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# Battling DUI

## A Comparative Analysis of Checkpoints and Saturation Patrols

By JEFFREY W. GREENE

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*Since September 11, 2001, drunk drivers have killed more people than actually died on that day. Not to take away from the tragedy of September 11, but drunk driving deaths are happening every day in America.<sup>1</sup>*

**F**or many years, the law enforcement community has attempted to detect impaired drivers through numerous innovative efforts and measures. The problem of driving under the influence (DUI) is well known throughout society, yet, even with all of the strategies used to remove these drivers from U.S. highways, it continues to cause needless and tragic loss of life each year. When will such madness end? When will society no longer

tolerate drunk driving? Until that time, the law enforcement community must attempt to contain the carnage inflicted upon law-abiding citizens by impaired drivers.<sup>2</sup>

Law enforcement has two basic methods of dealing with the DUI problem—sobriety checkpoints and saturation patrols. Sobriety checkpoints have existed for several years and have served as a deterrent to drunk driving across many communities. Although not the

most aggressive method of removing impaired drivers from America's roadways, these checkpoints comprise one piece of public awareness and education relevant to the drinking and driving dilemma.

Saturation patrols, on the other hand, constitute a vigorous tactic employed by law enforcement agencies to significantly impact an area known for a high concentration of alcohol-impaired drivers. Law enforcement agencies have used saturation patrols much longer than checkpoints, sometimes under a different name or no name at all. Which method offers the best use of law enforcement's limited resources? The choice depends upon many issues, such as funding, resource allocations, and targeted areas.

### The Problem

According to National Highway Traffic Safety Administration statistics, 16,653 people died in alcohol-related crashes in 2000, an

increase of more than 800 deaths from 1999. This represented the largest percentage increase on record.<sup>3</sup> By some estimates, about two out of every five Americans will be involved in an alcohol-related crash at some time in their lives.<sup>4</sup> These tragic statistics dramatically illustrate that DUI is a serious problem.

Research has indicated, however, that most impaired drivers never get arrested. Police stop some drivers, but often miss signs of impairment.<sup>5</sup> Estimates revealed that as many as 2,000 alcohol-impaired driving trips occur for every arrest, and, even when special drinking-driving enforcement patrols are conducted, as many as 300 trips occur for each arrest. Because the police cannot catch all offenders, the success of alcohol-impaired driving laws depends on deterring potential offenders by creating the public perception that apprehension and punishment of offenders is probable. Research also has shown that

the likelihood of apprehension is more important in deterring offenders than the severity of punishment.<sup>6</sup> Therefore, enforcement is the key to creating the perception of a possibility of capture, while publicizing these efforts can effect a real threat of detainment.

### Sobriety Checkpoints

Sobriety checkpoint programs are defined as procedures in which law enforcement officers restrict traffic flow in a designated, specific location so they can check drivers for signs of alcohol impairment. If officers detect any type of incapacitation based upon their observations, they can perform additional testing, such as field sobriety or breath analysis tests.<sup>7</sup> To this end, agencies using checkpoints must have a written policy as a directive for their officers to follow.

Agencies normally choose locations for checkpoints from areas that statistically reveal a large number of alcohol-related crashes or offenses. Officers stop vehicles based on traffic flow, staffing, and overall safety. They must stop vehicles in an arbitrary sequence, whether they stop all vehicles or a specified portion of them. Checkpoints offer a visible enforcement method intended to deter potential offenders, as well as to apprehend impaired drivers. Agencies should set up checkpoints frequently, over extended periods, and publicize them well.

Sobriety checkpoints must display warning signs to approaching motorists. Also, they normally will provide opportunities for drivers to actually avoid the checkpoint, usually with an alternate route that a



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***The key aspect in both sobriety checkpoints and saturation patrols rests with public awareness.***

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driver could divert to after passing the checkpoint warning signs. Agencies typically post an officer in a marked cruiser at each end of the checkpoint. These officers can observe the driving behavior of those who choose to avoid the checkpoint.

Used to deter drinking and driving, sobriety checkpoints are related more directly to educating the public and encouraging designated drivers, rather than actually apprehending impaired drivers. Typically, sobriety checkpoints do not yield a large volume of DUI arrests. Instead, they offer authorities an educational tool. Education and awareness serve as a significant part of deterrence. Frequent use of checkpoints and aggressive media coverage can create a convincing threat in people's minds that officers *will* apprehend impaired drivers—a key to general deterrence. In addition, public opinion polls have indicated that 70 to 80 percent of Americans surveyed favored the increased use of sobriety checkpoints as an effective law enforcement tool to combat impaired driving.<sup>8</sup>

### Saturation Patrols

Saturation patrols involve an increased enforcement effort targeting a specific geographic area to identify and arrest impaired drivers. This area always is much larger than the location chosen for a sobriety checkpoint. However, site selection proves vital in both sobriety checkpoints and saturation patrol initiatives. Some states require documentation as to why a specific location was chosen. Selected sites should have a statistically high incidence of DUI crashes or fatalities

and take into account officer and motorist safety.

Saturation patrols concentrate their enforcement on impaired driving behaviors, such as left of center, following too closely, reckless driving, aggressive driving, and speeding. Multiple agencies often combine and concentrate their resources to conduct saturation patrols. Therefore, planning represents a vital part of these efforts. All involved parties should participate in the planning phase, furnishing their specific views and concerns.

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Saturation patrols may afford a more effective means of detecting repeat offenders, who are likely to avoid detection at sobriety checkpoints. These patrols also may more effectively impact a specific geographic location with a history of a high number of alcohol-related crashes. They must enhance people's perceptions of being detected to be effective. Therefore, saturation patrols require the same intense media attention as sobriety checkpoints. In addition, prosecutors and judges must support

saturation patrols. These efforts also must remain ongoing, not merely a onetime operation, to produce successful results, the same as with sobriety checkpoint programs.

### A Comparative Study

Statistics compiled by two agencies, similar in size and area of responsibility, offer an overview of the scope of the DUI problem.<sup>9</sup> In 2000, the Missouri State Highway Patrol conducted 58 sobriety checkpoints and arrested 323 drivers for DUI. The Ohio State Highway Patrol carried out 12 sobriety checkpoints and arrested 77 drivers for DUI. In 2001, Missouri effected 67 sobriety checkpoints and arrested 318 drivers for DUI. Ohio implemented 19 sobriety checkpoints and arrested 126 drivers for DUI. Since 1989, the Ohio State Highway Patrol has participated in 156 sobriety checkpoints and arrested 807 drivers for DUI.

In the past 2 years, the Missouri State Highway Patrol conducted 822 saturation patrol operations, arresting 1,666 drivers for DUI. The Ohio State Highway Patrol performs saturation patrols on a regular basis across the state. The agency arrests an average of 25,000 DUI drivers per year through all DUI-related operations.

In another example, from 1994 to 1995, Tennessee, in cooperation with the National Highway Traffic Safety Administration, implemented a statewide campaign completing nearly 900 sobriety checkpoints. Law enforcement agencies conducted these in all 95 counties in Tennessee in just over 1 year. The checkpoint program was highly publicized and conducted basically

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every week. The evaluation of the program revealed it as highly favorable in reducing the number of alcohol-related fatal crashes. Although the program only netted 773 arrests for DUI, the deterrent factor created by the continuous use of the checkpoints and the media attention received resulted in the program's success.<sup>10</sup>

What do these statistics convey? Basically, Missouri averaged about five DUI arrests per checkpoint, Ohio averaged less than seven DUI arrests per checkpoint, and Tennessee's aggressive checkpoint program averaged less than one DUI arrest per checkpoint.<sup>11</sup>

What these figures do not show is the number of impaired drivers deterred by the operations, either through sobriety checkpoints or saturation patrols. Those statistics never will be clearly identified, but *any* lives saved by such efforts are worth the effort and resources allocated.

What also is not accounted for in these statistics is the additional number of other enforcement actions taken, such as safety belt, commercial vehicle, and child safety seat arrests; speeding violations; warnings for various traffic infractions or vehicle defects; and motorist assists. Detecting such additional violations is more probable during saturation patrols, as opposed to sobriety checkpoints. This alone could represent another measure of effectiveness of saturation patrols.

Overall, measured in arrests per hour, a dedicated saturation patrol is the most effective method of apprehending offenders. Such concerted efforts also may serve as a

general deterrence if their activities are publicized and become widely known.

Critics have pointed out that sobriety checkpoints produce fewer arrests per hour than dedicated patrols, but some studies show arrest rates can be increased greatly when police employ passive alcohol sensors (i.e., devices that can measure the alcohol content in the air, which officers can use while talking to a motorist passing through the checkpoint) to help detect drinking drivers. However, focusing on arrests is

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***Saturation patrols...constitute a vigorous tactic employed by law enforcement agencies to significantly impact an area known for a high concentration of alcohol-impaired drivers.***

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a misleading way to consider the value of checkpoints. The purpose of frequent checkpoints is to increase public awareness and deter potential offenders, resulting in the ideal situation where very few offenders are left to apprehend.

Sobriety checkpoint programs in Florida, North Carolina, New Jersey, Tennessee, and Virginia have led to a reduction in alcohol-related crashes. In 1995, North Carolina conducted a statewide

enforcement and publicity campaign aimed at impaired drivers. The campaign was deemed a success, indicating “drivers with blood alcohol levels at or above 0.08 percent declined from 198 per 10,000 before the program to 90 per 10,000 after the intensive 3-week alcohol-impaired publicity and enforcement campaign.”<sup>12</sup>

### **Other Factors**

Is public awareness and education important? The key aspect in both sobriety checkpoints and saturation patrols rests with public awareness. The perception of a higher risk of detection for driving under the influence of alcohol may deter more people from driving after drinking. The more the public understands the issues and severity of the consequences, the better they will accept drunk driving as a problem and will embrace a crusade to reduce occurrences. Indeed, agencies must have public support to succeed.

All law enforcement agencies must accept that the media plays a vital role in combating impaired drivers. They must use all outlets possible to spread the word about this needless tragedy that happens every day. All media entities are looking for stories. By working closely with them, agencies can get the message out about the dangers of drunk driving. The sooner agencies realize the importance of the media, the sooner they will gain a valuable ally in their fight. Agencies can garner a great deal of support from the public when they speak out on this vital issue.

Are stricter laws and sanctions working? Twenty-seven states and



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the District of Columbia have reduced their blood alcohol content (BAC) threshold to .08 percent from .10 percent in another effort to reduce the number of alcohol-related crashes. The federal government also has adopted the standard of .08 percent BAC, encouraging states to change to .08 percent. In 2003, states that have not adopted the .08 percent standard will lose millions of federal dollars for road construction. Currently, 22 states have the BAC threshold of .10 percent, Ohio included. Studies by the Centers for Disease Control and Prevention's National Center for Injury Prevention and Control indicated, on average, that states adopting .08 percent have reduced crash deaths involving alcohol by 7 percent.<sup>13</sup>

Administrative license suspension laws continue to become more aggressive, attempting to create a stronger deterrent environment. Estimates have indicated that they reduce driver involvement in fatal crashes by about 9 percent.<sup>14</sup> Some laws providing for the suspension or revocation of licenses have indicated a reduction in the subsequent crash involvement of those drivers who previously have been convicted of an alcohol-related offense. Although it is known that many suspended drivers continue to drive, they tend to drive less and possibly more carefully, attempting to avoid detection.

### Recommendations

While many conclusions can be drawn from an analysis of sobriety checkpoints and saturation patrols, both serve a significant purpose and, used together, can be effective

in reducing the number of impaired drivers. Law enforcement agencies may find that only one of these works for them, depending upon resources. Others may determine a combination of both is needed to successfully combat the problem in their communities. Regardless of the selected method, it remains essential to identify the specific keys to removing more impaired drivers from U.S. highways, including—

- exposing a sufficient number of motorists to the enforcement efforts and the likelihood of being arrested;
- improving officers' skills in detecting impaired drivers;

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- implementing an aggressive, continuous, and committed media effort;
- continuing efforts by legislatures and courts in an attempt to consistently punish violators and deter impaired driving; and
- identifying problem areas, high-level crash locations, and large volumes of impaired drivers.

It is proven that saturation efforts will bring more DUI arrests than sobriety checkpoints. If that represents an agency's goal and it has the resources, then it should use saturation patrols. If an agency's goal weighs heavier on the educational side, it should use sobriety checkpoints. If an agency should choose to use checkpoints over saturation patrols, the evidence is clear that infrequent use is not effective. So, an agency must consider the cost incurred with the frequent use of sobriety checkpoints. Resources (time and money) may greatly affect an agency's decision regarding which method to employ.

If an agency's goal is to reduce the number of impaired drivers over time, it should use both sobriety checkpoints and saturation patrols, as well as any other available methods. The bottom line is to do something—do everything—to remove impaired drivers from America's highways.

### Conclusion

Law enforcement agencies should not accept mediocrity in the area of driving under the influence enforcement. It is not a societal problem. It is everyone's problem, and no one should take it lightly. More people die or are injured on this nation's highways due to impaired driving than from all other causes combined. It is unacceptable, and all Americans pay a price, whether personal, financial, or professional.

Law enforcement agencies must take up the challenge and employ every available weapon to combat this deadly threat. This is a "mission possible." Through better

education, increased awareness, and some strict penalties, the battle can be won. Working in collaboration with one another, the public, the law enforcement community, and the judicial system can help prevent the needless loss of life that results from drunk driving. "When people are knocked away one at a time, it doesn't make the headlines like it should, but we've got to make Americans realize the fact that it's still the number one killer, and it's 100 percent preventable. This is one thing that we can all work together to do something about."<sup>15</sup> ♦

#### Endnotes

<sup>1</sup> Millie I. Webb, former national president of Mothers Against Drunk Driving (MADD), quoted in "Advocates Seek to Rejuvenate Fight

Against Drunk Driving," *Criminal Justice Funding Report* (Arlington, VA: Capitol City Publishers, July 3, 2002), 4-5.

<sup>2</sup> The author based this article on research he conducted and a paper he composed for a course while attending Northwestern University, School of Police Staff and Command.

<sup>3</sup> Mothers Against Drunk Driving, *Statistics and Resources*; retrieved on January 20, 2002, from <http://www.madd.org>.

<sup>4</sup> Ohio State Highway Patrol, "Sobriety Checkpoints," *Monthly News Article* (2001); retrieved on January 20, 2002, from <http://www.state.oh.us/ohiostatepatrol/enforce/sobch.html>.

<sup>5</sup> DeKalb County, Georgia, Police Department, *Strategic Traffic Accident Reduction Team Report: Deterrence and Enforcement*; retrieved on January 22, 2002, from <http://www.cyberlinkexchange.usww.com/homepages/starteam/dui-qu.html>.

<sup>6</sup> Ibid.

<sup>7</sup> Paul Blowers and Jack Stuster, National Commission Against Drunk Driving, *Experimental Evaluation of Sobriety Checkpoint Programs* (1995); retrieved on January

20, 2002, from <http://www.ncadd.com/tsra/abstracts/035.html>.

<sup>8</sup> Mothers Against Drunk Driving, *Sobriety Checkpoints: Facts and Myths*; retrieved on January 20, 2002, from [http://www.madd.org/madd\\_programs/0,1056,1229,00.html](http://www.madd.org/madd_programs/0,1056,1229,00.html).

<sup>9</sup> For all Missouri statistics, see Robert Stieffermann, Missouri State Highway Patrol, *Progress on Strategic Planning Priorities-Statistics*, February 11, 2002. For all Ohio statistics, see Ohio State Highway Patrol, Office of Field Operations, *Sobriety Checkpoint Statistics*, January 23, 2002.

<sup>10</sup> Fell, Jones, and Lacey, National Commission Against Drunk Driving, *The Effectiveness of the "Checkpoint Tennessee" Program* (1996); retrieved on January 20, 2002, from <http://www.ncadd.com/tsra/abstracts/043/html>.

<sup>11</sup> Supra notes 9 and 10.

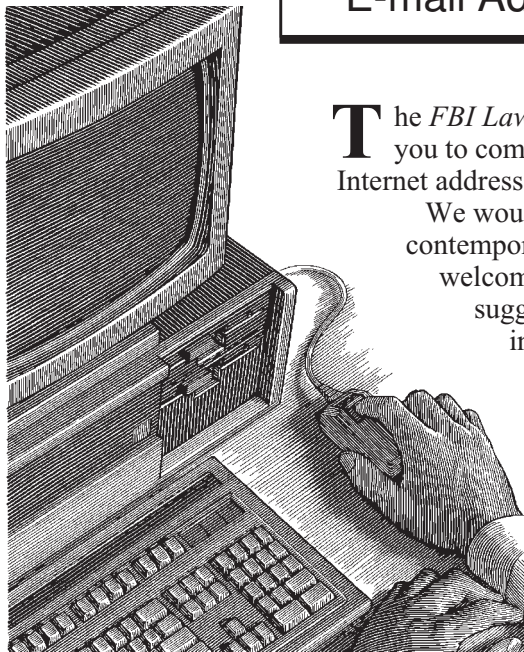
<sup>12</sup> Supra note 5.

<sup>13</sup> J.C. Fell, Insurance Institute for Highway Safety, *Status Report* (Arlington, VA, June 2001), 6.

<sup>14</sup> Supra note 5.

<sup>15</sup> Supra note 1.

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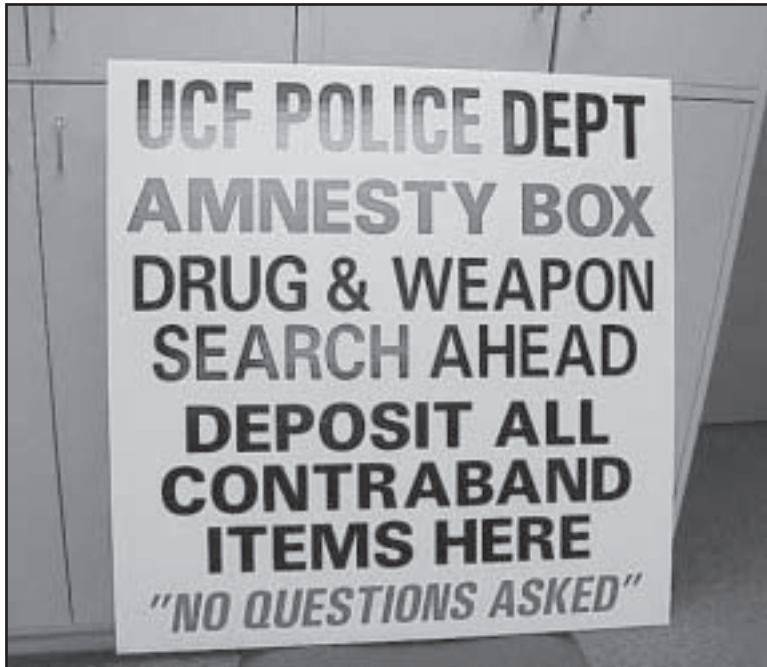
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### **Amnesty Boxes** *A Component of Physical Security for Law Enforcement*

By Charlie Mesloh, M.P.A., Mark Henych, M.S., and Randy Mingo, M.P.A., M.S.



In response to the September 11, 2001, terrorist activities, additional security measures have sprung up nationwide. As a result, many libertarians fear that civil rights will erode. Consequently, one feature of physical security, amnesty boxes, may make these intrusions more palatable for civil rights advocates while, at the same time, providing additional safety for those attending special events. In addition to reducing the level of intrusiveness of those being screened, amnesty boxes also can lessen the risk to law enforcement and contract security officers working checkpoints by providing guilty individuals with a nonconfrontational option to diffuse their impending detection.

An amnesty box is a sealed container positioned immediately before a metal detector or search checkpoint that allows individuals to discard any item of contraband inside it without fear of detection or arrest. The military and international airports have used this concept for decades. Could this concept work in social events where large numbers of people in attendance present a security challenge? Such events as sports competitions, concerts, and graduations traditionally draw large audiences and create any number of possible security issues. These may manifest as threats, assaults, or simply the possession and use of paraphernalia considered contraband. In light of recent tragedies, the law enforcement community may want to extend the use of the amnesty box concept into other areas and make it an integral part of physical security measures.

#### **ONE UNIVERSITY'S EXPERIENCE**

In response to the recent terrorist attacks and the potential for further reprisals, the University of Central Florida (UCF) and its police department (UCFPD) went on alert. The heightened concern for security increased when intelligence reports indicated that further violent acts would occur at a concert to be held on the UCF campus on September 29, 2001. The intelligence gathered included death threats against law enforcement officers. To reduce the likelihood of related or unrelated violent acts, the university and its police department implemented an amnesty box program as an additional physical security measure at the concert.

#### **Implementation**

In implementing the program, the UCF and the UCFPD examined the environment in which the



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amnesty boxes were to be located and conducted a risk analysis. They considered several factors in the amnesty box placement. Initially, they conducted a risk assessment of the environment focusing on access to the main auditorium. Next, they examined existing barriers and discussed inserting additional ones. Also, they studied previous incidents at the venue to determine potential problems for future events.

A narcotics detector canine swept the area 4 hours before the concert to locate contraband that anyone might have hidden around the arena. Although none was found, a noticeable effect occurred on those loitering in the area. A sweep by an explosive detector canine was proposed but rejected due to availability.

### Cost

The initial startup costs were less than \$100. The bulk of the expenses went for sign construction; the signs, however, are reusable and not cost recurring. To offset these initial costs, program “buy in” included the sponsoring event participants who appreciated the added security interest on their behalf and purchased the signs for the department. The signs measured 30" x 30," made from white 1/8-inch poster board with black and red warning letters 2 1/2" x 4" in size. Sign attachments would vary according to the containers in use. The signs can be placed directly on the containers, on walls at eye level, or on plastic stands. The department did not use metal stands because they could become potential weapons in the hands of unruly patrons.

Other materials used during the project included 30-gallon plastic trash containers with swing-type lids. Again, plastic is preferable to metal in the event that the container becomes a weapon. The department taped the lids to the base of the containers to prohibit removal or tampering. The depth of the container prevented anyone from reaching in to remove articles.

The department placed shredded paper at the bottom of the containers to absorb liquids poured into the boxes and to minimize the shock to any loaded firearm dropped inside. A digital or video camera aided in documenting the articles recovered from the boxes. Miscellaneous items used included tape, rubber gloves, evidence collection items, paper towels, hand disinfectant, and a tarp.

### Placement

The police department placed the amnesty boxes at four locations near the highly visible main, and only, entrance to the arena. Large signs were posted directly behind the boxes. Additional signs were located at the perimeter of the main entrance indicating that authorities would search attendees at the entrance to the arena. As patrons moved closer to the search area, they passed a final “last chance” amnesty box.

### Observations

With the amnesty boxes in place, both uniform and plainclothes officers observed them. In several instances, patrons

passed the boxes and, upon observing the security searches at the entrance, either returned to their cars or deposited items in the amnesty boxes.

Additionally, patrons attempted to conceal items of contraband, including cameras, immediately behind or in the vicinity of the amnesty boxes, presumably for later retrieval. Conducting area searches before and after the event proves important, especially with repeated amnesty box placement at a facility. Individuals may attempt to place contraband within the area prior to the event, thus defeating any type of precautionary search.

### Outcomes

Once the flow of patrons to the concert ceased, UCFPD officers collected the amnesty boxes and

### Amnesty Box Checklist

- Identify suitable containers to be used
- Conduct security sweep of event location to identify potential issues
- Implement sweep by narcotics and explosives detector canine
- Obtain evidence-collection supplies

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transported them to a safe, secure area located out in the open to prevent any cave-in type of destruction should explosive devices be present in the boxes. The officers used a tarp to spread the contents of the boxes. After examining the contents, officers placed some items into property and discarded others. An inventory of seized items included 24 disposable cameras, 4 small sealed bottles of liquor, 3 folding lock-blade knives, 3 cigars containing marijuana, 2 packages of rolling papers, 2 small plastic bags of marijuana, 1 marijuana pipe, 1 fake Florida drivers license, numerous open containers of alcoholic beverages, and several objects containing marijuana residue.

### Benefits

Overall, the university and its police department observed several benefits from implementing the amnesty box concept at the concert. First, with patrons not in possession of contraband when officers searched them at the arena entrance, the likelihood of arrest decreased. Thus, the criminal justice system benefitted as persons did not enter it, thereby alleviating the potential strain on resources. Also, the added safety and the presence of the amnesty boxes as a security measure may have served as a deterrent effect, although such an effect certainly would merit further research to validate this observation.

Finally, the amnesty boxes increased law enforcement's visibility at the concert. They allowed the police department the ability to engage in a venture that reduced criminality and increased visibility with no negative aspects. In short, this effort was akin to community-policing initiatives that attempt to reduce the burden on the criminal justice system by minimizing arrests.

### CONCLUSION

In this time of increased vigilance for the security of all Americans, the law enforcement community needs to explore all available avenues of ensuring the public's safety. In some instances, amnesty boxes can provide an ideal, low-cost complement for a security plan.

The University of Central Florida and its police department found these devices helpful during a concert held on campus shortly after the tragic events of September 11, 2001. The amnesty boxes related

directly to the "funneling effect" of the crowd, which eliminated individuals from bringing contraband items into the arena or concealing such materials within the area for later recovery. The amnesty boxes reduced confrontations between officers and patrons carrying contraband. Because patrons have the opportunity to discard such items, a buffer forms giving citizens who may, in times of intru-

sions to civil liberties, be concerned with their rights. However, examination of the boxes at the earliest appropriate time provides additional intelligence on the attendees with possible intrusive motivations. All in all, the university found the amnesty box concept ideally suited to the challenge of providing security at a highly popular special event. ♦



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# *The Business Police Academy Commercial Loss Prevention Through Education*

By GIANT ABUTALEBI ARYANI,  
CARL L. ALSABROOK, and  
TERRY D. GARRETT

**D**uring the past two decades, many law enforcement agencies successfully have implemented citizen police academies (CPAs) for the mutual benefit of their departments and the communities they serve. Building on this success, another innovative community policing program, the business police academy (BPA), has emerged. BPAs' benefits to law enforcement agencies and business communities clearly outweigh the costs of their implementation and operation. Although information on how to implement and operate a BPA is not as readily available as material on a CPA, the concepts are similar. Agencies can apply the experience and lessons learned from CPAs to BPAs in their communities.



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## **CONCEPT**

The BPA, a cooperative educational effort teaming law enforcement and the business community, represents a different version of a CPA. A BPA strives to ensure a productive exchange of information between businesses and law enforcement, which leads to an increased awareness of potential criminal activity and, as a result, to a reduction in crimes against businesses.<sup>1</sup>

The implementation of a BPA follows the same steps as beginning a CPA.<sup>2</sup> Nonetheless, the BPA differs in three major areas: the targeted audience, the curriculum, and the instructors.

## **Audience**

The targeted audience for a BPA is the business community within the respective jurisdiction. Unlike the CPA, where students ideally represent a cross section of

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the community, the BPA only includes students who are members of the business arena, such as owners, managers, and employees. It encompasses all commercial enterprises, such as retail stores, banks, restaurants, garages, and office complexes.

BPA students should live or work within the particular jurisdiction, be at least 21 years of age, and maintain a good standing in the community. Agencies should disqualify applicants with prior felony convictions. They should select students from various types of businesses for the first BPA class, which will ensure maximum publicity and help in future BPA recruitment as well. Agencies should accommodate business needs, such as location and schedule of classes and, at the end of the academy, hold a graduation ceremony for graduates' families, agency administrators, city or

county officials, representatives from the local chamber of commerce, and officials from volunteer organizations. Agencies should encourage graduates to display their graduation certificates at their places of business to promote publicity for the BPA.<sup>3</sup> A positive educational experience for business representatives benefits both the agency and the business community.

### Curriculum

A CPA provides students with a basic overview of diverse law enforcement topics.<sup>4</sup> On the other hand, a BPA seeks to reduce crimes against businesses; therefore, the curriculum should cover, in-depth, topics specific to the business community.<sup>5</sup> Crimes covered include those commonly committed against businesses, as well as related information for understanding and responding to them.

Lectures should include demonstrations, facility tours, role-plays, and simulations, when appropriate. Videos, slides, audio cassettes, overheads, and posters serve as additional tools to aid in the learning experience. Instructors should relay first-hand experiences and allow enough time for questions, which sustains the cooperative atmosphere. They should stress the cost of the respective types of crimes against businesses and how to alleviate it. This emphasis serves the business community's interest of reducing the cost of running a business, and it keeps the audience attentive.

### Instructors

A BPA requires a program coordinator with program management tasks similar to a CPA's. However, the majority of CPA instructors work for the hosting police department and introduce their



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## Typical Curriculum of a 12-Week Business Police Academy

### I. Administration and the Cost of Crime

- Introduction and welcome from the chief
- Administrative information and department overview
- Overview of business structure in the community
- Crime statistics and reporting
- The economics of crime

### II. Agency Operations and the Legal Process

- Patrol procedures
- Communications
- Criminal investigations
- Crime scene preservation
- Criminal justice system
- Corrections

### III. Property Crime

- Shoplifting and employee theft
- Scams and con games
- Credit card fraud
- Forgery and check fraud
- Embezzlement
- Identity theft
- Counterfeiting
- Business burglary
- Fencing

### IV. Violent Crime

- Business robbery
- Bank robbery
- Kidnapping and hostage survival
- Extortion

### V. Loss Prevention

- Suspicious persons and situations
- Business crime watch
- Crime Stoppers
- Citizens on patrol and other volunteer programs
- Security assessment
- Selection of private security

### VI. Special Topics

- Licensing and permits
- Bribery
- Organized crime
- Federal and state criminal justice system and agencies
- Emergency medical services
- Special weapons and tactics
- False alarm reduction
- Personal safety, self-defense, and citizen's powers of arrest

of the peace or small claims court judge to acquaint the audience with such legal issues as the processes of prosecution and restitution.

Representatives of major retail stores with successful results on pursuing shoplifting and decreasing employee theft also can teach these subjects. Additionally, employees from the Secret Service can teach students about counterfeiting, and the FBI can instruct on bank robbery and kidnapping. Officers from nearby major law enforcement agencies with specialized units for a variety of crime categories can educate the audience on topics, such as embezzlement, identity theft, fencing, extortion, and organized crime. Employees from other federal and state agencies, as well as specially trained citizen volunteers, can augment the available resource pool of instructors.

### COSTS

The costs of a BPA to the coordinating agency are minimal. The agency charges academy students tuition and application fees, which typically range from \$20 to \$100 per student. These funds should cover material expenses, such as binders, copies, handouts, and T-shirts. The agency covers any additional material cost. However, the local chamber of commerce or a business, such as a major retail store, may serve as a sponsor and help alleviate some of these costs. Labor represents the bulk of the costs incurred by the agency. Department officials can decide whether to pay their officers overtime or grant compensatory time for assuming teaching duties. Instructors from the chamber of

students to that agency's officers.<sup>6</sup> This may not prove the same with a BPA, especially with small and midsize agencies. The nature and depth of the covered classes require agencies to recruit expert individuals outside of the department to maintain the quality of lectures and to help the academy achieve its goal. For example, officials of the

local chamber of commerce can deliver the overview of the area's business structure. Economic or criminal justice academicians familiar with the jurisdiction may present issues, such as crime statistics and reporting, as well as the economics and cost of crime. Agencies can invite district attorney representatives and the local justice

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commerce and business community, academicians, and citizen volunteers typically donate their time. Officers and representatives from other departments either volunteer their time or receive compensatory time from their respective agencies. The use of city or county newsletters and official agency press releases can minimize the cost of promotional advertisement. Additionally, word of mouth is an effective and inexpensive advertising tool. Although unlikely, potential liability costs from accidents exist despite signed liability waivers. Thorough instruction before equipment demonstrations, role-plays, and simulations decreases these risks.

## **BENEFITS**

Law enforcement accrues both direct and indirect benefits from a BPA. An enormous direct benefit is the reduction of the workload of an agency's investigators. Many investigators can recount their frustrations over business owners or managers unwilling to aid in criminal investigations. Business representatives often cite fears of potential civil liabilities, as well as a lack of knowledge about the process and length of the criminal prosecution. For example, one store manager of a nationwide retail store in a wealthy suburban community admitted that checking for identification of customers who pay with checks or credit cards is too time consuming, especially at the peak of the Christmas holiday shopping season. This manager openly hypothesized to investigators that profits would compensate for losses even if his store suffered \$100,000 in losses per month due to fraud

because the store would make about \$1,000,000 in profits per month. This attitude is counterproductive; it causes some businesses to deny problems and to let criminal incidences go unreported. The BPA helps to reverse this attitude and reduce investigation time as cooperation from the business community increases.

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***Law enforcement accrues both direct and indirect benefits from a BPA.***

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A BPA familiarizes the business community, in-depth, with the different crimes commonly committed against businesses. Students learn how to prepare for, detect, act, react, and prevent crimes against businesses. They learn the importance of pursuing crimes committed against them and their businesses and not to simply accept their losses or rely on their insurance coverage. Instructors from the local prosecutor's office address students' fears about potential civil liabilities, which include filing a complaint to the actual prosecution and, in the best case scenario, to the conviction, sentencing, and restitution phase.

Further, implementing the advice and practices learned at the BPA reduces the likelihood of businesses being victimized; increases the probability that business owners, managers, and staff members

will survive violent incidents; and increases the probability of arresting offenders. In the long run, these factors lower rates of crime against businesses. But, in the short term, the greater number of reports and apprehensions will lead to a statistically higher rate of crime against businesses. However, many crimes against businesses, such as check and credit card fraud, business burglary, and counterfeiting, are committed by serial criminals. Their apprehension and prosecution will significantly decrease the number of such crimes in the community and further lower the crime rate in the long run. Moreover, the short-run statistical increase in crime against businesses gives the agency a more accurate picture of crime incidences. Departments can develop appropriate strategies and allocate resources needed to fight crime, which leads to a decrease in the rate of crime against businesses.

Indirectly, the agency benefits from enhanced ties to the business community, which results in a safer business climate or, at least, the perception of one. The agency's reputation in the business community increases, which potentially can lead to tangible business support of various agency initiatives and programs. Business assistance may include sponsorships for different agency volunteer programs. Other examples include business support for agency resource requirements and bond issues.

## **CONCLUSION**

Business police academies bring the business community and police agency together. The academy's educational environment

gives law enforcement personnel an ideal opportunity to communicate with members of local businesses. Agencies carefully should select their target audience, provide a curriculum that covers topics specific to members of the business community, and choose instructors from individuals outside of their departments to ensure that the BPA accomplishes its goal. Additionally, the costs of implementing and operating a BPA are minimal compared with its direct, as well as indirect, benefits.

The BPA provides law enforcement with an opportunity to teach

and convince business owners, managers, and staff about the multitude of mutual rewards that both sides will derive from greater cooperation in fighting crimes against businesses. In the end, the reduced crime rate proves beneficial to the whole community. ♦

**Endnotes**

<sup>1</sup> See Dave Hurdle, Bunbury District Police, Western Australia, "Business Police Academy," retrieved on July 25, 2002, from <http://www.ezefind.com.au/Police%20Business%20Academy.htm>.

<sup>2</sup> For more information on CPAs, as well as their implementation, see Ronald E. Ferguson, "The Citizen Police Academy," *FBI Law*

*Enforcement Bulletin*, September 1985, 5-7; Martin Alan Greenburg, "Citizen Police Academies," *FBI Law Enforcement Bulletin*, August 1991, 10-13; Giant Abutalebi Aryani, Terry D. Garrett, and Carl L. Alsabrook, "The Citizen Police Academy: Success Through Community Partnerships," *FBI Law Enforcement Bulletin*, May 2000, 16-21; and Elizabeth M. Bonello and Joseph A. Schafer, "Citizen Police Academies: Do They Do More Than Entertain?" *FBI Law Enforcement Bulletin*, November 2002, 19-23.

<sup>3</sup> Supra note 1.

<sup>4</sup> Supra note 2 (Aryani, Garrett, and Alsabrook).

<sup>5</sup> Ocala, Florida, Police Department, retrieved on July 25, 2002, from *Business Police Academy*, [http://www.ocalapd.com/opd\\_programs.html](http://www.ocalapd.com/opd_programs.html).

<sup>6</sup> Supra note 2 (Aryani, Garrett, and Alsabrook).

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**American Values in Decline: What Can We Do?** by William M. Fox, 1st Books Library, Bloomington, Indiana, 2001.

*American Values in Decline: What Can We Do?* reviews the trends contributing to America's decline in values involving the ideas, customs, and institutions that define what is moral, as well as what constitutes right and wrong behavior. It considers the conscious development of failure, the predisposition toward inappropriate behavior, and what can be done to maintain the greatness of America and its people through obeying the laws and respecting the rights and property of others.

The author states that it is simplistic to assume that by doing what is right is the result of knowing what is right, rather that various factors interact in society to cause ethical behavior. He emphasizes that it does not take money or power to be kind to a friend or stranger, to stand by a loved one, or fight against injustice. It is not the big things in life that make up America's history and freedoms as a nation, but the small events, the everyday decisions that give meaning to this nation's future and the role that values have on positive or negative behavior. Genetic inheritance on the types of values acquired by people in the socialization process has impact on how basic core values are achieved.

The book presents a candid approach to the author's research in tracing core values of honesty, loyalty, morals, and hard work in America from the time of the first settlers to the present day and why these values have declined. As a free nation, America's culture, beliefs, and way of life are being attacked and undercut by people indifferent or actively hostile to the laws and core values that make America a great and proud nation of people willing to die for its protection.

The power of values has a direct influence on positive behavior through first ensuring that all schools, public and private, are consistent with the country's core values and by reducing or eliminating the erosion of standards and self-esteem in students through the enhancement of teacher preparation and parental involvement. Second, the author addresses ethics in political leadership, including government,

private industry, and individual fraud. He emphasizes that conscientious people of principle should be selected to serve without fear or favor from others in the political arena and that this standard of selection would impact many areas, ranging from welfare and campaign donations to budgeting and contracts. Third, the author considers the core values in the administration of justice and what can be done, ranging from examining the ethical responsibilities of prosecutors and defense attorneys to correcting the misdirection in the rehabilitation of criminals. For example, in regards to lawsuits, he recommends placing caps on punitive damages to curb greed and protect people from unwanted penalties. Last, the author examines the need for nurturing values in the business sector. He suggests developing and implementing adequate business policies and regulations, eliminating deception and exploitation within and outside business, establishing attainable and workable programs, and creating and enforcing a strong and positive code of business ethics.

Given the effectiveness of the numerous remedies in each part of the book, many steps can be taken to introduce and nurture core values. Some are in the areas of the administration of justice, rehabilitation of criminals, political leadership, the chronically unemployed, and the strict ethical management of domestic and international business operations. Overall, the author asks, "Shall we have moral growth or future decline for our families, communities, and nation?"

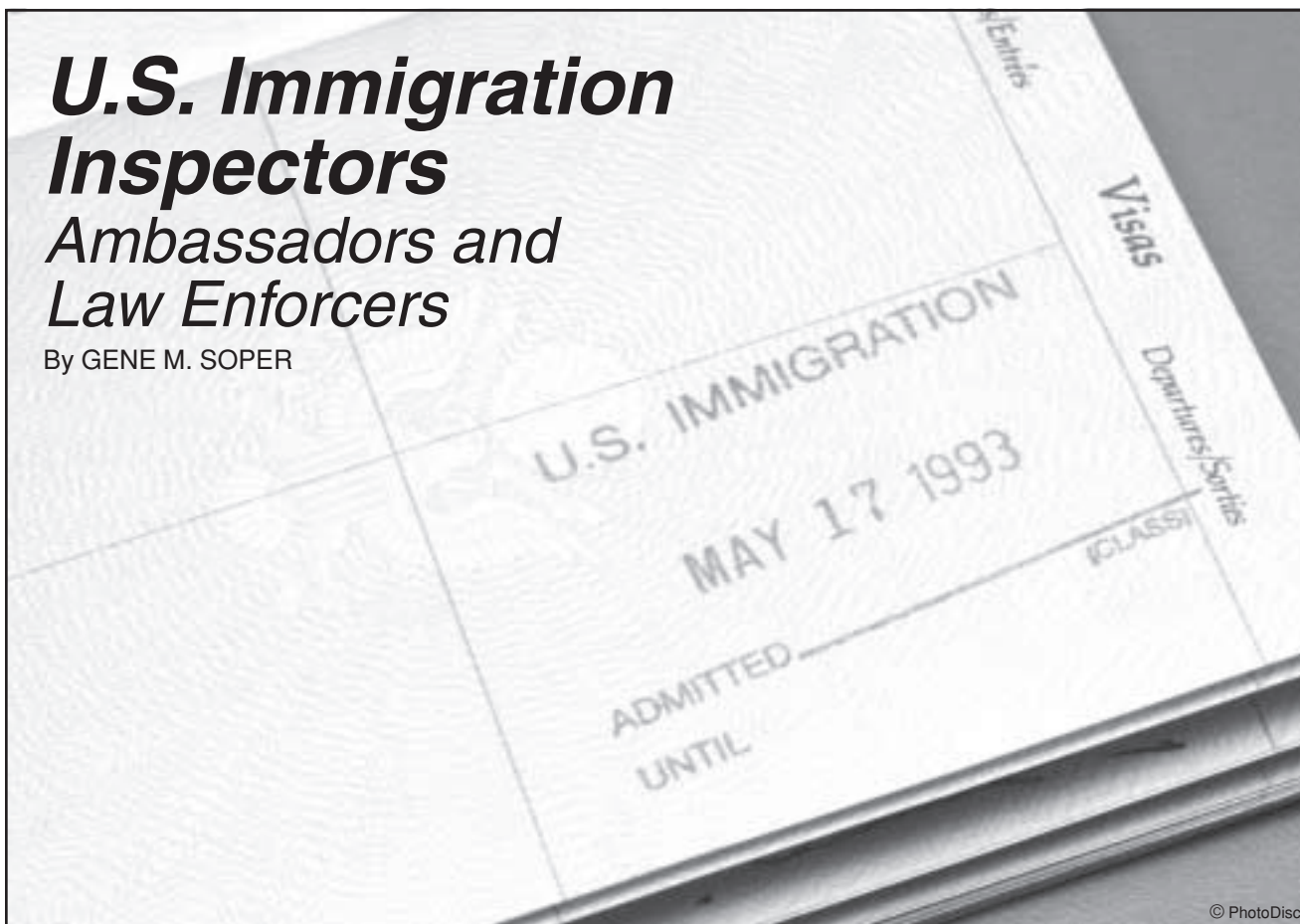
All members at all levels in the criminal justice system should read this book because it offers a very frank approach to many of the problems that American society faces today. It also could benefit the military, research institutions, law and business schools, employment security commissions, and Congress, as well as behavioral and anger management training programs.

Reviewed by  
Larry R. Moore  
Certified Protection Professional  
American Society for Industrial Security  
Knoxville, Tennessee



# ***U.S. Immigration Inspectors Ambassadors and Law Enforcers***

By GENE M. SOPER



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**T**he terrorist attacks of September 11, 2001, brought the importance of the U.S. Immigration and Naturalization Service (INS) to the forefront of the American public's attention. Prior to that date, a great portion of the general population had little knowledge of the brave men and women who protect U.S. borders.

Charged to, "in a timely and consistent manner, determine the admissibility of persons seeking entry; deny entry to inadmissible aliens; enforce criminal provisions against those who conspire to promote illegal entry and stay; and deter future illegal entry and stay in the United States,"<sup>1</sup> INS inspectors

not only enforce the nation's laws but also serve as the first Americans many foreigners encounter. They must determine the admissibility of all persons at air, sea, and land ports of entry. They intercept human and narcotic smugglers and can physically search, without warrant, applicants and their personal belongings. INS inspectors must ensure that foreign nationals enter the United States with proper documentation, verifying whether holders have authentic and current passports and visas. They interpret laws and clarify decisions to persons seeking entry into the country. They arrest, detain, parole, or deport persons according to laws, instructions, or

regulations. To accomplish these tasks, INS inspectors complete a rigorous 17-week training course that covers a variety of topics, such as legal procedures (e.g., constitutional law, conspiracy law, and U.S. Customs and U.S. Department of Agriculture laws), behavioral sciences, physical and firearm training, and nonlethal control techniques.

## **Organizational Overview**

The INS has many types of offices located in the United States and abroad.<sup>2</sup> It has 33 district offices in the United States and 3 overseas. District offices, each headed by a district director, enforce immigration laws and provide

certain immigration services and benefits to residents of their specific geographic jurisdiction. INS staff members collect applications, conduct interviews, and answer questions at these offices. Some district offices have suboffices and satellite offices determined, in part, by the needs of INS customers. In addition to these offices, the INS also divides the United States into Border Patrol sectors responsible for enforcing immigration laws.

Three regional offices oversee the work of the district offices and sectors. Three administrative centers, collocated with the regional offices, implement administrative policy and deliver direct service to their geographic areas. The INS established four service centers to handle mail, conduct data entry of information, and process applications. It also has eight asylum offices to help those individuals seeking shelter in the United States. To facilitate the application process, the INS uses application support centers at various locations.

All of these offices exist to support over 300 ports of entry in the United States, including international airports, land border ports, and seaports. As an example, the Paso del Norte port of entry in El Paso, Texas, will illustrate how the INS protects America's borders on a daily basis.

### **The Inspector's Role**

Nearly 250 INS inspectors are in the El Paso, Texas, district. During fiscal year 2000, these inspectors, along with U.S. Customs personnel, conducted over 68 million inspections in 9 ports of entry.<sup>3</sup>

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***...INS inspectors not only enforce the nation's laws but also serve as the first Americans many foreigners encounter.***

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*Mr. Soper recently retired from the U.S. Immigration and Naturalization Service, where he served as an inspector, cares sustainment coordinator, and a member of the Paso del Norte Port of Entry Collateral Intelligence Team in El Paso, Texas.*

During the busiest days (Saturdays and holidays), more than 25,000 pedestrians applied for admission into the United States from Mexico at the Paso del Norte port of entry, part of the total for the year of nearly 8 million pedestrians for the entire district. The majority of these pedestrians entered the United States to shop in stores in El Paso, but others came with different agendas.

On the Southwest land border, INS inspectors encounter several different types of applicants throughout their normal tour of duty. Mexican nationals comprise the greater part of the applicants, but many other nationalities also apply for admittance, including U.S. citizens. With such large amounts of people applying for entry, inspectors have just a few seconds to establish the validity and genuineness of documents and presenters. INS and U.S. Customs inspectors must make quick, on-the-spot decisions pertaining to the admissibility of applicants. Scrutinizing facial features and actions of

applicants requires alertness and attention to detail. Most applicants have lawful intentions, but some pose as impostors and others present altered or counterfeit documents in their attempts to enter the United States. Because a need for unskilled laborers exists in the United States, many are lured by better-paying jobs. In addition, economical conditions, wars, and natural disasters cause many aliens to leave their homelands and seek refuge in safer surroundings.

INS inspectors divide their duty time among processing immigrant visas, issuing permits, and questioning aliens. Inspectors handle prosecution cases and, due to changes in the law, remove or deport certain aliens not admissible. Because several oppressive governments reign throughout the world, many people request political asylum at American ports of entry. These individuals fear that they will face jail, or worse, if forced to return to their homeland. In the El Paso district, the INS usually

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detains such applicants at its El Paso Processing Service Center until the individuals can speak with an asylum officer.

In the El Paso district during fiscal year 2000, over 60 million drivers and passengers crossed the border in their motor vehicles. With an emphasis on maintaining the flow of vehicular traffic north, inspectors must check all vehicle occupants and their documentation promptly and accurately. Although watchfulness proves important, law enforcement computer systems also assist INS inspectors in their daily efforts to protect America's borders.

#### **Technological Resources**

INS has several computer databases available to authorized personnel. The Central Index System, the master records management system, collects and distributes biographical information on aliens. It contains the physical status of alien files and is the foundation of information for many functions pertaining to the mission of the INS. The Interagency Border Inspection System (IBIS) represents the primary resource for apprehending criminal aliens. It resides on the Treasury Enforcement Communications System, provides law enforcement agencies access to the FBI's National Crime Information Center, and permits users to interface with all 50 states via the National Law Enforcement Telecommunications System. Besides the U.S. Customs Service, 19 other federal agencies use the IBIS.

Through its terminals, approved employees quickly can

check an individual's name and date of birth for any prior criminal history and also determine whether guns and vehicles are stolen. At pedestrian inspection lanes, an authorized person can log onto the IBIS and, together with a document reader, guide an individual's passport or alien card through the reader to check for any illegal activity. At vehicle inspection booths, INS inspectors can query an individual's name and date of birth or alien file

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**Concerns about terrorism continue to demonstrate the need for immigration intelligence gathering and analysis.**  
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number to check for any wanted notifications or criminal activity. At many land border entry points, INS has installed license plate readers, which speeds up the inspection process and gives advance warning to inspectors (e.g., an alert banner flashes to indicate a stolen vehicle). If the preliminary inspection warrants further checks, INS personnel scan the suspect's photograph and fingerprints into the Automated Biometric Fingerprint Identification System (IDENT), which searches two databases, Lookout and Recidivist, for a possible match. If the computer systems reveal nothing, then the inspectors

must rely on their investigative and interviewing skills to ascertain the truth.

#### **Criminal Profile**

The high volume of pedestrian traffic at major land ports of entry offer cover to aliens attempting illegal entry or reentry. Many criminal aliens have prior arrests or convictions for drug-related charges. INS inspectors generally intercept criminal aliens, as well as U.S. citizens, by using the IBIS card readers and the IDENT. Law enforcement agencies throughout the United States input wanted persons and juvenile runaways into these systems. INS inspectors at the Paso del Norte port of entry consistently apprehend persons wanted by various law enforcement agencies and detain these subjects to confirm their extradition. Once that occurs, the inspectors normally release the subjects into the custody of the El Paso Police Department.

Danger lurks in every encounter as some of these criminals are armed. In addition, individuals under the influence of alcohol or other drugs and people with mental illness can become uncooperative, argumentative, and sometimes violent. Inspectors have found weapons in vehicles and hidden on people attempting to enter the United States. Especially dangerous to inspectors and the general public are the desperate port runners who use their vehicles, usually loaded with illegal drugs, as lethal weapons to barge past inspectors. Bomb threats occur almost weekly and result in closing the bridges until bomb-sniffing dogs can examine

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the area. The El Paso Police Department or the nearby military installation, Fort Bliss, normally supply these hardworking dogs and their handlers.

### **Drug and Human Smugglers**

Like many other American cities, El Paso is a transportation hub. It is a major crossing for railroads and has several bus lines downtown. These means of transportation provide quick and easy passage for drug and human smugglers. The flow of illegal drugs into the United States persists. Traffickers will try any method to conceal the drugs and attempt any means to avoid apprehension. Inspectors seize marijuana most often. Although intercepting illegal drugs is a secondary function for INS inspectors, they commonly refer vehicles to U.S. Customs personnel. Conversely, not all drugs smuggled into this country arrive in vehicles. Inspectors find all sorts of illicit drugs taped to people's bodies. Some smugglers, known as body carriers, ingest drugs contained in protected pellets. Lured by the large potential profits, all sorts of people attempt to smuggle drugs into the United States. Some smugglers bring their families with them as cover, while others attempt entry alone. Faced with no readily identifiable portrait of a drug smuggler, INS inspectors must remain alert to the actions and reactions of every person applying for entry into this country.

Alien smuggling also represents a lucrative business venture. Some reports put the price at between \$30,000 and \$50,000 per person smuggled into the United States. In the El Paso district, family

members trying to help relatives attempt most of the alien smuggling. INS inspectors generally find people hiding in vehicles, behind truck seats, and in trunks, but, sometimes, they locate individuals in dashboards, gas tanks, under floorboards, and in specially built concealed compartments.

### **Document Fraud**

Many criminals, terrorists, or otherwise inadmissible subjects use fraudulent documents. INS inspectors encounter the illegitimate



sale and rental of immigration documents from Mexico and elsewhere. Fraudulent documents generally fall into two categories, counterfeit or altered.<sup>4</sup> Counterfeiting documents involves copying, forging, or imitating an original with the intent to deceive. Altering documents, on the other hand, entails changing one or more elements of a genuine legitimate document without destroying the original document, again with the intent to defraud. The quality of such documents varies greatly, from

high-quality documents that could pass a cursory inspection to poor-quality documents that contain obvious flaws. However, increased computer technology makes document duplication better and easier for counterfeiters.

The Internet offers bogus Social Security cards, passports, and law enforcement identification. People can use these documents for immigration purposes or as substantiating evidence to support claims of U.S. citizenship. In addition, Web sites advertise information on how to order birth certificate templates from all 50 states. The possibility of the Internet becoming a major document supplier soon may represent a real threat as people learn of its potential. Moreover, in the last few years, identity theft, or assuming another person's identity, has become more prevalent and greatly concerns the INS.<sup>5</sup> Obtaining a valid birth certificate represents the normal route to assuming someone's identity. Occasionally, INS inspectors intercept an individual who possesses several documents issued under the assumed name, usually as some type of identification bearing the subject's photograph and the assumed name. Many victims of identity theft have learned the hard way the importance of protecting their Social Security number and other pertinent personal data. Identity thieves damage credit ratings and cause financial hardships for their victims.

### **INS Intelligence**

Concerns about terrorism continue to demonstrate the need for immigration intelligence gathering and analysis. Without performing



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intelligence activities, the INS cannot compete with organized criminals and terrorists. As the primary collectors of information, INS collateral intelligence officers assigned to ports of entry collect and disseminate information that pertains to terrorists, criminal aliens, smugglers, and identity thieves. They produce alerts and distribute reports documenting significant incidents, such as bomb threats, port runners, and incidents involving weapons. They also compile quarterly threat assessments that provide INS managers with the clarity to formulate plans, policies, and guidance for the future. The collateral intelligence officers predict criminal activities and current and future trends, create alerts on wanted persons, and post advance warnings. They also conduct preliminary evaluations of information and assist other law enforcement agencies. For example, the officers disseminated a bulletin produced by the FBI that resulted in two INS inspectors at the Paso del Norte port apprehending a suspected bank robber. The intelligence officers also work closely with the local law enforcement community. Their assistance normally deals with alerts or posting "lookouts" of persons wanted by the local authorities. Intelligence officers assigned to the Paso del Norte port of entry meet with representatives from the El Paso Police Department intelligence unit, the El Paso County Sheriff's Office, the FBI, the DEA, the Border Patrol, and the U.S. Customs. The officers also meet with representatives from the U.S. Marshals Service, the Secret Service, the Army's Criminal

Investigations Division, and the New Mexico State Department of Safety. They attend these weekly and monthly meetings to discuss a variety of topics, including officer safety, bomb threats, smuggling, and gang activities.

Intelligence analysts evaluate the information gathered from the ports of entry for reliability and validity. They also review the information for trends and patterns to provide INS managers with the knowledge to make tactical, operational, and strategic decisions.

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**Without performing intelligence activities, the INS cannot compete with organized criminals and terrorists.**  
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### Conclusion

The U.S. Immigration and Naturalization Service has a long and distinguished history of welcoming tourists, business travelers, and other temporary visitors to America at a variety of land, sea, and air ports of entry. It also has the responsibility of administering benefits, such as naturalization and permanent resident status on those individuals lawfully applying to reside in this country. Conversely, the INS has the authority to apprehend and remove aliens who have entered illegally or violated the requirements of their stay.

This dual and often-conflicting responsibility can burden even the most dedicated employee; however, it also can provide a high-degree of job satisfaction, whether introducing a new arrival to the freedoms and opportunities in the United States or intercepting a large quantity of illegal drugs bound for a schoolyard. INS inspectors willingly face both to protect not only U.S. citizens but also foreign visitors and new immigrants eager to participate in the American experience. ♦

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*At the time of publication, the status of the INS remained unknown. However, because homeland security weighs heavily upon all of America's law enforcement professionals, the FBI Law Enforcement Bulletin offers this article as a means of presenting the crucial role that the INS has played in the security of the United States and to honor those officers killed and assaulted while protecting this nation's borders.*

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### Endnotes

<sup>1</sup> The INS mission statement, *Inspections Field Manual M-450*.

<sup>2</sup> For a complete description of the INS, access the agency's Web site at <http://www.ins.usdoj.gov>.

<sup>3</sup> Annually, the INS compiles and publishes data in the *Statistical Yearbook of the Immigration and Naturalization Service*; view such reports at the agency's Web site, <http://www.ins.usdoj.gov>.

<sup>4</sup> For additional information, see John M. Davis, "Passport Fraud," *FBI Law Enforcement Bulletin*, July 1998, 9-13.

<sup>5</sup> For additional information, see Matthew L. Lease and Tod W. Burke, "Identity Theft: A Fast-Growing Crime," *FBI Law Enforcement Bulletin*, August 2000, 8-13; and John Pollock and James May, "Authentication Technology: New Levels in the Fight Against Identity Theft and Account Takeover," *FBI Law Enforcement Bulletin*, June 2002, 1-4.

## Victims

Trafficking in persons is a crime in which foreign nationals are brought to the United States under false premises to work in abhorrent conditions with little or no compensation. Estimates suggest that as many as 50,000 victims are trafficked into the United States each year, but few actually are detected. Isolated and vulnerable, victims often are coerced and intimidated through physical detention and debt bondage, making it impossible for them to report the crimes. Unfamiliar with U.S. laws, culture, and language and relying on their traffickers' accounts, victims often do not realize that they can get help. Understanding the dynamics of trafficking, the available resources, and the rights of trafficking victims can help organizations identify victims and provide them with meaningful services. *Trafficking in Persons: A Guide for Non-Governmental Organizations (NGOs)* discusses benefits and services for which victims may be eligible, tools that NGOs may use to assist victims in obtaining immigration relief, and federal resources that can help victims of trafficking. This brochure, developed by the U.S. Department of Justice in collaboration with the U.S. Department of State, U.S. Department of Labor, and U.S. Department of Health and

Human Services, and a second brochure, *Information for Victims of Trafficking in Persons and Forced Labor*, are available on the Office for Victims of Crime (OVC) Web site at <http://www.ojp.usdoj.gov/ovc/publications/infores/tip.htm>. A copy of either brochure also is available from the OVC Resource Center at 800-627-6872.

## Juvenile Justice

The Bureau of Justice Assistance (BJA) introduces *Promoting Safety in Schools: International Experience and Action*. This 68-page BJA monograph (NCJ 186937) provides information on school safety trends, policies, and projects from the United States and abroad. It reports that successful domestic and international approaches to school safety tend to be built around four major principles: a community-based approach; a focus on the school atmosphere, not just physical security or individual students; a partnership problem-solving model; and the holistic use of multiple strategies, not just single programs. It is available electronically at <http://www.ncjrs.org/textfiles1/bja/186937.txt> or by contacting the National Criminal Justice Reference Service at 800-851-3420.

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## **Universal Principles of Criminal Behavior A Tool for Analyzing Criminal Intent**

By Joe Navarro, M.A. and John R. Schafer, M.A.

**A** 39-year veteran detective of the Cleveland, Ohio, Police Department watched two men walk back and forth in front of a store window. They took turns peeking into the shop and walking away. After several passes, the two men huddled at the end of the street and looked over their shoulders as they spoke to a third person. Concerned that the men intended to rob the store, the detective moved in, patted down one of the men, and found a concealed handgun. The detective arrested the three men, thwarted a robbery, and averted the potential loss of life. This detective's detailed observations became the basis for the U.S. Supreme Court decision regarding stop and frisk.<sup>1</sup> More important, the Court acknowledged that criminals often communicate their intentions prior to the commission of a crime.

A broad analysis of unlawful activity reveals that all criminal behavior shares a common set of universal principles. These principles remain constant; however, they manifest differently for each individual depending on personality, criminal activity, and extrinsic factors. The universal principles of the criminal behavior (UPCB)<sup>2</sup> model does not focus on causal factors but, rather, provides a way to analyze the constituent stages of criminal behavior. Investigators can use the UPCB model as a tool to analyze criminal behavior in its nascent stages. The UPCB, a four-stage model, encompasses ideation, communication, facilitation, and actualization. Understanding the basic tenets of the UPCB model sensitizes law enforcement personnel to the antecedent behaviors that might signal future aberrant or criminal behavior.

### **Ideation**

Ideation motivates behavior for good or evil when conscious or subconscious thoughts take precedence as a result of intensity or frequency. Thoughts and ideas do not constitute crimes, but they do serve as the genesis for criminal behavior. However, not all repetitive thoughts portend evil. Thoughts of becoming a movie star, doctor, or firefighter inspire people and can become self-fulfilling prophecies. Conversely, compelling or nurtured thoughts of a nefarious nature can result in criminal behavior.

Criminals ideate as they formulate and reformulate plans to rob a bank, blow up a building, or avenge a slight. Even criminals acting on impulse ideate, however briefly. Ideation provides forethought that enables people to regulate their behavior or serves to rationalize criminal behavior. For the antisocial or psychopathic mind, ideation provides a value-free forum within which to develop new ways to take advantage of others or commit criminal acts. Ted Bundy, probably the most written-about psychopath, repeatedly ideated fantasies of sexual control and domination. Bundy meticulously thought and rethought his plans to entice young women and subsequently murder them as he envisioned.<sup>3</sup> Bank robbers, embezzlers, street muggers, and other criminals plan and think about their crimes before they act. Ideation manifests itself physiologically, verbally, nonverbally, symbolically, and behaviorally.

Ideation, a universal experience, presents itself differently for each individual depending on a variety of internal and external factors, including personality traits and personality disorders. For example, such criminals as John Wayne Gacey, the serial killer;<sup>4</sup> Ted Kaczynski, the UNABOMBER;<sup>5</sup> Timothy McVeigh, the Oklahoma City bomber; or Susan Smith, the mother who drowned her own children,<sup>6</sup> all shared one thing in common, ideation. They ideated consciously and subconsciously before they acted out their crimes.

### **Communication**

People continually communicate their conscious and subconscious thoughts physiologically, nonverbally, and verbally. Calm thoughts lower the heart rate. Anxiety and fear cause the heart to race, speed

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up breathing, increase perspiration, or manifest in other forms of outward discomfort. Bored listeners nonverbally demonstrate inattentiveness, disregard, or complete antipathy by rolling their eyes or crossing their arms while standing askance. Conversely, people often tilt their heads to one side when they like someone or hear something favorable. Humans constantly emit nonverbal communications, which sometimes accurately betray innermost thoughts more often than the spoken word.<sup>7</sup> “Casing” a store or stalking someone exemplifies behaviors that communicate criminal intent. The same holds true for terrorists who seclude themselves, conduct countersurveillance, call from multiple pay phones, - or use only cash when operational. These behaviors communicate ideated thoughts. In the same manner, individuals assigned to protection details look for the face in the crowd that does not fit in or one that suddenly changes expression. Similarly, parents look for nonverbal “tells” when their children misbehave.

Psychopaths communicate ideation through their predatory behavior. Perennially lying, conning, manipulating, and changing like a chameleon under varying circumstances, they live callously shallow, glib lives and show little stress and no remorse. They leave a debris field of human suffering in their wake.<sup>8</sup>

Symbolic gestures and emblems also provide powerful communication. Raising the middle finger in the United States, a Nazi salute, or bearing one’s teeth need no explanation. Symbolic emblems, such as clothing, hairstyles, jewelry, and cars, can reveal how people feel about themselves and others.<sup>9</sup> Some people use such emblems as tattoos to communicate their thoughts, values, and lifestyles. John “Bill” King, who dragged James Byrd, Jr., to his death behind his truck in rural Texas, dramatically scripted his hatred of blacks in the form of tattoos on his arms for all to see.<sup>10</sup> Others use bumper stickers to broadcast their beliefs on abortion, gun control, and other subjects. Gangs communicate loyalty by wearing

“colors” or monikers or by using complex hand signals. Skinheads shave their heads, render Nazi salutes, and tout other white supremacist paraphernalia, outwardly communicating their hate. The emblems and symbols that people choose or adopt provide bountiful insight into their thoughts long before the utterance of a single word.<sup>11</sup>

The written or spoken word also betrays inner thoughts and ideation. David Kaczynski recognized the similarities between the personal correspondence he received from his brother and the UNABOMBER’s published manifesto. This astute observation led to the arrest of Ted Kaczynski.<sup>12</sup> Questions also betray the thoughts of the inquirer. For example, the seemingly idle questions “What are the consequences of cheating?” “How much jail time do

you get for shoplifting?” or “What are the ingredients of gunpowder?” communicate ideation about cheating, shoplifting, or making bombs.

#### Facilitation

Physical exertion provides the link between thought and action. Depending on the sophistication of the criminal and the complexity of the criminal act, preparatory steps can range from simple to complex. These actions, no matter how stealthy, signal criminal intent to

an astute observer, such as the detective in the opening paragraph. Facilitation transforms ideation into behavior that draws criminals closer to acting out their intentions. From purchasing explosives to stealing a car for a bank robbery to following the travel routes of an intended assassination victim, these all facilitate and communicate, in many ways, what the person is ideating. In some instances, criminals conduct formal or informal practice sessions before the actual commission of a crime, thus providing an observer with additional opportunities to detect criminal intent. Purchasing a weapon, testing explosives, or taking steps to avoid detection after the crime, such as alibi creation, further facilitate the intended criminal act.

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**A broad analysis of unlawful activity reveals that all criminal behavior shares a common set of universal principles.**

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## Actualization

The criminal act completes the transmutation of an idea to action and usually reflects the criminal's intellect and personality. Personality and psychological disorders often manifest during the criminal act and provide investigators with valuable clues to the identity of the perpetrator.<sup>13</sup> Throughout facilitation and actualization, individuals continue to transmit thoughts physiologically, nonverbally, and even verbally depending on the circumstances. Under stress, anxious criminals often fail to recognize their own nervous or odd behavior, which signals an eminent criminal act to the knowledgeable observer.

## Practical Application of the UPCB Model

The UPCB model helps law enforcement officers analyze and prevent criminal behavior. Parents, teachers, coworkers, and friends often note behavior-changing ideation before the commission of a crime. By applying the UPCB model, individuals often can track the development and progression of nefarious thoughts and ideas. Armed with this knowledge, school administrators, workplace supervisors, and law enforcement authorities can take steps to intervene prior to the commission of the ideated criminal act.

From an analytical perspective, the UPCB model can assist crime scene analysts and investigators when retracing, step by step, the progression of a crime. The UPCB model also can assist investigators by providing a behavioral map to identify dormant leads, witnesses, or even evidence.

## Conclusion

Criminals, regardless of their circumstances, think about the crime that they intend to commit, communicate their ideations or intentions, prepare to carry out the crime, and, finally, commit the crime. Each stage in the universal principles of criminal behavior model affords an opportunity for observation and

intervention. Police officers no longer need to rely solely on intuition to prevent crime. The UPCB model, when combined with good observation and analysis, forms the foundation for effective crime prevention and intervention strategies.

By identifying the component parts of criminal behavior, law enforcement officers and interested observers more reliably can predict antecedent behavior before a crime takes place. The fruits of this approach have beneficial and long-lasting consequences for all. ♦

## Endnotes

<sup>1</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>2</sup> SA Joe Navarro, M.A., "Utilizing the Universal Principles of Criminal Behavior," lecture at Saint Leo's University, Saint Leo, Florida, School of Criminology, October 14, 2000.

<sup>3</sup> Robert K. Ressler and Tom Shachtman, *Whoever Fights Monsters* (New York, NY: St. Martin's Press, 1992), 72-73.

<sup>4</sup> Eric W. Hickey, *Serial Murderers and Their Victims*, 2nd ed. (Belmont, CA: Wadsworth Publishing Co., 1997), 170-72.

<sup>5</sup> Evan Thomas, et. al., "Probing the Mind of a Killer." *Newsweek*, April 15, 1996, 32-39.

<sup>6</sup> *The Washington Post*, July 26, 1995, sec. A, p. 7.

<sup>7</sup> Mark L Knapp and Judith A. Hall, *Nonverbal Communication in Human Interaction*, 4th ed. (Orlando, FL: Harcourt Brace, 1997), 24-25.

<sup>8</sup> *Supra* note 4, 66.

<sup>9</sup> David G. Givens, *The Nonverbal Dictionary of Gestures, Signs & Body Language Cues* (Spokane, WA: Center for Nonverbal Studies, 1998-2002); <http://members.aol.com/nonverbal2/diction1.htm>

<sup>10</sup> Joseph L. Galloway and Bruce Selcraig, "Into the Heart of Darkness," *U.S. News and World Report*, March 8, 1999, 18-20.

<sup>11</sup> Jack Schafer and Joe Navarro, "Hate Unmasked: A Practical Model for Understanding and Dealing with Hate Groups," *Chicano-Latino Law Review*, *UCLA School of Law* 21:201 (Spring 2000).

<sup>12</sup> *Supra* note 5.

<sup>13</sup> *Supra* note 4, 256.

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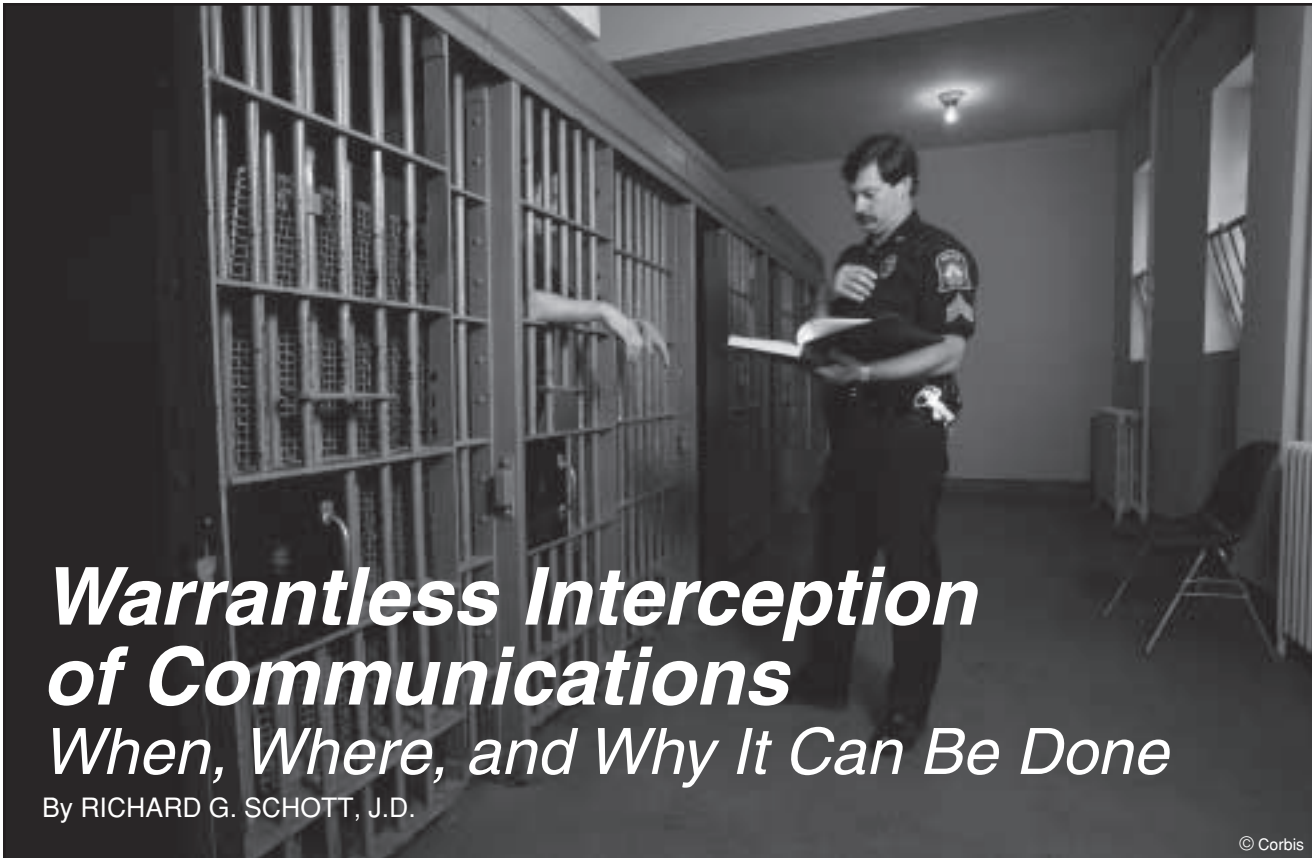
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# *Warrantless Interception of Communications When, Where, and Why It Can Be Done*

By RICHARD G. SCHOTT, J.D.

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**L**aw enforcement officers often desire to intercept and record conversations of the subjects of their investigations. Defendants' recorded words can be the strongest evidence obtained against them. Law enforcement officials are permitted to intercept, record, and use these conversations as evidence, provided the interception is accomplished lawfully. For this reason, it is important for criminal investigators to understand when, where, and, most important, why conversations may be legally intercepted and recorded. This article addresses situations in which federal agents are permitted to record conversations without the authority

of warrants or court orders.<sup>1</sup> Two points are important to remember. First, when practicable, officers always should seek warrants or court orders authorizing their interceptions of conversations. Second, state and local officers must be aware that constitutional and statutory requirements for interception may be different (and more restrictive) in their states.

The warrantless recording of a subject's conversation falls into one of two categories: those made with the consent of at least one of the parties involved in the conversation and those recorded without the consent of any of the parties involved in the conversation. In both cases,

Fourth Amendment<sup>2</sup> and statutory ramifications must be considered.

## **INTERCEPTION UNDERTAKEN WITH THE CONSENT OF ONE PARTY**

The use of confidential informants, cooperating witnesses, and undercover agents is one of the most effective and controversial tools available to law enforcement. Investigators frequently obtain otherwise unobtainable evidence by using these individuals. Often, the evidence obtained by informants, cooperating witnesses, and undercover agents comes in the form of verbal statements made by criminal subjects. Investigators generally are



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able to employ this method of evidence-gathering without violating either the subjects' Fourth Amendment rights to be free from unreasonable searches and seizures,<sup>3</sup> or their statutorily created rights, regardless of where the intercepted communications are uttered.

#### **Fourth Amendment Considerations**

It has long been recognized that the Fourth Amendment protects people, rather than places.<sup>4</sup> However, the Fourth Amendment does not apply to the situation in which subjects speak about criminal activity to, or in the presence of, individuals cooperating with law enforcement. The Supreme Court made clear in *Hoffa v. United States*<sup>5</sup> that the use of informants to capture the contents of conversations with the subjects of investigations does not violate those subjects' Fourth Amendment rights.

In 1962, James Hoffa was on trial in Nashville, Tennessee, accused of violating a provision of the Taft-Hartley Act. When Eddie Partin, an acquaintance of Hoffa,

told federal agents that Hoffa was attempting to bribe members of the jury in his case, they asked him to report any evidence of the bribery. Partin reported information to the agents that he was told, or overheard, while in Hoffa's hotel suite during the course of the trial. When Hoffa subsequently was prosecuted for bribing members of the prior trial jury, he sought to suppress Partin's testimony as a violation of, among other constitutional provisions, his Fourth Amendment rights. Hoffa argued that "Partin's failure to disclose his role as a government informer vitiated the consent that [Hoffa] gave to Partin's repeated entries into the suite and that by listening to [Hoffa's] statements Partin conducted an illegal 'search' for verbal evidence."<sup>6</sup>

At the outset of its analysis, the Supreme Court recognized that a "hotel room can clearly be the object of Fourth Amendment protection as much as a home or an office."<sup>7</sup> Furthermore, "the protections of the Fourth Amendment are surely not limited to tangibles but can extend as well to *oral*

*statements.*"<sup>8</sup> However, in his majority opinion, Justice Potter Stewart pointed out that Hoffa was not relying on the security of his hotel room to keep information from the government; rather, "he was relying upon his misplaced confidence that Partin would not reveal his wrongdoing."<sup>9</sup> Simply stated, the Court declined to apply Fourth Amendment protection to a "wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it."<sup>10</sup>

Three years prior to the *Hoffa* decision, the Supreme Court addressed a similar issue involving a subject's misplaced confidence in an Internal Revenue Service agent whom he attempted to bribe. In *Lopez v. United States*,<sup>11</sup> however, the agent not only testified at trial, but also introduced surreptitious recordings of the conversations that he had with the defendant wherein the defendant offered the bribes. The issue confronting the Court in 1963 was whether the recordings were admissible against the defendant Lopez.

The Court distinguished the surreptitious recordings made in this case from the more traditional "electronic eavesdropping"...when devices have been used to enable government agents to overhear conversations which would have been beyond the reach of the human ear."<sup>12</sup> Because the agent was a party to the recorded conversations, there was no Fourth Amendment violation that would warrant exclusion of the tapes. In 1971, the Supreme Court reiterated this point by holding that "[i]f the conduct and revelations of an agent operating

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without electronic equipment do not invade the defendant's constitutionally justifiable expectations of privacy, neither does a simultaneous recording of the same conversations made by the agent."<sup>13</sup>

It is apparent from *Hoffa* and *Lopez* that the recording of conversations by governmental actors who are a party to, or are within earshot of, those conversations does not violate the Fourth Amendment's ban against unreasonable searches. In 1999, the U.S. Tenth Circuit Court of Appeals extended this logic one step further. In *United States v. Longoria*,<sup>14</sup> a confidential informant cooperating with FBI agents surreptitiously recorded conversations involving Abel Longoria. When Longoria was prosecuted, he did not contest the admissibility of the recorded conversations between himself and the informant. However, the informant also recorded conversations between Longoria and others while the informant was present, but that were in Spanish. Longoria argued that those particular recordings should not be admissible because the informant did not understand Spanish. Therefore, according to Longoria, he had not knowingly exposed his conversations to the informant; rather, he exhibited a reasonable expectation of privacy in them. The U.S. Tenth Circuit Court of Appeals disagreed with Longoria.

First, the appellate court pointed out that "comprehension is a malleable,"<sup>15</sup> subjective concept. Rather than requiring judges or juries to ascertain whether an individual understood a particular language, the court preferred to eliminate the guesswork. Even

more important to the Tenth Circuit's rejection of Longoria's contention was the ever-increasing multilingual ability of American society. The court recognized that "the informant may very well have concealed his ability to speak Spanish the same as he concealed the recording equipment and his allegiance with law enforcement."<sup>16</sup> The court found the fact that the conversation was audible to the informant to be determinative, not whether the informant was able to understand what he clearly heard.

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***Surreptitious recording of telephone conversations is not prohibited by Title III when one party consents.***

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Federal case law makes clear that law enforcement may use individuals working for the government to record conversations to which they are a party, or overhear (even if they do not understand what they are hearing), without violating the Fourth Amendment to the Constitution.

#### **Statutory Considerations**

On the heels of the Supreme Court's *Katz* decision,<sup>17</sup> Congress passed the Omnibus Crime Control and Safe Streets Act of 1968. Title III<sup>18</sup> (hereinafter "Title III") of that

act governs the interception of wire, electronic, and oral communications by the government and private parties. Especially relevant to law enforcement is the provision mandating that communications intercepted in violation of Title III may not be received in evidence during any trial, hearing, or other proceeding before any court.<sup>19</sup> However, not all oral and wire communications are entitled to Title III protection.

For purposes of Title III, an "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation....<sup>20</sup> In other words, Title III does not protect oral conversations that occur under circumstances where the speaker has no reasonable expectation of privacy as defined in federal case law. As the analysis regarding the Fourth Amendment made clear, a person who misplaces his confidence in someone who is cooperating with the government does not have a reasonable expectation of privacy. Consequently, oral communications recorded by a consenting party do not fall within the definition of communications entitled to Title III protection.

Surreptitious recording of telephone conversations is not prohibited by Title III when one party consents. Although the communications satisfy the statutory definition of "wire communication,"<sup>21</sup> another provision of Title III explicitly exempts such communications from protection. Title III states that "[i]t shall not be unlawful under this



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chapter for a person acting under color of law to intercept a wire... communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.”<sup>22</sup>

Clearly, consensual recording of a subject’s telephone or personal communications runs afoul of neither constitutional nor statutory provisions. Consequently, this technique remains a legal option for law enforcement to gain invaluable information.

#### **INTERCEPTION UNDERTAKEN WITHOUT THE CONSENT OF ANY PARTY**

The antithesis of recording someone’s conversations with the consent of one of the parties involved is the recording of conversations in which none of the parties involved has explicitly authorized the interception. At first glance, it seems that this type of interception would violate individuals’ privacy rights in their spoken word. Upon closer examination, however, there are several circumstances that allow for such warrantless, non-consensual interception. The same constitutional and statutory considerations must be examined to determine whether the warrantless interception is lawful.

#### **Fourth Amendment Considerations**

The Fourth Amendment prohibits unreasonable government searches. A Fourth Amendment search only occurs when the government intrudes into a person’s

reasonable expectation of privacy.<sup>23</sup> However, there are places where a person does not have a reasonable expectation of privacy. If the government records conversations in an area where no expectation of privacy exists, it is not conducting a search, and the Fourth Amendment is not implicated. These areas include prisons, patrol cars, and interrogation rooms.

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***The Supreme Court has made clear that prison inmates do not have a reasonable expectation of privacy in their prison cells.***

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#### *Prison Cells*

The Supreme Court has made clear that prison inmates do not have a reasonable expectation of privacy in their prison cells. In *Hudson v. Palmer*,<sup>24</sup> the Court recognized that “prisons are not beyond the reach of the Constitution.”<sup>25</sup> However, the Court continued, “while persons imprisoned for crime enjoy many of the protections of the Constitution, it is also clear that imprisonment carries with it the circumscription or loss of many significant rights.”<sup>26</sup> Fourth Amendment protections are among those rights lost by prison inmates. In the words of the Supreme Court, “society is not prepared to recognize as legitimate any subjective expectation of privacy that a

prisoner might have in his prison cell...”<sup>27</sup> Based on *Katz*, of course, in order for a person’s expectation of privacy to enjoy Fourth Amendment protection, that expectation must be both subjectively<sup>28</sup> and objectively reasonable.<sup>29</sup> Although *Hudson* did not present a surveillance or electronic monitoring issue, the Court pointed out that “[a] right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual *surveillance* of inmates and their cells required to ensure institutional security and internal order.”<sup>30</sup> While *Hudson* involved the physical search of an inmate’s cell and property, other court opinions provide guidance on whether warrantless electronic surveillance is permissible in the prison setting and against whom such evidence is admissible.

A case involving the interception of a prison inmate’s oral communications reached the Supreme Court in 1962, well before its *Hudson* decision. In *Lanza v. New York*,<sup>31</sup> the Court addressed a Fourth Amendment challenge to the surreptitious recording of a conversation between a prisoner and a visitor, the prisoner’s brother (Lanza). Interestingly, the challenge to the recording came from the visiting brother, not the inmate. The record is unclear as to the circumstances that led to the brothers’ conversation being recorded, but that issue did not influence the outcome. The Court quickly dismissed Lanza’s challenge to the use of the recorded statements in his subsequent prosecution. In this pre-*Katz* decision, the Court dismissed the notion that

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the Fourth Amendment applied inside a prison by noting that “to say that a public jail is the equivalent of a man’s ‘house’ or that it is a place where he can claim constitutional immunity from search or seizure...is at best a novel argument.”<sup>32</sup> Rather, the Court reasoned, “[i]n prison, official surveillance has traditionally been the order of the day.”<sup>33</sup>

Arguably, the 1967 *Katz* decision changed the Court’s view of a challenge similar to that made in *Lanza*. Because *Katz* clearly provides Fourth Amendment protection to people rather than places,<sup>34</sup> this would appear to be a valid argument. However, later court decisions demonstrate that the *Katz* decision did not change the principle set forth in *Lanza*.

In *United States v. Hearst*,<sup>35</sup> a 1977 case wherein Patricia Hearst sought to suppress recorded conversations between herself (at the time an inmate of the San Mateo County jail) and a childhood friend who visited her in the jail, Hearst argued that *Katz* “effectively overruled *Lanza* or at the very least significantly reduced its precedential value.”<sup>36</sup> The Ninth Circuit disagreed. It cited numerous opinions dealing with jailhouse searches and seizures that found *Katz* and *Lanza* compatible.<sup>37</sup> The Supreme Court refused to hear an appeal of either the *Hearst* case or any of the cases cited therein. This refusal makes it apparent that the Supreme Court agrees with the continuing validity of its *Lanza* pronouncement. Therefore, monitoring and recording of conversations that take place in jail

cells or in jail visiting facilities do not violate the Fourth Amendment.

While *Lanza* and *Hearst* involved recording of inmate-visitor conversations, the U.S. Eleventh Circuit Court of Appeals was presented with a situation that merged the *Hudson* issue of jail cell privacy with the *Lanza* issue of surreptitious recording. In *Moody v. United States*,<sup>38</sup> Walter Leroy Moody sought to suppress all evidence obtained as a result of electronic monitoring of his prison cell. The

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monitoring commenced while Moody was jailed in the high-security unit of the Atlanta Federal Penitentiary. The unique aspect of this case is that Moody was alone in his cell, talking only to himself. At his subsequent trial, the government wished to introduce incriminating comments Moody made to himself while in his cell. The Eleventh Circuit affirmed the lower court’s rejection of Moody’s attempts to suppress the evidence. While the lower court acknowledged that the “basis for [Moody’s] attack upon the electronic monitoring of his prison cell is somewhat unclear,”<sup>39</sup> it certainly could not have been successfully

based on the Fourth Amendment. In addition to the *Hudson* and *Lanza* decisions—which dictate that Moody had no reasonable expectation of privacy in his cell—court authorization for this wiretap had been secured. Thus, even his most remote Fourth Amendment challenges had been eliminated.

Possibly the best explanation of why prisoners and their visitors have no reasonable expectation of privacy was expressed by Judge Gee of the U.S. Fifth Circuit Court

of Appeals in 1985. In *United States v. Harrelson*,<sup>40</sup> Charles Harrelson attempted to suppress recorded conversations between himself and his wife made while Harrelson was a prison inmate. The conversations were recorded by an inmate in the cell next to Harrelson’s, using equipment provided by the FBI. In denying Harrelson’s motion to suppress the evidence, Judge Gee stated that “one

who expects privacy under the circumstances of prison visiting is, if not actually foolish, exceptionally naive.”<sup>41</sup>

#### *Patrol Cars*

Another place where law enforcement officers are free to surreptitiously record conversations is inside a police patrol car. Like jail, individuals do not have a reasonable expectation of privacy in a patrol car and, therefore, are not protected by the Fourth Amendment while there. What an individual placed in a patrol car subjectively believes does not establish a privacy right.

In a novel suppression argument, one subject maintained that the nonexistence of an expectation of privacy in a patrol car should not be a blanket rule. In *United States v. McKinnon*,<sup>42</sup> Steve McKinnon was placed in the back of a patrol car with Theodore Pressley, the driver of the vehicle in which McKinnon had been a passenger. McKinnon and Pressley were recorded surreptitiously while conversing in the back of the patrol car. They made incriminating statements, and cocaine was located during a consent search of their vehicle. McKinnon argued that his subjective expectation of privacy was one that “society is willing to recognize because the government violated his rights because it did not have probable cause to conduct this secret search.”<sup>43</sup> McKinnon’s most creative argument, though, was that “the front seat of a police car is equivalent to the officer’s office, but the back seat is the office of the arrestee.”<sup>44</sup> The U.S. Eleventh Circuit Court of Appeals, following the logic of one federal district court and several state courts, found that McKinnon’s arguments failed and that “no reasonable expectation of privacy exists in the back seat area of a police car.”<sup>45</sup>

In 1994, the year following the *McKinnon* decision, the U.S. Eighth Circuit Court of Appeals also held that individuals have no reasonable expectation of privacy in police vehicles. That federal court found that a police car is “essentially the [officer’s] office, and is frequently used as a temporary jail for housing and transporting arrestees and suspects. The general public has no

reason...to believe that it is a sanctuary for private discussions.”<sup>46</sup> The analogy of the police car to a temporary jail slams the door on any argument that an expectation of privacy exists in a police vehicle as long as officers do or say nothing to establish that expectation.

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**...surreptitious  
recording of  
individuals in a  
police agency’s  
interrogation room  
is not prohibited  
by the Fourth  
Amendment.**  
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#### *Interrogation Rooms*

Finally, surreptitious recording of individuals in a police agency’s interrogation room is not prohibited by the Fourth Amendment. There is simply no reasonable expectation of privacy in an interrogation room. However, officials should do or say nothing that creates a reasonable expectation of privacy. For example, in *Ahmad A. v. Superior Court*,<sup>47</sup> an arrested juvenile requested to speak with his mother at the police station. They were allowed to converse in an interrogation room, where the juvenile made incriminating statements about a murder. The statements were surreptitiously recorded by the police. In denying his Fourth Amendment challenge to the admissibility of the

remarks, the California court noted that “no representations or inquiries were made as to privacy or confidentiality.”<sup>48</sup> A recent Virginia case agreed with the *Ahmad A.* opinion.

In *Belmar v. Commonwealth*,<sup>49</sup> Akeim Belmar was arrested and taken to police headquarters. He entered through the rear door of the detective bureau and did not pass a sign posted in the front lobby advising those who entered that “interview rooms were ‘electronically monitored and may be recorded.’”<sup>50</sup> Belmar, therefore, had a subjectively reasonable expectation that his conversation in the interrogation would be private. However, the Virginia court decided that his subjective expectation of privacy was not objectively reasonable. First, the appellate court noted that “federal courts continue to find a suspect has no reasonable expectation of privacy in areas controlled by the police.”<sup>51</sup> Specifically addressing interrogation rooms at police stations, the court pointed out that such rooms are “designed for disclosure, not the hiding, of information.”<sup>52</sup> Finally, it recognized that the detective involved in the investigation did nothing to “lull” Belmar into believing his conversation would not be monitored.<sup>53</sup> Clearly, officers should not make assurances to people that will give them an expectation of privacy in a police interrogation room. With no assurances to the contrary, individuals in police interrogation rooms enjoy no reasonable expectation of privacy, leaving their conversations open to warrantless electronic surveillance.

In all three of the preceding areas, courts have found that no

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reasonable expectation of privacy exists. Where no expectation of privacy exists, no Fourth Amendment search can occur. Therefore, under the U.S. Constitution, no warrant is required to surreptitiously record conversations in prisons, patrol cars, or interrogation rooms, even when no one has consented to the recording.

### Statutory Considerations

For the same reasons as in the case of consensual surreptitious recordings, Title III challenges fail when aimed at nonconsensual recordings that are not protected by the Fourth Amendment. Title III defines oral communications as “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation....”<sup>54</sup> Because this definition was intended to incorporate the reasonable expectation of privacy test set forth by the Supreme Court in *Katz*,<sup>55</sup> nonconsensual recordings made in jails, patrol cars, and interrogation rooms also satisfy Title III restrictions because there is no justifiable expectation that those conversations will not be subject to interception.

Telephone conversations made from jail or police stations normally enjoy no Title III protection either. Clearly, these phone calls satisfy the statutory definition of wire communication,<sup>56</sup> but are not covered for one of two reasons. Some courts have held that individuals making phone calls from these locations have given their implied consent to have the conversations recorded.<sup>57</sup>

Because Title III provides that “[i]t shall not be unlawful...for a person acting under color of law to intercept a wire...communication, where...one of the parties to the communication has given prior consent to the interception,”<sup>58</sup> these courts have found that this interception does not violate Title III.

One federal circuit court of appeals does not recognize the implied consent rationale, but allows interception for a different reason. The U.S. Seventh Circuit Court of Appeals, in *United States v. Daniels*,<sup>59</sup> refused to suppress FBI recordings of a prisoner’s phone



calls because the surveillance was permitted by the “law enforcement officer in the ordinary course of his duties exception”<sup>60</sup> of Title III.<sup>61</sup> The logic may vary, but, generally, Title III does not prohibit the surreptitious recording of oral or telephonic conversations occurring in jails, patrol cars, or police interrogation rooms.

### CONCLUSION

Law enforcement officers who contemplate the interception of their subjects’ conversations must

consider a myriad of issues: whether entrapment could be successfully argued, whether the conversations involve privileged communications, and whether Fifth or Sixth Amendment rights are impacted. Fourth Amendment and statutory issues also must be considered. This article has explained why, in several different situations, neither the Fourth Amendment nor Title III prevents the interception and recording of conversations. Of course, some state laws will prohibit this technique even when federal law clearly would not.<sup>62</sup> Twelve states have statutes more restrictive than the federal Title III statute in that they require all parties to a conversation to consent to its recording before it may be lawfully recorded.<sup>63</sup> For all practical purposes, this requirement eliminates any warrantless consensual recording in those states.

It is vital for law enforcement officials to recognize when, where, and why the warrantless interception of communications is a viable investigative technique to employ. Not all situations are obvious; yet, this technique can provide incredibly valuable and perfectly legal evidence for prosecutions. ♦

### Endnotes

<sup>1</sup> This article addresses only warrantless interceptions. Court authorized interception must be accomplished in accordance with established restrictions and procedures. See, e.g., 18 U.S.C. § 2510 *et seq.*, for the requirements to obtain a federal Title III court order.

<sup>2</sup> For an in-depth discussion of Fifth and Sixth Amendment constraints on this technique, see K. Crawford, “Surreptitious Recording of Suspects’ Conversations,” *FBI Law Enforcement Bulletin*, September 1993, 26-32; and “A Constitutional Guide to the Use of Cellmate



Informants," *FBI Law Enforcement Bulletin*, December 1995, 18-23.

<sup>3</sup> U.S. CONST. AMEND. IV states, in pertinent part, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...."

<sup>4</sup> *Katz v. United States*, 389 U.S. 347 (1967).

<sup>5</sup> 385 U.S. 293 (1966).

<sup>6</sup> *Id.* at 300.

<sup>7</sup> 385 U.S. at 301, citing *United States v. Jeffers*, 342 U.S. 48 (1951).

<sup>8</sup> 385 U.S. at 301 (emphasis added), citing *Silverman v. United States*, 365 U.S. 505 (1961).

<sup>9</sup> 385 U.S. at 302.

<sup>10</sup> 385 U.S. at 302.

<sup>11</sup> 373 U.S. 427 (1963).

<sup>12</sup> *Id.* at 438.

<sup>13</sup> *United States v. White*, 401 U.S. 745, 751 (1971).

<sup>14</sup> 177 F.3d 1179.

<sup>15</sup> *Id.* at 1183.

<sup>16</sup> 177 F.3d at 1183.

<sup>17</sup> *Supra* note 4.

<sup>18</sup> 18 U.S.C. § 2510 *et seq.*

<sup>19</sup> 18 U.S.C. § 2515.

<sup>20</sup> 18 U.S.C. § 2510(2).

<sup>21</sup> 18 U.S.C. § 2510(1) defines wire communication as any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce.

<sup>22</sup> 18 U.S.C. § 2511(2)(c).

<sup>23</sup> *Supra* note 4.

<sup>24</sup> 468 U.S. 517 (1984).

<sup>25</sup> *Id.* at 523.

<sup>26</sup> 468 U.S. at 524.

<sup>27</sup> 468 U.S. at 526.

<sup>28</sup> *Katz*, 389 U.S. at 361 (Harlan, J., concurring).

<sup>29</sup> *Id.*

<sup>30</sup> 468 U.S. at 527-528 (emphasis added).

<sup>31</sup> 370 U.S. 139 (1962).

<sup>32</sup> *Id.* at 143.

<sup>33</sup> 370 U.S. 143.

<sup>34</sup> *Katz*, 389 U.S. at 351.

<sup>35</sup> 563 F.2d 1331 (9th Cir. 1977), *cert. denied*, 435 U.S. 1000 (1978).

<sup>36</sup> *Id.* at 1345.

<sup>37</sup> 563 F.2d at 1345, citing *United States v. Dawson*, 516 F.2d 796, 805 (9th Cir.), *cert. denied*, 423 U.S. 855 (1975); *United States v. Hitchcock*, 467 F.2d 1107, 1108 (9th Cir. 1972), *cert. denied*, 410 U.S. 916 (1973).

<sup>38</sup> 977 F.2d 1425 (11th Cir. 1992), *cert. denied*, 507 U.S. 1052 (1993).

<sup>39</sup> *United States v. Moody*, 762 F.Supp. 1491, 1498 (N.D. Ga. 1991).

<sup>40</sup> 754 F.2d 1153 (5th Cir.), *cert. denied*, 474 U.S. 908 (1985).

<sup>41</sup> *Id.* at 1169.

<sup>42</sup> 985 F.2d 525 (11th Cir.), *cert. denied*, 510 U.S. 843 (1993).

<sup>43</sup> *Id.* at 527.

<sup>44</sup> 985 F.2d at 527.

<sup>45</sup> *Id.*

<sup>46</sup> *United States v. Clark*, 22 F.3d 799, 801-802 (8th Cir. 1994).

<sup>47</sup> 263 Cal. Rptr. 747 (Cal. App. 2 Dist. 1989), *cert. denied*, 498 U.S. 834 (1990).

<sup>48</sup> *Id.* at 751.

<sup>49</sup> 553 S.E.2d 123 (Va. App. Ct. 2001).

<sup>50</sup> *Id.* at 125.

<sup>51</sup> 553 S.E.2d at 128.

<sup>52</sup> 553 S.E.2d at 129.

<sup>53</sup> *Id.*

<sup>54</sup> *Supra* note 20.

<sup>55</sup> See, e.g., *Longoria*, note 14.

<sup>56</sup> *Supra* note 21.

<sup>57</sup> See, e.g., *Gilday v. Dubois*, 124 F.3d 277, 289 (1st Cir. 1997); *U.S. v. Workman*, 80 F.3d 688, 692-694 (2nd Cir. 1996).

<sup>58</sup> 58. Title 18 U.S.C. § 2511(c).

<sup>59</sup> 902 F.2d 1238 (7th Cir. 1990).

<sup>60</sup> *Id.* at 1245.

<sup>61</sup> 18 U.S.C. § 2510(a)(ii).

<sup>62</sup> See, e.g., *State v. Geraw*, 795 A.2d 1219 (Vt. 2002), where the Vermont Supreme Court found that the warrantless and surreptitious electronic recording of a face-to-face conversation by a known police officer in a defendant's home violated his right to privacy under the state constitution.

<sup>63</sup> Kermit L. Hall, *The Oxford Companion to American Law*, 841 (2002).

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*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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## Wanted: Notable Speeches

The *FBI Law Enforcement Bulletin* seeks transcripts of presentations made by criminal justice professionals for its Notable Speech department. Anyone who has delivered a speech recently and would like to share the information with a wider audience may submit a transcript of the presentation to the *Bulletin* for consideration.

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity, but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered. When possible, an electronic version of the transcript saved on computer disk should accompany the document. Send the material to:

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# 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 those situations that transcend the normal rigors of the law enforcement profession.



Officer Jackson

Officer Frank W. Jackson of the Village of Goshen, New York, Police Department responded to a call of a vehicle that had crashed through the showroom window of a local car dealership. On arrival, he found that a hysterical, distraught woman intentionally had slammed her sport utility vehicle into two new cars, drove through the showroom window, and then crashed it into several new vehicles on the showroom floor, narrowly missing several employees and customers. The woman had locked herself in the vehicle and was threatening to commit suicide by slashing her wrists and neck with a razor knife. Officer Jackson immediately tried to calm the woman and convince her to shut the vehicle off and open the window. The woman did not respond to negotiations and continued to cut herself. When the woman put the vehicle in gear and attempted to move away, Officer Jackson immediately smashed the driver's side window with his baton and tried to shut off the vehicle. The woman attempted to slash Officer Jackson with the razor knife. He immediately disarmed her, removed her from the vehicle, and took her into custody. Officer Jackson's selfless actions prevented the woman from taking her own life and from further endangering the lives of other individuals at the scene.



Officer Salazar

A citizen stopped Officer Alex Salazar of the Missouri City, Texas, Police Department to advise that a house was on fire in the area. After arriving at the location of the fire, Officer Salazar saw a light haze of smoke in the dwelling through the open front door. He found one elderly male on the sofa and a second male standing in the same room. Officer Salazar realized that the house was a facility for individuals with mental illnesses and that they were either unaware of the danger or in shock. He escorted both men outside to safety and immediately reentered the residence. He went to the bedroom in the back of the house to search for other people and tripped over a female lying on the floor. She did not respond verbally and appeared to be in shock. He noticed a wheel chair in the room, took it to the hallway by the front door, dragged the woman to the chair, and wheeled her outside. Officer Salazar went back into the house a third time to check for other people. Because the smoke was extremely thick at that point, he had to crawl to check closets and rooms, primarily by touch due to limited visibility. He completed his search and exited the house. Officer Salazar showed professionalism and courage by risking his own safety to evacuate the burning residence. His actions saved the lives of these individuals.

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 patch of the Harriman, Tennessee, Police Department features the Temperance Building, formerly The American Temperance University, founded in 1893. Chartered May 25, 1890, Harriman was a utopian community built on social temperance where “no manufacture, storage, or sales of intoxicating liquor or beverages” would take place. Much has changed in modern times; alcohol now is sold in the community, but the Temperance Building still stands as a constant reminder of the city’s illustrious past.



The body of water in the foreground of the Blaine, Washington, Police Department patch is Drayton Harbor. On the left is Semiahmoo, named after Native Americans once living there, along with its historic inn and water tower. On the right is the Peace Arch, located on the U.S./Canadian border, denoting the open-door friendship between the two countries. The boat depicts the Plover, a historic ferry between Blaine and Semiahmoo Bay and the Canadian Cascade mountain range in the background.