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## REWARDING CONFIDENTIAL INFORMANTS: CASHING IN ON TERRORISM AND NARCOTICS TRAFFICKING

*Douglas Kash*<sup>\*+</sup>

### INTRODUCTION

The criminal acts of September 11, 2001, resulted in changes to existing United States law, including rewards available to confidential informants who provide information on terrorists or terrorist activities. Specifically, on October 26, 2001, the United States Congress enacted the “Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.”<sup>1</sup> Prior to September 11, an informant could be eligible for a reward under several different venues, depending upon which agency received and utilized the informant’s information. Although the events of September 11 did not increase the types of rewards, the incentives for informants, including those who are non-citizens, were modified.

The notion of rewards for information is neither new nor limited to terrorism.<sup>2</sup> Indeed, the United States Code provides for several types of rewards for different kinds of information.<sup>3</sup> Some examples of the more

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+ As a matter of policy, the Drug Enforcement Administration disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are the author’s alone and do not necessarily represent the views of the United States Department of Justice, the Drug Enforcement Administration or any officer or entity of the United States Government.

<sup>1</sup> Pub. L No. 107-56, 115 Stat. 272 (2001) [hereinafter USA PATRIOT Act].

<sup>2</sup> Although some of the statutes use the term “award” it appears that “reward” is more appropriate. Black’s Law Dictionary defines “award” as “a final judgment or decision, especially one by an arbitrator or by a jury assessing damages.” “Reward,” on the other hand, is defined as a “something of value, usually money, given in return for some service or achievement, such as recovering property or providing information that leads to the capture of a criminal.” BLACKS’S LAW DICTIONARY 132, 1321 (7<sup>th</sup> ed. 1999). For purposes of clarity, “reward” will be used in this article unless “award” is part of the statutory language.

<sup>3</sup> For example, 18 U.S.C. §3059B(a) (2001) authorizes the Attorney General to reward “any individual who assists the Department of Justice in performing its functions”; 19 U.S.C. § 1619(a)(1)(B)(i) (2001) enables the Secretary of the Treasury to pay rewards for information concerning “any fraud upon the customs revenue”; 21 U.S.C. §881(e)(2)(A)(ii) (2001) authorizes the Attorney General to pay rewards for “information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement

esoteric reward programs include: information concerning illegal introduction, manufacture, acquisition or export of special nuclear material or atomic weapons or conspiracies relating to this activity;<sup>4</sup> information leading to the discovery or missing property belonging to the Department of Defense;<sup>5</sup> information leading to the arrest and conviction of persons interfering with navigational aids maintained by the Coast Guard and discovery of missing Coast Guard property;<sup>6</sup> information leading to the arrest and conviction of persons responsible for forest fires in the national forests;<sup>7</sup> information leading to a civil penalty or criminal conviction for violations of the African Elephant Conservation Act;<sup>8</sup> and information leading to the arrest of any person who is charged with a violation of a criminal law of the United States.<sup>9</sup>

This article focuses on a few of the different reward mechanisms for information relating to acts of terrorism and narcotics trafficking and explains the process of each program. While several U.S. intelligence agencies (civilian and military) have internally managed reward programs for confidential informants, these programs and their appropriations are classified for national security purposes and will therefore not be addressed in this article. Additionally, since most law enforcement agencies have their own reward programs, this article will focus on the reward programs of the Department of Justice, Drug Enforcement Administration, and the Department of State.<sup>10</sup>

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agent”; 26 U.S.C. §7623 (2001) authorizes the Secretary of Treasury to pay rewards for “detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same”; and 28 U.S.C. §524(c)(1)(C) (2001) authorizes the Attorney General to reward those who provide “information or assistance leading to a civil or criminal forfeiture.”

<sup>4</sup> 50 U.S.C. §47a (2001).

<sup>5</sup> 10 U.S.C. §2252 (2001).

<sup>6</sup> 14 U.S.C. §643 (2001).

<sup>7</sup> 16 U.S.C. §559a (2001).

<sup>8</sup> 16 U.S.C. §4225(a) (2001).

<sup>9</sup> 18 U.S.C. §3059(a)(1) (2001).

<sup>10</sup> Examples of reward programs for agencies other than the Department of Justice include the Secretary of the Treasury informant reward authority, found at 31 U.S.C. §5323 (2001), and the U.S. Customs Service award of compensation to informers, found in the Tariff Act of 1930, 19 U.S.C. §1619 (2001).

## I. REWARD MECHANISMS

### A. *The Confidential Informant Reward Program for Terrorist Information*

Rewards for information involving terrorism were established by the 1984 Act to Combat International Terrorism (1984 ACIT).<sup>11</sup> Under the 1984 ACIT, the Attorney General is given discretionary power with respect to acts of terrorism to reward any individual who furnishes information—

- (1) leading to the arrest or conviction, in any country, of any individual or individuals for the commission of an act of terrorism against a United States person or United States property; or
- (2) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of terrorism against a United States person or property; or
- (3) leading to the prevention, frustration, or favorable resolution of an act of terrorism against a United States person or property.<sup>12</sup>

Excluding government employees acting within the scope of their official duties, an individual may be entitled to a reward up to \$500,000. Rewards up to \$100,000 can be paid with the approval of the Attorney General, while a reward of \$100,000 or more requires the personal approval of the President or Attorney General. The rewards are deemed conclusive and no court has the power or jurisdiction to review it.<sup>13</sup> Additionally, although the identity of an informant is kept strictly classified, informants and their immediate families are eligible to participate in the Attorney General's Witness Protection Program.<sup>14</sup>

When President Ronald Reagan sent the ACIT bill to Congress in April 1984, he noted the limitations of existing laws, specifically the lack of authority to pay rewards for information concerning acts of terrorism

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<sup>11</sup> 1984 Act to Combat International Terrorism, Pub. L. No. 98-533, 98 Stat. 2706 (1984) (codified at 18 U.S.C. §3071-77 (2002)).

<sup>12</sup> *Id.* The 1984 ACIT was amended in 1994 to include acts of espionage and to replace the heading to Chapter 204 from "Rewards for Information Concerning Terrorist Acts" to "Rewards for Information Concerning Terrorist Acts and Espionage." See Pub. L. No. 103-359, title VIII, §803(a), 108 Stat. 3438 (1994).

<sup>13</sup> 18 U.S.C. §3072 (2001).

<sup>14</sup> *Id.* §3076.

abroad.<sup>15</sup> President Reagan also stated that the payment for rewards in connection with domestic acts of terrorism was appropriately designated to the Attorney General while acts of terrorism outside of the territorial United States raised political and foreign relations issues within the jurisdiction of the Secretary of State.<sup>16</sup> Upon signing the bill into law, President Reagan proclaimed that this law would “provide the resources and authorities essential in countering the insidious threat terrorism poses to those who cherish freedom and democracy....This Nation bears global responsibilities that demand that we maintain a worldwide presence and not succumb to these cowardly attempts at intimidation.”<sup>17</sup>

The 1984 ACIT adopted the definition of “terrorism” from the Foreign Intelligence Surveillance Act,<sup>18</sup> defining terrorism as violent or dangerous acts that would be crimes if committed in the United States and that appear to be intended to intimidate or coerce a civilian population or to influence the policy or conduct of a government or political subdivision of a government by intimidation or coercion. The 1984 ACIT was first used in 1985 in connection with the slayings of four U.S. Marines and two U.S. civilians in El Salvador.

Current law, specifically the “Rewards for Information Concerning Terrorist Acts and Espionage,” utilizes the same definition for terrorism as the 1984 ACIT.<sup>19</sup> Rewards are still deemed conclusive and no court has the power or jurisdiction to review the reward. Again, informants’ identities can be kept strictly classified, and their immediate families are eligible to participate in the Attorney General’s Witness Protection Program.<sup>20</sup>

The recently enacted USA PATRIOT Act amended the reward program’s authority by increasing the amount of money offered or paid to an informant. Now, a reward totaling \$250,000 or more requires the personal approval of the President or Attorney General.<sup>21</sup> The USA PATRIOT Act also mandates that if a reward is approved under this section, the Attorney General must transmit written notice to the Chairmen and ranking minority members of the Appropriations and the Judiciary Committees in the Senate and House of Representatives no later than 30

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<sup>15</sup> President’s Message to Congress Transmitting Four Proposed Bills on International Terrorism, 20 WEEKLY COMP. PRES. DOC. 590 (Apr. 26, 1984).

<sup>16</sup> *Id.*

<sup>17</sup> President’s Statement on Signing H.R. 6311 into Law, 20 WEEKLY COMP. PRES. DOC. 1573 (Oct. 19, 1984).

<sup>18</sup> 50 U.S.C. §1801(c)(1) and (2) (2001).

<sup>19</sup> 18 U.S.C. §3077(1)(2001).

<sup>20</sup> *See id.* §3076.

<sup>21</sup> USA PATRIOT Act §501(b)(1) (2001).

days after the approval.<sup>22</sup> The funding for the reward program can come from any executive agency or military department. The Attorney General's refusal to make a reward is not subject to judicial review.<sup>23</sup>

### B. The "S Visa"

In addition to the monetary reward incentive, the Immigration and Naturalization Service (INS), a component agency of the Department of Justice, has the authority under specific limited circumstances to grant special visas to non-immigrants and their immediate families. On November 29, 2001, Attorney General John Ashcroft announced a new program, the "Responsible Cooperators Program" which provides incentives to aliens to provide useful information about terrorists and their activities.<sup>24</sup> The incentives already existed within the U.S. Code, but this program is an effort to reinvigorate cooperative communication between the Department of State and alien groups regarding any knowledge their members may have regarding criminal acts, particularly terrorism.<sup>25</sup>

The Violent Crime Control and Law Enforcement Act of 1994 created a new immigration regulation establishing an "S" visa (sometimes referred to as the "Snitch visa") which provides for a temporary and potentially permanent stay within the U.S.<sup>26</sup> There are two categories of the S visa: The S-1 visa is issued to aliens who possess "critical reliable information" regarding *criminal* activity who are willing to share their information with a U.S. agency or court and whose presence in the U.S. is necessary for the successful prosecution of the criminal activity.<sup>27</sup> The S-2 visa is available to aliens possessing "critical reliable information" regarding *terrorist* activity.<sup>28</sup> In addition to the cooperation under S-1, the S-2 informant must be in danger as a result of providing the information to the U.S. Only state and federal law enforcement authorities (including federal or state courts and U.S. Attorneys) can initiate a request under the "S" category.<sup>29</sup> The

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<sup>22</sup> *Id.* §501(b)(2).

<sup>23</sup> *Id.* §501(b)(3)-(4).

<sup>24</sup> Dan Eggen, *U.S. Dangles Citizenship to Entice "Cooperators,"* THE WASHINGTON POST, Nov. 30, 2001, at A1.

<sup>25</sup> *Id.*

<sup>26</sup> Immigration and Nationality Act §101(a)(15)(S) (codified at 8 U.S.C. §1101(a)(15)(S) (1994). *See also* Immigration and Nationality Act §212(d) (1994) (allowing Attorney General to waive inadmissibility with respect to a nonimmigrant as set forth in §101(a)(15)(S) if the Attorney General considers it to be in the national interest).

<sup>27</sup> *Id.* (emphasis added).

<sup>28</sup> *Id.* (emphasis added).

<sup>29</sup> 8 C.F.R. §214.2(t)(2). The application is made on INS form I-854 accompanied by an I-539. *Id.*

alien must be eligible for a reward under 22 U.S.C. §2708(a) also designated as section 36(a) of the State Department Basic Authorities Act of 1956.<sup>30</sup> The application must contain evidence establishing the nature of the alien's cooperation with the government, the need for the alien's presence in the U.S., all conduct and conditions which may constitute grounds for exclusion, and all factors and considerations warranting favorable consideration by the Attorney General on the alien's behalf.<sup>31</sup>

The request must be submitted to the Assistant Attorney General (AAG), Criminal Division, U.S. Department of Justice. When necessary, the AAG can empanel personnel from the U.S. Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Department of Justice Criminal Division, and Department of State to review the applications and prioritize the cases in order to conform to the statutorily-mandated numerical limitations.<sup>32</sup> The application is then forwarded to the Commissioner of the Immigration and Naturalization Service for final approval.<sup>33</sup> Within their three-year stay, aliens can apply for permanent resident status ("green card") which may ultimately result in citizenship.

### *C. The Reward for Justice Program*

The Department of State also has the authority to pay rewards for information on terrorism. The Department of State was authorized to establish a rewards program in the Omnibus and Diplomatic Security Act of 1986, funded from the moneys available under section 36(a) of the State Department Basic Authorities Act of 1956.<sup>34</sup> Similar to the Attorney General, the Secretary of State has the authority to pay a reward to any individual who furnishes information leading to -

- (1) the arrest or conviction in any country of any individual for the commission of an act of international terrorism against a United States person or United States property;
- (2) the arrest or conviction in any country of any individual conspiring or attempting to commit an act of international terrorism against a United States person or United States property;...

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<sup>30</sup> 22 U.S.C. §2708 (2001) (amended by Chapter 502 in the USA PATRIOT Act). *See also* State Department Basic Authorities Act of 1956 §36, Pub. L. No. 885, 70 Stat. 890 (1956) (as amended by The Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988), and the International Narcotics Control Act of 1989, Pub. L. No. 101-231, 103 Stat. 1954 (1989).

<sup>31</sup> 8 C.F.R. §214.2(t)(4)(i)(C).

<sup>32</sup> *Id.* §214.2(t)(4)(ii)(B).

<sup>33</sup> *Id.* §214.2(t)(4).

<sup>34</sup> Pub. L. No. 99-399, 100 Stat. 853 (1986) (codified throughout the U.S. Code).

- (4) the arrest or conviction in any country of any individual aiding or abetting in the commission of an act described in paragraph (1) [or] (2)...
- (5) the prevention, frustration, or favorable resolution of an act described in paragraph (1) [or] (2), including by dismantling an organization in whole or significant part; or
- (6) *the identification or location of an individual who holds a key leadership position in a terrorist organization.*<sup>35</sup>

The USA PATRIOT Act also amended the maximum amount of a reward under 22 U.S.C. §2708(e)(1) which now provides “No reward under this section shall exceed \$5,000,000, *except as personally authorized by the Secretary of State if he determines that offer or payment of an award of a larger amount is necessary to combat terrorism or defend the Nation against terrorist acts.*”<sup>36</sup> The USA PATRIOT Act appears to give the Secretary of State the discretion to offer a reward without a monetary limit.<sup>37</sup>

In an effort to avoid duplication or interference with the payment of informants or obtaining evidence or information, the Secretary of State shall consult with the Attorney General regarding—

- (A) [the identification of] individuals, organizations, and offenses with respect to which rewards will be offered;
- (B) the publication of rewards;
- (C) the offering of joint rewards with foreign governments;
- (D) the receipt and analysis of data; and
- (E) the payment and approval of payment.<sup>38</sup>

However, before making a reward payment for any matter over which there is Federal criminal jurisdiction, the Secretary of State must secure the approval of the Attorney General.<sup>39</sup>

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<sup>35</sup> *Id.* (USA PATRIOT Act amendments in the italics).

<sup>36</sup> USA PATRIOT Act amendment in italics. It is noteworthy that the U.S. House of Representatives passed a resolution amending 22 U.S.C. §2708 by increasing, yet limiting, the Secretary’s award authority to \$25,000,000. *See* H.R. REP. NO. 236(I), *to accompany* H.R. 2975, 107<sup>th</sup> Cong. (2001).

<sup>37</sup> *See* BLACKS’S LAW DICTIONARY, *supra* note 2.

<sup>38</sup> 22 U.S.C. §2708 (c)(1) (2001).

<sup>39</sup> *Id.* §2708(c)(2).

Since the days of the "Wanted" posters, new methods and technologies have contributed to the fight against terrorism. The Department of State, in coordination with several media outlets and other private entities, has repeatedly broadcast ways in which the public can assist the government. The Rewards for Justice Program was created in 1984 and is managed by the Diplomatic Security Service (DSS), a component of the Department of State. The Director of the DSS chairs an interagency committee that reviews reward candidates and makes recommendations to the Secretary of State. Depending upon the type of incident, the committee can include representatives from the National Security Council, Central Intelligence Agency, Department of Justice, Federal Bureau of Investigation, Drug Enforcement Administration, U.S. Marshals Service Witness Security program, Immigration and Naturalization Service, Federal Aviation Administration, and Department of Energy.<sup>40</sup>

Any individual can furnish confidential information via mail, telephone or the internet.<sup>41</sup> Individuals that do not have any information to offer can contribute money to the Rewards for Justice Fund through [www.RewardsFund.org](http://www.RewardsFund.org), a 501(c)(3) nonprofit charitable fund from which the rewards are paid.<sup>42</sup>

RewardsFund.org was created on December 13, 2001, by Steve Case and Joe Rutledge, two businessmen who were moved to lend their business and advertising expertise after the September 11 terrorist attacks. In coordination with the State Department's campaign undertaken by Under Secretary of State Cheryl Beers, Case and Rutledge also advised the State Department to create the toll-free line. At least four states, Virginia, South Carolina, Connecticut and Florida have introduced legislation for the creation of "United We Stand" license plates. The proceeds from the sales of the license plates will go to the Rewards Fund.<sup>43</sup>

The availability of rewards has been published in domestic newspapers such as *The New York Times*, and internationally in *Al Hayat*, *Paris Match*, *Die Welt*, and *Pravda*. These announcements comport with the statutory mandate, referred to as the Aviation Security Improvement Act of 1990,<sup>44</sup> requiring the Secretary of State to publish the availability of U.S. rewards for information on international terrorist-related activities,

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<sup>40</sup> Information about the Rewards for Justice program is available to the public on the world wide web. See <http://www.rewardsforjustice.net> (last visited May 5, 2002).

<sup>41</sup> Information is communicated through the website, by telephone (1-800-USREWARDS), or by mail (Rewards for Justice, P.O. Box 96781, Washington, DC 20522-0303).

<sup>42</sup> See <http://www.RewardsFund.org>; see I.R.C. § 501(c)(3).

<sup>43</sup> *Id.*

<sup>44</sup> 22 U.S.C. §§5501-5513 (2001).

which to the appropriate extent, are prominently displayed domestically and abroad in international airports.<sup>45</sup>

Secretary of State Colin Powell called the Rewards for Justice Program “an extremely effective weapon in the United States’ arsenal to combat terrorism.”<sup>46</sup> David Carpenter, Assistant Secretary of State for Diplomatic Security, added that the reward program has saved thousands of lives by preempting terrorist attacks. He noted that 22 people have received a total of more than \$8 million [over the past seventeen years] in exchange for confidential information. The program generated information that led to the arrest of Ramzi Yousef who was convicted for the World Trade Center bombing in 1993.<sup>47</sup> State Department spokesman Richard Boucher stated that the Rewards for Justice Program has resulted in more than 100 telephone calls, 600 letters, 1,200 e-mails and 1.2 million hits on the website.<sup>48</sup> One of the most recent rewards offered was for information leading to the arrest and conviction of the persons responsible for the kidnapping and murder of *The Wall Street Journal* journalist Daniel Pearl. On February 27, 2002, the Department of State offered \$5,000,000 for the information.<sup>49</sup>

Moreover, in 1990 the Air Transport Association of America (ATAA) and the Air Line Pilots Association, International (ALPA) agreed to supplement the rewards paid by the U.S. Government for information that prevents a terrorist act against U.S. civil aviation or leads to the arrest or conviction of any person who has committed such an act.<sup>50</sup> Although not a separate fund, this enables the ATAA and ALPA to increase a reward by up to \$2 million.

#### *D. Confidential Informant Reward Programs for Narcotics-Related Information*

Today’s investigators, particularly those involved in drug trafficking, rely on confidential sources of information (CS) to infiltrate criminal organizations to help build their cases. From the first day of training and throughout their careers, investigators are repeatedly instructed not to make

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<sup>45</sup> *Id.* §5512(c).

<sup>46</sup> Tim Johnson, *Ads Stress \$25 Million U.S. Kitty For Informants*, MIAMI HERALD, Dec. 14, 2001, at 37A.

<sup>47</sup> *Id.*

<sup>48</sup> CNN.com, *Cash Offered, New Strategy Pushed in U.S. Fight to Foil Terrorism*, (Dec. 14, 2000), at <http://fyi.cnn.com/2000/US/12/14/terrorism.report.02> (last visited May 6, 2002).

<sup>49</sup> See Press Statement, U.S. Department of State, Rewards for Justice Program: Reward Offered for Information Leading to Arrest or Conviction in Daniel Pearl Murder Case (Feb. 27, 2002) available at <http://www.state.gov/r/pa/prs/ps/2002/8544.htm>.

<sup>50</sup> Website, *supra* note 40.

promises to CSs. For example, pursuant to the Drug Enforcement Administration (DEA) Agents Manual, agents are specifically prohibited from promising informants rewards in any amount.<sup>51</sup> This is especially important when the issue is a reward for the information provided to the investigator. DEA Special Agents and Task Force Officers have utilized thousands of CSs who have been justly compensated for their efforts. In a limited number of cases, a CS has objected to the amount of a reward he received and filed a civil action against the DEA for a breach of contract seeking a reward of compensatory damages arguing that he was “promised” or is “entitled” to a definitive dollar amount or a specific percentage of the assets seized. Notwithstanding this assertion, a CS is not *entitled* to any reward nor can he legally rely on any purported promises made by investigators.

The statutory authority for CS rewards from the Department of Justice is found in two distinct code sections. The first is 21 U.S.C. §886, which authorizes the Attorney General to pay any person from funds appropriated to the DEA for information concerning a violation of the Controlled Substances Act without regard to any reward the person may otherwise receive.<sup>52</sup>

The second source is found at 28 U.S.C. §524(c)(1) which provides that the Assets Forfeiture Fund (AFF) “shall be available to the Attorney General without fiscal year limitations for [specified] law enforcement purposes.” By its very language, granting a reward is discretionary and the statute neither enumerates any specific requirements nor stipulates a certain sum. Consequently, §524(c) does not mandate that a CS is *entitled* to monetary remuneration.<sup>53</sup>

Section 524(c) provides for a reward under two subsections. Section 524(c)(1)(B) allows for the payment of rewards for information or assistance directly relating to violations of the criminal drug laws. Section 524(c)(1)(C) grants the Attorney General discretionary authority to pay a

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<sup>51</sup> Drug Enforcement Administration Agents Manual §6612.57(A)(1).

“Do not make any commitments to a CS regarding payment from [the Asset Forfeiture Fund]. CSs have no inherent “entitlement” to receive payment from the Asset Forfeiture Fund regardless of the extent of their cooperation. The final decision as to whether to pay a CS from the Asset Forfeiture Fund is at the discretion of the appropriate Headquarters officials....”

<sup>52</sup> 21 U.S.C. § 801.

<sup>53</sup> Hoch v. United States, 33 Fed. Cl. 39, 45 (1995). See also Henke v. United States, 43 Fed. Cl. 15, 28 (1999)(noting that decisions to make awards of \$250,000 or more under 28 U.S.C. §524(c) are “wholly discretionary”).

reward for information or assistance leading to a civil or criminal forfeiture. The *Hoch* court opined that:

When an informant provides information or assistance under section 524(c)(1)(B), the Attorney General or her delegate has discretion to award any amount between \$0.00 and \$250,000.00. Similarly when an informant provides information or assistance under section 524(c)(1)(C), the Attorney General or her delegate has discretion to award any amount between \$0.00 and \$250,000.00, or between zero and 25 percent of the amount realized from the property forfeited, whichever is less. Neither section 524(c)(1)(B) nor section 524(c)(1)(C) requires payment of any particular sum; instead the statute leaves the amount of the award to the discretion of the Attorney general or her delegate.

The Federal Circuit has determined that 28 U.S.C. § 524(c) authorizes the discretionary payment of rewards from the proceeds of forfeited property but does not mandate the payment of compensation from the government.<sup>54</sup> The DEA has adopted internal regulations, set forth in the DEA Agents Manual, which detail the purely discretionary nature of the payment of rewards, and the officials who are required to approve these rewards at the highest levels of the DEA.

Where the payment of rewards is contingent on the quality of the information provided, it is not integral to an agents' duties that he be able to contract with informants at the beginning of the informant relationship as former CS plaintiffs typically allege. Agents are specifically prohibited from making promises to a CS and conduct that violates that prohibition cannot be said to be integral to the agents' duties.<sup>55</sup> The final decision as to whether to pay a CS from the AFF is purely at the discretion of the appropriate DEA Headquarters officials and depends upon other priorities.<sup>56</sup> Consequently, DEA Special Agents and deputized Task Force Officers are continually reminded that they are not to make any promises or firm commitments to a (potential) CS creating the impression that the CS is "entitled" to any remuneration. If the agent were to do so, she would be acting outside the scope of her authority and would be subjected to the disciplinary consequences of her actions.

#### *D. The Department of State Narcotics Reward Program*

The United States Department of State has its own rewards program for information relating to narcotics trafficking. The Department of State's Bureau for International Narcotics and Law Enforcement Affairs (INL)

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<sup>54</sup> *Id.* See also *Perri v. United States*, 35 Fed. Cl. 627, 629-30 (1996).

<sup>55</sup> This policy has also been recognized by the federal courts. See *Cruz-Pagan v. United States*, 35 Fed. Cl. 59 (1996).

<sup>56</sup> See DEA Agents Manual, *supra* note 51.

manages the narcotics part of the rewards program with the funding from their Emergencies in the Diplomatic and Consular Services (EDCS) appropriation. In turn, INL coordinates this program closely with the DEA and other law enforcement agencies.<sup>57</sup>

Initially established to dismantle the Medellin cocaine cartel in Colombia, and later the Cali cartel, the program was later extended to include ongoing investigations in other parts of the hemisphere such as the Mexican drug cartels.<sup>58</sup> The scope of the program was broadened to include Asian heroin cartels as a result of Presidential Decision Directive 44.<sup>59</sup> One critical difference between this reward program and the Rewards for Justice program, which is aimed at preventing acts of international terrorism, is that INL does not have any contact with informants. Managing informants is left to the agents and investigators responsible for the investigation.

Reward proposals are generally submitted by a U.S. embassy chief of mission to the Department of State upon the recommendation of a law enforcement agency such as the DEA. The proposals are then reviewed by the Interagency Narcotics Reward Committee which is chaired by the INL Assistant Secretary of State.<sup>60</sup> The statutory authority for these rewards is found at the same authority for terrorism rewards; Section 36 of the State Department Basic Authorities Act of 1956. Specifically, the purpose of this act is not only to assist the Department of State in obtaining information that helps prevent acts of international terrorism, but also "to assist in the prevention of acts of...international narcotics trafficking..."<sup>61</sup> Pursuant to this authority, the Secretary of State, in consultation with the Attorney General, may pay a reward to anyone other than a domestic or foreign government employee who furnishes such information in the performance of his or her official duties leading to...

- (3) the arrest or conviction in any country of any individual for committing, primarily outside of the territorial jurisdiction of the United States, any narcotics-related offense if that offense involves or is a significant part of conduct that involves—

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<sup>57</sup> The INL's approved 2002 budget provides for spending on its partnership with the DEA. See Office of National Drug Control Policy, National Drug Control Policy, Summary: FY 2002 National Drug Control Budget April 2000, available at <http://www.whitehousedrugpolicy.gov/publications/policy/index.html>.

<sup>58</sup> See U.S. Department of State, Narcotic Rewards Program at <http://www.state.gov/g/inl>.

<sup>59</sup> A Presidential Decision Directive directs Executive Branch departments and agencies to assume a standard policy promulgated by the President.

<sup>60</sup> See The Foreign Affairs Manual, Vol. 2 FAM 951.

<sup>61</sup> 22 U.S.C. §2708(a)(2) (2001).

- (A) a violation of U.S. narcotics laws such that the individual would be a major violator of such laws;
- (B) the killing or kidnapping of-
  - (i) any officer, employee, or contract employee of the United States while such individual is engaged in official duties, or on account of that individual's official duties, in connection with the enforcement of the United States narcotics laws or the implementing of United States narcotics control objectives; or
  - (ii) a member of the immediate family of any such individual on account of that individual's official duties, in connection with the enforcement of United States narcotics laws or the implementing of United States narcotics control objectives; or
- (C) an attempt or conspiracy to commit any act described in subparagraph (A) or (B);
- (4) the arrest or conviction in any country of any individual aiding or abetting in the commission of an act described in paragraph...(3);
- (5) the prevention, frustration, or favorable resolution of an act described in paragraph...(3).<sup>62</sup>

While the USA. PATRIOT Act amended the amount of a reward for terrorism cases, it did not do so for narcotics-related investigations and, consequently, the reward amount is capped at \$5,000,000.00.<sup>63</sup> Since 1989, the Department of State has paid informants a total of more than \$6,000,000 for information which has led to the arrest or conviction of major drug traffickers.<sup>64</sup>

One of the most critical components of this program, as well as the others mentioned in this article, is the extent to which agencies will go to ensure the complete confidentiality of informants. Indeed, confidentiality is integral to the survival of this program (and all other informant programs) without which a person would likely not agree to provide sensitive and possibly life-threatening information. Relocation of informants and their families, providing new identities and new jobs are some of the options utilized to protect informants. In a limited number of cases, providing

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<sup>62</sup> *Id.* §2708(b)(3)-(5).

<sup>63</sup> *Id.* §2708(e)(1).

<sup>64</sup> CNN.com, *supra* note 48.

informants these considerations “backfires” on the government such as the case of Sammy “The Bull” Gravano, a former New York organized crime figure who after admitting to the murder of 19 people, cooperated with law enforcement in its case against New York organized crime families, resulting in the conviction of 36 organized crime members. Gravano was placed into the federal Witness Protection Program, underwent plastic surgery, and relocated to Arizona where he assumed a new identity. In February 2000, Gravano was arrested and charged by the Arizona Attorney General with racketeering, conspiracy and money laundering for his alleged drug trafficking activities in Arizona “rave clubs.”

#### CONCLUSION

Based upon the aforementioned statutes, there are sufficient tools through which confidential informants can be rewarded for their information regarding terrorism and illicit narcotics trafficking. With respect to terrorism, the USA PATRIOT Act empowers the President and Attorney General to approve rewards. The Secretary of State has the apparent authority to offer rewards, without a monetary limit, to provide an incentive to persons with information sought by the United States. Some of those who possess the information have such deeply held religious or political convictions that no amount of money would cause them to contact U.S. authorities. Consequently, the U.S. intelligence community continues to develop its information gathering techniques and recruit sources who, notwithstanding their religious or political affiliations, are willing to provide confidential information in an effort to prevent attacks on those who cherish freedom and provide for its security.

Similarly, the scourge of drugs and the baneful nature of the traffickers continue to reap death and destruction on the United States. In order to target those most responsible for importing their poison onto the streets of America, investigators must sometimes rely on informants who have the ability to infiltrate narcotics trafficking organizations and integrate themselves into the organizations' operations. Monetary rewards, unlike reduction of charges and/or punitive sentences, can provide the incentive to persons who are not facing charges to provide necessary intelligence. Once successful, investigators can interdict the drugs, arrest the offenders and enable prosecutors to bring criminal charges thereby mutating suspects into defendants.

The arrest and conviction of suspected terrorists and drug traffickers is but one barometer in gauging the value of informants and the wisdom of monetary reward programs... more importantly is the number of deaths prevented. After all, it makes infinitely more sense to pay the price of a reward than the price of another September 11th.