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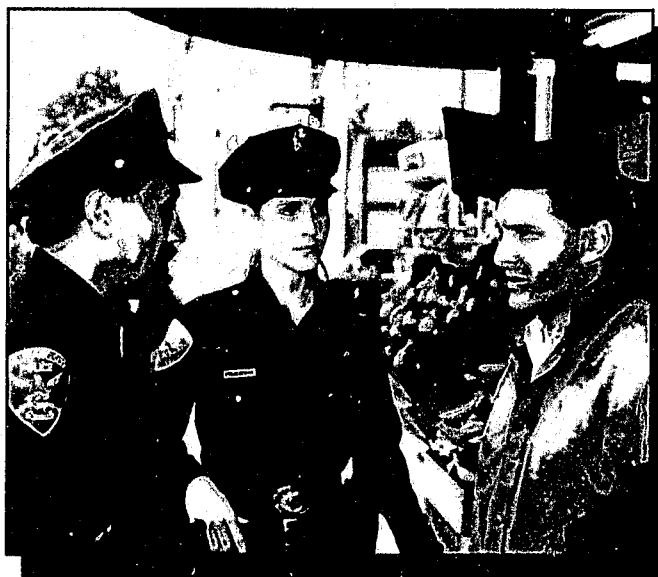


Photo courtesy of Dan Boyd



On the Cover: As the United States becomes an increasingly multicultural society, American law enforcement officers must learn to adapt to a changing world.

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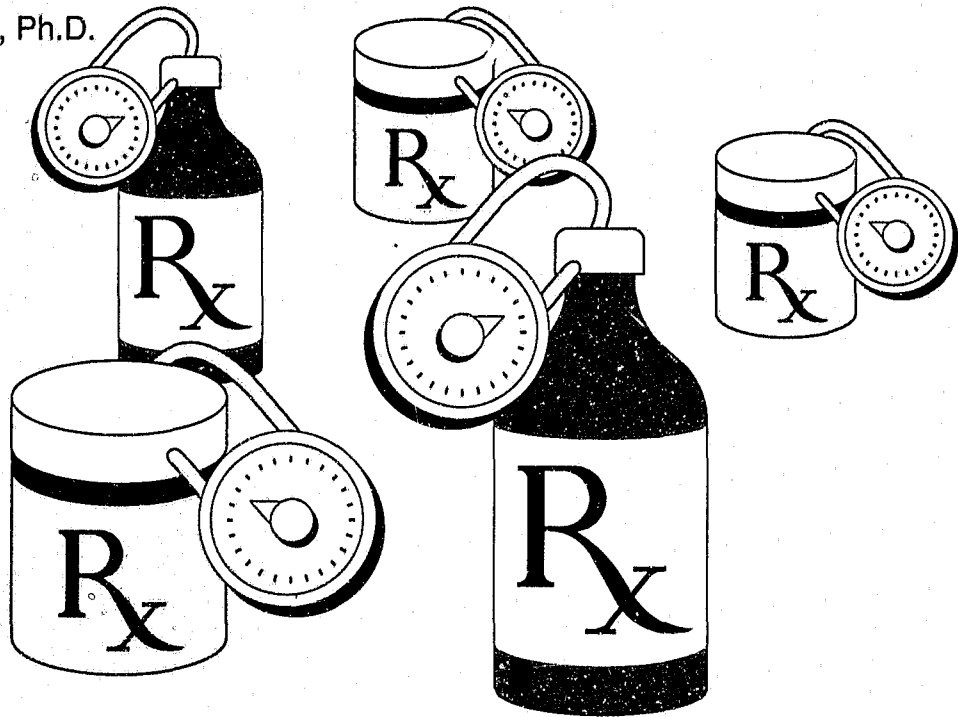
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Tamper Evident Packaging

Law Enforcement and the Consumer

By
JACK L. ROSETTE, Ph.D.



For centuries, civilizations used various forms of product packaging to store and transport food and other items. As time passed, these product packages underwent an evolution in design and material composition. For example, ancient civilizations used goatskins and earthenware to store liquids and food items. Then, as recently as the 1950s, any reference to a food package usually meant a glass, metal, or paper container. Now, the term "food container" also refers to rigid or flexible plastic packaging in which the food oftentimes can be cooked and served.

Today, however, a primary concern in packaging extends not only to storing food and other items but also to limiting access to the container's contents only to the product's final consumer. This concern grew as a result of incidents of product tampering that occurred in various products, such as over-the-counter (OTC) drugs, beverages, food products, candy, and vitamins. In fact, in recent years, every part of the United States experienced incidents of product tampering.

This article provides law enforcement with background information concerning product tamper-

ing. It also discusses its rate of occurrence in American society and the legal jurisdiction concerning product tampering cases. The article then addresses how consumers can reduce the possibility of becoming victims of product tampering.

Background

In September and October 1982, seven people died in Chicago, Illinois, after they consumed adulterated Tylenol. As a result of these incidents, the Food and Drug Administration (FDA) implemented regulations in late 1982 to require tamper-evident packaging on all OTC drugs and certain cosmetics.

These regulations became effective in 1983.¹ This marked the introduction of tamper-evident packaging to American consumers. These antitampering features, if they remain intact, assure the consumer of the product's safety.

Also in 1982, Congress passed the Federal Anti-Tampering Act (FATA).² This act authorized the FBI to investigate cases of product tampering. With the implementation of this new legislation, consumers became increasingly aware of product packaging. However, this awareness also led to an increase in the number of complaints of possible product tampering.

For instance, prior to 1982, the FDA received a total of 37 complaints of possible tampering, dating back to the early 1970s. But, by 1986, the number of possible product tampering cases reported to the FDA jumped to over 1,700, of which less than 5 percent proved to have potentially harmful effects.³ Obviously, based on these statistics, a need exists for a method to determine quickly the likelihood of possible package violations.

Is Product Tampering Widespread?

Based on the number of cases the author is familiar with, in addition to the 1,700 reported, the number of cases of possible product tampering annually is approximately 1,800.⁴ About 1,300 of these cases result from manufacturing defects, false claims, or false alarms. This leaves about 500 serious claims per year. Of these 500 complaints, case investigators confirm approximately 11 percent as product tampering.

Additionally, each year, industry produces billions of packages of food, cosmetics, and OTC products. This means that statistically, approximately one person in every 120,000 files a report concerning a case of suspected product tampering. The statistical probability of injury, of any type, from product tampering is approximately 1 in 3 million. Yet, despite this limited number of complaints, the statistics do not matter if even one person is harmed because of product tampering.

For this reason, local law enforcement agencies must be prepared to investigate such cases. Prompt, efficient response in preserving evidence is critical to ultimate success in resolving cases.

Another danger often associated with product tampering is the possibility of copycat reports. Because the media often publicizes product tampering incidents, the number of identical reports and/or

incidents can increase over widespread areas. Law enforcement agencies, however, should not automatically label these reports as copycat complaints. Someone knowledgeable of a complaint, later proved false, may actually violate the product in the same manner as the initial false call, but using a toxic substance that could injure anyone consuming the adulterated product. Therefore, law enforcement must investigate thoroughly each complaint.

Legal Jurisdiction

On the Federal level, the FBI has jurisdiction in tampering cases under Title 18, U.S. Code, sec. 1365.⁵ Title 18 defines the various classes of tampering as follows:⁶

1. *Attempt to tamper*; fine up to \$25,000, imprisonment for 10 years, or both
2. *If death results from tampering*; fine up to \$100,000,

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Educating consumers to inspect closely all packages and the products within could drastically reduce the chance of injury from adulterated products....

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imprisonment for any term of years or life, or both,

3. *If serious bodily injury to an individual results*; fine up to \$100,000, imprisonment for not more than 20 years, or both, and
4. *Any other case*; fine up to \$50,000, imprisonment not more than 10 years, or both.

Most of the cases prosecuted at the Federal level result in prison terms ranging from 18 months to life. Although these penalties do not take into account all possible penalties under various State laws, they do demonstrate the need for early local involvement, as well as the potential use of tampering statutes for cases other than product tampering. Additionally, local statutes provide more protection to the public than Federal statutes because prosecutors can combine offenses, thereby allowing for greater penalties upon conviction.

Ideally, all jurisdictions should prosecute and obtain convictions whenever possible. For example, an offender could be charged on the Federal level with product tampering (for the act of tampering), the State could also charge the individual with aggravated assault (for placing the product in a retail display), and the local jurisdiction could possibly charge the offender with filing a false police report.

However, State and Federal penalties do not deter some individuals from product tampering. Product tampering offenders are exceedingly inventive and have various motives for performing an act of product tampering. For example, some offenders may wish to have revenge against a store, product, or even a certain individual, while others may commit acts of product tampering for money or to create excitement or publicity.

State and local police departments are often in a position to initiate cases of product tampering because they respond immediately to a potential problem.⁷ These agencies must

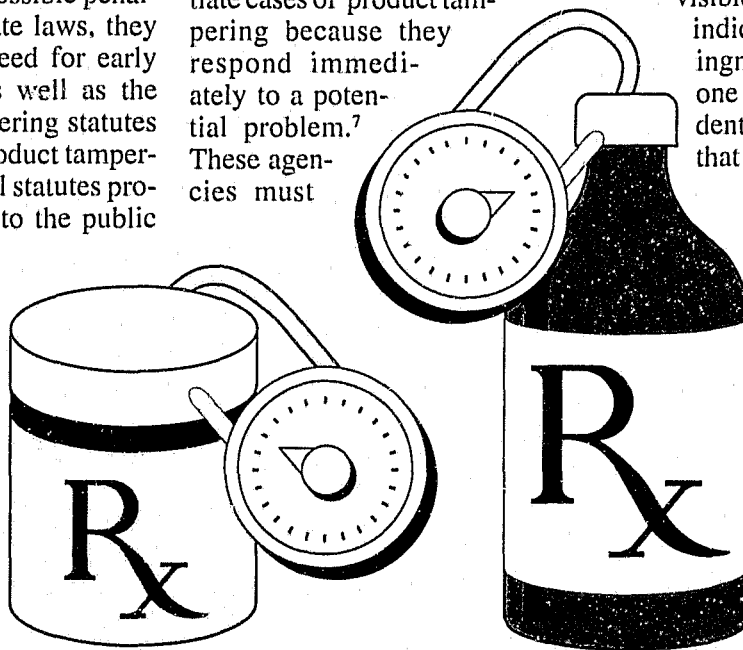
ries from the consumption of adulterated products.

Product Tampering Prevention

Industry and consumers continue to demonstrate increased awareness of tamper-evident packaging. This awareness reduces the loss of life due to the consumption of adulterated products. In addition, studies into consumer preferences concerning tamper-evident packaging consistently reveal that consumers prefer tamper-evident products and want these features to be shelf-visible.⁸ These same studies also indicate the consumers' willingness to pay slightly more for one brand that is tamper-evident than for a competing brand that is not.⁹

Manufacturers of tamper-evident packaging features have also improved the effectiveness of their products. Unfortunately, most consumers tend to take tamper-evident features for granted, unless an incident of product tampering appears on the evening news. However, in reality, this trust is often misplaced. An individual may consider a stranger a possible threat

to personal safety, but think nothing of using a product where the tamper-evident feature is obviously broken or where the product appears unusual. Educating consumers to inspect closely all packages and the products within could drastically reduce the chance of injury from



then turn to the FBI and FDA for assistance to determine whether a specific item has actually been tampered with and whether it contains a foreign substance. Such early identification enhances the chances of apprehending the perpetrator, as well as prevents other possible inju-

adulterated products to a point where it would not be worth the offender's effort.

However, in order for tamper-evident packaging to work as intended, manufacturers, as well as consumers, must be educated. To this end, manufacturers attend annual seminars on their responsibilities and how they can improve the effectiveness of their packaging. For example, manufacturers could further improve the effectiveness of their packaging by placing pictures of the product on the label and in their advertisements. This one step could eliminate many cases of product tampering and loss of life where the consumer used a product despite its altered appearance.

The component manufacturers can make the best tamper-evident packages; the product manufacturers can set high standards for package effectiveness; and law enforcement can achieve a high rate of solving product tampering cases. But, all of this is in vain if consumers ignore the appearance of the package and/or the product they are about to consume. If consumers have concerns about the integrity of specific packages, they should alert the proper law enforcement personnel. This could lead to other actions on the part of law enforcement that would prevent expansion of the incidents.

Consumers can improve these odds by inspecting product packaging before use. If consumers detected even half of the packages that could harm them, the probability of injury could decrease to one in six million. Therefore, consumers should regularly observe pack-

ages, report those suspect, and maintain a high level of awareness of what to look for in tamper-evident packaging.

Ideally, this preventive stance should extend to others involved in package design and in the marketplace; yet, oftentimes, it does not.

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Product tampering offenders are exceedingly inventive and have various motives for performing an act of product tampering.
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For example, during research, the author sent questionnaires to numerous packaging engineers and others in the industry. One executive of a major tamper-evident component manufacturer did not want to participate because “it's not our responsibility to make sure they work.”

Unfortunately, industry executives were not the only ones to express such disregard for effective tamper-evident packaging. A search in retail stores for defective packages led to the discovery of several examples of defective tamper-evident packaging, indicating possible prior opening, or tamper-evident packaging that was otherwise defective. When asked about the packages, the store managers responded, “Just put it back on the shelf, and I'll have the supplier pick it up.” What if someone bought the

defective item before the supplier's next visit?

Conclusion

Since industry instituted tamper-evident packaging, injuries resulting from product tampering have declined. While this trend is encouraging, vigilance in the battle to protect consumers against the possibility of product tampering must continue.

Product tampering will not disappear. Industry must remain committed to providing consumers with quality products in tamper-evident packages, and law enforcement must continue to prosecute aggressively cases of possible product tampering. There is no such thing as “tamper proof,” and consumers should examine carefully the products they use.

Since 1982, industry and law enforcement have come a long way. Still, all parties must continue to research and develop improvements in packaging and actively prosecute product tampering cases. ♦

Endnotes

¹ *Federal Register*, vol. 42, No. 215, November 5, 1982.

² Title 18, U.S.C., Section 1365.

³ U.S. Government report courtesy of the Food and Drug Administration and the Federal Bureau of Investigation.

⁴ *Ibid.*

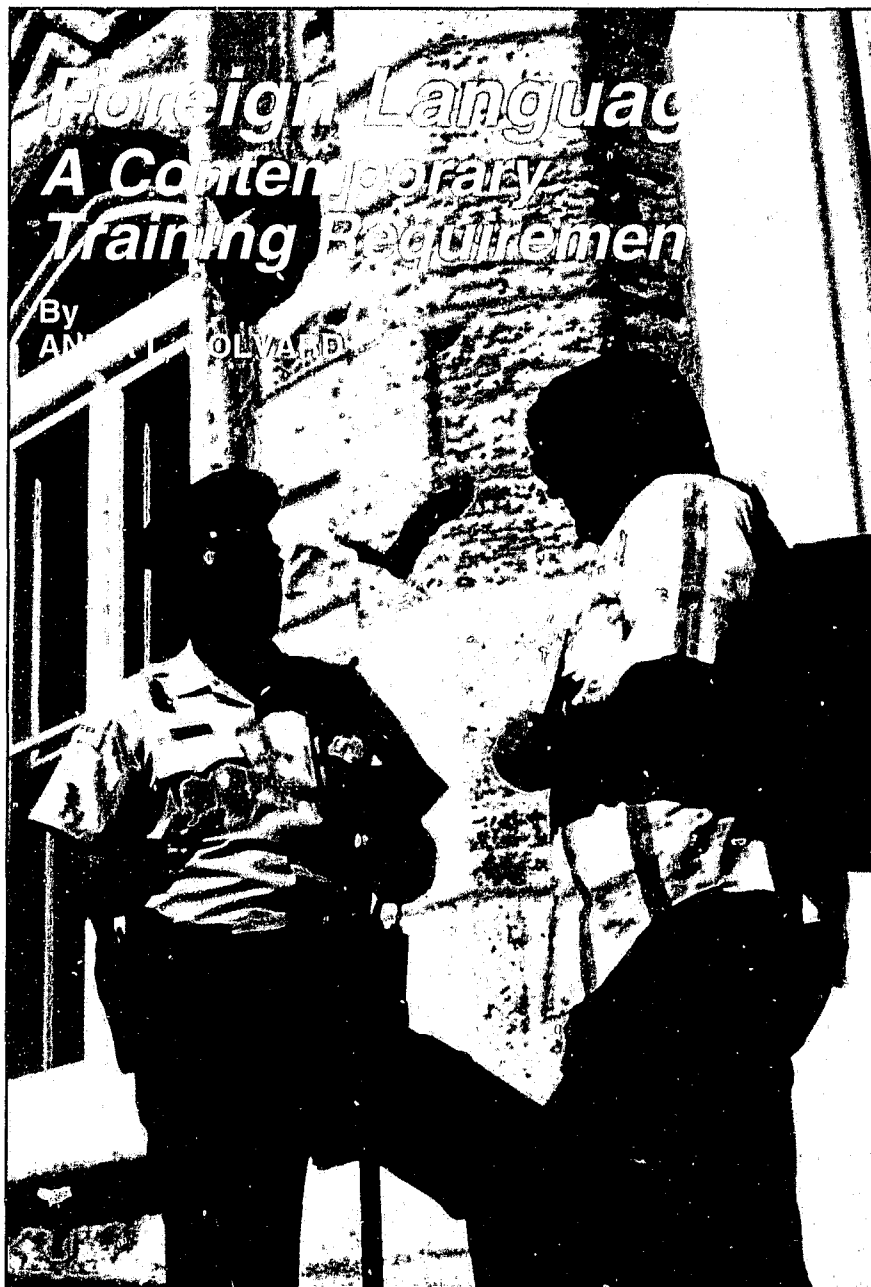
⁵ Title 18, U.S.C., Section 1365.

⁶ *Ibid.*

⁷ *Supra* note 3.

⁸ Greg Erickson, “Consumer Survey: Which Packages Do Consumers Like?,” *Packaging Magazine*, June 1988, 42; Mike Ligett, “Tamper Evidence in the Marketplace,” *Food and Drug Packaging Magazine*, May 1987; John Sneden, Dr. Hugh Lockhart, and Michael Richmond, “Tamper-Evident Packaging: Is it Really?” *Packaging Engineering Magazine*, June 1983.

⁹ *Ibid.*



Foreign Language A Contemporary Training Requirement

By
ANTHONY OLIVARDO

Consider the following traffic stop:

Officer Smith pulls over a motor vehicle occupied by four Hispanic males. She approaches the driver of the vehicle and asks for his license and vehicle registration. Not understanding English, the driver replies, "No hablo ingles." Officer Smith, who does not speak Spanish,

continues to make inquiries in English, which results in both parties becoming frustrated and excited.

The officer then motions for the driver to exit the vehicle. Within moments, the repeated attempts at communication and apparent misunderstanding between the driver and the officer lead to a confrontation in which Officer Smith sustains

injuries. The men then drive away, and a high-speed chase follows. The pursuit ends when the driver wrecks his vehicle.

This seemingly routine traffic stop results in severe consequences. The department places Officer Smith on injury leave. The innocent bystanders injured as a result of the high-speed chase bring civil action against the law enforcement agency. The occupants of the stopped vehicle suffer injuries, which lead to their hospitalization. And, two police cruisers remain out of service for an extended period of time.

Unfortunately, situations such as this will likely increase as scores of people from foreign countries continue to immigrate, both legally and illegally, to the United States. For the most part, these immigrants experience many difficulties while trying to assimilate into American society. They also pose problems for criminal justice personnel because of language barriers and cultural differences that neither group fully comprehends.

This article explains some of the reasons behind the misunderstandings and lack of communication that occur between law enforcement and the various ethnic communities. It then suggests that one way to overcome these problems is to incorporate foreign language instruction into criminal justice training programs.

REASONS FOR LACK OF COMMUNICATION

Language Barriers

The primary reason why law enforcement officers and many foreign-born residents of the United