



**ÆGIS** e-journal

***Addressing threats that affect your bottom line***

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**This month's features:**

- 1. Due Diligence — Scholarship and journalism**
- 2. OPSEC, Economic Espionage, and Competitive Intelligence — OPSEC and the law of trade secrets**
- 3. Executive Protection — Smuggling and theft in air travel**
- 4. Technical Issues — DUI / DWI: Unintended consequences**
- 5. Real Stories from the Field — German companies as a fruitful ground for spies**
- 6. Book and Product Reviews — Smith & Wesson First Response knife**
- 7. Free-Subscription/Unsubscription/Copyright Information**

## 1. Due Diligence — Scholarship and journalism

Due diligence is the verification of representations and claims made by one party to another. It is a process whereby we compare the results of research or investigation with the facts, expectations, and representations made. The process is simply to gather, check, discover, and verify. This requires the experience and judgment to know when, where, and how to explore further to uncover what *hasn't* been disclosed. We tend to think of due diligence as a process applied to business transactions, but, in fact, it is a process that should be applied to any important interaction.

One area in which we do not usually think of due diligence is the analysis of claims made in academic circles and in the news. Many assume that news is just that – news – and that the academic review process will separate the true from the false. This is not necessarily so, which means we may make decisions – financial and personal – based on information that is inaccurate. Even worse, the information may be deliberately inaccurate to further some personal, political, social, or financial agenda.

In some cases, particularly when dealing with special-interest groups, we expect this. We have certain expectations of what we will see if we read pieces from:

- *The Democratic Party and the Republican Party.*
- *Handgun Control, Inc. and the Second Amendment Foundation.*
- *Right to Life and Voluntary Euthanasia Society.*

We have, however, a somewhat different expectation when reading or seeing news reports or the results of scientific or academic studies. Nevertheless, both of these areas are being used to further agendas through use of misrepresentation. This means that when making decisions based on public information, there is an increasing necessity and obligation to verify what is being reported. (As one seasoned news editor told a cub reporter, “If your mother says she loves you, check it.”)

To demonstrate this, we will take two examples dealing with gun issues – one from academia and one from the media. We have chosen the gun issue because it is more comprehensible than party politics, and freer from religious and ethical colorations than issues regarding life. We race to point out that we do *not* own a gun, have *never* owned nor kept a gun for protection, do *not* encourage others to do so, and will *not* be trying to make a case for one side of this issue or the other. We merely want to show examples

of why the need for independent thought and verification is as important when making intellectual decisions as it is when making business decisions.

### ***Arming America: The Origins of a National Gun Culture***

This book was written by Michael A. Bellesiles, and published and subsequently withdrawn by Knopf (which should have known better). According to one online description, “Basing his arguments on sound and prodigious research, Bellesiles makes it clear that gun ownership was the exception – even on the frontier – until the age of industrialization. In Colonial America the average citizen had virtually no access to or training in the use of firearms, and the few guns that did exist were kept under strict control. No guns were made in America until after the Revolution, and there were few gunsmiths to keep them in repair. Bellesiles shows that the U.S. government, almost from its inception, worked to arm its citizens.”

The book was an immediate success, apparently because it was politically correct and gave the lie to the view that guns had always been available to Americans. In 2001 Bellesiles won the prestigious and lucrative (\$5000) Bancroft Award from Columbia University, which should have known better (<http://www.columbia.edu/cu/news/01/04/bancroft.html>). It was championed by the press. *The Economist*, which should have known better, wrote (<http://www.texansforgunsafety.org/articles/archives/guns.htm>) “So, contrary to popular belief and legend, and contrary even to the declarations of the founding fathers, gun ownership was rare in the first half of America’s history as an independent country. It was especially low in parts of the countryside and on the frontier, the very areas where guns are imagined to have been most important. By no stretch of the imagination was America founded on the private ownership of weapons.”

While the book was rather startling, it did present a minor problem, mostly involving, at first blush, common sense. It didn’t really seem to make much sense. While it is true that guns were obviously easier to make after the Industrial Revolution, even without being much of an historian it is hard to discount Alexis de Tocqueville describing in *Democracy in America* a “typical peasant’s cabin” as containing “a fairly clean bed, some chairs and a good gun.” Or, that in the first three battles of the Revolutionary War, which were over what we would term today as gun control issues, an awful lot of people managed to show up with guns.

Unfortunately for Bellesiles (and *The Economist* and Columbia University), the book quoted sources that others had seen, and remembered rather

differently. As it turned out, Bellesiles imprudently misquoted primary sources (you can be misled by secondary sources, but it is hard to explain how the Militia Act of 1792 went from “every citizen so enrolled and notified, *shall within six months thereafter, provide himself with a good musket or firelock*” to “every citizen so enrolled, *shall...be constantly provided with a good musket or firelock...*”), as well as using sources that could not be independently verified.

For those interested, many of the details of how Bellesiles was unmasked can be seen in an interview with Clayton Cramer at <http://hnn.us/articles/1185.html>, or at [http://www.emory.edu/central/NEWS/Releases/Final\\_Report.pdf](http://www.emory.edu/central/NEWS/Releases/Final_Report.pdf), in which Emory University’s findings of the issue said:

“In summary, we find ... that despite serious failures of and carelessness in the gathering and presentation of archival records {E.d., he claimed his notes had been destroyed in a flood in his office at Emory University. This flood had indeed occurred, but all the other professors who were affected reported the damage, and the university sent around document restoration experts. Bellesiles never reported any damage} and the use of quantitative analysis, we cannot speak of intentional fabrication or falsification.

... we find that the strained character of Professor Bellesiles’ explanation raises questions about his veracity with respect to his account of having consulted probate records in San Francisco County.

... dealing with the construction of the vital Table One, we find evidence of falsification.

... which raises the standard of professional historical scholarship, we find that Professor Bellesiles falls short on all three counts.”

In the end, Bellesiles resigned from Emory, the Bancroft Prize was revoked and he was asked to give back the money he had been given (<http://www.upi.com/view.cfm?StoryID=20031217-114343-7257r>), and *The National Endowment for the Humanities* also withdrew its name from a Newberry fellowship (\$30,000) awarded to Bellesiles for a second book on guns.

***License to Kill: How the GOP helped John Allen Muhammad get a sniper rifle, by Brent Kendall, a Washington Monthly editorial assistant.***

This editorial in the January/February issue of *The Washington Monthly* (<http://www.washingtonmonthly.com/features/2001/0301.kendall.html>) is a puzzling mishmash. Again, we are not concerned here with the political

views of either the magazine or the editorial assistant who wrote this piece, merely with the accuracy of the piece.

Ignoring the political rhetoric that the Republican Party was directly, and one assumes with malice aforethought, responsible for the illegal acquisition by Muhammad of a gun, the title starts with the inaccurate statement that the gun used in the tragic shootings was a sniper rifle. As it happens, the rifle used in the crimes was not a sniper rifle.

The bulk of the article, again stripping out the political rhetoric, is a series of attacks on the NRA and the GOP. The rest is a paean to the ATF (Bureau of Alcohol, Tobacco, and Firearms), which they state has no enforcement power because of the efforts of the GOP and the NRA. The ATF, you will remember, is the organization that, under the Clinton administration, was responsible for serving a warrant in Waco to determine whether certain gun-related papers had or had not been filed by the Branch Davidians.

We don't deal much with the world of gun commerce. So, in order to find out whether ATF's powers had decreased since Waco, we spoke with a number of law enforcement officers and a number of gun dealers. The consensus view was that the ATF had the power to do pretty much whatever they want, whenever they want, and used that power fairly freely, with one officer saying that some local governments had gone so far as to forbid their police departments to participate in joint operations with ATF.

The editorial then tells a story that differs from any other we have read. According to the *Washington Monthly*, "Bull's Eye employees have reported seeing Malvo at the store this summer, and later noticed the Bushmaster was not in its display case. But the store did not file the federally required theft report." We recall reading other written reports at the time of the incident indicating that when ATF showed up and asked about the gun, they were told that it had not been sold and was still on the premises, and only when its box was opened was it discovered to be missing. We suppose that if the employees noticed the gun was missing when ATF showed up to look for it, and then remembered Malvo had been there, one could make a claim that the editorial is accurate in some cosmic sense....

In terms of the scope of the gun problem (for perspective, keep in mind that according to the National Vital Statistics Report, Vol. 49, No. 12, October 9, 2001 in the last year of record there were roughly 2,405,000 deaths in the U.S., of which approximately 11,000 were gun homicides or accidents), the editorial says, "Every year, more than 200,000 guns used in crimes are traced back to licensed gun dealers like Bull's Eye," which sounds pretty

bad. According to the Bureau of Criminal Justice Statistics (<http://www.ojp.usdoj.gov/bjs/>), in the last year of record, there were 6,723,930 crimes of violence, of which 6.8 percent involved guns, for a total of 457,274, of which, according to *The Washington Monthly*, 44 percent involved “guns traced back to licensed dealers.”

We are given to understand (but can’t document) that ATF will only trace guns made after 1990, and that most guns used to commit violent crimes are not recovered by the police, and thus never traced. According to the Bureau of Justice Statistics report *Firearms Use by Offenders*, (<http://www.ojp.usdoj.gov/bjs/pub/pdf/fuo.pdf?>), 79 percent of state prison inmates using guns in their crimes got their guns from family or friends or street/illegal sources, which probably came originally from gun dealers, which means that probably 100 percent of guns used in crimes are originally purchased from gun dealers. This condemnation is thus as revelatory as saying that cars involved in automobile accidents are originally purchased from car dealerships.

The article goes on to say, “Of the 83,000 retail firearms dealers in America, ATF shuts down only about 25 annually.” In talking again with law enforcement officials and gun dealers, it appears that the average profit on a gun is generally under the 10 percent range, and thus few (the article notes that “just 1.2 percent of dealers accounted for 57 percent of the guns traced”) dealers would risk their freedom for little or no profit, so, independent of the general standards of the industry, the 25 figure is probably not unreasonable.

In the same vein they note that, “During the 1970s as ATF stepped up its policing of gun dealers, the NRA fought back, portraying ATF agents as ‘jack-booted fascists,’” a statement originally made, in fact, by House of Representative’s Minority Leader Dingel (D-Mich) about the ATF.

They also state “By 1995, however, the Brady law was beginning to show results. In its first year, it had blocked 40,000 attempts to purchase firearms by criminals, juveniles, and other prohibited persons--evidence that in fact many criminals were looking to gun stores for their firepower.” This is indeed impressive, if one has not read that the Government Accounting Office (GAO) reports that during the first year of Brady, 95 percent of the transactions were approved without any problem. Of the denials, almost 50 percent were due to traffic tickets or administrative problems with the application forms (prepared or mailed incorrectly, etc.). The GAO notes that of the denials reported by the ATF and later heralded by President Clinton and HCI, almost half of those initially denied applications were subsequently

approved following administrative or other appeals procedures. Using the GAO's own statistics, less than 1/100 of one percent of the 93,000 "felons" actually denied handgun purchases have been prosecuted under Brady. The GAO concluded that, "Brady may not directly result in measurable reductions of gun-related crimes."

The article also makes an obligatory-in-the-anti-gun-world passing mention of problems with gun shows. However, according to *Firearms Use by Offenders*, only 0.7% of State prison inmates got their guns at a gun show, making it not much of an issue in real terms. The typical gun show experience can be seen in an article by TV station KPLC (<http://www.kplctv.com/Global/story.asp?S=1090509&nav=0nqxDSLb>), which sent a sixteen year old boy to a gun show to in Louisiana to make a purchase of a handgun, with no success from any vendor in attendance..

Putting aside Constitutional issues (The Supreme Court said "For example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceably to assemble, and to petition the Government for the redress of grievances. Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding."), is it possible to make a valid case against civilian gun ownership without lying, distorting, or misrepresenting facts? Of course! As with most issues, there is truth on both sides of the issue, and no valid need to lie when analyzing costs versus benefits unless there is a need to force a specific answer for some purpose that will not be handled by a cost/benefit analysis.

In *fine*, we are not familiar with *The Washington Monthly Magazine*, and do not know if this editorial is representative of the magazine. We do know that, at least in this editorial, they are anti-Republican and anti-gun, and play fairly fast-and-loose with facts. Based on this editorial, this would be an appropriate magazine to read if you were rabidly anti-gun and anti-Republican, and wanted support for your views. It would not be a good choice if one wanted facts or news.

Before you make a judgment based on something you see on television, or read in a book, or read in popular press sources such as *The Economist*, *The Enquirer*, *The Washington Monthly Magazine*, the *New York Times*, or even in *The Business Security e-Journal*, you should ask yourself if what you are

reading makes sense, and then verify the information anyway. The same way you would verify claims made in a business transaction.

## **2. OPSEC, Economic Espionage, and Competitive Intelligence — OPSEC and the law of trade secrets**

Both federal and state authorities have recognized the need for the protection of trade secrets. At the state level, 41 states and the District of Columbia have passed some form of the Uniform Trade Secrets Act. This act provides civil injunctive relief and damages to the aggrieved party. In 1996, Congress passed the Economic Espionage Act, which makes it a federal crime to steal trade secrets. Unlike the state statutes, the U.S. Attorney brings the federal action on behalf of the complainant in federal district court.

The effects of these laws are twofold.

First, a company may very well be at risk through the inadvertent violation of these laws by its employees, thereby subjecting the company to the penalties outlined in the statutes. The statutes indicate that the actions of the offending party must be “intentional” or that the offending party “had reason to know” that the information was acquired through “improper means.” The latter standard presents a potential problem since it is a subjective standard that has to be applied. However, a company can avoid the appearance of impropriety if its personnel are trained to recognize potential conflicts and how to respond to them.

Second is when a company becomes the target of economic espionage. Both the federal and state statutes provide adequate remedies for protection and recovery of damages. However, that is predicated upon the information under scrutiny qualifying as a “**trade secret**” as defined under the statutes. Within the definition of “trade secret” are the provisions that:

- The information is of economic benefit if kept secret.
- The owner has taken reasonable measures to keep the information secret.
- The information, if shared, was acquired under circumstances giving rise to a duty to maintain secrecy or limit its use.

Legal commentators agree that the subjective test to be applied to meet the definition is to determine if the scope of the protection afforded the information is commensurate with the value of the information. It is important to note that the owner is **REQUIRED** to make some reasonable effort to protect the information.

The good news is that while companies have great difficulty identifying critical information (largely because they never think about it), they have no problems whatsoever identifying their trade secrets. The bad news is that they are not very good at figuring out who might try to steal these, nor how. Their protective efforts may be simultaneously *reasonable*, yet *inadequate* and *inappropriate*. This means that a serious industrial spy may find little impediment to acquiring your trade secrets. How many of you seriously feel your company is equipped to deal with an attack by a foreign government intelligence agency or a sophisticated domestic economic spy?

Now, imagine that you make a reasonable, albeit ineffective, effort to protect your trade secret and it is stolen. You most likely discover this when a foreign competitor starts producing a suspiciously similar product at much lower cost, and you are being driven out of business. You are convinced (correctly, in this case) that you are the victim of economic espionage, and would like to prosecute. Unfortunately, you could have four problems.

1. You haven't caught anyone with their hand in your cookie jar, so you are reduced to a *post hoc ergo propter hoc* argument.
2. The bad company will insist that they developed this themselves, and it is mere coincidence that the two of you did a simultaneous development of the same product.
3. They will note that you took reasonable precautions to protect your trade secret, and that therefore they couldn't have stolen it.
4. Even if it is a foreign company with no presence in the U.S., it is still possible to prosecute in the U.S. But it may be hard to ever collect.

The bottom line here is that it is better to adequately protect a trade secret than to try to take legal action after it is stolen. OPSEC professionals can help institute and maintain a program to identify possible adversaries and develop appropriate protective countermeasures. As a side benefit, an active OPSEC program will not only assure that the protection of your proprietary information meets the definition of "trade secrets," but will also help protect the critical (but not trade-secret) information that you have never even identified as needing protection.

### **3. Executive Protection — Smuggling and theft in air travel**

As most travelers now know, you are no longer allowed to lock your luggage when traveling by air. Two concerns we have heard discussed within the trade since this regulation has been put into place are smuggling and theft.

Whether you are reading this as a protective agent or one needing protection, you must be aware of the potential issues, and be prepared to deal with them.

## ***Theft***

Loss has always been an issue in travel. Because of the amount of luggage in transport, from time to time luggage tends to disappear, sometimes to reappear, and sometimes never to reappear. We have been lucky. On one occasion a bag containing a gun and ammunition disappeared. On another occasion a specially checked guitar disappeared. Fortunately, both were merely lost in transit, and re-appeared the next morning. On another occasion, a locked suitcase fell off a loading dock, dumping a gun onto the tarmac. We were summoned to the baggage office to be sure that no other weapons were missing, which they weren't.

Theft has been a problem also, albeit equally rare. Most baggage loaders know how to throw a bag to make it pop open (some would use duct tape to seal their bags, or wrap them in plastic sheeting like some giant luggage sandwich, or add a twisted paper clip to the lock), and it is only because most people are honest that the level of theft has been so low. We travel with Halliburton cases (<http://www.zerohalliburton.com/>), which are aluminum cases with sturdy, individual locking clasps. These cases are quite strong: It is rumored that some years ago when terrorists blew up an evacuated plane on the runway, the only recoverable items were three Halliburton cases. The locks are intended to deter the casual thief long enough that it will be more worthwhile to break into someone else's luggage, but do no good if they cannot be used: Our enthusiasm for transporting guns in unlocked bags is minimal....

It is believed in the industry that because of this new unlocked-bags policy, we should expect to see an increased level of theft. You must therefore make sure that you or those under your protection do not pack anything in the bag that cannot be replaced, and that there is appropriate theft insurance in place.

In theory, there will be more careful supervision of baggage, and if a bag is opened for inspection, a slip will be placed inside saying it was opened. In practice, we came back from a trip a few days before this article was written, and when the slip-less case was spit onto the luggage carousel there was a necktie hanging out of it. While nothing was missing, the greater concern was not theft, but smuggling.

## ***Smuggling***

It should be anticipated that unlocked luggage would be a tempting vehicle for smugglers. What, after all, could be more perfect? There are unlocked bags where the smugglers *qua* baggage handlers are, going to places to which they would like to send small packages. They merely have to open a bag, put in the package, find some way to identify it to their accomplice at the other end, and the package disappears before you get it, leaving, perhaps, only a telltale necktie hanging out. What happens if the contraband is discovered en route? You, the traveler, have a lot of explaining to do.

Obviously, given the amount of baggage being moved, the likelihood that you or the people under your protection fall victim to smugglers is in the slim-to-none category. Even so, no matter what the odds, someone wins the lottery every week, and this is a scenario that is best discussed with counsel before the event, not after. Naturally, if you are traveling abroad, where no such regulation is in force, you should ensure that your luggage is locked!

### **4. Technical Issues — DUI / DWI: Unintended consequences**

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## ***Disclaimer***

As an attorney, I have to make some disclaimers. First, for the international readership, my remarks pertain only to American law. Other nations use different legal systems and standards, and this article will be of interest to the international subscriber only as an indication of the laws in the United States. Secondly, for American readers, this article can only be an overview of the topic: The standard reference work on DUI law in the United States is four volumes and even this treatise has to be supplemented with other materials! Furthermore, there are significant differences in the application of the laws from state to state. In one state an individual was found guilty of drunk driving while riding a horse. In another state an individual was found guilty of DUI in an inoperable car.

## ***Definitions and history***

“Driving Under the Influence” (DUI) and “Driving While Intoxicated” (DWI) are now somewhat interchangeable terms. The current practice is to refer to all such charges as “DUI,” since driving under the influence of drugs has now been added to the list of crimes encompassed by these laws.

The modern push for severe anti-drunk driving laws began in the 1960's in Europe, where the initial scientific studies were conducted into the relationships between driving and drinking. In the 1980's the United States began to adopt the European view, and to enact more severe laws pertaining to drunk driving. This in turn spawned special fields in the forensic sciences, and the practice of law, which deal almost exclusively with the issue of drunk driving. But in the growth of this specialty there has been a continued expansion of the direct and hidden penalties attached, while at the same time the application of the involved science has become a major legal issue.

### ***Informal comments***

Even if you are legally sober, once the police stop you for some infraction and smell the odor of alcohol on your breath, the odds are that you will be cited for DUI and then have to prove your innocence. Officers are trained to gather evidence for a possible court case from the moment they first come into contact with a suspect.

Additionally, the police want to avoid civil liability for "turning a drunk loose on the highways." Therefore it is safer for the officer – not to mention the public – to arrest the suspect. Once the suspect is arrested, the case is turned over to a prosecutor, who is not paid for dismissing cases or losing them. In other words, from the moment the officer stops a suspect who has been drinking and driving, that suspect is headed for court, with all the expenses involved in a full defense.

Officers may stop vehicles for almost any reason: Safety, equipment violations, moving violations. But once the vehicle is stopped, the police may detain the driver and passengers for only so long as is justified by the initial reason for the stop, *unless during that initial contact the officer develops reasonable suspicions for another offense.*

Once the suspect is pulled over, the officer will approach and ask for license, registration, and proof of insurance. The driver has to produce these items, and while the driver is going through the wallet or glove compartment to find these items, the officer will be asking questions.

This is a form of test. The officer is evaluating the suspect's performance in a "divided attention" situation. The officer is checking the suspect's coordination and ability to perform two tasks simultaneously; the two tasks are answering the questions and looking for the paper work. If the suspect fumbles while looking for the documents, or gives confused answers to the questions, the officer will note this poor performance and report it as a

possible sign of impairment.

Next the suspect will be told to get out of the vehicle. As the suspect gets out of his car the officer will note whether the suspect uses the car to maintain his balance, and whether he is steady on his feet.

At this point the officer usually begins asking questions about the suspect's drinking, and whether there are any physical impairments that would prevent the suspect from performing the field sobriety tests. This is also the point at which the field sobriety tests are normally administered. Now, subject to some variations, the field sobriety tests are usually voluntary. However, failure to take them will usually result in an immediate arrest and the State's using the refusal against the defendant in trial.

Should the individual elect to perform the field sobriety tests and then fail those tests (and the odds are that he will fail if the officer judges that they are appropriate to be administered at all), the individual will then be arrested, advised of his rights, and taken to a location to be given a breath or blood test.

If the defendant refuses to cooperate with this breath or blood test, then there are administrative penalties automatically imposed (usually the immediate suspension of the license for approximately one year); the police can then seek a warrant for a blood draw and use the defendant's refusal as evidence in court against the defendant and also introduce the results of the blood draw. In other words, the accused can cooperate with the official test or face maximum penalties.

After the test the officer will normally ask the defendant all the questions that will allow the state to independently calculate the blood alcohol level without the use of the testing devices.

Three minor items:

1. Using European models, and based on their studies, it was determined that there was a small segment of the population that could still be considered sober at a 0.14 percent blood alcohol level, and we therefore set our laws to say that any reading of 0.15 or higher would automatically be considered as "impaired." Over the years this standard was reduced first to a 0.10 percent and is now generally at 0.08 percent, although some states use 0.06 percent. In addition there are special standards for the operators of commercial vehicles (0.04 percent), aircraft and boats. The significant fact here is that although a given individual may in fact pass the field sobriety tests at a blood

- alcohol level higher than the mandated maximum, that individual can and will be found guilty of DUI on the simple basis of exceeding the statutory maximum level.
2. The police are now using a number of different types of hand held breath-testing devices. In most states at this time these hand held devices can only be used to verify the presence of alcohol and not the individual's actual blood alcohol concentration. There is, however, a move afoot to make the readings obtained by these devices admissible in court.
  3. A number of states are now mandating that persons convicted of DUI, as either a second offense or a first offense with a high reading, obtain an ignition interlock device that requires the vehicle operator to blow into the device to insure that the operator is not drunk.

### ***Hidden consequences***

DUI has joined that list of crimes that have additional administrative penalties imposed on the accused by state agencies other than the court. As an example, a conviction for a domestic violence misdemeanor charge will also automatically revoke the right to own or use firearms, so security professionals may automatically lose their profession for a minor fight with their spouse. By the same token, a conviction for a misdemeanor drug charge can cost the accused the right to certain scholarship grants and to other forms of public assistance. These hidden consequences are seldom fully discussed when the accused is in court, and the accused first learns of them when, months after the conviction, he receives a notice in the mail that certain administrative actions have been taken against him because of that conviction.

This same type of logic has carried over into the DUI field. The Supreme Court has ruled that a driver's license is a privilege, not a right. With this reasoning in place, many states have transferred the imposition of penalties for DUI from the courts to the Motor Vehicle Department and other agencies. Thus, the court imposes a jail sentence, a fine, and mandates alcohol abuse screening and counseling, but it is the Motor Vehicle Department that actually suspends the license and re-instates that license in accordance with its own administrative rules and procedures. However, other agencies also use the "privilege" versus "right" logic following a person's conviction for DUI, and therefore the following types of situations routinely arise:

- First, there is the increase in one's collision and/or liability insurance

(although this is variable depending on the insurance company and the individual's driving record, the rule of thumb is a three-fold increase for a five year period.) However, in this context, where the individual is required to use a company vehicle in the scope of employment, the employer's insurance costs are also increased.

- If the individual carries a commercial driver's license and is found liable of DUI by the Motor Vehicle Department's standards, **even if found not guilty by the court**, then the driver will lose his license for one year for the first offense and indefinitely for any subsequent offense. This is true even though the individuals were operating their private, non-commercial vehicles at the time the offense was committed.
- If the individual has a pilot's license, he must report any DUI arrest when renewing his pilot's license. Failure to do so will result in suspension of the license. In the past, the first conviction of DUI would have no result. A second offense would result in administrative review to determine whether or not the pilot needed treatment or counseling, and possibly a one-year suspension for private pilots and a six-month suspension for commercial pilots.
- In a more local context, school teachers and day care workers in the author's home state of Arizona are required to have a security check conducted by the state, and an appropriate certificate issued in order for them to maintain their employment. When the State's computer runs its next cyclical check of its computer records, and the conviction for DUI appears in the records of a person subject to the security check requirements, the individual's certificate or license is suspended pending review. The review process currently takes about one year from the date of suspension.

It should be obvious that the individual employee being found liable for a DUI, either by a court or an administrative agency, can affect any professional office requires employees to be licensed or registered by the state. Furthermore, even where driving or individual fitness for the license or registration is not an immediate issue, it can reasonably be expected that any convictions for DUI will be grist for an administrative agency's mill in any subsequent context.

### **Conclusion**

As a matter of economics as well as morality, do not drink and drive!

The DUI laws have grown over the years to become something more than just another traffic ticket, and the anti-DUI lobby has made a highly successful marriage with the National Highway Safety and Traffic Safety Administration to impose strict standards on the consumption of alcohol in almost every scenario in which a mode of transportation can be operated. This, in combination with seat belt use and several other factors, has substantially reduced automobile deaths.

## **5. Real Stories from the Field — German companies as a fruitful ground for spies**

According to articles in the German press, the German National Criminal Police registered 110,000 cases of economic crimes in 2001, costing at least 6.8 *billion* euros. Who is doing the spying? A PricewaterhouseCoopers business consulting study found that in sixty-three percent of the cases of industrial espionage the perpetrator was employed in the firm.

Most economic espionage is preventable through a combination of access control, background checks, network monitoring and response, encryption, data destruction, and OPSEC (the identification and protection of critical information which is neither a trade secret nor classified). Increasingly aware of the dangers to their data, some German companies are becoming more cautious and electronic data is regularly encrypted. When it comes to investment in other preventive measures, however, such as regular background checks of potential employees, OPSEC, emergency plans, many companies prefer to take the risk. And the risk is substantial.

Due to the long existent “club atmosphere” in German business, and reliance on a candidate’s presentation of a bundle of documents that includes an official evaluation from each and every school, course, internship, and job that someone has held (often amounting to 10-20 pages) most companies see little need to check further. On the level of the board of directors, CEO, and CFO the record is public, and the list of offenders grows weekly. Again, the club atmosphere, embarrassment of checking on one’s peers, and reluctance to spend money account for the failure to exercise adequate due diligence.

The consequences are visible in the scandals, failed companies, and numbers of bankruptcies that have plagued the country for the last 18 months. As the competition increases in a rapidly shrinking job market, the potential for exaggerated or outright dishonest resumes has increased. Personnel specialists have noted a significant increase in inflated resumes, and struggle daily with the task of trying to sort the fact from the fiction among job-

seekers. Sadly, once the candidate has been presented by the personnel agency, most companies rarely choose to do their own checks. Companies, desperate to rescue themselves from failure, hire leadership based on word-of-mouth reputations, not reliable background checks and due diligence. We know from experience that this practice allows dishonest employees and managers to move from job to job defrauding and cheating companies with little fear of ever being caught.

But it doesn't take dishonest employees to pass on information. Because most companies have never identified their critical information, they have never told employees what may or may not be discussed. Because of this, information can be provided to competitors by even the most loyal employees through conversations with friends and colleagues about ongoing projects, plans or rumors, while working on company data on laptops in public places, and through improper destruction of sensitive papers and documents. Few companies, German or otherwise, give serious consideration to ongoing vulnerability assessments or employee briefings. For most German companies, it is taken for granted that employees will be discreet. We, however, consider identification of critical information to be the first line of defense for any organization seeking to protect its source of income.

Likewise, many companies believe that once they have secured their Internet against outside attack by hackers – generally a baseless assumption, by the bye – information available inside the company is safe.

Sadly, this is not true. If you have not identified your critical information you are unlikely to have secured it appropriately from insiders or outsiders. Plus, putting aside the fact that a substantial number of web sites can be easily hacked using only a browser (web designers don't know anything about data protection), even companies who have network monitoring rarely monitor real time, or react upon detection of intrusion.

But at least, you might think, the days of bugs, as in the days of the Cold War and spies around every corner, are long gone, right? Wrong! Unscrupulous competitors are turning to the tried and true ways of old, including bugs. Sophisticated and effective technology is readily available in trade magazines and over the Internet. The mobile telephone carelessly left on the conference table during a sensitive discussion; the promotional gift or the old-fashioned bug planted under the table in the conference room will all provide the necessary access to company plans if the competitor doesn't want to bother to sift through your garbage for unshredded sensitive documents.

Economic espionage is exploding in Germany. Actually, throughout Central Europe. What is not keeping pace with that explosion is a corresponding interest in internal management that aims to protect the research, technology, and customer base in which companies invest so heavily.

If you think it is possible that some of these 6.8 billion euros are coming from your company, you should call us. If you *don't* think it's possible, you may be in for a nasty surprise and should *definitely* call us! As the old saying goes, "Better safe than sorry." Call in OPSEC professionals to be sure.

## 6. Book and Product Reviews

*Smith & Wesson First Response knife*

Smith & Wesson ID #: 195190000 \$59.95

[http://shopping.smith-](http://shopping.smith-wesson.com/merchandise/showdetl.cfm?&DID=57&User_ID=686784&st=7424&st2=-176749315&st3=685945022&Product_ID=2958&CATID=5)

[wesson.com/merchandise/showdetl.cfm?&DID=57&User\\_ID=686784&st=7424&st2=-176749315&st3=685945022&Product\\_ID=2958&CATID=5](http://shopping.smith-wesson.com/merchandise/showdetl.cfm?&DID=57&User_ID=686784&st=7424&st2=-176749315&st3=685945022&Product_ID=2958&CATID=5)



Among the big concerns of protective services professionals are a series of issues relating to driving. One of these involves accidents, where you might have to rescue an incapacitated individual from a car. Two problems that need to be dealt with in this situation are getting into – or out of – the car, and cutting an incapacitated person's seatbelt without cutting the person.

The Smith & Wesson First Response knife, manufactured for S&W by Taylor Cutlery, addresses both of these issues. The back of the knife contains a spring-loaded tungsten carbide punch for shattering safety glass, and the high-carbon stainless steel serrated blade is designed to cut seatbelts.

While many rescue knives have a mariner or sheepsfoot blade, S&W has chosen to make the tip of their blade a screwdriver, albeit with a rounded top to reduce the likelihood of accidental cuts. And while many knife manufacturers warn against prying with their knives, this blade is 1/8 inch

thick, with a ¼ inch pivot, and the instructions tell you “to think of the 1<sup>st</sup> Response as a small crowbar that cuts and does lots of other things.”

The design of the blade is such that you really cannot use it for cutting a steak or peeling an apple, but, in truth, most of the people likely to carry this knife are, at any given moment, knife-rich, and will likely have several other knives appropriate for these other tasks.

This is a well-made emergency safety tool that should be given serious consideration by any protective team member. And a good gift for your driver.

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