



# FBI Law Enforcement Bulletin

August 2007  
Volume 76  
Number 8

United States  
Department of Justice  
Federal Bureau of Investigation  
Washington, DC 20535-0001

Robert S. Mueller III  
Director

Contributors' opinions and statements should not be considered an endorsement by the FBI for any policy, program, or service.

The attorney general has determined that the publication of this periodical is necessary in the transaction of the public business required by law. Use of funds for printing this periodical has been approved by the director of the Office of Management and Budget.

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

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This publication is produced by members of the Law Enforcement Communication Unit, Training Division. Issues are available online at <http://www.fbi.gov>.

**Internet Address**

[leb@fbiacademy.edu](mailto:leb@fbiacademy.edu)

Send article submissions to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

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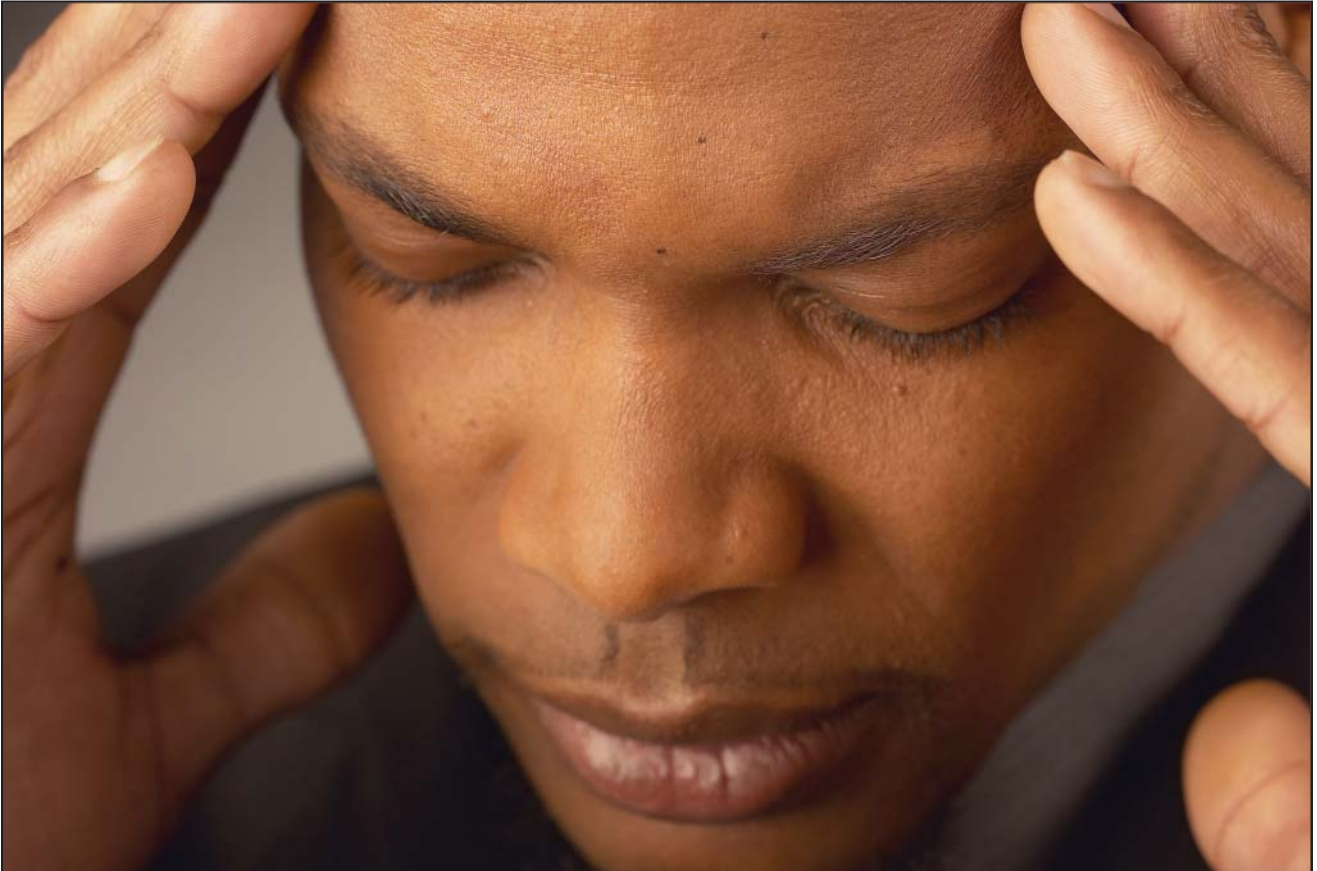
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# ***Police Fatigue***

## ***An Accident Waiting to Happen***

By DENNIS LINDSEY, M.Ed.

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*The woods are lovely, dark and deep.  
But I have promises to keep,  
And miles to go before I sleep,  
And miles to go before I sleep.*

—Robert Frost

**A**fter working almost 35 hours straight on a case that involved high-stress surveillance, the controlled delivery of nearly 2 tons of marijuana, and the arrest of 5 suspects, a detective on a narcotics task force was driving over 350 miles back home. The judge in the case advised the prosecuting attorney that if the detective was not in court that day by 2 p.m., the case would

be dismissed without prejudice. As the detective approached the midway point on his route home, his vehicle, according to witnesses, swerved left, traveled through the median strip, crossed the oncoming traffic lanes, flipped several times, and ultimately came to rest on the opposite side of the interstate. The detective was severely injured and out of work for over a year.

Accounts of tragedies associated with law enforcement fatigue are not new. In fact, such stories become more commonplace each year. Convincing federal, state, and local law enforcement organizations of the seriousness of fatigue as an occupational health, commercial, public safety, and legal issue ultimately will require law enforcement managers to have a paradigm shift to address this concern. Agencies must acknowledge this problem to improve working conditions for their personnel and to protect them from the scientifically documented consequences that fatigue can cause. For example, researchers assessed neurobehavioral functions after 17 hours of wakefulness and reported performance impairment on a range of tasks.<sup>1</sup>

Impairments after 20 hours of wakefulness equaled that of an individual with a blood-alcohol concentration of 0.10, twice the presumptive level of intoxication in most states.<sup>2</sup> Further, the ability to maintain speed and road position on a driving simulator is significantly reduced when the awake period is prolonged by 3 hours.<sup>3</sup> The magnitudes of the decrements were similar to those found at and above the legal limits of alcohol consumption (0.05).<sup>4</sup> All of these studies indicated that moderate levels of sleepiness can substantially impair the ability to drive safely even before an individual actually falls asleep.

Exhaustion due to shift work, voluntary and mandatory overtime assignments, seemingly endless hours waiting to

testify in court, physical and emotional demands of dealing with the public, and management expectations of doing more with less, combined with family responsibilities, puts the modern law enforcement professional at serious emotional and physical risk. Law enforcement fatigue and sleep deprivation also are becoming serious political and legal liabilities for police managers. What department can sustain multimillion dollar lawsuits or afford to lose a veteran officer for years?

The cumulative work hours for many professionals, such as pilots, locomotive engineers, ship captains, public transportation and commercial truck drivers, firefighters, and emergency room doctors, are standardized and regulated through federal or state regulatory commissions (e.g., U.S. Department of Transportation or Federal Aviation Administration). Unfortunately, no such regulations exist for the majority of federal, state, and local law enforcement employees. "Police work is the one profession in which we would want all practitioners to have adequate and healthful sleep to perform their duties at peak levels. Not only is fatigue associated with individual misery, but it also can lead to counterproductive behavior. It is well-known that impulsiveness, aggression, irritability, and angry outbursts



*Special Agent Lindsey is a senior instructor at the DEA Academy and is an international fellow at the Australian Institute of Police Management in Sydney.*

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***Law enforcement fatigue and sleep deprivation also are becoming serious political and legal liabilities for police managers.***

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are associated with sleep deprivation. It is totally reprehensible that the cops we expect to protect us, come to our aid, and respond to our needs when victimized should be allowed to have the worst fatigue and sleep conditions of any profession in our society.”<sup>5</sup>

Throughout the last century, the standard work week was 9 a.m. to 5 p.m., Monday through Friday, designed to not intrude on workers’ premium social time, such as evenings and weekends. As such, the 8-hour workday evolved from the widely held belief that the 24-hour day should be split evenly between work, recreation/relaxation, and sleep. While many people take the 8-hour day for granted as a part of normal life, such working conditions are a relatively recent industrial development. Traditionally, law enforcement personnel work long hours for four main reasons. First, they seek monetary gain—the more they work, the more money they make. Traditionally, wages for law enforcement personnel have been low; therefore, the dependence on overtime, night-shift premiums, and moonlighting (working other jobs) has been necessary. Second, they encounter organizational or occupational expectations (we have to do more with less). “Many companies (law enforcement agencies) foster

workaholism and actively seek out and reward workaholics.”<sup>6</sup> Third, employees want personal satisfaction. The majority of law enforcement professionals could make substantially more money doing something else, but the job is fun, stimulating, exciting, challenging, unpredictable, and dangerous. It attracts risk-aggressive individuals who have chosen not to passively sit behind a desk. Finally, they belong to an exclusive fraternity. Law enforcement gives a person a sense of self-identity, belonging, and self-worth.

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***People often use drowsiness and fatigue interchangeably, but they are not the same.***

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Not surprisingly, as long hours, shift work, and irregular hours of work increase, the hours, quality, and quantity of sleep decrease, causing a sleep debt. Conversely, fatigue levels rise, leading to detrimental effects on both health and on-the-job performance.

### **Fatigue**

What is fatigue? How does it relate to sleep? Although

there is no universally accepted definition of fatigue, several exist. Fatigue is a “tiredness concerning the inability of disinclination to continue an activity, generally because the activity has been going on too long”<sup>7</sup> or “a feeling of weariness, tiredness, or lack of energy.”<sup>8</sup>

People often use drowsiness and fatigue interchangeably, but they are not the same. Drowsiness is a feeling of the need to sleep or the state in which the body is ready to fall asleep. Fatigue is a lack of energy and motivation. Apathy, a feeling of indifference or not caring about what happens, and drowsiness can be symptoms of fatigue. It should be noted that fatigue can be a normal, healthy, and important response to physical exertion, emotional stress, boredom, or lack of sleep. However, it also can signify a more serious psychological or physical disorder. Because fatigue is such a common complaint, sometimes a potentially serious cause may be overlooked.

In the last 25 years, the job of enforcing the law has become increasingly complex from a cognitive perspective. Further, policing the community is creating tasks that require much higher levels of attentiveness than in the past. Long work hours are widely accepted as a major contributing factor to fatigue.<sup>9</sup> As hours of work increase, sleep is reduced with



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a concomitant elevation in fatigue and reduced levels of alertness.<sup>10</sup>

## Sleep

Humans typically have four to six sleep cycles that each last 70 to 90 minutes. At the end of each cycle, they are nearly awake. In light sleep, body movement decreases and spontaneous awakening may occur. People spend most of the night in intermediate sleep, which helps refresh the body. Deep sleep, the most restorative stage, lasts 30 to 40 minutes in the first few cycles and less in later ones. In this stage, people are the most difficult to arouse. Dreaming occurs in REM (rapid eye movement) and heart rate increases. This stage lasts about 10 minutes in the first cycle and 20 to 30 minutes in later ones. During a full night's sleep, these sleep cycles are repeated four to six times, moving from one stage of sleep to another.<sup>11</sup>

Several functions occur during sleep. These include—

- consolidation and optimization of memories;
- conservation of energy;
- promotion of physiological processes that rejuvenate the body and mind (some studies suggest that sleep restores neurons and increases the production of brain proteins and certain hormones);

- the process of unlearning that prevents the brain from becoming overloaded with knowledge; and
- avoidance of danger (prehistoric people adapted the pattern of sleeping in caves at night because it protected humans from species physiologically suited to function well in the dark, such as saber-toothed tigers).



Lack of sleep is considered one of the primary causes of fatigue. Humans need to sleep—it is not a matter of choice but essential and inevitable. The longer a person remains awake, the greater the need to sleep and the more difficult to resist falling asleep. Sleep will inevitably overpower the strongest intentions and efforts to stay awake.<sup>12</sup>

Little is known about the physiological role of sleep and

ways in which it restores the brain to its full function, but the effects of fatigue on the brain can be measured. Studies have shown that after 24 hours of sustained wakefulness, the brain's metabolic activity can decrease by up to 65 percent in total and by up to 11 percent in specific areas of the brain, particularly those that play a role in judgment, attention, and visual functions. One study highlights nine dimensions of workplace performance susceptible to the effects of fatigue, including the inability to—

- 1) comprehend complex situations, such as processing substantial amounts of data within a short time frame, without distractions (the lack of focused attention associated with sleep deprivation is likely to reduce efficiency of such processing);
- 2) manage events and improve strategies;
- 3) perform risk assessment and accurately predict consequences;
- 4) think latterly and be innovative;
- 5) take personal interest in the outcome;
- 6) control mood and behavior;
- 7) monitor personal performance;

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8) recollect timing of events; and

9) communicate effectively.<sup>13</sup>

People know when they feel tired—their eyes become a little glassy, they tend to have less eye movement, and yawning is more pronounced. As they try to fight through periods of fatigue, the human body, in an effort to rest, goes into microsleeps where a person literally falls asleep anywhere from 2 to 10 seconds at a time. It is difficult to predict when a person, once fatigued, might slip into a microsleep. Additionally, research has found that as little as 2 hours of sleep loss on one occasion can result in degraded reaction time, cognitive functioning, memory, mood, and alertness.

### Accident Risk

Research suggests that fatigue-related errors are common well before the point at which an individual no longer can stay awake. Inattention may get much of the blame, but fatigue often is the culprit. Thus, fatigue studies likely are a conservative estimate of the overall incidence of reported fatigue-related accidents. “Human fatigue is now recognized around the world as being the main cause of accidents in the transportation industry.”<sup>14</sup>

In addition to studying the direct link between accidents and fatigue, experts also have thoroughly researched the

cognitive impairment thought to mediate the relationship. Major findings show that mood, attitude, and cognitive performance (judgment and competence) deteriorate with sleep deprivation.<sup>15</sup> Moreover, research shows that fatigue is four times more likely to cause workplace impairment than alcohol and other drugs.<sup>16</sup> Ironically, alcohol and drug abuse normally are addressed immediately by management. However, the lack of sleep, probably the most common condition adversely affecting personnel performance, often is ignored.

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***Research suggests that fatigue-related errors are common well before the point at which an individual no longer can stay awake.***

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Fatigue in and of itself is not the key problem. Rather, the risks associated with fatigue impairment include poor judgment, accidents, and injuries. As such, fatigue is a context-dependent safety hazard, an important distinction because it can carry a significant risk in some situations and little or none in others.

In some cases, fatigue-induced impairment and accidents may be inconsequential, creating only minor delays in completing a task, or may be detected by checks and balances (e.g., search warrants and fact patterns for probable cause court hearings are reviewed, checked, and proofread for accuracy before submission to judicial systems). In other situations, however, the risks of equipment damage, personal injury, and public safety can be far greater.

### Reduced Social Time

The primary effect for law enforcement professionals working long hours is reduced social interactions and isolation from traditional community and social support systems, resulting in the “us against them” point of view. Furthermore, studies have shown that long work hours negatively impact an individual’s family relations.<sup>17</sup>

### Health Consequences

Fatigue is a symptom common to many diseases directly related to irregularity of daily life. Higher consumption of alcohol, caffeine, and tobacco; reduced physical exercise; stress; depression; social isolation; unbalanced diet and nutrition; and irregularity of daily meals all are hallmarks of law enforcement personnel around the world and can lead to an unhealthy increase

### Results of Lack of Sleep

1. Irritability with coworkers, family, or friends
2. Inability to remain alert to respond to the demands of work
3. Memory impairment
4. Lack of concentration
5. Lower frustration tolerance
6. Accidents on the job or in the home
7. Stress-related illness caused, in part, by a compromised immune system
8. Inattention
9. Obesity
10. Hypertension
11. Changes in metabolic functions
12. Alteration of hormonal functions in ways that mimic aging

in weight gain.<sup>18</sup> In fact, literature has indirectly linked long and irregular work hours with negative health issues to include disruptions of the body's biological rhythms, which may—

- change eating and sleeping habits;<sup>19</sup>
- raise blood pressure;<sup>20</sup>
- affect psychological well-being;<sup>21</sup>
- cause negative effects for pregnant women and fertility rates;<sup>22</sup> and
- result in gastrointestinal disorders,<sup>23</sup> stress-related disability claims, decreased productivity, and increased absenteeism.<sup>24</sup>

### Recommendations

Law enforcement agencies should make a concerted effort to provide a strong and coherent research base for the development of sound policies. Equating fatigue-related impairment to blood-alcohol equivalent gives policy makers, employees, and community leaders a clear index of the extent of impairment associated with fatigue. Agencies should develop preventative strategies to implement within the diverse range of political, economic, and social environments in which the law enforcement community functions and ensure cooperation with federal, state, and local court systems.

Departments should establish strict policies and implement effective enforcement regarding employee moonlighting. Administrators should review the policies, procedures, and practices that affect shift scheduling, overtime, rotation, the number of work hours allowed, and the way the organization deals with overly tired employees. Administrators should review recruit, supervisor in-service, and roll-call training, as well as executive retreats, to determine if personnel receive adequate information about the importance of good sleep habits, the hazards associated with fatigue and shift work, and strategies for managing them. Are personnel taught to view fatigue as a safety issue? Agencies should consider either implementing and enforcing regulations regarding a strict time-based work/rest policy, placing responsibility on the organization, or an education-based policy that focuses responsibility on the individual.

Finally, agencies should consider several different work/rest rules. The most common policy is the 16/8 formula. For every 16 hours of work, departments must provide 8 hours of rest time. Work/rest policies are most appropriate for agencies that have sufficient manpower to work in shifts. If resources are limited, managers may have to choose between using volunteers/reserves,

implementing mutual aid agreements, or declaring an emergency and breaking the work/rest policy; therefore, any policy must include flexibility. Also, officers should not consider vacations just as missed days of work. They should turn off their cell phones and advise courts of scheduled leave. They always should take the time off that their departments provide and use it, remembering that no one is irreplaceable.

## Conclusion

Modern law enforcement practices have developed well-entrenched unwritten rules that treat sleep in utmost disregard and disdain. Agencies often encourage and reward workaholics. A recent news report covering a large party proudly declared: "Four hours into his second 12-hour shift, [the officer] has been busy answering questions, giving directions, listening to drunken declarations of love, and drunken jokes amid the endless roar of the crowd."

When a person is deprived of sleep, actual changes occur in the brain that cannot be overcome with willpower, caffeine, or nicotine. The decline in vigilance, judgment, and safety in relation to the increase in hours on the job cannot be trivialized. Community perceptions of fatigue-related risk have changed and now are viewed as absolutely unacceptable, as well as

preventable. As a consequence, law enforcement professionals face a greater reactive pressure both politically and legally to rethink and implement proactive strategies to reduce fatigue-related incidents.

Fatigue is a serious, challenging problem that requires informed, forward-thinking managers to take action sooner, rather than later. Police leaders and sleep research experts

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**...agencies should make a concerted effort to provide a strong and coherent research base for the development of sound policies.**

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need to work in concert to assess each individual agency to minimize the threat that fatigue poses to the community and the individual law enforcement professional. Fatigue is not just an industrial issue to negotiate between employers, unions, and employees but an occupational health, commercial, and public safety concern. Local, state, and federal law enforcement organizations that fail to sensibly manage fatigue today certainly will face a broad range of damaging and enduring

legal, ethical, physiological, and personal consequences in the future. ♦

## Endnotes

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<sup>15</sup> A. Nocera and D.S. Khursandi, "Doctors' Working Hours: Can the Medical Profession Afford to Let the Courts Decide What Is Reasonable?," *Medical Journal of Australia* 168 (1998): 616-618.

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## Leadership Spotlight

### Legacy of a Leader

**R**ecently, I attended the funeral of Major Doug Zembiec of the U.S. Marine Corps who was killed in action in Iraq on May 10, 2007. He was a highly decorated combat veteran having received the Bronze Star and two Purple Hearts. He was considered a Marine among Marines. I became acquainted with Major Zembiec through Special Agent (SA) James McGee of the Jackson Division who, in many ways, was both a mentor and brother to him. My friendship with SA McGee provided me with the privilege of observing as Major Zembiec grew from a young inexperienced Naval Academy midshipman to an outstanding Marine Corps officer and a leader among men.

Military and law enforcement funerals always take on auras unlike any other due to the individual's courage, public service, and sacrifice of life for others. However, as the proceedings honoring Major Zembiec unfolded, I could not help but sense the presence of something above and beyond the normal feelings and emotions associated with a somber event of this caliber. That unknown something was the feeling of love and true respect that the Marines who served under Major Zembiec had for him as a leader and, most of all, as a person. Their admiration and respect were reflected not only by their words but also by the expressions on their faces. True, a certain indisputable bond exists between those who put themselves

in harm's way together, whether their missions are military or law enforcement oriented. However, I felt the relationship between Major Zembiec and his Marines was unique and involved more than just a common bond of valor. Perhaps, there were some lessons to be learned that could improve upon the ability of those in leadership positions and help elevate our methods of dealing with other people.

The answer to my question about the origin of the unusual leadership bond between Major Zembiec and his Marines became apparent during his eulogy. A fellow Marine read quotes from a book of writings the Major kept and referred to often. The following quotes amounted to a summary of Major Zembiec himself:

“Be a man of principle. Fight for what you believe in. Keep your word. Live with integrity. Be brave. Believe in something bigger than yourself. Serve your country.”

“Teach. Mentor. Give something back to society. Lead from the front. Conquer your fears. Be a good friend. Be humble and self-confident.”

“Appreciate your friends and family. Be a leader and not a follower. Be valorous on the field of battle. And take responsibility for your actions.”

This creed was found in the major's notebook under a written description “Principles my father taught me.” His father is a highly

respected retired FBI special agent. The major lived his life according to these principles. Numerous stories were relayed by the Marines under his command regarding how he always led from the front and by example, both in combat and in everyday life. He appreciated his parents, brother, wife, and young daughter.

The major also assisted one of his former Marines with gaining admission to the U.S. Naval Academy after that individual had been wounded in Iraq.

When one of the Marines in his company was killed in combat, Major Zembiec wrote his fallen comrade's mother, “Your son was killed in action

today. Despite intense enemy machine gun and rocket propelled grenade fire, your son fought like a lion. He remained in his fighting position until all his wounded comrades could be evacuated from the rooftop they were defending. It was during his courageous defense of his comrades that Aaron was hit by enemy fire.... With the exception of the Marines on security, every man in the company attended the service. Aaron was respected and admired by every Marine in his company. His death brought tears to my eyes, tears that fell in front of my Marines. I am unashamed of that fact.” Perhaps, we as leaders can all learn something from the life, legacy, and leadership style of such an American hero as USMC Major Doug Zembiec. ♦



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*Kevin J. Crawford, a special agent assigned to the Leadership Development Institute at the FBI Academy, prepared this Leadership Spotlight.*

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# The Psychological Fitness-for-Duty Evaluation

By LAURENCE MILLER, Ph.D.



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**P**hysical problems, such as an injured knee or high blood pressure, sometimes arise that may affect officers' abilities to perform their duties effectively. Or, their performance may remain unchanged. However, if supervisors or commanding officers perceive that an individual's limp or frequent headaches impair job performance, they may recommend that the employee seek medical attention. If the problem persists, they may

refer the officer for a medical evaluation, during which the examining doctor will declare the individual medically able to return to work, recommend a course of treatment to restore a proper level of health, or classify the officer as permanently unfit for duty.

Similarly, if supervisors suspect that personality disorders or stress reactions cause or contribute to problem behavior or substandard performance and the usual channels of

review, coaching, counseling, and discipline have failed to effect a substantial change, they may order a formal psychological fitness-for-duty evaluation (FFDE).<sup>1</sup> Through such an exam, agencies hope to determine an officer's psychological capability of remaining on the job and to identify, if necessary, measures to help improve the employee's effectiveness or reasonable accommodations to allow the officer to work in spite of residual disabilities.<sup>2</sup>

The FFDE functions, in part, to provide a basis for recommendations concerning education, retraining, counseling, or treatment.<sup>3</sup> Ideally, agencies will use the evaluation to help find ways to rehabilitate officers. Humaneness aside, salvaging an established employee is more cost-effective than hiring, training, and supervising a new one; for obvious reasons, departments should resort to discipline and dismissal as a last resort. However, although it never should be used as a substitute for adequate supervision and discipline, a carefully conducted and documented FFDE can provide a psychologically justifiable and legally defensible rationale for terminating an officer who cannot or will not meet the standards of the employing agency.

## THE PSYCHOLOGICAL FFDE

### The Evaluation

#### *Initial Considerations*

The FFDE combines elements of risk management, mental health intervention, labor law, and departmental discipline.<sup>4</sup> According to current International Association of Chiefs of Police (IACP) guidelines, a licensed psychologist or board-certified psychiatrist with law enforcement experience must conduct the evaluation.<sup>5</sup>

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***Ideally, agencies will use the evaluation to help find ways to rehabilitate officers.***

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*Dr. Miller is a clinical, forensic, and police psychologist and law enforcement trainer in Boca Raton, Florida.*

However, the guidelines do not specify how much experience is sufficient, and, as yet, no generally accepted formal credentialing exists for police psychologists as a distinct professional specialty. Thus, the level of law enforcement training or experience of these clinicians may vary considerably by agency.

When referring an employee for an FFDE, supervisors should provide specific referral questions. For example, they should not simply note that “Officer Jones seems depressed, and this condition interferes with his work.” Rather, the referring supervisor could state, “Officer Jones arrived late to shift five times this past month; on several occasions, has been visibly fatigued and in physical distress; has appeared absent-minded and distracted; and has been the subject of three citizen complaints of abuse of

force during the past evaluation period. These actions represent a clear deterioration from previous evaluation periods and reflect a pattern of substandard performance. Upon interview, Officer Jones denies any problem.”

#### *Recommendations for Officers*

Understandably, officers probably will not look forward to an FFDE. However, they can take measures to help the process go smoothly and for the results to provide an accurate picture of their true psychological status.

First, officers should remain positive. They should recognize that the examiner’s only job is to objectively evaluate the officer’s mental status in view of the specific referral questions and to determine the employee’s fitness for duty.



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Officers also should know their rights and responsibilities and remain informed about the FFDE, either through their own research or in consultation with a legal representative. In this way, they can help protect themselves throughout the process.

Next, officers should come prepared, arriving on time and with all necessary records or other requested materials. Commonsense recommendations also include bringing reading glasses, if needed, and having an adequate lunch prior to an early afternoon exam. Accordingly, employees have the right to expect the examiner to come prepared and to begin on time.

Throughout the process, officers must ensure that they read everything they sign and clarify anything unclear or of concern. This includes questions asked and tests conducted by the psychologist. Officers should not feel intimidated about making reasonable inquiries about the examination process and should expect straightforward answers. However, they must bear in mind that the psychologist may not be able to answer all of the questions (e.g., those relating to a particular test item or question) at the time of the evaluation.

Overall, officers must ensure that they remain honest and put forth their best effort. The entire validity of the FFDE

hinges on the accuracy of the information they provide. Further, many interview protocols and psychological tests have controls for inconsistency and response manipulation. In other words, the examiner probably will detect any attempts at dishonesty and will then have no choice but to report that the officer lied. Officers must consider the consequences of such actions.

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***...a licensed psychologist or board-certified psychiatrist with law enforcement experience must conduct the evaluation.***

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Finally, officers should both expect and give proper respect during the examination. Officers have the right to courteous and professional treatment, even as the examiner asks some troublesome, albeit necessary, questions. Psychologists should realize that if officers feel comfortable during the examination, their memories will serve them well and they will provide accurate information. Officers also should behave with respect and decorum. After all, both

examiner and subject are professionals with a difficult, but important, job to do.

### **The Report**

Ultimately, the examiner will prepare a report that, usually, first will go to the referring department. While there is no single universally accepted format, a useful and practical one exists for psychological FFDE reports.<sup>6</sup> The exact style and content may vary according to the needs and preferences of each psychologist and law enforcement agency, but it should contain several fundamental elements.

#### *Identifying Data*

The report will contain basic information about the officer and the evaluation. Examples of data include the officer's name and demographics, department identification, name of the evaluator, and dates of the evaluation.

#### *Reason for the Evaluation*

This section describes the main incidents, issues, and referral questions that have brought the officer to the examiner's office. Although a wide range of data may be relevant to the individual's overall psychological functioning, the focus of the evaluation itself should be relatively specific to the question at hand. In cases where officers are referred without clear reasons for an FFDE (e.g.,

that he has an “attitude problem”), the psychologist may have to help the referring agency refine its referral question (e.g., What problematic behaviors is this officer showing that reflect his bad attitude?). Also, a statement should be included that clarifies issues of informed consent and the potential uses of the evaluation findings.

#### *Background Information*

The information in this section can be narrow (e.g., what took place during or around the incidents in question) or broad (e.g., the officer’s general experience within the department that may shed light on the specific referral questions). Relevance to the referral question defines the scope and range of such background data. For example, conflicts with previous employers may be relevant, but history of physical abuse as a child may not. Details of past dealings with drug suspects may be pertinent, while marital infidelities or off-duty barhopping may not if they have no impact on officer job performance.

#### *Review of Records*

Depending on the case, the volume of pertinent records can range from a few sparse sheets to, literally, cartons of documents. Not all of these records may have direct relevance, but the examiner will not know that until after sorting

### **Tips for Officers Referred for an FFDE**

- Remain positive
- Know your rights and responsibilities
- Come prepared
- Read everything you sign
- Ask reasonable questions
- Be honest and do your best
- Expect and give courteous treatment

through them. For most psychologists, distilling the raw data to a few paragraphs or pages that will summarize the main points and then integrating this with the information gained from the clinical interview and test findings can prove challenging and time-consuming. As Mark Twain wrote, “If I’d had more time, I would have written you a shorter letter.” Further, psychologists should be clear about the sources of the records they cite. They may have to justify every statement they make at a subsequent deposition or trial.<sup>7</sup>

#### *Clinical Interview and Behavioral Observations*

During a face-to-face clinical interview, officers will provide much useful information by their speech content, voice tone, eye contact, body language, and general appearance. How they answer questions is just as important as what they say. Examiners will

determine clinical status (e.g., anxious, depressed, delusional, evasive) most accurately through this one-on-one interaction. Psychologists develop rapport with officers to help ensure validity of responses and test results.

#### *Collateral Interviews*

Interviews—in person, by phone, through e-mail, or by written accounts—with other people who have information relevant to the case can contribute greatly to the evaluation. These individuals may include supervisors, employees, family members, citizens in the officer’s patrol area, or others. Special sensitivity helps maintain the maximum degree of confidentiality possible for both the collateral sources and the subject of the FFDE.

#### *Psychological Test Findings*

No universally agreed upon psychological test battery for FFDEs exists, and examiners

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have their own preferences (some use no psychometric testing at all). But, certain standards cover what kinds of diagnostic issues these instruments should address. Some psychological tests are specifically designed for law enforcement assessment, while others that deal with general psychological functioning can be adapted to the law enforcement FFDE referral question. The basic areas that these measures should cover include general intelligence; cognitive functioning (attention, concentration, memory, and reasoning); personality; mood (e.g., anxiety or depression); and existence of psychotic symptoms (e.g., delusions or hallucinations). Some psychologists insert specific measures for malingering to gauge the subject's truthfulness in self-reports and test responses.

Psychologists should document both the actual test scores and their interpretations. For example, "A full-scale IQ score of 104 on the WAIS-III places this officer's overall intelligence in the average range.<sup>8</sup> A T-score of 86 on the Psychopathic Deviate scale of the MMPI-2 suggests high impulsivity and a characteristic disregard for rules and authority."<sup>9</sup>

#### *Conclusions and Discussion*

In the conclusion, the psychologist puts everything

together. This section should consist of a succinct summary of the main points relevant to the FFDE questions with documentation of the examiner's reasoning on each point. For instance, the psychologist may summarize as depicted in the following example:

Psychological test findings are within normal limits,

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**...officers...can take measures to help the process go smoothly and for the results to provide an accurate picture of their true psychological status.**  
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with the exception of a tendency to disregard rules and conventions and to respond impulsively under stress, as indicated by an elevated score on the Psychopathic Deviate scale of the MMPI-2. This is supported by the officer's statement that "If I know the SOP is wrong, I'll do what I think is right. If I try to go through channels and make recommendations to the brass, they just blow me off. That's why I went ballistic in the lieutenant's office when he told me I could be suspended."

Records indicating three disciplinary actions in the officer's present department and at least one suspension in his previous job corroborate this. Overall findings are consistent with an officer of average intelligence, no major mental disorder, and a high level of skill in certain job-related areas (firearms and vehicles), but with a long-standing tendency to disobey authority and respond impulsively, albeit not violently, under conditions of stress.

#### *Recommendations*

Examiners should take special care with this section because here they distill their findings to specific recommendations that will affect the officer's life and career. Although no standard model for expressing this exists, one protocol of alternatives is both psychologically valid and practical.<sup>10</sup>

- Unfit for duty: The officer is unfit for duty and unlikely to become fit in the foreseeable future, with or without psychological treatment. Examples include officers with a traumatic brain injury, a longstanding severe personality disorder, or a substance abuse problem that continues to worsen.
- Unfit but treatable: The officer is currently unfit but

appears amenable to treatment that will restore fitness in a reasonable amount of time. For example, a depressed, alcoholic officer agrees to enter a 12-step abstinence program, attend psychotherapy sessions, and take prescribed antidepressant medication as needed. Following the recommended course of treatment, the officer usually will be referred for a posttreatment FFDE, the recommendations of which may include continued abstinence and periodic psychological follow-up for a specified length of time.

- No psychological diagnosis: The results of the psychological FFDE do not suggest that the officer's unfitness for duty is related to a mental disorder or mental health diagnosis. In such cases, the officer usually will be referred for administrative coaching or counseling, further education and training, or disciplinary action. Psychologists sometimes must conclude that people exhibit unprofessional behavior for self-serving reasons, without the presence of a particular psychological condition.
- Invalid evaluation: In this case, the officer has not cooperated with the evaluation, has not been truthful, or has shown malingering or other response manipulation

on psychological tests. Perhaps, the officer has sat in silence with arms crossed, speaking only to voice a refusal to talk without a lawyer to the examiner. Maybe, the individual walked into the exam smiling, claimed that "I was framed," and worked a little too hard to impress the evaluator. Alternatively, a subject can behave appropriately, but the information presented does not agree with the records. Or, the test findings are inconsistent and invalid.

## CONCLUSION

Used correctly, psychological fitness-for-duty evaluations serve as an essential component of law enforcement management. Of course, officers should not take these evaluations

lightly because the results may enter into disciplinary or legal proceedings and, perhaps, impact an officer's entire career. However, officers also should realize that a properly conducted FFDE need not be unnecessarily stressful and will certainly not be demeaning. Law enforcement administrators and the mental health professionals they consult must ensure that FFDEs are carried out fairly and that the results are used properly. ♦

## Endnotes

<sup>1</sup> L. Miller, "Police Personalities: Understanding and Managing the Problem Officer," *The Police Chief*, May 2003, 53-60; "Good Cop-Bad Cop: Problem Officers, Law Enforcement Culture, and Strategies for Success," *Journal of Police and Criminal Psychology* 19 (2004): 30-48; and *Practical Police Psychology: Stress Management and Crisis Intervention*

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for *Law Enforcement* (Springfield, IL: Charles C. Thomas, 2006).

<sup>2</sup> The psychological examination and report must meet the requirements of the Americans with Disabilities Act.

<sup>3</sup> *Supra* note 1 (*Practical Police Psychology: Stress Management and Crisis Intervention for Law Enforcement*).

<sup>4</sup> A.V. Stone, "Law Enforcement Psychological Fitness for Duty: Clinical Issues," in *Police Psychology into the 21st Century*, eds. M.I. Kurke and E.M. Scrivner (Mahwah, NJ: Lawrence Erlbaum, 1995), 109-131; and A.V. Stone, *Fitness for Duty: Principles, Methods, and Legal Issues* (Boca Raton, FL: CRC Press, 2000).

<sup>5</sup> International Association of Chiefs of Police, "Psychological Fitness for Duty Evaluation Guidelines," *The Police Chief*, September 2005, 70-74.

<sup>6</sup> C.D. Rostow and R.D. Davis, "Psychological Fitness for Duty Evaluations in Law Enforcement," *The Police Chief*, September 2002, 58-66; *A Handbook for Psychological Fitness-for-Duty Evaluations in Law Enforcement* (New York, NY: Haworth, 2004); L. Miller, "Good Cop-Bad Cop: Problem Officers, Law Enforcement Culture, and Strategies for Success," *Journal of Police and Criminal Psychology* 19 (2004): 30-48; and *Practical Police Psychology: Stress Management and Crisis Intervention for*

*Law Enforcement* (Springfield, IL: Charles C. Thomas, 2006).

<sup>7</sup> L. Miller, "On the Spot: Testifying in Court for Law Enforcement Officers," *FBI Law Enforcement Bulletin*, October 2006, 1-7.

<sup>8</sup> For additional information, see [http://en.wikipedia.org/wiki/Wechsler\\_Adult\\_Intelligence\\_Scale](http://en.wikipedia.org/wiki/Wechsler_Adult_Intelligence_Scale).

<sup>9</sup> For additional information, see <http://en.wikipedia.org/wiki/Mmpi-2>.

<sup>10</sup> *Supra* note 6 (C.D. Rostow and R.D. Davis, *A Handbook for Psychological Fitness-for-Duty Evaluations in Law Enforcement*).

## FBI Law Enforcement Bulletin Author Guidelines

**Length:** Manuscripts should contain 2,000 to 3,500 words (8 to 14 pages, double-spaced) for feature articles and 1,200 to 2,000 words (5 to 8 pages, double-spaced) for specialized departments, such as Police Practice.

**Format:** Authors should submit three copies of their articles typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered, along with an electronic version saved on computer disk, or e-mail them.

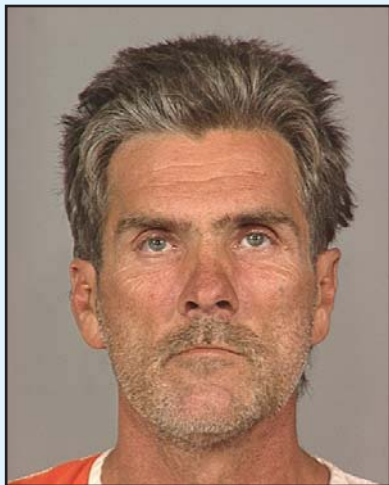
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# ViCAP Alert

*Joseph Worth, Jr.*



**J**oseph Worth, Jr., has been incarcerated in Multnomah County, Oregon, since his arrest in Stanfield, Oregon, (Umatilla County) on 5/21/2006. The FBI Violent Criminal Apprehension Program (ViCAP) Unit and the Gresham, Oregon, Police Department are seeking information from all sexual assault, sexual offender, cold case, and crime analysis units on cases in which Joseph Worth, Jr., may be involved.

Worth (AKA Joseph Bottrell) is a white male with a DOB of 3/03/1957. He is 6 feet tall, 185 pounds, and has brown hair and blue eyes. Worth has an extensive violent past, including robbery, kidnapping, and rape. On 4/14/2006, at 10:30 p.m., Worth forced a 17-year-old girl into a portable toilet in Gresham, Oregon, where he assaulted and attempted to rape her. He digitally penetrated the victim while attempting to rape her (he was not able to complete the act due to his inability to perform); however, there was semen on the victim's back. Worth then tied up the bloody and beaten victim and fled the scene on foot.

Based on open-source information, Worth has lived in the following areas: Fargo, North Dakota (11/2005 to 11/2006); Lawrence, Kansas (12/2004 to 11/2005); Clackamas, Oregon (1/2002 to 12/2004); Vader, Washington (10/2000 to 1/2002); Clackamas, Oregon (10/1998 to 10/2000); Elma, Washington (6/1991 to 10/1998); and Aberdeen, Washington (4/1986 to 06/1991). Worth is known as a transient who rode the railroad lines and NCIC offline searches indicate that he also may have been in Arizona, Colorado, California, Iowa, Idaho, Minnesota, Montana, Nevada, South Dakota, Texas, Utah, and Wyoming.

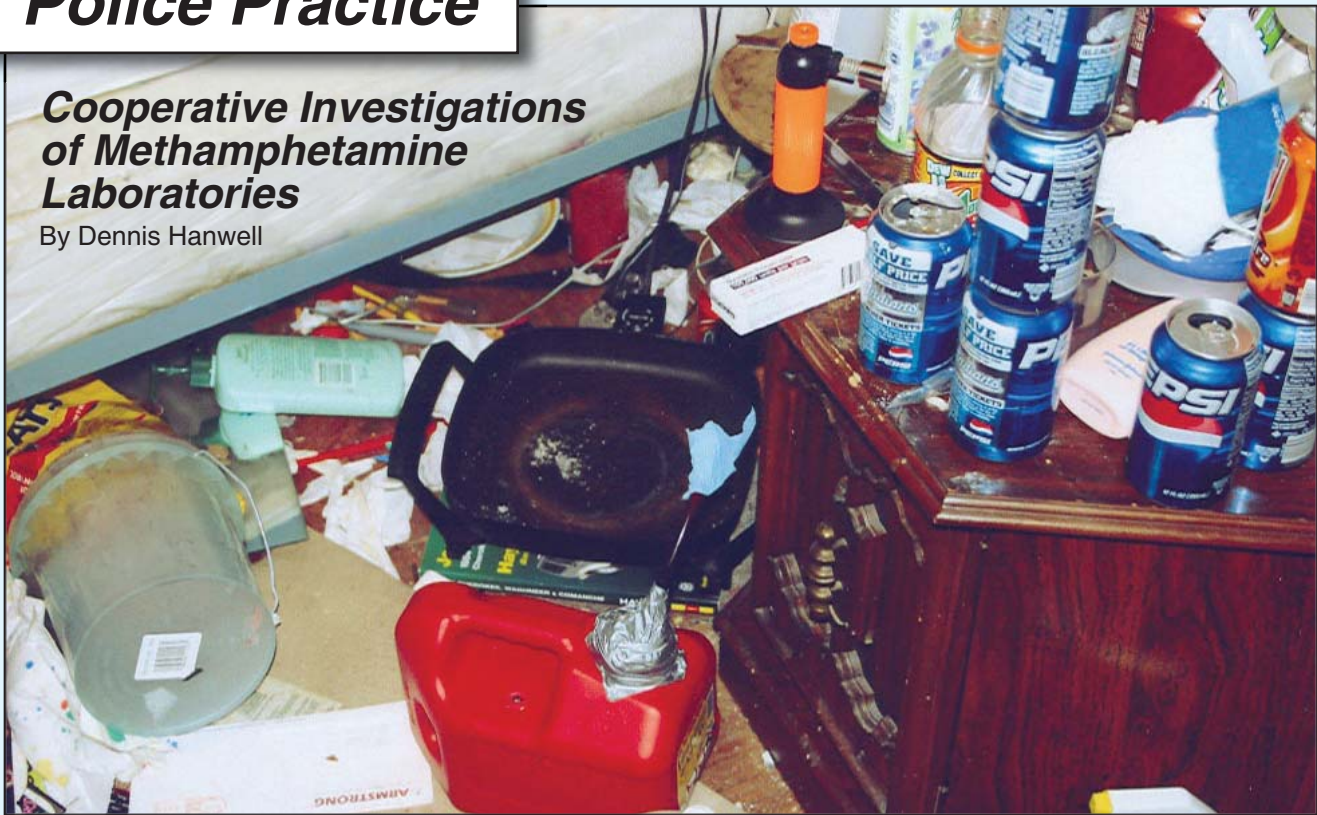
## Alert to Law Enforcement Agencies

Law enforcement agencies in these states with similar unsolved sexual assault cases should contact Crime Analyst Marty Hammonds, Gresham Police Department at 503-618-2559 or [hammonds@ci.gresham.or.us](mailto:hammonds@ci.gresham.or.us); or contact Crime Analyst Rick Blankenship of the FBI's ViCAP Unit at 703-632-4191 or [rblanken@leo.gov](mailto:rblanken@leo.gov). ♦

# Police Practice

## Cooperative Investigations of Methamphetamine Laboratories

By Dennis Hanwell



**M**ethamphetamine (meth) use has become more prevalent in the United States. The number of clandestine laboratories seized nationwide by DEA rose by over 500 percent between 1994 and 2000 and continued growing in 2005.<sup>1</sup> The Midwest has seen this trend as well; in fact, crystal meth dominates the market.<sup>2</sup> Despite the dangers it poses, this drug started to gain popularity when it became “easier to get and easier to use. When it was introduced, methamphetamine had to be injected.”<sup>3</sup> However, a few adjustments resulted in “crystal meth that could be smoked or snorted. Not only was the new form of the drug easier to use, it was also cheaper and easier to make, and it offered...a more intense high for less money.”<sup>4</sup>

Like the rest of its region, Ohio has seen meth activity rise rapidly. Not far from the state’s leading area for laboratory recoveries lies the jurisdiction of the Medina Police Department. Wary of the spread of this dangerous drug, the agency strives to

control the problem in its city. Recently, it successfully handled the dismantling of a laboratory without injury to any residents, suspects, or responding personnel. Such results depend on careful planning and cooperative working relationships between all agencies involved.

### Preliminary Considerations

Throughout the volatile process of producing methamphetamine, the toxic chemicals used present a risk of fire and explosion. People who make this drug endanger not only themselves but also those in close proximity. This can include, for example, children or other coinhabitants of the suspect, neighbors in a multiunit complex, or, perhaps, drivers sharing the roadway with a person transporting a mobile laboratory in a vehicle or carrying it in a backpack while walking.

Of course, authorities, particularly the specially trained investigators who execute searches, face numerous safety concerns.<sup>5</sup> Law enforcement



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agencies need to ensure that these officers have protection from hazardous material exposure yet remain agile enough to contain and apprehend uncooperative suspects. The danger continues for investigators who conduct evidence gathering, documentation, and disposal of vast amounts of hazardous waste, as well as medical and other responding personnel. To complicate matters, many departments have not dealt with such situations previously.

These investigations require readiness and coordination between entities that include police and fire departments, medical units, appropriate state agencies, and DEA. Law enforcement personnel must ensure that they plan for every contingency. For example, situations involving children require arrangements with a family services agency; also, youths may need a medical clearance to ensure that they have not been exposed to hazardous chemicals or drug vapors. Other instances may involve pets, thus requiring contact with animal control personnel.

### **Information Sources**

Educating and, thus, empowering the community provides law enforcement agencies with valuable sources of information pertaining to suspected methamphetamine laboratories. For instance, the Medina Police Department has distributed posters and aired programs on local cable television to inform the public of the dangers of meth and the components necessary for the drug's production. Personnel also have sent letters to retailers asking them to place cold tablets containing ephedrine or pseudoephedrine—two ingredients commonly used—behind the pharmacy counters and to limit sales to no more than two packs per customer. Also, the agency has held seminars to educate retailers

and rental managers and maintenance personnel on the common chemicals and equipment typically used in a meth lab.

Providing such knowledge to employees in rental facilities, for instance, has proven effective because these individuals, in the course of performing their duties (e.g., inspections and repairs), encounter contraband, paraphernalia, and drug-producing supplies and alert the police. These citizens have received instruction on the dangers of methamphetamine laboratory operations and the significant risks they pose to the producers, people living nearby, and law enforcement.<sup>6</sup>

Identification of a clandestine lab can come in a variety of ways. Perhaps, police may make the discovery in the course of their duties, or fire

departments may find it while responding to a blaze or explosion. Or, authorities may receive tips from informants or the community at large.<sup>7</sup>

Once officers have received information regarding a suspected meth lab operation, they must begin to develop probable cause for a search warrant affidavit. For instance, trash pulls may prove useful—investigators may find an unusual amount of matchbooks with the tips scraped off, a large number of cold tablet packages for an average household, or kitty litter used in an apartment where pets are not permitted. Officers also may notice a variety of persons who visit the location but do not live there, ventilation fans operating, strong odors emanating from the dwelling, little or no furniture inside, or the occupants vacating the residence to smoke.<sup>8</sup> Additionally, investigators can speak with neighboring residents, if trustworthy, for observations that could help establish probable cause. Officers also should consider other worthwhile pursuits—for example, a criminal

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**Investigating and searching locations of suspected methamphetamine laboratories presents unique challenges and dangers.**  
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history check of occupants under suspicion may reveal a prior history of narcotics violations.

The case handled by the Medina Police Department began with a reliable informant who recently had seen methamphetamine cooking in an apartment. A criminal history check of the male occupant showed two prior convictions for possession of the drug. Subsequently, officers conducted surveillance on the residence. During this, they observed the man's wife, who had a suspended license, drive away in the family vehicle. Police followed her until a marked car executed a traffic stop. They arrested her for driving while under suspension, and a subsequent search of her purse revealed methamphetamine. Investigators interviewed her, and she admitted that her husband had a supply of the drug and that he cooked it in the apartment for their personal use. Officers also noticed a strong odor of chemicals consistent with meth production, along with apparent lab paraphernalia, in the car. With all of this information added to the affidavit, the Medina Police Department established probable cause and obtained a search warrant for the residence.

### Search Procedures

Search warrant service at clandestine meth labs differs from other narcotics searches and requires greater ingenuity, planning, and preparation. "Raids conducted on clandestine drug laboratories are inherently dangerous, irrespective of the dangers associated with taking suspects into custody. The degree of danger is based largely on the types of chemicals...typically used and the processes employed. These dangers may be heightened by the operator's lack of expertise and experience..."<sup>9</sup>

Generally, agencies use a tactical team to quickly enter and control narcotics suspects before

they can flee or destroy evidence. However, this is not realistic in situations involving suspected methamphetamine labs. In these instances, officers do not want to alarm occupants, thereby causing them to knock over volatile items—they also want to avoid doing this themselves. Further, departments must preplan the removal of children, pets, and other occupants. The safety of everyone affected by the situation requires careful consideration. Fire and medical personnel should be

nearby to move in once the location is secure. Anyone entering the area must wear protective clothing and sufficient breathing equipment. And, once they have finished at the scene, authorities must have contact numbers for the manager or rental agent.

Numerous officers have experienced health problems from dealing with such labs without adequate protection. "While law enforcement officers in the Midwest have seen a dramatic

increase in meth laboratories recently, their West Coast counterparts have been battling the labs for decades. With simple lack of knowledge to blame, police officers investigating meth labs in the 1980s and 1990s would rush into lab scenes to make arrests and photograph, document, and collect evidence with absolutely no protective gear.... There are more and more documented cases of...aftereffects, some taking years to surface, some surfacing immediately.... While the exact long-term exposure consequences have not been definitely determined...experts agree...that any exposure to an active or recently active scene of a meth lab carries a risk for short- and long-term medical problems."<sup>10</sup>

In lieu of using a tactical team in its own investigation, the Medina Police Department opted to contact the husband, who was in the apartment with the family's three young children. Officers

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**People who make this drug endanger not only themselves but also those in close proximity.**

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advised him that they had his wife in custody for driving under suspension and that he should come to the department. He declined, advising that she had the only car and that he needed to stay home with the children. Later, he refused when an officer called back to offer him a ride.

In the meantime, agency personnel already had begun coordinating with the necessary agencies. They contacted Medina County Job and Family Services. Also, the department arranged for two county drug task force officers certified by DEA for methamphetamine investigations, along with the Ohio Bureau of Criminal Investigation and Identification (BCI&I) safety officer who oversees such operations and contacts DEA to have a federal case number assigned for the hazardous site cleanup (without this number, agencies must pay the significant costs themselves). Officers also made arrangements with fire and medical personnel.

The department sent its patrol sergeant to the door as he had established rapport with the husband, along with a plainclothes narcotics officer who had the search warrant with him. The entry team, comprised of the BCI&I agent and the two task force officers, stood by dressed in protective clothing and appropriate breathing equipment and ready to enter immediately upon removal of the husband. The fire and medical units waited nearby, out of sight of the residence. The sergeant knocked on the door, and the husband answered, holding the youngest child. After the officer invited him outside to talk, the man stepped through the doorway, and the investigators displayed the search warrant, handcuffed him, and secured him in the cruiser. The entry team quickly went in and located and removed the other two children; authorities placed all three in emergency custody and turned them over to family services personnel staged nearby. Then, the fire department

and medics responded, cleared the neighboring apartments, and prepared equipment in case fire suppression became necessary.

The entry team found evidence of methamphetamine production in various stages, as well as some finished substance. Many of these items were on floors, nightstands, and dressers, within easy access of the children. Investigators photographed the evidence where they found it before carrying the materials outside and separating them. They took small samples—keeping large amounts would prove dangerous—from some of the meth in production.

Both parents faced felony charges and incarceration for the manufacture of illegal drugs in the vicinity of juveniles. The father received 3 years in prison, and the mother pled to an amended charge of conspiracy, receiving 2 years. Also, the state of Ohio suspended her driver's license for 1 year.



### Cleanup Practices

The BCI&I agent requested a hazardous material disposal team, and DEA dispatched one of its contracted companies. After securing the evidentiary samples, the team removed the remainder of the materials. These included production components, such as funnels, tubing, kitty litter, lye, glass jars and bottles, propane fuel canisters, coffee filters with red residue, naphtha, acetone, isopropyl alcohol, and numerous liquids suspected of being methamphetamine in various stages of production or waste material.

Officers notified the apartment manager when they planned to clear the scene. They opened windows for ventilation. A DEA notice posted on the doors warned of the hazardous site inside. The clandestine lab operation resulted in the removal of all furnishings, the replacement of the carpet, and the repainting of the walls.<sup>11</sup>

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## Conclusion

Investigating and searching locations of suspected methamphetamine laboratories presents unique challenges and dangers. And, the unfortunate popularity of this drug indicates that many law enforcement agencies will face these situations.

The proper cooperation, planning, and input from various agencies prove critical to the success of the investigation and the safety of all concerned. And, one investigation at a time, law enforcement can take steps to successfully fight the spread of this dangerous drug. ♦

### Endnotes

<sup>1</sup> R. Schanlaub, "Meth Hazards," *Law and Order*, March 2005, 98-102.

<sup>2</sup> S.F. Domash, "Market Report," *Police*, May 2005, 36-45.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> For additional information, see Guy Hargreaves, "Clandestine Drug Labs: Chemical Time Bombs," *FBI Law Enforcement Bulletin*, April 2000, 1-6.

<sup>6</sup> Supra note 2.

<sup>7</sup> C.R. Swanson, N.C. Chamelin, and L. Territo, *Criminal Investigation* (New York, NY: McGraw-Hill, 2003).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Supra note 1.

<sup>11</sup> Federal decontamination standards dictate the specific cleanup requirements that rental managers must follow.

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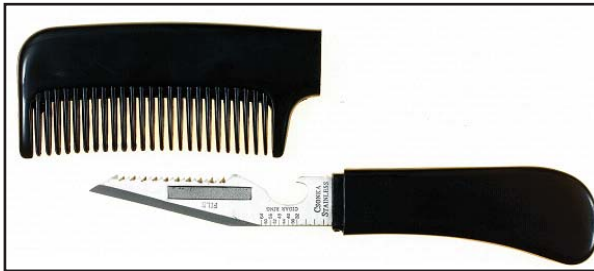
*Chief Hanwell leads the Medina, Ohio, Police Department.*

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## Unusual Weapon

### Comb Blade

These photos depict a plastic comb that has a metal blade inside. Law enforcement officers should be aware that offenders may attempt to use this unusual weapon.



# Abandonment of Items Associated with the Person

By JAYME W. HOLCOMB, J.D., Ed.D.



**A** *bandoned* is defined in the dictionary as “given up; forsaken; deserted.”<sup>1</sup> While seemingly simple to define, the term can become the focus of complicated legal meaning and analysis within particular contexts. Law enforcement officers may be lulled into a false sense of security in their understanding of the meaning of the term *abandoned property* within the Fourth Amendment context because of the simplicity of the dictionary definition of the word.

The U.S. Supreme Court has, on a number of occasions, explored the nuances of the term *abandoned* in cases involving the disposal of trash,<sup>2</sup> the expiration of hotel room leases,<sup>3</sup> and the discarding of items by individuals.<sup>4</sup> This article explores the legal issues associated with items abandoned from an individual’s immediate person.<sup>5</sup> More specifically, the article addresses the Fourth Amendment test used by courts to determine abandonment, the factors courts will consider in

assessing whether an item is abandoned, the consequences of improper police conduct that causes a person to abandon an item, and attempts to reclaim abandoned items.

## REASONABLE EXPECTATION OF PRIVACY

The Fourth Amendment states that “[T]he 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....”<sup>6</sup> While some courts consider whether an individual has abandoned an item in terms of standing,<sup>7</sup> courts generally analyze the issue as a Fourth Amendment question.<sup>8</sup> While an abandoned item could be searched, seized, or both, the more complicated cases involve situations where law enforcement officers have searched an item they believe has been abandoned.

The U.S. Supreme Court previously has stated the following with regard to searches and seizures: “A ‘search’ occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that

property.”<sup>9</sup> A person has no privacy or possessory interest in property that is abandoned. Accordingly, the protections afforded by the Fourth Amendment are not triggered with abandoned property. Therefore, law enforcement officers do not need a search warrant or probable cause to search an abandoned item.

The government has the burden of proving abandonment.<sup>10</sup> The abandonment of property is not abandonment within the meaning that the term may have in property law.<sup>11</sup> The important question in the Fourth Amendment analysis, and the test used by the courts, is whether the individual retained a reasonable expectation of privacy in the item.<sup>12</sup> Courts most frequently describe the expectation of privacy as “a question of intent which may

be inferred from words, acts, and other objective facts.”<sup>13</sup> Courts also have described the analysis of factors used to determine whether an individual intended to abandon an item of property at the time of the search or seizure as a consideration of the totality of the circumstances.<sup>14</sup>

## **FACTORS COURTS WILL CONSIDER**

Factors considered by courts in determining whether an individual intended to abandon an item can vary. However, the two factors considered most significant by the courts are disclaimers and the physical relinquishment of property.<sup>15</sup>

### **Disclaimers**

Disclaimers are one of the most frequent occurrences in abandonment-of-item cases. Disclaimers are most commonly demonstrated by what an individual says, such as “I’ve never seen that bag before in my life” or “That’s not my bag, I don’t care what you do with it.”<sup>16</sup> However, disclaimers also can be established by a combination of verbal statements and nonverbal conduct, such as disclaiming an item and walking away from officers<sup>17</sup> or walking away from a location with officers and leaving a bag behind.<sup>18</sup> A disclaimer of ownership does not always mean that there has been an abandonment.<sup>19</sup>



*Dr. Holcomb serves as chief of the Legal Instruction Section, DEA Training Academy.*

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***A person has no privacy or possessory interest in property that is abandoned.***

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An interesting example of a case involving a verbal denial of ownership is the U.S. Court of Appeals for the Tenth Circuit decision *United States v. Burbage*.<sup>20</sup> In *Burbage*, agents approached the defendant traveling on a train from Los Angeles to Chicago that had stopped in Albuquerque. One of the agents identified himself to the defendant as a law enforcement officer and asked to see his ticket. The agent returned the ticket and asked the defendant if he had any luggage. The defendant stated that he had no luggage and proceeded to leave the train to take pictures. When the defendant returned to the train, the agent saw a backpack in the overhead rack above the defendant's seat that he had not noticed before. The agent asked the defendant if the backpack was his, and the defendant replied that the backpack belonged to a person who had been sitting next to him. The agent attempted to locate the passenger who owned the backpack and was eventually told by other passengers in the car that no one had been sitting next to the defendant who had disclaimed the backpack. The agent asked all of the passengers in the car whether the backpack belonged to them. No one claimed the backpack. The agent again asked the defendant if it was his backpack, and the defendant told him that it was

not his backpack but that the owner of the backpack had allowed him to place his portfolio inside. Upon looking inside the backpack, the agent found the portfolio and a brick-like object wrapped in duct tape.

On appeal, the defendant argued that he had not abandoned the backpack because he had asserted sufficient interest in it to "preclude treatment of it as an abandoned object."<sup>21</sup>

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**...law enforcement officers do not need a search warrant or probable cause to search an abandoned item.**

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In rejecting the man's argument, the court stated that "[b]y affirmatively denying to [the officer] that he owned the backpack, the defendant lost any objectively reasonable expectation of privacy in the backpack as a whole."<sup>22</sup> The court also noted that the defendant's privacy interest in the portfolio he claimed as his own was protected when it was given to him by the officer without inspecting its contents; however, there was no "objectively reasonable expectation of privacy in the

remainder of the backpack's contents."<sup>23</sup>

More difficult cases involving disclaimers include situations where ownership of an item is unclear or where individuals remain silent when law enforcement officers inquire as to the ownership of an item.<sup>24</sup> The case of *United States v. Florez*<sup>25</sup> provides a good example of what can go wrong when officers do not obtain an explicit, verbal denial of interest in an item. In *Florez*, agents boarded a train in Albuquerque during a regular stop. One of the agents noticed two large suitcases on the lower level of one of the cars that prompted him to request a narcotics detection dog to come to the car to sniff the common luggage area. The dog alerted to the two suitcases that the agent believed to be suspicious. The agents were unable to read the name printed on pieces of tape attached to each suitcase.

The agents then made three announcements over the train's intercom system describing the bags and asking for their owner to step forward and claim them. After no one responded to the announcement, the agents removed the bags from the train and took them to their office where they were opened and determined to contain 32.6 kilograms of cocaine.<sup>26</sup>

The agents looked again at the name on the tape on the

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bags and were able to read “C. Florez” on each. The agents identified C. Florez at a stop in La Junta, Colorado, when he reported to train officials that his luggage was missing.<sup>27</sup>

The defendant filed a motion to suppress the cocaine found in his luggage on the basis that his bags were searched without probable cause and a search warrant. The government argued that the bags were abandoned and that a search warrant was unnecessary because the agents had probable cause and the search could be justified on the basis of exigent circumstances, an inventory search, and plain-view doctrine.<sup>28</sup> The court ultimately suppressed the cocaine and, with regard to the abandonment, stated:

Defendant Florez had identified each piece of luggage with his name and address printed on a piece of tape attached near the handle. Defendant never denied owning the luggage. In fact, when defendant discovered his luggage missing, he inquired about it at the train station in La Junta, Colorado. Defendant’s actions of identifying his luggage and searching for it, once he discovered it was missing, viewed objectively, negate any conclusion that he voluntarily relinquished his expectation of privacy in the luggage and abandoned it.<sup>29</sup>

### Physical Relinquishment

The physical relinquishment of items is the other most frequently encountered situation involving the abandonment of personal property. Courts have explored the facts that can be considered in establishing a physical relinquishment of items in many contexts. The more difficult situations involving the physical relinquishment of items occur when an item is

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***A disclaimer of ownership does not always mean that there has been an abandonment.***

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left with a third party for either conveyance or safekeeping. Giving an item to a third party for conveyance, such as giving an airline a checked bag to transport, is not considered an abandonment.<sup>30</sup> In these cases, officers should keep in mind that while individuals may have physically relinquished an item to another, they have not relinquished their reasonable expectation of privacy in the item.<sup>31</sup> The difficulty in these instances arises when, in cases such as *Burbage*, an individual has physically relinquished an item

to a third party for conveyance or safekeeping and officers fail to obtain a written or verbal disclaimer of the item.

The two most common situations involving the physical relinquishment of items by an individual are when items are left in a particular location<sup>32</sup> and when items are dropped or thrown when the individual is approached by or runs from law enforcement officers.<sup>33</sup> A unique case involving an item being abandoned by being left in a particular location is *United States v. Walker*.<sup>34</sup> The *Walker* case involved two defendants who were prosecuted for espionage and related offenses. The defendants filed a motion to suppress evidence they alleged agents searched and seized in violation of the Fourth Amendment. The government argued that the evidence, a large paper grocery bag, was abandoned by the defendant when he left it on the side of a rural road at the base of a utility pole. Surveillance agents had seen the defendant leave the bag and later found it in underbrush approximately 12 feet from the road. The agents seized the bag and looked inside, wherein they found trash and a plastic bag containing a manila envelope with documents.<sup>35</sup>

Applying an objective standard to conclude that the bag and contents were abandoned,<sup>36</sup> the Court found it important

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that the defendant had left what appeared to be a bag of trash on an unprotected rural roadside and made no attempt to protect it from damage or removal. The Court stated:

There is little doubt that defendant intended that this property should appear to be abandoned trash. By leaving it out in the open, alongside a road, in a rural setting, he was no longer retaining a reasonable expectation of privacy in the bag and its contents. Defendant's subjective expectation of privacy under the facts here is not one that society is prepared to recognize as reasonable.<sup>37</sup>

Classic cases of abandonment occur when an item is dropped or thrown when an individual is approached by or runs from law enforcement officers. The U.S. Supreme Court has addressed cases of this nature, most notably in the cases of *California v. Hodari D.*<sup>38</sup> and *Smith v. Ohio*.<sup>39</sup> In *Smith*, an officer exited an unmarked police car, approached the defendant, and, without identifying himself as an officer, asked the defendant, to "come here a minute."<sup>40</sup> The defendant kept walking and did not respond to the officer. When the officer identified himself, the defendant then "threw the sack he was carrying onto the hood of [his] car and turned to face [the officer]

who was approaching."<sup>41</sup> The defendant did not answer the officer when he asked what was in the bag and tried to protect the bag. The officer pushed the defendant's hand away from the bag, opened it, and found drug paraphernalia inside. The defendant was arrested for drug abuse. The Ohio Supreme Court rejected the prosecution argument that the defendant abandoned the bag when he threw it on the car and turned to face the



officer. The U.S. Supreme Court stated that "[a]s the state court properly recognized, a citizen who attempts to protect his private property from inspection, after throwing it on a car to respond to a police officer's inquiry, clearly has not abandoned that property."<sup>42</sup>

### **IMPROPER POLICE CONDUCT THAT CAUSES ABANDONMENT**

Another important U.S. Supreme Court case to consider

regarding abandoned items is the previously mentioned *California v. Hodari D.*<sup>43</sup> For items of property to be legally abandoned, the abandonment must be voluntary. A lawful arrest does not make an otherwise voluntary abandonment of property involuntary.<sup>44</sup> However, an abandonment of property cannot be voluntary if it is the result of police misconduct.<sup>45</sup> Courts have found involuntary abandonment generally when officers seize a person or an item in violation of the Fourth Amendment. If an individual abandons an item of property as a result of improper police conduct, it is likely that the item will be excluded from evidence during a suppression hearing.

In *Hodari D.*, two plainclothes officers wearing jackets marked "police" were patrolling in an unmarked car in a high-crime area. Four or five youths surrounding a parked car began running when they saw the police car. The suspicious officers chased the youths. One of the officers remained in the car while the other officer gave chase on foot. Hodari, who was running, did not see the officer on foot until he turned and saw that the officer was almost upon him. Hodari tossed away what appeared to be a small rock just before the officer tackled him to the ground and handcuffed him. The rock turned out to be crack cocaine. Hodari



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was also carrying cash and a pager.<sup>46</sup>

The U.S. Supreme Court addressed only one issue in *Hodari D.*, namely, “whether, at the time he dropped the drugs, Hodari had been ‘seized’ within the meaning of the Fourth Amendment. If so, respondent argues, the drugs were the fruit of that seizure and the evidence concerning them was properly excluded. If not, the drugs were abandoned by Hodari and lawfully recovered by the police, and the evidence should have been admitted.”<sup>47</sup> More specifically, the Court stated that “[t]he narrow question before us is whether, with respect to a show of authority as with respect to application of physical force, a seizure occurs even though the subject does not yield. We hold that it does not.”<sup>48</sup> Therefore, in the *Hodari D.* case, because Hodari did not yield to the show of authority made by the police and instead ran, he was not actually seized within the meaning of the Fourth Amendment until tackled by the officer. The crack cocaine thrown by Hodari was abandoned. Because the cocaine was not the product of an unlawful seizure, it was properly admitted into evidence.<sup>49</sup>

While individuals will frequently argue that their abandonment of an item was caused by police misconduct, courts will analyze the behavior of the police to determine whether a Fourth Amendment

violation occurred prior to the abandonment of the item. An example of a case involving an abandonment of an item that was found to be caused by improper police conduct is the U.S. Court of Appeals for the Fourth Circuit decision in *United States v. Wilson*.<sup>50</sup>

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***Giving an item to a third party for conveyance...is not considered an abandonment.***

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In *Wilson*, officers approached Wilson as he was leaving an airport terminal and asked if they could speak with him. Wilson agreed to let one of the officers search his carry-on bag and to let another officer pat him down. Both searches produced nothing. When Wilson turned to leave, he picked up two coats that he had placed on a chair. The officers asked if they could search the coats. Wilson refused to consent to a search of the coats and started to walk away. The officers continued to walk with Wilson and ask if he would consent to a search of the coats. Wilson continued to tell the officers that he felt he was being harassed; he twice refused additional

requests to search by the officers in an angry tone of voice and was twice advised by the officers to lower his voice. One of the officers testified that Wilson walked away from them on at least four occasions. Wilson eventually consented to a search of the coats, and, as one of the officers reached for a bulge he had seen in one of the coats, Wilson ran. The officers found cocaine in a paper bag in one of the coat pockets.

The court found that the officers had seized Wilson soon after he refused to consent to a search of the coats because of their extensive and prolonged questioning.<sup>51</sup> The court also found that the officers did not have reasonable suspicion to stop Wilson. Furthermore, with regard to the issue of abandonment, the court held that:

even viewing the evidence, [the officer’s] testimony, in the light most favorable to the government, we hold that Wilson’s actions immediately prior to his arrest did not amount to an abandonment such as would purge the taint from police conduct.

Unlike the situation in *Hodari D.*, the purported abandonment of the coat by Wilson occurred *after* he had been illegally seized. Wilson’s action was clearly the direct result of the illegal seizure, and it follows that the recovered

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drugs were the fruit of the illegality and must be suppressed.<sup>52</sup>

Another series of cases involving the issue of whether the abandonment of an item was caused by police misconduct are those where items have been found in the backs of police vehicles after the transportation of arrestees. Officers often will find abandoned items in the backs of previously checked and cleared police cars after transporting arrested individuals. If individuals has been lawfully arrested, the items officers find in the backs of their police cars that the individuals can be shown to have left behind have been found to be abandoned.<sup>53</sup> However, if a transported individual was unlawfully arrested, courts have held that items found in the back of the police car that the individual leaves behind are tainted by the unlawful arrest and, therefore, the abandonment of the items is involuntary.<sup>54</sup>

### ATTEMPTS TO REESTABLISH POSSESSION

Defendants sometimes argue that they attempted to reestablish possession of abandoned items. In considering this issue, courts will consider the efforts undertaken by the individual to reclaim their property, such as returning to the location of the item.<sup>55</sup> Arguments that individuals

attempted to reestablish possession are typically unsuccessful. Courts have found that an individual's subjective intent to reclaim an item is irrelevant and, instead, will focus on whether objective facts exist that indicate reassertion of a possessory interest in the item.<sup>56</sup> For example, addressing the defendant's argument that he had reasserted his interest in an abandoned bag, the U.S. Court of Appeals for the Ninth Circuit stated in *United States v. Nordling*:<sup>57</sup>



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We reject Nordling's argument that his later admission that he owned the bag constituted a reassertion of interest in the property. As the district court viewed the facts, Nordling disclaimed ownership and left the bag on the airplane in circumstances in which it was virtually certain that the bag would be opened, inspected and turned over to law enforcement authorities before he could possibly attempt to

reexert physical control. It also found that, in light of those facts, Nordling's admission of ownership in the course of later questioning did not constitute a reassertion of a privacy interest in the bag.<sup>58</sup>

### CONCLUSION

This article has explored the nuances of the Fourth Amendment issues that typically arise in cases involving abandoned items. Federal courts will analyze whether individuals abandoning items of property retained a reasonable expectation of privacy in the items. The two most significant objective factors considered by federal courts in making that determination are whether an individual disclaimed or physically relinquished the items.

In cases involving the disclaimer of an item, officers should obtain a written or verbal disclaimer from the individual. Officers should avoid concluding that an item has been abandoned in situations where no actual disclaimer is made. Courts repeatedly have suppressed evidence found in abandoned items where there was no actual disclaimer, particularly when officers made announcements asking individuals to claim certain items and it was later determined that the defendant was never even present when such announcements were made.

In cases involving the physical relinquishment of items, officers should carefully document the nature of the location in which the item was found and should particularly note whether the item was left accessible to others in a public area. Because the government has the burden of proving that an item was abandoned, officers should thoroughly and carefully recount in their reports the precise factual circumstances surrounding the disclaimer or physical relinquishment of items. Officers also should remember that an abandonment of property must be voluntary and will be found to be involuntary if it is the result of improper police conduct. ♦

#### Endnotes

<sup>1</sup> Webster's New World Dictionary 1 (3d ed. 1988).

<sup>2</sup> *California v. Greenwood*, 486 U.S. 35 (1988). For additional information regarding this issue, see Thomas V. Kukura, "Trash Inspections and the Fourth Amendment," *FBI Law Enforcement Bulletin*, February 1991, 27; and Edward M. Hendrie, "Curtilage: The Expectation of Privacy in the Yard," *FBI Law Enforcement Bulletin*, April 1998, 25.

<sup>3</sup> *Abel v. United States*, 362 U.S. 217 (1960).

<sup>4</sup> *California v. Hodari D.*, 499 U.S. 621 (1991); *Smith v. Ohio*, 494 U.S. 541 (1990); *Hester v. United States*, 265 U.S. 57 (1924).

<sup>5</sup> For additional information regarding the topic of abandoned items, see Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 2.6 (b), at 573-89 (3d ed. 1996). For additional information regarding the topic of abandonment within different contexts, see John P. Ludington, Annotation, *Search and*

*Seizure: What Constitutes Abandonment of Personal Property Within the Rule that Search and Seizure of Abandoned Property Is Not Unreasonable—Modern Cases*, 40 A.L.R. 4th 381 (1985).

<sup>6</sup> U.S. CONST. amend. IV.

<sup>7</sup> See, e.g., *United States v. Torres*, 949 F.2d 606, 608 (2d Cir. 1991); *United States v. Compton*, 704 F.2d 739, 741 (5th Cir. 1983); *United States v. Maryland*, 479 F.2d 566, 568 (5th Cir. 1973).



<sup>8</sup> The threshold Fourth Amendment question courts will analyze is whether an individual abandoned an item of property. If there is a finding of abandonment, then the individual will not have standing to challenge the legality of the search. See, e.g., *United States v. Washington*, 197 F.3d 1214, 1216 (8th Cir. 1999); *United States v. Williams*, 194 F.3d 100, 109 (D.C. Cir. 1999) ("Whether a person has a legitimate reasonable expectation of privacy is more an issue of Fourth Amendment law than standing.").

<sup>9</sup> *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

<sup>10</sup> See, e.g., *United States v. Fulani*, 368 F.3d 351, 354 (3d Cir. 2004); *United States v. Cofield*, 272 F.3d 1303, 1306 (11th Cir. 2001); *United States v. Basinski*, 226 F.3d 829, 836 (7th Cir. 2000) ("To demonstrate abandonment, the government must establish by a preponderance of the evidence that the defendant's voluntary words or conduct would lead a reasonable person in the searching officer's position to believe that the defendant relinquished his property interests in the item searched or

seized."); *United States v. Brady*, 842 F.2d 1313, 1316 (D.C. Cir. 1988); *United States v. Fernandez*, 772 F.2d 495, 499 (9th Cir. 1985) (government failed to meet burden of establishing abandonment).

<sup>11</sup> See, e.g., *United States v. Thomas*, 864 F.2d 843, 845 (D.C. Cir. 1989) ("The test for abandonment in the search and seizure context is distinct from the property law notion of abandonment..."); *United States v. Tolbert*, 692 F.2d 1041, 1044 (6th Cir. 1982) ("It should be emphasized that the term 'abandonment,' as employed herein, does not refer to traditional concepts of property law.").

<sup>12</sup> See, e.g., *United States v. Flynn*, 309 F.3d 736, 738 (10th Cir. 2002); *United States v. Cofield*, 272 F.3d 1303, 1306 (11th Cir. 2001); *United States v. Leshuk*, 65 F.3d 1105, 1111 (4th Cir. 1995); *United States v. Rem*, 984 F.2d 806, 810 (7th Cir. 1993); *United States v. Tolbert*, 692 F.2d 1041, 1044 (6th Cir. 1982); *United States v. Aikens*, 13 F. Supp. 2d 28, 33 (D.D.C. 1998); *United States v. Walker*, 624 F. Supp. 99, 101 (D. Md. 1985).

<sup>13</sup> See, e.g., *United States v. Cofield*, 272 F.3d 1303, 1306 (11th Cir. 2001); *United States v. Austin*, 66 F.3d 1115, 1118 (10th Cir. 1995); *United States v. Barlow*, 17 F.3d 85, 88 (5th Cir. 1994); *United States v. Rem*, 984 F.2d 806, 810 (7th Cir. 1993); *United States v. Lee*, 916 F.2d 814, 818 (2d Cir. 1990); *United States v. Aikens*, 13 F. Supp. 2d 28, 33 (D.D.C. 1998); *United States v. Perkins*, 871 F. Supp. 801, 803 (M.D.Pa. 1995), *aff'd*, 91 F.3d 127 (3rd Cir. 1996); *United States v. Jackson*, 544 F.2d 407, 409 (9th Cir. 1976).

<sup>14</sup> See, e.g., *United States v. Simpson*, 439 F.3d 490, 494 (8th Cir. 2006); *United States v. Liu*, 180 F.3d 957, 960 (8th Cir. 1999); *United States v. Nordling*, 804 F.2d 1466, 1470 (9th Cir. 1986); *United States v. Colbert*, 474 F.2d 174, 176 (5th Cir. 1973).

<sup>15</sup> See, e.g., *United States v. Basinski*, 226 F.3d 829, 837 (7th Cir. 2000); *United States v. Liu*, 180 F.3d 957, 960 (8th Cir. 1999); *United States v. Landry*, 154 F.3d 897, 899 (8th Cir. 1998); *United States v. Nordling*, 804 F.2d 1466, 1470 (9th Cir. 1986).



<sup>16</sup> Cases involving disclaimers of items include *United States v. Ojeda-Ramos*, 455 F.3d 1178, 1187 (10th Cir. 2006); *United States v. Fulani*, 368 F.3d 351, 354 (3d Cir. 2004); *United States v. Burbage*, 365 F.3d 1174, 1176 (10th Cir. 2004); *United States v. Sanders*, 196 F.3d 910, 914 (8th Cir. 1999); *United States v. Peters*, 194 F.3d 692, 696 (6th Cir. 1999); *United States v. Sanders*, 130 F.3d 1316, 1317 (8th Cir. 1998); *United States v. Magnum*, 100 F.3d 164, 170 (D.C. Cir. 1996); *United States v. Moffett*, 84 F.3d 1291, 1292 (10th Cir. 1996); *United States v. Han*, 74 F.3d 537, 540 (4th Cir. 1996) (defendant stated bag was not his); *United States v. Leshuk*, 65 F.3d 1105, 1111 (4th Cir. 1995); *United States v. Smith*, 3 F.3d 1088, 1096 (7th Cir. 1993); *United States v. De Los Santos Ferrer*, 999 F.2d 7, 9 (1st Cir. 1993) (defendant repeatedly told agents luggage was not hers); *United States v. Gonzalez*, 979 F.2d 711, 714 (9th Cir. 1992); *United States v. Miller*, 974 F.2d 953, 957 (8th Cir. 1992); *United States v. Torres*, 949 F.2d 606, 608 (2d Cir. 1991); *United States v. Springer*, 946 F.2d 1012, 1017 (2d Cir. 1991); *United States v. Lee*, 916 F.2d 814, 818 (2d Cir. 1990); *United States v. Piaget*, 915 F.2d 138, 140 (5th Cir. 1990) (defendant stated he knew nothing about bag in trunk); *United States v. Moskowitz*, 883 F.2d 1142, 1147 (2d Cir. 1989) (defendant twice explicitly denied having luggage); *United States v. Karman*, 849 F.2d 928, 931 (5th Cir. 1988); *United States v. Garcia*, 849 F.2d 917, 918 (5th Cir. 1988); *United States v. Nordling*, 804 F.2d 1466, 1470 (9th Cir. 1986); *United States v. Tolbert*, 692 F.2d 1041, 1044 (6th Cir. 1982); *United States v. Berd*, 634 F.2d 979, 987 (5th Cir. 1981); *United States v. Canady*, 615 F.2d 694, 697 (5th Cir. 1980).

<sup>17</sup> See, e.g., *United States v. Cofield*, 272 F.3d 1303, 1307 (11th Cir. 2001); *United States v. Colbert*, 474 F.2d 174, 177 (5th Cir. 1973).

<sup>18</sup> See, e.g., *United States v. Nordling*, 804 F.2d 1466, 1469-70 (9th Cir. 1986).

<sup>19</sup> See Wayne R. LaFare, *Search & Seizure: A Treatise on the Fourth Amendment* § 2.6 (b), at 588 (3d ed. 1996).

<sup>20</sup> 365 F.3d 1174 (10th Cir. 2004).

<sup>21</sup> *Id.* at 1178.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 1179.

<sup>24</sup> See, e.g., *United States v. Fulani*, 368 F.3d 351, 354 (3d Cir. 2004) (item was abandoned because defendant disclaimed ownership of all bags located in overhead rack on bus and also implicitly denied ownership of a bag on two occasions when he remained silent as an agent questioned the entire bus as to the ownership of the bag when he held it up and asked if anyone owned it); *United States v. Hernandez*, 7 F.3d 944 (10th Cir. 1993) (bag was abandoned when defendant distanced himself from the bag by sitting in a different area on the bus and also sat silent as officers asked all passengers who owned the bag). Cf. *United States v. Garzon*, 119 F.3d 1446 (10th Cir. 1997) (defendant never denied ownership of bag); *United States v. Cuevas-Ceja*, 58 F. Supp. 2d 1175, 1191 (D. Ore. 1999); *Stanberry v. Maryland*, 684 A.2d 823 (Md. 1996) (item was not abandoned when announcement made on bus but defendant was not on the bus at the time the announcement was made).

<sup>25</sup> 871 F. Supp. 1411 (D.N.M. 1994).

<sup>26</sup> *Id.* at 1413.

<sup>27</sup> *Id.* at 1414.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See *United States v. Lonabough*, 494 F.2d 1257 (5th Cir. 1973).

<sup>31</sup> See, e.g., *United States v. Basinski*, 226 F.3d 829 (7th Cir. 2000) (defendant who left locked briefcase with lifelong friend whom he told to hold the briefcase and later told to burn and destroy the briefcase did not abandon the briefcase); *United States v. Sanders*, 719 F.2d 882 (6th Cir. 1983) (defendant never disclaimed suitcase and did not abandon bag).

<sup>32</sup> See, e.g., *United States v. Landry*, 154 F.3d 897 (8th Cir. 1998) (defendant placed bag by wheel of dumpster and walked 50 feet away to pay phone to make a call); *United States v. Welbeck*, 145 F.3d 493 (2d Cir. 1998) (placing bag under bus seat and disclaiming); *United States v. Wider*, 951 F.2d 1283 (D.C. Cir. 1991) (defendant left paper bag on steps and walked away); *United States v. Brown*, 473 F.2d 952 (5th

Cir. 1973) (suitcase buried in a chicken coop in an open field); *United States v. Walker*, 624 F. Supp. 99 (D. Md. 1985) (bag left on side of road). Cf. *United States v. Most*, 876 F.2d 191 (D.C. Cir. 1989) (defendant did not abandon bag when he left it with store clerk when store had policy that all bags brought into store must be checked with clerk).

<sup>33</sup> See, e.g., *California v. Hodari D.*, 499 U.S. 621 (1991); *Hester v. United States*, 265 U.S. 57 (1924) (jug containing moonshine dropped when defendant saw police); *United States v. Taylor*, 462 F.3d 1023 (8th Cir. 2006) (defendant dropped cell phone and threw black bag and gun into different backyards when chased by police); *United States v. Simpson*, 439 F.3d 490 (8th Cir. 2006) (defendant threw rifle and magazine on the ground while being chased by officers); *United States v. Flynn*, 309 F.3d 736 (10th Cir. 2002) (defendant dropped methamphetamine out of car after passing ruse drug checkpoint signs and taking first available exit ramp off highway); *United States v. Boone*, 62 F.3d 323 (10th Cir. 1995) (defendant threw PCP bottles out of car during police chase); *United States v. Segars*, 31 F.3d 655 (8th Cir. 1994) (bag dropped as defendant started to run); *United States v. Trimble*, 986 F.2d 394 (10th Cir. 1993) (bag thrown to ground as officer approached defendant); *United States v. Collis*, 766 F.2d 219 (6th Cir. 1985) (defendant threw bag over fence while running from police); *United States v. Koessel*, 706 F.2d 271 (8th Cir. 1983) (cocaine package thrown out car window); *United States v. Bush*, 623 F.2d 388 (5th Cir. 1980) (bag thrown to ground when officers identified themselves as police to defendant); *United States v. Aikens*, 13 F. Supp. 2d 28 (D.D.C. 1998) (officers hear metal-on-metal noise while observing defendant running from them down an alley (abandoned gun later found in trash can in alley)); *United States v. Bailey*, 979 F. Supp. 1319 (D. Kan. 1997) (defendant left drugs on the ground in an alley and disclaimed anything found on the ground in the area).

<sup>34</sup> 624 F. Supp. 99 (D. Md. 1985).

<sup>35</sup> *Id.* at 100.



<sup>36</sup> *Id.* at 101.  
<sup>37</sup> *Id.* at 102.  
<sup>38</sup> 499 U.S. 621 (1991).  
<sup>39</sup> 494 U.S. 541 (1990).  
<sup>40</sup> *Id.* at 542.  
<sup>41</sup> *Id.*  
<sup>42</sup> *Id.* at 543-44.  
<sup>43</sup> 499 U.S. 621 (1991).  
<sup>44</sup> *See, e.g., United States v. Quiroz-Hernandez*, 48 F.3d 858 (5th Cir. 1995); *United States v. Mendez*, 27 F.3d 126 (5th Cir. 1994).  
<sup>45</sup> *See, e.g., United States v. Leshuk*, 65 F.3d 1105 (4th Cir. 1995).  
<sup>46</sup> *California v. Hodari D.*, 499 U.S. 621, 623 (1991).  
<sup>47</sup> *Id.* at 623.  
<sup>48</sup> *Id.* at 626.  
<sup>49</sup> *Id.* at 629. The State conceded in prior proceedings that the officer did not

have reasonable suspicion to stop Hodari. *Id.* at 623 n.1.

<sup>50</sup> 953 F.2d 116 (4th Cir. 1991).  
<sup>51</sup> *Id.* at 123.  
<sup>52</sup> *Id.* at 127.  
<sup>53</sup> *See, e.g., United States v. Maryland*, 479 F.2d 566 (5th Cir. 1973).  
<sup>54</sup> *See, e.g., United States v. Henderson*, 478 F.2d 705 (5th Cir. 1973). *See also United States v. Ienco*, 182 F.3d 517 (7th Cir. 1999).  
<sup>55</sup> *See, e.g., United States v. Tugwell*, 125 F.3d 600 (8th Cir. 1997) (attempt to reclaim bag by coming back to bag 2 hours after defendant had abruptly left the bag unguarded in a public place after witnessing a dog alert to the bag was rejected).  
<sup>56</sup> *See, e.g., United States v. Rem*, 984 F.2d 806, 810 (7th Cir. 1993) (“Rem urges this court to focus on his own

subjective desire to regain possession of the suitcase as proof of his expectation of privacy. This obviously will not work. His subjective ‘intent’ could be any hindsight excuse that fits the situation. We must instead examine the objective facts as the various agents encountered them.”).  
<sup>57</sup> 804 F.2d 1466 (9th Cir. 1986).  
<sup>58</sup> *Id.* at 1470.

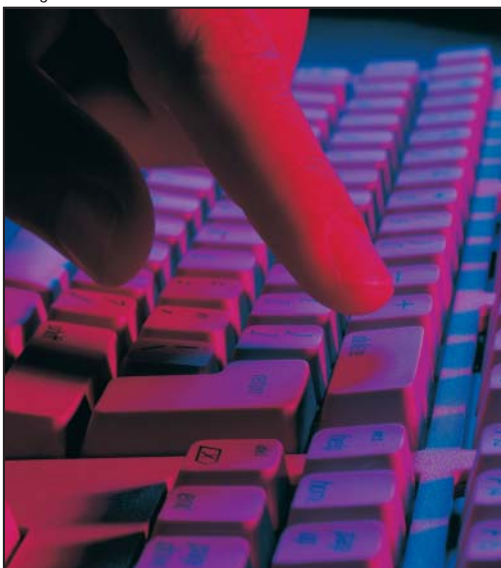
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*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

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Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI's home page. The home page address is <http://www.fbi.gov>.

## The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Officer Flores



Officer Molina

While on patrol, Officers Richard Flores and John Molina of the Waco, Texas, Police Department watched as an 18-wheeler crested a hill and rammed into the back of another tractor trailer that had stopped because of road construction, forcing it into the minivan in front of it. The truck that triggered the accident exploded and burst into flames. Immediately, Officers Flores and Molina ran into the fire and helped the elderly driver to safety. Fortunately, no one was seriously injured.



Sergeant Wright

While off duty, Sergeant Art Wright of the La Palma, California, Police Department watched an out-of-control vehicle veer off the roadway and crash into a power pole. The unconscious driver was slumped over in the passenger seat. The car then started to burn, and smoke filled the interior. Immediately, Sergeant Wright entered the vehicle and removed the male victim, at which time the car exploded and became engulfed in flames. After moving a safe distance away, Sergeant Wright realized the man was in full cardiac arrest and started CPR, continuing until medical personnel arrived and transported the driver to the local hospital. Several days later, he was released.

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

