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# FBI Law Enforcement

B ♦ U ♦ L ♦ L ♦ E ♦ T ♦ I ♦ N

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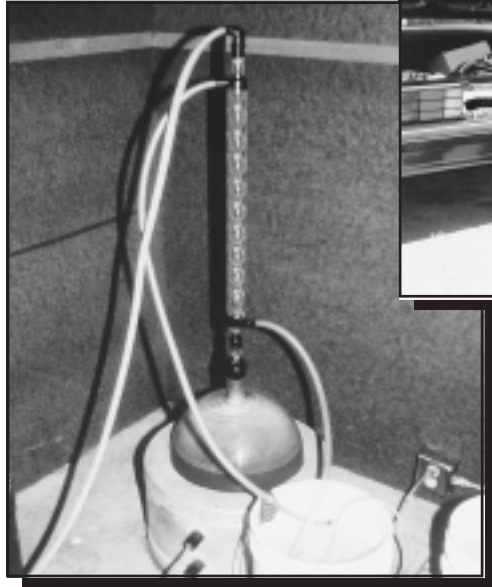
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# Clandestine Drug Labs Chemical Time Bombs

By GUY HARGREAVES



*Two suspects in a San Diego, California, hotel room died of poison phosphine gas fumes while manufacturing methamphetamine. Four police officers responding to the emergency call were overcome by fumes and hospitalized.*

*In Aguanga, California, three children died and their mother received critical burns from an explosion caused by a clandestine drug lab operation in a trailer house.*

*A woman manufacturing methamphetamine in Kansas City, Kansas, was killed when a drug laboratory ignited and burned down the house.*

**T**he dramatic increase in the seizures of clandestine methamphetamine (meth) laboratories nationwide has created a dangerous situation for private citizens and law enforcement officers alike. Today, encountering hazardous chemicals remains no less dangerous than pursuing an armed suspect.

Police officers receive comprehensive training in many areas of law enforcement. However, very few officers have expertise in firefighting, chemistry, bomb handling techniques, and hazardous waste disposal. Unfortunately, illegal drug laboratories pose deadly threats in all of these areas.

Raiding a clandestine drug laboratory (clan lab) has become one of the most dangerous operations a law enforcement officer can undertake. Officers sometimes refer to clan labs as “chemical time bombs” because they contain highly flammable and explosive materials, lethal chemicals, and even mechanical or chemical booby traps. Law enforcement has found these makeshift laboratories in apartments, hotel rooms, mobile homes, outdoor sites, and in all types of vehicles. As a result, an officer may inadvertently come into contact with such a laboratory when responding to a domestic violence call or even while making a traffic stop.

Since 1995, police records indicate that at least three meth laboratory suspects are killed in clan lab explosions or by poison chemical incidents each year, with many more receiving serious burns or other injuries from clan lab fires. Likewise, an increase has occurred in the number of reported injuries to untrained police officers who investigate or dismantle clan labs.<sup>1</sup>

In addition, reports of property damage and injuries to citizens from drug laboratory disasters have increased throughout the nation. In fact, several apartment complexes and a luxury hotel have burned down as the result of these illegal laboratory activities. For example, in 1997, Kansas City, Missouri, authorities reported fires on an almost monthly basis that originated from the operation of meth labs or the storage of precursor chemicals. In Independence, Missouri, the police chief reported in an interview that at least five deaths have resulted from clan meth lab fires since 1995.

In 1999, more than 99 percent of the clan labs seized by DEA were meth labs. Other illicit drugs like PCP, MDMA, and LSD are manufactured in clan labs, but because of the large percentage of clan labs that produce meth, and its close association with violent crimes, law enforcement investigations have focused on meth clan labs in recent years.

### **The Methamphetamine Problem Today**

Experts considered meth a West Coast problem until 1995, when meth production and abuse began to sweep eastward across the Midwest to the Southeast. In Missouri, meth laboratory seizures increased from 2 in 1992 to more than 600 in 1998. In Iowa, some local police departments have reported that meth-related arrests have surpassed drunk driving arrests.

Statistics demonstrate that meth use and availability have dramatically increased in a short period of

time. The Drug Abuse Warning Network indicates that emergency room episodes increased from 4,900 in 1991 to approximately 17,000 in 1997, an increase of 247 percent.<sup>2</sup>

Concurrently, law enforcement seizures of meth and meth laboratories also have increased. In 1999, the DEA participated in the seizure of a record high 1,948 clan labs, the vast majority (99 percent) of which were meth labs. For comparison purposes, this number was 306 in 1994—representing a 537 percent increase in just 5 years. In addition, state and local law enforcement officers raided more than 4,400 such labs in 1999. In fiscal year 1999, DEA arrested 8,680 people for meth trafficking—a 113 percent increase over fiscal year 1996 arrests.<sup>3</sup>

The violence associated with this powerful stimulant has had a devastating impact on many communities in the West and Midwest. Television viewers nationwide watched live footage of a paranoid meth addict who stole an armored tank from a National Guard armory and went on a car-crushing rampage in the San Diego area. Another meth addict in New Mexico beheaded his son after experiencing hallucinations in which he believed his son was the devil. In Contra Costa County, near San Francisco, police associated meth with 447 cases of domestic violence in 1997.

In previous decades, experts viewed meth as “poor man’s cocaine” and as a drug abused predominantly by white individuals with low incomes living in rural areas. Today, meth abusers are found in all segments of society and regions of the country, including the



*Special Agent Hargreaves serves in the DEA Methamphetamine Program, Arlington, Virginia.*

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previously untouched eastern regions of the United States, with meth use rivaling cocaine as the drug of choice. Meth remains very popular with young people at night clubs and all-night dance parties called “raves.” Also, some college students use meth to stay awake and study for exams; athletes may use it to relieve fatigue; and some dieters use it to lose weight.

### Effects of Methamphetamine

Methamphetamine, a Schedule II controlled substance,<sup>4</sup> is a central nervous system stimulant and more potent than amphetamines. It has legitimate medical uses for treating some illnesses such as narcolepsy, yet it remains a lethal and unpredictably dangerous drug when abused.

The effects of meth are similar to cocaine, with users experiencing a sense of increased energy and euphoria, but the duration of the high lasts longer—from 6 to 14 hours. Chronic meth abusers usually inject or smoke high levels of the drug every 2 or 3 hours during day-long binges in which they consume the drug continuously. This often results in the abuser staying awake for more than a week and experiencing extreme irritability from sleep deprivation, increased nervousness, anxiety, paranoia, hallucinations, and violent or erratic behavior.

### Methamphetamine Production and Trafficking

In 1994, trafficking organizations based in Mexico began to take control of the production and distribution of meth in the United States. Before this, the Outlaw Motorcycle Gang remained the primary

meth traffickers. Although this gang remains active in meth production, they do not produce the large quantities distributed by the aggressive traffickers from Mexico.

Mexican organizations dominate wholesale meth trafficking using large-scale labs to produce the drug in their own country and the southwestern United States. In 1999, the DEA estimated that organized crime groups operating out of Mexico and California controlled 80 to 90 percent of meth production and distribution in the United

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***Raiding a clandestine drug laboratory has become one of the most dangerous operations a law enforcement officer can undertake.***

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States. While clan labs in California continue to produce more meth than any other region, thousands of independent U.S. traffickers in the Midwest, with growing numbers in the Southeast, operate large numbers of the smaller “mom and pop” laboratories.

Unfortunately for law enforcement, meth is a very simple drug to manufacture. Except for marijuana, meth remains the most abused illegal drug that an individual can make alone.<sup>5</sup>

Unlike many other synthetic-based illegal drugs, it does not take a chemist to produce meth. In fact, fewer than 10 percent of those arrested for manufacturing meth are trained chemists. Meth laboratory operators or “cooks” usually are individuals who have little or no chemical training and simply learned a formula in prison or from the Internet. These small drug laboratory operations make importation and interdiction efforts irrelevant when, with easily obtained chemicals, an individual with the basic knowledge of how to cook meth can independently produce thousands of dollars worth of this dangerous drug.

### Chemicals Used to Manufacture Methamphetamine

Although the complete list of formulas, hazards, and chemicals employed to produce meth remains extensive, the vast majority of meth laboratories seized today use a common ephedrine/pseudoephedrine reduction method of manufacturing. This method requires a chemical not produced in the United States; however, laboratory operators can find the precursor chemicals needed in many over-the-counter cold medicines. Some clan lab operators purchase dozens of bottles of these cold remedies in order to extract the ephedrine or pseudoephedrine from the tablets.

Meth cooks sometimes use a formula for production that uses two extremely dangerous and highly volatile chemicals—sodium metal and anhydrous ammonia. Sodium metal can ignite when it comes into contact with water, and anhydrous ammonia is a deadly

### Products Commonly Found in Clan Labs\*

Commercial Products	Chemicals	Hazards
Battery Acid Drain Cleaner	Sulfuric Acid	Corrosive Acid
Camera Batteries	Lithium	Water Reactive
Coleman Fuel Kerosene Lacquer Thinner Mineral Spirits	Petroleum Distillates	Flammable
Denatured Alcohol	Mixture of Alcohols	Flammable
Epsom Salts	Magnesium Sulfate	Nonhazardous
Heet	Methyl Alcohol	Flammable
Iodine Crystals 7 percent Tincture of Iodine	Iodine	Irritant
Muriatic Acid	Hydrochloric Acid	Corrosive Acid
Nonprescription Cold Medicine	Ephedrine/Pseudoephedrine	Nonhazardous
Red Devil Lye	Sodium Hydroxide	Corrosive Base
Road Flares	Red Phosphorous	Flammable
Starting Fluid	Ethyl Ether	Explosive/Flammable

*\*This reflects only a partial list of products commonly found in clan labs. Officers should remember that any one item does not indicate the manufacture of methamphetamine.*

respiratory hazard. Some clan labs may even contain chemicals such as sodium cyanide, which, if accidentally mixed with another type of chemical found in the same lab, can produce a deadly hydrogen cyanide gas. Clearly, law enforcement teams conducting a

clan lab raid *always* should bring a qualified chemist with them.

#### **Environmental Issues**

In addition to the risk of explosive gases, chemical contamination from the hazardous waste of these clan labs poses a serious threat to

the environment and consequently to the health of unsuspecting citizens in nearby communities. Each pound of meth manufactured in a clan lab generates up to 5 or more pounds of toxic waste. Clan lab operators routinely dump such waste into local streams, rivers, and



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sewage systems in order to cover up the evidence of their illegal operations. Moreover, chemical reactions that occur during the manufacturing of meth produce chemical vapors that can permeate walls, carpets, plaster, and even the wooden structures of buildings.

The average clan lab costs \$3,000 to clean up. However, large production labs, because of the significant quantities of toxic chemicals and higher hazardous waste disposal charges, can result in clean-up costs exceeding \$100,000. Annually, the overall cleanup of these labs costs the DEA and other government agencies millions of dollars.<sup>6</sup>

### Clan Lab Safety Training

With clan labs, the risk of explosions, fires, and direct contact with toxic fumes, poisonous gases, and hazardous chemicals always exist. Size does not matter when it comes to the danger level involved in a clan lab raid. In fact, the smaller labs are usually *more* dangerous than the larger operations because the “cooks” are inexperienced chemists with little regard for safety. In addition to the physical danger, police officers who improperly dispose of toxic waste materials also could be civilly liable under the federal Resource Conservation and Recovery Act, thus making clan lab raids an especially risky aspect of drug law enforcement.

Consequently, any law enforcement officer involved in clan lab raids must receive thorough training on safe-handling techniques. To meet this need, in 1987, the DEA created a special training unit for

DEA special agents and task force officers on how to safely perform clan lab raids. Federal regulations now mandate that all federal, state, and local law enforcement officers receive at least 24 hours of training on how to handle hazardous chemicals prior to conducting a clan lab raid.

The DEA conducts both state and local certification schools at Quantico, Virginia, and at a training site in Overland Park, Kansas. This 1-week school qualifies state and local police to raid, process, and dismantle clan labs, and it provides instruction on the latest intelligence trends, chemical diversion, and clan lab investigations.

In addition, a specialized DEA unit frequently conducts in-service training and seminars for law enforcement groups. This unit also provides the annual recertification training mandated by federal regulation.

### Fundamental Rules of Chemical Safety

Police officers without specialized training in the unique types of hazards posed by clan labs never should attempt to investigate or dismantle these “chemical time bombs.” Police supervisors must advise their personnel that, if they should inadvertently encounter a clan drug lab, they should not touch anything, and should secure and evacuate the area immediately. Even those officers who have graduated from a qualified laboratory safety school always should remember some fundamental rules of chemical safety when encountering a clan drug lab.

- Leave the area, secure the location, and notify the DEA or a police narcotics unit with the proper equipment and certified personnel.
- Do not smoke in or near the lab.



- Never touch, taste, or smell any type of equipment or chemicals.
- Always wear the proper safety equipment.
- Always read the safety labels and warnings on seized chemical containers; however, do not rely on these warnings as some suspects may switch the labels or the containers.
- Do not mix any type of chemicals. Some chemicals will ignite, explode, or produce poisonous gas when combined with other chemicals—even contact with water can cause some chemicals to ignite.
- Do not use tools or devices that produce sparks or friction (e.g., flash bangs or some types of breaching devices).
- Do not turn light switches on or off or connect or unplug electrical devices. The electrical spark could cause an explosion if certain chemicals are present in the atmosphere.
- Always fully decontaminate all clothing and equipment when exiting a lab and remember to keep the prisoners' clothing as evidence because a laboratory exam usually can detect chemical residues—further evidence of participation in the manufacture of controlled substances.
- Ensure that emergency medical assistance (e.g., fire department, paramedics, life-flight helicopter) remains available prior to executing the raid.<sup>7</sup>

### Conclusion

Without question, the increasing distribution of methamphetamine throughout the United States by international drug organizations remains a serious problem for every law enforcement agency. This threat, compounded by the increasing number of clan labs operated by violent criminal organizations, coupled with a growing number of smaller “mom and pop” laboratories, results in an escalating likelihood that law enforcement agencies across the country will encounter more clan meth labs. Impetuous investigations of these clan drug labs without proper safeguards may recklessly endanger the lives of law enforcement officers. ♦

### Endnotes

<sup>1</sup> Compiled from teletypes and field interviews submitted to DEA Operations Division, Arlington, VA.

<sup>2</sup> National Clearinghouse for Alcohol and Drug Information, Drug Abuse Warning Network; available from <http://www.health.org>; accessed September 10, 1999.

<sup>3</sup> Statistics compiled by DEA, Intelligence Section, Domestic Strategic Intelligence Group, Arlington, VA.

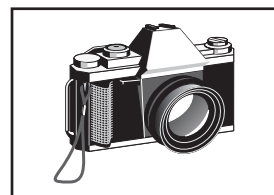
<sup>4</sup> Under the federal Controlled Substance Act, regulated drugs are divided into categories, known as schedules, according to their effect, medical use, and potential abuse. Schedule II drugs, such as cocaine and methamphetamine, may lead to severe psychological or physical dependence, have a high potential for abuse, and have a restricted medical use.

<sup>5</sup> DEA Operations Division, Methamphetamine Program, Arlington, VA.

<sup>6</sup> Compiled by DEA Hazardous Waste Disposal Unit, Arlington, VA.

<sup>7</sup> See Tom Manning “Drug Labs and Endangered Children,” *FBI Law Enforcement Bulletin*, July 1999, 10.

## Wanted: Photographs



The *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

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## Policing in a Global Society

By Jeffrey L. Patterson, M.P.A.

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**S**ociety is becoming increasingly global. Today, we can travel faster, more easily, more often, and for less money than ever before. Communications technology, from cellular telephones to the Internet, allows us to make worldwide connections from virtually any location. Many of us commute everyday through sprawling, multicounty, even multistate metropolitan areas. Some of us even fly to and from distant cities in the same day.

These capabilities also can present challenges to law enforcement. First, a mobile society may generate greater opportunities for crime by putting strangers together in unfamiliar surroundings. The resulting alienation and anonymity weakens social restraints on behavior. Second, offenders, victims, and witnesses of crimes may return or move to another jurisdiction, complicating cases for investigators and prosecutors. Extraditing a fugitive, whether from another country or another state, can prove a complex, drawn out, and expensive process.

The ease of international travel and the conflicts in national sovereignty have been factors in high-profile cases from drug smuggling and terrorism to traveling serial killers and sexual predators. Now, computers and the Internet create new varieties of criminals, from high-tech criminals to online

pedophiles, who cross jurisdictional lines in seconds. These jurisdictional problems can occur in any community, regardless of its population or geographical size, but areas with multicultural demographics and economies oriented toward international commerce remain particularly vulnerable. In the United States, an example of such areas would include New York City and Washington, DC, as well as communities along the Pacific Coast and in the Sunbelt.

### TERRITORIAL JURISDICTION

The system of justice in the United States, which focuses on territorial jurisdiction, hampers the ability to police in a global society. Unlike citizens of most other countries, Americans consider law enforcement primarily a local concern. While criminal statutes apply throughout a state, sheriffs have enforcement powers only within the geographic boundaries of their respective counties, and city police officers can conduct investigations and make arrests only for crimes that occur within their particular municipal limits.

Through the end of the 19th century, local sheriffs and police served adequately because the predominant focus was to maintain order. Constables on patrol chased away undesirables and only arrested the disorderly individuals or burglars they happened upon. In rural areas, sheriffs only occasionally left their courthouses and jails to form posses to track outlaws. State police, with the power to cross county lines, did not exist. The U.S. marshals presiding over western territories represented the only federal law

*Captain Patterson serves with the Clearwater, Florida, Police Department.*





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enforcement agency with the authority to cross state lines.

The need for state constabularies and federal investigators did not arise until after World War I, when the automobile gave criminals easy transportation from one community, county, or state to another—effectively putting them beyond the reach of the local foot patrol officer and the sheriff’s posse. Soon, the bootleggers of Prohibition and the bank robbers of the Great Depression sped across local boundaries with alarming regularity. For the first time, the limits of local jurisdictions became a major public concern in the provision of effective and efficient police services.

In response, law enforcement substantially changed the way it operated. Police departments adopted the automobile, telephone, teletype, two-way radio, and computer to track the mobile offender. Latent fingerprints and other trace evidence became accepted as positive proof of a crime, linking an unknown suspect to a distant crime scene (as DNA may become in the next century).

State lawmakers created new police organizations with state-wide enforcement powers. Some provided a full range of police services, such as patrolling, conducting investigations, and operating forensic laboratories. However, either law or custom restricted many state agencies to investigating only specific types of violations. State highway patrols investigated only violations of traffic laws; wildlife officers handled only violations of hunting and fishing regulations.

Similarly, Congress created new federal law enforcement agencies. The FBI, DEA, ATF, and U.S. Secret Service all have nationwide authority, which has developed and expanded over the decades to address new menaces, from bootlegging and counterfeiting to drug smuggling and terrorism. However, each agency still specializes only in investigations of certain crimes. Thus, the traditional American concern over the limitation of government police

authority remains manifested in either broad powers in limited geographic areas or limited powers in broad geographic areas.

To further address criminal activity that crosses jurisdictional lines, law enforcement then formed multiagency task forces. Members of today’s task forces likely include representatives from one or more federal, state, county, and local agencies from a particular geographic region. Similar to the state and federal agencies created earlier in the century, while their combined territorial jurisdiction remains broad, their investigative focus tends to be narrow, limited by a mutual agreement to a particular crime or class of crime.

### **LAW ENFORCEMENT RESPONSE**

Today, even the state and federal police agencies often find their jurisdictions too restrictive, while the multiagency task forces may have become as unwieldy as they are ubiquitous. Both were 20th century approaches; thus, law enforcement administrators must develop better solutions for the new millennium. New proposals must provide for effective, reasonably efficient law enforcement across jurisdictional lines and, yet, still preserve sufficient safeguards against the creation of a giant police state and maintain concern for local needs.

#### **Extradition**

To resolve international conflicts over fugitives, the U.S. State Department, in cooperation with the U.S. Department of

Justice, has moved away from the traditional extradition treaty and toward the broader mutual legal assistance treaty (MLAT). The MLAT not only provides for the arrest and extradition of fugitives, but also sets procedures for gathering evidence at all stages of an investigation.<sup>1</sup>

Similarly, because individuals frequently travel across state lines, legislatures should streamline interstate extradition procedures with today’s relatively uniform criminal and traffic laws and perhaps abolish the whole extradition process outright. Courts

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from one state should not intervene in a prosecution in the courts of another state.

### Distance Justice

Modern telecommunications technology and travel arrangements might allow the process from investigation through trial in a single case to take place in more than one venue. For several years, distance-learning programs have used television, teleconferencing, and the Internet to bring the college classroom experience to students. Law enforcement should adopt a similar concept of "distance justice." In fact, many jurisdictions already use videoconferencing to hold preliminary court appearances for in-custody defendants, detention hearings for juveniles, and pretrial depositions for witnesses.

Although these proceedings normally take place just across the street, or perhaps across town, they easily could occur across the state, the country, or even the globe.

Americans have grown accustomed to televised legal proceedings through regular exposure to national cable news and local government access channels. Some local governments now experiment with Internet sites that provide for electronic correspondence, inquiries, access to public records, and applications for licenses and permits. Some cities are considering the use of real-time, interactive formats to allow citizens to participate in town council meetings as if they were there in person.

One effort at multivenue proceedings occurred in Miami, when Italian and U.S. courts cooperated in the trial of an Italian citizen accused of murdering a Florida revenue agent. Because the defendant would have faced the death penalty in the United States, Italy refused to extradite him and instead tried him there under Italian law. However, because the victim's widow was too ill to travel overseas, the Italian judges heard her testimony from a federal courtroom in Miami.<sup>2</sup> Such cooperation seems even more feasible in the United States, where the states share basic legal and political traditions, and the use

of video teleconferencing proves more convenient and cost effective.

### CONCLUSION

More than 30 years ago, the President's Commission on Law Enforcement and Administration of Justice lamented the inefficiencies imposed by ancient political and geographic boundaries. Its members called for better coordination, and even consolidation, of police services throughout the country but conceded to the overwhelming legal and political obstacles to true reform.<sup>3</sup> Since then, law enforcement has tried to work around geographic limits by creating new agencies, establishing joint task forces, revamping procedures, and applying new technology. Perhaps the time has arrived to move beyond these obstacles to create a transnational jurisdictional paradigm more suited to the world of today and tomorrow.

Creating such a paradigm for law enforcement may seem radical

today. However, as this century progresses, we will see truly inter-national standards of conduct established because of global commerce and mass media. Law enforcement will have to operate more as an interstate, if not international, network of accredited professionals, sharing information, resources, and operations without regard to geopolitical boundaries. Police will have to make full use of transportation and telecommunications technology at all phases of an investigation and prosecution, yet still provide proper safeguards for civil rights and due consideration for local needs. The results, perhaps, would be a system of criminal justice more suited to the new millennium.♦

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**Courts from one state should not intervene in a prosecution in the courts of another state.**  
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### Endnotes

<sup>1</sup> For additional information on mutual legal assistance treaties, see Stephen P. Cutler, "Building International Cases: Tools for Successful International Investigations," *FBI Law Enforcement Bulletin*, December 1999, 1-5.

<sup>2</sup> "Italian Justice Transplanted to Miami for Murder Trial," *St. Petersburg (Florida) Times*, April 29, 1998, 4(B).

<sup>3</sup> *The Challenge of Crime in a Free Society*, Washington DC: U.S. Government Printing Office, 1967, 119-123.

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# Labeling Automobile Parts to Combat Theft

By PETER FINN

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Motor vehicle theft represents a major problem in the United States. In 1995, motor vehicle<sup>1</sup> owners reported nearly 1.5 million thefts representing 1 out of every 139 vehicles in the country.<sup>2</sup> The theft of parts from vehicles poses an even more common problem, outnumbering vehicle theft 5 to 1.<sup>3</sup>

In the 1950s and 1960s, young adults stole cars, drove them for a short period of time, and then

abandoned them, resulting in very high vehicle recovery rates. In fact, in many smaller and rural jurisdictions, joyriding remains the predominant reason for car thefts. However, beginning in the 1970s, substantial numbers of thieves in larger cities started stealing cars for profit, resulting in fewer recovered cars and more parts missing from those recovered. Car thefts increased because of a proliferation of “chop shops,” which sell stolen

parts either directly to consumers or to automobile dealerships or repair shops for resale to customers.

During this period, thieves began to employ numerous clever schemes that remain in use today. For example, thieves steal, strip, and abandon a car, and the innocent owner reports it stolen. The police eventually recover the car and cancel the theft record. The thieves then purchase the frame at an insurance or police auction, reattach the stolen parts, and sell the vehicle. Vehicle owners use this same technique, stripping their own cars, removing enough parts for their insurance companies to declare a total loss, then filing a claim for reimbursement.

In another commonly used scam, car thieves buy a salvaged car for its title and vehicle identification number (VIN). Stealing the same model car, they place the VIN from the salvaged car onto the stolen car, which they sell to an unwitting buyer. These examples represent a small number of the various techniques car thieves use. Law enforcement must make the most of new strategies developed to combat these innovative car thieves.

## FEDERAL PARTS-MARKING LEGISLATION

Until recently, automobile theft investigators, in an attempt to cope with these types of theft schemes, often had no means of identifying which vehicles the parts came from, if the parts were stolen, or whether a VIN actually belonged to the car on which investigators found it. As a result, Congress enacted the Motor Vehicle Theft Law Enforcement Act of 1984, which directed the

U.S. Department of Transportation (DOT) to develop a vehicle theft prevention standard mandating that automobile manufacturers inscribe or affix an identifying number or symbol onto certain parts of passenger cars that the DOT deemed a high theft risk.<sup>4</sup>

Manufacturers designed anti-theft labels<sup>5</sup> to trace automobile parts to the original vehicle in order to help prove that they were stolen. In addition, because the federal government and many states made it a criminal offense to remove or tamper with the labels, law enforcement investigators may seize and confiscate parts with defaced or missing labels. In some states, officers also may arrest individuals in possession of cars or parts with missing labels.

In 1992, Congress enacted the Federal Anti-Car Theft Act, directing DOT to require that manufacturers mark an additional 50 percent of their remaining automobile models by December 1994 regardless of the vehicle's theft rate. This act further required that the U.S. Department of Justice (DOJ) assess the effectiveness of the parts marking by 1997, and, if parts marking was found to inhibit chop-shop operations and deter motor vehicle theft, extend parts marking to all remaining vehicle lines by December 1997.

#### THE STUDY

In response to this mandate, the National Institute of Justice commissioned a study to determine whether anti-theft labels have substantially reduced automobile thefts. One part of the evaluation examines the National Highway

Traffic Safety Administration data on automobile theft rates based on information from the FBI's National Crime Information Center and the DOT's insurer database.<sup>6</sup> Another part of the evaluation examined the experiences and opinions of automobile theft investigators regarding the effectiveness of automobile parts anti-theft labels.

#### Do Labels Promote Arrests and Prosecution?

To assess the effectiveness of anti-theft labels, independent researchers conducted telephone interviews with automobile theft investigators from 47 jurisdictions nationwide, which varied in size and type of agency. Seventy-five percent of the investigators (30 out of 40)<sup>7</sup> reported that anti-theft labels aid officers in arresting individuals who steal or sell stolen parts and vehicles.

Nearly two-thirds of the investigators (24 of 40) also reported that

labels help in prosecuting chop shop operators and other automobile thieves in two respects. First, the labels encourage the state's attorney to file charges because missing labels, or ones that do not match the VIN, constitute convincing proof of theft. Investigators can testify that manufacturers place the labels on the vehicles in the factory, which proves that the labels should have existed. Furthermore, officers believed that fewer cases even have to go to trial because the suspects usually plead guilty as a result of irrefutable evidence of theft provided by the labels.

Second, the labels help prosecutors win cases because they provide valuable evidence that the vehicles or parts were stolen. Some investigators reported that, while not sufficient evidence for a conviction by themselves, anti-theft labels that suspects have removed or tampered with contribute to securing a conviction. In addition, labels help

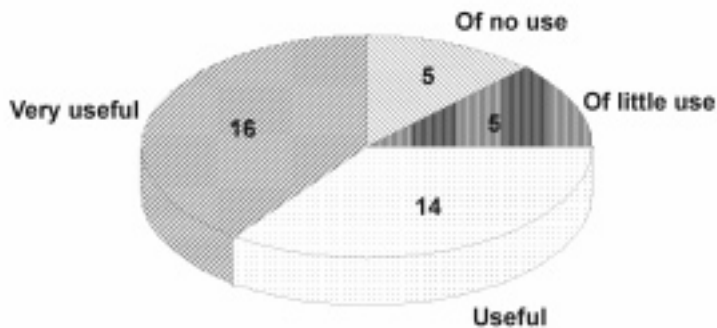
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**Manufacturers designed anti-theft labels to trace automobile parts to the original vehicle in order to help prove that they were stolen.**



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*Mr. Finn is an associate for Abt Associates Inc., a private research firm in Cambridge, Massachusetts, and a special officer with the Belmont, Massachusetts, Police Department.*



### Investigators' Opinions About the Usefulness of Antitheft Labels in Making Auto Theft Arrests (n=40)



investigators identify stolen parts and provide probable cause for further investigations that can lead to prosecution.

#### Do Labels Deter Theft?

Law enforcement investigators remained divided about whether antitheft labels help deter actual automobile theft. Officers felt that labels provide the greatest deterrent with chop-shop operators because operators usually will not purchase parts with missing labels or without proper paperwork. Because many states give law enforcement agencies authority to conduct administrative searches of salvage yards and repair shops without a search warrant, owners of these operations seldom accept or keep parts without labels and frequently report suspicious parts because they know they can face prosecution for receiving them.

Even if labels do not deter thieves, they do increase their "cost of doing business." In one

videotaped undercover case involving a body shop, the owner said, "I know that I said I would give you \$500 for that car, but I can give you only \$200 because the parts are marked. Now I'm going to have to go to the trouble of removing the labels."

Whether thieves need to spend more time to select cars without labels or receive less money for the extra time chop-shop operators must take to remove existing ones, antitheft labels undoubtedly place a bigger burden on thieves. At the same time, some investigators reported that labels decreased their investigative burden because if the label VIN matches the public VIN, then they do not have to look at the confidential VIN for further identification.<sup>8</sup>

#### Obstacles to Effective Use of Labels

Several factors hinder the effective use of antitheft labels. Investigators reported that the ease of

removal represents the most serious obstacle to identifying the vehicle's owner and proving the parts were stolen.

There are two main reasons investigators cannot be certain whether the labels are missing or are simply not supposed to be there in the first place. First, because some automobile manufacturers do not redesign parts for a period of years, the parts remain interchangeable; therefore, those parts manufactured before the parts-marking legislation took effect were unmarked legitimately. Second, some models with factory-installed anti-theft devices remain exempt from the label requirement.

Still, most manufacturers use adhesive labels for the markings, which when removed, leave a trace, commonly called a "footprint," on the part. When thieves remove these labels, investigators can use an ultraviolet or "black" light to detect the footprint.

Despite the reported ease of removing the labels, investigators still can detect the footprint with a verifier or prove that a label was mandated. Although thieves can sand and paint over the labels, seasoned detectives know whether a part should have a label and can testify in court that the label was missing. However, because many departments do not have access to verifiers, and, even with verifiers, the footprint does not reveal the VIN, investigators cannot identify the previous owner or prove that the suspect stole the parts.

In addition, even when the labels exist, most patrol officers make little or no use of them because they have not been trained to locate the



labels or to become familiar with which cars even should have labels. As a result, few patrol officers refer cars with missing or suspicious labels to their departments or state automobile theft units for further investigation.

Over half of the jurisdictions in the study reported that the use of counterfeit antitheft labels remains the only other significant barrier to making effective use of the current labels. Some investigators reported that thieves now use computer graphics to manufacture very sophisticated counterfeit labels. However, over half of the investigators who have discovered counterfeit labels reported not only that they rarely encounter them, but also that they can easily recognize counterfeits.

### Recommendations

Investigators had several suggestions for increasing the effectiveness of antitheft labels. A large majority of investigators preferred that manufacturers stamp VINs on the component parts instead of using labels and that they mark more parts, citing seats and airbags most frequently. As a substitute for stamping, a few investigators proposed that label manufacturers develop the technology that will leave a footprint with the actual VIN if the label is removed.

Investigators also suggested two steps that might enhance the effectiveness of parts marking in their investigations. First, departments should provide more systematic and frequent training regarding the labels, which would improve jurisdictions' ability to use them effectively. Moreover, patrol officers

may identify stolen cars more aggressively if they receive training on which vehicles must have labels, the location of the labels, and the officer's right to seize vehicles with missing or damaged labels. Although existing manuals list which cars have labels, more comprehensive training would benefit officers.

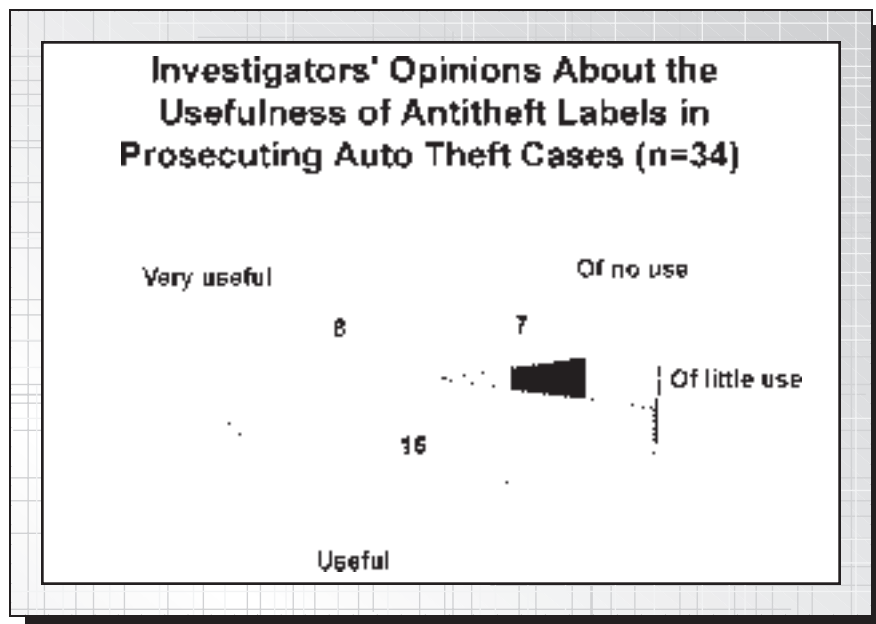
State legislation that makes tampering with or removing labels a crime could increase the effectiveness of antitheft labels. Without state statutes, investigators can only bring charges of possession of stolen property for these activities. Because only some states prohibit removing a label or possessing a component part with a removed label, thieves can avoid salvage inspection statutes in their states by having the cars retitled in another state that does not require inspections of antitheft labels. As a result, a federal statute requiring a salvage examination nationwide would

make the labels more effective in both deterring and catching thieves.

### CONCLUSION

Today, more foreign and domestic automobile manufacturers exist than ever before, each producing large numbers of different vehicle makes and models. This constant influx of cars and parts poses a unique problem for law enforcement officers faced with investigating automobile thefts. Investigators must use all available resources to combat automobile theft and automobile parts theft.

To thieves, automobile parts are worth a great deal more than the complete car. To counter the number of car thefts committed for the parts, Congress enacted legislation that requires manufacturers to label certain parts of some models. While many investigators agree that the labels help them identify stolen vehicles and arrest offenders, a



number of drawbacks remain. Easily removed labels, exemptions to the law, and a lack of proper training hamper the effective use of this worthwhile crime prevention tool.

By soliciting the opinions of investigators in the field, the National Institute of Justice has taken an important first step in improving law enforcement's ability to use every means available to stop car thieves. With the cooperation of automobile manufacturers and lawmakers and the help of a small label, investigators can make a significant impact on an increasing crime problem. ♦

#### Endnotes

<sup>1</sup> The FBI's *Crime in the United States* defines motor vehicles as autos, trucks, buses, motorcycles, motorscooters, snowmobiles, etc.

<sup>2</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1995*, (Washington DC, 1996), 50.

<sup>3</sup> P. Harris and R. Clarke, "Car Chopping, Parts Marking and the Motor Vehicle Theft Law Enforcement Act of 1984," *Sociology and Social Research* 75, no. 4 (1991): 228-331.

<sup>4</sup> The act required manufacturers to label the following passenger car parts: engine; transmission; both front doors; both rear doors; hood; both bumpers; both front fenders; deck lid, tailgate, hatchback, or sliding or cargo door(s); and both rear quarter panels. Later legislation also required labels on the side assembly of utility vehicles and on the pickup box, cargo box, or both of light-duty trucks.

<sup>5</sup> Different law enforcement agencies—and even different police officers within the same agency—use different terms to refer to component parts' markings. Some of the terms include Mylar labels, NHTSA labels, DOT labels, antitheft labels, VIN labels, high-theft line labels, and automobile tails. Investigators may refer to the markings as stickers, tabs, strips, or labels. For purpose of consistency, this article refers to them as antitheft labels.

<sup>6</sup> Abt Associates Inc., Cambridge, MA

<sup>7</sup> In 5 of the smaller cities and rural states, investigators indicated that they did not use labels to catch thieves because thieves there steal cars primarily for joyriding, resulting in the recovery of intact vehicles and VINs. Accordingly, in order not to skew the results, researchers did not include the data from these five jurisdictions—and one other small, but high-theft area—for the analysis. As a result, the number of investigators (40) does not equal the number of jurisdictions (47).

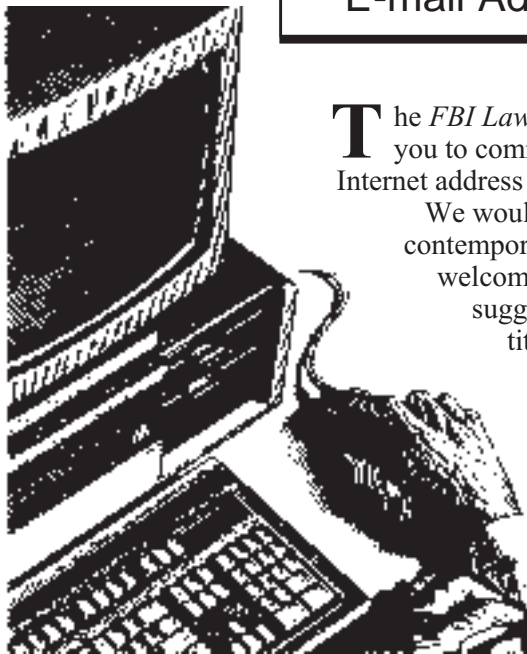
<sup>8</sup> Located on the door area, the label VIN sticker verifies that the vehicle conforms to all federal laws. The public VIN is visible in the windshield area. The location of confidential VINs varies, but typically they are "hidden" on the frame or the firewall of automobiles.

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## The *Bulletin's* E-mail Address



**T**he *FBI Law Enforcement Bulletin* staff invites you to communicate with us via e-mail. Our Internet address is [leb@fbiacademy.edu](mailto:leb@fbiacademy.edu).

We would like to know your thoughts on contemporary law enforcement issues. We welcome your comments, questions, and suggestions. Please include your name, title, and agency on all e-mail messages.

Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI's home page. The home page address is <http://www.fbi.gov>.

### *Computers and the Sexual Exploitation of Children*

In its ongoing effort to safeguard children, the Office of Juvenile Justice and Delinquency Prevention has published *Portable Guides to Investigating Child Abuse*, a series of brochures that address the issues challenging investigators of child sexual exploitation involving computers. The first section of this guide reviews the highly predictable behavior patterns of preferential sex offenders and how these offenders use computers. The second section provides investigative guidelines on establishing the context, obtaining a search warrant, handling and securing computer equipment, and analyzing the suspect's computer. The guide concludes with an examination of the legal principles governing the search and seizure of computers. Special tools contained in the guide include a glossary of computer terms, a supplemental reading list, and contact information for organizations and federal agencies that provide assistance with investigations.

Currently, 12 other titles exist in the *Portable Guides to Investigating Child Abuse* series: *Recognizing When a Child's Injury or Illness Is Caused by Abuse*, NCJ 160938; *Sexually Transmitted Diseases and Child Sexual Abuse*, NCJ 160949; *Photodocumentation in the Investigation of Child Abuse*, NCJ 160939; *Diagnostic Imaging of Child Abuse*, NCJ 161235; *Battered Child Syndrome: Investigating Physical Abuse and Homicide*, NCJ 161406; *Interviewing Child Witnesses and Victims of Sexual Abuse*, NCJ 161623; *Child Neglect and Munchausen Syndrome by Proxy*, NCJ 161841; *Criminal Investigation of Child Sexual Abuse*, NCJ 162426; *Burn Injuries in Child Abuse*, NCJ 162424; *Law Enforcement Response to Child Abuse*, NCJ 162425; *Understanding and Investigating Child Sexual Exploitation*, NCJ 162427; and *Forming a Multidisciplinary Team to Investigate Child Abuse*, NCJ 170020. To obtain these guides or *Use of Computers in the Sexual Exploitation of Children*, NCJ 170021, contact the Office of Juvenile Justice and Delinquency Prevention's Juvenile Justice Clearinghouse by telephone at 800-638-8736 or e-mail at [puborder@ncjrs.org](mailto:puborder@ncjrs.org).

### *Successful Adjudication Partnerships*

The *Key Elements of Successful Adjudication Partnerships* bulletin, produced by the Bureau of Justice Assistance (BJA), provides valuable information about the importance of establishing these partnerships, guidelines for setting up such cooperative efforts, and brief summaries of successful examples. The many complex problems, such as backlogged dockets, crowded jails, and recidivism of drug-addicted offenders, have led prosecutors, public defenders, and courts to join together to seek effective solutions. These formal or informal collaborative efforts bring key justice system agencies together in multiagency task forces, steering committees, or planning groups to identify problems, develop goals and strategies for addressing the problems, and oversee implementation plans to manage or solve the problems. The concept is not new; examples include criminal justice coordinating committees, drug courts, expedited case management programs, and community justice programs. The grassroots efforts of local criminal justice leaders committed to improving the operation and effectiveness of local criminal justice systems have resulted in the creation of most adjudication partnerships. However, these joint efforts are spreading throughout the United States. For a copy of the bulletin (NCJ 173949), contact the BJA Clearinghouse at 800-688-4252 or access the BJA Web site at <http://www.ojp.usdoj.gov/BJA>.

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# The Interview Challenge

## Mike Simmen Versus the FBI

By OWEN EINSPAHR, M.P.A.



On a Wednesday morning, an FBI special agent spends approximately 1 hour interviewing a local bank's loan officer, Mike Simmen, about a theft from the bank's automated teller machine (ATM), which occurred the previous Saturday. After asking numerous questions, the agent believes that Mr. Simmen knows more about the theft than his answers convey. The agent decides to try a more direct approach.

"Tell me what *you* think happened on Saturday," the agent asks. Mr. Simmen replies, "Well, *I* think somebody took the money." Next, the agent says, "Tell me *your* side of what happened Saturday." Mr. Simmen retorts, "What do you mean, *my* side? Do you think *I* took the money?" The agent reassures Mike, "Everyone remembers things differently, so that's why we need to get everyone's perspective." Mr. Simmen answers, "I don't know

that I have one." Then, the agent pointedly remarks, "If you did it, we'll find out." At this, Mr. Simmen indignantly announces, "I'm not going to answer any more questions. This interview is over."

Realizing that this approach did not succeed, the agent decides to interview Mr. Simmen again, using a different approach. How could this happen? Thanks to modern technology, law enforcement officers now can enhance their most fundamental



and important skill, interviewing individuals, via an interactive computer program that so closely imitates real life officers may find it difficult to tell the difference.

## DEVELOPING THE PROGRAM

In 1996, instructors who teach interviewing and interrogation at the FBI Academy met with members of the Johns Hopkins University's Applied Physics Laboratory (APL) to determine if they could create a computer program that would realistically simulate a human personality.<sup>1</sup> At the time, these instructors were training record numbers of new agent and FBI National Academy students. They needed a system that would allow their students to practice interviewing skills and receive feedback yet did not require instructor-monitored practice sessions. Primarily, the instructors wanted a program that would augment and support the training that FBI students receive during their interviewing classes but that also could act as a stand-alone practice drill to enhance the interviewing skills of veteran officers.

The APL faced a challenging design proposal. First, the FBI instructors wanted an interactive, self-paced computer program user-friendly enough to allow those with minimal computer expertise to use it with little or no training and engaging enough to make students want to use it on their own time. Second, the computer-simulated interviewee needed to display multiple dispositions interview after interview to emulate the many

different types of individuals that investigators encounter. Finally, the program could not allow users to "beat the system." FBI instructors did not want clever students devising one set of questions that they could ask in the same order during each interview to produce a high score. Human interviewees prove more complex than that.

The APL accepted the challenge and delivered the completed software to the FBI in May 1998. "Mike Simmen" (i.e., simulated man) was born. Mike may appear talkative and eager to help investigators in one interview but seem busy and defensive in the next. He may portray an innocent employee in some interviews but, in others, is guilty of stealing money from an ATM. As with many humans, even when he is not the perpetrator, Mike may lie to hide other information that he does not want the user to know. These changes occur because Mike "remembers" the nature of the user's questions and statements and responds based on typical behavior

patterns related to his guilt or innocence and the content of the interview.

Moreover, the APL designed Mike's "brain" with both logical and emotional components. The logical component tracks the responses and keeps them reasonable and consistent. It selects one of a series of likely responses to the current questions and circumstances, which affect Mike's actual status (i.e., guilt or innocence) and emotional state. At the same time, the emotional component critically impacts Mike's response selection. While the user's questions primarily determine Mike's emotional state, the computer randomly selects the fluctuations of Mike's emotional state or "mood," causing his answers to change each time the user conducts an interview. For example, depending on Mike's mood, he may forgive a poorly worded question or become upset and uncooperative. The user never knows how Mike will respond from one interview to the next.

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***This simultaneous visual and aural presentation realistically simulates a lifelike interview.***

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*Special Agent Einspahr is an instructor in the Law Enforcement Communication Unit at the FBI Academy.*



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## USING THE PROGRAM

The program includes an online tutorial to help users learn how to use the program and to understand the scoring system. Also, an online manual of tips and guidelines helps those who want to enhance their interviewing skills. For example, the manual reminds users that an interview is a conversation with a purpose or goal, not just a series of questions. To this end, the manual stresses that users must learn to evaluate the truthfulness of the information they obtain by “reading” both the verbal and nonverbal indicators of the individuals they interview. As experienced interviewers know, they must develop rapport with their interviewees and establish a baseline of what constitutes an individual’s normal behavior. Without determining an individual’s typical reactions, interviewers cannot identify deviations from them.<sup>2</sup>

### Conducting the Interview

After reviewing the online case study to obtain background information about the crime, users start the interview by choosing 1 of 14 different categories, covering such items as Mike’s personal habits, work relationships, or possible involvement in the crime. Users then conduct the interview by selecting from an extensive scripted list of questions. As Mike responds to these inquiries, additional follow-up questions appear. Users choose the questions that they feel are most appropriate. Simultaneously, the program eliminates those questions that users have asked or those that have lost their relevance.

As the questions and Mike’s responses appear in a portion of the computer screen, users see a full-body view of Mike seated in front of them and a close-up of his face in another part of the screen. At the same time, users hear their questions followed by Mike’s responses. While Mike’s “brain” determines his behavior and responses, an actor presents the visual and audible responses in the video sequences. This simultaneous visual and aural presentation realistically simulates a lifelike interview.

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***Mike may appear talkative and eager to help investigators in one interview but seem busy and defensive in the next.***

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Unlike an actual interview, however, the program stores the sequence of questions and responses so that users can replay and reexamine the entire interview at any time until it ends.

As the interview progresses, skilled interviewers recognize that some of Mike’s verbal responses and nonverbal body movements readily indicate guilt or innocence and represent clues to his level of truthfulness. After hearing and observing Mike’s responses, users can plan a line of questioning to help them judge these verbal and

nonverbal clues as truthful or deceptive. For example, users must decide whether Mike’s tone of voice, body posture, and other nonverbal actions, such as scratching the back of his neck or avoiding eye contact, demonstrate deception. To this end, if users have not determined Mike’s normal behavioral reactions correctly, they may believe his lies or suspect him when he is innocent. Also, similar to computer and video games, the users gain extra points for successfully identifying these truthful or deceptive clues but have points taken away for incorrectly judging Mike’s responses. This encourages users to remember important interviewing skills, such as developing rapport and establishing a baseline of normal behavior patterns.

### Concluding the Interview

Unless Mike refuses to answer any more questions (as he did in the beginning scenario), users decide when to end the interview. At that time, they must determine whether Mike was truthful or deceptive. Users must base their decisions about Mike’s truthfulness on the complex combination of information they received from Mike in response to the questions they asked throughout the interview. This often proves challenging. For example, if users appear too abrasive in their quest to solve the crime, Mike may end the interview when he becomes frustrated. Yet, if users fail to probe sufficiently, they may find it difficult to determine Mike’s truthfulness.

Once users decide whether Mike appeared deceptive or

truthful, they must enter their decisions. Then, the computer program gives them information about their interviewing efforts.

### Scoring the Interview

The program computes a total numerical score based on the accuracy of the users' decisions concerning Mike's truthfulness, the rapport and investigative values of the questions they selected, the number of questions asked, and the number of clues detected correctly. The program has four levels of difficulty—beginner, intermediate, advanced, or professional—and provides fewer clues at the more challenging stages.

To illustrate one of these rating factors, one objective of this program involves users' developing rapport with Mike and, thus, more likely to provide reliable information. Accordingly, the program rates each of the users' questions or statements on how it contributes to this rapport. Positive rapport-building questions generate positive rapport ratings, whereas questions that offend Mike contribute to negative rapport-building scores. However, some of the questions that make Mike feel uncomfortable may help the user determine Mike's deceptiveness and provide important investigative information. Therefore, both rapport and investigative ratings contribute to users' overall evaluations.

Similar to video and computer games, the program compares users' scores and lists the top five<sup>3</sup> along with the date they occurred. Users may print a copy of their scores, save the interview for later

replay and further examination, start a new interview, or exit the program.

### MEASURING THE PROGRAM'S SUCCESS

Since October 1, 1998, all FBI new agent trainees have used this interviewing software to augment their classroom instruction.<sup>4</sup> Although not enough time has elapsed to calculate any notable benefits, FBI Academy instructors have observed improvement in the interviewing skills of those who have used the program. For example, most trainees who have practiced with it conduct longer, more

in-depth interviews during classroom role-plays. Many spend additional time building rapport by developing general conversations about nonthreatening topics (e.g., family, education, the weather, or sports); employing more thoughtful questioning strategies, such as asking open-ended questions (e.g., What happened? Can you tell me what you have heard?); and encouraging conversation by asking follow-up questions (e.g., And then what happened? What else did you hear?).

Additionally, FBI instructors require that new agent trainees use the program for two homework

### Minimum System Requirements

The program will operate on a standard, up-to-date desktop or laptop computer that meets the following requirements.

#### Hardware

Graphic card support and screen setting of 1024x768 pixels or more with 16 bit color, 32 megabytes RAM, Pentium Processor 180 MHZ or better

- Hard Drive Option: 600 megabytes of free disk space
- CD-ROM Option: 40 megabytes of free disk space, 12x CD-ROM

#### Software

- Windows 95 Option: Microsoft DirectX 5.2, Microsoft Active Movie 2.0, and Microsoft Internet Explorer 4.0
- Windows NT Option: Version 4.0 with service pack 3 (contains DirectX 3.0), Microsoft Active Movie 2.0, and Microsoft Internet Explorer 4.0

*Law enforcement agencies can obtain a copy of this software at no cost by contacting the nearest FBI field office.*

assignments. At the beginning of training and then near the end, the trainees must interview Mike, as often as they wish within the assignment's time limit, and submit their best score of each of these interviews to their instructor. Finally, most of the instructors agree that while nothing replaces interviewing a real subject, this program allows students to make mistakes and, more important, learn from their mistakes in a supportive instructional environment.

### EXPLORING OTHER APPLICATIONS

Such an absorbing and interactive training tool has a broad range of potential applications. The sophistication of the simulation and programming of the software makes it a viable candidate for many kinds of training that require understanding the psychology of human interaction. For example, any investigative agency could use the basic approach developed for the FBI to detect deception in a variety of situations, including employment interviews, security investigations, and insurance claims. However, the program also has applications in many other areas. Schools, businesses, and community service organizations could adapt it to teach individuals how to respond in specific situations, such as showing young people how to resist peer pressure and other unhealthy influences or informing supervisors how to interact more effectively with their employees.<sup>5</sup>

### OBTAINING THE PROGRAM

Early in 1999, the FBI Academy conducted interview training

for veteran FBI agents from most of the agency's 56 field offices. Attendees used this software during these seminars and took copies back to their offices for other agents to examine. Afterward, the FBI provided numerous copies of this software to each of its field offices for distribution to state and local law enforcement agencies. Departments can obtain the software at no cost by contacting the nearest FBI field office.

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*...the APL designed Mike's 'brain' with both logical and emotional components.*

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### CONCLUSION

Solid interviewing skills stand as the cornerstone in law enforcement's arsenal of crime-fighting weapons. Officers need to sharpen these abilities as surely as they must hone their expertise with firearms. Accordingly, advanced technology has provided an innovative and engaging training tool that law enforcement administrators may want to explore to help their officers enhance their interviewing skills.

FBI Academy interviewing instructors worked with the Johns Hopkins University's Applied Physics Laboratory to provide law enforcement professionals with

realistic interviewing practice via a self-paced, multimedia computer program. The resulting user-friendly software gives students and veteran officers alike experience in asking appropriate questions and distinguishing between deceptive and truthful responses. It also provides a critique and numerical score for users to compare their level of improvement. This creative response to a critical need in the law enforcement community represents how modern technology can help officers in their daily struggle to successfully solve crimes and safeguard the communities they are sworn to protect. ♦

### Endnotes

<sup>1</sup> Prior to this meeting, the APL had demonstrated an extremely lifelike, interactive training computer program to FBI Academy personnel. Following an assessment to determine the area of instruction that would benefit most from the APL's assistance, FBI Academy managers chose interviewing because of its fundamental importance to police work.

<sup>2</sup> For additional information on conducting interviews, see, for example, David Vessel, "Conducting Successful Interrogations," *FBI Law Enforcement Bulletin*, October 1998, 1-6; and Michael R. Napier and Susan H. Adams, "Magic Words to Obtain Confessions," *FBI Law Enforcement Bulletin*, October 1998, 11-15.

<sup>3</sup> Many users want to know the highest possible score. However, the extensive number of human variables makes it impossible to determine or achieve an absolute top score.

<sup>4</sup> Because the software only recently became available in sufficient quantities for distribution to state and local law enforcement agencies, FBI National Academy students began using the program in October 1999.

<sup>5</sup> For complete details about different software applications, contact Dale E. Olsen, program development director for law enforcement programs, Applied Physics Laboratory, Johns Hopkins University, Laurel, MD; telephone: 443-778-6114 or 240-228-6114; e-mail: dale.olsen@jhuapl.edu.



**Criminal Investigation Handbook: Strategy, Law, and Science** by Thomas P. Mauriello, Matthew Bender and Company, Inc., New York, New York, 1998.

The *Criminal Investigation Handbook* is a comprehensive tool that can assist any law enforcement officer, from rookie patrol officers to seasoned federal agents assigned to complex investigations. Directed toward anyone required to understand the investigative process, the *Criminal Investigation Handbook* enhances the law enforcement officer's basic training, provides exposure to new ideas and methods, and serves as a valuable reference for all criminal investigations.

Investigative textbooks are often timely and informative when written, but the *Criminal Investigation Handbook* remains current. In a unique approach, the author eliminates dated material through annual updates. Produced in a five-ring binder, the *Criminal Investigation Handbook* allows users to easily update information by inserting new materials and deleting the old. Formerly entitled the *Police Investigation Handbook*, the *Criminal Investigation Handbook* had its ninth revision in 1999.

The handbook not only serves as a practical guide for each element of an investigation, but it also provides the reasoning behind the need for each element. Part I, "General Legal Principles," details the process involved in the management of an investigation, elements of proof, basic rules of evidence, and constitutional principles. The reader can easily understand and apply the presented information.

The book addresses every aspect and element of a criminal investigation in Part II, "Criminal Investigation Methods" (e.g., crime scene preservation, collection and documentation, interview and interrogation, informant use, and undercover tactics and surveillance

techniques). Chapter 12 provides Websites, e-mail addresses, and databases for access to investigative information and resources. The proliferation of the Internet allows anyone with limited computer literacy immediate access to hundreds of worldwide databases to further an investigation. Additionally, Chapter 17 discusses computer forensics as an area of law enforcement struggling to keep pace with daily innovations in computer technology. In today's society, computers have become an instrumentality to many different crimes. The *Criminal Investigation Handbook* provides necessary guidance in the investigation of an area new to a large number of law enforcement officers. The author presents the comprehensive information in a manner clear enough for those with limited computer knowledge to understand.

Part III, "Testifying and Use of Evidence in Court" provides insight to the end result of the law enforcement officer's investigative efforts by offering methods and techniques for successful presentation of evidence and testimony in the courtroom. The final section, "Investigation of Specific Crimes," details the elements and investigative techniques of particular offenses (e.g., property, sex, white-collar, foreign counter-intelligence, and drug-related crimes).

The *Criminal Investigation Handbook* provides answers to the basic interrogatives of criminal investigation, as well as the intricacies involved in the successful prosecution of these investigations. With its annual updates, this book remains a valuable reference for any law enforcement officer, and will appeal to anyone responsible for criminal investigations.

Reviewed by  
Special Agent G. Joseph Bradley  
Federal Bureau of Investigation  
Baltimore Field Office

# Proving Guilty Knowledge

## Caught Red-Handed or Empty Headed?

By EDWARD M. HENDRIE, J.D.

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**S**tate and federal statutes prohibiting the possession of contraband, such as illegal drugs, require the government to prove that the possessor knowingly possessed the contraband. Individuals who possess illegal drugs but do not know what they have are not guilty of illegally possessing the drugs. Proving knowledge is often an issue in vehicle courier and package delivery cases. Suspects who have been caught red-handed many

times claim that they did not know that the object they possessed contained illegal drugs. This article explains what evidence is relevant to determining whether a suspect who is caught in possession of drugs knew he had the drugs or whether he is simply an innocent dupe.

### Hidden Compartments

It ordinarily is reasonable to infer that the driver of a vehicle that contains drugs knows that the drugs

are present in the car because the driver has control over the vehicle. However, when the drugs are secreted in a hidden compartment, there must be some additional evidence that establishes guilty knowledge because there is at least a fair probability that someone could have secreted the controlled substance in the vehicle and used the driver as an unwitting courier.<sup>1</sup> There is seldom direct evidence that proves knowledge. Knowledge



usually must be inferred from the facts and circumstances of the case.<sup>2</sup> Many times a defendant will make inconsistent statements or come up with implausible stories. Inconsistent or implausible statements can be circumstantial evidence of guilty knowledge.

*United States v. Cano-Guel*<sup>3</sup> is a typical border drug courier case. The defendant was arrested while trying to enter the United States in a car loaded with marijuana. The defendant was the driver and sole occupant of the vehicle. He told the Customs inspector at the border that he had nothing to declare and was traveling to El Paso to buy groceries. The defendant did not appear nervous and the car did not smell of marijuana. The defendant told the inspector that the car belonged to a friend. Because the car did not contain registration or insurance papers, the driver was referred to a secondary inspection station. The defendant told the inspector at that station that he had borrowed the car from his mechanic because his car was not running. A trained drug canine alerted to the presence of marijuana, and the officers discovered 59.7 pounds of marijuana hidden inside the dashboard and the rear doors. The defendant claimed that he did not know the marijuana was hidden in the car.

After the Customs inspectors found the drugs hidden in the car, the defendant changed his story and stated that he was going to El Paso to see a doctor who had performed a hernia operation on him some 4 years earlier. The defendant, however, could not remember the doctor's name until he pondered it

for some time. The defendant also admitted that he did not have an appointment with the doctor, but said that he was on his way to the office to make an appointment. The defendant stated that the car belonged to a friend he had known since childhood, however, he did not know the friend's last name. At the trial, the defendant testified that he was crossing the border to see his doctor, because he was in great pain from the hernia operation. He did not mention his pain at the border checkpoint or while being processed at the county detention facility, nor did he see a doctor concerning his hernia pain until the Friday before the trial, which was some 4 months after the border stop.

The U.S. Court of Appeals for the Fifth Circuit ruled that, based on the conflicting and implausible statements of the defendant at the border and at trial, there was sufficient evidence to prove that the defendant knowingly possessed

with the intent to distribute the marijuana.

There are other factors that point to guilty knowledge. For instance, in *United States v. Ramos-Garcia*,<sup>4</sup> an immigration inspector was suspicious that the defendant, who was a U.S. resident alien, was seeking to enter the United States in a vehicle that was registered in Mexico. Further inspection of the vehicle revealed 70 pounds of marijuana in a hidden compartment. The defendant denied any knowledge of the marijuana. The defendant stated that he was paid \$500 to drive the vehicle 4 miles across the U.S.-Mexico border. The defendant was convicted of importing marijuana into the United States from Mexico. He appealed his conviction claiming that the evidence was insufficient to prove that he knew marijuana was in the vehicle he was driving. The appeals court ruled that the defendant's failure to ask any questions about the trip

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***Proving knowledge  
can be difficult  
when there  
are multiple  
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automobile where  
illegal drugs  
are found.***

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*Special Agent Hendrie, DEA Legal Unit,  
is a legal instructor at the FBI Academy.*

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suggested willful ignorance, which was consistent with guilty knowledge. Furthermore, the court felt that it was implausible that the defendant would be entrusted with such a large quantity of marijuana without his knowledge. Finally, the court noted that the defendant was nervous during his encounter with the immigration inspector, which suggested that he had guilty knowledge.

### Willful Blindness

The *Ramos-Garcia* court considered the fact that the defendant did not ask any questions about the trip as an indication of guilty knowledge. The court understood that some drug suspects purposely avoid learning all the information regarding what is contained in an automobile or a package in the hope that, if caught, they would be able to argue that they did not actually know that the automobile or package contained drugs. Such “willful blindness” on the part of drug couriers is not a defense in federal drug prosecutions because the U.S. Supreme Court has applied the Model Penal Code definition of knowledge in federal drug cases.<sup>5</sup> Section 2.02 (7) of the Model Penal Code provides that: “When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that does not exist.”

In order for the government to prove knowledge when a defendant deliberately avoids finding out whether a vehicle or package contains illegal drugs, the government

must prove that the defendant was aware of a high probability that he possessed a prohibited drug and deliberately avoided learning the truth. It is not enough that the defendant is merely careless or even reckless regarding the contents of a vehicle or package.<sup>6</sup> A finding of willful blindness is only proper where it can almost be said that the defendant actually knew that drugs were present, but consciously and deliberately avoided taking the extra step to confirm the presence of the drugs.<sup>7</sup>

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***...the defendant's failure to ask any questions about the trip suggested willful ignorance, which was consistent with guilty knowledge.***

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For example, in *United States v. Jewell*,<sup>8</sup> the defendant testified that he was approached in Tijuana, Mexico, by a stranger who identified himself only as “Ray.” Ray asked the defendant if he wanted to buy some marijuana, and when the defendant declined the offer, Ray offered to pay him \$100 for driving a car across the border. The defendant was stopped at the border by a U.S. Customs agent, who found 110 pounds of marijuana concealed in a secret compartment between the trunk and the rear seat. The

defendant claimed he did not know the marijuana was in the car. He testified at trial that he thought there was probably something wrong and perhaps something illegal in the vehicle. He claimed though that prior to driving the vehicle across the border he checked the vehicle but did not find anything illegal inside. He assumed that because he did not find anything in the vehicle then the Customs agents at the border would not find anything either. The defendant further testified that he saw the hidden compartment in the trunk but did not know what it was and did not investigate any further.

The defendant was ultimately convicted of possession with intent to distribute and importation of marijuana. The entire bench of the U.S. Court of Appeals for the Ninth Circuit accepted the concept of willful blindness and ruled that even though the trial court’s instruction on willful blindness was deficient, the deficiency did not require reversal of the defendant’s conviction. The court took the position that where a defendant deliberately avoids confirming his suspicions, in the face of a high probability that illegal drugs are present, in order to purposely remain ignorant of their presence, such deliberate avoidance of knowledge is equivalent to actually knowing the drugs are there.<sup>9</sup>

While willful blindness is generally viewed as equivalent to actual knowledge in the federal courts,<sup>10</sup> there has been a split on the applicability of the willful blindness concept in the few state court decisions that have addressed the issue.<sup>11</sup>

### Limited Application of Willful Blindness

Willful blindness is not a concept that can be applied to every courier case. Willful blindness can only be properly applied in those cases where the defendant claims lack of knowledge and the evidence supports an inference of deliberate ignorance.<sup>12</sup> For example, in *United States v. Baron*,<sup>13</sup> the defendant was pulled over for speeding by a Phoenix, Arizona, police officer. The officer noticed an intense cherry fragrance coming from inside the vehicle. A canine unit alerted to the presence of illegal drugs. Twenty-seven pounds of illegal methamphetamine were found hidden in a compartment in the left rear quarter panel of the car. The defendant claimed he did not know the drugs were in the car. The defendant stated that he was simply given \$200 to drive the car from Los Angeles to Phoenix. The defendant gave inconsistent and implausible stories as to what he was to do with the car once he arrived in Phoenix. In addition, the defendant had receipts on his person indicating recent cash purchases by him of over \$13,000 even though he admitted being unemployed during the previous 7 to 8 months.

The defendant was convicted of possession with intent to distribute methamphetamine, and he appealed. The U.S. Court of Appeals for the Ninth Circuit ruled that the evidence suggested the defendant had either actual knowledge the drugs were hidden in the car (which points to his guilt) or was negligent in disregarding a risk that drugs were in the car (which would mean



he is not guilty), but there was insufficient evidence to demonstrate that he purposely avoided learning all the facts in order to have a defense in the event of being arrested and charged. The appeals court, consequently, ruled that the trial court erred when it instructed the jury that they could consider the willful blindness of the defendant. Such an instruction is inappropriate when the evidence suggests that either the defendant has actual knowledge or no knowledge that illegal drugs are present.<sup>14</sup> The *Baron* court was concerned that giving a willful blindness instruction when there is not sufficient evidence that the defendant deliberately avoided exploring whether drugs are present could serve to reduce the criminal state of mind required for conviction from knowledge to something less, such as negligence. The court ruled that a jury can only be instructed on willful blindness in cases where there is sufficient evidence establishing that

the defendant 1) suspects that an object contains drugs, 2) deliberately avoids taking steps to confirm or refute his suspicions, and 3) does so in order to provide himself with a defense in the event of prosecution.<sup>15</sup>

### Multiple Passengers in a Vehicle

Proving knowledge can be difficult when there are multiple passengers in an automobile where illegal drugs are found. For instance, in *United States v. Leonard*,<sup>16</sup> three suspects were pulled over as they were driving through Georgia on Interstate 75. The driver claimed that he only began driving at the Georgia/Florida line and that he had slept during the entire drive through Florida. The other two passengers also claimed that they had slept during the drive through Florida and consequently did not know where in Florida they had traveled. None of the occupants of the vehicle had any photographic identification. The driver first stated that they were

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traveling from Orlando but later changed that to Miami. The owner of the car was sitting in the front passenger seat when the car was pulled over. After obtaining consent from the owner, the officer searched the car and found nine bricks of cocaine and a 9 mm handgun hidden behind the inside panel in the tailgate of the car. All of the passengers were arrested and subsequently convicted of possession with intent to distribute the cocaine and carrying a firearm during a drug trafficking offense.

All three defendants appealed their convictions claiming that there was insufficient evidence at trial for a finding that they knew that a gun and drugs were in the car. The U.S. Court of Appeals for the Eleventh Circuit ruled that there was sufficient evidence to prove that all three defendants knew the drugs were hidden in the vehicle. The court pointed out that each of the passengers claimed to have slept during the drive through Florida. Obviously, that could not have been true. The court also thought it was significant that none of the passengers were surprised when the police discovered cocaine hidden in the tailgate of the vehicle, which indicated that they all knew the drugs were hidden there. Nonetheless, the court reversed the convictions of the one passenger who was seated in the rear of the car. The court pointed out that mere knowledge of the presence of illegal contraband is not enough to convict.<sup>17</sup> There must be evidence that the person charged possessed or aided and abetted others in the possession of the contraband. The court felt that although

the rear passenger knew the gun and drugs were hidden in the car, there was insufficient evidence to prove that he possessed or owned the drugs, gun, or vehicle or that he aided and abetted the other passengers in possessing them.

In *United States v. Stanley*,<sup>18</sup> a suspect arrested on drug charges decided to cooperate with the police by arranging a purchase of cocaine from his supplier, Charles Cameron. At the appointed time, the informant met with his supplier.

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**...deliberate avoidance of knowledge is equivalent to actually knowing the drugs are there.**

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The informant walked up to Cameron, who at the time was pumping gas into his car, and asked him where the dope was. Two people were sitting in Cameron's car; Tiffany Stanley was in the front seat, and Ronald Powers was sitting in the back seat. Powers told the informant, "You need to talk to me." The informant and Powers walked across the street, negotiated the drug deal, and returned and entered Cameron's car. Shortly afterward, all three suspects were arrested by the police. Upon searching the vehicle, officers discovered 88 grams of cocaine base hidden underneath the dashboard.

All three defendants were convicted of conspiracy and possession with intent to distribute cocaine base. Stanley appealed her conviction, arguing that the evidence was insufficient to prove that she was involved in the drug deal. The U.S. Court of Appeals for the Eleventh Circuit agreed that the evidence was insufficient to support her conviction. The court noted that the evidence only indicated that she was present. Mere presence during illegal activity is never sufficient to support a conviction.<sup>19</sup> In this case, there was no reliable evidence that proved Stanley was involved in the illegal attempt to distribute the cocaine. The government argued that because she was sitting in the front seat, she would have known that a drug deal was being arranged because she would have overheard the question posed by the informant as he walked up to the car. The court noted, however, that there was no testimony that Stanley heard the question by the informant, or, if she did hear it, whether she reacted in any way to it. Even if she did hear the question, her mere knowledge of the crime, without any evidence that she assisted in its commission, would not be enough to support a conviction.<sup>20</sup>

Both *Stanley* and *Leonard* involved drugs hidden in a car. Proving knowledge in multiple passenger cases is sometimes difficult even when the drugs are not hidden in a secret compartment. For example, in *United States v. Pace*,<sup>21</sup> the defendant was the driver in a station wagon that the Missouri State Police pulled over for speeding. Pursuant to a consent search of



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the vehicle, the trooper found bricks of cocaine totaling 200 pounds in three duffel bags and one suitcase. The drugs had a street value of between 12 and 15 million dollars. Two of the duffel bags were in the back seat; the third duffel bag and the suitcase were in the cargo area. The testimony at the trial indicated that a used car dealer paid the driver \$250 to drive a car the dealer owned from Los Angeles to Chicago. The dealer rode with him during the trip. The evidence at trial also indicated that all of the bags containing the cocaine belonged to the owner. During the trip, the driver noticed that they were being followed by a black van containing two people, one of whom was described as a Colombian. At one point during the trip, the driver asked the owner of the vehicle why the van was making the trip with them, and the owner told the driver that it was none of his business.

Both the driver and the owner of the vehicle were convicted of possession with intent to distribute the cocaine. The U.S. Court of Appeals for the Eighth Circuit ruled that, while there was probable cause to arrest both the passenger and the driver, there was insufficient evidence to convict the driver. The court felt that because there was no evidence introduced that the driver ever looked into the bags, it was merely conjecture to conclude that the driver knew that there was cocaine in them. Furthermore, the court did not feel that the driver's question and the owner's answer about the black van was enough to prove that the driver was willfully ignorant that the car contained contraband. The government argued

that it was reasonable to infer that criminals would not ordinarily trust an unwitting person to deliver a valuable shipment of a large quantity of drugs, and, therefore, it is reasonable to further infer that a driver entrusted with drugs valued at between 12 and 15 million dollars must have known the drugs were in the car.<sup>22</sup> In *Pace*, however, the evidence suggested that the driver was not truly trusted. He was not driving alone; the owner of the vehicle drove with him as a passenger, and the vehicle was being followed by a van apparently to keep an eye on the



shipment. Furthermore, all drug statutes prohibiting possession of illegal drugs require that there be sufficient evidence to prove beyond a reasonable doubt that the defendant knowingly possessed the drugs. Even if the driver had suspicions about whether there were illegal drugs in the car, mere suspicion of illegal activity is not a substitute for knowledge.<sup>23</sup>

#### **Unopened Packages**

Many times, the issue as to whether a suspect knew of the

presence of illegal drugs arises in situations where the police have intercepted a package filled with illegal drugs. Typically, the police must deliver the package to the suspect before they can prove the suspect knowingly possessed the illegal contents. Mere receipt of a package, however, is usually insufficient in itself to prove knowledge of its contents.<sup>24</sup> That is particularly true when the package is not opened by the suspect before his arrest. Under those circumstances, a suspect can argue that because he did not see what was inside the package, he could not have known it contained illegal drugs. In such a case, the police must obtain evidence in addition to the receipt of the package in order to prove knowledge.<sup>25</sup>

For example, in *Ramsey v. People*,<sup>26</sup> the defendant claimed a suitcase at the Grand Junction airport. The police had previously determined that the suitcase contained marijuana. The defendant was arrested immediately after taking possession of the suitcase. The testimony at the trial indicated that the defendant picked up the suitcase at the request of a friend whom he had driven to the airport for a flight to Denver. The Supreme Court of Colorado ruled that on those facts there was insufficient evidence to prove beyond a reasonable doubt that the defendant knew there was marijuana in the suitcase.

Three weeks before its decision in *Ramsey*, the same Colorado Supreme Court ruled that the defendant in *People v. Hankin*<sup>27</sup> knew there was marijuana in a package that he picked up from freight personnel at the Denver Airport. The

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Denver Police were notified by the San Mateo County, California, Sheriff's Department that the package contained marijuana. The Denver Police arrested the defendant as soon as he picked up the package. The difference between the *Ramsey* and *Hankin* cases is that in *Hankin* the police found a small quantity of marijuana and a note bearing the name and address of the party sending the package in the defendant's pockets. The freight employee, who talked with the defendant on the telephone prior to the defendant picking up the package, testified that he did not disclose the sender's name or address to the defendant. The court ruled that those facts were sufficient to infer that the defendant knew marijuana was in the package, even though it was not opened, and he only had possession of it for a moment before being arrested.

In *State v. Arthun*,<sup>28</sup> workers at the United Parcel Service (UPS) transport hub in Louisville, Kentucky, inspected a package addressed to Ellen Arthun and discovered what appeared to be a sizable amount of marijuana (3.96 pounds). The police were called and made an undercover controlled delivery to Ellen Arthun at the address on the package. The police set up surveillance and watched the house while one of the officers obtained a search warrant for the residence. The police executed the search warrant and, during the search, found a small bag of marijuana, rolling papers, "roach" clips, and some partially burned marijuana cigarettes in the house. They also found several UPS receipts, more marijuana, and rolling papers in Ellen Arthun's

purse. Initially, Ellen's husband, Bruce, denied any knowledge of the UPS package. When, however, Bruce was informed of the controlled delivery, he led the officers to a shed and showed them where the box was hidden.

Both Ellen and Bruce Arthun were convicted of criminal possession of dangerous drugs. They appealed their convictions claiming that there was insufficient evidence to prove knowing possession of the drugs in the UPS package. The defendants maintained that mere possession of the unopened package

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***Mere receipt of a package, however, is usually insufficient in itself to prove knowledge of its contents.***  
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was not enough to establish their knowledge of its contents. The Supreme Court of Montana acknowledged that knowing control cannot be inferred from mere possession alone. The court, however, ruled that there was sufficient evidence that both defendants knew that the UPS package contained marijuana. The court stated that guilty knowledge could be inferred from the following facts: Ellen accepted the package without question or surprise; both Ellen and Bruce kept the package without attempting to return or disclaim it; Bruce took the

package to a shed and concealed it within hours of it being delivered; Bruce claimed ignorance when questioned about the package; and the police found other marijuana and drug paraphernalia in the house.

#### **Fictitious Addressee**

Drug suspects sometimes arrange to have a fictitious name used for the addressee. For example, in *Commonwealth v. Sheline*,<sup>29</sup> police made a controlled delivery of a package containing 48 grams of cocaine to Howard Sheline at Portside Marina. Sheline worked at the marina, which contained a bait and tackle shop and a small office. During the week before the controlled delivery, Sheline asked the regular UPS driver twice if there were any packages for him—a question Sheline had never asked the driver before. The package was addressed from “M. Shark” to “Howie Tuna.” Sheline told the undercover officer delivering the package that the person named as the addressee on the package was aboard one of the boats out back. After receiving the package, Sheline left the package unopened in the bait and tackle shop; he then scanned the parking lot and looked in one of the parked cars seemingly as though he was looking for police surveillance. A few minutes later, the police entered the marina office with a search warrant. The police asked Sheline if he knew Howie Tuna and whether he had received a package for a person named “M. Shark” or anyone else. Sheline denied knowing Howie Tuna or receiving a package.

A jury convicted Sheline of knowingly possessing cocaine. He

appealed his conviction, claiming that there was insufficient evidence to prove that he knowingly possessed the cocaine. The Supreme Court of Massachusetts stated that merely possessing a package received by mail or common carrier which contains drugs is not sufficient to support an inference beyond a reasonable doubt that the possessor knows the contents of the package. The court ruled, however, that there was evidence in the case that proved Sheline knew that cocaine was in the package. Sheline's denying receipt of a delivery and telling the police that he did not know Howie Tuna suggested that he was attempting to disassociate himself from the package because he knew it contained cocaine. In addition, his inquiries of UPS earlier in the week regarding the delivery of a package indicated that he expected the package to arrive. His behavior after the delivery of seeming to look for police surveillance also suggested that he had knowledge of the contents of the package.

### Multiple Residents in a Dwelling

There is a strong inference that a person who is the sole occupant of a house or apartment has dominion and control over the contents of his house or apartment. If illegal drugs are found in the dwelling, then it would be reasonable to infer that the sole occupant knowingly possessed those drugs.<sup>30</sup> When, on the other hand, there is more than one person living at a residence, there must be some additional evidence to prove the guilt of each of the suspects. While association between suspects may be relevant when deciding probable cause to

arrest, association alone is never sufficient to prove guilt beyond a reasonable doubt.<sup>31</sup>

For instance, in *United States v. Samad*,<sup>32</sup> U.S. Customs officials opened a package that contained 22 grams of 72 percent pure heroin. DEA agents removed most of the heroin, leaving only a remnant and resealed the package. The DEA agents arranged with the mail service a controlled delivery of the package to the address listed on the package. Samad answered the door at the residence, and when the letter carrier asked for M. Amin, the person named on the package, Samad answered, "Yes." The package was fitted with a beeper that was designed to emit a radio signal when the package was opened. When the package was opened, the DEA agents went to the door and were admitted by Samad's housemate, Hanan. When the agents asked Hanan where the package was located, he asked, "What package?"

The agents saw the package opened in the kitchen and found the bag containing the remnant of heroin underneath a rug in the living room. Both Samad and Hanan denied knowing that there was heroin in the package. Nonetheless, they were both convicted of possession with intent to distribute the heroin and importation of the heroin into the United States.

Samad and Hanan appealed their convictions claiming that there was insufficient evidence that they knew heroin was in the package. The evidence at trial indicated that Samad handed the package to Hanan, who opened the package. When the agents knocked on the door, Hanan quickly kicked the heroin underneath the carpet. The U.S. Court of Appeals for the Fourth Circuit had little trouble finding that Hanan knowingly imported the heroin into the United States and possessed it with the intent to distribute it.

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Although Samad was receiving welfare, he had \$850 in cash on his person and another \$3,500 in a suitcase. A large amount of money found on a person who is closely associated with illegal drugs suggests that the money is proceeds from drug trafficking, particularly when the person has no gainful employment. The court, however, was persuaded by Samad's explanation that he brought the money with him from Afghanistan when he was granted political asylum in the United States. Furthermore, the court felt that Samad's affirmative response to the letter courier at the door was the result of Samad's language difficulty with English. Consequently, the court found that there was insufficient evidence to prove that Samad was aware of the importation or distribution scheme.

### Conclusion

The government has the burden of proving at trial that an individual found in possession of an object containing illegal drugs knew that the object contained the illegal substance. If the drugs are hidden in a vehicle or in a package the recipient has not opened and the suspect does not admit he knew that the contraband was present, then the government must have sufficient circumstantial evidence from which to infer that the possessor knew the contraband was present. Courts have found that the following facts are particularly relevant to proving knowledge: 1) inconsistent statements, 2) implausible stories, 3) a large quantity of valuable contraband, 4) nervousness, 5) failure to ask any questions regarding the nature of a trip, 6) more contraband or

drug paraphernalia found in the subject's possession, 7) lack of surprise upon discovery of the contraband, 8) scanning for police surveillance, 9) accepting a package without question or surprise, 10) hiding a package once it is delivered, and 11) inquiring about the status of a package in anticipation of its delivery. The above list is only a partial roster of facts which may point to guilty knowledge. Each situation will give rise to its own unique facts which will either point to guilty knowledge or innocence. ♦

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**Even if the driver had suspicions about whether there were illegal drugs in the car, mere suspicion...is not a substitute for knowledge.**

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### Endnotes

<sup>1</sup> *United States v. Resio-Trejo*, 45 F.3d 907, 911 (5th Cir. 1995); *United States v. Diaz – Carreon*, 915 F.2d 951, 954 (5th Cir. 1990). See also *United States v. Ortega Reyna*, 148 F.3d 540 (5th Cir. 1998).

<sup>2</sup> See *United States v. Moreno*, 185 F.3d 465 (5th Cir. 1999) (implausible and inconsistent statements were sufficient to infer guilty knowledge in an airport courier case involving a hidden compartment). See also *Seeley v. State*, 959 P.2d 170 (Wyo. 1998).

<sup>3</sup> 167 F. 3d 900 (5th Cir. 1999).

<sup>4</sup> 184 F.3d 463 (5th Cir. 1999).

<sup>5</sup> *Turner v. United States*, 396 U.S. 398 (1970); *Leary v. United States*, 395 U.S. 6 (1969).

<sup>6</sup> See *United States v. Baron*, 94 F.3d 1312, 1317 (9th Cir. 1996).

<sup>7</sup> *Id.* (quoting *United States v. Jewell*, 532 F.2d 697, 704 (9th Cir. 1976) (en banc)).

<sup>8</sup> 532 F.2d 697 (9th Cir. 1976) (en banc).

See also Kristen L. Chesnut, *Alvarado: Reflections on a Jewell*, 19 Golden Gate U. L. Rev. 47 (1989).

<sup>9</sup> But see *United States v. Hiland*, 909 F.2d 1114, 1130 (8th Cir. 1990). In *Hiland*, the Eighth Circuit rejected the requirement that the willful blindness instruction to the jury must specifically state that “a defendant has knowledge of a certain fact only if he is aware of a high probability of its existence, unless he actually believes that it does not exist.” The Second Circuit, however, requires that the willful blindness instruction given to the jury have the “high probability” language. See *United States v. Feroz*, 848 F.2d 359, 360 (2d Cir. 1988).

<sup>10</sup> See, e.g., *United States v. Bilis*, 170 F.3d 88 (1st Cir. 1999); *United States v. Wilson*, 134 F.3d 855 (7th Cir. 1998); *United States v. Feroz*, 848 F.2d 359 (2d Cir. 1988); *United States v. Rada-Salano*, 625 F.2d 577 (5th Cir. 1980); *United States v. Aleman*, 728 F.2d 492 (11th Cir. 1984).

<sup>11</sup> See *North Carolina v. Bogle*, 376 N.E.2d 745 (N.C. 1988) (rejecting the concept of “willful blindness” in North Carolina drug case); *contra*, *State v. McCallum*, 583 A.2d 250 (Md. 1991) (applied “willful blindness” to driver’s license suspension case); *Wetzler v. Florida*, 455 So.2d 511 (Fla. Dist. Ct. App. 1984) (applied “willful blindness” in a Florida drug case).

<sup>12</sup> See *United States v. Aguilar*, 80 F.3d 329, 332 (9th Cir. 1996) (en banc) (overturning conviction of federal judge in wiretap disclosure case where willful blindness instruction was improperly given to the jury).

<sup>13</sup> 94 F.3d 1312 (9th Cir. 1996).

<sup>14</sup> See *United States v. Lara-Velasquez*, 919 F.2d 946, 951-53 (5th Cir. 1990).

<sup>15</sup> But see *United States v. Ruhe*, --- F.3d ---, 1999 WL 674758 (4th Cir. 1999) (the Fourth Circuit rejected the Ninth Circuit’s requirement that the government prove that the defendant’s ignorance was for the purpose of providing a defense in case of prosecution before a willful blindness instruction may be given).

<sup>16</sup> 138 F.3d 906 (11th Cir. 1998).

<sup>17</sup> See *United States v. Vasquez-Chan*, 978 F.2d 546, 552 (9th Cir. 1992) (The defendant was a live-in housekeeper who knew that the homeowner was involved in large scale drug trafficking. The police found approximately 600 kilograms of cocaine in the house. The housekeeper admitted that she knew the drugs were in the house. The court reversed her



conviction because the evidence only proved that she was a housekeeper and there was insufficient evidence that she assisted in the illegal venture.). See also *United States v. Teffera*, 985 F.2d 1082, 1087 (D.C. Cir. 1993) (“[I]t is not a crime simply to travel—even knowingly—with someone who is carrying drugs; to be liable for the substantive offense, one must actively seek to aid or assist the person in possessing the drugs.”); *United States v. Ramirez*, 176 F.3d 1179 (9th Cir. 1999) (The driver in a rental vehicle was annoyed and his passenger was very nervous during a Mexican/U.S. border inspection where 46.4 pounds of marijuana were found hidden in the spare tire. The driver’s conviction was affirmed but the passenger’s conviction was reversed. While evidence of a passenger’s nervousness suggests knowledge of the presence of drugs in a vehicle, mere knowledge without evidence pointing to the passenger’s dominion or control of the contraband is insufficient to prove possession. In *Ramirez* the passenger was not connected to

the illegal contraband by fingerprint evidence nor was he connected to the vehicle other than as a mere passenger. No drugs or cash were found on his person and he did not attempt to evade arrest.)

<sup>18</sup> 24 F.3d 1314 (11th Cir. 1994).

<sup>19</sup> See *United States v. Pantoja-Soto*, 739 F.2d 1520 (11th Cir. 1984).

<sup>20</sup> See *United States v. Pena*, 983 F.2d 71, 72 (6th Cir. 1993); *United States v. Kelly*, 888 F.2d 732 (11th Cir. 1989).

<sup>21</sup> 922 F.2d 451 (8th Cir. 1990).

<sup>22</sup> See also *United States v. Ramos-Garcia*, 167 F.3d 900 (5th Cir. 1999); *United States v. Del Aguila-Reyes*, 722 F.2d 155 (5th Cir. 1983).

<sup>23</sup> See *United States v. Pena*, 983 F.2d 71 (6th Cir. 1993) (Seventeen kilograms of cocaine were found hidden in a vehicle’s secret compartment. The conviction of the passenger was overturned because she did not know the vehicle contained cocaine, even though she felt there was something illegal in the car.)

<sup>24</sup> See, e.g., *Commonwealth v. Rambo*, 412 A.2d 535, 537-38 (Pa. 1980); *People v. Larson*, 503 P.2d 343, 344-45 (Colo. 1972) (en banc).

<sup>25</sup> See, e.g., *State v. Smith*, 661 P.2d 463 (Mont. 1983); *United States v. Shinder*, 8 F.3d 633 (8th Cir. 1994).

<sup>26</sup> 498 P.2d 1148 (Colo. 1972).

<sup>27</sup> 498 P.2d 1116 (Colo. 1972).

<sup>28</sup> 906 P.2d 216 (Mont. 1995).

<sup>29</sup> 461 N.E.2d 1197 (Mass. 1984).


<sup>30</sup> *United States v. Morris*, 977 F.2d 617 (D.C. Cir. 1992).

<sup>31</sup> See *United States v. Bautista-Avila*, 6 F.3d 1360, 1363 (9th Cir. 1993).

<sup>32</sup> 754 F.2d 1091 (4th Cir. 1984).

*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

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A photograph of the author(s) should accompany the manuscript. Authors can submit photos and illustrations that visually enhance and support the text. Black-and-white glossy prints (3- by 5-inch to 5- by 7-inch) reproduce best. The *Bulletin* does not accept responsibility for lost or damaged photos or illustrations.

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**Judging Manuscripts:** The *Bulletin* judges articles on relevance to the audience, factual accuracy, analysis of the information, structure and logical flow, style and ease of reading, and length. The *Bulletin* generally does not publish articles on similar topics within a 12-month period or accept articles previously published or currently under consideration by other magazines. Because it is a government publication, the *Bulletin* cannot accept articles that advertise a product or service.

**Query Letters:** Authors may submit a query letter along with a 1- to 2-page outline before writing an article. Although designed to help authors, this process does not guarantee acceptance of any article.

**Author Notification:** The *Bulletin* staff will review queries and articles and advise the authors of acceptance or rejection. The magazine cannot guarantee a publication date for accepted articles.

**Editing:** The *Bulletin* staff edits all manuscripts for length, clarity, format, and style.

### SUBMISSION

Authors should mail their submissions to:  
Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Bldg., Room 209, Quantico, VA 22135; telephone: 703-632-1952; fax: 703-632-1968; e-mail: leb@fbiacademy.edu.

# The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their exemplary service to the law enforcement profession.



Deputy Mero



Deputy Cervelli



Deputy Ford

Deputies Louis Mero, Monty Cervelli, and Dennis Ford of the Siskiyou County, California, Sheriff's Department responded to a fire at an apartment complex. Upon arrival, the deputies began evacuating the three-story building, which quickly became engulfed in smoke and flames. Through the dense smoke, Deputy Mero climbed a wooden stairwell in the back of the complex to

reach the third floor. A couple trapped on that floor had become desperate as the flames approached and were contemplating jumping out the window when Deputy Mero found them. After directing the couple to the ground floor, Deputy Mero assisted an elderly female from the second floor down the last flight of stairs. As soon as they reached the ground floor, the stairway burst into flames. Deputies Cervelli and Ford coordinated the evacuation of several other residents, as well as those in surrounding buildings. The brave and heroic actions of these three deputies prevented injury and possible death to the occupants and surrounding residents of the apartment complex.



Lieutenant Mance

Lieutenant Ben Mance of the Morrow, Georgia, Police Department was with another officer in a local restaurant when an elderly female, seated with her two companions, began to choke. Lieutenant Mance was unaware of the emergency until the choking victim began to thrash in her seat, and he saw the frightened looks of her companions. Lieutenant Mance moved immediately to the booth, lifted the victim from her seat, and began to administer the Heimlich maneuver. Fearful of breaking the elderly woman's ribs, Lieutenant Mance made two unsuccessful attempts

to dislodge the food stuck in her throat. On the third attempt, he dislodged the food successfully. Lieutenant Mance's keen observation skills and swift response saved the woman's life.

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.



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## Patch Call



The Campbellsville, Kentucky, Police Department patch resembles the city seal. The date at the bottom of the patch depicts the year Campbellsville was founded. The large star at the top of the patch represents the mayor of the city, and the 12 smaller stars symbolize the elected officials that form the city council. The dot with lines emerging in the middle of the patch signifies the city's central location in Kentucky. The emblem of a barn with a plowed field represents agriculture, the building with smokestacks denotes industry, the cap and diploma depict education, and the man with a ball represents recreation.



The Navajo County, Arizona, Sheriff's Department patch is outlined in red to represent the loss of the first deputy killed in the line of duty in the county. The patch's scene depicts the White Mountains of Arizona to the high desert area of Monument Valley. A 5-point silver star in the center of the patch holds the outline of Arizona, decorated with the state flag. A stripe of silver in the right corner depicts Navajo County. The black circle around the star indicates the county's continued mourning for the deputy. The four gold arrows within the black ring indicate the county's bonding and commitment to work together for one common cause with the Navajo, Hopi, and Apache Indian tribes.