

SENSITIVE

SECTION 8. INFORMANTS AND ENTRAPMENT

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8-1 IN GENERAL (See MIOG, Part I, Section 137.)

(1) The use of informants to assist law enforcement officers in the task of enforcing the criminal law has been recognized and approved by the courts for centuries. Because criminals usually work covertly, the government may also employ some guile or misrepresentation when attempting to investigate and apprehend those responsible for criminal conduct. The value of informants is particularly high in investigations of so called "victimless crimes" where complaining witnesses are rare, or in situations in which eyewitnesses are unavailable.

(2) Although informants are private individuals in the sense that they are not commissioned representatives of the government, they are considered agents of the government when performing informant-related tasks. As such, they are subject to the same legal restrictions that govern the conduct of Special Agents. It follows that if the informant's contemplated action would be illegal or unconstitutional if performed by a Special Agent, it is also impermissible if performed by the informant. The material which follows contains a general discussion of the common legal and policy restraints which limit the permissible scope of an informant's activities. In addition, a brief discussion of the law relating to the government's privilege of nondisclosure of its informants' identities is included.

(3) It is noted that this section does not include any of the material contained in the Attorney General's Guidelines on FBI use of informants and confidential sources. These rules, which can be found in MIOG, Part I, Section 137, set out FBI policy regarding informants and confidential sources. They include regulations governing when an informant may be utilized, when an informant may participate in criminal activities, when appropriate authorities must be notified of an informant's unauthorized criminal activity, when a person affiliated with the news media or under an obligation of a legal privilege or confidentiality may be used, when an informant may be permitted to infiltrate an organization, and the circumstances of payment to an informant.

(4) For a discussion of the Bureau rules relating to the administrative handling of informants see MIOG, Part I, Section 137.

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8-2 INFORMATION REGARDING LOCAL CRIMES

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When an FBI informant provides information concerning planned criminal activity which is not within the investigative jurisdiction of the FBI, the FBI should advise the law enforcement agency having investigative jurisdiction. If the circumstances are such that it is inadvisable to have the informant report directly to the agency having investigative jurisdiction, the FBI, in cooperation with that agency, may continue to operate the informant.

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8-3 LEGAL LIMITATIONS

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8-3.1 Entry to Premises

Any entry by an informant into premises protected by the Fourth Amendment is illegal if the informant had no authority to enter. For example, a surreptitious entry without the consent of the suspect or another person with lawful possession of the property, would be illegal and taint anything observed or overheard by the informant while inside the premises. Conversely, if an informant is invited into a suspect's residence, even though the invitation is obtained after misrepresenting his/her identity and purpose, the courts uniformly consider his/her presence lawful. The fact that entry is gained by use of a ploy or ruse does not vitiate the suspect's permission to enter. It follows that any incriminating information developed by the informant, whether in the form of a statement made by the suspect, or a physical item observed by the informant, is lawfully developed and can be used by the Government either to establish probable cause for the issuance of a warrant, or as an element of proof at a criminal trial.

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8-3.2 Search and Seizure

As noted earlier, informants are considered agents of the law enforcement officers for whom they work and are subject to the same exclusionary rules imposed on the officers or agents who direct them. Thus any evidence obtained or observed by the informant while conducting an unreasonable search and seizure will likely be inadmissible in a criminal prosecution against the party aggrieved by the search. For a discussion of the general rules governing searches and seizures, see Section 5, Search and Seizure.

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