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Hostage Situations in Detention Settings

Planning and Tactical Considerations

By KENNETH J. PEAK, Ph.D.,
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and DARIN BALAAM



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“[Correctional administrators] undoubtedly must take into account the very real threat unrest presents to inmates and officials alike, in addition to the possible harm to inmates. To resolve a disturbance...we think the question whether the measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on whether force was applied in a good-faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.”

—Whitley v. Albers¹

At the Morey Unit of the Lewis Prison Complex in Buckeye, Arizona, two inmates took two correctional officers hostage and seized the unit’s tower, triggering a 15-day standoff that remains the longest prison hostage situation in this nation’s history.² Approximately 450 prisoners at the Southern Ohio Correctional Facility in Lucasville engaged in a riot, resulting in the deaths of nine inmates and one officer during the

10-day siege.³ Federal detainees in a Louisiana parish jail held the warden and two guards hostage at knifepoint, demanding a helicopter to escape.⁴

A sheriff’s negotiator won the release of three employees before a SWAT team stormed the Bay County Jail in Florida. Inmates had threatened to rape and cut off the body parts of a fourth hostage, a nurse. They had taken over the jail’s infirmary, and one was holding a scalpel to the nurse’s neck when

the SWAT team and armed correctional officers ended the 11-hour standoff.⁵

At the U.S. Penitentiary in Atlanta, Georgia, the U.S. Department of State reinstated an accord that permitted the repatriation of about 2,500 Cuban nationals. Three days later, the detainees seized control of the penitentiary, demanding that they not be repatriated. The uprising lasted 11 days and involved more than 100 hostages.⁶

At the Mack Alford Correctional Center in Stringtown, Oklahoma, a riot occurred that lasted 3 days, wherein inmates seized eight hostages and took control of two-thirds of the prison.⁷ Also, permanently seared in the annals of corrections rioting are the horrific incidents at the Attica Correctional Facility in New York in 1971 (39 inmates and employees killed) and at

the New Mexico State Prison in Santa Fe in 1980 (33 inmates dead).⁸

OVERVIEW OF THE PROBLEM

As seen by these tragic events, jail and prison rioting and hostage taking are potentially explosive and perilous situations from beginning to end. Hostages always are directly in harm's way, and their jeopardy is continuous and uninterrupted until they are released and safely in the hands of authorities.⁹ Some inmate-involved riots and hostage situations come as a complete surprise, whereas others flow from a precipitating event or some type of "spark."

Corrections hostage-taking events can involve any individuals—employees, visitors, or prisoners—held against their will by an inmate seeking to

escape, gain concessions, or achieve other goals, such as publicizing a particular cause. They can be planned or impulsive acts¹⁰ and can involve one hostage or hundreds.¹¹

History

Although hostage situations may seem like a recent phenomenon, history, in fact, is replete with examples. The Romans regularly exchanged hostages with other treaty nations to ensure that each party would fulfill its obligations. Emperor Henry VI captured King Richard Coeur-de-Lion and held him hostage for ransom. Other famous hostages of that era included Joan of Arc and Miguel de Cervantes. During the 17th century, Christian orders were dedicated to the rescue of hostages held as slaves in Islamic countries



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surrounding the Mediterranean Sea. Pirates, as well as renegade governments, have captured and used hostages to obtain money or goods, and skyjackings have occurred since the early 1930s.¹²

Following the watershed year for hostage taking of 1972 when Palestinian terrorists took 11 Israeli athletes hostage at the Olympic Games in Munich, Germany, the law enforcement community immediately realized the far-reaching effects of these events. The New York City Police Department created a Hostage Recovery Program that included not only SWAT teams but also detectives trained in hostage negotiation.¹³ The FBI developed a Special Operations and Research Unit based at its training academy. Since then, the use of personnel trained as hostage negotiators steadily increased. By the early 1990s, nearly all large law enforcement organizations (96 percent), more than two-thirds of large police departments, and about one-third of small municipal agencies had a designated negotiator.¹⁴

Scope

The authors include local jails in this discussion of hostage situations in correctional facilities because these incidents certainly occur in the United States and are even far more common in foreign venues. For example, rioting prisoners

in Brazil took nearly 8,000 visitors and guards hostage in a 2001 protest that spread to 22 jails and resulted in at least 5 deaths.¹⁵ As with its prisons, U.S. jails also have become increasingly dangerous because of overcrowded conditions and the disparity of their clientele, such as arrestees awaiting trial for felony offenses, persons in transition to mental health facilities, convicted felons requiring transport to a state or federal institution, military offenders, and many violent

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In correctional settings, the hostage takers are known to the negotiators.

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and often unstable subjects who lack social skills, remorse, and empathy and have histories of substance abuse. Certainly, these individuals are capable of hostage taking. Indeed, 4 in 10 jail inmates have a violent arrest record.¹⁶ Eighty-five percent of these local jails are operated by either sheriff's offices (with 76 percent of the total) or municipal police departments (with 9 percent).¹⁷ Therefore, local

sheriffs and police chiefs with lockup responsibilities must shoulder the burden of preparing for such emergencies.

In principle, prison and jail hostage situations and the methods used for their resolution are similar to those employed in such incidents in free society. Indeed, hostage situations that occur in correctional facilities are resolved using many of those standard strategies and tactics. However, some important differences exist that can have an impact on negotiations, negotiating strategies, and incident tactics.

Perpetrators

In correctional settings, the hostage takers are known to the negotiators. Many of the inmates have a history of violence, and their demands will be very different from those presented by hostage takers in situations that occur in the outside world. Generally deliberate and willing to execute their captives, inmate hostage takers view their hostages as discardable implements to be used as long as needed. These captors are supremely goal oriented but unfeeling, like a shark seeking a meal. Although uncaring, they are well aware of the hostages' emotions but use them to their own ends. They will terrorize one minute and act friendly the next in their effort to control the situation. However, they know

full well that both their ability to kill and their control over part or all of the facility give them ultimate control.¹⁸

Administrative Concerns

Riot and hostage situations are the jail or prison administrator's worst nightmare. They can happen at any time. Even the most safety-concerned managers cannot always avoid such crises. After all, inmates will be inmates, and they do not want to be where they are.¹⁹ As the commission investigating the Attica uprising warned, "Attica is every prison, and every prison is Attica."²⁰

With much idle time on their hands, many prisoners will look for and develop the means to make life easier for themselves and harder for employees. Given the dedication that many inmates have to this cause, they certainly may plan disturbances, riots, or hostage-taking incidents that have every possibility of success.

EMERGENCY PLANNING

Before correctional administrators can begin to plan for emergencies within their facilities, they must bear in mind several major points. Successful resolution requires a controlled, measured response; clear lines of authority; and effective communication. This means having the ability to

exercise authority and direction over the forces and resources available; to deploy the forces at hand and monitor their actions in the field; and to deliver orders promptly and effectively, coordinate operations with other law enforcement agencies, and interpret information on what inmates are doing and intend to do. Unity of command—the principle that members of an organization are accountable to a single superior—also proves paramount.²¹

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Resource Allocation

Administrators must decide which resources they will dedicate to crisis response. They can employ several staffing levels—traditional crisis response teams (CRTs), armed CRTs, and tactical teams—that can wield less lethal intervention options and even the use of deadly force. As the first, primary level of response, the traditional CRT is composed of

personnel from all job specialties who train in riot control formations and use of defensive equipment (e.g., batons, stun guns, chemical agents, control and containment). Armed CRTs provide managers with an option for dealing with more difficult situations if the emergency escalates to the point where employee or inmate lives are in imminent danger. This second level involves a specially trained team that can respond with deadly force when necessary. As the most highly trained and skilled emergency response personnel, tactical teams must be trained in advanced skills, such as barricade breaching, hostage rescue, and precision marksmanship with pistols, rifles, and assault weapons.²²

ICS Implementation

In a prolonged hostage incident or siege, administrators may need to activate an incident command system (ICS), which coordinates response personnel from more than one agency or teams from more than one jurisdiction. Its unified command component, a key strength of ICS, is composed of four sections: operations, planning, logistics, and finance.²³ In this vein, agencies should determine whether they are mandated to comply—and if so, are in compliance—with Homeland Security Presidential Directive (HSPD) 5, Management of

Domestic Incidents, which established the National Incident Management System (NIMS) and took effect on March 1, 2004. A structured framework of which ICS is a part, NIMS is used nationwide for both governmental and nongovernmental organizations to respond to natural disasters or terrorist attacks at the local, state, and federal levels.

ICS contains several elements. Some experts recommend that administrators prepare a prepackaged “hostage kit” that includes such items as recording equipment, portable telephones capable of communicating with hostage takers, field glasses, writing materials, bullhorns, walkie-talkies, telephone directories, facility maps, blueprints, and flashlights.²⁴ Furthermore, because prison hostage situations usually involve sieges and some lapse of time, establishing a victim assistance team trained to provide the hostages’ families emotional support, information and intelligence, and stress management techniques can prove beneficial.²⁵ Finally, administrators should develop a policy that details which staff members are authorized to order the use of force and what weapons and less lethal munitions are appropriate. The riot plan also should include contact names and phone numbers and an outline of existing agreements between agencies.²⁶ The

use of force in such incidents often entails establishing rules of engagement, contained in a directive issued by the incident commander specifying the limitations and circumstances under which force will be deployed.



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Training Requirements

Mark Twain said, “A man can seldom—very, very seldom—fight a winning fight against his training: the odds are too heavy.” Those words certainly apply to emergency planning. Mental readiness can be achieved only through field practice and instruction.

It does little good to have an emergency plan if employees and supervisors are not trained to activate it. Administrators must assign training a high priority so that people in each component clearly understand the functions of those in other ones. Indeed, negotiators and personnel from tactical teams should train together regularly.

Furthermore, to protect themselves from liability, managers should develop policies and procedures that cite required training, as well as records that show who was trained during what period of time.²⁷ As an example, the National Institute of Justice’s Office of Science and Technology sponsors a 4-day mock prison riot at a former penitentiary. Police cadets and students play the role of prisoners staging an uprising (including hostage situations, hazardous materials spills, cell extractions, large-scale disturbances in the yard, possession of homemade weapons, and escape attempts) to provide realistic scenarios. The event shows administrators the vulnerability of their facilities and assesses such equipment as communication systems and drug detection devices.²⁸

In addition, several major elements can come into play concerning hostage behavior and survival that jail and prison personnel need to learn in preparation for possibly being taken hostage. It can be imprudent and even dangerous for jail or prison hostages to act out or attempt to escape, overpower, or negotiate with the inmates because such actions can work against their best interest. For example, engaging in verbal confrontation with inmates or insulting or demeaning them proves counterproductive. After

all, the main goal is survival. To do so, hostages should accept the situation; be patient; try to avoid becoming discouraged; cooperate with their captors and comply with their reasonable demands; avoid making suggestions to them (these could backfire); and observe what is happening, such as identifying the hostage takers and their weapons to help investigators later. They also should attempt to avoid being blindfolded. Because eye contact is personal, blindfolding depersonalizes hostages and, thus, increases the chance of harm.²⁹

Warning Signs

Warning signs of an impending riot often exist. These can include rumors, prison tension, an increase in disciplinary hearings, suggestions by inmates that personnel should take vacation or sick leave, and a rise in employee turnover. Inmates may stock up on nonperishable items in the commissary, band together to an unusually high degree, play loud music, request transfers to a different cell block, attend programs in greater numbers (as a means of banding together to plan a disturbance or to gather equipment or supplies), and make overt threats of hostage taking. Administrators should take these occurrences, especially in tandem, seriously.³⁰ By free-world standards, the

circumstances that ignite such incidents often prove minor and could involve discontent over laundry service,³¹ an argument in the prison yard,³² or even a refusal to have tuberculosis vaccinations.³³

If a riot appears imminent, administrative action includes a lockdown of the unit or the entire prison, transfer of suspected instigators to a segregated unit or another facility, cancellation of activities that give inmates opportunities to congregate, and

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an increased presence of correctional officers. Diplomatic efforts that personnel could take involve convincing prisoners that a riot would prove costly to them personally.³⁴

Most important, administrators must remember that events can go awry quickly. Time's passing is not altogether an ally and can make negotiating a peaceful resolution much

harder. While the greatest challenge in an early use of force is assembling the necessary personnel and equipment with sufficient speed, responding too quickly can increase the risk of being overrun and taken hostage.³⁵

TACTICAL CONSIDERATIONS

More has probably been written about tactics, particularly negotiation and the use of force, than any other aspect of hostage situations. Certainly, the U.S. Supreme Court has given legal support to officials in making a good-faith effort to restore prison security,³⁶ but such decisions must be made with extreme care. The two basic options for bringing about the resolution of hostage incidents include talking (the negotiation approach) and forcibly quelling the problem (the tactical response). In the case of a riot, another recourse is to allow the situation to die of its own accord (waiting and talking it out).

Response Teams

As with state prisons and local jails, the federal government has escalated its readiness for addressing critical incidents. Such tragic occurrences proved the need to unite federal crisis management resources under one umbrella. Therefore, the FBI formed the Critical Incident

Response Group (CIRG) to integrate tactical and investigative resources and expertise. As such, CIRG can deploy investigative specialists to respond to terrorist activities, hostage takings, child abductions, and other high-risk repetitive violent crimes.³⁷

The level of command during a prison or jail riot depends on knowledge of the facility; effects on the chain of command; and breadth of experience, responsibility, and communications. So, in state prison or jail settings, with numerous layers of personnel involved, who should take command in a riot? Several options exist.

- Some agencies feel that the organization's chief executive has greater overall knowledge of the facility. However, if that individual is new, someone who has spent more time there may handle it better.
- Others think that because of their experience across a range of situations, central office administrators may have a more developed understanding of resolution strategies and insight into the effects of disturbances on the department of corrections as a whole.
- In state-level cases, some believe that because the state commissioner of corrections bears ultimate responsibility for the outcome,

decision-making authority should reside there. By contrast, in decentralized departments in which wardens have greater latitude, it may prove more advantageous for them to remain in command.³⁸



At the onset of any hostage situation, a command post should be established in a quiet area between the inner and outer perimeters established by the tactical team. As a common practice in both jails and prisons, the on-scene commander (OSC), along with three primary advisors, will direct all activities from this site. The second in command, as one of the advisors, will supervise interaction with the media, legal representatives, public officials, and other entities. Another advisor, the negotiation team leader, will brief the OSC on the negotiation process, intelligence gathered, and the hostage takers' current mental status or information obtained from

others, such as a psychological consultant. This team also formulates tactics used to defuse an incident. As the third advisor, the SWAT team leader will inform the OSC about the position and readiness of the team and the feasibility and likelihood of success for various assault options. Then, the OSC should inform the negotiation team leader of any planned action so the primary negotiator can provide a cover story to the hostage takers and maintain their trust.³⁹

In a jail setting, administrators often can benefit from having additional individuals on hand. These can include a security deputy to monitor access to the command center, medical personnel, and maintenance employees who know the facility's utilities and overall infrastructure.

Force Options

An assault of the location can pose significant risk to the hostages, tactical team, and captors. Hostage takers can fashion and use a variety of weapons, including office furniture, bed frames, chains, glass, razors, scissors, computer cables, homemade knives, extension cords, belts, pens, and dumbbells.⁴⁰ They also can set fires with bed sheets, smash windows, break water and other utility lines, and generally wreak havoc with the physical plant.

So, what options do tactical teams have? Particularly when hostages have been harmed and are in serious danger, they may consider using sniper fire. However, captors have been known to switch clothes with hostages, and the incorrect person could be shot. Employing chemical agents may force hostage takers out of the area but may not reliably produce the desired effect and could possibly harm the hostages. The choice of chemical agent is important because some will linger and, thus, delay repopulating the facility. Another option is to contain and negotiate. This process has proven successful, especially when communication has been isolated and captors speak only with the negotiator. Notably, when they are allowed to speak with friends, family, media, and others, the situation has the potential to regress quickly.⁴¹

The essence of the tactical assault is to maximize the element of surprise, preceded by a continuous effort to gather intelligence. If possible, the team should conduct rehearsals that accurately simulate the planned mission. The actual assault should occur when a maximum opportunity of success exists (e.g., in the predawn hours when the inmates are asleep or more subdued) and executed with great speed and without issuing warnings or ultimatums.⁴²

Even with such efforts, however, tactical teams face an enormous challenge: the basic architecture of the building is designed to keep people in, which also keeps them out. Therefore, breaching doors, windows, or walls inside a jail or prison certainly can prove difficult. But, tactical teams will be worthless if they cannot get in the door. So, teams should have a trained, properly

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Mental readiness can be achieved only through field practice and instruction.

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equipped breacher to successfully operate in low light, from a rappel line, through brick walls and steel doors, and in many other venues.

Although it is almost impossible to plan a specific response to each potential crisis situation, managers can determine how to access all areas of an institution in an emergency. Preplanned breach points and means of entry will provide a greater opportunity for a safe and successful resolution of an incident. Prestablished breach points

and means of entry should include—

- a staging area for tactical teams not visible to inmates, media representatives, or the public;
- a plan for the approach that conceals a team and allows it to reach the objective quickly;
- preparation for entry, including a primary and secondary point of entry into all buildings;
- knowledge of physical hardware at entry points (blueprints should identify all tunnels, hatches, doors, windows, and locking devices), as well as tensile strength of each access point; and
- identification of entry method, whether from key rings, cutting tools, torches, saws, or explosives.⁴³

Depending on the situation, breaching methods can include manual tools for prying, breaking, or forcing open doors and windows; mechanical tools powered by hydraulics or electricity; ballistics, such as a shotgun with special mass projectile ammunition to breach door locks or introduce chemical agents; thermal and exothermal equipment for cutting through steel or metal doors and locks; and explosives. All have advantages and disadvantages and obviously require a high

degree of training for properly selecting and using them.

Negotiation Approach

The goals of hostage negotiation include opening communication lines, reducing stress and tension, building rapport, obtaining intelligence, stalling for time, allowing hostage takers to express emotion and ventilate, and establishing a problem-solving atmosphere.⁴⁴ As an aid to negotiators, jail and prison records can provide valuable information on the hostage taker, including prior criminal, educational, work, psychological, and family histories. Similar information exists on the hostage, whether an inmate or employee.

Studies of hostage negotiations indicate that they tend to follow a common cycle. However, it is imperative to note that in a mob or riot situation, negotiations should not begin until the situation has stabilized. Negotiating with a rioter is impossible.⁴⁵ At the outset of the process, both parties will make exaggerated demands, followed by a period of withdrawal and then a return to negotiations with more moderate stipulations.

The Negotiator

Is it better to have a primary negotiator from within the facility where the hostage incident is occurring or use one from

outside? Both approaches have advantages and disadvantages. An in-house negotiator may know the inmates involved and, in turn, have better insights into their personalities, makeups, and motivations. This negotiator also may have previously established a relationship of trust and rapport with them prior to the incident. Furthermore, an in-house negotiator will know the layout of the facility and, perhaps, can better anticipate certain movements



of the prisoners. Conversely, an in-house negotiator may have a negative relationship with these inmates, hold strong emotional feelings regarding the hostages, and need to continue working in the facility after the termination of the incident, regardless of the outcome. The best course of action may be to use a combination of both types of negotiators: an outside negotiator might perform the primary duties,

whereas the in-house one may represent the coaching or sideline aspect of the team.⁴⁶

The Wait

The passage of time can become an important ally and represents a major element of the negotiator's role. Often, the preferred strategy for negotiating is to wait it out. The advantages include hostage takers possibly developing sympathy for their hostages, building rapport with negotiators, or simply tiring of the situation.⁴⁷ Additionally, Stockholm syndrome (the development of a positive emotional bond between hostages and their captors) can occur, resulting in hostages being well cared for. If this condition is not present, however, employee and inmate hostages can face great danger, and most negotiating efforts will focus on keeping them alive.⁴⁸ In fact, placing hoods over the hostages' faces, as done during the Attica riots, can neutralize any positive benefits possibly gained from the Stockholm syndrome.⁴⁹

Deciding how long to wait proves difficult because every incident is different. Generally, negotiations may continue if no one is injured and if no major damage or destruction to the facility has occurred. The incident commander—perhaps in consultation with the negotiator and tactical team leader—ultimately determines when and whether to

cease negotiations and initiate a tactical response. Certainly, stalling involves the need to use professionally trained negotiators who can actively listen, pay close attention to what is said, and directly motivate and convince inmates to end the incident more quickly.

The Demands

Several demands by hostage takers—allowing release or escape, weapons, an exchange of hostages, and pardon or parole—are nonnegotiable. But, a number of others are open to discussion. “Always get something for something” is a maxim of the negotiation process. Negotiators should not cede to a demand without obtaining a concession in return⁵⁰ nor engage in trickery, such as trying to drug the captors’ food or drink (it might backfire) or have face-to-face contact (unless, as in rare instances, it is felt to be advantageous).⁵¹

In any case, negotiators must show extraordinary patience and even ingenuity. For example, employing such tactics as helicopter overflights to put pressure on the hostage takers and depriving them of water, heat, and food have proven successful.⁵² While each situation is different, negotiators generally must avoid coddling the captors and, instead, keep pressure on them to effect a peaceful resolution, make it clear that nothing

will be free, frequently induce or require them to permit periodic welfare checks of hostages, remain totally professional, and emphasize the significant legal consequences that will result from their conduct during the incident. Negotiators should keep them focused on positive elements, always emphasizing the desirability of a peaceful solution and the certainty of the prison administration’s honoring its promises.⁵³

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The Deadlock

When negotiations deadlock, the incident commander may decide to employ ultimatums regarding either the use of force or specific issues. A use-of-force ultimatum stems from the expectation that captors, given a clear choice between surrender and an armed assault, will choose surrender. A problem relating to this ultimatum concerns how to handle the transition from negotiation to force. Should commanders

alert negotiators? Many experts say no because the negotiators might inadvertently reveal the plan. Others feel that advantages exist. For example, the negotiators might be able to distract the hostage takers at the outset of the assault, provide reassurances that would lower their defenses, or position them for a sniper attack.⁵⁴

Issues ultimatums involve the principle that once inmates are told that some or all of their demands will not be met, they will stop making these and focus on matters that can be negotiated. Negotiators generally discourage this type of ultimatum and try to avoid ever telling the hostage taker no. Instead, they try to fashion demands that can be met or pose no immediate threat.⁵⁵

Captors may see their hostages as human shields and “chips” to be traded for publicity, amnesty, improved conditions, or other benefits. The facility administrator through the negotiator may respond to the demands with counterdemands. The resolution comes when the right bargain is struck (e.g., release of hostages in return for a new and improved review process and a promise to meet with the jail commander or warden).⁵⁶

The Surrender

Before surrendering, hostage takers may want a

formalized ceremony in which documents, stipulating their demands and ensuring that they will not be injured or killed during the surrender stage, are signed. They also may want the media and outsiders to witness this ritual.⁵⁷ Other than the opening moments of a hostage situation, probably no more dangerous period exists than the surrender phase. Authorities must immediately consider the order and manner in which to recover hostages, weapons, and captors. Also, for many reasons, hostage takers may change their minds midstream and have a hidden agenda (e.g., to be killed in a shootout or to kill the hostages). Therefore, if possible, the ideal order of recovery during surrender is hostages, weapons, and perpetrators.⁵⁸

INCIDENT AFTERMATH

Following the resolution of a hostage situation, administrators then face three important areas of concern. First, they should conduct a critical incident debriefing. Second, they must oversee the recovery of the facility. Third, they need to ensure that the hostages receive appropriate treatment for any physical or psychological injuries.

Debriefing Process

A critical incident debriefing is a formal, fact-based procedure. As such, it is important to

gather information as soon as possible from released hostages, their captors, and witnesses to better understand how the event happened, how the response can be improved in the future, and what can be done to prevent such an incident from occurring in the first place.



Debriefers have an advantage in planning their strategy because they should know the layout of the jail or prison, the number of persons involved, and the background of the perpetrators and hostages. Generally, debriefers will want to know such information as the identities of all perpetrators, the crimes they committed, the weapons they used and how they obtained them, and who the leader was.⁵⁹

Also of utmost importance, debriefers should find out whether any factors contributed to the situation. These could include inadequate searches, contractors and visitors coming

and going, inmate familiarity with work routines, unlocked doors or gates, facility access points, inmate movements, cameras (or lack thereof), communication systems, employee training (including self-defense tactics), inmate classification, and general personnel complacency or morale. If any of these existed, managers must enact new policies and procedures that cover such exigencies.

Facility Recovery

Administrators also must address property recovery in the aftermath of the incident. While potential renovations, repairs, and remodeling often are a costly result of such incidents, maintaining control of the inmates requires prompt attention to these endeavors.

In addition, administrators should place a suicide watch on the hostage takers immediately after the incident. Perpetrators have been known to commit suicide in the midst of the very agency charged with protecting them against themselves.⁶⁰

Returning the facility to normal operations at the conclusion of a disturbance also represents a major priority. Various issues require attention in the aftermath.

- Short-term responsibilities include searching for contraband, securing and counting inmates, assessing damages, providing medical care to

hostages and inmates, and collecting evidence for future prosecutions.

- Medium-range efforts involve providing continued support and counseling to employees in coping with their experiences, repairing damage to facilities, normalizing institutional operations, and undertaking a thorough investigation of the causes of the crisis. A report may be commissioned to determine how the incident occurred.
- Long-term solutions include developing policy reflecting what was learned from the disturbance, discovering better ways to forecast and prevent problems, improving the flow of information, enhancing relationships with other agencies, boosting morale, and meeting challenges.⁶¹

Hostage Treatment

It is well known that prison and jail personnel who have been taken hostage often suffer considerable psychological trauma during and after the event. A study of 14 correctional officers taken hostage during the 1980 Santa Fe, New Mexico, prison riot found that the guards suffered extreme helplessness, fear, and sensory overload. All had decided that they were going to die as they listened to the torture deaths

of other victims around them. Obviously, no amount of preparation could adequately prepare them to anticipate what being a hostage in this situation would be like.⁶²

Furthermore, when employees are taken hostage, they are not only stripped of individual control but of an authority role as well. Because that authority often represents the strongest weapon they can use, its loss, even temporarily, may seriously

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affect their perceived and real future job performance. Many have not successfully returned to work due to feeling that once they have lost face with the inmates, they never can gain it back. Another consideration with former hostages may involve their general personality. For instance, they often have a need to deny even the hint of psychological difficulties. This tendency to maintain a strong appearance of control also may negatively affect their

amenability to preliminary training in hostage response techniques, as well as their treatment following an incident.

Counseling of former hostages is compounded by the fact that correctional officers work in an environment in which they must constantly be concerned about becoming a hostage, having the administration's support if it happens, and even the possibility of being sexually attacked during such an incident.⁶³ Therefore, they may identify with the tough, heterosexual image that, in turn, may hinder counseling afterward. Therefore, counselors must understand these facets of the working personality of officers to validate their feelings, assure them that they are not alone, and disabuse themselves of the idea that receiving counseling is a sign of weakness. Their agencies and families also must provide strong support to them following a hostage event. Special intervention teams should interact with hostage victims after their release and before they reenter their normal world to foster the development of a supportive internal social network, to act as gatekeepers between the victims and others to help control the potentially intrusive impact of media and authorities, and to educate the victims and their families with respect to the psychological consequences of their hostage experience.

CONCLUSION

Riots and hostage incidents in jails and prisons, such as those described at the beginning of this article, pose a real and present danger. Even a minor event can trigger such an episode, so personnel must be attuned to inmate climate and unrest.

When faced with such a situation, administrators must be prepared to respond. Proactive strategies can significantly reduce the potential for major crises. It is critical to have a coordinated plan to address the incident.⁶⁴ The manner in which prison and jail administrators prepare for and handle this type of crisis not only can make a difference between a small disturbance and a full-fledged riot but even can determine whether someone lives or dies. ♦

Endnotes

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Clarification

The author of the focus article “Jesus Malverde’s Significance to Mexican Drug Traffickers,” which appeared in the August 2008 issue, intended to thank retired El Paso, Texas, Police Department Deputy Chief Robert Almonte, who currently trains police officers throughout the country regarding drug traffickers and the spiritual world. He inspired the author to write the article and contributed the photographs used to further illustrate the topic’s importance to officer safety.

Leadership Excellence and Achievement

As a way to help individuals advance into senior executive positions, the U.S. Department of Justice (DOJ) offers the Leadership Excellence and Achievement Program (LEAP), a 12-month, part-time initiative. As program manager for the University Education Program component of the FBI's Leadership Development Unit, I attended the 2007 LEAP training. Required instructional and developmental activities consisted of preparing an individual development plan; receiving mentoring and coaching, as well as assessments and feedback; participating in residential and shadowing training; and completing reading assignments.

Following the conclusion of the LEAP curriculum, I have reflected on the leadership proficiencies and knowledge that it provided. I have become aware that proper leadership necessitates the fostering of trust, communication, honesty, competency, inspiration, and dedication to both the mission of an organization and its people.

The LEAP training demonstrated how leaders ought to be adaptable, flexible, self-confident, socially responsible, and stress tolerant. They should think and act realistically, rationally, and globally, seeking to continually promote and build coalitions through relationship facilitation.

Through LEAP, I discovered the important distinction between managing and leading. Soon after returning to work, one of my

employees noticed something different about me. I recognized that this change related to my new leadership method. I had gone from an almost micromanaging mode into a coaching style of leadership. This new approach has energized me and my staff and has given them more opportunities to challenge their own skills to solve issues and problems before seeking my intervention.

To continue my leadership growth and development, I shall adhere to the numerous principles learned from my LEAP experience

and work on becoming a better supervisor, manager, and leader by seeking increased feedback from my

GROWTH

employees. Clearly stating my expectations to my staff and becoming a mentor and coach, instead of a micromanager, should help achieve the desired results. I plan on creating a vision statement that contains a list of measurable objectives and repeatedly seeking feedback from my employees on how my actions affect their performance. These efforts demonstrate the importance of attending effective training programs, such as LEAP, and remaining open to self-improvement methods that can help all of us become better leaders.

Ms. Lisa George, a program manager in the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

Crime Statistics for 2007

Statistics released by the FBI's Uniform Crime Reporting Program (UCR) showed that the estimated volume of violent crime declined 0.7 percent, and the estimated volume of property crime decreased 1.4 percent in 2007 when compared with 2006 figures. The estimated rate of violent crime was 466.9 occurrences per 100,000 inhabitants (a 1.4 percent decrease from the 2006 rate), and the estimated rate of property crime was 3,263.5 for each 100,000 in population (a 2.1 percent decline).

The FBI presented these data in the 2007 edition of *Crime in the United States*, a statistical compilation of offense and arrest information as reported by law enforcement agencies throughout the nation. In 2007, more than 17,700 city, county, college and university, state, tribal, and federal law enforcement organizations, representing 94.6 percent of the nation's population, voluntarily participated in the UCR Program.

Offense Statistics

All four of the violent crime offense categories declined nationwide in 2007 compared with data from 2006. The estimated number of forcible rapes decreased 2.5 percent. Murders and nonnegligent manslaughters fell 0.6 percent, as did aggravated assaults. Robberies dropped 0.5 percent.

An estimated 9,843,481 property crimes, excluding arson, were reported nationwide in 2007, and each declined for the year. Motor vehicle thefts decreased 8.1 percent, larceny-thefts dropped 0.6 percent, and burglaries

fell 0.2 percent. In 2007, victims of property crimes, excluding arson, collectively lost an estimated \$17.6 million. Although the FBI classifies arson as a property crime, it does not estimate arson data because of variations in participation at the agency level. Consequently, arson is not included in the estimated property crime total.

Arrest Data

The FBI estimated that law enforcement agencies nationwide made 14,209,365 arrests in 2007, excluding those for traffic offenses. The arrest rate for violent crime was 200.2 arrests per 100,000 inhabitants. The rate of arrests for murder and nonnegligent manslaughter in 2007 was 4.5 per 100,000 in population. For forcible rape, it was 7.7; for robbery, 42.9; and for aggravated assault, 145.1.

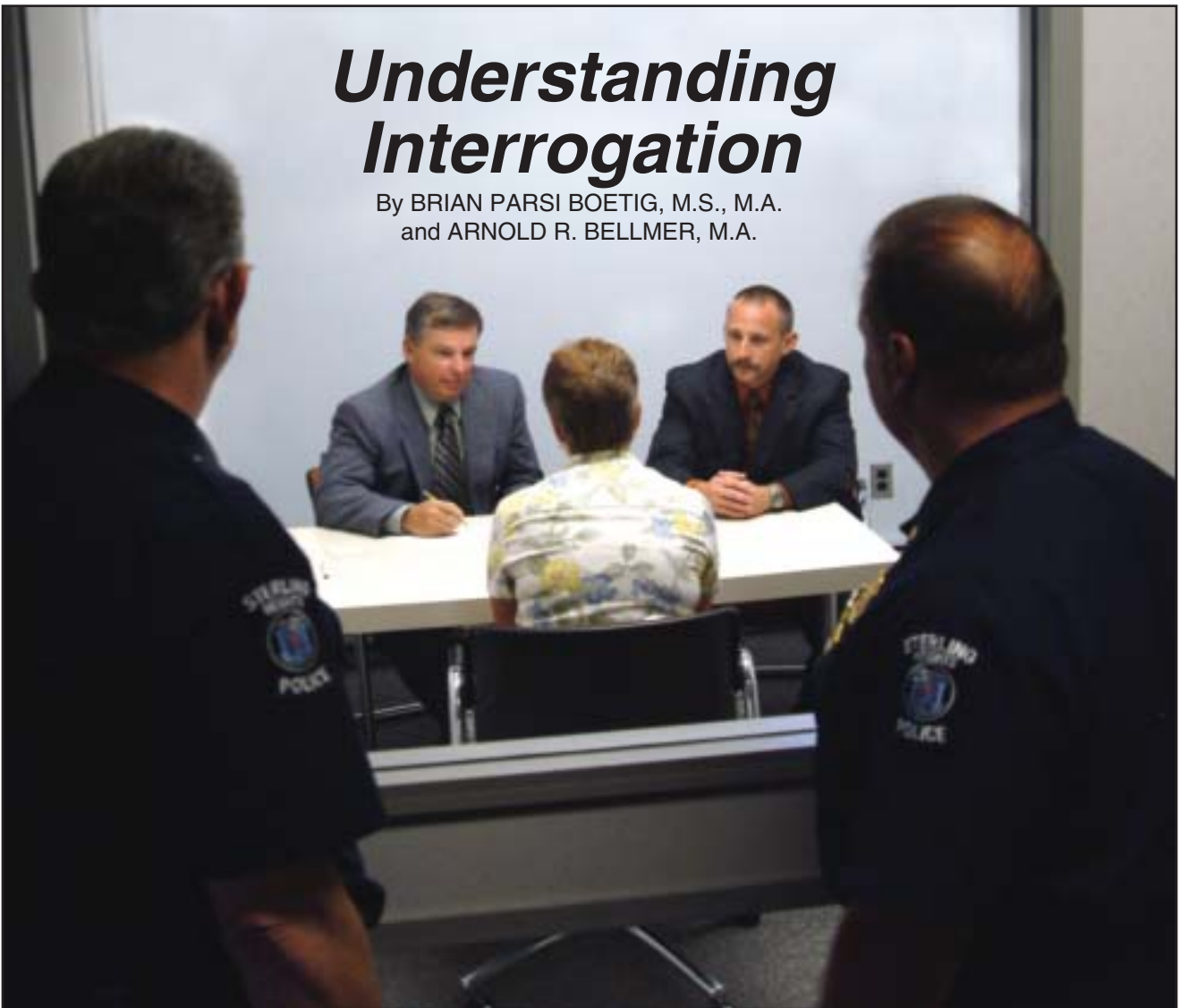
For property crime, the rate was 544.1 arrests per 100,000 inhabitants. Law enforcement agencies made 101.5 arrests for burglary for each 100,000 in population, 398.0 for larceny-theft, 39.5 for motor vehicle theft, and 5.1 for arson.

Other Information

In addition to offense and arrest data, *Crime in the United States, 2007* contains information regarding the staffing levels of more than 14,600 city, county, state, college and university, and tribal law enforcement agencies as of October 31, 2007. These organizations collectively employed 699,850 sworn personnel and 318,104 civilians, a rate of 3.6 employees for each 1,000 inhabitants. ♦

Understanding Interrogation

By BRIAN PARSI BOETIG, M.S., M.A.
and ARNOLD R. BELLMER, M.A.



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Leaders of law enforcement agencies regularly interact with the media, establish various policies and regulations, and often are required to discuss or justify real-life police practices. To this end, defining and understanding the term *interrogation* has become important to the profession for several reasons.¹

Various Perspectives

The mention of interrogation often generates images of torture or unpleasant conditions, despite the fact that these depictions do not represent the overwhelming majority of current police interrogations. When officers testify in court and mention interrogation, jurors and other fact finders often associate

the word with harsh and illegal police behaviors, even though it is highly unlikely that such actions actually occurred.

Additionally, interrogation has distinctive meanings in different settings. Although contemporary law enforcement usage of the word implies an interaction between officers and suspects, it also can include

victims and witnesses reluctant to be forthcoming with information. The term *interview* generally is associated with victims, so the phrase *interrogate a victim* may sound objectionable but prove completely appropriate if applying a dictionary-derived definition.

Finally, the ambiguity between the two words can cause confusion, which law enforcement administrators may find advantageous. For example, during a police department's media conference, officers might mention that they conducted an investigative interview with the husband in a high-profile murder case. Using a description often associated with victims, witnesses, and suspects could reduce speculation that they consider the

husband a suspect. The word *interrogation* likely would result in the follow-up question, Did he confess? At this point in the investigation, the chief may not want to reveal either the presence or absence of a confession or whether the department suspects the husband of any wrongdoing.

Multiple Interpretations

Understanding interrogation can be problematic because more than one entity refers to the word (e.g., popular culture, lexical, criminal justice, legal, and international bodies). Real and fictional events viewed by the general public create the popular-culture interpretation and may evoke negative images of law enforcement or military personnel as hard,

unpleasant, remorseless, or unkind to another person (e.g., the representation of a bright light shining into a suspect's eyes while the interrogator towers above in an otherwise dark room or the use of military police dogs terrorizing prisoners prior to an interrogative encounter). Interrogators often are portrayed flaunting large firearms in fully exposed shoulder holsters and degrading or undermining suspects' dignity by employing psychological stress, physical exhaustion, or torture. An accurate depiction of a real-life interrogation does not involve these theatrical images.

A logical step in defining words begins with the exploration of their lexical properties. Interrogation is derived from the Latin roots *inter* (in the presence of) and *rogre* (to ask) and simply means to question formally and systematically.² There are no nefarious connotations, elements of torture, or illegal activities associated with the action of interrogation. In fact, officers could correctly report that they have interrogated a victim, although the word *interviewed* is more popularly accepted.

In the U.S. criminal justice community, the prevalent use of the term *interview* typically is associated with compliant, nonproblematic victims, witnesses, complainants, and even suspects, while the word



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interrogation usually relates to suspects who are noncompliant and problematic, generally meaning deceitful or hostile. Law enforcement training often is divided into an interview section and an interrogation one simply to differentiate between conducting interviews with compliant persons and handling interrogations with those reluctant to divulge information.

In many countries, as well as some places in the United States, the various components of the criminal justice system have begun to use the term *investigative interview* in lieu of either *interview* or *interrogation*. This phrase refers to any police-citizen encounter in which officers obtain information, regardless of levels of cooperation, resistance, or intent.

Interrogation also has a legal definition valuable to understanding, interpreting, and applying case law in the United States: "In criminal law, a process of questions propounded by police to a person arrested or suspected to seek solution of crime. Such person is entitled to be informed of his rights, including the right to have counsel present, and the consequences of his answers. If the police fail or neglect to give these warnings, the questions and answers are not admissible in evidence at the trial or hearing of the arrested person."³ From a legal perspective, interrogation

is questioning, or the functional equivalent, likely to produce incriminating statements. It would be inappropriate for any law enforcement officer to selectively use the popular culture, lexical, criminal justice community, or legal definition simply to thwart legal thresholds or requirements. For example, officers should not suggest that they were not required to provide a suspect in custody with *Miranda* warnings because they were conducting an interview, rather than an interrogation,

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Understanding interrogation can be problematic because more than one entity refers to the word....

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where the dialogue represented more of a conversation in which facts were elicited than a formal examination through questioning. This idiomatic tactic undermines the legal definition of the word. In fact, the courts have defined *custodial interrogation* as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom

in any significant way.”⁴ Interrogation is not only related to direct questioning intended to produce incriminating statements but also to the functional equivalent of direct questioning, words, or actions by officers who should know that they are likely to elicit an incriminating response from a suspect.⁵ *Investigatory interrogation* is legally defined as “questioning by police in a manner that has not reached an accusatory stage and where such persons are not in legal custody or deprived of their freedom in any significant way.”⁶ Investigatory interrogations fall outside the scope of the *Miranda* decision.

On an international basis, the words *interview* and *interrogation* are not universally applicable, which may cause confusion. In some countries, other terminology often is used. For example, in France, the functional equivalent of a U.S. witness interview is referred to as the taking of testimony, whereas in the United States, testimony generally is associated with oral statements given during judicial proceedings. In France, an interview denotes encounters with the media, not law enforcement. U.S. officers seeking the assistance of foreign agencies can find themselves in a quandary when communicating their requests and not understanding the regional application of the two words.

Law Enforcement Online

Law Enforcement Online (LEO) is an FBI certified and accredited controlled-access communications and information sharing data repository for law enforcement personnel, first responders, criminal justice professionals, and antiterrorism and intelligence agencies around the globe. It operates 7 days a week, 24 hours a day online (real-time). LEO catalyzes and strengthens collaboration and information sharing by providing access to sensitive but unclassified information and various state-of-the-art communications services and tools. It is available to vetted users anywhere in the world and is offered free of charge to members. LEO provides a communications mechanism to link all levels of law enforcement, supporting broad, immediate dissemination of information concerning the best technologies and practices in law enforcement.

LEO was created in 1995 as a small dial-up service with just 20 members. Today, it has more than 100,000 members across the world and supports a host of features and capabilities offered through a virtual private network on the Internet. LEO offers various tools to the campus public safety community.

- a national alert system providing members with up-to-the-minute information concerning emergency situations;
- over 540 special interest groups (SIG) that allow members who share expertise or interests to connect with each other, including sections on terrorism, International Association of Campus Law Enforcement (IACLEA), and campus public safety;

- access to important and useful databases, such as those managed by the National Center for Missing and Exploited Children, the Violent Criminal Apprehension Program, and the Bomb Data Center;
- secure e-mail services, which enable members to submit fingerprints to the FBI for processing by their Integrated Automated Fingerprint Identification System;
- virtual command center (VCC)—a real-time information-sharing and crisis-management tool that allows the law enforcement community to use LEO at local and remote sites as an electronic command center to submit and view information and intelligence;
- distance learning with several online learning modules on numerous topics, including terrorism response, forensic anthropology, and leadership; and
- a multimedia library of publications, documents, studies, research, technical bulletins, and other reports of interest to LEO users.

Members of law enforcement, criminal justice, or public safety communities are eligible for LEO membership. For more information on LEO, please call 304-625-5555 or send an e-mail to leoprogramoffice@leo.gov.

Special Agent Lesley G. Koestner, who serves with the FBI's Law Enforcement Online Unit, Criminal Justice Information Services Division, prepared this Technology Update.

Abandoning Places

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



Abandonment is defined in Black’s Law Dictionary as “[t]he surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right title, claim and possession, with the intention of not reclaiming it.”¹ Abandonment issues commonly arise² in search and seizure situations involving trash,³ vehicles,⁴ locations, and items. A prior *FBI Law Enforcement Bulletin* article titled, “Abandonment of Items

Associated with the Person”⁵ focused on abandonment of items. This article examines the legal issues associated with the abandonment of locations, such as homes,⁶ apartments,⁷ hotel rooms,⁸ and storage lockers.⁹ It also addresses the Fourth Amendment concept of a reasonable expectation of privacy and the issues of disclaimer of association with a particular location and the physical relinquishment of a location.

REASONABLE EXPECTATION OF PRIVACY

The Fourth Amendment to the Constitution provides 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....”¹⁰ The U.S. Supreme Court has stated, “[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.”¹¹

When an individual abandons a location, the individual’s Fourth Amendment rights and protections in relation to that location no longer exist.¹² The Fourth Amendment protections cease to exist because the person has given up his reasonable expectation of privacy in the location.¹³ This is important because if an individual has no reasonable expectation of privacy in the location, then an intrusion by the police into that location is not a search under the Fourth Amendment.¹⁴

The burden rests on the government to prove that the location was abandoned and, therefore, an individual had no reasonable expectation of privacy in the area.¹⁵ As courts have noted, “the critical inquiry is ‘whether the person prejudiced by the search...voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.’”¹⁶

To demonstrate that an individual had no reasonable expectation of privacy in an abandoned location, courts will look to the intent of the

individual “which may be inferred from acts, words and ‘other objective facts.’”¹⁷ In undertaking this analysis, courts will look to the totality of the circumstances and, particularly, to the words and acts of the individual regarding the abandonment.¹⁸ As in abandonment situations regarding the abandonment of items of property associated with the person, location abandonment situations involve close examination of the two primary issues of disclaimers and the physical relinquishment of a location.¹⁹

DISCLAIMERS

An individual’s statement that he does not own or has not rented a particular location can provide strong evidence of abandonment. Such disclaimers may be written, verbal, or nonverbal in nature. Because

the government has the burden of proving that an individual disclaimed a particular location, law enforcement officers should be very clear regarding the exact location they asked about and exactly how the individual disclaimed or denied association with the location.

In abandonment of location cases, a person may abandon the actual location or both the location and the items within it. The U.S. Court of Appeals for the Eighth Circuit decision *United States v. Caballero-Chavez*²⁰ involved assessment of disclaimers and abandonment of both a location and specific items. In *Caballero-Chavez*, the defendants hired a 70-year-old woman to transport seven kilograms of cocaine from El Paso, Texas, to Omaha, Nebraska. In Omaha, the woman rented rooms 123 and 222 under her

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When an individual abandons a location, the individual’s Fourth Amendment rights and protections in relation to that location no longer exist.

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

name. The defendants arrived at the hotel and paid the woman. She then gave them the keys to the car she had driven and the key to room 222.

The next day, officers working on a large drug investigation learned from an intercepted call that a Hispanic man staying in room 222 of the hotel would be involved in a drug delivery at 8:00 that evening. When the officers went to the hotel to investigate, they received information that a woman had rented rooms 123 and 222. The officers then watched both rooms. They saw two Hispanic males through the window to room 222 but observed no other activity at either room. The officers later observed two Hispanic males leaving the hotel in the car that the woman had driven, but the officers had not seen anyone leave room 222. The two males in the car returned to the hotel about 35 minutes later and went to the hotel restaurant.

A short time later, the officers decided to contact the occupants of rooms 123 and 222. At room 222, no one responded. At room 123, the officers identified themselves to the woman and obtained consent to search both rooms 123 and 222. The officers found a large roll of cash in room 123 and 7 kilograms of cocaine in the unoccupied room 222. At the hotel restaurant, the officers spoke to the two Hispanic males

they had seen earlier in the car. The men denied that they were guests at the hotel and said that they were at the hotel to meet a woman named Maria. The men agreed to show the officers Maria's room at the hotel. On the way to room 123 they agreed to follow the officers to room 222. Outside of room 222 the men "denied that room 222 was theirs, denied they had ever been in the room, and said they did not care whether the officers

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searched the room because it was not their room.”²¹ The men also denied ownership of the bags in the room, including the bag in which the cocaine was hidden.

The court examined the totality of the circumstances surrounding the abandonment and took particular note of “two factors: whether the suspect denied ownership of

the property and whether he physically relinquished the property.”²² The court affirmed the trial court's denial of the defendants' motion to suppress, holding that the defendants had abandoned any interest in room 222 because of their repeated denials that the room was theirs, that they had ever been in the room, and that anything in the room was theirs. The court also concluded that the abandonment was voluntary and untainted by the initial search of the room and duffle bag based upon the earlier consent from the renter of room 222.²³

PHYSICAL RELINQUISHMENT

Courts have frequently stated that the Fourth Amendment analysis within the context of abandonment cases is not driven by property law rules.²⁴ However, the status of any lease or rental agreement associated with the location is important because, as noted by the U.S. Court of Appeals for the Second Circuit in *United States v. Parizo*,²⁵ “[p]reliminary to the inquiry into intentional abandonment by the defendant, it must be shown that the defendant had sufficient control over the premises to establish a right to privacy therein.”²⁶

The U.S. Supreme Court has ruled that under ordinary circumstances, a landlord may not consent to a search of a tenant's

property.²⁷ The Court also has specifically held that hotel employees do not have the authority to consent to police searches of hotel rooms.²⁸ The general rule in cases involving hotel rooms is that after the room rental period has expired, the hotel guest no longer has a reasonable expectation of privacy in the room.²⁹ After the rental period, hotel personnel have the authority to give consent to search the room or items within or that have been taken from the room.³⁰

In *United States v. Croft*,³¹ the defendant rented a room at a motel on July 8 for 2 days. On July 10, shortly after the noon checkout time, the owner of the motel allowed the local county attorney and county sheriff to search the room the defendant had rented. The lower court did not suppress the evidence discovered during the warrantless search of the room. The U.S. Court of Appeals for the Tenth Circuit found that “after the rental period expires a guest has no right of privacy, there can be no invasion thereof.”³²

At first glance, the general rule as stated above appears to be simple to understand and easy to apply. However, there are nuanced issues that frequently arise in abandonment of location cases that officers need to know, including whether a lease or rental agreement

has expired, an abandonment occurred before the expiration of a lease or rental agreement, and, if the subject has been arrested.

Lease Expiration

In cases involving the expiration of leases or rental agreements, the nature of the property involved,³³ the lease terms,³⁴ the timeliness of rent or lease payment,³⁵ the practice of a business,³⁶ the condition of the property,³⁷ the actions taken by the renter,³⁸ the actions taken by the property owner,³⁹ and any statements made in relation to



the location⁴⁰ are all important factors to consider in determining when a lease actually has expired.⁴¹ This article focuses on examples involving hotels because the most frequently litigated scenarios involve whether abandonment of a hotel room occurred.⁴² However, law enforcement officers must be aware that the issues

are different than in hotel room situations, and potentially more complex, in cases involving alleged abandonment of homes, condominiums, and apartments because an individual has a significantly higher expectation of privacy.⁴³ At least one court has held law enforcement to a higher standard of proof of abandonment because the renter’s privacy interests are greater in more permanent housing.⁴⁴

In *United States v. Parizo*,⁴⁵ a man and his companion checked into a hotel on April 22. They paid for one night at the hotel in advance in accordance with hotel policy. The desk clerk told them that checkout time was 2:00 p.m. The man subsequently mentioned to both a busboy and a maid that he would be staying at the hotel for a few days; however, neither employee told hotel management of the man’s intention to stay beyond the 2:00 p.m. checkout time. At 2:30 p.m., a maid entered the man’s room to clean, found a hidden marijuana pipe and marijuana,⁴⁶ and informed hotel management of the discovery. The manager ordered the man to be checked out of the hotel and then called the police. In the meantime, the man returned to the hotel and, upon the arrival of law enforcement, was asked to go with the police to the police station. The manager then went to the empty room and found a gun, which

the police removed without a search warrant. The U.S. Circuit Court of Appeals for the Second Circuit affirmed the trial court's decision that the defendant had no expectation of privacy in the room. The court stated

[t]he appellant had not communicated to the front desk or to the management any desire to stay beyond checkout time. The room was cleaned and readied for new occupancy. After discovery of the marijuana, the manager attempted to regain his exclusive possession of the room by checking out the appellant, by calling the police, and, subsequently, by searching the room. On the other hand, the appellant on his return to the room may have thought that his conversations with the employees were sufficient to extend his stay and that his term of occupancy had not expired.... Thus, the facts as found indicate that even if the defendant had not completely vacated the room, the motel manager had the right to enter and examine the room as if it had been relinquished.⁴⁷

In *United States v. Owens*,⁴⁸ the defendant checked into a hotel and paid \$28.45 in advance for a 1-night stay. The defendant failed to check out by the usual noon checkout time. Shortly thereafter, hotel

employees called the defendant's room to find out if he intended to extend his stay. At approximately 3:00 p.m., and apparently in response to that call, the defendant's companion deposited \$100 with the front desk as advanced payment for the room rental. There was a dispute regarding whether the defendant was being charged a weekly or daily rental rate and how phone charges were calculated. If the defendant were a weekly renter, his room would

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An individual's statement that he does not own or has not rented a particular location can provide strong evidence of abandonment.

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have been paid for through noon on September 13; however, if he were a daily renter, his room would have been paid for through noon on September 12.

On September 11, hotel personnel noticed a large number of calls to the defendant's room and advised hotel security. Shortly after noon on September 12, the defendant was arrested in the hotel parking lot for receiving stolen

property. Officers who arrested the defendant called the hotel front desk and told an employee about the arrest and that there was a second person still in the room. The hotel manager told the police that the room had been rented for one person only and that the term of paid occupancy had expired. The defendant, who was handcuffed to a railing outside of the hotel, urged the officers not to enter the room because his girlfriend was sleeping there naked. The officers entered the room, saw the girlfriend in bed; observed marijuana cigarettes, white powder, and drug paraphernalia in plain view; and found 2 ounces of cocaine in a bag in a drawer.

The officers never obtained an arrest or search warrant during their investigation. The U.S. Court of Appeals for the Tenth Circuit addressed the issue of whether the defendant had abandoned his reasonable expectation of privacy in the hotel room by staying in the room after noon on September 12. The court stated that the defendant “testified that he believed his \$100 deposit had converted his status to that of a weekly rate tenant. His vigorous attempts to persuade the police not to enter his room further demonstrated that he held a subjective expectation of privacy.”⁴⁹ The court found this expectation to be reasonable, noting that

a reasonable person in Owens' situation might well have expected a weekly rental rate in exchange for a \$128.45 advance deposit. All motel guests cannot be expected to be familiar with the detailed internal policies and bookkeeping procedures of the inns where they lodge. Even assuming that Owens was renting on a day-to-day basis, his reasonable expectation of privacy continued past check-out time for at least the short period in question here. On September 9, Owens had remained in his room past checkout time without consequence. Some time after noon, on the 9th, the Inn merely had inquired politely whether he planned to stay an extra day. Eventually, after 3:00 p.m., he had paid in advance for continued occupancy.⁵⁰

The court held that "Owens had a reasonable expectation of privacy in his hotel room and in the contents of the closed bag inside the dresser drawer. For that reason a warrant was required to justify the search, absent application of some exception to the warrant requirement."⁵¹ Officers should be aware that in another case, a court noted that "[a] guest may still have a legitimate expectation of privacy even after his rental period has

terminated if there is a pattern or practice which would make that expectation reasonable."⁵²

Physical Relinquishment Prior to Lease Expiration

Sometimes, it can be difficult to determine whether an individual has relinquished a reasonable expectation of privacy in a location. It may be hard to determine how long a lease lasts or what the practice is of the hotel, storage area, or other location. Where there is enough evidence that an individual has physically relinquished a location, some courts have found



that the location can be considered abandoned even if an existing lease or rental agreement has not yet expired at the time of the search,⁵³ while other courts have concluded the opposite.⁵⁴ Courts have considered the following factors in analyzing whether an area has been physically relinquished: the type of location in question;⁵⁵

statements made or actions taken by individuals involved with the location, including making payment;⁵⁶ observations made by individuals familiar with the location;⁵⁷ and law enforcement officer observations of the location.⁵⁸

The most notable example of the U.S. Supreme Court's analysis of the issue of abandonment is *Abel v. United States*.⁵⁹ In *Abel*, the FBI was investigating Abel's involvement in espionage. FBI agents accompanied Immigration and Naturalization Service agents when they executed an administrative deportation warrant and order to show cause on Abel at his hotel. Abel was arrested in the hotel room. He was allowed to dress and gather his belongings from the room. He then checked out of the hotel and turned in his room key. The bill the defendant paid entitled him to occupy the room until 3:00 p.m. that day. However, the hotel's practice was that once a guest turned in the key and took his luggage, the room was considered vacated. In *Abel*, FBI agents searched the defendant's vacated room without a warrant for approximately 3 hours after he had checked out. The agents found a hollowed-out pencil and a block of wood containing a "cipher pad" the defendant had put in the garbage can while packing his things. With respect to these items, the Court stated

it [the search] was entirely lawful, although undertaken without a warrant. This is so for the reason that at the time of the search petitioner had vacated the room. The hotel then had the exclusive right to its possession, and the hotel management freely gave its consent that the search be made.... There can be nothing unlawful in the Government's appropriation of such abandoned property.⁶⁰

In the U.S. Court of Appeals for the Fifth Circuit case *United States v. Hunter*,⁶¹ personnel at an airfield found a general aviation aircraft on a grassy area about 20 feet off the airport runway at approximately 7:00 a.m. The plane had a flat tire. Airport personnel went to the plane, opened the unlocked door, and found that it contained large plastic covered bales that smelled like marijuana. Law enforcement officers called to the scene at 7:30 a.m. moved the plane and found that it contained 2,081 pounds of marijuana.

At 6:00 a.m., the defendant had called for a hotel courtesy van to pick him up at a restaurant approximately 2.5 miles from the airport. The defendant told the desk clerk at the hotel that his car had broken down. The defendant, who had no luggage, checked in and paid for

a room at 6:25 a.m. He made a long distance call between 7:00 a.m. and 7:30 a.m. After paying for the phone call in cash and eating breakfast, the defendant was told that checkout time was at noon. The defendant told the desk clerk he would be out around noon. DEA agents went to the hotel that morning and spoke to the assistant manager. They asked the manager to have the housekeeper find out if the defendant was still in his room. The housekeeper knocked on the door to the room at 11:00

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...under ordinary circumstances, a landlord may not consent to a search of a tenant's property.

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a.m. After receiving no reply to the knock, the housekeeper entered the room where she found a disarrayed bed and the room key on the night stand. She also found two keys on a chain and a single key in the toilet. The agents then entered the room and seized the keys, which later were determined to fit the master lock on the airplane. They also found a fingerprint that matched the defendant's.

The court rejected the defendant's argument that he had not abandoned either the plane or the hotel room and that, therefore, the searches by law enforcement officers were unlawful. With respect to the hotel room, the court stated

[i]t also appears clear that the appellant had given up his rental interest in the motel room. He had paid his bill in full, indicated that he was departing by checkout time that day and left the motel with the room key locked inside the room. The mere fact that the room was entered prior to checkout time to ascertain whether it was occupied, and then searched, does not aid appellant's arguments.⁶²

Impact of Arrest

There are a number of reported cases involving searches of hotel rooms rented by people arrested during the course of the rental period. In these cases, the arrestee has failed to pay for the continued rental of the room because of his arrest. Some courts have found such rooms abandoned by the occupant at the end of the time through which the rent had been paid. In those cases, courts have generally found that the defendant's own actions caused the situation to arise, but that did not change

the finding that the location was abandoned.⁶³

In *United States v. Ramirez*,⁶⁴ DEA agents arrested multiple defendants who had completed a series of cocaine transactions. During the arrests, another DEA agent went to a motel where several of the defendants had been staying. The agent set up surveillance on the room registered to one of the defendants that had been rented through noon the next day. No one was seen either going in or out of the room by either the agent or hotel staff during the evening. Upon returning to the hotel on the checkout day, the agent told the hotel manager that “if the room were later determined to be abandoned, he [the agent] would like to view any personal property.”⁶⁵ When no one returned to the room and the rental period expired, the manager followed his usual procedure with an abandoned room by examining the property in the room and readying the room for new occupants. The manager notified the agent the following day about the property. The agent retrieved suitcases containing nondrug evidence in the room.

The defendant argued that the DEA agent “improperly exploited an exception to the exclusionary rule” by waiting for the rental period to expire and not getting a search warrant.⁶⁶

The court rejected the defendant’s argument and found that

[b]ecause the hotel room was abandoned, appellants had forfeited their reasonable expectation of privacy in it, and a search by the hotel manager did not trespass on appellants’ fourth amendment rights. An equally compelling refutation of appellants’ position, as will be discussed below, is that the hotel manager was not acting in the capacity of a government agent, and his independent conduct implicated no fourth amendment concerns.⁶⁷



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CONCLUSION

This article has explored Fourth Amendment issues in cases involving the abandonment of locations. To determine whether an individual has abandoned a location, courts will look at whether an

individual disclaimed any interest in or physically relinquished the location.

In cases involving the denial or disclaimer of a location, officers should carefully document the disclaimer. Because the government has the burden of proving that an abandonment occurred, officers should clarify exactly what is being disclaimed. The disclaimer should be specific and, if possible, in writing.

In cases involving physical relinquishment of a location, officers always should consider the totality of the circumstances in determining whether a location has been abandoned. Significant factors to consider could include, but are not limited to, the existence of a lease, the type of location, the practice of a lessor, statements made by the defendant, statements made by other people with knowledge of the property, and the condition of the location.

When individuals abandon a location, the protections afforded by the Fourth Amendment no longer apply because they have given up their reasonable expectation of privacy. Such an abandonment must not be the result of improper police behavior.⁶⁸ Officers should obtain search warrants whenever possible prior to the search of a location. In situations where obtaining a search warrant is not possible

but a location has been abandoned, officers need to remain alert and focused on the details determining that the location is abandoned. Officers also must be aware of other related Fourth Amendment issues that exist in these cases but are beyond the scope of this article. Such issues include, but are not limited to, consent searches, private searches, protective sweeps, and exigent circumstances. As in all situations, officers need to be conscientious, diligent, and thorough in documenting the facts that led them to conclude that a location has been abandoned. ♦

Endnotes

¹ Black's Law Dictionary 2 (6th ed. 1990).

² Additional information regarding the different contexts in which abandonment issues can arise involving the Fourth Amendment are addressed in 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).

³ See T. Kukura, "Trash Inspections and the Fourth Amendment," *FBI Law Enforcement Bulletin*, February 1991, p. 27-32.

⁴ See, e.g., *United States v. Hunter*, 647 F.2d 566 (5th Cir. 1981) (airplane).

⁵ See J.W. Holcomb, "Abandonment of Items Associated with the Person," *FBI Law Enforcement Bulletin*, August 2007, p. 23-32.

⁶ See, e.g., *United States v. Winchester*, 916 F.2d 601 (11th Cir. 1990); *United States v. Sellers*, 667 F.2d 1123 (4th Cir. 1981); *United States v. Haynie*, 637 F.2d 227 (4th Cir. 1980).

⁷ See, e.g., *United States v. Stevenson*, 39 F.3d 538 (4th Cir. 2005); *United States v. Ramos*, 12 F.3d 1019 (11th Cir. 1994); *United States v. Hoey*, 983 F.2d 890 (8th Cir. 1993);

United States v. Lavasueur, 816 F.2d 37 (2d Cir. 1987); *United States v. De Parias*, 805 F.2d 1447 (11th Cir. 1986); *United States v. Wilson*, 472 F.2d 901 (9th Cir. 1972); *United States v. Kress*, 466 F.2d 358 (9th Cir. 1971); *United States v. Hocker*, 450 F.2d 490 (9th Cir. 1971); *United States v. Robinson*, 430 F.2d 1141 (6th Cir. 1970); *United States v. Parkman*, 399 F.2d 559 (D.C. Cir. 1968); *United States v. Jordan*, 399 F.2d 610 (2d Cir. 1968); *United States v. Friedman*, 347 F.2d 697 (8th Cir. 1965); *United States v. Minker*, 312 F.2d 632 (3d Cir. 1963); *United States v. Feguer*, 302 F.2d 214 (8th Cir. 1962).

⁸ See, e.g., *United States v. Caballero-Chavez*, 260 F.3d 863 (8th Cir. 2001); *United States v. Bond*, 77 F.3d 1009 (7th Cir. 1996); *United States v. Alvarez*, 6 F.3d 257 (5th Cir. 1993); *United States v. Huffhines*, 967 F.2d 314 (9th Cir. 1992); *United States v. Rahme*, 813 F.2d 31 (2d Cir. 1987); *United States v. Ramirez*, 810 F.2d 1338 (5th Cir. 1987); *United States v. Mulder*, 808 F.2d 1346 (9th

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...hotel employees do not have the authority to consent to police searches of hotel rooms.
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Cir. 1987); *United States v. Rambo*, 789 F.2d 1289 (8th Cir. 1986); *United States v. Larson*, 760 F.2d 852 (8th Cir. 1985); *United States v. Rackley*, 742 F.2d 1266 (11th Cir. 1984); *United States v. Garcia*, 741 F.2d 363 (11th Cir. 1984); *United States v. Lee*, 700 F.2d 424 (10th Cir. 1983); *United States v. Sledge*, 650 F.2d 1075 (9th Cir. 1981); *United States v. Diggs*, 649 F.2d 731 (9th Cir. 1981); *United States v. Hunter*, 647 F.2d 566 (5th Cir. 1981); *United States v. Callabross*, 607 F.2d 559 (2d Cir. 1979); *United States v. Jackson*, 585 F.2d 653 (4th Cir. 1978); *United States v. Cella*, 568 F.2d 1266 (9th Cir. 1978); *United States v. Savage*, 564 F.2d 728 (5th

Cir. 1977); *United States v. Akin*, 562 F.2d 459 (7th Cir. 1977); *United States v. Haddad*, 558 F.2d 968 (9th Cir. 1977); *United States v. Parizo*, 514 F.2d 52 (2d Cir. 1975); *United States v. West*, 453 F.2d 1351 (3d Cir. 1972); *United States v. Edwards*, 441 F.2d 749 (5th Cir. 1971); *United States v. Croft*, 429 F.2d 884 (10th Cir. 1970); *United States v. Cowan*, 396 F.2d 83 (2d Cir. 1968); *United States v. Granza*, 377 F.2d 746 (5th Cir. 1967); *United States v. Dargento*, 353 F.2d 327 (9th Cir. 1965); *United States v. Frank*, 347 F.2d 486 (D.C. Cir. 1965).

⁹ See, e.g., *United States v. Poulsen*, 41 F.3d 1330 (9th Cir. 1994); *United States v. Reyes*, 980 F.2d 281 (8th Cir. 1990).

¹⁰ U.S. CONST. amend. IV.

¹¹ *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

¹² Some courts also address the related issue of standing in abandonment cases. However, the first question to be asked in abandonment cases is whether the individual abandoned the property. If the individual is found to have abandoned the property, the court then may find that he has no standing to challenge a search of the property. See, e.g., *United States v. Gilman*, 684 F.2d 616, 619 (9th Cir. 1982).

¹³ See, e.g., *United States v. Thomas*, 451 F.3d 543, 545 (8th Cir. 2006) ("Abandoned property is outside the scope of Fourth Amendment protection because its owner has forfeited any expectation of privacy in it").

¹⁴ See, e.g., *United States v. Hoey*, 983 F.2d 890, 892 (8th Cir. 1993) ("It is well established that the warrantless search of abandoned property does not constitute an unreasonable search and does not violate the Fourth Amendment."); *United States v. Levasueur*, 816 F.2d 37, 44 (2d Cir. 1987) ("Since one forfeits any reasonable expectation of privacy upon abandoning one's property, a warrantless search or seizure of abandoned property does not violate the fourth amendment.");

¹⁵ See, e.g., *United States v. Ramos*, 12 F.3d 1019, 1023 (11th Cir. 1994).

¹⁶ *United States v. Winchester*, 916 F.2d 601, 603 (11th Cir. 1990) (quoting *United States v. Pirolli*, 673 F.2d 1200, 1204 (11th Cir. 1982)). See also *United States v. Diggs*, 649 F.2d 731, 735 (9th Cir. 1981); *United States v. Wilson*, 472 F.2d 901, 902 (9th Cir. 1973) ("The proper test for abandonment is not whether all formal property rights have

been relinquished, but whether the complaining party retains a reasonable expectation of privacy in the articles alleged to be abandoned.”).

¹⁷ See, e.g., *United States v. Ramos*, 12 F.3d 1019, 1023 (11th Cir. 1994) (“Whether abandonment occurred is a question of intent which may be inferred from acts, words and ‘other objective facts.’”); *United States v. Sampol*, 636 F.2d 621, 683 (D.C. Cir. 1980) (“Abandonment is primarily a question of intent, and intent may be inferred from words, acts, and other objective facts.”); *United States v. Cowan*, 396 F.2d 83, 87 (2nd Cir. 1968) (“Abandonment does not require performing a ritual; rather, it is a question of intent.”).

¹⁸ *United States v. Levasseur*, 816 F.2d 37, 44 (2d Cir. 1987).

¹⁹ See, e.g., *United States v. Caballero-Chavez*, 260 F.3d 863, 866-67 (8th Cir. 2001) (“we ‘look to the totality of the circumstances, noting in particular two factors: whether the suspect denied ownership of the property and whether he physically relinquished the property.’”).

²⁰ 260 F.3d 863 (8th Cir. 2001).

²¹ *Id.* at 866.

²² *Id.* at 867.

²³ *Id.*

²⁴ See, e.g., *United States v. Levasseur*, 816 F.2d 37, 44 (2d Cir. 1987); *United States v. Haynie*, 637 F.2d 227, 237 (4th Cir. 1980); *United States v. Wilson*, 472 F.2d 901, 902 (9th Cir. 1973) (“The proper test for abandonment is not whether all formal property rights have been relinquished, but whether the complaining party retains a reasonable expectation of privacy in the articles alleged to be abandoned.”); *Paraman v. United States*, 399 F.2d 559, 565 (D.C. Cir. 1968) (“We are, of course, mindful of the admonition that it is not necessary to import the subtle refinements of property law into the law surrounding search and seizure.”).

²⁵ 514 F.2d 52 (2d Cir. 1975).

²⁶ *Id.* at 55.

²⁷ *Chapman v. United States*, 365 U.S. 610 (1961).

²⁸ *Stoner v. California*, 376 U.S. 483 (1964).

²⁹ See, e.g., *United States v. Huffines*, 967 F.2d 314, 318 (9th Cir. 1992); *United States v. Rahme*, 813 F.2d 31, 34 (2d Cir. 1987); *United States v. Ramirez*, 810 F.2d 1338,

1341 n.3 (5th Cir. 1987); *United States v. Rambo*, 789 F.2d 1289, 1296 n.7 (8th Cir. 1986); *United States v. Larson*, 760 F.2d 852, 854-55 (8th Cir. 1985); *United States v. Lee*, 700 F.2d 424, 425-26 (10th Cir. 1983); *United States v. Jackson*, 585 F.2d 653, 658 (4th Cir. 1978); *United States v. Savage*, 564 F.2d 728, 733 (5th Cir. 1977); *United States v. Akin*, 562 F.2d 459, 464 (7th Cir. 1977); *United States v. Haddad*, 558 F.2d 968, 975 (9th Cir. 1977); *United States v. Parizo*, 514 F.2d 52, 54-55 (2d Cir. 1975); *United States v. Croft*, 429 F.2d 884, 887 (10th Cir. 1970); *United States v. Collins*, 515 F. Supp. 2d 891 (N.D. Ind. 2007).

³⁰ A complete discussion of the authority to consent to a search is beyond the scope of this article.

³¹ 429 F.2d 884 (10th Cir. 1970).

³² *Id.* at 887. See also *United States v. Parizo*, 514 F.2d 52, 54 (2d Cir. 1975) (“when the term of a guest’s occupancy of a room expires the guest loses his exclusive right to privacy in the room”).

³³ See, e.g., *United States v. Thomas*, 451 F.3d 543 (8th Cir. 2006) (rented mailbox store); *United States v. Ramos*, 12 F.3d 1019 (11th Cir. 1994) (condo); *United States v. Hoey*, 983 F.2d 890 (8th Cir. 1993) (apartment); *United States v. Mulder*, 808 F.2d 1346 (9th Cir. 1987) (hotel room); *United States v. Larson*, 760 F.2d 852 (8th Cir. 1985) (hotel room); *United States v. Gilman*, 684 F.2d 616 (9th Cir. 1982) (storage locker); *United States v. Haynie*, 637 F.2d 227, 237 (4th Cir. 1980); *United States v. Wilson*, 472 F.2d 901 (9th Cir. 1973) (apartment).

³⁴ See, e.g., *United States v. Thomas*, 451 F.3d 543 (8th Cir. 2006); *United States v. Ramos*, 12 F.3d 1019 (11th Cir. 1994).

³⁵ See, e.g., *United States v. Hoey*, 983 F.2d 890 (8th Cir. 1993) (apartment rent 6 weeks overdue); *United States v. Mulder*, 808 F.2d 1346 (9th Cir. 1987); *United States v. Sellers*, 667 F.2d 1123, 1125 (4th Cir. 1981) (defendant 5 months delinquent paying house rent); *United States v. Wilson*, 472 F.2d 901 (9th Cir. 1973) (rent 2 weeks late); *United States v. Jordan*, 399 F.2d 610, 614 (2d Cir. 1968); *United States v. Watson*, 783 F. Supp. 258, 263 (E.D. Va. 1992); *United States v. Wylser*, 502 F. Supp. 959, 967 (S.D.N.Y. 1980).

³⁶ See, e.g., *United States v. Kitchens*, 114 F.3d 29, 32 (4th Cir. 1997); *United States v.*

Ramos, 12 F.3d 1019 (11th Cir. 1994); *United States v. Larson*, 760 F.2d 852 (8th Cir. 1985); *United States v. Jordan*, 399 F.2d 610, 614 (2d Cir. 1968); *United States v. Watson*, 783 F. Supp. 258, 263 (E.D. Va. 1992) (“The presence in the room of many personal items in addition to the hotel’s lax enforcement of its check-out policy and Mr. Watson’s prior payment history suggest that Mr. Watson intended to continue his stay at the hotel and that it was reasonable for him to intend to continue his stay. The court finds that he did not abandon his room and that, at the time of the search, he had a reasonable expectation of privacy in the room and the personal things he had left in the room.”).

³⁷ See, e.g., *United States v. Hoey*, 983 F.2d 890 (8th Cir. 1993); *United States v. Larson*, 760 F.2d 852 (8th Cir. 1985) (assistant hotel manager enters room after check-out time and observes empty liquor bottles, prescription pills, keys, and grocery bags containing plastic bags with white powder in them); *United States v. Haynie*, 637 F.2d 227, 237 (4th Cir. 1980); *United States v. Wilson*, 472 F.2d 901 (9th Cir. 1973); *United States v. Watson*, 783 F. Supp. 258, 263 (E.D. Va. 1992); *United States v. Wylser*, 502 F. Supp. 959, 967 (S.D.N.Y. 1980).

³⁸ See, e.g., *United States v. Hoey*, 983 F.2d 890 (8th Cir. 1993) (defendant has a moving sale and is seen by neighbor leaving apartment); *United States v. Larson*, 760 F.2d 852 (8th Cir. 1985) (defendant stays in room after extended checkout time, leaves, and then returns to room 5 hours later without paying for next day’s rent); *United States v. Sellers*, 667 F.2d 1123, 1125 (4th Cir. 1981) (defendant who was 5 months delinquent paying house rent left a note in the house saying that he was “sorry he could not pay his rent but he told her he was leaving everything in the house and that she could have them” found to have abandoned house); *United States v. Wilson*, 472 F.2d 901 (9th Cir. 1973) (defendant leaves apartment door open); *United States v. Jordan*, 399 F.2d 610, 614 (2d Cir. 1968); *United States v. Wai-Keung*, 845 F. Supp. 1548, 1563 (S.D. Fla. 1994); *United States v. Wylser*, 502 F. Supp. 959, 967 (S.D.N.Y. 1980).

³⁹ See, e.g., *United States v. Hoey*, 983 F.2d 890 (8th Cir. 1993); *United States v. Mulder*, 808 F.2d 1346 (9th Cir. 1987); *United States v. Larson*, 760 F.2d 852 (8th

Cir. 1985); *United States v. Gilman*, 684 F.2d 616 (9th Cir. 1982); *United States v. Wilson*, 472 F.2d 901 (9th Cir. 1973).

⁴⁰ See, e.g., *United States v. Haynie*, 637 F.2d 227, 237 (4th Cir. 1980); *United States v. Mourning*, 716 F. Supp. 279, 290 (W.D. Tex. 1989) (“Certain vague statements that the Defendant did not go around the warehouse anymore, whether before or after the search, are insufficient to show an abandonment of the Defendant’s interest in that property, particularly when the defendant is the lessee and the rent-payer for that property.”).

⁴¹ Many of these factors were present in *United States v. Olsen*, 245 F. Supp. 641 (D. Mont. 1965). In *Olsen*, the court found that the tenant had not abandoned the house he rented and that, therefore, agents had not lawfully searched the house with the landlord’s consent but without a search warrant. Of particular import in the case was the fact that “both the landlord and the defendant considered the tenancy to be still in effect on February 10th [the day of the search] despite the nonpayment of rent on February 9th.” *Id.* at 644. Additionally, the defendant had paid the utilities through March 8th, retained a key to the house, and still had many personal belongings in the house. The court stated that the failure of the agents “to obtain a search warrant in this case is beyond the court’s comprehension.” *Id.* at 645.

⁴² *United States v. Wylar*, 502 F. Supp. 959, 967 (S.D.N.Y. 1980) (“The majority of the precedents in the area of abandonment have arisen in the context of a search of a hotel room.”).

⁴³ In a case involving an apartment, the U.S. Circuit Court of Appeals for the Eighth Circuit stated, “[t]his court has held that an individual has no reasonable expectation of privacy after the expiration of the rental period for a storage locker. In addition, this court has held that one does not have a legitimate expectation of privacy in a hotel room after the rental term has expired. This court does not suggest that there are equivalent privacy interests in storage lockers, hotel rooms, and apartments.” *United States v. Hoey*, 983 F.2d 890, 892 (8th Cir. 1993) (citations omitted).

⁴⁴ In *United States v. Wylar*, 502 F. Supp. 959, 967 (S.D.N.Y. 1980), the court stated, “the premises involved in this case were the defendants’ home where it is reasonable for one to expect the maximum degree of privacy. Accordingly, a very heavy burden

of justification must be placed upon officials who enter a house or dwelling without authorization....” The court later noted “[t]hus, while the transiently occupied hotel room cases may provide guidance by analogy, stricter scrutiny must be applied when the government seeks to demonstrate that a defendant has abandoned his home. In this Court’s view, the government has not met its burden here.”

⁴⁵ 514 F.2d 52 (2d Cir. 1975).

⁴⁶ A complete discussion of the legal issues associated with searches conducted by private parties is beyond the scope of this article.

⁴⁷ *Id.* at 55.

⁴⁸ 782 F.2d 146 (10th Cir. 1986).

⁴⁹ *Id.* at 150.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *United States v. Kitchens*, 114 F.3d 29, 32 (4th Cir. 1997) (citing *United States v. Watson*, 783 F. Supp. 258, 263 (E.D. Va. 1992)). See also *United States v. Owens*, 782 F.2d 146, 150 (10th Cir. 1986); *United States v. Wai-Keung*, 845 F. Supp. 1548, 1563 (S.D. Fla. 1994).

⁵³ See, e.g., *United States v. Akin*, 562 F.2d 459, 464 (7th Cir. 1977) (agents walked through room prior to checkout time but waited to search room until checkout time passed to get management consent to search room); *United States v. Feguer*, 302 F.2d 214, 249 (8th Cir. 1962) (“Abandonment is not foreclosed here until the paid rent period ran out....”).

⁵⁴ See, e.g., *United States v. Hossbach*, 518 F. Supp. 759 (E.D. Pa. 1980) (court found there was no abandonment of office suite and that landlord had no right to permit DEA agents to search rented office without a warrant even though rent was in arrears when mail was being received at the office, the phone worked, and there were files and filing cabinets in good order in the business (apartment similarly not held abandoned but storage locker held to have been abandoned)).

⁵⁵ See, e.g., *United States v. Binder*, 794 F.2d 1195 (7th Cir. 1986) (office); *United States v. Sledge*, 650 F.2d 1075 (9th Cir. 1981) (apartment); *United States v. Hunter*, 647 F.2d 566, 568 (5th Cir. 1981) (hotel room).

⁵⁶ See, e.g., *United States v. Winchester*, 916 F.2d 601 (11th Cir. 1990); *United States v. Binder*, 794 F.2d 1195 (7th Cir. 1986);

United States v. Sledge, 650 F.2d 1075 (9th Cir. 1981); *United States v. Hunter*, 647 F.2d 566, 568 (5th Cir. 1981) (stated he was leaving by checkout time); *United States v. Akin*, 562 F.2d 459, 464 (7th Cir. 1977) (there was no luggage or suits in the room, the rent had not been paid, and no arrangements had been made to extend stay).

⁵⁷ See, e.g., *United States v. Binder*, 794 F.2d 1195 (7th Cir. 1986); *United States v. Sledge*, 650 F.2d 1075 (9th Cir. 1981); *United States v. Akin*, 562 F.2d 459, 464 (7th Cir. 1977); *United States v. Feguer*, 302 F.2d 214, 249 (8th Cir. 1962).

⁵⁸ See, e.g., *United States v. Akin*, 562 F.2d 459, 464 (7th Cir. 1977).

⁵⁹ 362 U.S. 217 (1960).

⁶⁰ *Id.* at 241.

⁶¹ 647 F.2d 566 (5th Cir. 1981).

⁶² *Id.* at 568.

⁶³ See, e.g., *United States v. Huffhines*, 967 F.2d 314, 318 (9th Cir. 1992) (“[I]t was Huffhines’s own conduct in giving a false name to the police that precipitated his arrest and prevented him from returning to the motel to renew the rental period. He cannot rely on his own misconduct to extend the period of his expectation of privacy in the motel room.”) (citing *United States v. Croft*, 429 F.2d 884, 887 (10th Cir. 1970); *United States v. Reyes*, 908 F.2d 281, 285-86 (8th Cir. 1990)); *United States v. Rahme*, 813 F.2d 31, 35 (2d Cir. 1987); *United States v. Haddad*, 558 F.2d 968 (9th Cir. 1977).

However, in at least one case, a court found that the government failed to meet its burden of proving abandonment when the defendant had not paid rent in over a month and was in jail at the time agents searched his apartment without a warrant. See *United States v. Robinson*, 430 F.2d 1141 (6th Cir. 1970).

⁶⁴ 810 F.2d 1338 (5th Cir. 1987).

⁶⁵ *Id.* at 1340.

⁶⁶ *Id.* at 1341.

⁶⁷ *Id.*

⁶⁸ *United States v. Alvarez*, 6 F.3d 287, 289 (5th Cir. 1993).

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.

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 Cusumano



Officer Hansen

Officers Nicholas Cusumano and Tara Hansen of the Largo, Florida, Police Department responded to assist with traffic control at the scene of a fire in a 2-story, 20-unit apartment building. After learning from a group of individuals that residents still remained inside and realizing that fire personnel had not yet checked the first floor of the structure, the officers hurried to the complex, which quickly was becoming engulfed in flames and smoke. Officers Hansen and Cusumano forced entry into the windows of one apartment and physically helped the confused elderly resident outside. Officer Cusumano then broke out the windows of a second apartment but could not see because of the thick smoke. After Officer Cusumano forced open the door, Officer Hansen saw an elderly woman collapse. The officers quickly helped her to safety. The two elderly residents then received emergency medical care.



Officer Driscoll

Officer David Driscoll of the Wakefield, Massachusetts, Police Department responded to a report of a dog attack. A pit bull had bitten a young girl and then attacked her 13-year-old brother who tried to help her. Upon arrival, Officer Driscoll saw the dog biting the boy's arm while shaking his head violently. Officer Driscoll immediately intervened, using a baton to pry open the animal's jaws. Then, the dog bit the boy on the leg, and Officer Driscoll again pried open the pit bull's mouth. At that time, he moved the animal a short distance away and held him down, allowing the children to escape.

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, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135.

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Patch Call



The Waupun, Wisconsin, Police Department patch displays “The End of the Trail,” a world-renowned statue located in the city’s Shaler Park. The sculpture depicts the displacement of Native Americans during the 18th and 19th centuries and is listed on the National Register of Historic Sites.



The patch of the Kentucky Horse Park Mounted Police, Lexington, Kentucky, features a mare and foal imposed on a scenic background as seen from the gravesite of the famous racehorse Man of War. A white plank fence common to central Kentucky horse farms is shown with historical trees and 1,032 acres of manicured bluegrass.