his/her own free will and that no one has coerced him/her into waiving his rights.

VI. LIMITATIONS

18. This agreement is limited to PROSECUTOR and Controlling Agent and does not bind any other federal, state or local prosecuting authority. If PROSECUTOR determines that the Defendant has cooperated fully and successfully, PROSECUTOR agrees to communicate to the appropriate state or federal authorities, the nature and extent of the Defendant's cooperation, provided that such disclosure would not jeopardize the integrity of an ongoing investigation or the safety of an informant, informant's family, law enforcement officer, or other individual.

19. It is further understood that this plea agreement does not prohibit the State of Georgia, the United States, any agency thereof, or any third party, from initiating or prosecuting any civil proceedings directly or indirectly against the Defendant, including, but not limited to, civil proceedings by the Internal Revenue service relating to potential tax liability.

20. The Defendant acknowledges that PROSECUTOR has not made any promises as to what the Defendant's ultimate sentence will be.

21. No promises, agreements, or conditions have been entered into other than those set forth in this agreement, and none will be entered into unless in writing and signed by all parties. This agreement supercedes any prior promises, agreements or conditions between the parties. To be effective, this agreement must be signed by all signatories listed below.

This ___ day of _____, _____.

PATRICK H. HEAD
District Attorney
Cobb Judicial Circuit

A. Jason Saliba
Samuel W. Lengen
Assistant District Attorney
MCS Organized Crime Unit
Cobb Judicial Circuit

The Defendant:

Counsel for the Defendant:

«Defendant»
Signature

«DefenseCounsel»
Signature

«Defendant»
Name Printed

«DefenseCounsel»
Name Printed

Witnessed by:

Signature