NEWSLETTER

International Association of Directors of Law Enforcement Standards and Training
3287 Tasa Drive; Meridian, Idaho 83642-6444
http://www.iadlest.org

Volume 23 Number 1 **January 2012**

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MESSAGE FROM THE PRESIDENT

by: Richard Clark, Executive Director, Nevada POST

All IADLEST Members,

I would like to wish you all a happy and safe New Year!

I recently attended a very enjoyable and productive IADLEST Western Regional Meeting in San Diego, California; and I look forward to meeting with as many of you as possible at your regional meetings.

Having the NDI (National Decertification Index) Initiative pay for travel and lodging is a great benefit which will surely boost attendance.

Thanks to the following states for completing their full *Sourcebook* survey in a timely manner: Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington State, West Virginia, Wisconsin, and Wyoming.

I understand that there were a few glitches in the formatting that left no way to indicate issues that were "not applicable," as well as problems with saving the survey to complete later. I apologize for these issues and thank each of you for your diligence in pushing through these difficulties and completing the survey.

If your agency has not sent the survey in at this time, please make every effort to do so. I hope to present the 100% completed survey at the Executive meeting in January. The value in the 2011 update is enhanced by 100% participation and completion.

On January 18-19-20, 2012, we will hold our Winter IADLEST Executive Board meeting in Washington, D.C., in conjunction with the NSA Midwinter Conference.

While we are in Washington, D.C., Bill Muldoon, Jon Bierne, Mike Becar, and I will be meeting with representatives from DOJ and NHTSA to reinforce and hopefully expand our management of several national training initiatives, not the least of which is the NDI.

Among other IADLEST business issues, the Executive Board will be making the final selection and hiring of our full-time Executive Director. I'm excited about all the possibilities for IADLEST's growth and future accomplishments that this position will open.

Editorial Note: The IADLEST Newsletter is published quarterly. It is distributed to IADLEST members and other interested persons and agencies involved in the selection and training of law enforcement officers.

The IADLEST is a nonprofit, tax-exempt organization comprised of law enforcement training managers and leaders. Its mission is to research and share information, ideas, and innovations that assist in the establishment of effective and defensible standards for the employment and training of law enforcement officers.

All professional training managers and educators are welcome to become members. Additionally, any individual, partnership, foundation, corporation, or other entities involved with the development or training of law enforcement or criminal justice personnel are eligible for membership. Recognizing the obligations and opportunities of international cooperation, the IADLEST extends its membership invitation to professionals in other democratic nations.

Newsletter articles or comments should be sent to IADLEST; 2521Country Club Way; Albion, MI 49224

MEETING SCHEDULE

The IADLEST held its general Business Meeting, October 22-23, 2011, at the Hilton Palmer House 17 East Monroe Street; Chicago, Illinois.

The IADLEST Executive Committee is scheduled to meet in conjunction with the National Sheriffs' Association Midwinter Conference, at the J. W. Marriott Hotel;1331 Pennsylvania Ave., NW; Washington, DC; 9:00 a.m. to 5:00 p.m., Thursday, January 19; and 9:00 a.m. to noon, Friday, January 20, 2012.

The next Business Meeting is scheduled for Tuesday, June 12, 2012, at the Annual IADLEST Conference to be held at the Hilton Savannah DeSoto Hotel; 15 East Liberty Street; Savannah, Georgia.

The IADLEST will meet in conjunction with the IACP and conduct a business meeting in San Diego, California; September 29-30, 2012.

SPECIAL OLYMICS AUCTION ITEMS NEEDED

A Special Olympics auction will be held at the June 2012 IADLEST Annual Conference in Savannah, Georgia. IADLEST members are asked to contribute items for the auction. In the past, IADLEST members have generously contributed products, often items that represent their state, to the auction. All proceeds from the sale of items are given directly to the Special Olympics.

Please send your items to:

IADLEST Special Olympics Auction
c/o Georgia Peace Officers
Standards and Training Council
P.O.Box 349
Clarkdale, Georgia 30111-0349

PEACE OFFICER DECERTIFICATION THE VITAL NEED FOR THE NATIONAL DECERTIFICATION INDEX

by: Roger Goldman, Professor of Law, Saint Louis University; Ari Vidali, CEO, Envisage, Inc.; and Mike Becar, IADLEST

In the 1950's the states began treating law enforcement as a profession. One of the hallmarks of a profession is that professionals must live up to certain standards or lose the privilege of practicing the profession. Professionalization of the delivery of police services requires continual monitoring to ensure practice meets the prescribed standards. When it falls below that standard or is unethical, there should be a mechanism for removing unfit officers. The need for professionalization of law enforcement has led to the establishment of state agencies usually called Police Officer Standards and Training Boards (POSTs). In every state except Hawaii, POSTs have the authority to set standards relating to training, selection, and certification of peace officers. Unless the individual complies with those standards, he or she is not able to serve as a peace officer in the state. In 44 states, POSTs have the additional authority to revoke the officer's certificate for specified misconduct, a process typically called "decertification." The six states without the authority to decertify are California, Hawaii, Massachusetts, New Jersey, New York, and Rhode Island. New Jersey does have a forfeiture of office statute: after a conviction of certain offenses, such as abuse of office, the judge must enter an order forfeiting the officer's right to hold any public office.

Decertification is similar to the removal of a license common to most other professions and occupations. A peace officer who has been found after a hearing to have violated the state's statutes or regulations, will have his or her certificate revoked, thereby preventing the officer from getting hired by another police or sheriff's department within the state. In many states, an officer need not first be terminated from a local department; he or she can still be decertified even if he resigns prior to any action from the department. In terms of what kind of conduct can lead to decertification, there are two major approaches: (1) states that permit

revocation on narrowly defined grounds such as a felony conviction or a misdemeanor conviction involving moral turpitude, and (2) states that permit revocation for conduct that has not resulted in a conviction. States also differ in the type of law enforcement officers that can be decertified. In addition to peace officers, some states are authorized to decertify correctional officers, parole and probation officers, campus and tribal police, courtroom and security officers, and private security. When officers are decertified, it helps end the practice of problem officers who outrun discipline efforts by resigning positions in one jurisdiction to take up work in a neighboring jurisdiction in the same state. Approximately 24,000 law enforcement officers have had their licenses revoked since 1960 when New Mexico became the first state to decertify.

Interstate Movement of Decertified Peace Officers: The Vital Need for the NDI

One particularly egregious case points out the interstate problems occasioned by officers with previous records of misconduct. A Chattanooga, Tennessee, officer, accused of brutality and drug use, promised the police commissioner he would not apply to work in a surrounding state but would go two states away to Florida so long as the commissioner allowed him to resign and agreed not to give any unfavorable information. When called by the West Palm Beach, Forida, department that was considering hiring the officer, the commissioner didn't mention the circumstances of the resignation so the officer was hired, joining another officer who had recently left a Florida department after he beat a suspect and blinded him in one eye. Even though that department had settled a law suit for $80,000, the department told West Palm Beach it was unaware of any derogatory information. At West Palm Beach, the officers were involved in the killing of a hitchhiker, tried for first degree murder, and were acquitted. The West Palm Beach mayor later stated they would never have been hired had the city been told about their backgrounds. To address the problem of the interstate movement of officers illustrated by these kinds of cases, the organization of POST directors, International Association of Directors of Law Enforcement Standards and Training (IADLEST), which is the National organization of POST directors, considered the advisability of establishing a national nation-wide databank on decertified officers.

Beginning as a pilot effort in 1999, IADLEST, with the support of the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA), established the National Decertification Database (NDD). Now called the National Decertification Index (the NDI) which is a national reporting mechanism for decertification actions taken against police officers. The NDI is administered by the association of POST directors, the International Association of Directors of Law Enforcement Standards and Training. Thirty states have submitted data to the NDI, but all state POSTs are permitted to query the NDI. The information is not accessible to the public and social security numbers and other personally identifiable information are omitted. The information is available to hiring agencies that have their state POST's permission to query the database. Of the 24,000 current estimated decertifications, more than one-half. Over14,000 are posted on the database: the remaining 12,000 are of officers who have been decertified in states that do not submit information to the NDI. Achieving a higher rate of submissions and data queries is a major goal for IADLEST, which is currently holding regional conferences to educate POSTs from the non-submitting states about the importance of participation.

One example of the success of the NDI relates to the Oregon POST's revocation of officer Sean Sullivan. Sullivan was convicted of two counts of harassment and subsequently decertified. The Oregon POST entered his record in the NDI, and three months later Sullivan attempted to gain employment in Alaska. The NDI provided Alaska with information regarding his decertification, and Sullivan was denied employment. One month later, Sullivan applied for a Police Chief position in Kansas. Again, the NDI responded to a query, barring his employment.

As the Sullivan case illustrates, the NDI is a critical step in the pre-hire screening process. It helps states pinpoint officers who have been

decertified elsewhere and prevents movement among states by officers who have engaged in misconduct from simply moving to another state in order to get a job.

Policing requires public trust: the NDI provides the only tool available to hiring agencies to validate that a decertification did not occur in another state.

Recent Evolution of the NDI

In August 2011, IADLEST launched a complete redesign of the database. Dubbed NDI 2.0, the new architecture conforms to the latest security standards for internet-based applications and provides significant usability improvements over the previous version. Specifically, users were having trouble navigating the site and querying the database. The advanced search mechanism was confusing and if not used correctly, would not yield search results.

The NDI committee convened to review end-user input and created an updated design that is both easy to use (requires no training) and provides many new features for approving hiring agency access requests. IADLEST then put out a competitive bid for the work and awarded a contract to Envisage Technologies for the programming services.

The results of this technology refresh have been overwhelmingly positive. Since the launch (late August), 252 new decertification actions have been reported, and over 220 new users (hiring agencies) have been granted access. An additional state (Delaware) has signed up to use the platform, and IADLEST is in the process of recruiting the remaining non-reporting states. Hiring agencies have performed over 3,800 searches of the NDI since August, a marked increase due to the many new users adopting the system as part of their hiring process. There is still work to be done to refine the site and provide statistical reporting tools for the POST agencies, but NDI 2.0 is a vast improvement over its predecessor and remains the only mechanism available to perform a national check for peace officer decertification.

WELCOME NEW MEMBERS

The IADLEST is proud and privileged to add the following new members. These professionals complement our Association's already extensive wealth of talent and expertise. We welcome them to the IADLEST.

Ken Jones, Dir., POST, E. Camden, AR
Michael Miller, NY POSTS, Albany, NY
Mitch Javidi, Holly Springs, NC
Cynthia McAlister, Chantilly, VA
Tony Barthuly, Dir., POST, Madison, WI
Jeff Schulz, Dir., POST, Cheyenne, WY
Orlando Guerra, POST, Carson City, NV

POST DIRECTOR CHANGES

Arkansas: In April of this year, Arkansas Governor Mike Beebe appointed former Union County Sheriff, Ken Jones, of El Dorado, Arkansas as Executive Director of the Arkansas Commission on Law Enforcement Standards and Training. Jones a 29 year law enforcement veteran recently completed his fourth term as the Union County, Arkansas, Sheriff. Prior to being elected Sheriff, Jones was a Patrolman with the Arkansas Highway Police.

Jones has been a member of the Arkansas Board of Corrections and served as the Vice President of the Arkansas Sheriff's Association prior to being appointed in April.

Wyoming: On August 29, 2011, Jeff Schulz was appointed Executive Director of the Wyoming Peace Officer Standards and Training Commission.

Jeff began his law enforcement career in 1994, with the Cheyenne, Wyoming, Police Department. Working patrol, he served both as a Field Training Officer and as an officer with the K-9 Unit. Promoted to Sergeant, he supervised both patrol squads and general detectives. Promoted to Lieutenant, Jeff served as the commander for dispatch unit, in the patrol division and the detective division. As a Captain, his responsibility included the overall operations of the Cheyenne Police Department with 105 sworn officers and 30 civilian support staff.

In addition to his professional life, Jeff enjoys staying active in the Cheyenne community. He currently serves on a number of non-profit boards. Jeff serves on the board of directors of the COMEA House homeless shelter, the Cheyenne Capitals Youth Hockey Association, and the Wyoming Amateur Hockey Association.

Wisconsin: Attorney General J.B. Van Hollen appointed John "Tony" Barthuly to the position of Director of the Training and Standards Bureau at the Department of Justice.

"Tony Barthuly's extensive experience as an instructor and law enforcement leader will be critical to our mission of enhancing the skills and professionalism of the law enforcement community in Wisconsin," Van Hollen said.

Director Barthuly has been in law enforcement for more than 30 years. He began his career in public safety as a Deputy Sheriff with the Fond du Lac County Sheriff's Department. Tony then joined the Fond du Lac Police Department, where he served initially as a police officer and more recently, as chief of the department for the past seven and a half years.

As director of the Training and Standards Bureau, Tony will oversee the Bureau's efforts to coordinate and support statewide training provided by the Department of Justice to the Wisconsin law enforcement community. The Bureau also is the staff of the Law Enforcement Standards Board. The Bureau administers the programs for certification of law enforcement officers, jail and secure detention officers; training academies and academy instructors.

Tony comes to the Bureau with a long and distinguished background in the training of law enforcement officers, having served on and led a number of committees and associations focused on increasing the skill sets of Wisconsin's law enforcement officers. He holds a Bachelor's Degree in Criminal Justice Administration from UW-Oshkosh and a Master's Degree in Management from Cardinal Stritch. Tony is also a graduate of the FBI National Academy.

NEWSPAPER REPORTS SERIES ON OFFICER MISCONDUCT

from: Herald-Tribune Newspaper

The Herald-Tribune (Sarasota, Florida) conducted an investigation into police and prison guard misconduct. In December 2011, the Herald-Tribune published a nine-part series written by Anthony Cormier & Matthew Doig detailing their investigation and findings. For more information: http://www.heraldtribune.com/unfitforduty

BELOW 100: A GOAL WE CAN ACHIEVE

from: Idaho POST Newsletter

At the end of November 2011, law enforcement lost 144 officers. November ended with the death of six officers, the lowest monthly rate in five years. BELOW 100 is a national campaign to keep the number of on-duty deaths of officers below 100 officers. Key initiatives of this program are: wear your seatbelt, wear your vest, watch your speed, WIN — what's important now, and remember: complacency kills. The Idaho POST supports this noble cause and encourages law enforcement agencies to join the effort in support of BELOW 100. For further information, go to: www.below100.com.

Mark your calendar! The Annual IADLEST Conference will be held June 10-13, 2012.

Join fellow Law Enforcement Executives, Training Managers, POST Directors and Academy Directors at the Conference in Historic Downtown Savannah.

What's new this year?

- Presentation by Keynote Speaker, Jack Enter on Leadership in Law Enforcement
- Facility tour and training at the Federal Law Enforcement Training Center (FLETC)
- Scheduled roundtable discussions to exchange ideas and experiences regarding standards, certifications and course development
- BELOW 100 and Brady-Giglio training
- Exciting social activities for attendees and their guests, including a welcome reception, dinner and entertainment at the Railroad Museum, a poolside reception, and a hospitality room sponsored by the Georgia POST

AND…. FLETC will be sponsoring hotel rooms for registered attendees, Sunday through Thursday – saving you more than $600!

Registration will open February 1st – keep an eye on the website for a schedule and updates: IADLEST2012.org. For questions about the conference, email alyssa@iadlest2012.org or call (888) 902-1088

For the 2012 IADLEST Conference, the Federal Law Enforcement Training Center (FLETC) is providing training in *BELOW 100* and *Brady-Giglio*, is sponsoring the roundtable discussions, is hosting attendees at its facility on June 13, and is funding lodging for eligible conference attendees for the nights of June 10 through 13. All other activities, fundraisers, events, etc., are sponsored solely by IADLEST and the Georgia POST and are completely independent of the Department of Homeland Security (DHS) and the Federal Law Enforcement Training Center (FLETC). The registration fee will be used to defray costs separate from those associated with activities provided or sponsored by the FLETC.

PURSUIT POLICY TRAINING ONLINE - FREE

Pursuit Policy Workshop is now available as an online training module!

This training is available to ALL police officers. You do not need to be a member of NLEARN to take advantage of this training opportunity.

In this one-hour lesson your patrol officers will achieve the following objectives:

- Discuss US Supreme Court decisions and State-specific statutes that have impacted and governed vehicular pursuit operations
- Discuss the components of the IACP vehicular pursuit policy guide
- Compare your agency's current pursuit policy with the IACP pursuit guidelines
- Develop an action plan for your agency that supports vehicular pursuit operations and addresses any weak or missing areas within the current pursuit policy

Just go to the IADLEST web site at: https://www.iadlest.org/ and click on the Pursuit Training icon or link. If you would like to have a DVD, please contact IADLEST at: mikebecar@yahoo.com

LAW ENFORCEMENT LEADERSHIP SUMMIT ON CROWD CONTROL AND CRITICAL INCIDENT MANAGEMENT – HOLD THE DATE

The California Commission on Peace Officer Standards and Training (POST) has initiated an examination of existing training resources for law enforcement's response to incidents of civil disobedience and public protest. To gain a thorough appreciation of agency needs, POST has formed partnerships with key law enforcement associations and other stakeholders. The review and update of the 2003 POST Crowd Management and Civil Disobedience Guidelines, currently being undertaken, is an essential component of this endeavor.

As an outgrowth of this effort, POST is planning a Leadership Summit to address issues related to the management of critical incidents - specifically crowds, protests and civil unrest. A related topic will include an analysis of the "Occupy" protests in California and elsewhere. Other topics will include command and control/leadership issues, pre-intervention strategies and post-intervention strategies. The summit will introduce successful practices gleaned from "lessons learned."

The Leadership Summit on Crowd Control and Critical Incident Management will be held on March 20-22, 2012, at the DoubleTree Hotel - Mission Valley, in San Diego. More information on this summit and how participants can register will be announced soon on the POST website at www.post.ca.gov

SCIENCE AND TECHNOLOGY SNAPSHOTS: WHEN CLEAN JUST ISN'T CLEAN ENOUGH

Backboard Covers Protect Patients From Cross Infections

Caption: The Science & Technology Directorate demonstrates the backboard cover.
(Image Credit: DHS Science & Technology)

Medical crews respond to countless emergencies in a single day. After each call, technicians scrub down their equipment to avoid exposing the next patient to diseases, microbes, or bodily fluids. Despite these efforts, a study connected in partnership with the University of Miami recently examined 55 "cleaned" active-duty backboards and found that every board was contaminated with at least 11 different strains of bacteria and microorganisms. Yuck!

*Interested in learning more? Read the full S&T Snapshots story. Do you have any questions about the publication? Please email st.snapshots@hq.dhs.gov.

IDAHO POST PARTNERS WITH RISK MANAGERS

from: IDAHO POST Newsletter

In October 2011, the POST Council and Idaho Counties Risk Management Program (ICRMP) agreed to a partnership changing the way law enforcement would meet its training needs in certain high-risk areas of work. In this partnership, POST will sit with ICRMP to review the causes of litigation against law enforcement officers and assist in better preparing officers, through training, where ICRMP has identified "evidenced-based risk" is greatest.

Beginning January 1, 2012, throughout calendar year 2012, POST and ICRMP will offer all law enforcement officers holding a Patrol Officer Certification or Reserve Level 1 Officer Certification, an opportunity to enhance their knowledge in emergency vehicle operations by taking an on-line training program entitled: EVOC-101 Web™. The training is offered "free-of-cost" to Idaho's patrol and reserve level 1 officers when taking the course through POST's website.

EVOC-101Web™ instills the concepts of safety and caution into the driving strategy of officers conducting emergency driving thru crowded traffic patterns. EVOC-101 Web™ is utilized by many other states in their law enforcement EVOC programs, and has proven to decrease law enforcement traffic accidents. All local and state police agencies are encouraged to embrace this program for the welfare of their officers and as a true method to serve Idaho's citizens and promote a safer environment.

We recognize ICRMP for their willingness to provide funding towards this admirable effort. Without the leadership of ICRMP's Executive Director Richard Ferguson and staff, POSTs' effort to present this program as a method to enhance driver safety training to patrol officer/reserve level 1 officers, would not have been possible. By offering EVOC-101 Web™ to Idaho's officers, POST and ICRMP have forged a partnership in a powerful and strategic manner, with other initiatives still to come.

Once again, POST and ICRMP are offering EVOC-101 Web™ to all patrol and reserve level I officers, free-of-cost, throughout calendar year 2012. What EVOC-101 Web™ will offer to law enforcement officers and agencies is a measure of confidence in the ***ability*** to negotiate intersections during emergency driving, ***knowledge*** that the agency has provided state-of-the-art training to negotiate intersections during emergency driving, and a measure of ***risk-reduction*** for the communities we serve.

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OREGON MEDICAL GUIDELINES

by: Eriks Gabliks, Director, Oregon POST

The Oregon Department of Public Safety Standards and Training Research Section has been following the work of the Public Safety Medicine Section of the American College of Occupational and Environmental Medicine (ACOEM). Many of names will be familiar to folks in the public safety community. Chair: Daniel G. Samo, MD, FACOEM, Vice Chair: Thomas R. Hales, MD, MPH, Vice Chair: Fabrice Czarnecki, MD, MPH, Secretary: L. Kristian Arnold, MD, Treasurer: Mary R. Hunt, MD, MPH, and Education Director: David J. Louis, MD, MS, FACOEM.

The function of this section is to provide a forum for physicians and other health professionals to exchange ideas, provide a source of current information, provide educational opportunities, and develop consensus and position statements, regarding fire, police, corrections officers, crossing guards, and other public safety professionals.

This section is concerned with the unique medical and occupational health concerns of public safety personnel. The objectives of this section include:

- Defining physical requirements for qualification for these jobs based on current scientific concepts.
- Educating physicians and other caregivers regarding toxic and other exposures as well as injuries which are specific to these professions.
- Encouraging research in the many areas in this field which will require more scientific data to establish standards for care, qualification, and disqualification of these professionals.

ACOEM is developing a comprehensive set of medical guidelines for law enforcement officers. ACOEM provides an on-line subscription to "Guidance for the Medical Evaluation of Law Enforcement Officers" in which they are developing medical requirements for law enforcement officers. To date they have developed the following guidelines: cardiovascular, diabetes, eye and vision, hearing, infectious diseases, medications, and pregnancy. Members of ACOEM's Public Safety Medicine section are continuing to work on sections addressing pulmonary, gastrointestinal, endocrine, musculoskeletal, and others.

The ACOEM website is http://www.acoem.org/ and it provides information on how to access the guidelines.

MPOETC AND PENNSYLVANIA STATE POLICE HOST ADVANCED INSTRUCTOR WORKSHOP

by Rudy M. Grubesky, Pennsylvania POST

On September 15, 2011, the Municipal Police Officers' Education and Training Commission (MPOETC) sponsored a workshop titled, "Using Brain Science to Make Training Stick," conducted by Sharon Bowman that was held in the High-Tech Classroom at the Pennsylvania State Police Academy.

Sharon Bowman a nationally known trainer and noted author, who also teaches for the California Commission on Peace Officer Standards and Training (POST) Master Instructor Development Program conferences, facilitated the workshop for MPOETC and PSP instructors. She also spent a day in the studio at the PSP Academy taping video clips for future MPOETC instructor training programs. Sharon has assisted the MPOETC in the design of its 16-hour Advanced Instructor Development Program (AIDP) and the MPOETC utilizes her book, "Preventing Death by Lecture" in the AIDP course.

During the workshop, our instructors participated in a very informative, interactive hands-on program that explored six learning principles on current "cognitive neuroscience." The workshop participants received many new ideas, activities, and resources for their instructor tool bag. The MPOETC received a lot of positive comments from the 28 instructors who attended the course including one instructor who wrote, "I wish I would have had this

information 18 years ago when I started teaching."

According to MPOETC Executive Director Major Joseph Elias, "I really appreciate Sharon Bowman's facilitating this innovative program for our instructors." I also want to thank Major Laufer, Captain Kisthardt, and the academy staff for hosting this important workshop."

OREGON'S CORRECTIONS POLICY COMMITTEE APPROVES UPDATED BASIC CORRECTIONS COURSE AND ADDITIONAL WEEK

by: Ryan Keck, Oregon POST

For over a year, members of the Oregon State Sheriff's Association and the Oregon State Sheriff's Jail Command Council have been working with staff at the Oregon Department of Public Safety Standards and Training (DPSST) to conduct a comprehensive review and update to the 5-week Basic Corrections Course. The work group has completed its work and made its report last week at the quarterly meeting of the Corrections Policy Committee of the Board on Public Safety Standards and Training (BPSST). The recommendations, which were approved by the Corrections Policy Committee, include significant changes to the program with more emphasis on problem-based learning and scenario training. The recommendation also includes the addition of one week to the course which will take it to six-weeks. The addition is necessary to address the training needs of newly hired corrections officers. DPSST staff has also been working with the Oregon Department of Corrections throughout this process to ensure that reciprocity between the two programs remains intact. Once approved by the Board, the new six-week course is scheduled to begin after the first of the year. DPSST thanks all of the participants of the work group who have spent countless hours working with DPSST staff to update the course so that it is meetings the needs of Oregon's corrections professionals. For those who would like additional information on this program, please contact Training Coordinator Ryan Keck at DPSST via email at ryan.keck@state.or.us

ENVISAGE TECHNOLOGIES AND CINET ANNOUNCE FEDERAL AWARD TO PROVIDE NATIONWIDE ONLINE LAW ENFORCEMENT TRAINING

submitted by: Cory Myers, Envisage

Free online training aims to keep officers on the street, reduce liability, and increase safety.

On October 18, 2011, Envisage Technologies and teammate CiNet announced that they were awarded a contract to provide tuition-free online training for state and local law enforcement agencies across the United States by the Federal Law Enforcement Training Center (FLETC), a component of the Department of Homeland Security.

"In today's budget-constrained environment, many small law enforcement agencies lack the resources, travel budgets, or manpower to send their officers to classroom-based training to keep up their skills. Police departments across the nation have been struggling to maintain essential services. As budgets are being cut, vital training is frequently eliminated first," said Ari Vidali, Envisage chief executive officer. "The support provided by organizations such as the FLETC's Rural Policing Institute and the Office of State and Local training are providing police officers access to high-quality training, regardless of the size of their department."

Envisage will act as the prime contractor and deliver the free service in a secure, cloud environment via its Acadis Readiness Suite Learning Management System (LMS). The Acadis LMS enables officers to take courses and agencies to track results in one seamless platform.

The Law Enforcement Training Network (LETN), an Envisage partner and division of CiNet, will provide the extensive online learning library available on the system. The LETN catalog gives enrolled officers access to 200 high-quality learning modules addressing important subjects such as Officer Survival, Use of Force, Narcotics, Gangs, and Cybercrime. Many of the courses are certified by state

agencies to provide officers with in-service or continuing education credits.

"Working in concert with the Envisage team, CiNet's Law Enforcement Training Network is extraordinarily proud to participate with the FLETC's Rural Policing Institute to provide our expansive and time-tested library of critically needed training to those that put their lives on the line every day of their brave careers," said Steve Albright, CEO of CiNet. "We are honored to bring the Envisage and CiNet resources together in a blended solution to fulfill the requirements of FLETC's training contributions to state and local law enforcement with the predominate community qualified as rural departments."

The program is administered through FLETC's Rural Policing Institute (RPI) and Office of State and Local Training (OSL). Their missions are to provide high-quality and easily-accessible training to State, local, county, tribal, and campus law enforcement officers, as well as other emergency responders.

"Both Envisage and CiNet are honored to have been selected by FLETC for this very important initiative," said Ari Vidali. "The partnership between our state and local police departments and the Federal government is of paramount importance to the ongoing support of professional policing."

About the Rural Policing Institute: The mission of the Rural Policing Institute (RPI) is to develop and deliver specialized and advanced training, based upon sound research, and to conduct outreach efforts for law enforcement officers and to other emergency responders located in rural areas, including Indian Country. To accomplish these objectives, the RPI will evaluate the needs of the rural law enforcement community; develop and deliver expert training, and conduct outreach to rural law enforcement. The RPI will work with partners and stakeholders in the development of new training programs to include a validation process to measure training outcomes.
http://www.fletc.gov/rpi

About the FLETC Office of State and Local Training: The Office of State and Local Training (OSL) at the Federal Law Enforcement Training Center (FLETC) provides tuition-free and low cost training to state, local, campus, and tribal law enforcement agencies. Programs are conducted at select sites throughout the country and are usually hosted by a local law enforcement agency in the area.
http://www.fletc.gov/osl

About ENVISAGE Technologies: Founded in 2001, Envisage is an industry visionary in training management, resource optimization, complex scheduling, and process automation for law enforcement, public safety, and military organizations. Clients include military commands, federal law enforcement academies in the U.S. Department of Homeland Security (DHS), and state law enforcement and public safety organizations.
http://www.envisagenow.com

About CiNet – LETN: Since 1989, CiNet's Law Enforcement Training Network (LETN) has been a partner to our nation's law enforcement service by delivering officer training solutions that help to retain personnel, reduce training costs, improve performance, and ultimately save lives. LETN's online courses serve every discipline within a law enforcement agency and depict real-life incidents analyzed by leading experts, increasing engagement, retention, and results. Police officers have access to one of the largest libraries of law enforcement training videos in the industry and the ability to develop customized curricula designed for specific job functions. http://www.letn.com/

About the Acadis Readiness Suite: The Acadis Readiness Suite is an enterprise software application that enables organizations to create training ecosystems. The system is in use by over 270,000 public safety professionals nationwide. Acadis automates the management of complex, high-risk training environments such as law enforcement, public safety, homeland security, and the military. The modular system architecture allows training organizations to optimize the entire "hire-to-retire" lifecycle for personnel by fusing learning management, automated scheduling,

registration, housing/barracks management, certification compliance tracking, automated testing, and document storage into a comprehensive end-to-end solution. The optional Acadis Portal Framework allows secure, decentralized access to online learning, employee training records, in-service training reporting, class registrations, and instructor availability management.
http://www.envisagenow.com/acadis

ENVISAGE TECHNOLOGIES CONTINUES EVOLUTION OF THE Acadis® READINESS SUITE

submitted by: Cory Myers, Envisage

Latest Release Includes Critical New Features and Performance Enhancements for Law Enforcement, Public Safety and Military Training

On December 13, 2011, Envisage Technologies announced the release of Version 4.4.5 of the Acadis® Readiness Suite for Law Enforcement, Public Safety, and Military training and certification management. The newest version of Acadis reflects months of development and client input with critical new features and optimized performance to support high-liability training organizations and the agencies they support. The new software was showcased at the International Association of Chiefs of Police (IACP) conference in Chicago.

The new version of the Acadis Readiness Suite incorporates dozens of powerful new features that streamline training, scheduling, and compliance operations. Many of the redesigned elements use "wizards" to walk users through workflow and user-defined business rules that simplify complex training operations. Highlights of the newest release include:

Scheduling Optimization and User Interface: The latest version of Acadis Scheduling incorporates many new features that automate complex scheduling tasks. This module is capable of scheduling individual training programs and forecasting hundreds of prescheduled training programs simultaneously. The sophisticated rules-based scheduling engine intelligently applies sequencing, priorities, dependencies, and resource requirements for each block of instruction via highly-configurable model schedules.

Easy to navigate, Acadis features simple drag-and-drop scheduling, with an individual calendar for each instructor, classroom, lab, and range. The automated scheduler provides immediate notification of conflicts or insufficient instructional resources and automatically suggests resolution options. Reports are easily printed or exported directly into standard Microsoft Office formats. Acadis Automated Scheduling is accessible via a standard internet browser and is fully integrated with the Readiness Suite.

Learning Management System (LMS): Acadis includes a fully Shareable Content Object Reference Model (SCORM)-compliant LMS module to enable the efficient delivery of online learning. It allows personnel to register for online courses and enables training managers to assign mandatory courses to their personnel. Automated due dates and reminders keep personnel on track with individualized learning plans. Completion records, test scores, and certifications are automatically appended to each student's lifelong learning record.

Certification Compliance Management: Acadis now provides a distributed In-service Reporting portal that allows law enforcement and public safety agencies to report training and compliance items required to meet recertification requirements directly to their certifying organization. This eliminates costly dual data entry and increases accuracy of reported data. Certifications can be tracked for officers, emergency responders, organizations, and vehicles.

Automated Testing: The new version of Automated Testing includes a test-item bank and an easy-to- navigate rules-based process to automatically create written and online tests based on selection of learning objectives, subject areas and user-chosen questions. Online test questions may include audio, video, or graphic files and test scores are automatically graded and appended to the tester's record. Question

analysis and statistical reports are also included. Automated Testing allows users to create written, online, and observed tests, including firearms shoots.

Conduct and Performance: Acadis now provides the ability to create self-defined evaluations for students during training and for officers in the field after basic training. Evaluation criteria, or competencies, are fully user defined. Each competency can be evaluated using either a subjective rating or test score as the assessment criteria, with immediate remediation tracking included. Completed evaluations are automatically appended to the persons record.

"I am proud of what our R&D team has accomplished for this important release. They have done an excellent job incorporating the incredible feedback we have received from our clients, partners, and solutions analysts into the new product," says Ari Vidali, Envisage CEO. "Acadis is the very antithesis of the common silo-based approach to training and compliance operations. The suite provides an enterprise framework that supports unified operations across traditionally disconnected training functions. The tremendous cost savings and efficiencies that are gained by eliminating fragmented legacy systems, silos, and paper processes are very appealing to our Federal and State customers."

About the Acadis® Readiness Suite: The Acadis Readiness Suite is an enterprise software application that enables organizations to create training ecosystems. More than 270,000 public safety professionals nationwide use the system. Acadis automates the management of complex, high-risk, blended training environments such as law enforcement, public safety, homeland security, and the military.

The modular system architecture allows training organizations to optimize the entire "hire-to-retire" lifecycle for personnel by fusing learning management, automated scheduling, registration, housing/barracks management, certification compliance tracking, automated testing, and document storage into a comprehensive end-to-end solution. The optional Acadis Portal Framework allows secure, decentralized access to online learning, employee training records, in-service training reporting, class registrations, and instructor availability management.
http://www.envisagenow.com/acadis

BUSINESS MEETING MINUTES
CHICAGO, ILLINOIS
OCTOBER, 22-23, 2011

CALL TO ORDER: President Clark called the meeting to order at 1:00 p.m. October 22, 2011.

ROLL CALL: States Present: Colorado, FLETA, Idaho, Indiana, Kentucky, Maine, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, West Virginia, and California. Sixteen states represented.

AGENDA ADDITIONS: NHTSA Umbrella Agreement.

APPROVAL OF MINUTES: **MOTION** by Vickers to approve the minutes of the General Business Meeting from June 21-22, 2011 in Nashville, TN. SECOND by Sadler. MOTION CARRIED with all in favor.

EXECUTIVE DIRECTOR'S BRIEFING: **New POST Directors**: There are new POST Directors in Arkansas, Oklahoma, Wyoming, and Washington. ***Sourcebook***: Please respond to the Sourcebook survey as soon as possible. Pat Judge will contact regional representatives so they can also help encourage participation. **Website**: Judge is looking for any photographs that could be used on the web site. Judge reminded the members that many of the documents available are posted behind the member's only section of the web site. **PERF Project**: PERF has asked IADLEST to collaborate on a grant from the Spencer Foundation. This foundation exists to make education better and help make policing more civic minded. They have agreed to subsidize any expenses we may incur. **Training:** Judge attended a three day

session with approximately 800 attendees on emergency preparedness and disaster management. Becar and Judge attended training on E-Learning and Learning Management Systems. **Meeting Dates**: The next Executive Committee Meeting is in Washington, DC, January 19-20, 2012. The next General Business Meeting is in Savanna, Georgia; June 9-12, 2012. **Retirement Notice:** Longtime IADLEST member Mike DiMiceli has announced he will retire from California POST at the end of the year.

GRANTS MANAGER'S BRIEFING:

Grant Projects: Mike Becar provided the members with a summary of the grants currently in place, the ones that have expired, and the ones that are coming to a close very soon. The original umbrella agreement from 2006 with NHTSA has run its course.

NHTSA Umbrella Agreement: A new umbrella agreement with NHTSA has been offered. It will be a three year, approximately $4.5 million agreement, and include the following seven projects: Motorcycle Safety Training, Motorcycle Safety Course Conversion, DDACTS, LE Training Development and Delivery for Pursuit Policy, TOPS, and Getting the Word Out, NLEAN Pursuit Management, Traffic Safety Outreach and Support, and SFST Assessment Facilitation and Coordination.

2010 Audit: The 2010 audit should be finished up this week.

General Fund Request: Becar indicated that at times grant funding is not available to cover travel due to new government rules put in place after meetings that were planned had already been arranged. He is concerned that reimbursement in these situations could be delayed or denied. He is requesting that the members authorize funds to cover the expenses in these situations. **MOTION** by Gabliks to make $10,000 from the general fund available to pay travel and per diem expenses should DOJ deny reimbursement at the last minute. SECOND by Bierne. MOTION CARRIED with all in favor.
Credit Card Payments: The use of credit cards for memberships and purchases was discussed. Many agencies have a need to use a credit card as purchase orders and check processing is being phased out in many states. **MOTION** by Silva to put a system in place on our website to use credit cards for purchases and membership dues. SECOND by Bierne. MOTION CARRIED with all in favor.

GUEST INTRODUCTIONS: Jim Baker, Executive Support Specialist, and Kate Black, Outreach and Communications Advisor, spoke on the nationwide suspicious activity and reporting initiatives. There is a fifteen minute DVD available. Additional information and the DVD can be obtained by contacting them at Katherine.black@usdoj.gov and jimbaker@ncirc.gov.

IADLEST TREASURY: Chuck Melville provided the Statement of Assets and Liabilities for the year ending September 2011. They are currently scanning all of Westfall's records into a digital and searchable format so there is a valid historical record available. **MOTION** to approve the Treasurer's Report by Goodpaster. SECOND by Sutterfield. MOTION CARRIED with all in favor.

RECESS: **MOTION** to recess at 2:45 p.m. by Goodpaster. SECOND by Cappitelli. MOTION CARREID with all in favor.
RECONVENE: President Clark called the meeting back to order on October 23, 2011 at 9:00 a.m.

ADMINISTRATIVE REVIEW:
2012 Conference: Greg Redden provided an overview of the summer conference in Savanna, GA. **MOTION** by Goodpaster to set the 2012 conference registration fee at $395.00. SECOND by Muldoon. MOTION CARRIED with all in favor.

2013 Conference: The 2013 conference was scheduled to be held in the state of Washington. The POST Director there has resigned so we may need to look for a new host.

Strategic Planning: Bill Muldoon provided the strategic planning update to the members as he did for the Executive Committee. MOTION by Silva to approve the Strategic Planning Report. Second by Bierne. MOTION CARRIED with all in favor. MOTION by Silva to authorize the Executive Committee to hire a full-time CEO. SECOND by Goodpaster. MOTION CARRIED with all in favor.

Life Membership: Paul Cappitelli reported that Mike DiMiceli will be retiring at the end of the year. He has served as a regional representative, as chair of the traffic safety committee, and the technology committee. He has been a dedicated member of IADLEST for many years. **MOTION** by Flink to award life membership to Mike DiMiceli. SECOND by Mann. MOTION CARRIED with all in favor.

Safe Driving Initiative: Paul Cappitelli reported that what California is doing with the Safe Driving Initiative has a lot of potential. He would like to make IADLEST the primary message carrier for this. There are preliminary plans for a symposium in California in October 2012. ALERT International elected Travis Yates and Doug Larson into leadership positions and they also want to be a part of this effort. **2011**

NHTSA Umbrella Agreement: President Clark asked for a motion regarding the NHTSA Umbrella Agreement. MOTION by Goodpaster to accept the current umbrella agreement from NHTSA and the seven related grant projects. SECOND by Bierne. MOTION CARRIED with all in favor.

REGIONAL REPORTS:

West Region: Flink reported that the West Region will meet in December. NDI grant will help fund travel for some of the members. **Central**: Chuck Sadler has not had an opportunity to schedule a regional meeting for this fall. One will be planned for the spring. **Northeast**: Silva stated that Rhode Island hosted a regional meeting last May. Another will be scheduled before the conference in June. His region has many states that do not actively participate in IADLEST. **Midwest**: The Midwest Region has not met since the meeting in Nashville. It is anticipated that a spring regional will occur (location is yet to be determined). **South**: No Report.

ADJOURNMENT: MOTION by Cappitelli to adjourn. SECOND by Bierne. MOTION CARRIED with all in favor.

SPECIAL EXECUTIVE COMMITTEE MEETING MINUTES CHICAGO, ILLINOIS OCTOBER 23, 2011

CALL TO ORDER: President Dick Clark (NV) called the meeting to order on October 23, 2011 at 11:15 a.m.

11. ROLL CALL: Members Present: Clark, Muldoon, Bierne, Melville, Vickers (arrived 11:52 a.m.), Goodpaster, Halvorson, Silva, Sadler, Flink, Pat Judge (Executive Director), Mike Becar (Grants Manager). Members Absent: Bill Floyd

NEW BUSINESS: Organizational Restructuring**:** The members met after the General Business Meeting to talk further about the hiring of a full-time CEO. The members debated at length the process to fill the newly authorized position.

MOTION by Flink to discuss the hiring process in executive session. SECOND by Melville. MOTION CARRIED with all in favor. Executive session began at 11:45 a.m. Members exited executive session at 12:20 p.m.

Continued on page 20

APPLICATION FOR IADLEST MEMBERSHIP

Print Name **Title**

Organization

Address

City

State **Zip Code**

Area Code **Telephone**

Area Code **Fax**

E-mail Address

Sponsoring State Director Member

Type of Membership Requested:

_____ Director ($400)

_____ Sustaining ($200)

_____ General ($100)

Make check payable to **IADLEST** and mail with application to:

IADLEST
c/o 3287 Tasa Drive
Meridian, ID 83642-6444

MEMBERSHIP

Membership in the Association is available in one of the following categories:

Director Member is an agency membership available to the director or chief executive officer of any board, council, commission, or other policy-making body. This agency is established and empowered by state law and possesses sole statewide authority and responsibility for the development and implementation of minimum standards and/or training for law enforcement, and where appropriate, correctional personnel.

General Member is available to any professional employee of an agency represented by a director; any member of the board, council, commission, or other policy-making body of any state, to which a director is responsible; any professional employee of a criminal justice academy or training center at a national, state, or local level, or other persons actively involved in the training/education of law enforcement personnel; or individuals employed by or within any country other than the United States whose employment and responsibilities are deemed equivalent.

Sustaining Member is limited to any individual, partnership, foundation, corporation, or other entity involved with the development or training of law enforcement or other criminal justice personnel.

General and Sustaining members must have the sponsorship of a state director member upon application for membership.

RECRUIT A NEW MEMBER
SHARE IADLEST WITH A COLLEAGUE

We ask each IADLEST member to recruit other distinguished law enforcement professionals. If each member recruited one other member, we would double in size overnight! The more members we have, the greater influence we will have on law enforcement standards and training. There is no reason why we should keep the IADLEST organization our best-kept secret.

Why should you become a member?

You can:

- Belong to an international association of professional law enforcement training directors, managers, leaders, and educators.
- Exchange information and advice with other professionals.
- Participate in national conferences and keep abreast of state-of-the-art training and employment standards.
- Access the IADLEST POST-NET (Internet) national curriculum library.
- Use the IADLEST POST-NET (Internet) national training calendar to list your training programs.
- Access IADLEST research studies and training products, e.g., Emergency Driving Training Guide, Radar/LIDAR Training Manuals, *IADLEST Sourcebook*, etc.
- Provide input on national policies affecting law enforcement standards and training.

Continued from page 18

Executive session began at 11:45 am. Members exited executive session at 12:20 pm.

MOTION by Bierne to advertise for a CEO, with a selection committee to consist of current President Clark and Past Presidents Goodpaster and Crews. SECOND by Silva. MOTION CARRIED with all in favor.

ADJOURNMENT: **MOTION** to adjourn by Bierne. SECOND by Melville. MOTION CARRIED with all in favor.

OREGON L-O-D-D RESOURCE GUIDE UPDATE COMPLETED AND AVAILABLE

by: Eriks Gabliks, Director, Oregon POST

The Department of Public Safety Standards and Training (DPSST) recently released a Line-Of-Duty-Death (L-O-D-D) Resource Guide that will assist law enforcement agencies and family members in addressing both on-and off-duty deaths. The work group included representatives of the Oregon Association of Chiefs of Police, Oregon State Sheriff's Association, Oregon Association of Corrections Officers, Oregon Council of Police Associations, Oregon State Police, Oregon Department of Corrections, and DPSST. The work group pulled together a singular document (including checklists and resources), and we think you will be pleased with what you see. The digital format will allow for easy updates and modifications. It will also allow agencies to include their agency-specific policies, protocols, and resources if they wish. It is our hope that the guide never needs to be used; but if it is needed for an on-or off-duty death, we now have a useful tool that addresses the needs of both agency and family ready to go.

If you would like a copy of the printed copy of the guide please contact Eriks Gabliks at DPSST via email at eriks.gabliks@state.or.us

SCHOOL OFFICIALS DID NOT VIOLATE 1ST OR 14TH AMENDMENT DURING INVESTIGATION OF STUDENT'S VIOLENT ESSAY

by: Brian S. Batterton, J.D.

Recently the Second Circuit Court of Appeals decided *Cox v. Warwick Valley Central School District et a* [i], which serves as an excellent review of the constitutionality of school officials' conduct during investigations of student writing that describes violence and suicide. The facts of *Cox*, taken directly from the case are as follows:

> John Kolesar is the Principal of Warwick Valley Middle School ("Warwick"), which was attended by Raphael Cox, the plaintiffs' son. During his time at Warwick, Raphael exhibited a pattern of misbehavior: He threw objects at classmates, interrupted class instruction, fought with other students, and brought contraband to school (fireworks, lighters, and alcohol). Kolesar suspended Raphael on multiple occasions for these infractions. At a meeting with Kolesar in late 2006, Raphael and his parents signed a "behavioral contract" that placed Raphael on probation and specified that further misconduct would result in more severe discipline, possibly including expulsion.
>
> Raphael continued to misbehave, fighting with other students and vandalizing school property. He also continued to display violent tendencies and ideations: He made an inappropriate comment in class about flying a plane into a building, he was overheard by a teacher talking about blowing up things, and he brought to school what administrators perceived to be a makeshift metal weapon. As a

result, Kolesar requested another meeting with the parents.
In February 2007, the parents met with several Warwick school administrators, including Kolesar and the school psychologist. The administrators requested that Raphael undergo a psychiatric evaluation. The parents resisted, but agreed to have Raphael seen by a psychologist. After Raphael met with the psychologist, the parents gave Kolesar a copy of the evaluation.

In March 2007, Raphael's English teacher assigned Raphael to write an essay on what he would do if he had only 24 hours to live.3 Raphael's essay, titled "Racing Time," described getting drunk, smoking, doing drugs, and breaking the law. It ended with Raphael taking cyanide and shooting himself in the head in front of his friends at the end of the 24 hours. Raphael submitted the essay to his teacher, but never presented it to his class or shared it with his fellow students.

Concerned about its casual description of illegal activity, violence, and suicide, Raphael's teacher showed Racing Time to Kolesar. Kolesar immediately took Raphael out of class to discuss it. Raphael explained that the essay was fictional and that he did not intend harm to himself or others.

Kolesar then sequestered Raphael in the in-school suspension room ("ISS Room") for the rest of the afternoon while he considered whether Raphael posed an imminent threat to himself or others, and whether he should be disciplined for his essay. Kolesar concluded that there was no immediate threat and that discipline was not appropriate. Raphael was sent home at the end of the day.

Before school the next morning, Kolesar met the school psychologist and guidance counselors to discuss Raphael's emotional health and Kolesar's perception that the parents were insufficiently concerned about Raphael's misbehavior and emotional well-being. After the meeting, Kolesar reported to the district Superintendent, who reminded Kolesar of his legal obligation to report suspected abuse or neglect to the state department of Child and Family Services ("CFS"). Kolesar then called CFS and reported his concern that the parents were neglecting Raphael. The CFS narrative on Kolesar's call stated: Narrative: 13 yr old Rafael has been repeatedly writing in his journal violent homicidal and suicidal imagery while in school. He has also participated in acts of vandalism and brought dangerous objects into school such as fireworks and pieces of metal.

Rafael recently expressed suicidal thoughts and had a very descriptive plan for doing it in that he would take his favorite weapon, a ruger place it in his mouth with a cyanide pill and shoot himself and everyone would party for a week. The school recommended to the parents that they seek a psychiatric evaluation for their son but they have refused to do so. The parents are minimizing the child's thoughts and behaviors and state that this is just fiction and all a misunderstanding. It is believed the child is a danger to himself and other[s] at this point.

The parents are failing to provide a minimal degree of care to their son. That afternoon, a CFS worker told the parents to meet her at Warwick. When they arrived, the CFS worker insisted that they take Raphael to the hospital immediately to undergo a psychiatric evaluation, and warned

> that otherwise they could lose custody. The parents complied, and Raphael was evaluated that evening. After this incident, the parents home-schooled Raphael for the rest of the year. The CFS investigation eventually concluded Kolesar's concern was "unfounded." No further state action was taken.[ii]

The child's parents filed suit against Principal Kolesar and the school district on their son's behalf in federal district court. They alleged that Kolesar violated their son's (Raphael) *First Amendment* rights by disciplining him for his essay and violated their *Fourteenth Amendment* Substantive Due Process rights to custody of their son by making an exaggerated or false report to Child and Family Services. The district court granted summary judgment the principal and school district on both claims. Cox appealed to the Second Circuit Court of Appeals.

The Second Circuit first addressed the issue of whether the principal's act of placing Raphael in the in-school suspension room for the essay while the school investigated the incident constituted a violation of Raphael's *First Amendment rights*. The Second Circuit first noted

> To state a *First Amendmen*t retaliation claim, a plaintiff must establish that: (1) his speech or conduct was protected by the *First Amendment*; (2) the defendant took an adverse action against him; and (3) there was a causal connection between this adverse action and the protected speech. *Scott v. Coughlin, 344 F.3d 282, 287 (2d Cir. 2003); see also Kuck v. Danaher, 600 F.3d 159, 168 (2d Cir. 2010).*[iii]

The plaintiffs argued that Raphael's Racing Time essay was constitutionally protected speech and the principal violated his *First Amendment* rights when he placed him in the ISS room. They also argued that calling the Child and Family Services was also an adverse action against Raphael.

The Second Circuit then noted several rules that apply in the school context regarding the *First Amendment*. First, the court recognized that, while "students do not shed their constitutional rights at the schoolhouse gate," their rights are not the same as adults in public settings.[iv] Second, the court noted that, in a school setting, student speech is generally protected by the *First Amendment* unless the speech "materially and substantially interferes with the requirements of appropriate discipline in the operation of the school."[v] Third, the court stated there is an exception to the first two rules above, particularly,

> When students speak pursuant to the school curriculum such that their speech may be perceived as being endorsed or promoted by the school, e.g., school newspapers, theatrical productions--school administrators may exercise editorial control over that speech "so long as their actions are reasonably related to legitimate pedagogical concerns." *Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 271-73, 108 S. Ct. 562, 98 L. Ed. 2d 592 (1988).* Moreover, school administrators may, as part of their responsibility to "teach[] students the boundaries of socially appropriate behavior," punish student speech that is vulgar, lewd, or threatening, at least where that speech occurs publicly at school or a school-related event. *Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 681, 106 S. Ct. 3159, 92 L. Ed. 2d 549 (1986); see also Morse, 551 U.S. at 404-06.*[vi]

The court then stated that they did not need to reach a decision on whether Raphael's speech in the essay was protected *First Amendment* because the principal's action in placing Raphael in the ISS room and contacting Child and Family Services (CFS) did not constitute retaliation against Raphael. The court reasoned that typical *First Amendment* claims in the school setting involve *explicit censorship and clear disciplinary action by school officials.*[vii]

In analyzing the school official's action of placing Raphael in the ISS room constituted discipline, the court stated

> [S]chool administrators must distinguish empty boasts from serious threats, rough-housing from bullying, and an active imagination from a dangerous impulse. Making such distinctions often requires an investigation, and the investigation may result in discipline, but the investigation itself is not disciplinary--it is precautionary and protective. This is so even when a student is separated, interviewed, or temporarily sequestered to defuse a potentially volatile or dangerous situation. As in this case, a school administrator must be able to react to ambiguous student speech by temporarily removing the student from potential danger (to himself and others) until it can be determined whether the speech represents a real threat to school safety and student learning. Such acts deserve "unusual deference" from the judiciary. Without more, the temporary removal of a student from regular school activities in response to speech exhibiting violent, disruptive, lewd, or otherwise harmful ideations is not an adverse action for purposes of the
>
> *First Amendment* absent a clear showing of intent to chill speech or punish it.
>
> Although a student and his parents might perceive such removal as "disciplinary" or "retaliatory," its objective purpose is protective. It affords the administrators time to make an inquiry, to figure out if there is danger, and to determine the proper response: discipline, a benign intervention, or something else. A school cannot function without affording teachers and administrators fair latitude to make these inquiries.[viii] [internal citations omitted]

The court then stated that even though Raphael and his parents may have perceived the action as disciplinary, the principal merely took a precautionary measure to ensure that the student did not intend violence. As such, the court stated that they would give the principal's decision, ""unusual deference," and absent a clear showing of retaliatory or punitive intent, it cannot be considered "adverse" or "retaliatory."[ix] As such, the principal and school district did not violate Raphael's *First Amendment* rights.

Similarly, the court held that the principal's decision to report Raphael's parents to CFS was not adverse action against Raphael because to hold school officials liable in such a situation would place them in a very difficult situation. Particularly, school officials are required under New York law to report abuse and neglect. If they fail to report abuse or neglect, under state law they face liability. Yet if they report it, and this court holds such reporting to be a constitutional violation, then school officials would be forced in similar situations to choose between state law liability or federal liability under *Section 1983*. As such, the court held there was no adverse action or constitutional violation to Raphael in reporting the possible neglect or abuse.

The second issue before the court was whether the principal's call to CFS violated Raphael's parent's *Fourteenth Amendment* substantive due process rights by interfering with their custody of Raphael. The court stated

> To state a claim for a violation of this substantive due process right of custody, a plaintiff must demonstrate that the state action depriving him of custody was "so shocking, arbitrary, and egregious that the *Due Process Clause* would not countenance it even were it accompanied by full procedural protection." *Tenenbaum v. Williams, 193 F.3d 581, 600 (2d Cir. 1999).*[x]

Additionally, the court noted that

> Absent truly extraordinary circumstances, a brief deprivation of custody is insufficient to state a substantive due process custody claim. *Nicholson v. Scoppetta, 344 F.3d 154, 172 (2d Cir. 2003); see also Anthony, 339 F.3d at 143; Tenenbaum, 193 F.3d at 601.* Such temporary deprivations do "not result in the parents' wholesale relinquishment of their right to rear their children," so they are not constitutionally outrageous or conscience-shocking. *Nicholson, 344 F.3d at 172.*[xi]

The court then applied the facts of Raphael's case to the rules above. The court stated that even though the principal's reporting may have angered or infuriated the Cox's, the school did not even temporarily cause them a loss of custody of Raphael. In fact, the court stated that they even maintained custody of Raphael during the psychiatric evaluation. Further, the court noted that requiring a psychiatric exam under the circumstances at hand could not be said to "shock the conscience."[xii] Lastly, although the Cox's allege that the report to CFS was false, the court noted that nothing in the report was materially false and the principal did not act with malice in making the report such that it would "shock the conscience." As such, the court held that the report to CFS did not violate the Cox's *Fourteenth Amendment* Due Process rights.

Thus, the court of appeals affirmed the district court's grant of summary judgment in favor of the principal and the school district.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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[i] No. 10-3633-cv, 2011 U.S. App. LEXIS 17094 (2nd Cir. Decided August 17, 2011)
[ii] *Id.* at 2-6
[iii] *Id.* at 8
[iv] *Id.* at 9 (citing *Morse v. Frederick*, 551 U.S. 393, 396-97, 127 S. Ct. 2618, 168 L. Ed. 2d 290 (2007))
[v] Id. (quoting *Tinker v. Des Moines Indep. Cmty. School Dist.*, 393 U.S. 503, 509, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969))
[vi] *Id.* at 9-10
[vii] *Id.* at 10
[viii] *Id.* at 13-14
[ix] *Id.* at 15
[x] *Id.* at 17-18
[xi] *Id.* at 18
[xii] *Id.* at 19

ELEVENTH CIRCUIT UPHOLDS EVIDENCE FOUND DURING VEHICLE INVENTORY

by Brian S. Batterton, J.D

On September 30, 2011, the Eleventh Circuit Court of Appeals decided the *United States v. Glover*[i] which serves as an excellent review of the constitutional law as it applies to the admissibility of evidence found during vehicle inventories. The facts of Glover are as follows:

> On December 13, 2009, Chuwan Boros, an officer of the DeFuniak Springs, Florida Police Department was surveilling a Toyota truck in the Wal Mart parking lot because its owner, Caleb Andrew Glover, the defendant, was suspected of being involved in the robbery of a Winn Dixie pharmacy two days earlier. Boros checked the truck's registration and discovered that although at some point in the past the truck had been registered, the registration had been "cancelled," meaning that it was not registered to anyone. And the truck did not sport a valid license tag. When Glover exited the Wal Mart with his wife and younger brother and drove away in the truck, Boros followed and initiated a traffic stop. After obtaining Glover's identification, Boros gave Glover a traffic citation

> for operating his truck without a tag in violation of *Fla. Stat. Ann. § 320.07(3).1* Boros noted on the citation that this was a criminal offense requiring a court appearance. Boros also cited Glover for having no proof of insurance, in violation of *§ 316.646(1),* and failure to produce proof of registration, in violation of *§ 320.0605* (neither a criminal offense).
>
> Boros arrested Glover and placed him in the back seat of his patrol car. Since Glover's wife was unable to drive and his brother was a juvenile, Boros and Lt. David Krika, Boros's supervisor who had arrived on the scene, impounded the truck. A partial inventory search conducted at the scene pursuant to the police department's inventory policy yielded a white mask similar to the mask worn by the Winn Dixie robber, a loaded machine gun and ammunition. A subsequent search conducted at the impoundment lot pursuant to a search warrant uncovered two firearms, ammunition, controlled substances, and items apparently connected with the robbery.[ii]

Glover was indicted in federal court for robbery and numerous other offenses based on the evidence obtained in the searches. He filed a motion to suppress arguing that his arrest was unlawful because originally he was not charged with a criminal offense under Florida law and that the evidence obtained in the inventory search should be suppressed because the impoundment of his vehicle was improper (as it resulted from an unlawful arrest). The District Court denied the motion to suppress, and Glover was convicted. He then appealed the denial of his motion to suppress.

On appeal, Glover's first argument was that his arrest was unlawful because he was originally charged under *Fla. Ann. § 320.07(3)* which is a non-criminal violation. Only after the fact, was his original charge changed to a violation of *§ 320.02(1*), which was a criminal offense. Thus, Glover argues, at the time he was arrested, he was not charged with an offense that was a criminal violation, thus the impoundment of his vehicle because his arrest was not lawful.

To begin its analysis of this issue, the Eleventh Circuit first examined rules that were relevant to issue. First, court of appeals noted

> A warrantless arrest without probable cause violates the *Fourth Amendment. United States v. Lyons, 403 F.3d 1248, 1253 (11th Cir. 2005).* Probable cause to arrest exists when a police officer has a reasonable belief that a suspect committed or was committing a crime, based upon facts and circumstances within their knowledge. *United States v. Gonzalez, 969 F.2d 999, 1002 (11th Cir. 1992).*[iii]

Next, the court noted that

> For probable cause to exist, an arrest must be objectively reasonable based on the totality of the circumstances." *United States v. Street, 472 F.3d 1298, 1305 (11th Cir. 2006)* (quotation and ellipsis omitted). The officer's own subjective opinions or beliefs about probable cause are irrelevant, because it is an objective standard. *Id.*[iv]

Thus, the standard for the court to use when determining whether an arrest is lawful and based on probable cause is an "objective" standard; this means that the court does not consider the officer's own opinions at the time of arrest, but rather whether, viewed objectively, probable cause was present.

The court then stated

> When an officer makes an arrest, which is properly supported by probable cause to arrest for a certain offense, neither his subjective

> reliance on an offense for which no probable cause exists nor his verbal announcements of the wrong offense vitiates the arrest. *United States v. Saunders, 476 F.2d 5, 7 (5th Cir. 1973).*

In other words, as long as there was probable cause to believe the suspect committed a criminal offense, the arrest is lawful, even if the officer charged the suspect with the wrong offense.

Thus, in Glover's case, the court of appeals stated that even though the officer charged him with a non-criminal offense, there was still probable cause at the time of arrest to support Glover's arrest for a second degree misdemeanor, particularly *§ 320.02(1)* (driving an unregistered vehicle). As such, the arrest, viewed objectively, was lawful.

The next issue was whether the impoundment of Glover's vehicle was reasonable under the *Fourth Amendment*.

Before its analysis, the court first examined the constitutional requirements of vehicle impounds. First, the court of appeals stated

> In *Colorado v. Bertine*, the Supreme Court further explained that "[n]othing . . . prohibits the exercise of police discretion [in deciding to impound a vehicle,] so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." *479 U.S. 367, 375, 107 S.Ct. 738, 743, 93 L.Ed.2d 739 (1987).* Even if an arrestee's vehicle is not impeding traffic or otherwise presenting a hazard, police officers may impound a vehicle, but the decision to impound a vehicle must be made in good faith, based upon standard criteria, and not solely based upon "suspicion of evidence of criminal activity." *Sammons v. Taylor, 967 F.2d 1533, 1543 (11th Cir. 1992)* (involving a 42 U.S.C. § 1983 action for damages for unlawful impoundment and search of vehicle). Additionally, if law enforcement officials have the authority to conduct a valid impoundment, they are not constitutionally required to permit an arrestee to make an alternative disposition of his vehicle. *Id.*[v]

Further, the court noted that in *Oppermann* the Supreme Court articulated the three purposes for allowing vehicle inventory searches on vehicles being impounded. The court of appeals stated

> The Supreme Court had identified three distinct interests that justify the inventory search of an automobile: (1) protection of the owner's property while it remains in police custody; (2) protection of the police against claims or disputes over lost or stolen property; and (3) protection of the police from potential danger.[vi]

Thus, in *Glover*, the court of appeals noted that the officer had no viable alternative to the impoundment of Glover's vehicle. His wife admitted that she was not able to drive. Further, the impound and inventory search were conducted according to the police department's written policies, which is also a legal requirement. As such, the inventory was lawful and the evidence found during the inventory was admissible.

The court of appeals then affirmed the denial of the motion to suppress.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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[i] No. 11-10095, 2011 U.S. App. LEXIS 19955 (11th Cir. Decided September 30, 2011 Unpublished)

[ii] Id. at 1-3

[iii] Id. at 6

[iv] Id.

[v] Id. at 8

[vi] Id. at 10

6TH CIRCUIT DENIES QUALIFIED IMMUNITY FOR DEPUTIES IN EVICTION INCIDENT

by: Brian S. Batterton, J. D.

Law enforcement officers are often called to keep the peace during eviction proceedings. While the vast majority of these incidents are handled without problems, at times, it is possible for officers or deputies to sometimes exceed the bounds of what the *Constitution* allows. Recently, the Sixth Circuit Court of Appeals decided *Cochran v. Gilliam*[i] which provides guidance regarding the constitutional parameters for officers or deputies on scene at an eviction in order to keep the peace.

The facts of *Gilliam* are as follows: In 2008, Cochran leased a home from the Mr. and Mrs. Williams (the Landlords). After Cochran fell behind in rent payments, the Landlords filed a "Forcible Detainer Complaint" in state court. Later, a judge ruled against Cochran and found him guilty of forcible detainer. Specifically, the order stated that Cochran "was guilty of forcible detainer as charged and that [the Landlords] have restitution of the premises…and recover of the Defendant the costs expended herein."[ii] The court also issued an Eviction Notice that stated:

> To the Sheriff or any other Constable of Lincoln County: Defendant [Cochran] on 8-28-2008 was found guilty of a forcible detainer of the premises located at 3700 HWY 2141, Stanford, KY 40484 to the injury of the Plaintiff [Mr. and Mrs. Williams]. Defendant having failed to file an appeal on or before the seventh day after the finding, and upon request of the Plaintiff, you are commanded, in the name of the Commonwealth of Kentucky, to put the Plaintiff in possession of the premises, and to make due return to the Court within 8 days showing you have executed this warrant.[iii]

Three days later, on September 8, 2008, Deputy Sheriffs Dan and Don Gilliam and another deputy who was not named as a defendant, went to the home at issue to keep the peace while the Eviction Notice was executed.

At the beginning of the eviction, Cochran was not home. His neighbor called him; and he, his mother and his sister eventually arrived. During the eviction, Deputy Don Gilliam told the Landlords that he noticed the court's order was silent as to whether the Landlords could seize Cochran's personal property to sell to recover rent and costs. Allegedly, the deputy then told the Landlord that he should go ahead and seize the personal property. Additionally, the Landlord told the deputy that the County Attorney told him that he could sell Cochran's personal property to recover his losses. Deputy Don Gilliam, in an Affidavit, stated that he, in turn, called the County Attorney regarding the issue. He said that the County Attorney told him that the Landlords "had the right to sell the property."[iv]

As such, during the course of the eviction, the deputy sheriff's threatened to restrain or arrest anyone who attempted to interfere with the Landlords as they took Cochran's personal property. Additionally, Deputy's Don and Dan Gilliam helped the Landlords load Cochran's personal property into the Landlord's vehicle. Allegedly, there were even photographs of the deputies actively loading items for the Landlord. Even further, Deputy Don Gilliam admitted that he paid the Landlord $100 for Cochran's television which he planned to use at the sheriff's office. Cochran's guns and prescription medication were also taken by the deputies and

subsequently turned over to the Landlord's uncle who was a constable.

During one point during the eviction, Cochran called the Kentucky State Police. Cochran claims the deputies cancelled the state police telling them that they would handle the call. The deputies claim that Cochran cancelled the state police response himself.

After the eviction and seizure of his property, Cochran alleges that he offered to pay the Landlord for the return of his property. However, he states that no property has been returned to him.

Cochran subsequently filed a lawsuit against Deputies Don and Dan Gilliam under *42 U.S.C. § 1983* for violating his *Fourth* and *Fourteenth Amendment* rights. While Cochran admits that the deputies had a right to be at the residence for the eviction, he contends that the Landlord was required to place his personal property on the sidewalk. Cochran alleged the *Fourth Amendment* violation stemmed from the deputies' unreasonable involvement in the seizure of his personal property; and the *Fourteenth Amendment* violation stemmed from the deputies, while acting in their official capacity as deputy sheriffs, assisted the Landlords in removing and transporting away his personal property.

The district court denied qualified immunity for Deputy's Don and Dan Gilliam in their personal capacities and also allowed a claim for punitive damages. The deputies appealed the denial of qualified immunity to the Sixth Circuit Court of Appeals.

The Sixth Circuit noted that, under the qualified immunity analysis, they must first determine whether or not a constitutional violation occurred; if so, they second, must determine whether the right that was violated was "clearly established" at the time of the violation such that a reasonable officer would have known that he was violating the law.[v]

The Sixth Circuit then first sought to determine whether the Deputy's Don and Dan Gilliam violated the *Fourth Amendment* by their involvement during the eviction.

The Gilliam's argued that they should be entitled to qualified immunity from suit because (1) they did not actively participate in the removal of Cochran's property, and (2) Kentucky law did not prohibit the removal of Cochran's property by the Landlords.

The Sixth Circuit noted that under the *Fourth Amendment* a "seizure" occurs when government officials *meaningfully interfere* with a person's possessory interest in their property.[vi] The court of appeals also noted that it is undisputed that the Gilliam's did not take all of Cochran's property but they did actively assist the Landlords who did take Cochran's personal property. Thus, the court of appeals stated that they must determine whether the Gilliam's "meaningfully interfered" with Cochran's property.

The court of the appeals then stated

> What actions can constitute a meaningful interference with property is determined under a reasonableness analysis. While the term "reasonableness" standing alone, without context, is of limited value, the Supreme Court's dicta on *Fourth Amendment* seizures is instructive. What matters is the intrusion on the people's security from governmental interference. Therefore, the right against unreasonable seizures would be no less transgressed if the seizure of the house was undertaken to collect evidence, verify compliance with a housing regulation, effect an eviction by the police, or on a whim, for no reason at all.[vii] [internal citations and quotations omitted]

The court of appeals then stated that they agreed with the district court that the Gilliam's participation in the improper seizure of personal property does violate the *Fourth Amendment.* The court also more specifically examined the lead United States Supreme Court case on the

topic of seizures during evictions, *Sodal v. Cook County, Ill.*[viii] In *Sodal*, deputies knowing that no eviction order existed, went with a landlord who dragged Sodal's trailer off of its mooring in the trailer park owned by the landlord. The deputies stood by and threatened to arrest Sodal if there was interference with the landlord's efforts. When Sodal tried to file a trespassing complaint with the deputy's lieutenant, the lieutenant called the prosecutor and then told Sodal it was a civil issue. The Supreme Court held

> [T]he deputy sheriffs, by telling Sodal they were there to prevent his interference in the repossession and by refusing to stop a legally questionable repossession by others, constituted a *Fourth Amendment* seizure, despite the fact the deputies did not enter[] Sodal's house, rummage[] through his possessions, or . . . interfere[] with his liberty in the course of the eviction.[ix] [internal citations and quotations omitted]

After examining *Sodal*, the court of appeals examined precedent from the Sixth Circuit. First, they noted that, in *Revis v. Meldrum*, they held that

> [A]n officer's mere presence at the scene to keep the peace while parties carry out their private repossession remedies does not render the repossession action that of the state.[x]

On the other hand, the court also noted

> [I]n cases where police officers take an active role in a seizure or eviction, they are no longer mere passive observers and courts have held that the officers are not entitled to qualified immunity. See *Haverstick Enters., Inc. v. Fin. Fed. Credit, Inc., 32 F.3d 989, 995 (6th Cir. 1994).* This is particularly true when there is neither a specific court order permitting the officers' conduct nor any exigent circumstance in which the government's interest would outweigh the individual's interest in his property. *Cf. Flatford v. City of Monroe, 17 F.3d 162, 169-71 (6th Cir. 1994).*[xi]

The court then applied the facts of Cochran's case to the rules discussed from the cases above. First, there was evidence, including a photograph, that the Gilliam's personally carried Cochran's personal property to the Landlord's truck. The court of appeals noted that this goes even further than the deputies in *Sodal*, who did not enter Sodal's trailer or touch Sodal's personal property. Additionally, the Gilliam's threatened to arrest anyone who interfered with the taking of Cochran's property. Lastly, the Gilliam's even purchased a television belonging to Cochran from the Landlord at the scene. As such, the Sixth Circuit held

> These acts, taken together, indicate the Gilliams' presence that day went beyond the constitutionally permissible detached keeping of the peace function and crossed over into a "meaningful interference" with Cochran's property.[xii]

The Gilliam's also argued that they should be entitled to qualified immunity because they relied on the advice of the County Attorney that the Landlords could take and sell Cochran's property.

The pertinent facts to this issue are that the Gilliam's knew the order did not specifically authorize the taking of Cochran's personal property to sell. However, they suggested that the Landlords do so anyway and called the County Attorney to confirm their statement. This, they claim, should entitle them to qualified immunity.

The court of appeals stated the rule regarding immunity for reliance on legal advice is as follows:

> [A] law enforcement officer's phone call to a county or district attorney for general guidance when

> confronted with a situation where there is no legal basis for the contemplated actions does not automatically convert unreasonable actions into reasonable actions. This circuit has determined that reliance on counsel's legal advice constitutes a qualified immunity defense only under 'extraordinary circumstances,' and has never found that those circumstances were met.[xiii] [internal quotations omitted]

The court of appeals then held that, like the district court, they agree that no extraordinary circumstances are present to grant the deputies immunity for reliance on legal advice.
The deputies also argued that the taking of Cochran's personal property was authorized under a Kentucky statute that allows a landlord a lien on a tenant's personal property in order to secure payment of rent.[xiv] However, the court of appeals stated

> [T]his section of the Kentucky code merely gives the landlord a lien on the personal property—the lien does not give a landlord carte blanche to take possession of the tenant's property without going through the proper judicial processes.[xv]

As such, the Sixth Circuit agreed with the district court that Deputy's Don and Dan Gilliam did violate Cochran's *Fourth Amendment* rights by their actions during the eviction.

The court of appeals then sought to determine whether this *Fourth Amendment* right was clearly established such that another reasonable officer in the same situation would have known the conduct was a violation. If the law was not clearly established, the deputies will be entitled to qualified immunity. If the law was clearly established, the deputies are not entitled to qualified immunity.

The Gilliam's argued that there was no similar case precedent to put them on notice that their conduct was unlawful. However, the court of appeals noted that they do not require cases with practically identical fact patterns in order hold that the law is clearly established. In fact, the court of appeals stated

> [T]his Court has employed a more reasonable, common sense approach to the "clearly established" analysis, one that acknowledges that, while every situation will involve slightly different factual scenarios, they are not so different that courts and public officials cannot intuit the contours of the rights at issue. Under this standard, a right is "clearly established," when [t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right. Additionally, an action's unlawfulness can be apparent from direct holdings, from specific examples described as prohibited, or from the general reasoning that a court employs.[xvi] [internal citations and quotations omitted]

The court of appeals then stated that, based on the United States Supreme Court's holding in *Sodal*, the law was clearly established for the deputies in *Cochran*. The court of appeals also stated that they believed they were consistent in their interpretation of *Sodal* with other circuits that have faced similar cases. Specifically, the court stated

> [W]e note our application of *Soldal* is consistent with other circuits regarding police officers taking active roles in otherwise private self-help remedies. HN17 Generally, "officers are not state actors during a private repossession if they act only to keep the peace, but they cross the line if they affirmatively intervene to aid the repossessor." *Marcus v. McCollum, 394 F.3d 813, 818-19 (10th Cir. 2004)* (citing similar cases from the Fifth, Ninth, and Eleventh Circuits). The Second Circuit has discussed police officers' involvement in repossessions as a continuum,

> stating: "When an officer begins to take a more active hand in the repossession, and as such involvement becomes increasingly critical, a point may be reached at which police assistance at the scene of a private repossession may cause the repossession to take on the character of state action." *Barrett v. Harwood, 189 F.3d 297, 302 (2d Cir. 1999). See also Booker v. City of Atlanta, 776 F.2d 272, 274 (11th Cir. 1985)* (police officer's "arrival with the repossessor gave the repossession a cachet of legality and had the effect of intimidating [the plaintiff] into not exercising his right to resist, thus facilitating the repossession. Even if unintended, such an effect could constitute police 'intervention and aid' sufficient to establish state action.").[xvii]

As such, the Sixth Circuit affirmed the district court's denial of the Gilliam's motion for qualified immunity. The court refused to address the *Fourteenth Amendment* issue since the deputies were denied qualified immunity, regardless of the outcome of that issue. Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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[i] No. 10-6274, 2011 U.S. App. LEXIS 18448 (6th Cir. Decided September 2, 2011)

[ii] Id. at 2

[iii] Id. at 2-3

[iv] Id. at 4

[v] Id. at 11-12 (citing Saucier v. Katz, 533 U.S. 194 (2001)

[vi] Id. at 14 (citing U.S. v. Jacobsen, 466 U.S. 109 (1984)

[vii] Id. at 14-15

[viii] 506 U.S. 56 (1992)

[ix] Id. at 16 (citing Sodal , 506 U.S. at 62)

[x] Id. at 16-17 (citing Revis v. Meldrum, 489 F.3d 273 (6th Cir. 2007)

[xi] Id. at 17

[xii] Id. at 18

[xiii] Id. at 19-20 (quoting Silberstein v. City of Dayton, 440 F.3d 306, 318 (6th Cir. 2006); see also Buonocore v. Harris, 134 F.3d 245, 253 (4th Cir. 1998) ("[A]lthough reliance on counsel's advice may indeed be a factor to be considered in deciding whether a defendant has demonstrated an 'extraordinary circumstance,' reliance on legal advice alone does not, in and of itself, constitute an 'extraordinary circumstance' sufficient to prove entitlement to the exception to the general Harlow [v. [**12] Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982),] rule.").

[xiv] See Ky. Rev. Stat. § 383.070

[xv] Id. at 21

[xvi] Id. at 23

[xvii] Id. at 24-25

PEDESTRIAN STOPS AND WARRANT CHECKS

by Brian S. Batterton, Attorney

On September 12, 2011, the Tenth Circuit Court of Appeals decided the *United States v. Burleson*[i], which serves as an excellent legal review for officers on the topic of pedestrian stops. The facts of *Burleson* taken directly from the case are as follows:

> Shortly before midnight on May 2, 2008, Officer Jeff Kuepfer of the Roswell, New Mexico, Police Department was patrolling a neighborhood in Roswell when he observed Mr. Burleson and two companions exit an alleyway and begin walking in the middle of the street side-by-side. One of the individuals was carrying a pit bull without a leash.
>
> Officer Kuepfer decided to question the individuals for two reasons. First, they were walking in the middle of the street, which is a violation of a New Mexico statute and a Roswell ordinance. Second, they were carrying a dog that appeared to be older than a puppy, which Officer Kuepfer found odd and which concerned Officer Kuepfer based on reports of dog thefts in the city. Officer Kuepfer therefore believed that further investigation was appropriate, especially in light of the fact that the police department had within the past week received reports of criminal activity in the immediate area, including property damage, vehicular burglaries, and a shooting. Although Officer Kuepfer did not intend to cite the individuals for a traffic violation, he wanted to give them a verbal warning for walking in the street, find out who they were and what they were doing, find out why they were carrying the dog, and determine whether the dog could have been stolen.

Officer Kuepfer thus got out of his patrol car and asked the group to "hold up." He approached them and informed them that they were not permitted to walk in the middle of the street. He then talked to them about what they were doing and about the dog, after which he asked for their names:

> I just basically said, Hey, how you guys doing tonight? Just, what's going on? Where are you heading? And, through just talking to them, I found out that they were heading home, that the dog was theirs, that the reason why they were carrying the dog was because, if they put him down, he'd run off from them. So that made sense to me, okay. Asked them for their names.

Once Officer Kuepfer obtained their names, he immediately requested a warrants check on each of them, using the portable radio attached to his belt. Shortly thereafter, police dispatch responded that there was an outstanding warrant for an individual named Carl Burleson. The total duration of this initial encounter, from the time at which Officer Kuepfer stopped the individuals to the time at which dispatch informed Officer Kuepfer that Mr. Burleson may have an outstanding warrant, was three to five minutes.

At that point, Officer Kuepfer told Mr. Burleson that he may have an outstanding warrant, and asked Mr. Burleson for identification or for his date of birth and Social Security number so that Officer Kuepfer could verify that the warrant really was for Mr. Burleson. Mr. Burleson provided his date of birth and Social Security number, and Officer

> Kuepfer confirmed that the warrant was indeed for Mr. Burleson. Officer Kuepfer then told Mr. Burleson that he was under arrest for the warrant, and while Mr. Burleson was turning around, he told Officer Kuepfer, "Just so you know, I do have guns on me." Officer Kuepfer handcuffed Mr. Burleson and, during the ensuing a pat-down, discovered two handguns and ammunition in Mr. Burleson's pants pocket and waistband.[ii]

Burleson was indicted for federal weapons violations. He filed a motion to suppress the handguns and argued that his prolonged detention to run the warrant check, after the officer warned him of his violation and dispelled his suspicion about the dog, violated the *Fourth Amendment*. The district court agreed and suppressed the guns for the reasons argued by Burleson and because the court held officer safety concerns did not justify a warrant check. The government appealed to the Tenth Circuit Court of Appeals.

The issue before the court of appeals was whether Burleson was lawfully detained at the time the officer checked his name and date of birth for warrants. If he was lawfully detained, the guns will be admissible. If not, the guns must be suppressed as the product of an unlawful detention.

To resolve the issue, the court first examined whether officers may, during the course of a pedestrian stop, run a warrant check, just as they do during traffic stops. The court first noted that

> One type of seizure is an investigatory stop," *United States v. Simpson, 609 F.3d 1140, 1146 (10th Cir. 2010)*, in which "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest," *Terry v. Ohio, 392 U.S. 1, 22, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)*. Under *Terry*, an investigatory stop must be "reasonably related in scope to the circumstances which justified the interference in the first place." *Id. at 20*.[iii]

The court then noted that, in order for an officer to be within the proper scope of the stop, the officer must not exceed a reasonable time frame or duration required to complete the purpose of the stop.[iv]

With the above rules in mind, the Tenth Circuit stated that

> [I]t is well-settled in the traffic-stop context that while an investigative detention is ongoing, a police officer may obtain an individual's name and check that name for outstanding warrants.[v]

The court next examined whether officers can also run warrant checks during pedestrian stops. In order to answer this question, the court examined another Tenth Circuit case, the *United States v. Villagrana-Flores*.[vi] In *Villagrana-Flores*, officers received reports that a man was in public who appeared to be mentally ill. Officers arrived and found Villagrana-Flores was acting "delusional and paranoid" and appeared to be a danger to himself and others. The responding officers detained him and conducted a warrant check. Mr. Villagrana-Flores returned wanted and was arrested. He was later indicted for illegal reentry into the United States. The Tenth Circuit stated

> Mr. Villagrana-Flores's *Fourth Amendment* rights were neither violated when his identity was obtained during a valid Terry stop nor when his identity was shortly thereafter used to run a warrants check.[vii]

Thus, in *Burleson*, after examining *Villgrana-Flores*, the Tenth Circuit stated

> In sum, we concluded in *Villagrana-Flores* that the same rationale that

> underlies our conclusion as to the permissibility of warrants checks in the motorist context applies with equal force in the pedestrian context. Contrary to the government's statement at oral argument, this conclusion is not dicta, but reflects the holding of *Villagrana-Flores*. *See id. at 1275, 1277* (holding that it is not a violation of the *Fourth Amendment* for an officer who performs a *Terry* stop on an individual suspected of engaging in criminal activity to obtain that individual's identity and perform a warrants check, and thus that the warrants check on Mr. Villagrana-Flores, a pedestrian, was permissible).[viii]

The court of appeals next examined whether, at the time the officer conducted the warrant check of Burleson, the stop was completed and Burleson was being unlawfully detained. The district court, at the motion to suppress, held that the officer intended to warn Burleson and his companions about the violation. Further, the district court found that the officer was satisfied regarding their explanation regarding the dog. As such, the district court held that Burleson was unlawfully detained at the time of the warrant check.

Regarding the pedestrian law violation (walking in the street) the court of appeals held

> Viewed objectively, Officer Kuepfer had not completed the *Terry* stop by the time he requested the warrants check. Officer Kuepfer stopped the individuals because they had committed a pedestrian traffic violation and because they were carrying the dog without a leash. With respect to the first basis for the stop, it is objectively reasonable for an officer in that situation to assess the circumstances and then decide whether to issue each individual a written traffic citation or to let them go with a verbal warning. Whether an officer opts for a citation, a warning, an arrest, or some other action will depend in part on what transpires during the detention, including the results of the computer check.[ix] [internal citation omitted]

The court also noted that the stop was not "completed" just because the officer told Burleson and his companions that they were not allowed to walk in the street.

Further, the court of appeals also recognized that there was another purpose to the stop, particularly to investigate whether the men were stealing the dog. As to this purpose, the court of appeals stated

> With respect to the second basis for the stop (investigation into whether the dog had been stolen), it is objectively reasonable for an officer in that situation not only to ask questions as to whether the dog actually belongs to the detainees, but also to obtain their names and confirm their identities in case the dog is later reported stolen.[x]

In fact, regarding this purpose for the warrant check, the court of appeals noted that the officer testified that he asked for Burleson and his companions' identities for the very purpose of furthering an investigation if the dog were later reported stolen.

One additional important issue examined by the court was the duration of the stop. As previously stated

> [A]n investigative detention must not exceed the reasonable duration required to complete the purpose of the stop.[xi] [internal quotations and citations omitted]

In this case, it is undisputed that the duration of the stop was three to five minutes. The court held that this is well within the objectively reasonable period of time for this type of stop.

Lastly, the court examined whether officer safety concerns must be present in order to

justify a warrant check during a pedestrian stop. In *Burleson*, the district court held that there were no officer safety concerns that would justify a warrant check. In fact, they distinguished this case from *Villagrana-Flores* based on the fact that officer safety concerns were present in that case. However, the court of appeals stated

> It is true that in *Villagrana-Flores* we recognized that officer-safety concerns justified running a warrants check during a *Terry* stop because determining whether a detainee has outstanding warrants may inform an officer whether the detainee might engage in violent behavior during the detention. However, we did not base our decision solely on officer-safety concerns. We also determined that permitting a warrants check during a *Terry* stop on the street also 'promotes the strong government interest in solving crimes and bringing offenders to justice.[xii] [internal quotations and citations omitted]

As such, the warrant check is justified based on strong governmental interest in solving crime and bringing offenders to justice, as well as officer safety concerns.

Additionally, the court of appeals found that the district court was incorrect in concluding that Burleson and his companions posed no officer safety concerns. The court reasoned that the officer was alone with three unknown suspects at midnight in a neighborhood that was known for recent, significant criminal activity, including a shooting. As such, officer safety concerns were present in this case.

In conclusion, the court of appeals reversed the grant of Burleson's motion to suppress and remanded the case back to the district court for further proceedings.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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[i] No. 10-2060, 2011 U.S. App. LEXIS 18820 (10th Cir. Decided September 12, 2011)

[ii] Id. at 2-5

[iii] Id. at 9

[iv] Id. at 10

[v] Id at 11 (citing United States v. Villa, 589 F.3d 1334 (10th Cir. 2009))

[vi] 467 F.3d 1269 (10th Cir. 2006)

[vii] Burleson at 15-16 (quoting Villagrana-Flores, 467 F.3d 1269 (10th Cir. 2006))

[viii] Id. at 16

[ix] Id. at 18-19

[x] Id. at 20

[xi] Id. at 21

[xii] Id. at 30