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FBI Law Enforcement Bulletin

Features

Departments

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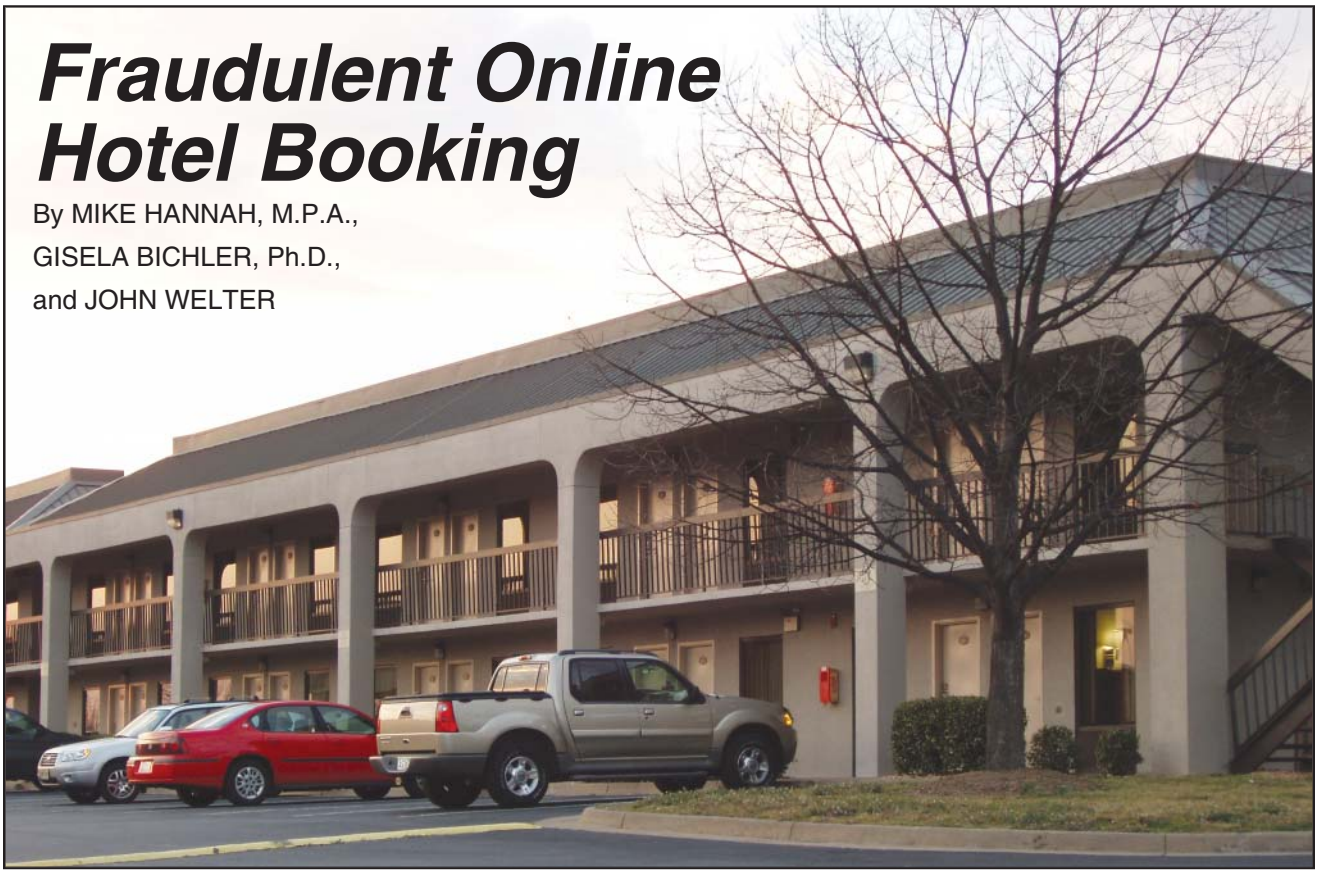
Fraudulent Online Hotel Booking

By MIKE HANNAH, M.P.A.,
GISELA BICHLER, Ph.D.,
and JOHN WELTER



Identity theft and credit card fraud represent multifaceted problems with far-reaching consequences, including Web-based crime targeting the travel industry. Fraudulent booking of hotel rooms through the Internet has become a major issue. To commit this crime, suspects obtain someone's credit card number—by stealing a person's identity or charge receipts—and book multiple rooms online at one or several locations. Then, they either use the reservations or sell them to associates. In addition to the loss of revenue experienced by credit card companies, individuals, travel firms, and hotels, communities suffer when offenders perpetrate additional offenses in their lodging areas. Evidence found at numerous crime sites suggests that fraudulent booking may fuel local street crime and narcotics traffic.

In dealing with booking fraud in its jurisdiction, the Anaheim, California, Police Department undertook a problem-oriented policing (POP)[1] project that has proven successful. This effort can serve as an example for agencies operating in cities impacted by issues affecting the lodging industry. The department found that resolving Internet-booking fraud required a collaborative effort between police and private industry. It used the SARA (scanning, analysis, response, and assessment)[2] model to tackle this problem and the related crime and public safety issues affecting the city.

THE PROJECT SITE

A suburb of Los Angeles, the city of Anaheim has approximately 350,000 residents and is known as a major tourist destination. It also is home to a popular theme park, professional baseball and hockey

Mr. Hannah retired as the south district commander of the Anaheim, California, Police Department.

Dr. Bichler is a professor of criminal justice at California State University in San Bernadino.

Chief Welter heads with the Anaheim, California, Police Department.

teams, and one of the largest convention centers in the United States. Together, these attractions swell the city's population daily—Anaheim's residents seem to disappear compared with the 10.2 million overnight visitors per year staying at one of the 153 hotel properties.[3]

Another one-third of the lodging facilities appeal to clientele seeking luxurious amenities, and most are located in the hotel district, locally referred to as the resort area. Accommodations vary widely in size and price; the cost of rooms also differs between the low off-season and the peak summer and holiday periods. Approximately half of the properties cater to the family/budget or midrange market, and most are affiliated with large hotel chains.

The Anaheim Police Department strives to maintain public order in this highly transient city. All agency employees remain committed to POP as a means of resolving community crime and public safety issues. The Anaheim hotel corridor is located in the south district where police personnel work out of a satellite station.

SCANNING: DEFINING THE PROBLEM

In November 2003, following an exploration of area crime issues, investigators identified Internet-booking fraud as an important problem affecting the Anaheim resort area. Initially, officers noticed high levels of theft, motor vehicle break-ins, narcotics activity, and robbery within the hotel district. Detectives investigating these cases discovered that many of the suspects also had fraudulently checked into resort-area hotels. Curious, investigators contacted representatives of the Internet companies handling the reservations. Through conversations with online-booking representatives, detectives connected the fraudulent activity to a larger booking scam often related to identity theft.

Dialogue between the stakeholders revealed that hotel representatives did not notify the police department of incidents of fraudulent bookings unless they requested assistance pertaining to another crime by the same suspects. Instead, employees followed other procedures to handle these situations. In cases where the Internet company discovered an occurrence of this crime, a representative called the lodging facility and had the violator evicted by hotel staff, and the online firm paid for the room up to the date of notification. In instances where the hotel discovered the fraud, they removed the violator and

notified the Internet-booking company of the eviction; the Web-based firm still paid for the room. Regardless of the scenario, neither procedure required notifying the police and neighboring properties. Therefore, suspects could continue offending when ejected from one location.

ANALYSIS: PREPARING FOR ACTION

During the scanning phase, police made two important discoveries. Not only did many cases of this fraud remain unidentified because of the tendency of personnel at hotels and Internet-booking companies to handle them without police notification but also patrol officers generally responded to calls for service without further investigation that would reveal occurrences of these crimes.

Moreover, detectives quickly discovered that the information contained in the agency's records management system was not sufficient to fully understand the fraudulent-booking problem, so they turned to other sources, such as focus group discussions, case studies, hotel surveys, and suspect interviews, to analyze the issue. Piecing together the details from each source gave a more comprehensive picture of the problem, providing new insight and confirming existing facts. Investigators gathered and analyzed this information while continuing to fulfill their regular investigative responsibilities; no additional police resources were available for this effort.

Focus Group Discussions

Investigators started by exploring the competing priorities and perspectives of three of the most affected stakeholders. These included the Internet-booking companies, hotels, and police.

> ***"Fraudulent booking of hotel rooms through the Internet has become a major issue."***

Internet-Booking Companies

Internet-booking sites used different security-related screening procedures and did not follow standard e-commerce policies. For example, not all companies required customer addresses to match the billing address of the credit card user. While acknowledging the security weaknesses, representatives feared that implementing extensive screening mechanisms would lead legitimate customers to use competing companies. Further, no centralized source of fraud information existed. The Internet-booking companies saw the problem as people abusing the reservation process. And, because cases of fraud represented such a small percentage of the total bookings made, firms wrote off the cost as a business expense. To make matters worse, these companies perceived law enforcement as uninterested in addressing the problem.

Hotels

Hotel managers feared the loss of revenue—including the cost of incidentals, potential damage to the facility, and lost revenue from rooms that legitimate customers could have rented—even though Internet companies pay for the rooms at the time of booking. Industry representatives voiced concern about involving the police and risking the observation by guests of the arrests of suspects on hotel property, thus having a negative effect on public perceptions of the property and, in turn, business.

Discussions revealed that, typically, desk clerks checked in guests using only a confirmation number. During busy registration times and because of their hesitation to slow the process, personnel were even less likely to ask for identification. Further, they may have checked females'

identification less often. And, due perhaps to a lack of training, hotel staffs did not recognize suspicious situations, such as someone arriving the same day as an Internet-booking date or an individual checking in for a multiple-night stay with only a computer for luggage.

Police

Police found developing prosecutable Internet-fraud cases challenging. Workload caused the officers responding to calls for service at hotels to work fast, sometimes seeking the quickest way to deal with the issue that generated the call (e.g., a theft from the property). They did not consider fraudulent bookings of rooms the primary crime problem. Moreover, these complex crime issues drained agency resources because of the time they required; officers had to collect a large quantity of evidence (e.g., computers, multiple forms of victim identification, and credit cards). And, once they identified this issue, officers faced the frustration of seeing suspects released and rearrested, perhaps within a week, at a different hotel.

Case Studies

Collectively, the stakeholders hypothesized that individuals committed these crimes by exploiting a vulnerable reservation process and a faulty communication chain, motivated by the opportunity to obtain a free place to stay while perpetrating other crimes; a source of quick cash (suspects could sell the reservations or trade them for narcotics to other offenders); and a location to book more rooms online or steal more identities. To test this working hypothesis, detectives hand searched all crime reports taken in the hotel district during the previous 2 years to look for elements of booking frauds. This produced 29 cases that involved fraudulent room bookings over the Internet. In all of these instances, other crimes (e.g., thefts, narcotics, and burglaries) committed by the fraud perpetrators led to the report.

> ***In examining the issue, investigators deemed necessary a response from both the law enforcement and business communities.***

Examination of these 29 cases revealed that the fraudulent bookings all involved perpetrators with prior police contacts, 98 percent of them living in Southern California. Seventy percent of these individuals had previous convictions, and 99 percent were involved in narcotics. Eighty-three percent of the perpetrators registered at the hotel either the same day or within 1 day of booking, 98 percent booked multiple locations the same day, and 70 percent reserved rooms for multiple occupants. Suspects booked 84 percent of the rooms through only two Internet companies. They favored upscale facilities, staying in some rooms and selling others to crime partners.

Regarding those victimized, 76 percent of the stolen credit card information was from local victims. Hotels suffered ancillary losses totaling approximately $27,000, with the average loss being $930 per case; these included mainly damage to property, incidentals billed to the credit card, and thefts from the hotel.

Forty-one percent of the cases were reported as fraud problems. In investigating, processing, and filing these 29 cases, the Anaheim Police Department incurred an estimated $100,000 in total costs.

Hotel Surveys

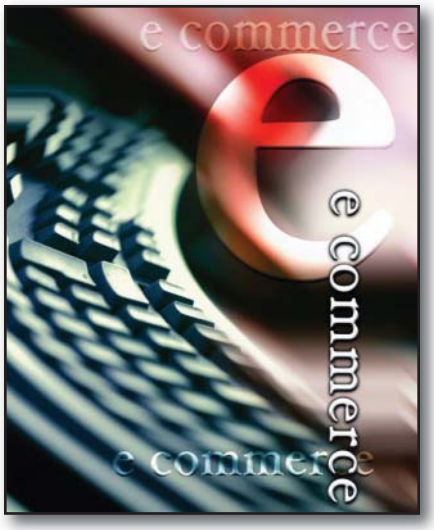
Police officers surveyed the on-duty manager at 42 of the 55 hotel properties in the target area. Investigators deter-mined that people make, on average, 38 percent of all

bookings through independent Internet-booking companies; typically, between .05 and 1 percent of all bookings prove fraudulent. Eighty-three percent of these managers claimed that they did not suffer losses of the nightly lodging fees, and 31 percent reported ancillary losses from theft and damage. Only one hotel enforced its mandatory identification check policy—this property has not had a fraudulent occupant.

Hotel staff recognized the vulnerabilities in registration processes; however, they considered an easy and convenient check-in process a corporate advantage as additional steps could motivate guests to stay elsewhere. Also, hotels did not want fraud instances to become known, so personnel were reluctant to notify police of suspicious behavior. They feared that having officers arrest someone in front of guests would scare the legitimate client base.

Interviews with Suspects

As part of the analysis, police investigators in Anaheim interviewed perpetrators arrested for this crime.[4] Suspects confirmed that they obtained someone else's identity information, logged onto a Web-based travel-booking site, and reserved rooms in the victim's name. Then, they stayed in the rooms until removed by hotel staff. The perpetrators indicated that they preferred two particular independent Internet companies because these firms required the least amount of personal identification. Apparently, while staying at the hotels, the suspects used these locations to commit additional crimes connected with narcotics, identity theft, and credit card fraud.



RESPONSE: ADDRESSING THE PROBLEM

As the detailed analysis of information from various sources revealed flaws in the booking, check-in, and investigative procedures that created opportunities for Internet-booking fraud to flourish, detectives realized that resolving the problem would require a multifaceted approach. This would involve efforts by the Internet-booking companies, hotels, and police.

Internet-Booking Companies

Representatives from Internet companies recognized that they needed to incorporate more security precautions at the time of booking. Consequently, new e-commerce protocol requires the three-digit security code on the back of credit cards on some points of sale, and a number of improvements to the fraud prevention program have been enacted. Another Internet-booking firm implemented security software programs offered by credit card companies, at the point of sale. In addition to enhanced e-commerce uniformity, Internet-booking companies have increased efforts to share information.

Hotels

Through a cross-training program, police and hotel representatives began sharing important information via the Anaheim Area Hotel/Motel Association. And, with special acknowledgments, hotel personnel started reinforcing efforts by their staff to recognize suspicious situations and subjects during registration. Lodging facilities also now require verification of photo identification for all guests—regardless of the source of the booking—at check-in. Also, through liaisons with police, hotel staff members contact officers immediately to evict problematic customers,

and improved communication with Internet-booking companies helps ensure identification of fraudulent bookings prior to room registration.

And, through the new Crime Alert Network system, representatives from the business and law enforcement communities exchange important information through e-mail and fax. At quarterly update meetings, information sharing occurs in person.

Police Department

The Anaheim Police Department adjusted response protocols involving hotels in the study area. Dispatchers and field sergeants began notifying south district detectives upon receiving any call to a hotel in the resort area. Further, the agency encourages its patrol officers to spend more time investigating the calls for service they respond to in the hotel district. If any evidence of fraudulent activity or identity theft arises, officers contact specific investigators in the south district. The department publicly recognizes and awards line officers responding to calls for service in the resort area who go beyond simply handling the initial call and look into other possibly related crime issues, such as identity theft or methamphetamine distribution.

The department also considered education efforts an important response and began a comprehensive training and awareness program. To date, it has invested about $10,000 for the entire project, including overtime and resources used.

Patrol officers receive training about the nature of this complex crime issue because many of them work overtime shifts in, or eventually transfer to, the hotel district. Training occurs through presentations during briefings and covers how to recognize a fraud case and look for indicators of identity theft.

Police, along with hotel/motel association representatives, created a lecture outline to train lodging staffs who handle check-ins. South district police personnel make training presentations.

Additionally, officers met with members of the city and district attorneys' offices to help facilitate prosecution. They informed these parties about the larger scope of the fraud issue. By advising supervisory case-filing attorneys about the broad scope and impacts of this crime, police hoped to deter recidivism by invoking more felony-level case filings.

Police awareness efforts also targeted the Merchant's Risk Council (MRC), a professional association representing members in the private sector using e-commerce for business. This organization strives to aggressively deal with fraud, specifically on the Internet. They have solicited local law enforcement to join and partner in this cause. The Anaheim Police Department has representation on, and has recently worked with, the MRC.

ASSESSMENT: EVALUATING THE RESULTS

Internet-Booking Companies

Two frequently used Web-based companies have reported a dramatic decrease in the amount of Internet-booking fraud—a 50-percent drop in a recent 12-month span—in the Anaheim area. However, while the Anaheim area has seen dramatic results, a fraud investigation supervisor for one Web-based company remarked,

"While our improvements in our own people, process, and technology have made a positive impact to our fraud prevention efforts, it has not had the same dramatic impact elsewhere that we have seen in Anaheim. I can only assume that this is directly related to the combined efforts of the Anaheim Police Department, the Orange County District Attorney's Office, hotel security personnel, and the private sector investigations team. Getting everyone together to address the issue has resulted in a greater prevention effort by all parties. I think that, ultimately, our efforts have resulted in a clear message to the criminals on the street that if they commit fraud against us in Anaheim, they will go to jail. I know that we were communicating with each other regarding fraud events on a weekly and sometimes daily basis. The number of calls now has dropped to almost zero. We will likely be using this as a model for action in other cities." Industry representatives indicate that they still have other areas in California that experience high levels of hotel fraud.

Hotels

Informal discussions with hotel managers indicate an apparent decline in fraudulent Internet-based booking activity. However, hotels have not tracked the number of fraudulent bookings through independent Web sites, so no statistical data exists. In addition, hotel representatives indicate that check-in and registration procedure changes have been implemented. Training on identification scrutiny and registration procedures is ongoing both with police and in-house staff. Currently, the on-duty hotel manager survey is being repeated to officially document changed calling activity and new check-in procedures. Finally, at the industry corporate levels, there is movement to create industry-wide procedures for handling all check-ins and fraudulent-booking recognition.

> ***"In dealing with booking fraud in its jurisdiction, the Anaheim, California, Police Department undertook a...project that has proven successful."***

Police Department

Reported cases of fraudulent guests at hotels in the area dropped from the 29 cases in 2004 to 2 in 2005, a 94 percent decline. To assess whether the interventions resulted in an overall reduction of calls for service in the hotel district, officers compared the number of calls in the study area for the same 6-month period in 2004 and 2005. The comparison revealed a 3 percent increase in calls from 2004 to 2005, not surprising as one of the anticipated outcomes was an increase in hotel-initiated calls for service. An examination of the hotel occupancy rates for the same period showed a 5 percent increase in overnight lodging levels. Thus, because the percent change in calls for service was lower than the increase in hotel occupancy rates, the efforts of the Anaheim Police Department and its partners appear successful in controlling crime problems in the resort area. Also, figures provided by the city of Anaheim Finance Department and the Anaheim/Orange County Visitor's and Convention Bureau indicate a 3 percent increase in day visitors as well.

Anaheim officers contacted all adjacent law enforcement agencies and those in nearby destination cities to assess displacement. Discussions revealed no apparent recent increases in hotel-related crimes in these areas.

CONCLUSION

The Anaheim Police Department identified a potential threat to the safety and security of its city's hotel district—the fraudulent booking and occupation of rooms in area hotels by criminals through independent Internet sites. And, perpetrators used the rooms to commit other crimes that victimized people who live in, work in, or visit Anaheim. Fortunately, investigators identified the problem early, which explains the low number of reported crimes.

In examining the issue, investigators deemed necessary a response from both the law enforcement and business communities. In this regard, procedural and policy changes were made in public agencies and multimillion dollar industries. And, by building partnerships with businesses, informing affected staff and leaders in the industry, and enhancing enforcement, the project team successfully resolved this problem, dramatically reducing fraudulent booking. ✦

Endnotes

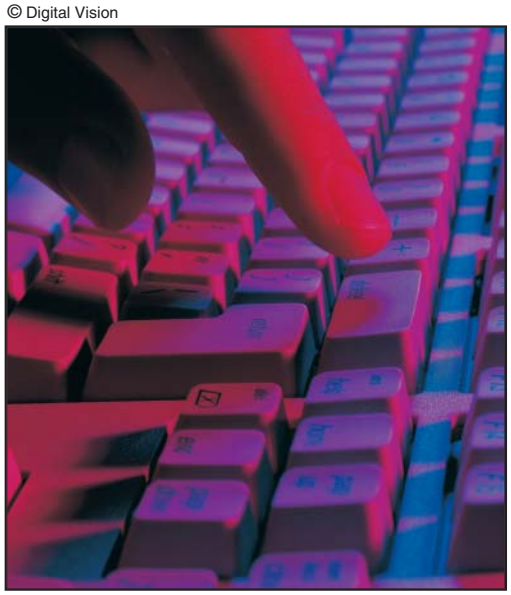
[1] For additional information, see Terry Eisenberg and Bruce Glasscock "Looking Inward with Problems-Oriented Policing," *FBI Law Enforcement Bulletin*, July 2001, 1-5.

[2] Ibid.

[3] The lodging industry in Anaheim includes both motels (with drive-up access to rooms) and hotels (with a central lobby as the primary access point to the rooms). Throughout this article, the term *hotel* refers to both.

[4] While only three perpetrators would participate, the detectives found that the information they derived from this small sample was consistent with that provided by other sources.

The *Bulletin's* E-mail Address



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

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Eagles Flock Together

I really believe that it takes a leader to know a leader, grow a leader, and show a leader. I have also found that it takes a leader to attract a leader.

—John C. Maxwell

In their latest book *A Leader's Legacy,* Jim Kouzes and Barry Posner assert that "leadership development is first and foremost self-development." Indeed, much of the current crop of leadership and management literature primarily focuses on the criticality of lifelong learning for leaders. Effective leaders inherently know the value of constantly seeking self-improvement and refusing to remain stagnant in ideas, thoughts, and practice. By continuing to grow, they can better fulfill their responsibilities of accomplishing their missions and developing others. This *Spotlight* looks at the necessity of proactive self-improvement from a slightly different premise: the better leaders become, the better leaders they will attract.

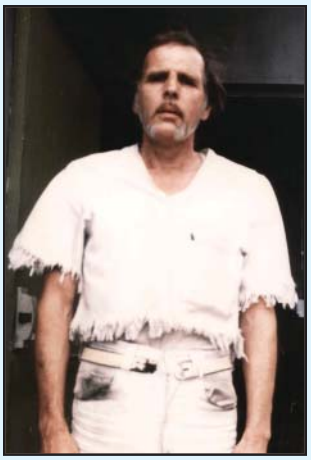
Dynamic and vibrantly led organizations incorporate the continual leadership development of their members into their very fabric. Successful law enforcement leaders also know that building the skills of the players on the team and establishing a deep leadership bench are vital to their organizations' long-term viability. Highly effective leaders add another step to increasing the capacity of their organizations at all levels. They continually seek to infuse "fresh blood" into the mix by *attracting* and *recruiting* those with proven leadership skills from external sources. In practical terms, external can mean across the country, across town, or across the hall.

The world of sports can provide an appropriate analogy. Winning coaches always develop their onboard players while simultaneously recruiting the best and brightest from the outside. Now, consider the situation from the perspective of the ones being recruited. Do they want to invest their time and talent with a mediocre team led by a mediocre coach? Or, would they prefer to join a winning team led by a coach who will best use their skills and build them to an even higher level. Put another way, if you are a B- leader, you are not likely to attract, or keep for long, B+ or better followers. Great leaders attract other great leaders. Increasing your own leadership quotient will yield at least two significant benefits. Besides becoming more proficient in increasing the developmental levels of those you currently lead, you also will enhance your capability to attract even more high-quality leaders to your team. These fresh players not only will bring new energy and capabilities with them but will push you, and their teammates, to even greater levels of success. ✦

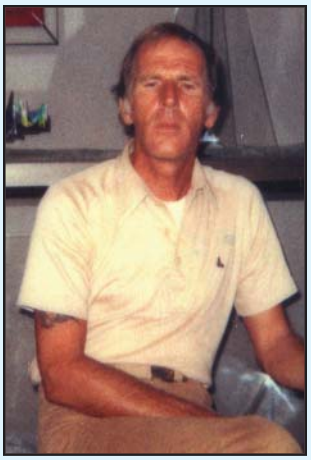
Special Agent Jeffrey C. Lindsey, an instructor and program manager in the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

ViCAP Alert

Wanted for Aggravated Murder
Robert Brent Bowman



1982



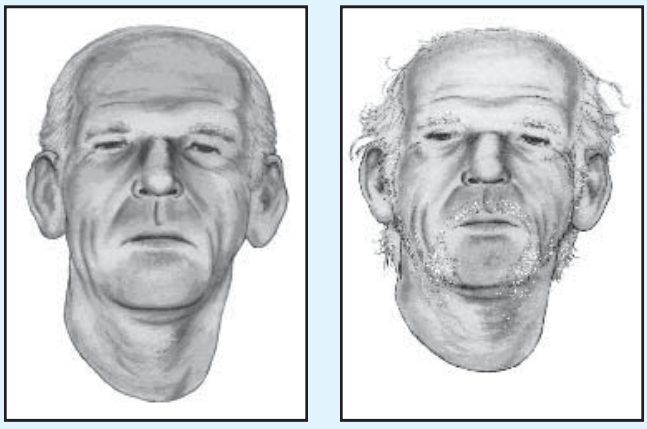
1986

DNA links Bowman to the 1967 abduction, rape, and murder of 14-year-old Eileen Adams in Toledo, Ohio. It is believed that Bowman abducted the victim after she got off a bus and walked in front of his house. He kept her in his basement and sexually assaulted her until his wife discovered her gagged and strapped to a mattress hanging on a wall. Bowman bound her hands and feet with drapery cord and then tied her ankles to her neck with telephone cord. It is believed that when she struggled or moved, she strangled and died. Additionally, she was hit in the head with a hammer several times, and a nail was driven into the back of her skull. A possible bite mark was located on her arm. She was redressed (without shoes/socks), wrapped in a sheet and rug, and tied with an electrical cord. He put her in the trunk of his vehicle, transported her across state lines approximately 10 to 15 miles into Michigan, and dumped her body in a remote field. Bowman has traveled across the country. He is now possibly homeless, living on the streets in a warm climate area.

Alert to Law Enforcement

Any agency with information on the whereabouts of fugitive Robert Brent Bowman is asked to contact Sergeant Steve Forrester at 419-245-1594 or *steven.forrester@toledo.oh.gov*; or Detective Bart Beavers at 419-245-3118 or *bart.beavers@toledo.oh.gov* of the Toledo, Ohio, Police Department. Additionally, any agency with a potentially similar case is asked to contact Crime Analyst Lesa Marcolini of the FBI's Violent Criminal Apprehension Program (ViCAP) at 703-632-4178 or *lmarcoli@leo.gov*. ✦

Name: Robert Brent Bowman
AKAs: Robert Baxter Bowman, Bob Roman, Bruce Baxter Bowman, "Bo"
DOB: 04/16/1936
Age: 71
SSN: 546-50-7689
FBI #: 187873E
Race: White
Height: 6 feet
Weight: 150 lbs.
Hair: Blonde/brown/gray
Eyes: Blue
Tattoo: Right arm, sword through heart



Age progression sketches of Robert Brent Bowman.

The Social Security Card Application Process

Identity and Credit Card Fraud Issues

By RICHARD A. BALLEZZA

The mission of the U.S. Social Security Administration (SSA) is "[t]o advance the economic security of the nation's people through compassionate and vigilant leadership in shaping and managing America's social security programs." Further, "[t]he programs administered by the agency touch the lives of over 95 percent of the American public and improve the economic well-being of the nation."[1] In today's changing world, law enforcement agencies should be aware of the challenges the SSA has encountered while protecting citizens from criminals who attempt to acquire social security cards to facilitate a wide range of fraud.

Organized groups of individuals have presented counterfeit, altered, and fraudulently obtained identification (ID) documents at district offices of the SSA to obtain genuine social security cards ultimately used for credit card fraud.

Background

Two weeks after September 11, 2001, personnel at a bank in New York noticed that the same male customer used two

different identities to open checking accounts on different dates. A comparison of photocopies of the ID documents shown to open the checking accounts indicated that the same person presented Pakistani passports, along with a social security card. Employees notified the local FBI office and proceeded to determine if this subject had opened additional accounts at other branches of the bank. Their investigation showed that the suspect had opened other accounts, displayed a different social security card on each occasion, and also used a nondriver New York State ID card for identity purposes.

The Scheme

The FBI's preliminary investigation revealed that the initial suspect maintained five apartments and had at least 45 different New York State ID cards. The FBI agent conducting the investigation contacted the Office of Inspector General for the SSA (OIG/SSA) in New York to obtain copies of the SS-5 (the application form used to apply for a social security card) for each social security number identified. The applications were complete and had been submitted with supporting identification at a district office of the SSA. The SS-5s showed the name of the applicant, mailing address, and other identifiers, as well as the district office where the subject originally submitted the form. The FBI requested additional copies of SS-5s after investigation identified a second male suspect, as well as a third (female), engaged in the same type of activity. Investigators now realized that three people were assuming at least 104 different identities. Although the initial bank had not suffered a financial loss thus far, investigators conducted various financial checks to determine if any of the identities appeared to be involved in credit card fraud. Perpetrators had used some of the identities to open more than 20 credit card accounts, causing those companies to lose more than several hundred thousand dollars.

"Certain procedures can help prevent unauthorized persons from obtaining a social security card...."

Special Agent Ballezza serves in the FBI's New York City office.

The Scope

An OIG/SSA agent in Boston, Massachusetts, contacted the FBI case agent in New York City and advised that he was investigating more than 600 SS-5s, which included those under investigation by the FBI's New York City office. Further, he had determined that two individuals from the New York City metropolitan area had organized a scheme to help hundreds of people, primarily from the New York area, obtain social security cards using counterfeit ID documents produced at district offices of the SSA. It appeared that some had received just one social security card, but others had them for many identities.

The mailing address listed on the SS-5s usually was a mail-forwarding center box. The issued social security card was mailed to that box, rather than to the applicant's actual residence. These boxes primarily were in Massachusetts,

Rhode Island, and Connecticut; therefore, suspects had used many different SSA district offices. Investigation determined that the case did not appear to involve corruption by any customer service representatives at these offices.

The person who submitted the SS-5 application with supporting ID documents received a social security card in a name that matched the one on the documents. However, that same person also subsequently received social security cards that did not match the first and last names on those documents. Suspects used Pakistani passports to apply for as many as four different social security cards. Investigation revealed several issues in the application process.

First, although the case primarily involved the use of Pakistani passports, suspects also used some from other countries. The Pakistani passports were altered by the addition of a counterfeit U.S. visa and a fake I-94 Arrival-Departure Record card.[2] Basically, people in the United States as tourists do not have permission to work, so they would have to alter their visas to indicate a class that permits employment. Most individuals involved in this fraud had counterfeit visas with class "H1-B," which allows the person to work in the United States. Apparently, certain evidence submitted for identification purposes was not compared; therefore, the SSA did not determine that the same passport or other ID document was used previously to apply for and, in most cases, receive a social security card. Copies of the SS-5s showed that the same Pakistani passport was submitted as evidence of identity for different applications.

> ***...law enforcement agencies should be aware of the challenges the SSA has encountered while protecting citizens....***

For example, passport #123456 in the name of John (FN) Smith (LN) was used to obtain a social security card. A subsequent SS-5 showed that the same passport was submitted as proof of identity to obtain a card in the name of Smith (FN) John (LN). Then, a third SS-5 involving that same passport was used to obtain a card in the name of Jon (FN) Smith (LN). Obviously, because most of the people who applied for the social security cards had foreign-sounding names, the applicant more easily convinced the customer service representative to process the application to issue a card that did not exactly match the first and last names as they appeared on the identity documents. One person involved in the fraud admitted to basically just telling the customer service representative "That's how it's spelled in my country" to get the individual to accept the application.

Second, various numbers on the ID documents, such as the passport, visa control, visa, and I-94 Arrival-Departure Record numbers, were incorrectly identified. These discrepancies were discovered after FBI agents from New York City executed search warrants and recovered many of the original ID documents used to obtain the social security cards.

Third, due to efforts to reduce paperwork, copies were not routinely made of the evidence submitted at the time of the application. Rather, copies were made only if a customer service representative became suspicious of the documents presented. In such cases, the photocopies were forwarded to the U.S. Immigration and Customs Enforcement (ICE) for review, but the originals were immediately returned to the applicant at the district office. The applicant then left the district office and waited to find out if the social security card was issued.

The Resolution

Members of the FBI, ICE, and state and local law enforcement agencies executed searches at various suspect locations believed to be involved in these frauds. They arrested the two male suspects at different locations. Despite recovering 13 Pakistani passports bearing the photograph of the same female, they did not locate her on that date. Many of the locations searched appeared to be mail drops for credit cards—they had no furniture except a bed and virtually nothing else. Various ID documents, as well as ledger books, were found hidden between the mattress and box spring of beds. The ledgers contained detailed data for each assumed identity, showing all of the information for that person, such as fictional parental names, mailing address for the social security card, employment address, and phone number. Subjects had organized the ID documents for each identity by using a wallet or plastic check register holder that contained a driver's license (or state ID card), social security card, bank ATM card, information on the starter checking account opened by the person, and, in some cases, more than 20 credit cards in the name of that particular assumed identity.

Investigation revealed that these subjects primarily were from the New York City metropolitan area. They first fraudulently obtained a social security card with the help of a New York City resident who OIG/SSA agents in Boston, Massachusetts, apprehended while he drove his customers around to apply for social security cards in Massachusetts. This individual, along with the help of a female accomplice, charged between $1,000 to $1,500 to manufacture the counterfeit visas and I-94 Arrival-Departure Record cards and helped people obtain a social security card. They charged one-half of the fee up front, paid at a meeting in Manhattan, New York. Customers later would be driven to a district office of the SSA in Massachusetts, Rhode Island, or Connecticut to submit the SS-5. The mailing address on the SS-5 was a mail-forwarding center box controlled by the same New York City resident who periodically checked the contents of the box.

> ***"Perpetrators had used some of the identities to open more than 20 credit card accounts...."***

Once the SSA mailed the card, the New York City resident picked it up and arranged a second meeting with the original customer, who then paid the second half of the fee and received the social security card. Some of the customers applied for just one card, but others, particularly those whose aim was credit card fraud, applied for many different ones.

Once the suspects had a social security card, they could obtain a driver's license (or state ID) and open a bank account. They usually opened a checking account with a $500 deposit and paid bills on time, which established good credit and enabled them to begin applying for credit cards. Investigation determined that the goal was to obtain 20 credit cards in each name. In turn, this allowed each identity a cash advance potential of $60,000. The full evolution of this scheme took up to 18 months.

One of the suspects had assumed more than 50 identities, so he had the opportunity to make about $3 million for his efforts. The female suspect, whose passports were recovered during the searches, eventually was arrested in Brooklyn. An additional eight suspects associated with the other three were arrested there as well.

Recommendations

Certain procedures can help prevent unauthorized persons from obtaining a social security card and can give investigators a greater chance of determining the perpetrators. First, customer service representatives at SSA district offices enter the handwritten data from the SS-5 into the computer. Additional training at SSA district offices will ensure that personnel correctly identify the various numbers on government visas and immigration documents. Moreover, by uploading specific software, SSA computers can compare information and determine if someone already has used the same passport or identification to apply for (or receive) a social security card. Then, the computer will alert the representative entering the data that a possibility of fraud exists. At that time, the matter should be referred to another person for closer review.

Employees can scan all documents exhibited as proof of identity into the computer with a link to a digital photo or some type of biometric identifier, such as a scanned image of at least one fingerprint. Further technological enhancements involve having the SSA computer equipped with the ability to interface with the U.S. Department of State for concerns pertaining to visas and with ICE regarding departure records and employment authorization documents because criminals may use counterfeit U.S. visas or immigration documents to help obtain social security cards.

Conclusion

The issuance of social security cards by the Social Security Administration is primarily a social service function to help administer benefits. However, criminals are increasingly using the cards to facilitate numerous fraudulent activities.

Law enforcement professionals should be aware that suspects have presented counterfeit or altered identification documents to obtain the cards and then used them to acquire multiple credit cards, resulting in the loss of hundreds of thousands of dollars to credit card companies. Increased vigilance by all involved federal, state, and local agencies will ensure that attempts by these criminals to exploit the social security card application process are immediately thwarted, and the SSA can continue its mission of advancing this nation's economic security. ✦

Endnotes

[1] U.S. Social Security Administration.

[2] A U.S. Citizenship and Immigration Services Form I-94 (Arrival-Departure Record) shows the date an individual arrives in the United States and the date when the authorized period of stay expires. For more information, see *http://www.uscis.gov*.

Wanted: Notable Speeches

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

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity, but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8 ½- by 11-inch white paper with all pages numbered. When possible, an electronic version of the transcript saved on computer disk should accompany the document. Send the material to:

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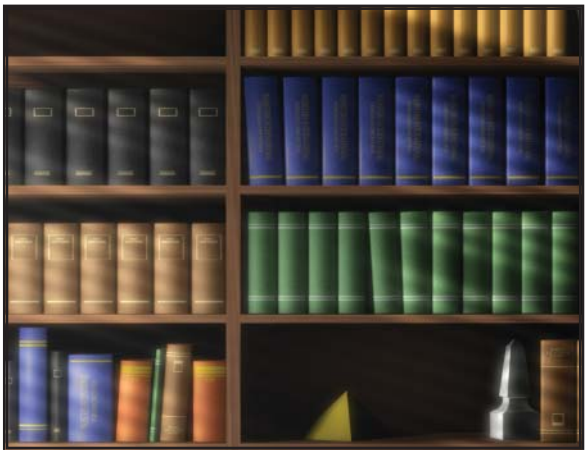
Book Review



Test Validity in Justice and Safety Training Contexts: A Study of Criterion-Referenced Assessment in a Police Academy
by Kevin I. Minor, James B. Wells, Kimberly Cobb, Beverly Lawrence, and Terry C. Cox, Charles C. Thomas Publisher, Springfield, Illinois, 2005.

In view of the post-September 11 era, training officials are likely to be called to demonstrate that their academic and in-service training objectives prove consistent with the required knowledge and skills of their personnel. That law enforcement trainers have a scientific method to assess and validate trainee performance represents the core reason for this book's existence. As such, it is a must-have resource for all training and test developers.

Test Validity in Justice and Safety Training Contexts is a state-of-the-art book for assessing and validating actual knowledge and skill development required to achieve the levels of competency and consistency necessary in the performance of duty. The book involves an actual research study conducted on-site for the 16-week (640 hours) Kentucky Department of Criminal Justice Training at the Louisville and Richmond facilities concerning state-mandated entry-level and in-service training for approximately 9,000 law enforcement personnel each year.

It is not a theoretical approach but an actual demonstration of the concepts of developing and using test validity and reliability instruments with respect to criterion verses norm-referenced measurement of trainee knowledge and skills against individual performance and standard learning objectives. Did the trainee achieve the intended knowledge and skills by those trainers who developed and presented the training curriculum?

This book is designed, developed, and implemented in three phases for law enforcement trainers. Phase I (chapters 1 through 4) entails the preparation of criterion-referenced tests for the validation study, along with pilot testing of data collection and pretest data. Phase II (chapters 5 and 6) involves the collection and analysis of data, content, and construct validity of those items produced in Phase I, such as reliability and test bias. Phase III (chapters 7 and 8) reviews a predictive validation of test items and contains an identification of fundamental concerns that must be addressed when developing test items and attempts to validate testing instruments. The book has five compelling aspects.

1) a list that identifies numerous guidelines for developing valid test questions with appropriate test distracters;

2) an 8-page rating instrument (assessment tool matrix) covering law enforcement administration, investigation, patrol operations, legal aspects, patrol and advanced skills, firearms, and defensive tactics;

3) a 13-page matrix that outlines the curriculum objectives on those areas mentioned in the rating instrument;

4) a 12-page matrix of essential law enforcement tasks and their corresponding curriculum objectives; and

5) a 4-page supervisor's employee-rating matrix on job performance.

Test Validity in Justice and Safety Training Contexts contains a comprehensive and systematic approach involving the authors' study and findings supported by applicable statistical analysis methodologies identified and discussed in numerous tables in the text, which are easily understandable. It can apply to all law enforcement agencies at the town, city, county, state, and federal levels, as well as fire departments, hazardous materials units, and emergency medical services.

Reviewed by
Major Larry R. Moore (Ret.)
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Knoxville, Tennessee

Unusual Weapon

Zipper Pull/Blade

Law enforcement officers should be aware that offenders may use this unusual weapon, which looks like a zipper pull. Instead, this object has a plastic insert in the handle and metal blades. It also may be worn as a necklace, carried as a key chain, or mixed in with coins.

X-ray of zipper pull/blade.

Bulletin Reports

School Safety

Indicators of School Crime and Safety, 2006, presents data on crime and safety at school from the perspectives of students, teachers, principals, and the general population. A joint effort by the Bureau of Justice Statistics and the National Center for Education Statistics, this annual report examines crime occurring on campus, as well as on the way to and from school. It provides the most current detailed statistical information on the nature of crime in schools, campus environments, and responses to violence and crime at school. Information was gathered from an array of sources, including editions of the National Crime Victimization Survey, School Crime Supplement to the National Crime Victimization Survey, Youth Risk Behavior Survey, School Survey on Crime and Safety, and the School and Staffing Survey.

Highlights include the following: from July 1, 2004, through June 30, 2005, 21 homicides of youths ages 5 to 18 occurred at school; in 2003 to 2004, teachers' reports of being threatened or attacked by students during the previous 12 months varied according to their school level; and the percentage of public schools experiencing one or more violent incidents increased from 71 to 81 percent between the 1999 to 2000 and 2003 to 2004 school years. This report is available online at *http://www.ojp.usdoj.gov/bjs/pub/pdf/iscs06.pdf* or by contacting the National Criminal Justice Reference Service at 800-851-3420 or *http://www.ncjrs.gov/*.

Computer Investigations

The National Institute of Justice's (NIJ) *Investigations Involving the Internet and Computer Networks* is intended as a resource for investigators responsible for such cases. Any crime could involve devices that communicate through the Internet or through a network. Criminals may use the Internet for numerous reasons, including trading/sharing information (e.g., documents and photographs), concealing their identities, and gathering information on victims. This report is available at *http://www.ncjrs.gov/pdffiles1/nij/210798.pdf* or by contacting the National Criminal Justice Reference Service at 800-851-3420 or *http://www.ncjrs.gov/*.

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

Drugs

The Office of National Drug Control Policy introduces *Pushing Back Against Meth: A Progress Report on the Fight Against Methamphetamine in the United States*, which highlights the recent progress made across all 50 states through the passage and implementation of laws, laboratory incident seizures, and positive workplace tests for amphetamines in reducing methamphetamine production. In 2005, a pattern became apparent in the United States—a nationwide drop in methamphetamine laboratory incidents. In 2004, there were approximately 17,750 methamphetamine laboratory seizures by law enforcement in the United States. In 2005, this number was 12,500, a drop of more than 30 percent. Early 2006 data has suggested a continuing decline. The primary reason for this downhill trend is the enactment of various state laws, which started in Oklahoma in 2004. By early 2006, more than 40 states had implemented some type of new restriction on retail transactions involving products containing certain chemicals that could be used to make methamphetamine. In 2006, the Combat Methamphetamine Epidemic Act (CMEA) went into effect, which set a nationwide baseline standard for how to legally sell these products, including some popular over-the-counter cold medications. In some states, enactment of the CMEA was followed by a swift and sudden decline in methamphetamine laboratory incidents, sometimes as much as 75 percent or more. However, in some states, the decline was less dramatic. This state-by-state annual report examines progress made on the fight against methamphetamine in the United States for 2005. This publication is available online at *http://www.whitehousedrugpolicy.gov/publications/pdf/pushingback_against_meth.pdf* or by contacting the National Criminal Justice Reference Service at 800-851-3420 or *http://www.ncjrs.gov/*.

Corrections

Medical Problems of Jail Inmates provides findings on prisoners who reported a current medical problem, a physical or mental impairment, or an injury since admission based on data from the 2002 Survey of Inmates in Local Jails. The prevalence of specific medical problems and conditions also are included. The report examines medical problems and other conditions by gender, age, time served since admission, and select background characteristics. Highlights include the following: more than one-third of jail inmates reported having a current medical problem; 22 percent advised having a learning impairment; and 11 percent said they had impaired vision. Heart valve damage (290 per 10,000 inmates) and arrhythmia (211 per 10,000) were the most commonly reported types of heart problems. This Bureau of Justice Statistics report is available online at *http://www.ojp.usdoj.gov/bjs/pub/pdf/mpji.pdf* or by contacting the National Criminal Justice Reference Service at 800-851-3420 or *http://www.ncjrs.gov/*.

Time, Place, and Manner

Controlling the Right to Protest

By MARTIN J. KING, J.D.

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In towns it is impossible to prevent men from assembling, getting excited together and forming sudden passionate resolves. Towns are like great meeting houses with all the inhabitants as members. In them the people wield immense influence over their magistrates and often carry their desires into execution without intermediaries.

—Alexis de Tocqueville

These words, published in 1835 by Alexis de Tocqueville in the book *American Democracy,* were intended as an observation on the importance of the right of assembly to a citizen's ability to directly influence the political process.[1] However, the ability to "carry their desires into execution" has a potentially ominous connotation in a post-September 11 environment where a concern for security and public safety is paramount. If, for example, the desire to be carried into execution is to "affect the conduct of a government by mass destruction," then it qualifies as an act of terrorism that law enforcement is charged with preventing.[2] An event, activity, or meeting having political, ideological, or social significance might hold an equal attraction to a peaceful protestor as it would to a potential terrorist or anarchist. Thus, the dilemma, long faced by law enforcement but now exacerbated by the omnipresent threat of terrorism, is how to effectively exercise control over such events, which often involve large gatherings of people, in the interest of preserving public order and safety

without trammeling the First Amendment rights of protesters. This article examines how courts have recently reconciled security-based restrictions with the right to protest.

The Right of Public Protest

Freedom of speech and the right of the people peaceably to assemble are specifically guaranteed by the First Amendment to the U.S. Constitution.[3] Protest activity falls squarely within the First Amendment's guarantees of freedom of speech and assembly.[4] The right to protest is most highly protected when assembly for purposes of expression takes place on property that, by law or tradition, has been given the status of a public forum, such as public streets, sidewalks, and parks, rather than on property that has been limited to some other governmental use.[5] Nevertheless, it is well settled that the First Amendment does not guarantee unlimited access to government property for expressive purposes. Because expressive conduct occurring in public places, by its very nature, may conflict with other pursuits of the general population within that space, the need to balance competing interests in this area has long been recognized.[6] The U.S. Supreme Court itself has noted that "courts have for years grappled with the claims of the right to disseminate ideas in public places as against claims of an effective power in government to keep the peace and protect other interests of a civilized community."[7]

Accordingly, although protest activity in public places is protected by the Constitution as free speech, it is afforded less protection than other forms of expression that do not involve conduct.[8] Individuals who communicate ideas by conduct, such as participating in a protest march, have less protection than those who communicate ideas by "pure speech," such as speaking or publishing. Indeed, the terms *speech plus* and *expressive conduct* are used to describe public demonstrations that involve the communication of political, economic, or social viewpoints by means of picketing, marching, distributing leaflets, addressing publicly assembled audiences, soliciting door-to-door, or other forms of protest.[9] The expression of ideas in a manner that neither threatens public safety nor undermines respect for the rule of law is afforded comprehensive protection under the First Amendment. When speech does not involve aggressive disruptive action or group demonstrations, it is almost always protected from government regulation.[10] Conduct, however, is subject to reasonable regulation by the government even though intertwined with expression and association.[11] Demonstration routes, for instance, sometimes must be altered to account for the requirements of traffic or pedestrian flow.[12] People have a constitutional right to march in a protest but not with noisy bull horns at 4 a.m. in a residential neighborhood.[13] In regulating expressive conduct, the government is not permitted

> ***"Reasonable restrictions as to the time, place, and manner of speech in a public forum are permissible provided those restrictions are justified...."***

Special Agent King is a legal instructor at the FBI Academy.

to completely close all avenues for public protest or to restrict access to public forums based on considerations of the content of the message or viewpoint of the speaker.[14]

Government restriction of expressive activity imposed in advance of its occurrence raises the specter of a prohibited form of content or viewpoint discrimination known as a "prior restraint" on speech.[15] Concerns over prior restraints relate primarily to government restrictions on speech that result in censorship.[16] Although the U.S. Supreme Court has indicated that "any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity," it has consistently refused to characterize government restriction of protest activity as a prior restraint.[17] Restrictions imposed on expressive conduct must not operate as a form of censorship. Therefore, when imposing restrictions on protest activity, the government is not permitted to discriminate based on the content or viewpoint of the demonstrators and must allow for adequate alternative means of expression. A complete ban on protest activity that effectively silenced dissent in a public forum would be a presumptively unconstitutional prior restraint on speech and, accordingly, is rarely encountered in actual practice.[18] Much more commonly presented are government efforts to regulate protest activity through a permitting or licensing process whereby officials are put on notice of the planned activity and then seek to impose an alternative date or time or a different location or route than that requested by the organizers of the protest.[19]

> ***"Protest activity falls squarely within the First Amendment's guarantees of freedom of speech and assembly."***

Time, Place, and Manner Restrictions

Where government restrictions are not based on censorship of the viewpoint of the protestors, courts employ the First Amendment doctrine of time, place, and manner to balance the right to protest against competing governmental interests served by the enforcement of content-neutral restrictions.[20] In differentiating between content-based and content-neutral restrictions on the right to public protest, the U.S. Supreme Court has held that "[t]he principal inquiry in determining content neutrality, in speech cases generally and in time place or manner cases in particular is whether the government has adopted a regulation of speech because of disagreement with the message it conveys."[21] A fundamental principle behind content analysis is that "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views."[22] Even given that protest activity is expressive conduct, courts take a categorical approach to the question of conduct versus content regulation. In assessing whether a government restriction is content neutral, courts look at the literal language of the restriction, rather than delving into questions of any hidden motive to suppress speech; stated another way, "whether a statute is content neutral or content based is something that can be determined on the face of it; if the statute describes speech by content then it is content based."[23]

Time, place, and manner restrictions do not target speech based on content, and, to stand up in court, they must be applied in a content-neutral manner. The U.S. Supreme Court has developed a four-part test to determine the constitutional validity of time, place, and manner regulation of expressive conduct in a public forum.

1) The regulation must serve an important government interest (e.g., public safety).
2) The government interest served by the regulation must be unrelated to the suppression of a particular message (i.e., content neutral).
3) The regulation must be narrowly tailored to serve the government's interest.
4) The regulation must leave open ample alternative means for communicating the message.[24]

All four of these requirements must be satisfied to survive a constitutional challenge, and failure to satisfy even one will render the restriction invalid. The third and fourth criteria are closely aligned. Narrow tailoring means that the restriction imposed is not substantially broader than necessary to achieve the government's interest. However, "the regulation will not be invalid simply because a court concluded that the government's interest could be adequately served by some less speech-restrictive alternative."[25] In other words, a narrowly tailored restriction does not require the government to impose the least intrusive restriction possible. The case of *Hill v. Colorado* illustrates the straightforward approach taken by the U.S. Supreme Court when applying this test to government-imposed restrictions on protest activity.[26] In *Hill*, antiabortion protestors challenged the constitutionality of a Colorado statute that made it unlawful for "any person to 'knowingly approach' within eight feet of any person, without that person's consent, 'for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such

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other person," within 100 feet of the entrance to any health care facility.[27] In declaring the statute a valid time, place, and manner restriction, the Court held:

> The Colorado Statute passes that test for three independent reasons. First, it is not a "regulation of speech." Rather, it is a regulation of the places where some speech may occur. Second, it was not adopted "because of disagreement with the message it conveys." This conclusion is supported not just by the Colorado court's interpretation of legislative history, but more importantly by the State Supreme Court's unequivocal holding that the statute's "restrictions apply equally to all demonstrators, regardless of viewpoint, and the statutory language makes no reference to the content of the speech." Third, the state's interest in protecting access and privacy, and providing police with clear guidelines, are unrelated to the content of the demonstrator's speech. As we have repeatedly explained, government regulation of expressive activity is "content neutral" if it is justified without reference to the content of regulated speech.[28]

The Court also held that the statute was narrowly tailored and left open ample alternatives for communication, observing that it only restricted the location where communication could take place, and noted that no limitations were placed on the number, size, or content of text or images portrayed on protestors' signs.[29] "Under this statute, absolutely no channel of communication is foreclosed. No speaker is silenced. And no message is prohibited."[30]

Content-neutral regulation of speech means the restrictions

are placed on speech regardless of what the speaker has to say. Such content-neutral regulations that interfere with what otherwise would be First Amendment protected expression are examined under a balancing test, comparing the state's interest in prohibiting the activity in question to the level of interference with the speaker which is often determined by looking at available avenues of communication.

Demonstration Zones

The undeniable and very serious concerns about safety and security at public venues that attract large-scale protest activity have been described by one court as follows: "We have come to a point where it may be anticipated at…national security events, that some significant portion of demonstrators among those who want the closest proximity to…participants, consider assault, even battery, part of the arsenal of expression. And as a consequence, those responsible for safety must plan for violence."[31] Where it can be reasonably anticipated that an event likely will attract threats from persons seeking to carry out criminal acts to disrupt the proceedings and bring attention to extremist political causes, law enforcement preparations commonly include the proactive imposition of demonstration zones or security zones as a means of providing some measure of physical security to the event.

Both free-speech zones that designate restricted areas within which protest activity may take place and speech-free zones that prohibit protest activity from taking place within designated areas have been employed and often in conjunction with each other.[32] An analysis of the relatively few cases concerning the legality of demonstration zones reflects that the challenged security measures were indisputably content neutral and that there was no doubt as to the importance of the government interest in maintaining security at special events, such as political conventions.[33] Accordingly, the decisions turn predominantly on the resolution of whether the array of security precautions were narrowly tailored to meet the security interest at stake and whether those precautions left open ample alternative avenues of communication.

> ***"Restrictions imposed on expressive conduct must not operate as a form of censorship."***

In response to events surrounding the 1999 World Trade Organization (WTO) conference in Seattle, a restricted zone was implemented by the city in response to actual physical obstruction of the conference venue, property damage, and other violent acts committed by protestors.[34] Under the city's emergency order, protestors were completely barred from entering a designated restricted zone—in First Amendment terms, a no-speech zone—that covered the convention site and hotels where the WTO delegates were staying.[35]

The U.S. Court of Appeals for the Ninth Circuit found that the restricted zone "was not a regulation of speech content, but rather was 'a regulation of the places where some speech may occur.'"[36] In reaching that conclusion, the court applied the traditional time, place, and manner analysis, finding both that 1) the order itself made no reference to the content of speech and 2) the fact that the order "predominantly affected protestors with anti-WTO views did not render it content based."[37] The court next determined that the measure was narrowly tailored to serve the government's interest in maintaining public order. "In the face of a violent riot, the City had a duty to restore order and to ensure the safety of WTO delegates and the residents of Seattle. The

City also had an interest in seeing that the WTO delegates had the opportunity to conduct their business at the chosen venue for the conference; a city that failed to achieve this interest would not soon have the chance to host another important international meeting."[38]

The court noted that "a municipality is required to provide tangible evidence that speech-restrictive regulations are necessary to advance the proffered interest in public safety."[39] Although the city was not required to choose the least restrictive alternative, the court indicated that an assessment of alternatives still can bear on the reasonableness of the tailoring of the restriction and whether it is narrowly tailored as required. "We have said that 'if there are numerous and obvious less-burdensome alternatives to the restriction on [protected] speech, that is certainly a relevant consideration.'"[40]

Finally, the court resolved what it described as a very difficult question, in holding that ample alternative channels of communication were available to the demonstrators outside the restricted zone.[41] On the one hand, the protestors were not permitted to protest directly in the presence of the delegates they presumably sought to influence. On the other hand, the protestors were able to demonstrate and express their views immediately outside the restricted zone, including areas directly across the street from WTO venues. Ultimately, the court concluded that the protestors could reasonably expect their protest to be visible and audible to delegates even if not as proximate as the protestors might have liked. Citing the U.S. Supreme Court's holding in *Hill*, the court concluded, "Appellants argue that they were prevented from communicating with the WTO delegates

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at close range, but there is no authority suggesting that protestors have an absolute right to protest at any time and at any place, or in any manner of their choosing."[42]

While the WTO case concerned a reactive response to actual civil disorder, the government interest in maintaining security and order can be adequately supported through observation and analysis of past occurrences to identify tactics that might be used by violent demonstrators at future events. In engaging in security preparation and planning, any proactive restrictions imposed on protest activity must be narrowly tailored to meet the anticipated threat and also must leave open adequate alternative means for expression. In *Service Employee International Union 660 v. City of Los Angeles*, the court considered–nearly a month in advance of the event–proposed security restrictions surrounding the 2000 Democratic National Convention in Los Angeles.[43] The Los Angeles police, in conjunction with the U.S. Secret Service and other agencies, imposed a very large secured zone that encompassed the convention facility and involved the closing of several public streets. No protest activity would be permitted within the secured zone. Outside the secured zone, a designated demonstration zone was set up about 260 yards from the entrance to the convention facility, where a platform, a sound system, and portable toilets were provided to facilitate protest activity.[44] In justifying the security and demonstration zones, the government did not suggest that the protestor's speech itself created a safety issue. Rather, the government sought to safeguard against risks generally associated with 1) the presence of prominent people at the event, 2) the fact

that the convention was a real and symbolic target for terrorist activity, and 3) the fact that a large media concentration could encourage groups to become violent to attract attention to their causes.[45]

The court found that the proposed security zone was not narrowly tailored because it burdened more speech than was necessary.[46] The principal problem with the secured area was its size—it covered approximately 185 acres of land—combined with its configuration that prevented anyone with any message from getting within several hundred feet of the entrance to the venue where delegates would arrive and depart. The court concluded that while there was no dispute that a narrowly tailored zone is constitutionally permissible to ensure that delegates can enter and exit the venue safely, the secured zone covered much more area than necessary to serve that interest.[47]

The court also found that the demonstration zone was not an adequate alternative for speech, rejecting, in part, the city's claim that there would be a sight line to the convention facility, concluding, instead, that the "distance ensure[d] that only those delegates with the sharpest of eyesight and most acute hearing have any chance of getting the message, that is, assuming that the 'sight line' is not blocked during the convention."[48] The court noted that whether a sight line existed at all was a "questionable assumption" because a 10,000-person media area would lie directly between the demonstration zone and the convention center entrance.[49]

In *United for Peace and Justice v. City of New York*, a group opposing the war in Iraq applied, 3 weeks in advance, for a permit to authorize a parade of up to 10,000 people to march in front of the United Nations (UN) headquarters in New York City.[50] The city refused to allow the demonstrators to march in front of the UN as requested because the police determined that they could not provide adequate security for the event, even though the road where the march would take place was six lanes wide and there would be almost 40 feet between the marchers and the outer fence protecting the UN.[51] The city, however, did permit the marchers to conduct a large stationary demonstration confined to Dag Hammarkjold Plaza, where the demonstrators had intended to begin the parade.[52]

> ***"...the restrictions imposed were not substantially broader than necessary to achieve the city's interest in public, participant, and officer safety."***

The U.S. District Court upheld the denial of the permit distinguishing the requested event from other large-scale parades commonplace in New York City.[53] Important to the court's decision was testimony from the police that detailed the rather disorganized nature of the proposed march, with widely varying estimates of the number of participants and no reliable contact information regarding the various participating organizations. According to the police, past approved parade permits typically involved regularly recurring events where applications were submitted well in advance and contained specific details about the number of participants. Further, in approved parades, there were opportunities for meetings between the police and the organizers to jointly discuss issues, such as the manner of protest, means of formation, and spacing of demonstrators along the route.

The district court found that the restrictions imposed were not substantially broader than necessary to achieve the city's interest in public, participant, and officer safety.[54] The Second Circuit Court of Appeals affirmed, finding that "short

notice, lack of detail, administrative convenience, and costs are always relevant considerations in the fact-specific inquiry required in all cases of this sort."[55] The court cautioned that "these factors are not talismanic justifications for the denial of parade permits" and "[l]ikewise, simply offering an alternative of stationary demonstration does not end the analysis."[56]

In *Stauber v. City of New York*, the court considered, inter alia, a challenge to the New York City Police Department's practice of using barricades or "pens" to contain and control demonstration activity.[57] The pens, in this instance, were "metal interlocking barricades…in which demonstrators were required [by police] to assemble" and from which they were not permitted to leave, even to go to the bathroom.[58] The court, finding that the pens policy violated the First Amendment because it was not narrowly tailored, issued a preliminary injunction against "unreasonably restricting access to and participation in demonstrations through the use of pens."[59] Although the city had a legitimate interest in regulating the demonstrators to prevent violence, the court held that completely enclosing demonstrators within the pens and preventing their movement was not a sufficiently narrowly tailored speech regulation.[60]

Stauber contained an extensive factual record concerning how the pens actually were used to essentially herd and very restrictively confine persons who wanted to exercise their right to protest throughout the duration of the protest. It should be noted, however, with a different factual record before it, a court has observed that a "barricaded enclosure for demonstrators… is a practical device used by the police to protect those actively exercising their rights from those who would prevent its exercise," such as counterdemonstrators.[61]

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The legality of a demonstration zone imposed at the 2004 Democratic National Convention was upheld by the U.S. Court of Appeals for the First Circuit in *Bl(a)ck Tea Society v. City of Boston*.[62] This event was the first national political convention to be held following the September 11, 2001, terrorist attacks on New York's World Trade Center that were launched from Boston's Logan Airport and was designated as a national special security event, thereby placing the Secret Service directly in charge of security.[63] The Boston Police Department acted in conjunction with the Secret Service to enforce two different restrictive zones in the vicinity of the FleetCenter convention venue located in downtown Boston. A so-called "hard security zone" encompassed an area immediately surrounding the FleetCenter, and a so-called "soft security zone" encompassed certain public streets adjacent to the hard zone. The Secret Service restricted access within the hard security zone to convention business only and no protestors were permitted within that zone. The soft zone was controlled by the city and remained open to the general public, including demonstrators who were subject to certain permit and crowd-control measures.[64] Among these was the creation of a designated demonstration zone, the major issue of contention in the case.[65]

The demonstration zone was described by a U.S. District Court judge as follows based on an actual visit to the site:

> The "designated demonstration zone" [DZ] is located in the soft zone…[and] is a roughly rectangular space of approximately 26,000 to 28,000 square feet–very

approximately 300 feet by 90 feet.… A written description cannot begin to convey the ambiance of the DZ site as experienced during the view. Most–at least two thirds of the DZ lies under unused Green Line tracks [elevated train tracks].… It is a grim, mean, and oppressive space whose ominous roof is supported by a forest of girders that obstruct sight lines throughout as the tracks slope downward towards the southern end.… The City is providing a sound system and will allocate access to the stage itself through a permitting system…. During the view, I observed that a person of normal height could not carry a sign underneath it without lowering it to head level or lower. If that were done, no one on the other side of the girders would be able to see it once it was raised again beneath the tracks.… The DZ is surrounded by two rows of concrete jersey barriers. Atop each of the jersey barriers is an eight foot high chain link fence. A tightly woven mesh fabric, designed to prevent liquids and objects from being thrown through the fence, covers the outer fence, limiting but not eliminating visibility. From the top of the outer fence to the train tracks overhead, at an angle of approximately forty-five degrees to horizontal is a looser mesh netting, designed to prevent objects from being thrown at the delegates."[66]

Even though the district court found that the overall impression created by the demonstration zone was "that of an internment camp," it concluded that the design of the demonstration zone was narrowly tailored "given the constraints of time, geography, and safety."[67] In reaching this conclusion, the court noted that the demonstration zone was placed at a location suggested by the American Civil Liberties Union and the National Lawyers Guild, counsel for the groups that challenged the restrictions, and was the only available location providing a "direct interface between demonstrators and the area where delegates will enter and leave the FleetCenter."[68] As it happened, this location included some unfortunate geographic and structural constraints, such as the sight-obstructing girders and low clearance presented by the overhead tracks, that were not susceptible to timely modification by the government.

> ***"In justifying the security and demonstration zones, the government did not suggest that the protestor's speech itself created a safety issue."***

With respect to those features that were subject to modification, such as the barriers, multiple layers of fencing, mesh, and netting, the court determined that each of these were adequately supported, reasonable security precautions. The court's conclusion was based on testimony from various law enforcement personnel's past experience at comparable events, including the 2000 Democratic National Convention in Los Angeles.

The double fence is reasonable in light of past experience in which demonstrators have pushed over a single fence. A second fence may prevent this altogether, or at least give police officers more time to respond and protect the delegates. The liquid dispersion fabric is reasonable in light of past experience in which demonstrators have squirted liquids such as bleach or urine at delegates or police. The overhead netting is reasonable in light of past experience in which demonstrators have thrown objects over

> fences. The razor wire atop the Green Line tracks…is reasonable in light of the possibility of demonstrators climbing upon the tracks and using them as an access point to breach the hard zone perimeter and/or rain objects on delegates, media, or law enforcement personnel from above.[69]

In short, given the unique circumstances presented, there was "no way to 'tweak' the DZ to improve the plaintiffs' free speech opportunities without increasing a safety hazard."[70]

On appeal, the First Circuit affirmed the decision of the district court. While noting that the security measures at the convention "dramatically limited the possibilities for communicative intercourse between the demonstrators and the delegates...[and] imposed a substantial burden on free expression," the court found that past experiences with large demonstrations created a "quantum of 'threat' evidence...sufficient to allow the trier to weigh it in the balance."[71] The court indicated that the question was not whether the government can make use of past experience to justify security measures–it most assuredly can–but the degree to which inferences drawn from past experiences are plausible.

> While a government agency charged with public safety responsibilities ought not to turn a blind eye to past experience, it likewise ought not to impose harsh burdens on the basis of isolated past events. And, in striking this balance, trial courts should remember that heavier burdens on speech must, in general, be justified by more cogent evidentiary predicates.[72]

The court said that unfounded speculation about potential violence cannot justify an insufficiently tailored restriction on expression. On the other hand, law enforcement officials may draw upon experiences of other cities or entities that have hosted comparable events when assessing the type of security measures necessary to police an upcoming event. The reality that some demonstrators at other recent large political events had engaged in acts, such as pushing over fences and throwing objects over barricades, was deemed to be clearly relevant to the safety risk posed to delegates at the 2004 Democratic National Convention. Nevertheless, while not requiring a showing of event-specific intelligence, the court found the lack of specific information in the record about a risk of violence specific to the event "troubling in light of the particularly stringent restrictions that were imposed."[73]

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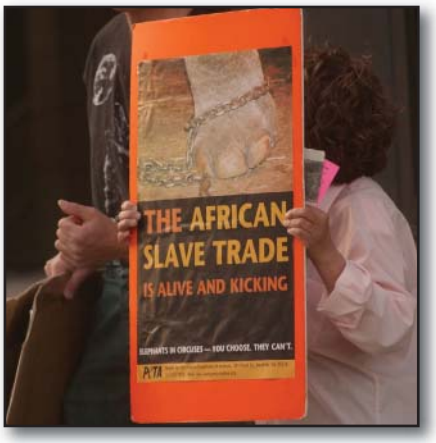


The court also found that viable alternative means existed to enable protestors to communicate their messages. The demonstration zone did provide an opportunity for expression within the sight and sound of the delegates, "albeit an imperfect one." Two other considerations were deemed to be pertinent to the analysis and were described as follows:

> First, although the opportunity to interact directly with the body of delegates by, say, moving among them and distributing literature, would doubtless have facilitated the demonstrator's ability to reach their intended audience, there is no constitutional requirement that demonstrators be granted that sort of particularized access. Second, we think that the appellants' argument greatly underestimates the nature of modern communications. At a high profile event, such as the convention, messages expressed beyond the first-hand sight and sound of the delegates nonetheless has

the propensity to reach the delegates through television, radio, the press, the Internet and other outlets.[74]

Thus, on balance, the importance of providing demonstrators with some measure of physical connection to an event venue, such as relatively proximate line-of-sight access, may be lessened where there are other available outlets for effective communication.

Conclusion

It has been said that "the greater the importance of safeguarding the community from incitements to the overthrow of institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for political discussion, to the end that that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means."[75] Freedom of expression, especially the expression of political views, ranks near the top of the hierarchy of constitutional rights.[76] Despite the importance of that right, the protections of the First Amendment are not without limits. Reasonable restrictions as to the time, place, and manner of speech in a public forum are permissible provided those restrictions are justified without reference to content, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels for communication of the protestors' message.

No one can seriously dispute that the government has a significant interest in maintaining public order; indeed, this is a core duty that the government owes its citizens. Security measures may inevitably require the imposition of restrictions on large numbers of peaceful protestors to effectively address the threat posed by a violent few among them. Courts have recognized this inherent dilemma and that the public interest cuts both ways. Freedom of expression is vital to the health of democracy but making public safety a reality and ensuring that important political and social events are able to proceed normally also are valuable.[77] While a case-by-case determination must be made in consideration of the unique geographic, logistical, and security challenges posed by an actual event, a safety net is cast too broadly if it restricts protest activity unduly in too large of an area and, thus, is not narrowly tailored. However, courts generally will not strike down government action for failure to leave open ample channels of communication unless the government action will foreclose an entire medium of public expression across the landscape of a particular community or setting. A time, place, or manner restriction does not violate the First Amendment simply because there is some imaginable alternative that might have been less burdensome on speech. The U.S. Supreme Court has instructed that the First Amendment does not require that individuals retain the most effective means of communication, only that individuals retain the ability to communicate effectively.[78] ✦

> ***...unfounded speculation about potential violence cannot justify an insufficiently tailored restriction on expression.***

Endnotes

[1] Quotation retrieved from *http://www.tocqueville.org.*

[2] *See, e.g.* 18 U.S.C.A. §2331(1)(B)(iii); 18 U.S.C. § 2332b(f), (g). Annex II of National Security Presidential Directive (NSPD) 46 and Homeland Security Presidential Directive (HSPD) 15 designate the FBI as the lead federal agency for counterterrorism.

[3] The First Amendment to the U.S. Constitution provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of

grievances." The question of whether state action deprives a person of the "liberty of expression" guaranteed by the First Amendment is analyzed under the Due Process Clause of the Fourteenth Amendment. *See, e.g. Gitlow v. New York*, 268 U.S. 652 (1925).

[4] *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 152 (1969) (describing the privilege of citizens to assemble, parade, and discuss public questions in streets and parks while striking down a parade ordinance that gave the government complete discretion to prohibit any "'parade,' 'procession' or 'demonstration' on the city's streets or public ways").

[5] The three types of forums on government property are 1) traditional public forum (e.g., streets, sidewalks, and parks); 2) designated or limited public forums (e.g., state university meeting facility, municipal theater, school board meeting rooms, or other place opened to the public as a place for certain forms of expressive activity); 3) nonpublic forums (e.g., government offices, jailhouses, military bases, polling places, or other place operated by the government as a proprietor and not made accessible to the public for expressive activity). *See International Society for Krishna Consciousness v. Lee*, 505 U.S. 672, 678 (1992) (Holding that an airport concourse was not a public forum, "The government need not permit all forms of speech on property that its owns or controls. Where the government is acting as proprietor, managing its internal operations, rather than acting as a lawmaker with the power to regulate or license, its actions will not be subject to the heightened review to which its actions as lawmaker may be subject.").

[6] *See Cox v. New Hampshire*, 312 U.S. 569, 576 (1941) ("If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination to time, place and manner, in relation to other proper uses of the streets.").

[7] *Niemotko v. Maryland*, 340 U.S. 268, 273 (1952) (J. Frankfurter, concurring).

[8] The U.S. Supreme Court found that picketing and marching in public were protected as free speech in *Thornhill v. Alabama*, 310 U.S. 88 (1940). In subsequent rulings, the Court established that regulations affecting time, place, and manner of demonstrations were lawful but that government discrimination based on the content or viewpoint of speech was prohibited by the First Amendment. *See, e.g., Edwards v. South Carolina*, 372 U.S. 229, 237 (1963) ("The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views."); *Cox v. Louisiana*, 379 U.S. 559, 563 (1965) ("The conduct which is the subject of this statute–picketing and parading–is subject to regulation even though intertwined with expression and association."); *Adderly v. Florida*, 385 U.S. 39, 48 (1966) (Persons who want to "propagandize protests or views" do not have "a constitutional right to do so whenever and however, and wherever they please.").

[9] *See, e.g. U.S. v. Grace*, 461 U.S. 171, 177 (1983) ("It is also true that 'public places' historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, without more, to be 'public forums.' In such places, the government's ability to permissibly restrict *expressive conduct* is very limited: the government may enforce reasonable time, place and manner regulations….") (emphasis added, internal citations omitted).

[10] *See, e.g., Tinker v. Des Moines Independent School District*, 393 U.S. 503, 508 (1969).

[11] *See Cox v. Louisiana*, 379 U.S. at 563.

[12] *Cox v. New Hampshire*, 312 U.S. at 574 ("Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unconstrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need.").

[13] This example retrieved from *http://www.firstamendmentcenter.org.*

[14] *See Forsythe County, Ga. v. Nationalist Movement*, 505 U.S. 123 (1992) (A county ordinance permitting a government administrator to vary the fee for assembling or parading to reflect the estimated cost of maintaining public order was facially unconstitutional due to the absence of narrowly drawn, reasonable, and definite standards to guide the fee determination and because it required the administrator to examine the content of messages to estimate the public response and cost of public service necessitated by the parade or assembly.).

[15] The use of designated demonstration zones or security zones in which no protest activity is permitted has been the subject of substantial commentary suggesting that the practice should be viewed as a form of content discrimination or as a "prior restraint" on speech. Courts have generally not been receptive to that suggested interpretation. *See, e.g.,* "Capturing the Dialogue: Free Speech Zones and the 'Caging' of First Amendment Rights," 54 Drake L. Rev. 99 (2006); "Speech and Spatial Tactics," 84 Tex. L. Rev. 581 (2006).

[16] The "prior restraints" doctrine encompasses a wide range of activity but is chiefly concerned with government suppression of speech by enjoining publication. *See, e.g.*, "Prior Restraints," 883 PLI/Pat 7 (November 2006) (contains a comprehensive digest of cases on the topic).

[17] *New York Times Co. v. U.S.*, 403 U.S. 713, 714 (1971) (internal quotations and citations omitted); *See Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 764, FN 2. (1994) ("Not all injunctions that may incidentally affect expression, however, are 'prior restraints'…. Here petitioners are not prevented from expressing their message in any one of several ways…moreover, the injunction was not issued because of the content of petitioner's expression…."); *Schenck v. Pro-Choice Network*

of Western N.Y., 519 U.S. 357, 374, FN 6. (1997) ("As in *Madsen*, alternative channels of communication were left open to the protestors….").

[18] *See* "Balancing the Right to Protest in the Aftermath of September 11," 40 Harv. C.R.-C.L. Rev. 327, 330 (2005).

[19] *Id*.

[20] *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) ("[T]he government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech.…").

[21] *Id*.

[22] *City of Renton v. Playtime Theaters, Inc.,* 475 U.S. 41, 48-49 (1986) (internal quotation marks and citation omitted).

[23] *City of Los Angeles v. Alameda Books, Inc.,* 535 U.S. 425, 448 (2002) (J. Kennedy, concurring).

[24] *See Ward*, 491 U.S. at 799-800. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984). *Frisby v. Schultz*, 487 U.S. 474, 481 (1988).

[25] *Coalition to Protest the Democratic Nat'l Conv. v. Boston*, 327 F. Supp. 2d 61, 70 (D. Mass. 2004) (*quoting Ward*, 491 U.S. at 800).

[26] 530 U.S. 703 (2000).

[27] *Id*. at 707.

[28] *Id*. at 719-720.

[29] *Id.* at 734.

[30] *Id.*

[31] *Coalition to Protest*, 327 F. Supp. 2d at 77.

[32] The case law reflects that crowd-control measures intended to control protest activity have involved various forms and degrees of restriction deemed necessary by government officials to accommodate the safety and security requirements posed by the unique physical environments of specific venues. At least one commentator, who has expressed concern that demonstration zones can be used to impose content or viewpoint censorship, described such activity as the use of "spatial tactics." *See* "Speech and Spatial Tactics," 84 Tex. L. Rev. 581 (2006).

[33] The FBI defines a special event as a "significant domestic or international event, occurrence, circumstance, contest, activity, or meeting which by virtue of its profile and/or status represents an attractive target for a terrorist attack." Manual of Investigative Operations and Guidelines (MIOG) 300-1(2). This definition is not limited to threats of international terrorism, but, rather, includes threats posed by domestic anarchist groups whose members may commit violent acts at demonstrations. See *A Review of the FBI's Investigative Activities Concerning Potential Protestors at the Democratic and Republican National Political Conventions*, U.S. Department of Justice, Office of the Inspector General, (April 27, 2006), 10. In addition to the FBI's responsibilities concerning special events, the U.S. Secret Service is statutorily authorized to provide security to protected officials at national special security events designated by the secretary of the Department of Homeland Security. *See* 18 U.S.C. 3056(e)(1).

[34] *See Menotti v. City of Seattle*, 409 F.3d 1113 (9th Cir. 2005).

[35] *Id.* at 1125.

[36] *Id.* at 1129.

[37] *Id*.

[38] *Id.* at 1131-1132.

[39] *Id.* at 1131.

[40] *Id*. at 1131, FN41.

[41] *Id.* at 1138.

[42] *Id.* at 1138-1139.

[43] 114 F. Supp. 2d 966 (C.D. Cal. 2000).

[44] *Id*. at 966.

[45] *Id*. at 971, FN2.

[46] *Id.* at 971.

[47] *Id.* at 971.

[48] *Id.* at 972.

[49] *Id.*

[50] 243 F.Supp. 2d. 19 (S.D. N. Y. 2003).

[51] *Id.* at 24 (Since the terrorist attacks at the World Trade Center on September 11, 2001, the city had banned all demonstrations, parades, or other public events in front of the United Nations and U.S. Mission. The court applied the narrowly tailored test to this total ban in light of the security concerns posed by the requested march.).

[52] *Id.* at 20.

[53] *Id.* at 25-28.

[54] *Id*. at 20-31.

[55] 323 F.3d 175, 178 (2nd Cir. 2003).

[56] *Id.*

[57] 2004 WL 1593870 (S.D.N.Y. 2004).

[58] *Id*. at 28.

[59] *Id.* at 2,6,34.

[60] *Id*. at 29.

[61] *Oliveri v. Ward*, 801 F.2d 602, 607 (2nd Cir. 1986).

[62] 378 F.3d 8 (1st Cir. 2004).

[63] A comprehensive statement of the facts surrounding this litigation is contained in the district court opinion. *See Coalition to Protest*, 327 F. Supp. 2d 61 (D. Mass. 2004).

[64] *Id*. at 71-72 (The court noted that the city provided "nuanced, reticulated options for many different types of expression within the soft zone…. Inside it, plaintiffs may conduct small demonstrations with no permits whatsoever, and may conduct 21-50 person stationary demonstrations on an expedited permitting basis. Anyone may distribute leaflets or hold signs.").

[65] *Id*. at 66-67.

[66] *Id.*

[67] *Id.* at 74-75.

[68] *Id.* at 75.

[69] *Id.*

[70] *Id* at 76.

[71] 378 F.3d. at 13-14.

[72] *Id.* at 14.

[73] *Id.* at 17 (Lipez, Circuit Judge, concurring).

[74] *Id.* at 14.

[75] *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937).

[76] *See* 378 F.3d. at 11-12.

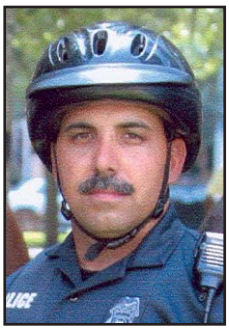
[77] *Id.* at 15.

[78] 409 F.3d at 1138, FN 48 (*citing City Council v. Taxpayers for Vincent*, 466 U.S. 789, 812 (1984)).

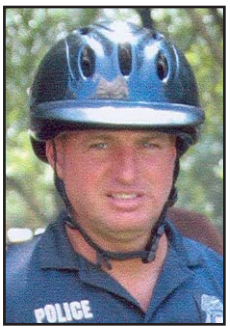
Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

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 Mazza



Officer Pasley

One afternoon, mounted patrol Officers Sal Mazza and Tim Pasley of the Tampa, Florida, Police Department noticed a large cloud of smoke in the distance and decided to investigate. Once at the scene, they found a burning building with citizens frantically trying to help a man escape from a second-floor apartment. Immediately, Officers Mazza and Pasley rushed into the building, kicked in the locked door, crawled through the thick smoke, and located the victim. Officer Mazza attempted to pull the man out, but the victim got caught on something in the doorway. Working together, both officers freed him and carried the unconscious resident to safety, just before the apartment went up in flames. Once outside, the officers checked his vital signs and found no pulse. Officer Pasley quickly started chest compressions; moments later, the man began breathing.

Deputy Ivey

Deputy Leblanc

One afternoon at a high school, a group of teenagers were eating lunch on an outdoor patio overlooking the student parking lot. Approximately 75 yards away, a suspect stopped his vehicle, got out, and tossed homemade smoke bombs that detonated in the parking lot. He then produced a semiautomatic 9-millimeter rifle and began firing toward the patio. Deputy London Ivey, serving as the school resource officer, and off-duty Reserve Deputy Russell Leblanc, both of the Orange County, North Carolina, Sheriff's Office, heard the shots and saw students running from the patio.

After observing the shooter in the parking lot, both men moved toward him, crossing approximately 75 yards of open ground with no cover. Deputy Ivey, drawing his weapon, approached the shooter and demanded that he drop his gun. The suspect's rifle jammed, and he complied. Deputy Ivey further ordered the shooter to lie face down on the ground with his arms and legs spread. Deputy Leblanc then cuffed and secured the suspect. After taking him into custody, the deputies discovered that he also had a sawed-off 12-gauge shotgun, a large quantity of ammunition, and several homemade explosive devices. Later, other officers responding to the suspect's home found the body of his father, the victim of gunshots, with additional explosive devices surrounding him and strewn throughout the house.

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