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The Dynamics of Domestic and International Cargo Theft

*Barry Conlon**

I. INTRODUCTION

Cargo theft. Most of you have probably never heard of the term. It should come as no surprise that the offense is commonly referred to as the silent crime.¹ It is silent because people rarely see it. As a property crime, it feels less personal and it is insured. When it does rear its ugly head and make a headline, it is usually an attention-grabbing headline based on the items targeted and the startling amount stolen. These headlines are more than likely about pharmaceuticals. A pharmaceutical theft can cause alarm when the stolen product has been stored in a manner that corrupts the integrity of the product, making it potentially harmful, or even lethal to a patient who is prescribed the drug that re-enters the supply chain after being stored improperly.² This has happened and has resulted in multiple deaths.³

II. THE SILENT CRIME

Measuring the impact of this crime is a challenge. Law enforcement officers indicate that many cargo thefts go unreported.⁴ Some suggest that as many as five thefts go unreported for every one cargo theft that is reported.⁵ Many companies choose not to suffer from bad publicity associated with reporting these thefts since the likelihood of a successful recovery is so slight.⁶ They may believe insurance will cover the damages more efficiently and with less overhead than a lawsuit or a public statement.⁷ From a dollar value standpoint, the level and extent of this crime is highly speculative.

Even recoveries can be a challenge to law enforcement as many commodities are not tagged with unique identifiers to prove definitively the prod-

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1. DAN BURGESS, *CARGO THEFT, LOSS PREVENTION, AND SUPPLY CHAIN SECURITY* 3 (1st ed. 2012).
2. See Jared S. Palmer, *The Cargo Theft Threat*, *INBOUND LOGISTICS* (Jan. 2010), <http://www.inboundlogistics.com/cms/article/the-cargo-theft-threat/>.
3. *Id.*
4. Kevin Hall, *Cargo Theft: Business' Unreported Crime*, *JOC* (July 1, 1999 8:00 PM), http://www.joc.com/cargo-theft-business-unreported-crime_19990701.html.
5. *Id.*
6. See Palmer, *supra* note 2.
7. See *id.*

uct was indeed stolen.⁸ In cases where a criminal is caught with suspect goods in his possession, law enforcement officials sometimes struggle to prove a crime has been committed.⁹ Additionally, the suspects could be eligible for immediate bail because the penalties for property crime are light.¹⁰ This is why cargo theft is aptly named the silent crime and is considered a major growth industry by criminal organizations.¹¹

III. RISK VS. REWARD

All of these factors combined create a rare opportunity seldom encountered by the criminal underworld, one of both low risk and high reward. Traditional bank robberies result in an average net profit \$5,000¹² and are virtually guaranteed a robust law enforcement response.¹³ The average cargo thief, in contrast, could resell stolen cargo at approximately ten cents on the dollar.¹⁴ For a million-dollar load, that is not a bad reward as a result of only a few hours of work. If the thief is caught, odds are she will be released and can be back at the same gig in another state within hours.¹⁵

Stereotypes indicating that criminals are of less than average intelligence could not be further from the truth. Risk and reward considerations come naturally to them, and they rarely pass up lucrative opportunities provided by dynamic, just-in-time supply chains. The unique combination of free-flowing goods and supply chains that stop those goods from moving at several vulnerable junctures provide the criminal the opportunity to steal many millions of dollars' worth of highly sought-after goods.¹⁶

This begs the question: How does a criminal know what's in one trailer versus another? The gangs that trade in this space are usually multi-dimen-

8. *Id.*

9. See Thomas Zambito, *Caught But Seldom Stopped*, NY DAILY NEWS (Apr. 15, 2002), <http://www.nydailynews.com/archives/news/caught-seldom-stopped-guilty-8-cases-cargo-theft-loose-article-1.482878>.

10. *Id.*

11. *See id.*

12. Leslie Horn, *How To Rob A Bank, As Told By An Actual Bank Robber*, ADEQUATE MAN (June 11, 2015), <http://adequateman.deadspin.com/how-to-rob-a-bank-as-told-by-an-actual-bank-robber-1710663924>.

13. Joseph Petrocelli, *Bank Robberies*, POLICE: THE LAW ENFORCEMENT MAG. (Jan. 1, 2008), <http://www.policemag.com/channel/patrol/articles/2008/01/bank-robberies.aspx>.

14. BURGES, *supra* note 1, at 43.

15. *See Zambito, supra* note 9.

16. *See* Sean Kilcarr & Jim Mele, *Increase in Cargo Theft Has Caught Law Enforcement's Attention*, FLEETOWNER (Sept. 1, 2009), <http://fleetowner.com/management/news/cargo-theft-rising-0901>.

sional.¹⁷ At the center of this web operates an individual usually referred to as the broker.¹⁸ He is the mastermind behind the operation and could have several loosely aligned gangs operating at his direction.¹⁹ In many cases the Full Truck Load (FTL) is targeted directly for the product it contains—essentially theft-to-order.²⁰ The broker takes the order, or based on research, figures out what stolen product has the higher Return on Investment (ROI).²¹ Pharmaceuticals neatly fit into this space, particularly when the media highlights a current drug shortage and its negative impact on the public.²² Gangs will then study all available media resources to gather information on where that product is manufactured and warehoused.²³ Once the distribution profile is understood, the gang will dispatch to the area.²⁴ One of the most successful collection of gangs who operate in this space come from the Hialeah suburb of Miami.²⁵ These gangs, when directed to travel to locations such as Dallas, Texas, or Los Angeles, California, fly with low-cost airlines, rent vehicles locally, and establish monitoring sites overlooking the FTL exit gates at distribution centers they know store the drugs or other goods they are directed to steal.²⁶ With pharmaceuticals, they know the usual truck profile for an expensive, high-value product almost always involves a temperature-controlled environment.²⁷ Therefore, they know a reefer is required and also look for a trailer with a security lock and seal.²⁸ They assume, again based on experience, the company may even have some form of covert satellite tracking device accompanying the load.²⁹ Critically, and probably most importantly,

17. See BURGESS, *supra* note 1, at 45–46.

18. See *id.* at 57–58.

19. See *id.* at 45, 48, 58.

20. See *id.* at 8.

21. See *id.* at 7–8, 58 (discussing the broker’s process of analyzing the industry, determining the best product to steal, and choosing a selling price for the cargo after its theft).

22. See *id.* at 124.

23. See Burgess, *supra* note 1, at 8.

24. See *id.*

25. See *id.* at 48.

26. See *id.* at 52–53.

27. See Jean-Paul Rodrigue & Theo Notteboom, *The Cold Chain and its Logistics*, THE GEOGRAPHY OF TRANSPORT SYSTEMS (2017), <https://people.hofstra.edu/geotrans/eng/ch5en/appl5en/ch5a5en.html>.

28. See *id.*; Model Guidance for the Storage and Transport of Time- and Temperature-Sensitive Pharmaceutical Products, World Health Organization Expert Committee on Specifications for Pharmaceutical Preparations, World Health Organization Technical Report Series NO. 961, Forty-Fifth Report, at 348.

29. See BURGESS, *supra* note 1, at 211–12.

they know one thing: drivers are creatures of habit that stop to fuel and rest in the same place—allowing cargo thieves to hijack trucks with little or no interference from the drivers.³⁰ This results in a significant amount of North American FTL cargo theft being a relatively simple affair.

FTL drivers have a difficult job, and it's only becoming more difficult. A rash of new government regulations around mandated driving hours³¹ and Electronic Logging Devices³² means drivers must carefully plan how and when they can legally drive their trucks. This was a paper-based problem before that involved the driver stopping near their pick-up locations to do their administrative work, to fuel up, and to eat prior to beginning their long journey to a destination. Most stops made by the driver usually occur within a 200-mile radius of the pick-up location.³³ Aware of this fact, criminal gangs will follow the driver until he stops.³⁴ It costs a driver money to shut his diesel engine down at a truck stop, meaning most drivers leave their trucks on idle once they leave their vehicle.³⁵ Also, almost all trucks are not equipped with an electronic alarm system. This creates a condition where a driver leaves a truck trailer, containing many millions of dollars' worth of cargo, running and unattended the entire time he needs to eat, shower, and complete his required administrative duties. This could take a driver over an hour. It takes a gang less than a minute to enter a locked vehicle and drive away with it.³⁶ One member of the gang will have experience driving a commercial vehicle and may even be licensed.

As the thief drives away, another two gang members will have followed the driver into the truck stop to alert the gang if the driver changes his mind and returns to the vehicle. Another gang member in their vehicle will monitor the local law enforcement radio bands if a 911 call is raised. Once the truck is clear, all members will return to the gang vehicle and depart the scene. They will have a previously agreed rendezvous point approximately 10–15 miles away. They favor locations where truck parking is normal, such as Walmart. The gang will park the stolen tractor-trailer and place surveillance to confirm no utilization of covert tracking. Recently, gangs have opted for jamming devices, which they carry in their vehicle, as a more efficient

30. 1 ANDREW R. THOMAS, *SUPPLY CHAIN SECURITY: INTERNATIONAL PRACTICES AND INNOVATIONS IN MOVING GOODS SAFELY AND EFFICIENTLY* 13 (2010).

31. Fed. Motor Carrier Safety Act, 49 U.S.C. § 395.3 (2016).

32. *Id.* § 31137.

33. *Keeping Your Cargo Safe*, SCHNEIDER, <https://schneider.com/document/keeping-your-cargo-safe-pdf> (last visited Mar. 20, 2017).

34. *See* THOMAS, *supra* note 30, at 13.

35. GORDON J. KNAPP, *IS OVER THE ROAD TRUCKING FOR YOU?* 115–16 (2d ed. 2011).

36. *See* Karen E. Thuermer, *Cargo Theft is a Critical Issue to Food and Beverage Industry*, *FOOD LOGISTICS* (Dec. 16, 2016), <http://www.foodlogistics.com/article/12281779/cargo-theft-is-a-critical-issue-to-food-and-beverage-industry>.

counter-measure to jamming technology.³⁷ Once sure of the secured trailer, they will bring in a clean tractor-trailer and exchange it for the stolen one.

In many instances, it has been proven that thieves have established elaborate “reverse logistics” operations for the safe warehousing of the stolen goods until the buyer can receive them.³⁸ But, this is not always the case: after several of the gang members were arrested, the stolen trailers were returned to South Florida, thus establishing a new criminal operation. The thieves contracted a legitimate hauling company to collect the load from a warehouse leased by the thieves and, then, carried to a delivery location in Miami. Although more expensive, this presents less risk to the gang members.

Another factor that plays into this dynamic is the industry’s ability to fuel the problem by buying commodities wholesale, particularly when shortages are experienced.³⁹ For example, some wholesale distributors of pharmaceuticals and electronics have purchased their own stolen commodities from the very organization that that stole them.⁴⁰ This seems crazy, but it ties back to the challenge of identifying stolen products in the first place.

How can all this happen as simply as the above demonstrates? Why can’t law enforcement put a stop to this? Why aren’t the laws tougher? All good questions, but the silent crime as an issue is not going away anytime soon. It is just too lucrative with too many opportunities out there, and the problem will be exacerbated by the difficulty of tracking and quantifying the level and extent of the problem due to the international and transcontinental nature of commerce and the movement of goods across state lines and overseas. While trade moves freely, law enforcement’s ability to move as freely and thus follow closely is hampered by jurisdiction and limited budgets.⁴¹ The FBI, the one U.S.-based agency with jurisdiction to cross state lines and conduct multi-state investigations, has a limited budget to direct towards cargo theft and the gangs who perpetrate it.⁴² All federal eyes are turned towards terrorism, with little time or money dedicated to the silent crime.

37. Walt Beadling, *10 Takeaways from the GPS Cargo Tracking/Monitoring Forum*, CARGO SECURITY ALLIANCE (Feb. 4, 2016), https://www.securecargo.org/sites/securecargo.org/files/10_takeaways_from_the_gps_cargo_tracking_forum_rx-360_and_pcsc_0.pdf.

38. Karen Hawks, *What is Reverse Logistics*, REVERSE LOGISTICS MAG. (Winter/Spring 2006), <http://www.rlmagazine.com/edition01p12.php>; Sean Kilcarr, *Cargo Theft Now a Tougher Nut to Crack*, FLEETOWNER (Jun. 1, 2016), <http://fleetowner.com/fleet-management/cargo-theft-now-tougher-nut-crack>.

39. See BURGES, *supra* note 1, at 64–65.

40. *Id.*

41. See, e.g., *Inside Cargo Theft*, FED. BUREAU OF INVESTIGATION (Nov. 12, 2010), https://archives.fbi.gov/archives/news/stories/2010/november/cargo_111210/cargo_111210.

42. *Id.*

IV. CARGO THEFT TARGET LOCATIONS

America's cargo theft problem seems tame when compared to that of Brazil or Mexico.⁴³ Only in very rare circumstances is hijacking a Modus Operandi used by U.S.-based cargo thieves.⁴⁴ The number one cardinal rule practiced is do not elevate the crime from property to people. If you do, law enforcement will investigate and pursue you. There have been many incidents when a theft-oriented gang discovered a driver sleeping in the bunk as they drove away.⁴⁵ The ideal reaction is to stop and flee. You don't want to hurt people and provoke a more robust response. The exact opposite is the norm in countries that have hardened the areas of theft risk such as truck stops and delivery yards. In countries like Brazil and Mexico, the criminal gangs will choose the location for the theft.⁴⁶ These locations are usually where the FTL has no option but to slow down and stop. Toll booths, traffic lights, and congested traffic areas are commonly targeted locations.⁴⁷ When that won't do, blocking vehicles such as dump trucks are used to slow and stop the targeted vehicle.⁴⁸ If the vehicle is escorted by security contractors, a common practice overseas, additional vehicles are used by the gangs to seize the security officers alongside the drivers.⁴⁹ If the escort is armed, the gangs will shoot the protection officers or use coercion methods such as family pictures to encourage the guards and drivers to surrender willingly.⁵⁰ Other elaborate methods are also common. If covert tracking is practiced, suspected tunnels have been dug to house multiple FTL's below ground to kill the tracking signal.⁵¹

43. *FreightWatch International Global Threat Assessment*, FREIGHTWATCH INTERNATIONAL (Feb. 10, 2010), https://www.securecargo.org/sites/securecargo.org/files/FreightWatch_2010_Global_Threat_Assessment.pdf.

44. *Id.* at 4.

45. Cindy Clayton, *Truck Cab Stolen, Driver Abducted in Newport News*, VIRGINIAN-TIMES (May 9, 2012), http://pilotonline.com/news/local/crime/truck-cab-stolen-driver-abducted-in-newport-news/article_a4f6ac92-e672-5645-8ae2-082027a73875.html.

46. *See FreightWatch International Global Threat Assessment*, *supra* note 43, at 17.

47. *Id.* at 24.

48. *Id.* at 22, 42, 45.

49. *Id.* at 10.

50. *Truck Hijackings, Crime and Road Safety*, ARRIVE ALIVE, <https://www.arrivealive.co.za/Truck-Hijackings-Crime-and-Road-Safety> (last visited Mar. 19, 2017).

51. Tristan, *Signal-Minded Approach to Signal Jamming*, TRANSPORT WORLD AFRICA (Apr. 29, 2016), <http://www.transportworldafrica.co.za/2016/04/29/signal-minded-approach-to-signal-jamming/>.

Perhaps the most troubling circumstance is the unfortunate fact that law enforcement has been complicit in several confirmed theft events in overseas jurisdictions.⁵² Having no dependable law enforcement response capability severely complicates corporate security management of this phenomena and can make the cost of prevention unsustainable.⁵³ In most of these countries there are several different law enforcement agencies with a confusing cross-functional jurisdiction.⁵⁴ While this confusion can be a problem, it can also assist if you have some idea on which agency was involved and which agency was not.⁵⁵ Having intelligence at this level is a challenge, as the dynamic environment means it is a constantly shifting target.⁵⁶ When circumstances like this exist many private security agencies have a policy that entails immediately calling out all law enforcement agencies in the hope that one will counter the other.⁵⁷ This practice has led to some embarrassing scenarios where law enforcement has engaged with other brother agencies.⁵⁸

V. IN-TRANSIT SECURITY PLANS

So, what do you do when cargo theft occurs? Freight must flow and it must flow seamlessly.⁵⁹ If your in-transit security plan in any way slows or negatively impacts the smooth freight flow, it is doomed to fail.⁶⁰ Doubling your transportation costs by implementing costly security counter-measures is not sustainable.⁶¹ Here's how the normal scenario normally plays out: the shipper gets a phone call from his transportation vendor saying a truckload is missing, and the shipper responds, "What do you mean missing? Is the driver asleep? Has his cell phone run out of juice? Will he be found again?" The transportation vendor then responds, "No. The load has been stolen."⁶² Typically, this is the "hair on fire" stage; frantic efforts are made to try to understand what has happened and how do we prevent it from happening again. Afterwards, money is thrown at the problem and new high security standards

52. See *FreightWatch International Global Threat Assessment*, *supra* note 43, at 22.

53. BURGES, *supra* note 1, at 11–12.

54. Bill Turner, *Cargo Theft: Not Just a US Problem*, LPM INSIDER (Mar. 24, 2016), <http://losspreventionmedia.com/insider/supply-chain-security/cargo-theft-not-just-a-us-problem/>.

55. Robert Fischer et al., *INTRODUCTION TO SECURITY* 35–36 (9th ed. 2012).

56. *Id.*

57. *Id.*

58. *Id.*

59. BURGES, *supra* note 1, at 6.

60. *Id.* at 163.

61. *Id.*

62. *Id.* at 8.

are implemented.⁶³ Therefore, the problem should be contained. Fast forward a year, and a P&L holder will ask how we can reduce the transportation spending.⁶⁴ The P&L holder might ask, “Why do we have so many security provisions when we haven’t lost a truck in over a year?” You get the point.

There are in-transit security plans that are sustainable and can last the test of time. Build a plan that is based on knowledge.⁶⁵ Know your supply chain completely as well as all the vendors who participate.⁶⁶ That sounds simpler than it is, but make the effort to identify and document the key vendors and ask them if they are aware of the relevant risky scenarios. Essentially, confirm that vendors have a plan and know how to respond if they find themselves in such a scenario. Your plan should focus on prevention and not just response.⁶⁷

As Benjamin Franklin once put it, “An ounce of prevention is worth a pound of cure.” This is especially true in the supply chain where identifying weaknesses that could be exploited by various criminal players across a multitude of service providers is crucial to any successful theft prevention plan.⁶⁸ Most importantly, your plan must include any key player who may control the risk scenario based on his or her actions. In North America, this key player is the driver.⁶⁹ Often, millions of dollars are spent securing facilities, production lines, and warehouse distribution centers.⁷⁰ Yet, when a payload that is worth millions of dollars is loaded into a cargo trailer, it is released

63. *Id.* at 160.

64. *Profit and Loss Statement (P&L)*, INVESTOPEDIA, <http://www.investopedia.com/terms/p/plstatement.asp> (last visited Mar. 19, 2017) (“A profit and loss statement (P&L) is a financial statement that summarizes the revenues, costs, and expenses incurred during a specific period of time, usually a fiscal quarter or year.”).

65. See Bill Zalud, *The Daily Challenges of Supply Chain Security*, SECURITY MAG. (Apr. 1, 2016), <http://www.securitymagazine.com/articles/87010-the-daily-challenges-of-supply-chain-security>.

66. See *Supply Chain Security Best Practices Catalog*, U.S. CUSTOMS & BORDER PROT. (2006), https://www.cbp.gov/sites/default/files/documents/ctpat_bp_2006.pdf.

67. See *id.*

68. See Michelle Curtis, *Preventing Cargo Theft*, RECON LOGISTICS (July 22, 2014), <http://reconlogistics.com/preventing-cargo-theft>.

69. See *Cargo Theft Risk Dependent on Where Truck Drivers Park*, PENSKE (Jan. 13, 2016), <https://blog.gopenske.com/insights/cargo-theft-risk-dependent-on-where-truck-drivers-park/>.

70. See generally *Industrial & Warehouse Security: Put a Stop to Theft and Pilferage*, CISCO-EAGLE, http://www.cisco-eagle.com/uploads/White-Papers/eBook-Loss_Prevention-tall.pdf (last visited Mar. 19, 2017) (describing the broad spectrum of methods available to prevent theft in warehouses and other distribution-oriented facilities).

with little or no security protection.⁷¹ It is the hub and spoke argument: we can protect the few, but not the many. At least that used to be the case.⁷² Transportation is evolving from a fragmented and disconnected state into a seamless environment from origin to destination.⁷³ There is demand to have immediate access to information related to cargo content, location, and estimated time of arrival—all of which are readily available data points.⁷⁴ Connecting these dots is now considered a relatively basic challenge in the mobile-connected world.⁷⁵

VI. THE DRIVER

In the fragmented state of the North American logistics system, the single profound pain point is the condition experienced by the FTL long-haul driver today. The driver is without a doubt the most important cog in the machine that moves America's economy.⁷⁶ They directly influence the risk environment and can be the deciding factor on whether it is a good or bad day.⁷⁷ They directly affect the care and handling of the product for a significant portion of the distribution process and are relied on to make that all critical on-time delivery (OTD).⁷⁸ Yet, in almost all cases, they are eliminated from almost all risk management plans.⁷⁹ They are relegated from all security plans that are based on what to do when the driver messes up and loses the load. In general, they are usually the individuals who are treated poorly and forgotten about in the economic spread. Drivers deserve a second

71. See, e.g., *Sample Transportation Security Plan*, FAR W. AGRIBUSINESS ASS'N, http://www.fwaa.org/accounts/fwaa/data_documents/63/files/plan.pdf (last visited Mar. 19, 2017).

72. See Justine Brown, *Locking Down Supply Chain Security*, INBOUND LOGISTICS (Jan. 2013), <http://www.inboundlogistics.com/cms/article/locking-down-supply-chain-security/>.

73. See Zalud, *supra* note 65.

74. See *id.*

75. See *id.*

76. See generally *Disruptions Ahead*, CSX (2016), http://www.supplychain247.com/paper/your_guide_to_upcoming_trucking_regulations/papers#register (describing the general importance of drivers in a functioning supply chain through the lens of new trucking regulations).

77. See Schneider, *Keeping Your Cargo Safe*, 3 (2016), <https://schneider.com/cs/schneider/document/keeping-your-cargo-safe-pdf>.

78. See *Supply Chain Gain: Trucking Tactics*, INBOUND LOGISTICS (Jan. 2011), <http://www.inboundlogistics.com/cms/article/supply-chain-gain-trucking-tactics/>.

79. See, e.g., Amber Road, *Heightening Supply Chain Security: The New Paradigm and Best Practices to Manage Security*, SUPPLY CHAIN 24/7 (May 4, 2016), http://www.supplychain247.com/paper/heightening_supply_chain_security/amber_road (mentioning the driver only once in only one instance).

look, and most importantly they deserve to be treated with the respect hard-working professionals deserve. They are the security professional's dream—hard-working, responsible, and honest. Drivers have a significant amount of skin in the game when you factor in they own their vehicle and trailer, and their livelihood is at risk if they lose the load. If corporate security could figure out a way to positively involve the driver, a scalable low-cost security program is not only possible, but could have a greater chance of success.

VII. ONE FINAL POINT ON THE DRIVER SHORTAGE

The American Trucking Association (ATA) predicts in the next ten years, 890,000 drivers are needed to maintain the pace of industry growth as well as replace retirees.⁸⁰ The current deficit of 48,000 FTL drivers will climb to around 160,000 in the next five years.⁸¹ Drivers are not retiring because they can. They are retiring because they are struggling to make a living. Despite rising pay rates, transportation-lending practices are worsening the payday lending schemes.⁸² The driver's inability to make a living means this issue will become a crisis and will not just affect rates, but may impact a shipper's ability to move his product if not systemically addressed by the entire industry.

80. Bob Costello & Rod Suarez, *Truck Driver Shortage Analysis 2015*, AM. TRUCKING ASS'NS (Oct. 2015), <http://www.trucking.org/ATA%20Docs/News%20and%20Information/Reports%20Trends%20and%20Statistics/10%206%2015%20ATAs%20Driver%20Shortage%20Report%202015.pdf>.

81. *Id.* at 6.

82. *See id.* at 2, 10.