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Internet Address
leb@fbiacademy.edu

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FBI Law Enforcement Bulletin

Features

Departments

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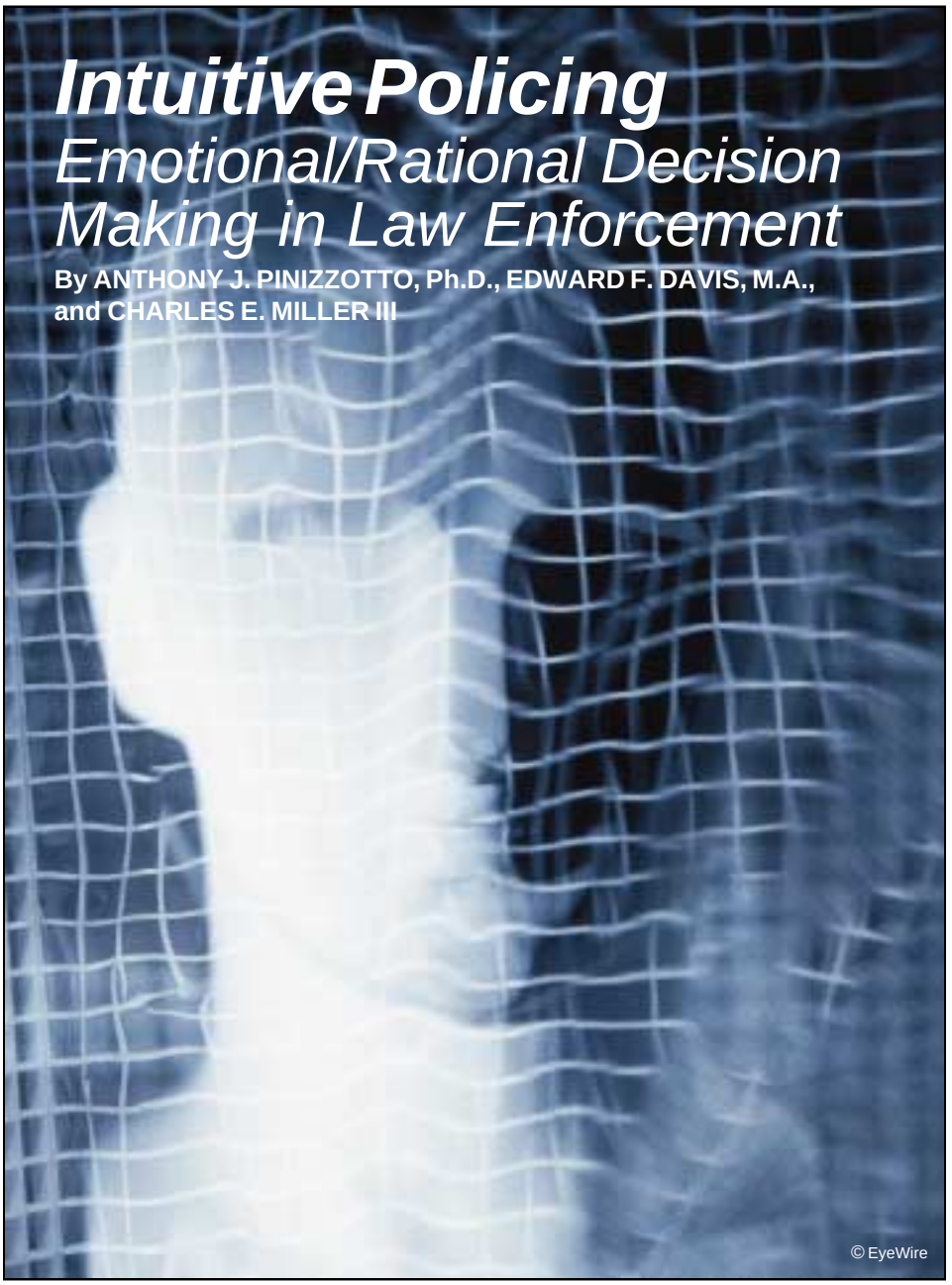
Intuitive Policing

Emotional/Rational Decision Making in Law Enforcement

By ANTHONY J. PINIZZOTTO, Ph.D., EDWARD F. DAVIS, M.A., and CHARLES E. MILLER III



On a warm summer evening in a large American city, narcotics officers, working the 4 p.m. to midnight shift, began a "buy-bust" operation at an intersection known as an open-air drug market where approximately 50 to 60 persons, many presumably involved in narcotics trafficking, had congregated on the sidewalk. Five minutes earlier, two undercover officers had walked into the area and purchased illicit narcotic substances from several street dealers. The undercover officers then walked away from the intersection and broadcast the physical descriptions of the sellers to arrest teams, consisting of three unmarked vehicles containing three officers each, who began canvassing the vicinity to locate the suspects.

When the unmarked cars approached the street corner, the crowd immediately began dispersing. At this time, one officer observed a subject matching the description of one of the sellers provided by the undercover team and instructed the driver to stop. The doors of the unmarked police car swung open, and the crowd began to clear the area in a more-hurried fashion. As the officer who spotted the alleged dealer began yelling to the other officers to identify which of the suspects he intended to stop, another officer simultaneously exited the vehicle and pointed to a different individual approximately 30 feet farther down the sidewalk.[1] The second officer began calling out to the others, as well as broadcasting on the radio, to "get the one in the red

Dr. Pinizzotto is the senior scientist and clinical forensic psychologist in the Behavioral Science Unit at the FBI Academy.

Mr. Davis is an instructor in the Behavioral Science Unit at the FBI Academy.

Mr. Miller is an instructor with the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia.

shirt; he's got a gun." The man in the red shirt started to run down the sidewalk after he observed plainclothes officers approaching from both sides with their weapons drawn. The male surrendered, and the officers removed a .357-caliber revolver from his waistband and placed him under arrest. The remaining members of the arrest team continued to canvass the area until they located, identified, and arrested the suspects who had made the illegal narcotics sales.

While the officers were in the station house processing the prisoners and completing the necessary paperwork, the officer who originally identified the seller turned to the officer who spotted the gunman and asked, "How did you know he had a gun?" The officer who noticed the gunman hesitated for a moment and stated, "I'm not sure why; I just knew." He then finished processing his prisoner and sat down to prepare his statement of facts for presentation to the prosecutor's office. As he began to recall the details and circumstances of the incident, he had to make a conscious effort to remember the observations that led him to conclude that the suspect possessed a handgun. First, the officer recalled that when pulling up to the scene, he saw the suspect sitting on the curb. As the officers approached and the crowd began to scatter, the man stood up and adjusted his waistband. Next, the officer remembered that although the weather was extremely warm, the suspect had on a long-sleeved dress shirt with the shirttails hanging out. Finally, he recalled that immediately after the male stood up, he turned the right side of his body away from the officer and began to walk in another direction, grabbing the right side of his waistband as if securing some type of object. The combination of these factors led the officer to correctly believe that the individual in the red shirt was armed.

The officer made these observations so rapidly that he experienced an "instantaneous recognition" of danger. However, he could not articulate these reasons to his fellow officers until after the incident was resolved.

How often do law enforcement officers observe suspects and immediately "know" that they possess a weapon or illicit narcotic substances? On such occasions, why are these officers unable to articulate their accurate reactions that may represent building blocks to reasonable suspicion or probable cause indicators? Equally important, why can they not explain their reasons for reacting in such appropriate ways that actually saved

their lives or prevented an offender from assaulting them? The authors have been exploring the concept of intuitive policing and have begun to draw some conclusions. While their research remains ongoing, they feel that the importance of the subject matter necessitates sharing their preliminary findings with the law enforcement community.

Danger Signals

Not limited to law enforcement experience or law enforcement officers, examples of individuals "perceiving" the need to act without first becoming consciously aware of why they were acting have surfaced repeatedly in current work in the neural sciences. In his book *Emotional Intelligence*, Daniel Goleman related the case of a young man walking along a canal who comes upon a woman staring into the water. He recognizes the look of fear on her face. But, before being consciously aware as to why, he finds himself diving into the canal. Only when he enters the water does he realize that the woman had been staring at a child who had fallen into the canal and was in immediate danger of drowning. Thanks to his "acting upon impulse," he saved the toddler's life. Goleman wondered what made him jump so quickly into the water without knowing why. The answer, he said, was in the work of neuroscientist Joseph LeDoux.[2]

Three major, interrelated portions comprise the human brain: the brain stem, the cerebellum, and the cerebrum. Dr. LeDoux's research[3] in the anatomy of the brain and its emotions seems to point to what law enforcement officers have experienced since the first peace officer—they become aware of danger signals and can act on them without first being consciously aware of these warnings.

> ***"...people often perceive danger signals and can begin to initiate responses to them before becoming consciously aware of them."***

In one of the most telling discoveries about emotions of the last decade, LeDoux's work revealed how the architecture of the brain gives the amygdala a privileged position as an emotional sentinel, able to hijack the brain. His research has shown that sensory signals from eye to ear travel first in the brain to the thalamus, and then—across a single synapse—to the amygdala; a second signal from the thalamus is routed to the neocortex—the thinking brain. This branching allows the amygdala to begin to respond before the neocortex, which mulls information through several levels of brain circuits before it fully perceives and finally initiates its more finely tailored response.[4]

Essentially, Goleman and LeDoux feel that people often perceive danger signals and can begin to initiate responses to them before becoming consciously aware of them. This preconscious recognition of danger and how humans can react appropriately to it have been explained by several authors, including Gavin DeBecker who has worked for many years advising corporate executives, media figures, and government officials on how to recognize feelings of impending danger and react fittingly to them.

I've learned some lessons about safety through years of asking people who've suffered violence, "Could you have seen this coming?" Most often they say, "No, it just came out of nowhere," but if I am quiet, if I wait a moment, here comes the information: "I felt uneasy when I first met that guy," or "Now that I think of it, I was suspicious when he approached me," or "I realize now I had seen that car earlier in the day." ...if

they realize it now, they knew it then.[5]

Whether explained as an uneasy feeling, a gut reaction, "a cop's sixth-sense," or overlapping neural networks, the result is the same: law enforcement officers perceive danger signals that trigger alarms in their brains that set their bodies in motion. Often unable to articulate *why* they reacted or *what* prompted them at the time of the event, they sometimes retrospectively can plot their actions based upon what had been clear and present danger signals.

Goleman explained this convergence of thought (cognitive explanation) and feeling (gut reaction) as the coordinated efforts of the emotional and rational brains: the convergence of the brain stem, the cerebellum, and the cerebrum. The rational brain—aware, conscious, and reflective—ponders the consequences of the person's actions. The emotional brain—more impulsive and reflexive—acts upon stimulation from the environment in powerful ways designed to protect the person from danger and harm.

Law enforcement officers work in a profession where their lives depend both on recognizing danger signals and on responding appropriately. Life-threatening, high-arousal, high-stress situations within the law enforcement officer's experience trigger the brain to stimulate the adrenal glands to secrete the hormones epinephrine and norepinephrine. The body now engages in a fight or flight action. As part of this reaction, the memories of these circumstances become fixed in a part of the brain called the amygdala. When similar situations occur in the future, the amygdala is stimulated and triggers the officer to react even before being aware of the totality of the

circumstances. Applying the work of LeDoux, Goleman, and DeBecker to the law enforcement arena provides insight into some of the "intuitive" or "implicit" nature of officer reactions and has several implications for law enforcement training and procedures.

Realistic Training

Realistic academy training can present pragmatic and practical situations that approach the kinds of events officers will experience on the street. If the scenarios are realistic and simultaneously arouse the autonomic nervous system, officers begin to develop a bond between situations and circumstances that represent potential threat and subcortical awareness of the limbic system, their fight/flight mechanism of defense. Upon graduation, these new officers are assigned to veteran training officers on the street. Experienced, qualified training officers can reinforce these biopsychological responses learned at the academy by having the young officers verbalize what they saw and felt following high-arousal incidents, such as high-speed chases and calls involving armed suspects or suspicious persons. New recruits, as well as seasoned officers, must make constant checks on their environment. They must continually and persistently conduct "reality checks" on themselves and recurrently and consciously say to themselves, "Look around; take note." They must constantly ask themselves, "What do I see? What do I hear? What do I smell? What do I feel?"

In-service training also should include scenarios where officers must recall as many details as possible, along with their own feelings and thoughts that occurred to them as the incident took place. These feelings and thoughts can later trigger important details of the incident that they will need for reports and testimony. Moreover, in-service training by specially trained mental health workers

can further assist in helping officers relate their feelings to the circumstances occurring in the immediate environment.

Throughout the realistic and practical preparation at the academy, on-the-job experience, and in-service training, several important processes occur. The high-arousal, realistic training prepares officers to recognize the kinds of physiological reactions they can expect to experience during high-stress activities. This training also engages the neural wiring within the brain, already present in each officer, to react to certain threatening stimuli in the environment. By becoming accustomed to associating these feelings with their triggers and then verbalizing these feelings both at the academy and during on-the-job training, officers become better able to recognize the environmental cues triggering the impulses to act.

Improved Procedures

Because officers cannot testify that the reasonable suspicion they used to stop a suspect was a "gut feeling" or an "intuition," they often will state that the person displayed a "furtive move" or was "acting suspiciously" without being able to articulate what constituted these moves or actions. But, in reality, what frequently "catches the officer's attention" is preconscious. Based on the officer's experience, the "furtive movement" was the suspect dropping his hand under the seat of the car as he pulled to the side of the road. The "acting suspiciously" was the individual tugging on the right side of his shirt that caused the officer to think "gun." Becoming aware of the processes that create these "gut feelings" or "intuitions" and practicing to recognize and verbalize these realities present officers with accurate and verifiable reasonable suspicion or probable cause indicators that they can articulate.

> ***"...supervisors who review reports of subordinate officers must ensure the inclusion of all necessary details in original or follow-up reports."***

In addition, supervisors who review reports of subordinate officers must ensure the inclusion of all necessary details in original or follow-up reports. If the report does not contain details necessary to support the stop or arrest, the supervisor must require the officer to reflect on the incident and articulate what behaviors caused the officer to focus attention on the suspect, vehicle, or crowd.

Finally, officers should use postarrest debriefing to process individual and collective experiences cognitively, reliving the experience to remember in accurate and supportable detail the reasons for the stop or arrest. During this time, officers must recall and record the specific actions and verbalizations of suspects and, based on these facts, garner support for their own behaviors. Such a process proves helpful to the individual officer, to the agency, and to the process of justice and the protection of local communities.

Conclusion

Since the first law enforcement officers accepted the responsibility of protecting their communities, accurately recognizing which individuals pose a threat to the safety and security of those jurisdictions has challenged all who belong to the profession. Criminals come in a variety of shapes and sizes and can blend in easily with society's law-abiding members. How, then, can those charged with safeguarding the innocent ferret out the guilty?

Intuitive policing represents a decision-making process that officers use frequently but find difficult to explain to those unfamiliar with the concept. Experienced officers observe actions and behaviors exhibited by criminals that send danger signals to them that they react to

before becoming consciously aware of these warnings. Such "gut feelings" or "intuitions" have saved many lives, not only those of innocent citizens but officers as well. The authors intend to continue their research into this remarkable concept to better understand how it may help reduce crime in American communities and, most of all, to improve officer survival in encounters with dangerous criminals. After all, the authors agree with an early 16th century proverb: "Forewarned is forearmed."[6] ✦

Endnotes

[1] For illustrative purposes and to maintain clarity, the authors refer to officers and suspects as males throughout the article.

[2] Daniel Goleman, *Emotional Intelligence: Why It Can Matter More Than IQ* (New York, NY: Bantam, 1995).

[3] Joseph LeDoux, *The Emotional Brain: The Mysterious Underpinnings of Emotional Life* (New York, NY: Touchstone, 1996).

[4] Supra note 2, 17.

[5] Gavin DeBecker, *The Gift of Fear: Survival Signals that Protect Us from Violence* (New York, NY: Little, Brown and Company, 1997), 6-7.

[6] Elizabeth Knowles, ed., *The Oxford Dictionary of Quotations* (New York, NY: Oxford University Press, 1999), 600.42.

The Bulletin Honors

The Houston, Texas, Police Department presents the Houston Police Officers Memorial. This monument, dedicated on November 19, 1992, perpetuates the memory of police officers who gave their lives while serving the citizens of Houston. It consists of a central, tiered pyramid with inverted pyramids underground on each of its four sides; other features include a waterfall and the names of the fallen officers. Funded entirely by donations from citizens and corporate entities, the monument is situated on city-donated land.

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Bulletin Reports

Evidence Preservation

The National Institute of Justice (NIJ) presents *Partial Results from Prototype Testing Efforts for Disk Imaging Tools: SafeBack 2.0, April 2003*, which documents partial results obtained during prototype-testing efforts of SafeBack 2.0, an electronic evidence preservation tool that creates mirror-image backups of computer hard disk drives. This special report describes anomalies detected among the test cases, the testing environment, and expected results; presents results of 35 test assertions; and includes summary log files for each test case. The results provide information necessary for developers to improve tools, users to make informed choices, and the legal community and others to understand the tools' capabilities. This publication is available electronically at *http://www.ojp.usdoj.gov/nij/pubs-sum/199000.html* or by contacting the National Criminal Justice Reference Service at 800-851-3420.

Civil Rights

This Bureau of Justice Statistics (BJS) report presents selected findings about civil rights cases adjudicated in U.S. district courts between 1990 and 2000. It examines several categories of civil rights complaints (e.g., employment, housing, welfare, and voting). Information is presented on the number and types of civil rights cases filed, jurisdiction and disposition of civil rights cases, and plaintiff winners and awards. Out-of-court settlements also are addressed. This report does not include prisoner petitions or criminal civil rights cases prosecuted by U.S. attorneys. This publication is available electronically at *http://www.ojp.usdoj.gov/bjs/abstract/crcus00.htm* or by contacting the National Criminal Justice Reference Service at 800-851-3420.

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Police Practice

Drug-Endangered Children

By Jerry Harris, M.S.

The number of children in the United States exposed to the inherently hazardous processes used in the illicit manufacture of the controlled dangerous substance methamphetamine or meth has more than doubled in the past few years. Unfortunately, despite law enforcement efforts, these numbers continue to rise.

Just as alarming is the number of children negatively impacted by physical and emotional abuse, as well as neglect, by parents, guardians, or other adults who expose them to toxic meth lab operations, firearms, pornographic material, criminals and their unlawful activity, and domestic violence, just to name a few of the dangers. Methamphetamine abuse and production have become major factors in the increase of child abuse and neglect cases handled by the child welfare system.

The Growing Menace

Estimates have indicated that children are found in approximately one-third of all seized meth labs. Of those children, about 35 percent test positive for toxic levels of chemicals in their bodies. In other areas, those numbers have proven even higher. More alarming, however, is the possibility that 90 percent of all meth labs go undetected, leaving many children to suffer needlessly.[1]

Although statistics are limited at present, an abundance of anecdotal evidence exists about the enormous physical, developmental, emotional, and psychosocial damage suffered by children exposed to illegal home-based drug production. The evidence comes from professionals in the fields of law enforcement, human services, medicine, education, and others who have first-hand experience with children living in homes where methamphetamine is illegally manufactured.

Children who inhabit homes where parents, guardians, or other adults undertake the illegal manufacturing of methamphetamine risk multiple exposures to many different chemicals and combinations of chemicals and their byproducts. They further risk toxic poisoning from the inhalation of chemical gases and vapors that damage their respiratory and circulatory systems; chemical burns; and the ingestion, absorption, or injection of drugs or chemicals. Such children also face the peril of injury or death from fires or explosions.

Often, these children live in poor conditions. Homes that house labs frequently are dirty, sometimes lacking water, heat, and electricity. The children typically have little to eat and do not receive adequate medical care, including immunizations, and dental services. The mothers rarely seek prenatal care for some of the same exposures. This constitutes not only child endangerment but, even worse, child abuse.

Exposure to these dangerous substances can cause serious short- and long-term health problems, including damage to the brain, liver, kidneys, lungs, eyes, and skin. The chaotic lifestyle

of individuals involved in methamphetamine manufacturing and use places children at risk for physical and emotional trauma. To compound the problem, neglect or inconsistent parenting can interfere with children's cognitive, emotional, and social development. The children become exposed to drug-related violence and physical and sexual abuse at the hands of family members, neighbors, and an array of strangers who pass through the house to buy or sell drugs.

Relatively few states have programs in place to deal with the problems associated with the manufacture of methamphetamine, especially when it comes to the children caught up in this illegal activity. The social and legal aspects of these types of cases are enormous. The parents, more often than not, have been getting away with the abuse and neglect of their children for a long time. The children found at these meth lab sites have suffered greatly and been denied access to social and health-related services. What can be done to protect these drug-endangered children?

"The children found at these meth lab sites have suffered greatly and been denied access to social and health-related services."

Oklahoma's Response

In Oklahoma, a program began operating ad hoc after months of preparation and training. Meetings involved representatives from social, medical, law enforcement, and criminal justice agencies. These professionals saw the need and, thus, conjointly formed a state drug-endangered children (DEC) effort that, so far, has attempted to mirror the DEC program in California.[2]

The goal of the DEC effort is to intervene on behalf of children found living in horrific conditions produced by the unlawful and dangerous clandestine methamphetamine manufacturing processes and the environment associated with addiction. A further goal involves creating a collaborative multidisciplinary community response to identify and meet the short- and long-term needs of the children endangered by this exposure.

To accomplish this goal, the DEC program steering committee was set up to offer assistance to the multidisciplinary child abuse and neglect teams (CAN) that Oklahoma has mandated every county to establish. Currently, there are 50 functional teams, with more forming. The CAN teams, comprised of law enforcement officers, child protective service workers, mental health employees, medical personnel, prosecutors, and other professionals, address problems of child abuse and neglect and currently are the best suited to respond to the needs of drug-endangered children. Many teams, who have been called upon to do so, have worked in concert with other professionals to see that these children receive the kind of short- and long-term care needed and, when appropriate, ensure that the violators are prosecuted for child endangerment.

Only by working collaboratively can these professionals succeed in their endeavors. They must work toward a "win-win" situation in the best interest of the children. First responders must recognize that intervention on behalf of these children is of the utmost importance. This intervention, however, must take place without creating additional trauma to the children. Law enforcement officers take the children into protective custody, move them to a safe location, and attend to their immediate needs. Child protective services (CPS) personnel arrive on the scene as soon as possible to help the officers assess the needs of the children. Emergency medical technicians (EMTs), firefighters, and hazardous material professionals also stand by if needed.

Such coordinated efforts prove invaluable to

the well-being of the children and must be worked out in advance and included in the operational protocols of the CAN team. For example, because removal of clothes and decontamination procedures according to federal instructions are certain to cause an increased sense of vulnerability and trauma to all but the smallest infants, this only should occur prior to CPS arrival in the most pressing and urgent circumstances.

The children should be transported to the appropriate medical screening facility for further evaluation as soon as possible after the intervention. If grossly contaminated children are discovered, they should be examined on the scene by trained EMTs. The children then should be transported by ambulance just in case complications arise en route. EMTs also should consider that they are traveling in a confined space and should allow for ventilation.

> **"Exposure to these dangerous substances can cause serious short- and long-term health problems...."**

Determining which member of the team should transport the children proves crucial to the CAN team's effectiveness. In the best interest of the children, team members must agree on the most appropriate method of transporting them. In some cases, a CPS worker may be the best choice. CAN members must consider the children's ages, as well as the safety of the person providing the transportation. While officers must maintain control of the situation, they may encounter difficulties in transporting the children to a medical screening facility out of their jurisdiction. The number of officers on duty may dictate whether they can leave their jurisdiction for that purpose. When officers provide the transportation, they cannot remain with the children at the medical screening facility for any length of time, no matter how much they would wish to, because they must return to their official duties.

Similarly, the CAN team also must coordinate transportation to the receiving facility. The vast majority of the children taken into protective custody are eventually placed with relatives, while the remainder are sent to shelters.

Having a standing court order from the jurisdictional judge when children are found in meth labs expedites assuming temporary custody for the CPS worker. A standing court order regarding toxicology testing also helps in testing for ingested or assimilated chemicals and drugs. Based on the results of a urinalysis test, a blood test may be warranted and in the best interest of the children's health in terms of follow-up care. Although it is strongly recommended that children's urine/blood be obtained if possible within 2 hours as part of evidence collection, this is not absolutely necessary to conduct a thorough DEC investigation or prosecution. While the presence of toxins in the child's urine or blood will support child abuse charges, it is most important as a possible indicator of other chemical exposures and for identifying and treating any adverse health effects.[3]

Conclusion

Based on the California Drug-Endangered Children Program and what Oklahoma authorities have seen thus far, an effective comprehensive response to the needs of children endangered by the epidemic of methamphetamine use and production, as well as all substance abuse, must include prevention, intervention, enforcement, interdiction, and treatment. Multidisciplinary collaboration is key to ensuring that this comprehensive range of responses is activated.

In the state of Oklahoma, social, medical, law enforcement, and criminal justice agencies began working together to address this escalating

problem. The team approach has become a valuable model of intervention for children and families endangered by the devastating intergenerational cycle of alcohol and drug abuse of all kinds.

Participating agencies and elected representatives support this type of program. No better reason exists for this than the safety and health of innocent children. No one must add to the trauma and suffering these children have endured, and, more important, no one must fail to respond to their needs. ✦

Endnotes

[1] The author based these estimates on various reports that he has reviewed and on his personal experience as a narcotics agent for nearly 25 years.

[2] For information on the California program, see Tom Manning, "Drug Labs and Endangered Children," *FBI Law Enforcement Bulletin*, July 1999, 10-14.

[3] The state of California has established models of multidisciplinary protocols for intervening on behalf of children found in home-based meth labs. Their medical protocols for screening drug-endangered children will give medical professionals a starting point. While many physicians may find these protocols acceptable, most medical screening facilities will want to establish their own medical protocols. Medical professionals in any state should approach this situation with great care and establish medical protocols in the best interest of the child.

Agent Harris heads the Training and Education Section at the headquarters of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control in Oklahoma City.

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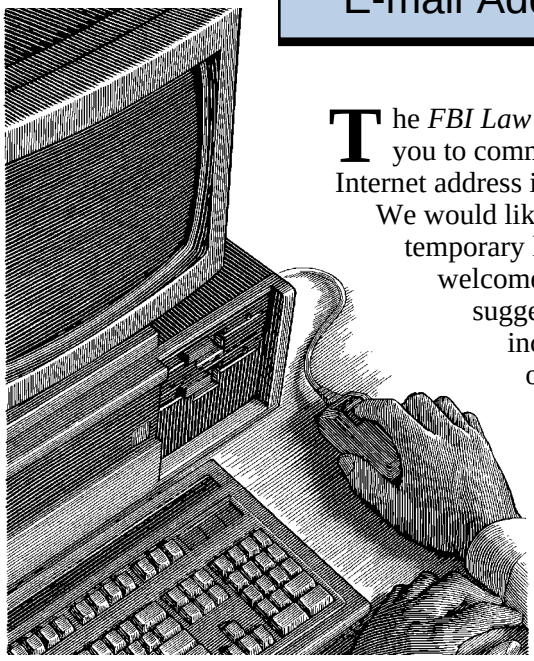

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Role-Playing
A Vital Tool in Crisis Negotiation Skills Training

By VINCENT B. VAN HASSELT, Ph.D.,
and STEPHEN J. ROMANO, M.A.

Role-playing has become one of the most frequently used training tools employed by law enforcement agencies. In fact, recent surveys show that over 80 percent of law enforcement agencies use some form of role-playing in their training programs.[1] Also, nearly all survey respondents agreed that role-plays are valuable in a variety of training situations. They involve simulations of real-world situations likely to be encountered by personnel in a wide range of law enforcement activities (e.g., SWAT operations and interviews/interrogations). Further, role-playing has become a hallmark of law enforcement recruit selection and promotional tests.

In recent years, however, role-playing also has become a mainstay in the evaluation and training of crisis negotiation skills. With a history dating back over 30 years, crisis negotiation has led to the "successful resolution of tens of thousands of hostage, barricade, attempted suicide, and kidnapping cases throughout the world."[2] Beginning with the pioneering work of the New York City Police Department, crisis negotiation offered the first "soft" approach to conflict and dispute resolution, which was a marked departure from previous "hard" tactical methods.[3] Crisis negotiation emphasizes the "slowing down" of an incident, thus expanding the timeframe, allowing the subject to vent feelings (anger,

frustration, anxiety) and, in turn, defusing a negative emotional state. To accomplish this, investigators use active listening skills that have proven critical in establishing rapport with subjects and defusing strong emotions in high-risk crisis situations.

Training law enforcement personnel in crisis negotiation can be a challenging enterprise. "...police officers are taught to take charge—to act quickly and with authority. The principles of hostage negotiation fly in the face of that training. A negotiator must fight the inner urge to 'act.' Instead, he or she must sit back and use words to diffuse critical, life-and-death situations."[4] To train law enforcement officers to resist the urge to act and employ effective listening skills can take considerable time and training; practice and repetition are crucial. While direct observation of actual negotiations is a preferred approach for evaluation and training of skill level, the risks of these encounters make such an approach unrealistic. Further, the frequency of such events usually is too low to provide sufficient opportunities for skill practice and acquisition. Therefore, role-playing is the next best approach.

Development

Role-playing, as employed in crisis negotiation skills training, can take various forms and be brief or lengthy in format. Managers can develop detailed scenarios or keep them sketchy. Some role-play situations are based on actual incidents that have occurred, while others may be designed in anticipation of situations likely to happen in the future. The Crisis Negotiation Unit (CNU) of the FBI's Critical Incident Response Group uses a combination of role-play scenarios in its National Crisis Negotiation Course (NCNC) taught at the FBI Academy to agents, as well as to law enforcement officers from all over the world. To facilitate training, the CNU developed sets of role-play scenarios adapted to hostage, barricaded, suicide, and kidnapping incidents, which occurred over the past several years that necessitated a law enforcement response. In their role as the negotiation arm of the U.S. government domestically and internationally and due to their direct involvement in numerous critical incidents over the past 25 years, CNU personnel have unique, extensive expertise in crisis negotiation and management.

One set of role-play scenarios developed by the CNU describes crisis negotiation situations in family/domestic, workplace, and suicide categories. Further, each scenario includes prearranged prompts delivered by an actor portraying a subject, which helps extend and standardize the interactions and make them more similar to real-life encounters.

Role-play scenarios can last from 1 to several minutes. Instructors ask students to respond

Dr. Van Hasselt is professor of psychology at Nova Southeastern University in Fort Lauderdale, Florida, and is a certified police officer.

Special Agent Romano is the chief of the Crisis Negotiation Unit of the Critical Incident Response Group at the FBI Academy.

the same way they would if the situation actually was occurring. While obviously much shorter than most real-world crisis situations, the format of these relatively brief scenarios allows for immediate and frequent instructor feedback of targeted negotiation skills. Feedback is especially helpful in the early phases of negotiation training given the importance of the practice and repetition usually required for new negotiators to gain these skills.

The NCNC also carries out lengthier role-plays of critical incidents in Hogan's Alley, the FBI Academy's mock city that provides a variety of naturalistic settings (e.g., hotel, drug store, and apartment building) for training. Scenarios at this level usually last about 40 minutes. They provide the opportunity for negotiators to apply their newly learned skills but now in an increasingly more realistic situation. For example, negotiators might be asked to respond to a bank robbery gone awry in which the perpetrator has barricaded with hostages. Facilitators provide students with a scenario/incident overview, including some background on the perpetrator and the setting. Students must make contact with the subject and attempt to resolve the situation peacefully. Further, they rotate through a series of such scenarios, with team members taking turns in different negotiator roles (primary negotiator, coach, situation board member, intelligence gatherer, team leader, command post liaison) in each.

A third type of role-playing involves the use of even lengthier scenarios, often several hours in duration. These more realistic role-plays reflect actual critical incidents that often require prolonged negotiation periods for successful resolution. For example, one NCNC scenario involves a subject who hijacked a school bus and is threatening to blow it up and kill everyone inside if the subject's demands are not met. These role-plays require negotiation team members to work together, using all of their new skills.

> ***Role-playing serves as a vital tool for training crisis negotiators to use active listening skills.***

Realism

To what extent does role-play behavior reflect the negotiator's likely behavior in actual crisis situations? This proves a difficult question to answer until the negotiator handles real-life critical incidents. Many years of research on this topic has provided several helpful suggestions to enhance realism in role-plays.[5] For example, greater detail in scenario descriptions helps participants "get into" their roles. Of course, giving too much information to negotiators may not be realistic either because negotiators often have limited knowledge about the situation, subject, or hostage when they first arrive on the scene.

Personnel with extensive previous experience in crisis negotiations should provide as much input as possible into scenario content and development. Further, using actors or trained confederates in the various scenario roles provides many benefits. For the NCNC, negotiator-trained special agents and law enforcement officers portray perpetrators and hostages in role-plays conducted during the field training portion of the course. In addition, local college students often are eager to help as role-players. Counseling and clinical psychology graduate students who have developed sound interviewing and active (empathic) listening skills have been especially useful in providing objective feedback concerning negotiators' use of active listening skills in the critique/feedback phase of training.

Role-Play Scenarios

Family/Domestic

Jim Smith abducted his common-law wife and their son from a distant state. She had obtained a court order preventing him from seeing their son. She repeatedly rejected his efforts at reconciliation, and he has stalked and harassed her in the past. He kidnapped her and the child in the middle of the night from her parent's home and drove them to an unoccupied nearby farmhouse where he ran out of gas. Authorities located his vehicle and then discovered the family inside the farmhouse.

Prompt 1: "I'm not letting her take my son away from me."

Prompt 2: "I've tried over and over to get her to come back to me."

Prompt 3: "My son is what I live for."

Prompt 4: "I don't think I can take any more."

Workplace

John Henry became angry because the factory where he had worked for 10 years fired most of the senior workers to reduce payroll and increase profits. He blamed the factory manager for the loss of his job. He brought a gun into his office and threatened to kill the manager if he did not get his job back. He felt that he had been treated badly and not given the respect he deserved after 10 years of hard work.

Prompt 1: "I've given 10 years of my life to this place."

Prompt 2: "It's that damn manager's fault."

Prompt 3: "They had no right doing this to me."

Prompt 4: "If I can't work, I can't support my family."

Suicide

Frank Jones was a successful banker living the good life. Unfortunately, several of his investments and financial decisions failed, and he faced financial ruin. He thought that he would bring shame to his family, his wife would leave him, and his possessions would be taken away. He felt hopeless and helpless. He believed that killing himself was the only way out. One of his bank employees observed him with a gun in his office and called the police to intervene.

Prompt 1: "I'm ruined; my life is over."

Prompt 2: "My family will be so ashamed of me."

Prompt 3: "This is hopeless; I can't go on."

Prompt 4: "Killing myself is the only answer."

Finally, instruction from trainers significantly impacts the productiveness of the role-play process. Negotiation instructors must instill a clear sense of the training's importance to students and advise them to perform as if the critical incident was occurring. As with any other aspect of law enforcement instruction, how students perform in training is the best available predictor of performance under real conditions. All participants should take role-playing seriously or, otherwise, implementation problems under actual conditions are more likely to occur.

Active Listening Skills

Crisis/hostage negotiation seeks to decrease the perpetrator's emotions and increase rationality.[6] The specific verbal strategies used to accomplish this goal fall under the category of active listening skills, which are critical for the establishment of social relationships in general and the development of rapport between negotiator and subject in crisis situations in particular.[7] Further, active listening skills have proven highly effective in peacefully resolving volatile confrontations. Some of the active listening skills trained in the NCNC and similar programs include—

- paraphrasing: repeating in one's own words the meaning of the subject's messages;
- emotion labeling: attaching a tentative label to the feelings expressed or implied by the subject's words or actions;

> ***"To get the most value from role-plays, several training tips prove helpful in improving negotiation skill level."***

- reflecting/mirroring: using statements indicating the ability to take the subject's perspective; repeating last words or main ideas of the subject's message;
- open-ended questioning: asking questions that stimulate the subject to talk; not eliciting short or one-word answers.

Role-playing serves as a vital tool for training crisis negotiators to use active listening skills. Most notably, role-playing provides the vehicle for the extensive behavior rehearsal necessary for new negotiators to gain proficiency in these skills. Using active listening skills and acquiring the patience needed to peacefully resolve crises require considerable training and time. Ongoing practice using role-play scenarios as a primary behavior change approach can accomplish this.

Training Procedures

To get the most value from role-plays, several training tips prove helpful in improving negotiation skill level. These suggestions are borrowed from the field of behavior therapy, which heavily relies on role-playing in behavior-modification efforts, and incorporate common sense. The first is the simplest, and it involves direct instructions to the skills needed (e.g., active listening and surrender instruction) in role-play crisis situations. Usually, instructors initially teach these in the classroom and then review students' use of them immediately prior to and after role-playing scenarios.

Second, feedback and positive reinforcement following role-plays improve and shape targeted skills. Role-plays allow instructors to observe students' behaviors in simulated critical incidents and result in subsequent constructive evaluation of their demonstrated skills. This feedback is most effective in enhancing skill development when instructors provide it immediately after the scenario in as

positive a manner as possible and with specific statements about what was done well or, conversely, what needs more work.

Third, modeling allows the trainer to demonstrate effective crisis negotiation strategies during role-play scenarios. Particularly, when a student appears to have great difficulty learning a skill, observing a veteran negotiator can boost the learning curve considerably.

Finally, videotaping or audiotaping role-play scenarios proves invaluable. It allows team members to observe and self-evaluate their performance in various job functions; reviewing taped negotiations benefits the individual's self-analysis and helps the instructor evaluate each student's strengths and deficits.

Conclusion

Role-playing has considerable value in crisis negotiation skills training. Most important, it can serve as a primary tool for the evaluation and training of required negotiator behaviors. In particular, active listening skills, widely considered a negotiator's primary weapon, can be most easily trained and shaped in the context of role-play training scenarios.

The best way to predict negotiators' behaviors is to imitate, as closely as possible, the conditions to which they will be exposed in actual crisis situations. Role-playing provides the opportunity to practice negotiation skills under circumstances designed and manipulated to closely approximate real-world situations. Given the increasingly prominent role of crisis negotiations in law enforcement and the need for more and better-trained negotiators, law enforcement agencies should use, as well as refine, role-play strategies in crisis negotiation training. ✦

Endnotes

[1] Arthur G. Sharp, "The Importance of Role-Playing in Training," *Law and Order*, June 2000, 97-100.

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Wanted: Notable Speeches

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

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity, but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8 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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FBI Academy
Madison Building,
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Focus on Accreditation

A Small Police Department's Success

By William L. Wilcox

The German Township, Ohio, Police Department, currently consisting of six full-time and nine reserve officers, serves a small agricultural community in southwestern Ohio of approximately 2,800 residents.[1] Like many other small police departments in rural areas, the German Township Police Department patrols relatively safe streets, free of many of the crime problems that often plague more populated areas.

However, despite its size and location, this department considered it worthwhile to face the monumental task of becoming one of the smallest forces to receive accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA).[2] Its experience demonstrates that any law enforcement agency, large or small, can find accreditation both beneficial and attainable.

What Is Accreditation?

CALEA began in 1979 through the combined efforts of the four major law enforcement membership associations—the International Association of Chiefs of Police (IACP), the National Organization of Black Law Enforcement Executives (NOBLE), the National Sheriffs' Association (NSA), and the Police Executive Research Forum (PERF). These organizations continue to serve in an advisory capacity and also hold responsibility for appointing the 21 volunteer commissioners (11 practicing law enforcement professionals and 10 members of the public and private sectors).

CALEA began for two purposes: to develop a set of law enforcement standards and to establish and administer a voluntary accreditation process through which law enforcement agencies can demonstrate that they meet those standards. Improving the delivery of law enforcement services is the overall goal of accrediting agencies in this manner.

Why Become Accredited?

The German Township Police Department, like any law enforcement agency, aims for excellence in all aspects of its operations, ranging from the development of clearly defined policies and procedures to the consistent delivery of quality services to the community. Accreditation can serve as an important tool to use in that

pursuit, as "...accredited law enforcement agencies in the United States, Canada, and Barbados rank among the best."[3] Agencies that choose to become accredited enjoy a number of benefits.

- Controlled liability insurance costs: accredited departments find it easier to obtain insurance, to increase the limit of their insurance coverage, and, often, to acquire lower premiums.
- Stronger defense against lawsuits and citizen complaints: in today's society, where a growing number of people quickly file lawsuits, an agency that has clear, documented policies and procedures and well-trained employees not only can handle situations effectively but also can defend themselves when necessary.
- Greater accountability within the agency: the accreditation process provides a system of written directives, sound training, clearly defined lines of authority, and routine reports that support decision making and resource allocation.
- Staunch support from government officials: agencies earn this support through their commitment to excellence in leadership, resource management, and in the delivery of their services.
- Increased community advocacy: the accreditation process offers a framework in which police and citizens can work together to prevent and control challenges confronting law enforcement and to address community expectations. Agencies that remain unsure if they should pursue accreditation can request a free information package from CALEA. This package offers descriptive information about the program and its standards.

> **"...any law enforcement agency, large or small, can find accreditation both beneficial and attainable."**

What Is the Process?

The German Township Police Department found the road to accreditation difficult. However, with hard work and commitment at all levels of the organization and with a larger agency, the West Carrollton, Ohio, Police Department, serving as a mentor, it found success throughout the process. How can other law enforcement agencies, large and small, obtain accreditation?

Any law enforcement agency considering accreditation likely demonstrates a commitment to excellence; however, a successful pursuit of accreditation depends largely on the degree of commitment, at all levels of the agency, to the accreditation process. To this end, a firmly committed chief executive officer (CEO) should communicate, by word and deed, to the rest of the department the importance of accreditation and its benefits. This is a commitment to a process that requires agencies to ask themselves two important questions. First, are we prepared to change? Second, do we have the necessary financial and personnel resources?

While the level of procedural and administrative change will vary by agency, all organizations pursuing accreditation must remain open to any changes necessary. Striving to provide the community with the best police services possible in an ever-changing world demands such flexibility; without it, attaining accreditation will prove impossible.

Agencies also must ensure that they possess the necessary personnel to manage the accreditation process. Additionally, they must have access to the requisite financial resources to undergo the assessment and make any required changes. Some agencies may have to obtain at least some

of the funds through creative means; for instance, the German Township Police Department financed the application fee through grants and donations. Other agencies simply decide not to pursue accreditation at all because of financial reasons.

However, accreditation typically offers financial benefits that outweigh the costs. For example, a local company, which handles risk management, loss control, insurance liability, and legal defense of civil lawsuits for 16 municipalities in Ohio, recently conducted a 10-year analysis of financial losses incurred by accredited and nonaccredited member agencies. It found that accredited police agencies averaged losses of $314 per year, per officer, while nonaccredited agencies averaged losses of $543 per year, per officer. Under this formula, a typical 25-member, accredited force should incur losses of about $7,850 per year; the figure for a 25-member, nonaccredited force should be about $13,575 per year.[4]

> **"Improving the delivery of law enforcement services is the overall goal of accrediting agencies...."**

When beginning the process, the choice of the right accreditation manager (or, perhaps, in the case of a large agency, an accreditation staff) proves vital to the agency's success; this person should demonstrate commitment to the project, attention to detail, an ability to work independently, and a positive relationship with the agency's CEO. The accreditation manager oversees the accreditation process.

The process itself proves simple. An agency begins by purchasing an application package for $250 (applicable to the accreditation fee for agencies that apply within 6 months), which contains everything necessary to study and enroll in the program. CALEA considers the process to have begun formally when the agency completes and returns the appropriate application materials.

Then, the agency begins the heart of the accreditation process, the self-assessment, where it examines its policies and procedures to ensure they meet the standards set by CALEA. The German Township Police Department found itself fortunate in that it needed to create or revise relatively few policies; when doing so, the department found that involving officers in this process proved very beneficial, both drawing upon a wealth of knowledge and experience and further garnering commitment to the accreditation process.

In the next step, the on-site assessment, CALEA assessors verify the agency's compliance with all standards. CALEA prides itself in assessments that are fair, impartial, and appropriate for agencies of all sizes. After the assessment, CALEA prepares a formal, written report of its findings. If the report reflects compliance with all standards, the agency moves on to the commission review; if not, the agency may return to the self-assessment phase.

During the commission review, CALEA decides, after reviewing the final report and hearing testimony from agency and CALEA personnel, whether or not to award accreditation status. Newly accredited agencies can maintain their status for 3 years by submitting annual reports attesting to continued compliance (which, of course, may involve additional changes); at the end of the 3-year period, the agency may repeat the process and continue accredited status into the future.

Conclusion

The German Township Police Department found going to the effort and expense of enduring this process worthwhile—after all, accreditation

offers many benefits. The impact has proven positive. They have a chief who can lay his head down to sleep at night, knowing that the community enjoys protection by the best. Department morale remains at an all-time high, with officers taking great pride in their recognition as being among the best in the nation.

Other departments, both large and small, can look at the experience of the German Township Police Department and realize that accreditation proves attainable. It takes effort and money, but the benefits far outweigh the costs, monetary and otherwise. ✦

Endnotes

[1] *DaytonClassifieds.com;* retrieved on May 28, 2003, from *http://206.190.169.132/classifieds/montgomery/germtwp.htm*.

[2] For more information, see *CALEA On-line, http://www.calea.org;* and Robert J. Falzarano, "Law Enforcement Accreditation: One Department's Experience," *FBI Law Enforcement Bulletin*, November 1999, 1-5.

[3] Margaret J. Levine, "Accreditation: Celebrating 20 Years of Excellence"; retrieved on May 28, 2003, from *http://www.calea.org/newweb/accreditation%20info/Levine%20article.htm*.

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Chief Wilcox heads the German Township, Ohio, Police Department.

Crime Data

Criminal Victimization, 2002

According to the U.S. Department of Justice's National Crime Victimization Survey (NCVS), in 2002, U.S. residents age 12 and older experienced about 23 million violent and property victimizations, continuing a downward trend that began in 1994. These criminal victimizations included an estimated 17.5 million property crimes (burglary, motor vehicle theft, and theft), 5.3 million violent crimes (rape, sexual assault, robbery, aggravated assault, and simple assault), and 155,000 personal thefts (pocket picking and purse snatching).

Between 1993 and 2002, the violent crime rate decreased 54 percent (from 50 to 23 victimizations per 1,000 persons age 12 and older), and the property crime rate declined 50 percent (from 319 to 159 crimes per 1,000 households). *Criminal Victimization, 2002* (NCJ 199994) by BJS statisticians Callie Marie Rennison and Michael R. Rand is available from BJS at 1-800-851-3420 or from the agency's Web site at *www.ojp.usdoj.gov/bjs*.

Consent Searches
Scope

By JAYME WALKER HOLCOMB, J.D.

A law enforcement officer asks a woman if she will consent to a search of her luggage for drugs. After the woman consents to the search, the officer finds a sealed can labeled as vegetables that, when shaken, feels as if it contains no liquid. The officer promptly opens the can with a can opener and discovers a white powdery substance, later identified as cocaine, inside. Did the officer exceed the scope of the woman's consent to search by prying open the can?

The Fourth Amendment preserves the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."[1] The U.S. Supreme Court has stated that a search conducted pursuant to lawfully given consent is an exception to the warrant and probable cause requirements of the Fourth Amendment. However, because a consensual search of an item or location is still a search, the Fourth Amendment reasonableness requirement still applies.[2]

This article considers the question of whether the officer's opening of the can in the example violated the Fourth Amendment. The article also addresses the standard that courts apply in determining the scope of a consent search, officer statements and actions that impact

upon scope, subject statement and actions that impact upon scope, and scope-related issues, such as reasonableness and the damaging or destruction of property during a consent search.

The Standard

The U.S. Supreme Court addressed the issue of the scope of a consent search in the 1991 decision *Florida v. Jimeno*.[3] In *Jimeno*, an officer overheard Jimeno apparently arranging a drug transaction over a public telephone. The officer followed Jimeno's car and pulled him over after observing him commit a traffic violation. The officer told Jimeno he had reason to believe that Jimeno had narcotics in his car. The officer asked for consent to search Jimeno's car. Jimeno consented to the search. The officer found a folded brown paper bag on the passenger side floorboard. The officer picked up the bag, looked inside, and found a kilogram of cocaine.

The Court specifically addressed the question of whether consent to search a vehicle may extend to closed containers located in the vehicle and stated:

> The touchstone of the Fourth Amendment is reasonableness. The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable. Thus, we have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness–what would the typical reasonable person have understood by the exchange between the officer and the suspect?[4]

In holding that Jimeno's general consent to search the car included consent to search the paper bag, the Court found it important that the officer said he was looking for narcotics and that Jimeno placed no explicit limitation on the search. The Court rejected the argument that police should have to separately ask permission to search each closed container within a car under such circumstances. However, the Court distinguished *Jimeno* from another case decided by the Supreme Court of Florida where that court held that consent to search a car trunk did not include prying open a locked briefcase in the trunk, stating that

> It is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk, but it is otherwise with respect to a closed paper bag.[5]

As stated by the Court, the standard for measuring the scope of a person's consent to a search is one of objective reasonableness.[6] In short, to determine the scope of the consent to search, the overall context in which the consent was obtained must be

"...to determine the scope of the consent to search, the overall context in which the consent was obtained must be examined."

Ms. Holcomb serves as chief of the Legal Instruction Section, DEA Training Academy.

examined.[7] And, just as it is the government's burden to prove that a subject voluntarily consented to the search,[8] the government also must prove that a search conducted by officers was within the scope of the consent given.[9] Evidence that is obtained by the government that exceeds the scope of an individual's consent to search must be excluded at trial unless another lawful reason existed to search.[10]

Officer Statements and Actions

An officer may place limitations on or expand the scope of a search when asking a subject for consent to search. The statements made,[11] forms used,[12] or actions taken by an officer asking a subject for consent to search all impact upon the scope of the search that may be conducted and may relate to what,[13] where,[14] how,[15] and when[16] the officer can search.[17]

An example of an officer's statements limiting the scope of a consent search is the decision by the U.S. Court of Appeals for the Tenth Circuit in *United States v. Elliott*.[18] In *Elliott,* an officer stopped a car for speeding. After issuing a warning ticket to the driver, the officer asked, "Say, there's nothing illegal in the vehicle, in the trunk by chance?" After the driver stated that there was nothing, the officer asked if he could "look through the trunk there and see what you got in there? I don't want to look through each item." The officer told the driver that he just wanted to see how things were "packed" or "packaged."

The driver then pushed a trunk release button in the glove box and opened the trunk. The officer saw that the trunk was full of luggage. The officer pushed and felt the outside of a nylon bag. He then unzipped the bag 5 to 7 inches and saw a package wrapped in a material with little red dots on it. The officer recognized the packaging as similar to that which he had seen in a prior drug case. After being asked a few questions about the bag, the driver consented to the officer making a little cut into the package, inside of which the officer found what appeared to be marijuana.

> ***An officer may place limitations on or expand the scope of a search when asking a subject for consent to search.***

The court concluded that, although the driver voluntarily consented to the search, the officer exceeded the scope of the consent. The court analyzed the question of whether, based upon the exchange between the officer and the driver, the typical reasonable person would think that the driver consented to the officer touching and unzipping one of the bags in the trunk. The court stated that the officer's request to "look through the trunk," if considered alone, would have conveyed that the officer wanted to search the trunk and its contents.[19] The court then stated:

> Significantly, however, Dyer did not stop with his first question. Instead, he told Elliott that he did not "want to look through each item." Further, he explained to her that he just wanted to see how things were "packed" or "packaged." We conclude that a typical reasonable person would have construed these additional statements as expressly limiting the scope of Dyer's request.... To us, Dyer's statements, considered in their entirety, would have conveyed to a reasonable person that Dyer was interested only in visually inspecting the trunk and its contents and did not convey his intent to look into any containers in the trunk....
>
> Because he expressly and narrowly limited the scope of his request, it is apparent that Dyer exceeded the

> scope of Elliott's consent and thereby violated her Fourth Amendment rights by unzipping and looking inside one of the bags in the trunk.[20]

Subject Statements and Actions

Just as officers may expand[21] or limit[22] the scope of a consent search, so too may the person giving the consent.[23] The scope of a consent search may be determined through statements made[24] or actions taken[25] by the subject during the exchange with the officer and may relate to such details as the time,[26] location, or manner[27] in which the search can be conducted. One court has noted that—

> the need for a warrant is waived only to the extent granted by the defendant in his consent. A defendant's consent may limit the extent or scope of a warrantless search in the same way that the specifications of a warrant limit a search pursuant to that warrant. Both limit the officer's activity by stipulating the areas into which they may look. Both may limit a search to certain areas or even to certain specified items within an area.[28]

An example of a situation in which an individual placed a limitation on where an officer could search is the U.S. Court of Appeals for the Sixth Circuit decision in *United States v. Roark*.[29] In *Roark*, officers received an anonymous tip that marijuana was being "stripped" at a particular residence. Responding to the tip, several officers went to the house and asked to search the residence. The defendant's sister consented to the search. While several officers searched the house, other

officers searching the outside of the house discovered a well-worn path behind the residence. The path led to a second house at the top of a hill. The officers entered the second house and found marijuana growing in buckets under bright lights and the defendant sleeping on a mattress while holding a rifle. The officers seized approximately 124 marijuana plants from the second house.[30]

The *Roark* court found that the officers exceeded the scope of the sister's consent. More particularly, the court stated that while the sister consented to a search of the first house, she did not consent to a search of the surrounding property. The court reversed the trial court's denial of the defendant's motion to suppress the marijuana found in the second house.

In the 1971 U.S. Court of Appeals for the Seventh Circuit case of *United States v. Dichiarinte*,[31] agents had a warrant to arrest the defendant on a narcotics charge. After arresting the defendant, the agents asked him whether he had any narcotics at his house. The defendant denied having any narcotics and invited the agents to his house to have a look. After the search had been going on for about 45 minutes, the defendant saw an agent seize currency exchange receipts from a drawer and said,

> "Does that look like narcotics if that is what you want to search for?" and the agent replied, "Sorry, Pal, we are here now and this is what we are going to do." Shortly thereafter, defendant announced, "The search is over. I am calling off the search." However, the agents continued their search for about ten more minutes.
>
> The agents seized currency exchange receipts, insurance polices, receipts for a loan, and a certificate of title to real estate and took them to their office.[32]

The court assumed that the consent given by the defendant for the search was voluntary and that the documents seized were evidence of a crime. Even so, the court stated that the consent given by the defendant was limited to a search for narcotics. Significantly, the court noted that—

> the defendant's statement that the agents could "come over to the house and look" must be taken to mean at most that they might come and conduct only such a search as would be necessary to establish whether he had any narcotics. Government agents may not obtain consent to search on the representation that they intend to look only for certain specified items and subsequently use that consent as a license to conduct a general exploratory search.[33]

The court further stated:

> In the case before us, the defendant's consent set the parameters of the agents' conduct at that which would reasonably be necessary to determine whether he had narcotics in his home. But the agents went beyond what was necessary to determine whether defendant had hidden narcotics among his personal papers; they read through those papers to determine whether they gave any hint that defendant was engaged in criminal activity. This was a greater intrusion into defendant's privacy than he had authorized and the fourth amendment requires that any evidence resulting from this invasion be suppressed.[34]

"Whether the scope of a consent search is reasonable will depend largely on who, what, where and how the search is conducted."

The court concluded that the government failed to sustain its burden of demonstrating that it acted within the scope of the defendant's consent to search. Although the record was not clear, the court stated that at least some of the items seized could not have been seized under a plain-view theory because they had to be opened and read, and this action was not authorized by the defendant's limited consent.

In many cases, a subject will provide a general consent to search with no specific limitations. Defendants are generally unsuccessful in having evidence suppressed when their argument is that the officers exceeded the scope of a general consent to search but the defendant failed to object or withdraw consent while watching the officers search.[35] However, officers cannot represent that they will only search certain locations or for particular items and then use that consent to conduct a general exploratory search.[36] It also should be noted that officers are not required to conduct all searches in plain view of a subject[37] or slowly enough to give a subject enough time to limit or withdraw the consent.[38]

Reasonableness

Officers must conduct consent searches in a reasonable manner and be prepared to clearly explain the circumstances surrounding the search when testifying in court.[39] Whether the scope of a consent search is reasonable will depend largely on who, what, where and how the search is conducted. When an officer conducts a consent search of a person,[40] for example, the court will analyze the reasonableness of the search differently than an officer's search of a home,[41] area,[42] vehicle,[43] or an item of property.[44]

An example of a case involving the question of whether officers acted reasonably within the bounds of a given consent involving a person is the U.S. Court of Appeals for the

Eleventh Circuit case of *United States v. Blake.*[45] In *Blake,* officers approached two men in the public concourse area of an airport and asked if the men would consent to speak with them. The men agreed to speak with the officers and consented to a search of their baggage and their persons for drugs. Within seconds of consenting to the search, one of the officers reached down the front of the pants and into the crotch of one of the men, felt a foreign object, and heard a crinkling sound. The officer then searched the second man in the same way. The men were taken to a police office outside of the public concourse where suspected packages of crack cocaine were removed.

The court found that the general consent to search the persons of the two men did not include the type of intrusive search conducted by the officers. In reaching this conclusion, the court made it clear that searches like the one conducted by the officers could be conducted; however, proper consent would have to be obtained. The court stated: "[g]iven this public location, it cannot be said that a reasonable individual would understand that a search of one's person would entail an officer touching his or her genitals."[46]

In another case involving a consent search of a person, the U.S. Court of Appeals for the District of Columbia in *United States v. Ashley*[47] determined the actions taken by the officer were reasonable. In *Ashley,* an officer approached the defendant after observing him exit a bus and walk out of the bus station. The officer asked the defendant if he was carrying any drugs on his person. The defendant said, "No," raised his hands, and said, "Do you want to search me?" The officer then said, "Yes. May I search you?" The defendant said, "Yes." The officer told the defendant to lower his arms and proceeded to pat down the outer surfaces of the defendant's sleeves, pant legs, and pants. After feeling a hard rock substance underneath the defendant's pants in the groin area, the officer asked the defendant to open his pants. The officer discovered the defendant had on a second pair of pants, which the officer opened and removed a hard object, part of which was sticking up from the defendant's underwear. The object was a bag of crack cocaine.[48]

Mark C. Ide

The defendant argued that the officer's search exceeded the scope of the consent. The court found that the search and seizure were lawful. Specifically, the court found the officer's patdown search was properly conducted and that probable cause existed for the officer, based on his knowledge regarding the transport and packaging of drugs, to believe that the hard object detected during the patdown was crack cocaine.[49]

This article began with an example and the resulting question of whether the officer exceeded the scope of a consent to search by prying open and destroying a can found inside a piece of luggage. This particular question has been addressed by two federal circuits with differing results. In *United States v. Kim,*[50] officers engaged an individual traveling in a train roomette in a conversation. One of the officers obtained consent to search the defendant's luggage. The officer found six apparently factory sealed cans labeled "Naturade All-Natural Vegetable Protein" with the seals intact. The officer opened one of the cans and determined that it contained narcotics.

In *Kim,* the U.S. Court of Appeals for the Third Circuit determined that the defendant voluntarily consented to the search of the luggage. The court also rejected defendant's argument that the consent to search the luggage did not extend to the

sealed cans. The court held that a reasonable person would have understood the exchange between the officer and defendant to include permission to search any items found in the luggage for drugs and that, therefore, the cans could be searched.[51] The court found no distinction between the officer opening the folded paper bag in *Jimeno* and the opening of the sealed cans. The court rejected the argument that the sealed cans were similar to a locked briefcase. The court also rejected the idea that the officers should have asked for specific permission to open the sealed cans, stating that such reasoning had been rejected by the *Jimeno* Court, and indicating that it was up to the defendant to object to the opening of the sealed cans.

The U.S. Court of Appeals for the Tenth Circuit took the opposite approach to the opening of sealed cans found in luggage in *United States v. Osage*.[52] The *Osage* case involved officers who searched an individual's luggage after being given consent to search the bag during the course of a consensual encounter with the individual while traveling on a train. After giving consent to search, the subject opened the luggage with a key. Inside the luggage, the officer found four 28-ounce cans labeled "tamales in gravy." The officer noticed that the label on the can appeared to have been tampered with. When the officer shook the can, he noted that it felt like a container of salt would feel if shaken, not as if it contained a liquid. The officer then took a tool from his belt, opened the can, and found a plastic bag containing methamphetamine.

The *Osage* court began its analysis by assuming that the defendant voluntarily consented to the search. The court noted that in prior cases, a subject's failure to object to a search could be considered an indication that the search was within the scope of the consent. The court then stated that the narrow issue in this case was: "whether Mr. Osage's failure to object to a search of a sealed can permitted the officer, in the course of conducting his search, to destroy the can or render it completely useless for its intended function."[53] The court concluded that it did not.

> ***Officers must think about what and how they want to search before asking for consent.***

In concluding that the officer exceeded the scope of the defendant's consent, the court rejected the reasoning of the *Kim* court that sealed cans were more like the paper bag in *Jimeno* than a locked briefcase and concluded just the opposite. The court held that "before an officer may actually destroy or render completely useless a container which would otherwise be within the scope of a permissive search, the officer must obtain explicit authorization or have some other, lawful basis upon which to proceed."[54] The court also distinguished *Osage* from other cases in which officers had "dismantled" items during the course of a consent search, noting that those cases did not involve the complete destruction of the item as occurred in the *Osage* case.

Conclusion

Whether an individual voluntarily consents to a search is only one of the issues for a court to consider in cases involving consent searches. Courts must also evaluate the scope of the consent. The U.S. Supreme Court has established an "objective reasonableness" standard for measuring the scope of a suspect's consent.[55] Under this test, courts will consider what a reasonable person would have understood about the communication between the person and the officer regarding the scope of the search.

The government has the burden of showing that the search conducted by officers was within

the scope of the consent given by the subject. Courts will consider, among other things, an officer's and subject's statements and actions during the search, the manner in which the search is actually conducted, and the reasonableness of the search in determining whether the officer exceeded the scope of the consent. The reasonableness of a particular consent search also will depend upon whether the officer is searching a person, house, car, or item. The *Blake*[56] case confirms that officers must conduct consent searches within the scope of the consent given and in a reasonable manner.

Questions still exist regarding certain issues related to the scope of consent searches. For example, during consent searches, the opening of closed areas or items that are within a location that could hold an item expressly included in the search by the officer has been upheld by most courts.[57] Indeed, in *Jimeno*, the U.S. Supreme Court clarified that the officer could open the closed paper bag on the floorboard of the car to look for narcotics. However, the *Jimeno* Court implied that the officer could not have opened a locked briefcase in the car under similar circumstances.[58]

Whether the damaging or destruction of property during the course of conducting a consent search is within the scope of the consent is another unsettled question. Federal case law addressing situations where officers have opened sealed items or enclosures during a consent search, without damaging or destroying the area or item, have generally found the actions taken by the officers to be lawful.[59] However, when officers have damaged, destroyed, or rendered items nonfunctional during the course of conducting the consent search, courts, with *Kim* as a notable exception, generally have found that such damaging or destruction exceeded the scope of the search.[60] Officers searching an item pursuant to consent should keep in mind the result in the *Osage* case that an officer who damages or destroys an item while searching it must have explicit authorization from the subject consenting to the search or another lawful basis upon which to conduct the search.

Officers must be acutely aware that what they say and do in obtaining consent to search impacts directly upon how, where, what, and when they can search. Officers must think about what and how they want to search before asking for consent. Officers carefully should document exactly what they said and did during the course of asking for and in conducting the search.

Additionally, officers meticulously should record statements made and actions taken, or not taken, by the subject during the entire time the officer has contact with the individual. Paying close attention to the details surrounding the consent search and clearly articulating the facts and circumstances of the search are critical in consent to search cases. ✦

Endnotes

[1] U.S. CONST. Amend. IV.

[2] *Schenkloth v. Bustamonte,* 412 U.S. 218, 219 (1973); *United States v. Dichiarinte,* 445 F.2d 126, 129 (7th Cir. 1971) ("A consent search is reasonable only if kept within the bounds of the actual consent.") (citing *Honig v. United States,* 208 F.2d 916, 919 (8th Cir. 1953)).

[3] 500 U.S. 248 (1991).

[4] *Id.* at 250-51 (citations omitted); *United States v. Rich,* 992 F.2d 502, 507 (5th Cir. 1993).

[5] *Id.* at 251-52. *United States v. McRae,* 81 F.3d 1528 (10th Cir. 1996); *United States v. Snow,* 44 F.3d 133, 135 (2nd Cir. 1995) ("Based on the plain meaning of the word 'search,' an individual who consents to a search of his car should reasonably expect that readily-opened containers discovered inside the car will be opened and examined."); *United States v. Crain,* 33 F.3d 480 (5th Cir. 1994); *United States v. Smith,* 901 F.2d 1116 (D.C. Cir.

1990); *United States v. Torres*, 663 F.2d 1019 (10th Cir. 1981).

[6] *See, e.g., United States v. McRae*, 81 F.3d 1528 (10th Cir. 1996); *United States v. Saadeh*, 61 F.3d 510, 518 (7th Cir. 1995); *United States v. Maldonado*, 38 F.3d 936 (7th Cir. 1994); *United States v. Cannon*, 29 F.3d 472 (9th Cir. 1994); *United States v. Rich*, 992 F.2d 502 (5th Cir. 1993); *United States v. Acosta*, 110 F. Supp. 2d 918, 924 (E.D.Wis. 2000) ("A consent search is reasonable only if kept within the bounds of the actual consent."); *United States v. Cucci*, 892 F. Supp. 775, 792 (W.D. Va. 1995).

[7] *United States v. Lemmons*, 282 F.3d 920, 924 (7th Cir. 2002); *United States v. Turner*, 169 F.3d 84, 87 (1st Cir. 1999) ("We therefore look beyond the language of the consent itself, to the overall context, which necessarily encompasses contemporaneous police statements and actions."); *United States v. McRae*, 81 F.3d 1528, 1536-37 (10th Cir. 1996) ("We determine from the totality of the circumstances whether a search remains within the boundaries of the consent given."); *United States v. Brandon*, 847 F.2d 625, 630 (10th Cir. 1988); *United States v. Sealey*, 830 F.2d 1028, 1032 (9th Cir. 1987).

[8] *Bumper v. North Carolina*, 391 U.S. 543 (1968); *United States v. Dichiarinte*, 445 F.2d 126, 130 (7th Cir. 1971).

[9] *United States v. Turner*, 169 F.3d 84, 87 n.3 (1st Cir. 1999); *United States v. Schaefer*, 87 F.3d 562, 569 (1st Cir. 1996); *United States v. Strickland*, 902 F.2d 937, 941 (11th Cir. 1990); *United States v. Cruz Jimenez*, 894 F.2d 1, 6 (1st Cir. 1990); *United States v. Blake*, 888 F.2d 795 (11th Cir. 1989); *United States v. Dichiarinte*, 445 F.2d 126, 130 (7th Cir. 1971).

[10] *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir. 1992).

[11] *See, e.g., United States v. Orrego-Fernandez*, 78 F.3d 1497, 1505 (10th Cir. 1996); *United States v. Saadeh*, 61 F.3d 510, 518 (7th Cir. 1995).

[12] *United States v. Lemmons*, 282 F.3d 920, 924 (7th Cir. 2002).

[13] *See United States v. Turner*, 169 F.3d 84, 88 (1st Cir. 1999) (Police indicated they wanted to search in places where physical evidence of an assault could have been put that excluded an examination of the files on the defendant's computer); *United States v. Maldonado*, 38 F.3d 936 (7th Cir. 1994); *United States v. Rich*, 992 F.2d 502, 508 (5th Cir. 1993); *United States v. Gutierrez-Mederos*, 965 F.2d 800, 803 (9th Cir. 1992) (scope of a search generally is defined by its expressed object); *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir. 1992); *United States v. Al-Marri*, 230 F. Supp. 2d 535 (S.D.N.Y. 2002).

[14] *See, e.g., United States v. Rich*, 992 F.2d 502, 508 (5th Cir. 1993); *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir. 1992); *United States v. Al-Marri*, 230 F. Supp. 2d 535 (S.D.N.Y. 2002).

[15] *See, e.g., United States v. Martinez*, 949 F.2d 1117 (11th Cir. 1992).

[16] *See, e.g., United States v. Rich*, 992 F.2d 502, 508 (5th Cir. 1993).

[17] The fact that an officer may develop probable cause during the search is beyond the scope of this article. *See United States v. Alverez*, 235 F.3d 1086, 1088 (8th Cir. 2000); *United States v. West*, 219 F.3d 1171, 1177 (10th Cir. 2000); *United States v. Strickland*, 902 F.2d 937, 941 (11th Cir. 1990); *United States v. Garcia*, 897 F.2d 1413, 1419 (7th Cir. 1990).

> ***"Officers should carefully document exactly what they said and did during the course of asking for and in conducting the search."***

[18] 107 F.3d 810 (10th Cir. 1997).

[19] *Id.* at 812. A number of federal courts have found that an officer's asking to look in an area or item is sufficient to constitute a general request to search. *See, e.g., United States v. Gant*, 112 F.3d 239, 242 (6th Cir. 1997) ("The district court was correct in its view that the use of the term 'look' placed no particular limitations on the scope of the search."); *United States v. McSween*, 53 F.3d 684, 687 (5th Cir. 1995) ("Even if Price actually asked to 'look in' McSween's vehicle, we would still conclude that in these circumstances Price effectively asked for a general consent to search."); *United States v. Berke*, 930 F.2d 1219, 1222 (7th Cir. 1991); *United States v. Harris*, 928 F.2d 1113, 1117 (11th Cir. 1991) (search of unlocked luggage in trunk held valid after consent given to look in vehicle for drugs, weapons, or other contraband); *United States v. Pena*, 920 F.2d 1509, 1515 (10th Cir. 1990) ("We will not attach unduly restrictive meaning to the officer's request to 'look' inside the vehicle."); *United States v. Sierra-Hernandez*, 581 F.2d 760 (9th Cir. 1978) (officer's search under car hood upheld after defendant gave permission for officer to look inside truck).

[20] *Id.* at 815-16.

[21] *See, e.g., United States v. Lemmons*, 282 F.3d 920 (7th Cir. 2002) (In *Lemmons*, the defendant aided officers in their search of his trailer. The consent search eventually resulted in officers discovering child pornography on the defendant's computer after the defendant invited the officer to check his computer and watched the officer locate and open files.); *United States v. Mejia*, 953 F.2d 461, 465 (9th Cir. 1991) ("Mejia correctly asserts that consent to enter one's threshold for the limited purpose of talking about an investigation does not include permission to enter a bedroom occupied by a sleeping spouse.... However, once the officers were in the house, Cajigas gave a subsequent implied consent to let them enter the bedroom by not objecting when the officers followed her into the bedroom.").

[22] *See, e.g., United States v. Acosta*, 110 F. Supp. 2d 918, 924 (E.D. Wisc. 2000) (After first refusing to consent to search the house for people or evidence, the defendant then gave consent to a search for people. During the search, an officer opened a small plastic box and found bullets inside. The court found that the officer exceeded the scope of the consent by searching a box that was clearly too small to hold a person.).

[23] *Florida v. Jimeno*, 500 U.S. 248 (1991); *United States v. Rich*, 992 F.2d 502 (5th Cir. 1993); *United States v. Felix*, 134 F. Supp. 2d 162 (D. Mass. 2001).

[24] *United States v. Maldonado*, 38 F.3d 936, 941 (7th Cir. 1994) (defendant's expression of concern that packaging of boxes not be disturbed did not amount to a limitation on the scope of the search or a withdrawal of consent).

[25] *United States v. Maldonado*, 38 F.3d 936, 940 (7th Cir. 1994); *United States v. Rudolph*, 970 F.2d 467 (8th Cir. 1992) (defendant assisted officer in moving truck seat so officer could search behind it); *United States v. Chaidez*, 906 F.2d 377, 383 (8th Cir. 1990) ("Chaidez's behavior during the search is relevant when assessing the scope of the consent....").

[26] *See, e.g., United States v. Al-Marri*, 230 F. Supp. 2d 535, 539 (S.D.N.Y. 2002) ("Al-Marri's silence on this subject and his failure to

raise the issue again the next day persuades this Court that his consent could reasonably have been understood to be open-ended and given without a limitation on time or scope."); *United States v. Felix*, 134 F. Supp. 2d 162, 173 (D. Mass. 2001) ("Ms. Felix granted the police permission to search Felix's house under several conditions. The police were to enter her home after she arrived to meet them, after she had unlocked the house. They were to perform the search in her presence. And finally, they were to search for the limited purpose of locating firearms." The court found it was objectively unreasonable for the officers to believe they could search before Ms. Felix arrived.).

[27] *United States v. Felix*, 134 F. Supp. 2d 162, 173 (D. Mass. 2001).

[28] *United States v. Dichiarinte*, 445 F.2d 126, 130 n.3 (7th Cir. 1971).

[29] 36 F.3d 14 (6th Cir. 1994).

[30] The *Roark* court found that the defendant's sister owned both houses and, even though she only entered the second house upon her brother's invitation, and he was in the process of buying the house from her, she had the authority to consent to a search of the premises. *But see Wilheim v. Boggs*, 290 F.3d 822 (6th Cir. 2002) (regarding common authority).

[31] 445 F.2d 126 (7th Cir. 1971).

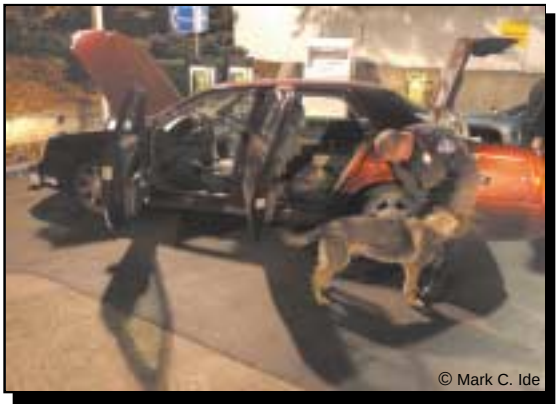
[32] *Id.* at 126.

[33] *Id.* at 129.

[34] *Id.*

[35] *See, e.g., United States v. Patten*, 183 F.3d 1190, 1194 (10th Cir. 1999) ("Additionally, the court found defendant's silence and acquiescence in opening his suitcase indicated that defendant's consent to search was not limited to examining the exterior of the suitcase."); *United States v. Gordon*, 173 F.3d 761, 766 (10th Cir. 1999) (duffle bag of train passenger); *United States v. Saadeh*, 61 F.3d 510, 518 (7th Cir. 1995) ("Finally, we note that Saadeh did not object to the search of his tool box."); *United States v. McSween*, 53 F.3d 684, 685 (5th Cir. 1995) (officers searching under hood of car after asking to search car upheld as defendant stood by and watched the search); *United States v. Cannon*, 29 F.3d 472, 477 (9th Cir. 1994) (glove box, car trunk); *United States v. Martel-Martines*, 988 F.2d 855, 857 (8th Cir. 1993) ("Martel-Martines's failure to object made it objectively reasonable for the officer to conclude that his general consent to search the truck included consent to access the compartment in a minimally intrusive manner."). *But see United States v. Ibarra*, 965 F.2d 1354, 1357 (5th Cir. 1992) ("The fact that Chambers neglected to foresee the officers' conduct and failed specifically to state any limitations on his permission to search the house is, we think, an insufficient basis for interpreting his consent as authorizing the officers to damage the house or any property in it.").

[36] *United States v. Milian-Rodriguez*, 759 F.2d 1558, 1563 (11th Cir. 1985); *United States v. Dichiarinte*, 445 F.2d 126 (7th Cir. 1971); *United States v. Acosta*, 110 F. Supp. 2d 918, 924 (E.D.Wis. 2000) ("The rule is straight forward: Government agents may not obtain consent to search on the representation that they intend to look only for certain specified items and subsequently use that consent as a license to conduct a general exploratory search.").



[37] *See, e.g., United States v. George*, 987 F.2d 1428 (9th Cir. 1993); *United States v. Lechuga*, 925 F.2d 1035, 1041 (7th Cir. 1991).

[38] *See, e.g., United States v. Rich*, 992 F.2d 502, 507 (5th Cir. 1993).

[39] *United States v. Strickland*, 902 F.2d 937, 941 (11th Cir. 1990) ("When an individual gives a general statement of consent without express limitations, the scope of a permissible search is not limitless. Rather it is constrained by the bounds of reasonableness: what a police officer could reasonably interpret the consent to encompass.").

[40] *See, e.g., United States v. Ashley*, 37 F.3d 678 (D.C. Cir. 1994); *United States v. Pace*, 893 F.2d 1103, 1104 (9th Cir. 1990) ("The drug agents conducted a reasonable pat-down search with the defendant's consent and were entitled to remove the bulky objects which they reasonably suspected from the pat-down to be bricks of cocaine."); *United States v. Blake*, 888 F.2d 795 (11th Cir. 1989).

[41] *See, e.g., United States v. Pena*, 143 F.3d 1363, 1368 (10th Cir. 1998) (request to look in hotel room for drugs would reasonably be understood to include a thorough search of the room, including in the bathroom ceiling); *United States v. Rojas*, 906 F. Supp. 120, 130 (E.D.N.Y. 1995) ("While officers did not have permission to cause physical damage to the apartment, opening the 'traps' in the floor of the bedroom closets did not amount to physical damage.").

[42] *See, e.g., United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir. 1992) (The defendant consented to officer's search of mini-warehouse for narcotics. The court found that prying open the trunk of a 1949 Dodge in the warehouse was reasonably within the scope of the consent.).

[43] *See, e.g., United States v. Alverez*, 235 F.3d 1086, 1088 (8th Cir. 2000) ("the cutting of the spare tire likely exceeded the scope of the consensual search and may well have required suppression of the evidence had the officers not had probable cause to expand the search."); *United States v. Martel-Martines*, 988 F.2d 855, 857 (8th Cir. 1993) (defendant consented to a search of truck for drugs and watched silently as officers examined truck on a hoist and prepared to puncture sheetmetal covering a secret compartment); *People v. Crenshaw*, 9 Cal. App. 4th 1403 (Cal. Ct. App. 1992) (discussing cases regarding the removal of car panel vents for contraband based on a general consent to search).

[44] *See, e.g., United States v. Mendoza-Gonzales*, 318 F.3d 663 (5th Cir. 2003) (officer's slicing open tape that closed a small cardboard box found to reasonably be within defendant's unqualified consent to general search of truck); *United States v. Melendez*, 301 F.3d 27, 33 (1st Cir. 2002) (officer's unscrewing of one screw and removal of speaker woofer did not destroy the speaker or violate the defendant's limitation placed on the search to not "tear up" the house).

[45] 888 F.2d 795 (11th Cir. 1989).

[46] *Id.* at 800-01.

[47] 37 F.3d 678 (D.C. Cir. 1994).

[48] *Id.* at 679.

[49] *Id.* at 680-81.

[50] 27 F.3d 947 (3d Cir. 1994).

[51] *Id.* at 956.

[52] 235 F.3d 518 (10th Cir. 2000).

[53] *Id.* at 520.

[54] *Id.* at 522.

[55] *United States v. Jimeno*, 500 U.S. 248 (1991).

[56] 888 F.2d 795 (11th Cir. 1989).

[57] *See, e.g., United States v. Mendoza-Gonzalez*, 318 F.3d 663 (5th Cir. 2003); *United States v. Gant*, 112 F.3d 239, 243 (6th Cir. 1997); *United States v. Springs*, 936 F.2d 1330 (D.C. Cir. 1991); *United States v. Dyer*, 784 F.2d 812 (7th Cir. 1986); *United States v. Al-Reyes*, 230 F. Supp. 2d 535, 540 (S.D.N.Y. 2002) ("With regard to closed containers, the general rule holds that separate consent to search such an item found within a fixed premises is unnecessary."); *United States v. Medina*, 922 F. Supp. 818, 834 (S.D.N.Y. 1996) (general consent to search a car included consent to search the memory of a pager found in the car).

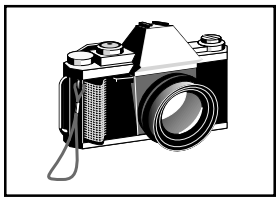
[58] *Florida v. Jimeno*, 500 U.S. 248, 252 (1991). *But see United States v. Reeves*, 6 F.3d 660, 662 (9th Cir. 1993) (search of locked briefcase in car upheld after defendant signed consent to search form); *United States v. Gutierrez-Mederos*, 965 F.2d 800, 803 (9th Cir. 1992) (officer used defendant's key to open locked compartment in defendant's car after defendant consented to a search for drugs and weapons).

[59] *See, e.g., United States v. Melendez*, 301 F.3d 27 (1st Cir. 2002); *United States v. Snow*, 44 F.3d 133, 135 (2d Cir. 1995); *United States v. Maldonado*, 38 F.3d 936 (7th Cir. 1994); *United States v. Santurio*, 29 F.3d 550 (10th Cir. 1994); *United States v. Springs*, 936 F.2d 1330 (D.C. Cir. 1991); *United States v. Dyer*, 784 F.2d 812 (7th Cir. 1986); *United States v. Dominguez*, 911 F. Supp. 261 (S.D. Tx. 1995); *United States v. Rojas*, 906 F. Supp. 120, 130 (E.D.N.Y. 1995).

[60] *See, e.g., United States v. Strickland*, 902 F.2d 937, 941 (11th Cir. 1990).

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

Wanted: Photographs



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

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

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The Bulletin Notes

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

Officer McCarthy

Officer Barber

Officers Chris McCarthy and Charles Barber of the Liberty, New York, Police Department arrived on the scene of a church parking lot that was rapidly flooding during a rainstorm and found an individual trapped inside her vehicle. The woman had entered the car in an attempt to move it; however, the rapidly rising water lifted the vehicle and caused it to float and swirl helplessly until it became pinned against a railing. Officers McCarthy and Barber immediately entered the water, pulled the driver from the car, and carried her to safety. Subsequently, because the individual's house keys were trapped inside the vehicle, the officers helped the woman and her husband into their home. Officers McCarthy and Barber demonstrated bravery and selflessness in their response to this dangerous situation.

Officer Mulhollon

Officer Niman

Responding to a house fire, Officers Ken Mulhollon and Tom Niman of the Beloit, Wisconsin, Police Department arrived at a home that was ablaze. After learning that people were inside and hearing cries for help, the officers entered the smoke-filled residence. They successfully assisted three people from the fire, including a pregnant woman and a child. Without Officers Mulhollon and Niman placing themselves in harm's way, these three citizens may not have survived this tragedy.

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

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