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**Editor**

John E. Ott

**Managing Editor**

Kim Waggoner

**Associate Editors**

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**Assistant Art Director**

Denise K. Bennett

**Staff Assistant**

Linda W. Szumilo

**Internet Address**

leb@fbi.gov

**Cover photo**

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Send article submissions to  
Editor, *FBI Law Enforcement  
Bulletin*, FBI Academy, Madison  
Building, Room 209, Quantico,  
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## ***Citizen Complaints*** ***What the Police Should Know***

By RICHARD R. JOHNSON

**C**itizen complaints against police officers act as a barometer measuring the community's satisfaction with the police service they receive. The number and type of complaints filed against officers clearly indicate if problems exist. Citizen complaints can serve as quality control for police service because the citizens represent the customers who purchase police service with their tax dollars. Complaints demonstrate the need for improved training in certain areas, uncover problem employees, and identify areas of potential legal liability.

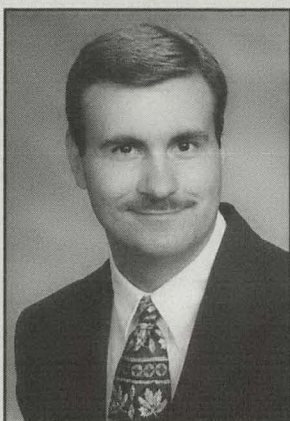
The manner in which police departments handle and resolve complaints influences community relations. Complaints reveal police activities that cause the most concern for community members. A community that perceives their concerns to law enforcement officials fall on deaf ears will negatively impact community support for the department. If the community feels that the police do not investigate their complaints fairly or that biased judgments usually result, citizens will view the police as opponents instead of as partners. Understanding and responding to citizen

complaints remain important issues for police administrators.

### **Who Files Complaints?**

Studies conducted in Chicago, St. Louis, and Philadelphia observed the types of individuals who file complaints against the police. Although the complaints came from both sexes, many races, a variety of ages, and all socioeconomic groups, a profile developed for the person most likely to complain about police conduct. Nonwhite males under the age of 30 filed approximately three-quarters of the complaints against the police. Over one-half of





Mr. Johnson, a former Indiana state trooper, currently serves as an adjunct professor at Vincennes University in Indianapolis, Indiana.

**“...the majority of complaints filed against the police do not find the accused officer guilty.”**

the complainants were divorced or single and unemployed or blue-collar workers with at least one prior arrest. In most cases, individuals who filed complaints lived in the jurisdiction of the department complained against.<sup>1</sup> Studies in Canada found the same profile for individuals filing complaints against the police in that nation, as well.<sup>2</sup>

The young, unmarried, low-income, nonwhite male represents the profile of a citizen most likely to complain against the police. This person generally has the most contact with the criminal justice system, demonstrated by the fact that the majority of these complainants had prior arrests. A higher level of contact with the police results in a higher probability of unhappiness with the conduct of the police.

This fact underscores the importance of community policing efforts targeted at improving relations with youth, racial minorities, and those individuals in lower socioeconomic groups. The fact that most complainants live within the department's jurisdiction shows

that the complaints signify local problems for the department. However, because many jurisdictions share the same types of complainants, perhaps a nationwide dissatisfaction with police service exists among this group.

#### **Against Whom?**

Similar to the typical person who complains about police conduct, the average officer complained against has the most contact with the public. Officers assigned to uniformed patrol duties received the most complaints. In the studies reviewed, the majority of officers who had complaints filed against them were white males—the majority of police officers in the nation.<sup>3</sup> As women and members of ethnic minority groups increase in numbers within the police profession, complaints against these groups probably will increase.

Even though all uniformed patrol officers have a high probability of receiving a citizen complaint, some officers' characteristics slightly elevate this chance.

Officers under age 30, with less than 5 years of police experience and only a high school education suffer the greatest risk for receiving a complaint.<sup>4</sup> These facts illustrate the importance of maturity to perform the job functions of a law enforcement officer.

Generally less aggressive and more mature, older officers have learned to communicate with people through years of life experience. By trial and error, they have learned various ways to understand and effectively deal with various individuals. Seasoned officers have gained experience negotiating in various situations, and officers with over 5 years of police experience have learned to handle people in stressful situations. In many instances, when officers do not develop effective communication skills after 5 years, administrators might terminate them, or they might voluntarily leave their career in law enforcement.

Formal education in psychology, sociology, and communication help college-educated officers avoid many complaints. Their advanced education provides them with a better understanding of the world and their place in society. College campus life provides an excellent environment to learn interpersonal communication skills and experience cultural diversity. Officers possessing police work experience, maturity, and higher education appear better equipped to handle stressful situations without offending individuals.

Research demonstrates that officers' chances of receiving a complaint may increase if they work with a partner. Several studies have



found that two-officer patrols receive a complaint more often than one-officer units.<sup>5</sup> This might stem from a sense of security officers feel when working with constant backup. An officer might talk tough to a suspect with a partner present to avoid appearing like a coward. If a citizen speaks aggressively to one of the officers, the partner may feel the need to defend the officer's reputation by snapping back at the citizen. Of course, pairing officers together could double the chance that someone in the unit will receive a complaint.

#### **For What Reason?**

Studies conducted in Florida, Illinois, Missouri, Pennsylvania, and Washington revealed citizens complain most about the police officer's verbal conduct. In each study reviewed for this article, approximately 50 percent of the complaints described rude or inappropriate statements made by an officer.<sup>6</sup> Interestingly, citizens appeared more concerned by *how* officers spoke to them than by *what* the officer specifically said to them.<sup>7</sup>

Many complainants accused the officer of using a gruff or condescending tone of voice. This clearly identifies a nationwide need for improved interpersonal communication training for police officers. Most department policies prohibit officers from cursing or using racially derogatory language, but regulating all behavior defined as rude remains difficult. Each citizen contact situation varies, and cultural differences may exist that cause citizens to misinterpret an

otherwise innocent comment as a rude remark. Officers need to understand people and situations in order to comprehend how citizens will react to their statements.

About one-quarter of the complaints filed against police officers dealt with excessive force issues.<sup>8</sup> These complaints included off-duty uses of force as well as on-duty applications of force. Many off-duty uses of force involve criminal acts, such as bar fights or domestic battery situations. After excluding

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***Officers assigned to uniformed patrol duties received the most complaints.***

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direct criminal acts, on-duty excessive force incidents involving arrest situations resulted in less than one-quarter of all complaints against the police. This reveals that excessive use of force by police officers while effecting an arrest represents a problem to address, but it does not appear as widespread as the media portrays. The last quarter of the complaints include additional unethical and nonviolent illegal conduct by the police both on duty and off duty.

#### **Under What Circumstances?**

Over one-half of the situations that result in a citizen complaint come from on-site interventions with police officers rather than a

call dispatched from a citizen's report. A patrol officer uncovering suspicious or criminal behavior exemplifies such situations. In these incidents, officers may not appear as friendly as usual because they just witnessed illegal activity. The circumstances also do not provide the officer with time to mentally prepare for the encounter. In addition, the unexpected appearance of the police surprises the citizens and causes the resident to become overly sensitive to any statements or actions from the police. This factor might create the high proportion of complaints against two-officer units. Because of the added sense of safety and the extra pair of scanning eyes, more on-site situations might involve two-officer units.

A large percentage of complaint-producing incidents involve situations when the police contact complainants in front of their families or friends. The potential embarrassment from the officer's questioning or the possible arrest in front of loved ones causes citizens under these circumstances to become hypersensitive to what they consider rude behavior or excessive force. The offended citizen may worry more about damage to his social status when detained by the police in front of his girlfriend than if stopped alone.

The majority of complaint-producing incidents occurred within 1 or 2 miles of the complainant's home. Citizens may feel that the police disrupt the comfort and security of their homes when confronted in their own house, apartment complex, or neighborhood. Many individuals in inner-city communities



view the police as outsiders and feel a confrontation near their home represents an invasion of their own turf. Incidents occurring near the proximity of their home also increase the chances of a friend or family member observing an arrest, again inciting subjects to defend their status.

Further research reinforces the fact that the majority of excessive force complaints stem from arrests at domestic battery calls. Police officers know that domestic disturbance calls can become extremely dangerous and may apply force quicker in these situations than on other calls. Because subjects have uninvited police officers in their homes in these situations, they may feel threatened and overly sensitive to anything the officers do or say. With the subject's family nearby, officers tell individuals how to conduct family business. Subjects might feel damage to their social status and power within the family.

Family members become distressed if an individual resists arrest, thus compelling police officers to use force. Normal and acceptable force can easily seem excessive to a civilian witnessing it applied to a family member. All of these factors form a situation in which officers must use tremendous tact and patience in order to remain professional.

#### **How Are Complaints Resolved?**

Surveys found that one-half of all Americans do not believe the police can investigate other police officers in an unbiased manner. As a result, politicians and community groups push for the use of civilian oversight committees and civilian

review boards to handle citizen complaints. For the past decade, over one-half of major city police departments include some type of civilian involvement when handling citizen complaints.<sup>9</sup>

“

***...officers' chances of receiving a complaint may increase if they work with a partner.***

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Yet, citizens in communities with a civilian review system do not appear to have more confidence in the manner in which departments handle citizen complaints. Studies analyzing several different civilian review systems revealed that citizens felt just as unsatisfied when a civilian review board handled their complaints as when the police handled their complaints.<sup>10</sup> Regardless of who investigates, records show that case dispositions vary little—both civilian and police review systems find the majority of complaints unsubstantiated.<sup>11</sup> Surprisingly, residents still prefer the idea of a citizen review system over the police investigation, and with this in mind, failing to respond to community desires can further destroy citizen confidence in the police.

Research shows that the majority of complaints filed against the

police do not find the accused officer guilty.<sup>12</sup> Some of the complaint situations are cleared because the alleged police conduct never happened. A disgruntled citizen might have lied for various personal reasons. Other complaints are cleared because the complainant simply misinterpreted the legal and ethical behavior of the officer. Finally, many complaint situations lack physical evidence or unbiased witnesses to support the claims of the complainant.

Investigations substantiate less than one-third of the complaints regarding police verbal conduct,<sup>13</sup> partly because of the difficulty defining rude behavior. Acceptable comments in one situation may not be appropriate if made to another person in another situation. Disciplining officers can prove difficult simply because a citizen found their tone of voice or facial expression offensive during an encounter. However, because most complaints of inappropriate verbal behavior only result in minor disciplinary actions, such as issuing a letter of reprimand or making an apology to the citizen, these complaints carry a lower burden of proof.

Only a little more than one-tenth of excessive force complaints are substantiated.<sup>14</sup> Excessive force complaints can result in administrative punishments (e.g., suspension without pay, termination, or civil court action) and may even result in criminal charges because an excessive force complaint carries a much higher standard of proof than a verbal behavior complaint. A lack of unbiased witnesses can influence a case alleging excessive force. However, in extreme cases,



physical evidence (e.g., cuts, bruises, missing teeth, and broken bones) exists to support the citizen's claims.

Complaints regarding unethical and nonviolent criminal activity by police officers are substantiated in over one-third of the cases.<sup>15</sup> Complainants can more easily prove this type of activity because it often involves other people, for example, dealing drugs to a citizen, patronizing a prostitute, or taking a bribe. At the same time, these cases may be difficult to prove because police officers perform these illegal acts in secret and the witnesses—sometimes accomplices to the criminal act—may be reluctant to testify.

Even though investigations substantiate less than one-third of all complaints against police officers, it remains extremely important for police administrators to treat every complaint seriously until it is properly investigated. In doing so, administrators help to cultivate the public's trust and advance the ethical goals of the police profession.

## Conclusion

Research on citizen complaints against the police highlights several areas of dysfunction between the police and the community. The research demonstrates that a misunderstanding exists between the police and young males from lower socioeconomic neighborhoods and also suggests a general lack of faith in the police by most ethnic minority groups, indicating a strong need for community policing efforts nationwide to repair these relationships. The community should view the police as their partners in

the neighborhood, not as outsiders who are indifferent to their concerns.

Research shows the importance of interpersonal communication in police work. Police agencies should hire mature, educated officers with strong communication skills and provide further instruction and experience in communication techniques. Human relations and cultural diversity training help equip new officers with the tools to handle stressful situations.



Finally, research demonstrates that the age-old problems of police corruption and brutality still exist, although not as frequently as the media portray. Police agencies should attempt to understand the reality of these problems and handle them in a professional manner. By removing brutal officers from the public position they have abused and prosecuting corrupt officers for their crimes, the law enforcement profession will gain support from the community by demonstrating that the police are not above the law.

Police departments should handle every complaint from the community with concern and professionalism. Listening to citizen complaints shows the department what concerns exist within the community and also reveals how the community feels about their police service. By taking corrective action to reduce the causes of citizen complaints, police supervisors improve the quality of police service. ♦

## Endnotes

<sup>1</sup> Allen Wagner, "Citizen Complaints Against the Police: The Complainant," *Journal of Police Science and Administration* 8 (1980): 247-252; James Hudson, "Police-Citizen Encounters that Lead to Citizen Complaints," *Social Problems* 18 (1970): 179-193; Wayne Kerstetter, Kenneth Rasinski, and Cami Heiert, "The Impact of Race on the Investigation of Excessive Force Allegations Against Police," *Journal of Criminal Justice* 24 (1975): 1-15.

<sup>2</sup> Susan Watt, "The Future of Civilian Oversight of Policing," *Canadian Journal of Criminal Justice* 33 (1991): 347-362; Tammy Landau, "When Police Investigate Police: A View from Complainants," *Canadian Journal of Criminal Justice* 38 (1996): 291-315.

<sup>3</sup> Ibid., Wagner.

<sup>4</sup> Ibid., Wagner.

<sup>5</sup> Ibid., Wagner.

<sup>6</sup> Albert Reiss, *The Police and the Public* (New Haven: Yale, 1971); David Griswold, "Complaints Against the Police: Predicting Dispositions," *Journal of Criminal Justice*, 22 (1994): 215-221; John Dugan and Daniel Breda, "Complaints about Police Officers: A Comparison Among Types and Agencies," *Journal of Criminal Justice*, 19 (1991): 165-171.

<sup>7</sup> Angela Woodhull, *Police Communication in Traffic Stops* (Rochester, VT: Schenkman, 1993); and Ibid., Hudson; Reiss.

<sup>8</sup> Ibid., Dugan and Breda; Griswold; Reiss.

<sup>9</sup> Ibid., Griswold.

<sup>10</sup> Ibid., Griswold.

<sup>11</sup> Ibid., Landau.

<sup>12</sup> Ibid., Landau.

<sup>13</sup> Ibid., Griswold.

<sup>14</sup> Ibid., Griswold.

<sup>15</sup> Ibid., Griswold.



# Police Practice

## Realtor-Police Partnership for Safety

By Karl Leonard

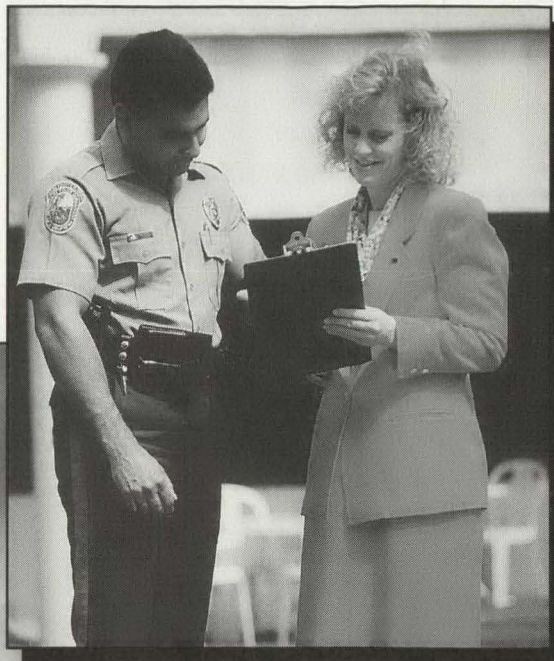
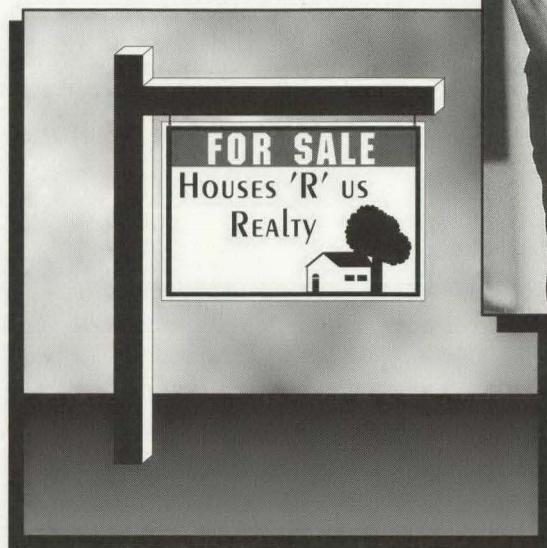


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*"In Coral Gables, Florida, an agent is raped at knifepoint in a vacant home by a man who has an appointment to see property."<sup>1</sup>*

*"30-year old murdered after she left to show a vacant house...apparently strangled with bare hands."<sup>2</sup>*

*"A Daytona Beach agent was stabbed to death by someone apparently posing as a customer...."<sup>3</sup>*

*"Real estate agent robbed outside her office."<sup>4</sup>*

**T**hese newspaper stories depict only a few of the increasing numbers of crimes committed against real estate agents nationwide. Real estate agents have daily, one-on-one contact with various individuals—virtual strangers—and put themselves at risk every day. They advertise their availability by displaying a trail of signs, usually adorned with balloons indicating an open house, and remain relatively easy targets to criminals. Personal safety and security remain important issues.

The National Association of Realtors reports an increase in crimes against real estate agents in recent years. These crimes, ranging from minor thefts and assaults to rapes and even murder, occur throughout the country. A 1996 report on the real estate industry estimates the total number of agents and brokers in the United States at 2,350,000. In 1996, the National Association of Realtors consisted of 695,000 members, with females representing 54 percent of that



total.<sup>5</sup> Female real estate agents, in particular, become targets during house showings when meeting the client alone or at night. Anyone can become a victim, including real estate agents, and everyone should anticipate what can happen. The *Michigan Realtor Magazine* advised that "the first step in preventing any crime is the knowledge that it can happen to you," and "denial stops most people from anticipating what can happen."<sup>6</sup>

By forming a partnership with local realtors, police departments can help real estate agents identify and possibly prevent crimes against them. To prevent the nationwide trend of violent acts against real estate agents from becoming a local reality, the Chesterfield County, Virginia, Police Department began a joint training venture with area realtors as an extension of their community policing program.

#### **A JOINT TRAINING PROGRAM**

Encompassing metropolitan Richmond and approximately 500 square miles in size, Chesterfield County boasts a diversified make-up of business, industry, and residential housing. The current population rests at over 250,000, with a steady increase of home sales in the forecast. With a significant number of home sales comes a large number of realtors, and in turn, possible crime victims. Although Chesterfield County realtors have not reported any major crimes, the initiation of a joint training program between the local law enforcement community and area real estate agents seeks to ensure crime prevention and personal safety.

#### **Safety Issues**

In training sessions offered every 6 months, officers from Chesterfield County's community policing and crime prevention divisions provide valuable safety tips that help realtors thwart possible harmful situations. Police officers instruct realtors how to take precautions when meeting prospective clients and how to protect themselves if an incident occurs. Among the information provided, officers advise realtors to conduct the first meeting with clients at the realty office. This provides the realtor an opportunity to become somewhat acquainted with clients, rather than merely judging them by their

#### **Additional Information**

##### **For further information contact:**

National Association of Realtors  
430 North Michigan Avenue  
Chicago, Illinois 60611  
(312) 329-8200

Women's Council of Realtors  
430 North Michigan Avenue  
Chicago, Illinois 60611  
(312) 329-8483

outward appearance. Officers also instruct real estate agents to identify clients before a house showing by acquiring an address and telephone number, if possible, and to leave this information with another individual. Officers advise realtors to show homes in pairs when possible, especially at night, and inform another person of their destination and who will accompany them, all while within earshot of the client. These precautions advise prospective customers that other individuals know their names and the realtor's location at all times and that assistance remains available to realtors in emergency situations.

Officers should advise real estate agents to drive customers in their own vehicles when showing property and ensure that their cars remain in good running condition. This gives real estate agents control of the situation and eliminates various safety issues, such as the client pretending to run out of gas in a desolate area. By parking their vehicles in a noticeable area (i.e., on the street in front of the house on show) agents can make a quick exit if necessary.

Law enforcement officers also instruct real estate agents on ways to identify drug users and notice signs of drug abuse, both factors that can warn realtors of an impending problem. Clients left alone may prepare the house for a later burglary by unlocking doors/windows or planting weapons for a future visit; therefore, officers caution realtors to remain with customers throughout the house to help prevent future incidents.



## Safety Points for Realtors

Topics covered in a training program between local police departments and real estate agencies should include instructing realtors to:

- Attempt to identify clients before a house showing.
- Never leave items identifying personal information available to clients.
- Never give out their home telephone numbers/addresses.
- Remember their obligation to protect their clients by maintaining confidentiality and not releasing sensitive client information (e.g., client's home telephone number and address).
- Practice office security awareness (e.g., do not leave realtor's or client's home telephone numbers/addresses in an area open to public access).
- Tell another individual their destination.
- Never carry a large amount of money or wear a lot of jewelry.
- Establish a prearranged distress signal with each realtor agency member and family members to use in emergencies.
- Always drive their own vehicle.
- Always ensure their vehicle remains in good running condition.
- Park their vehicle in a noticeable area when showing property.
- Keep vehicle keys easily retrievable in case of an emergency.
- Remain suspicious of spur-of-the-moment showings or clients who rush their schedule.
- Always have a plan.

Not only designed to provide realtors with safety tips, the training program also offers a physical defense training session where police officers prepare realtors for unexpected holds such as bear hugs and how to escape them, how to break handholds, and ways to defend themselves against choke holds. These classes can benefit realtors caught alone with individuals attempting to overpower them.

Finally, officers stress that above all, real estate agents should always have a plan. By anticipating incidents and preparing ahead of time for a response, dangerous situations can be prevented. If running remains the only option, realtors should have a destination in mind so that a worse situation does not develop.

### Realtors Helping Police

In addition to preventing crime by educating realtors, this program also represents a partnership intended to benefit law enforcement officers. Realtors

work 7 days a week, all hours of the day, and travel through many subdivisions and housing areas that law enforcement officers may not always get a chance to patrol. Real estate agents can act as extra eyes for the police. Many realtors travel with a cellular telephone and can contact law enforcement officers when observing any unusual activities in their areas. This further assists the police department in their efforts in crime prevention and reduction as well as in the apprehension of violators.

### RESULTS

The realtor community expresses enthusiasm about this program, readily welcomes the police into their world, and continues to show support with the police department. Initially a short-term program, the partnership continues as officers from the department's safety and community support division regularly participate in the activities of such organizations as the local business associations or retail



merchants associations. This partnership, another branch of the community policing program, has resulted in positive community relations in Chesterfield County.

As is the case in Chesterfield County, Virginia, most states have governing boards that mandate realtor training annually. If approved, this training rewards the realtors as well as satisfies part of their annual training requirements. Almost all populated areas have a local realtor association with which to work. These associations usually have education and public affairs departments that can provide assistance.

## CONCLUSION

Creating a partnership between local police departments and real estate agencies can prevent realtors from becoming victims. By initiating a joint training program with real estate agencies and providing valuable safety tips, local police departments prepare realtors for attempted crimes against them. These training programs not only benefit realtors but

can provide valuable information to police departments concerning criminal activity, as well. Departments throughout the country should capitalize on realtors' assistance, and in turn, form lasting partnerships with them. ♦

## Endnotes

<sup>1</sup> "Real Estate Agent Raped in Gables," *Miami Herald*, November 25, 1996, 1B.

<sup>2</sup> "Realtor Safety: You May Lose a Sale, but if the Situation is Uncomfortable Then Bow Out," *The Illinois Realtor*, November 1994, 18.

<sup>3</sup> "Safety First," *Florida Realtor*, June 1994, 18.

<sup>4</sup> Ibid.

<sup>5</sup> Jennifer Montgomery, National Association of Realtors, Chicago, IL, interview by author, December 1996.

<sup>6</sup> "The Keys to Your Protection," *The Michigan Realtor Magazine*, May 1994, 8.

*Lieutenant Leonard serves as a shift commander with the Chesterfield County Police Department in Chesterfield, Virginia.*

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# INTERPOL

## *Extending Law Enforcement's Reach Around the World*

By JOHN J. IMHOFF, M.A., CPA, and STEPHEN P. CUTLER, M.A.

A police chief in a small midwestern town receives an anonymous note that an immigrant, a recent arrival to the community, allegedly has a long history of involvement in illegal drug abuse and is wanted in his native country for drug offenses. The chief wants to deal firmly with potential drug dealers but finds himself stymied in his ability to contact authorities overseas to research the allegations due to language barriers and time zone differences.

In another city, officers find a sizeable hoard of cash in a suspect's possession during the execution of a search warrant. The officers strongly suspect that the money constitutes proceeds from illegal drug transactions. The suspect, however, claims he legitimately earned the money during his rock band's tour of Europe. The courts initially seem sympathetic to the suspect's arguments, and the seizing officers become frustrated in their ability to disprove the suspect's story.

Parents from a European nation send their daughter to a school in the United States for advanced studies in the English language. She is hired by an unscrupulous employer who makes her work in a kitchen under dangerous conditions



and do other undocumented menial field labor for extremely low wages.

How can the officers in these situations verify their suspicions? How do they determine the appropriate foreign agency or person to contact for information and then

communicate their request to that person in the appropriate language? How can police officers accomplish routine humanitarian tasks when confronted by international borders?

The officers in each of these cases could take advantage of the



International Criminal Police Organization, more commonly known as INTERPOL. Created nearly a century ago, INTERPOL enables law enforcement information to flow easily from officer to officer across borders, language barriers, time zones, and terrains in the basic service of justice.

### **INTERPOL's Mission**

INTERPOL originated in 1914, when police professionals from 14 European countries gathered in Monte Carlo, Monaco, to discuss currency counterfeiting and other matters of mutual interest. Then, as now, criminal activity flowed easily across national borders while police officers found themselves limited by sovereignty, laws, absence of treaty relations, nationalistic pride, and a general lack of cooperation.

Founded on the recognition of, and respect for, national sovereignty, INTERPOL is not an international police force, has no police powers of its own, and does not have its own independent agents or officers. The organization facilitates the interaction and cooperation of police agencies in nations around the globe. Those agencies operate within their own national boundaries and remain bound by their own national laws and regulations. INTERPOL does not conduct investigations on its own authority or without a request for assistance from a recognized law enforcement authority of a member nation.

Now headquartered in Lyon, France, INTERPOL helps local, state, and federal law enforcement agencies coordinate their investigations with the world, rapidly obtain

information, and seek the return of fugitives or stolen property. INTERPOL conducts these tasks within the framework of treaties and international laws but effectively accomplishes them in most cases because the member nations have agreed to the methodology established by INTERPOL.

### **The Communication System**

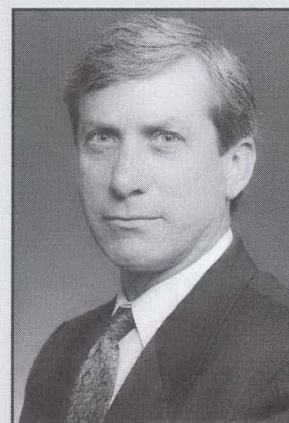
INTERPOL connects its worldwide offices through a secure communication network that enables confidential and instantaneous handling of messages and leads for international criminal investigations. This network links the central office, known as the National Central Bureau (NCB) in each of the 177 INTERPOL member nations with each other as well as INTERPOL headquarters. This secure communication system carries text messages, as well as high-resolution images, such as counterfeit notes, photographs, or fingerprints.

NCB offices around the globe handle requests for assistance from police departments or judicial authorities daily. Departments frequently request assistance in locating a fugitive or obtaining information about a criminal. In those cases, INTERPOL headquarters may issue an international circulation of information known as a diffusion—an electronic dissemination of wanted person information to agencies in a particular country or area who then immediately broadcast the wanted person information to their officers. The diffusion acts in the same manner as an “all points bulletin” or “APB,” and precedes the official wanted person flier or red notice.

INTERPOL also may issue a notice, similar to a diffusion, and transmit it simultaneously to all 176 member countries and the NCB in the United States (USNCB). INTERPOL color-codes these notices into 10 categories and uses



*Special Agent Imhoff heads the FBI's detail at INTERPOL's U.S. National Central Bureau in Washington, DC.*



*Special Agent Cutler is detailed from the FBI's International Relations Branch to INTERPOL's U.S. National Central Bureau in Washington, DC.*



them to communicate various types of information. Because of the color code, officers receiving the notice immediately know the nature of the alert. For example, INTERPOL issues a red notice alerting officers at any location, especially border and immigration checkpoints, that their subject has outstanding arrest warrants. The red notice functions as an international wanted poster, and a number of countries recognize it as a legitimate arrest warrant.

INTERPOL uses a blue notice when authorities gather information about a suspected criminal or want to trace and locate a subject. In this way, blue notices help law enforcement officials find material witnesses or develop new leads and information on subjects.

For a proactive action, INTERPOL may issue a green notice to alert authorities of career criminals who have committed, or are likely to commit, offenses in several countries. These habitual offenders typically are convicted child molesters or child pornographers who move freely worldwide in search of new victims.

Purple notices detail unusual criminal methods of operating or new methods of contraband concealment, and gray notices circulate information about various organized crime groups and activities. On occasion, INTERPOL disseminates information concerning international criminal activity that does not involve a specific group but remains important. Orange notices alert agencies to this activity. Information detailing and describing different types of stolen or seized cultural objects is circulated via a

white notice, and the FOPAC bulletin provides money laundering information.

INTERPOL uses the notice program to give wide publicity to other areas, as well. Yellow notices feature missing persons, including missing or abducted children. Information requests related to unidentified dead bodies whose true identities have been masked by apparent false documents may be circulated through black notices.

“  
**[INTERPOL]  
facilitates the  
interaction and  
cooperation of police  
agencies in nations  
around the globe.**  
”

In order to issue a notice from the United States, the USNCB must receive a written request. For a red notice, or wanted person notice, the USNCB must have a confirmation of both a felony warrant and entry into the National Crime Information Center computer. Additionally, prosecuting attorneys must certify that they will cooperate with the U.S. Department of Justice in extraditing the fugitive back to the United States, including the covering costs of transportation and other related matters.

The free flow of information between law enforcement officers only can exist if confidentiality and

reliability are ensured. To protect against disruption or interception, INTERPOL encrypts all of its communications.

In addition to providing secure communication facilities, INTERPOL has taken important steps to ensure that its archived or filed information remains safe. A supervisory board governs policy for the records held by INTERPOL and sets out rules and regulations for the organization to follow. The board conducts checks and audits to guarantee the implementation of proper procedures.

INTERPOL conducts all business in four of the most commonly spoken languages: Arabic, English, French, and Spanish. Thus, communications remain standardized without the need to translate hundreds of languages. INTERPOL communications travel around the world with little difficulty because of this uniformity of languages.

#### **Information Resources**

INTERPOL headquarters also operates the Automated Search Facility, or ASF system. This system allows NCBs to search for international records on people, using such criteria as family name, including phonetic spellings, given names, dates of birth, and nationalities. Through ASF and other INTERPOL databases, police officers gain access to criminal information, such as arrest warrants, from around the globe.

In addition to providing the ability to communicate rapidly, a variety of state-of-the-art computer systems allow member countries to carry out the mission of combating



### Types of INTERPOL Notices

Red	Seeks arrest of subjects for whom arrest warrants have been issued and where extradition will be requested (e.g., fugitives).
Blue	Seeks information (e.g., identity, criminal records) for subjects who have committed criminal offenses and is used to trace and locate a subject where extradition may be sought (e.g., unidentified offenders, witnesses).
Green	Provides information on career criminals who have committed, or are likely to commit, offenses in several countries (e.g., habitual offenders, child molesters, pornographers).
Yellow	Seeks missing or lost persons (includes missing and abducted children).
Black	Provides details of unidentified dead bodies or deceased people who may have used false identities.
White	Circulates details and descriptions of all types of stolen or seized property, including art and cultural objects.
Purple	Provides details of unusual modus operandi, including new methods of concealment.
Gray	Provides information on various organized crime groups and their activities.
Orange	Provides information on criminal activity with international ramifications but not involving a specific person or group.
FOPAC	Provides money laundering information for use in countering international money laundering.

international crime. Several sections within INTERPOL's headquarters maintain databases containing records of the names and aliases of people linked to international crime, as well as records of counterfeit currency seizures, theft of works of art, 10-print fingerprints (versus single-print fingerprints), and photos of individuals implicated in international crimes. These databases give a police officer access to an extensive array of information.

The representatives from the NCB in each member country carry out virtually all investigative

assistance for local law enforcement. They collect and disseminate documents and intelligence (e.g., current criminal trends) bearing on international police cooperation and ensures that requests for assistance from both domestic and international agencies are met. The NCBs communicate directly with one another and also keeps INTERPOL headquarters advised of ongoing probes.

#### INTERPOL's U.S. Role

Located in Washington, DC, the USNCB houses individuals detailed from all of the major federal

criminal investigative agencies, as well as numerous other professional personnel. Working under the authority of the U.S. Department of Justice and in cooperation with the U.S. Department of Treasury, the USNCB divides its workforce into several operational sections to effectively address law enforcement needs.

The Alien/Fugitive Division assists officers in locating fugitives who allegedly have fled the United States or may have entered the United States to avoid arrest in another country. This division also investigates immigration violations,



missing persons, and passport fraud and successfully resolved the case involving the drug dealer immigrant introduced at the beginning of this article. This USNCB group maintains close coordination with the Department of Justice to meet extradition treaty requirements and oversees INTERPOL's red notice program.

Agents and analysts assigned to the Criminal Investigative Division investigate a wide array of offenses. These include organized crime, kidnapping, terrorism, outlaw motorcycle gang activity, child abduction, art theft, and violent crimes such as murder, rape, and robbery.

Agents from this division successfully resolved the dilemma faced by the officers in the second introductory scenario by contacting authorities in Europe and proving that the rock band did not tour the cities claimed during the period stated by the defendant. They also assisted in locating the child cited in the third example. The successful resolution of this case highlights the close working relationship the Criminal Division enjoys with the National Center for Missing and Exploited Children, an international information clearinghouse. This division also has provided invaluable assistance in recovering stolen art and cultural treasures and returning those works to their proper owners.

The agents and analysts who staff the Financial Fraud Division focus on money laundering, currency and bank card counterfeiting, financial instrument smuggling, computer crimes, child

pornography, and a variety of related fraudulent activity. Finally, working with analysts at INTERPOL headquarters, USNCB personnel track new trends in drug trafficking and money laundering.

INTERPOL does not replace the liaison officers of any U.S. agency serving abroad. Those representatives remain a logical first choice for conducting overseas investigations for such agencies. Nonetheless, where applicable, the INTERPOL USNCB works cooperatively with those agencies. Primarily, this work will occur in one of two areas.

**“  
To protect  
against  
disruption or  
interception,  
INTERPOL  
encrypts all of its  
communications.  
”**

First, INTERPOL's worldwide broadcast communication capabilities are unique. When used effectively, the system serves much like the U.S. National Law Enforcement Telecommunications System (NLETS), only worldwide. It provides the most expeditious means of broadcasting law enforcement messages around the world. The agency sending the message can include U.S. agency liaison officers on these broadcast messages

as warranted. The notice program provides an example of how the system is used most frequently.

Second, although the liaison officers have the world thoroughly covered with their territorial assignments, travel budgets and logistics still make some remote countries difficult to service. In these instances, the INTERPOL USNCB may provide an alternative means of setting out investigative requests. INTERPOL must closely coordinate this usage with interested agencies to avoid duplicate efforts.

### **Investigative Limits**

Given the diverse array of government structures within the organization, INTERPOL must strive to avoid having its criminal investigative capabilities distorted for other purposes. To this end, INTERPOL will not intervene in activities of a political, military, religious, or racial character. Nonetheless, INTERPOL does conduct investigations of terrorist attacks and distinguishes them from military or political crimes. INTERPOL does not consider terrorist offenses political or military when committed outside a "conflict area" (i.e., a demilitarized zone) or when the victims have no connection with the aims or objectives pursued by the offenders. Thus, INTERPOL may, under most circumstances, assist in investigations of crimes commonly labeled as terrorist events.

In order for INTERPOL to assist in investigations, the originating agency must include a statement of the matter under investigation with every query, assuring the receiving country the legitimacy of



## INTERPOL State Bureau Offices and Telephone Numbers

Montgomery, AL	334-260-1170	West Trenton, NJ	609-882-2000, Ext. 2638
Anchorage, AK	907-265-9583	Albuquerque, NM	505-841-8053
Phoenix, AZ	602-223-2158	Albany, NY	518-485-1518
Little Rock, AR	501-618-8373	New York, NY	212-374-5030
Sacramento, CA	916-227-4186	Raleigh, NC	800-334-3000
Denver, CO	303-239-4310	Bismarck, ND	701-221-5500
Meriden, CT	203-238-6561	London, OH	800-282-3784, Ext. 223
Dover, DE	302-739-5998	Oklahoma City, OK	405-848-6724
Tallahassee, FL	850-488-0586	Salem, OR	503-378-3720
Decatur, GA	404-244-2554	Harrisburg, PA	717-705-2344
Honolulu, HI	808-586-1249	N. Scituate, RI	401-444-1006
Meridian, ID	208-884-7124	Columbia, SC	803-896-7008
Springfield, IL	217-782-8760	Pierre, SD	605-773-3331
Indianapolis, IN	317-232-7796	Nashville, TN	615-741-0430
Des Moines, IA	515-242-6124	Austin, TX	512-424-2200
Topeka, KS	913-296-8261	Murray, UT	801-284-6200
Frankfort, KY	502-227-8708	Waterbury, VT	802-244-8781
Baton Rouge, LA	504-925-6213	Richmond, VA	804-323-2493
Augusta, ME	207-624-8787	Olympia, WA	360-753-3277
Columbia, MD	410-290-0780	South Charleston, WV	304-558-3324
Framingham, MA	508-820-2129	Madison, WI	608-266-1671
Lansing, MI	517-336-6637	Cheyenne, WY	307-777-6615
St. Paul, MN	612-642-0610	Washington, DC	202-724-1426
Jackson, MS	601-987-1592	Pago Pago,	684-633-2827
Jefferson City, MO	573-751-3452	American Samoa	
Helena, MT	406-444-3874	San Juan, Puerto Rico	787-729-2048
Lincoln, NE	402-479-4957	St. Croix, U.S. Virgin	809-778-6601
Carson City, NV	702-687-3346	Islands	
Concord, NH	603-271-2663		

*Law enforcement agencies requiring assistance from INTERPOL should contact the liaison office in their state. Additional information is also available through the USNCB at 202-616-9000; fax, 202-616-8400; NLETS, DCINTER00; or on the Internet at <http://www.usdoj.gov/usncb/>.*

the inquiry and the right to challenge. Generally, an offense must be a violation of law in all countries requesting investigations.

### Contact Guidelines

How can police agencies in the United States extend their reach around the world? As a first step,

the USNCB suggests that agencies review outstanding warrants and other cases for those whose subjects may have some international connection. This may be by birth, past travel history, known associations, or even simple possession of a passport. A recent review of the National Crime Information Center

records indicated more than 400,000 active wanted person records; however, fewer than 600 international fugitive wanted notices have been issued by the United States. This comparison indicates that law enforcement agencies may not be using INTERPOL's red notices to their fullest potential.



Each of the 50 states—along with Puerto Rico, Washington, DC, New York City, the Virgin Islands, and American Samoa—has a designated state liaison office through which state and local officers may connect to NCBs around the world. Thus, when a state or local agency believes that INTERPOL may be useful in an investigation, it should contact the state liaison office to forward information to the USNCB. Agencies can accomplish this by fax, telephone, mail, or by using NLETS. Requests for assistance should incorporate all available details, including a thorough description of suspects, set out in clear, concise language, as well as a statement of the nature of the request to be made of the overseas NCB. Federal agencies should follow their own policies and guidelines for contacting INTERPOL. Although agencies incur no direct cost for INTERPOL services, they must bear the cost of extradition-related expenses, such as transportation of the fugitive back to the United States to face charges.

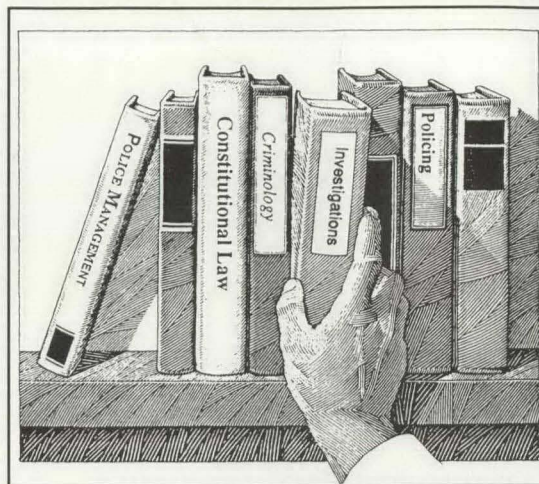
### Conclusion

International impediments to commerce relax with each passing month. The North American Free Trade Act, the European Union, and the Internet are bringing incredible changes and breaking through restraints on the transit of cargo, people, and information. Movement of people and goods from continent to continent that before took weeks, if not months, now can be conducted within hours. Data moves around the globe in seconds.

Unfortunately, as advantageous as this may sound for businesses, criminals also can benefit from the ease of transport. The speed at which these transactions occur often allows criminals to elude investigators before they can obtain arrest warrants. Illegal activity also may take place on a scale beyond the ability of a single agency to appropriately respond.

In this age of computer-driven crimes and jet travel allowing the crossing of international borders with ease, police officers must use all available tools to maintain a level playing field with criminals. Knowledge of these tools remains an important step, but actually using the tools empowers an agency to fulfill its mission of protecting its citizens.

Since early this century, INTERPOL has been a tremendous resource to law enforcement. It provides police officers the ability to reach out to every continent to find fugitives, obtain information needed for prosecution or investigation, and return stolen art and other valuable property to the rightful owner. Whether the person needing assistance is a police chief in a small town, a county sheriff, or an agent from a federal law enforcement agency, INTERPOL remains an invaluable tool investigators across the globe can use to coordinate a myriad of information to assist them with international investigations. ♦



**Ticking Bombs: Defusing Violence in the Workplace**, by Michael Mantell, Ph.D., with Steve Albrecht, Irwin Publishing, New York, New York, 1994.

When it comes to crime and violence, police officials take a certain amount of comfort in knowing that the private sector looks to them for research, management, and training. But when it comes to workplace violence, particularly by nonstrangers, law enforcement lags far behind the private sector in recognition, prevention, and management. *Ticking Bombs: Defusing Workplace Violence* provides an excellent overview of the subject.

The book thoroughly examines the problem and provides practical steps that law enforcement and private sector managers can use to prevent in-house violence and manage people and situations that are potentially violent. The author spent 10 years as the chief psychologist for the San



## Manager's Bookshelf

Diego Police Department where he established one of the leading counseling and preemployment screening programs.

The book begins with an examination of the dynamics of the workplace, showing how virtually no organization remains immune to violence. In the chapter, "Toxic World, Toxic Workplace," the author examines the factors in society and the workplace that contribute to violence. Among those, the culture of the American workplace, where the customer is king, may contribute to employees' feelings of low self-worth, making them prone to violence.

In the chapter "Caution! Disgruntled Employee Ahead!," the author outlines the warning signs of dangerous employees. Because two of the indicators, being a male between age 30 and 40 and collecting guns or weapons, apply to a certain percentage of police officers, law enforcement supervisors would be well advised to learn the other 18 warning signs. Chapters on hiring and firing remind supervisors that like hiring, firing is a process, and firing someone the right way may avert disaster.

In "Protecting Your Assets: Human and Otherwise," the author emphasizes that managing human problems may prove more important than handling security equipment. That is, the best security system will not necessarily protect agencies from their worst employees. At the same time, managers should never underestimate the potential disruptive power of the "least influential employee." Speaking from experience, the author advises that a good employee assistance program often represents one of the best security measures that an institution can implement.

Although victims of workplace violence are often managers, management still

must look at how it can improve its own performance. By following the author's "Golden Rule of Management," "treat your people as you would like to be treated," managers can diffuse potentially volatile situations. By contrast, managers who fail to live by this rule, whom the author calls "toxic supervisors," forget that "average pay and excellent working conditions are much preferred to great pay coupled with horrific working conditions. People want to enjoy their work, their coworkers, and their supervisors."

*Ticking Bombs* represents an invaluable resource for any manager. For law enforcement, it bridges criminology and principles of management, while helping administrators keep up with the advances that the private sector has made on this problem. The book also can help officers in the field deal with employee/employer cases, while it guides agencies as they attempt to handle their own problem employees. Armed with information from years of practical field experience, the author makes *Ticking Bombs* readable and easily applicable to any institution.

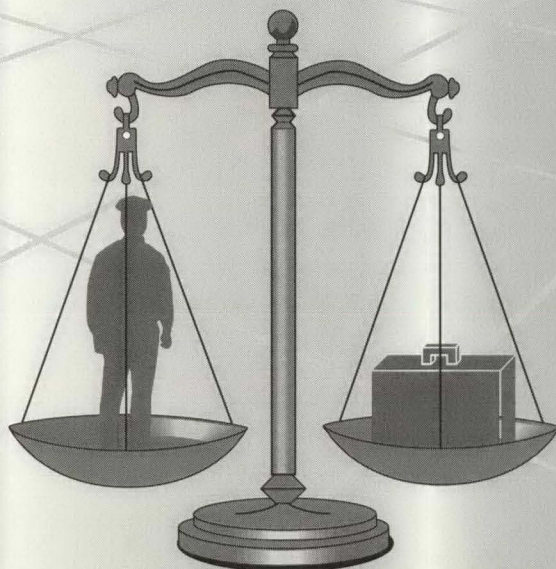
Reviewed by  
Lieutenant Stan Duncan  
Sarasota Police Department  
Sarasota, Florida

**Manager's Bookshelf** is designed to acquaint readers with books that have been in print for several years or cover topics outside a strict law enforcement focus, which, nonetheless, present information helpful to law enforcement administrators. If you would like to review a book that you believe may be of interest to *Bulletin* readers, please contact Cynthia L. Lewis, the *Bulletin's* book review editor at 703-640-8219.



# ***Moving and Touching Stowed or Checked Luggage Fourth Amendment Considerations***

By JAYME S. WALKER, J.D.



**O**fficers must consider a number of Fourth Amendment issues when moving and touching luggage stowed or checked with a common carrier. The Fourth Amendment requires that all searches and seizures be reasonable. Before addressing the reasonableness of police action, however, a court must first decide if a search or seizure even occurred. For example, suppose officers working in a transportation interdiction unit obtain the permission of a bus driver to board the bus during a regularly scheduled layover. After all of the passengers have left the

bus, the officers walk down the aisle and begin both moving and feeling the exterior of the bags in the overhead bins. One of the officers suspects that two of the bags each contain a brick of controlled substances. The other officer then pushes and feels the exterior of the bags and reaches the same conclusion.

This article addresses two questions presented by this example. First, did the movement of the bags in the overhead bin by the officers constitute a Fourth Amendment seizure? Second, did the feeling of the exterior of the bags by the officers

constitute a Fourth Amendment search? The answers to these questions are important to law enforcement officers because police action that does not constitute either a search or seizure is constitutional if the police lack even a reasonable suspicion of criminal activity.

## **MEANINGFUL INTERFERENCE WITH POSSESSORY INTERESTS**

The U.S. Supreme Court has stated that "[a] 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in



that property.”<sup>1</sup> Therefore, in the earlier bus scenario, the question becomes whether the officers’ movement of the bags in the overhead rack constitutes a meaningful interference with the passenger’s possessory interests in the bag.

Courts addressing this question in similar cases have found that such movement does not constitute a meaningful interference with someone’s possessory interest in property and therefore does not constitute a seizure under the Fourth Amendment. For example, in *United States v. Gant*,<sup>2</sup> after all of the passengers had exited, officers boarded the bus and moved all of the bags from the overhead racks to the seats below. The officers then brought a dog on the bus to sniff the bags for contraband. The dog alerted to two bags. The officers returned the bags to the overhead racks.

After the passengers returned to the bus, the officers asked who owned the two bags on which the dog had alerted. A passenger claimed one of the bags, but disclaimed ownership of the other. No other passenger claimed the second bag. The officers took the unclaimed bag off of the bus, opened it as abandoned property, and found cocaine inside. The officers reboarded the bus and obtained consent from the passenger to open the other bag. Inside that bag an officer found a box of laundry detergent that contained cocaine.

The defendant in *Gant* argued that the officers’ movement of the bags from the overhead rack to the bus seats violated the Fourth Amendment prohibition against

unreasonable seizures. In rejecting this argument, the U.S. Court of Appeals for the Sixth Circuit stated that:

...there was no meaningful interference with defendant’s possessory interest in his bag. The bag was moved only a short distance (from an open overhead compartment to the seat below), for a short time (just long enough for the dog to walk up and down the aisle), and the movement occurred at a time when defendant had left the bag unattended, so his access to it was never impaired. Finally, had the dog not indicated that the bag contained drugs, defendant would have been able to travel uninterrupted to the next stop with his bag. Because there was no meaningful interference with defendant’s possessory interest in his bag, there was no seizure.<sup>3</sup>

Similarly, in *United States v. Lovell*,<sup>4</sup> officers observed an individual arrive at the airport with two large, soft-sided bags. The individual proceeded to check the bags at the curb while glancing rapidly about, chewing incessantly on a toothpick, and writing erratically on baggage claim checks. After observing this behavior, the officers went to the baggage area and removed the individual’s bags from the conveyor belt. The officers felt what appeared to be a solid mass when touching the sides of the bags. The officers compressed the sides of the bags and smelled the odors of talcum powder and marijuana. After a trained narcotics dog also had alerted to the bags, the officers obtained a search warrant. The officers found 68 pounds of marijuana inside the bags. In addressing the question of whether the officers’ removal of the bags from the conveyor belt constituted a seizure, the court distinguished the moving

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...movement of bags  
in the overhead bin is  
not a meaningful  
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person’s possessory  
interest in those  
bags....  
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Ms. Walker serves as a legal instructor and an attorney for the Drug Enforcement Administration at the FBI Academy.



of the bags from the belt from a situation where a bag is taken directly from a person. The U.S. Court of Appeals for the Fifth Circuit stated that:

There is no suggestion that if the agents had not smelled marijuana, Lovell's travel would have been interfered with or his expectations with respect to his luggage frustrated. The agents' brief removal and compression of Lovell's bags cannot be analogized to a seizure of Lovell himself. The momentary delay occasioned by the bags' removal from the conveyor belt was insufficient to constitute a meaningful interference with Lovell's possessory interest in his bags. As a result, the agents' actions did not constitute a seizure.<sup>5</sup>

In both *Gant* and *Lovell*, the movement of the bags by the officers did not meaningfully interfere with either person's possessory interest in the bags. Therefore, in both cases the courts ruled that the bags were not seized.<sup>6</sup> The officers did not take the bags from the physical possession of either person, and the officers' movement of the bags did not impede their travel.

#### **INTERFERENCE WITH A REASONABLE EXPECTATION OF PRIVACY**

A search occurs when the government infringes upon an individual's "expectation of privacy that society is prepared to consider reasonable."<sup>7</sup> The following cases illustrate that in deciding whether a police action constitutes

a search, courts focus on the degree of touching or manipulation to determine whether an officer's feeling of the exterior of a bag amounts to an interference with a person's reasonable expectation of privacy. In other words, courts assess the extent to which travelers assume the risk that their bag placed with a common carrier might be felt or manipulated by another person.

“  
**...the defendant had  
no objectively  
reasonable  
expectation that the  
unattended bag  
would not be lifted or  
kicked as it protruded  
out into the aisle.**  
”

#### **Light Touching of a Bag Ruled Not a Search**

In *United States v. Lovell*,<sup>8</sup> the court<sup>9</sup> stated that: “[i]n analyzing whether the agents’ sniff of Lovell’s bags constituted a search, we must determine whether the agents’ actions offended reasonable expectations of privacy.”<sup>10</sup> In addressing the question of whether the officers’ pressing of the sides of the bag constituted a search,<sup>11</sup> the court quoted from the Fifth Circuit’s decision in *United States v. Viera*,<sup>12</sup> noting that a light press of the hands along the sides of a suitcase did not

constitute a search, and further stating that:

While we could hypothesize a “prepping” process so violent, extreme, and unreasonable in its execution as to cross the bounds of constitutional propriety, we are not confronted by such a process here. The agents’ actions in this case fall squarely within the ambit of our holding in *Viera* and, therefore, did not constitute a search.<sup>13</sup>

In *United States v. Guzman*,<sup>14</sup> the U.S. Court of Appeals for the Sixth Circuit affirmed the conviction of a defendant for possession with intent to distribute cocaine. In *Guzman*, two detectives were at the bus depot with their dogs. One of the detectives checked the baggage compartments under a bus with a dog while the other detective approached persons exiting the bus with carry-on luggage and asked for consent to submit their bags to a dog sniff. One of the dogs exhibited an interest in a carry-on bag the owner had consented to be sniffed.

After all of the passengers exited the bus, the detectives boarded the bus with the dogs. One of the dogs alerted to a bag on the bus. The detectives then left the bus with the intention of reboarding it later to determine the ownership of the bag on which the dog had alerted. After the passengers reboarded the bus, the detectives boarded the bus and informed the passengers that they were attempting to ascertain the ownership of certain bags. One of the detectives reached the defendant’s bag in the overhead rack,<sup>15</sup> stopped, touched the bag,



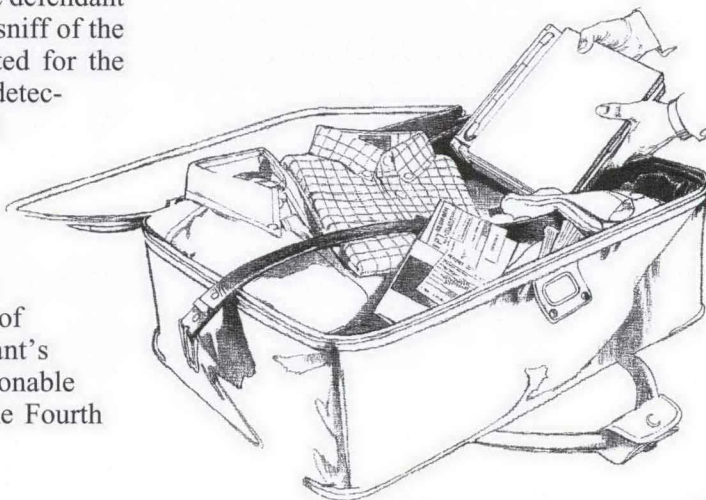
and asked who owned it. The detective felt several hard bricks in the bag and immediately concluded that they were drugs.

The defendant claimed the bag. The detective then put the bag on the seat next to the defendant. The defendant indicated that the detective would need a "piece of paper" to look inside the bag. This led the detective to believe that the defendant did not want the bag opened without a search warrant, at which point the detective asked the defendant to leave the bus. The defendant then consented to a dog sniff of the bag and both dogs alerted for the presence of drugs. The detectives obtained a warrant to search the bag and found six wrapped bundles of cocaine inside. The *Guzman* court held that the officers' "initial touch of the exterior of defendant's bag was not an unreasonable search in violation of the Fourth Amendment."<sup>16</sup>

#### **Manipulation of Bag Exterior Ruled Not a Search**

In 1997, the U.S. Court of Appeals for the Seventh Circuit decided *United States v. McDonald*.<sup>17</sup> In *McDonald*, officers obtained permission from the bus driver to board and inspect the bus during a short layover after all of the passengers had disembarked. While onboard the bus, the officers walked down the aisle "pushing and feeling the exterior of the bags in the overhead racks and sniffing the air surrounding the bags."<sup>18</sup> One of the officers suspected that each of

two soft-sided bags contained "a 'brick' of controlled substance."<sup>19</sup> One of the other officers pushed and felt the exterior of the bags and reached the same conclusion. The officers left the bus, leaving the bags in the overhead rack. After all of the nine remaining passengers got back on the bus, the officers reboarded and proceeded to ask the three passengers seated near the two bags whether they owned the bags. All three passengers denied ownership. The officers held up



the bags and asked if anyone on the bus owned them. No one claimed the bags. One of the officers then took the bags to the front of the bus, told the driver that the bags appeared to be abandoned, and obtained permission from the driver to open the bags.

The officer found women's clothing, toiletries, and 11 kilograms of cocaine in the bags. At the same time, a passenger at the rear of the bus informed another officer that he had observed a particular

person carry the two bags onto the bus. This officer gave that information to the officer looking in the bags, who noticed that there was only one passenger with a physical stature consistent with the clothes in the bag. The officers went back to that passenger and asked if she would mind stepping off of the bus to answer a few questions. The passenger agreed to leave the bus. The officers eventually arrested the individual after she repeatedly denied owning the bag.<sup>20</sup>

The *McDonald* court specifically addressed the question of whether a person who leaves a bag in an overhead bin on a bus has a reasonable expectation of privacy that it will not be touched or felt by others and stated that "the reasonable expectation of privacy inherent in the contents of luggage is not compromised by a police officer's physical touching of the exterior of luggage left exposed in the overhead rack of a bus."<sup>21</sup>

#### **Manipulation of Bag Exterior Ruled a Search**

In the 1998 decision *United States v. Nicholson*,<sup>22</sup> the U.S. Court of Appeals for the Tenth Circuit focused on the exact method officers used when touching the bag in order to decide whether such action constitutes a search.

In *Nicholson*, the court reviewed the actions of officers



involved in a drug investigation initiated after a bus interdiction unit began to inspect luggage in both the luggage compartment under the bus and in the overhead racks on the bus. The officer inspecting the luggage in the compartment under the bus observed a padlocked fabric-sided bag. The officer "initially" felt the sides of the bag with his palms perpendicular to the ground and flat, and detected "several large bundles" inside it."<sup>23</sup> The officer then smelled the bag and detected an odor of marijuana. Meanwhile, the officers working on the bus began removing bags from the overhead bins. One of the officers testified that "during the course of removing the bags from the overhead racks...they are manipulated and smelled."<sup>24</sup> The officer manipulated the defendant's bag, "felt hard, 'tightly-wrapped bundles' inside,"<sup>25</sup> and then put it back into the rack.

After the passengers reboarded the bus, the officers checked all of the passenger's tickets and asked them to identify their baggage. The defendant claimed to have no luggage.<sup>26</sup> The officers held both the unclaimed bag from the overhead bin and the padlocked bag from the luggage compartment in front of all of the passengers on the bus and asked if anyone owned the bags. No one claimed the bags. The officers took the bags off the bus and opened them. The officers found 5 kilograms of cocaine in the bag from the overhead bin and extra-large clothing which appeared to fit the defendant. The officers also found 10 kilograms of marijuana in the bag from the luggage

compartment. The officers then reboarded the bus and asked the defendant to step off. The defendant got off of the bus and subsequently consented to a patdown search. During the patdown search, the officers found a baggage claim check in the defendant's pocket for the bag containing the 10 kilograms of marijuana and placed the defendant under arrest.

“

***The lifting of  
a bag will not  
be  
considered a  
search.***

”

The *Nicholson* court acknowledged that "[t]he circuits uniformly agree that an officers' touching of a bag's exterior does not necessarily constitute a search."<sup>27</sup> Noting that the *Guzman* court's ruling that a passenger on a commercial bus does not have an expectation of privacy in the exterior of luggage placed in an overhead compartment, the *Nicholson* court stated that: "Other circuits have been more cautious in their language, suggesting...that the degree of intrusion is the determining factor in whether an officer's contact with the exterior of luggage constitutes a search under the Fourth Amendment."<sup>28</sup> Regarding the carry-on bag, the *Nicholson* court also stated

that "[t]he degree of intrusion is the determining factor as to whether an officer's contact with the exterior of luggage constitutes a search under the Fourth Amendment....By manipulating the [d]efendant's bag in a manner that [d]efendant did not reasonably expect from other passengers, [the officer] conducted a search within the meaning of the Fourth Amendment."<sup>29</sup> And, with respect to the bag underneath the bus, the court noted that the officer "acknowledged that he was inspecting the contents of the suitcase....[W]e conclude that [the officer's] initial manner of handling [d]efendant's suitcase in the cargo hold also constituted a search within the meaning of the Fourth Amendment."<sup>30</sup>

#### **Kicking and Lifting of a Bag Ruled Not a Search**

Prior to the decision in *Nicholson*, the Tenth Circuit concluded in the 1996 decision *United States v. Gault*,<sup>31</sup> that no search occurred when an agent walking down the aisle of a passenger train car kicked and lifted a bag on the floor that protruded out from the seats. The heaviness of the bag was consistent with the agent's experience with bags containing drugs. Upon kneeling down and sniffing the outside of the bag the agent detected an odor of ether, which is used in the making of PCP. The agent subsequently approached the individual who sat down in the seat in front of the bag. The individual refused to consent to a search of the bag by the agent. However, after obtaining the individual's consent to smell the bag, and after smelling the bag



again, the agent indicated that the bag would be detained. The agent detained the bag, obtained a search warrant and, upon searching the bag, found that it contained six whiskey bottles filled with PCP.<sup>32</sup> The *Gault* court held that the actions of the agent did not constitute a search. The court found that the defendant had no objectively reasonable expectation that the unattended bag would not be lifted or kicked as it protruded out into the aisle. The *Nicholson* court later distinguished the situation in that case from *Gault*, noting that "the officer's manner of handling the bag [in *Gault*] was the sort that a traveler leaving the bag in such a position reasonably might expect."<sup>33</sup>

## CONCLUSION

Analysis of these cases can provide officers guidance when moving and touching luggage stowed or checked on common carriers. First, the movement of a bag in the overhead bin is not a meaningful interference with a person's possessory interest in the bag and therefore does not constitute a seizure. Second, the following conclusions can be drawn regarding whether the feeling of the exterior of the bags by officers constitutes a search. The lifting of a bag will not be considered a search.<sup>34</sup> Lightly compressing or "poofing" the sides of a bag for either the officer or a drug dog to smell the bag most likely will not be considered a search.<sup>35</sup> Actively manipulating the outside of a bag with the entire hand to feel what is in the bag may or may not be considered a search. Of the three courts

to consider the issue to date, one federal court of appeals has found such action to be a search,<sup>36</sup> while another federal court of appeals and a state court have reached the opposite conclusion.<sup>37</sup> Finally, touching a bag in a violent, extreme, and unreasonable manner, such as throwing and breaking or crushing a bag, constitutes a violation of the Fourth Amendment.<sup>38</sup> Because courts are divided over the degree of manipulation of a stowed or checked bag that is permitted, officers should consult with their department legal advisors before engaging in a warrantless manipulation of such luggage. ♦

## Endnotes

<sup>1</sup> *United States v. Jacobson*, 466 U.S. 109, 113 (1984).

<sup>2</sup> 112 F.3d 239 (6th Cir. 1997).

<sup>3</sup> *Id.* at 242.

<sup>4</sup> 849 F.2d 910 (5th Cir. 1988).

<sup>5</sup> *Id.* at 916 (citations omitted).

<sup>6</sup> See also *United States v. Hall*, 978 F.2d 616, 619-20 (10th Cir. 1992); *United States v. Harvey*, 961 F.2d 1361, 1364 (8th Cir.), cert. denied, 506 U.S. 883 (1992); *State v. Peters*, 941 P.2d 228, 230-31 (Ariz. 1997).

<sup>7</sup> *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

<sup>8</sup> 849 F.2d 910 (5th Cir. 1988).

<sup>9</sup> On July 1, 1988, the Fifth Circuit decided a number of cases involving prosecutions resulting from transportation interdiction arrests. *United States v. Garcia*, 849 F.2d 917 (5th Cir. 1988) (squeeze and sniff of bags by agents was not a search or seizure); *United States v. Roman*, 849 F.2d 920 (5th Cir. 1988) (agents' compression and

sniff of bags did not violate the Fourth Amendment; defendant abandoned the bags); *United States v. Cagle*, 849 F.2d 924 (5th Cir. 1988) (agents' compression and sniff of bag was not a seizure, however, prolonged detention of bag until dog alerted to it violated the Fourth Amendment); *United States v. Karman*, 849 F.2d 928 (5th Cir. 1988) (squeeze and sniff of bags by agents was not a search or seizure); *United States v. Hahn*, 849 F.2d 932 (5th Cir. 1988) (squeeze and sniff of bags by agents was not a search or seizure); *United States v. Jaquez*, 849 F.2d 935 (5th Cir. 1988) (squeeze and sniff of bags by agents was not a search or seizure); *United States v. Sawyer*, 849 F.2d 938 (5th Cir. 1988) (squeeze and sniff of bags by agents was not a search or seizure); *United States v. Gutierrez*, 849 F.2d 940 (5th Cir. 1988) (squeeze and sniff of bags by agents was not a search or seizure).

<sup>10</sup> *United States v. Lovell*, 849 F.2d 910, 912 (5th Cir. 1988).

<sup>11</sup> See also *State v. Peters*, 941 P.2d 228, 232 (Ariz. 1997) ("An agent's squeeze and subsequent sniff of a checked bag is not a search. . . . Neither sniff nor squeeze was an unreasonable search."); *People v. Santana*, 73 Cal. Rptr. 2d 886, 889 (Cal. App. Dep't Super.

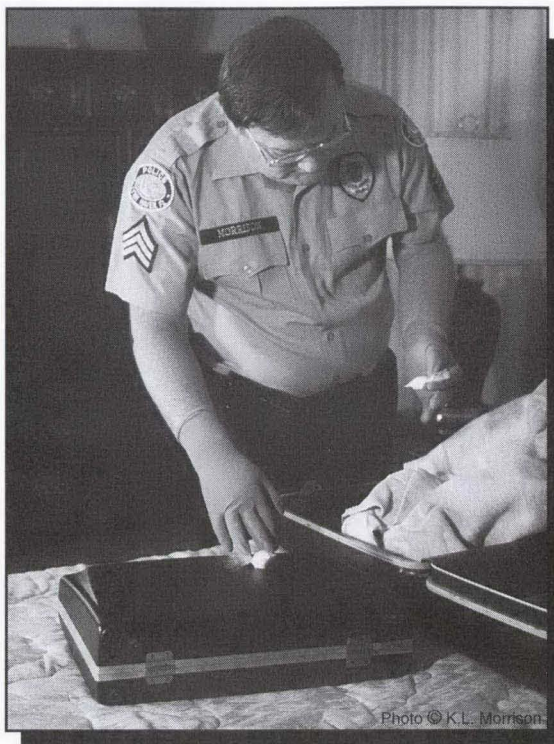


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Ct. 1998) ("Appellant's Fourth Amendment rights were not violated when the officer 'poofed' his luggage."); *Sprowls v. State*, 433 So.2d 1271, 1272 (Fla. Dist. Ct. App. 1983) ("The only point with which we are concerned here is whether the ventilation or 'prepping' of the defendant's luggage constituted an unreasonable search and seizure....We adopt the reasoning of *United States v. Viera* [citation omitted] in recognizing that this type of investigative procedure is such a de minimis intrusion as not to constitute a search and seizure within the respective constitutional provisions."); *Scott v. State*, 927 P.2d 1066, 1068 (Okla. Crim. App. 1996) ("Appellant argues that manipulation of the bag without probable cause, preceding the [drug dog] sniffing the selected bags, was an illegal search and seizure. We disagree."). Cf. *Hernandez v. United States*, 353 F.2d 624 (9th Cir. 1965), *cert. denied*, 384 U.S. 1008 (1966) (The *Hernandez* court found that the squeezing of the defendant's luggage and smelling of escaping air constituted a search. The *Santana* court has noted that "[l]ater Ninth Circuit cases suggest if faced again with the issue of the propriety of squeezing checked bags, at least some justices of that court might not follow *Hernandez*"); *State v. Randall*, 569 P.2d 1313 (Ariz. Ct. App. 1977) (disapproved of by *State v. Peters*, 941 P.2d 228 (Ariz. 1997)).

<sup>12</sup> 644 F.2d 509, 510-11 (5th Cir.), *cert. denied*, 454 U.S. 867 (1981).

<sup>13</sup> *United States v. Lovell*, 849 F.2d 910, 913 (5th Cir. 1988) (The *Lovell* court quoted the following from the *Viera* decision: "[s]ome investigative procedures designed to obtain incriminating evidence from the person are such minor intrusions upon privacy and integrity that they are not generally considered searches or seizures subject to the safeguards of the fourth amendment.").

<sup>14</sup> 75 F.3d 1090 (6th Cir.), *cert. denied*, 117 S. Ct. 266 (1996).

<sup>15</sup> This was the bag in which the other detective's dog had shown an interest in but had not alerted.

<sup>16</sup> *Id.* at 1095.

<sup>17</sup> 100 F.3d 1320 (7th Cir.), *cert. denied*, 117 S. Ct. 2423 (1997).

<sup>18</sup> *Id.* at 1322. The trial judge described the officer's actions as: "manipulating the sides of the bags with her fingers..." *United States v. McDonald*, 855 F. Supp. 267, 268 (S.D. Ind. 1994).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 1323.

<sup>21</sup> *Id.* at 1325.

<sup>22</sup> 144 F.3d 632 (10th Cir. 1998).

<sup>23</sup> *Id.* at 634.

<sup>24</sup> *Id.* at 635.

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

<sup>26</sup> The officers who located the bag in the luggage compartment under the bus noted that the tag on the bag indicated that it had been checked through to Toledo, Ohio. The officers asked the bus driver if they could inspect the passengers' tickets. Inspection of the tickets indicated that the defendant was the only passenger on the bus with a ticket to Toledo. *Id.*

<sup>27</sup> *Id.* at 637.

**“  
...touching a bag  
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”**

<sup>28</sup> *Id.* In *United States v. Most*, 876 F.2d 191, 193 (D.C. Cir. 1989), the District of Columbia Circuit held that a police officer's feeling of a grocery bag being held for a customer by a store clerk constituted a search. The officer picked up the bag and felt the bottom of it using a "crush technique." The officer felt hard individually wrapped packages in the bag and concluded that they were rocks of crack cocaine. The officer opened the bag and found crack inside.

<sup>29</sup> *Id.* at 639.

<sup>30</sup> *Id.* at 640.

<sup>31</sup> 92 F.3d 990 (10th Cir.), *cert. denied*, 117 S. Ct. 321 (1996).

<sup>32</sup> *Id.* at 991.

<sup>33</sup> *United States v. Nicholson*, 144 F.3d 632, 637 (10th Cir. 1998).

<sup>34</sup> See, e.g., *United States v. Gault*, 92 F.3d 990 (10th Cir.), *cert. denied*, 117 S. Ct. 321 (1996).

<sup>35</sup> The *Nicholson* court distinguished the *Lovell* and *Viera* cases from the officer's squeezing of the bag located under the bus in *Nicholson*. The *Nicholson* court stated that the officer was inspecting the bag, not gently pressing the sides and prepping it for purposes of a sniff. While the *Nicholson* court did not explicitly state that the Tenth Circuit would not consider the activity in *Lovell* or *Viera* to be a search, the court did state that: "[i]n those cases, unlike here, the officers' initial handling of the bags revealed nothing of independent evidentiary value and thus was considered minimally intrusive." *United States v. Nicholson*, 144 F.3d 632, 640 (10th Cir. 1998). But see *Hernandez v. United States*, 353 F.2d 624 (9th Cir. 1965), *cert. denied*, 384 U.S. 1008 (1966).

<sup>36</sup> See *United States v. Nicholson*, 144 F.3d 632 (10th Cir. 1998). In *United States v. Washington*, 146 F.3d 536 (8th Cir. 1998), an officer working on a bus noticed "a black bag that still had manufacturer's tags on it, physically manipulated it, lifted it, and felt along its bottom." *Id.* at 537. While the *Washington* court did not address the issue of the manipulation of the bag in the opinion, the court stated that: "[w]e certainly entertain grave doubts about the constitutional propriety of the officer's initial manipulation of Mr. Washington's bag." *Id.*

<sup>37</sup> See, e.g., *United States v. McDonald*, 100 F.3d 1320 (7th Cir.), *cert. denied*, 117 S. Ct. 2423 (1997); *State v. Peters*, 941 P.2d 228 (Ariz. 1997) (The officers "squeezed, smelled, and felt the bags and the hard objects within," and the court held that "[n]either sniff nor squeeze was an unreasonable search.").

<sup>38</sup> *United States v. Lovell*, 849 F.2d 910 (5th Cir. 1988).

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

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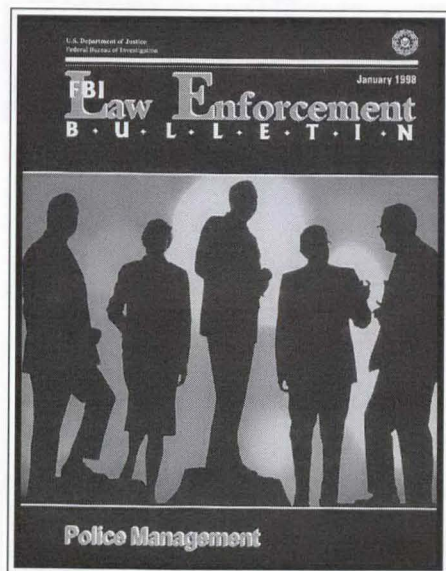
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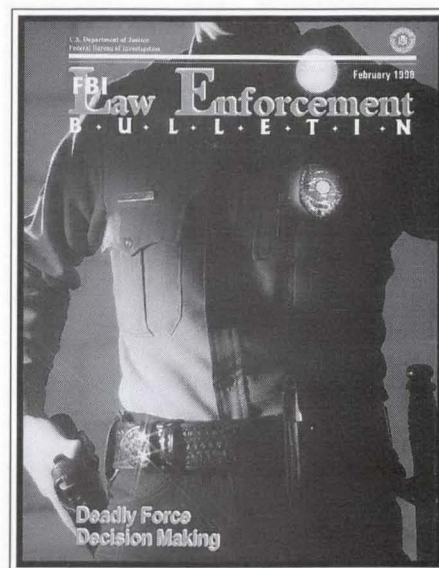
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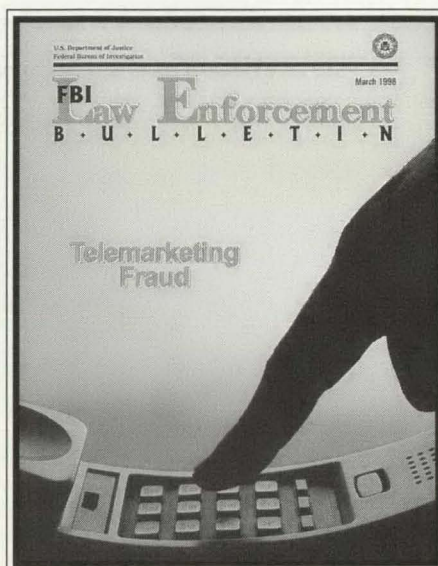
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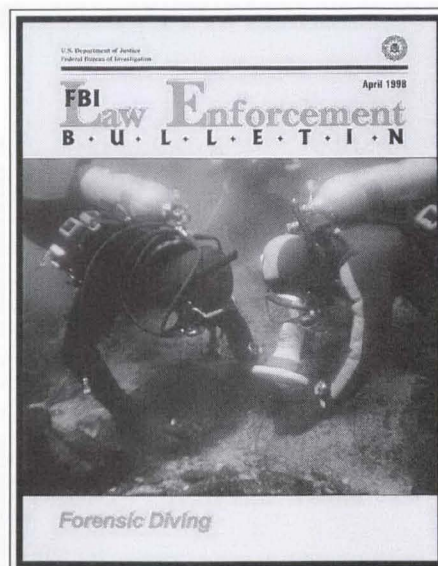
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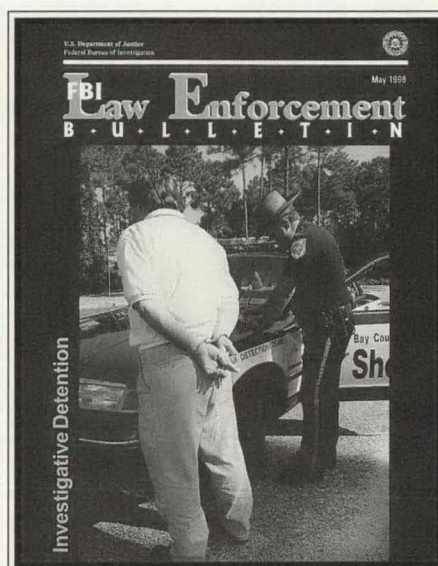
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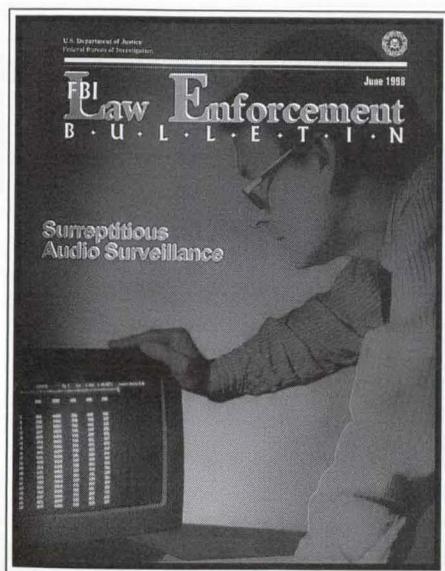
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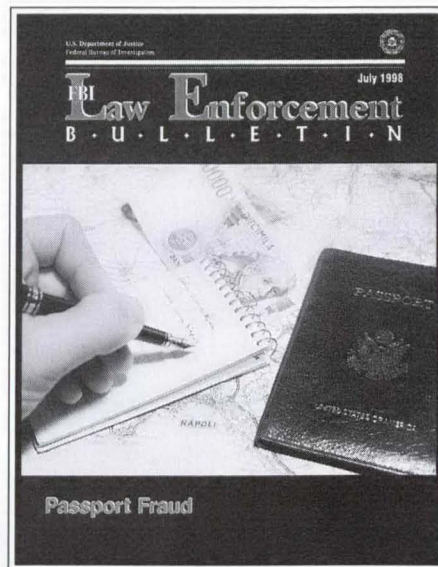
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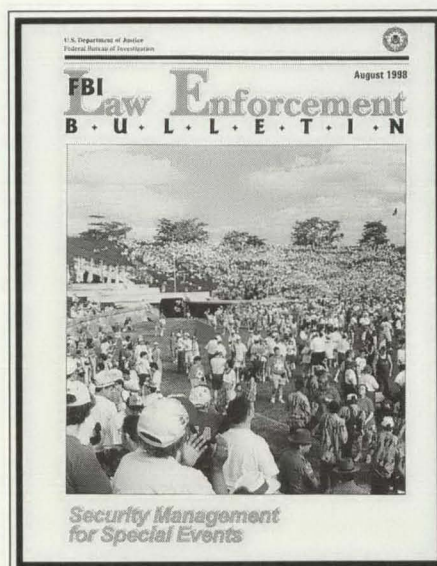
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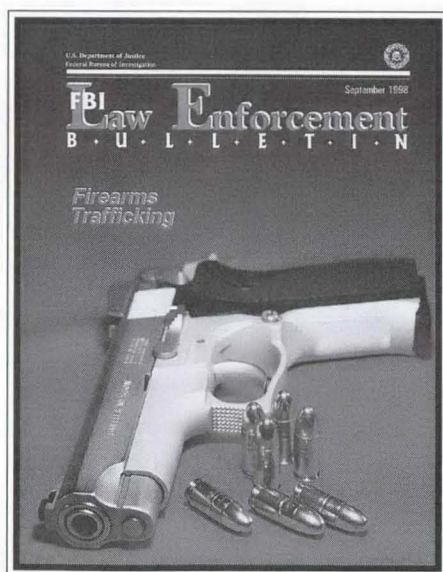


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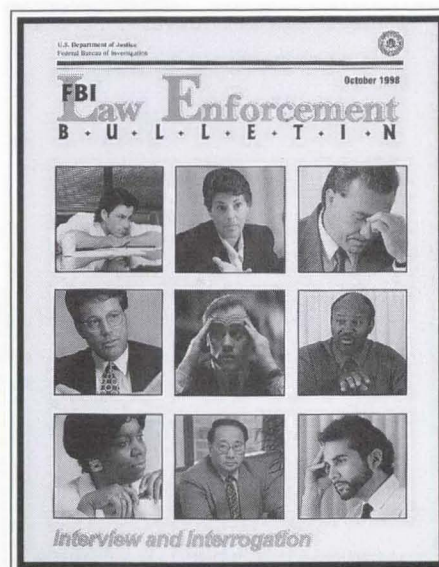
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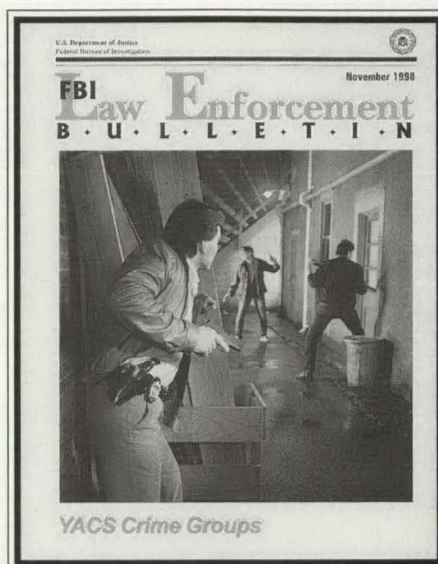
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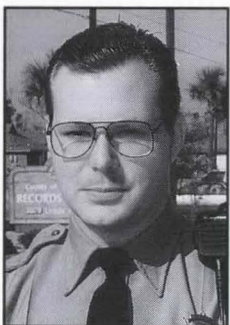
## The Bulletin Notes

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 their exemplary service to the law enforcement profession.



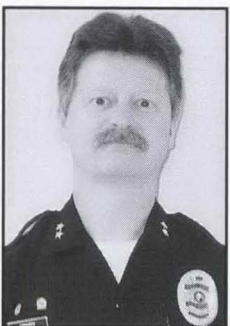
Officer Waddle

Officer Phillip Waddle of the Cincinnati, Ohio, Police Department responded to a domestic violence call in a residential area. Arriving at the scene, Officer Waddle started to exit his vehicle when someone inside the dwelling began shooting at him. He took cover behind his patrol vehicle. As the shooting continued, a female fled the house. Officer Waddle ran to the woman and pulled her to safety while bullets struck his patrol vehicle and the ground around him. Neither he nor the woman were hit. The subject surrendered to responding officers who found 10 firearms and a stash of ammunition in the house. Officer Waddle's courageous and unselfish actions saved the woman's life.



Deputy Lucius

While on patrol, Deputy Joseph V. Lucius of the Charleston County, South Carolina, Sheriff's Office observed a speeding vehicle that matched the description of one involved in a vehicular homicide, which occurred only minutes before. Deputy Lucius pursued the vehicle, which subsequently spun out of control. The driver exited the vehicle and fired a shotgun at Deputy Lucius, striking him under his left arm outside the area covered by his protective body armor. Although the shots had pierced his lung, Deputy Lucius returned fire, wounding the driver in the shoulder. Deputy Lucius held the suspect at bay until responding officers arrived. Deputy Lucius not only captured a dangerous subject, but prevented innocent bystanders at a nearby restaurant from being hurt.



Commander Gainer

While at his vacation home on Crater Island, Commander Larry Gainer of the Redmond, Washington, Police Department heard an airplane in distress on a cold winter night. Commander Gainer exited his residence and observed the plane crash into the nearby water. After Commander Gainer alerted the other two island inhabitants and contacted the local sheriff's office, he loaded emergency supplies into his boat. Despite poor visibility and inclement weather, Commander Gainer retrieved the two crash victims from the cold water and obtained medical treatment for them. Without Commander Gainer's quick actions, the two victims would not have survived.

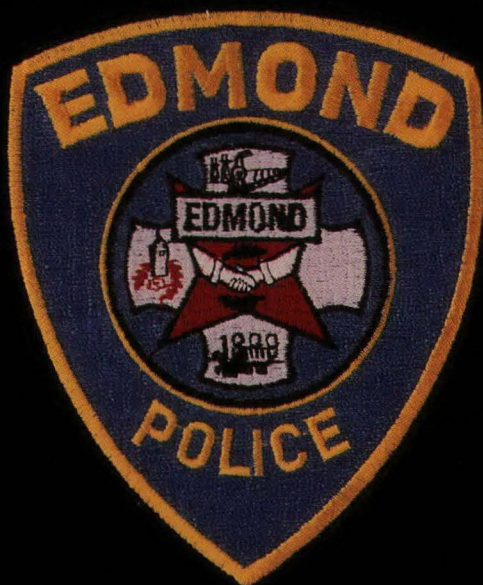


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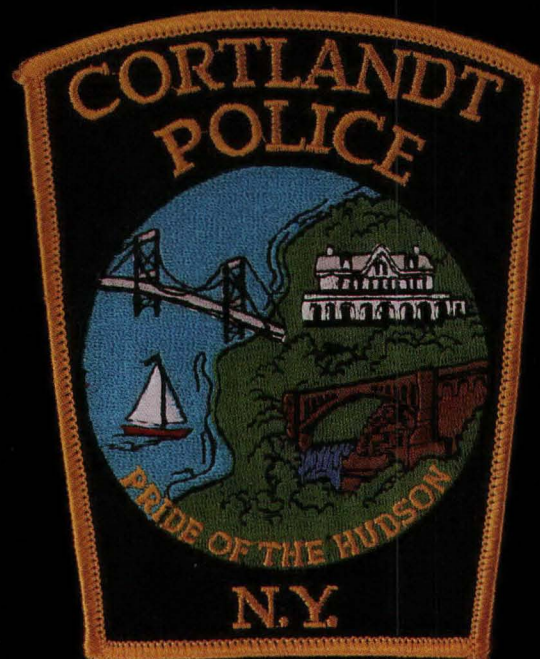
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## Patch Call



The patch of the Edmond, Oklahoma, Police Department reflects the city's history. The two hands in the center symbolize friendship, while the covered wagon over the year 1889 represents when Edmond was first settled. The train and oil well depict Edmond as an integral part of the railroad and oil industries, and the clock tower represents the University of Central Oklahoma, which was the first institution of higher learning in the state and is located in Edmond.



The Town of Cortlandt, New York, Police Department patch features the historic Hudson River, which borders the town. The design also includes the Bear Mountain Bridge, built in 1924 and considered the largest expansion bridge of its time; the Croton Dam, which is the largest manmade structure in the world; and the Van Cortlandtville home, which was visited by several of America's founding fathers, including George Washington, John Adams, and Alexander Hamilton.