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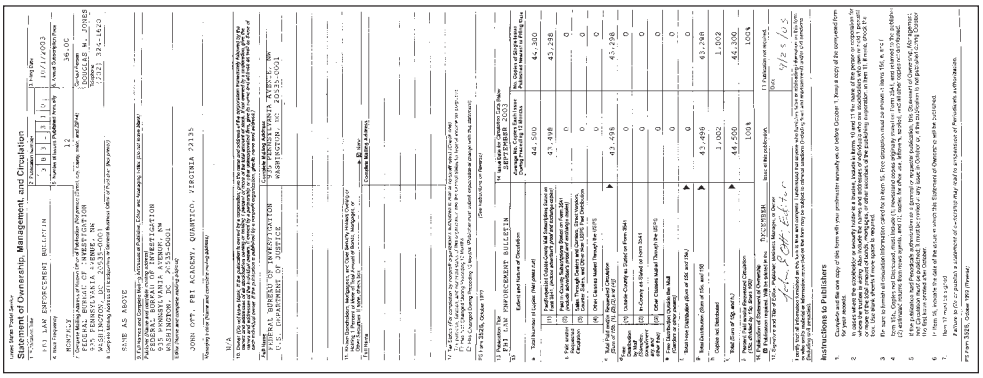
# FBI Law Enforcement Bulletin

## Features



## Departments





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# Pickpockets, Their Victims, and the Transit Police

By DAVID YOUNG


Pickpockets have pursued their trade almost as long as people have carried money. Many pickpockets begin their careers at a young age and, after many years of experience, acquire the patience, dexterity, and knowledge of human behavior to become successful criminals.

Pocket-picking is most common in places where large groups of people gather. Transportation facilities, such as bus terminals and railroad stations, are favorite hunting grounds for pickpockets, but a department store, public arena, or city street also can supply enough potential victims.[1] Several factors inherent in public areas increase opportunities for a pickpocket to commit a theft, while other variables reduce the risk that the pickpocket will be caught, prosecuted, and penalized in a manner consistent with the seriousness of the crime.

## Victim Profile

The author s research revealed that females became pickpocket victims more often than males. Most victims were approximately 30 years old and used the railroad as a means of transportation. The most likely places for a theft to occur were on station escalators and platforms and on trains near the doors of the car. Because a transportation facility is a public accommodation, everyone has almost unrestricted access to the common areas of the terminal. Thousands of people pass through these areas each day, and holiday travel dramatically increases customer volume. Pickpockets spend hours in terminals watching the crowds and

searching for potential targets. Research did not find significant correlation between a victim s race and victimization.

Pickpocket incidents occurred most often during peak shopping times, which usually occurred outside the station, or during evening rush hours. These victims often reported the theft to railroad police officers because of a highly visible substation in the main concourse of the terminal. After people reported a pickpocket crime, preliminary interviews revealed that most victims had their wallets exposed during the 30 minutes prior to the theft. Then, they put their wallets back in their bags, purses, or knapsacks on top of other items, making the wallets easily accessible once the pickpocket opened the bag. Closing devices, such as snaps, buckles, zippers, or velcro, proved minor obstacles for the professional pickpocket.

Victims often unintentionally placed bags in an exposed position on their person, and most victims carried the bag over one shoulder. The pickpocket surveilled the victims and waited for their bags to slip into a vulnerable position to the rear of the victims, instead of at a more secure place under their arms or toward the front of their bodies. A wallet placed in an outer compartment of a knapsack and worn over the shoulders presents an easy target for even the novice pickpocket.

Incidents increased during cold weather and around holidays. In cold weather, both the pickpocket and the victim wear more clothing, which may facilitate the pickpocket s ability to commit the crime. The extra layers reduce the victim s sense of bodily awareness and provide pickpockets with added cover by shielding movements during the commission of the crime or providing a place to hide the stolen property if they get caught. Additionally, pickpockets simply may shed an outer layer of clothing for one of a different color that they are wearing underneath, thereby confusing identification by the victims and in broadcasts to other patrol officers. Pickpockets also use this tactic in warm weather; the outer garment either can be discarded or hidden in a plastic bag carried by the offender.

The most significant factor in the victim profile possibly may be psychological. A crowded terminal creates a distracting environment. People are packed together in cramped waiting areas listening for public announcements, watching a departure, carrying packages, or talking on a cellular telephone. The station s environment creates a sensory overload. Further, the victims, conditioned by the rush hour atmosphere of the station, are accustomed to the close physical proximity of other people. Those who use mass transit expect to be bumped and jostled. The victim also expects to have even less personal space when descending the escalators and riding the train, focusing more on boarding the train and

***"Officers can help prevent individuals from becoming a victim by observing and pointing out certain victim behaviors."***

*Officer Young, a former criminal investigator with the Amtrak Police Department in New Jersey, now serves as a civilian criminal defense investigator in New Jersey.*

finding a seat than being concerned with others.

### Pickpocket Profile

Research revealed that most pickpockets are male. The pickpockets patterns of behavior quickly became evident during rush hours, which started around 4:30 p.m. and ended at approximately 8 p.m. The first victims usually began making their reports after 6 p.m. Typically, pickpockets bumped into their victims just as the victim stepped onto a crowded train. This usually happened a few seconds before the scheduled departure time for the train so that the pickpocket who bumped the victim simply could step off the train and let the doors close. Victims frequently realized that their wallets were stolen, but they were unable to exit the train. Instead, they had to travel to the next station before they could get off to make a report.

Most of the train rides lasted only about 18 minutes, but, during this period, the pickpocket had time to charge hundreds of dollars worth of unauthorized purchases using the victim s credit cards. Frequently, suspects used the cards within the first 5 minutes, most often to make purchases either in the station or at nearby department stores. Automatic teller machine cards regularly were compromised because victims either had the personal identification number (PIN) code in their wallets or had a PIN that the pickpocket easily could determine.

### Consequences of the Crime

Connecting the pickpocket suspects to the crime may present problems with the prosecution of these cases. Victims may have been unaware that someone had stolen their wallets; therefore, they could not identify the pickpocket. Alternatively, pickpockets apprehended by police already may have passed the victim s property to an accomplice and not have possession of it anymore. Further, when confronted, pickpockets often tried to convince the victims that they were making false accusations.

> ***"The most significant factor in the victim profile possibly may be psychological."***

Prosecution sometimes is not feasible because the victim lives too far away and the loss is relatively minor. Many years ago, crimes committed by pickpockets involved a pecuniary motive that came and went with the initial act of theft. Once the money was spent and the credit cards were maxed out, the pickpocket moved to a new victim. Now, however, many businesses and other institutions use personal information to identify clients, customers, and students; the information itself has real value. The profits realized by the pickpocket and the potential for harm to the victim increases exponentially if the victim s personal identifying information is used to commit identity theft.[2] The New York City Police Department s grand larceny task force has worked with the district attorneys offices in New York to familiarize prosecutors with the most active pickpockets and to coordinate prosecution resources. They hope to obtain longer sentences for recidivist offenders to keep them out of circulation for as long as possible. Permitting a pickpocket to plead to a reduced charge or to receive the minimum term on a felony conviction decreases the punishment to merely a cost of doing business.

### Law Enforcement Response

Officers should learn how to recognize regular pickpocket suspects and observe actions indicative of pickpocket activity by unknown offenders. For example, has the suspect loitered in the station long enough to have missed several trains? Has the suspect moved to various platforms or trains without an

apparent intent to travel? Officers should note times and locations when tracking a suspect s movements. Some offenders will arrive in groups, separate, and pretend not to know one another. Officers should note the suspects attire (e.g., layers of different colors of clothing) and if they are carrying items that they can use to conceal their hands, such as garment bags, portfolio cases, or rain coats. Officers should watch people who repeatedly bump up against others or those who use a ruse, such as assisting a passenger with luggage, to get close to a potential victim s wallet or purse. Some states have laws that make it an offense for people to put their hands in unnecessarily close proximity to a person s wallet or purse while in public areas.

Plainclothes officers assigned to pickpocket details will develop the investigative expertise needed to make an arrest and recover the victim s property. Detectives should share the results of long-term investigations through the dissemination of intelligence information to patrol and plainclothes officers. Officers who encounter known offenders should try to effect an immediate arrest if the offenders are subject to a supervisory order that prevents them from entering the station (e.g., restraining order, condition of parole, or open arrest warrant). Further, officers should take notes during their surveillance; their written observations can prove helpful when prosecuting pickpockets.

Crime analysis also plays an important role by revealing current trends and providing statistical justification for an antipickpocket program. Transit and railroad police agencies working in the same geographical area but for different authorities should communicate with one another on a regular basis to share information and coordinate their enforcement efforts. To protect customers, transit and railroad systems should allow their police departments wide latitude in developing programs to address pocket-picking problems.

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Finally, people themselves must remain aware of their environment to avoid becoming a pickpocket victim. Officers can help prevent individuals from becoming a victim by observing and pointing out certain victim behaviors. For example, officers should alert those who do not safeguard their wallets and other valuables. All transit employees should assist people who appear lost or in a vulnerable position that would attract pickpockets. Officers should detail characteristics of pickpocket behavior and techniques to all transit employees, ensuring that they feel comfortable reporting suspicious behavior to the police. Further, law enforcement agencies should provide pamphlets that include tips on personal safety and security at ticket counters, customer service areas, and on trains. When a passenger is victimized, officers should make every effort to quickly mitigate the damage. An officer should stay with the victim until the crisis is contained, giving the victim access to a telephone in a quiet area to make calls to credit card companies. Subsequently, officers should offer to take victims back to their station of origin.

## Conclusion

Railroads have been an integral part of America s infrastructure since the 19th century. The environmental, social, and political concerns of the 20th century created an increased demand for new, light-rail, transit, and long-distance trains. Increased demand results in the construction of more terminals, the development of new rail systems, and,

therefore, a growing number of customers.

Law enforcement officers must remain aware of pickpocket behaviors and techniques. Many passengers will become victims because they are careless or unaware that people will try to steal their wallets and other valuables. Officers should alert transit employees and passengers to profiles of victims, as well as offenders. Transportation authorities and their police departments assume the responsibility to protect these customers from victimization; they must ensure that they are prepared to face this challenge. ✦

**Endnotes**

[1] The author gained experience as a criminal investigator with the Amtrak Police Department in Penn Station, New York. He culled information for this article from the careful recording and analysis of data relating to station larcenies and onboard train larcenies, as well as from facts learned during subsequent investigation from May 1999 through May 2000.

[2] For more information on identity theft, see John Pollock and James May, Authentication Technology: New Levels in the Fight Against Identity Theft and Account Takeover, *FBI Law Enforcement Bulletin*, June 2002, 1-4; and Matthew L. Lease and Tod W. Burke, Identity Theft: A Fast-Growing Crime, *FBI Law Enforcement Bulletin*, August 2000, 8-13.

*The author dedicates this article to the memory of Lieutenant James McHugh and Lieutenant John Delougherty, Amtrak Police.*

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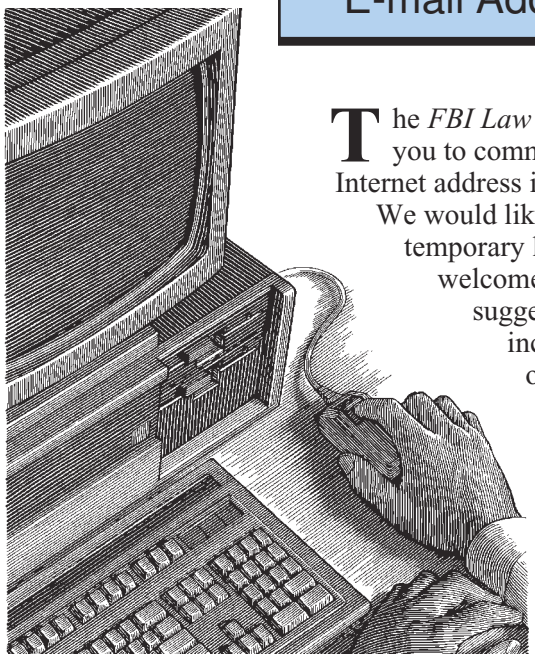

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Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI s home page. The home page address is *http://www.fbi.gov.*

# ViCAP Alert

## Unsolved Sexual Assaults/ Home Invasions/Robberies

The Columbus, Ohio, Department of Public Safety, Division of Police, requests assistance in an investigation of a series of unsolved sexual assaults committed by an unknown black male within residences located in Columbus, Ohio, from December 1991 through June 2002. To date, a total of 20 attacks in Columbus, Ohio, have been attributed to this subject, and 10 of these offenses have been positively linked to this suspect by DNA analysis/ comparison. In Pomona, California, this same offender also committed an attack on February 25, 1995, bringing the total to 21. This confirmation also was made through a positive DNA comparison. The offender committed a series of attacks, stopped, then committed more. These cessations of attacks have varied from several months to numerous years.


### Crime Scenes

The unknown black male suspect gained entry into the dwellings either by surreptitious means (e.g., locating unsecured windows/doors) or by knocking on the door of the residence and waiting for the resident to respond. The suspect utilized a household knife as his primary weapon. The suspect sexually assaulted the victim multiple times (repeated acts of vaginal intercourse, fellatio, cunnilingus, and anal intercourse). Upon his departure, the suspect often stole currency. Based on his behavior and statements to the victims, the suspect appeared to have surveilled these persons prior to these attacks

### Possible Suspect Information

The suspect, based on a compilation of information, is a black male, now in his 30s, approximately 5’10" to 6’ tall and weighing 180 to 200 pounds. The suspect has been described as having a medium complexion; generally clean shaven; short, black hair; and brown eyes. Also, the suspect smoked cigarettes and now may have scars on his body (in unknown areas), based upon injuries received during his escape from the victim s residence in Pomona, California.

### Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all crime analysis personnel and officers investigating crimes against persons, sex crimes, robberies, homicides, burglaries, and home invasions. Any agencies with crimes similar to these should contact Sergeant Jeffrey Sacksteder (614-645-4041) of the Columbus Division of Police Homicide Unit or Supervisory Special Agent Gary Cramer (703-632-4197) or Crime Analyst Anita Hayne (703-632-4167) of the FBI s Violent Criminal Apprehension Program (ViCAP). Any agencies with open or closed cases fitting the above-referenced criteria are encouraged to submit their cases for inclusion in the FBI s ViCAP national violent crime database. ✦

# Bulletin Reports

## Evidence

The National Institute of Justice (NIJ) presents *Report to the Attorney General on Delays in Forensic DNA Analysis, March 2003*, which presents the results of a task force convened by NIJ at the request of Attorney General John Ashcroft to assess existing DNA analysis delays and to develop recommendations for eliminating those delays. The report details six recommendations that will serve as the foundation of a comprehensive, national DNA backlog-reduction strategy. This publication is available electronically at *http://www.ojp.usdoj.gov/nij/pubs-sum/199425.htm* or by contacting the National Criminal Justice Reference Service at 800-851-3420.

## Problem Analysis

*Problem Analysis in Policing* introduces and defines problem analysis and provides guidance on how problem analysis can be integrated and institutionalized into modern policing practices. The 64-page report is not a how-to guide on conducting problem analysis, but is a summary of what problem analysis is; what skills and knowledge are necessary to conduct it; and how it can be advanced by the law enforcement community, academia, the federal government, and other institutions. The ideas and recommendations in this report come primarily from a 2-day forum conducted in February 2002 by the Police Foundation and the Office of Community Oriented Policing Services (COPS) that brought a group of academics, practitioners, and policy makers together to discuss problem analysis and make recommendations for its progress. This report is a culmination of the concepts and ideas discussed in the forum and includes specific, relevant statements made by participants. This publication is only available electronically at *http://www.cops.usdoj.gov/default.asp?Open=True&Item=847*.

***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 209, 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.)

# When an Informant's Tip Gives Officers Probable Cause to Arrest Drug Traffickers

By EDWARD M. HENDRIE, J.D.


Agent Marsh stood attentively at the Denver Union Station on September 9, 1956, watching the passengers as they came off the morning train from Chicago. He was a Federal Bureau of Narcotics agent, with 29 years of law enforcement experience. As he scanned the passengers, he saw a black male exit the train. That s him, he thought, as he and his partner, a Denver police officer, followed the man. Agent Marsh was certain that was their man because his paid informant (Hereford), whom he always had found to be accurate and reliable, told him that James Draper would be arriving on the morning train from Chicago on either September 8th or 9th carrying a load of heroin. Hereford gave a detailed description of Draper. Just as described by Hereford, the suspect had a light brown complexion, was in his mid-20s, stood approximately 5 feet, 8 inches tall, and weighed approximately 160 pounds. As predicted by Hereford, the suspect was wearing brown slacks, black shoes, and a light-colored raincoat and was carrying a tan zippered bag. Agent Marsh saw the suspect walking fast toward the exit; Hereford had told him that the man habitually walked real fast.

The officers arrested the suspect, who turned out to be James Draper.[1] They searched Draper

incident to arrest and found two envelopes containing 865 grams of heroin clutched in his left hand, which had been thrust into his coat pocket. The officers also found a syringe in the tan zippered bag.

Draper filed a motion to suppress the evidence. The informant died 4 days after the arrest and, therefore, was not available to testify at the motion to suppress. The trial court denied the motion to suppress, and the evidence seized from Draper was introduced against him at trial. Draper s conviction was upheld upon appeal, and he filed a petition for a writ of certiorari to the U.S. Supreme Court, which was granted.

Draper raised two issues in his appeal to the U.S. Supreme Court.[2] His first argument was that the information given to the agent was hearsay, and because hearsay is not admissible in a court hearing, it should not be considered when determining probable cause. The Supreme Court dispensed with that argument by quoting from Judge Learned Hand:

> It is well settled that an arrest may be made upon hearsay evidence; and indeed, the reasonable cause necessary to support an arrest cannot demand the same strictness of proof as the accused s guilt upon a trial, unless the powers of peace officers are to be so cut down that they cannot possibly perform their duties.[3]

> ***"...the test for probable cause under the Fourth Amendment should be a totality of the circumstances test."***

*Special Agent Hendrie, DEA Legal Unit, is a legal instuctor at the DEA Training Academy.*

Draper s second argument was that even if the hearsay could lawfully have been considered, it was insufficient to establish probable cause to believe that Draper was violating the narcotics laws. He argued that because his arrest was unlawful, the evidence seized pursuant to that arrest should be suppressed. The *Draper* Court looked at the facts as presented to the agent and ruled that the agent would have been derelict in his duties if he had not arrested Draper. The court stated that at the moment the agent arrested Draper he had verified every facet of the information given to him by the informant, except for whether Draper had accomplished his mission and had heroin on his person. Every innocent detail of the informant s tip was personally corroborated by the agent; he, therefore, had reasonable grounds to believe that the remaining unverified criminal detail of the informant s tip (that Draper would have the heroin with him) was likewise true.[4]

In drug courier cases, officers typically corroborate the information before making an arrest.[5] *Draper v. United States*[6] is instructive regarding the level of corroboration needed to establish probable cause to arrest a drug courier. It is not necessary, however, for an officer to corroborate the information before he approaches the defendant. The corroboration could take place after a consensual encounter[7] or a temporary detention[8] of the suspect.[9]

When there is probable cause to believe that a suspect possesses contraband under circumstances that suggest he knows what he is carrying, an officer

not only has probable cause to search the suspect but he also has probable cause to arrest him.[10] It would be proper for an officer to arrest the suspect and then search the suspect and his luggage incident to that arrest, as was done in *Draper*.[11] The *Draper* decision illustrates that when an officer has probable cause to search a drug courier for contraband, he also has probable cause to arrest that courier for the possession of that contraband.[12] Upon arresting the courier, the officer may contemporaneously search the courier and the items the courier is carrying without having to get a search warrant.[13]

**Totality of the Circumstances**

Officers frequently take action based upon information given to them by informants. For a number of years the courts used what has become known as the *Aguilar-Spinelli*[14] two-prong test for assessing whether information from an informant established probable cause. The first prong of that test assesses the credibility of the source. Police officers, concerned citizens, and crime victims all are presumed credible; criminal informants, however, are presumed incredible. The credibility of criminal informants must be established through an articulated track record of reliability, having made a statement against their penal interests, corroboration of the supplied information, or establishing that the informants have a strong motive to tell the truth.[15] The second prong of the *Aguilar-Spinelli* test is an assessment of the informant s basis of knowledge. In explaining an informant s basis of knowledge, an officer is essentially trying to establish that the informant knows what he is talking about.

> ***"It is reasonable to believe that an informant has a motive to be truthful when he is expecting some leniency for pending charges...."***

One way to establish a basis of knowledge is if the informant states that he saw the criminal activity; another way is if the information from the informant is so detailed that a reasonable officer could infer that the informant was an eye witness or received the information from a reliable source who was himself an eye witness.

In *Illinois v. Gates,*[16] the U.S. Supreme Court ruled that probable cause is a practical, nontechnical concept and that it should not be weighed in terms of library analysis by scholars using tests such as the *Aguilar-Spinelli* two-prong test. Rather, the Court stated that the test for probable cause under the Fourth Amendment should be a totality of the circumstances test. The Court reasoned that probable cause is a fluid concept that turns on the assessment of probabilities in particular factual contexts by those versed in the field of law enforcement. The *Gates* totality of the circumstances test gives officers and courts more flexibility when deciding if there is probable cause in a particular case. Although the *Aguilar-Spinelli* two-prong test is not a legal requirement in federal and most state courts, the test often is used as a guide by courts in determining probable cause based upon an informant s tip.

**Reliable Informants**

In *Draper*, which was decided before *Gates*, the agent was able to corroborate all of the innocent details about the suspect s future conduct. *Draper* was described in the *Gates* decision as the classic case on the value of corroborative efforts of police officials. [17] Once an officer corroborates innocent future conduct of the suspect as predicted by the informant, it would be reasonable for the officer to conclude that the informant is being accurate regarding the suspect s involvement in the alleged crime.[18]

When an officer has reason to believe that an informant is reliable, the officer could establish probable cause to arrest if he corroborates the slightest future innocent conduct exhibited by a suspect.[19] For example, in *United States v. Mehciz*,[20] the U.S. Court of Appeals for the Ninth Circuit reviewed a case involving an informant who was considered reliable because he had given prior information that resulted in seizures of substantial quantities of narcotics. The reliable informant told a federal drug agent that a large shipment of LSD was being carried from southern California to Phoenix the next day, September 29, 1969. The informant told the agent the first name of the courier (Vance), as well as the flight number and arrival time. The courier was described by the informant as a white male, approximately 6 feet tall, with long dark hair, and missing a front tooth. Several federal agents met the flight upon its arrival in Phoenix. They watched near the gate as the passengers exited the plane. They spotted a person who met the description given by the informant. When the suspect walked past one of the agents, the agent yelled, Hey, Vance. The suspect responded by turning around and looking at the agent. The suspect was immediately arrested and the overnight suitcase he was carrying was opened and searched. Inside the suitcase the agents found the shipment of LSD. The *Mehciz* court stated that there was no doubt that the warrantless arrest of the defendant was based on probable cause.[21]

**Pending Charges Against Informant**

An informant could be considered credible even if he does not have a track record for reliability, if he has made a statement against his penal interest,[22] or it can be established that he has a strong motive to be truthful.[23] It is reasonable to believe that an informant has a motive to be truthful when he is expecting some leniency for pending charges and the circumstances suggest that any benefit expected by him would only inure to him if the information he supplies is accurate.[24]

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For instance, in *United States v. Carter*,[25] the U.S. Court of Appeals for the District of Columbia Circuit reviewed a case where a suspect had been arrested and agreed to cooperate with the police. The new informant had no established track record for reliability. After his release from custody, the informant called the officer who had arrested him and told the officer that from the phone booth where he was making the call he could see a suspect known to him as Mousey at a named intersection in the city who was carrying a white towel around his neck and narcotics in a paper cup. The intersection was known to the police as an area where narcotics could be purchased. The officer and his partner met with the informant, who directed them to a different intersection to which the defendant had since moved. The officers approached the suspect, who matched the physical description given by the informant, and seized a cup, which was under a towel, from the possession of the suspect and arrested him.

The court ruled that there was probable cause for the arrest. The court, using the *Aguilar-Spinelli* two-prong test, ruled that 1) the informant, by stating that he saw the suspect with the drugs, had established that he had first-hand knowledge and 2) the officers had corroborated that a person matching the description of the suspect was carrying a towel and a cup where the informant said he would be. Further, the court ruled that the informant

had a motive to be truthful because the truthfulness and accuracy of the information he gave to the police would have a bearing on the benefits he would receive for his cooperation.

### Concerned Citizen Informants

Concerned citizen informants usually give police information out of a sense of civic duty. To be considered a concerned citizen informant by the courts, an informant must not be involved in the criminal milieu.[26] A concerned citizen usually does not have a track record for reliability with the police. Such a track record for reliability, however, is not necessary to establish the credibility of a concerned citizen.[27] If a concerned citizen s identity is known to the police, he is presumed credible.

Assuming an identified concerned citizen has a reliable basis of knowledge, an officer could have probable cause to arrest a suspect on only the slightest corroboration of the information.[28] For example, in *State v. Lindquist*,[29] the concerned citizen informant identified herself to the police and stated that a suspect had shown her marijuana in his car and told her that in a few minutes he would be driving to a specified area with the drugs. The informant gave a detailed description of the vehicle and license plate number. The officers found the vehicle described by the informant traveling in the predicted direction. They pulled over the car and arrested the defendant. The officers found approximately 5 pounds of marijuana in the vehicle. The Supreme Court of Minnesota characterized the police finding the car as corroboration of many of the details given in the tip and ruled that the officers had probable cause to arrest the suspect.

> ***To be considered a concerned citizen informant by the courts, an informant must not be involved in the criminal milieu.***

### Anonymous Tips

In *Lindquist*, the informant identified herself to the police. If, on the other hand, a concerned citizen wishes to remain anonymous to the police, he would not be presumed credible, and the corroboration needed to establish his credibility would be more exacting.[30] In *Illinois v. Gates*, the U.S. Supreme Court reviewed the sufficiency of the corroboration of an anonymous tip. The *Gates* Court stated that it was significant that the anonymous tip contained details regarding unusual future travel plans of the suspects. The anonymous tipster in a letter to the police stated that Sue Gates ordinarily drove her car to Florida, where she would leave it to be loaded with drugs. Lance Gates would fly down later and drive the car back to Illinois, and Sue would fly back to Illinois. The letter indicated that they planned to make a trip to pick up over $100,000 worth of drugs on May 3, 1978. A police detective assigned to the case determined that Lance Gates made a reservation on a flight to West Palm Beach, Florida, scheduled to depart from Chicago on May 5, 1978, at 4:15 p.m. The detective made arrangements with an agent from DEA for surveillance of the May 5th flight. The DEA agents observed Lance Gates boarding the flight, and other agents in Florida observed Gates arriving in West Palm Beach, Florida. The Florida agents observed Gates take a taxi to a nearby motel and go to a room registered to Susan Gates. Early the next morning, the agents observed Gates and an unidentified woman, apparently Susan Gates, leave the motel in an automobile bearing Illinois license plates registered to another vehicle owned by Gates. Gates drove northbound on an interstate highway frequently used to travel to the Chicago area.[31] The *Gates* Court ruled that such uncommon conduct was suggestive

of a prearranged drug run. Once the police corroborated the major details of the travel of the suspects, which were predicted by the anonymous tipster, it was reasonable to conclude that the information about the future conduct of the suspects likely was obtained directly from one of the criminal participants or from someone they trusted who was familiar with their criminal plans. The Court ruled that the corroboration of the anonymous tip was sufficient to establish probable cause for a search warrant to search the suspects home and car upon their return to Illinois.

While it is ideal to corroborate suspicious conduct typical of drug traffickers before arresting a suspect based upon an anonymous tip, some courts are satisfied with corroboration of innocent details from an anonymous tip to establish probable cause.[32] For example, in *People v. Walker,*[33] the Benton Township Police received an anonymous telephone tip on February 27, 1971, at about 8:20 p.m. indicating that

> Ulysses Walker left town a short time ago going to Detroit to pick up a load of dope, and that he would be driving either a bronze-colored Cadillac four-door with Indiana license plates or a black-over-yellow Oldsmobile four-door with Michigan plates, and that there would be two women in the car with him, and they would be returning to Benton Harbor in approximately 5 hours and going to 668 Superior Street in the City of Benton Harbor.[34]

After receiving the anonymous call, police were able to verify that a 1969 Oldsmobile with Michigan license plate GKV 275 was registered to Lucille Gayten, who lived at 668

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Superior Street, Benton Harbor. Officers drove to 668 Superior Street and saw a bronze-colored Cadillac in the garage. Police then set up surveillance to catch the suspect returning to Benton Harbor with the load of drugs. At approximately 1 a.m. on February 28, several officers saw a black-over-yellow 1969 Oldsmobile with Michigan license plate GKV 275 traveling west on the I-94 business loop into Benton Harbor. The officers followed the car for a short distance and then pulled the car over. When the three officers got out of their patrol cars, the Oldsmobile lurched forward another 3 feet before again stopping. One of the officers drew his gun and told the occupants of the Oldsmobile that they were under arrest. The officer ordered all of the occupants out of the car. As one of the occupants exited from the right rear door, he bent over and made a quick underhand throwing motion. One of the officers saw a white powdery substance flying through the wind. When the officer approached he saw a strip of white powder on the ground near the right rear tire and patches of white powder on the right rear door of the car. The powder was removed from the road and car and later determined to be heroin.

In *Walker*, the Michigan Supreme Court ruled that the Michigan constitutional provisions on search and seizure provide the same protection as the Fourth Amendment to the U.S. Constitution and concluded that because the officers had probable cause, the arrest of the defendant was constitutional under both the U.S. and Michigan Constitutions. In *Walker*, as in *Gates,* the officers received information from an anonymous informant. However, unlike the conduct by the defendants in *Gates*, the conduct corroborated by the officers in *Walker* was not suspicious conduct indicating a drug run.

The officers only corroborating innocent details were that the vehicles described by the informant were registered to the target address on Superior Street; that the bronze Cadillac described by the informant was in the garage at the house; and that the Oldsmobile described by the informant was heading into Benton Harbor at approximately the time the informant stated that the defendant would be returning from Detroit with his drugs. The court ruled in *Walker* that it was sufficient that the officers corroborated future innocent conduct predicted by the informant.

As explained by the U.S. Supreme Court in *Gates*, seemingly innocent activity became suspicious in the light of the initial tip.... In making a determination of probable cause, the relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts. [35] Because the officers in the *Walker* case were able to verify that the informant was correct about the innocent information, it was reasonable for the officers to deduce that the informant must be correct about the unverified conclusion that the suspect would be in possession of illegal drugs. Thus, the officers had probable cause to arrest the suspects in the car.

The *Walker* case was decided in 1977 under the more stringent *Aguilar-Spinelli* two-prong test. It would not be unreasonable to expect that facts similar to those in *Walker* would pass the more flexible *Gates* totality of the circumstances test for probable cause.[36] Other jurisdictions, however, are not bound by Michigan precedent and may not adjudge *Walker*-type facts sufficient to establish probable cause, even under the more flexible *Gates* totality of the circumstances test.[37] For example, in

> ***If a concerned citizen's identity is known to the police, he is presumed credible.***

*United States v. Campbell*,[38] the U.S. Court of Appeals for the Eleventh Circuit ruled that a tip from an informant with no history of reliability about a load of illegal drugs combined with police corroboration of the description of the truck, the place of arrival, and the time of arrival of the suspect was sufficient to establish reasonable suspicion to stop but not sufficient to establish probable cause to arrest.[39]

### Other Suspects

In *United States v. Navarro*,[40] three informants identified Leonel Ruiz as a cocaine trafficker. One of those informants, who had assisted police in prior arrests and drug seizures, identified a farm in Kenosha County, Wisconsin, later determined to be owned by Ramon Navarro, as the source for the cocaine. On October 28, 1994, the informant stated that within the next week Ruiz would leave his home in Waukegan, Illinois, and stop at the farm along the way to pick up cocaine, which he then would transport to Milwaukee, Wisconsin, for distribution. The informant stated that Ruiz did not have a driver s license, and, consequently, someone else would likely drive the vehicle to Milwaukee. On November 3, 1994, the informant told DEA agents that something would happen soon. On that day, a DEA task force set up aerial and ground surveillance at Ruiz s home and followed him as he left his home and drove to Navarro s farm. Upon arriving at the farm, Ruiz met with Navarro and Navarro s girlfriend; they then all got into Navarro s truck. Just as predicted by the informant, Ruiz did not drive the truck; instead, Navarro s girlfriend drove it. As she drove south toward Milwaukee, the truck was stopped by the police, and all three passengers were arrested. After the occupants were taken into custody, the truck was searched and approximately 3 kilograms of cocaine were seized from the truck,

with another 6 ounces of cocaine found on Navarro s person.

Navarro was convicted of conspiracy to distribute cocaine and possession with intent to distribute cocaine. Navarro appealed his convictions, alleging among other things that even if there was probable cause to arrest Ruiz, there was not probable cause to arrest him, and, therefore, the drugs seized in the truck and on his person should be suppressed as the fruit of the poisonous tree. In fact, the informants did not supply any information about Navarro personally. The police only had information pointing to Ruiz and Navarro s farm, but Navarro himself was never named by any of the informants. Furthermore, the officers did not know with whom Ruiz was meeting at Navarro s farm when they conducted the aerial surveillance. The police only knew that the informant had told them that the farm to which Ruiz traveled was the source for Ruiz s cocaine.

Nonetheless, the U.S. Court of Appeals for the Seventh Circuit ruled that the officers reasonably inferred from that information and the corroboration of the predicted conduct of Ruiz that the person with whom Ruiz met (Navarro) was involved in Ruiz s efforts to deliver cocaine to Milwaukee. The officers, therefore, had probable cause to arrest Navarro and probable cause to search the truck. The court ruled that searching the truck without a search warrant was lawful under the motor vehicle exception.[41] Ruiz s travel to the uninformed observer was innocent, but when viewed in the light of the information from the informants was indicative of criminal conduct. Once the officers corroborated the travel information given by the informant, it was reasonable for them to infer that the allegation by the informant that Ruiz was picking up drugs from the farm for delivery in Milwaukee also was true.

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**Suspicious Conduct**

Corroboration by the police of future conduct predicted by the informant, as was done in *Walker* and *Navarro,* is a good way to substantiate that the informant has inside reliable information about the crime. Such corroboration is considered significant by courts when assessing probable cause to arrest. When, however, the informant is reliable, the police do not necessarily have to corroborate predictions by the informant of future conduct in order for them to have probable cause to arrest a suspect. There would be probable cause for a warrantless arrest of a suspect if the police witness the suspect engaging in conduct, which in light of the tip from the informant appears indicative of criminal behavior, even though the suspicious conduct was not predicted by the informant.

For example, in *McCray v. Illinois*,[42] a reliable informant, who had supplied accurate information to the police 15 to 16 times in the past that had led to numerous arrests and convictions, informed three police officers that he had observed a person, whom the officers knew, selling narcotics at a specified corner and that the suspect presently had narcotics on his person. The officers traveled to the location, and the informant pointed out the defendant to them. The officers observed the defendant walking with a woman. He separated from her and met briefly with another man. The defendant continued to walk along the street. After seeing the officers, the defendant hurriedly walked between two buildings. At that point, the officers decided to approach the defendant. The officers told the defendant that they had information that he possessed narcotics, arrested him,

and placed him in their police vehicle. The officers searched the defendant incident to arrest and found heroin in a cigarette package on his person. The defendant alleged that the arrest and search of him by the police were unlawful. The U.S. Supreme Court ruled there was no doubt that there was probable cause to arrest the defendant and that the search incident to that arrest was lawful.[43]

In *McCray*, the only fact given by the informant that was corroborated by the officers was that the defendant was at the intersection where the informant claimed. All of the other observations by the officers were additional facts, but not corroboration of the informant s information. The *McCray* decision illustrates that when conclusory information is given by a reliable informant about illegal activity being engaged in by a suspect, it is enough to establish probable cause if the officers observe conduct that is arguably suggestive of criminal activity.[44] The meeting by the defendant of the two people on the street was suggestive of drug trafficking, but it was not clearly so. Certainly, the defendant s walking hurriedly between two buildings upon seeing the police car was suspicious. Those two facts combined with the informant tip that the suspect was trafficking in illegal drugs left no doubt for the U.S. Supreme Court that there was probable cause to arrest the defendant.

The *McCray* case involved a reliable informant. If, however, a suspect displays suspicious conduct that is common to drug traffickers, a tip from an informant with no track record of reliability, combined with only the slightest corroboration by the officers, could be enough to establish probable cause to arrest. For example, in *United States v. Canieso*,[45] a special agent with the Bureau of Narcotics and Dangerous Drugs (BNDD) stationed in Bangkok received information from a confidential informant with no articulated track record for reliability. The informant stated that on November 10, 1971, two suspects, Domingo Canieso, a Philipine Attache to Vintiane, Laos, (he had no diplomatic status within the United States) and Siu Tsien Chou, a Chinese national, would attempt to smuggle a large quantity of heroin into the United States. The tip included information that Chou may take an alternative route to New York once the plane stopped in Tehran. The agent followed the two suspects onto their flight from Bangkok to New York. On the airplane, the suspects sat in the same row but on opposite sides of the aircraft. The seats between the suspects were empty. The suspects looked at each other between 20 and 30 times during their flight without giving any sign of recognition. When the plane stopped at London, Canieso nodded to Chou, who returned the signal. Upon their arrival in New York, Chou stood in a line waiting for an airport bus, while Canieso hailed a cab and then signaled for Chou to join him in the cab. Upon their arrival at the hotel room together, the suspects were arrested. Incident to the arrests, the BNDD agents searched the luggage and found Canieso s luggage to contain 20 kilograms of heroin. The defendants claimed that there was insufficient evidence to establish probable cause for their arrest.

> ***...some courts are satisfied with corroboration of innocent details from an anonymous tip to establish probable cause.***

The only fact given by the informant that was corroborated by the agents was that the defendants did travel to the United States on November 10, 1971. Even though there was only slight corroboration, the U.S. Court of Appeals for the Second Circuit found that there was sufficient evidence to establish probable cause for the arrest of

the suspects. The court determined that the tip indicating the specific flight and the potential alternative travel route from Tehran for Chou suggested that the informant had direct access to one of the defendants. The court further ruled that the conduct of the suspects suggested that they had gone through considerable pains to avoid being seen together until their bags had passed the point of possible examination by the U.S. Customs officials. Their behavior suggested that the plan was to use Chou s status as a diplomat to ensure that his bag would not be subjected to a customs search. The court ruled that there was probable cause in the case, not because the information from the informant was corroborated but because the investigation by the agents developed other probative indications of criminal activity along lines suggested by the informant.[46]

## Conclusion

Often, a tip given by an informant, along with some corroboration, can establish probable cause to arrest. The degree of corroboration necessary to establish probable cause is dependent upon the credibility and basis of knowledge of the informant. The police do not necessarily have to corroborate information from an informant to establish probable cause to arrest if they see the suspect engaging in conduct, which in light of the tip from the informant appears indicative of criminal behavior. If the totality of the circumstances indicate that there is probable cause that a drug courier possesses illegal drugs, an officer not only will have probable cause to search the item containing the drugs but he also will have probable cause to arrest the courier for possession of those drugs. Once the officer arrests the suspect, he can conduct a contemporaneous warrantless search of that suspect incident to that arrest. ✦

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**Endnotes**

[1] *Terry v. Ohio*, 392 U.S. 1 (1968), which allows officers to temporarily detain a suspect on reasonable suspicion of criminal activity, which is less than probable cause, had not yet been decided and would not be decided for 10 years.

[2] *Draper v. United States*, 358 U.S. 307 (1959).

[3] *Id.* at 313 n.4 (quoting *United States v. Heitner*, 149 F.2d 105, 106 (2nd Cir. 1945)).

[4] *See also United States v. Miller*, 925 F.2d 695, 699 (5th Cir. 1991) (verification of innocent travel conduct by the suspect predicted by a reliable informant was sufficient to establish probable cause for the arrest of a drug courier).

[5] Corroboration, however, is not legally required if the source of the information is reliable, *e.g., United States v. Harris*, 403 U.S. 503 (1971) (plurality opinion) (A federal tax collector had prior reliable information that the defendant was involved in illegal whiskey sales. A confidential informant made a statement against his penal interest that he had purchased illegal whiskey from the defendant within the last 2 weeks, which was just one of many transactions over the prior 2 years. That was sufficient to establish probable cause for a search warrant for the defendant s home without corroboration of the informant s new information.); *State v. Appleton*, 297 A.2d 363, 368-69 (Me. 1972) (An informant, who had made previous police-controlled purchases, made a statement against his penal interest that he had purchased methamphetamine without police authorization from the defendant s apartment earlier that day. He turned over the methamphetamine to an officer and told the officer that there were more illegal drugs inside the defendant s apartment. The court ruled that the statement by the informant was sufficiently reliable without any further corroboration to establish probable cause to obtain a search warrant for the defendant s apartment.). *Jones v. United States,* 362 U.S. 257 (1960), *overruled on other grounds by United States v. Salvucci*, 448 U.S. 83 (1980) (An informant who had given information to [the affiant officer] on previous occasion and which was correct, stated that he had purchased heroin from the defendant on many occasions, the last time being 1 day ago, and the defendant still had a ready supply of heroin on-hand in his apartment. The information supplied by the informant about the defendant being a heroin trafficker was confirmed by the officer through other informants and prior admissions by the defendant. The court ruled that there was probable cause for a search warrant, even though the officer did not corroborate the current information given by the informant. [T]he Commissioner need not have required... that [the affiant officer] have personally made inquiries about the apartment, so long as there was a substantial basis for crediting the hearsay. ). The U.S. Supreme Court in *Aguilar v. Texas,* 378 U.S. 108 (1964), *overruled by Illinois v. Gates*, 462 U.S. 213 (1983), cited with approval the affidavit in *Jones*. In *United States v. Finch*, 998 F.2d 349, 352 (6th Cir. 1993), the U.S. Court of Appeals for the Sixth Circuit found the following affidavit sufficient

to establish probable cause for a search warrant: [A]ffiant has talked with a reliable informant of Memphis, Shelby County, Tennessee, who has given the affiant other information in the past, which has been found to be true and correct, and which has resulted in several narcotic arrests and drug seizures. This reliable informant stated that within the past 5 days of January 19, 1991, this reliable informant has been inside the above described residence and has seen the above described person storing and selling cocaine inside this residence. *Heard v. State*, 876 S.W.2d 231 (Ark. 1994) (affidavit stating that affiant received information from a person proven to be reliable on several occasions, who has observed cocaine being possessed, used, and sold at the above described residence was sufficient to establish probable cause for a search warrant without corroboration).

[6] *Draper v. United States*, 358 U.S. 307 (1959).

[7] A consensual encounter is not a seizure of the person; an officer may make an inquiry of any person for any reason, or no reason at all. *INS v. Delgado,* 466 U.S. 210 (1984); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980); *United States v. Taylor,* 956 F.2d 572 (6th Cir. 1992). In *United States v. Avery*, 137 F.3d 343 (6th Cir. 1997), the U.S. Court of Appeals for the Sixth Circuit ruled that while the Fourth Amendment restrictions do not come into play until a person is seized, citizens are given equal protection of the law even during a consensual interview. The court stated that if an officer decides to approach a person based solely upon the person s race, in the absence of a compelling justification, such an approach would be an equal protection violation, even if the officer only intends to ask the person questions.

[8] An officer may briefly stop an individual if he has a reasonable suspicion that the subject has committed or is about to commit a crime. *Adams v. Williams*, 407 U.S. 143, 145-46 (1972); *Terry v. Ohio*, 392 U.S. 1, 21-23 (1968). Because the detention of the suspect is only temporary, an officer does not need probable cause; he only needs reasonable suspicion. *United States v. Sokolow,* 490 U.S. 4, 7 (1989). To stop somebody temporarily to investigate whether he is involved in criminal activity, it is not necessary that the officer observe criminal conduct. Wholly lawful conduct in certain contexts might justify a suspicion that criminal activity is afoot. *Reid v. Georgia*, 448 U.S. 438, 441 (1980) (per curiam). Once a suspect is stopped, an officer may frisk that person for weapons if the officer reasonably suspects that he is armed. *Terry v. Ohio*, 392 U.S. 1 (1968). In *Draper*, it would have been proper for the officer to stop and detain Draper temporarily. During the temporary detention, the officer could have confirmed that he in fact was James Draper, the name given for the suspect by the informant. If Draper had given false, inconsistent, or implausible stories about his travel, such statements could establish probable cause for an arrest. *See, e.g., United States v. Moreno,* 185 F.3d 465 (5th Cir. 1999); *United States v. Cano-Guel*, 167 F.3d 900 (5th Cir. 1999); *United States v. Baron*, 94 F.3d 1312 (9th Cir. 1996). Furthermore, the officers could even have asked for consent to search his person or his tan zipper bag during the temporary detention.

> ***Often a tip given by an informant, along with some corroboration, can establish probable cause to arrest.***

[9] In cases like *Draper*, where the officers are trying to corroborate information from an informant, the officers often will not have probable cause until the information is corroborated. Under those circumstances, the officer does not have time to get an arrest warrant; to take the time to do so would give the suspect an opportunity to get away. It is almost always necessary, therefore, for the officer to conduct either a consensual encounter, a warrantless arrest, or a *Terry* stop. *See Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. De Los Santos*, 810 F.2d 1326, 1337 (5th Cir. 1987).

[10] It is constitutional for a police officer to arrest a suspect in a public place without a warrant if the officer has probable cause to believe the arrestee has committed a crime, regardless of whether that crime is a felony or a misdemeanor. *See Street v. Surdyka,* 492 F.2d 368, 371-72 (4th Cir. 1974); *Minnesota v. Seefeldt,* 292 N.W. 2d 558 (Minn. 1980). The common law rule, however, followed in many state and federal statutes, limits the authority of an officer to make a misdemeanor arrest without a warrant to circumstances when the suspect commits the misdemeanor in the officer s presence, *e.g.,* 21 U.S.C.⁄ 878 (1970). It is not required that the warrantless misdemeanor arrest be for a violent offense or a breach of the peace. It is not a violation of the Fourth Amendment to arrest a person for a relatively minor offense, such as driving without a seat belt, driving without a license, or failure to provide proof of insurance. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001). Once it is determined that the officer has probable cause to arrest, the lawfulness of a warrantless public arrest will rarely be in doubt, unless there are extraordinary circumstances. *Atwater v. City of Lago Vista*, 195 F.3d 242, 245 (5th Cir 1999) (en banc), *aff d*, 532 U.S. 318 (2001); *Whren v. United States*, 517 U.S. 806, 817 (1996).

[11] *United States v. Robinson*, 414 U.S. 218, 235 (1973). In *Robinson*, the U.S. Supreme Court has ruled that a custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. Police have the automatic authority to search a person incident to a lawful arrest and need not establish the probability that contraband, weapons, or evidence would be found prior to instituting the search. *Id.* at 236. The search incident to arrest must be contemporaneous to the suspect s arrest. During the search, an officer may perform a search of the suspect and remove, as well as open, all objects found on him. *Chimel v. California*, 395 U.S. 752, 763 (1969). While the legal arrest of a person should not destroy the privacy of his premises, it does for at least a reasonable time and to a reasonable extent take his own privacy out of protection from police interest in weapons, means of escape, and evidence. *United States v. Edwards*, 415 U.S. 800, 808 (1974). The search could extend to the area within the immediate reach of the suspect, including suitcases or other items the arrestee may be carrying, even if they are locked. *Chimel*, 395 U.S. 752; *United States v. Tavolacci*, 895 F.2d 1423,1428 (D.C. Cir. 1990) (search of locked suitcase incident to arrest); *United States v. Silva,* 745 F.2d 840, 847 (4th Cir. 1984) (search of a locked zippered bag incident to the arrest of two suspects in a hotel room); *United States v. Litman*, 739 F.2d 137 (4th Cir. 1984) (en banc) (court upheld the search of bags

carried by the suspect at the time of arrest). Police may contemporaneously search the entire passenger compartment of an automobile incident to the arrest of an occupant of that vehicle, even though the occupant is no longer in the vehicle. *New York v. Belton*, 453 U.S. 454 (1981). Such a search incident to arrest would not include the trunk. A trunk search would require probable cause that it contains contraband or evidence; the trunk then could be searched without a warrant under the motor vehicle exception. *California v. Acevedo,* 500 U.S. 565 (1991); *United States v. Ross*, 456 U.S. 798 (1982); *Chambers v. Maroney*, 399 U.S. 42 (1970); *Carroll v. United States,* 267 U.S. 132 (1925).

[12] There is a rebuttable presumption that searches conducted without a warrant are unreasonable; conversely, searches conducted under the authority of a search warrant are presumed to be reasonable. *Katz v. United States,* 389 U.S. 347, 357 (1967). It is because of this presumption of reasonableness that it has become common practice for officers who have probable cause that a suspect possesses luggage containing contraband to seize luggage and obtain a search warrant. Often, the suspect is not arrested but is instead identified and released. Although it is optimal to obtain a warrant before searching luggage under those circumstances, an officer is not legally required to do so. Once arrested, the suspect can be searched incident to that arrest. There is no correlative presumption of unreasonableness for a public arrest without an arrest warrant. *United States v. Watson*, 423 U.S. 411, 417-18 (1976) ( the Court has never invalidated an arrest supported by probable cause solely be-cause the officers failed to secure a warrant ) (quoting *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975)).

[13] The officer could even search the suspect before actually arresting him; the search under those circumstances would be a valid search incident to arrest provided that the officer had probable cause to arrest the suspect prior to the search and the search was contemporaneous with the arrest. *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980). *See also Smith v. Ohio*, 494 U.S. 541 (1990) (search of bag could not be justified as a search incident to arrest where the probable cause for the arrest was based upon drug paraphernalia found in the bag). While the arrest could follow the search, in order to maintain the admissibility of the items seized, the person must be placed under arrest. In *Knowles v. Iowa*, 525 U.S. 113 (1998), the U.S. Supreme Court ruled that an Iowa statute that allowed an officer to search a person who had not been arrested but was simply issued a citation violated the Fourth Amendment, even though the officer had probable cause to arrest.

[14] *Aguilar v. Texas*, 378 U.S. 108 (1964), *overruled by Illinois v. Gates*, 462 U.S. 213 (1983); *Spinelli v. United States*, 393 U.S. 410 (1969), *overruled by Illinois v. Gates*, 462 U.S. 213 (1983).

[15] In *United States v. Miller*, 925 F.2d 695, 699 (5th Cir. 1991), the U.S. Court of Appeals for the Fifth Circuit stated that the informant s interest in obtaining leniency for a pending criminal charge created a strong motive to supply accurate information to the police. *See also People v. Rodriguez*, 420 N.E.2d 946, 950 (N.Y. 1981) (an informant seeking leniency for a pending charge has a strong reason to tell all and tell it truthfully).

[16] *Illinois v. Gates,* 462 U.S. 213 (1983).

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[17] *Id.* at 242-43. *See also Spinelli v. United States*, 393 U.S. 410 (1969), *overruled by Illinois v. Gates*, 462 U.S. 213 (1983). Regarding the detail required to infer that the informant has a sufficient basis of knowledge for the information he is giving, the *Spinelli* Court stated: The detail provided by the informant in *Draper v. United States*, 358 U.S. 307 (1959), provides a suitable benchmark. *Id.* at 416.

[18] *See People v. Tisler*, 469 N.E. 147 (Ill. 1984); *State v. Anderson*, 910 P.2d 1229, 1232-34 (Utah 1996).

[19] *See, e.g., United States v. Amorin*, 810 F.2d 1040 (11th Cir. 1987) (A reliable informant forwarded information to the police that the defendant showed him two duffle bags and told him that the bags were full of cocaine and that the defendant would soon leave his house with the duffle bags. Police set up surveillance on the defendant s house. After an accomplice loaded the defendant s car with the bags, the defendant was arrested as he was about to get into the car. The bags were found to contain 63 pounds of cocaine. The court ruled that there was probable cause to arrest. The search of the bags was valid under the motor vehicle exception.); *Jefferson v. United States*, 472 A.2d 685, 686 (D.C. 1984) (corroboration of innocent details given by a reliable informant is sufficient to establish probable cause).

[20] 437 F.2d 145 (9th Cir. 1971).

[21] *Id.* at 146 (*citing Draper v. United States*, 358 U.S. 307 (1959)). In fact, the defendant in *Mehciz* conceded the lawfulness of his arrest. His appeal was based upon, among other things, a contention that because he was handcuffed and the bag was in police custody and not within his immediate control when it was searched, the officers did not have authority to search the bag incident to arrest. He argued that the agents should have obtained a search warrant. The court disagreed and held that the officers were not required to get a warrant, simply because the bag was no longer in the arrestee s possession and control. Bags that are in the possession of the suspect at the time of arrest may be searched without a warrant incident to the arrest, even though they have been seized by the officers and are in the officer s exclusive possession and control at the time of the search. *United States v. Morales*, 923 F.2d 621,625 (8th Cir. 1991) (upholding a contemporaneous search of luggage at an airport as the arrestee stood 3 feet away, spread eagle against a wall); *United States v. Cotton*, 751 F.2d 1146, 1147-48 (10th Cir. 1985) (arrestees handcuffed and apparently guarded by an officer while another officer searched the vehicle); *United States v. Litman*, 739 F.2d 137 (4th Cir. 1984) (en banc) (upheld the search of bags carried by the suspect at the time of arrest where the suspect had dropped the bags and the DEA agents had obtained exclusive control of the bags at the time of the search); *United States v. Fleming*, 677 F.2d 602 (7th Cir. 1982) (search of paper bag within 5 minutes of arrest was valid even though the defendant was handcuffed at the time of the search).

[22] *United States v. Davis*, 617 F.2d 677, 693 (D.C. 1979); *State v. Appleton*, 297 A.2d 363, 368-69 (Me. 1972); *United States v. Harris*, 403 U.S. 573 (1971) (plurality opinion).

[23] *Cf. Illinois v. Gates*, 462 U.S. 213, 232 (1983). In *Gates,* the U.S. Supreme Court stated that probable cause is a fluid concept turning

on the assessment of probabilities in particular factual context not readily, or even usefully, reduced to meet set of legal rules. Informants tips doubtless come in many shapes and sizes from many different types of persons. As we said in *Adams v. Williams*, 407 U.S. 143, 147 (1972), informants tips like all other clues and evidence coming to a policeman on the scene may very greatly in their value and reliability. Rigid legal rules are ill-suited to an area of such diversity. One simple rule will not cover every situation.

[24] *People v. Rodriguez*, 420 N.E.2d 946, 950 (N.Y. 1981) (It may be that a suspect who decides to cooperate with the police and become an informant has a motive to offer false evidence in order to help his situation. The informant, however, also has a strong motivation to tell the truth. That is because the informant must know that the police will act upon his information. Sending the police on a fruitless errand would avail the informant little benefit and would become part of his record. Hence, an informant seeking leniency for a pending charge has a strong reason to tell all and tell it truthfully.); *United States v. Miller*, 925 F.2d 695, 699 (5th Cir. 1991) (In an opinion written by retired U.S. Supreme Court Justice Lewis Powell, the U.S. Court of Appeals for the Fifth Circuit ruled that an informant s interest in obtaining leniency for a pending criminal charge created a strong motive to supply accurate information to the police.). *See also State v. Bean*, 572 P.2d 1102, 1104 (Wash. 1978) (informant with a pending drug charge had a strong motive to be accurate in the information he provided officers); *State v. Lopez*, 856 P.2d 390, 394 (Wash App. 1993). *But see Rutledge v. United States*, 392 A.2d 1062, 1066 (D.C. 1978), where the court correctly stated that an expectation by the informant of a financial reward for services is an ambiguous variable. *Rutledge,* however, is distinguishable from cases where the informants had pending charges for which they were seeking leniency. The informant in *Rutledge* did not have any pending charges. The *Rutledge* informant was giving information to the police for the sole purpose of getting paid ($20 per arrest).

[25] 498 F.2d 83 (D.C. 1974) (per curiam).

[26] At least one court considered a police informant who has had prior criminal involvement as equivalent to a concerned citizen informant because it could be established that the informant did not have a motive to obtain some benefit or concession from the police. *State v. Friday*, 434 N.W.2d 359, 372 (Wis. 1989) ( It does not follow that every time a police informant talks to the police he acts in that capacity.... The distinction between a citizen informer and a police informer when testing reliability for probable cause is whether the informer has an expectation of some gain or concession in exchange for the information. ).

[27] *United States v. Scalia*, 993 F.2d 984, 987 (1st Cir. 1993).

[28] *See, e.g., State v. Paszek*, 184 N.W.2d 836 (Wis. 1971) (A concerned citizen store employee told police that a suspect showed her what appeared to be marijuana and made an unsolicited offer to return to the store at a specified time to sell her the marijuana. When the suspect returned to the store at the reported time, he was arrested. The Supreme Court of Wisconsin ruled that the federal standard and Wisconsin State standard for probable cause were substantially identical and that the corroboration of the time and place of the suspect s arrival at the store was sufficient to establish probable cause to arrest the suspect because the informant was a concerned citizen and concerned citizen informants are presumed to be credible.).

> ***"The degree of corroboration necessary to establish probable cause is dependant upon the credibility and basis of knowledge of the informant."***

[29] 205 N.W.2d 333 (Minn. 1973).

[30] *See, e.g., In re Bertrand*, 303 A.2d 486 (Pa. 1973); *State v. Chapman*, 515 P.2d 530 (Wash. App. 1973).

[31] Some of the details corroborated by the police were different from the information given by the tipster. The U.S. Supreme Court, however, did not find the differences sufficient to vitiate the finding of probable cause.

[32] *See, e.g., People v. Rodriguez*, 420 N.E.2d 946, 948-49 (N.Y. 1981) (probable cause based upon corroboration of innocent conduct of the defendant predicted by the informant).

[33] 259 N.W.2d 1 (Mich. 1977).

[34] *Id.* at 2.

[35] 462 U.S. at 245 n.13.

[36] *People v. Levine*, 600 N.W.2d 622, 628 n.10 (Mich. 1999) ( There is no question that having survived rigid application of the *Aguilar-Spinelli* test, the circumstances in *Walker* also would satisfy the flexible *Gates* test. ).

[37] *See, e.g., State v. Hlavacek*, 185 S.E.2d 375 (W. Va. 1991) (A tip from an informant with no stated basis of knowledge or history of reliability that the defendant had left from his home in his car to obtain an undetermined amount of marijuana in Frankford combined with corroboration by the officer that the officer later followed the defendant on a route consistent with returning from Frankford was insufficient to establish probable cause.). *See also United States v. Larkin*, 510 F.2d 13 (9th Cir. 1974) (In a pre-*Gates* case, an unproven informant gave a tip that a 1972 black-on-blue GMC Blazer with an identified license plate was traveling from El Centro to Los Angeles carrying drugs. The police stopped the vehicle, arrested the driver, and found the drugs inside. The court ruled that the corroboration that the vehicle was traveling toward Los Angeles was insufficient to establish probable cause for the arrest.); *People v. Diaz*, 793 P.2d 1181 (Colo. 1990); *People v. Adams*, 546 N.E.2d 561 (Ill. 1989).

[38] 920 F.2d 793 (11th Cir. 1991).

[39] *Cf. Whiteley v. Warden*, 401 U.S. 560 (1971) (A complaint for an arrest warrant recited a conclusion that the defendant and another unlawfully broke into and entered a particular building, but the operative details and the fact that the information came from an informant was omitted from the complaint. The court ruled that the complaint was not sufficient to support probable cause for issuance of the arrest warrant.); *Beck v. Ohio*, 379 U.S. 89 (1964). In *Beck*, an officer had information that the defendant had three prior illegal gambling arrests. The officer further had received some unspecified information about the suspect from an unidentified source with no articulated record of reliability. Based upon that information the officer arrested the suspect for illegal gambling. During the search incident to arrest, he found betting slips on the defendant. The U.S. Supreme Court found that the officer lacked probable cause for the arrest. Because the

arrest was illegal, the evidence seized pursuant to that arrest was suppressed as the fruit of the illegal arrest. In order to legally search a suspect incident to arrest, the arrest itself must be based upon probable cause.

[40] 90 F.3d 1245 (7th Cir. 1996).

[41] The motor vehicle exception allows officers to search a vehicle without a warrant to the same degree as if they had a warrant, if the officers have probable cause to believe that evidence or contraband is located in the motor vehicle. *Maryland v. Dyson,* 527 U.S. 465 (1999); *California v. Acevedo,* 500 U.S. 565 (1991); *United States v. Johns*, 469 U.S. 478 (1985); *United States v. Ross,* 456 U.S. 798 (1982); *Chambers v. Maroney*, 399 U.S. 42 (1970); *Carroll v. United States*, 267 U.S. 132 (1925).

[42] 386 U.S. 300 (1967).

[43] *Id.* at 304.

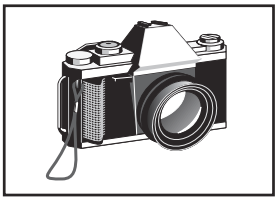
[44] One legal scholar has suggested that the additional observations by the officers in *McCray* were not needed to establish probable cause but were just frosting on the probable cause cake because the informant s track record established that he was reliable and his information came from his direct observation of the defendant s illegal drug trafficking. WAYNE R. LAFAVE, SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT,／ 3.3(f), at 164 (3rd ed. 1996).

[45] 470 F.2d 1224 (2nd Cir. 1972).

[46] There was an unresolved factual issue whether one of the agents saw the drugs in the luggage prior to the arrest. The district court, however, did not resolve that issue and appeared not to have considered that evidence in deciding the issue of probable cause. The court of appeals expressly stated that it did not consider it necessary to resolve that issue in deciding whether there was probable cause to arrest because there was sufficient evidence to establish probable cause without that fact.

*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.*

## Wanted: Photographs



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

We can use either black-and-white glossy or color prints or slides, although we prefer color prints (5x7 or 8x10). We will give appropriate credit to photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to:

Art Director
*FBI Law Enforcement Bulletin*, FBI Academy,
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Room 209, Quantico,
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# Book Review

**Pocketguide to Gangs Across America and Their Symbols**, *CTS Associates Incorporated, Patchogue, New York, 2001.*

With gangs spreading across America at a rapid rate and their propensity for violence increasing, a vital need exists for the law enforcement community to identify these gangs quickly and efficiently before they establish strongholds. These gangs no longer merely constitute an urban problem. In fact, suburban and rural communities are experiencing a faster growth of gangs than urban areas. Never has a greater need existed for a nationally useful book to assist in identifying gangs in all regions of America.

The *Pocketguide to Gangs Across America and Their Symbols* is an extremely useful book for anyone interested in obtaining information relating to gangs. It is easy to read, easy to use, and has almost any symbol a law enforcement officer may come in contact with when dealing with gangs, hate groups, outlaw motorcycle gangs, and occult organizations. Besides hundreds of up-to-date symbols, the *Pocketguide to Gangs Across America* has a glossary containing symbols, words, and phrases used by a multitude of gangs and criminals.

The versatility of this book is not only its small size (5 ½" x 4") but also its sections on analyzing gang graffiti, identifying gang members, and understanding gang/group differences, as well as the many sections on the types of gangs spreading across America, such as Bloods, Crips, Folk Nation, People Nation, Latino gangs, prison gangs, Asian gangs, outlaw motorcycle gangs, hate groups, occult organizations, and miscellaneous gangs. This book represents a significant step forward for gang investigations as it deals with all regions of gangs, something the law enforcement profession has needed for a long time. The book describes the East Coast, West Coast, and Midwest regions equally in great detail.

One compelling section of the *Pocketguide to Gangs Across America and Their Symbols*, the Symbol Lookup Reference Glossary, lists hundreds of symbols, words, numbers, phrases, and slang used by gangs, hate groups, and occult practitioners. Officers will find themselves referring to it on many occasions. It can help not only gang officers but parents and school officials as well.

Interested individuals can purchase the *Pocketguide to Gangs Across America and Their Symbols* for $10 (free shipping) directly through the creators, a law enforcement consulting company, made up of a diverse cadre of law enforcement officers from across the United States, called CTS Associates Incorporated, located at Post Office Box 1001, Patchogue, New York 11772-0800. CTS Associates Incorporated can be reached via telephone at 877-444-1287 (toll free) or via e-mail at CTSAssociatesinc@aol.com. The Calibrepress Survival Catalog and the Varro Press Catalog also carry the book for $10 plus shipping and handling.

Reviewed by
Detective Wes Daily
Suffolk County, New York,
Police Department
President, National Alliance of
Gang Investigators Associations

## Illegal Sales of Stolen Military Property


The Defense Criminal Investigative Service of the Department of Defense (DOD) is investigating the sale of suspected stolen military property. The property, a small arms protective insert (SAPI), is a lightweight body armor worn to protect the chest area. When used in conjunction with the soft ballistic vest, the SAPI is designed to protect the user from multiple impacts from high-velocity, high-impact assault ammunition. The SAPI currently is being used by U.S. military personnel in military operations throughout the world. The SAPI provides state-of-the-art ballistic protection and would provide a tactical advantage to criminals in confrontations with law enforcement officers.

Investigative sources indicate that individuals throughout the United States are selling and buying this property at an alarming rate. The theft and subsequent illegal sales of SAPIs is a continuing and pervasive problem. It also has been determined that several individuals who have both sold and purchased SAPIs have criminal histories. Recent legislation has passed that makes it illegal for anyone with a felony conviction to possess body armor (the SAPI is considered body armor), Title 18 U.S.C. 931(a), Possession of Body Armor by a Convicted Felon.

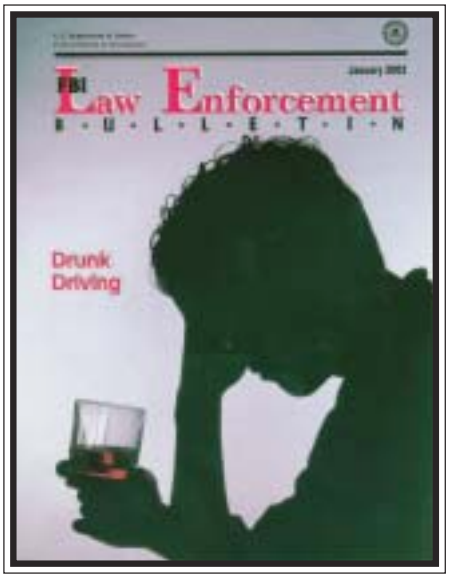
A DOD directive requires that SAPIs be destroyed when no longer needed by the military and that SAPIs are not to be sold to the general civilian population. One exception to this directive is the sale to law enforcement. There have been no government sales to explain the ability of civilians to purchase any such item legally. Because the SAPI is only being produced under current DOD contracts, the property should be considered stolen, and anyone who purchases a SAPI is in possession of stolen military property.

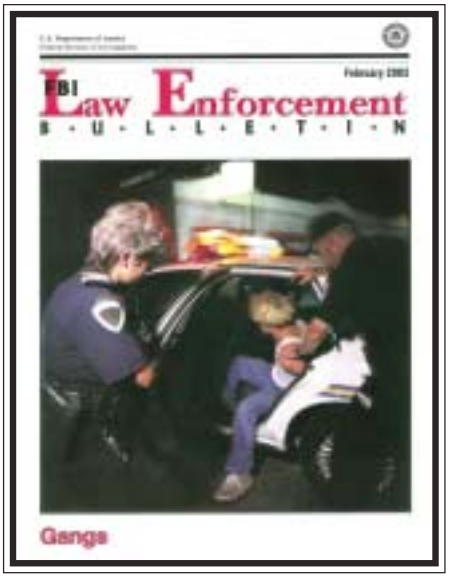
It also should be noted that the picture above is only one example of a SAPI. Although they all share similar features and dimensions, there may be slight variations in appearance, to include differences in markings on the SAPI and the absence of a manufacturer s plate. ✦

*Any agency with inquiries or information concerning this investigation should contact Special Agent Tiffany Linn, Defense Criminal Investigative Service, Northeast Field Office at 610-595-1904, extension 247, or via electronic mail at* tlinn@dodig.osd.mil.

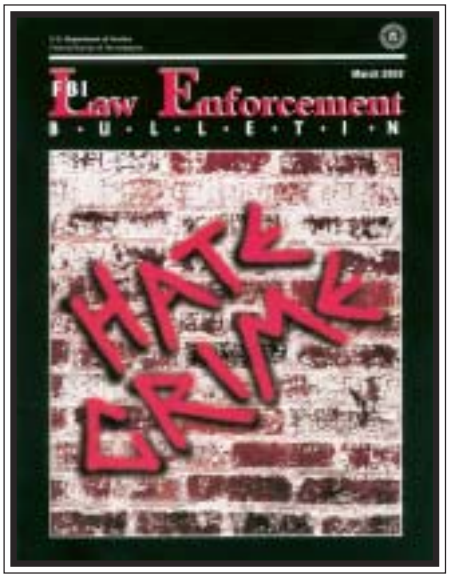
# 2003 Subject Index









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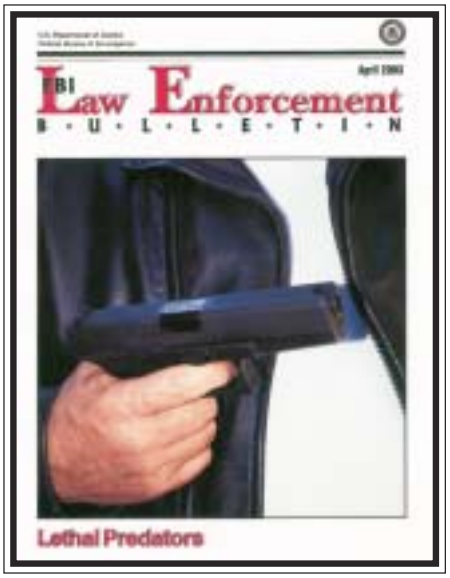


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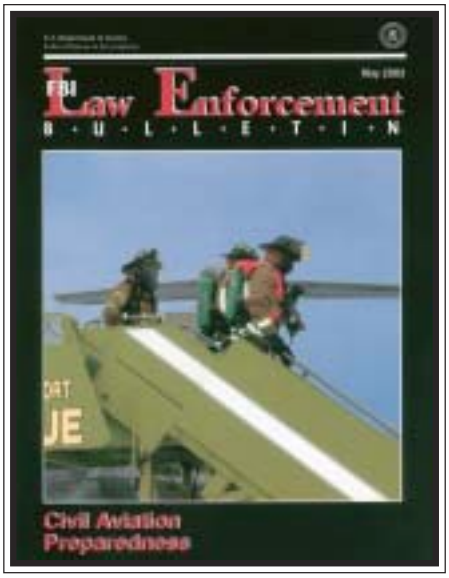




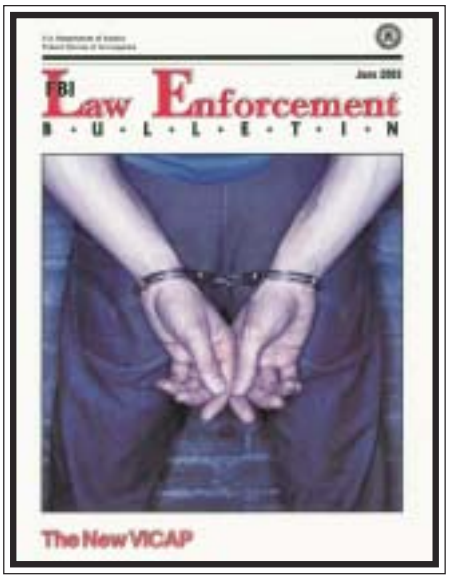

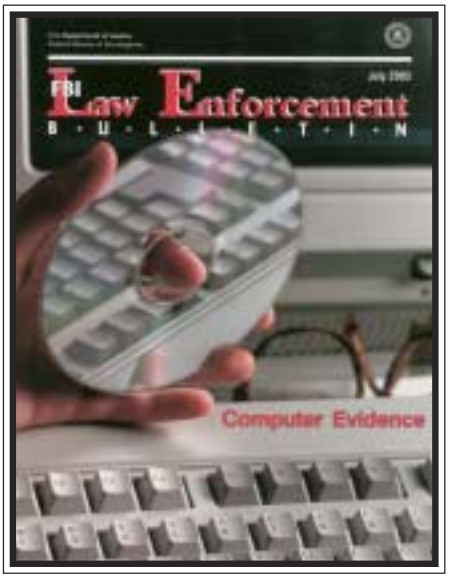

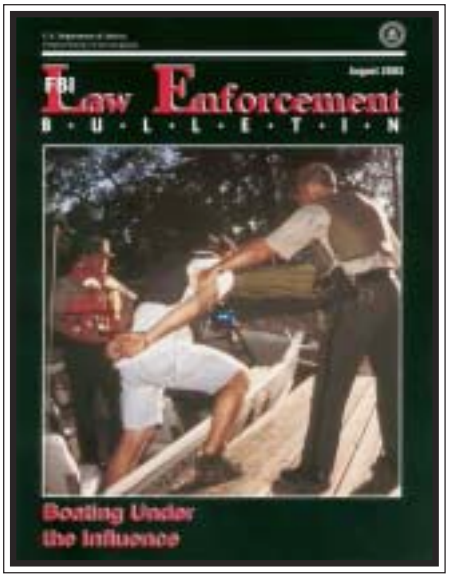




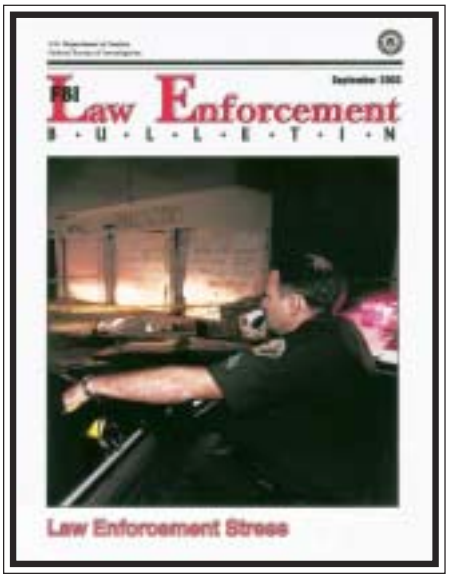

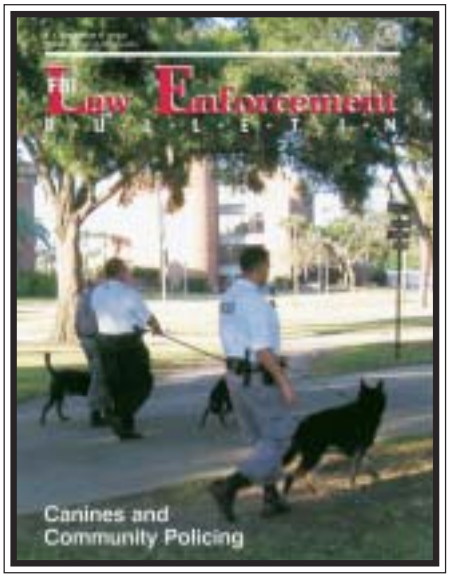

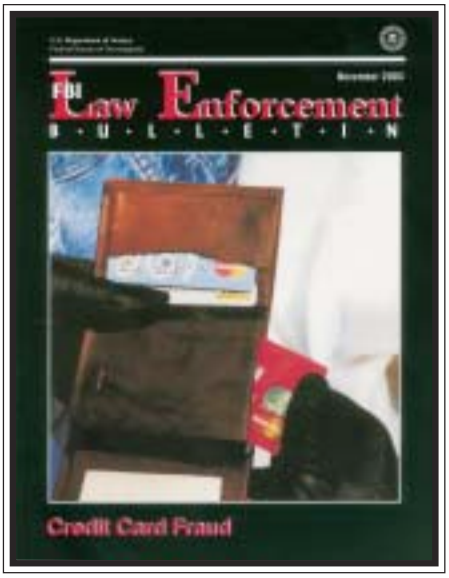


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# The Bulletin Notes

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

*Officer Kullman*

*Officer Hack*

Early one morning, Officer Daren Kullman of the Syracuse, New York, Police Department came upon an apartment fire. Officer Kullman notified dispatch and as Officer George Hack arrived on the scene, the two officers ascended a front stairwell in search of occupants. As the officers reached the second floor where two apartments existed, they encountered extreme heat and heavy smoke. After unsuccessfully trying to force open the door to one apartment, Officer Hack smashed the window in the door to determine if anyone was inside. They did not hear a response, so they turned their attention to the other apartment. Within seconds, two victims, one male and one female, approached the door of the first apartment. The officers pulled both people through the window opening and carried them outside, where Officer Kullman observed that the male victim was not breathing. He immediately began CPR and resuscitated the victim. Fire department personnel arrived and rescued two more victims from the burning building one adult male, who later died from his injuries, and a 1-year-old child, who survived. If not for the observations of Officer Kullman and the quick, yet decisive, actions of both officers, this incident most likely would have ended even more tragically with additional loss of life.

*Deputy McGuire*

Late one evening, Deputy Stephen McGuire of the Ingham County, Michigan, Sheriff s Office witnessed a vehicle weaving between lanes and driving along the center line of the highway. Deputy McGuire made contact with the driver and had him pull to the side of road. After talking with and observing the individual, Deputy McGuire determined that the driver was intoxicated. As Deputy McGuire was about to place him under arrest, the man reached into a surgical wound in his stomach and eviscerated himself. Deputy McGuire, a registered paramedic, immediately called for an ambulance and started to medically treat the individual. Shortly after arriving, the ambulance rushed the driver to the local hospital. Deputy McGuire s immediate response, calm demeanor, and medical background thwarted the attempted suicide, helped remove a dangerous driver from the road, and saved the man s life.

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

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# Patch Call


The patch of the Sunset Valley, Texas, Police Department features both a sunset and valley, representing a rural community incorporated in 1954 and now surrounded by the city of Austin. Predated by a city marshal, the agency has served its citizens since 1981.


The patch of the Fulton, Missouri, Police Department contains a seal featuring an arm and hammer, representing the strong industrial community. The Kingdom of Callaway flag, recalling the role of Callaway County during the Civil War; and the Winston Churchill Memorial and Library are also included.