U.S. Border Patrol

Legal Update

Journeymen Training

January 22, 1998

Investigative Detention

- *Reasonable suspicion required*
- *Pretextual stops OK (in some jurisdictions). United States v. Cummins. Pretextual stop OK if objectively reasonable. If officer has objective grounds for stopping vehicle or subjecting a person to stop may lawfully do so even if his true motive is to investigate suspicious behavior that would not in itself support the detention. See also, United States v. Wren, U.S. Supreme Court, decided June 10, 1996.*

Questioning and Detention at the Border

- Reasonable search
- Without warrant
- Some view as an exception to the warrant requirement
- Goes to traditional notions of the absolute sovereignty and integrity of national boundaries & the People's right to protect those boundaries
- Same rule for "functional equivalent of the border"

Consensual Encounters

- Not a seizure
- No justification required
- If individual wishes to cease conversation, officer must let him go, unless reasonable suspicion
- Delgado

Stop and Question

- Legal Standard: Reasonable Suspicion
  Almeida-Sanchez
- Pedestrians: Consensual encounter can change to an investigative detention
- Examples

Roving Patrol

Need RS--specific, articulable facts together with rational inferences which reasonably warrants the suspicion that the vehicle contains illegal aliens

Checkpoints

- Roving patrol rules do NOT apply at checkpoints
- BP may stop every vehicle
- Primary: brief questioning re: citizenship and immigration status, request for documents, a visual inspection of what can be seen from outside the vehicle
- Secondary:
  - No individualized suspicion/RS required
  - Be "selective"
  - If criminal suspected, need RS
- For searches, need PC or consent

III. INVESTIGATION OF VEHICLES AND PEDESTRIANS

A. QUESTIONING AND DETENTION AT THE BORDER

- A REASONABLE SEARCH MAY BE CONDUCTED OF ALL PERSONS AND PROPERTY ENTERING THE UNITED STATES AT THE BORDER, WITHOUT INDIVIDUALIZED SUSPICION AND WITHOUT A WARRANT.

POWER OF THE SOVEREIGN

TO PROTECT THE TERRITORIAL INTEGRITY OF THE NATION. THE UNITED STATES IS ENTITLED TO MAKE SURE THAT PEOPLE WHO ENTER, HAVE A RIGHT TO DO SO.

THE SAME RULES APPLY TO "FUNCTIONAL EQUIVALENTS OF THE BORDER" (I.E., AIRPORTS - DIRECT FLIGHTS FROM FOREIGN COUNTRIES)

B. CONSENSUAL ENCOUNTERS WITH PEDESTRIANS/DELGADO

- LAW ENFORCEMENT DOES NOT NEED ANY JUSTIFICATION TO JUST GO UP AND TALK TO SOMEONE. AS LONG AS IT IS CONSENSUAL AND THE PERSON IS FREE TO LEAVE, YOU DO NOT NEED "REASONABLE SUSPICION."

✳WORKSITE ENFORCEMENT

- THERE ARE SEVERAL KEY CASES DEALING WITH INS AGENTS ENTERING FACTORIES TO QUESTION WORKERS. A CONSENSUAL ENCOUNTER WILL NORMALLY BE FOUND WHERE
  - NO FORCE IS DISPLAYED
  - WORKERS ARE FREE TO MOVE AROUND AND KEEP WORKING
  - ARE QUESTIONED WHILE WORKING, OR MOVING ABOUT THE FACTORY

- THIS IS NOT A SEIZURE BUT A "BRIEF ENCOUNTER." <u>DELGADO</u>

C. STOP & QUESTION

- INVESTIGATORY DETENTION IS A HIGHER LEVEL OF INTRUSION THAN A CONSENSUAL ENCOUNTER, BUT IS LESS THAN FULL ARREST. AS SUCH, A PRIVACY RIGHT IS IMPLICATED.

1. <u>LEGAL STANDARD</u>: "REASONABLE SUSPICION" <u>ALMEIDA - SANCHEZ</u>

- OTHER THAN "CONSENSUAL ENCOUNTERS" OR BORDER SEARCHES, YOU NEED SOME LEGAL BASIS TO STOP AND QUESTION SOMEONE.
- YOU NEED "REASONABLE SUSPICION."
  - DEFINITION: A PARTICULARIZED AND OBJECTIVE BASIS FOR SUSPECTING THE PARTICULAR PERSON HAS COMMITTED A CRIME.

* THE BOTTOM LINE IS YOU CAN HAVE A CONVERSATION WITH ANYONE, AS LONG AS IT IS CONSENSUAL.

* TO DETAIN SOMEONE, YOU NEED TO REASONABLY BELIEVE THAT A PERSON IS AN ALIEN ILLEGALLY IN THE UNITED STATES.

2. PEDESTRIANS

- TO JUST GO UP AND TALK TO A PEDESTRIAN YOU DO NOT NEED ANY SUSPICION
  - "CONSENSUAL ENCOUNTER"
    - A CONSENSUAL ENCOUNTER CAN CHANGE INTO A DETENTION.
- THE TEST IS WHETHER A PERSON WOULD FEEL FREE TO WALK AWAY AND WOULD THEY BE ALLOWED TO DO SO.

CONSENSUAL v. DETENTION

CONSENSUAL

- OFFICER WALKS UP TO A PERSON
- ONE OFFICER
- OFFICER INSPECTS AND RETURNS KEYS, TICKETS, DOCUMENTS
- OFFICER USES FRIENDLY CONGENIAL TONE OF VOICE
- OFFICER REQUESTS TO TALK AND TELLS PERSON THEY ARE FREE TO LEAVE
- OFFICER EXPLAINS THE REASON FOR QUESTIONING
- OFFICER INTRODUCES HIMSELF AS A BPA AGENT
- OFFICER REQUESTS IDENTIFICATION AND EXPLANATION OF SUSPICIOUS ACTIVITY
- OFFICER MAINTAINS SPACE BETWEEN HIMSELF AND SUSPECT
- OFFICER IN A VEHICLE REQUESTS THE SUBJECT TO APPROACH

DETENTION

- OFFICER SIGNALS A CAR TO STOP
- SEVERAL OFFICERS
- OFFICERS INSPECT AND THEN KEEP KEYS, TICKETS, DOCUMENTS
- OFFICER IS AUTHORITATIVE AND DEMANDING
- OFFICER ORDERS SUBJECT TO REMAIN AND ANSWER QUESTIONS
-
- OFFICER ACCUSES SUBJECT OF A CRIME
- OFFICER DISPLAYS BADGE AND WEAPON AND BATON
- OFFICER DEMANDS IDENTIFICATION AND ACCUSES SUBJECT OF CRIMINAL ACTIVITY
- OFFICER TOUCHES OR GRABS THE SUBJECT
- OFFICER ORDERS SUBJECT TO CLIMB INTO THE BACK OF THE VEHICLE FOR QUESTIONING

3. VEHICLES ON ROVING PATROL

- EXCEPT AT THE BORDER AND ITS FUNCTIONAL EQUIVALENTS (AIRPORTS) INS OFFICERS ON ROVING PATROL MAY STOP A VEHICLE ONLY IF THEY HAVE "REASONABLE SUSPICION" THAT THE VEHICLE CONTAINS ILLEGAL ALIENS.

- "<u>REASONABLE SUSPICION</u>"
  - SPECIFIC ARTICULABLE FACTS, TOGETHER WITH RATIONAL INFERENCES FROM THOSE FACTS THAT REASONABLY WARRANT SUSPICION THAT THE VEHICLE CONTAINS ILLEGAL ALIENS.
- HISPANIC APPEARANCE IS NOT ENOUGH.
- MUST LIST <u>EVERY</u> FACTOR.
- SOME COURTS ARE TAKING A MORE RESTRICTIVE VIEW AND ARE REQUIRING SUSPICION ON THE LEVEL OF PROBABLE CAUSE (NEW MEXICO).

4. BORDER PATROL LAWSUITS - REGARDING ROVING PATROL

- DURGIN (TUCSON, YUMA SECTORS) CLASS ACTION LAWSUIT PENDING CHALLENGING ROVING PATROL STOPS.

- THE COMPLAINT ALLEGES THAT:
  - STOPS ARE MADE ON SEVERAL HIGHWAYS BUT THAT IT IS NOT PHYSICALLY POSSIBLE TO TELL THAT INDIVIDUAL VEHICLES ARE SMUGGLING ALIENS;
  - THAT THE STOPS ARE UNJUST AND DONE ONLY BECAUSE OF HISPANIC APPEARANCE, WITHOUT REASONABLE SUSPICION OR PROBABLE CAUSE, AND THAT BPAs SEARCH VEHICLES WITHOUT CONSENT OR PROBABLE CAUSE;
  - THAT NO REPORTS ARE MADE OF STOPS UNLESS AN ARREST OR SEIZURE IS MADE.
  - THAT STOPS ARE DELIBERATELY MADE OUTSIDE COUNTIES WHERE FEDERAL COURTS SIT AND SO THEY ARE TURNED OVER TO STATE COURT WITHOUT ANY FEDERAL REVIEW.
  - THAT REPORTS ARE PLAGIARIZED, AND MIRROR THE OPERATIVE FACTS IN CASES WHICH COURTS FOUND TO BE VALID.

*MURILLO IS NOT A ROVING PATROL CASE, BUT INVOLVES SIMILAR ISSUES. (CAN'T STOP SOMEONE JUST BECAUSE THEY LOOK HISPANIC.)

- <u>MURILLO</u> (EL PASO SECTOR) CLASS ACTION LAWSUIT, STUDENTS ALLEGED THEY WERE STOPPED, DETAINED, AND HARASSED, BY THE BORDER PATROL. THE SETTLEMENT AGREEMENT SAYS BPAs CAN'T DETAIN SOMEONE FOR QUESTIONING REGARDING IMMIGRATION STATUS, UNLESS THEY HAVE <u>REASONABLE SUSPICION</u>, BASED UPON SPECIFIC ARTICULABLE FACTS INVOLVING <u>MORE THAN</u> THE PERSON'S HISPANIC APPEARANCE, THAT THE PERSON IS ILLEGALLY IN THE U.S. OR IS GUILTY OF A FEDERAL IMMIGRATION OFFENSE.

- NICACIO (SPOKANE) - CLASS ACTION. HISPANIC APPEARANCE, DRESS, REFUSING TO LOOK AT OFFICERS, DOES NOT EQUAL REASONABLE SUSPICION.

- RAMIREZ (MICHIGAN) - HISPANIC APPEARANCE, DRIVING OLDER CARS, DRESSES IN WORK CLOTHES, OUT OF STATE PLATES ARE NOT ENOUGH.

- <u>MENDOZA</u> (EL PASO) - INS OFFICERS AND EL PASO POLICE OFFICERS ENTERED BARS, SECURED THE DOORS, STOPPED THE MUSIC, TOLD PEOPLE TO GET UP AND QUESTIONED EVERYONE ABOUT CITIZENSHIP. THIS MAY HAVE BEEN VALID WITH A BLACKIE'S OR BARLOW'S WARRANT.

- <u>U.S. v. PACHECO</u>: CAR RODE LOW TO THE GROUND, APPEARED HEAVILY LOADED, AND FOUR ALIENS "HUNKERED DOWN" IN THE SEAT OF THE DEFENDANT'S CAR AND AVOIDED EYE CONTACT WITH THE AGENTS.

5. VEHICLES AT CHECKPOINTS

- THE RULES THAT APPLY TO MOVING VEHICLES (ROVING PATROL STOPS) DO NOT APPLY AT CHECKPOINTS.

- BORDER PATROL AGENTS MAY STOP EVERY VEHICLE PASSING THROUGH AN IMMIGRATION CHECKPOINT.

- PRIMARY INSPECTION INCLUDES:
  - BRIEF QUESTIONING ABOUT CITIZENSHIP AND IMMIGRATION STATUS;
  - A REQUEST FOR DOCUMENTS EVIDENCING A RIGHT TO BE IN THE U.S.;
  - A VISUAL INSPECTION OF WHAT CAN BE SEEN FROM THE OUTSIDE OF THE VEHICLE

REFERRAL TO SECONDARY

* FOR AN IMMIGRATION PURPOSE, (NOT FOR DRUGS) BP AGENTS DO NOT NEED ANY "INDIVIDUALIZED," "ARTICULABLE," OR "REASONABLE," SUSPICION. AS LONG AS AGENTS ARE "SELECTIVE" YOU CAN REFER ANY VEHICLE TO SECONDARY INSPECTION.

* FOR ANOTHER PURPOSE (DRUGS) BP AGENTS NEED TO BE ABLE TO ARTICULATE "REASONABLE SUSPICION" OF SOME CRIMINAL VIOLATION WHICH THE AGENTS HAVE THE AUTHORITY TO ENFORCE.

* TO SEARCH AT CHECKPOINTS YOU NEED CONSENT OR PROBABLE CAUSE. (USE THE K-9 TO GET PROBABLE CAUSE. IF K-9 HITS, ASK FOR CONSENT ANYWAY, EVEN IF YOU DO NOT NEED IT.)

6. FRISK FOR OFFICER SAFETY
   - LEGAL STANDARD: REASONABLE BELIEF-ARMED AND DANGEROUS

- <u>U.S. v. GARCIA</u>: CAMPER'S BUMPER WAS LOW, ITS TIRES WERE SQUISHED DOWN, THE WHEEL WELLS WERE COVERING PART OF THE TIRES, AND IT WAS HEAVILY LOADED IN THE REAR. THE TRUCK WAS WEAVING, IT APPEARED THAT THE DRIVER WAS HAVING A HARD TIME CONTROLLING THE VEHICLE DUE TO THE WEIGHT IN THE BACK, MAKING THE FRONT END LIGHT. WHEN THE AGENTS PULLED THEIR CAR ALONGSIDE THE VEHICLE AND SHINED A FLASHLIGHT OUT OF THEIR WINDOW TO ILLUMINATE THE TRUCK, THEY NOTICED THAT THE WINDOWS OF THE CAMPER SHELL WERE COMPLETELY FOGGED OVER. THE AGENTS TESTIFIED THAT THE NIGHT WAS COLD AND THAT THE FOGGED WINDOWS INDICATED TO THEM THAT THE CAMPER SHELL CONTAINED LIVING BEINGS, PERHAPS PEOPLE.

Legal Update

for

U.S.
BORDER
PATROL

Border Patrol Agents
U.S. Border Patrol Academy
Artesia, New Mexico
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REFRESHER COURSE FOR BORDER PATROL AGENTS

Pedestrian Contacts and Vehicle Stops

A. INTRODUCTION

Section 287(a)(1) states that BPAs have authority, without warrant, *"to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States."*

Even though the language of Section 287(a)(1) appears to confer broad authority, the courts have ruled that such "interrogation" may only be conducted within the bounds of the Fourth Amendment. Court decisions have interpreted Section 287(a)(1) to authorize **consensual** questioning regarding any matter even **without** any particular **suspicion** or justification; however, **detention** for interrogation must be justified by **reasonable suspicion** that the suspect is an alien illegally in the United States or is committing a federal crime in the BPA's presence.

Similarly, Section 287(a)(3) states, in part, that BPAs have authority, without warrant, to "**board and search for aliens** . . . **any vehicle** . . . [within a reasonable distance from any external boundary of the United States.]"

Even though the language of Section 287(a)(3) also appears to confer broad authority, the courts have ruled that such "board and search" of vehicles within the United States may only be conducted within the bounds of the Fourth Amendment. As such, the courts have interpreted Section 287(a)(3) to authorize a roving patrol **vehicle stop** only where BPAs have **reasonable suspicion**, based upon specific articulable facts, that the vehicle contains **aliens** who are **illegally** in the United States.

This refresher course will address the legal differences between "consensual encounters" and "investigative detention," as applied to pedestrian contacts and vehicle stops.

B. LEGAL DIFFERENCES BETWEEN "*CONSENSUAL ENCOUNTERS*," "*INVESTIGATIVE DETENTIONS*," AND "*ARRESTS*"

CONSENSUAL ENCOUNTER	INVESTIGATIVE DETENTION (STOP)	ARREST
•no suspicion required	•requires reasonable suspicion, based upon specific articulable facts, that suspect is an illegal alien or is committing a federal crime in the officer's presence	•requires probable cause to believe that suspect is an illegal alien or has committed a crime and is likely to escape before a warrant may be obtained
•no allowable force except "self-defense"	•"self-defense" plus reasonable/ nondeadly force to effectuate stop or prevent escape	•"self-defense" plus reasonable force to effect arrest or prevent escape
•no warnings required prior to questioning	•no warnings required prior to questioning	•*Miranda* warnings required prior to custodial interrogation in criminal cases: in administrative cases, I-826 (or I-770 for unaccompanied minors, or I-848/848A for El Sals.) rights advisals required prior to VR or NTA/WA -
•no search authority	•"search" authority is limited to frisk for weapons if BPA reasonably believes the subject to be armed and dangerous. Includes a patdown of the subject's outer clothing and personal possessions, as well as unlocked areas of a vehicle's passenger compartment where the subject could reach for a weapon. "Frisk" is strictly for officer safety and BPAs may only remove objects which reasonably resemble weapons.	•search "incident to arrest" includes subject's person, the area within the subject's immediate control, personal property in the subject's immediate possession, and the entire passenger compartment of the vehicle which the suspect occupied, including glove boxes, consoles and open or closed containers within the passenger compartment. Search is not limited to weapons, and may include evidence, contraband, etc.

C. LAW REGARDING "*CONSENSUAL ENCOUNTERS*"

Law enforcement officers may engage in casual conversation with any person encountered in a public place; i.e. public street, parking lot, railroad/airport/bus terminal or conveyance, shopping mall, etc. Such "consensual encounters" may also take place in private areas where officers are lawfully present with consent or a warrant. Consensual questioning may take place without any particular suspicion, and officers need not provide any warnings or rights advisals prior to initiating questioning. Statements made during the course of consensual questioning may be used by officers to formulate "reasonable suspicion" to detain the subject for further investigation, or may give rise to "probable cause" to arrest the subject. As such, consensual questioning is a valuable enforcement tool which may easily aid officers in uncovering evidence of criminal activity and/or illegal aliens.

A consensual encounter does not include any right by officers to use force, or to conduct any search or frisk. Rather, the subject is not required to answer the officer's questions and remains free to walk away at any time. Further, a subject's "attitude" or refusal to answer an officer's questions, without more, does not constitute "reasonable suspicion" to justify detention.

At times, an initially consensual contact may escalate into an "investigative detention," which imposes significant restrictions upon an officer's authority to continue questioning the subject. In such cases, the court will apply the following test to determine whether questioning was consensual or detentive:

> *would a reasonable person feel free to leave or to decline the officer's requests?*

The court will look at the parties' actions and conduct; an officer's subjective belief of guilt is irrelevant so long as it is not conveyed to the subject. Further, the court will analyze the facts and circumstances of each case, and will evaluate certain types of factors which are indicative of either consensual encounters or involuntary detentions. The factors set forth on the following page describe typical patterns of police conduct which the courts tend to categorize as consensual or detentive, as indicated below.

FACTORS INDICATING CONSENSUAL ENCOUNTER:	FACTORS INDICATING TEMPORARY DETENTION:
• officer on foot approaches a pedestrian subject	• officer "stops" a subject's car
• one or two officers approach a pedestrian subject	• many uniformed officers approach the subject
• officer inspects and **returns**: •keys •documents •tickets •property	• officer inspects and **retains**: •keys •documents •tickets •property
• officer uses friendly tone of voice or casual language	• officer uses loud, forceful or demanding tone of voice. "cop talk"
• officer tells the subject he's free to leave	• officer tells the subject he's a suspect
• officer asks the subject if he's willing to answer a few questions	• officer demands that the subject remain and answer questions
• officer explains the reason for questioning	• officer accuses the subject of a crime
• officer in a vehicle requests a pedestrian subject to approach the vehicle	• officer places the subject in the back of a patrol vehicle during questioning
• officer shines light on a subject at night	• officer shines flashlight in the subject's eyes
• officer makes small talk or routine conversation, i.e. "wait. can we talk to you"	• officer uses commands: i.e. "hold it; USBP"
• officer requests identification and explanation of suspicious activity	• officer demands identification and accuses the subject of criminal activity
• officer minimizes body space between the officer and the subject but does not touch the subject	• officer physically touches the subject
• officer identifies self as BPA	• officer repeatedly flashes badge; draws or displays weapon or baton
• officer drives vehicle or walks behind or alongside the subject (no lights or siren) and does not block the subject's path	• officer drives or parks head-on toward subject's vehicle, blocks subject's path, controls subject's speed or direction, or walks at or blocks subject's foot path
• subject need not answer and may walk away at any time	• officer persists in demanding answers after the subject's refusal to cooperate
	• subject is not free to leave

D. LAW REGARDING TEMPORARY/INVESTIGATIVE DETENTION

Where law enforcement officers have reasonable suspicion, based upon specific articulable facts and rational inferences from those facts, that criminal activity is afoot, they may generally detain the suspect(s) in order to briefly investigate the suspicious activity. In the context of immigration law enforcement, where Border Patrol Agents have **reasonable suspicion**, based upon specific articulable facts, that a vehicle contains **aliens** who are **illegally present** in the United States, they may **stop the vehicle** and briefly question those occupants reasonably believed to be aliens as to their right to be or remain in the United States. Similarly, where Border Patrol Agents have **reasonable suspicion**, based upon specific articulable facts besides mere ethnic appearance, that a pedestrian is an **alien illegally in the United States** or is committing a federal crime in their presence, they may temporarily **detain** the suspect for brief investigation as to immigration status or suspicious circumstances. Such temporary investigative detention may be known as a "*Terry*" stop, a "roving patrol" stop, or simply a "stop." While such temporary investigative detention is a "seizure" in that the suspect is not free to leave, the courts have ruled that it does not rise to the level of a full arrest. Therefore, detentive questioning need not be proceeded by *Miranda* warnings or other rights advisals. Further, any statements made during the course of a valid "stop" may give rise to "probable cause" to arrest the subject.

1. Reasonable Suspicion

Agents making vehicle stops or detaining pedestrians for questioning must be prepared to testify as to their "reasonable suspicion" (often mistakenly called "PC") for the stops. The court will thoroughly analyze all the facts and circumstances of each case to determine whether an agent's suspicion was reasonable to justify the temporary detention; no one factor is dispositive. Agents should note a recent trend by the federal courts to criticize vehicle stops by the Border Patrol in particular. In several cases, the courts stated that the BPAs' descriptions of suspicious persons and behavior could just as easily describe innocent and/or legal persons engaging in legitimate activities.

Agents should be aware that ethnic appearance alone does not constitute "reasonable suspicion" to justify temporary detentive questioning. In addition, some courts have ruled that eye contact (or lack of eye contact) is not a significant factor, nor is driving an older model vehicle and/or a vehicle with a large trunk. Further, while a "profile" may constitute a good lead upon which to begin an investigation, agents must be prepared to testify regarding other suspicious factors about the particular vehicle and/or its occupants which lead the agents to reasonably suspect that it presently contains illegal aliens or is otherwise involved in criminal activity. While the courts defer to officers' experience as to the suspicious nature of particular areas or patterns of conduct commonly exhibited by illegal aliens and smugglers, officers must point to specific conduct by the particular persons(s) stopped to prove that the detention was based on more than a mere hunch. In addition, agents should note that a subject's "attitude" or refusal to answer questions during a consensual encounter does not constitute "reasonable suspicion" to justify detentive questioning.

Agents should note that "reasonable suspicion" is their sole authority to detain a pedestrian or stop a vehicle on roving patrol. However, "reasonable suspicion" may justify: the use of nondeadly force to effect a stop; temporary detention while agents promptly investigate immigration status or suspicious circumstances; and a frisk for weapons, in limited circumstances as described below.

2. Frisk

Where law enforcement officers **reasonably believe** that a lawfully stopped subject is **armed and dangerous**, they may "**frisk**" the subject for weapons. Such a "frisk" may only be made where there is an articulable concern for officer safety; i.e. agents see bulges in clothing or bulky garments, quick hand movements, subject reaches into pockets, or subject is suspected to be involved in a violent crime, gangs, drugs, failure to yield, etc. A "frisk" is designed strictly to find weapons; it may not be used as a pretext to search for evidence or contraband.

A lawful frisk includes a patdown of the suspect's outer clothing. If the patdown reveals a hard object that feels like a weapon, then the frisk may include a further patdown beneath the subject's outer clothing. Agents may remove any hard object that reasonably resembles a weapon; i.e. gun, knife, club, sharp object, blade, bullet, screwdriver, etc. During a "frisk," agents are not authorized to reach into pockets or remove items not reasonably resembling weapons even though such objects might feel suspicious; i.e. soft/small objects, matches, cigarettes, plastic bags, wallets, coins, folded papers, etc. Unless agents have probable cause to arrest the suspect or they obtain the subject's consent to search, such non-weapon suspicious objects may not be searched or seized unless agents are absolutely sure from plain touch (without looking or smelling) that the suspicious objects on a subject's person are contraband.

In addition, where the suspect is encountered during a vehicle stop and is reasonably believed to be armed and dangerous, agents may search for weapons in any unlocked portions of the passenger compartment where the suspect could reach for a weapon; i.e. under seats, floorboard, unlocked glove box, console, etc.

3. Use of Force to Effect a "Stop"

Agents making vehicle or pedestrian "stops" are authorized to use nondeadly force reasonably necessary to effect the temporary investigative detention or to prevent a suspect's escape. Reasonable force in the context of stops ordinarily includes any necessary touching; i.e. hands on the subject's arm, elbow, shoulder, belt, or minimal push/pull-type direction, etc. During investigative detention, agents are authorized to block the suspect's foot path to compel the suspect to remain at the scene during their brief investigation. An agent's use of handcuffs or display of a firearm or baton should not be unnecessarily or routinely applied in "stops," as a court would generally find these measures to be consistent with an "arrest" rather than a "stop."

4. <u>Scope and Extent of Temporary/Investigative Detention</u>

A temporary investigative detention may only last a brief time as reasonably necessary to diligently investigate the suspicious activity and quickly confirm or dispel the agents' suspicions, resulting in either the suspect's arrest based upon probable cause, or in the subject's release. In the immigration context, investigative detention may only last as long as reasonably necessary to determine a suspected illegal alien's immigration status or to investigate other suspicious circumstances. Agents are obligated to diligently pursue a means of investigation likely to quickly resolve questions as to immigration status or other suspicious circumstances; brief delays for computer checks are acceptable if documents presented are questionable or inadequate for some particular reason. There is no set time period for a "reasonable" stop, and there are cases both for and against stops lasting 5, 10, 20, 30 minutes, and even hours, etc. The court will carefully consider the facts of each case based upon agents' reports and testimony. Agents should thoroughly document any evasive, false, or implausible information provided by a suspect, as well as any lack of cooperation by a suspect which caused delay to the agent's diligent investigation. However, a suspect's complete refusal to speak does not itself constitute probable cause to arrest. Therefore, unless agents quickly develop probable cause based upon their observations and information from other sources besides the suspect, an uncooperative suspect must be released.

Agents making vehicle stops may order suspects to exit their vehicles during temporary investigative detention; however, agents should avoid placing suspects in the back of Service vehicles during questioning, as the court may find that an arrest has taken place.

Further, agents may only move or transport a suspect away from the scene in rare circumstances involving safety concerns or where victims/witnesses are nearby and could quickly identify the suspect. Agents making vehicle or pedestrian stops are not authorized to **transport** a suspect to their station for questioning or fingerprinting unless they have probable cause to arrest.

E. CONSEQUENCES OF "BAD" STOPS

BPAs' written descriptions of "reasonable suspicion" are important not only to win the case against a suspect, but also to prove that the agents acted properly in the event of civil lawsuits or other challenges. For example, if BPAs are unable to articulate "reasonable suspicion" to justify stopping a vehicle which is found to contain illegal aliens or drugs, the government will **be unable** to **prosecute** the driver or **seize/forfeit** the vehicle. In addition, the Ninth Circuit recently ruled that the government **may not deport** an illegal alien located during a roving patrol stop if the stop is based solely upon the Hispanic appearance of the occupants. Further, if the Border Patrol and/or individual agents are sued in a **civil lawsuit** alleging a pattern of discriminatory vehicle stops or harassment of pedestrians, BPAs' written descriptions of "reasonable suspicion" will be critical to prove that the agents acted properly and within their authority. BPAs should note that at least five such lawsuits have already been filed against the Border Patrol, which have resulted in three court orders against the Border Patrol, and a recent settlement agreement in a class action lawsuit involving numerous El Paso agents in their personal capacities. One such lawsuit remains pending in the District of Arizona.

As such, BPAs are advised that a court finding of "bad" stops may have serious adverse legal consequences which may affect an agent or Sector for many years.

F. CONCLUSION

Consensual questioning is a valuable enforcement tool which may easily aid officers in uncovering evidence of criminal activity and/or illegal aliens. Border Patrol Agents should avoid language or conduct indicative of detention unless justified by "reasonable suspicion" that a particular subject is an illegal alien or is committing a federal crime in the agents' presence. In addition, agents are advised to thoroughly document suspicious factors and behavior to support their suspicion that a particular vehicle contains aliens who are illegally in the United States. For further information or citations to specific case law regarding these subjects, agents are encouraged to contact Service counsel.

ROVING PATROL STOPS

WHY ARE WE OUT THERE?

TO ENFORCE TO THE IMMIGRATION AND NATIONALITY ACT

IN THE STATE OF TEXAS BORDER PATROL AGENTS ARE NOT PEACE OFFICERS AND MAY ONLY ACT PURSUANT TO STATUTORY AUTHORITY

THREE TIERS OF POLICE CONTACT WITH PUBLIC

1.) Innocent and casual conversation.

2.) Stop and temporary detention from a reasonable suspicion based on articulable facts that criminality is afoot.

3.) Arrest and seizure based on probable cause.

A Border Patrol Agent conducting a roving patrol stop may make a temporary investigative stop of a vehicle if aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicle is engaged in illegal activities.
U.S. v. Brigoni-Ponce, 422 U.S. 873 (1975)

The officer must be able to articulate something more than an "inchoate and unparticularized suspicion" or "hunch."
U.S. v. Sokolow, 109 S.Ct. 1581, 1585 (1989)

REASONABLE SUSPICION FACTORS

1.) Characteristics of the area.
2.) Proximity to the border.
3.) Usual patterns of traffic and time of day.
4.) Previous experience with alien or drug smuggling in the area.
5.) Behavior of the driver, including obvious attempts to evade officers.
6.) Officer experience and training.
(number, appearance and behavior of passengers)
Brignoni-Ponce, 422 U.S. 873, 95 S. Ct. 2574 (1975)

-As cited by Judge Kazen

VALID:

1.) Agent sitting at stop light. Goes up to vehicle and smells dope. P/C to search

2.) Jump and run from vehicle. Vehicle is abandoned. Inventory search.

3.) Just walk up and talk to the driver at a stop light or stop sign. No seizure or detention. No lights or siren.

4.) U-turn or turn around in front of the checkpoint on an are not used for U-turns. Especially if the driver exits the area at accelerated speed.

5.) Driver veers off road and drives through the grass or cuts across the median.

6.) FM 1017. Known smuggler route. Experienced agent. 4:30 A.M. In Oil truck. Driver confused and unable to answer questions. Okay to rap on exterior fuel tanks.

7.) FM1017. Known smuggler route. Arkansas plates. Passenger ducked. Later saw vehicle parked with it's back against the store of a closed store. Early Sunday morning.

8.) FM 1017. Tip from informant that dope was being transported. Large radio antenna. 0645. Traveling back and forth as if looking for something.

9.) Overheard a drug deal on the scanner. Dope sting going on in area. 0130. Saw vehicle driving very slowly on the shoulder of road. Driver fled on BPA approach.

10.) 59 & FM 2050: 0500. Intel lookout that ranch area being used for smuggling. Brush hanging of the back of vehicle. Slowed to 45 from 65 when saw BPA. Agent experience knew that no activity at that time of day.

11.) In known smuggling area, riding low. Passenger slouched. Erratic driving.

12.) Temporary Checkpoint. Traffic light. Large step sign.

13.) Coming out of ranch on the border to US 83 at midnight. Red mud on van. Looked like a scout vehicle. Heavily loaded/riding low. Van kept driving onto shoulder.

14.) FM 1017. Agent experience did not recognize vehicle as being part of local traffic. License plate registered to someone in Alice. Freshly painted. Truck looked irregularly low like it had a false bottom.

15.) FM 1017. Notorious smuggling route. 1730. Kentucky plated on an old sedan. Hispanic occupants, riding low and crossing center line. Passengers slouched and kept looking back. Went from 55 to 45-40. (close)

16.) FM 1017. 1020 on Jan. 2. Notorious smuggling route. Not a local vehicle. Looked like an oil company truck but no logos. Carrying poorly secured cinder blocks that fell off on turns. Driving 60-65 on turns. (Traffic safety alone showed that something was wrong)

17.) High speed maneuvering and erratic driving. (close)

18.) BPA pulls up close without lights/siren to check license plate number. Defendant pulls off road and runs.

19.) FM 1017. U-Haul w/PA plates. Notorious. Not a local vehicle. Strange turns. running off and on road.

20) Reliable tip that dope being moved. BPA told to lookout for vehicles coming his way. Trucks are approaching one another on the highway. They turn around and begin to follow one another. BPA U-turns they accelerate and take-off.

21.) Pickup w/camper shell and a tarp. Area of known smuggling. Starr county license plate. Driver look of surprise and fear. Erratic driving, frantic looks in rearview mirror.

22.) FM1017. 2-3:00 A.M. Agent experience knows type of vehicle. Riding low. Out-of-state license plate.

INVALID

1.) FM 1017. Can't pass vehicles stop them at a stoplight and declare yourself a checkpoint.

2.) FM 1017. Going 70 miles an hour. Driver looked back at BPA 3 times. Passenger slouched down. Did not come to a complete stop at stop sign. Slowed down when saw BPA.

3.) FM 1017. Slouched down when saw BPA. License plate from Houston.

4.) Fm 1017. Noon. To attempt to hide. Stopped beyond the stop sign. Touched the center line 3 times and went onto the should twice. **License plate on upside down.

5.) FM 1017. Monday morning. Stopped vehicle based on a 6-month old lookout. Car was clean and relatively new. Slowed down when saw BPA.

6.) FM 1017. Saw 7 vehicles in procession. Stopped them by pulling front of them at stop light, jumping out and declaring himself a checkpoint.

7.) FM 1017. 10 year old car w/Texas plates. Car registered to someone in Houston 2:00 P.M. on a weekday. Very little traffic on a known smuggling route. Followed for 10 miles watched car cross center line. Passengers "bolted upright." Made some strange turns. It looked like there were visible passengers talking to invisible passengers. No weight.

8.) FM 1017. Large smuggler type vehicle. Erratic driving as if unfamiliar with road.

9.) FM 1017. Heavy Suburban. 1:00 A.M. Inexperienced agent.

10.) FM 1017. Large old sedan. 1:00 P.M. on a weekday. Driver avoided eye contact. Crossed center line and went off the side of the road periodically.

11.) North on IH 35. Heavy traffic. 35 MPH. Slowed down when followed. Avoided eye contact. Riding low.

12.) Saw a person look back from a van and then disappear from sight. Tinted windows. Late in the day. Agent found to lack credibility.

13.) Back road at noon on a weekday. 7 year old pick-up with an out of county license plate. Driver sat rigid in seat and would not look at agent. Did look in rearview mirror twice. Lowered speed and crossed center line once or twice.

14.) Cox road. Truck looked like an oil company vehicle but was registered to an individual. Construction helmet in window driver clean cut with shirt and tie. Large antenna. Clean truck. Driving towards Laredo.

15.) Two vehicles look like they are caravaning. First car begins to act suspiciously. Cannot stop the second car without some reasonable suspicion that the second car is also involved in illegal activity.

16.) Cox road. BPA saw a passenger but when agents U-turned to follow the passenger was no longer visible.

17.) Tip that a yellow station wagon with coke bottles strapped to the luggage rack would would be carrying dope to San Antonio. Tip was from a known informant. A yellow station wagon was stopped at checkpoint. Court held that the tip was too general and only contained information that was available to the public. There was nothing specific about the tip to show that the tipster was acquainted with the subject and knew of potential criminality.

18.) Highway 59 left turn at 44. Minor erratic driving Only pursued because they turned left on 44.

19.) Tip that 2 vehicles would be heavily loaded and gong down a major highway at a certain time.

HIGH IMPORTANCE

- TIME OF DAY
- OBVIOUS ALTERATIONS TO THE VEHICLE (I.E FALSE BOTTOM)
- RUNNING WITHOUT LIGHTS AT NIGHT
- OUT OF STATE PLATES
- BRUSH, MUD OR CLAY ON A VEHICLE THAT WOULD NOT NORMALLY BE RUNNING ON AN OFF ROAD OR IN THE AREA
- VEHICLE CIRCLING OR DRIVING BACK AND FORTH AS IF LOOKING FOR A RENDEZVOUS
- WEEKEND AND EVENING AS OPPOSED TO DAYLIGHT
- U-TURNS ESPECIALLY IF THEY ARE IN AN UNAUTHORIZED AREA
- TIPS FROM A RELIABLE INFORMANT WHO PREDICTS WHAT THE SMUGGLER WILL DO OR CAN PROVIDE INFORMATION THAT IS SPECIFIC ENOUGH TO SHOW THE KNOW THE SMUGGLER WELL ENOUGH TO KNOW THAT THEY WILL ENGAGE IN CRIMINAL CONDUCT.

MEDIUM IMPORTANCE

- AGENT EXPERIENCE
- THE AREA IS WELL KNOWN TO BE A SMUGGLING AREA WITH LITTLE TRAFFIC
- VEHICLE IS OUT OF PLACE FOR THE AREA IT IS IN
- VEHICLE IS RIDING OBVIOUSLY LOW
- VERY ERRATIC DRIVING
- PASSENGERS ARE VISIBLE AND THEN BECOME INVISIBLE

LOW IMPORTANCE

- SLOUCHING
- OUT OF COUNTY TEXAS PLATES
- OCCASIONALLY CROSSING THE CENTER OR LINE OR ROAD SHOULDER
- DRIVER LOOKING BACK IN THE REARVIEW MIRROR (MANY TIMES)
- PASSENGERS VISIBLE AND THEN INVISIBLE
- INCREASING/DECREASING SPEED BY A LARGE MARGIN.
- GENERIC TIP INFORMATION

NO WEIGHT

- NOT LOOKING AT BPA
- SLOWING DOWN ON BPA APPROACH
- SITTING BOLT UPRIGHT
- LOOKS AFRAID OR NERVOUS
- DRIVER SWEATING
- RADIO ANTENNA
- ANYTHING THAT HAPPENS AFTER THE STOP

REMEMBER

- GOOD CASES CAN BE MADE BY JUST WALKING UP AND ENGAGING IN CASUAL CONVERSATION
- CONSIDER TEMPORARY CHECKPOINTS (USE CORRECT EQUIPMENT)
- USE YOUR NOSE. IF YOU SMELL DOPE, HEAVY PERSPIRATION OR SOMETHING ELSE THAT IS ODD, THEN SOMETHING IS PROBABLY WRONG
- NO MATTER WHAT YOU DO, THE EXPERIENCE AND OPINION OF THE JUDGE IS WHAT COUNTS. MANY OF THESE CASES ARE VERY CLOSE FACTUALLY. YOUR PRESENTATION WILL MAKE THE DIFFERENCE. BE COMPLETE, YOUR CREDIBILITY IS IN ISSUE.

DEA Jetway Intel Bull

U.S. Department of Justice
Drug Enforcement Administration

March 1998
DEA-98012

DEA Intelligence Division Intelligence Bulletin

Operation Jetway:
State and Local Success In Commercial Transportation Drug Interdiction

MISSION STATEMENT

Operation Jetway is a Special Enforcement Operation that was established in 1993, with DEA as the lead agency, to provide uniform, standardized training and statistical analysis to federal, state, and local drug interdiction units working at airports, bus stations, train stations, and parcel facilities nationwide. The primary goals of the Jetway Program are 1.) to ensure that the nations interdiction units are afforded training in accepted interdiction techniques, within the confines of current legal decisions and case law, and 2.) to increase the effectiveness of interdiction efforts on both a national and international scale.

On a Divisional level, the Special Agent in Charge, and those Assistant Special Agents in Charge, Resident Agents in Charge, and Group Supervisors involved with drug interdiction units, are responsible for monitoring and evaluating the effectiveness of the units to ensure that the interdiction members have received the proper training and are adhering to DEA policies and procedures. Additionally, appropriate DEA supervisors will systematically review case files and evaluate all of the operational aspects of the interdiction units under their command for adherence to program objectives, methodologies, current interdiction laws, and accepted interdiction procedures.

Training and oversight for Operation Jetway is coordinated through the DEA Headquarters State and Local Programs Section (DOS) and the statistical data and Jetway Directory are coordinated through the El Paso Intelligence Center (EPIC).

TRAINING

Drug interdiction units evolved from an early relationship formed during the 1970's between state and local police officers and DEA Agents working at airport details for the purpose of combating drug couriers. These officers/agents had recognized that the drugs flowing into their cities could be traced to certain "source cities", such as Miami or Los Angeles. The officers/agents decided that rather than investing countless hours on surveillance, it would be more effective initiating drug interdiction efforts at the airports.

DOS is responsible for budgeting and coordinating approximately one (1) to two (2) Jetway schools per month (effective April 1998) based on requests that are received from the various field divisions. The schools are taught by instructors certified by DOS, utilizing a drug interdiction lesson plan that has been approved by the Office of Chief Counsel, DEA Headquarters and DEA Training. The legal portion of the interdiction training is taught by staff attorneys from the Office of Chief Counsel. Through this effort, all interdiction groups will receive the necessary training to adhere to DEA policies and procedures and meet the objectives of the program.

EPIC is responsible for collecting and disseminating statistical data relevant to drug interdiction seizures and maintaining a Jetway Directory containing the listing for the 179 drug interdiction units nationwide.

Training is the foundation of Operation Jetway. The selection and training of personnel in interdiction units is paramount. Jetway training is a result of collaboration in the late 1980's between DEA and state and local law enforcement in setting standards for the Jetway Program. The curriculum for the training program is a refinement of what has been learned about drug couriers through years of observation and interaction with them. Jetway training involves three days of instruction. Each school is taught by experienced, certified interdiction agents/officers, and the DEA Staff Coordinator monitors all the Jetway schools to ensure that they conform to DEA requirements and guidelines. The training focuses on: (1) legal issues in transportation interdiction investigations, (2) drug trafficking trends and key characteristics that are shared by drug traffickers, and (3) effective use of investigative tools and intelligence sources. Also, each school is tailored to the region where it is to be delivered and to the specific needs of the participating agencies, which could include train interdiction, bus interdiction, parcel interdiction, etc. All schools include the following core subjects:

Establishing an office (1 hour)
Airport Interdiction (1 hour)
Legal issues involving interdiction encounters (2 hours)
Detentions (2 hours)
Visual courier characteristic recognition (2 hours)
Sources of Information (1 hour)
Effective use of computer information (2 hours)
Airline ticket analysis (1 hour)
Interviewing techniques (2 hours)
Controlled deliveries (1 hour)

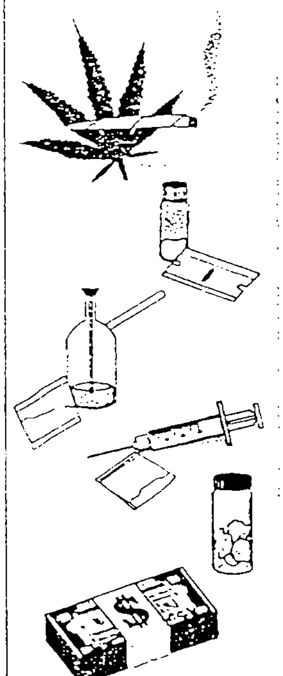
Jetway training officers/agents prepare and deliver a well rounded course on drug interdiction utilizing a drug interdiction lesson plan that has been approved by the Office of Chief Counsel and DEA Training in Quantico. Course instruction includes constitutional law, search and seizure with regard to consensual encounters/detentions (taught by DEA staff attorneys from the Office of Chief Counsel), drug courier indicators and concealment methods. Each attendee at a Jetway School is given an "Airport Interdiction Manual," prepared by members of DEA's Office of Chief Counsel. The manual provides information regarding the legal aspects of drug interdiction encounters. All of these subjects are intended to broaden the agents/officers knowledge of the law, as well as sharpen their awareness of drug trafficking methods.

It is well established that law enforcement personnel may approach anyone and engage in a consensual encounter. Jetway instructors stress that agents/officers are not to approach a passenger based on race, gender, or age. However, when agents/officers intend to temporarily detain a person, they are taught that they must be able to identify and articulate specific factors which when viewed collectively give reasonable suspicion that an individual is involved in smuggling contraband. There is no national drug courier profile. However, there are unquestionable patterns of activity, methods, and characteristics that are shared by drug traffickers and other criminals. Agents/officers are trained to spot these characteristics at the various aforementioned interdiction locations. The following are examples of indicators:

Several key indicators of drug couriers

- Ticket paid for with cash
- Ticket purchased on same day of travel or the previous day
- One-way travel
- Quick turnaround
- Checked in just prior to departure
- Late night/early morning reservations
- No reservations (walk-up to counter)
- Provides a fictitious or unrelated telephone number
- Travel from source city
- Multiple passengers trying to act like they are not together
- Inconsistent statements
- Unusually nervous

Operation JETWAY Seizures in Kilograms FY-1993 thru 1997



Marijuana
94,244 kilograms

Cocaine
10,202 kilograms

Methamphetamine
643 kilograms

Heroin
248 kilograms

Crack Cocaine
227 kilograms

Seized a Total of Over $155 Million in Currency

The Operation Jetway Program has a proven record of achievement. Since the inception of the program in 1993 through fiscal year 1997, drug interdiction groups have seized 94,244 kilograms of marijuana; 10,202 kilograms of cocaine, 227 kilograms of crack cocaine, 248 kilograms of heroin, 643 kilograms of methamphetamine and over $155 million in U.S. currency.

SUCCESS STORIES

On June 12, 1997, Agents and Officers of the DEA New York Field Division seized 10 kilograms of heroin and arrested two couriers who had arrived at JFK from Detroit. The drugs were concealed in 14 designer jackets which were packed into two suitcases. A controlled delivery subsequently resulted in the arrest of three New York based Colombian nationals.

Another example of a success story occurred September 23, 1997 when the Orange County interdiction team at John Wayne Airport (JWA) seized 6.5 pounds of Black Tar heroin and 4.5 pounds of cocaine, and arrested three suspects. The three were traveling from JWA to St. Louis, Missouri when arrested. Agents obtained a consensual search from the defendant as he attempted to board the aircraft and found 3 pounds of cocaine taped to his body. His accomplices were located aboard the aircraft and a consensual search recovered 5 pounds of Black Tar heroin and 1.5 pounds of cocaine taped to the suspect's bodies. An additional 1.5 pounds of Black Tar heroin was later discovered in the shoe the suspect was wearing.

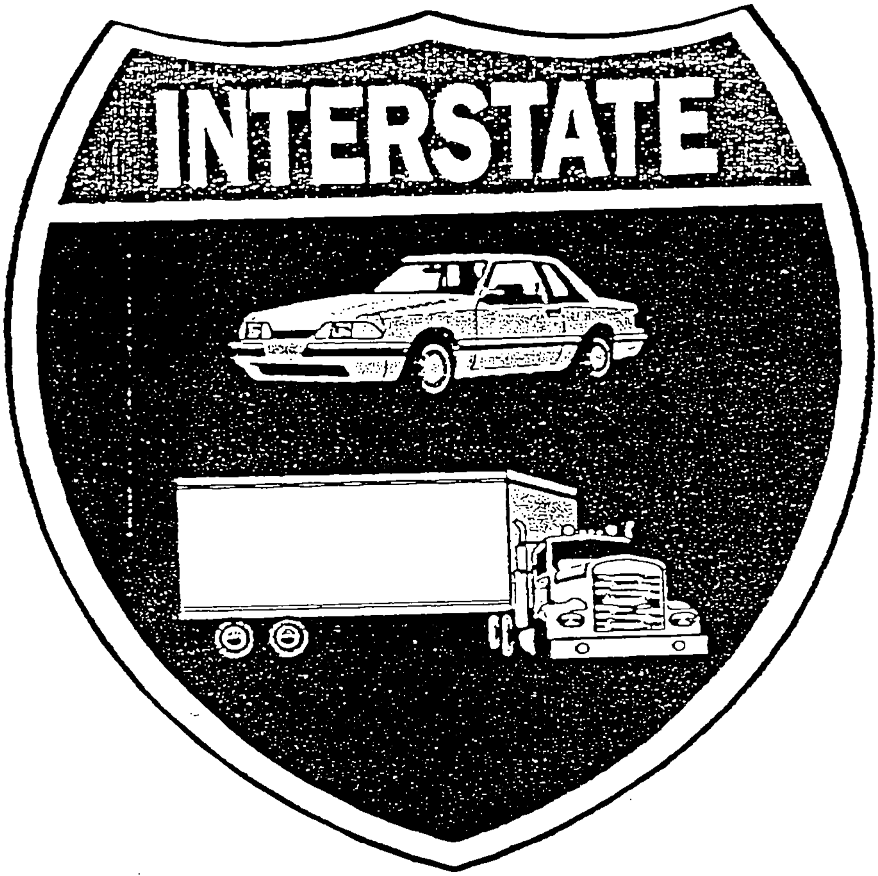
OVERSIGHT

The Special Agent in Charge, along with the responsible Assistant Special Agent in Charge (ASAC) must monitor the interdiction units and review cases to ensure that these units follow DEA guidelines and procedures with regard to drug interdiction. Also, they should ensure that those ASAC's, Group Supervisors, Resident Agent's in Charge, Special Agents and Task Force Officers working in interdiction units, including those units that lack DEA participation, have received the aforementioned training. DEA training is both offered and encouraged to alleviate any legal problems or officer safety issues that may arise due to improper interdiction methods.

Agents and task force officers with information concerning potential drug couriers, and information in regards to the couriers destination, should first inform the DEA agents working in the destined area. If this is not possible, or if there is no DEA presence in the area, the local narcotics unit should be contacted. If the responding police officers do not have any training or experience in drug interdiction, then the agents/officers should attempt to provide as much assistance as possible regarding procedures and methods generally employed involving drug interdiction investigations. Additionally, once identified, those police officers that could be involved in future drug interdiction investigations will be offered drug interdiction training via the Jetway Program.

This report was prepared by the State and Local Programs Section (DOS). Requests for copies are welcome, and questions /comments may be directed to DOS at DEA Headquarters, at (202) 307-8863.

EL PASO INTELLIGENCE CENTER
DRUG ENFORCEMENT ADMINISTRATION



OPERATION PIPELINE/CONVOY

WEST MEMPHIS, ARKANSAS
JUNE 15 - 17, 1999

EPIC EL PASO INTELLIGENCE CENTER

U.S. Department of Justice • Drug Enforcement Administration

A MESSAGE FROM THE DIRECTOR

With great pleasure, it is our honor at the El Paso Intelligence Center (EPIC) and the Drug Enforcement Administration (DEA) to sponsor OPERATION PIPELINE/CONVOY training. Since the inception of highway interdiction in the early 1980's, formal training in the application of detection techniques has grown and evolved dramatically. EPIC and DEA, in conjunction with host law enforcement agencies, now funds and coordinates OPERATION PIPELINE/CONVOY training throughout the United States and Canada, recently expanding efforts internationally. OPERATION PIPELINE/CONVOY instructors, who are working experts from a variety of law enforcement agencies and professional disciplines, have trained more than 25,000 uniformed officers.

Uniformed officers play a critical role in contraband interdiction. The Nation's streets and highways are the criminal's most vulnerable avenues of transportation. This training is intended to provide you with additional practical knowledge and reinforce awareness and techniques that will assist you in becoming more productive in interdiction activities while ntaining high officer safety. Your participation and comments throughout the program are ouraged and highly valued. They assist us in maintaining a dynamic program, with timely and relevant topics and techniques. Please share your experiences with us in the spirit of cooperative law enforcement, as they only enhance and broaden this training.

EPIC, from the initial training, to the Watch inquiry support during traffic stops, to assisting cooperative law enforcement efforts in controlled deliveries, to extensive post seizure analysis, to asset sharing and trend analysis publications, hopes to maintain a highly active, supportive role in your interdiction techniques. To date, over 270 state and local law enforcement agencies participate in sharing concealment trends and seizure information so that our efforts to combat crime and interdict contraband, including drugs, remains current. Please let us know if there is any way we can improve the program in our efforts to support you.

Thank you for your participation.

John B. Brown

John B. Brown, III
Special Agent in Charge
El Paso Intelligence Center

OPERATION PIPELINE/CONVOY TRAINING

West Memphis, Arkansas
June 15 - 17, 1999

HOSTED BY

ARKANSAS HIGHWAY POLICE
LITTLE ROCK, ARKANSAS

DRUG ENFORCEMENT ADMINISTRATION
LITTLE ROCK, ARKANSAS

SPONSORED BY

EL PASO INTELLIGENCE CENTER
DRUG ENFORCEMENT ADMINISTRATION
EL PASO, TEXAS

OPERATION PIPELINE/CONVOY TRAINING

West Memphis, Arkansas
June 15 - 17, 1999

TUESDAY
JUNE 15, 1999

8:00 - 8:30	REGISTRATION
8:30 - 9:00	OPENING REMARKS

George Coffman
Captain
Arkansas Highway Police
Little Rock, Arkansas

COURSE OVERVIEW

Steve Riley
Special Agent
Drug Enforcement Administration
El Paso Intelligence Center

Tı)AY
JUNE 15, 1999

9:00 - 11:00 **ARKANSAS TRENDS**

Nick Phillips
Officer
Arkansas Highway Police
Marion, Arkansas

11:00 - 11:30 **EPIC OPERATIONS/ACCESS**

Steve Riley
Special Agent
Drug Enforcement Administration
El Paso Intelligence Center

11:30 - 12:30 **LUNCH**

12:30 - 5:00 **PASSENGER VEHICLE INTERDICTION TECHNIQUES**

Larry Cuslidge
Officer
California Highway Patrol
Indio, California

/EDNESDAY
JNE 16, 1999

:00 - 11:30	**PASSENGER VEHICLE INTERDICTION TECHNIQUES-CONTINUED** Larry Cuslidge Officer California Highway Patrol Indio, California
11:30 - 12:30	**LUNCH**
12:30 - 5:00	**COMMERCIAL MOTOR VEHICLE INTERDICTION TECHNIQUES** Jack McMullin Sergeant Missouri State Highway Patrol Springfield, Missouri

THURSDAY
JUNE 17, 1999

8:00 - 11:30 **COMMERCIAL MOTOR VEHICLE INTERDICTION TECHNIQUES-CONTINUED**

Jack McMullin
Sergeant
Missouri State Highway Patrol
Springfield, Missouri

11:30 - 12:30 **LUNCH**

12:30 - 3:00 **SEARCH & SEIZURE ISSUES**

Fred Thorne
Deputy Prosecuting Attorney
Crittenden County Prosecuting Attorney's Office
West Memphis, Arkansas

THURSDAY
JUNE 17, 1999

3:00 - 4:30 CLANDESTINE LABORATORIES

William Bryant
Resident Agent in Charge
Drug Enforcement Administration
Little Rock, Arkansas

4:30 - 5:00 CLOSING REMARKS

&

CERTIFICATE PRESENTATION

ADDITIONAL INFORMATION

OPERATION PIPELINE/CONVOY training programs are presented by DEA and coordinated by EPIC. Requests for training can be initiated through local DEA offices or by calling EPIC directly. For additional training information, and for information regarding EPIC's authorized State Police agency representatives, contact EPIC's State & Local Liaison Unit at 800-927-0468.

For information regarding seizure reporting and intelligence analysis, contact EPIC's Pipeline Analysis Group at 800-487-0472.

United States Department of Justice
Drug Enforcement Administration
El Paso Intelligence Center
El Paso, Texas

LESSON PLAN FACE SHEET

TITLE OF INSTRUCTION:	*OPERATION PIPELINE/CONVOY - HIGHWAY INTERDICTION*
TIME ALLOTTED:	*24 HOURS - STATE AND LOCAL TRAFFIC OFFICERS*
INSTRUCTORS:	*STATE AND LOCAL INTERDICTION OFFICERS. EL PASO INTELLIGENCE CENTER STATE AND LOCAL LIAISON UNIT*
METHOD OF INSTRUCTION:	*LECTURE. VIDEOS. SLIDE PRESENTATION, PRACTICAL APPLICATION*
DATE:	*MARCH 1998*

SPECIAL AGENT IN CHARGE:

LEGAL:

PLANNING AND EVALUATION:

TRAINING:

TION CHIEF:

OBJECTIVES

A. OVERALL OBJECTIVES:

The course is designed for state and local law enforcement officers whose primary responsibility is traffic enforcement. This course emphasizes the legal and practical methods of utilizing the traffic stop for the seizure of contraband and/or money. This course, coordinated through the El Paso Intelligence Center and funded by the Drug Enforcement Administration, aims to coordinate this seizure of contraband/monies into further enforcement activities including controlled deliveries and post seizure analysis in the effort to contribute to the accomplishment of the mission of the Drug Enforcement Administration.

At the conclusion of this training, the participants will be exposed to the current case law regarding search and seizure as applied to highway interdiction; the course will cover issues of consent, reasonable suspicion and probable cause, and their subsequent application to the traffic stop. The participants will be exposed to visual and audio indicators of deception and its possible indication of criminal activity, as applied to the activity an officer performs during a valid traffic stop. The participant will be exposed to concealment methods used by criminals in prior interdictions and how indicators of deception led the officer to extend their roadside ·erview during a traffic stop. The participant also will be exposed to the information available ɔm Federal databases through the El Paso Intelligence Center, security access procedures, post seizure analysis and other resources available to enable the coordination among different law enforcement entities.

INSTRUCTIONAL OBJECTIVES:

1. Upon completion of the instruction, the student will be able to correctly identify the difference between consent, reasonable suspicion and probable cause while conducting a traffic stop.

2. Upon completion of the instruction, the student will be able to identify recent court case law and appellate decisions, Federal and State, and how they apply to interdiction in the student's jurisdiction.

3. Upon completion of the instruction, the student will be able to correctly list characteristics of deception, audio and visual, that may be observed when an officer makes a traffic stop based on a traffic violation.

4. Upon completion, the student will be able to correctly list relevant questions that may be asked to illicit indicators of deception.

5. Upon completion of the instruction, the student will be able to correctly state that a cumulative list of indicators of deception is necessary to identify possible criminal activity.

6. Upon completion of the instruction, the student will be able to correctly identify officer safety concerns when conducting a traffic stop and roadside interview.

7. Upon completion of the instruction, the student will be able to identify concealment locations in a vehicle that have been used by criminals to secrete contraband

Upon completion of the instruction, the student will be able to list procedures used to effect a controlled delivery of contraband.

9. Upon completion of the instruction, the student will be able to list how to access the El Paso Intelligence Center for information databases while conducting a traffic stop.

10. Upon completion of the instruction, the student will be able to list how to submit arrest/seizure information to the El Paso Intelligence Center and retrieve analytical and statistical information.

.STRUCTIONAL MATERIALS:

A. OVERHEAD TRANSPARENCIES

B. OVERHEAD PROJECTOR

C. HANDOUTS

EL PASO INTELLIGENCE CENTER USER GUIDE PUBLICATION # EUG-01-97
COMMONLY ENCOUNTERED CONCEALMENT METHODS IN LAND VEHICLES EPIC PUB # RD-03-97

D. PRESENTATION BOARD/ FLIP CHART

E. VIDEO MONITOR/ TELEVISION

F. VIDEO CASSETTE RECORDER

G. LAP TOP COMPUTER

H. COMPUTER PROJECTOR

I. SLIDE PROJECTOR

J. SCREEN

GGESTED COURSE OUTLINE:

A. INTRODUCTION

1. PROGRAM OVERVIEW

2. COURSE OVERVIEW

B. LEGAL REVIEW

1. SEARCH AND SEIZURE

a. GENERALLY

i. PERSONS HAVE THE RIGHT TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURES FROM THEIR PERSONS, PLACES OR THINGS.

b. STANDING

i. OWN OR RIGHT TO POSSESS THE THING OR PLACE TO BE SEARCHED

ii. OCCUPANCY

iii. PASSENGERS IN CARS - NO STANDING (RAKAS V. ILLINOIS, 439 U. S. 128, (1978))

2 VEHICLE SEARCHES/DETENTION

a. GENERALLY

i. AUTOMOBILE EXCEPTION BASED ON THE EXIGENCY OF THE CIRCUMSTANCES

ii. VEHICLE MOBILITY AND A LESSER EXPECTATION OF PRIVACY IN A VEHICLE, BOAT, MOTOR HOME AND PLANES

b. DETENTION/STOPS - REASONABLE SUSPICION

i. EXERTION OF AUTHORITY BY LAW ENFORCEMENT

ii. REQUIREMENTS FOR A DETENTION

a. REASONABLE PERSON WOULD BELIEVE HE IS NOT FREE TO LEAVE
b. THAT PERSON SUBMITS TO AUTHORITY (CALIFORNIA V. HODARI D., 499 U.S. 621, (1991))

iii. VALIDITY OF DETENTION

a. REASONABLE SUSPICION THAT:
   i. CRIMINAL CONDUCT IS, HAS OR IS ABOUT TO HAPPEN
   ii. VEHICLE IS CONNECTED WITH THAT ACTIVITY

b. VIOLATION OF VEHICLE CODE PROVIDES REASONABLE SUSPICION (PEOPLE V. URIBE 12 CAL.APP 4TH 1432, (1993)) (WHREN V. UNITED STATES, 116 S.CT. 1769 (1996))

iv. LENGTH OF DETENTION

a. ROUTINE TRAFFIC OFFENSE
   i. CAN DETAIN AS LONG AS IT TAKES TO PERFORM DUTIES NECESSARY TO ISSUE CITATION

V. INVESTIGATIVE DETENTION

a. NOT A ROUTINE TRAFFIC STOP

b. APPROPRIATE LENGTH OF INVESTIGATIVE DETENTION
   i. MUST DILIGENTLY PURSUE A MEANS OF INVESTIGATION LIKELY TO CONFIRM OR DISPEL SUSPICIONS QUICKLY

VI. ORDERING OCCUPANTS OUT OF VEHICLE

a. DRIVER ORDERED OUT OF VEHICLE
   i. REASONABLE BASED ON INHERENT RISK
   (PENNSYLVANIA V. MIMMS, 434 U.S. 106, 1972))

b. PASSENGER ORDERED OUT OF VEHICLE
   i. OFFICER CAN ORDER PASSENGER OUT OF CAR DESPITE LACK OF PROBABLE CAUSE OR REASONABLE SUSPICION (RUVALCABA V. LOS ANGELES, 64F.3D. 1323, NINTH CIRCUIT (1995))

   ii. OFFICER CAN ORDER PASSENGER OUT OF CAR PENDING COMPLETION OF THE TRAFFIC STOP
   (MARYLAND V. WILSON, 117 S. CT. 882, (1997))

VII. PRETEXT STOPS

a. DEFINITION- WHEN POLICE USE A LEGAL JUSTIFICATION TO MAKE THE STOP IN ORDER TO SEARCH A PERSON, PLACE OR VEHICLE FOR AN UNRELATED SERIOUS CRIME FOR WHICH THEY DO NOT HAVE A REASONABLE SUSPICION NECESSARY TO SUPPORT A STOP.
(U.S. V HERNANDEZ, 55F.3D.443, NINTH CIRCUIT (1995))

b. INTERPRETATION OF U.S. V. HERNANDEZ
   i. WOULD A REASONABLE OFFICER HAVE MADE THE STOP ABSENT A DESIRE TO INVESTIGATE AN UNRELATED SERIOUS OFFENSE

   ii. WAS THE OFFICER LEGALLY AUTHORIZED TO MAKE AN ARREST OR STOP AND CONDUCT A SEARCH. THE SUBJECTIVE INTENT OF THE OFFICER IS IRRELEVANT.

c. VALIDITY OF VEHICLE STOP - NO REQUIREMENT OF SUBJECTIVE INTENT OR ASSIGNMENT
(WHREN V. UNITED STATES, 116 S.CT. 1769 (1996))
(U.S. V. ROBLES-ALVAREZ 75F.3D 559, NINTH CIRCUIT (1996))

   i. VEHICLE STOP IS LAWFUL IF A REASONABLE OFFICER WOULD HAVE CONDUCTED THE STOP FOR A VIOLATION OF A SPECIFIED LAW AND THAT IT WAS WITHIN THE DETAINING OFFICER'S SCOPE OF RESPONSIBILITY TO ENFORCE THE LAW

   ii. THE SUBJECTIVE MOTIVATIONS OF INDIVIDUAL OFFICERS MAKING THE TRAFFIC STOP DOES NOT OFFEND THE CONSTITUTION IF STOP IS BASED ON TRAFFIC VIOLATION

C. SEARCHES DURING DETENTION

1. PAT DOWN SEARCHES
   a. MUST HAVE SPECIFIC FACTS INDICATING THAT PERSON MAY POSE A DANGER

ii. ENTRY OF VEHICLE TO RETRIEVE DRIVERS LICENSE OR REGISTRATION ALLOWED IF:
   a. CIRCUMSTANCES REQUIRE FURTHER INVESTIGATION OF VEHICLE OWNERSHIP
   b. DRIVER STATES WHERE IT IS LOCATED AND DOES NOT OBJECT
   c. ENTRY REASONABLY NECESSARY FOR OFFICER SAFETY

iii. LIMITED SEARCH OF VEHICLE FOR WEAPONS
   a. SPECIFIC ARTICULABLE FACTS INDICATIVE OF POTENTIAL OFFICER SAFETY DANGER
   (MICHIGAN V. LONG 463 U.S. 1032, (1993))

d. SEARCHES OF VEHICLES INCIDENT TO ARREST OF INDIVIDUAL

i. OCCUPANT OF VEHICLE ARRESTED
   a. PROPER SCOPE OF SEARCH
      i. PASSENGER COMPARTMENT OF VEHICLE
      ii. GLOVE COMPARTMENT
      iii. CONTAINERS - OPEN OR CLOSED
      (NEW YORK V. BELTON 453 U.S. 454, (1981))

ii. DEFENDANT/ARRESTEE CAN BE OUT OF THE VEHICLE WHEN ARREST OCCURS

iii. INVENTORY SEARCH SUBSEQUENT TO THE ARREST OF DEFENDANT/OCCUPANT
(FLORIDA V. WELLS 495 U.S. 1, 109L.ED.2D1, 111 S.CT. 1382 (1990))

3. SEARCHES BASED ON PROBABLE CAUSE- AUTOMOBILE EXCEPTION

a. GENERALLY

i. LAW ENFORCEMENT CAN SEARCH ANY PART OF A VEHICLE (PASSENGER COMPARTMENT, GLOVE BOX, TRUNK, CLOSED CONTAINERS) WITHOUT A WARRANT PROVIDED THEY HAVE PROBABLE CAUSE TO BELIEVE THAT THE VEHICLE CONTAINS CONTRABAND
(UNITED STATES V. ROSS 456 U.S. 798, 1982))

ii. PROBABLE CAUSE
   a. SUFFICIENT FACTS, KNOWLEDGE, TRAINING, EXPERTISE TO PROVIDE A FAIR PROBABILITY THAT THE OBJECT TO BE LOCATED WILL BE FOUND IN THAT PORTION OF THE VEHICLE SOUGHT TO BE SEARCHED

iii. APPLICATION OF AUTOMOBILE EXCEPTION
   a. OPERATIVE VEHICLES
   b. VEHICLE WHICH REASONABLY APPEARS TO BE MOBILE
   (U.S. V. HATLEY 15F.3D.856, NINTH CIRCUIT (1994))

b. SCOPE OF SEARCH OF VEHICLE

i. OFFICERS CAN SEARCH ENTIRE VEHICLE, INCLUDING CLOSED CONTAINERS, WITHOUT A WARRANT IF THEY HAVE PROBABLE CAUSE TO SEARCH FOR CONTRABAND
(UNITED STATES V. ROSS, 456 U.S. 798 (1982)

ii. EVEN WITH NO PROBABLE CAUSE TO SEARCH THE ENTIRE VEHICLE, OFFICERS CAN SEARCH A CLOSED CONTAINER FOUND WITHIN THE VEHICLE WITHOUT A WARRANT IF THERE IS PROBABLE CAUSE TO BELIEVE CONTRABAND IS LOCATED IN THE CONTAINER
(CALIFORNIA V. ACEVEDO 111 S.CT. 1982 (1991))

c. MOTOR HOMES/VANS

i. AUTOMOBILE EXCEPTION APPLICABLE IF:
a. VEHICLE IS USED ON HIGHWAYS

aI. VEHICLE IS CAPABLE OF USE ON THE HIGHWAY AND IS STATIONARY IN PLACE AND NOT REGULARLY USED FOR RESIDENTIAL PURPOSES
(<u>CALIFORNIA V. CARNEY</u>, 471 U.S. 386(1985))

d. TIMELINESS OF SEARCH

i. NO REQUIREMENT THAT WARRANTLESS SEARCH BE CONTEMPORANEOUS WITH TIME OF STOP
(<u>MICHIGAN V.THOMAS</u>, 1982 458 U.S. 259, (1962))

ii. IMPOUNDED VEHICLE AND PROBABLE CAUSE TO SEARCH SUBSEQUENTLY ARISES
a. VEHICLE LAWFULLY IN POLICE CUSTODY MAY BE SEARCHED IF THERE IS PROBABLE CAUSE TO BELIEVE IT CONTAINS CONTRABAND

b. NO EXIGENT CIRCUMSTANCES ARE REQUIRED TO JUSTIFY THE WARRANTLESS SEARCH

4. PLAIN VIEW

a. GENERALLY

i. THE OBSERVATION OF CRIME-RELATED EVIDENCE FROM A LOCATION WHERE YOU HAVE A LAWFUL RIGHT TO BE
(<u>HORTON V. CALIFORNIA</u>, 496 U.S. 128 (1990))

b. OBSERVATIONS BEFORE ENTRY INTO VEHICLE

i. PROVIDES SUFFICIENT PROBABLE CAUSE TO ENTER AND SEARCH VEHICLE (<u>U.S. V. HALL</u>, 974 F.2D 1201, NINTH CIRCUIT (1992))

5. PLAIN SMELL

a. GENERALLY

i. CAN PROVIDE PROBABLE CAUSE FOR SEARCHING VEHICLES AND/OR CONTAINERS

b. DRUG SNIFFING DOGS

i. OUTSIDE VEHICLE - DOG SNIFFS
a. NOT A SEARCH AND VALID

ii. CONSENT
a. USAGE OF THE DOG DOES NOT EXCEED THE SCOPE OF THE CONSENT AND IS VALID
(<u>UNITED STATES V. PEREZ</u>, 37F.3D.510, 9TH CIRCUIT (1994))

6. CONSENT SEARCHES

a. GENERALLY

i. PERSON WHO CONSENTS CAN WITHDRAW OR LIMIT SEARCH

b. PROBLEM AREAS OF CONSENT SEARCHES

i. RIGHT TO ASK FOR CONSENT SEARCH
(<u>FLORIDA V. BOSTICK</u>, 111 S.CT. 2382 (1991))

ii. VOLUNTARINESS
    a. TOTALITY OF THE CIRCUMSTANCES

iii. AUTHORITY
    a. LEGAL OR APPARENT AUTHORITY TO CONSENT TO SEARCH

iv. SCOPE
    a. EXTENDS TO CLOSED CONTAINERS
    (FLORIDA V. JIMENO, 500 U.S. 248 (1991))

    b. CONSENT SEARCH AFTER VALID TRAFFIC STOP WHICH WAS BASED ON PROBABLE CAUSE
    (OHIO V. ROBINETTE, 117 S.CT.417 (1996))

        i. OHIO COURT OPINION BASED PRIMARILY ON FEDERAL LAW
        ii. OFFICER DOES NOT HAVE TO INFORM A SEIZED DEFENDANT THAT HE IS "FREE TO GO" BEFORE HIS CONSENT TO SEARCH IS DEEMED VOLUNTARY

7. VEHICLE INVENTORIES

a. GENERALLY

i. LAW ENFORCEMENT CAN ENTER AN IMPOUNDED VEHICLE AND CAN LOOK INTO ANY PART OF THE VEHICLE, INCLUDING OPENED AND CLOSED CONTAINERS (COLORADO V. BERTINE, 479 U.S. 367 (1987))

ii. REQUIREMENTS FOR APPLICATION OF THE BERTINE RULE
    a. DECISION TO IMPOUND VEHICLE MUST BE IN GOOD FAITH FOR INVENTORY REASONS - NO PRETEXT

    b. STANDARDIZED PROCEDURES OF DEPARTMENT/LAW ENFORCEMENT AGENCY ARE NECESSARY
        i. ALL OR NOTHING POLICY IS NECESSARY
        ii. OFFICER DISCRETION IS ALLOWED IN POLICY
        (FLORIDA V. WELLS, 495 U.S. 1 (1990))

8. CONFESSIONS

a. FOURTEENTH AMENDMENT - VOLUNTARINESS

i. DUE PROCESS CLAUSE REQUIRES CONFESSION BE VOLUNTARY
    a. TOTALITY OF CIRCUMSTANCES
    (SPANO V. NEW YORK, 360 U.S. 315 (1959))

b. MIRANDA - FIFTH AMENDMENT MIRANDA WARNINGS

i. MIRANDA WARNING
    a. RIGHT TO REMAIN SILENT, ANYTHING SAID CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW, RIGHT TO ATTORNEY, IF YOU WANT ONE, ONE WILL BE PROVIDED BEFORE ANY FURTHER QUESTIONING

ii. MIRANDA REQUIRED IF:
    a. CUSTODIAL INTERROGATION
        i. CUSTODY - FREEDOM OF ACTION DENIED IN SIGNIFICANT MANNER
        ii. INTERROGATION
            a. ANY CONDUCT WHERE POLICE KNOW OR SHOULD KNOW THAT THEY WOULD ELICIT A DAMAGING STATEMENT
            (R.I. V. INNIS, 446 U.S.291 (1980))
            b. SPONTANEOUS STATEMENTS - NO MIRANDA REQUIRED
            c. BREAK IN INTERROGATION

b. WAIVER - KNOWING, INTELLIGENT, VOLUNTARY
i. SILENCE - NOT WAIVER
ii. REQUEST ATTORNEY - POLICE MUST STOP

iii. RIGHT TO TERMINATE INTERROGATION
a. RIGHT TO REMAIN SILENT
i. QUESTIONING MUST STOP
ii. POLICE CAN RESUME IF SCRUPULOUSLY HONOR REQUEST
a. WAIT SIGNIFICANT TIME
b. RIGHT TO COUNSEL
i. POLICE MAY NOT RESUME QUESTIONING ABOUT ANY CRIME
ia. DEFENDANT CAN RESUME IF SELF INITIATED
ii. ONCE DEFENDANT ASSERTS HIS RIGHTS TO TERMINATE INTERROGATION, AND REQUESTS AN ATTORNEY, THE RE-INITIATION OF THAT INTERROGATION BY POLICE WITHOUT HIS ATTORNEY PRESENT, DENIES HIS CONSTITUTIONAL RIGHTS.

iv. EFFECT OF VIOLATION
a. CAN USE FOR IMPEACHMENT PURPOSES
b. IF VOLUNTARINESS (DUE PROCESS) - NO IMPEACHMENT

v. PUBLIC SAFETY EXCEPTION TO MIRANDA WARNING
a. NO WARNING AND ADMISSION IF PUBLIC SAFETY AT ISSUE
i. EVIDENCE ADMISSIBLE

9. CONCLUSION TO LEGAL REVIEW

a. QUESTION AND ANSWER

C. VEHICLE INTERDICTION

1. OVERVIEW OF A TRAFFIC STOP

2. OFFICER AWARENESS SKILLS

a. INDICATORS OF CRIMINAL ACTIVITY
i. OBSERVATIONS MADE BY OFFICER OF ITEMS SEEN INSIDE OF VEHICLE

ii. OBSERVATIONS MADE BY OFFICER OF OCCUPANTS OF VEHICLE
a. SIGNS OF DECEPTION
i. VERBAL
ii. NON-VERBAL

3. ROADSIDE INTERVIEW

a. INTERPRETING SIGNS OF DECEPTION

b. QUESTIONS USED TO ILLICIT FURTHER INDICATIONS OF CRIMINAL ACTIVITY

4. CONCEALMENT METHODS

a. SEARCH TECHNIQUES - ESTABLISHING A METHOD

b. COMMON HIDING AREAS

c. NATURAL CAVITIES VERSUS CONSTRUCTED COMPARTMENTS

5. COMMERCIAL MOTOR VEHICLE VERSUS PASSENGER VEHICLE

a. DOCUMENTS REQUIRED BY A COMMERCIAL TRUCK DRIVER

b. COMMON HIDING AREAS

c. NATURAL CAVITIES VERSUS CONSTRUCTED COMPARTMENTS

6. OFFICER SAFETY

   a. ESCORT VEHICLES

   b. PROTECTIVE WEAR

   c. TACTICS DURING VEHICLE SEARCHES

7. POST ARREST/SEIZURE

   a. EVIDENCE COLLECTION

   b. CONTINUING THE ROADSIDE INTERVIEW INTO AN INTERROGATION

      i. LEGAL CONCERNS
      ii. OFFICER DEMEANOR

   c. CONTROLLED DELIVERIES

8. CONCLUSION TO VEHICLE INTERDICTION

   a. QUESTION AND ANSWER

D. EL PASO INTELLIGENCE CENTER

1. OVERVIEW OF CENTER FUNCTION TO STATE AND LOCAL LAW ENFORCEMENT

2. OPERATION PIPELINE/CONVOY

   a. DATABASES

   b. PROCEDURES ON MAKING AN INQUIRY

   c. ACCESS REQUIREMENTS

3. ADDITIONAL RESOURCES AVAILABLE

   a. POST SEIZURE ANALYSIS

   b. STATISTICAL ANALYSIS

   c. PUBLICATIONS

      i. SUBMISSION OF DATA

      ii. ACQUISITION PROCEDURES

4. TREND ANALYSIS

   a. LOCAL

   b. REGIONAL

   c. NATIONAL

5. ADDITIONAL TRAINING

E. CONCLUSION

1. RECAP, QUESTION AND ANSWER

2. CERTIFICATE PRESENTATION

ACKNOWLEDGEMENTS:

Legal outline developed for Operation Pipeline/Convoy courses, authored by Deputy District Attorney Richard P. Margarita, Sacramento County District Attorney's Office, 901 G Street, Sacramento, California 95814, (916) 874-6637.

Vehicle interdiction outline based on criminal interdiction lesson plan, authored by Lieutenant Michael Snyders, Illinois State Police, 500 Iles Park Place, Springfield, Illinois 62718, (217) 785-3329.

U.S. Department of Justice
Drug Enforcement Administration

March 1998
DEA-98013

Intelligence Division

Intelligence Bulletin

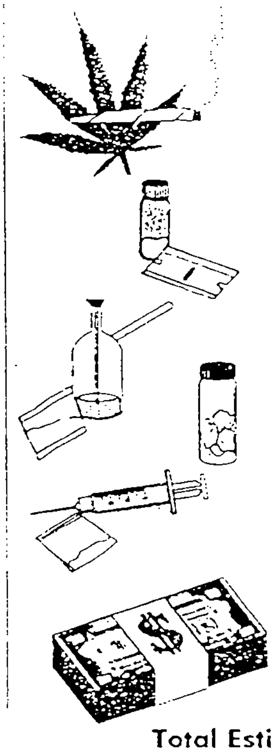
Operation PIPELINE:

State and Local Success In Highway Interdiction

In the last 15 years, the United States has initiated a wide range of law enforcement and intelligence programs that aim to prevent illicit drugs from entering the country. But one of the nation's most effective drug interdiction programs has been carried out on its highways for over a decade, and has been responsible for seizures that match or exceed those of other, more costly programs. Further, this operation has proven effective in attacking the command and control of criminal drug organizations. This report details the success, background, and effectiveness of Operation Pipeline, a highway drug interdiction program led by state and local agencies, with support by the El Paso Intelligence Center

H 1

Highway Interdiction Seizures in Kilograms FY-1988 thru 1997



Marijuana 696,000 kilograms

Cocaine 94,000 kilograms

Methamphetamine 1,943 kilograms

Crack Cocaine 642 kilograms

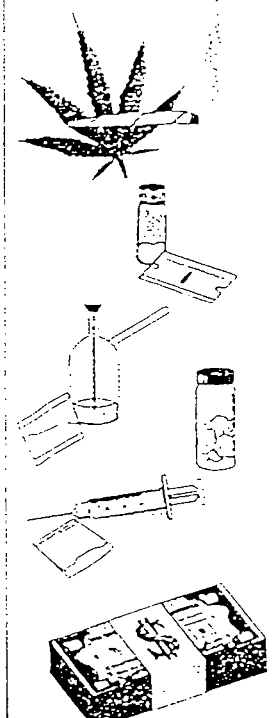
Heroin 278 kilograms

Seized a Total of $379 Million in Currency

Total Estimated Value of Over $2 Billion Dollars

GRAPH 2

Highway Interdiction Seizures in Kilograms FY-1997



Marijuana 137,841 kilograms

Cocaine 9,186 kilograms

Methamphetamine 923 kilograms

Crack Cocaine 101 kilograms

Heroin 102 kilograms

Seized a Total of Over $64 Million in Currency

IMPACT OF OPERATION PIPELINE

Operation Pipeline is a drug interdiction program that is led and implemented by the nation's state and local law enforcement agencies with support from the El Paso Intelligence Center. The operation is active along the highways and interstates most often used by drug organizations to move illicit drugs North and East and illicit money South and West. Graph 1 depicts the impact of Operation Pipeline, during a 9-year period, from FY 1988 to FY 1997. State and local officers seized a total of $379 million in currency; 696,000 kilograms of marijuana; 94,000 kilograms of cocaine; 1,943 kilograms of methamphetamine, 642 kilograms of crack cocaine, and 278 kilograms of heroin all having a total estimated street value of over $ 2 billion dollars. Graph 2 depicts the impact of Operation Pipeline, during FY 1997. State and local officers seized a total of over $64 million in U.S. currency; 137,841 kilograms of marijuana; 9,186 kilograms of cocaine; 923 grams methamphetamine; 101 kilograms of crack caine, and 102 kilograms of herion. These results were achieved with no more than the initiative of state and local police officers and the cost of training provided by the Drug Enforcement Administration (DEA).

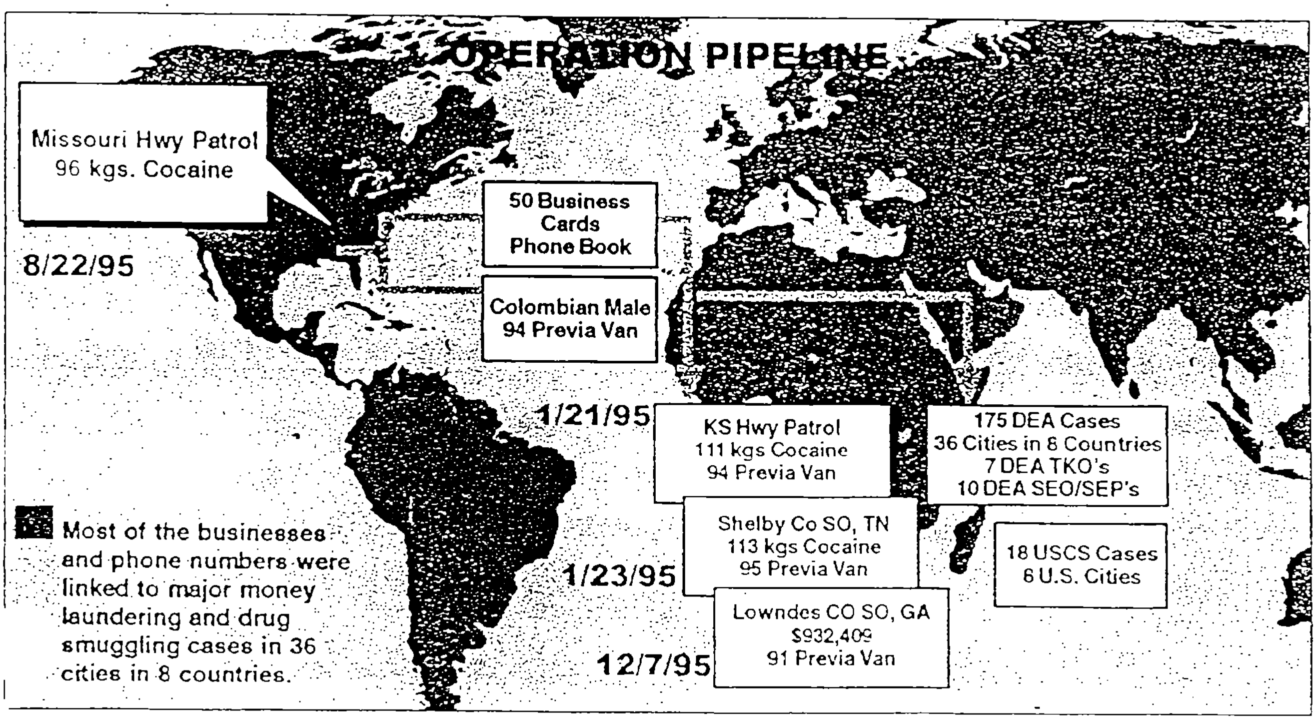
CONTROLLED DELIVERIES

Controlled deliveries also play a crucial role in Operation Pipeline. With support from DEA Agents across the country, state and local highway officers are able to execute controlled deliveries of the drug shipments they seize, thereby furthering their own criminal investigations and contributing to federal and international investigations. By identifying and arresting the courier of a drug shipment, as well as its recipient law enforcement authorities are better positioned to target the command, control, and communication of a criminal organization, and arrest its leadership. The map below depicts how a highway seizure can lead to a large scale investigation that identifies the supplier, as well as recipient, of a drug shipment. In this 1995 seizure, the Missouri Highway Patrol uncovered a money laundering and drug smuggling organization that operated in 36 cities in countries, and resulted in the seizure of $1 on.

Another example of the program's success occured on August 20, 1997, after a three-year OCDETF investigation led by DEA and FBI. Authorities in Philadelphia indicted 23 people who were members of a cell that distributed over 1,000 kilograms of cocaine in the Philadelphia area between July 1995 and July 1996. Over the next two days, federal, state, and local authorities arrested 12 cell members: 11 were already in custody at the time of the roundup. This investigation began in October 1994 subsequent to a vehicle stop. The Kansas State Highway Patrol seized 30 kilograms of cocaine, and a controlled delivery to the Philadelphia area was attempted and accomplished. This was followed by a second controlled delivery in April 1995 after Kansas officials seized another 112 kilograms of cocaine, again subsequent to a vehicle stop. Through federally authorized wire intercepts-initiated on two business and two clone pagers-authorities found that the defendants were cell members of an organization based in Medellin, Colombia and linked to a former guard of Medellin drug lord Pablo Escobar.

HISTORY OF OPERATION PIPELINE

Beginning in the early 1980s, New Mexico state troopers grew suspicious when there came a sharp increase in the number of motor vehicle violations, particularly along Interstate-40, that resulted in drug seizures and arrests. At the same time, and unknown to those in New Mexico, troopers in New Jersey began making similar seizures during highway stops along what would become the Interstate-95 drug corridor from Florida to the Northeast. Independently, troopers in New Mexico and New Jersey established their own highway drug interdiction programs.



Immediately, their drug and money seizures grew. The ·° of seizures and arrests signaled to law enforcement :ers that the nation's highways had become major —.eries for drug transportation. In addition, they found that tons of illicit drugs were flowing North and East from Florida and the Southwest border, while millions in drug money returned South and West -- as if traveling through a pipeline.

Over time, as their seizures mounted, highway officers found that highway drug couriers shared many characteristics, tendencies, and methods. Now, more perceptive and knowledgeable, law enforcement officers could zero in on indicators and ask key questions to help determine whether or not the motorists they had stopped for traffic or vehicle violations were also carrying drugs.

These interview techniques proved extremely effective. During annual conferences and other multi agency gatherings, officers shared their experiences in highway interdiction, which the state and local police communities termed "Pipeline" investigations. DEA retained this name in 1984 when it established Operation Pipeline, which targeted only private passenger vehicles. In 1988, the U.S. Department of Transportation initiated the Drug Interdiction Assistance Program, which provided training funds to and local agencies to target commercial vehicles 90, Operation Convoy, Pipeline's sister operation, was created to target the commercial operations of drug transportation organizations.

Today, Operation Pipeline is active in every state. Simple in its design and objective, the operation is composed of three elements: training, real-time communication, and analytic support. Each year, state and local highway officers deliver dozens of training schools across the country to other highway officers. These schools are intended to inform officers of interdiction laws and policies, to build their knowledge of drug trafficking; and to sharpen their perceptiveness of highway couriers. Also, through the El Paso Intelligence Center (EPIC), state and local agencies can share real-time information with other agencies, obtain immediate results to their record checks, and receive detailed analysis of drug seizures to support their investigations.

TRAINING, COMMUNICATION, AND SEIZURE ANALYSIS

Training

)-cop training is the foundation of Operation .ie. EPIC, through DEA funding, coordinates the ʰree-day training schools and designs their curricula. Each school is taught mostly by state and local law enforcement officers with years of experience in highway drug interdiction. Also participating in every school is a local prosecutor, sometimes accompanied by an Assistant U.S. Attorney, who teaches laws and policies governing highway stops. DEA, FBI, and Customs Agents and a U.S. Marshal provide additional training, as well. Course instructors are selected from among the top state and local officers in the schools. The training schools are designed to teach: (1) the law, policy, and ethics governing highway stops and drug prosecution, and (2) drug trafficking trends and key characteristics or indicators, shared by drug traffickers. Also, each school is tailored to the region where it is to be delivered and to the specific needs of the participating agencies. All schools include the following core subjects:

- Search and seizure Law; probable cause development (taught by a state prosecutor or an Assistant U.S. Attorney - at least 3 hours)
- Asset forfeiture and asset sharing (1 hour)
- Concealment detection; interdiction methods, safety considerations; violator indicators; interview techniques; hidden compartments (13 hours)
- Record checks and information sharing (2 hours)
- Clandestine labs; trafficking trends; canine use; post-seizure analysis (4 hours)
- Intelligence exchange among state and local agencies (2 hours)
- Practical exercise at a highway interdiction site.

Pipeline training officers prepare and deliver a well rounded course on highway drug interdiction. Course instruction covers a wide array of topics, from constitutional law and search and seizure to drug identification and drug courier indicators and concealment methods. All of these subjects are intended to broaden officers' knowledge of the law, as well as sharpen their awareness of drug trafficking.

Several Key Indicators of Drug Couriers

- Inconsistent statements by driver/passengers
- Drug odor or heavy perfume smell inside car
- Extreme nervousness of driver/passengers
- No luggage or very little luggage on long trips
- Driver and car are from different states
- Car rental agreement different than name of driver
- Map with route marked from drug source city
- Key ring with only vehicle keys (no personal keys)
- Duct tape, loose screws on car's exterior/interior
- Excessive mileage on a new car
- CB radio, radio, car phone, pager

aw and ethics are included in the curriculum of the ning schools. Pipeline instructors and prosecutors ess that highway officers are not to detain a motorist based on race, gender, or age. Instead, officers are taught that they must be able to identify and articulate specific factors which when viewed collectively give reasonable suspicion of an individual. Although there is no national drug courier profile, there are unquestionable patterns of activity, methods, and characteristics that are shared by drug traffickers and other criminals. Officers are trained to spot these indicators in the car, in their observations, and in their conversations with motorists who are stopped for traffic violations. Since 1993, when training statistics were first compiled, nearly 23,000 state and local law enforcement officers have participated in 271 Pipeline training schools. The Pipeline concept is also spreading to other nations. In the last year, law enforcement authorities in Europe and South America have requested information and training, in order to implement highway interdiction programs in their own countries.

Support by the El Paso Intelligence Center

In the early years, Operation Pipeline's training and data collection components were performed mostly ad hoc state and local agencies. By the late 1980s, these icies were flooded with training requests from other agencies due to the operation's growing popularity and success. State law enforcement agencies saw the need to coordinate Pipeline's activities from a central point. In 1991, Pipeline's support functions were formally housed at the El Paso Intelligence Center (EPIC).

Today, EPIC continues to play a support function to Operation Pipeline. Training is a key support function. Another is real-time communication. When a highway officer stops a car for a violation, the officer can request additional record checks on the vehicle, its driver, and passengers through the center's numerous databases that are available 24-hours. Record checks are returned to the roadside officer's dispatcher within minutes. Over 5,493 state and local officers have direct access to the center.

Analytic case support is still another support provided by EPIC. Its Highway Interdiction Analysis Team analyzes law enforcement intelligence related to reported drug seizures. Analysts record drug seizure information, such as names, dates, addresses, vehicle tags, and criminal histories, all of which are later cross checked through law enforcement databases (e.g. DEA, Customs, INS) and commercial databases (e.g. Dunn and Bradstreet). This analytical component has been successful, often linking state and local highway seizures to federal and international investigations.

CONCLUSION

Increasingly, Colombian and Mexican cell members and urban drug gang members are relying on the nation's interstates to move their drug and money shipments. Operation Pipeline is an interdiction program with a proven record of achievement. Moreover, it is an innovative program, one that bridges the skill and experience of state and local agencies with the resources and support of federal law enforcement.

report was prepared by the State and Local Programs Section (DOS). Requests for copies are welcome, and questions /comments be directed to DOS at DEA Headquarters, at (202) 307-8863.

FBI National Academy
MS 381
Ethics In Law Enforcement

Prepared by:

Federal Bureau of Investigation
Office of Professional Responsibility
Law Enforcement Ethics Unit

FBI NATIONAL ACADEMY
MS381
ETHICS IN LAW ENFORCEMENT
ETHICS IN MATTERS OF RACE, ETHNICITY, AND GENDER

I. Introduction

A. Individuals do not chose their race, ethnicity, or gender.

B. Effect of judging individual solely on one of these criteria.

1. Cover over individual identity and shared humanity.

2. Makes us indifferent to the behavior and character of others

3. Look at some recent cases.

a. O.J. Simpson

b. John Gotti

c. Karla Tucker

C. Do law enforcement officers act on profiles or biases based largely on racial or ethnic criteria?

1. Traffic stops.

2. Drug profiles.

II. Race and the O.J. Simpson case.

A. Why was this the "Trial of the Century?"

1. Celebrity status of defendant.

2. Celebrity status of lawyers.

3. Celebrity status of witnesses.

4. Race.

B. Mark Fuhrman.

1. Media darling during preliminary hearings. Newsweek used the term, "hunk." and speculated on his future career in film.

    a. No question of his assertion that he entered the Simpson property without a warrant because he feared for the safety of those inside.

    b. No question about why a detective, not assigned to homicide, was playing such an important role in the early stages of the investigation.

    c. Defense attorneys saw something else and began their investigation.

2. The real Mark Fuhrman - A bigot, brute and liar.

3. The defense strategy in light of the real Mark Fuhrman. Could they have done any of this without Mark Fuhrman?

    a. Tied all of the government witnesses and attorneys to Fuhrman's racism. Negated the weight of the government's evidence.

    b. Shifted the focus from Simpson's alleged acts to Fuhrman's conduct.

    c. After Fuhrman's exposure as a perjurer was able to get Fuhrman to publicly take the Fifth in response to the question of his planting evidence at Simpson's property.

    d. Encouraged the jury, some of whom certainly had dealt with Fuhrman-style police officers, to send out a public statement against racism.

4. The media in light of the real Mark Fuhrman.

    a. Began "exposing" the Fuhrman mentality in modern policing.

    b. Shifted emphasis of reporting away from the evidence of Simpson's guilt.

5. The jury in light of the real Mark Fuhrman.

    a. Jury nullification.

        i.) Jurors believe that a specific law is unjust and that no one should be punished for breaking it. or

ii.) Jurors see a law as being unjustly enforced. or

iii.) Jurors believe that extenuating circumstances excuse a defendant from sanctions.

b. Racial nullification - A refusal to convict because of the defendant's race, even if case is proved beyond a reasonable doubt.

Most prevalent in trials of whites, by all-white juries, for crimes against blacks.

6. Effect of the real Mark Fuhrman.

a. Acquittal of Simpson, who was at least by a preponderance of the evidence in the minds of a civil jury, was guilty of two brutal murders.

b. Denigration of the entire LAPD as a racist organization that protects and nurtures Mark Fuhrmans.

c. Perception among many that all law enforcement officers share Fuhrman's mentality.

d. A mind set by police officers that the public ingratitude makes effective law enforcement hopeless and pointless.

7. Public reaction to the verdict.

III. Ethical ramifications of race, ethnicity and gender in law enforcement work.

A. Must expose, and address law enforcement bigotry.

B. Law enforcement organizations are obligated to:

1. Prevent those with these beliefs from entering law enforcement.

2. Remove those with such beliefs from law enforcement.

3. Educate law enforcement employees about effect of bigotted behavior on law enforcement objectives.

C. USDC Judge Harold Baer

1. Issued a ruling which held that two police officers had no probable cause to search a vehicle they observed two black youths running from. The ruling, later reversed by the same judge, held that blacks in Morningside Heights, knowing of corruption within the NYCPD, had reason to fear the police and that the police were unreasonable in finding their flight to be suspicious.

2. We in law enforcement reject judges making such blanket assessment of all police officers. We must also reject law enforcement officers making blanket judgements about all member of a particular group.

D. Organizations of law enforcement officers drawn from members of a particular racial, ethnic or sexual group.

1. Do such organizations promote comradery within a particular group of officers? or

2. Do these organizations promote fractionalization of law enforcement and prevent the recognition of legitimate cultural differences between groups.

V. Merit and Affirmative Action.

A. Introduction.

1. Title VII 1970 Civil Rights Act

No person shall be deprived of opportunity on grounds of race, color, religion, sex or national origin

2. Affirmative Action in light of Title VII.

a. One view is that affirmative action is a natural extension of Title VII. Affirmative action allows individuals, who belong to groups which have suffered from discriminatory practices in the past, to obtain redress through hiring and promotion practices. These practices "level the playing field" for individuals who otherwise could not have competed equally.

b. The other view holds that affirmative action punishes individuals who engaged in no wrongdoing for the benefit of other individuals who may or may not have suffered from discrimination. This preference based upon race or sex is contrary to the very provisions of Title VII.

B. Issues in law enforcement affirmative action.

1. What causes under representation?

a. Discrimination.

b. Other reasons.

2. Requirements of proportionality.

a. Justification - a police force which reflects the community that it serves.

b. Is this a proper justification?

3. Are there other solutions?

a. Legal redress.

b. Natural progression of society.

4. Does affirmative action stigmatize its beneficiaries?

C. Dealing with affirmative action.

1. Recognize that there will be disagreements.

2. Conduct an open discussion of the issues. Do not allow rumors and innuendo to flourish.

3. Find quality people from all groups.

Worst case - The FBI Rochon case.

Office of the Attorney General
Washington, D.C. 20530

October 16, 1999

The President
The White House
Washington, DC 20500

Dear Mr. President:

In response to the June 9, 1999, Executive Memorandum, I am submitting a report on the plans of the Department of Justice to achieve the purpose of the Executive Memorandum.

The report proposes a plan and field test for a system to collect data related to race, ethnicity, and gender in the Department's law enforcement activities. Data received from these tests will assist the Department in its ongoing efforts to establish and modify current and future policies and practices to ensure fairness in law enforcement activities. A report on the Department's training programs, policies, and practices regarding the use of race, ethnicity and gender in its law enforcement activities will be submitted separately.

Respectfully,

Janet Reno

Janet Reno

Enclosure

DEPARTMENT OF JUSTICE REPORT

POLICIES, PRACTICES AND TRAINING ON USE OF RACE, ETHNICITY AND GENDER IN FEDERAL LAW ENFORCEMENT ACTIVITIES

I. INTRODUCTION

On June 9, 1999, the President issued a Memorandum entitled, "Fairness in Law Enforcement: Collection of Data," directing the Department of the Treasury, the Department of Justice, and the Department of the Interior to: (1) collect data from all levels of Federal law enforcement tracking the race, ethnicity and gender of persons stopped or searched by law enforcement; and (2) provide a report on training programs, policies, and practices regarding the use of race, ethnicity, and gender in Federal law enforcement activities, along with recommendations for improving those programs, policies, and practices.

The guarantee of equal protection under the law to all persons is one of the most fundamental principles of our democratic society. In order to protect this essential right, Federal law enforcement agencies must adopt policies that ensure fairness in their activities. Federal law enforcement officers are prohibited from discriminating on the basis of race, ethnicity, religion, gender, and disability in performing their law enforcement duties.

Illegal activity transcends racial or ethnic parameters. The fact that a person is African-American, Hispanic, Asian, or of another racial or ethnic minority group is not a reason for law enforcement to suspect that person of wrongdoing. There is universal recognition, in both policy and case law, that a law enforcement officer may not rely on race or ethnicity as the sole basis for law enforcement action such as a traffic stop, pedestrian stop, or request for consent to search. At the same time, where a law enforcement officer has information linking specific criminal activity to an individual whose race, ethnicity or other identifying characteristic is known, that information is appropriately used to identify and locate that individual.

The challenge for law enforcement is (1) to develop policies and training programs enabling law enforcement officers to determine when information relating to the race or ethnicity of persons engaged in past or current illegal activities may be used in law enforcement operations; (2) to supervise and monitor law enforcement activities to ensure that these policies are implemented in the field; and (3) to identify and remedy those situations where race or ethnicity is inappropriately used to target individuals.

Recognizing the damaging effects that the impermissible use of race, ethnicity, or gender has on individuals and the community and recognizing the vital importance of instilling trust of law enforcement in all Americans, the Department of

Justice has begun a review of our programs, policies, and practices to determine how these programs could be improved to ensure the fair enforcement of the laws. The Department of Justice has committed to an ongoing process, described more fully below, that will involve an extensive evaluation of current practice with regard to the use of race, ethnicity, and gender in law enforcement and recommendations for reforms to policies and training.

This report describes the policies, practices and training programs of the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the Federal Bureau of Prisons (BOP), the Immigration and Naturalization Service (INS), and the United States Marshals Service (USMS) as they relate to the use of race, ethnicity and gender. This report also includes recommendations for the evaluation of existing policies, the evaluation and enhancement of training programs, and the development of interim policies and guidance for law enforcement officers.

In response to the first part of the June 9 Memorandum, the Department of Justice has submitted a separate report that describes the methods the various agencies will employ to collect the requested data. The Department of the Treasury and the Department of the Interior have each submitted separate reports detailing their data collection plans and respective programs, policies and practices pursuant to the June 9, 1999, Memorandum. The data collected by the Department of Justice will be analyzed as part of the Department's ongoing policy review process.

II. AGENCY MISSIONS, POLICIES, AND TRAINING

A. Drug Enforcement Administration

Mission

The DEA is responsible for enforcing the provisions of the controlled substances and chemical diversion and trafficking laws and regulations of the United States. DEA creates, manages, and supports law enforcement programs -- domestically and internationally -- aimed at reducing the supply of and the demand for controlled substances. It investigates and prepares cases for prosecution against significant trafficking organizations and their members involved in the cultivation, production, smuggling, distribution and diversion of controlled substances in or destined for illegal trafficking in the United States.

Among DEA's responsibilities is the coordination of drug investigations and drug intelligence collection with foreign governments; training of Federal, state, local, and foreign officials in drug law enforcement; coordination and cooperation with Federal, state, and local drug law enforcement agencies in joint investigations, supply reduction programs, and other mutual efforts; and participation in the national supply and demand reduction strategy.

Operation Jetway is a Special Enforcement Operation established in 1993, with DEA as the lead agency, to provide uniform, standardized training and statistical analysis to federal, state, and local drug interdiction units working at airports, bus stations, train stations, and parcel facilities nationwide. The primary goals of the *Jetway* program are (1) to ensure that interdiction units are afforded training in accepted interdiction techniques, within the confines of current law; and (2) to increase the effectiveness of interdiction efforts on both a national and international scale. DEA agents personally participate in *Jetway* interdiction actions on the ground.

Operation Pipeline is a highway drug interdiction program that is led and implemented by the nation's state and local law enforcement agencies, with support from DEA's El Paso Intelligence Center. The program is composed of three elements: training, real-time communications, and analytic support. Each year, state and local highway officers conduct dozens of three-day training schools across the country for other highway officers. The DEA coordinates *Operation Pipeline* training through the DEA's El Paso Intelligence Center. The course content of each *Pipeline* school is individually tailored by the lead instructor-officer, who uses a basic training curriculum designed by the DEA. DEA agents do not personally participate in *Operation Pipeline* interdiction actions.

Policies and Practices

DEA conducts investigations to determine which individuals or organizations are manufacturing and trafficking in illicit drugs. DEA's policy is to develop cases against drug traffickers based on evidence of violations of the federal narcotics laws, irrespective of the race, ethnicity, or gender of any given trafficker. DEA does not have a written policy on the use of race, ethnicity or gender in its law enforcement activities.

DEA investigations often reveal drug source and transit areas, trafficking routes, and trends and may also identify the race or ethnicity of individuals suspected of drug trafficking. Where an individual is specifically identified as a suspect in an investigation, racial and ethnic identifiers are used to assist law enforcement in locating and identifying the suspect. Investigations may also identify particular criminal organizations that are involved in drug trafficking. When investigative and intelligence activities collect information on the race or ethnicity of persons involved in such criminal activity, that information is given to the investigator who, in turn, can use that information as part of an investigation.

In addition, DEA prepares intelligence reports based upon its investigations. If investigative activity indicates that members of a particular ethnic group are frequently involved in the trafficking of a particular drug at a particular time, that information is included in the intelligence report. These reports are used internally, as well as shared with other federal, state, and local law enforcement agencies for use in their investigations. Also, intelligence reports disseminated to state and local law enforcement by the DEA could contain information received identifying the race or ethnicity of a specific alleged drug trafficker.

Training

DEA agents are trained to identify and articulate specific factors that distinguish individuals involved in smuggling contraband from other members of the traveling public. While there is no "national drug courier profile," there are patterns of activities, methods, and characteristics that may indicate criminal activity. For example, with respect to an airline passenger, these may involve details regarding the passenger's ticket and how it was purchased, characteristics of the passenger's luggage, excessive nervousness, and evidence suggesting the passenger may be smuggling contraband internally.

Operation Jetway training focuses on (1) legal issues in transportation interdiction investigations; (2) drug trafficking trends and key characteristics that are shared by drug traffickers; and (3) effective use of investigative tools and intelligence sources. The *Jetway* courses use a lesson plan that has been approved by the Office of Chief Counsel and DEA Training in Quantico. Course instruction includes constitutional law, search and seizure with regard to both consensual encounters and detentive stops, drug courier indicators and concealment methods. During *Operation Jetway* training, agents/officers are taught that race, religion, ethnic origin, gender, or age are not indicators of criminal activity. Moreover, when agents/officers intend to temporarily detain a person, they are taught that they must be able to identify and articulate specific factors which, when viewed collectively, give reasonable suspicion that an individual is involved in smuggling contraband.

Similarly, *Operation Pipeline* instructors and prosecutors teach that highway officers are not to detain a motorist based on race, ethnicity, gender, or age. Instead, officers are taught that they must be able to identify and articulate specific factors which, when viewed collectively, give the officer reasonable suspicion that an individual has engaged in criminal activity. Attached as Appendices 7-10 are excerpts from Operation Jetway and Pipeline training materials.

In addition to the *Operation Jetway* and *Operation Pipeline* training, DEA incorporates ethics and integrity sessions into its basic training programs and its in-service training courses. The agency's Standards of Conduct states that "no employee may discriminate against any other employee, applicant for employment, or person dealing with DEA on official business because of race, color, religion, national origin, sex, age, or handicap." Aside from *Operation Jetway* training, however, standard training for DEA agents does not address the use of race, ethnicity or gender in law enforcement activities.

B. Federal Bureau of Investigation

Mission

The mission of the Federal Bureau of Investigation ("FBI") is to investigate violations of federal criminal law; to protect the United States from foreign intelligence and terrorist activities; to provide leadership and law enforcement assistance to federal state, local, and international agencies; and to perform these responsibilities in a manner that is responsive to the needs of the public and is faithful to the Constitution of the United States.

Policies and Practices

FBI policy prohibits the discriminatory use of race, ethnicity, or gender in law enforcement, and the Bureau incorporates its policy into its training programs. In conducting criminal investigations, the FBI typically gathers facts at crime scenes to determine the likely perpetrators. To identify those responsible for criminal activity, the FBI elicits and documents descriptive information, which may include the race, ethnicity, gender, age, size, and distinguishing characteristics of the criminal offender. Depending on the nature of the crime, the characteristics may include tattoos or other physical markings, DNA, voice tone, inflection, and manner of speech, and the type of clothing, car, and jewelry possessed by the perpetrator. In short, the FBI collects and analyzes all relevant information that will assist in identifying correctly those who have committed criminal acts, including, where available, the race and ethnicity of suspects.

In situations in which the FBI lacks suspect-specific descriptive information, the FBI uses violent crime analysis as an essential investigative tool. This analysis — based on behavioral, psychological and forensic data — may include a description of the likely gender, race, ethnicity, or age of potential suspects. The FBI uses that descriptive information to pursue investigative leads and identify those responsible for the activity under investigation. Violent crime analysis is used to develop a behavioral composite of an unknown offender after analyzing the facts and circumstances surrounding the commission of a specific criminal act, usually a violent crime such as a homicide. Although the behavioral composite may include the likely gender, race, ethnicity or age of the offender, it is based on the evaluation of the specific crime that has occurred and the physical evidence at the crime scene. The analysis is not used as a predictor of future criminal activity of any individual or group.

The FBI does not investigate suspects without proper predication. Predication is defined as facts and circumstances that would provide a reasonable basis to suspect that an individual has engaged in or is engaged in conduct which is a violation of federal criminal laws. In the context of ongoing investigations, levels of predication vary depending on the intrusiveness and sensitivity of the investigative technique being contemplated. Before initiating a new investigative technique, such as wiretapping or surveillance, the FBI evaluates all of the facts and circumstances to determine whether use of the technique is appropriate. With respect to national security investigations, intelligence gathering involves a range of sophisticated investigative techniques, which are used to identify individuals and their affiliations. Illicit activities uncovered in the course of intelligence gathering may be used to predicate national security investigations. The FBI does not permit interdiction based on racial, ethnic, or gender factors in national security investigations.

<u>Training</u>

The FBI attempts to ensure that its investigators do not discriminate on the basis of race, ethnicity, or gender, by providing a number of training and awareness courses to its employees.

The FBI has instituted a training program for incoming Special Agents at the FBI Training Academy in Quantico. Developed by the Law Enforcement Ethics Unit (LEEU) within the FBI's Office of Professional Responsibility (OPR), this program entails sixteen hours of instruction as part of the overall training of new agents. The program is based on a concept known as the "Golden Thread," which emphasizes basic human rights and constitutional principles, such as equal rights for all individuals.

As part of this specific training program, and throughout the entire training period, New Agent Trainees examine poor police practices and police corruption. The trainees are given examples that enable them to explore the pressures they may face in controlling crime in a manner consistent with due process. The training program emphasizes that law enforcement officers who use their power for improper purposes and base their actions on the race, ethnicity, or gender of individuals are unacceptable representatives of the FBI and will be subject to discipline, including dismissal.

It is not only new FBI agents who receive training on the impropriety of discriminating on the basis of race, ethnicity, or gender. As part of an eleven-week training program offered at Quantico, the FBI instructs veteran state and local law enforcement officers on the impropriety of taking official action, including traffic stops or courier profiling, on the basis of race, ethnicity and gender. LEEU provides similar instruction (through seminars and conferences) to FBI senior managers and law enforcement officers throughout the United States and overseas.

All FBI employees at GS-13 and above, whether in special agent or support positions, are evaluated annually on the basis of their performance in eradicating workplace discrimination. The FBI requires that the performance appraisals of these employees include an evaluation of the extent to which they have acted to increase the recruitment of minorities, decrease discrimination on the basis of race, ethnicity, and gender, and improve the workplace environment for all FBI employees.

The training programs and other institutional measures described above illustrate the steps that the FBI has taken to ensure that FBI Special Agents and employees act in a manner that is consistent with the commitment to fairness and integrity.

C. Federal Bureau of Prisons

Mission

The mission of the Federal Bureau of Prisons ("BOP") is to protect society by confining federal offenders in the controlled environments of prison and community-based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

Policies and Practices

The BOP monitors gang activity within its facilities for security reasons. This entails identifying and tracking various gangs and gang members. Identification is based on objective criteria such as tattoos and use of symbols, rather than race or ethnicity. While gang membership and affiliation may cross racial and ethnic groupings, some gangs self-identify based on distinctions such as race, ethnicity, and national origin. However, when the BOP monitors activity by such gangs, it is based solely upon disruptive behavior.

Based on research conducted by the BOP regarding federal inmates, female inmates differ from male inmates in the following ways: the frequency and severity of their prison violence; their demographic, offense, and criminal history composition; the prison environments in which they are confined; and background characteristics that predict prison violence. For these reasons the BOP maintains gender-specific classification systems. The most significant difference between male and female inmates is with respect to security level classifications. Women are classified into three security levels: minimum, low, or high; in addition to these three security levels, men can also be classified as medium security. The reason for this distinction is that most of the females previously classified as medium or high security were classified at that level because of offenses in which they often played a secondary or peripheral role to a co-offender who was male. Since the separation of male and female classification systems in June 1994, the overwhelming majority of female inmates have been classified as low or minimum security. Only a small number, most often 40 or fewer, are currently classified as high security.

Training

Given that the BOP does not base any of its law enforcement activities on race or ethnicity, the BOP does not conduct training specifically directed toward the prevention of racial profiling. However, as the BOP manages an extremely diverse inmate population, racial sensitivity and diversity management are significant concerns for the agency. Accordingly, the BOP conducts extensive training on diversity management, which includes race, ethnicity, and gender issues.

Staff receive diversity management training during the Introduction to Correctional Techniques at the Federal Law Enforcement Training Center (FLETC), which is required for all new primary law enforcement employees, and optional for new employees in secondary law enforcement positions. Diversity management principles are again emphasized during Annual Refresher Training, required for all employees, which serves to remind staff of key policies, procedures, and agency philosophy. A large number of national BOP training seminars also have a session on diversity management. During these training sessions, the BOP also places a strong emphasis on its recently revised and enhanced policy on sexual abuse prevention. Lastly, all BOP institutions, Regional Offices, and Central Office have Affirmative Action Committees which sponsor programs to help educate staff about the contributions and achievements of all Americans. These programs are designed to enhance communication and understanding among staff and with the inmate population.

D. Immigration and Naturalization Service

Mission

The mission of the INS is to provide for the lawful entry of persons into the United States, and to assist applicants who are eligible for permanent residence or naturalization. At the same time, INS deters illegal immigration by controlling the nation's borders and apprehending and removing those who violate the immigration laws.

It is the responsibility of the INS to ensure appropriate documentation of aliens at entry and to deny entry to those who are not legally admissible, whether they attempt to enter through ports-of-entry or undetected across the border. The INS is also responsible for deterring illegal entry and stay, including enforcement of the criminal provisions of the immigration laws against individuals who act or conspire to promote such entry and stay. Further, it is the responsibility of the INS to detect, apprehend, and remove those noncitizens whose entry was illegal, whether undocumented or fraudulent, and those found to have violated the conditions of their stay.

Policies and Practices

Every mission decision by Immigration Officers involves a determination of nationality. The legislative authority for activities of the INS is the Immigration and Nationality Act of 1952 (INA), as amended. A number of court decisions also guide INS practice. The INA requires Immigration Officers at the border or port-of-entry to inspect all aliens seeking admission to or transit through the United States. See INA Section 235(a)(3). In addition, the statute provides broad authority to Immigration Officers to interrogate, without a warrant, any alien or person believed to be an alien as to his or her right to be or remain in the United States.

Under the Fourth Amendment, certain immigration encounters are considered "seizures" and thus must be justified by a "reasonable suspicion." These kinds of encounters include stops of vehicles by Border Patrol agents ("roving patrol" stops) and pedestrian stops where persons are detained by immigration officers. "Reasonable suspicion" has been defined as specific, articulable facts together with rational inferences that reasonably warrant the suspicion that a law which the officer has the authority to enforce has been violated. INS policy allows officers to use apparent ethnicity as one factor among many in a "totality of the circumstances" that support reasonable suspicion and thus justify the officer's intervention. This practice is supported by Supreme Court case law. See United States v. Brignoni-Ponce, 422 U.S. 873 (1975). INS policy prohibits the sole reliance on apparent ethnicity or foreign appearance for Fourth Amendment encounters. This policy is applied nationwide.

Reasonable suspicion must be based on multiple factors and not on any one factor alone. Among the many factors that may be used by INS officers and agents as "articulable facts" are:

> (1) place and time of the encounter; (2) demeanor of individuals stopped and their reactions to the presence of INS Officers; (3) appearance/dress/grooming showing signs of either an immediate border crossing or of the individual not being lawfully in the United States; (4) speech; (5) information from outside sources such as intelligence reports or tips; (6) rational inferences from officers' previous experience and training; (7) in case of vehicular stops, characteristics of the vehicle (e.g., appearance, occupancy, speed of travel, etc.); and (8) ethnic appearance.

What is crucial in making an officer's suspicion well-founded is not the presence of any specific factor, or the number of factors involved, but that the whole picture yields a reasonable suspicion that justifies the officer's intervention.

Other types of immigration encounters do not require a predicate finding of "reasonable suspicion" under the Fourth Amendment. For example, INS maintains fixed traffic checkpoints, where agents make a brief inquiry as to the immigration status of the occupants of the vehicle. People stopped at these checkpoints also may be selectively referred to a secondary inspection area for further inquiry. See United States v. Martinez-Fuerte, 428 U.S. 543 (1976). Reasonable suspicion is also not required for inspections at ports-of-entry or consensual interviews at the worksite. See INS v. Delgado, 466 U.S. 210 (1984). While it may not be required by law, INS policies require reasonable suspicion for worksite encounters where INS agents are selecting employees for questioning. While INS policy and training curricula do not specifically address the proper use of ethnicity for encounters that do not rise to the level of detentive stops, agents are guided by INS policies that require a suspicion based on articulable facts, viewed as part of a totality of circumstances.

Through the collection and analysis of intelligence from internal and external sources, INS develops useful information on the sources, traffic routes, and destination points of illegal immigrants. Additionally, shared case information and leads may provide information on the businesses that allegedly have employed undocumented workers. This intelligence information sometimes includes the identification of an individual's or group's ethnicity.

Training

The INS trains its officers on how to identify and articulate rational factors for stops and searches, and on the different levels of suspicion that are required by the Fourth Amendment and case law. The training includes instruction on INS policy that allows the use of "ethnic appearance" as one factor among many in a totality of circumstances, but prohibits the use of ethnicity as the sole factor for stops and searches. See Appendices 1-6.

Immigration Officer Academy

The Immigration Officer Academy is responsible for the basic training of all Deportation Officers, Immigration Agents, Immigration Inspectors, and Immigration Special Agents. All trainees receive eight hours of instruction in INS Statutory Authority focusing on section 235 and, in greater detail, section

287 of the INA. Trainees are taught that under section 235 all applicants for admission are to be inspected by Immigration Officers at the port-of-entry for the purpose of establishing admissibility to the United States. Also explained and discussed is an INS officer's authority to stop, board, and search a vehicle at the port-of-entry.

Topics of instruction under INA section 287 include: authority to interrogate without a warrant; authority to arrest without a warrant for both administrative and criminal violations; authority to search a conveyance without a warrant within a reasonable distance of the border; authority to enter private lands, but not dwellings, within 25 miles of the border for the purpose of preventing the illegal entry of aliens; and the prohibition against entering a farm without a warrant or the consent of the owner, to question a probable alien as to his or her right to be in the United States, unless evidence exists that the persons has just crossed the border. Under section 287(a)(1), emphasis is placed on the need to use the authority to interrogate judiciously, based on some articulable facts.

Additional areas of instruction on INA section 287 include: a review of legal precedent that clarifies proper use of ethnicity in traffic stops and the reasonable suspicion requirement for detentive stops. At the conclusion of the course on statutory authority, trainees are shown a portion of the video entitled "Fourth Amendment Issues at the Worksite" which provides instruction by the INS Office of General Counsel on lawfully executed searches and seizures.

Officers are also trained on the three levels of encounters with the public (consensual encounter, investigative stop, and arrest) and the corresponding degrees of suspicion or probable cause which are required to take action. Emphasis is placed on the statutory obligation to conduct investigative stops only on reasonable suspicion of a criminal or administrative offense that falls within the officer's jurisdiction.

In addition to the core instruction on statutory authority, Special Agents, Immigration Agents, and Deportation Officers receive training on Alien Encounters and False Claims to United States Citizenship. This class equips trainees with effective techniques to use when encountering and questioning aliens during the course of an investigation.

The Behavioral Science Division (BSD) of the Federal Law Enforcement Training Center (FLETC) offers additional courses and laboratories related to cultural diversity to all INS personnel except Adjudication Officers. The understanding of and respect for cultural differences is essential to an officer's ability to interpret, predict, and ultimately control the behavior of those aliens with whom he comes in contact. The BSD courses teach several ways to recognize and overcome the principal barriers to intercultural communications. All officers are trained to demonstrate professionalism when identifying themselves, to develop rapport based on mutual respect, to understand verbal and nonverbal communications, and to utilize proper methods and techniques when dealing with victims and witnesses.

Border Patrol Academy

The Border Patrol Academy is responsible for both entry-level training for new Border Patrol Agents and for the advanced training of journeyman Border Patrol Agents at the GS-9 and GS-11 levels. New agents receive intensive instruction on statutory authority. This course of instruction explains to the Border Patrol Agent trainee the bases for making traffic and pedestrian stops, including ethnic appearance, vehicle characteristics, proximity to the border, abnormal behavior, demeanor, speech, attire, and many others. The curriculum stresses that pedestrian and "roving patrol" traffic stops based solely on race or ethnicity are illegal. The agents are taught that the required degree of suspicion must be based on a combination of articulable facts, one of which may be ethnic appearance. Similarly, trainees are taught that the referral of vehicles to secondary inspection at a traffic checkpoint may be premised on the lowest level of suspicion (where few articulable facts are required) that illegal aliens are being transported in the vehicle. Constitutional law and relevant court decisions are discussed with emphasis not only on the Fourth, but also on the Fifth and Sixth Amendments. In addition, the curriculum of FLETC devotes 3 hours to officer liability and criminal sanctions relating to violations of an individual's constitutional rights.

The first duty station for all Border Patrol Agents is on the southern border. Therefore, Border Academy trainees receive extensive training in Spanish and cultural sensitivity and diversity issues. Discussions are held on prejudice, ethnocentrism, language barriers, and ignorance of cultural norms. Several other courses that address discrimination and intercultural issues are taught at the Academy. Among these are Ethics and Conduct, Sexual Harassment, Communications for Border Patrol, Victim and Witness Awareness, Authority (i.e., the appropriate use of authority), EEO, and Officer Liability. In relation to civil and constitutional rights, trainees are taught that, except for very limited exceptions, foreign nationals who have entered the United States are afforded the same rights and protections guaranteed to United States citizens.

The Border Patrol Academy also offers separate journeyman level training at the GS-9 and GS-11 agent grade. Every year, 750-800 journeyman agents receive this type of training at the Academy. Each program lasts 8 days and contains a block of instruction entitled "Legal Updates." This segment, taught by INS attorneys, includes a review of recent legal developments, the identification and discussion of civil lawsuits alleging illegal stops, and instruction on the relative importance to attach to a variety of factors when making roving patrol stops.

E. United States Marshals Service

Mission

The Marshals Service's mission is to find and apprehend fugitives. It is also responsible for protecting federal judicial officers and others who are subject to threats, and transporting detainees for the federal courts and aliens for the INS.

Policies and Practices

The Marshals Service engages in few non-suspect specific encounters. When presented with warrants issued by federal courts, the race, ethnicity and gender of the subject is predetermined.

The Marshals Service does not operate its own detention facilities. It assumes custody of arrestees detained by the Federal courts and, if a conviction results, delivers such persons to the Bureau of Prisons. In addition to relying on the BOP, the USMS relies on private and local jails near each Federal courthouse to house the detainees. Consequently, the Marshals Service does not have policies for classifying detainees according to ethnic gangs or by using other ethnic classifications.

The Marshals Service has developed several policies that distinguish between male and female detainees in housing and transportation. Male and female detainees are kept in separate holding cells at courthouses. On air flights, female and male detainees may be transported together, but for their safety, female detainees must be under visual surveillance of a female guard or Deputy U.S. Marshal at all times. In ground transportation, female and male detainees are normally transported separately. If they must be transported together, every effort is made to separate them in the vehicle and to have a female guard or female Deputy U.S. Marshal accompany a female detainee. If no Marshals Service matron or female Deputy U.S.

Marshal is available, female personnel are requested from local law enforcement agencies. If female detainees must be transported by only male Deputy U.S. Marshals, a Marshals Service log book must have an entry before the trip of the time of departure, the odometer reading on the vehicle, the persons in the vehicle, and the estimated time of arrival at the destination.

Training

The USMS trains its employees in general terms that,apart from suspect specific information, race and ethnicity are not to be considered in carrying out official duties. Deputy Marshals are instructed during basic training not to rely on non-suspect specific information about race and ethnicity.

III. RECOMMENDATIONS

Given the importance of the issue of the use of race, ethnicity, and gender in federal law enforcement activities and the need to achieve a coordinated resolution of the complex legal and policy issues that the matter presents, the Department of Justice will establish a working group, headed by the Deputy Attorney General, to further evaluate current policies and training with regard to the use of race, ethnicity, and gender in DOJ law enforcement agencies and make recommendations as appropriate.

The working group, which will include representatives from the Department's law enforcement agencies and the Civil Rights Division, will evaluate existing agency materials as well as results from the data collection field tests as they become available in order to:

(1) Develop policy recommendations with respect to the use of race, ethnicity and gender in all agency law enforcement activities. This will include an examination of the appropriate use of intelligence reports and when information obtained as part of a law enforcement investigation is specific enough to warrant the use of a racial or ethnic identifier. This will also include an analysis by the INS to determine if some factors are more accurate than others in predicting alienage;

(2) Expand and strengthen the training provided by Department law enforcement agencies to federal, state, and local law enforcement concerning the use of race, ethnicity and gender; and

(3) Ensure that the law enforcement agencies are appropriately supervising and monitoring their agents, employees and operations for any impermissible use of race, ethnicity or gender.

We expect to conclude this review and make recommendations for reforms, as appropriate, soon after the receipt of interim results from the data collection effort.

In the interim, the Department's law enforcement agencies will take the following steps to enhance training, establish interim policies where gaps exist, and provide guidance to their officers.

(1) The INS will issue interim policy guidance that clarifies that ethnicity cannot be the sole or determinative factor in the decision to conduct <u>any</u> encounter – including those not requiring "reasonable suspicion" under the Fourth Amendment. This will result in a consistent agency policy with regard to all encounters.

(2) Each agency will review its training materials to ensure that all new, incumbent, line, and supervisory agents and analysts receive training on the agency's policies with regard to the use of race and/or ethnicity in all law enforcement activities. This will include a review of the training provided to state and local law enforcement to better ensure that officers trained by federal agencies are not basing their law enforcement activities on race or ethnicity.

(3) The Department of Justice will explore ways to promote data collection on race, ethnicity, and gender of people stopped or searched by state and local law enforcement officers trained by Department agencies. This data collection will assist state and local law enforcement officers in complying with principles of non-discrimination.