



**PLUNKETT & COONEY**  
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## Prepare for Takeoff

The Emerging Trend of Drone Use  
by Law Enforcement

Presented by  
**Matthew G. Berard**  
**Jason G. Bulbuk**

**William H. Reising**  
**Rochelle L. Ralph**

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## Today's Presenters



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## What are "Drones"?

- Quad-copters
- Fixed Wing









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## Law Enforcement Uses

- Traffic monitoring
- Crowd control
- Non-lethal use of force
- Searches and seizures
- Hostage situations
- Bomb squads
- Search and rescue
- Surveillance
- Arson investigation/forest fire monitoring
- Unknown/classified




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## Governmental Entities Using Drones

- Michigan State Police
- University of Michigan
- Seattle Police Department
- NASA
- King County Sheriff's Office
- Washington State Dept. of Transportation
- Orange County Sheriff
- Polk County Florida Sheriff's Department
- Gadsden Alabama Police Department
- FBI
- Army/Navy/Air Force




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## Seattle Police Department



**DroneFlyer X5**

The objective of our program is to create a higher standard of safety for members of our community by utilizing the DroneFlyer X5 unmanned aircraft vehicle in support of non-lethal Law Enforcement related functions which assist, monitor, and are not involved in:

- Offense site related to interstate transport of hazardous materials
- Offense site related to national transport of hazardous materials
- Offense & rescue operations
- Physical support of Law Enforcement operations

This COA is specifically submitted for "law enforcement only" training to be held during 1<sup>st</sup> OCTOBER 1-4, 2012 11<sup>th</sup> at Camp Arifin, Bremerton, WA. The training will be supervised by the responsible and the military personnel assigned to that location. Operation of the DroneFlyer X5 will be utilized in "Class 1" and "Class 2" airspace at or below 400 feet AGL. This aircraft will be used for flight training, operational training and support training.

The operation will occur and proceed from property in which the Proprietor controls or, where applicable, an agreement exists between the Proprietor and the property owner to allow to use. Duration of each flight will be approximately 15 minutes, and not exceed a ceiling of 400 feet AGL, and the same locations will be using the specific need for training and evaluation purposes. The locations listed provide are ideal locations that can be controlled, secured and used throughout the event. The COA approved area will not be training while violating any potential risk to people, property or wildlife.

**DroneFlyer X5 DroneFlyer Technical Specifications**

The DroneFlyer X5 is a remotely controlled, autonomous, portable, and can take off and land, aircraft designed for easy control, easy operation, and safe operation.

**References:**

- 1. DroneFlyer X5
- 2. DroneFlyer X5
- 3. DroneFlyer X5

**Map:**



**Diagram:**






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## Wash. Dept. of Transportation



**Description of Aircraft System: Yamaha RMAX type II helicopter**  
 An aircraft known as the RMAX Type II and made by Yamaha is the helicopter that will be used for this test. (The Company's web site with information on the RMAX Type II is <http://www.yamahamotor.co.jp/global/industrial/mxy/index.html>.) The characteristics of this specific ROA are as follows:  
 Dimensions: 10-foot diameter rotor with 10 foot length x 24 inch wide fuselage  
 Weight: 70 lbs  
 Payload: 30 lbs  
 Power plant: Liquid-cooled, 2-stroke, horizontally opposed engine  
 Fuel: Gas mixed with oil  
 Anti-collision lights  
 Cruise Speed: 30 knots  
 Duration (Endurance): 2 hours  
 Altitude (maximum operating): 5,000 feet

The Washington State Department of Transportation (WSDOT) is submitting this application to the Federal Aviation Administration (FAA) to obtain a Certificate of Authorization (COA) to test fly a Remotely Operated Aircraft (ROA). The application will be for a one-year demonstration project that will evaluate the cost effectiveness and utility of a ROA for avalanche control and search and rescue operations.  
 Test flights will occur over a three day period.  
 There may be one to four flights each day.  
 Each flight will last for an hour or less.




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## Polk County (Florida) Sheriff



The Polk County Sheriff's Office UAS program will evaluate the practicality and functionality of a small UA. Safety will be the first and foremost objective during the evaluation of the UA. Secondly, whether or not deployment of the UAS will be practical in our rural environment. Thirdly, will the craft be functional in the roles of surveillance, search and rescue, officer safety and augmentation of the pre-existing aviation unit's roles.  
 Operation of the Polk County Sheriff's Office UAS will occur at or below 400 feet AGL in Class "G", "E" and "D" airspace. Flights will not occur over densely populated areas "yellow areas". Proper radio calls will be made with ATC or over CTAF. Flights will only be during the day.




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## Gadsden Alabama Police Dept.



Figure 1. Waip  
 (28.5 inch x 9.3 inch)



"The Gadsden Police Department is involved in multi-agency efforts for narcotics enforcement (Etowah County Drug Enforcement Unit) and tactical operations (Joint Special Operations Group). Both entities operate on a county-wide basis. In response to the need for situational awareness and intelligence, the DEU and JSOG have established an unmanned aircraft system program. The UAS will not be used for routine patrol but only in response to a specific dedicated law enforcement mission in a defined area. DEU personnel will use the UAS for covert surveillance of drug transactions and develop video evidence of such activities. JSOG personnel will use the UAS for pre-operational planning and surveillance, maintaining operational security, and obtaining evidentiary video. The UAS team may also use the UAS for other missions that meet the mitigating criteria of the COA and for which the UAS team has determined that the operation may be safely conducted in the National Airspace."




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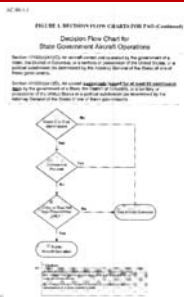
## FBI



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## FAA Regulation of Public Aircraft Operation



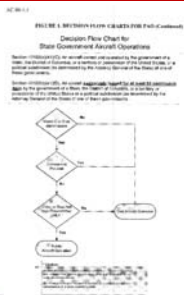
- For public aircraft operations, FAA issues a Certificate of Waiver or Authorization (COA) that permits public agencies and organizations to operate a particular aircraft, for a particular purpose, in a particular area.

Continued

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## FAA Regulation of Public Aircraft Operation

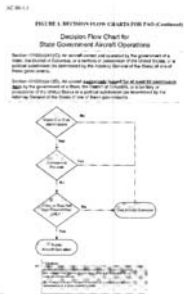


- COA allows an operator to use defined block of airspace and includes special safety provisions unique to proposed operation. COAs usually are issued for a specific period – up to two years in many cases.

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## FAA Regulation of Public Aircraft Operation



- FAA works with these organizations to develop conditions and limitations for UAS operations to ensure they do not jeopardize safety of other aviation operations.

Continued



## FAA Regulation of Public Aircraft Operation

- Objective is to issue COA with parameters that ensure a level of safety equivalent to manned aircraft.
- Usually, this entails making sure that UAS does not operate in populated area and that aircraft is observed, either by someone in a manned aircraft or someone on ground, to ensure separation from other aircraft in accordance with right-of-way rules.
- Common public uses today include law enforcement, firefighting, border patrol, disaster relief, search and rescue, military training, and other government operational missions.

Continued



## FAA Regulation of Public Aircraft Operation

- FAA manages public aircraft COAs through its COA Online system.
- Agency (or proponent) must provide FAA with "declaration letter" from city, county or **state attorney's office** assuring FAA that proponent is recognized as a political subdivision of government of state under Title 49 of U.S. Code (USC) section ( § ) 40102(a)(41)(c) or (d) and that proponent will operate its unmanned aircraft in accordance with 49 USC. § 40125(b) (not for commercial purposes).

Continued



## FAA Regulation of Public Aircraft Operation

- Agency's accountable executive cannot self-certify their agency is a "public" agency.
- Typical COA application approval process is completed within 60 business days of receipt, provided there are no submittal errors, missing information or safety or airspace issues.




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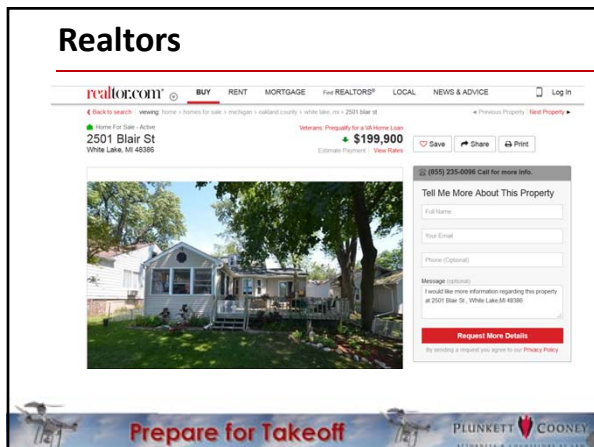
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## Realtors




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## Realtors




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## What's the Big Deal?

2501 Blair St, White Lake, MI 48386

\$199,900

3

2 Full

1,438 Sq Ft

9,583 Sq Ft Lot



Request More Details



Street View Get Driving Directions

On Site

Last refreshed

1 Day Ago

Added to Site

July 31, 2016

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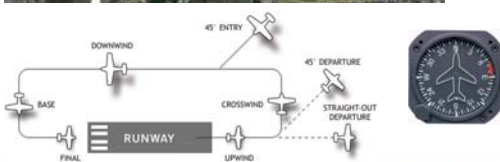
## What's the Big Deal?



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## What's the Big Deal?



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## What's the Big Deal?




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## What's the Big Deal?




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## What's the Big Deal?




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## What's the Big Deal?



## Prepare for Takeoff

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ATTORNEYS & COUNSELLORS AT LAW

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## What's the Big Deal?



Presidential Temporary Flight  
Restriction (TFR)  
September 9, 2015

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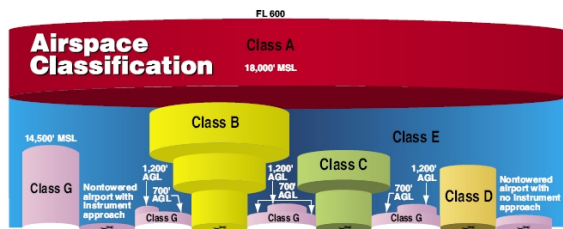
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## What's the Big Deal?



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## Current Drone Regulations

- Individuals flying for hobby or recreation are strongly encouraged to follow safety guidelines, which include:
  - Fly below 400 feet and remain clear of surrounding obstacles.
  - Keep aircraft within visual line of sight at all times.

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## Current Drone Regulations

- Remain well clear of and do not interfere with manned aircraft operations.
- Don't fly within five miles of an airport, unless you contact airport and control tower before flying.
- Don't fly near people or stadiums.
- Don't fly aircraft that weighs more than 55 lbs.
- Don't be careless or reckless with your unmanned aircraft – you could be fined for endangering people or other aircraft.



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## Proposed Drone Regulations

- Small UAS operator must always see and avoid manned aircraft. If there is a risk of collision, UAS operator must be first to maneuver away.
- Operator must discontinue flight when continuing would pose a hazard to other aircraft, people or property.
- Small UAS operator must assess weather conditions, airspace restrictions and location of people to lessen risks if he or she loses control of UAS.

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## Proposed Drone Regulations

- Small UAS may not fly over people, except those directly involved with flight.
- Flights should be limited to 500 feet altitude and no faster than 100 mph.
- Operators must stay out of airport flight paths and restricted airspace areas, and obey any FAA Temporary Flight Restrictions (TFRs).



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## Emerging State Laws

- Look into how certain states are using drones to assist in law enforcement efforts.
- Department of Homeland Security has granted hundreds of thousands of dollars to law enforcement agencies across the country for drone purchases.



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## Nationwide Overlook

- To date, 26 states have enacted drone-related privacy laws for law enforcement.
- Nationwide, 609 government agencies, including those involved in law enforcement, firefighting, border patrol, military training, disaster relief, and search and rescue, received permission from the Federal Aviation Administration last year to use unmanned aircraft systems, compared with 423 in 2013, and 146 in 2009.

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## Nationwide Overlook

- Most states ban law enforcement from using drones absent a warrant, except in emergency situations.
  - Pennsylvania is seeking to implement this policy for a period of two years to give lawmakers time to catch up.



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## California

- Many California law enforcement agencies are seeking to use drones as a way to monitor crime scenes and pursue suspects.
- FAA has green-lighted more than 100 agencies in California to fly unmanned aircraft.

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## California

- FAA rules focus on safety, not privacy.
- Governor Jerry Brown vetoed a bill in 2014 that would have required police to obtain a warrant prior to using a drone in most law enforcement actions.
  - Governor Brown agreed that there are times when a warrant should be required but felt proposed bill was too narrow and would impose requirements beyond what is required by 4<sup>th</sup> Amendment.



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## Colorado

- Mesa County Sheriff's Department has been given FAA authorization to use drones without geographic boundaries.
- Can deploy state-of-the-art cameras anywhere in county's 3,300 miles
- County has done everything by the book with FAA but admits that "the book is pretty thin."

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## Colorado

- Drones were intended to be used in search and rescue missions.
  - Only used in two since 2010
- Drones are mostly used for police chases and crime scene reconstruction.



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## Arkansas

- Seeking to pass bill that would criminalize flying a drone over private property and capturing video footage or pictures without permission
- Bill exempts law enforcement and footage taken on public property.
- Part of trend toward permitting law enforcement to use drones while restricting use by private citizens



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## Michigan

- City of Ferndale sought to pass legislation that would make it a misdemeanor to fly a drone for any purpose anywhere other than in one's back yard.
- City decided this was not a local issue and would wait for federal authorities to decide on regulations nationwide.



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## North Dakota

- First of six “test sites” for drones by FAA
  - Other states are Alaska, New York, Virginia, Nevada, and Texas
- First state in union to allow police to equip drones with “less than lethal” weapons
- Examples include rubber bullets, pepper spray, sound cannons, tasers and tear gas

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## North Dakota

- FAA currently prohibits dropping anything from an aircraft (“unless reasonable precautions are take to avoid injury or damage to persons or property” FAR § 91.15).
  - FAA ban is on civilian aircraft, not government operated aircraft.



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## Governmental Immunity

- MCL 691.1407:
  - A governmental agency is immune from tort liability if governmental agency is engaged in exercise or discharge of a governmental function.

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## Governmental Immunity

- An employee of a governmental agency acting within the scope of his or her authority is immune from tort liability for an injury to a person or damage to property caused by officers, employees or members while in course of employment if:
  - Acting within scope of his or her authority

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## Governmental Immunity

- Engaged in the exercise or discharge of governmental function
- Conduct does not amount to gross negligence
- *Gross negligence*: conduct so reckless that it demonstrates a complete lack of concern for whether an injury results.



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## 4<sup>th</sup> Amendment

- U.S.C. Amend. IV:
  - Right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated.

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## 4<sup>th</sup> Amendment

- Analysis: Does government's use of a drone violate 4<sup>th</sup> Amendment?
  - Did a search occur?
  - Was there a warrant?
  - If no, was search reasonable?



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## 4<sup>th</sup> Amendment Jurisprudence

- Privacy Rights:
  - *Katz v United States*
    - Reasonable expectation of privacy test
      - Actual subjective expectation of privacy
      - Expectation must be one that society is prepared to recognize as objectively "reasonable."



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## 4<sup>th</sup> Amendment Jurisprudence

- Property Rights:
  - Trespass
    - *United States v Jones*
      - Government's use of GPS system to monitor defendant's location, without warrant, encroached upon constitutionally protected area and, thus, constituted an unreasonable search.

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## 4<sup>th</sup> Amendment Jurisprudence

- Curtilage
  - Definition: Area immediately surrounding home that is intimately linked to home, both physically and psychologically.
  - Factors to consider: (1) proximity of area to home (2) whether area is included within enclosure surrounding home (3) nature of uses to which area is put (4) steps taken by resident to protect area from observation by passerbyers

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## 4<sup>th</sup> Amendment Jurisprudence

- *Florida v Jardines*
  - Government's use of drug sniffing dog on front porch of home to investigate unverified tip that marijuana was being grown in home was a trespassory invasion of curtilage, constituting a search under the 4<sup>th</sup> Amendment.

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## 4<sup>th</sup> Amendment Jurisprudence

- Open-Fields Doctrine
  - *Oliver v U.S.*, 466 U.S. 170 (1984)
    - Expectation of privacy in open fields is not an expectation that society recognizes as reasonable.



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## Warrantless Aerial Surveillance By Manned Aircraft

- *California v Ciraolo*, 476 U.S. 207 (1986)
  - Warrantless naked-eye aerial observation surveillance of curtilage of a home does not violate the 4<sup>th</sup> Amendment.

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## Warrantless Aerial Surveillance By Manned Aircraft

- *Dow Chemical Co. v United States*, 476 U.S. 227 (1986)
  - Use of aircraft to take aerial photos of chemical plant did not violate 4<sup>th</sup> amendment, as there is no reasonable expectation of privacy with respect to aerial photography. Further, photography revealed no intimate details of facility. Mere fact that human vision is enhanced to some degree does not give rise to constitutional problems.

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## Warrantless Aerial Surveillance By Manned Aircraft

- *Florida v Riley*, 488 U.S. 445 (1989)
  - Warrantless, naked-eye aerial observation of interior of partially enclosed greenhouse does not constitute a search.



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## 4th Amendment Guarantees & Advancing Technologies

- *Kyllo v United States*, 533 U.S. 27 (2001)
  - Use of thermal imaging device from public roadway to determine whether defendant was growing marijuana in his home constituted an unreasonable search.

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## 4th Amendment Guarantees & Advancing Technologies

- Sense enhancing technology, not in general public, that is used to acquire details from within “the home that could not otherwise be obtained without physical intrusion into a constitutionally protected area” is an unreasonable search and in violation of the 4<sup>th</sup> Amendment to the Constitution.



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## Take Away

- As society becomes more technologically advanced and use of drones becomes more common place, warrantless use of drones to conduct searches may cease to interfere with individual's reasonable expectation of privacy.



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## Questions?



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## Surveys



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## Blog Zone

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### Litigation Defenders

Risk management resources and insights

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#### Lovette or Leave It - Constructive Notice in Premises Liability Cases

POSTED BY JASON G. BULBUK  
JUNE 23, 2015

A recent ruling by the Michigan Court of Appeals further clarifies the proper use of Grandberry-Lovette v. Garancia in premises liability cases where constructive notice is at issue.

[Continue Reading »](#)

TAGS: CONSTRUCTIVE NOTICE, PREMISES LIABILITY

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THE EMERGING TREND OF DRONE USE BY LAW ENFORCEMENT

Attorneys Speaking

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- Jason G. Bulbuk
- Rochelle L. Ralph
- H. William Reising

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**Prepare for Takeoff** PLUNKETT COONEY

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## Thank You!

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