

**THE RECRUITMENT AND MANAGEMENT OF AGENTS IN  
UNDERCOVER DRUG TRAFFICKING CRIMINAL INVESTIGATIONS**

by

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at the

UNIVERSITY OF SOUTH AFRICA

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FEBRUARY 2017

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I declare that this research dissertation is my own, unaided work, and all sources used or quoted have been reflected and acknowledged by means of complete referencing. It has been submitted in partial fulfilment of the requirements of the degree of Magister Technologiae in the subject of Forensic Investigation for the school of criminal justice, University of South Africa.

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## **Abstract**

The organized and sophisticated way in which criminal targets conduct the crime of drug trafficking, necessitates the use of undercover agents in undercover drug trafficking criminal investigations. The goal of this research was to determine how agents should be recruited and managed for undercover drug trafficking criminal investigations.

The correct recruitment and management processes when dealing with agents in undercover drug trafficking criminal investigations, which enable investigators to follow a logical sequence, was explored by the researcher.

The entire recruitment process of agents in undercover drug trafficking criminal investigations was discussed, from studying the criminal target, identification of a suitable agent and then the recruitment process itself. Legal aspects and administrative processes to be utilized to manage agents were discussed. The researcher utilized national and international literature sources to gather new and current information on the recruitment of agents in undercover drug trafficking investigations. Interviews were conducted with retired and experienced former South African Police Service (SAPS) officials who managed and recruited agents during their employment in the SAPS.

The general purpose of this research was to provide practical recommendations on the best practices for the recruitment and management of agents in undercover drug trafficking criminal investigations.

### **Key terms:**

Forensic investigation, crime information, crime intelligence, evidence, undercover drug trafficking investigations, agents, criminal targets, recruitment strategies, operational management of agents.

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### List of abbreviations

CI	Crime Intelligence
CPA	Criminal Procedure Act
DEA	Drug Enforcement Administration
DPP	Directorate of Public Prosecutions
ISS	Institution of Security Studies
SAPS	South African Police Service
SARS	South African Revenue Service
SWOT	Strengths, Weaknesses, Opportunity and Threat
UNODC	UN Office of Drugs and Crime

# **1. CHAPTER 1: GENERAL ORIENTATION**

## **1.1 Introduction**

According to the UN Office of Drugs and Crime (UNODC), South Africa is number three in the world when it comes to drug trafficking, which includes cannabis seizures, (Nair, 2012:1). More than 619 South Africans are in prisons abroad for drug smuggling. According to the UNODC, South Africa is the origin, transit point, and/or destination of many drug trafficking routes. The increasingly sophisticated way in which these crimes are committed has compelled the South African Police Service (SAPS) to consider unconventional investigative techniques in order to successfully address organised drug trafficking in South Africa. These unconventional investigative techniques include the use of informant(s) and/or agents by penetrating and/or infiltrating organised drug syndicates and other crime groups or criminal activities. One of the functions of the SAPS is to gather, correlate, evaluate and use crime intelligence. The National Strategic Intelligence Act also authorises the South African Police Service to gather crime intelligence.

The recruitment and infiltration of informants and agents into criminal groups, criminal activities and crime syndicates form an integral and essential part of the gathering of intelligence and the management thereof as contemplated in Section 2(3)(a) (b) of the National Strategic Intelligence Act. Marais and Van Rooyen (1990:154) mention that the application of undercover operations is justified and in the interest of the community when other methods and techniques to gather evidence are not suitable.

## **1.2 Problems experienced during the research**

After the interviews had been analysed and the research report was compiled, the permission to interview SAPS member who managed agents was withdrawn by the Acting Divisional Commissioner: Crime Intelligence, Head Office. The information gathered was then destroyed and a new strategy to find empirical evidence had to be followed. The researcher then conducted interviews with retired and experienced former SAPS officials who managed and recruited agents during their employment in the SAPS. In depth information was gathered from these former SAPS officials

because they were not afraid to express themselves and could freely speak their mind.

### **1.3 Problem statement**

Before the researcher conducted or even designed a research study, there had been a clear picture of the direction of the study, which had to be refined in the form of a research problem or problem statement (De Vos, Strydom, Fouche & Delport, 2011:79). Leedy and Ormrod (2012:44) pointed out that the heart of every research project is the problem as it is paramount to the success of the research effort. The statement of the problem was first expressed with utmost precision and then divided into more manageable sub-problems. The utilisation and recruitment of agents is mandated by the National Undercover Network and Operations Office: Division Crime Intelligence, which ensures the effective management of all crime intelligence undercover operations by members of Crime Intelligence in the provincial and national office. The recruitment of the undercover agent stays the responsibility of the individual crime intelligence officer on the operational level in the different provincial areas. The researcher identified that the criticism by judges and prosecutors against ill-disciplined agents in undercover drug trafficking criminal investigations is due to the conduct of the agents during these investigations. The use of agents is a controversial issue and if the correct agent is not identified and recruited, it can seriously jeopardise undercover drug trafficking criminal investigations and render such investigations unsuccessful.

Girodo (1991:363) and Van der Walt (2010:396) mention that the bad character of agents and the environment in which these agents conduct their criminal investigations are the causes of police corruption in drug-related criminal activities. It is important that appropriate agents with the highest moral character are recruited to avoid corruption and also to be managed efficiently in difficult work environments in accordance with SAPS policies and procedures (Van der Walt, 2010:396).

Nair (2012:2) mentions that a study published in April 2010 by the Institution of Security Studies (ISS), indicated that South Africa has become the central hub for the spread of organised crime across Southern Africa, which includes drug trafficking. The study reported that South Africa's harbours and airports are used as

drop-off points for drugs and other illegal imported goods. To add to this, Hand (2013:1) states that drug smuggling in South Africa is a serious problem with many drug mules being arrested at national airports every day and drugs worth millions of rands being confiscated on a daily basis. However, most of the time, the recruiters and financiers of such drug mules are not arrested and convicted due to the lack of agents to gather evidence of such criminal targets. Each year substance abuse statistics are on the rise. Drug abuse is costing South Africa R20 billion a year and drug consumption in South Africa is twice the world norm.

The Minister of Police, Nathi Mthethwa, at the launch of the anti-drug campaign in Mitchell's Plain, Western Cape, made remarks that the use of drugs has become an international challenge (Mthethwa, 2013:1). In view of the serious nature of the problem, the Minister has decided to launch a focused campaign targeting the drug problem by implementation of intelligence; driven, concerted and programmatic interventions aimed at dealing serious blows to the illegal drug trade and use.

In a report to the Inspector General of Intelligence, Hankel (2011:5) cast a dark cloud over the inappropriate recruitment process of unsuitable agents for the Agent Program of Crime Intelligence.

The researcher, a police officer with seventeen years' practical experience as a Project Manager and Handler in several different undercover operations, has identified the following problems in the recruitment process of agents in undercover drug trafficking criminal investigations:

- There is a lack of successful selection and management of undercover agents which results in poor intelligence being gathered and lack of evidence causing drug cases to be withdrawn during court proceedings.
- The lack of a focused recruitment process of agents leads to major problems such as an agent provocateur, inappropriate cover stories, poor infiltration strategies and no proper legend for the agent.
- The poor recruitment progress results in agents not acting according to departmental rules and the laws that govern undercover investigations.
- During the literature review, the researcher found limited sources related to the problem that is under investigation. The sources which were found, only cover

the use of informants in undercover operations, but not agents in drug trafficking criminal investigations. The limited literature found on undercover agents, is probably because of the clandestine and secret methods used by different policing departments and government agencies. Further research is needed to generate new knowledge.

The abovementioned problems, associated with the recruitment of agents in undercover drug trafficking criminal investigations, motivated the researcher to conduct research on this topic.

#### **1.4 Aims of research**

De Vos et al. (2011:94), Gray (2014:53) and Mills and Birks (2014:204) are of the opinion that aims are a statement of the intent, and what you plan to achieve; that provides the direction for the research. They are of the opinion that it is the most important aspect of any research, especially in a qualitative study, to reveal your intention to the readers of your study. Flick (2011:89) is of the view that a research aim is the anticipation to create new knowledge and theories. The researcher claims that new knowledge has been generated by formulating the following aim: To determine how agents should be recruited and managed for undercover drug trafficking criminal investigations.

#### **1.5 Purpose of the research**

According to Creswell (2014:124), Mouton and Marais (1990:193), Mouton, (1996:103) and Singleton and Straits (2010:107) the researcher should state the purpose of the project by stating whether the project is exploratory, descriptive, explanatory, analytical or predictive. In general, the purpose of this research is to establish facts, gather new data and to determine whether there are interesting patterns in the data. There should be a reason for doing research or else there would be no point in spending time, money and effort to undertake the investigation (Denscombe, 2002:25). By taking the guidelines of Denscombe (2010:11) and Leedy and Ormrod (2012:140) into consideration, the researcher explains the purpose of this research as follows:

- To empower and educate intelligence operatives (handlers) on how to recruit agents for undercover drug trafficking criminal investigations in order to become

better and more effective and efficient in their fight against crime and drug trafficking. Other individuals who will also be empowered by this research are detectives who investigate crimes and company investigators by providing experience and new knowledge concerning the recruitment of agents. In addition, the researcher attempts to empower his managers and commanders in the intelligence units of the SAPS through this research by reporting the findings and providing recommendations on the research topic. This research empowered the researcher to solve practical problems and improve current procedures in the recruitment of agents.

- To evaluate and analyse the use of agents during drug trafficking criminal investigations. The research has investigated programmes and policies on the recruitment of agents with the intention to evaluate the strengths and weaknesses and to consider how things might be improved. To develop good practice, the new found data were used to solve the research problem and make recommendations to address the problem under research. To ascertain whether adequate policies exist relating to the recruitment of agents during undercover drug trafficking criminal investigations. This approach serves to identify the strengths and weaknesses of current processes and possible improvements thereto.
- To explore national and international literature sources to gather new and current information on the recruitment of agents in undercover drug trafficking investigations. The weak points in the literature and practice were identified and addressed. The problem has been addressed by exploring and searching for new information and interviewing individuals with knowledge and experience in the recruitment of agents.

## **1.6 Research questions**

Du Plooy-Cilliers, Davis and Bezuidenhout (2014:69), Leedy and Ormrod (2012:38), Mills and Birks (2014:204), Mouton (2001:53), Punch (2014:76), Salkind (2012:44) and Wagner, Kawulich and Garner (2012:18) state that research questions are the expression of interest and intent. Research questions assist to gather new facts and methods to be utilised (Leedy & Ormrod, 2012:38 and Rule & John, 2011:28). De Vos et al. (2011:352), points out that the researcher should follow a logical sequence and limit it to a few problems, but still ensures that the topic is covered

thoroughly. Flick (2011:90), Rule and John (2011:31) states that research questions must be limited to between two and four questions. With the suggestions made by Denscombe (2002:31) and Leedy and Ormrod (2010:56) in mind, the researcher formulated the following as research questions for this research:

- What are the procedures to follow when agents are recruited to assist in undercover drug trafficking criminal investigations?
- What does the management of agents during undercover drug trafficking criminal investigation entails?

## **1.7 Key theoretical concepts**

Leedy and Ormrod (2012:44-45) articulate key concepts of research, which should assist a researcher to focus on the work at hand and also suggest that each term must be defined operationally, i.e. the definition must interpret the term as it is used in relation to the research project. To give meaning to certain concepts and adhere to what Berg (2004:29) says, the researcher decided on the following concepts:

### **1.7.1 Forensic investigation**

Zinn and Dintwe (2015:443) state that forensic investigation is the practice to lawfully establish evidence and facts to be presented in a court of law or at another form of hearing or tribunal.

### **1.7.2 Crime investigation**

Benson, Horne and Jones, (2015:19) define criminal investigation as a systematic, organised, thinking, reasoning, examination and analysis process designed to search for truth, during which an inquiry and thorough analysis are conducted on all types of crimes or unlawful acts.

### **1.7.3 Criminal target**

Louw and Lombard (2015:18) define a criminal target as an individual, syndicate, high flyer and group upon which the intelligence collection capacity is focused and who is implicated in the commission of criminal activities.



#### **1.7.4 Drug trafficking**

Schmalleger (2009:546) defines drug trafficking as the manufacturing, distribution, dispensing, importing, and exporting (or possession of the intent to do the same) a controlled substance or a counterfeit substance.

#### **1.7.5 Informant**

An informant in the context of a drug investigation is someone who informs or provides information to an officer about suspected criminal activity (Fredrickson & Siljander, 2004:125-126).

#### **1.7.6 Undercover operation**

Undercover operations represent an important means by which intelligence and information are collected and are used to reach as high into the criminal enterprise as possible (Osterburg & Ward, 2010:582).

#### **1.7.7 Agent**

A police official who infiltrates a syndicate (Unisa, 2004:306).

#### **1.7.8 Covert information gathering**

The employment of people informants, infiltrators and police traps and methods (observation and pursuit) under clandestine (undercover) circumstances to obtain information on the crimes (Van der Westhuizen, 1996:88-89).

#### **1.7.9 Drug**

Most drugs can be defined as depressants, stimulants, hallucinogens, or inhalants (Lee, 2004:17).

### **1.8 Value of the research**

The value of this research will benefit the academic community, the South African community, the South African Police Service (SAPS), prospective clients and Unisa as follows:

#### **1.8.1 Academic community and Unisa**

The academic community will benefit from the provision of new facts and additional knowledge to academics regarding the recruitment and management of agents. The

value of this research will benefit the researching students with new and additional knowledge on important procedures and judicial measures that regulate the use of agents in undercover operations. For students, the research will be available as reference material for research projects and may also stimulate further research in this field. The value of the research will benefit Unisa by means of adding to the existing body of knowledge regarding drug-related investigations and the recruitment and management of agents.

### **1.8.2 South African community**

The South African public will benefit from the information regarding the subject under investigation as it will assist them to empower themselves with the knowledge and stimulate their way of thinking concerning drug-related investigations. This study may help in reducing the number of drug-related crimes and contribute to ensure a safe community.

### **1.8.3 South African Police Service**

Intelligence operatives/handlers and investigators in the SAPS, who deal with undercover agents, will benefit greatly in understanding the dynamics of handling agents in undercover operations and the procedures on how the agents can be used to address drug trafficking. Constructive recommendations are made to address the problem because of the research conducted. This would ensure that the best and suitable agents can be recruited and how agents should be managed. This research will also enable senior management members of the SAPS and the commanders of the intelligence units to follow the correct procedure in recruiting agents. In addition, this research would provide suggestions on how agents should be recruited and managed during an undercover drug investigation.

## **1.9 Research design and approach**

Flick (2011:89), Lichtman (2014:3), Marshall and Rossman (2011:59), Msweli (2011:58) and Ritchie, Lewis, Nichollis and Ormston (2014:48-70) state that a research design is a plan or complete strategy or blueprint of how you intend conducting the research and how you will go about addressing the research questions. In order to answer all the research questions and address the aim, the

researcher needs to conduct fieldwork and purposefully seek the necessary information.

The research design is grounded in the problems experienced by the participants who participated in the study. The aim was to obtain a deeper insight in order to assist the researcher to be in contact with the world view perspective. The latter meant that this study also constitutes a phenomenological study (Mills & Birks, 2014:182). According to Creswell (2013:69), Du Plooy-Cilliers et al. (2014:28), and Wagner et al. (2012:132), the phenomenological aspect forms part of a qualitative research approach because the focus of the study is on the common meaning of several individuals regarding their life experience of a concept or phenomenon. In this study, how individuals make sense of the problem, was explored.

To answer the research questions and address the aims of the research, the researcher used a qualitative approach in an empirical research design because the production of knowledge and the practical answers to the problem was based on experience, knowledge and ideas of the participants (Creswell, 2013:69; Du Plooy-Cilliers et al., 2014:28; Flick, 2011:89; Marshall & Rossman, 2011:59 and Mills & Birks, 2014:182). Furthermore, the qualitative research approach also served to discover what the participants' opinions and views are regarding a problem and how they experience it (De Vos et al., 2011:65; Leedy and Ormrod, 2005:133; Ritchie et al., 2014:37 and Wagner et al., 2012:126). Interviews were conducted with individuals who had experience with engaging in undercover investigations, encountered the problem under investigation and who had lived through the situations (Wagner et al., 2012:127). These interviews were done to determine the true nature regarding the recruitment and management of agents during an undercover drug traffic trafficking criminal investigation.

Flick (2011:89) and Marshall and Rossman (2011:59) further add that the experience of the researcher can be applied in qualitative research. The researcher has experience in the recruitment and management of agents in undercover drug trafficking criminal investigations and due to this experience and the search for further knowledge, the researcher was compelled to conduct this research.

Empirical evidence is based on real world observations, which the researcher in this research obtained directly from the participants. This means the researcher relied on the experience of the participants (Wagner et al., 2012:270). According to Punch (2014:4) and Welman and Kruger (2002:57) empirical research supports developing new ideas through collecting data and is concerned with interviews and the analysis of secondary data sources. The statements of the above authors were applied by conducting semi-structured face-to-face interviews with five experienced former crime intelligence operatives or handlers, who were responsible for the recruitment and management of undercover drug trafficking criminal investigations. A comprehensive literature study was also done.

### **1.10 Target population and sampling**

According to Msweli (2011:63) and Bachman and Schutt (2011:110) the population for a study is a group (usually of people) from which the researcher wants to obtain information in order to draw conclusions and generalise the results. For this research, the ideal population would be police officials including retired police officials, who have recruited and managed agents in undercover drug trafficking criminal investigations. The researcher applied for permission and received approval from the SAPS to interview police officers within the crime intelligence environment for this study. The researcher interviewed these participants, but before the research project was finalised, the SAPS Divisional Commissioner, Crime Intelligence, Head Office withdrew the authority for the interviews after which the researcher had no other option than to seek for another approach. The researcher therefore limited the population to participants outside the SAPS, who have left SAPS Crime Intelligence with no further obligations to the state. This smaller group or sub-population is called the target population in this study.

Maxfield and Babbie (2011:112) and Salkind (2012:33) explain that we are almost never able to study all the members of the population that are of interest to the researcher. Constraints, such as limited time, funds and specific problems faced, and the fact that permission was withdrawn after interviews were conducted, forced the researcher to take a small portion of the larger group of former police officers. Because of the constraints, which Salkind (2012:33) mentioned, and the fact that all the retired police officials are not known because of the secret nature of their work

and hidden identities, the snowball sampling method was decided on. Wagner et al. (2012:92), Babbie and Mouton (2016:166) and Joubert, Hartell and Lombard (2016:103) mention that the snowball method is used when the members of a special population are difficult to locate. The snowball sampling method is a non-probability sampling method, which is a sampling method in qualitative research. The researcher approached a known retired police official who did provide names of other retired police officials that were responsible for managing and recruiting agents for undercover drug trafficking criminal investigations.

Wagner et al. (2012:88) and Leedy and Omrod (2012:97) state that qualitative research allows the researcher to explore and in qualitative research there are no rules to the appropriate sample size. Because of the in depth interviews with the purpose to find rich information, the sample size in qualitative research intend to be small and if the sample is too big it will not be conducive for the research. For this reason and the fact that this research is of limited scope, the researcher selected a sample of five (5) former SAPS members, who were responsible for recruiting agents and managing them in undercover drug trafficking criminal investigations. They have the same professional characteristics as far as training is concerned, as well as being qualified and experts in the field of recruitment and management of undercover agents. They followed the same procedures and processes in the crime intelligence environment.

The information used is not harmful or detrimental to the SAPS. The researcher ensured the highest degree of objectivity, integrity and professionalism when utilising the information. His loyalty to the SAPS ensured no prejudicial intentions to the interest of the SAPS and thereby protected the integrity of the SAPS and its methods. The researcher is committed fully and unconditionally to the SAPS Code of Conduct.

### **1.11 Data collection**

According to Dantzker and Hunter (2012:16) regardless of the research design, data collection is always a key component. According to Ragin and Amorosa (2011:131) data collection is the technique used to collect evidence in systematic ways. This includes surveys, interviews, observation, and previously existing data. Data for the

research was obtained from literature, such as books and documents. Documents, which included, national instructions and standard orders of newsletters, journals and magazines, were studied for literature evidence and data. Empirical data was obtained from interviews and data from the researcher's experience.

### **1.11.1 Literature**

Blaxter, Hughes and Tight (2006:122), De Vos et al. (2011:328-341), Fink (2010:196) and Leedy and Ormrod (2010:146) are of the view that literature refers to all the available research on a subject or topic. Different works or publications relevant to this research were consulted. Various newly published national and international textbooks on the subject matter were used in this research with the object of answering the research questions and to address the research problem. The sources also included articles and publications on websites, research dissertations and theses, and case laws. Where applicable and relevant, the latest literature sources available were used as a reference in the study. In this study, the data that was obtained from the participants were compared with the literature sources. In this dissertation, the literature sources were analysed and, where relevant and applicable, combined with the information obtained from the other data gathering techniques used for this study.

### **1.11.2 Interviews**

Semi-structured face-to-face interviews with the participants were conducted to obtain new and broad views. Barbour (2014:337), De Vos, Strydom, Fouché and Delport (2005: 203), Lichtman (2014:248), Mills and Birks (2014:188), mention that researchers use semi-structured interviews to gain a detailed picture of a participant's beliefs about, or perceptions or accounts of a particular topic. This method allowed the researcher and participants much more flexibility and leeway for the participants to express their opinions and experiences regarding the problem under investigation. Open-ended questions were asked, which allowed the researcher to ask additional question to answers that were not understandable or unclear.

Questions that could address the research questions and the research topic were identified by the researcher in advance. The same questions were put to all the

participants and the answers were written down on the interview schedule. The interviews were conducted in private and the answers given by the participants provided a complete picture on how an agent in undercover drug trafficking criminal investigation should be recruited and managed.

- Written permission was obtained from all participants, who signed an informed consent form. The nature of the study and plans for using the results was explained by the researcher.
- The researcher ensured that participants were not in any way guided or lead as to what they should say and only asked questions relevant to the recruitment and management of agents and the researcher accepted the given answers from the participants.
- The researcher was courteous and respectful at all times. To maintain rapport with the participants and to invoke general feelings of closeness and trust, the researcher showed compassion and interest through body language (smiling, maintaining eye contact, and leaning forward).

### **1.11.3 Personal experience**

The researcher has twenty-three years of experience in the SAPS of which seventeen years within the Crime Intelligence Department. The researcher has extensive experience as an intelligence operative/handler during which undercover agents have been recruited and managed in project-driven investigations pertaining to drug-related offences. The researcher has obtained a National Diploma in Police Management from Technikon SA during 1997, a B-Tech degree in Forensic Investigation from Unisa in 2009 and a B-Tech degree in Security Risk Management from Unisa in 2011. The researcher has received various kinds of internal training within Crime Intelligence and has also completed the Precursor Chemical Control Course at the International Law Enforcement Academy (ILEA) in Gaborone in Botswana, which was held by the United States Drug Enforcement Administration (DEA).

### **1.12 Data analysis**

Data analysis is the process of bringing order, structure and meaning to the mass of collected data (De Vos et al., 2011:397). According to Creswell and Clark

(2007:131) qualitative analysis begins with coding the data, dividing the text into small units (phrases, sentences and paragraphs) and assigning a label to each unit, which was done in this study.

Creswell (2013:182) and Leedy and Ormrod (2010:153) describe a data analysis spiral, which is applicable to a wide range of qualitative studies. To adhere to the guidelines of Barbour (2014:253), Creswell (2013:182), and Leedy and Ormrod (2010:153) in bringing order to the data, the following steps in the spiral analysing method were used:

- The researcher organised the data by using a computer database.
- The researcher perused the entire data set several times to get a sense of what it contains as a whole.
- General themes and categories were identified, as well as subcategories and subthemes and then each piece of data was classified accordingly.
- The data was finally integrated and summarised. The outcome of the data analysis enabled the researcher to make findings and recommendations regarding the research questions.

### **1.13 Trustworthiness**

Wagner et al. (2012:137) and Du Plooy-Cilliers et al. (2014:258), mention that the term *trustworthiness* is used for validity and reliability in qualitative research. To ensure trustworthiness, the researcher adhered to the following:

#### **1.13.1 Credibility**

The researcher interpreted the data correctly and exactly as it was received from the participants. The researcher used multiple sources of data collection and spent long periods of time with the participants. To ensure credibility, the interviews was in a safe and non-threatening environment and the relationship with the participants was open, relaxing and trusting. The latter helped the researcher to obtain a better understanding of the participants' insights to the problem. The fact that the findings will be believable from the participant's point of view will increase the credibility of this study. Furthermore, to ensure that the research is credible, the researcher served as a data collection instrument and remained neutral at all times with regard



to the subject under study. Information was also gathered on the basis of the research questions to ensure that they measure what they were intended to measure as accurately as possible.

### **1.13.2 Transferability**

The theoretical knowledge obtained from this qualitative study can be applied to other similar individuals, groups or situations. If another researcher applies the findings to similar circumstances and use the same qualitative methods, the same results will be obtained.

### **1.13.3 Dependability**

To ensure that dependability was achieved, the researcher made sure that the research process was logical, traceable and clearly documented. This included details of the chosen methodology, data collection methods and coherent linkages between the data and reported findings. In this study, several methods were used to collect data to measure the same aspect.

The spiral method, as described by Leedy and Omrod (2005:150) was used to analyse the data, which helped to prevent the researcher from making the wrong deductions and interpretations. The researcher was cautious and did not make his own deductions or suggestions to direct the opinions of the participants. The researcher also did not manipulate the data to fit a certain viewpoint.

### **1.13.4 Confirmability**

To ensure conformability, the researcher kept a detailed record of all literature consulted in order to show that the findings and the interpretations of those findings did not derive from the researcher's imagination, but are clearly linked to the data. The findings and interpretations of the research study relate to the data collected. Since the researcher used the spiral method to analyse data, confirmability was ensured. The detailed explanations of how the data was collected and analysed will support confirmability. It will also enable other researchers to scrutinise the research design and if they were to investigate the data that was collected, they will come to similar conclusions.

#### **1.14 Ethical considerations**

The researcher adhered to what Leedy and Ormrod (2013:104-105), Mouton (2001:15) Creswell (2014:98) and Salkind (2012:85) suggest regarding ethical considerations. The participants were protected from physical and psychological harm and were not subjected to unusual stress or discomfort. Written informed consent from all participants was obtained and they were informed about their right to privacy, which would be respected. The researcher also made sure that the participants did not have any commitments towards the SAPS and all their answers were included in the interview schedule. The participants were treated in a respectful manner. At no stage were the participants deceived and the researcher at no stage took sides. The researcher discussed all the results with the participants no matter if it was favourable or not for the participant. In order for the participants to disclose information, the researcher developed a rapport and arranged for an environment that was trustworthy, safe and free from interruptions or intrusions.

In an effort to give back to the community, all the findings were reported in a professional and honest manner without misrepresentation. Under no circumstances was data fabricated or falsified. An accurate account of the information was presented in the final research rapport. The use of another person's ideas or words was acknowledged in text and in the list of references. The participation of the participants was also acknowledged without revealing their identity. The raw original data is being kept in a safe environment which is code protected.

In addition, the participation in the study was done on a voluntary basis. All the participants were informed about the reason for the study and what it aimed to achieve. The informed consent was documented and done in the language that was understandable to the participant. The researcher made sure that the participants understood the consent. All the information that was gathered, was handled confidentially and, anonymity of all participants, including names, was guaranteed. The participants were informed that they could at any stage withdraw. The researcher reassured the participants that their names would not be disclosed and that the interview schedules would be filed in a safe and sure environment. The participants signed a declaration of voluntary participation and participants were

guaranteed that refusal to participate would incur no penalty. Once all the data had been collected and analysed, the researcher compiled a report on the findings as accurately and objectively as possible. The UNISA Code of Ethics was adhered to at all times in order to ensure ethical standards of quality, confidentiality and anonymity. The researcher made an ethical declaration to UNISA concerning this research on its conclusion.

In compiling this scientific research, the researcher conformed to standards of what is right or just within a scientific research. The researcher adhered to the correct referencing and acknowledgement of sources, so as to avoid plagiarism.

### **1.15 Research structure**

The research report is divided into the following chapters in which the research questions are discussed, the research design is presented and the findings of the research are interpreted:

Chapter 2: The use of agents in undercover drug trafficking criminal investigations. In this chapter, the researcher discusses topics of undercover investigations and the objectives of criminal and undercover investigations. The nexus between crime information, intelligence and evidence are examined and reported. The evidence gathering functions of agents is also discussed.

Chapter 3: The recruitment of agents in undercover drug investigations. The chapter focuses on the aim of this research, which is to determine how agents should be recruited for undercover drug trafficking criminal investigations. The recruitment processes of agents are discussed.

Chapter 4: The management of agents in undercover drug trafficking criminal investigations. In this chapter the researcher explains how agents should be managed effectively and efficiently in undercover drug trafficking criminal investigations. Legal aspects and administrative processes pertaining to the use of agents are discussed. The infiltration process of agents and the agent's cover story is also elaborated on.

Chapter 5: Findings and recommendations. This chapter concludes this study with a conclusion and recommendations on the findings of the study.

## **2. CHAPTER 2: THE USE OF AGENTS IN UNDERCOVER DRUG TRAFFICKING INVESTIGATIONS**

### **2.1 Introduction**

The increasing sophistication of crime committed sometimes necessitates the use of agents in undercover operations. When conventional methods of policing have failed to produce the desired result, unconventional methods such as undercover criminal investigations need to be applied to reach the ultimate goal of criminal investigation, which is the gathering of evidence to obtain a conviction in court. For the purpose of this dissertation the researcher made use of terms, such as undercover operations, undercover investigations, working undercover, trap or agent, which all refer to an agent or the use of an agent. This is done due to certain words and terms not fitting into certain sentences and therefore required to be replaced accordingly for the reader to understand better.

The use of undercover agents is an investigative technique where disguises and pretexts are used to gain the confidence of criminal targets in order to determine their illegal activities. In this chapter, the researcher informs the reader on what undercover investigations entail, the objectives of undercover investigations and the different functions of agents, and lastly the reason why agents are used. The nexus between crime information, intelligence, and evidence is also discussed.

### **2.2 The concept of undercover investigation**

Brandl (2014:6) and Palmiotto (2013:7) states that there are different types of investigation, such as crime and traffic accident investigations; investigations into character and background with the aim to determine eligibility for positions of trust and organised crime investigations. Brandl (2014:6) refers to the investigation of crime as reactive investigations with the purpose to find evidence and divides it into four stages, namely the discovery of the crime; the preliminary investigation; the follow-up investigation and the closure of the investigation. Benson et al. (2015:9), Caldwell (1965:317), Technikon SA (1996:2), Van Der Westhuizen (1996:1) describe crime investigation as a systematic search for the truth with the primary purpose of finding a positive solution to the crime with the help of objective and subjective evidence. Van Heerden (1986:214) explains that objective evidence

refers to exhibits and the analysis thereof, whilst subjective evidence refers to evidence from people who were directly or indirectly involved in the incident, such as an agent or any other human source. Caldwell (1965:317) and Dowling (1979:1) believe that the gathering of evidence is important to strengthen the evidence against the alleged criminal target. However, they do not refer to a specific method with regard to the gathering of evidence, but according to Berg and Horgan (1988:6) the gathering of evidence also includes the use of people in undercover investigations. With this explanation in mind, it can be safely argued that the evidence gathered and presented by an agent in a court of law is subjective evidence due to him/her testifying in court. Evidence is discussed further in paragraph 2.4.3.

Pena's (2000:196) understanding of what an undercover investigation means is described as dropping one's real identity and assuming another that blends into the area and the circumstances of the investigation. Dempsey and Forst (2010:320) add another aspect to undercover investigation by stating that an undercover investigation is where an agent assumes a different identity to obtain evidence, but they are of the opinion that it can also happen to achieve another investigatory purpose, although they do not explain and elaborate on what the other investigatory purpose entails.

Palmiotto's (2013:92) point of view is that during undercover investigations, agents obtain evidence about criminal activities by associating with criminals or working within a criminal organisation. Benson et al. (2015:27), mentioned that an undercover investigation is an investigation technique that is almost exclusively conducted by the SAPS and it is carried out in secret against a criminal target. According to them, it is usually done where a high profile crime figure is involved and the sole purpose is to obtain evidence for use in court. They however point out that during the court case, the whole investigation is exposed including the existence of the undercover agent. Brandl (2014:7) argues that an undercover investigation is a controversial investigation strategy, which is covert in nature and according to him, is necessary to effectively investigate drug dealings and drug trafficking.

Girodo (1998:481) mentioned that an undercover investigation is a specialised investigative method which does not replace other traditional methods, but is used as a last resort or in exceptional circumstances to gather evidence. It is done in a strategic and covert manner whereby a strategy is put into place, which entails a plan of action of how the agent will approach or make contact with the criminal target in order to gather evidence. The gathering of evidence is done covertly as the criminal target is unaware that the agent is a police official or official that is authorised to gather evidence covertly. Such evidence is gathered by the recruitment of suitable agents to infiltrate a group or syndicate for the purpose of gathering information concerning illegal activities. In *S v Pule* 1996 (2) SACR 604 (O), the judge ruled that undercover investigation is an indispensable tool to gather evidence against criminal targets since criminals are sly and operate in a sophisticated way.

An open-ended question was posed to the participants, namely: What is the objectives of undercover operations? Their answers were as follows:

- The majority of the participants are of the view that the objectives of undercover operations is to make an impact or add value to the investigation process.
- One of the participants is of the opinion that undercover operations should not be a 'Play the Number Game'. He feels that the number of reports and number of arrests should not be the main focus of undercover operations. On probing his answer further, this participant mentioned that the arrest of a high profile criminal, who has been operating for the past 20 years cannot be finalised within six months. He is further of the opinion that the number of resources and the amount of money allocated by management to a specific operation are sometimes just the bare minimum to have a successful investigation.

Some of the participants' answers did not directly address the question, but there are important aspects that need to be pointed out. The researcher is of the opinion that some of these aspects needs to be further researched. The following aspects were mentioned by the participants:

- Two participants mentioned that agents should be made aware of the fact that they will not be promoted while they are undercover. Although the information

provided had been vague, it was suggested that it is possible that agents' pension funds might remain static and might not grow while agents are 'off the grid', however it seemed that the participant had not been sure about this fact.

- One participant had a very strong opinion on the identity of agents, which is revealed after the undercover operation has been finalised and terminated. He was of the opinion that there had not been sufficient protection for one of the agents he managed after the termination of the undercover investigation. According to him, it was the reason why he resigned from the SAPS.
- All the participants had some or other opinion about problematic administrative issues of an undercover investigation. One participant's answer suggested that an undercover operation is a "smart way" to tackle crime, but sometimes red tape might jeopardise the investigation as, according to the participant, police officers spend almost 80% of the time on red tape and 20% on the real work when it comes to undercover operations. Although the participant did not provide a clear explanation on exactly what the red tape he referred to exactly was and which authorities were involved, the researcher could derive that red tape issues referred to laborious and time-consuming administrative procedures. This includes obtaining permission for the necessary logistical arrangements and resources during the investigation. In several cases resources were finally obtained just before the undercover operation had been terminated.

The researcher knows from experience that undercover investigations are a covert crime investigative method used to investigate and detect crimes that are committed in secret by using an agent. The agent supposedly takes part in crime to gather evidence against a criminal target. It is the researcher's point of view that it is therefore an important part of the criminal investigation function and that such operations are highly specialised with certain objectives. It is thus important to investigate the objectives of criminal investigation because undercover investigations form part of criminal investigation.

### **2.3 The objectives of the undercover investigation**

From the experience of the researcher, undercover investigations are seen as exciting and glamorous, but it should always be taken into account that the



objectives of an undercover investigation are to achieve the objectives of criminal investigation. Van Rooyen (2004:152) states that undercover investigations are fraught with danger and psychological pitfalls, which can have an influence on reaching the objectives of an undercover operation.

In order for the objectives of the undercover investigation to be achieved, a great deal of discipline is required, from the agent, the investigating officer, and the supervisors alike. A summary of what Brandl (2014:9), Lee (2004:116), McDevitt (2012:153), Palmiotto (2013:92) and Van Rooyen (2004:149-150) see as the objectives of undercover investigation are briefly discussed below:

- **To determine whether a crime is being planned or committed**

Certain offences, such as drug trafficking, are usually committed in secret by persons who agree among themselves on the commission of an offence and will therefore not disclose its commission. Such offenses require the use of agents in undercover criminal investigations due to the secret nature of such crimes where little or no trace of the commission of a crime is left. Through practical experience, the researcher has gathered that the use of agents in undercover criminal investigations would be more reliable than any other human source. The agent's primary objective is to determine if a crime is being planned or committed.

- **To identify criminal associates and all persons involved**

Another objective of undercover investigation is to identify the criminal targets, to identify associates of the criminal target and to determine their particular role in the organisation. An agent, when infiltrated into the criminal's inner circle, can quickly observe and properly identify members and associates of the inner circle involved in committing and planning of crimes.

- **To obtain evidence for court**

The most important objective of undercover investigations is to obtain evidence. The agent has the opportunity to obtain evidence about the whole criminal operation and, in the case of undercover drug trafficking investigations, where the proceeds of the crime go to. Evidence about the location of the assets can be determined and assets purchased from proceeds of drug trafficking can be located.

- **To determine the most opportune time to affect an arrest**

Evidence gathered by agents in undercover investigations, assists in determining the suitable time and place for the execution of arrests and to conduct police raids<sup>1</sup>. Knowledge of the accurate time to arrest criminal targets is beneficial in locating all criminal targets during arrest and assists in predicting whether they will attempt to resist the arrests. Effecting arrests and conducting raids are dangerous work as the wrong timing could be detrimental to the well-being of police officers, especially in cases where police officers are ambushed.

- **To test reliability of informants or witnesses**

Evidence and information is also supplied by informants during an undercover drug trafficking investigation. An additional objective of undercover investigations is to test the credibility and reliability of an informant's information. Informants who are reliable, will continue to assist in the operation and will be remunerated or rewarded accordingly, whilst unreliable informants' services must be terminated.

- **To obtain evidence for arrest and search warrants**

The last objective of undercover investigations is to obtain evidence for search warrants and arrest warrants. The arrest warrant is authorised by any magistrate or justice of the peace in terms of section 43 of the Criminal Procedure Act which is based on evidence of the agent which appears in a statement made by the agent under oath that there is a reasonable suspicion that the criminal target in respect to whom the warrant is applied for has committed the alleged offence. A search warrant in terms of section 25 of the Criminal Procedure Act may be issued by a magistrate on evidence gathered by agents for the police to search any person or premises. Miller (2006:2) and Lee, (2004:116) emphasises that the goal of undercover investigations is to develop prosecutable evidence that can hopefully lead to a larger scale shutdown of the criminal enterprise when search and arrest warrants have been executed.

In analysing the explanations of Gardner (2014:2), Osterburg and Ward (2010:5) Palmiotto (2013:92) and Pena (2000:192) with regards to what the objectives of

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<sup>1</sup> A police raid is a visit by the police, immigration officers or other officials, often in the early morning, hoping to use the element of surprise to arrest suspects.

criminal investigation are, and by studying the opinions of Lee (2004:116), McDevitt (2012:153), Palmiotto (2013:92) and Van Rooyen (2004:150) regarding the objectives of undercover investigation, the researcher came to the conclusion that the gathering of evidence is one of the common objectives in these two investigation methods.

The participants were unanimous in their answers to the questions as to what they regard as the objectives of an undercover investigation. The participants mentioned the gathering of evidence to obtain a conviction and neutralise the threat as the primary objective. The majority of the participants were of the opinion that the objectives of the undercover investigation should be explained by the supervisors and investigators to the agent to see to it that the agent understands his or her role in achieving the objectives of the undercover investigation. It was mentioned by one of the participants that the objectives must be realistic and suggested the use of the 'Troika System<sup>2</sup>' which is a prosecution-driven or an evidence-driven investigation. The majority of the participants are of the opinion that all the role players must agree on the objectives to be achieved.

It is important that the evidence derived from information that has been analysed to produce intelligence and is presented in court as evidence be regarded as accurate and reliable. Crime information, crime intelligence and evidence are therefore discussed next.

#### **2.4 The nexus between crime information, crime intelligence and evidence**

By studying literature sources such as Benson et al. (2015:22), Houck, Crispino and McAdam (2012:29), O'Hara and O'Hara (2003:7) and Palmiotto (2004:43) it became evident that information, intelligence and evidence are the tools that the investigator utilises in search for the truth. Information and intelligence, which are collected, must result in evidence to prove that a crime has been committed and that a criminal target was involved in the committing or planning of an offence. Information and intelligence can therefore be seen as the indicators on the path to finding sufficient

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<sup>2</sup> This is the investigative methodology used by the Directorate of Specialised Operations (DSO), which integrates analysis/intelligence, investigation and prosecution, and which is based on the FBI model.

evidence for a trial. It is thus important to discuss what crime information and intelligence is.

#### **2.4.1 Crime information**

Palmiotto (2013:37) states that investigators cannot solve crime without accurate crime information. According to Benson et al. (2015:22), crime information is the lifeblood of any investigation and according to them, it should be properly coordinated so that it can be prepared as evidence for court. Govender's (2001:1) point of view of crime information, is that crime information is complex and multi-faceted. According to Unisa (2004:218) crime information is simply 'raw' facts and data. Smit, Minnaar and Schnetler (2004:168) on the other hand, mentioned that crime information usually consists of small, fragmented pieces of information. Bell (2002:194) in his explanation of crime information refers to unevaluated material as written reports, rumours, observations, electronically stored data and photographs from which evidence is processed. Lowenthal (2011:57) argues that crime information must be processed and analysed before it can be regarded as crime intelligence. From the researcher's experience, it can be said that most of the information received from agents still need to be analysed and processed before it can be regarded as intelligence and presented as evidence. The analysing and processing of crime information is known as the intelligence gathering process (Houck et al., 2012:28).

There are different types of information collection techniques, namely covert and overt collection. According to Lyman (2013:117) and the Detective Learning Programme of the SAPS (2004:2-6) overt collection of crime information includes personal interaction with people, such as witnesses of crimes, victims of crime or suspects themselves. Covert crime information collection methods are physical surveillance, electronic surveillance, and the use of informants and agents.

From the participants' answers, some examples of open sources of information are the internet, the print media, Facebook and telecommunication enquiries. Closed and classified sources of information are the intelligence community<sup>3</sup>, information

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<sup>3</sup> Intelligence community refers to government and other public agencies as well as private agencies that gather, assemble, and report information that pertains to world or national security.

analyses, and reports from surveillance teams, agents, and registered informants. The majority of the participants mentioned that pieces of information, regardless of the method in which they were collected, are analysed to become crime intelligence. In the next paragraph, crime intelligence and how it is processed, is highlighted.

#### **2.4.2 Crime intelligence**

According to Prenzler (2012:75), Smit et al. (2004:168), Swanson, Territo and Taylor (2008:74), and Zinn and Dintwe (2015:445) crime intelligence is information that has been evaluated, analysed, and produced with careful conclusions and recommendations. The purpose of crime intelligence is to be used in the prevention of crime, or to conduct investigations and ultimately to prepare evidence for the prosecution of offenders (Milne, 2013:3 and Prenzler, 2012:76). Lyman (2013:117) is of the opinion that the primary purpose of crime intelligence is to gather evidence on criminal targets by utilising covert intelligence methods such as surveillance, informants and undercover agents. He emphasises that the purpose of collection of crime intelligence is to identify and to arrest major crime figures.

After crime information is received in its raw state, it goes through a process (the intelligence gathering process) in which the information is verified and analysed to become crime intelligence. This analysis stage forms part of the crime intelligence gathering process and consists of several steps, which will not be discussed because of the limited scope of this study. The participants were asked to elaborate on what they regarded as crime intelligence. Their responses are summarised as follows:

- Confirmed information from two or more sources that is relevant and will aid in a criminal investigation.
- Information which is gathered and relates to a specific crime or syndicate. The majority as the participants however mentioned that investigators need to filter out irrelevant information and to confirm the relevant information before using it as crime intelligence.

After the information has been analysed to become intelligence, the evidence which flows from the intelligence is used in court cases, which is elaborated upon in the next section.

### 2.4.3 Evidence

There are different types of evidence which can be used to prove the elements of a crime. From the literature study, it became evident that different authors provide different categories of evidence. According to Buckwalter (1984:6), Gilbert (2012:52), Osterburg and Ward (2010:21), Palmiotto (2013:29-30) and Van Rooyen (2008:106), evidence falls into five categories, namely:

- Indirect evidence or circumstantial evidence, which implies that the offender committed the act where, for example, the witness saw the offender walking away from the automobile with a package of drugs in his hand.
- Testimonial evidence, which is oral evidence provided by the witness. It does not need to be accompanied by real evidence.
- Documentary evidence, which includes everything from photographs to handwritten and printed materials.
- Real evidence, which consists of physical objects such as handguns or fingerprints. This type of evidence must be accompanied by testimonial evidence.
- Direct evidence, which, according to Buckles (2003:62) and Schwikkard and Van der Merwe (2002:18-19) is direct information or original evidence and is an actual sensory observation or experience. Direct sources of information include evidence from:
  - victims and complaints;
  - accomplices and suspects;
  - persons involved in the event, but not present (informants); and
  - witnesses directly involved in the event, such as agents.

Agents can thus be seen as sources of information who provide testimonial evidence about their experience and observation, which is classified as direct information. O'Hara and O'Hara (2003:7) further divide people as sources of information into two categories:

- regular sources, which are found on the crime scene and include witnesses, victims and reports; and
- cultivated sources of information, such as paid informants and agents.

Regular sources will differ from crime to crime, whereas cultivated sources may be used to obtain evidence about different crimes where they are tasked to operate and gather evidence. From the above discussion, the researcher argues that agents are cultivated sources of information because they obtained evidence through their observation and experience in their interaction with criminal targets. Direct evidence can therefore be obtained from an agent. Questioning the sample about what they regard as evidence, the following aspects came to the fore. One participant said that evidence is a direct link between proving the existence of a crime and the accused.

The majority of the participants mentioned that evidence is any information or intelligence that can be used against a criminal target in court. One participant mentioned that evidence in drug-related cases should be supported by documentation and offered the following example:

An agent that gives testimony in court regarding a drug purchase in an undercover operation will be supported by forensic laboratory reports on the drug being tested as well as audio and visual recordings of the drug transaction.

Evidence is the crux around which a criminal investigation and subsequent trial centres and for evidence to be regarded as admissible, it should be gathered by the agent in a legal manner (Lochner & Zinn, 2015:42). One of the main functions of an agent is to gather evidence, therefore it is important to examine what an agent is and their functions with regards to the gathering of evidence. According to Lee (2004:115) the use of agents is a time-tested investigative technique to gain the confidence of criminal targets in order to gather evidence.

## **2.5 Description of an agent**

Criminal Intelligence Guide for Analysts (2008:2), Louw and Lombard (2015:16), Palmiotto (2013:92), Unisa (2004:306), Welch (2000:1) and Benson et al. (2015:23), mention that an agent is a police official who infiltrates a criminal group, threat, activity or syndicate for the purpose of gathering evidence. Traps and Undercover Operations (2015:3) also mentioned that section 252A (1) of the Criminal Procedure Act states that the following persons may be used as agents or may engage in an undercover operation:

- any law enforcement officer;
- any official of the State; or
- any other person authorised thereto for such purpose.

Knight (2014:1-2) mentions that the focus of an agent is on the clandestine relationships with those around him or her, but the emphasis of the relationship is to gather evidence. Burchell (2013:235), Du Toit, de Jager, Paizes, Skeen and Van der Merwe (2006:24-8A-8B), Hoor (2013:182), Joubert (2010:330), Van der Westhuizen (1996:95) and Van Rooyen (2004:8) refer to the definition that was determined in the case of *S v Malinga* 1963 1 SA 69, that an agent is a person who, with the view to securing a conviction of another, proposes certain criminal conduct that creates the occasion for someone else to commit an offence.

According to Marais and Van Rooyen (1990:149) an agent is also known as stool-pigeon, agent-provocateur, decoy and police-spy. The use of agents could be seen as a “proactive investigation technique.” Due to the secret nature of drug trafficking, it is necessary for agents to act as an agent by assuming a role other than that of a police officer. Joubert (2010:329) is of the opinion that in cases of organised crime, it is necessary to use agents to join the crime syndicate, to set traps where the drug dealer is unaware that the ‘buyer’ is actually a police official. In this regard Kriegler (1993:505) mentions that agents are usually used in the investigation of illegal diamond dealings and narcotics, which can be seen as organised crime in the opinion of the researcher.

Lyman (2013:143) adds that undercover investigations require the agent to assume a different identity and sometimes assume roles where he or she is tempted to do things that are illegal. This alerts us to the fact that any police administration must be careful in the selection of the proper candidate(s) as agents to do undercover work (Lyman, 2011:268). Dempsey and Forst (2010:320) and Marx (1988:65) state that in an attempt to play the role of a criminal, the agent’s role is generally the role of another person. The primary purpose of the agent is to play a role without anyone realising that he or she is playing that role.

According to Lyman (2011:268) the use of agents is not recommended for every police organisation because of the resources required for a successful undercover



criminal investigation. These resources include manpower, training, funding, specialised equipment, and other unique resources such as guidance and direction from prosecutors, electronic programs, such as Analyst Notebook<sup>4</sup> to interpret evidence gathered by the agent. This also includes evidence obtained through surveillance.

Joubert (2010:330) mentions that in terms of section 252A (1) of the Criminal Procedure Act, police officials are therefore authorised to make use of agents and to engage in undercover criminal investigations in certain limited circumstances. Watney (2010:838) supports Joubert (2010:330) by stating that in *Kotzé v The State* (429/08) [2009] ZASCA 93 the judge emphasised that the use of agents and undercover investigations in order to detect, investigate and uncover the commission of an offence, is permissible. This is evidence that an agent can be used in undercover investigations.

Du Toit et al. (2006:24-8A), Kriegler (1993:505), and Kriegler and Kruger (2002:638) refer to the *S v Mabaso* 1978 (3) SA 5 (O) case where it was decided that the evidence of an agent must be treated with caution as agents pretend to be involved with criminal activities, whilst they have a motive to arrest the criminal target and secure his or her conviction. Du Toit et al. (2006:24-8A), further stipulates that the reason for exercising caution when using agents is due to such agents being persons of low repute, as determined by Judge Claasen in *R v Vlok and Vlok* 1954 (1) SA 203 (SWA) 205C. In this case, the agent that was used as a witness was referred to as 'one of the lowest and meanest villains to be found on earth.'

Burchell (2013:237) however, states that in *S v Dube* 2000 (2) SA 583 (N), the court evaluated the admissibility of evidence obtained by means of using an agent. In reaching the conclusion that the admission of the evidence had not rendered the trial unfair, the court in this case emphasised the importance of the following factors:

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<sup>4</sup> Analyst Notebook is a software program used for data analysis and investigation.

- The use of agents was the only method of preventing the offence.
- The accused participated willingly in the commission of the offence, despite the opportunity to withdraw.
- The methods employed by the agent were not objectionable.

### **2.5.1 Rational for the use of agents**

In order for agents in undercover investigations to be utilised correctly, all legal aspects with regards to utilising an agent in the gathering of evidence must be adhered to, which are discussed in paragraph 4.2. Louw and Lombard (2015:16) and Lyman (2013:117) mention that one of the primary responsibilities of any police organisation is the covert collection of evidence and in the South African context as contemplated in section 3 of the National Strategic Intelligence Act. According to Louw and Lombard (2015:42) covert gathering is to covertly or secretly gather evidence in support of the detection, investigation, uncovering or prevention of organised criminal conduct. Pena's (2000:196) explanation why agents are used in covert evidence gathering is that some criminals develop a skill and ability to conduct their criminal activities in ways that defy detection by overt techniques of investigation, and therefore the situation requires the police to engage in covert investigations.

Lyman (2013:150) and Benson et al. (2015:23), state that undercover investigations have been used by police agencies for decades and are an important part of the criminal investigation function, but they are highly specialised. Although this is true, the use of agents and the reasons why agents have been used in the South African context since the turn of the 20<sup>th</sup> Century, is a contentious aspect and is widely criticised in various jurisdictions (Marais & Van Rooyen, 1990:149 and Watney, 2010:835). This is due to undercover work being both covert and deceptive (Marx, 1988:12). Covert and deceptive techniques, according to Marx (1988:12) also offers a means of discovering otherwise unavailable evidence, which may constitute an invasion to privacy or a violation of trust. Furthermore, Birzer and Roberson (2012:292) reason that undercover investigation is an investigative technique that has been extremely successful over the years in law enforcement operations, especially in the investigation of narcotic-related crimes. They further mention that

agents are recruited for drug-related investigations to obtain evidence on the drug-related activities of the drug traffickers and their associates.

Adding to this reasoning, Van Rooyen (2008:275) voices his opinion that certain offences and crimes are committed in secret where no trace of the commission of the crime is left and for this reason agents can be used to gather admissible evidence. Burton (2015:1), Lyman (2013:150) and O'Conner (2011:1) articulate that undercover investigations are viable options for police investigators because they can obtain admissible evidence that is not otherwise available through traditional investigation methods and statements from witnesses. Birzer and Roberson (2012:292) are however clear that the traditional methods first must have failed in order to justify the use of agents to gather the relevant and admissible evidence.

Fredrickson and Siljander (2004:86) are of the opinion that narcotic crimes are largely underground and due to the secretive nature of the illegal drug business and activities, they argue that it is often necessary for an agent to obtain the evidence that will be used in court. Lee (2004:116) emphasises that through their roles, the agents have the opportunity to learn where drugs and evidence are located. In addition to drugs and evidence of the crime, Lee (2004:116) mentions that agents should be alert to gathering evidence about the drug proceeds and where items purchased from the drug proceeds are located. From the researcher's experience, the agent will not only gain considerable evidence on a specific individual, but also information and evidence about the entire drug distribution organisation networks, which will expose the methods and techniques used by them to distribute and sell the drugs.

Birzer and Roberson (2012:292) mention that agents are able to gather information on drug suppliers, locations of major stash houses, distribution methods, key distributors, quantities and qualities of drugs, drug-related assets, smuggling routes and loading vehicles. The abovementioned authors also mention that security measures utilised by the drug traffickers cannot be obtained by normal policing methods of investigation and therefore agents are used. One of the reasons why agents are used is to determine the different kinds of criminal activities and methods and patterns that criminal targets use (Burton, 2015:1 and O'Conner, 2011:1).

Security Services M15<sup>5</sup> (2015:1) further states that the secret gathering of evidence is done to obtain detailed knowledge of criminal targets or criminal organisations, their key personalities, infrastructure, intentions, plans, and capabilities. Harfield and Harfield (2012:3) highlight that through covert evidence gathering methods, useful supporting evidence is generated to secure a conviction, for example, covert evidence can be used to secure evidence of manufacturing, importation, and distribution of drugs that would not otherwise be available to the prosecuting authority. Marx (1988:61) mentions that crime intelligence investigations use covert tactics to gather information about crimes that have already occurred, or might be planned, or are in progress. The agent's role involves observation rather than direct interaction. The agent acts as an 'information sponge' or being 'the fly on the wall.'

From the participants' explanation, agents were utilised for the following:

- to present evidence in court;
- to infiltrate syndicates, where one participant mentioned that this allows the syndicate to gain trust of an agent that can result in the conviction of the criminal target; this will allow the agent to purchase drugs which will be used as evidence;
- to report on organised crime before and when they are happening;
- to gather information and evidence in a covert manner; and
- to identify weak links in the syndicate.

One participant provided an answer that needs to be directly quoted. He was of the opinion that "agents do not only disrupt the syndicate, but can 'dismantle' their illegal activities if recruited and utilised effectively." On a probing question what the participant meant by the word 'dismantle,' the participant explained "to infiltrate the core of an organised crime syndicate where evidence can be gathered on each criminal target." In his explanation, he was also of the opinion that the role of each criminal target in the syndicate, as well as assets that are purchased through the proceeds of drug trafficking can be identified. His explanation of 'dismantle' also includes the arrest of all role players and the forfeiture of assets. The latter, according to him, can result in a syndicate being 'dismantled.'

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<sup>5</sup> M15 is United Kingdom's national security intelligence agency.

## **2.6 Summary**

The use of agents in undercover operations is to gather information and evidence in a covert manner. Evidence stems from information which has been processed to become crime intelligence. The crime intelligence is then used as evidence. There are sound and legal reasons why agents can be used in undercover operations. In undercover investigations, the use of agents is as a proactive investigation technique whereby the agent assumes a different identity and sometimes undertakes roles where he or she is tempted to do things that are illegal. In the South African context, agents are generally police officials who infiltrate a criminal group, threat, activity or syndicate for the purpose of gathering evidence. Some regard this technique as being a controversial way of obtaining evidence.

The functions of an agent are to infiltrate criminal targets, gather information and evidence in a covert manner to obtain a successful prosecution. To find the truth in undercover drug trafficking investigation, the investigator uses the evidence of an agent. An agent is a cultivated source of information and the evidence obtained from an agent is regarded as direct evidence.

In order for an undercover investigation to be successful, the most suitable agents need to be recruited in order for evidence to be gathered in a covert manner. The recruiting process is discussed in the next chapter.

### **3. CHAPTER 3: THE RECRUITMENT OF AGENTS FOR UNDERCOVER DRUG TRAFFICKING CRIMINAL INVESTIGATIONS**

#### **3.1 Introduction**

The recruitment of agents is an important process for any undercover drug investigation. Undercover criminal investigations are highly specialised and require specialised training and management to successfully perform this function. The use of agents is a viable option because they provide information that cannot be obtained through traditional investigative methods. It is imperative for the investigator to have thorough knowledge of the criminal target before any recruitment takes place. Only suitable agents who meet the required criteria must be recruited. The most important criteria is the ability to obtain evidence covertly regarding the criminal targets identified in the undercover criminal investigation. Not every agent can function properly and professionally in an undercover capacity. Typically, the agent works with minimum direct supervision. Agents can be exposed to a number of enticements, which could result in compromising the agent's integrity or the integrity of the investigation. It is therefore of paramount importance that the agent recruited must have considerable personal integrity.

This chapter will focus on the aim of the research, which is to determine how agents should be recruited for undercover drug trafficking criminal investigations. The evidence-gathering functions of agents and the recruitment process are also discussed.

#### **3.2 The recruiting process**

There are various important aspects that need to be considered before recruitment can take place. The studying of the criminal targets and identification of the agent are aspects that are taken into account before the actual recruitment takes place.

The use of agents in an undercover investigation requires careful planning, preparation, and a complete understanding of what is to be accomplished. It is therefore important to know everything about the criminal target in order to recruit a suitable agent. This recruiting process is discussed chronologically in the following paragraphs, as it appears in textbooks.

### **3.2.1 Studying the criminal target**

Palmiotto (2013:93) states that by studying the criminal target, the investigation team will develop a strategy on how to successfully address the crime they are investigating and in the case of narcotic investigations, the drug syndicate. McDevitt (2012:157) is of the opinion that undercover investigations require an extreme amount of preparation, therefore as much information as possible should be gathered on the criminal target and his associates. In studying the criminal target, the investigating officer would need to explore and know the geographical area and the criminal surroundings in which the criminal activities take place and establish an appropriate cover story (see paragraph 4.3.1.2) in order to recruit a suitable agent. According to Lee (2004:124), Lyman (1993:35) and Palmiotto (2013:93) the following checklist should be completed by the investigator to completely identify and study the criminal target:

- Full names, aliases, and nicknames. If the suspect holds public office, the title and the name of the department.
- Addresses - the past and present, which include the residential and business addresses.
- Family and relatives. An acquaintance with members of the family may suggest another source of information. This should also include any addresses and other information such as mobile phone numbers, names of their respective banks, and assets.
- Associates. This knowledge is essential to the understanding of the criminal target's activities and with whom the criminal target associates. These associates must be fully identified and photographs obtained before any undercover investigation commences.
- Character and temperament of the criminal target should be known. The level of violence (physical and emotional) the agent will most likely encounter from the criminal target will determine the need for additional security, technical support, surveillance and other manpower.
- Vice offenses such as drug addiction, alcohol and gambling. It is common that criminal targets involved in drug trafficking spent a lot of time at casinos. It is a means used to launder their monies gained from proceeds of drug dealing.

These casinos can be excellent venues for agents to acquaint themselves with the criminal targets. A criminal target who has a drug or alcohol addiction can be dangerous for the agent during any meeting or drug interaction, therefore the safety of the agent should be first and foremost of paramount importance. Previous information reports and arrest records may shed light on the criminal target's behaviour when under the influence of drugs and alcohol. This will dictate the need for more manpower to safeguard the agent.

- Hobbies. A common interest between the agent and the criminal target creates a strong bond of sympathy. This is a simple way of developing acquaintance.
- Education. The education of the criminal target will indicate the agent's desired level of education during recruitment. For example, if the criminal target is a practicing criminal attorney, the agent should have studied law or have some background on criminal law.
- Occupation and specialty. The suspect's employment or business can indicate the criminal target's character, which provides a possible meeting ground for the agent and criminal target. The agent must therefore be recruited according to occupation and character of the criminal target. For example, if the criminal target is a real estate agent, the agent can appear as a rich businessman looking for an expensive home.
- Criminal history. A previous criminal record will confirm past illegal activities of the criminal target. A study of the criminal record and the cases will shed light and his or her modus operandi. This information will assist in the recruitment of a potential agent who have knowledge of crimes committed by the criminal target and also familiar himself or herself with the modus operandi used to commit such crimes.

From the participants' answers, the following should be investigated in the process of studying a criminal target in an undercover drug trafficking investigation:

- A full profile of the suspect must be obtained from internal and external sources of information. On a probing question, one participant mentioned that external sources include their land and air travel movements inside and outside the borders of South Africa, criminal record, vehicles, business and property belonging to the criminal target. The same participant regards external sources



as the South African Revenue Service (SARS), FICA<sup>6</sup> and other departments such as the Metropolitan Police.

- A SWOT Analysis<sup>7</sup> of the criminal target should be completed from information gathered from reliable informants and contacts. Understanding the weak points and knowing the criminal target fully will assist in the infiltration process.
- One participant mentioned that a lifestyle<sup>8</sup> audit of the criminal target, showing exactly what the criminal target does on a daily basis and assets used by him or her, should be conducted. All the participants mentioned that a comprehensive list of friends, associates and all persons working for the criminal target should be compiled. This will, according to them, assist in placing an agent within the syndicate.
- One participant regards the modus operandi of a criminal target as very important. According to him, knowledge about the modus operandi of the criminal target will help to formulate a strategy by which the suitable agent will be recruited.

After analysing the information from the participants, the researcher conducted further research on the usefulness of a lifestyle audit in order to add more value when studying a criminal target. According to Deloitte (2002:14-19) and Madinger and Zalopany (1999:121) the purpose of the lifestyle audit is to determine the financial profile of an individual, which will help to direct an investigation to the discovery of assets or documents thereto and to prove how money has been laundered. From experience, the researcher knows that drug trafficking is conducted for self-enrichment by most criminal targets who cannot afford the lifestyle they are leading. The lifestyle audit of criminal targets should therefore form part of the investigation regarding studying the subject.

After investigating the background and profile of the criminal target while studying the criminal target, the process to identify the right agent commences. In the next

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<sup>6</sup> The purpose of the Financial Intelligence Center Act is to assist in the identification of the proceeds of unlawful activities; combat money laundering; and combat the financing of terrorist and related activities.

<sup>7</sup> SWOT Analysis is a method used to evaluate the strengths, weaknesses, opportunities and threats of a criminal target in an undercover operation.

<sup>8</sup> Lifestyle audit is a study of a person's living standards to see if it is consistent with his reported income.

discussion the characteristics of a suitable agent and aspects that should be considered before an agent is recruited, are highlighted.

### **3.2.2 The Identification of an agent**

It is a difficult and a tedious process to identify a suitable agent. Birzer and Roberson (2012:293) mention that evaluating the strengths and weaknesses of the agent is important to determine his or her suitability for the undercover operation. Furthermore, the stability and overall maturity of the agent must be considered, along with any special skills and talents. Therefore, the agent's supervisor to be should first evaluate the characteristics of any potential agent to determine if the individual is suited for the undercover investigation. The successful identification of an agent does have an influence on the success of the undercover investigation (Palmiotto, 2013:92). In order for an agent to be successful, they must according to Birzer and Roberson (2012:293), Fredrickson and Siljander (2004:86), Gilbert (2010:389), Lee (2004:118-123), McDevitt (2012:155), Palmiotto (2013:92) and Van Rooyen (2008:277) possess certain characteristics. The following characteristics were identified and integrated with the information obtained from the participants:

- **Self-confidence and courage**

It is essential that the undercover agent has complete confidence in his or her ability to complete the assignment safely. A high level of confidence is required because undercover investigations require assuming a role that is often very different from the lifestyle of most police officers who will be used as the agent. If the agent lacks confidence, he or she will find it difficult to fulfil the role successfully. It also takes courage for an agent to meet with a known criminal to discuss purchasing drugs or the planning of crime. The agent has to associate with criminal targets that he or she would never meet within their professional and social settings.

- **Good Judgement and knowledge**

Demonstrating good judgement is certainly one of the most important qualities of a good agent. There is no place for an agent who continuously displays questionable judgement. Making the right decision, often under stressful or dangerous circumstances, is an essential element of a successful undercover investigation. Undercover investigations require officers to make decisions without supervision,

decisions for which they are responsible. From one participant's point of view, it sometimes happens that an agent must choose out of two options to make a decision of which neither option would be wrong.

Only agents with good judgement will be able to select the right decision. The majority of the participants mentioned that the agent must have sufficient knowledge of the crime that he is tasked to gather information on. From the researcher's experience, in the case of drug-related undercover investigations in general, agents must have knowledge on how drugs are bought, sold, diluted, transported, smuggled and used. One participant mentioned that the agent must be well versed in trafficker's 'language' and must know the street terminology for the different drugs, which in essence means that he should be 'street wise'. Another participant mentioned that an agent he used in the past with no experience in drugs was detrimental to the operation.

- **Personality**

An agent must be psychologically sound and have a gregarious personality. The agent's personality must be such that it allows him or her to communicate and interact with a wide spectrum of people. An agent must be able to work alone without assistance, and yet not be an introvert. One participant qualified his answer on the characteristics of an agent by giving an example. He mentioned that an agent who is an introvert would find it difficult working undercover at a night club where he or she needs to interact with different types of people to gather information. This participant also mentioned that agents who show uneasiness about an assignment should not be utilised.

Miller (2006:6) points out a very important fact regarding the characteristics of an agent. He alerts the reader to the fact that the agent must be able to purposefully and credibly establish, nurture, and maintain close relationship with a variety of different types of people, knowing that these relationships will ultimately be betrayed as part of a larger mission and the overall dedication to law enforcement.

- **Integrity**

All agents should take a polygraph test to ensure honesty. It has been revealed in the past that some agents have been just as dishonest, if not more so, than the persons they were supposed to gather evidence on. Honesty in an agent is also important in order to ensure that an over-zealous agent does not resort to entrapment<sup>9</sup> in order to please his or her superiors. This type of action can only lead to the evidence that was gathered to be inadmissible. A proper background investigation on the agent would assist to determine his or her honesty. This can be done by advanced profiling of the agent, inspection and auditing of his work history and personnel file to establish any written warnings, departmental or criminal proceedings against him. Recognition of good work and accolades in his personnel file will also confirm his integrity and honesty.

- **Morality**

The morality aspects of agents should be investigated in detail to ensure that a history of over-indulgence does not exist with regard to drugs or alcohol and the person is not a philanderer. The agent needs to be a person of sound ethics and good morals who has an upright character and is accountable for his or her actions.

- **Operational alertness and memory**

During undercover investigations, the agent must be attuned to the slightest change in the suspect's demeanour or involvement of unplanned accomplices. All the participants indicated another important quality that an agent should possess, namely good memory skills and the power to retain information without writing it down. The majority of the participants further mentioned that it is very important for an agent to remember minute details of interactions and narcotic activities during the undercover investigation and be able to document them later in investigative reports and statements under oath. This will enable the investigator to have an accurate account of what has transpired between the agent and the criminal target when documenting evidence for court purposes.

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<sup>9</sup> Entrapment is defined as inducing an individual into committing a crime for the purpose of arrest and criminal prosecution.

- **Quick thinking**

The agent must be a quick thinker as there is no way to prepare completely for the many unpredictable situations which may occur during this type of investigation. For example, the agent may be asked to participate in a crime or be offered an injection of heroin and then be able to react on what the situation demands. The agent's identity may be challenged or other difficult situations arise, demanding quick and decisive thinking and therefore the ability to remain cool, calm, and collective is essential in any undercover investigation.

Agents must be able to think on their feet during circumstances when things do not go exactly according to plan. For example, during drug transactions where criminal targets may attempt to rob the agent for his money or try to search the agent for any surveillance equipment. The agent can avoid being robbed or searched by creating a good first impression and commanding attention and respect when interacting with criminal targets.

- **Willingness**

The majority of the participants mentioned that it is not advisable to pressure anyone into an undercover role. To add to the participants' answers, the researcher knows that the success rate of any undercover investigation depends on the desire and motivation of the agent.

According to Fredrickson and Siljander (2004:86) and Gilbert (2010:389) agents must also clearly understand the inherent dangers and the potential of failure. They must be willing to put themselves in dangerous situations and rely on their own abilities. The agent must be willing to work long hours with minimum supervision while gathering evidence.

- **Physical appearance**

The agent must have the appropriate appearance for the role. For example, an agent must be well groomed and tailored if he is needed to play the role of an investment banker who can launder a drug dealer's money.

There are also other non-characteristic factors that should be considered in the recruitment process of finding a suitable agent. First and foremost, Palmiotto

(2013:92) reasons that the agent to be assigned must fit the specific case under investigation. For example, a drug trafficker may need a truck driver to move drugs from one location to another. This is an ideal situation to introduce an agent into the organisation. The selected agent must have the appearance of being a truck driver by possessing the necessary skills required to convince the criminal targets that he or she can perform the job.

Fredrickson and Siljander (2004:87) and Palmiotto (2013:92-93) point out that factors to consider when selecting the appropriate agent, include the age, race, gender, ethnic, socio-economic background, lifestyle, personality, and previous work experience. Palmiotto (2013:92-93) gives an example to support one of his reasons by stating that it would be unwise to select a white man to do undercover narcotic investigations in a black neighbourhood. In addition to this, Fredrickson and Siljander (2004:87) argue that members of some races tend to trust 'their own' more than they trust someone of a different ethnicity than theirs. According to them, this tendency can be exploited because an agent of the same ethnicity will tend to be more successful because the subject will be less suspicious when partaking in a criminal act, such as selling drugs. In the South African context, a practical example can be found in the Boeremag trial. In this case all the criminal targets and the agent that was recruited were from the same race, they were all male and they held the same political, cultural and religion believes. Subsequently, in identifying the right agent, the process of recruiting the agent commences, which is discussed in the next paragraph.

### **3.2.3 The recruitment of an agent**

Miller (2006:4) is of the opinion that those who seek involvement in undercover investigations are not always those who are best qualified. The screening and selection process include elements such as the agent's knowledge of tactics, weapons, legal principles, undercover strategies, evidence collection and preservation of evidence. According to Clark (2014:52-55) there are several different processes during the recruitment process such as identification of a suitable agent, which has been discussed in paragraph 3.2.2, and then the actual recruiting process which is an important step in the recruitment process and crucial to this research. Before the actual recruitment is discussed, it is important to discuss

the important approach strategies of the recruitment as discussed by Mashiloane (2014:91-92). His discussion is based on the South African Police Service Training Manual, Crime Intelligence Gathering: Policy Directives and Procedures.

### **3.2.3.1 Approach strategies**

The initial contact between the recruiter and the potential agent is extremely important. The approach will determine the success or failure of the recruitment process. There are a number of approach strategies which are normally used in the intelligence environment when recruiting an agent, depending on the profile of the potential agent, the prevailing circumstances and the situation. These common approaches are the development approach, the combined approach, the direct approach, and the indirect approach.

#### **3.2.3.1.1 Development approach**

In this approach, a relationship is established between the recruiter and the potential agent some time before the actual recruitment takes place. This can be done by interacting with the agent through social or departmental meetings where the recruiter befriends the agent and obtains background on the agent before actual recruitment takes place.

#### **3.2.3.1.2 Combined approach**

Here the recruitment is effected by a third party, while the identity of the initial recruiter remains concealed. For example, certain investigators are more skilled in identifying and recruiting suitable agents due to their experience and knowledge or acquaintance with the potential agent. These investigators may sometimes not be the best managers of agents and only initiate the recruitment process together with the investigator assigned to manage the agent in the undercover investigation.

#### **3.2.3.1.3 Direct approach**

This approach is also known as the cold approach. In this approach, no prior contact exists between the recruiter and the potential agent. For example, an agent becomes known to the investigator who suits the profile needed in the undercover investigation. The agent is met personally by the recruiter and is then requested to assist or to be evaluated.

#### **3.2.3.1.4 Indirect approach**

This approach is also called a 'false flag' approach. Here a 'legend'<sup>10</sup> is used by the recruiter to make contact with the potential agent. The recruiter will reveal his true identity only when necessary.

The participants were asked to elaborate on what approach strategy they utilised in the past when recruiting an agent. The following answers were presented:

- Most of the participants used the direct approach strategy where the handler approaches the agent directly after fully profiling the potential agent.
- Familiar police officers were utilised were they were tested in previous trap operations such as buy and bust operations and drug purchases of exhibits in accordance with section 252A of the Criminal Procedure Act. Once the agent is seen to be someone that can testify in court, he or she can be recruited.
- One of the participants mentioned that an agent was met informally (development approach). Time is spent with the agent during work and social events to check how he or she communicates with others and to establish if the agent would be able to defend himself or herself. The participant mentioned further that if the potential agent was asked directly to assist as an agent, the potential agent would probably be excited and agree to 'try it' by portraying to be very confident towards the recruiter. By meeting the agent informally, the handler will be able to establish if the agent would be able to 'live through it and remain committed.'

#### **3.2.3.2 Planning the recruitment**

Krause (2008:1) mentions that some law enforcement agencies have independent units or divisions dedicated to the recruitment, training, certification and management of undercover agents. To Mashiloane (2014:92) the successful recruitment depends on proper planning. According to Mashiloane (2014:92) the following aspects should be taken into consideration when the planning has been done:

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<sup>10</sup> A legend is a fictitious representation to conceal the true objectives and activities of an intelligence operative, safe premise, informants and agents.



- Who will recruit the human resource?
- Time of recruitment
- Place of recruitment
- Motives of the agent for co-operation
- What can be offered to the potential agent?
- How should the potential agent be approached?

After the planning has been done and all of the abovementioned aspects have been considered, the actual recruitment of the agent takes place.

### **3.2.3.3 Actual recruitment**

According to Clark (2014:55) after a favourable assessment, the investigating officer has to convince the potential agent to assist in the undercover investigation. Successful recruitment depends on the skills of the investigator who has to present an attractive offer that is based on the potential agent's perceived motivations. Such motivations might involve specialised medical treatment, relocation to a different area or province, or money needed for some purpose such as school fees and university.

Krause (2008:1) mentions an undercover safeguard process for the FBI, which is made up of a qualified mental health professional (for selection and monitoring) and experienced undercover agents. These experienced undercover agents will provide critical selection, education, stress inoculation, monitoring and re-integration support to undercover agents. According to Mashiloane (2014:92) the actual recruitment is the sensitive stage of the recruitment process where the potential agent is met face to face and convinced by the recruiter to assist voluntarily regarding the identified criminal targets. The following should be considered by the recruiter during his/her recruitment strategy:

- It is advisable that the recruiter reveal his or her own affiliations to the agent. From practical experience, the researcher found that the agent will be much more comfortable when he knows the department where the investigating officer (recruiter) is based and the department's role in the investigation.

- Assurance must be given to the agent that his or her association remain undisclosed. From practical experience, the researcher has experienced that potential agents, when asked to assist with gathering intelligence on corrupt police officials, become concerned about their identity being exposed and they need to be reassured.
- Should the attempted recruitment fail, the recruiter must terminate the meeting without any unpleasantness.
- Should the potential agent agree to the recruitment, as much information as possible should be obtained immediately. For example, the potential agent must provide a clear indication on when he or she can commence with the assignment.
- If the agent agrees to the recruitment, terms of employment must be discussed.
- After agreement, the recruiter must ensure that the agent understands the need for secrecy and security measures.
- The recruiter must, under no circumstances, make any promises of any nature to the agent.

As part of the recruitment, McDevitt (2012:59) suggests that an interview be conducted by a panel of investigative superiors made up of personnel outside the department in order to add credibility to the entire process, hereby removing the idea of favouritism. Risk Factors associated with Police Criminality (2015:98) emphasises that strict recruitment policies with regards to agents within a police organisation are a definite deterrent to corrupt behaviour when dealing with agents. The consequences of a police organisation's bad recruitment policies have been compared to letting a worm into an apple (Risk Factors associated with Police Criminality, 2015:144). In an internet article, *How to become a DEA Agent* (2015:5), Miller (2006:4) and Pogrebin and Poole (1993:384) stipulate that the recruitment process with a potential agent should include the following:

- Written tests and examinations evaluate the potential agent's reasoning, problem-solving skills and written communication skills.
- Psychological evaluations assess the candidates' ability to keep a steady head in tense situations.
- Interviews and role play scenarios.

From the abovementioned, it can be derived that the recruitment of agents is a systematic process which follows a sequence, from the studying of the criminal target, the identification of a suitable agent to the recruitment process itself.

### **3.3 Summary**

It is obvious that the success of an undercover investigation depends on the recruitment of the most suitable agent. The recruitment of an agent must be done with the aim of the objective of undercover investigation in mind, which is to gather evidence. An agent that possesses all the characteristics and other important aspects must be considered during the recruitment process in order for the agent to qualify. It is imperative for investigators to know that during recruitment of an agent there are certain main areas that should be examined such as identification, planning and actual recruitment of an agent. The process of recruitment follows an organised and logical sequence which is made up of factors that influence successful recruitment. The different approach strategies are important strategies that are used to recruit an agent. The following chapter will focus on the management of agents in drug trafficking criminal investigations.

## **4. CHAPTER 4: THE MANAGEMENT OF AGENTS IN UNDERCOVER DRUG TRAFFICKING CRIMINAL INVESTIGATIONS**

### **4.1 Introduction**

It is important that investigators not only manage and plan undercover operations, but also see to it that the agents are managed efficiently and that they understand their roles and the necessary limitations to those roles. McDevitt (2012:153) mentions that the responsibility of managing undercover agents places the investigator in an extremely high stressful and demanding position. This is due to undercover work being dangerous and the lives of agents are continuously at risk.

This chapter examines the first research question, which is the management of agents in undercover drug trafficking criminal investigations. Legal aspects regarding the use of agents, section 252A of the Criminal Procedure Act and management of agents are discussed in this chapter. This chapter will also reflect on the administrative and operational management of agents. Before any investigation in which agents are used commences, it is important that the legal aspects are complied with. In the next paragraph the legal aspects are discussed.

### **4.2 Legal aspects with regards to agents in undercover criminal investigations**

According to Van Rooyen (2008:275) the use of agents in gathering evidence is a complex process which raises many ethical and legal questions regarding the techniques used by investigators to determine whether the conduct of the agent was justified and fair. It is therefore of paramount importance for investigators to understand all legal aspects regarding the utilisation of an agent in drug trafficking criminal investigations. It is also important for investigators to understand and to have knowledge of section 252A of the Criminal Procedure Act and Section 35(5) of the Constitution of the Republic of South Africa 108 of 1996. Agents and investigators are therefore bound by legal aspects when gathering information.

Burchell (2013:238), Elizabeth (2009:171-172), Hoctor (2013:182) and Joubert (2010:330) mention that evidence obtained by means of an agent is admissible, provided the agent did not go beyond providing the criminal target with the

opportunity to commit an offence. It is important that investigators take note of what Van Rooyen (2008:283-285) argues regarding the factors a court considers when the evidence from an agent is evaluated. According to van Rooyen (2008:283-285) the courts refer to section 252A(2)(a) to (n) of the Criminal Procedure Act which contains 14 factors which a court must consider in determining whether the agents conduct went “beyond providing an opportunity to commit an offence.”

In order for an agent’s testimony to be admissible in court, the main factors mentioned by Burchell (2013:236-237), Hoctor (2013:182), Lyman (2013:143) and Van Rooyen (2008:285) are discussed below:

- **Approval by Director of Public Prosecutions**

Section 252A (4) of the Criminal Procedure Act, authorises a Director of Public Prosecutions to issue guidelines pertaining to the supervision and control of agents. The Director of Public Prosecutions may also require that this written approval be granted prior to the setting of a trap or the use of an agent in his jurisdiction area.

- **The nature of the offence under investigation**

Van Rooyen (2008:281) and Benson et al. (2015:27), state that certain offences are usually committed in secret by persons who agree amongst themselves on the commission of the offence and will, therefore, not disclose its commission. Such offences can hardly be combated without the use of an agent. From the researcher’s experience, when one looks at drug trafficking it is clear that it is committed in secret and in a clandestine manner which makes conventional techniques to gather such intelligence ineffective.

- **Would an average person have been induced into the commission of the offence?**

It must be considered if an average person, who was in the position of the criminal target, would have been induced into the commission of an offence by the kind of conduct employed by the agent concerned.

- **The degree of persistence**

An agent that makes a number of attempts before the accused succumbed and committed the offence would be going beyond providing an opportunity to commit an offence.

- **The type of inducement**

Any undercover criminal investigation is subject to claims of inducements (entrapment). Agents are permitted to do things that provide the opportunity for the criminal target to commit a crime, but they may not induce someone to commit a crime. Elizabeth (2009:171-172) explains that agents may engage in criminality to obtain the necessary evidence for the successful prosecution of criminal targets, but this process may not entail bullying or inserting pressure on any criminal target into committing an offence such as the selling of narcotics.

- **Whether the inducement amount to exploitation of the accused emotions or economical circumstance**

The conduct of the agent must not be an exploitation of human characteristics such as emotions, sympathy or friendship. This also includes the exploitation of the accused's personal, professional or economic circumstances in order to increase the probability of the commission of the offence.

- **Whether the police had a suspicion that the accused had previously committed a similar offence**

It is common practice that the investigator must have enough background information to ensure that reasonable grounds based on a suspicion exist before an agent is used in an undercover investigation. This will provide a stronger reason to investigate the criminal target.

- **Whether the agent acted in good faith**

Van Der Walt (2010:415-416) mentions the decided case, S v Nnusola 2010 (1) SACR 561 (KZP), where the two appellants were charged with a contravention of the Drugs and Drug Trafficking Act in that they dealt with cocaine. To determine if an agent acted in good faith, the court in this case took into consideration the following factors:

- the nature and seriousness of the offence;
- the extent of the effect of the trap upon the interests of the accused;
- the nature and seriousness of any infringement of any fundamental right in the Constitution of the Republic of South Africa; and
- whether the setting of a trap and the means used were proportional to the seriousness of the offence and any other factor which ought to be taken into account.

In the abovementioned case, the court held that the admission of the evidence obtained by the trap resulted in no unfairness to the appellants and therefore the evidence was admitted.

The utilization of agents in undercover criminal investigations also requires investigators to be responsible for the control and management of the agent which is documented in an administration file. This important administrative processes is discussed in the next paragraph.

#### **4.2.1 The administrative management file**

Internal Revenue Manual (2012:2), Lyman (1993:340) and Pogrebin and Poole (1993:393) mention that with any undercover criminal investigation where agents are used, lots of paperwork form part of the undercover criminal investigation, which is necessary for the successful administration and documentation of all the relevant information. Agents should be able to complete all relevant official forms such as investigative expenses and reports regarding the agent's activities. From the researcher's experience, such expenditure receipts and all official forms relating to progress reports are kept in the agent's file.

Questioning the sample on the administrative management processes for agents used, the participants mentioned that it is important that the administrative processes of agents be completed timeously from the identification, selection and recruitment of agents until the termination of the services of the agent and de-

registration<sup>11</sup> of the agent. All the participants highlighted the three important files that are kept:

- the undercover agent file, which is kept by the handler and reflects the administrative and financial management of the undercover agent;
- the operational file, which contains documents pertaining to the undercover investigation in which the agent is being deployed and which is managed by the handler and kept for safekeeping at his or her operational office; and
- the agent administration file, which is kept by the handler's financial office to keep record of all original copies of all financial documentation pertaining to the agent.

For the purpose of this research, the undercover agent file will be discussed in detail. This file is the most important file for the investigator as it reflects the total administrative and financial management of the undercover agent.

#### **4.2.2 The undercover agent file**

An agent file must be kept by the investigator at the operational office from where the undercover agent is deployed. Lyman (1993:287-288) mentions that the agent file should include the following:

- Full name of agent and all identifying information such as address and information on the agent's spouse and children.
- Agent expenditure ledger which consists of all financial outlays (dates and times) such as the agent's salary and medical and operational expenditure.
- List of all equipment used by the agent as well as the agent's vehicle description, a vehicle identification number (VIN),<sup>12</sup> and licence plate number.
- Declaration signed by the agent stating he has read and he understands the department's policy and procedures.

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<sup>11</sup>De-registration of an undercover agent is an administrative process that takes place after the services of the agent have been terminated which allows the agent to return to his or her normal policing duties.

<sup>12</sup>VIN is a vehicle identification number or also known as the chassis number, is a unique code used by the automobile industry to identify individual motor vehicles.



From the researcher's experience, the undercover agent file is different from a police docket, which have three clips. The police case file consists of three clips, namely Section A, which contains statements of witnesses, expert reports and documentary evidence. Section B contains internal reports and memoranda, and Section C the investigation diary. On the open-ended question of what the participants see as important aspects that should be contained in the undercover agent file, the sample mentioned that the undercover agent's file should be made up of an A and B clip. Their answers are integrated with the experience of the researcher and are discussed in the next section.

#### **4.2.2.1 Administrative File (A CLIP)**

The administration file contains the following:

- all applications and assessments made for the agent;
- undertakings and biographical data;
- an investigation diary indicating all administration documents filed;
- the agent's job description, which highlights the key performance areas and tasks for the agent to perform, such as the execution of personal, operational, financial and organisational security measures; and
- the compiling and submitting of reports of evidence gathered and the ability to manage resources and monitoring of criminal targets to prepare for arrests.

An agent monthly progress report must be submitted showing progress made by the agent in obtaining information or evidence gathered on criminal targets and on progress on the objectives of the undercover investigation. This also entails purchase of exhibits conducted by agent from criminal targets.

#### **4.2.2.2 Financial expenditure (B CLIP)**

The B Clip entails all financial matters such as copies of travel and subsistence, medical claims, receipts signed by the agent and any other financial expenditure incurred by the agent, which is indicated in an investigation diary. Copies of the following documents are also filed and include the following:

- Copies of receipts signed by the agent that reflects all monies paid to the agent.

- All advances drawn for agents detailing the exact purpose why the money was drawn.
- The closing of finances utilised by an agent with motivations and proof of receipts when agents are entertaining criminal targets or incur other operational expenses, such as telephone expenses.
- A monthly progress report that entail details of the agents present mental and physical well-being, which is signed by the agent, investigating officer/handler and his or her immediate commander.

The documentation and information below should also be filed under the B clip of the undercover agent file:

- List of all assets used by the agent.
- An investigation diary showing all financial documents filed.
- All requests and payments made for the agent must be documented in the investigation diary. Dates and times when monies were drawn and paid to the agent must also be reflected on the investigation dairy. All financial expenditure of the agent should be documented accordingly in the investigation diary.

One of the participants mentioned that it sometimes occurs that receipts cannot be obtained when criminal targets are entertained, which requires that the agent or the handler submits a report which is filed accordingly under the B clip of the operational file to explain the use of the monies.

The use of agents is a special method of investigation which entails operational processes that need to be put into place and managed. The operational management of agents need to be planned, documented and managed accordingly, which is explored in the next discussion.

#### **4.2.3 Operational management for agents**

In order for an agent to be successful, there are certain operational processes to be adhered to in order to manage agents effectively and efficiently. These operational processes assist the agent and investigating officer to be focussed on specific tasks and to carry out work in a systematic, safe and professional manner. Burton (1995:4), Fredrickson and Siljander (2004:92) and Lee (2004:151-152) mention that

an operational plan is an extremely important tool for undercover criminal investigations and an absolute requirement to ensure a safe criminal undercover investigation. The plan should be in any format agreed upon by management and clearly written and distributed to everyone involved in the operation. The plan forms an integral part of the undercover criminal investigation and to highlight the plan's importance, it will be discussed in the next paragraph.

#### **4.2.3.1 The operational plan**

Birzer and Roberson (2012:297-298), Lee (2004:131), Levine (2007:3.3) and McDevitt (2012:158-160) state that in order to plan well, to minimise the inherent danger of the agent and to establish the objectives of the undercover criminal investigation, a written operational plan must be completed. The operational plan consists of the following:

- A brief synopsis of what led to the undercover operation must be highlighted.
- Complete details of the criminal target and vehicle descriptions are necessary for back up teams and surveillance teams to accurately identify the criminal targets.
- Maps showing the exact location of criminal targets or where the undercover meetings are going to take place.
- A thorough plan of action must be discussed and agreed upon, which will explain the date, time and place of operation and objectives of the operation, i.e. to gather intelligence or effect arrests. After the plan has been formulated, there must be a decision made on the strategy and planning. This is important for the execution of the undercover investigation.

##### **4.2.3.1.1 Strategy and Planning**

- Planning can assist in the training and updating of investigative personnel such as agents, investigating officers, and tactical response and surveillance teams before the investigation and arrests.
- Distress signals, both audio and visual, should be incorporated in the operational plan in order for all personnel to familiarise themselves with these signals to immediately identify whether an agent is in danger during the investigation or arrest procedures. For example, an agent might give a sign by

taking off his cap or sunglasses, which then signals the operational team to move in for arrest or to make them aware that he is in immediate danger.

- Photos of criminal targets to identify them clearly for the purpose of investigation and for the arrest.
- It is good practice to include the name, address and telephone number of the nearest hospital emergency room closest to the vicinity where the investigation or operation is going to take place in case of any medical emergency.

Questioning the sample about what an operational plan should contain, the majority of the participants mentioned that an operational plan or written project plan must be completed so that the entire operational team understands what is required of them during the investigation. One participant was adamant that the plan should include an organigram of the syndicate with specific objectives.

Two participants mentioned that the plan should include a clearly defined, strategy and budget. They were also of the opinion that the plan should have an approved time frame which gives direction to the investigation team.

One of the participants mentioned that the plan should make provision for an agent to be closely monitored to ensure that progress is being made and tasks completed timely. According to Lyman (2013:147) hands on training should be given to agents in surveillance, arrest techniques, defensive tactics, report writing, law and drug identification and recognition. Training of an agent is of such importance in undercover investigations that it should be incorporated into the operational plan.

#### **4.2.3.2 Training and development of an agent**

Lyman (1993:18) and Miller (2006:7) state that, given the inherent dangers of undercover work, the selection and training of personnel must be meticulous as insufficient training can compromise the mission itself. Lyman (2013:145) points out that panic is an agent's worst fear. If the agent has been properly trained and responds to the criminal target according to his or her training, a bond of trust may develop between the agent and criminal targets which can pave the way to a successful undercover criminal investigation. Barefoot (1983:21) emphasises that lack of training is probably the largest single factor impeding the growth of an agent who works in an undercover criminal investigation.

Lyman (1993:319) does have the same point of view as Barefoot (1983:21) and emphasises the importance of the training of agents. Lyman's (1993:319) point of view is that training enhances an agent's chances of survival. Lyman (1993:319) further reasons that training will improve the agents, the techniques used in undercover criminal investigation, and knowledge of criminal law. According to him, this will definitely improve the overall effectiveness of police efforts to investigate and prevent crime.

The training of agents should also include in-service training. From the researcher's experience he would argue that important techniques can only be conveyed and taught through in-service training.

#### **4.2.3.2.1 Specialised and in-service training**

According to Barefoot (1983:40) the agent must be completely familiar with the slang terms used for various illicit drugs and must be able to recognise the drugs when they are encountered. Bickerstaff (2014:9-11) and Lyman (1993:320) stipulate that in-house training (or in-service training), which is conducted within the undercover unit allows experienced agents to train less experienced agents about specific undercover techniques and practices. The authors further state that in-service training should never be used in place of formalised training. McDevitt (2012:68) supports this view and points out that in-service training might work for an agent assigned on a temporary basis. Hamilton and Smykla (2006:142) have a controversial point of view. According to them, new recruits assigned to undercover work receive no formal police academy training as supervisors considered formal police training to be counterproductive. However, the researcher cannot agree with this point of view. From experience, he knows that formal police academy training will help the agents to promote self-awareness and mental preparation needed to remain resilient in facing expected and unexpected stressors. Agents are educated on the latest investigative techniques, such as electronic and physical surveillance, as well as strategies in managing operational matters.

Miller (2006:6) is of the opinion that the purpose for in-service training is to develop and sharpen operational performance by acquiring knowledge and practising skills necessary to function in the undercover area. Miller (2006:6) offers the following

explanation by saying that SWAT teams<sup>13</sup> and most hostage negotiation teams have always had a history of being specially screened, tested, selected and trained. However, the agents in undercover criminal investigations often have not received the same attention despite the fact that such agents frequently face levels of immediate or potential danger as great or even greater than any hostage or SWAT team members, even without armed back-up. Training is of such an importance that Undercover Operations: Reversals and Sting Operations (2014:372-373) mentions and argues that many police agencies require investigators assigned to work in an undercover capacity to receive specialised training. For example, the Drug Enforcement Administration (DEA) Practical Application Unit provides all undercover and surveillance training for agents. The training comprises practical exercises to present real-life scenarios, which agents can expect to encounter during the undercover operation. In-service training courses on contemporary issues in the Undercover Process and Risk Management course are provided to agents. From the researcher's experience, he believes that such training should also be implemented in the SAPS.

The participants were asked to elaborate on the in-service training and the development of agents. The majority of the participants mentioned that agents must also be trained on several different aspects. Probing their answers, the following training was suggested by the participants:

- All the participants were of the opinion that agents should be trained in physical and electronic surveillance techniques.
- The majority of the participants are of the opinion that agents should be trained to utilise technical equipment to monitor and record drug transactions. They are of the opinion that these recordings of drug transactions rarely arise and that no mistakes can be afforded.
- All the participants mentioned that agents need to be trained on all aspects pertaining to the manufacture and trafficking of drugs.

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<sup>13</sup> SWAT team is a group of elite police marksmen who specialise in high risk tasks such as hostage rescue.

- The majority of the participants mean it is important for agents to be trained on what chemical precursors are used to manufacture drugs.

One participant was of the opinion that agents should also be trained on the different types of drugs and prices of these drugs; the latter is very important for the researcher. From experience, the researcher knows that this is the first action criminal targets require to determine if the buyer is a possible agent.

It was highlighted by a participant that the one of the main objectives of most undercover operations is to identify clandestine laboratories. Therefore, an agent that walks into a clandestine laboratory must be prepared and able to identify dangerous chemicals because inhaling certain chemicals can be detrimental to his or her health.

All the participants were of the opinion that agents should be extensively trained to write reports. They were asked to clarify their statement and the common answer was that report writing is an important skill. They mentioned that accurate and complete reports will provide the necessary information and evidence. For this reason, this research will explore report writing.

#### **4.2.3.2.2 Report writing**

Lyman (2013:22) mentions that a written report represents the final product of an agent's investigative efforts. According to Lyman (2013:22) and Pena (2000:34-35) the report informs others of what events have occurred and provides a permanent record useful in numerous ways such as evidence at a trial, intelligence information and for analysing crime data. Brandl (2014:478), Lyman (2013:22) and Pena (2000:34) mention that there are three important rules to remember when reports are written, namely the report should be factual, thorough, and to the point. They offer various reasons, but the most important reason is that reports will be under scrutiny when it goes to court. In addition to the above rules, Palmiotto (2013:81) emphasises that each report should attempt to answer six basic questions relating to crime: who, what, where, when, how and why? Such reports can be used to prepare court cases and to provide the court with pertinent facts and evidence.

The majority of the participants mentioned that training on report writing is important because intelligence reports need to be submitted on a weekly basis by the agent. According to the participants, these reports must be compiled with as much detail as possible. The participants mentioned that the information which should be included in the reports are information on property, vehicle registration numbers, family members and the modus operandi of criminal targets. The next section will address the second research question.

#### **4.3 Management of agents during undercover drug trafficking criminal investigations**

According to Birzer and Roberson (2012:294) and Lee (2004:154) agents in undercover drug trafficking investigations are constantly in dangerous situations. This is due to their close interaction with criminal targets where undercover purchases of narcotics are conducted, which is a complex and dangerous activity in today's violent world of drug trafficking. Agents are exposed to suspects who may rob them of their money or even kill them. The greatest fear for any agent is to be exposed, which will cause serious problems for the operation and the investigation (Lee, 2004:154). According to Lyman (1993:18) and Pena (2000:189) in an undercover investigation, an agent is operating under an assumed identity and makes direct contact with the criminal target(s) for the purpose of collecting information and evidence on criminal activity.

Agents must therefore be well prepared and managed in a manner that does not expose them. Criminal targets use different methods to expose agents and can be quite tricky, dishonest and cunning when trying to expose possible infiltrations by agents (McDevitt, 2012:157). The exposure of agents is not discussed in this research.

All undercover investigations require careful planning, preparation and a clear understanding of what are intended to accomplish. Before the undercover investigation can commence, the agent should be prepared.



#### **4.3.1 The preparation of an agent for an undercover drug trafficking criminal investigation**

The important operational management processes such as planning and strategy (paragraph 4.2.3.1.1) and training and development (paragraph 4.2.3.2), should form part of the agent's preparation. Gilbert (2010:389) and Van Rooyen (2004:150) mention that the preparation of an agent for the undercover operation is of the highest importance. According to them, a briefing must be held with the agent to prepare the agent on what to expect in the undercover investigation. The guidance that Lee (2004:124) provides is that the agent must be briefed on the criminal target's limitations in respect of the quality and quantity of drugs that the criminal target usually deals in, as well as the modus operandi. The agent must be prepared not to exceed such limitations, for example, asking for larger amounts of drugs that the criminal target cannot handle, which can raise suspicions and jeopardise the investigation.

The participants' answers to the open-ended question on how they prepared agents for an undercover operation, is summarised as follows:

- Give the agent a brief summary of the entire operation.
- Make the agent aware of the risks, challenges and possible dangerous situations to ensure there are no unpleasant surprises. Before the operation, have a detailed preparations session for a period of three days with the agent. One participant referred to the preparation as a "bosberaad." All the participants were of the opinion that it is important to have clear guidelines on how to communicate during the undercover investigation.
- The majority of the participants were concerned with the infiltration process. They feel the infiltration process should be discussed in detail. They reason that the infiltration process can be a long process and that the agent should be prepared for it. The rationale for the latter is to prevent the agent from losing concentration, focus and interest.

According to McDevitt (2012:157) and Palmiotto (2013:93) the preparation of the agent involves getting the agent to study the environment, which will include studying the target area and being informed exactly what is required and where he or she is going to operate to gather evidence. During the preparation, the cover

story and the infiltration strategy is discussed in detail and revised several times. This is done to make the agent aware of what the investigation intends to accomplish. According to McDevitt (2012:157) and Palmiotto (2013:93) the preparation starts with studying the environment.

#### **4.3.1.1 Studying the environment**

Miller (2006:8), Palmiotto (2013:93) and Pena (2000:93) state that agents should make a thorough study of the environment or area in which they are going to operate to gather information and evidence. It is imperative that the agent must have as much background information as possible on the criminal target(s) and the area in which he or she is going to operate. For example, if the agent's legend is residing from a specific town or city, he or she should possess knowledge of that neighbourhood, such as religious background and transportation facilities (Palmiotto, 2013:93). Macdonald (1983:113) stipulates further that the agents must have the ability to become familiar with the language of the drug dealer and his vicinity. The agent's attitude towards meetings is essential in order for the agent to appear at ease in the drug dealer's setting, whether it is in a fashionable restaurant or a sleazy bar.

Questioning the sample about the importance of learning the environment, they furnished the following aspects:

- The majority of the participants mentioned that studying the environment will enable the agent to establish and maintain a good cover story. This will assist the investigating officer in identifying suitable resources needed for the agent, such as vehicles and safe premises to be utilised by the agent.
- Two of the five participants mentioned the prediction of possible situations that may arise. The agent must know escape routes in case of a hostile situation and an exit strategy must be in place. One participant mentioned that the agent must not only know the area from an aerial view, but also know the area well on the ground.
- The agent must know the local police stations and hospitals in case of emergencies.

From the participants' answers in the paragraph above, it can be seen that the selection of a proper cover story is an important aspect in preparing an agent for an undercover investigation. In the next section the importance of establishing a cover story and important aspects, which must be considered when selecting and maintaining a cover story are discussed.

#### **4.3.1.2 The cover story**

Barefoot (1983:45) and Lyman (2011:271) are of the opinion that the most important factor in any successful undercover operation is establishing a proper and believable cover story. According to Independent (1998:1) the cover stories must be meticulously constructed. Cover stories are used to prepare agents in answering questions consistently the same when they are questioned by the criminal target. The cover story can include associating with known or suspected criminal targets for the purpose of collecting information or evidence on criminal activity (Independent, 1998:1). To Lyman (2013:145) it is important that the cover story should fit the environment and people involved in the investigation. Miller (2006:9) cautions that agents need not to be in constant presence of the criminal targets lives. Miller (2006:9) points out that real criminals come and go, disappear for periods of time and are shady about their doings and whereabouts. This behaviour, according to Miller (2006:9) may well suit the agent who needs time during the operation to take a break and attend debriefing meetings with the investigators.

Lee (2004:125) emphasises one way to ease the suspicions of drug traffickers and to enhance the safety of the undercover agent, i.e. to devise a solid cover story. To create a solid cover story, Lyman (2013:144) and Palmiotto (2013:94) argue that the agent will convey a fictitious story to criminal targets concerning his or her background, including his or her name, address, hometown (or area), and employment, associates, neighbourhoods, trades and travels. Birzer and Roberson (2012:294), Lyman (2013:144) and Palmiotto (2013:94) reason that it is a good idea to keep the cover story simple in case an agent must deal with inquisitive criminal targets. According to Miller (2006:9) and Palmiotto (2013:94) provision should be made in the cover story for the following:

- Frequent contact with the criminal target so as to not arise any suspicion. Elizabeth (2009:166) adds that police participation in crime plays an important part in maintaining an agent's cover status. An agent who is reluctant to participate as a criminal associate with criminal targets can 'afflict a deal and arouse suspicion in an undercover investigation'.
- There must be freedom of movement by the agent and the justification for actions made by the agent. For example, an agent that is buying large amounts of drugs from a criminal target needs to move more freely where he or she cannot be monitored closely by the criminal target to verify the redistribution of the drugs. The cover story can be that the agent is from another area or province and visits the criminal target only when he needs drugs or when he is passing the criminal targets town on other business ventures.
- Background information, which will permit the agent to maintain a financial and social status equivalent to the criminal target.
- Mutual points of interest between the agent and the criminal target should be considered when the cover story is established.
- The cover story must allow the agent an opportunity to meet with the investigating officer or handler for briefing<sup>14</sup> and debriefing<sup>15</sup> sessions and handing over of exhibits if necessary.
- Alternative cover story (Plan B) in case the original cover story is compromised.
- Lyman (2013:146) mentions that agents should remember that most questions about their cover story are bluffs, and they should remain calm and confident, discounting the challenges presented without appearing scared, intimidated or paranoid.

In addition to the provisions mentioned above, Barefoot (1983:47), Independent (1998:20), Lyman (2013:145), Miller (2006:9) and Palmiotto (2013:94) further highlight three essential elements for any cover story, namely:

- the story should be simple;

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<sup>14</sup> A process of providing a written or verbal tasking to an agent concerning the execution of a specific intelligence collection assignment.

<sup>15</sup> A process where an intelligence handler/investigating officer receives a report by means of purposeful and systematic questioning of an agent on the completion of a specific intelligence assignment.

- believable; and
- should be as true to the agent's real life situation as possible. In this way, it is easier to memorise and to elaborate on when investigating and exploratory questions are asked by the criminal target.

According to Lyman (2013:145) when claiming a place of employment, the agent should choose one that cannot be easily investigated, verified or checked out by the criminal target. According to Fredrickson and Siljander (2004:89) and Lee (2004:126-127) whichever cover story is chosen, the agent should be provided with business cards, customised stationery, credit cards and other supporting credentials to corroborate the cover story. Lee (2004:127) suggests that to convince the criminal target that the undercover agent is not associated with law enforcement or criminal justice process, he or she must be equipped with documents and other items that support his undercover identity.

Lyman (2013:145) further debates that the agent's appearance and mannerisms should also fit the cover story. For example, if the agent claims to be a mechanic or an oil field worker, it will be out of character for the agent to be seen by the criminal target in an expensive business suit. On the other hand, if the agent's cover is a financier of a big money deal, then expensive clothing might be appropriate. It might be necessary for an agent to wear expensive jewellery to help convince sellers of his or her cover story. After the cover story has been established, the agent is committed to it and can never change the cover story. Agents should remember that mixing a partial truth with the cover story, makes him or her more believable to the criminal target.

The participants were asked to elaborate on how important it is to use a cover story and they emphasised the following aspects:

- the story creates credibility;
- the story should be simple;
- the story should be believable; and
- the story must be difficult to investigate.

Lyman (2013:146) states that after a cover story is established, a methodical process of infiltration must take place to uncover criminal wrongdoing and its associated evidence. The infiltration process is therefore discussed in the next paragraph.

#### **4.3.1.3 The infiltration process**

According to Hoctor (2013:181) infiltration is an investigative method employed by the police which can be understood as a systematic and deliberate investigation through the use of agents. Lyman (2013:146) and Macdonald (1983:113) mention that during infiltration, a relationship is established between the agent and the criminal target. However, they have a concern about the time that is spent to create a relationship. They are of the opinion that the time the agent spends with the criminal target should be brief because of security reasons. Mashiloane, (2014:94) are of the opinion that infiltration is the development of an on-going relationship between an agent and a criminal target by participating in and/or attending the activities of a criminal target for the purpose of gathering criminal information.

According to Lyman (2013:146), Macdonald (1983:119) and O'Conner (2011:11) the use of an informant is sometimes necessary to establish contact between the agent and the criminal target. This is done to kick off the infiltration process. Birzer and Roberson (2012:294) mention that it is critical for the agent and the informant to be on the same page when meeting the criminal target, as the informant literally holds the life of the agent in his or her hand. To point out the important role of an informant in introducing the agent to the criminal target, Birzer and Roberson (2012:294-295) state the following: "The cover story is only as strong as its weakest link, and in many cases the weakest link is the informant." Lyman (2013:146) has some critique on the use of an informant to introduce an agent to the criminal target; he is of the opinion that informants may cause more trouble for the agent and the investigation than they are worth and therefore, the use of informants should be carefully considered.

Barefoot (1983:59) and Lyman (2013:146) mention that infiltration requires inventiveness and originality on the agent's part because he or she might have to create his or her own opportunity to engage with the criminal target. After contact

has been made between the agent and the criminal target, the criminal target's confidence must be gained as soon as possible. This can be done by learning the interests of the criminal target (e.g. jobs, the opposite sex, local bars, cars, drugs), which the agent can easily discuss with the criminal target. After the agent gathers information and it appears that the information might be useful in showing criminal activities, it should be properly documented in the reports of the agent. In paragraph 4.2.3.2.2 the aspects that should be addressed are mentioned.

Questioning the sample on their understanding of the infiltration process and how agents were infiltrated in undercover operations, they mentioned the following:

- Most of the participants mentioned that it is the placement of an agent from the outside to the inside of the syndicate. One of the participants mentioned that it is most important that after infiltration the agent must be accepted and trusted for the entire duration of the operation.
- Another participant mentioned that infiltration can take one month or even three to six months, depending on the infiltration strategy used. It is also of paramount importance that during the infiltration process, the agent must be protected from being exposed.

#### **4.3.2 Management challenges of agents**

According to Kurke and Scrivner (2013:315-316), Lyman (2013:146-147) and Marx (1988:160-166) the problem of maintaining the criminal identity can be seen as a continuous problem, as criminal targets have access to advanced profiling techniques, which assist them to investigate any new person within their circle. They also highlight the following problems and challenges:

- **Stress in relationships**

Undercover work is one of the most stressful criminal investigations that can be undertaken. The biggest cause of stress for agents working undercover is the requirement that they distance themselves from friends, family, and their normal environment. This simple isolation can result in the onset of depression and anxiety.

- **Stress from uncertainty**

Stress can also be the result of an apparent lack of direction of the investigation or not knowing when it will end. The amount of elaborate planning, risk, and expenditure can also place pressure on the agent to succeed, which can cause considerable stress.

- **Development of alcohol or drug abuse**

Stress may be instrumental in the development of drug and alcohol abuse in the case of some agents. These agents are more prone to the development of an addiction because they experience greater stress than other police officials; they are isolated and drugs are often easily accessible.

- **Feelings of personal guilt**

There may also be some feelings of guilt associated with working undercover because of the need to essentially betray the trust of those criminal targets who have come to trust the agent. Bryjak (2009:1) states that as agents form relationships with those they are investigating, feelings of ambivalence and guilt may ensue. The author further mentions that criminal targets have good and bad aspects to their personalities and agents often see both sides. They are consequently sometimes reluctant to furnish evidence against such criminal targets.

- **Problems of reintegration**

The lifestyle led by agents is very different than that of any other areas of law enforcement and it can be quite difficult to reintegrate back into normal duties. Agents work their own hours, they are removed from direct supervisory monitoring, and they can ignore the dress and etiquette rules. Therefore, working in such a free lifestyle, agents may have disciplinary problems or they may behave irrationally.

The participants were asked to elaborate on what challenges/problems they experienced with agents when managing agents in undercover investigations. Their responses were as follows:



- Agents can become dishonest. On further probing, the participant explained that agents sometimes lie about their working hours, relationship with the targets and the money they used.
- One of the participants mentioned that agents can become psychologically unstable and stressed. This can have an influence on the agent's integration back into the police service.
- Agents can become dependent on drugs and this will have an effect on the reintegration of the agent into the police service.
- Agents who are in the field for long periods form bonds and friendships with criminal targets and therefore can have emotional effects on the agents. The latter can have an influence on the credibility of the agent's evidence.

From the abovementioned, it is clear that that there are serious management challenges that may be encountered when dealing with agents. Investigators and agents need to be adequately prepared to face such challenges. Miller (2006:13) emphasises that well planned psychological monitoring can ensure that the agent is able to work over long periods of time. Agents should also be responsible for monitoring their own stress levels and knowing when to take the appropriate steps to maintain their bodies and minds to perform optimally. The investigator must also inform the agent of any strategic or logical changes in the undercover operations goals or tactics and keep regular contact with the agent to assure that the agent is dealing with the pressures of his or her role in a reasonable healthy and capable way (Miller, 2006:13).

#### **4.4 Summary**

In order for investigators to manage agents effectively and efficiently, it is imperative to have sufficient knowledge and experience on the legal aspects regarding the use of agents and processes involved. There are certain strategies and procedures that agents need to be made aware of in order to avoid being exposed. These strategies and procedures can be addressed by training agents in the initial stages in the investigation. Problems that agents encounter can be solved through good planning and preparation. To avoid problems, the cover story should be as close as possible to the truth in order that it becomes acceptable by anybody questioning the cover story. The cover story must form part of the planning and the infiltration strategy.

Agents must be well prepared, they should know the operational area well, as well as the targets to be addressed. Agents must be well trained in aspects such as technical and physical surveillance and drug identification. It can be safely argued that the proper management and training of agents is essential in avoiding unethical, immoral, or unprofessional allegations by the criminal target. There are definitely challenges in managing undercover agents. The empirical evidence corroborates the literature sources to confirm such challenges.

## **5. CHAPTER FIVE: FINDINGS AND RECOMMENDATIONS**

### **5.1 Introduction**

The recruitment of agents plays an important role in the investigation of drug-related cases. This recruitment process can potentially lead to positive outcomes, but if the correct person is not selected, the entire undercover operation faces the danger to fail. The process to select an agent follows a logical sequence. If this sequence is not followed correctly, unfortunately, the wrong person will be selected. This research is the result of the need, identified by the researcher, to improve the recruiting process and management of undercover drug trafficking criminal investigations. The researcher addressed the research aim by utilising literature, national and international, and police circulars as well as to interview former agent handlers. The findings are not representative for all police officers who have recruited and managed agents in undercover drug trafficking criminal investigation. There is a strong possibility that it can be transferable because of the researcher's experience in the field and literature. To address the aims, the researcher has formulated two research questions.

### **5.2 Findings**

During the research, the researcher attained primary and secondary findings based on the formulated research questions to address the aim of this research. Recommendations, also based on the primary and secondary findings, are provided.

#### **5.2.1 Primary findings**

- Undercover operations are a controversial issue, but is used when all other conventional methods of policing have failed. According to empirical evidence, the purpose of undercover operations is to make an impact or add value to the investigation process.
- The objectives of undercover operations are the same as for criminal investigations and the emphasis is to gather evidence.
- The most prominent finding of this research is that the recruitment and management of an agent follows a logical sequence. It was found that within

the recruitment process and management of agents, there is also a sequence that must be followed.

#### **5.2.1.1 Findings on the sequence for recruitment**

- **Studying the criminal target**

It was established that by studying a criminal target in an undercover investigation a full profile and SWOT analysis of the criminal target should be obtained. This will help to formulate a strategy by which a suitable agent can be recruited. The studying of a criminal target will also include a lifestyle audit of the criminal target showing regular movements of the criminal target and identification of assets.

- **Determine the characteristics of a suitable agent**

In order to be recruited, the potential agent must have certain special abilities, such as self-confidence and courage when conducting undercover investigations. It is imperative that the agent has enough experience to be streetwise and the agent must demonstrate good judgement skills. An agent must be able to make the right decision, often under stressful or in dangerous circumstances. Therefore, being able to make the right choices and decisions is an essential element of a successful undercover investigation.

Other important abilities have been identified as:

- An agent must have sufficient knowledge of the crime which he is tasked to investigate and gather information.
- Honesty is also important in order to ensure that an over-zealous agent does not resort to entrapment in order to please his or her superiors. Agents should have high moral standards and they must be investigated in detail to ensure that a history of overindulgence does not exist with regards to drugs or alcohol and that the agent cannot be classified as a philanderer.
- Agents must present good memory skills and the ability to retain information without writing them down.
- Agents must have the ability to think and decide quickly and decisively and must be able to remain calm, composed and self-possessed during any undercover investigation.

- **The recruitment of agents**

It was established that there are different approach strategies that can be utilised during recruitment, of which the direct approach was mostly used by the participants. The need for proper planning is important for successful recruitment.

#### **5.2.1.2 Findings on the sequence in the management process of agents**

- The legal aspects pertaining to the management of agents in undercover drug trafficking criminal investigations must be understood and complied with by investigators. There must be approval from the Directorate of Public Prosecutions (DPP), which consists of guidelines pertaining to the proper control of agents.
- Before infiltration takes place, the cover story is one of the most important aspects. An agent requires a good cover story which creates credibility. The cover story should therefore be simple, believable and as true to the agent's real life situation as possible.
- The researcher has found that there are various administrative processes for using agents, which must be completed timely from the identification, selection and recruitment of agents until the termination of the services of the agent and de-registration of the agent. All of these processes are important.
- The management of agents is also two-folded:
- The undercover agent file, which reflects the administrative and financial management of the undercover agent as a whole, as well as a true version of productivity.
- Interaction between the agent and investigator to ensure operational processes are carried out diligently and professionally.

#### **5.2.2 Secondary findings**

The researcher made secondary findings on some general facts that were identified during this research.

- Empirical evidence reveals that 'red tape' in obtaining permission for resources within the SAPS can have a negative impact on undercover operations.
- It was established that there is a nexus between crime information, intelligence and evidence. Evidence stems from intelligence which comes from information.

- The compiling of detailed reports by the agent is an important aspect to ensure that pertinent facts and evidence are not lost.
- During undercover drug trafficking investigations, an agent should follow certain important procedures in order for evidence to be admissible in court. Evidence must be gathered by agents in accordance with guidelines set by the court to ensure admissibility in court.
- The compiling of an operational plan is important for the successful execution of an undercover operation, which includes aspects such as strategy, planning, training and development for agents.
- Preparation in an undercover investigation allows the agent to learn the environmental area and to know exactly where the gathering of information and evidence is going to take place. During preparation, the infiltration strategy must be discussed in detail.
- Getting to know the environmental area will enable the agent to establish and maintain a good cover story and also assist the investigating officer in identifying suitable resources the agent needs.
- Infiltration is a process through which an agent is placed from the outside to the inside of a syndicate where a relationship is created with the criminal target for the purpose of gathering evidence. It is most important that after infiltration the agent is accepted and be trusted.
- Agents are exposed if they are not skilled enough and not being able to back-up his or her cover story and therefore not trusted by the syndicate.
- There are management challenges when handling agents, such as stress in relationships and the development of alcohol or drug abuse.

### **5.3 Recommendations**

Based on the primary and secondary findings of the research, a number of recommendations can be made relating to the subject of the research.

#### **5.3.1 Procedures to follow when agents are recruited**

Investigators should receive training to follow the correct procedures in sequence when recruiting agents for undercover drug trafficking criminal investigations. Training should be conducted on the following best practices before and during the recruiting of agents:

- The importance and different methods used to study and profile a criminal target that would assist in identifying a suitable agent.
- Training on the special abilities of the agent the investigator must identify when recruiting a suitable agent.
- All agents should take a polygraph test to ensure honesty. Conducting a proper background investigation on the agent would assist in determining his or her honesty.
- Familiarise investigators through intensive training workshops on the different approach strategies available to them when recruiting an agent for undercover operations.
- Educate investigators on the actual recruitment of agents to be well planned and executed in order for the agent to be assessed thoroughly.

### **5.3.2 Management of agents during undercover drug trafficking criminal investigation**

- Advise on correct facts and procedures for investigators to provide continuous guidance to agents and using the correct operational processes during police traps.
- An undercover operation user guideline/manual needs to be compiled in order to assist and guide investigators through the administrative and operational management processes for agents.

The manual should be updated annually and should consist of the following:

- All legal requirements, reported judgements, SAPS directives and best practices pertaining to undercover operations.
- Aspects that need to be considered during the recruitment phase of an undercover operational agent.
- Compiling an operational or project plan including suitable resources that are needed for the agent.
- The correct procedures in documenting the A and B clip of the undercover agent file and its contents thereof.

It is recommended that there should be practical and theoretical training for agents and investigators involved in an undercover operation. The training should cover the following aspects:

- Investigators and handlers should be trained on how to prepare an agent for an undercover operation.
- How to study the environmental area.
- The importance of a solid cover story.
- Infiltration strategies to be utilised.
- Investigators should be trained on how to avoid operational exposure of agents, e.g. by limiting the number of people who are aware of the operation and by conducting more thorough background checks on the entire investigative team.
- How to manage challenges an undercover agent face, such as high levels of stress, and alcohol and drug abuse.

### **5.3.3 Specialised training and development of an agent**

- Agents must also be trained on several different aspects such as physical and electronic surveillance techniques. Agents must have some sort of formal training. They need to be trained on all aspects relating to drugs such as chemical precursors and the different types of the narcotics that are sold, including the price.
- Agents must be trained in compiling detailed reports and statements and should learn how to answer six basic questions relating to the crime they are tasked to gather evidence on, i.e. *who, what, where, when, how* and *why*.
- Practical exercises and role playing should be used in training to present real-life scenarios that agents expect to encounter during the undercover operation.

## **5.4 Conclusion**

The researcher was able to address the research questions by utilising the design and methodology of this research, which clearly revealed that the recruitment process should follow a logical sequence.

This research established that undercover operations are a smart and legal way of combating organised crime where information and evidence on the entire drug



distribution organisation can be obtained. Trained investigators, agents and adequate resources must however be available. The recruitment of agents in undercover drug trafficking criminal investigations is a process that starts from studying the criminal target, identification of a suitable agent and then the recruitment process itself. The correct management, both operational and administrative, of undercover agents also plays a pivotal role in the success of any undercover operation. The use of an appropriate and solid cover story was found to be important, which gives the agent access to infiltrate a target in order to gather evidence.

Based on the findings of the research, a number of recommendations have been made, aimed at improving the recruitment and management processes for undercover agents.

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## **7. APPENDIXES**

### **7.1 Appendix A: Interview schedule**

#### **THE RECRUITMENT OF AGENTS FOR UNDERCOVER DRUG TRAFFICKING CRIMINAL INVESTIGATIONS**

##### **Instructions:**

Please answer all of the questions as honestly as possible. The information collected for this study will be analysed in order to develop an accurate picture for this research project. The purpose of the research is to obtain my Master's Degree in Forensic Investigation at the University of South Africa. Your participation will assist the researcher to make findings and recommendations to determine how agents should be recruited and managed for undercover drug trafficking investigations. You do not need to identify yourself and, similarly, the researcher will uphold anonymity in that there will be no possibility of any participant being identified or linked in any way to the research findings in the final research report.

##### **Declaration by the researcher**

You as the respondent will be treated as a human being. The interview will be in the language of your choice. No attempts will be made to mislead you or to supply you with false information. It is my intention to conduct this research honestly, fair and transparent and I acknowledge that I may have certain limitations, competence and believes regarding research. However, I will at all times adhere to integrity, transparency and accountability. There are no predetermined risks accompanying this study. You as the participant are merely providing the researcher with knowledge about the subject matter. It is not foreseen that by participating in this research that you as the participant will face any specific risks.

The questions formulated in the interview schedule are to provide information to answer the research questions. It is not of a personal nature and should not pose a risk of discomfort. During the interview you may become tired or feel uncomfortable at which point you may request a break or request that the interview be postponed to a later date or terminated if so desired.

I will ensure that the benefits from this research will out way any risk and precautions will be taken to minimize and mitigate risk if risks occur. I will adhere to the research ethics of Unisa and all other applicable policies on the protection of the identity of the participants and the information that was gathered during the interview. The interview schedule with your information and relevant documentations to the interview and the analyses of the information will be code protected and it will be stored in a code protected safe. I am the only person who has excess to the safe.

You as the respondent do not have to disclose information you would prefer to remain private. I am the person who will analyse the data and will ensure that all data be treated confidentially and only for the purpose agreed herewith. Your information will be used as empirical data in the research report.

I appreciate your willingness to be interviewed for this research project. You may withdraw from the study at any time. In co-signing this agreement, I Kevin Naicker (the researcher) under takes to:

- Maintain confidentiality, anonymity, and privacy regarding the identity of the respondent and information rendered by the respondent.
- The researcher will use code names to protect the anonymity, and privacy regarding the identity of the respondent and all the information obtained during the interviews will be kept confidential at all times.

The research findings will be made available to you should you request them. The research report will after the research has been done be available at UNISA library. (electronic and hard copy).

### **Participants involvement in the study**

Your involvement in this study is voluntary. You will in no way be penalised if you do not participate or withdraw during the interview. The reason for your involvement is to gain valuable, rich and new information regarding the problem that is researched. You will be asked open ended questions which will appear on an interview schedule. I will record your answer verbatim on the interview schedule. The interview schedule will be completed anonymously to protect your

confidentiality. I will refrain from publishing any of the participants' personal information.

The open ended questions will allow me as the researcher to ask clarifying and probing questions on answer you gave. The interview will be semi structured and will take approximately 60 minutes.

This research will follow a qualitative approach and empirical design. Interviews are an empirical method to gather information and this is one of the data collection techniques that I am going to use in this research. I have used a scientific sampling method to sample you as a participant for this research. You as a participant fall into the geographical area where the research will be conducted. You have the experience and the knowledge of the topic under investigation. You will be able to supply the richest and most valuable information that will help to investigate the topic under investigation.

**Respondent's benefits**

There are no perceptible financial benefits or incentives available for you. However, it can be proposed that you as the participant will benefit in some way through the process of knowledge production. The result of this study could facilitate the enhancement of the investigation capabilities of the crime scene investigators. This study could benefit the academic community since its results could be used in academic material and the results could be accessed by local and international scholars as a source.

The researcher to complete the next section after the information was read to the respondent.

		<b>Yes/No</b>
1.	I the participant have received sufficient information about the study for me to decide whether to take part.	
2.	I the participant understand that I am free to refuse to take part if I wish	

		Yes/No
3.	I the participant understand that I may withdraw from the study at any time without having to provide a reason.	
4.	I the participant know that I can ask for further information about the study from the research team.	
5.	I the participant understand that all information arising from the study will be treated as confidential.	
6.	I the participant know that it will not be possible to identify any individual participant in the study report, including myself.	
7.	I the participant agree to take part in the study.	
8.	I the participant understand that all information will be kept in a code protected safe and that the documents on which the information appears will also be code protected.	

### **Certificate by participant**

I the participant also consent to:

- follow-up interview if necessary;
- the interviews be recorded in writing; and
- the use of data derived from these interviews by the interviewer in a research report as he deems appropriate;

I the participant also understand that:

- I am free to end my involvement or to cancel my consent of participate in the research at any time should I want to;
- Information rendered up to the point of my termination of participation could, however, still be used by the researcher;
- Anonymity is guaranteed by the researcher and data will under no circumstances be reported in such a way to reveal my identity;
- I am free to determine that specific information that I reveal should not be recorded in writing;
- No reimbursement will be made by the researcher for information rendered or for my participation in this project;

- I will in no way derive any personal benefit from taking part in this research project; (delete if not applicable and if applicable explain the benefit).

By signing this agreement, I the respondent under take to:

Give honest and full answers to reasonable questions and not to deliberately mislead the researcher.

I the respondent hereby acknowledge that the researcher/interviewer:

- Discussed the aims and objectives of this research project with me;
- Informed me about the contents of this agreement; and
- Explained the implications of my signing this agreement.

I confirm that quotations from the interview can be used in the final research report and other publications. I understand that these will be used anonymously and that no individual respondent will be identified in such report.

NB: PARTICIPANTS MAY NOT ANSWER QUESTIONS OR FURNISH ANY INFORMATION THAT HE OR SHE FEELS MAY BE PROHIBITED TO DISCLOSE DUE TO HIS OR HER PAST ASSOCIATION WITH THE SOUTH AFRICAN POLICE SERVICE OR POSSIBLE CONTRAVENTION OF THE PROTECTION OF INFORMATION ACT (ACT 84 OF 1982).

I the participant did receive the original copy of this agreement on signing it.

I the participant understand the contents of this document and agree to voluntary participate in this research.

Signature:  
Name in block letters, please

Date: .....

### **SECTION A: HISTORICAL INFORMATION**

1. What is your age?
2. What is your gender?
3. State the name of unit that you were attached to?
4. How many years of investigation experience did you have in Crime Intelligence?

5. Did you attend any Crime Intelligence Courses?
6. Did you receive/undergo any training regarding agent handling?
7. Did you undergo specialized training with regards to the following whilst you were in the SAPS?
 

Recruitment and Handling of Agents	Yes/No
Recruitment and Handling of Informants	Yes/No
Undercover Operations	Yes/No
Drug Trafficking	Yes/No
8. How many agents have you recruited in the past?
9. How many agents have you utilized and managed in the past?

**SECTION B: RECRUITMENT OF AND SELECTION OF AGENTS**

10. What is your viewpoint regarding undercover operation?
11. What do you regard as the objectives of criminal investigation?
12. What are the objectives of undercover operation?
13. What do you regard as Crime Information?
14. What did you regard as open source and closed sources of information?
15. What do you regard as Crime Intelligence?
16. What did you regard as evidence?
17. Who did you regard as an agent?
18. Why was it necessary to use agent in the past?
19. Why was it important to study the criminal target?
20. How did you identify suitable agents in the past and discuss certain characteristics that agents needed to have?
21. How did you recruit an agent in the past?
22. What approach strategies did you utilize in the past when recruiting an agent?

**SECTION C: MANAGEMENT OF AGENTS**

23. In the past, what important factors/procedures did you take into consideration during a police trap for agents testimony to be admissible in court?
24. What did you see as the purpose of section 252A of the Criminal Procedure Act, 51/1977?

25. What administrative management processes for agents did you utilize in the past?
26. What important aspects did the undercover agent file contain?
27. What was the importance of an operational plan?
28. What aspects were attended to when you trained and developed an agent in the past?
29. How did you prepare an agent during an undercover operation in the past?
30. Why was it important to learn the environmental area?
31. What was the importance of a cover story in the past?
32. What factors/provisions did you take into consideration when selecting an appropriate cover story?
33. What did you understand be the concept infiltration process to be?
34. What are the reasons that agents become exposed and how can this be avoided?
35. What challenges/problems did you experience with agents when managing them in past undercover investigations?

Thank you for the opportunity to allow me to conduct this interview with you. Your cooperation is highly appreciated.



## 7.2 Appendix B: Ethics clearance



### COLLEGE OF LAW RESEARCH ETHICS SUB-COMMITTEE

17 February 2014

Dear Mr K Naicker

**REQUEST FOR ETHICAL CLEARANCE: THE RECRUITMENT OF AGENTS IN CLANDESTINE DRUG TRAFFICKING CRIMINAL INVESTIGATIONS**

The application for ethical clearance for the above research project has been approved.

The ethical clearance is granted for the duration of this project. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study, as well as changes in the methodology, should be communicated to the College of Law Ethical Review Committee. An amended application could be requested if applicable.

It is your responsibility to ensure that the research project adheres to the values and principles expressed in the UNISA Research Ethics Policy, which can be found at the following website:  
[http://www.unisa.ac.za/cmsys/staff/contents/departments/res\\_policies/docs/Policy\\_Research%20Ethics\\_rev%20app%20Council\\_22.06.2012.pdf](http://www.unisa.ac.za/cmsys/staff/contents/departments/res_policies/docs/Policy_Research%20Ethics_rev%20app%20Council_22.06.2012.pdf)

Yours faithfully

A handwritten signature in black ink, appearing to read "M Schoeman".

Prof Marelize Schoeman  
Chairperson  
Ethics Review Committee  
College of Law

A handwritten signature in black ink, appearing to read "S Songca".

Prof S Songca  
Executive Dean  
College of Law



University of South Africa  
Pretoria Street, Muckleneuk Ridge, City of Tshwane  
PO Box 292, Unisa 0003, South Africa  
[www.unisa.ac.za/home](http://www.unisa.ac.za/home)

SUID AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

VERWYSING REFERENCE	:	0468061-8
NAVRAE ENQUIRIES	:	CAPTAIN K. NAICKER
TELEFOON TELEPHONE	:	082 3730 417
FAKSNOMMER FAX NUMBER	:	031 -3255987

**THE SECTION COMMANDER  
COVERT INTELLIGENCE COLLECTION  
CRIME INTELLIGENCE  
KWAZULU-NATAL**

27 JANUARY 2014

- A. *The Section Commander  
Counter Narcotic Unit  
Covert Intelligence Collection  
Kwazulu Natal*
- B. *The Section Commander  
Covert Intelligence Collection  
Crime Intelligence  
Kwazulu Natal*
- C. *The Acting Section Head  
Operation  
Crime Intelligence  
KwaZulu Natal*
- D. *The Acting Provincial Head  
Crime Intelligence  
Kwazulu Natal*

**APPLICATION TO CONDUCT RESEARCH WITHIN THE SAPS : TOPIC: THE  
RECRUITMENT OF AGENTS IN CLANDESTINE DRUG TRAFFICKING CRIMINAL  
INVESTIGATIONS: CAPTAIN K. NAICKER : 0468061-8 :**

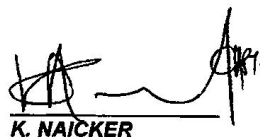
- A.1 *Captain K. Naicker requests to continue with the abovementioned topic: The Recruitment of Agents in clandestine drug trafficking criminal investigations, for completion of MTEC: Forensic Investigation at UNISA. The researcher is at a final stage of his research proposal and ready to commence with his dissertation into the abovementioned topic.*
2. *The researcher considers the following on the purpose of research:*
  - *Empower and educate intelligence operatives(handlers) on how to recruit agents during clandestine drug trafficking criminal investigations in order to become better and more*

CONT... **APPLICATION TO CONDUCT RESEARCH WITHIN THE SAPS : TOPIC: THE  
RECRUITMENT OF AGENTS IN CLANDESTINE DRUG TRAFFICKING  
CRIMINAL INVESTIGATIONS: CAPTAIN K. NAICKER : 0468061-8**

*effective and efficient in their fight against crimes such as drug trafficking.*

- *Evaluate and analyze the use of agents during drug trafficking criminal investigations.*
  - *Enhance procedures and ascertain whether adequate policies exist relating to the use and recruitment of agents during clandestine drug trafficking criminal investigations. This approach serves to identify the strengths and weaknesses of current processes and possible improvements thereto.*
  - *Explore national and international literature sources to gather new and current information on the recruitment of agents in clandestine drug trafficking investigations.*
3. *The participation of respondents in the study will be on voluntary basis. All the respondents will also be informed about the reason for the study and what it aim to achieve. The inform consent will be documented and will be done in the language that is understandable for the respondent. The researcher will make sure that the respondents understand the consent. All the information that is gathered will be handled confidentially and anonymity of all respondents including names will be guaranteed. The participants will be informed that they can at any stage withdraw. The researcher's interview schedule will include the purpose of the research, duration of the research the procedure of the research and how answers will be recorded. The researcher will explain anonymity and confidentiality of the research to the participant. In the explanation the researcher will reassure the respondents that their names will not be disclosed and that the interview schedules will be filed in a safe and sure environment. The respondent will sign a declaration of voluntary participation and respondent will be guarantee that refusal to participate will incur no penalty. Once all the data has been collected and analyzed, the researcher will write up the findings as accurately and objectively as possible.*
4. *Hope this application meets your favourable approval.*

*Kind regards*

  
K. NAICKER

CONT... **APPLICATION TO CONDUCT RESEARCH WITHIN THE SAPS : TOPIC: THE  
RECRUITMENT OF AGENTS IN CLANDESTINE DRUG TRAFFICKING  
CRIMINAL INVESTIGATIONS: CAPTAIN K. NAICKER : 0468061-8**

RECOMMENDED / NOT RECOMMENDED

  
LT/COLONEL  
THE UNIT COMMANDER: COUNTER NARCOTICS UNIT  
COVERT INTELLIGENCE COLLECTION  
CRIME INTELLIGENCE: KWAZULU NATAL  
G.D SMAL

RECOMMENDED / NOT RECOMMENDED

1. For the past five (5) years this officer has benefited due to the officer's skill development through his interactive studies regarding the subject matter.
2. The officer has instilled value information in the police environment which is directly related to his job functions and duties.
3. It is also noted his performance has met or is of a high standard.

  
COLONEL  
THE SECTION COMMANDER, COVERT INTELLIGENCE COLLECTION  
CRIME INTELLIGENCE: KWAZULU NATAL  
DZULU

CONT... APPLICATION TO CONDUCT RESEARCH WITHIN THE SAPS : TOPIC: THE RECRUITMENT OF AGENTS IN CLANDESTINE DRUG TRAFFICKING CRIMINAL INVESTIGATIONS: CAPTAIN K. NAICKER : 0468061-8

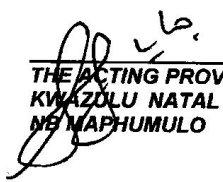
~~RECOMMENDED / NOT RECOMMENDED~~

  
THE SECTION COMMANDER  
CRIME INTELLIGENCE (OPERATIONS)  
KWAZULU NATAL  
G. WANNENBURG

COLONEL

To be considered by  
Research Committee  
at Crime Intelligence  
and SAPS Research.

~~APPROVED / NOT APPROVED~~



BRIGADIER

THE ACTING PROVINCIAL HEAD: CRIME INTELLIGENCE  
KWAZULU NATAL  
N. MAPHUMULO

**SUID-AFRIKAANSE POLISIEDIENS**  
 Privaatsak/Private Bag 54320



**SOUTH AFRICAN POLICE SERVICE**

Verwysing Reference	11/3/1
Navrae Enquiries	COL. D. ZULU CAPT K. NAICKER
Telefoon Telephone	082 559 6886 082 373 0417
Faksnommer Fax number	031 701 0661

**THE SECTION COMMANDER  
 COVERT INTELLIGENCE COLLECTION  
 KWAZULU NATAL**

**2015-08-09**


**THE DIVISIONAL COMMISSIONER  
 CRIME INTELLIGENCE  
 HEAD OFFICE  
 PRETORIA**

**APPLICATION TO CONDUCT RESEARCH IN THE SOUTH AFRICAN POLICE SERVICE: MTEC:  
 FORENSIC INVESTIGATION: THE RECRUITMENT OF AGENTS IN UNDERCOVER DRUG  
 TRAFFICKING CRIMINAL INVESTIGATIONS: CAPTAIN K. NAICKER: 04680618**

1. This office applies and recommends that Captain K. Naicker be allowed to conduct research in in the Crime Intelligence Division regarding the recruitment of agents in undercover drug trafficking criminal investigations.
2. The officer made an application to Human Resource Development in 2013-11-04. General Gossmann recommended that the research will be useful in the development of the organization, however he recommended that the officer must submit a request to the Divisional Commissioner: Crime Intelligence for approval. The acting Divisional HRD letter is attached as annexure A.
  - 2.1 The recommendation letter by Provincial Head, Crime Intelligence, KwaZulu Natal dated 2014-01-27 is attached for your easy reference as annexure B.
  - 2.2 The Officers Proposal/ Registration Document is attached as annexure C.
  - 2.3 Ethical Clearance approval to conduct research from College of Law Research Ethics Sub-Committee is attached as annexure D.
3. The member is currently in the final stages of his dissertation for completion of Masters in Forensic Investigation. The member started payment for study fees as from 2012.
4. The members has vast knowledge and experience in recruitment and handling of human informant and undercover agents. He is mentoring and coaching the young members in the Unit about recruitment and the value of agent in the drug trafficking investigation. The self development the Officer is embark on will definitely benefit the unit the member is attached, the organization and the South African Police Service including Crime Intelligence Environment.

cont...APPLICATION TO CONDUCT RESEARCH WITHIN THE SERVICE: TOPIC: THE RECRUITMENT OF AGENTS IN UNDERCOVER DRUG TRAFFICKING CRIMINAL INVESTIGATIONS: CAPTAIN K. NAICKER: 04680618

5. Your favourable consideration in this regard is highly appreciated.

  
COLONEL  
THE SECTION COMMANDER  
COVERT INTELLIGENCE COLLECTION  
KWAZULU-NATAL  
D ZULU

APPROVE / NOT APPROVED

The research has a potential to expose and therefore compromise CI methodologies and processes  
wrt. undercover agents.

  
MAJOR GENERAL  
ACTING DIVISIONAL COMMISSIONER  
CRIME INTELLIGENCE  
MJ LEKALAKALA

2015/09/04.

## 7.4 Appendix D: Turnitin report

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THE RECRUITMENT OF AGENTS  
TRAFFICKING CRIMINALS

by

KEVIN NAICKER

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