

ABOUT THE REUTERS DEA SPECIAL OPERATIONS DIVISION STORY

Reuters is out this morning with what is being hailed as somewhat of an eye opening expose on the Drug Enforcement Agency's Special Operations Division. The article is very good and should be read in full, but I would like to make a couple of quick points.

First, the headline is misleading. The caption is:

Exclusive: U.S. directs agents to cover up program used to investigate Americans

Well, not really (and, in fairness, the actual body of the article is about a practice that is a result of the SOD). DEA's Special Ops Division is neither new nor secret in the least, and there is no way to "cover it up". Google it; I got "About 289,000 results (0.29 seconds)" as a return. You will get something similar. The revelation that SOD was used in the Viktor Bout case is also not new, here is a Time story detailing it from 2011.

In fact, any criminal defense attorney who did cocaine hub conspiracy cases in the 90's could have told you most of the Reuter's article in their sleep. That was exactly the scene that DEA-SOD was born from. As the war on drugs went nuclear, the DEA devised what they termed the "Kingpin Strategy":

In 1992, the DEA instituted the Kingpin Strategy that focused investigative and enforcement efforts on specific drug trafficking organizations. The DEA planned to disable major organizations by attacking their most vulnerable areas—the chemicals needed to process

the drugs, their finances, communications, transportation, and leadership structure.

The Kingpin Strategy held that the greatest impact on the drug trade took place when major drug organizations were disrupted, weakened, and destroyed. This strategy focused enforcement efforts and resources against the highest-level traffickers and their organizations, and provided a systematic way of attacking the various vulnerabilities of the organizations. By systematically attacking each of these vulnerabilities, the strategy aimed to destroy the entire organization, and with it, the organization's capacity to finance, produce, and distribute massive amounts of illegal drugs. Each blow weakened the organization and improved the prospects for arresting and prosecuting the leaders and managers of the organizations.

The Kingpin Strategy evolved from the DEA's domestic and overseas intelligence gathering and investigations.

And from Kingpin sprung the Special Operations Division:

Under the original Kingpin Strategy, DEA headquarters often dictated the selection of Kingpin targets. In response to the SACs' concerns, Administrator Constantine agreed to allow them more latitude in target selection. In conjunction with this decision, he established the Special Operations Division at Newington, Virginia, in 1994 to coordinate multi-jurisdictional investigations against major drug trafficking organizations responsible for the flow of drugs into the United States.

The above is from a history of the DEA right there on the Justice Department's website, so "covering up" SOD is kind of a non-starter. However, what IS being covered up, and what really is the substance of the body of the Reuter's article, is the practice of "parallel construction" of cases:

The undated documents show that federal agents are trained to "recreate" the investigative trail to effectively cover up where the information originated, a practice that some experts say violates a defendant's Constitutional right to a fair trial. If defendants don't know how an investigation began, they cannot know to ask to review potential sources of exculpatory evidence – information that could reveal entrapment, mistakes or biased witnesses.

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After an arrest was made, agents then pretended that their investigation began with the traffic stop, not with the SOD tip, the former agent said. The training document reviewed by Reuters refers to this process as "parallel construction."

The two senior DEA officials, who spoke on behalf of the agency but only on condition of anonymity, said the process is kept secret to protect sources and investigative methods. "Parallel construction is a law enforcement technique we use every day," one official said. "It's decades old, a bedrock concept."

Yes. Exactly. And, as the "senior DEA officials" admitted, this, too, is not new in the least. Again, the Reuter's quote of the incredulous former Judge Nancy Gertner aside, any number of longtime members of NACDL could have told you all of this at any point in time since the mid 90's.

The takeaway that is important from the Reuters

piece is that all the frothing about “golly, what if those NSA capabilities bleed out of terrorism and into traditional criminal cases” is nuts. It already is, and has been for a long time. It is the “clean teaming” of criminal prosecutions. And it is a direct and tangible fraud upon defendants, the courts, Due Process and several other important Constitutional concepts.

It is not a matter of what if it happens, it IS happening.