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# THE GOOD AND (BREAKING) BAD OF DECEPTIVE POLICE PRACTICES

Elizabeth N. Jones\*

## INTRODUCTION

Strategic police deception is common in criminal investigations, encouraged by law enforcement and routinely permitted by courts. But while various tactics and ruses may technically comport with existing criminal law jurisprudence, they raise deep social and ethical problems that provoke concern about the acceptable role of police behavior within the parameters of the Fourth Amendment.<sup>1</sup> To the extent that the law requires social legitimacy to operate effectively, the extensive adulation surrounding *Breaking Bad*<sup>2</sup> can provide several functions: It introduces a rapt public audience to the extensive use of deceptive police practices, it suggests that law enforcement may rely on lies, trickery and misrepresentation as acceptable policy, and it perhaps cajoles tolerance of inappropri-

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1. Many academics have contributed to this query. *See, e.g.*, Jerome H. Skolnick & Richard A. Leo, *The Ethics of Deceptive Interrogation*, 11 CRIM. JUST. ETHICS 3, 4 (1992); Christopher Slobogin, *Deceit, Pretext, and Trickery: Investigative Lies by the Police*, 76 OR. L. REV. 775 (1997); Rebecca Strauss, *We Can Do This the Easy Way or the Hard Way: The Use of Deceit to Induce Consent Searches*, 100 MICH. L. REV. 868 (2002); Elizabeth E. Joh, *Breaking the Law to Enforce It: Undercover Police Participation in Crime*, 62 STAN. L. REV. 155 (2009); Susan R. Klein, *Lies, Omissions, and Concealment: The Golden Rule in Law Enforcement and the Federal Criminal Code*, 4 TEX. TECH L. REV. 1321 (2007); Robert P. Mosteller, *Moderating Investigative Lies by Disclosure and Documentation*, 76 OR. L. REV. 833 (1997).

2. *Breaking Bad* aired on AMC from January 20, 2008 to September 29, 2013. Its critical acclaim as one of the most popular dramatic series in television history has garnered the series 85 official honors including Emmy, Screen Actors Guild, Golden Globe, and Art Directors Guild awards and 166 nominations. *See, e.g.*, *Breaking Bad Awards*, IMDB (Aug. 12, 2014), [http://www.imdb.com/title/tt0903747/awards?ref\\_=tt\\_awd](http://www.imdb.com/title/tt0903747/awards?ref_=tt_awd); Charlotte Alter & Eliana Dockterman, *The Year's 11 Most Influential Fictional Characters*, TIME MAGAZINE (Dec. 9, 2013) [http://poy.time.com/2013/12/09/the-11-most-influential-fictional-characters-of-2013/#slide/walter-white/?&\\_suid=140788220451706734215953244627](http://poy.time.com/2013/12/09/the-11-most-influential-fictional-characters-of-2013/#slide/walter-white/?&_suid=140788220451706734215953244627) (listing Walter White at the number one spot on the list of "on screen figures who got our attention").

ate or questionable police activity. Of greater concern is that the use of deceit in investigating crime may extend to police overreach, from permissible law enforcement tactics to intrinsic corruption and illegal, excessive use of force.

*Breaking Bad* invited viewers to enter a chaotically spellbinding world of methamphetamine manufacture and distribution, where relationships between characters were often complicated and the lines between good and evil blurred. Yet *Breaking Bad* was more than a weekly show about drugs. It captured a panoply of human frailties and the propensity to succumb to power and corruption by artfully wrapping its protagonist and antagonist into one superbly unforgettable character: Walter White. His transformation from perpetually downtrodden, sickly chemistry teacher to calculating, violent methamphetamine kingpin illustrates the negative spiraling inevitability caused by the temptations of unfettered power.

Viewers see this dichotomy in the first moments of the pilot episode, which introduces the Whites (Walt, his wife Skyler, and son Walt Jr.—with daughter Holly on the way).<sup>3</sup> The family struggles to maintain their modest New Mexico lifestyle even as Walt holds down two jobs, one as a high school chemistry teacher, and the other as an attendant at a car wash. When Walt is diagnosed with inoperable lung cancer, he becomes determined to find a way to provide for his family in the face of a likely premature death. By chance, Walt runs into former student Jesse Pinkman, an underachieving, small-time drug dealer. Walt seizes this opportunity to enter into the methamphetamine manufacturing business. Eventually, Walt and Jesse go to work for Gustavo “Gus” Fring, a local small-business owner and philanthropist who heads an international narcotics empire. Later, Walt and Jesse become elite meth manufacturers themselves.

Walt is first presented to viewers publicly emasculated, sporting a button-down shirt, socks, and “tighty whitey” underpants. He is disheveled and talking hysterically into the camera. Viewers soon learn that he is ineffective as a family provider, physically ill with cancer, and rather impotent as a teacher. He is bitter over his lack of financial accomplishment and social acceptance, especially when contrasted with his former colleagues, who have prospered in large part because of Walt’s work. Walt feels that he is the victim of an unfair system; he has dutifully followed the “rules” only to find that he has failed to achieve his dreams. However, as the series progresses, Walt enjoys increasing success in the meth trade, and the power and strength accompanying it, and he begins

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3. *Breaking Bad: Pilot* (AMC television broadcast Jan. 20, 2008).

to change. He shaves his head, grows a goatee, and creates a new personal moniker, “Heisenberg,” further distancing his old image and values from his newfound authority. Walt’s metamorphosis culminates in the brilliant episode, “Cornered.”<sup>4</sup>

In a pivotal scene, Skyler is concerned for Walt’s safety, and even more so for that of her family. She asks Walt if they should go to the police for protection, as she would rather face the legal consequences of his involvement with methamphetamine than risk “you getting shot when you open your front door.”<sup>5</sup> At this point Skyler does not fully understand the degree to which Walt has immersed himself in narcotics trafficking. It becomes frighteningly clear to her, literally stunning her into silence, when Walt surfaces as Heisenberg and barks,

Who are you talking to right now? Who is it you think you see? Do you know how much I make a year? I mean even if I told you, you wouldn’t believe it. Do you know what would happen if I suddenly decided to stop going in to work? A business big enough that it could be listed on NASDAQ goes belly up. Disappears. It ceases to exist without me—no, you clearly don’t know who you’re talking to so let me clue you in. I am not in danger Skyler. I *am* the danger! A guy opens his door and gets shot and you think that of me? No. *I* am the one who knocks!<sup>6</sup>

This intimate glimpse into the soul of a seemingly ordinary, albeit law-breaking, man captivated America for five glorious seasons, providing a forum through which viewers alternately rooted for and against Walt and his nemesis (and brother-in-law), federal Drug Enforcement Administration (“DEA”) Agent Hank Schrader. Hank embodies the ultimate macho cop, persistently steadfast in his crime fighting pursuits, even when the very laws he has sworn to uphold hinder his ability to apprehend the criminal. Hank is tenacious to the point of feeling compelled to overstep his legal authority in the name of law enforcement. He is abrasive but likeable; he is the voice of justice. The audience knows that Hank is the only one who recognizes that Gus and, eventually, Walt are involved in the methamphetamine trade. Hank cannot ignore his gut instincts, and it is this refusal to surrender that makes him successful, even as he pushes the boundaries of legally permissible police procedures.

Sun-scorched Albuquerque, New Mexico, provides the perfect backdrop to emphasize the all-too-real systems of production and distribution

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4. *Breaking Bad: Cornered* (AMC television broadcast Aug. 21, 2011).

5. *Id.*

6. *Id.*

of meth in the United States.<sup>7</sup> Sparsely populated towns like Albuquerque exist on the shared front lines of America's failed war on drugs. The isolated desert geography represents a lawlessness of sorts, harkening back to the early days of the Western frontier.

The parallel between Walter White's protagonist and today's real-world APD cannot be ignored. It is arguably not by coincidence that the fictional construct of a brutal meth dealer provided welcome publicity for the city of Albuquerque, yet some of Albuquerque's own rank-and-file officers were concurrently generating disrepute by engaging in the effects of unchecked misconduct. Might the maverick actions of fictional police in *Breaking Bad* have infiltrated the reality of the APD, such that the irresistible mix of unaccountability and authority infected an actual police force? Even the title of the show is instructive to this query: to "break bad" means "to 'go wild,' to 'defy authority' and break the law" and even "to behave in a violent manner for no good reason."<sup>8</sup> The recent episodes of APD brutality suggest as much.

The facts are stunning. *Breaking Bad* aired from 2008 to 2013,<sup>9</sup> and since 2009, APD officers have been involved in thirty-seven officer-involved shootings that killed twenty-three people and left fourteen others wounded. To put these figures into perspective, Albuquerque has a population of approximately 550,000 residents.<sup>10</sup> In comparison, New York City's population numbers well over 8 million residents, and it saw twenty-five officer-involved shootings in the same period.<sup>11</sup>

These statistics provided the impetus for the Civil Rights Division of the DOJ and the United States Attorney's Office for the District of New

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7. *Breaking Bad* was originally set in Riverside County, California – an inland desert community with similarities to Albuquerque. Interview by J.C. Frenan with Vince Gilligan, creator of *Breaking Bad* (Mar. 29, 2010), <http://www.slantmagazine.com/features/article/interview-vince-gilligan>.

8. Lily Rothman, *Breaking Bad: What Does That Phrase Actually Mean?*, TIME MAGAZINE (Sep. 23, 2013), <http://entertainment.time.com/2013/09/23/breaking-bad-what-does-that-phrase-actually-mean/> (describing the expression "to break bad" as "a Southern regionalism" deriving from the same area in Virginia as *Breaking Bad*'s creator, Vince Gilligan). See also, WIKTIONARY, [http://en.wiktionary.org/wiki/break\\_bad](http://en.wiktionary.org/wiki/break_bad) (last visited Jan. 10, 2014) (defining the phrase "break bad" as meaning "to go wrong; to go downhill; to turn toward immorality or crime").

9. See *Breaking Bad*, IMDB (Sep. 9, 2014), <http://www.imdb.com/title/tt0903747/>.

10. See U.S. CENSUS BUREAU: ALBUQUERQUE, NM QUICKFACTS, <http://quickfacts.census.gov/qfd/states/35/3502000.html> (last visited Sep. 9, 2014). See also K. Annabelle Smith, *Albuquerque's Shoot-First Police Finally Begin Facing Questions*, ESQUIRE MAGAZINE (Jul. 2, 2014), <http://www.esquire.com/blogs/news/albuquerque-shootings>; Fernanda Santos, *Justice Dept. Accuses Albuquerque Police of Excessive Force*, NY TIMES, Apr. 10, 2014, <http://nyti.ms/1hvNhA4>.

11. Smith, *supra*, note 10, at 2.

Mexico to conduct a joint investigation into the APD beginning in November of 2012. The investigation culminated on April 10, 2014, with a condemning rebuke of the department, finding that “systemic deficiencies of the APD” contributed to “a pattern or practices of excessive force that violates the Constitution and federal law.”<sup>12</sup> The rehabilitation of the APD remains an open matter.

The APD is unquestionably in need of a recalibrated approach toward the residents of Albuquerque. Society deserves balanced law enforcement, encompassing both the ability to solve crimes and protect residents, as well as the capacity for temperance to control unruly situations with firm, yet empathetic, communication. To that end, strategic police deception may be useful. However, it is disconcerting when the implicit protocol of a police agency is to endorse a duplicitous posture toward its residents, while also actively encouraging excessive force, or at a minimum discounting the consequences of its usage. Other areas of criminal law require supervision before officers can act,<sup>13</sup> yet police deception remains largely unrestricted.

This Article questions whether a nexus exists between *Breaking Bad*, the popular series that regularly depicts strategic police deception, and the systemic abuse of force infecting the actual police department featured on that show.<sup>14</sup> First, it focuses on investigative “strategic police deception” depicted in *Breaking Bad* as a potential gateway to the unrea-

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12. Letter from Jocelyn Samuels, Acting Assistant Att’y Gen., Dep’t of Justice, and Damon P. Martinez, Acting U.S. Att’y, Dep’t of Justice, to Mayor Richard J. Berry, Mayor, Albuquerque, N.M. (Apr. 10, 2014), [http://www.justice.gov/crt/about/spl/documents/apd\\_findings\\_4-10-14.pdf](http://www.justice.gov/crt/about/spl/documents/apd_findings_4-10-14.pdf) [hereinafter DOJ Letter].

13. For example, the Fourth Amendment provides the presumption that the police must obtain a valid warrant prior to searches, seizures, and arrests. U.S. CONST. amend. IV. (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.”). See also, Klein, *supra* note 1, at 1348 (commenting that the Fourth Amendment warrant requirement mandates a neutral, detached magistrate to review an officer’s asserted probable cause declaration, in part because “we cannot be sure that the government has a proper motivation – to prevent crime with the least effect on individual liberties, rather than to find shortcuts to solve case . . . because the only evidence of the motivation is the government’s own word”).

14. The city of Albuquerque is policed by the Albuquerque Police Department. The Bernalillo County Sheriff’s Department and the New Mexico State Police patrol other jurisdictions. *Breaking Bad* features the APD and a local branch office of the federal DEA, with greater emphasis on the latter agency’s investigative tactics. This Article explores the possible impact of *Breaking Bad* on the real Albuquerque Police Department.

sonable use of force. The recent transgressions perpetrated by the APD evidence this concern. The show demonstrates the multi-faceted complexities of such police practices—from questionable discretionary decisions and psychological coercion, to deliberate deception and outright lies. Much of the policing depicted on *Breaking Bad* passes technical legal muster, though illegal police activity also occurs. Therefore, this section analyzes both constitutionally permissible and impermissible police actions.

Next, this Article discusses the recent excessive force allegations against the APD. The comprehensive federal investigation reveals a violent, antagonistic, and unflattering image of the Albuquerque Police. The investigation found that officers use much higher levels of force, including deadly force, than is reasonable in encounters with Albuquerque residents. Officers also use physical force that is disproportionate to any possible threat against the officer. In some situations, officers shock residents repeatedly with Tasers, even when unprovoked, which needlessly increases the risk of death or serious bodily injury. Additionally, multiple deficiencies within the department contribute to some officers' habitual reliance on excessive force, most notably the lack of oversight and virtual absence of internal and external accountability.

Finally, this Article highlights the internal workings of the APD and the community of Albuquerque during the occurrence of these particular allegations. Because research has recognized the dual role of television as both entertainer and educator, and because the airing of *Breaking Bad* shares a timeline with the egregious behavior of some APD officers, the Article considers whether the deception and subterfuge highlighted in *Breaking Bad* escaped the world of entertainment and entered the actual city of Albuquerque. The Article alternatively examines the social and situational behaviors within the APD, and how officers may have succumbed to such variables. It evaluates studies of patternistic human behavior indicating that environmental situations, rather than intrinsic personal traits, often dictate the expression and severity of aggressive behavior. In that respect, Walt's journey from family man to narcotics despot is not unlike the APD's submission to postures of hostility and antagonism. Though perhaps a fantastic notion, and possibly subject to more correlative than causative circumstances, the inquiry is provocative and poignant: did *Breaking Bad* instigate the rise in reckless, "shoot first" policies within the APD, ultimately leading the department to "break bad"?

## I. *BREAKING BAD* DEPICTS STRATEGIC POLICE DECEPTION

Police protocol often relies on the use of deception and psychological manipulation when investigating crime. Police accept that they cannot function as investigators and peacekeepers without the ability to legally conceal the truth and even outright lie about any number of facts and circumstances.<sup>15</sup> This outcome-dictated philosophy is adversative to the traditional criminal justice paradigm, wherein the value of evidentiary fruit may not justify the legality of its procurement. Social intuition requires law enforcement to embrace a transparently upright methodology; to act otherwise may subject officers to an uncooperative citizenry.<sup>16</sup>

However, public perceptions can be complicated. Law enforcement elicits both respect and fear from civilians, who in turn demand competing character traits of their officers. Trickery and deceit may be legitimate means to an end when used by law enforcement to investigate crime and perform official job duties. Yet officers are held to a higher standard than private citizens, and must be “trustworthy, honest, and maintain the highest level of integrity” at all times.<sup>17</sup> In some ways the paternalism expected by the community clashes with laws designed to shield police officers from any duty to inform citizens of their rights or to instruct them as to current criminal procedures.<sup>18</sup> These conflicting attributions become even more convoluted and less likely to co-exist when the public is itself unclear as to their tenability.

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15. See Slobogin, *supra* note 1, at 783 (citing JEROME SKOLNICK, *JUSTICE ON TRIAL* 196-97 (2d ed. 1975)) (“[L]ies to suspects about police authority or purpose are, as far as the police are concerned, ‘techniques of the trade’ that should be fostered rather than criticized.”).

16. See Irina Khasin, *Honesty is the Best Policy: A Case for the Limitation of Deceptive Police Interrogation Practices in the United States*, 42 VAND. J. TRANS. L. 1029, 1037 (2009) (noting that “the practice of police deception runs contrary not only to widely held beliefs about right and wrong, but also to the ideals of the American criminal justice system”).

17. See Geoffrey P. Alpert & Jeffrey J. Noble, *Lies, True Lies, and Conscious Deception: Police Officers and the Truth*, POLICE QUARTERLY ONLINE FIRST 2 (Nov. 2008) (noting the dual standards required of police officers, as “often, their word and their ‘honesty’ is taken over that of a civilian in legal proceedings, and judges will most frequently award a ‘tie,’ a ‘he said, she said,’ or a ‘swearing contest’ to the officer”).

18. See Klein, *supra* note 1, at 1329–30 (noting that law enforcement need not ensure that citizens are knowledgeable of the many rights that they possess, and listing examples, *inter alia*, such as the right to refuse a consent search, that the invocation of a suspect’s right to remain silent does not prohibit officers from interrogating on a separate offense, that passengers stopped for traffic violations are free to leave, and that an attorney hired by family members is waiting to speak with a suspect).



Authorized deception may also increase skepticism from an unsympathetic public already predisposed to distrust authority. The juxtaposition of such social views and underhanded police practices virtually invites antithetical outcomes.<sup>19</sup> The same officers who lie when securing arrests and confessions must also convey a sense of trustworthiness and integrity when testifying in court. In light of these contradictory obligations, is it truly absurd to question the precision with which the police calibrate their collective moral compass?

Regardless of one's personal view on the topic, police deception is a legally permissible and well-established doctrine.<sup>20</sup> One of *Breaking Bad*'s many strengths is its ability to illustrate deceptive tactics as compulsory to law enforcement needs and yet fraught with capricious execution. Though the United States Supreme Court has ratified many different forms of police deception, this issue remains complicated and controversial.<sup>21</sup>

*Breaking Bad* exposes viewers to a wide range of typical law enforcement techniques and strategies through the actions of Agent Hank Schrader and his partner, Agent Steve Gomez. The duo's investigation of the city's meth insurgency invites analysis as to whether the strategies employed by these fictional characters are legally sound. It also questions whether APD officers may perceive their roles in society as perpetrators of such actions. This section presents moments in *Breaking Bad* that exemplify police deception, accompanied by a primer explaining the legality of such behavior.

### A. Law Enforcement May Outright Lie in a Host of Situations

A foundational tenet of law enforcement policy is that "artifice and stratagem may be employed to catch those engaged in criminal enterprises."<sup>22</sup> Indeed, police deception and psychological trickery are com-

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19. See Skolnick & Leo, *supra* note 1, at 8 (noting the "paradoxical outcome" where "deception by police during interrogation offers yet another reason for disbelieving law enforcement witnesses when they take the stand, thus reducing police effectiveness as controllers of crime").

20. See *Lewis v. U.S.*, 385 U.S. 206, 210 (1966) (declining to hold that the use of deception by law enforcement agents was per se unconstitutional).

21. See Skolnick & Leo, *supra* note 1, at 3 (noting the inconsistent and confusing state of the law in that "police are permitted to pose as drug dealers, but not to use deceptive tactics to gain entry without a search warrant, nor are they permitted to falsify an affidavit to obtain a search warrant").

22. See *Sorrells v. U.S.*, 287 U.S. 435, 441 (1932). See also *Lewis*, 385 U.S. at 210 (refusing to hold law enforcement's use of deception is unconstitutional per se); *State v. Evans*, 2009-NMSC-027, ¶ 43, 146 N.M. 319, 328 (stating that "our case law makes clear that deception is not coercive per se").

monplace in criminal investigations.<sup>23</sup> Though courts have set forth some guidelines as to impermissible behavior, the law does not specify what the police may say or do to effectuate such lies.<sup>24</sup> For example, law enforcement may not entrap an otherwise innocent person into committing crime,<sup>25</sup> nor tell suspects that they cannot refuse to consent to a search,<sup>26</sup> nor abuse their discretion such that it violates due process and “shocks the conscience” of the court.<sup>27</sup>

Lying to conceal officer identity is often necessary while conducting criminal investigations. Case law has consistently upheld the need for law enforcement to perform in an undercover capacity, particularly in drug busts.<sup>28</sup> And common sense dictates that the police must be permitted to

23. See Robert Panzarella & Joanna Funk, *Police Deception Tactics and Public Consent in the United States and Great Britain*, 2 CRIM. JUST. POL’Y REV. 133, 133-35 (1987) (“Deception has become an integral part of police work . . . Even in routine patrol and detective work the use of deceptions is commonplace.”); Welsh S. White, *Police Trickery in Inducing Confessions*, 127 U. PA. L. REV. 581, 581-82 (1979) (“Use of trickery or deceit in the questioning of criminal suspects is a staple of current police interrogation practices.”).

24. See Richard A. Leo, *From Coercion to Deception: The Changing Nature of Police Interrogation in America*, 18 CRIME, L. & SOC. CHANGE 35, 36 (1992) (noting that courts “have been reluctant to lay down bright lines about the use of deceptive police methods.”).

25. *Sorrells*, 287 U.S. at 445 (“It is well settled that decoys may be used to entrap criminals, and to present opportunity to one intending or willing to commit crime. But decoys are not permissible to ensnare the innocent and law abiding into the commission of crime. When the criminal design originates, not with the accused, but is conceived in the mind of the government officers, and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefor”) (quoting *Newman v. U.S.*, 382 F.2d 479, 127 U.S. App. D.C. 263 (D.C. Cir. 1967)).

26. See, e.g., *Bumper v. North Carolina*, 391 U.S. 543, 550 (1968) (“[W]hen a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion – albeit colorably lawful coercion. Where there is coercion there cannot be consent.”).

27. See, e.g., *State v. Vallejos*, 1997-NMSC-040, ¶ 17, 123 N.M. 739, 744-45 (1997) (citing to prior state and federal court decisions which stated that “[p]olice conduct violates due process when it is outrageous . . . offends notions of fundamental fairness . . . violates principles of fair and honorable administration of justice . . . or shocks the conscience . . . while police may engage in some degree of deception in their efforts to detect certain sorts of crime that are difficult to detect otherwise, police may not employ unconscionable methods in their attempts to ferret out crime.”).

28. See *Lewis*, 385 U.S. 206, 210 (1966) (citing narcotics traffic as a “prime example” of organized criminal activities that may require covert investigation by the government” . . . and stating that “particularly, in the enforcement of vice, liquor or narcotics laws, it is all but impossible to obtain evidence for prosecution save by the

hide their identities so as not to jeopardize reconnaissance operations and officer safety. Criminals are not hindered in the same ways as law enforcement; they can and will lie with impunity. However, the police are constrained by the Constitution and judicial precedent, and these limitations keep them from acting as deceptively as the criminals they pursue.

Media and contemporary culture continue to recycle the misguided belief that police officers must reveal themselves when asked. *Breaking Bad* adeptly and humorously debunks this myth in the introductory scene to the episode titled, “Better Call Saul.”<sup>29</sup>

In this scene, a low-level meth dealer, Badger, sits on a bus bench. A man approaches him, looking to buy some meth. Badger alternates between professing ignorance of the man’s request and claiming that the man must be an undercover police officer. The man rebuffs Badger’s assertions, even lifting up his own shirt to show Badger that he is not wearing a “wire.” Badger, for all of his boasting that he has just identified an undercover cop, relents, telling the man, “I just need you to prove it,” meaning that he needs the man to prove that he is not law enforcement. After pondering the request, the man says to Badger, “I know, it’s simple. If you ask a cop if he’s a cop, he’s, like, obligated to tell you. It’s in the Constitution.” The man instructs Badger to raise his right arm and “ask it official.” Badger complies, and the man solemnly states, “No, I am not a police officer.” The two then exchange money for a bag of meth, which Badger had hidden in a nearby garbage can. Immediately upon receiving the drugs, the man points a gun at Badger and yells, “Albuquerque police, you’re under arrest!” Badger is arrested, thus ending his involvement in narcotics sales—at least for the moment.<sup>30</sup>

Here, the undercover officer’s multiple false assurances and misrepresentations of the law are all legal. Badger is successfully duped, and is not absolved from legal accountability.

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use of decoys. There are rarely complaining witnesses . . . [t]he participants in the crime enjoy themselves. Misrepresentation by a police officer or agent concerning the identity of the purchaser of illegal narcotics is a practical necessity”); see also *U.S. v. Russell*, 411 U.S. 423, 436 (1973) (noting that in the case at bar, involving undercover police investigating a methamphetamine laboratory, is an example of a “circumstance when the use of deceit is the only practicable law enforcement technique available”).

29. *Breaking Bad: Better Call Saul* (AMC television broadcast Apr. 26, 2009).

30. *Id.* In this scene, officers from the Albuquerque Police Department are depicted investigating crime. *Breaking Bad* primarily centered its law enforcement scenes on the Drug Enforcement Administration (“DEA”), a federal organization, though the APD was also shown at times.

*B. Law Enforcement May Fabricate Physical Evidence to Acquire Information, Lure Suspects Out of Hiding, and Promote Basic Investigative Goals*

Police may falsify documents and other items to further investigative needs. Fabricated items are often used to elicit confessions during custodial interrogation,<sup>31</sup> though this tactic may be applied in virtually limitless ways.<sup>32</sup> Courts tend not to focus on the deceptive nature of the practice per se. Rather, courts emphasize the effectiveness of the deception and its impact on the voluntariness of the confession.<sup>33</sup> Courts have also worried over the possibility that false documents could end up as part of the record in trial, resulting in distorted evidence.<sup>34</sup> With the respect of the judicial system at stake, such trepidation is a valid reaction to the use of fabrications to fool and mislead suspects.

Despite these concerns, officers have succeeded by fabricating physical evidence in many ways, including baiting suspects by setting up fake

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31. The controversial issue of general police deception during custodial interrogation is a subject of legal discourse. *See generally* Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 *FORDHAM URB. L.J.* 791 (2006); Richard A. Leo & Welsh S. White, *Adapting to Miranda: Modern Interrogators' Strategies for Dealing with the Obstacles Posed by Miranda*, 84 *MINN. L. REV.* 397 (1999); Laurie Magid, *Deceptive Police Interrogation Practices: How Far is Too Far?*, 99 *MICH. L. REV.* 1168 (2001); Robert P. Mosteller, *Police Deception Before Miranda Warnings: The case for Per Se Prohibition of an Entirely Unjustified Practice at the Most Critical Moment*, 39 *TEX. TECH L. REV.* 1239 (2007); Christopher Slobogin, *Lying and Confessing*, 39 *TEX. TECH L. REV.* 1275 (2007); Margaret L. Paris, *Trust, Lies, and Interrogation*, 3 *VA. J. SOC. POLICY & L.* 3 (1995); Deborah Young, *Unnecessary Evil: Police Lying in Interrogations*, 28 *CONN. L. REV.* 425 (1996).

32. *See* Alpert & Noble, *supra* note 17, at 1 ("Officers engage in a wide range of deception limited only by their imaginations.").

33. *See, e.g.,* *People v. Mays*, 174 Cal. App. 4th 156, 164 (2009) (upholding the use of a fake graph "generated" from a fake polygraph as not unduly coercive . . . and also stating "[a] psychological ploy is prohibited only when, in light of all of the circumstances, it is so coercive that it tends to result in a statement that is both involuntary and unreliable").

34. *See, e.g.,* *Florida v. Cayward*, 552 So. 2d 971, 974-75 (Fla. Dist. Ct. App. 1989) (holding that a practical distinction between verbal deception by the police and false documents manufactured by the police is that "[u]nlike oral misrepresentations, manufactured documents have the potential of indefinite life and the facial appearance of authenticity . . . [s]uch reports have the potential of finding their way into the courtroom"). *Accord, State v. Jackson*, 304 S.E.2d 134, 153-54 (N.C. 1983) (finding fabricated physical evidence (here, a fake bloody fingerprint) admissible as long as it is not likely to make an innocent person confess).

crime scenes,<sup>35</sup> and by luring suspects out of hiding through fictitious advertisements designed to arouse curiosity,<sup>36</sup> or by sending fake notices of prize giveaways.<sup>37</sup> *Breaking Bad* puts its own spin on this practice in the episode titled, “To’hajiilee.”<sup>38</sup>

Hank’s investigation has stagnated. To seize Walt’s cash, Hank hopes for a voluntary confession from one of Walt’s unwilling employees. However, the employee, like most people associated with criminal activity, will not simply supply information to law enforcement. To scare the employee, Huell, into talking, Hank and Gomez create phony death pictures of Jesse, and take them to the safe house where Huell has been staying.

Once there, Hank lies to Huell, telling him that Walt has been on a recent killing spree with Huell “next on the hit list.” As further “proof” of the lie, Hank shows Huell the pictures of Jesse looking quite dead. As soon as Huell sees the fake photo, he tells Hank and Gomez everything he knows about Walt’s money. The fabricated picture and corroborative lies work exactly as Hank had planned.<sup>39</sup>

The fake photos seem to have been used lawfully, and were certainly of value to Hank’s investigation. Though they appear misleadingly authentic and provide tangible documentation of the DEA’s lie, they may be easily refuted as evidence, thus preserving the integrity of the criminal justice process.

### *C. Law Enforcement May Use Fake Sympathy and Ruses when Seeking Consent to Search*

Fourth Amendment jurisprudence expressly allows for an exception to the warrant requirement when an individual consents to a

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35. See, e.g., Aletse Mellado, *Florida Woman Found Guilty of Hiring Hit Man to Kill Her Husband*, CNN IN SESSION (May 13, 2011, 8:27 PM), <http://www.cnn.com/2011/CRIME/05/13/florida.hitman/>.

36. See, e.g., Patrick Simonaitis, *Eight Charged in Undercover Prostitution Sting in Casper*, CASPER STAR TRIBUNE (March 28, 2014, 6:00 PM), [http://trib.com/news/local/casper/eight-charged-in-undercover-prostitution-sting-in-casper/article\\_1e9c5ab4-1143-5447-ae27-1cf9c5fed27c.html](http://trib.com/news/local/casper/eight-charged-in-undercover-prostitution-sting-in-casper/article_1e9c5ab4-1143-5447-ae27-1cf9c5fed27c.html).

37. See, e.g., Brian Day, *Deputies Lure Suspects with Fake Contest*, CRIME SCENE BLOG (Nov. 28, 2009), <http://www.insidesocal.com/sgvcrime/2009/11/28/deputies-lure-suspects-with-fa/>.

38. *Breaking Bad: To’hajiilee* (AMC television broadcast Sept. 8, 2013).

39. *Id.*

search.<sup>40</sup> A valid consent vitiates the government's obligation to obtain a warrant prior to conducting a search. The consent search is the most common type of warrantless search utilized by law enforcement,<sup>41</sup> and implicates two core conditions: authority to consent and voluntariness.

First, the person providing the consent must possess proper authority. The law distinguishes between the actual and the apparent authority to consent to a search. Using an objective standard,<sup>42</sup> the police examine the facts and circumstances of the specific situation to decide whether the person consenting reasonably holds the authority to do so. Police may validly enter a premise based on apparent, but not actual, authority to grant consent, if the officers had reasonable belief that the person possessed the authority to consent.<sup>43</sup>

Second, the consent must be voluntary. Courts have analyzed the voluntariness of consent by utilizing a "totality of the circumstances" test,<sup>44</sup> and have articulated an assortment of determining factors.<sup>45</sup>

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40. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) ("It is . . . well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.").

41. Strauss, *supra* note 1, at 871 (citing Richard Van Duizend et al., *The Search Warrant Process: Preconceptions, Perceptions, and Practices*, National Center for State Courts 1984 at 21, finding that "some ninety-eight percent of searches police conduct without a warrant they conduct pursuant to consent."); *accord*, Christopher Slobogin, *Deceit, Pretext, and Trickery*, *supra* note 1, at 781 n.29 ("[O]ne detective interviewed 'suggested that as many as 98% of the searches were by consent. Ironically, this may be obtained through an officer's mere threat to secure a warrant should the party refuse voluntarily to grant admission to the premises.'").

42. See *generally* *Illinois v. Rodriguez*, 497 U.S. 177 (1990) (upholding the validity of a search based on the consent of a person who had apparent but not actual authority, reasoning that the search was valid so long as the officers had reasonable belief that the individual had authority to consent.).

43. *Id.*

44. See *Schneckloth*, 412 U.S. at 227 ("[T]he question whether a consent to a search was in fact voluntary or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances."); see also *U.S. v. Mendenhall*, 446 U.S. 544 (1980) (applying the totality of the circumstances test set forth in *Schneckloth* to uphold a valid consent to search).

45. See, e.g., *Mendenhall*, 446 U.S. at 558 (setting forth relevant factors to the case at bar in determining the voluntariness of consent, including the respondent's age, sex, race, and level of education); *U.S. v. Gonzalez-Basulto*, 898 F.2d 1011, 1013 (5th Cir. 1990) (listing six non-exclusive factors to be considered in determining the voluntariness of consent, including the voluntariness of the defendant's custodial status; the presence of coercive police procedures; the extent and level of the defendant's cooperation with the police; the defendant's awareness of his right to refuse consent; and the defendant's belief that no evidence will be found"); *U.S. v. Galberth*, 846 F.2d 983, 987 (5th Cir. 1988) (setting forth "six primary factors" as described in *Gonzalez-Basulto*).

The United States Supreme Court has provided limited guidance with regard to the propriety of consent searches. It famously held that “[w]here there is coercion there cannot be consent,”<sup>46</sup> but in practice courts have construed this rule rather narrowly.<sup>47</sup> These limited interpretations ensure that so long as the police are not coercive, they have virtually no restrictions in their efforts to gain consent.<sup>48</sup> In an episode titled “End Times,” DEA Agent Steve Gomez obtains consent to search a business by smoothly employing a battery of deceptive techniques.<sup>49</sup>

Despite the DEA’s refusal to consider Gus as a suspect, Hank dispatches Agent Gomez to investigate an industrial laundromat that he suspects is a cover for Gus’s methamphetamine operation. At the laundromat, a plainclothes Gomez approaches the business while leaving a partner to wait by their unmarked police vehicle. He is greeted by an employee dressed in business attire, which contrasts with the rest of the laundromat employees, who are scurrying around in casual clothing. Gomez identifies himself as a DEA Agent, and says, “[M]y friend and I were wondering if we could take a look around.” The employee, Dennis asks if there is a “problem.” Gomez responds by saying, “No, not for you. Can I tell you a story?” He then regales Dennis with falsehoods, accented with jokes and asides, regarding a defendant’s claim that heroin was placed in his clothing while it was being cleaned. Gomez also attempts to befriend Dennis by lamenting the inflexibility of his superiors, and ultimately asserts that he must search the laundromat for evidence of criminal activity.

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46. *Bumper v. North Carolina*, 391 U.S. 543, 550 (1968).

47. *See, e.g., U.S. v. Duran*, 957 F.2d 499, 502 (7th Cir. 1992) (refusing to extend the prohibition in *Bumper* to find coercion where police officers threaten to obtain a warrant unless consent is granted, noting that the officer’s threat to return with a warrant “may have induced [the suspect] to grant her consent, but it was not coercive under the Fourth Amendment”); *U.S. v. Price*, 54 F.3d 342, 346 (7th Cir. 1995) (finding that the “crucial fact” in upholding the consent as valid was the suspect’s “failure to protest” when he realized that the officer has misconstrued his answer of “sure” to the question, “Do you mind if I take a look?”).

48. *See State v. Pittman*, 2006-NMCA-006, ¶ 39, 139 N.M. 29 (Robinson, J., dissenting) (“Police deception which [is] not coercive in nature will not invalidate a consent to search if the record otherwise shows the consent to have been voluntary.”) (quoting 1–8 SEARCH AND SEIZURE, § 8.17 at 258 n.262 (2004)); *see also*, William E. Underwood, *A Little White Lie: The Dangers of Allowing Police Officers to Stretch the Truth As a Means to Gain a Suspect’s Consent to Search*, 18 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 167, 179 (2011) (“It is undisputed that valid consent must be freely and voluntarily given, but it is decidedly unclear what degree of falsehood is necessary to constitute outright coercion.”).

49. *Breaking Bad: End Times* (AMC television broadcast Oct. 2, 2011).

Dennis replies that he must ask his boss, who is currently out of town, for permission. Gomez, feigning disappointment, shakes his head and replies, "So, I'll have to go get a warrant. We'll do it official, but you'll probably have to close down for the day. Twenty agents poking around. Less trouble if it was just us two, but it's your call." Dennis, unsure, nervously seeks assurances from Gomez. "Just the two of you? You'll make it quick, right?" With consent in hand, Gomez cheerfully promises, "We'll be like the wind!" Dennis' reluctant "OK," provokes a signal from Gomez to the other agent, who approaches with a large K9 police dog. Dennis's surprised reaction to the canine addition is amplified with Gomez's final request, "And could you clear out some of the people for us?"<sup>50</sup>

This exchange exemplifies the wide latitude in interpreting valid consent afforded to law enforcement. Though Dennis's authority to consent and his voluntariness in doing so raise potential legal concerns, Gomez proceeds as if the consent was valid.

In the above scene, Dennis appears vested with authority to consent to a search. He is the only employee dressed as a supervisor, and he initiates conversation with Gomez. Dennis's revelation that his boss is unavailable may initially call into question his actual authority. However, Dennis appears to have been left in charge of the business, which most likely suffices to vest him with the apparent authority to consent.<sup>51</sup>

The voluntariness of the consent is also at issue because some of Gomez's strategies may not pass constitutional muster. The totality of the circumstances reveals that Gomez lies to explain his presence at the laundromat. He seeks to elicit sympathy through that fabrication by complaining about his lack of control over the investigation. He attempts to befriend Dennis by making jokes and using colloquial language. Gomez threatens to return with a warrant and "twenty agents," though he skillfully masks the threat as an unfortunate result that would only occur if Dennis failed to consent to the search. And Gomez lies by omission when he initially represents that only two DEA Agents would invoke "less trouble" should consent be granted, only to reveal the presence of a drug-sniffing dog and the request of further accommodations.

The heroin ruse creates the illusion to the employee, Dennis, that he has nothing to fear; this deception by Gomez is lawful. However, the last minute inclusion of the police dog is not as clearly permissible. On one

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50. *Id.*

51. Of course, the audience knows more than Agent Gomez: Dennis is actually the manager, or "boss" of the laundromat, employed by Gus to further the elaborate concealment of the meth lab below.



hand, Gomez specifically told Dennis that there would be “just us two” looking around the business, and further emphasized this number by shaking his head in an affirmative nod to Dennis’s question “Just the two of you?” On the other hand, immediately after Dennis agreed, the dog escorts the agents into the laundromat, raising the number of law enforcement personnel in the business to three.<sup>52</sup> Then again, this may be a de minimis adjustment to the agreement, and not enough to preclude true consent.

Of greater concern is Gomez’s tenuous assertion that he is able to return with a warrant. Officers may threaten to obtain a warrant, but only if they maintain a reasonable belief that the requisite probable cause to obtain a warrant exists.<sup>53</sup> Though measuring an officer’s honest belief as to the existence of probable cause can be problematic, courts have disallowed officers’ “empty threats” where insufficient grounds to seek a warrant were later determined.<sup>54</sup> Ultimately, Hank acted as a rogue agent in asking Gomez to inspect the laundromat, an unreasonable act given the DEA’s previous dismissal of Gus as a suspect. Since Gomez conducts the search with neither the proper legal authority nor the probable cause necessary to obtain a warrant, it is likely that his actions may be viewed as coercive.

#### *D. Law Enforcement May Act with Surreptitious Trickery*

The threshold inquiry as to whether the government has violated the Fourth Amendment prohibition against unreasonable searches and

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52. K9 dogs are used by law enforcement in a variety of ways to investigate crime. See, e.g., Bryan Robinson, *Federal Law Now Protects Canine Cops*, ABC NEWS (Aug. 9, 2014), <http://abcnews.go.com/US/story?id=96229> (applauding new federal law imposing stiffer penalties for injuring K9 animals and noting, “the law enforcement animals as more than just a piece of police equipment and property. The stronger punishment recognizes the animals as partners who are valued by human officers”).

53. See *State v. Evans*, 2009-NMSC-027, ¶ 43, 146 N.M. 319 (“It is not per se coercive for police to truthfully inform an accused about the potential consequences of his alleged actions.”).

54. See STEPHEN A. SALTZBURG & DANIEL J. CAPRA, *AMERICAN CRIMINAL PROCEDURE INVESTIGATIVE*, 466–67 (9th ed. 2010) (“Empty threats to obtain a warrant may at times render a subsequent consent involuntary.”); see also *Dotson v. Somers*, 175 Conn. 614, 402 A.2d 790 (1978) ([C]onsent invalid where police had insufficient grounds upon which to base a warrant application.”); *U.S. v. White*, 979 F.2d 539, 542 (7th Cir. 1992) (holding that “baseless threats” to obtain a warrant if consent is not given may render any consent involuntary); *U.S. v. Talkington*, 843 F.2d 1041 (7th Cir. 1988) (finding consent invalid when police lied in telling suspect that they were in the process of getting a search warrant).

seizures begins with whether a “search” or “seizure” has taken place.<sup>55</sup> Searches and seizures are associated with different privacy interests.<sup>56</sup> For a search, an individual must manifest a “reasonable expectation of privacy” in the area at issue.<sup>57</sup> A two-pronged test determines when a “search” takes place.<sup>58</sup> The test encompasses both a subjective, or actual, expectation of privacy in the area searched, as well as an objective expectation of privacy, which is defined as “one that society is prepared to recognize as ‘reasonable.’”<sup>59</sup> For a seizure of property, there must be “some meaningful interference with an individual’s possessory interest in that property.”<sup>60</sup> If the government’s activity is neither a search nor a seizure, then the Fourth Amendment warrant requirement is inapplicable.

Furthermore, law enforcement may generally observe activities, and collect items, that are “knowingly exposed” to the public without the constraint of a warrant, since individual privacy interests are not implicated as “objectively reasonable” in such circumstances.<sup>61</sup> Fingerprints are the perfect example of “mere physical characteristics” that are “constantly exposed to the public” and therefore do not require protection under the Fourth Amendment.<sup>62</sup>

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55. *State v. Cleave*, 2001-NMSC-031, ¶ 11, 131 N.M. 82 (“The protections of the Fourth Amendment only apply if there has been a search or seizure, so a threshold inquiry in every Fourth Amendment analysis is whether a search or seizure has occurred.”); *Ferguson v. City of Charleston*, 532 U.S. 67 (2001) (“The first step in Fourth Amendment analysis is to identify the search or seizure at issue.”).

56. SALTZBURG & CAPRA, *supra* note 54, at 41.

57. *Katz v. U.S.*, 389 U.S. 347 (1967).

58. *Id.* (Harlan, J., concurring).

59. *Id.*

60. *See generally* *Soldal v. Cook County*, Illinois, 506 U.S. 56 (1992).

61. *See generally* *California v. Greenwood*, 486 U.S. 35 (1988) (“[T]he police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public.”); *Kyllo v. U.S.*, 533 U.S. 27, 33 (2001) (“A Fourth Amendment search does not occur . . . unless the individual manifested a subjective expectation of privacy in the object of the challenged search, and society [is] willing to recognize that expectation as reasonable.”). *See also* Karen J. Maschke, *DNA and Law Enforcement*, in *THE HASTINGS CENTER BIOETHICS BRIEFING BOOK FOR JOURNALISTS, POLICYMAKERS, AND CAMPAIGNS* 48 (2008) available at <http://www.thehastingscenter.org/Publications/BriefingBook/Detail.aspx?id=2168> (noting that law enforcement officials engage in the “backdoor collection” of obtaining DNA from items discarded by criminal suspects).

62. *See, e.g.,* *Cupp v. Murphy*, 412 U.S. 291, 295 (1973) (finding that the collection of “mere physical characteristics . . . constantly exposed to the public” do not require a warrant); *U.S. v. Dionisio*, 410 U.S. 1, 14 (1973) (holding that no reasonable expectation of privacy can exist for physical characteristics which “he or she routinely exposes to public view”); Elizabeth E. Joh, *Reclaiming “Abandoned” DNA: The Fourth*

Nonetheless, police often engage in ploys when attempting to accumulate such evidence. *Breaking Bad* illustrates such circuitous action in the episode titled, “Problem Dog.”<sup>63</sup>

At Hank’s insistence, Hank and Walt Jr. eat lunch at Los Pollos Hermanos, a chicken restaurant owned and operated by Gus Fring. Gus sees them, and they engage in friendly conversation. Gus refills Hank’s soda for him, and later Hank furtively places this cup into an evidence collection bag. He later tests the cup for fingerprints, and matches Gus’s print with one found at a crime scene.<sup>64</sup>

Hank’s warrantless collection of Gus’s fingerprints is permissible, as the Fourth Amendment is not implicated by this activity.<sup>65</sup> Gus would have undoubtedly declined to submit to fingerprint analysis if Hank had asked him to do so. Furthermore, such a question would have alerted Gus to Hank’s suspicions. Hank’s actions mirror the prevalent law enforcement practice of seeking out and securing discarded genetic information. The potential consequences of collecting, analyzing, and storing such information are not yet fully known.<sup>66</sup> Even so, it remains a legal, and useful, investigative strategy.

#### *E. Law Enforcement May Not Violate the Law*

Notwithstanding the seemingly endless spectrum of deceptive techniques, the police may not conduct investigations with impunity. Overzealous officers may be tempted to abuse their discretionary authority at times, and to go beyond lawful parameters at others. Examples of such unauthorized behavior are found in the episodes, “Mas”<sup>67</sup> and “Hermanos.”<sup>68</sup>

Hank locates a recreational vehicle (“RV”) that he believes is being used as a meth lab. He and a partner have the stationary RV under nighttime surveillance. They appear to be in a campground

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*Amendment and Genetic Privacy*, 100 Nw. U. L. REV. 857, 869 (2006) (“[W]e leave abandoned DNA, like fingerprints, nearly everywhere we go.”).

63. *Breaking Bad: Problem Dog* (AMC television broadcast Aug. 28, 2011).

64. *Id.*

65. *Cupp*, 412 U.S. at 295.

66. See Maschke, *supra* note 61, at 47 (“[T]he possibility that new technologies will be able to extract medical information from DNA profiles collected for law enforcement purposes.”); Joh, *supra* note 62, at 875 (noting that the potential uses of a DNA sample “almost certainly will change as science evolves”).

67. *Breaking Bad: Mas* (AMC television broadcast Apr. 18, 2010).

68. *Breaking Bad: Hermanos* (AMC television broadcast Sept. 4, 2011).

of sorts, with trees everywhere and dirt covering the ground. Hank describes the RV as “buttoned up tight,” and complains that he “can’t see a damn thing.” His partner suggests that they return in the morning with a search warrant, but Hank is undeterred. He mutters that he will not let the RV “out of my sight” and that there has “gotta be a way.” Hank then jogs over to the RV and, using an attached side ladder, climbs to the roof. He peers down into a vent, only to find a couple playing cards in their underwear. They see him, and shriek.<sup>69</sup>

Hank and Walt drive into the Los Pollos Hermanos parking lot, where Hank reveals his suspicions to Walt that Gus is an international drug dealer. He vents his frustrations that, though Gus was interviewed at the police station, he was “terms of endearment convincing” as to his lack of culpability. Walt asks Hank if that means that Gus is not guilty, and Hank replies, “[A]s far as the DEA and APD are concerned he’s not. Officially, Fring’s not a suspect. But I’m telling you, something deep down says he’s my guy. I just gotta prove it.” Hank then asks Walt for a “favor.” He shows Walt a GPS tracking device, and tells Walt to attach it to Gus’s vehicle. Walt, clearly flustered as to the accuracy of Hank’s instincts, asks, “Hank, isn’t that illegal? Isn’t there some sort of unlawful search?” Hank chuckles and jokes, “That’s something that’s known as extra legal. Trust me, it’s our little secret. It’s easy ok?”<sup>70</sup>

The two scenes have elements in common. Notably, both situations require the issuance of a warrant. In the first scene, the RV can be classified as either a home (or “domicile” as it is referred to in *Breaking Bad*)<sup>71</sup> or a vehicle. The distinction is important, and depends largely on the RV’s function. This designation dictates an officer’s decision to apply for a warrant, as homes and vehicles enjoy different levels of privacy protection.

An RV has significantly lower privacy interests when it is used as a vehicle rather than a home. Courts have delineated an “automobile exception” to the warrant requirement, reasoning that a vehicle’s inherent mobility and its pervasive regulation by the government justify the exigency of a warrantless search.<sup>72</sup> On the other hand, the law may, under certain circumstances, treat an RV as a home, thus granting it far greater

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69. *Breaking Bad: Mas* (AMC television broadcast Apr. 18, 2010).

70. *Breaking Bad: Hermanos* (AMC television broadcast Sept. 4, 2011).

71. *Breaking Bad: Sunset* (AMC television broadcast Apr. 25, 2010) (showing Jesse eloquently yelling to Hank from inside the RV that, “[t]his is my own private domicile and I will not be harassed! Bitch!”).

72. *California v. Carney*, 471 U.S. 386, 393 (1985).

privacy interests.<sup>73</sup> The home is the place most recognized as deserving of privacy;<sup>74</sup> it is the place where intimate activities take place, where possessions are stored, and where people lay their heads to sleep. This classification affords an RV being used as a home the greatest of protections, and requires the police to obtain a warrant prior to invading the homeowners' privacy interests.

Here, the RV is parked, immobile, and situated off the roadways, thus taking on characteristics more aligned with a home rather than a vehicle. Therefore, Hank's decision to forego the warrant process and look into the interior of the RV appears to be a flawed one.

In the second scene, the installation of a GPS tracker to a vehicle has been held to intrude upon an individual's property interests, and thus requires a valid warrant.<sup>75</sup> Hank, as an agent of the federal government, seems aware of his legal obligation to obtain a warrant, as evidenced by his request of the "favor" that Walt be the one who attaches the GPS to Gus's Volvo. Walt, as a civilian, is not subject to the same constitutional criterion as Hank. Walt may choose to install a GPS contraption, but if Walt acts at the behest of Hank, it is legally akin to the DEA Agent placing the GPS onto the car himself.

Finally, both scenes involve characters who recognize the need for a warrant and Hank's reticence to accept their advice. Though Hank's perseverance and innate sense of justice are positive attributes, they misguidedly operate through his "above the law" mentality.

The distinction between lawful police trickery and unconstitutional abuse of authority can be a fine one. The deceptive strategies exemplified in *Breaking Bad* run the gamut of lawfulness, from acceptably necessary (concealing one's identity as an officer) to cautiously discretionary (deter-

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73. *Id.* at 394 n.3 (providing that the relevant factors in determining whether an RV was being used as a home rather than a vehicle, including "its location, whether the vehicle is readily mobile or instead . . . elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road").

74. *See, e.g., Miller v. U.S.*, 357 U.S. 301, 306–07 (1958) (noting that breaking down the door to a home in order to arrest a suspect "invades the precious interest of privacy summed up in the ancient adage that a man's house is his castle"); *Wilson v. Layne*, 526 U.S. 603, 610 (1999) (quoting William Blackstone, 4 *Commentaries on the Laws of England* 223 (1765–1769) ("[T]he law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle . . .").

75. *U.S. v. Jones*, 132 S.Ct. 945, 949 (2012) (holding in the majority opinion that the warrantless installation and monitoring of a GPS tracking device onto a suspects Jeep is a "search" and therefore unconstitutional with concurring opinions differing as to whether a "search" occurred, and relied on issues other than property rights, such as the reasonable expectation of privacy).

mining the validity of a consent) to fundamentally illegitimate (circumventing the law by asking a civilian to execute law enforcement operations). Though not attorneys, police officers must recognize the legal nuances implicated by their decisions, the outcomes of which often dictate the integrity of an entire investigation.

Notwithstanding the subtleties of criminal procedure, officers are held up to the highest of community standards, and expected to perform with impeccable competency. While legally sanctioned manipulations and lies may help law enforcement apprehend criminals, they also may further aggravate underlying tensions between officers and the communities they protect.

## II. THE ALBUQUERQUE POLICE DEPARTMENT “BREAKS BAD”

*Breaking Bad*’s possible influence on police subculture is underscored by the recent, very public federal allegations of excessive force against the current APD. In April 2014, the Department of Justice (“DOJ”) presented the results of its longstanding civil inquiry into allegations that APD officers consistently engage in unnecessary and unreasonable physical altercations with citizens during ordinary encounters. In a forty-six-page letter to Albuquerque’s mayor,<sup>76</sup> the DOJ detailed its findings that the APD “engages in a pattern or practice of using excessive force during the course of arrests and other detentions” in violation of the Fourth Amendment and Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994.<sup>77</sup>

The Civil Rights Division of the DOJ and the United States Attorney’s Office for the District of New Mexico conducted the investigation. Their comprehensive review of case files, internal policies, and APD infrastructure exposed the magnitude of APD violence, and how its unlaw-

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76. See generally DOJ Letter, *supra* note 12.

77. 42 U.S.C. § 14141 was passed in response to the LAPD beating of Rodney King in 1994 and provides that,

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

42 U.S.C. § 14141(a) (2012).

ful conduct is symptomatic of many underlying failures within the department.<sup>78</sup>

The investigation examined twenty fatal officer-involved shootings from 2009 to 2012, and concluded that a “majority” of these fatal shootings were unjustified.<sup>79</sup> Specifically, APD officers failed to meet the legal standard required for the use of deadly force by an officer when they “shot and killed civilians who did not pose an imminent threat of serious bodily harm or death to the officers or others.”<sup>80</sup> In encounters with “individuals in crisis” officers also frequently used deadly force.<sup>81</sup> And at times, the reckless actions of APD officers themselves led to their use of deadly force.<sup>82</sup>

The investigation also conducted a random sampling of over 200 APD “use of force” reports between 2009 and early 2013. One third of these non-fatal force reports were found to involve unreasonable APD officer conduct.<sup>83</sup> Here too, the investigation found that APD officers inappropriately deployed Tasers,<sup>84</sup> and were physically aggressive without cause against civilians.<sup>85</sup> Officers also used disproportionate force against vulnerable individuals: the mentally ill, incapacitated, individuals in need of medical treatment, and those who were otherwise in distress.<sup>86</sup>

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78. Interestingly, the DOJ investigation did not address the commonly used policy of strategic police deception. Perhaps the difficulties in measuring the many types of deceit, as well as the frequency with which APD officers employ such tactics during routine patrols, prevented their assessment. It is also possible that the DOJ was faced with more imminent problems than those inherent in the legal practice of police deception.

79. DOJ Letter, *supra* note 12, at 10.

80. *Id.* at 11.

81. *Id.* at 12.

82. *Id.* at 13.

83. *Id.* at 16 (“Of the force incidents that we reviewed, APD identified less than 1% of these reports as unreasonable uses of force. In contrast, we concluded that approximately a third of the same incidents involved officer conduct that was unreasonable. The disparity between our conclusions is striking and strongly suggests a pervasive and deliberate leniency in supervisory oversight and accountability.”).

84. *Id.* (“[T]he over-reliance on Tasers in situations where more effective and less extreme options, including verbal de-escalation techniques, were far more appropriate, contributes to the pattern or practice of excessive force.”); *id.* at 16, 19 (defining a Taser as “a weapon that sends up to 50,000 volts of electricity through a person’s body, causing temporary paralysis and excruciating pain” (internal citations omitted)); *id.* at 32 (“The department clearly has not provided sufficient training on the use of Tasers.”).

85. *Id.* at 17 (“Albuquerque police officers used force against individuals who were passively resisting and posed a minimal threat.”).

86. *Id.* at 20.

Examples of these APD violations are graphic and unrelenting. In February 2009, an unarmed man lay on the ground, motionless and wounded from an APD bullet, while an officer walked around the man's truck so as to fire another bullet directly into his chest, executing him.<sup>87</sup> In December 2009, APD officers set a man on fire by deploying their Tasers multiple times against his body, knowing that he had doused himself and the area around him with gasoline.<sup>88</sup> In April 2010, an APD officer who was breaking up a party fired his Taser onto a man who was obviously intoxicated and passed out on a couch; the officer then used the Taser directly against the man's skin three more times before arresting him.<sup>89</sup> In March 2009, an intoxicated, "slow moving" sixty-year-old man dropped the knife he was holding, only to then have forty-seven APD officers stun him with a flash-bang grenade, shoot him with wooden batons and bean bags, Taser him with six five-second cycles of electricity, and unleash a police dog, which bit him.<sup>90</sup> In March 2012, APD officers kicked, beat, and fired multiple Taser rounds into an unarmed, developmentally disabled man who had disrobed and was eating chips on the floor of a gas station.<sup>91</sup>

Each interaction between APD officers and citizens of Albuquerque is factually distinct, but together comprise a pattern of police brutality.<sup>92</sup> Officers injured unarmed, developmentally disabled, and unconscious individuals alike. Officers killed people regardless of whether they possessed a weapon.

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87. *Id.* at 11 (providing that during a trial in state court, officers testified that they thought the suspect had a gun, but a trial judge found that the officers' testimony to this effect was not credible).

88. *Id.* at 19.

89. *Id.* at 21.

90. *Id.* at 17–18.

91. *Id.* at 20–21.

92. The DOJ investigation cited other examples of excessive force. *See id.* at 14 (providing as an example that in March 2010, a plainclothes APD detective shot and killed a man as he attempted to drive away from the detective's unmarked vehicle . . . the DOJ findings stated that the victim "did not pose an immediate threat of death or serious bodily harm and the shooting could have been avoided if the officer had waited for other officers to assist him"); *see id.* at 11–12 (explaining that in May 2011, an APD officer shot and killed an unarmed man, even though the man had not exhibited any threatening behavior during the hour he was observed by the officer, and despite prior notification to police dispatchers that the man did not have a weapon); *id.* at 21–22 (providing another example in September 2012 where APD officers, checking on the welfare of an unarmed, schizophrenic man, grabbed, tripped, choked, and kned him several times in the leg when he refused to come out of his mother's bathroom).



The DOJ stated that its investigation reflects the “full context” surrounding the use of force by APD officers.<sup>93</sup> This thorough vetting discloses that the cases described above were not anomalous incidents perpetrated by one or two rogue officers. Instead, they comprise an array of confrontations in which civilians experienced unreasonably harsh behavior by numerous officers within the APD. Though the investigation acknowledged the many APD officers who perform their duties within the law,<sup>94</sup> the incidents of unreasonable officer aggression recur with such consistency as to establish a “pattern or practice” of unlawful force.<sup>95</sup> And as the findings further clarify, the case descriptions are not exhaustive,<sup>96</sup> but merely illustrative of “the types of encounters that have resulted in a use of force that was not objectively reasonable” by APD officers.<sup>97</sup>

The DOJ investigation was commissioned as a response to “serious public concerns” held by the residents of Albuquerque about their police force.<sup>98</sup> It also meant to further uncover issues raised by a study conducted by the Police Executive Research Forum, which confirmed deficiencies within the department, but was limited in its length and scope.<sup>99</sup> The DOJ investigation found that the development of the APD’s “aggressive organizational culture” resulted from forces beyond individual officer misconduct.<sup>100</sup> Rather, multiple problematic dynamics within the organization seem to have contributed to the APD’s “institutional disre-

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93. *Id.* at 8–9.

94. *Id.* at 22 (“[M]any APD officers carry out their duties in accordance with the Constitution.”); *id.* at 4 (“[M]any APD officers who strive to and do uphold their oaths.”).

95. *Id.* at 2 (“Based on our investigation, we find that the [Albuquerque Police] department engages in a pattern or practice of using excessive force during the course of arrests and other detentions in violation of the Fourth Amendment and Section 14141 [of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141].”).

96. Other incidents of APD unreasonable force abound. See David Fitzpatrick and Drew Griffin, *Video Shows Albuquerque Police Killing Homeless Man*, CNN, (June 22, 2014), <http://www.cnn.com/2014/06/20/us/albuquerque-police-investigation/> (citing an April 2011 example where two plainclothes APD officers shot a man in the back, killing him, the officers claimed that the man was armed, though the judge presiding over the subsequent civil case, which concluded with a \$6 million judgment against the APD, found that the officers’ testimony was not credible).

97. DOJ Letter, *supra* note 12, at 22.

98. *Id.* at 5.

99. *Id.* at 5–6 (noting the results of the PERF’s nine month study revealed many similarities to the DOJ investigation, but that PERF “did not evaluate whether officers used force appropriately”).

100. *Id.* at 3 (“The use of excessive force is not isolated or sporadic . . . [it] stems from systemic deficiencies in the department’s failure to implement an objective and rigorous internal accountability system.”).

gard for constitutional policing.”<sup>101</sup> These failures include the aforementioned excessive force, exacerbated by the synergistic relationship between a lack of internal and external supervision and accountability, inadequate and outdated officer training procedures, and ineffective departmental policies.<sup>102</sup>

To begin, the investigation uncovered a serious lack of oversight within the APD. The chain-of-command in department leadership not only failed to curb the rampant use of officer force, but may have encouraged it. The DOJ observed that internal reviews of officer “use of force” reports are cursory, and rarely result in corrective action, even when officers clearly violated departmental policies.<sup>103</sup> Officers were equipped with mandatory lapel cameras, but they often did not activate them, or the cameras otherwise “failed to record.”<sup>104</sup> Many times officers involved in forceful encounters with civilians did not follow up with the required “use of force” reports.<sup>105</sup> When officers did submit these reports, they were often incomplete, or were filled with the same standardized, or “canned,” language.<sup>106</sup> APD administration also neglected to address potential problems revealed by the reports, and did not attempt to resolve inconsistencies between the reports and other conflicting evidence.<sup>107</sup> The Internal Affairs division of the APD endorsed the officers’ use of force in almost every instance.<sup>108</sup> APD leadership has praised officers for their use

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101. *Id.* at 4.

102. *Id.* at 3 (finding systemic deficiencies in APD “oversight, training, and policy”).

103. *Id.* at 24–25.

104. *Id.* at 26 (noting the “numerous reports where officers are supervisors on the scene failed to turn on their lapel cameras or belt tapes” and that APD officers “failed to record some incidents even when it was the officers themselves who initiated the contact, making their failure to switch on their cameras or recorders before beginning the encounter especially troubling”); see also Carlos Miller, *A Study in Contrasts Between Rialto Police and Albuquerque Police in Regards to Body-Mounted Cameras*, PINAC NEWS (Mar. 25, 2014), <http://photographyisnotacrime.com/2014/03/25/study-contrasts-rialto-police-albuquerque-police-regards-body-mounted-cameras/> (contrasting the implementation of body-mounted cameras at the Rialto Police Department which resulted in a 60% drop in use of force incidents, with the implementation of body-mounted cameras at the Albuquerque Police Department in 2010, the year a marked increase in excessive force cases began with the APD).

105. DOJ Letter, *supra* note 12, at 25–26.

106. *Id.* at 4, 26.

107. *Id.* at 27–28.

108. *Id.* at 24.

of force, even in circumstances where such force was later determined to be unreasonable.<sup>109</sup>

The external oversight structure adopted by the APD was also determined to be ineffective and virtually devoid of impact. Current Albuquerque ordinances restrict the ability of citizens to file complaints against officers, and do not provide meaningful opportunities for their grievances to be heard at public meetings.<sup>110</sup> External Review Officers interpret departmental policies to justify clearing officers of wrongdoing, and thus appear to be “more closely aligned with the department than with the community that the Review Officer serves.”<sup>111</sup> Though many law enforcement agencies have implemented “community policing” programs to foster relationships with citizens, the APD has not supported this strategy. To the contrary, the DOJ explained that APD leadership “does not prioritize community policing, has not communicated its importance throughout the agency, and tolerated a culture that is hostile to community partnerships.”<sup>112</sup>

Instruction in the use of violence was found to be over-emphasized, and contributed to the department’s systemic use of excessive force. The investigation observed that the “APD’s training is focused so heavily on weaponry and force scenarios that officers do not get essential tools to engage in effective de-escalation methods.”<sup>113</sup> The department continues to instruct recruits in antiquated procedures no longer within law enforcement “best practices,” such as shooting at moving vehicles<sup>114</sup> and deploying police dogs to control crowds.<sup>115</sup> Once their initial training is complete, many APD officers elect to purchase their own expensive, high-powered guns, which they use to supplement their department-issued firearms.<sup>116</sup> Not surprisingly, the investigative findings note, “[M]uch

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109. *Id.* at 18 (describing the conduct of an APD officer who tasered an infirm 75-year-old man who refused to relinquish his cane and leave a bus bench as being praised as “exceptional” by his supervisor).

110. *Id.* at 38-39. *But see* Matt Howerton, *New APD Oversight Board Meets for 1st Time*, KOAT 7 Albuquerque (Mar. 12, 2015, 10:46 pm), <http://www.koat.com/news/new-apd-oversight-board-meets-for-1st-time/31770234> (describing the existence of a new police oversight board that is “designed to be stronger” than the old structure).

111. *Id.* at 39.

112. *Id.* at 40.

113. *Id.* at 37.

114. *Id.* at 33.

115. *Id.* at 34.

116. *Id.* at 37. *But see* Kai Porter, *APD Officers Will No Longer Be Able to Use Personal Guns On Duty*, KOB EYEWITNESS NEWS 4 (May 8, 2014, 6:29 PM), <http://www.kob.com/article/stories/s3428948.shtml#.VLXsP8ZN3zI> (noting that the recent change in department policy to allow only standard issue 9 mm Smith & Wesson or

of the training leads officers to believe that violent outcomes are normal and desirable.”<sup>117</sup>

Relatedly, some officers tended to discount the value of a specialized APD unit emphasizing nonviolent, tension-diffusing methods of communication, while over-utilizing the “heavily-armed tactical unit”<sup>118</sup> that trains with militarized weaponry.<sup>119</sup> Specifically, the investigation remarked that many officers were unfamiliar with the Crisis Intervention Team, which trains officers to use de-escalation techniques designed for peaceful conflict resolution.<sup>120</sup> The APD officers did not understand the relevance of using this unit during encounters with mentally impaired, intoxicated, or distressed citizens.<sup>121</sup> In contrast, the investigation found officer overreliance on the APD SWAT (“Special Weapons and Tactics”) team, which operates complex and sophisticated weaponry, and engages in combative interactions involving the highest degree of volatility and threat.<sup>122</sup> The investigation determined that the great weight officers placed on the SWAT team served to inflame situations in which violent approaches were not justified. Moreover, the investigation uncovered an undisciplined, poorly organized APD SWAT team with ineffective leadership,<sup>123</sup> which further aggravated the APD’s use of excessive force.

Overall, the investigation concluded that APD officers are unnecessarily disrespectful and antagonistic when engaging in “ordinary encounters with residents.”<sup>124</sup> This observation is corroborated by the many case examples above, and further reinforced through witness accounts and documented video footage.<sup>125</sup> Incidents caught on tape include officers “slamming a man’s head against a tree planter on a sidewalk, using a Taser on an obviously subdued man, and punching a man who had done nothing to the officer or anyone else.”<sup>126</sup> Stories of officers pointing weapons at children and at individuals trying to provide medical aid to injured family members were identified, and deemed credible by the investigation.<sup>127</sup> These findings may give the impression that some APD officers

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Glock handguns resulted from the DOJ investigation, but has no immediate deadline for implementation, as “it depends on when the manufacturer can ship the supply”).

117. DOJ Letter, *supra* note 12, at 30.

118. *Id.* at 7.

119. *Id.* at 37.

120. *Id.* at 34–35.

121. *Id.* at 35.

122. *Id.* at 15, 36.

123. *Id.*

124. *Id.* at 36, 40.

125. *Id.* at 37.

126. *Id.*

127. *Id.* at 40.

viewed residents more like enemy combatants than members of a community.

Events outside the coverage area of the investigation may also have played a role in the animus of APD officers toward the Albuquerque community. Three Police Chiefs in five years left the department with inconsistent leadership, and kept it in a perpetual state of transition.<sup>128</sup> Inflammatory media reports of APD officers earning “bonuses” for killings furthered resident anger, as did the department-wide pay raises issued in the wake of the DOJ investigation.<sup>129</sup> The APD, apparently undeterred by the findings of excessive force, ordered 350 AR-15 assault rifles soon after the findings were publicized.<sup>130</sup> The Bernalillo County District Attorney’s Office has refused to prosecute APD officers for many years, including throughout the time span of the investigation, though charges against two APD officers were just announced in January, 2015.<sup>131</sup> Recent judicial opinions citing the lack of credibility in offi-

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128. As noted in media coverage of APD, these police chiefs are: Ray Schultz (2005-2013); Allen Banks (July 2013-Feb. 2014); Gordon Eden (Feb. 2014–present). *See, e.g.*, Devon Armijo, *APD Names Gordon Eden Next Chief*, KOAT 7 ALBUQUERQUE (Feb. 14, 2014, 6:05 PM), <http://www.koat.com/news/new-mexico/albuquerque/apd-to-announce-next-chief-at-10-am/24483946>.

129. *See, e.g.*, Manny Fernandez & Dan Frosch, *Payments to Albuquerque Officers are Called a ‘Bounty System’*, N.Y. TIMES, Mar. 24, 2012, [http://www.nytimes.com/2012/03/25/us/payments-to-albuquerque-officers-involved-in-shootings-called-bounty-system.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/03/25/us/payments-to-albuquerque-officers-involved-in-shootings-called-bounty-system.html?pagewanted=all&_r=0) (referring to the Albuquerque Police Officers’ Association describing these payments as covering the costs of “out-of-town trips for officers and their families after stressful episodes,” and quoting a victim’s family members as stating, “[i]f the police shoot a person they get (the payment) . . . [w]hat does the family get? A funeral bill”); *see also* KOB.com staff, *Albuquerque Cops to Receive Pay Raises* (July 7, 2014), KOB EYEWITNESS NEWS 4, <http://www.kob.com/article/stories/s3496377.shtml#.VBNZq54g9Mu> (noting the five percent raise for each APD officer).

130. *See, e.g.*, Zach McAuliffe, *Albuquerque Police Department Purchases 350 Assault Rifles*, BEN SWANN (July 11, 2014), <http://benswann.com/albuquerque-police-department-purchases-350-assault-rifles/> (noting that the APD purchased 350 assault rifles, with more promised if needed by the department, with \$350,000 of taxpayer money); *see also* RT, *Albuquerque Police Purchase 350 AR-15 Rifles Despite Widespread Protests Over Excessive Force and Reprimands from DOJ*, SOTT.NET: SIGNS OF THE TIMES, (July 11, 2014 6:50 PM), <http://www.sott.net/article/281776-Albuquerque-police-purchase-350-AR-15-rifles-despite-widespread-protests-over-excessive-force-and-reprimands-from-DOJ>.

131. *See, e.g.*, David Fitzpatrick & Drew Griffin, *Video Shows Albuquerque Police Killing Homeless Man*, CNN (last updated June 22, 2014 12:05 PM), <http://www.cnn.com/2014/06/20/us/albuquerque-police-investigation/> (noting that the Albuquerque District Attorney, Kari Brandenburg, “has cleared every (other) police officer involved in a killing during her last 13 years in office”); *see also* The Associated Press, *DA Clears Albuquerque Officers in Two Shooting Cases*, RUIDOSO NEWS, May 18,

cer testimony increases the curiosity behind such prosecutorial discretion.<sup>132</sup>

On a positive note, the investigative findings appreciate APD leadership's apparent willingness to accept necessary changes to its institutional practices.<sup>133</sup> The investigation commends some of the APD's newly instituted remedial measures, and praises its acceptance of several innovative policing programs.<sup>134</sup> It recognizes that many APD officers did act

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2013, [http://www.ruidosonews.com/ci\\_23274282/da-clears-albuquerque-officers-2-shooting-cases](http://www.ruidosonews.com/ci_23274282/da-clears-albuquerque-officers-2-shooting-cases) (noting that eight recent internal reviews of police shootings have all resulted in the DA clearing the officers of misconduct); Lucy Steigerwald, *Are Albuquerque's Police the Worst in the Country?*, VICE (June 23, 2014), [http://www.vice.com/en\\_ca/read/are-albuquerque-police-the-worst-in-the-country](http://www.vice.com/en_ca/read/are-albuquerque-police-the-worst-in-the-country) (noting a "complete lack of accountability" as evidenced by the fact that "District Attorney Kari Brandenburg hasn't brought charges against any cop in the past thirteen years," including cases in which judges found the officers' testimony not to be credible); Trip Jennings & Fernanda Santos, *Beleaguered Albuquerque Department Reports Another Fatal Shooting by Police*, N.Y. TIMES, Apr. 21, 2014, [http://www.nytimes.com/2014/04/22/us/beleaguered-albuquerque-department-reports-another-fatal-shooting-by-police.html?\\_r=0](http://www.nytimes.com/2014/04/22/us/beleaguered-albuquerque-department-reports-another-fatal-shooting-by-police.html?_r=0) (noting that despite APD officers killing 24 people since 2010 and the resulting "millions of dollars" in legal settlements paid by the city, "none of the officers involved in the shootings have faced criminal charges or, in most cases, other types of internal reprimand"). *But see* Mike Gallagher & Ryan Boetel, *Officers Charged with Murder*, ALBUQUERQUE J., Jan. 12, 2015, <http://www.abqjournal.com/524987/news/da-to-see-murder-charges-against-officers-in-james-boyd-shooting.html> (noting that charges against "officer Dominique Perez and recently retired Detective Keith Sandy appear to be the first against an APD officer for an on-duty fatal shooting in at least 50 years."); The Associated Press, *Murder Charges Against Police Put New Mexico DA in Spotlight*, NY TIMES, Jan. 13, 2015, <http://www.nytimes.com/aponline/2015/01/13/us/ap-us-albuquerque-police-shootings.html> (stating that the charges brought by DA Kari Brandenburg against the two APD officers "marked a major shift from her previous decisions not [to] go after Albuquerque officers linked to more than 40 police shootings since 2010.").

132. *See, e.g., Torres v. City of Albuquerque*, No. D-202-CV 2011-06551 (06/10/2014) (awarding over \$6 million to victim Stephen Torres's family, District Court Judge C. Shannon Bacon found, "based on the inconsistencies noted herein and others found in the testimony and evidence, the testimony of the [two APD] Detectives is not credible"); *see also* Jeff Proctor, *APD Deadly Force Under Fire*, ALBUQUERQUE J., June 10, 2011, <http://www.abqjournal.com/35111/news/apd-deadly-force-under-fire.html> (noting that State District Judge Theresa Baca found the testimony of APD officers "not credible" when awarding the family of victim Andrew Lopez over \$4.25 million); ABQnews Staff, *Lawsuits Against APD Have Cost City \$23M Since 2010*, ALBUQUERQUE J., Apr. 11, 2014, <http://www.abqjournal.com/382548/news/lawsuits-against-apd-have-cost-city-23m-since-2010.html> (detailing the civil judgments awarded to victims and their families of APD excessive force).

133. DOJ Letter, *supra* note 12, at 2.

134. *Id.* at 6.

lawfully.<sup>135</sup> And yet, even after the investigation concluded, and its findings made public, high-profile incidents of APD excessive violence continue.

For example, in March 2014, just two months after DOJ officials toured the APD in a fourth onsite visit, APD officers shot a homeless man in the back, killing him.<sup>136</sup> Multiple officers responded to a report of the man's unlawful camping in the Sandia foothills; video footage shows APD officers killing him while he appeared to comply with their demands, and as he asked the officers to promise not to hurt him.<sup>137</sup> Though the federal investigation focused exclusively on closed APD cases,<sup>138</sup> it expressed concern over the APD Chief's statement to news reporters that the actions against the homeless man were legally justified.<sup>139</sup> APD shootings since the investigation appear to remain unabated.<sup>140</sup>

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135. *Id.* at 22.

136. *Id.* at 4 n.5 (recognizing that the shooting death of James Boyd by APD officers is under separate, criminal investigation, and not covered in the current findings). See Dan McKay, *Camper Turning from Officers When Shot*, ALBUQUERQUE J. (Mar. 22, 2014, 12:05 AM), <http://www.abqjournal.com/372844/news/video-camper-turning-away.html>; Gallagher, *supra* note 131 (noting that the Boyd shooting has resulted in murder charges against APD officers Keith Sandy and Dominique Perez).

137. See Regina Ruiz, *APD Chief: Threat Directed at Officer Justifies Foothills Shooting*, KOAT (Mar. 21, 2014), <http://www.koat.com/news/new-mexico/albuquerque/apd-chief-threat-directed-at-officer-justifies-foothills-shooting/25099982#!bjqL0N>.

138. DOJ Letter, *supra* note 12, at 10 n.21.

139. *Id.* at 4. See also Chris McKee, *APD: Officer Involved Shooting Was Justified*, KRQE NEWS 13 (Mar. 21, 2014), <http://krqe.com/2014/03/21/apd-officer-involved-shooting-was-justified/> (quoting APD Chief Gordon Eden's answer to the question whether the shooting was justified, "[y]es, if you follow case law . . ."); Erin Donaghue, *Albuquerque PD Under Fire for Deadly Police Shootings*, CBS NEWS (Mar. 25, 2014), <http://www.cbsnews.com/news/albuquerque-pd-under-fire-for-deadly-police-shootings/> (noting that APD Chief Gordon Eden retracted these remarks after the Albuquerque Mayor said that they were "a mistake").

140. See, e.g., Alex Goldsmith & Gabrielle Burkhart, *DOJ, City Agree to Outline for APD Reform*, KRQE NEWS 13 (July 24, 2014), <http://krqe.com/2014/07/24/doj-abq-sign-joint-statement-to-reform-apd/> ("Since the DOJ report was released in April, APD has shot and killed four people."); Rory Carroll, *In the Breaking Bad City, Trust in the Trigger-Happy Police has Broken Down*, THE GUARDIAN (May 10, 2014), <http://www.theguardian.com/world/2014/may/10/albuquerque-police-shootings-violence-breaking-bad> (describing the April 2014 shooting death of a nineteen year old woman by an APD officer); Russell Contreras, *New Albuquerque Police Shooting Exposes Distrust*, USA TODAY, May 7, 2014, <http://www.usatoday.com/story/news/nation/2014/05/07/albuquerque-police-shooting/8795405/> (describing the May 2014 APD officer shooting death of a United States Air Force veteran).

Nevertheless, the DOJ investigation, and its attendant media scrutiny, brings light to how out of step the APD is with its community.<sup>141</sup> It legitimizes the anecdotal evidence of civilian mistreatment, and suggests remedial measures from which the city can wrest hope for the future.<sup>142</sup> Implementation of these measures will be critical to addressing the unfortunate reality that “the public’s confidence in the department remains shaken over concerns that the department is unable to control its officers’ use of excessive force.”<sup>143</sup>

Finally, to the extent that many APD officers feel a reciprocal distrust toward and isolation from the greater Albuquerque community,<sup>144</sup> perhaps a bit of Walter White has been inculcated in the department. Remember that Walt’s dream of success proved elusive when he passively followed social norms, but became overwhelmingly and unimaginably real when he dared to step outside the boundaries of the law. So too, the immeasurable authority and discretionary power vested in law enforcement can compel officers to embrace bolder, more risky behavior. Officers may rationalize their ability to enforce the law only by first breaking the law,<sup>145</sup> paving the way for an almost certain escalation into excessively violent practices. The power attained by Walt, via his alter ego Heisenberg, eventually strengthened to enormous and uncontrollable limits. He ended the series as a man corrupt with power, and immune to legal authority. Similarly, though not as egregiously, many APD officers appear to exude an inherent disdain for the law; the DOJ investigative findings suggest as much. The lack of supervision and oversight over the department is well documented, and virtually beckons officers to act with impunity. The world knows the ultimate fate of Walter White—but whether a similar finale will be written for the APD remains unclear.<sup>146</sup>

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141. The DOJ investigative findings appear to contradict the APD motto, “In Step with Our Community.”

142. DOJ Letter, *supra* note 12, at 41–45 (listing 46 remedial measures that the APD “should implement” to “address the deficiencies discussed in this letter”).

143. *Id.* at 6.

144. *Id.* at 40.

145. McCafferty et al., *The Corruption Process of a Law Enforcement Officer: A Paradigm of Occupational Stress and Deviancy*, 26 J. AM. ACAD. PSYCHIATRY LAW 433, 437 (1998) (“Law enforcement officers often justify breaking the law to enforce the law when they . . . partially enforce or fail to enforce certain laws.”).

146. The City of Albuquerque recently reached a settlement with the Department of Justice, in which the APD has agreed to implement reforms intended to reduce officer use of force and improve community relations. Settlement Agreement, *United States v. City of Albuquerque* (to be filed in No. 1:14-cv-01025 (D. N.M. 2014)). See also Ian Lovett, *Albuquerque Agrees to Changes on Use of Force*, N.Y. TIMES, Oct. 31, 2014, <http://nyti.ms/1tpKbRr> (quoting the United States Attorney for the district



### III. PREDICTABLE VIOLENCE BRED FROM TELEVISED INSTRUCTION, SITUATIONAL VARIABLES, AND PUBLIC ADULATION

*Breaking Bad*'s pop culture narrative is now intimately woven into Albuquerque's social fabric. It can be difficult to fathom how a television drama so beneficial to the city could also provide the impetus for police enmity toward its residents. But the ability of the media to shape beliefs about and behavior toward law enforcement must not be underestimated. When a show enjoys such broad viewership as does *Breaking Bad*, it is informative to examine the effects (if any) of its promotion of legal interpretations. In doing so, it stands to reason that *Breaking Bad*'s depiction of deceptive and illegal strategies may have led to the APD's excessive use of force.

#### A. Lessons Learned From the Influence of Television

Television has long served dual roles as both entertainment and education for the masses.<sup>147</sup> Notwithstanding the proliferation of social media platforms, television continues to reach vast numbers of people, consuming more of their time every day than any other medium.<sup>148</sup> Studies have documented the pronounced effect of televised fiction on viewers, particularly when these viewers form emotional attachments to characters and their storylines.<sup>149</sup> *Breaking Bad* supplied such passion and personal investment in abundance. From creating *Breaking Bad* Facebook pages and fan clubs to raising thousands of dollars at *Breaking Bad* charity events,

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of New Mexico as stating that this settlement is "[a] roadmap for rebuilding trust between the community and the police").

147. See generally Kimberlianne Podlas, *Blame Judge Judy: The Effects of Syndicated Television Courtrooms on Jurors*, 25 AM. J. TRIAL ADVOC. 557 (2002) (noting that syndicated television courtrooms are both interesting and educational to viewers).

148. *TVB: TV Remains Most Influential Medium*, TVNEWSCHECK (May 25, 2010), <http://www.tvnewscheck.com/article/42502/tvb-tv-remains-most-influential-medium> ("Television continues to dominate the media usage habits of America, topping the Internet, magazines, newspapers, and radio . . .").

149. See Diana C. Mutz & Lilach Nir, *Not Necessarily the News: Does Fictional Television Influence Real-World Policy Preferences?*, 13 MASS COMM'N & SOC'Y, 196, 202 (2010).

the show's viewers were demonstratively emotional.<sup>150</sup> Television shows have also served as inspiration for actual criminal activity.<sup>151</sup>

Further, television provides substantive learning opportunities for its viewers, particularly when shows involve unfamiliar or complex issues such as the legal system.<sup>152</sup> The proliferation of criminal justice dramas has supplemented viewers' limited knowledge of the law through fictional portrayals.<sup>153</sup> Personal experiences and the media alike may easily influence individual opinions of police integrity.<sup>154</sup> As possibly the most

150. See, e.g., Kimberly Nordyke, 'Breaking Bad': Walter White Funeral Raises \$17K Amid Controversy, *HOLLYWOOD REPORTER* (Oct. 20, 2013), <http://www.hollywoodreporter.com/live-feed/breaking-bad-walter-white-funeral-649687>.

151. See, e.g., Steve Lillebuen, *Are Shows Like Dexter to Blame for Inspiring Violent Crimes?*, *THE GUARDIAN* (July 1, 2013), <http://www.theguardian.com/commentis-free/2013/jul/01/dexter-final-season-tv-violence-murder> (noting that crime has often been linked to pop culture, though there is a difference between television shows being the inspiration for criminal activity and whether they are responsible for such activity); Ree Hines & Anna Chan, *From 'Breaking Bad' to Worse: When TV Shows Inspire Wicked Crimes*, *TODAY* (Aug. 10, 2013), <http://www.today.com/entertainment/breaking-bad-worse-when-tv-shows-inspire-wicked-crimes-6C10879074>.

152. See, e.g., Valerie J. Callanan & Jared S. Rosenberger, *Media and Public Perceptions of the Police: Examining the Impact of Race and Personal Experience*, 21 *POLICING AND SOC'Y* 167, 168 (2011) (citing studies that have found that because "[m]ost citizens have limited contact with the police, the media may significantly shape beliefs and expectations about law enforcement"); Podlas, *supra* note 147, at 559 ("[T]he media play an influential role in shaping attitudes and behavior, and many believe that this remains true when it comes to shaping beliefs about the law."); Kimberlianne Podlas, *The "CSI Effect" and Other Forensic Fictions*, 27 *LOU. L.A. ENT. L. REV.* 87, 101 (2007) (noting that despite a slow recognition by legal scholars of television as a "mediator of legal understandings, they now acknowledge that television impacts the public's understanding of law"); Kenneth Dowler, *Media Consumption and Public Attitudes Toward Crime and Justice: The Relationship Between Fear of Crime, Punitive Attitudes, and Perceived Police Effectiveness*, 10 *J. CRIMINAL JUSTICE & POPULAR CULTURE* 109 (2003) ("The public's perception of victims, criminals, deviants, and law enforcement officials is largely determined by their portrayal in the mass media."); Sarah Eschholz, *Crime on Television – Issues in Criminal Justice*, 2 *J. INST. JUSTICE & INT'L STUDIES* 9, 13 (2003) (noting the challenge present in empirical tests designed to link television viewing to public attitudes toward the police).

153. See, e.g., Gray Cavender & Sarah K. Deutsch, *CSI and Moral Authority: The Police and Science*, 3 *CRIME, MEDIA, CULTURE* 67, 70 (2007) (noting that recently "crime fact and crime fiction blur on television in representing the spectacle of crime"); Kathleen Curry, *Mediating COPS: An Analysis of Viewer Reaction to Reality TV*, 8 *J. CRIMINAL JUSTICE & POPULAR CULTURE* 169, 170 (2001) ("[J]ustice issues pervade what people see on television.").

154. See, e.g., Sanja Kutnjak Ivkovic, *To Serve and Collect: Measuring Police Corruption*, 93 *J. CRIMINAL LAW & CRIMINOLOGY* 593, 607 (2003) (noting that responses to surveys inquiring as to the honesty of police officers and the extent of corruption

watched crime drama in television history,<sup>155</sup> *Breaking Bad* must certainly have served as a teacher to many of its viewers.

Like other television viewers, police officers—as both government officials and members of the viewing public—have also shown susceptibility to the power of television.<sup>156</sup> Research reveals that officers mirror, perhaps unconsciously, the tactics and attitudes portrayed by fictional police on television.<sup>157</sup> In fact, criminal justice programming may function as an orientation of sorts for rookie police officers and those who wish to become officers.<sup>158</sup> Since strategic police deception is a prevalent practice in real life, it is unsurprising that it is also routinely depicted in television crime dramas.<sup>159</sup> *Breaking Bad* offered dramatic interpretations of both “minor” police deceptions and more intricately manipulative strategies.<sup>160</sup>

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among police failed to account for the fact that “public attitudes can be based on an unobservable mix of their actual experiences and their general opinions about the police (which can be shaped in significant part by the media or by a few highly publicized cases)”; Joseph L. Gustafson, *A Descriptive Analysis of Police Corruption on Film*, 14 J. CRIMINAL JUSTICE & POPULAR CULTURE 161, 170 (2007) (noting that for many people, “ideas about crime, criminality, and agents of social control are transmitted through film”); Lance Holbert, Dhavan V. Shah, & Nojin Kwak, *Fear, Authority, and Justice: Crime-Related TV Viewing and Endorsements of Capital Punishment and Gun Ownership*, 81 JOURNALISM & MASS COMMUNICATION QUARTERLY 343, 345 (2004) (noting that television crime dramas often depict law enforcement in a negative light, and that viewers may thus question “how police officers conduct their professional duties, and . . . their ability to combat crime”).

155. IMBD, *supra* note 2.

156. See Jan J.M. Van den Bulck, *Fictional Cops: Who Are They and What Are They Teaching Us?*, in LAW ENFORCEMENT, COMMUNICATION, AND COMMUNITY 119 (Howard Giles ed., 2002) (citing studies finding that police officers may be influenced by television as evidenced by “[a] number of examples of LAPD officers changing behaviors to look more like their fictional colleagues” and that officers “regularly refer to situations and characters from crime fiction when commenting on or describing situations they are faced with.”).

157. See Timothy M. Dees, *Ethics and the Sipowicz Factor*, 23 LAW ENFORCEMENT TECHNOLOGY 58, 59 (1996).

158. See Danielle M. Soulliere, *Policing on Prime-Time: A Comparison of Television and Real-World Policing*, 28 AM. J. CRIMINAL JUSTICE 215, 230 (2004) (noting that a result of this phenomenon is that “police training courses need to address the potential impact of television in shaping recruits’ perceptions of policing and police work”).

159. See Christopher P. Wilson, “Let’s Work Out the Details”: *Interrogation and Deception in Prime Time*, 12 J. CRIMINAL JUSTICE & POPULAR CULTURE 47, 49 (2005) (noting the focus of the article is on “the prevalent practice of police deception: the battery of tricks and ruses police commonly use to conduct interrogations of criminal suspects”).

160. See Part II, *infra*.

Though difficult to gauge the extent to which APD officers felt encouraged to mimic such deceit, examples emerge as concrete indicators of this practice. Similar to Hank and Gomez's use of fabricated photos to bait Huell into talking,<sup>161</sup> the APD has recently expanded its efforts to employ a "bait program," wherein cars, bicycles, and computers are left by the APD to lure would-be criminals to commit theft.<sup>162</sup> And harkening back to *Breaking Bad*'s undercover drug sting,<sup>163</sup> an APD Sergeant recently went undercover to infiltrate a peaceful community protest, filming the residents as they assembled in front of police headquarters.<sup>164</sup> The same Sergeant shot a man during another undercover operation in 2012.<sup>165</sup>

### B. Lessons Learned From Behavioral Social Science

APD officers may identify with *Breaking Bad* as a model for law enforcement compliance, but copycat tactics alone cannot account for their aggressively violent approach to policing. Questioning the reasons behind the excessive use of force would seem the logical precursor to reform, were the reasons not both already known and reliably predictable. An analysis of social and behavioral dynamics is critical to stop past institutional weaknesses from continually emerging as prologue.<sup>166</sup>

Officer emulation of deceptive strategies shown on *Breaking Bad* may have led to officer abuse of force in real life. Social psychological studies indicate that people are more willing to engage in violent behavior if they first participate in small increments on the force continuum, from observation of others, to involvement in minor offenses, to independently instigated aggression.<sup>167</sup> This phenomenon of escalating action is

161. *Breaking Bad: To'hajiilee*, *supra* note 39.

162. See Regina Ruiz, *APD Looks to Beef Up Bait Program*, KOAT (Aug. 14, 2014), <http://www.koat.com/news/apd-looks-to-beef-up-bait-program/27487514#!bFklfC> (quoting an Albuquerque Police Commander as warning would-be thieves that, "[i]f you break into a car, if you steal property that doesn't belong to you, there's a good possibility that property belongs to the Albuquerque Police Department").

163. *Breaking Bad: Better Call Saul*, *supra* note 29.

164. See Katherine Mozzone & Jeff Proctor, *Undercover APD Officer Secretly Films Protesters*, KRQE NEWS (June 21, 2014), <http://krqe.com/2014/06/21/undercover-apd-officer-secretly-films-protesters/>.

165. *Id.*

166. WILLIAM SHAKESPEARE, *THE TEMPEST* act 2, sc. 2.

167. See David Crump, *The Social Psychology of Evil: Can the Law Prevent Groups From Making Good People Go Bad?*, 2008 BYU L. REV. 1441, 1446-1447 (2008) (citing the ability of political regimes to recruit torturers as an example of this phenomenon) ("[I]t is easier to induce individuals to shift attitudes if they already have taken steps in the desired direction.").

referred to as “successive approximation” or the “foot in the door” technique.<sup>168</sup> When an officer takes the “small step” of manipulating the public while investigating crime, that step predictably accelerates to pervasive and unreasonable use of force. The expansion from lawful investigations to illegal abuse of authority is thus a foreseeable one.

*Breaking Bad*’s deceptive police tactics are represented as acceptable tools of the profession, justified by necessity.<sup>169</sup> The APD’s excessively violent practices may have been viewed as similarly justified. When Hank laments the inefficacy of pursuing a warrant and decides to investigate without one, APD officers may conclude that imitating this minor transgression could yield investigative fruit.<sup>170</sup> And when Hank and Gomez trick Huell into giving up information, perhaps APD use of force to achieve the same end is not far behind. Indeed, the assertion that “[p]olice lying contributes to police misconduct and corruption”<sup>171</sup> reinforces the successive approximation principle.

Behavioral and psychological social science studies indicate that small wrongdoings often lead to larger, more significant ones. The willingness of average people to inflict horrific violence onto others was famously studied by psychologist and scholar Philip G. Zimbardo. His “Stanford Prison Experiment” involved placing ordinary people within a simulated prison setting as either “guards” or “prisoners,” and recording their ensuing reactions.<sup>172</sup> The results demonstrated the powerful impact of environmental situations on human behavior. Those assigned the role of “guard” quickly perpetrated increasing levels of humiliation and violence against the “prisoners.”<sup>173</sup> “Guards” developed an ‘us versus them mentality’, expressed in their depersonalization of the “prisoners” under

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168. *Id.* at 1447.

169. See Slobogin, *supra* note 1, at 784.

170. See *Breaking Bad: Mas*, *supra* note 69 (showing Hank ignoring his partner’s plea to obtain a warrant and instead proceeds to climb onto an RV and peer into the roof vent).

171. Slobogin, *supra* note 1, at 800 (citing Tom Barker & David Carter, “*Fluffing Up the Evidence and Covering Your Ass: Some Conceptual Notes on Police Lying*,” 11 *DEVIAN'T BEHAV.* 61, 64 (1990)).

172. Philip G. Zimbardo, *A Simulation Study of the Psychology Imprisonment Conducted at Stanford University*, STANFORD PRISON EXPERIMENT, (last viewed Sept. 22, 2014), <http://www.prisonexp.org/>; Alastair Leithead, *Stanford Prison Experiment Continues to Shock*, BBC NEWS (Aug. 17, 2011), <http://www.bbc.co.uk/news/world-us-canada-14564182> (describing the division of a “group of volunteers” into either prisoners or “prison wardens”).

173. Alastair Leithead, *Stanford Prison Experiment Continues to Shock*, BBC NEWS (Aug. 17, 2011), <http://www.bbc.co.uk/news/world-us-canada-14564182>

their control.<sup>174</sup> Those assigned the role of “prisoner” rapidly became depressed and submissive.<sup>175</sup> The progression from “ordinary people” to sadistic torturers and passive victims was so pronounced that Zimbardo prematurely aborted the experiment.<sup>176</sup>

Zimbardo’s “Lucifer Effect” originated from this research, and postulates the significance of situational forces and external pressures on individual behavior.<sup>177</sup> The “social situational variable” may serve as the impetus for systemic abuses of force.<sup>178</sup> Thus, the transformation of a “good” law-abiding person to one capable of perpetrating inhumane acts of cruelty often depends more on one’s environment than on one’s internal character traits.<sup>179</sup>

Situationism may coincide with other behavioral tenets linked to violence. For example, deindividuation, or anonymity, also has been shown to increase aggression. Changing one’s appearance by donning masks or identical uniforms is a mechanism through which accountability is decreased and “permission for violence” is more tolerable.<sup>180</sup> The “guards” in Zimbardo’s Prison Experiment wore silver reflecting sunglasses as a type of mask to shield their individual identity when degrading and harming the “prisoners.” Many years later, similar conditions resulted in the

174. *Id.* The process of dehumanization is also a recognized precursor to antisocial behavior, as it allows those in power to place others “outside the boundary in which moral values, rules, and consideration of fairness apply.” See Susan Opatow, *Moral Exclusion and Injustice: An Introduction*, WILEY ONLINE LIBRARY (1990), <http://onlinelibrary.wiley.com/doi/10.1111/j.1540-4560.1990.tb00268.x/abstract>; see generally Philip G. Zimbardo, *Dehumanization*, LUCIFER EFFECT, <http://lucifereffect.com/dehumanization.htm> (last viewed Sept. 22, 2014); see also, Andrew Rosado Shaw, *Our Duty in Light of the Law’s Irrelevance: Police Brutality and Civilian Recordings*, 20 GEO. J. ON POV. L. & POL’Y 161, 181 (2012) (quoting a high ranking source at Abu Ghraib who attributed dehumanization of prisoners as directly resulting in the “severe abuses” at the prison) (citing Michael Scherer & Mark Benjamin, *Dehumanization*, SALON (Mar. 14, 2006, 5:12 AM), [http://www.salon.com/2006/03/14/chapter\\_2/](http://www.salon.com/2006/03/14/chapter_2/))).

175. See Leithead, *supra* note 172.

176. *Id.*; Philip G. Zimbardo, *The Psychology of Power and Evil: All Power to the Person? To the Situation? To the System?*, STANFORD PRISON EXPERIMENT, 14 (June 2005), <http://www.prisonexp.org/pdf/powerevil.pdf> (illustrating that Zimbardo himself was alerted to his altered behavior during the short-lived experiment as well).

177. PHILIP G. ZIMBARDO, *THE LUCIFER EFFECT: UNDERSTANDING HOW GOOD PEOPLE TURN EVIL*, (Random House 2008).

178. Zimbardo, *supra* note 174.

179. See Jo-Ann Tsang, *Moral Rationalization and the Integration of Situational Factors and Psychological Processes in Immoral Behavior*, 6 REV. OF GEN. PSYCHOL. 25, 27–28 (2002). Others have conducted more contemporaneous research with remarkably similar findings. See generally *id.* (discussing social psychological experiments by Milgram, Bandura, and Blumenthal).

180. Zimbardo, *supra* note 176, at 7.

degradation and torture of Iraqi prisoners by U.S. soldiers at Abu Ghraib.<sup>181</sup>

Finally, strong institutional leadership and established procedural accountability are indispensable counters to such situational insularity.<sup>182</sup> External accountability is also crucial to establish public trust and legitimacy.<sup>183</sup> If command complicity is allowed to prevail, abuses of authority will inevitably take root and unreservedly proliferate.<sup>184</sup>

These observations of the social and psychological underpinnings of human behavior are evident in law enforcement. They connect the stressful work environments of officers to their adoption of “situational ethics” when excusing excessive force in the name of solving crime.<sup>185</sup> Zimbardo’s assertion that there are no “bad apples” but rather “bad barrels” aptly encompasses the organizational subculture of the APD.<sup>186</sup> When the DOJ

181. *Id.* at 19 (providing that Zimbardo testified as an expert witness regarding the way “situation” can affect behavior at the Abu Ghraib hearings); Adam Zagorin, *Shell-Shocked at Abu Ghraib?*, TIME (May 18, 2007), <http://content.time.com/time/nation/article/0,8599,1622881,00.html> (noting that Zimbardo was the first to publically question the mental state of the U.S. Army officers at Abu Ghraib).

182. *See, e.g.*, David Weisburd et al., *Police Attitudes Toward Abuse of Authority: Findings From a National Study*, NATIONAL INSTITUTE OF JUSTICE, 6 (2000), <https://www.ncjrs.gov/pdffiles1/nij/181312.pdf> (noting results from a national survey of American police officers showing that “[a]lmost 85% of the sample agreed or strongly agreed that a police chief’s strong position against the abuse of authority can make a big difference in deterring officers from abusing their authority”); McCafferty et al., *supra* note 145, at 452 (“To avoid the erosive effects of corruption, law enforcement officers need leadership that does not tolerate corruption and procedures for accountability of officers.”).

183. Valerie J. Callanan & Jared S. Rosenberger, *Media and Public Perceptions of the Police: Examining the Impact of Race and Personal Experience*, 21 POLICING & SOC’Y 167 (2011) (noting that police effectiveness requires public trust and confidence in the police).

184. Shaw, *supra* note 174, at 181 (quoting Abu Ghraib investigators as concluding, “the worst abuses [at Abu Ghraib] arose from an ‘atmosphere of permissiveness.’”) (citing Michael Scherer & Mark Benjamin, *Dehumanization*, SALON (Mar. 14, 2006, 5:12 AM), [http://www.salon.com/2006/03/14/chapter\\_2/](http://www.salon.com/2006/03/14/chapter_2/))).

185. McCafferty et al., *supra* note 145, at 441 (noting that one of many factors contributing to the vulnerability of police officers to engage in unlawful or unethical behavior includes having a mentality that the “ends justifying the means”); *see also* Jeffrey J. Rachlinski, *The Psychological Foundations of Behavioral Law and Economics*, 2011 U. ILL. L. REV. 1675, 1690 (2011) (“Situationism is that strain of social psychology that suggests that human behavior is commonly the product of the situations in which people find themselves, more so than their own underlying personalities.”).

186. *See, e.g.*, Eric Wargo, *Bad Apples or Bad Barrels? Zimbardo on ‘The Lucifer Effect’*, ASS’N FOR PSYCHOL. SCI. (Aug. 2006), <http://www.psychologicalscience.org/index.php/publications/observer/2006/august-06/bad-apples-or-bad-barrels-zimbardo-on-the-lucifer-effect.html>; Don Loree, *Corruption in Policing: Causes and Conse-*

investigation uncovered the virtual absence of supervision and oversight of the APD while its officers antagonized, injured, and executed residents of the city, it should have been to the chagrin of all and the surprise of none.

### C. The Contribution of Public Scrutiny

The mix of televised deceptive instruction, public adoration, and situational variables has proven both a blessing and a curse to the city of Albuquerque. Any correlation between *Breaking Bad* and excessive APD violence may explain residents' emotional dissonance toward the city's public image. On one hand, Albuquerque proudly embraced its geographic role in the series. Indeed, the city strove to become even more like the broadcast version of itself, complete with a tidy financial profit. For instance, small businesses made money by selling goods inspired by the show, such as "Blue Sky Donuts," and spa products advertised to "relax away the Bad."<sup>187</sup> Candy stores designed blue rock crystal candy to look like methamphetamine.<sup>188</sup> The Albuquerque Convention and Visitors Bureau promoted a "self-guided" walking map of various locations where the show filmed, with "Breaking Bad" tours offered by local trolley and bicycle rental companies.<sup>189</sup> Local breweries labeled beer with

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*quences a Review of the Literature*, PUBLIC SAFETY CANADA, 14 (2006), <http://www.publicsafety.gc.ca/lbrr/archives/cnmc-plcng/cn30740-eng.pdf> (noting that senior police officers often use the "'bad apple' paradigm . . . as an easy way out when they are called upon to explain corruption within their organization").

187. Richard Verrier, 'Breaking Bad' Has Been Good to Albuquerque, *New Mexico*, LOS ANGELES TIMES, Aug. 7, 2013, <http://articles.latimes.com/2013/aug/07/business/la-fi-ct-onlocation-breaking-bad20130807> (noting that local companies in Albuquerque "capitalized on [*Breaking Bad*'s] growing fan base, pitching everything from location tours to bath salts").

188. See, e.g., *Goodbye Breaking Bad But Not Albuquerque! City Cooks Up Plan to Cash in on Tourism Boom Off the Back of Hit Series*, DAILY MAIL (Sep. 28, 2013), <http://www.dailymail.co.uk/news/article-2436391/Goodbye-Breaking-Bad-Albuquerque-City-expects-ongoing-tourism-boom-wake-hit-series-finale.html> (noting that the owner of an Albuquerque candy store sold 30,000 bags in 12 months of blue rock sugar candy used as meth in the first two seasons of *Breaking Bad*).

189. See, e.g., *Popular TV Series 'Breaking Bad' Inspires Albuquerque Tours, Bath Salts and Now Beer*, RSS FEED (July 18, 2013), <http://www.visitalbuquerque.org/articles/view/popular-tv-series-breaking-bad-inspires-albuquerque-tours-bath-salts-and-now-beer/5837/> (quoting the President/CEO of the Albuquerque Convention and Visitors Bureau) ("People want to come here and see the actual locations where the filming is taking place."); Tanya Mendis, *Breaking Bad Makes Positive Tourism Impact* (Aug. 7, 2012), <http://www.koat.com/entertainment/-Breaking-Bad-makes-positive-tourism-impact/15990914> (noting that the city offers popular "*Breaking Bad* trolley rides" and that the city is launching a new website "to highlight *Breaking Bad* sites and the other destinations around them").



thematic references such as “Walt’s White Lie” and “Heisenberg’s Dark Ale.”<sup>190</sup>

It is natural for a city to accept a fortuitous monetary windfall, and *Breaking Bad* was quite a profitable series. Reported production costs amounted to \$1 million per episode in the city, with estimations of \$60–70 million total spent on “goods, services, and wages.”<sup>191</sup> The series was so lucrative for the city of Albuquerque that it even inspired legislation named in its honor to incentivize the state’s film production industry.<sup>192</sup>

Perhaps even more intriguing than the city’s financial opportunism is its attempt to capture a different type of profit from the series: that of heightened cultural relevance.<sup>193</sup> The media fixated on Albuquerque as *Breaking Bad* aired, and the residents reveled in the attention. Albuquerque promoted actors’ appearances at local businesses, sold them homes, and even sought their political endorsements at times.<sup>194</sup> Widely touted “watch parties” emerged throughout the city for the *Breaking Bad* finale.<sup>195</sup> Residents even held a “funeral” for Walter White, complete with

190. See, e.g., RSS FEED, *supra* note 189 (reporting that “Albuquerque’s Marble Brewery will introduce Walt’s White Lie and Heisenberg’s Dark Ale in August 2013” in honor of the show’s season premiere).

191. Media reports of the benefits of *Breaking Bad* filming in Albuquerque were many. See, e.g., Verrier, *supra* note 187 (citing the economic boon to Albuquerque in which “production spent an estimated \$1 million per episode in Albuquerque . . .”); see also, Claire Martin, *Breaking Up With Breaking Bad is Hard for Albuquerque*, NY TIMES, Sept. 28, 2013, [http://www.nytimes.com/2013/09/29/business/breaking-up-with-breaking-bad-is-hard-for-albuquerque.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/29/business/breaking-up-with-breaking-bad-is-hard-for-albuquerque.html?pagewanted=all&_r=0) (noting that *Breaking Bad*’s production hired residents as film extras and paid homeowners and businesses for filming privileges).

192. See, e.g., Verrier, *supra* note 187 (reporting on the “*Breaking Bad* Bill” as “recently approved legislation that increased the state’s rebate to 30% from 25% for TV series shooting at least six episodes in the state”).

193. See, DAILY MAIL, *supra* note 188 (quoting Albuquerque’s film liaison) (“Before the show, Albuquerque didn’t have an image . . . [before *Breaking Bad*] I mentioned New Mexico, people would say, ‘Oh, I love Santa Fe.’ No one thought of Albuquerque.”).

194. See, e.g., Verrier, *supra* note 187 (noting that *Breaking Bad* stars Bryan Cranston (who played Walter White) and Aaron Paul (who played Jesse Pinkman) bought homes in Albuquerque and lived there during filming); Chris Gray Faust, *Breaking Bad Has Been Very Good For Albuquerque*, USA TODAY, Aug. 13, 2013, 3:43 PM, <http://www.usatoday.com/story/travel/destination/2013/08/11/breaking-bad-albuquerque-tourism/2636859/>.

195. See, e.g., Patrick Lohmann, *Breaking Bad Fans Say Goodbye*, ALBUQUERQUE J., Sept. 30, 2013, 12:05 AM, <http://www.abqjournal.com/271834/news/breaking-bad-fans-say-goodbye.html> (reporting that 400 people attended a “watch party” at the Hotel Albuquerque for the *Breaking Bad* finale); Xeni Jardin, *Breaking Bad Viewing Parties For the Final Episodes, in Albuquerque*, BOINGBOING.NET (July 22, 2013, 12:23 PM), <http://boingboing.net/2013/07/22/breaking-bad-viewing-parties-f.html> (listing

an obituary in a New Mexico newspaper.<sup>196</sup> These events and activities all received nationwide news coverage, and furthered public exaltation of the city and, of course, all things *Breaking Bad*.<sup>197</sup>

Though Albuquerque has shown great love for *Breaking Bad* and has benefitted from its connection, it may not appreciate how much of the show's influence may also inure to its detriment. For example, the concurrently generated DOJ investigation brought about a different type of public scrutiny, one that was most unwelcome and that proved frustratingly painful for the city. Release of the investigative findings prompted intense print and social media coverage.<sup>198</sup> Reports of victims of APD violence and their families receiving massive civil judgments, stories of APD officers behaving unprofessionally, and accounts of City Council attempts to stifle citizen protestors made embarrassing headline news.<sup>199</sup>

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dates and locations throughout Albuquerque for “watch parties” to commemorate the final episodes of *Breaking Bad*).

196. See, e.g., Adrian Gomez, *Breaking Bad Fan Group Places Paid Obituary for Walter White*, ALBUQUERQUE J., Oct. 5, 2013, 12:04 AM, <http://www.abqjournal.com/275038/news/abq-news/it-provides-closure.html>; Philiana Ng, *Breaking Bad Fans Place Walter White Obit in Albuquerque Paper*, HOLLYWOOD REPORTER (Oct. 4, 2013, 11:18 AM), <http://www.hollywoodreporter.com/live-feed/breaking-bad-walter-white-obit-643432>.

197. See *Goodbye Breaking Bad but not Albuquerque! City Cooks up Plan to Cash in on Tourism Boom off the Back of Hit Series*, DAILY MAIL UK (Sept. 28, 2013, 7:39 AM), <http://www.dailymail.co.uk/news/article-2436391/Goodbye-Breaking-Bad-Albuquerque-City-expects-ongoing-tourism-boom-wake-hit-series-finale.html> (noting that fans planned to watch the series finale at Hotel Albuquerque with “a special VIP showing serviced with special cocktails named after *Breaking Bad* characters”).

198. See, e.g., Dan Mayfield, *APD Story Abuzz on Twitter, #DOJAPD Makes Nationwide Impact*, ALBUQUERQUE BUSINESS FIRST (Apr. 15, 2014, 3:41 PM) <http://m.bizjournals.com/albuquerque/news/2014/04/15/apd-story-abuzz-on-twitter-dojapd-makes-nationwide.html?page=all&r=full> (“By 4 p.m. on April 10, the day of the announcement, #DOJAPD had received 5 million impressions. By Monday morning, that number grew to 7.5 million impressions.”).

199. See Scott Sandlin & Patrick Lohmann, *Judge Blasts Officers in Torres Shooting Death*, ALBUQUERQUE J., June 10, 2014, <http://www.abqjournal.com/413552/news/judge-awards-6-million-to-family-of-man-shot-by-apd.html> (noting that over \$6 million was awarded to the family of APD shooting victim Christopher Torres, and that a \$10 million judgment was ordered to be paid to the family of APD shooting victim Kenneth Ellis III); Radley Balko, *Albuquerque's Long History of Police Abuse, Cover-Up and Scandal*, WASH. POST, Apr. 14, 2014, <http://www.washingtonpost.com/news/the-watch/wp/2014/04/14/albuquerques-long-history-of-police-abuse-cover-up-and-scandal/> (noting the suspension of an APD detective for boasting via social media that his occupation was a “human waste disposal”); LAS CRUCES SUN-NEWS, *Albuquerque City Council Protest Lawsuit Eyed*, May 12, 2014, 11:49 PM, [http://www.lc-sun-news.com/las\\_cruces-news/ci\\_25747999/las-cruces-sun-news](http://www.lc-sun-news.com/las_cruces-news/ci_25747999/las-cruces-sun-news) (noting that

Newspapers continue to publish editorials and opinion posts interpreting the DOJ findings.<sup>200</sup>

This negative portrait of reality undermined the favorable public exposure the city assimilated through its connection to the show. It eroded the public support so necessary to the APD's authority and sense of legitimacy. And it epitomizes the untenable fusion between fictional television and real policing as forces of indoctrination. In fact, Albuquerque officials, perhaps now cognizant of the unsustainable archetype of life imitating art, publicly and adamantly opposed the return of the reality crime drama "COPS" to its city streets—at least toward the filming of APD officers.<sup>201</sup>

Television and law enforcement each represent unique forms of social control, and their confluence appears to have dramatically manipulated the APD and its officers.<sup>202</sup> The ultimate breakdown between the department and the residents of Albuquerque may be traced back to this contagion.

## CONCLUSION

Albuquerque has now joined a dubious list of cities that have faced federal inquiry into their police departments.<sup>203</sup> Many of these agencies

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demonstrators were removed, cited, and banned from City Hall after holding a silent protest over police shootings).

200. See generally, Editorial, *Public's Involvement is Key for Reforming APD*, ALBUQUERQUE J., June 20, 2014, 12:05 AM, <http://www.abqjournal.com/418116/opinion/publics-involvement-is-key-for-reforming-apd.html>; Editorial, *Cowboy Cops Are Not the Biggest Problem at APD*, ALBUQUERQUE J., Sept. 15, 2014, 12:02 AM, <http://www.abqjournal.com/462076/opinion/cowboy-cops-are-not-the-biggest-problem-at-apd.html>.

201. The Bernalillo County Sheriff's Department, however, had no such restrictions on its deputies. See, e.g., Rob Nikolewski, *Editorial: Gimme a Break on What's Bad*, NEW MEXICO WATCHDOG (Feb. 23, 2014), <http://watchdog.org/20588/nm-editorial-gimme-a-break-on-whats-bad/>; Jen Samp, *City Councilors: TV Show 'COPS' Not Welcome Here*, KOB EYEWITNESS NEWS 4 (Feb. 23, 2014), <http://new-mexico.icitto.com/city-councilors-tv-show-cops-not-welcome-here/> (referencing Bernalillo County Sheriff Houston's comment that the production of COPS "will be able to shoot in the city as long as they are with BCSO"); Albuquerque Journal Editorial Board, *It's Hard to Ban 'COPS' after Breaking Bad*, ALBUQUERQUE J., Feb. 24, 2014, <http://www.abqjournal.com/358153/opinion/its-hard-to-ban-cops-after-breaking-bad.html>.

202. See Kathleen Curry, *Mediating COPS: An Analysis of Viewer Reaction to Reality TV*, 8 J. CRIM. JUST. & POPULAR CULTURE 169, 170 (2001) ("[T]elevision and the police are both forms of social force and control . . .").

203. See Sarah Moughty, *17 Justice Department Investigations into Police Departments Nationwide*, PBS FRONTLINE (Sept. 20, 2011, 2:32 PM), <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/law-disorder/17-justice-dept-investigations-into->

were deemed to operate under similar organizational deficiencies as those found within the APD. However, the conspicuous timeframe within which both *Breaking Bad* aired and the APD accrued excessive force allegations sets Albuquerque apart from its peers.

Did the APD “break bad” as a result of *Breaking Bad*? The facts appear to support the direct alignment of several factors: *Breaking Bad* and its educative portrayal of “small acts” of strategic police deception commanded extensive viewership and critical acclaim, so much so that the city of Albuquerque became integrated as one with the show; at the same time, the dynamics within the Albuquerque Police Department left its rank-and-file officers improperly trained, and without fundamentally vital internal supervision and external oversight; this confluence of situational forces shaped APD officers, and led to a “culture of aggression,” accompanied with a “pattern or practice of using excessive force.”<sup>204</sup> APD officers are inherently no more evil than officers in any other city are,<sup>205</sup> but the “bad barrel” surrounding them enabled and encouraged their violent behavior.

Then again, perhaps no significance should attach to the timing of *Breaking Bad* and the APD’s violent behavior. Of greater import is the repair necessary to forge a better relationship between community residents and their police force.

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police-departments-nationwide/; CBS NEWS, *DOJ Investigating 17 Police, Sheriff Departments* (Apr. 18, 2012, 2:20 PM), <http://www.cbsnews.com/news/doj-investigating-17-police-sheriff-departments/>; Fernanda Santos, *Justice Department Accuses Albuquerque Police of Excessive Force*, NY TIMES, Apr. 10, 2014, [http://www.nytimes.com/2014/04/11/us/albuquerque-police-report-justice-department.html?\\_r=0](http://www.nytimes.com/2014/04/11/us/albuquerque-police-report-justice-department.html?_r=0) (“Police departments in several other cities have been targets of similar investigations . . . including Seattle, Portland, and New Orleans.”).

204. See generally DOJ Letter, *supra* note 12.

205. See Conor Friedersdorf, *The Brutality of the Albuquerque Police Department*, THE ATLANTIC (Apr. 11, 2014, 7:00 AM), <http://www.theatlantic.com/national/archive/2014/04/the-brutality-of-the-albuquerque-police-department/360514/> (“The men in Albuquerque are no more malign in nature than folks in other cities. Yet they engaged in all sorts of indefensible . . . behavior.”).

