

## Opening Mail Boxes

Most every professional investigator, be they law enforcement or private has at one time or another been face to face with a mailbox that has no name on the outside to identify the recipient. Some of these mailboxes, like most of those in large residential complexes can only be opened with a mailbox key, yet others like curbside residential mailboxes, or those that are hung near the front door are usually unsecured and have an inviting little latch or knob that is designed to pull open the door.

So, you've just followed your subject around town, making stops at suspicious bars, grocery stores, street corners, where you've observed the subject talking to nefarious looking people with whom the subject seemingly exchanges small items for what appears to be cash. You then follow the subject to a two-story residential building and watch as the subject enters through the front door, and through the glass in the front door you can see the subject walking up the stairs to the second floor. Just to the left of the front door you observe two Mailboxes. Quickly, yet discretely you approach the front door to see who's names appear near the bells, or on the Mailboxes. Alas, the only words that you see are on the front of the mailboxes and they read "1<sup>st</sup> FL and 2<sup>nd</sup> FL." You can see that neither Mailbox has a lock, and through the decorative slots in the front of each you can see that the mail is still inside, but you just can't make out the names. Ah, a mere lifting of the flap and you will quickly be able to identify the resident on the second floor....

L.E.O.'s are no more exempt than private investigators from Federal, or State Laws. But are there any laws that cover this issue specifically? Who owns your residential Mailbox? When is Mail considered to be "delivered?" What is "tampering?"

Let's look at the last question first, since it is the most obvious. If the mailbox is locked, and you "pick it", or use any type of force to open it, you have certainly "tampered" with it appears that you are in violation of TITLE 18, PART I, CHAPTER 83, § 1705 of the U.S. Code which states:

*" § 1705. Destruction of letter boxes or mail.*

*Whoever willfully or maliciously injures, tears down or destroys any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route, or breaks open the same or willfully or maliciously injures, defaces or destroys any mail deposited therein, shall be fined under this title or imprisoned not more than three years, or both."*<sup>1</sup> *Additionally, the chances are very good that you have also violated one or more sections of your States criminal laws dealing with the destruction of property, etc.*

Who owns your Mailbox? Well, based upon Section 1705, it seems that the U.S. Code recognizes the Post Office's ownership of "any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route...." As further evidence of the Post Office's control over your mailbox, it is illegal for anyone expect your postal letter carrier to deposit anything into your mailbox:

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<sup>1</sup> U.S. Code, Section 1705, Release date: 2004-08-06

*“§ 1725. Postage unpaid on deposited mail matter.*

*Whoever knowingly and willfully deposits any mailable matter such as statements of accounts, circulars, sale bills, or other like matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon, shall for each such offense be fined under this title.”<sup>2</sup>*

When is Mail considered to be “delivered?” Is this a play on words? Does “*delivered*” mean that it is physically in the hands of the person that it was addressed to, or does it mean that once it has been deposited into the intended Mailbox by the authorized Letter Carrier it has been “*delivered.*” Semantics? Well, here is what the dictionary says about the meaning of *delivered*: “to take and hand over to or leave for another”<sup>3</sup> My local Post Master, and the Postal Inspection Services “Public Information Officer” of a large Metropolitan area (who asked not to be identified for obvious reasons that follow) both agreed that Mail is considered to be delivered once it is placed in the recipients Mailbox.

Yet there is sufficient case law based upon Title 18, Section 1702 that disagrees. Here is the relevant section:

*“§ 1702. Obstruction of correspondence*

*Release date: 2004-08-06*

*Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined under this title or imprisoned not more than five years, or both.”*

But wait a second! Does section 1702 actually say “*before it has been delivered to the person to whom it was directed...*”, Yes, that is what it says, yet the courts have interpreted “delivered to the person” in a literal sense. While I am not an attorney, and I make no representations or offer any legal advise in this or any other matter, I conducted a search of the Lexis Legal database and found several cases in which this delivery issue has come up. One such case was U.S. v Murray, and I have included the following for your information:

“The crucial question under § 1702 is what constitutes delivery so as to terminate the statute's applicability. In [United States v. Maxwell, 137 F. Supp. 298, 303 \(W.D.Mo.1955\)](#), Judge Ridge found that “it is apparent from . . . the Act, that the Congress intended to protect “letters” . . . not only while they are in the physical

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<sup>2</sup> U.S. Code, Section 1725, Release date: 2004-08-06

<sup>3</sup> Merriam Webster Online Dictionary, <http://www.m-w.com/dictionary.htm>

possession of the Post Office Department, but also thereafter." In affirming the district court Judge Sanborn noted: It seems to us, however, that the plain language of the statute discloses a clear intent on the part of Congress to extend federal protection over mail matter from the time it enters the mails until it reaches the addressee or his authorized agent."<sup>4</sup>

A further look at this section of the U.S. Code on Lexis, under "INTERPRETIVE NOTES AND DECISIONS, II, 8. Delivery," offered the following information:

"18 USCS § 1702 protects mail matter until it is delivered to person to whom it is directed or to his authorized agent; statute protects letters not only while they are in physical possession of Post Office Department, but also thereafter until it reaches addressee or authorized agent; thus § 1702 reaches mail not yet delivered to addressee or his agent, even though post office has relinquished possession of mail matter."<sup>5</sup>

Okay, so the Statute is in effect until the addressee or their authorized representative physically touches it. That must mean that the residential Mailbox is as much a part of the US Mail System as a Mail Carriers bag, a U.S. Mail Box on the corner, a U.S. Mail Truck, or the Main Post Office itself? It could be argued that to open a Mailbox is the same as opening the door to a U.S. Mail Delivery vehicle, even if they are both unlocked. The more I thought about this, the more I came to believe that it may be a bad idea for anyone to open another persons Mailbox without authorization.

This brings me to my phone call to the Postal Inspectors "Public Information Officer" that I referred to above. Being in a large metropolitan area, he is used to answering questions about identity theft, child pornography, mail fraud, terrorism, etc., but he seemed to take my request seriously. His first reaction was that so long as nothing was removed or tampered with, it would probably be okay but he indicated that he would check with his legal department for further clarification. Several days later I had to track him down again only to learn that he could not find an answer to this simple question, "can investigators, either public or private, open an unlocked mailbox to see who's name is on the mail." His answer to me was "It's a gray area, but please don't quote me by name."

But what about the rest of the Mens Rea issue. The statute requires that there be "*design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same.*" I suppose that in the current example above the criminal intent on behalf of the LEO or PI would be hard to prove, but I would not want to be the test case.

During my research I could not find one such criminal case on the Federal level. All of the cases that I did locate dealt with the theft, destruction of mail, identity theft, etc. I did however come across the following Jury Instruction from the State of Tennessee dealing with Mailbox Tampering:

*T.P.I. -- CRIM. 14.12 T.P.I. -- CRIM. 14.12 MAILBOX TAMPERING*

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<sup>4</sup> . United States v Murry (1978, CA8 Mo) 588 F2d 641.

<sup>5</sup> United States v Murry (1978, CA8 Mo) 588 F2d 641.

*Any person who commits the offense of mailbox tampering is guilty of a crime. For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:*

*(1) that the defendant [damaged] [destroyed] [removed] [otherwise tampered with] a [residential mailbox] [container the defendant knew, or reasonably should have known, was used for the receipt or deposit of United States mail]*

Certainly, the actions described here are not on point, yet before looking into a mailbox you may want to check with your own State laws as well.

Yet there is that one phrase in § 1702 that really bothered me: “*or to pry into the business or secrets of another.*” Can the viewing of a name on a letter inside of an unlocked mailbox be interpreted as “prying into the business or secrets of another?” I guess the answer to that question is as simple as the definition of gray area, “*Definition: [n] an intermediate area; a topic that is not clearly one thing or the other*”<sup>6</sup> My advice is to dive the dumpster rather than opening that mailbox.

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<sup>6</sup> Hyperdictionary: <http://www.hyperdictionary.com/dictionary/gray+area>