

Chapter 23

Transnational and Cross-Cultural Approaches in Undercover Police Work

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ABSTRACT

Undercover operatives have for decades attempted to interact with and expose criminal activity in identified criminal sub-culture groups of their same ethnic backgrounds, potential criminal participants in diverse ethnic cultural groups other than their own ethnic background, and cross-cultural groups made up of people from different ethnic groups. Through our combined professional experiences (e.g., leadership professor, undercover law enforcement, criminal justice, research, inmate instructor, ethics professors) and having lived and worked in various parts of the world (e.g., Canada, US, UK, Europe, South East and Central Asia) our chapter examines undercover police work and provides a view to cross-cultural issues that exist on both the enforcement and suspect sides of police investigation. A variety of transnational and cross-border ethical issues are examined in undercover work (e.g. trickery, entrapment) along with landmark court cases in an effort to compare and contrast international approaches to undercover operatives. Future directions concerning international collaboration are presented.

INTRODUCTION

Advancements in technology, the onset of the internet consumer markets and the European Union have all contributed to lines on national boundaries becoming more obscure. Research conducted internationally including North America, Asia, Europe and Asia-Pacific (see Hufnagel, Harfield, & Bronitt, 2011; Jenner, 2011; Lemieux, 2010) clearly indicate that police must engage in a transnational and cross-cultural approach to be effective (Andreas, 2000; European Cooperation Group on Undercover Activities, 2004; The Hague Programme 2005). Historically, a transnational crime issue is dealt with in

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courts on a case-by-case assessment of whether or not the law in a jurisdiction where someone is located permits the legality of extraditing a person to another jurisdiction for prosecution. Examples include *United States of America v. Burns* (2001) wherein Canadian undercover officers obtained confessions for a murder committed in the United States, and *United States of America v. Commisso* (2000) wherein an American undercover officer successfully met with a Canadian drug supplier and arranged to import illicit drugs to Canada. In both cases a Court of Appeal authorized extradition of a Canadian Citizen to the United States to face prosecution based on what could be described as typical undercover operations for serious crimes.

According to research on cross-border trafficking of people, drugs and contraband (e.g., Andreas, 2002; Campbell, 2008; European Cooperation Group on Undercover Activities, 2004; Findley, 1999) there is a logical extension that undercover operations will need to be employed with a transnational view. Significant issues arise with a transnational approach including: physically moving officers from one jurisdiction to another, increased officer stress related to a transnational deep cover operation, providing cover for the officers' safety, and ensuring the undercover operative adjusts to work within the limits set by a particular jurisdiction outside of her/his own. (Anglin, 2002; Duraković, 2010; Gribakina, 2013; Irwin, 2002; Marx & Fijnaut, 1995; Štariene, 2009; The Hague Programme, 2005; Tinto, 2013). The significant change in process would be engaging out-of-country undercover operatives. The value in understanding the social, psychological and legal issues related to police undercover work is the ability to identify key ethical issues that underlie effective and meaningful policing mentalities, aimed at meeting the Rule of Law, regardless of the local jurisdiction or country.

The Rule of Law is a foundational approach to government that incorporates clear, publicized laws honouring human rights, and applied equally to all in a fair and efficient manner. For example, the need for transnational undercover operations and a need to understand national autonomy in legal process may be most acute relative to child sex exploitation (Seto, 2013). The ability for pedophiles to broaden their audience and scope of access through the internet has grown exponentially over the last four decades (Ospina, Harstall, & Dennett, 2010). The onset of technological privacy advancement such as the "Deep Web" increases the ability to conduct 'business' with less chance of becoming exposed (Sharma, 2014). Likewise the police must use equally surreptitious methods to uncover the activity (Fulda, 2007; Mitchell, Wolak & Finkelhor, 2005). Whereas many may accept a more security-minded approach with online pedophile activity, society may not be equally willing to accept online undercover policing activity for fraud related offences (International Business Times, 2013), for identity issues (Zureik, Harling Stalker, Smith, Lyon, & Chan, 2010), or for direct corporate interests such as copyright infringement.

BACKGROUND: COLLABORATIVE POLICING ACROSS CULTURES

Undercover operations in a cross-cultural context by their very nature require integrating the 'other(s)'. In order to be effective at infiltrating a group, the undercover operative must shift from a position of thinking about the defined 'other' as an antithetical entity to affiliate, studying and mimicking his/her social practices. In order to be credible the officer must 'understand' the world (s)he is entering and understand the players within that environment. This brand of covert work can be viewed as a political strategy used by one [empowered] group against a competing other, deemed "necessary" only because of the presence of that antithetical criminal world, and the need to control that world (Boersma, 2014; Foucault, 1980). This politicization is exemplified in the current cross-cultural shift in Canada and the

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