

LAW ENFORCEMENT EXPERTS THE UNDERUSED DEFENSE WEAPON

By

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During my 25-year career in Law Enforcement, working for four Federal law enforcement agencies– IRS Intelligence, BATF, Customs and DEA– I never lost a prosecution case. Here's the "secret" to my success:

When I retired from DEA in 1990 and began my career as a trial consultant/expert witness, I had testified in excess of 500 times at Federal and state trials throughout the US, Puerto Rico and a few foreign countries. At approximately 1/3rd of those trials, federal and state prosecutors qualified me before juries as an expert on everything from "RICO" ; "Use of Force"; "Corruption"; "Undercover Tactics"; and "Informant Handling"; to "Money Laundering"; "Narcotics Trafficking"; "Police Corruption and Misconduct"; "Drug/Gambling Records"; "International Smuggling Tactics"; and much, much more. (Prosecutors are quite imaginative in the invention of categories of expertise).

The secret of my perfect record was that neither I nor any of the officers under my supervision, were ever opposed by an expert witness for the defense.

No matter how questionable we knew our investigative tactics to be, no amount of a eye-rolling incredulity and table pounding by an attorney– no matter how skilled at cross-examination– could overcome the testimony of a man with a badge– a cop– telling judge and jury: "That's the way we do it."

Over the past thirteen years as a trial consultant and expert witness, I've been continually astounded and saddened by the large number of attorneys with criminal and civil cases that beg for expert testimony, who refuse to even consider the tactic. The results are often heartbreaking. Since the tragic events of 9/11 the situation has only grown worse, in that too many juries now tend to accept the testimony of a law enforcement officer– unchallenged by his peers– as gospel.

On the other hand, in recent years, it has also been my gratifying experience to witness the situation slowly begin to change. More and more attorneys are seeing the light. I have been able to help people, whom I believed genuinely deserved my help in some significant ways and to learn from some superb legal practitioners how my expertise in law enforcement– my badge– might be used effectively in some creative and ingenious ways.

I've selected just a few brief examples from my case files that, I hope, will both illustrate my point and inspire some out-of-the-box thinking:

Carlson v United States (San Diego, California)

Statement of Facts: A federal and state drug task force (DEA, Customs, BATF, San Diego Police) raided the San Diego home of Donald Carlson, based on Probable Cause testimony of a "previously reliable" confidential informant. Mr. Carlson, a gun owner, fired at raiding officers. The officers returned fire shooting him three times. Mr. Carlson survived to sue the government.

Expert Witness Report indicated that the investigating officers had deviated from acceptable standards and norms of Informant Handling procedures and the use of

deadly force.

Results: \$2.7 million settlement. No trial.

Polk County Iowa v Patrick Connor.

Statement of Facts: A two man undercover narcotics team, engaged in a buy/bust operation charged Mr. Connor with possession and sale of a "rock" of crack cocaine that the defendant allegedly swallowed during a violent arrest. The officers further charged the severely beaten Mr. Connors with assault claiming, among other things, that he bit one of them severely, possibly exposing the officer to the AIDS virus. Mr. Connor faced criminal penalties in excess of 100 years in prison.

Expert Witness Testimony at trial indicated that the buy/bust operation had deviated from national standards and norms for that type of operation, thereby, provoking any violence that ensued; and that certain features of said deviation from standards cast significant doubts as to the truthfulness of the arresting officers.

Results: Defendant found Not Guilty after trial.

Town of Carteret New Jersey, v (name withheld).

Statement of Facts: Defendant arrested by store detectives of a major department store chain and charged with shoplifting and assault. Immigrations notified. Deportation proceedings begun.

Expert Testimony (affidavit) That the store detectives had not adhered to national law enforcement standards and norms in their undercover operations and that said deviance had in fact caused the ensuing violence; that the store detectives had also used excessive force in making the arrest.

Results: All assault charges dropped; Immigration proceedings cancelled..

New York City Police Department v (Unnamed officer)

Statement of Facts: A female NYPD officer, with 19 years service, was accused of drawing her weapon during an off-duty traffic altercation. The officer claimed it was a case of mistaken identity; that the incident never happened. Her accuser, a violent felon with numerous felony convictions, and his girlfriend pressed charges. The NYPD, after investigating the incident, began removal hearings and submitted the case to the district attorneys office for prosecution.

Expert Witness Report indicted that the officer's accuser should have been handled as a "criminal informant" which required a higher standard of investigative effort to corroborate the complaint– a standard the investigating officers failed to reach.

Results: Prosecution and removal actions were dropped. The officer and the department agreed to a suspension based on inconsistencies in her statement.

Bajana v New York City Police Department (civil)

Statement of Facts: A kilo of cocaine was intercepted, addressed to Mr. Bajana's address, by US customs and turned over to an NYPD Narcotics Unit. A "controlled delivery" operation was carried out and Mr. Bajana arrested. Charges were later dismissed for lack of evidence. A lawsuit charging the NYPD with false arrest ensued. Expert Witness Report indicated that the NYPD investigation, prior to committing to an undercover operation, was far below acceptable national standards and procedures for this type of an investigation.

Results: Undisclosed out-of-court settlement.

Informant/Entrapment Cases (including Jailhouse Snitches).

Statement of Facts: I have been retained in numerous cases, involving DEA, FBI, Customs and many local law enforcement agencies, that fit a pattern of law enforcement's inability to recruit and manage the activities of criminal informants in adherence to national standards and procedures, often resulting in crimes that would not have even been contemplated by defendants and/or evidence contrived by said

informants being presented at trial, were it not for the **substandard control and management** of the CI.

Results: Most defense cases in my experience, where this kind of expertise is merited and properly utilized, benefit significantly during plea-bargaining and/or trial and/or sentencing. (specifics available on request). What is important to note here, is that, during my law enforcement career, Informant Entrapment was a significant in-house problem for enforcement supervisors. I am certain that many convictions, wherein the prosecution was unopposed by a qualified expert in the standards of Informant Handling, would have ended in either Not Guilty findings or hung juries.

Civil RICO Actions

Statement of Facts: During my law enforcement career, I have managed and/or personally been charged with in excess of 100 RICO prosecutions. I have recently been retained, for the first time, in a Civil RICO action against a major corporation.

Results: Skillful attorneys are, at present, utilizing my reports, opinions and investigative recommendations with apparent effectiveness.

Drug Asset Seizures

Statement of Facts: During my law enforcement career, I supervised the seizure of, and/or personally seized, many millions of dollars in assets seized pursuant to state and federal drug laws. Not a single one of those seizures was opposed by expert testimony to contest the appropriateness of the seizing officers' actions and/or reasoning. Not a single petition for remission, in my personal experience, was ever successful.

Results: Since my retirement, I have been retained on six occasions to offer expert opinions in affidavit form, as to the below-national-standards actions and reasoning of officers seizing significant amounts of cash, in linking said seizures to drug trafficking. Both of these cases resulted in the return of the funds.

Since my retirement I've been retained in more than 160 criminal and civil matters, every one of them with its own peculiar set off facts, circumstances and problems, far too varied to cover in this short article; however, thanks to the imagination and creativity of the attorneys involved, I was granted a priceless education that I am willing to share with anyone in need.

For a free telephone or e-mail consultation, I can be reached at expert53@aol.com or 845-687-9642