August 2004
Volume 73
Number 8

**United States
Department of Justice
Federal Bureau of Investigation
Washington, DC 20535-0001**

**Robert S. Mueller III
Director**

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

This publication is produced by members of the Law Enforcement Communication Unit, Training Division.

Internet Address
leb@fbiacademy.edu

Cover Photos
© PhotoDisc

Send article submissions to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

FBI Law Enforcement Bulletin

Features

Departments

ISSN 0014-5688 USPS 383-310

Homicidal Poisoning
The Silent Offense

By ARTHUR E. WESTVEER, M.L.A., JOHN P. JARVIS, Ph.D., and CARL J. JENSEN III, Ph.D.

"Poisoning, of course, differs considerably from many other crimes, frequently committed in uncontrolled passion and in the heat of the moment. The innate character of the crime of homicidal poisoning demands subterfuge, cunning, and, what is equally important, usually a period of careful planning, and also not infrequently the repetition of the act of administering poison.... Its characteristic being one of premeditation, it is a method of murder, which, therefore, cannot be the subject of extenuation as some other forms of killing can."[1]

Given such a description, the crime of homicidal poisoning would seem a rich arena for research. Surprisingly, however, other than a few published reviews of some famous historical poisoning cases, the authors found little written material on the characteristics of poisoners and their victims.[2] A further probe of the international forensic literature also failed to reveal any previously published epidemiological studies dealing with criminal investigative analyses, or psychological "profiles," of the homicidal poisoner. Yet, the potential for toxic substances becoming weapons of mass destruction has increased dramatically in recent years. Therefore, the authors wondered if empirical data concerning homicidal poisoners and their victims would reveal

relationships, patterns, and characteristics that could help law enforcement professionals. Building on the few empirically based studies that exist, they examined recently reported poisoning homicides to find out.

METHOD

To conduct this research, the authors drew upon FBI Uniform Crime Reporting (UCR) supplementary homicide reports (SHR) of those incidents occurring in the United States over the last decade (1990-1999). Specifically, they examined these data to isolate homicides where a poisoning agent was reported as the cause of death.[3] The authors intentionally selected this time period to permit comparisons with an earlier work that reviewed similar data reported over the period of the previous decade (1980-1989).[4]

Traditionally, the UCR program has offered the criminal justice community a way to look for fluctuations in the level of crime and to provide statistics for varied research and planning purposes. From these data, the SHRs reveal much of what criminologists know empirically about the nature and scope of homicidal behavior in the United States.

For this study, 186,971 SHR murders in the United States that occurred during the 10-year period 1990-1999 were available for analysis. This volume of cases represented an 8 percent decline in reported murders compared with the 202,785 homicides recorded in the decade of the 1980s. From these cases, the authors extracted those homicides involving a chemical (nondrug) poison or a drug/narcotic that an offender had used for homicidal purposes. They excluded reports entailing asphyxiation/fumes because the data did not allow them to differentiate asphyxiation by smothering from those cases concerning chemical fumes (e.g., carbon monoxide).

RESULTS

Of the total 186,971 SHR reports in the United States for the period 1990-1999, 346, or 1.9 per 100,000 total homicides, were poisonings involving a single victim and a single offender or a single victim and an unknown number of offenders.[5] Compared with the 1980s when 292 similar homicidal poisonings were reported, the 1990s saw an increase of 18 percent

Mr. Westveer is a violent crime specialist in the Behavioral Science Unit at the FBI Academy.

Dr. Jarvis is an instructor in the Behavioral Science Unit at the FBI Academy.

Dr. Jensen, an FBI special agent, is an instructor in the Behavioral Science Unit at the FBI Academy.

of these crimes, which represented a 35 percent increase in the rate of these cases coming to the attention of law enforcement during these years.

The effective investigation of homicides generally, and poisoning cases in particular, often depends upon a number of factors, including such basic investigative data as victim demographics, possible offender characteristics, geographic and temporal features of the case, and any particular incident attributes that may assist law enforcement. The findings of this study, therefore, underscore the importance of cooperation between the medicolegal and law enforcement communities and serve as a foundation for the continued examination of behavioral attributes of homicidal poisoners.

Victim Demographics

The SHR data for the 1990s showed that victims of homicidal poisonings were divided almost equally between males and females. The victims' ages ranged from a single victim less than 1 week old to 13 victims 75 years or older. The greatest number of victims fell in the age range of 25 to 44 years, which constituted 91 (37.2 percent) of the victims. The age of the victim was unknown in 4 (1.2 percent) of the homicides. By race, white victims were divided almost equally between males and females in poisoning homicides. Victims of other races (American Indian or Alaskan Native and Asian or Pacific Islander) were as likely to be males as females.

Offender Attributes

The data also revealed that victim characteristics may dictate some contingency related to offender characteristics. That is, when victims were female, the offenders were predominantly male. By contrast, if victims were male, the offenders were divided almost equally between males and females. Regardless of the sex of the victim, the poisoning offender was predominantly white. When examining race, it appeared that homicidal poisonings, like other homicidal behavior, usually did not cross racial lines, with the offender predominantly of the same race as the victim. However, this information also indicated a slight increase from 1 percent to 3.5 percent among other races as victims compared with the 1980s analysis. Additional findings showed that whites were predominantly the victims of male offenders, blacks were almost equally the victims of male and female offenders, and people of other racial backgrounds were equally likely to be victims of female or unknown offenders.

> ***"...the potential for toxic substances becoming weapons of mass destruction has increased dramatically in recent years."***

By race, black poisoning offenders were males twice as often as females, and white poisoning offenders also were more likely to be males. By sex, the result that 168 (48.6 percent) of the poisoning offenders were male compared with 115 (33.2 percent) female offenders would seem to challenge the perception that primarily females use poisons. Of course, these cases represented only those murders that became known to law enforcement. It may be that females are the predominate poisoners, but are more successful at getting away with the crime. Furthermore, this information reflected a 50 percent increase in the participation of females in this criminal homicidal behavior compared with data from the 1980s. It must be noted, of course, that the sex of 63 (18.2 percent) of the offenders remained unknown. The offenders' ages ranged from one offender between the ages of 10 and 14 to four offenders 75 years or older.

The age category of 20 to 34 years accounted for 111 (32.1 percent) of the offenders. The age of the offender was unknown in 73 (21.1 percent) of the homicides. These patterns remained relatively stable in comparison with those of the 1980s.

However, as a word of caution, because the authors found the percent of poisoning offenders with unknown characteristics to be 20 to 30 times higher than those with unknown characteristics among all homicide offenders, some of these demographic findings must remain tentative. This problem is most likely due to a lack of witnesses to provide insight into offender characteristics.

Relationship of Poisoning Victim to Offender

Homicides within families occurred with some frequency and accounted for 125 (36.1 percent) of the poisonings in the 1990s. The four most frequent relationships within the offender's family were son (9.5 percent), daughter (7.2 percent), wife (6.9 percent), and husband (5.2 percent). However, while many people may widely believe that poisoning is predominantly a household or domestic crime, this study found that of the reports where the relationship of the offender to the victim was known, more of the victims came from outside the family (63.9 percent) than from within the family (36.1 percent) of the offender. Victims outside the family of the offender accounted for 221 (63.9 percent) of the poisoning homicides. The five most frequent relationships outside the family were acquaintance (69, or 19.9 percent), unknown (66, or 19.1 percent), other (31, or 9 percent), friend (22, or 6.4 percent), and girlfriend (13, or 3.8 percent).

These results are in stark contrast to the findings from the 1980s that showed just 39 percent of victims outside the family of the offender. The earlier analysis disclosed a more equitable distribution of relationships, whereas this study revealed substantially more victimizations of individuals outside the family. But, once again, 66 homicide victims (19.1 percent) in the 1990s had an unknown relationship to the offender. So, the prevalence of unknown characteristics may dampen the significance of some of these patterns. In particular, the variance with the findings of the 1980s may be due to fluctuations in missing data relative to these cases, rather than true compositional changes in homicidal-poisoning behavior.

Type of Poison

Thirty (8.7 percent) of the female offenders and 38 (11 percent) of the male offenders employed a chemical (nondrug) poison. Eighty-five (25 percent) female offenders and 130 (37.6 percent) male offenders used a drug/narcotic as their homicidal agent. Although it was not possible from the SHR to determine the exact identification of the poison used, male offenders chose chemical (nondrug) poisons in a ratio of 5 to 4 compared with female offenders. While male offenders used a drug/narcotic in a ratio of almost 3 to 2 to female offenders, this still represented a 33 percent increase in the use of drug/narcotic poisonings by women when compared with data from the 1980s. Because the SHRs did not identify the exact poison used in the homicides, this important piece of information must come from a more in-depth analysis of the specific case reports on file in the various jurisdictions.

Case Examples

Because they often display few visible signs, homicidal poisonings remain one of the most difficult crimes to detect and prosecute. All too often, authorities may certify a death as due to a natural or unknown cause, resulting in important evidence of the crime being buried with the victim. Therefore, a great number of homicides by poisoning are detected only upon specific toxicological analyses carried out after the exhumation of the victim's remains.

Selected from FBI and police files, as well as from public source court documents, these cases identify incidents in which the nature of the initial poisoning was either not detected or misdiagnosed. In most cases, the initial causes of death were thought to be accidental or due to natural causes, but were determined later (through considerable legal and investigative effort) to be homicides where poison was the weapon of choice.

Case #1

In a small country town, a white male suddenly became extremely ill with what his family claimed was pneumonia. Upon admission to the local hospital, he received treatment of antibiotics and pain killers. Ten days after the onset of his symptoms, he succumbed and was declared to have died from his illness. Unbeknownst to authorities, the victim's wife was involved in an adulterous affair and wished to marry her lover. After her husband's death, she returned some highly toxic herbicide to a fruit grower who became suspicious and contacted the police. Upon further investigation, the police learned that the victim's wife had collected on a $55,000 insurance policy and was pressuring her paramour into marriage. The police had the husband's body exhumed and discovered the highly toxic chemical paraquat in his body. As a result of these findings and other evidence, the police arrested and charged the wife with the death of her husband. She was later convicted and sentenced to 5 years' imprisonment and treatment in a mental hospital.

Case #2

Officers were called to a residence at 3:30 a.m. to treat an 8-month-old baby who reportedly had stopped breathing. The boy was transported to the local hospital and died later that morning. It was presumed that the infant had suffered from sudden infant death syndrome (SIDS). An autopsy later revealed that the child had a blood ethanol level of 0.12 (120 mg/dl). Further investigation led the police to suspect that the father had given the child a toxic dose of peppermint schnapps. The father was arrested and charged with negligent homicide for the alcohol poisoning of his son.

Case #3

Police found a 33-year-old woman dead on her waterbed. The investigating officer noticed a black substance around her mouth and nose and, recalling similar evidence from a case 12 years earlier, suspected possible cyanide poisoning. During the autopsy, personnel detected the distinctive bitter-almond odor common to cyanide poisonings.[7] Laboratory tests confirmed the presence of cyanide in the victim's blood, but not in her stomach contents. Due to this finding, investigators thought that the victim somehow was forced to inhale hydrogen cyanide gas. They later discovered that her husband worked at an exterminating company where hydrogen cyanide was readily available. Combining this information with evidence of both marital and financial problems, the police later arrested the husband. Prosecutors have sought a first-degree murder conviction and a possible life sentence.

As to what can serve as a potential homicidal poison, an early, but accurate, definition can suffice: "What is there that is not a poison, all things are poison and nothing without poison. Solely the dose determines that a thing is not a poison."[6] Thus, any chemical substance has the potential of becoming the means of committing a poisoning homicide. Clearly, the prime candidate for the most effective weapon in homicidal poisonings is the chemical with the greatest lethality, the smallest dose, and the least likelihood of detection.

Geographic and Temporal Features

A total of 44 (88 percent) of the 50 states reported poisoning homicides for the decade of the 1990s. The seven states with the most reported cases, accounting for 178 (51.5 percent) of the total reported homicides, were California with 63 (18.2 percent), Washington with 34 (9.8 percent), Texas with 23 (6.6 percent), Pennsylvania with 22 (6.4 percent), and Arizona, Michigan, and New York with 12 (3.5 percent) each. Upon analyzing the 346 poisoning homicide reports by geographic region for the United States, the authors found that the Northeast had 52 (15 percent), the Midwest 56 (16 percent), the South 87 (25 percent), and the West 151 (44 percent). These findings were very similar to the analyses of the 1980s with the exception of an increase of 9 percent in reported cases from the western United States.

The fact that UCR received fewer SHR reports from one geographic area over another, however, does not necessarily mean lower poisoning homicide rates in any specific region.

> ***"...the prime candidate for the most effective weapon in homicidal poisonings is the chemical with the greatest lethality, the smallest dose, and the least likelihood of detection."***

Factors that could impact the number of reports received from a jurisdiction include legislation requiring autopsies or toxicology screens on all deaths of unknown cause, the sophistication of analytical toxicology laboratories in the area, or the workload of the local law enforcement or forensic pathology personnel.

Modus Operandi

The number of homicide reports per year for the decade varied from a high of 41 in 1995 to a low of 26 in 1999. The average number of poisoning homicide reports per year was 34.6. Yet, the authors found little year-to-year variation in the data reported.

The incidence of poisoning homicide reports by month for the decade varied from a high of 40 in December to a low of 16 in August. The average rate of poisoning homicide reports by month was 28.8.

The data collection format of the SHRs made it impossible to determine an exact motive in 220 (64 percent) of the crimes because of the generalized categories, such as "other, not specified," "other," or "unable to determine circumstances." This important information relating to motive likely will have to come from a more in-depth analysis of specific cases among local jurisdictions. Interestingly, only two (0.6 percent) SHRs reported the circumstance as related to a "lover's triangle," which appeared contrary to the general perception that poisons often are used in domestic situations to remove spouses or significant others.

Because of the large number of reports that fell into generalized unknown categories, the authors also could not determine the exact motive as it related to the relationship of victim to offender. Additionally,

Demographics of Homicidal Poisonings (1990–1999)

Attribute	Victim	Offender
Age	25-44	20-34[8]
Sex	Male/Female[9]	Male[10]
Race	White[11]	White[12]
Circumstances	Unknown[13]	Unknown
Relationship	63 percent outside family[14]	36 percent within family
Weapon	75 percent drug/narcotic	25 percent nondrug[15]
Unknown	20-30 percent higher for both than that of all homicides	

they could not ascertain how the poison was administered. However, a summary of findings concerning the demographics of homicidal poisonings depicts the consistency of patterns in these crimes and may provide an opportunity for investigators in developing leads that may reveal the methods used by these killers.

CONCLUSION

From this study, the authors concluded that the incidence of reported homicides due to poisoning comprised only a small portion of the SHR data for the decade. They wondered, though, if more of these types of homicides remained undetected because of the many holes in the investigative net through which the homicidal poisoner can slip. Also, many of the demographics of poisoning offenders were largely unknown, at least when compared with that of overall homicides during the decade. This may have indicated that homicide investigators had discovered a poisoned victim but could not identify the offender. An old and wise adage related to homicide detection states that "all deaths are homicides until facts prove otherwise." As evident from the cases identified at the outset of this research and the statistical analysis performed, perhaps this adage could prove more relevant to poisoning cases rephrased as "all deaths, with no visible signs of trauma, may be considered poisonings until facts prove otherwise."

The authors also felt that many other factors may be important to the identification of a poisoning homicide offender, such as the offender's socioeconomic status, IQ, level of education, professional training, personality (introversion/extroversion), ethnicity, prior criminal history, marital harmony, and psychological makeup. Unfortunately, SHRs do not contain this information; it can be generated only by in-depth research into actual circumstances surrounding homicidal-poisoning cases. Such analyses may assist law enforcement personnel in their investigations by arming them with a clearer picture of the poisoner. Finally, while this work has focused on individual incidents of homicidal-poisoning behavior, the importance of these patterns may be even more significant in the context of the 21st century. That is, the potential for toxic substances becoming a weapon of mass destruction may prove more of a substantial threat than in the past. In addition, the expanding elderly population may provide additional victims for those who wish to commit homicides that appear as deaths from natural causes. Understanding some of the attributes of homicidal

poisoners may enhance the ability of the law enforcement and forensic communities when they are called upon to assist in the prevention and investigation of homicides. ✦

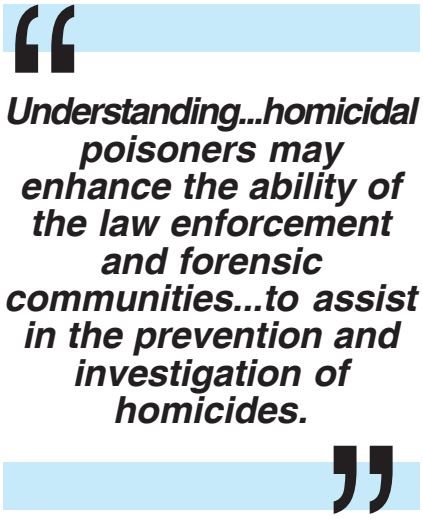
Endnotes

[1] J. Glaister, "Methods and Motives," in *The Power of Poison* (New York, NY: William Morrow and Company, 1954), 153-182.

[2] Some earlier attempts to identify characteristics of poisoners include those by J. Rowland who found that poisoners likely had an unfortunate married life, failed to make an impression on life, possibly were connected with the medical world, were vain, possessed a mind without sympathy or imagination, and likely were spoiled by their parents, see "The Mind of the Poisoner," in *Poisoners in the Dock* (London, UK: Arco Publications, 1960), 230-237. Alternatively, C. Wilson described poisoners as prone to daydreaming and fantasy; possessing an artistic temperament; and being weak-willed, cowardly, and avaricious, see "Poisoners," in *The Mammoth Book of Crime* (New York, NY: Graf Publishers, Inc., 1988), 476-484. While these depictions may have been anecdotally accurate when offered, the question remains of whether current law enforcement perceptions and medicolegal statements about poisoners' characteristics still are valid and reliable. For recent exceptions, see A.Westveer, J. Trestrail, and A. Pinizzotto "Homicidal Poisonings in the United States: An Analysis of the Uniform Crime Reports from 1980-1989," *American Journal of Forensic Medicine and Pathology* 17, no. 4 (1996): 282-288; and J. Trestrail, *Criminal Poisoning: Investigational Guide for Law Enforcement, Toxicologists, Forensic Scientists, and Attorneys* (Totowa, NJ: Humana Press, Inc., 2000).

[3] UCR data, believed to be the most reliable source of information concerning incidents that come to the attention of the police, form the basis for all analyses presented in this article. For additional information on UCR, see U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 2002* (Washington, DC, 2003).

[4] See A.Westveer, J. Trestrail, and A. Pinizzotto "Homicidal Poisonings in the United States: An Analysis of the Uniform Crime Reports from 1980-1989," *American Journal of Forensic Medicine and Pathology* 17, no. 4 (1996): 282-288 for all references in this article to data on homicidal poisonings occurring from 1980 through 1989.



[5] For the purposes of this study, in those reports where there were an unknown number of offenders, the authors assumed that at least one offender was involved. Therefore, they included all of these cases, even though the exact number of offenders remained unknown.

[6] The physician Paracelsus (1493-1541) made this observation in 1538.

[7] It is estimated that only about 50 percent of the human population can detect the odor of cyanide. Therefore, the possibility exists that the use of this poisonous substance often may go undetected.

[8] Age or sex unknown in approximately 20 percent of the cases.

[9] If victim was male, offender was no more frequently male or female; if victim was female, offender was more frequently male.

[10] More frequent than female, but 50 percent increase in female offending compared with analyses of 1980s.

[11] If victim was white, offender was more frequently male; if victim was black, offender was no more frequently male or female. Black male victims occurred two times more than black female victims; white or other race males occurred equally with white or other race females. Other race victims increased from 1 percent to 3.5 percent compared with the analyses of 1980s.

[12] Both white and black offenders were more frequently male.

[13] Circumstances were not informative in 64 percent of cases due to being reported as unknown/other/missing. Yet, three times more husbands as wives were reported as victims in lover's triangle circumstance, along with some acquaintance victims in this circumstance.

[14] Relationship reported to be 39 percent outside family in the analyses of the 1980s.

[15] Drug/narcotic type poisoning involving female offenders increased 33 percent compared with the analyses of the 1980s.

The authors thank the FBI UCR staff for providing SHR data relating to poisoning homicides. Additionally, they express appreciation to John Trestrail for his insights on earlier drafts and his contributions to earlier works in this area. Finally, they gratefully acknowledge those Behavioral Science Unit members who assisted at all stages of the process, including Intern Emily Noroski who reworked initial drafts and Special Agents Harry Kern and Sharon Smith who reviewed the final product.

Unidentified Homicide Victim

The Kansas City, Missouri, Police Department seeks information regarding the identity of a child homicide victim. The child's headless body was found by officers on April 28, 2001, and the severed head was found on May 1, 2001, in the same area. The child never was identified; the Kansas City community named the child Precious Doe.

Crime Scene

On April 28, 2001, along a dirt road in a wooded area at 59th and Kensington in Kansas City, Missouri, officers found the nude, headless body of a young African-American female lying in weeds along the edge of the road. Two searches of the area with cadaver dogs failed to turn up any related evidence. On May 1, 2001, the victim's severed head, wrapped in a trash bag, was found in the same wooded area.

Subsequent forensic examination determined the victim to be a child between 3 and 4 years of age, 42" to 44" in height, and between 35 and 40 pounds. She had a light, crescent-shaped birthmark on her front, upper left shoulder.

Alert to Law Enforcement

The Kansas City Police Department contacted the FBI's Violent Criminal Apprehension Program (ViCAP) and submitted a report about the child. The information was entered into the nationwide ViCAP database of murdered, missing, or unidentified found persons. Further, ViCAP conducted searches of its own and other databases for similar crimes. Based on photographs of the young child's head, the National Center for Missing and Exploited Children in Alexandria, Virginia, produced the first computer-generated depiction of how the child may have looked in life. Release of this picture garnered national attention and produced numerous leads, none of which revealed her identity. Other attempts by forensic experts who produced drawings and a bust constructed from the actual face and skull received media and news publicity but have not resulted in identification of the child.

Almost 1,000 leads have been logged in this case. A poster was released through Interpol to its over 180 member nations, and leads have been followed in Great Britain, Holland, and Jamaica. On July 15, 2003, the remains of Precious Doe were exhumed and the Forensic Anthropology and Computer Enhancement Services (FACES) laboratory reconstructed the child's skull and prepared a model of what the child's face may have looked like.

The Kansas City Police Department asks any agency having information concerning the identity of the child homicide victim to use the following contact information: 1) Kansas City Police Department at 800-399-8517; 2) Sergeant David Bernard, Kansas City Police Department, Homicide Unit, 1125 Locust, Kansas City, Missouri, 64106, at 816-234-5043 or via e-mail at *dbernard@kcpd.org*; 3) Crime Analyst Suzanne D. Stiltner, ViCAP, Quantico, Virginia, 22135, at 703-632-4173; or 4) Major Case Specialist Eric W. Witzig, ViCAP, Quantico, Virginia, 22135, at 703-632-4194 or via e-mail at *vicap@fbi.gov*. ✦

Khat
A Potential Concern for Law Enforcement

By M. Justin Crenshaw, M.S., and Tod Burke, Ph.D.

© Drug Enforcement Administration

The word *khat* (pronounced *cot*) may not evoke much response from most of American society, but it could herald a significant problem for law enforcement in the near future.[1] Khat is a plant that originates in eastern Africa and the southern Middle East; people of these regions know it well and, reportedly, for centuries have chewed its leaves for their narcotic properties. Users in these areas may spend up to half of their income on the drug.[2] Khat is known by other names throughout the world; people in eastern Africa most commonly call it miraa, but it also is referred to as chat, jat, oat, kat, African salad, and Abyssinian tea. Many countries consider it a legitimate (and profitable) export.

The United States considers khat dangerous and classifies it as a controlled substance. Undoubtedly, a passion for this drug in America's fast-paced society would present a crisis. Armed with an understanding of this natural narcotic, including its origins, chemical and medical concerns, and cultural status, law enforcement will be better equipped to combat it if it expands into the larger U.S. population.

Composition and Cultivation

The main psychoactive ingredients in khat are cathinone (chemically similar to amphetamine) and cathine. In addition, khat plants contain chemicals called alkaloids, which long have served as narcotics and hallucinogens.

DEA classifies cathinone as a Schedule I narcotic.[3] The amounts of cathinone that exist in khat and, thus, the drug's mind-altering effects may vary based on the area where it was harvested. For instance, the amount of cathinone in khat plants from Kenya may reach 14 percent, while levels in plants from Yemen may be as low as 3.3 percent.[4] Once khat leaves dry and the cathinone evaporates, only cathine remains, and the plant drops to a Schedule IV narcotic.[5]

Current interest in cathinone exists because recent discoveries confirm that illegal laboratories produce a chemical called methcathinone, a synthetic form of cathinone. Ephedrine, a compound found in over-the-counter cold medicines, and pseudoephedrine represent the main precursor chemicals. Methcathinone, which sells as a methamphetamine alternative, commonly is called cat and often mistaken for khat.[6]

The khat tree grows 3,000 to 6,000 feet above sea level and can reach a height of 20 feet. The leaves of the plant are reddish-brown while on the tree, but quickly become a leathery yellow-green once picked. Although people may use all of the stems and leaves, they appear to prefer the young shoots at the top of the plant because they find them softer and easier to chew than the older ones toward the bottom. While most leaves are harvested for chewing, some are deliberately dried and crushed into a powder form for additional

uses, such as smoking, brewing tea, or sprinkling over food. People harvest the leaves and stems of the plant on a continual basis throughout the year.

Khat leaves must be transported quickly to market because once they dry (within 48 hours), the cathinone evaporates, leaving only the milder cathine. When this happens, of course, users who crave the more potent effects find the khat of little worth. To help avoid this, harvesters package the leaves and stems in plastic bags or wrap them in banana leaves to preserve their moisture and may sprinkle them with water during transport to keep them moist. Frozen or refrigerated khat may retain cathinone longer.

Examples of Khat Use Effects

Short Term	Long Term
• hallucinations	• anxiety
• bizarre thoughts	• confusion
• schizophrenia	• dysphoria
• increased blood pressure	• aggressive behavior
• rapid breathing	• insomnia
• lethargy	• high blood pressure
• mild depression	• weight loss due to decreased appetite
• nightmares	• increased heart rate
• heightened alertness	• stomach irritation
• loss of appetite	• dehydration
• difficulty sleeping	• hallucinations
• inflated ego	• paranoia
• agitation	• decreased absorption of important nutrients
• aggressive behavior	

Effects and Concerns

Cathinone stimulates an excessive production of dopamine, which controls feelings of pleasure and happiness, in the human brain. This can lead to a variety of short-term effects, including hallucinations, bizarre thoughts, schizophrenia, high blood pressure, rapid breathing, lethargy, mild depression, nightmares, and heightened alertness.[7] Other possible examples are a suppressed appetite for food and sex[8] and an increased ability to stay awake for long periods of time.[9] The drug also can make users more aggressive, inflate their egos, and cause them to be irrational and irritated, which may lead to unusual behavior, such as increased arguments, reckless actions, and violence.[10] Additional, less dramatic examples can include dry mouth, flushing, and an urge to urinate.[11] The effects of chewing khat, which can vary by user, may not show up for 3 or more hours, but then may last for several hours.

The long-term effects for chronic users may include anxiety, confusion, dysphoria, aggressive or agitated behavior, insomnia, high blood pressure, loss of weight due to a lack of appetite, increased heart rate and stomach irritation, and dehydration. Visual hallucinations and paranoia represent additional examples.[12] The chemicals in khat also may block the body's absorption of iron and other necessary minerals, causing potential health consequences.[13]

Advocates of khat argue that the drug eases symptoms of diabetes, asthma, and intestinal disorders. Furthermore, users claim that they are more adept at problem solving and social communication and have increased spirits and sharpened thinking.[14]

Many khat users have adapted strategies to impede the ill effects of the drug. Most veteran consumers can estimate the amount they can chew to avoid the negative effects of sleep deprivation and loss of appetite. Neophytes typically do not

start chewing large amounts of khat; therefore, they build up a tolerance for the drug slowly. Some users even have supplemented alcohol or other depressants to counteract the effect that khat has on sleep. Due to the small quantity often consumed, overdose is unlikely.

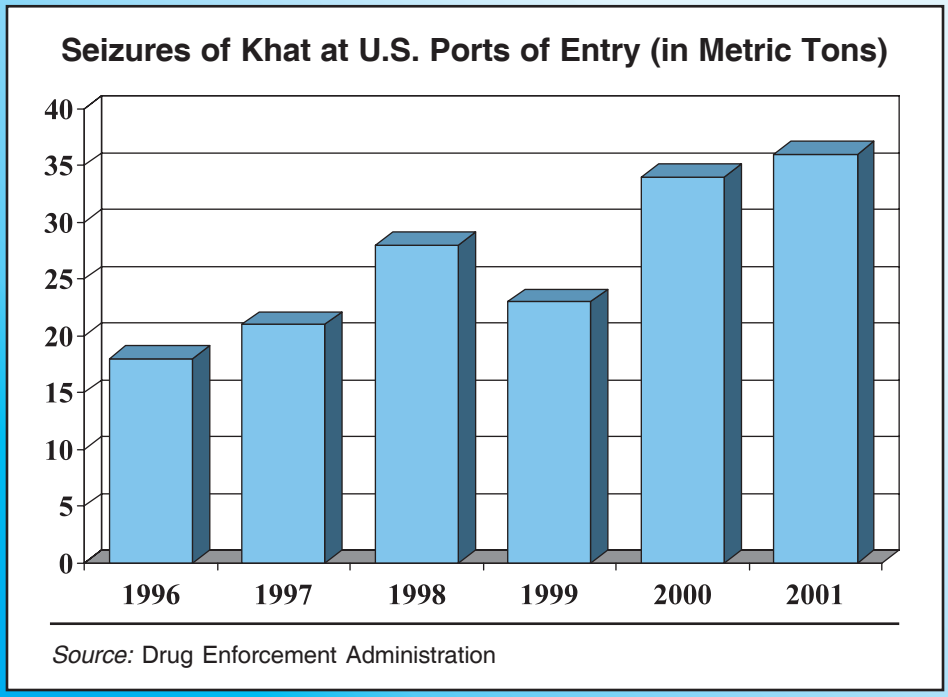
While khat does have a strong psychological addiction for most users, the withdrawal symptoms are relatively minor when compared with other illegal drugs, such as heroin and cocaine. Withdrawal signs may include laziness, depression, nightmares, and slight tremors.[15] The duration of these symptoms may differ by user. Furthermore, the severity of the depression can vary and may lead to agitation or sleeping difficulties.

The rise of khat use in the United States seems to coincide with the increase in the number of immigrants arriving from eastern Africa and the Arabian Peninsula.[16] In 2000, the U.S Customs Service seized 70,008 pounds of khat, an increase of 21,070 pounds from the previous year. In Columbus, Ohio, which has the second largest Somali population in the United States, police seized 860 pounds in 2002, an increase over the previous 2 years' seizures of 633 pounds and 8.5 pounds, respectively.[17] New York City, Detroit, Minneapolis, Seattle, and San Diego may see an increase in khat arrests due to growing eastern African communities.[18]

Many immigrants are unaware that khat is illegal in the United States. As a result, they often use the drug in public and later face arrest. Some cities even have seen khat advertised and sold openly in grocery stores and restaurants. Many sellers, in an attempt to keep sales of the drug quiet, only deal with users of eastern African descent and turn away everyone else.

On the street, khat currently sells for $28 to $50 a bundle (100 to 200g) and $300 to $440 a kilogram;[19] these prices currently compare with those of some other drugs, such as ecstasy and oxycodone, but are considerably lower than prices of other narcotics, such as marijuana, cocaine, and heroin. Khat's low cost makes it appealing to many drug users, especially youths.

Most of the khat enters the United States from eastern Africa via overnight shipping, although there have been some instances of cultivation in the United States. A majority of khat arrives through



commercial shipping services, although some passengers aboard airlines will smuggle it in their luggage or place it with other cargo and mark it as "vegetables."

Recommendations

With khat seizures nearly doubling annually,[20] law enforcement personnel must become more cognizant of this drug. The following recommendations may assist officers to better combat its manufacturing, distribution, and use:

- Law enforcement officers must receive training in academies and in-service seminars to recognize khat. Examples of the actual drug can aid in identification. Drug detection canines also should be trained to detect khat.
- To identify users on the street, officers must have an understanding of khat symptoms and methods of use.
- Because the trafficking and smuggling practices of khat are not unlike those of other illegal narcotics coming into the United States, current drug detection methods can prove successful.
- Law enforcement agencies must use international communication and cooperation to track the progression of khat and possible dealers migrating to the United States.
- Law enforcement must be aware of any khat cultivation in the United States. The plant grows in higher altitudes with wet climates (or in greenhouses or indoors where the climate can be duplicated); in this regard, officers must monitor, as appropriate, any areas in the United States that may provide khat with the means to grow.
- Because khat has previously existed only in underdeveloped countries, few scientific studies exist. Reliable data could help law enforcement agencies understand the potential long-term effects of khat.
- To target incidents of khat use, law enforcement and medical institutions, including hospitals, research facilities, and health departments, must make a coordinated effort.

> "Armed with an understanding of this natural narcotic...law enforcement will be better equipped to combat it...."

Conclusion

With khat numbers growing in the United States, law enforcement must fight this drug proactively. To evaluate the potential for khat use, Americans only need to consider the progression of other drugs, such as oxycodone and ecstasy, which started with a small community of users and now continue to spread across the country. While khat has not yet become widespread, it soon may be a legitimate problem.

If law enforcement personnel can become educated about khat, perhaps this knowledge will prove valuable when combating this drug in the United States. The key to early success in this effort is recognition. ✦

Endnotes

[1] The authors based this article on their research and knowledge of narcotics.

[2] Teri Randall, "Khat Abuse Fuels Somali Conflict, Drains Economy," *Journal of the American Medical Association* 269 (January 6, 1993): 12-14.

[3] A Schedule I narcotic presents a high potential for abuse and dependence. Examples include LSD, heroin, and cocaine. For additional information, see *http://www.usdoj.gov/dea/agency/csa.htm*.

[4] Mwingirwa Kithure, "The Dark Side of Chewing Miraa (Khat)"; retrieved on January 23, 2004, from *http://www.africaonline.com/site/Articles/1,10,2654.jsp*.

[5] A Schedule IV narcotic presents a lower potential for abuse and dependence than some other controlled substances. Examples include benzodiazepines, darvon, and phenobarbital. For additional information, see *http://www.usdoj.gov/dea/agency/csa.htm*.

[6] U.S. Department of Justice, Drug Enforcement Administration, ìKhat,î *Drug Intelligence Brief*, June 2002; retrieved on January 23, 2004, from *http://www.usdoj.gov/dea/pubs/intel/02032/02032.html*.

[7] Supra note 4.

[8] Jonathan Stevenson, ìKrazy Khat: Somaliaís Deadly Drug War,î *The New Republic* 207 (November 23, 1992): 17-19.

[9] Supra note 4.

[10] Supra notes 2 and 8.

[11] Richard B. Seymour, ìKhat Has U.S. Presence,î *Psychopharmacology Update* 10 (June 1999): 5.

[12] Ibid.; and Mohamed Al-Kamel, ìKhat Plantî; retrieved on January 24, 2004, from *http://www.geocities.com/forceps1974/khat.html*.

[13] Supra note 12 (Al-Kamel).

[14] Supra note 12 (Al-Kamel).

[15] Supra note 4.

[16] ìKhat Use Increases in Some U.S. Cities,î *Alcoholism and Drug Abuse Weekly* 14 (September 16, 2002): 7-9.

[17] Ibid.

[18] Frank Bures, ìFrom Civil War to the Drug War: Immigrants Are Risking Prison for a Taste of Home,î *Mother Jones* 26 (November/December 2001): 23-24.

[19] Supra notes 6 and 12 (Al-Kamel).

[20] T.Trent Gegax, ìMeet the Khat Heads,î *Newsweek*, September 30, 2002, 35.

Lt. Crenshaw serves in the U.S. Air Force.
Dr. Burke, a former police officer, is a professor of criminal justice at Radford University in Radford, Virginia.

The Bulletin Honors

Christos G. Rouses Memorial

The Lowell, Massachusetts, Police Department presents the Christos G. Rouses Memorial. This monument, dedicated in 1980, is named for Officer Rouses, who was shot to death by an armed robber while responding to a silent alarm at a local pharmacy. The memorial, located in the plaza directly in front of Lowell Police Department Headquarters, depicts an officer with his hand on the shoulder of a young child and features the names of Officer Rouses and other fallen Lowell officers. The memorial sits, surrounded by landscaping, in the center of an unused fountain.✦

Nominations for ***The Bulletin Honors*** should include at least one color 5x7 or 8x10 photograph (slides also are accepted) of a law enforcement memorial along with a short description (maximum of 200 words). Contributors should send submissions to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

Book Review

Police Suicide: Tactics for Prevention
by Dell P. Hackett and John M. Violanti, Charles C. Thomas Publisher, Springfield, Illinois, 2003.

The information, issues, and concepts presented in *Police Suicide: Tactics for Prevention* deserve serious consideration in the advancement of law enforcement suicide prevention and reduction. The book was researched and written by leading experts in their fields of law enforcement, pathology, psychiatry, and other behavioral sciences, along with consultants connected to law enforcement.

Studies have documented that within a specific time frame, some law enforcement agencies have had more officer deaths from suicide than from line-of-duty homicides. In some situations, this rate is higher than in other employment areas, as well as the general population of the United States. The authors of this book addressed in-depth the law enforcement teaching and working culture, ranging from entry into the academy to executive-level administration of the department. They examined the supervisor's role in detection and prevention of suicide and organizational denial of the suicide dilemma, as well as concerns of family members and survivors of the victim officer, including the who, what, when, where, how, and why of confidential help, or lack thereof, from professionals.

The purpose of this well-researched book is to get the reader much closer to the detection of law enforcement personnel in low- to high-risk crisis postures who may commit self-harm coupled with sound strategies and tactics for prevention for all departments. Three strong points emerge from the book besides its overall comprehensiveness. First, an outstanding modified flowchart depicts a model for suicide prevention with initial and ending protocol actions involving the officer's family. Second, results from a National Police Suicide Foundation's officer survey revealed 10 reasons why officers commit suicide. Within this point, the authors also identify a startling potential phenomena coined "suicide by suspect." This involves officers deliberately failing to initiate a defensive action against a life-threatening situation as an honorable way out of their depressed state of mind. The third point entails information on a training module, Gatekeeper, that focuses on officers in a crisis situation using the technique of questioning, persuading, and referring as preventive measures to suicide incidents.

Police Suicide: Tactics for Prevention is a must read for all law enforcement personnel, ranging from the basic recruit in the academy to the top echelons of command, including staff supervisors, managers, administrators, and commissioners. It is a critical book for the policy and procedures writers, in-service training and assessment center representatives, psychological testing personnel, correctional members, chaplains, and all first responders in the community.

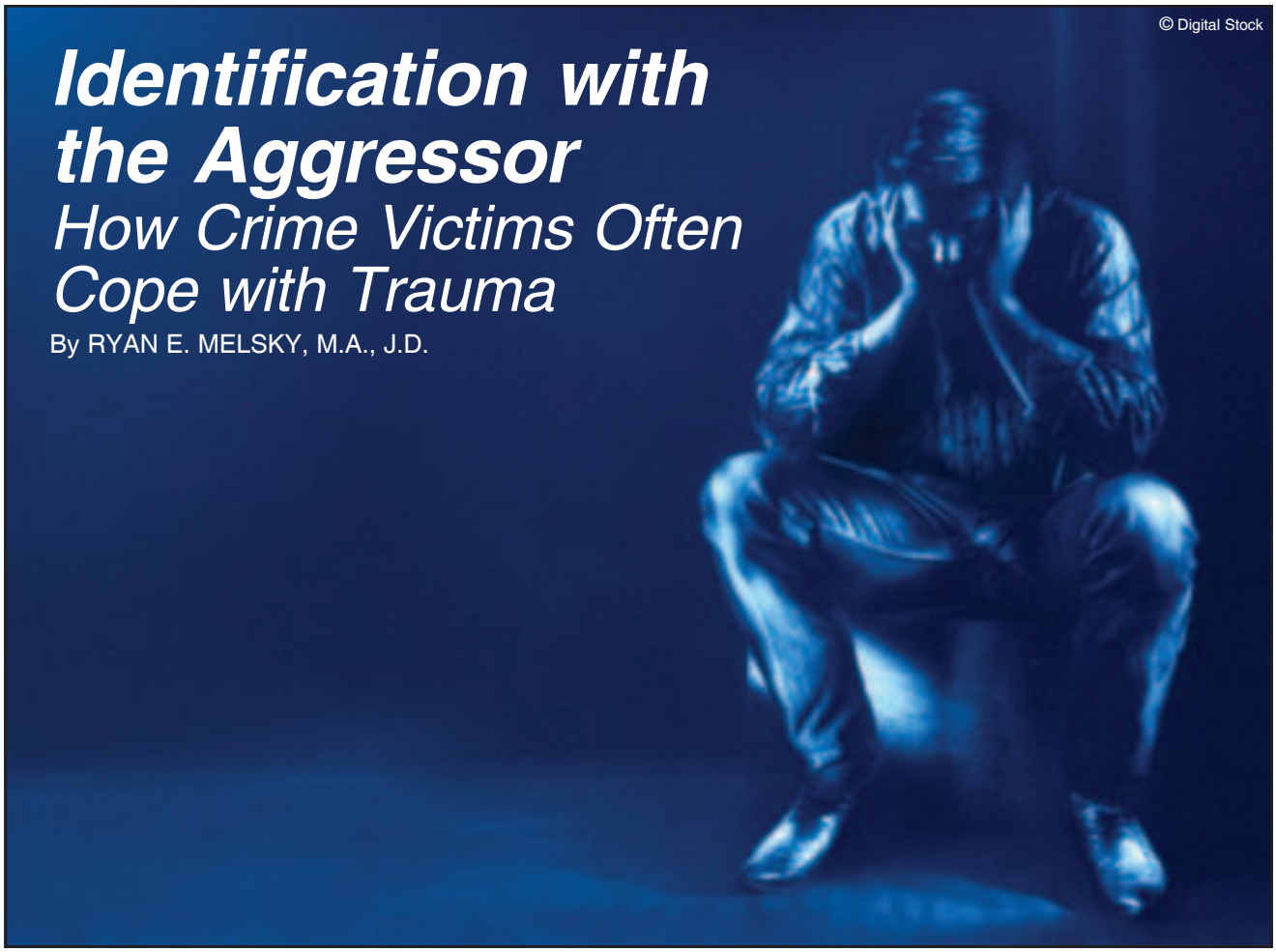
This book is an exemplary research effort in the field of law enforcement designed to reverse the thinking that may lead to life-ending decisions. Information in this book is essential to the advancement of law enforcement suicide prevention. It surfaces the hidden psychological dangers common to law enforcement officers involving job stress and their roles in society.

Reviewed by
Larry R. Moore
Certified Emergency Manager
International Association
of Emergency Managers
Knoxville, Tennessee

Identification with the Aggressor

How Crime Victims Often Cope with Trauma

By RYAN E. MELSKY, M.A., J.D.



He was too weak to live down the shock of the killing. That's what he suspected must be troubling him. A real man could have come out of it in a short time and resumed a normal life.

After all, he had done all he could that night. He had nothing to feel bad about. Nothing at all. It was easy for some of them to criticize him. To have their training classes and criticize him and Ian and say what should have been done.

Then he was crying. It was the first time he had cried like this. Karl Hettinger sat hunched in his chair and his wet cheeks glistened silver from the light of the television, and his shoulders began heaving and great shuddering sobs ripped out. He lost control. He wept and the shame of it made the tears gush hot. There was nothing left, not a shred of self-respect.

One day while walking through a department store with O'Lear looking for thieves, he saw a masonry drill he needed. He started to buy it but instead just put it in his pocket. It was as baffling and inexplicable as the weeping.

—*Joseph Wambaugh,* The Onion Field[1]

The notion that a traumatic experience produces an extreme reaction is an ancient one. When confronted with serious, often life-threatening situations, crime victims instinctively resort to various cognitive mechanisms that allow them to cope with their sudden victimization.[2] Many people are familiar with the more common of these coping strategies, or "defense mechanisms" as psychologists call them, which include regression, denial, and repression.

In addition to these, crime victims also can cope with life-threatening trauma by "identifying" with their aggressor, just as Karl Hettinger—an officer with the Los Angeles, California, Police Department—did after witnessing two thieves murder his partner. Identifying with the aggressor has become a well-documented, bona fide defense mechanism.[3] By understanding why people often identify with their aggressors and how this affects future behavior, the law enforcement community can better comprehend the vicissitudes of victimization and, as a result, provide more effective victim services, thereby facilitating a healthy recovery for crime victims.

> ***"Identifying with the aggressor has become a well-documented, bona fide defense mechanism."***

Sergeant Melsky serves with the Clinton Township, New Jersey, Police Department.

Identification Process

The process of identification occurs when one person forms an emotional bond with another. Introjection then takes place, whereby identifying parties modify their own personalities and physical characteristics in an attempt to imitate the person they are identifying with.[4] Typically motivated by unconscious forces, identifying parties may not recognize the effects that identification has on their actions.[5]

Examples of identification happen every day, especially in children and teenagers. Little boys wear toy guns and badges to emulate their police officer fathers. Young girls don their mothers' jewelry and makeup to look like them. Teenagers often dress in the same type of clothes and speak in the same manner to identify with their social groups.

Identification with Aggressors

By identifying with their aggressors, assuming their attributes, and imitating their aggression, crime victims cognitively transform themselves from the people threatened into those making the threat.[6] This mental transformation allows the victim to achieve some feeling of strength in an otherwise humiliating situation. In short, when an aggressor sticks a gun in a person's face or kidnaps someone at knifepoint, often the victim's only chance for survival is to join the aggressor emotionally, as well as physically. Anything short of total cooperation likely will result in death.

In addition to its cognitive utility, identification with the aggressor serves an important, external function. With this defense mechanism, victims make an intuitive prediction regarding their aggressors' reactions to the bond.[7] Instinctively, victims know that if they appease their aggressors, their chances of survival increase. Aggressors assured that they are "right" or whose controlling ideations are bolstered by the companionship of submissive victims will less likely dispose of this "positive" reinforcement. In this way, the victim's identification has somewhat of a controlling effect on the aggressor. Intuitively, the victim has outsmarted the aggressor.

From a causal perspective, some theorize that identification with the aggressor results from

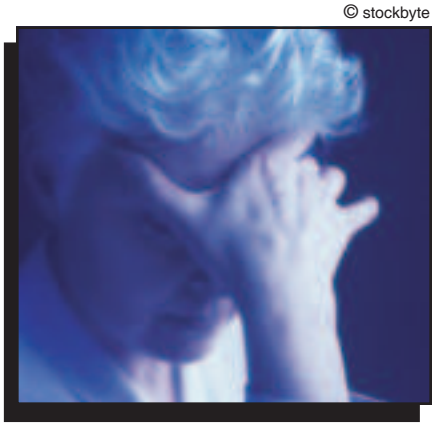
the victim's appreciation for being allowed to live. When abductors threaten to kill victims, they establish intense fear in their captives. However, when abductors change their minds and begin to show compassion, their victims feel gratitude toward them.[8]

Well-Known Examples

Karl Hettinger's troubling postvictimization behavior represents one well-known illustration of how crime victims identify with their aggressors. History is full of examples of how otherwise law-abiding victims bonded with their aggressors and subsequently went on to participate in, or cooperate with, criminal conduct.

When Adolf Hitler and other leaders of the Nazi regime implemented policies calling for mass genocide during the 1930s and 1940s, they recruited unlikely participants to carry out their murderous plans in the concentration camps. As a result, many of Germany's doctors were transformed from humanistic healers to cold-blooded torturers and killers. Under the threat of their violent leaders, whether actual or implied, these educated and accomplished concentration camp doctors came to justify their crude and pointless human experiments as being necessary under the current conditions, just as Nazi policies proclaimed.[9]

In 1973, a bungled bank robbery in Stockholm, Sweden, resulted in a prolonged hostage situation. As time wore on, the hostages became impatient and frustrated. As a result, they identified with their captors and eventually came to assist them against the police. This case prompted the term *Stockholm syndrome*.[10]



In what probably represents the most well-known case of identification with the aggressor, Patty Hearst was kidnapped, kept blindfolded and nude in a closet for several months, sexually assaulted, and deprived of food and sleep. Eventually, her abductors freed her from her confines and began to show her compassion.[11] When they did, she joined their bank-robbing escapades. Accounts of Hearst committing bank robberies seemed to portray a young woman who enjoyed her crimes as she acted under her own free will.

Many wonder why people caught up in such situations as these did not attempt to flee their captors. This mentality reflects a pervasive lack of knowledge regarding the subjective experience of crime victims. This insensibility, in turn, serves to revictimize the victim. Members of the law enforcement community, as well as society as a whole, must realize that the experience of being a crime victim creates a complex, long-lasting effect on the person's cognitive processes. Moreover, these effects are not easily understood.

Long-Term Effects and Future Considerations

In its mildest form, identification with the aggressor is a healthy defense mechanism. It allows people to adjust to threatening situations. For example, a little girl afraid to walk down the dark hallway of her house for fear of meeting a ghost may solve the problem by "booing" her way along the corridor.[12]

On the opposite end of the spectrum, identification with the aggressor may lead to antisocial or "psychopathic" behavior. Although especially true with continuous victimization over a long period of time beginning in early childhood,[13] a single

life-threatening experience may be enough. Such was the case with Karl Hettinger. Obviously, identifying with an aggressor during victimization creates long-term psychological and personality changes likely to last well after the aggressor has relinquished control. Sadly, many crime victims, despite treatment by competent professionals, remain psychologically disabled.[14]

Coupled with identification with the aggressor, a traumatic experience also may lead to post-traumatic stress disorder (PTSD). In turn, the victim may experience amnesia, depression, or suicidal tendencies, all of which are by-products of PTSD. Overall, the traumatic threat imposed on an unwilling victim by an aggressor can produce multiple cognitive and behavioral abnormalities for the rest of that person's life.[15]

This does not bode well for law enforcement officers, prosecutors, or therapists working with crime victims who have identified with their aggressors. In situations where antisocial behavior has resulted, the intrapsychic identification between the victim and the aggressor can be so intense that the victim actually will project the aggression onto those trying to help.[16] This results in an angry, difficult victim who resists change.

However, this does not mean that no hope exists. Rather, just as no one can force a physical wound to heal quickly, no one can force a psychological wound to heal either. In both cases, a person has to flow with the healing process, not fight it.[17]

What often is overlooked is that the healing process begins with the first law enforcement officer to make contact with the victim. Soon after, the victim likely will encounter other officers, detectives, paramedics, nurses, physicians, family members, prosecutors, judges, jurors, and therapists, to name a few. By not judging the victim by how *they* think that *they* would have acted in the situation, these professionals can resist the natural, often subconscious, tendency to blame the victim.

> ***"No one should scrutinize or judge the subjective, complex reactions of victims of violent crime...."***

Conclusion

The process of identifying with their aggressors is a real, instinctive phenomenon that crime victims often experience. No one should scrutinize or judge the subjective, complex reactions of victims of violent crime because history has shown that this defense mechanism has played a role in saving the lives of countless victims.

Instead, people should come to accept what they already know—a traumatic experience produces an extreme response. Understanding this, law enforcement officers and others coming into contact with victims of violent crime can help these individuals begin the long road to healing, as opposed to exacerbating the problem by revictimizing them. A victim's seemingly odd reaction to the trauma directly results from the fact that the person had no choice but to adopt this form of behavior. Keeping this foremost in mind will serve the public and, most important, crime victims well. ✦

Endnotes

[1] Joseph Wambaugh, *The Onion Field* (New York, NY: Dell Publishing, 1973), 347.

[2] Michael J. Scott and Stephen G. Stradling, *Counseling for Post-Traumatic Stress Disorder* (Thousand Oaks, CA: Sage Publications, 1992).

[3] Anna Freud, *The Ego and the Mechanisms of Defense*, vol. 2 (Madison, CT: International Universities Press, Inc., 1966).

[4] Nandor Fodor and Frank Gaynor, eds., *Freud: A Dictionary of Psychoanalysis* (Greenwich, CT: Fawcett Publications, 1958).

[5] Robert B. Ewen, *An Introduction to Theories of Personality*, 3d ed. (Mahwah, NJ: Lawrence Erlbaum Associates, Inc., 1988), 37.

[6] Supra note 3, 113.

[7] For additional information on the intuitive ability to predict violence, see Gavin De Becker, *The Gift of Fear: Survival Signals That Protect Us from Violence* (New York, NY: Little, Brown and Company, 1997).

[8] Vincent J. Schodolski and V. Dion Haynes, "Captive Girl's Actions Hint at Brainwashing," *Easton (PA) The Express-Times*, March 16, 2003.

[9] Robert Jay Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York, NY: Basic Books, 1986).

[10] John Douglas and Mark Olshaker, *Mind Hunter: Inside the FBI's Elite Serial Crime Unit* (New York, NY: Pocket Star Books, 1995), 82.

[11] Supra note 8, sec. A, p. 4.

[12] Christopher F. Monte, *Beneath the Mask: An Introduction to Theories of Personality*, 5th ed. (Fort Worth, TX: Harcourt Brace, 1995), 201.

[13] J. Reid Meloy, *The Psychopathic Mind: Origins, Dynamics, and Treatment* (Northvale, NJ: Jason Aronson, 1988).

[14] Shelley Neiderbach, *Invisible Wounds: Crime Victims Speak* (Binghamton, NY: Harrington Park Press, 1986).

[15] Supra note 2.

[16] Supra note 13, 52-53.

[17] Supra note 2.

Snapshot

Sea Hunt

The New Hanover County, North Carolina, Sheriff's Office received a call that a male had shot at and kidnapped his estranged girlfriend at gunpoint, forcing his way into her truck on a rural road. Shortly after receiving the call, officers located an abandoned vehicle that had been operated by the subject along with a firearm. Investigation revealed the identities of the victim and the subject; cellular phone calls to family members by both the victim and the subject verified investigative results. A negotiator with the sheriff's office emergency response team contacted the victim by telephone and, after several hours, determined the location of the two individuals.

On learning the location, both the negotiator and tactical elements of the emergency response team moved into the area. The subject, now driving the truck, attempted to flee but was blocked, so he turned to drive toward the intra-coastal waterway. The victim jumped from the truck, and the subject drove directly into the waterway.

The photo depicts members of the sheriff's office emergency response team deployed on the bow of a U.S. Coast Guard vessel approaching the subject who was partially concealed on the floor of the flooded truck. The subject was removed without incident after approximately 30 minutes; he suffered exposure to the 39-degree water. ✦

Bulletin Reports

Collaboration

The National Institute of Justice (NIJ) presents *Fighting Urban Crime: The Evolution of Federal-Local Collaboration*. Although rare before the mid-1980s, collaboration between federal and local law enforcement has grown rapidly as local police and prosecutors have worked closely with federal authorities to address increased levels of drug trafficking and violent crime. This report examines the rise of federal-local collaboration; the various types of relationships, such as task forces and grant-funded programs; and the advantages collaboration offers both local and federal authorities. These partnerships have been characterized by restraint, careful coordination, and shared operational leadership. Researchers found that collaboration has become institutionalized in many U.S. cities and likely will expand in the future. This report is available electronically at *http://www.ncjrs.org/pdffiles1/nij/197040.pdf* or by contacting the National Criminal Justice Reference Service at 800-851-3420.

Reference and Statistics

Indicators of School Crime and Safety: 2003, a joint effort by the Bureau of Justice Statistics and the National Center for Education Statistics, presents up-to-date, detailed data on crime at school (including crime in school and on the way to and from school) from the perspectives of students, teachers, principals, and the general population. Information was gathered from an array of sources, including the National Crime Victimization Survey (1992 to 2001), School Crime Supplement to the National Crime Victimization Survey (1995, 1999, and 2001), Youth Risk Behavior Survey (1993, 1995, 1997, 1999, and 2001), School Survey on Crime and Safety (2000), and School and Staffing Survey (1993 to 1994 and 1999 to 2000). This report is available electronically at *http://nces.ed.gov/pubs2004/2004004.pdf*.

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 201, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

U.S. Land Border Search Authority

By M. Wesley Clark, J.D., LL.M.

The need to safeguard U.S. borders has drawn more attention recently than ever before. The law traditionally has recognized that significant public safety interests are at stake when it comes to safeguarding America's borders. This has translated into a unique body of law that permits the government to exercise broad search authority at the border to safeguard the public. This article discusses the contours of land border search law, including a discussion of the role the actual site of the search plays, whether the site is at the actual border, at the functional equivalent of the border, at the extended border, or during the course of roving border patrols.

ACTUAL BORDER

The state of the law with respect to suspicionless searches conducted at actual, or "true," U.S. borders is the most straightforward and most easily understood. Such searches have been described as either exceptions to the Fourth Amendment's warrant and probable cause requirements (leaving them subject only to the amendment's reasonableness standard) or as a species of search wholly outside the Fourth Amendment.[1]

A true border search can be made without probable cause, without a warrant, and, indeed, without any articulable suspicion at all.[2] The only limitation on such a search is the Fourth Amendment stricture that it be conducted reasonably. Note that the reasonableness calculus is different at the border (i.e., looser) than it is inland.[3] Of course, the experience and training of law enforcement personnel must be the lens through which all of the facts

giving rise to concern on the part of the officer or agent at the border are viewed.[4] The law has developed a sliding scale with regard to border searches—as the degree of intrusiveness increases, so does the requirement for indicia of suspicion.

Routine Border

When crossing the border into the United States, a traveler's luggage, conveyance, outer clothing, purse, wallet, and pockets are subject to suspicionless (i.e., routine) inspection.[5] When inspecting luggage, it is permissible as part of a routine search to scratch the exterior to determine if the luggage shell vibrates (lack of vibration would be abnormal), to flex the luggage exterior (lack of flex would be abnormal), and to heft the luggage to see whether it is equally weighted (unexplained weight might suggest a hidden compartment containing contraband).[6]

Pat Downs and Exposures

Pat downs and requests, for example, to raise a skirt to reveal an undergarment may be considered to fall–depending upon the circuit–somewhere between the suspicionless border search[7] and such nonroutine border examinations as strip and body cavity searches.[8] Therefore, these may require some level of suspicion, albeit minimal.

> ***"...significant public safety interests are at stake when it comes to safeguarding America's borders."***

Mr. Clark is a senior attorney in the Domestic Criminal Law Section, Office of Chief Counsel, DEA.

Nonroutine Border

Drilling/Destructive/ Disruptive

Invasive measures designed to reveal the nature of the contents of a container, such as a suitcase or steel drum used for shipping materials, require some level of justification to comply with the Fourth Amendment. For example, drilling into the bottom of a traveler's bag because it had an unusual bottom is not a routine search and, therefore, requires reasonable suspicion.[9] Similarly, once reasonable suspicion arose, drilling into a vessel to reveal cocaine hidden in a secret compartment was a proper reasonable means of effectuating a border search.[10] Drilling into a metal cylinder arriving at an international airport in the United States, not a routine search, must be based upon reasonable suspicion.[11] Inserting a long, thin metal probe in the drain valve of an electrical transformer awaiting customs clearance has been held proper because the search was based upon reasonable suspicion.[12] In summary, at the border, reasonable suspicion justifies a full-scale search that employs reasonable means.[13]

However, a nondestructive search taking only 1 to 2 hours at the border that involves only dismantling and reassembly, such as the removal, inspection, and reattachment of a vehicle gas tank (a reversible procedure that does not threaten vehicle safety or operation), requires no suspicion. In *United States v. Flores-Montano*,[14] an inspector tapped a station wagon gas tank, "noted that the tank sounded solid," and had a mechanic on contract with the U.S. Customs Service remove the tank.

Conducting a search involving neither serious damage or destruction, the inspector then "hammered off bondo (a putty-like hardening substance used to seal openings) from the top of the gas tank[,]... opened an access plate underneath the bondo and found 37 kilograms of marijuana bricks."[15] The Supreme Court ruled that under these circumstances, no level of suspicion is needed to justify the search inasmuch as it and others similarly conducted at the border are inherently "reasonable simply by virtue of the fact that they occur at the border."[16] Unfortunately, the *Flores-Montano* decision deliberately left unaddressed whether more invasive or lengthier searches, such as potentially destructive drilling, also can be conducted without any suspicion whatsoever.[17]

Similar to drilling for purposes of detecting the contents of a container, the relatively low reasonable suspicion standard is the level of proof required for involuntary x-rays,[18] except, perhaps, in the Ninth Circuit.[19] Indeed, it even can be argued that x-rays, particularly at airports, are routine.[20]

Strip

When a search more invasive than a routine inspection is conducted at the border, additional requirements are imposed. The degree of invasiveness visited upon the detainee must be weighed.[21] A strip search, for example, requires "'reasonable' or 'real' suspicion, directed specifically to [the] person[.]"[22] Note, however, that the continuing viability of the real (as opposed to reasonable) suspicion and other tests (discussed below)[23] developed by the Ninth Circuit are in serious doubt given the 1985 Supreme Court decision in *United States v. Montoya de Hernandez,*[24] which "rejected the Ninth Circuit's view that there exists a 'clear indication' standard, intermediate between 'reasonable suspicion' and 'probable cause,' applicable when a seizure of a traveler persists beyond a routine border search."[25]

> ***"The degree of invasiveness visited upon the detainee must be weighed."***

Body cavity searches are the most intrusive and personal types of searches. Accordingly, a higher standard sometimes is imposed on the government to conduct such searches, whether they are conducted visually or by way of a physical examination. A visual examination of body cavities generally needs no more than reasonable suspicion,[26] although more is required in the Ninth Circuit—a clear indication or plain suggestion.[27] A physical body cavity inspection at the border also must be based upon reasonable suspicion[28] or, within the Ninth and Fifth Circuits, upon a clear indication that contraband is being hidden in a body cavity.[29]

Detention at the Border

Detaining someone at the border for a period longer than that necessary for a routine inspection is justified if based on reasonable suspicion that the would-be entrant, for example, is "smuggling contraband in her alimentary canal."[30] Once the decision is made to detain someone, the next issue becomes the length of time the person may be detained. There is no "bright-line" solution as each case is judged by its unique set of facts, and a determination whether continued detention is reasonable is reached in light of all of those facts.[31] Courts recognize that the time for which a suspect is held often is lengthened by the suspect's own behavior, which, in balloon-swallowing cases, can involve refusal to eat, drink, excrete, submit to x-rays, or take laxatives.[32] Many cases begin with detentions that ripen into arrests. When the entire restraint period is considered (periods of detention plus

arrest), care must be taken to present the facts to a magistrate judge in a timely fashion. Failing to do so may result in motions for sanctions against the government. In one reported decision, a balloon-swallowing defendant argued that his detention actually had ripened into an arrest, that consequently he had not been provided "with the procedural protections required for warrantless arrests," and, therefore, his incriminating statements made after the "arrest" should be suppressed.[33] Although the appellate panel had no trouble dismissing the defendant's argument,[34] it established a rule applicable in the Fifth Circuit that when balloon swallowers are detained, the government "must seek a judicial determination, within a reasonable period, that reasonable suspicion exists to support the detention." This can be done, the court added, by making an ex parte presentation to a magistrate judge. If this is not done within 48 hours, the judges warned that the "burden" shifts "to the government to demonstrate a bona fide emergency or extraordinary circumstance justifying the lengthier delay."[35]

Mail

All mail arriving from overseas certainly may be opened without a warrant at the postal facility in the United States where it first arrives if there is reasonable cause to suspect its contents are being unlawfully introduced into the country.[36] Indeed, the Fourth Amendment permits the inspection of items crossing the border without any suspicion.[37] The area of the law with regard to mail crossing the border has been overlaid, however, with statutory and regulatory provisions, which seemingly provide additional

protection to sealed letter class mail. In such cases, "*reasonable cause* to suspect the presence of...contraband"[38] must be established. This standard is not difficult to meet. For example, little more than the recognition that the letter class mail originated from a drug source country establishes reasonable cause.[39] Some courts have bypassed the reasonable cause requirement by using a separate statutory provision that has no threshold proof requirement.[40] As the law in this area is confused, it is best to seek guidance from someone knowledgeable in the applicable circuit case law: "[T]he constitutional necessity of the statutory requirement of reasonable suspicion for a search of international mail is unsettled; many lower courts, however, have upheld spot-checks of international mail conducted without particularized suspicion."[41] Note that both the functional equivalent and extended search doctrines may apply to both incoming and outgoing mail or its substitute (e.g., commercial express mail).[42]

FUNCTIONAL EQUIVALENT

"Under the 'functional equivalent' doctrine, *routine* border searches are constitutionally permissible at places other than actual borders where travelers frequently enter or exit the country."[43] Examples of functional equivalent borders include airports within the United States where international flights depart or first land[44] and at an "established station near the border, at a point marking the confluence of two or more roads that extend from the border."[45] Of course, this means that those traveling by vehicle "may be stopped at fixed checkpoints near the border without individualized suspicion *even if the stop is based largely on ethnicity*."[46] Additionally, "boats on inland

waters with ready access to the sea may be hailed and boarded with no suspicion whatever."[47] The first point inside the United States where a ship arriving from outside the country docks is another example of a border functional equivalent.[48] The key feature of a border functional equivalent, then, is that it is "the first point at which an entrant may *practically* be detained."[49]

EXTENDED BORDER

"The extended border doctrine provides that *non-routine* border searches that occur near the border are deemed constitutionally permissible if reasonable under the Fourth Amendment," something which is determined by a three-part test, "whether 1) there is a *reasonable certainty* [or a high degree of probability] that a border crossing has occurred; 2) there is a *reasonable certainty* that no change in the condition of the luggage [i.e., the item or person to be examined] has occurred since the border crossing; and 3) there is a *reasonable suspicion* that criminal activity has occurred."[50] This three-part test becomes necessary in an extended border search context because it "entails greater intrusion on an entrant's legitimate expectation of privacy than does a search conducted at the border or its functional equivalent[.]"[51] What, however, is reasonable certainty? This is a proof threshold that lies between probable cause and beyond a reasonable doubt.[52] Regarding the second prong of the test, key to concluding whether or not there has been any change in the luggage, conveyance, or any other item, because it crossed the border are factors including "the time and distance from the original entry and the manner and extent of surveillance."[53] The signal characteristic that differentiates the extended border search from one conducted at the border's functional equivalent is that the first "takes place *after* the first point in time when the entity might have been stopped within the country."[54] Significantly, a proper extended border like a functional equivalent search may take place without either a warrant or probable cause.

> ***"...only those federal officers with customs or immigration enforcement authority, or those acting under their supervision, may conduct border searches."***

ROVING PATROLS

By statute, the Immigration and Naturalization Service (INS)[55] has the power to search any vehicle located "within a reasonable distance from any external boundary of the United States" without a warrant. A reasonable distance is defined as "within 100 air miles from any external boundary of the United States." However, such a yardstick is not necessarily determinative. "It is clear, of course, that no Act of Congress can authorize a violation of the Constitution."[56] Despite the statute and regulation, the Supreme Court refused to condone a suspicionless Border Patrol vehicle search 25 air miles north of the border with Mexico that resulted from a roving patrol. Note that a roving patrol does not keep the suspect or suspect conveyance under nearly continuous surveillance from the point where the actual border was crossed. "In the absence of probable cause or consent, the search violated the...Fourth Amendment right to be free of 'unreasonable searches and seizures.'"[57] The Court continued, quoting from one of its earlier opinions, that "those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."[58]

Not only may searches away from the border or its functional/extended equivalent not be conducted absent probable cause or consent, neither may brief stops[59] be effected absent reasonable suspicion. In 1973, the Border Patrol stopped a car below San Clemente, California, and away from the U.S.-Mexican border solely because all three of its occupants "appeared" to be of "Mexican descent."[60] The government relied on the INS statutory and regulatory to support its position that it had the authority to stop vehicles in the border area solely for the purpose of determining whether the occupants were legally in the United States. As before, the Border Patrol was disappointed before the Supreme Court. Al-though recognizing the serious illegal immigrant problem along the southwest border, the Court nevertheless concluded that "[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest."[61] The Court went on to expand its remarks, noting

> [e]xcept at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country.[62]

In sum, away from the actual, functional equivalent, or extended border, traditional Fourth Amendment concepts apply to both searches and seizures. Put differently, so-called roving patrols enjoy no special Fourth Amendment treatment, nor do they fall under any special exception to the reasonableness requirement.

BORDER SEARCH AUTHORITY

As a general rule, only those federal officers with customs or immigration enforcement authority,[63] or those acting under their supervision, may conduct border searches. Drug evidence uncovered by an FBI agent who was searching vehicles entering the United States from Mexico to determine if they were stolen was suppressed because he was not cloaked with statutory border search authority. Indeed, the government could not even make a

> claim that the FBI agent is a person 'authorized to board or search vessels' within Section 482[64] or that customs authority has been delegated to him. The FBI agent surpassed his authority.... He acted for general law enforcement purposes, not for enforcement of customs laws[.]...Congress and the courts have specifically narrowed the border searches to searches conducted by customs officials in enforcement of customs laws.[65]

Additionally, the FBI agent had not been acting in concert with customs officials[66] nor had the agent been cloaked with customs authority as, for example, by a cross-designation of customs powers. The Ninth Circuit has said statutes, such as the one granting customs officials their powers, "represent special designations of authority to them to conduct border searches. That authority also has been extended to immigration authorities and Coast Guard officials"[67] and, conspicuously by omission, to no other federal law enforcement personnel. The court added that

> Congress has given the authority to conduct border searches *only* to this limited group of officials and has

charged them with the exclusive responsibility for inspecting goods and persons crossing the borders and for interdicting illegal entries. Searches conducted by other law enforcement agents are not considered border searches and must therefore meet the traditional demands of the Fourth Amendment.[68] If there is to be a delegation or cross-designation of, for example, customs authority, it will not be valid unless clearly made, such as by written agreement[69] or, if in the heat of an enforcement operation, verbally.[70] Delegations of federal customs authority may be made by designation to other than federal personnel, such as to state or local law enforcement personnel.[71] Personnel assisting and under the supervision of customs officials at the border, such as National Guard soldiers[72] or even nongovernment individuals,[73] may conduct border searches.

CONCLUSION

Border search authority is an important weapon in the law enforcement arsenal. However, to lawfully exercise such powers, a law enforcement officer must be acting under a clear delegation of authority or acting under the direction and supervision of federal agents who have such authority. Of course, benefits from this authority also may arise through close coordination of investigations and the sharing of information. ✦

Endnotes

[1] William E. Ringel, *Searches & Seizures, Arrests and Confessions* § 15.1 (Justin D. Franklin & Steven C. Bell 2d ed. Supp. 2003).

[2] *United States v. Cardona*, 769 F.2d 625, 628 (9th Cir. 1985); *United States v. Turner*, 639 F. Supp. 982, 986 (E.D.N.Y. 1986).

[3] *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985)("[T]he Fourth Amendment's balance of reasonableness is qualitatively different at the international border than in the interior" and "not only is the expectation of privacy less at the border than in the interior, the Fourth Amendment balance between the interests of the government and the privacy right of the individual is also struck much more favorably to the government at the border." *Id.* at 539-40 (citations omitted)).

> ***...a proper extended border like a functional equivalent search may take place without either a warrant or probable cause.***

[4] *United States v. Vega-Barvo*, 729 F.2d 1341, 1350 (11th Cir.), *cert. denied,* 469 U.S. 1088 (1984)("Many of the factors supporting reasonable suspicion will seem innocent enough if evaluated independently and without the expertise of an experienced customs inspector.") But, what is reasonable suspicion? "A reasonable suspicion consists of a 'particularized and objective basis for suspecting the particular person' of smuggling." *United States v. Oyekan*, 786 F.2d 832, 836 (8th Cir. 1986)(citations omitted).

[5] *United States v. Braks*, 842 F.2d 509, 514 (1st Cir. 1988); *United States v. Asbury*, 586 F.2d 973, 975 (2d Cir. 1978); *Henderson v. United States*, 390 F.2d 805, 808 (9th Cir. 1967); Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 10.5(a) (3d ed. & Supp. 2004). Note that there are cases that suggest that some level of suspicion, albeit less than probable cause, is required for a routine border search, *see, e.g., United States v. Bilir*, 592 F.2d 735, 739 (4th Cir. 1979) (reasonable cause); *United States v. Rodriguez-Gonzalez,* 378 F.2d 256, 258 (9th Cir. 1967) (unsupported or mere suspicion). This view is, of course, incorrect and flies in the face of the primary reason why routine border searches are permitted, indeed, necessary: "the 'primordial' national interest in protecting the borders against violation by illegal importations." *Bilir,* 592 F.2d at 739 (citation omitted). Note, too, that border searches can be conducted with respect to persons and items (including mail) leaving the United States, *United States v. Whiting*, 781 F.2d 692, 695 (9th Cir. 1986) (citations omitted); *Turner,* 639 F. Supp. at 986.

[6] *United States v. Johnson*, 991 F.2d 1287, 1292-93 (7th Cir. 1993).

[7] "[E]xamination of a person by ordinary pat down or frisk, the requirement that outer garments, such as coat or jacket, hat or shoes be removed, that pockets, wallet or purse be emptied are part of the routine examination of a person's effects, which require no justification other than the person's decision to cross our national boundary." *United States v. Ramos*, 645 F.2d 318, 322 (5th Cir. 1981); *Oyekan*, 796 F.2d at 835 (pat down is "within the scope of routine customs practice unrestricted by the Fourth Amendment)(citations omitted); *United States v. Aguebor*, No. 98-4258, 1999 WL 5110, at *3 (4th Cir. Jan. 4, 1999)(unpublished); *United States v. Carreon*, 872 F.2d 1436, 1442 (10th Cir. 1989); *United States v. Vega-Barvo*, 729 F.2d 1341, 1345 (11th Cir.), *cert. denied,* 469 U.S. 1088 (1984). *But see United States v. Brown*, No. 00 CR 407, 2000WL 33155619, at *4 (N.D. Ill. Dec. 8, 2000)(minimal level of suspicion present to conduct pat down "assuming that some heightened level of suspicion was required"); *United States v. Vance*, 62 F.3d 1152, 1156 (9th Cir. 1995)(pat down at border requires minimal suspicion)(citations omitted); *United States v. Dorsey,* 641 F.2d 1213 (7th Cir. 1981)(pat down is more than a routine search so some unspecified level of suspicion, depending on the facts of each case, is required).

[8] Pat downs and requests to reveal underclothing are routine border searches; body cavity and strip searches are not and, therefore, require reasonable suspicion before they may be conducted, *Braks*, 842 F.2d at 512-13.

[9] *United States v. Aragon*, 155 F.3d 561, 1998 WL 454085, at *2 (4th Cir. Jul. 28, 1998)(unpublished).

[10] *United States v. Puig*, 810 F.2d 1085, 1087 (11th Cir. 1987)(because reasonable suspicion existed, the Supreme Court elected not to pursue whether a lower suspicion standard would have sufficed to justify drilling); s*ee also United States v. Moreno*, 778 F.2d 719, 721 (11th Cir. 1985)(inserting probes into holes drilled by customs officials into vessel fuel tanks followed by use of electric saw to uncover hidden compartments proper given the existence of ample reason).

[11] *United States v. Robles*, 45 F.3d 1, 5 (1st Cir.), *cert. denied,* 514 U.S. 1043 (1995).

[12] *United States v. Villabona-Garnica*, 63 F.3d 1051, 1057 (11th Cir. 1995), *cert. denied*, 517 U.S. 1114 and 1126 (1996).

[13] *United States v. Sarda-Villa*, 760 F.2d 1232, 1237-38 (11th Cir. 1985)(use of ax and crowbar to pry up boat deck to reveal hidden compartment containing contraband was reasonable means and thus permissible procedure given presence of reasonable suspicion); *Carreon*, 872 F.2d at 1440-41 (use of drill on camper shell affixed to pickup truck was based on reasonable suspicion; evidence uncovered from hidden compartment held admissible).

[14] No. 02-1794, 2004 WL 609791 (U.S. Mar. 30, 2004).

[15] *Id.* at *2. Arguably, the tapping of the tank by the inspector provided him with reasonable suspicion.

[16] *Id.* at *3 (citation omitted).

[17] *Id.* at *4 n.2.

[18] *Oyekan*, 786 F.2d at 837; *United States v. Mejia*, 720 F.2d 1378, 1381-82 (5th Cir. 1983).

[19] *United States v. Shreve*, 697 F.2d 873, 874 (9th Cir. 1983); *United States v. Ek*, 676 F.2d 379, 382 (9th Cir. 1982)(as with body cavity search, clear indication or plain suggestion required); *United States v. Quintero-Castro*, 705 F.2d at 1100.

[20] *Johnson,* 991 F.2d at 1293 (contention that x-ray of suitcase at airport was nonroutine is "a proposition that we believe lacks merit").

[21] *Vega-Barvo*, 729 F.2d at 1346 ("[I]ndignity analysis pervades the border search cases throughout the other circuits.... We hold...that personal indignity suffered by the individual searched controls the level of suspicion required to make the search reasonable. [W]e have isolated three factors which contribute to the personal indignity endured by the person searched: 1) physical contact between the searcher and the person searched; 2) exposure of intimate body parts; and 3) use of force.") After examining decisions by the Supreme Court, as well as by sister appellate courts, the First Circuit identified seven factors for determining the degree of search invasiveness in and around the border: "(i) whether the search results in the exposure of intimate body parts or requires the suspect to disrobe; (ii) whether physical contact between...officials and the suspect occurs during the search; (iii) whether force is used to effect the search; (iv) whether the type of search exposes the suspect to pain or danger; (v) the overall manner in which the search is conducted; and (vi) whether the suspect's reasonable expectations of privacy, if any, are abrogated by the search." *Braks*, 842 F.2d at 512 (citations omitted).

© Mark C. Ide

[22] *United States v. Aguebor*, No. 98-4258, 1999 WL 5110, at *3 n.2 (4th Cir. Jan. 4, 1999) (unpublished)(Noting that the Supreme Court "flatly rejected" the clear indication test); *United States v. Smith*, 557 F.2d 1206, 1208 (5th Cir. 1977)(9th Cir. real suspicion test "expressly rejected" in favor of reasonable suspicion test); *see also United States v. Adekunle*, 980 F.2d 985, 987-88 (5th Cir. 1992), *cert. denied,* 508 U.S. 924 & 955(1993); *Oyekan*, 786 F.2d at 837 (reasonable suspicion required for strip search). For a discussion of the real versus reasonable suspicion standards used, respectively, by the Ninth and other circuits (including the Fifth) to justify a strip search, *see Asbury,* 586 F.2d at 976-77. Circumstances that factor into this real/reasonable suspicion analysis, according to the *Asbury* panel, include a) excessive nervousness; b) unusual conduct; c) informant's tip; d) computerized information showing "pertinent criminal propensities"; e) loose-fitting or bulky clothing; f) "an itinerary suggestive of wrongdoing"; g) whether incriminating evidence is discovered during the routine aspect of the search; h) no employment or a claim of self-employment; i) indications of drug use, such as needle marks; j) information obtained as a result of search/conduct of traveling companion; k) inadequate luggage; and l) evasive or contradictory responses. *Asbury* 586 F.2d at 976-77. *Vance*, 62 F.3d at 1156 (real suspicion required for strip search); *Quintero-Castro,* 705 F.2d 1099, 1100 (9th Cir. 1983)(same).

[23] The Ninth Circuit's clear indication or plain suggestion test, discussed *infra* with regard to body cavity searches, is similarly called into question.

[24] 437 U.S. 531 (U.S. 1985). *See also* the Ninth Circuit's own post-*Montoya de Hernandez* opinion, *United States v. Gonzalez-Rincon*, 36 F.3d 859, 864 (9th Cir. 1994)("Strip searches and body cavity searches...must be supported by reasonable suspicion.").

[25] *Oyekan*, 786 F.2d at 836 (citation omitted).

[26] *United States v. Himmelwright*, 551 F.2d 991, 995 (5th Cir.), *cert. denied,* 434 U.S. 902 (1977).

[27] *Henderson,* 390 F.2d at 808. *See also* LaFave, *supra* note 5 at § 10.5(b). Reasonable suspicion sufficient to justify visual inspection of body cavity (vagina), *Himmelwright*, 551 F.2d at 995.

[28] *United States v. Ogberaha*, 771 F.2d 655, 658 (2d Cir. 1985), *cert denied,* 474 U.S. 1103 (1986)(reasonable suspicion contraband being concealed internally; invitation to adopt Ninth Circuit's clear indication standard, lying somewhere between reasonable suspicion and probable cause, rejected); *United States v. Handy*, 788 F.2d 1419, 1420-21 (9th Cir. 1986); *Gonzalez-Rincon*, 36 F.3d at 864.

[29] *United States v, Mastberg*, 503 F.2d 465, 471 (9th Cir. 1974); *Quintero-Castro*, 705 F.2d at 1100. *See also United States v. Himmelwright*, 406 F. Supp. 889, 892 (S.D. Fla. 1975), *aff'd*, 551 F.2d 991 (5th Cir.), *cert. denied,* 434 U.S. 902 (1977).

[30] *Montoya de Hernandez,* 473 U.S. at 541. The alimentary canal is the "mucous membrane-lined tube of the digestive system, extending from the mouth to the anus and including the pharynx, esophagus, stomach, and intestines." *Webster's II New Riverside University Dictionary 92* (1988). The defendant in *Montoya de Hernandez* had swallowed 88

cocaine-filled balloons, which, after refusing to be x-rayed, she passed while detained by U.S. Customs for 16 hours prior to her arrest, a period that the Supreme Court said was reasonable under the circumstances. For other cases involving upheld detention periods of balloon-swallowing defendants, all post-*Montoya de Hernandez, see United States v. Onumonu*, 967 F.2d 782 (2d Cir. 1992)(83 condoms, x-ray refused, 4-day detention prior to arrest); *United States v. Yakubu*, 936 F.2d 936 (7th Cir. 1991)(82 balloons, x-ray refused, 20-hour detention period prior to arrest); *United States v. Odofin*, 929 F.2d 56 (2d Cir.), *cert. denied,* 502 U.S. 850 (1991)(at least four balloons, x-ray and effective laxatives refused, last 19 of 24-day detention under judicial supervision, first 5 were not); *United States v. Esieke*, 940 F.2d 29 (2d. Cir.), *cert. denied*, 502 U.S. 992 (1991)(63 balloons, x-ray refused, 3-day detention); *United States v. Adekunle*, 980 F.2d at 987-88 (defendants detained 2 days until first balloons excreted, then arrested; detention permitted until bowel movements); *Oyekan*, 786 F.2d at 836 (reasonable suspicion required to detain after initial, routine examination). Given their proximity to Mexico, the Fifth and Ninth Circuits receive a large number of balloon-swallower cases.

None too helpfully, the Supreme Court said in an aside that "[i]t is important to note what we do *not* hold. [W]e suggest no view on what level of suspicion, if any, is required for nonroutine border searches, such as strip, body cavity, or involuntary x-ray searches." *Montoya de Hernandez,* 473 U.S. at 541 n.1. As noted above, lower courts have filled in the gaps with regard to strip and body cavity searches.

[31] "We have said that border stops and searches must be reasonable and that what is reasonable will depend on all the facts of a particular case." *Asbury*, 586 F.2d at 976 (citation omitted).

[32] "Our prior cases have refused to charge police with delays in investigatory detention attributable to the suspect's evasive actions.... Respondent's detention was long, uncomfortable, indeed, humiliating; but both its length and its discomfort resulted solely from the method by which she chose to smuggle illicit drugs into this country." *Montoya de Hernandez,* 473 U.S. at 543-44 (citations omitted). "We further note our deference to the expertise and 'common sense' of trained customs inspectors." *Ogberaha*, 771 F.2d at 658.

[33] *United States v. Adekunle*, 2 F.3d 559, 561 (5th Cir. 1993), *revising previous opinion at* 980 F.2d 985 (1992), *cert. denied*, 508 U.S. 924 & 955 (1993).

[34] "A defendant has no constitutional right to be arrested at the point when either he or the court deems that there is sufficient probable cause for his arrest. Law enforcement officials are 'not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect.' Such a requirement would punish the cautious officer who errs on the side of protecting a defendant's rights by requiring a stronger showing of probable cause that the court might deem necessary." *Adekunle*, 2 F.3d at 561 (citations omitted).

[35] *Adekunle*, 2 F.3d at 562 (citations omitted).

[36] *United States v. Ramsey,* 431 U.S. at 606, 611-12; 19 U.S.C. § 482(a); 19 C.F.R. § 145.3(a).

[37] *Ramsey,* 431 U.S. at 616-21.

[38] 19 C.F.R. § 145.3(a) (emphasis added). More fully, 19 C.F.R. § 145.3(a) provides that "Customs officers and employees may open and examine sealed letter class mail...which appear to contain matter in addition to, or other than, correspondence, provided they have *reasonable cause* to suspect the presence of merchandise or contraband." (emphasis added).

[39] In *United States v. Taghizadeh*, 87 F.3d 287 (9th Cir. 1996), the fact that a package sent letter class from Turkey, a source country, coupled with the fact that it was addressed to a post office box satisfied this requirement. "[O]nce suspicion is triggered by source country origin, not much else is required to justify a search." *Id.* at 290. Sealed letter class mail is "letter class mail sealed against postal inspection by the sender." 19 C.F.R. § 145.1(c). And, what is letter class mail? It consists of "any mail article, including packages, post cards, and aerogrammes, mailed at the letter rate or equivalent class or category of postage." 19 C.F.R. § 145.1(b). For a list of factors contributing to or even establishing the presence of reasonable cause, *see* 43 Fed. Reg. 14,455-56 (1978).

[40] 19 U.S.C. § 1582 "The secretary of the treasury may prescribe regulations for the search of *persons and baggage*...; and all *persons* coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the government under such regulations" (emphases added). *See, e.g., United States v. Pringle*, 576 F.2d 1114, 1116 (5th Cir. 1978)("We need not decide whether such [19 U.S.C. § 482] 'reasonable cause to suspect' existed in the present case, for we find this search justified by another section of the customs laws, 19 U.S.C.A. § 1582, and the regulations thereunder.... The courts have long held warrantless border searches, including mail searches, reasonable, without 'probable cause' or any ground for 'suspicion.'"). *But see DeVries v. Acree*, 565 F.2d 577, 579 (9th Cir. 1977), *overruled by United States v. Taghizadeh (Taghizadeh II)*, 41 F.3d 1263 (1994)("Nothing in either the language or the legislative history [of 19 U.S.C. § 1582] suggests that this statute was related to searches of international mail."). *Taghizadeh II* concerned the search of an incoming package containing opium from Turkey; the Ninth Circuit, in an en banc decision, determined that § 482 was inapplicable concluding that § 1582 applied and that it authorized suspicionless "customs searches of packages arriving at the border from a foreign country." *Taghizadeh II,* at 1265. However, in *United States v. Taghizadeh (Taghizadeh III)*, 87 F.3d 287 (1996), the Ninth Circuit reached the tortured conclusion that the reasonable cause requirement of 19 C.F.R. § 145.3(a) was one of the regulatory provisions implementing 19 U.S.C. § 1582 and that reasonable cause applied in this case but that the facts established were sufficient to satisfy that standard.

[41] *Ringel, supra* note 1 at § 15.2(d) (citations omitted).

[42] *Cardona,* 769 F.2d at 629.

[43] *United States v. Yang*, 286 F.3d 940, 944 (7th Cir. 2002)(emphasis added, citation omitted)(nonstop flight from Laos and Tokyo, Japan, landed in the United States at Chicago's O'Hare Airport).

[44] *Id.; see also United States v. Duncan*, 693 F.2d 971, 976-77 (9th Cir. 1982), *cert. denied*, 461 U.S. 961 (1983)(defendant properly stopped by U.S. Customs after he left airline waiting area and was "proceeding up the ramp to board a plane bound for Bogota, Colombia.... It is enough that the passenger manifest a definite commitment to leave the United States and that the search occur in reasonable temporal and spatial proximity to the departure. [B]y checking his luggage, passing through the airline checkpoint, obtaining a boarding pass, and proceeding up the ramp [defendant] had manifested a definite commitment to leave the country" *Id.* at 977); *Ramos*, 645 F.2d at 320 (airport suspect had left customs area servicing deplaning international passengers and was not accosted until 30 minutes later in airport lobby after having checked in at airport hotel; held: functional equivalent of the border, a determination reached upon considering two factors: 1) degree to which traveler "has been

assimilated into the mainstream of domestic activity" and 2) whether the weight of the evidence indicates that the seized contraband crossed the border) *Id.*; *United States v. Palmer*, 575 F.2d 721, 723 (9th Cir.), *cert. denied*, 439 U.S. 875 (1978)(suspect departed airport customs area and stopped at baggage claim, a location still considered to be at the border); *Johnson,* 991 F.2d at 1290; *United States v. Ivey*, 546 F.2d 139, 144 (5th Cir. 1977)(local Florida airport where private plane landed after flight from the Caribbean is border functional equivalent).

[45] *United States v. Almeida-Sanchez*, 413 U.S. 266, 272-73 (1973).

[46] *Montoya de Hernandez,* 473 U.S. at 538 (emphasis added; citation omitted).

[47] *Id.* (citation omitted); *see* 19 U.S.C. § 1467, which provides that "[w]henever a vessel from a foreign port or place...arrives at a port or place in the United States..., the appropriate customs officer for such port or place may...for the purpose of assuring compliance with any law, regulation, or instruction..., cause inspection, examination, and search to be made of the persons, baggage, and merchandise discharged or unladen from such vessel...."; *see also* 19 U.S.C. § 1581. Note further that 19 C.F.R. § 162.6 specifies in pertinent part that "[a]ll persons, baggage, and merchandise arriving in the customs territory of the United States from places outside thereof are liable to inspection and search by a customs officer." *See also* 19 C.F.R. § 162.3. Marine "border searches" are generally outside the scope of this article.

[48] *United States v. Thomas*, 257 F. Supp.2d 494, 497 (D. P.R. 2003)(search conducted in vicinity of the pier area of an arriving ship is a border functional equivalent); *United States v. Victoria-Peguero*, 920 F.2d 77, 80 (1st Cir. 1990), *cert. denied,* 500 U.S. 932 (1991)("courts have consistently recognized the constitutionality of warrantless searches at the functional equivalent of the sea border")(citations omitted); United *States v. Gavira,* 805 F.2d 1108 (2d Cir. 1986), *cert. denied*, 481 U.S. 1031 (1987)(site of extensive final customs inspection held to be border functional equivalent even though preliminary customs inspection had been conducted at initial point of entry; final destination 3-part test established to determine if search of bonded shipment constitutes border functional equivalent: 1) the search location "is the intended final destination of the goods; 2) the goods, upon arrival, remain under a customs bond until a final search is undertaken by [U.S.] Customs; and 3) there is no evidence that anyone has tampered with the goods while in transit." *Id.* at 1114; *United States v. Moreno*, 778 F.2d 719, 721 (11th Cir. 1985). A shipment under a customs bond/seal until the point of actual customs inspection is another example of a functional equivalent search, *United States v. Sheikh*, 654 F.2d 1057, 1069-70 (5th Cir. 1981), *cert. denied*, 455 U.S. 991 (1982); *cf. United States v. Gallagher*, 557 F.2d 1041 (4th Cir.), *cert. denied,* 434 U.S. 879 (1977).

[49] *United States v. Cardenas*, 9 F.3d 1139, 1147 (5th Cir. 1993), *cert. denied*, 511 U.S. 1134 (1994)(emphasis added).

[50] *Yang,* 286 F.3d at 945 (emphases added; citations omitted). Of course, one can substitute whatever "container" is at issue for the term *luggage*. *See also United States v. Espinoza-Seanez*, 862 F.2d 526, 531 (5th Cir. 1988). The third prong of the extended border test, reasonable suspicion of criminal activity, can arise from a number of factors, to include: "1) characteristics of the area in which the vehicle is encountered; 2) proximity to the border; 3) usual patterns of traffic on the road; 4) previous experience with alien traffic; 5) information about recent illegal crossings in the area; 6) behavior of the driver; 7) appearance of the vehicle; and 8) number, appearance, or behavior of passengers." *Espinoza-Seanez*, *supra* at 531; *see also Cardenas*, 9 F.3d at 1148; c*f. Cardona,* 769 F.2d at 629 (totality of circumstances test adopted for extended border searches)(citations omitted).

[51] *Yang,* 286 F.3d at 946 (defendant accosted after he had cleared international arrival terminal, his luggage having been x-rayed with negative results, and had traveled to a separate terminal via airport tram; second look, deemed proper as extended border search, uncovered opium-soaked clothing).

[52] *Id.* at 947 (citations omitted).

[53] *Id.* at 948 (citation omitted); *see also United States v. Fogelman*, 586 F.2d 337 (5th Cir. 1978)(extended border search permitted 254 miles and 20 hours from observed border crossing); *United States v. Martinez*, 481 F.2d 214 (5th Cir. 1973)(extended border search allowed 150 miles and 142 hours after border was crossed). "[C]ontinuous surveillance is not a requirement of an extended border search[,]" *Cardenas*, 9 F.3d at 1150, and thus a break in that surveillance is not fatal to the conduct of an extended border search. "The government is not required to negate every hypothetical possibility as to how the contraband may have been obtained subsequent to the border crossing. [T]he mere assertion by the defendant that there was the opportunity to obtain contraband after the border crossing is insufficient to controvert the facts established by the government." *Id.* at 1152, *quoting from Ramos*, 645 F.2d at 321 (30-minute break in surveillance does not defeat application of extended border search doctrine). Note that some courts may be confusing functional equivalent and extended border searches. "The 'functional equivalent' subcategory includes searches made at points inland of national borders under circumstances other than continuous surveillance that guarantee preservation of border-crossing conditions at the point of search. The underlying principle that permits them to be treated as border searches is thus the same as that for extended border searches. Courts may in fact be using the terms interchangeably." *Bilir,* 592 F.2d at 742 n.11.

[54] *Cardenas*, 9 F.3d at 1148 (original emphasis). There is one characteristic that routine border, border functional equivalent, and extended border searches all have in common: the person, conveyance, or item to be searched "brings the border with it to the point of the search." *Id.* at 1149 (internal quotation marks and citations omitted).

[55] INS enforcement functions have since been transferred to the U.S. Department of Homeland Security (DHS), and the statute has not yet been updated to reflect this change. 8 U.S.C. § 1357(a)(3). The Border Patrol now falls under the Bureau of Customs and Border Protection (CBP) at DHS.

[56] *Almeida-Sanchez,* 413 U.S. at 272 (1973); s*ee also United States v. Brignoni-Ponce*, 422 U.S. 873, 877-78 (1975), which quotes this provision from *Almeida-Sanchez* with approval.

[57] *Id.* at 273.

[58] *Id.* at 274-75, *quoting from Carroll v. United States*, 267 U.S. 132, 153-54 (1925).

[59] *Terry v. Ohio*, 392 U.S. 1 (1968).

[60] *Brignoni-Ponce,* 422 U.S. at 875.

[61] *Brignoni-Ponce, supra* note 56 at 878.

[62] *Id.* at 884. Helpfully, the Court provided a nonexclusive list of factors that could give rise to reasonable suspicion in the mind of an experienced immigration officer: 1) characteristics of the area in which they encounter a vehicle; 2) the vehicle's proximity to the border; 3) the usual patterns of traffic on the particular road; 4) previous experience with alien traffic; 5) recent illegal border crossings in the area; 6) the vehicle operator's driving behavior (evasive or erratic?); 7) size and configuration of the vehicle (can it easily smuggle aliens?); 8) whether the conveyance appears to be heavily loaded; 9) whether the

conveyance is carrying a large number of passengers; 10) whether passengers make attempts to hide; and 11) the mode of dress and haircut typical of in-dividuals from foreign countries. *Id.* at 884-85.

[63] Historically, the Border Patrol could search only for illegal aliens at the border (and not for contraband) and U.S. Customs could search only for items entering the United States in violation of the customs laws. Now that both functions have merged into the CBP at DHS, this enforcement dichotomy is coming to an end as border protection officials are being cross-trained.

[64] 19 U.S.C. § 482. Besides being permitted to "board or search vessels," § 482 also allows authorized "officers or persons" to "stop, search, and examine...any vehicle, beast, or person[.]"

[65] *United States v. Soto-Soto*, 598 F.2d 545, 549 (9th Cir. 1979)(marijuana found under the hood of a pickup that crossed border into the United States was suppressed; at time of discovery, FBI agent working at the border had been searching for vehicle identification number stamped on truck frame); *Whiting, supra* note 5 (evidence found in mail leaving the United States was suppressed because an Office of Export Enforcement agent of the U.S. Department of Commerce was not cloaked with customs border search authority).

[66] *Id.* at 550.

[67] *Id.* at 1136.

[68] *Id.* (original emphasis).

[69] "In order for a border search to be valid, it must be executed either by a person statutorily authorized to conduct border searches or by an individual who by delegation of authority is so empowered. Furthermore, the delegation of authority must be clear." *United States v. Brown*, 858 F. Supp. 297, 300 (D.P.R. 1994)(citations omitted).

[70] *Victoria-Peguero, supra* note 48.

[71] *Id.* (officers from both the Commonwealth of Puerto Rico Police Narcotics and Marine Divisions given radioed approval from U.S. Customs Service to make customs search at sea); *see also* 19 U.S.C. § 1401(i), which allows the designation of "any agent or other person" to "perform any duties of an officer of the [U.S.] Customs Service."

[72] *People v. Villacrusis*, 992 F.2d 886, 887 (9th Cir. 1993).

[73] *United States v. Noriega*, No. 98-50022,1998 WL 515111, at *1 (9th Cir. Aug. 14, 1998) (unpublished)(gas station attendant removed tires containing contraband from vehicle at direction of customs inspector). Note that when body cavity searches are conducted, *see supra* notes 28 and 29 and accompanying text, customs officials regularly rely on physicians to assist them.

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.

The *Bulletin's* E-mail Address

The *FBI Law Enforcement Bulletin* staff invites you to communicate with us via e-mail. Our Internet address is *leb@fbiacademy.edu*.

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

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

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 Ricco

Officer Charles Ricco of the Fairfield, Connecticut, Police Department responded to a one-car accident in a residential neighborhood. Upon arrival at the scene, Officer Ricco determined that the vehicle had gone over a curb and struck a tree. The elderly female driver sustained injuries and was trapped in the car. Officer Ricco also noticed that the engine compartment was on fire and that the vehicle was filling with smoke. Quickly and without regard for his own safety, Officer Ricco forcefully opened the driver's side door and carried the woman to the safety of his patrol car, where they waited for medical help. Officer Ricco's selfless actions prevented the serious injury or death of the elderly driver.

Officer Holquinn

Officers from the Fresno, California, Police Department responded to a shooting incident in which the suspect was still on the scene. Upon arrival at the residence where the incident occurred, officers saw the shooter pointing a gun under his chin while sitting on a sofa in the small bedroom. The victim was lying motionless on the floor a few feet away from him. Officers attempted to negotiate, but the suspect, continuing to point the weapon at his head and mouth, refused to allow them to enter the bedroom to rescue the unconscious man. Officer Raymond Holquinn then made the decision to rescue the victim and facilitate medical treatment. He crawled into the room, just a few feet away from the armed suspect, calming him as he proceeded, grabbed the victim by the ankles, and pulled him out of the bedroom to safety, where the man received immediate medical treatment and transport to a local hospital. Officer Holquinn's brave actions saved the individual's life.

Nominations for the ***Bulletin Notes*** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

U.S. Department of Justice
Federal Bureau of Investigation
FBI Law Enforcement Bulletin
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-0001

Periodicals
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

Official Business
Penalty for Private Use $300

Subscribe Now

United States Government
INFORMATION

Order Processing Code:
* 5902

☐ YES, please send _____ subscriptions to:
FBI Law Enforcement Bulletin
The total cost of my order is $ _____.

Credit card orders are welcome!
Fax orders: (202) 512-2250
Phone orders: (202) 512-1800
Online orders: bookstore.gpo.gov

(FBIEB) at $36 each ($45 foreign) per year.
Price includes regular shipping & handling and is subject to change.

Name or title (Please type or print)

Company name Room, floor, suite

Street address

City / State / Zip code+4

Daytime phone including area code

Purchase order number (optional)

Check method of payment:

☐ Check payable to: Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐–☐

☐ VISA ☐ MasterCard ☐ Discover

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
(expiration date)

☐☐☐☐

Authorizing signature 1/2001

Mail to: Superintendent of Documents, PO Box 371954, Pittsburgh PA 15250-7954

Important: Please include this completed order form with your remittance.

Thank you for your order!