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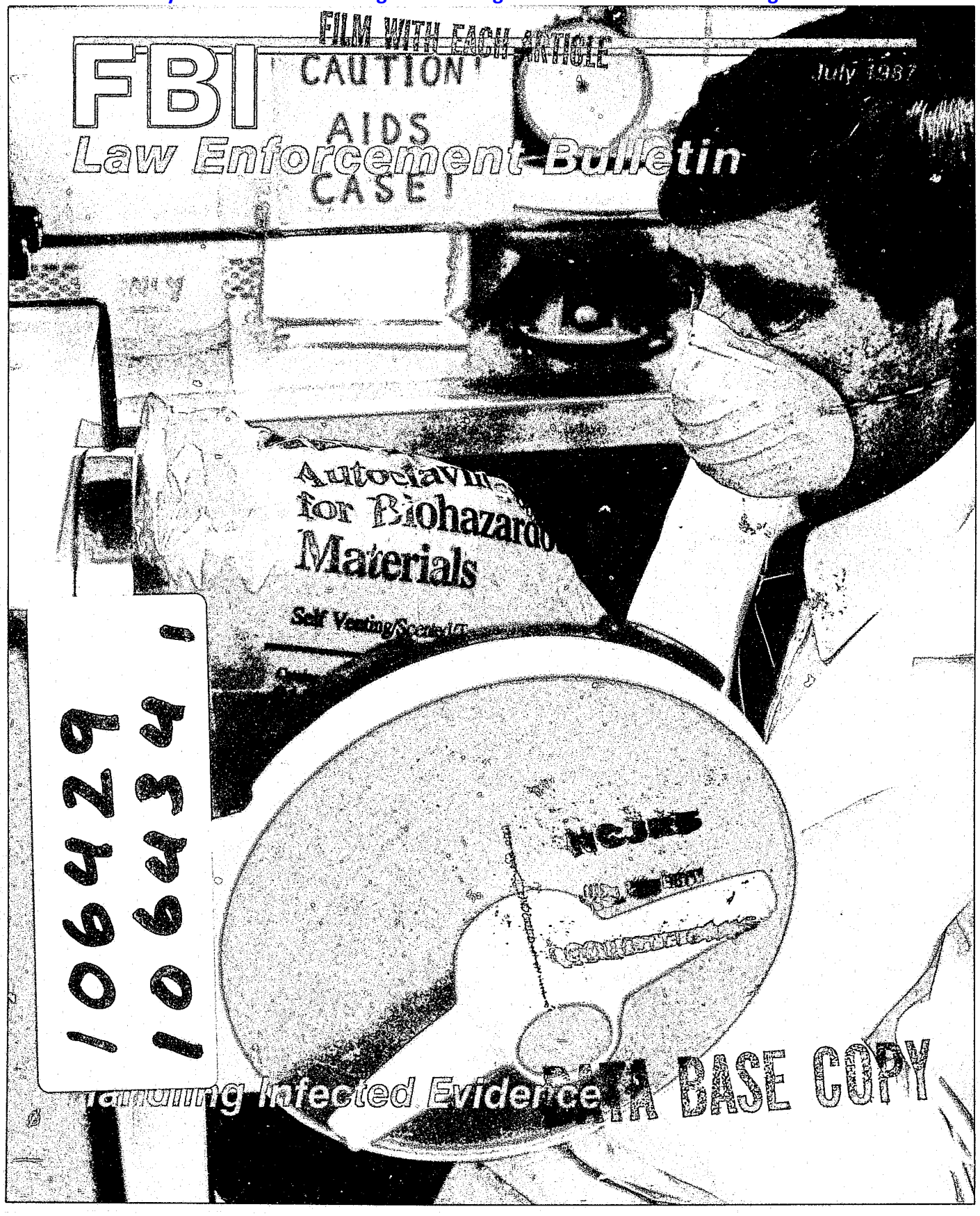

Handling Infected Evidence

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Fourth Amendment Rights of Law Enforcement Employees Against Searches of Their Workspace

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Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

Public employees are not, by virtue of their employment, deprived of the protection of the U.S. Constitution, and the Supreme Court has ruled that police officers "are not relegated to a watered-down version of constitutional rights."[1]

However, the government has an interest in the integrity of its law enforcement officers which may justify some intrusions on the privacy of officers which the fourth amendment would not otherwise tolerate.[2] Recently, in the case of *O'Connor* v. *Ortega*,[3] the Court examined the constitutionality of workplace searches of a public employee's office, desk, and file cabinet and concluded that public employers must be given wide latitude to search employee workspace for work-related reasons. Lower courts have also addressed that issue in the context of law enforcement employment. These decisions set forth the legal principles that govern such searches and are of obvious interest to administrators and employees in law enforcement organizations. This article examines those decisions and offers some recommendations to assist in the development of organizational policy and procedures that are consistent with fourth amendment requirements and also meet legitimate law enforcement objectives.

FOURTH AMENDMENT PROTECTION IN THE WORKPLACE

The fourth amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and searches and seizures by government employers or supervisors of the private property of their employees are subject to the restraints of the fourth amendment.[4] The strictures of the fourth amendment have been applied to the conduct of government officials in various civil activities, including searches of employee workspace by government employers for the purpose of determining whether any administrative or personnel action is warranted or for other reasons. Fourth amendment protection is not limited to only investigations of criminal behavior but can also protect public employees when a workplace search infringes their reasonable expectation of privacy.

For definitional purposes, the terms "workplace" or "workspace" in this article include those areas and items related to work and generally within the employer's control, such as offices, desks, file cabinets, and lockers. These areas remain part of the "workplace" even if an employee places personal items in them. However, an item does not necessarily become part of the "workplace" merely because it passes through the confines

Special Agent Schofield

of a government facility. For example, an employee may bring closed luggage, a handbag, or a briefcase to the office. Such items do not necessarily become part of the "workplace" for purposes of determining whether the employee has a reasonable expectation of privacy in their contents.

Supreme Court Decision

On March 31, 1987, the Supreme Court announced its decision in *O'Connor* v. *Ortega,* which addresses two issues of importance to public employers and employees. First, under what circumstances do public employees have a reasonable expectation of privacy in their workspace? Second, where an expectation of privacy exists in a particular workspace area, when and under what conditions may public employers search such areas? A proper understanding of the *O'Connor* decision and its implications for law enforcement organizations requires a careful review of the facts.

Facts and Procedural History

Dr. Ortega was an employee of a State hospital and had primary responsibility for training physicians in the psychiatric residency program. Hospital officials became concerned about possible improprieties in his management of the program, particularly with respect to his acquisition of a computer and charges against him concerning sexual harassment of female hospital employees and inappropriate disciplinary action against a resident. While he was on administrative leave pending investigation of the charges, hospital officials, allegedly in order to inventory and secure State property, searched his office and seized personal items from his desk and file cabinets that were used in administrative proceedings resulting in his discharge. No formal inventory of the property in the office was ever made, and all other papers in the office were merely placed in boxes for storage. In a subsequent civil suit against hospital officials, Dr. Ortega alleged that the search of his office violated the fourth amendment. The U.S. Court of Appeals for the Ninth Circuit concluded that the search unconstitutionally intruded on his reasonable expectation of privacy because the office had a locked door, contained confidential and personal files, and had been occupied by Dr. Ortega for 17 years.[5]

The Supreme Court unanimously concluded that Dr. Ortega had a reasonable expectation of privacy in his desk and file cabinets, and five Justices agreed he had a similar expectation in his office. Disagreement on the Court centered on the appropriate standard of reasonableness that should govern workplace searches. A plurality of four Justices, in an opinion authored by Justice O'Connor, voted to remand the case to the district court to determine whether hospital officials were justified by legitimate work-related reasons to enter Dr. Ortega's office and also to evaluate the reasonableness of both the inception of the search and its scope.[6] Justice Scalia concurred, but disagreed with the plurality's reasonableness analysis. Four dissenting Justices concluded that the search of Dr. Ortega's office violated the fourth amendment because there was no justification to dispense with the warrant and probable cause requirements.[7]

Expectation of Privacy Analysis

The Court unanimously rejected the argument that public employees lose their fourth amendment rights as a condition of public employment and can never have a reasonable expectation of

"The great variety of work environments requires a case-by-case analysis to determine whether an expectation of privacy in workspace is reasonable in light of a particular employment relationship."

privacy in workspace.[8] An employee's expectation of privacy in workspace may be reduced by actual business practices and procedures or be so open to fellow employees or the public that no expectation of privacy is reasonable.[9] The great variety of work environments requires a case-by-case analysis to determine whether an expectation of privacy in workspace is reasonable in light of a particular employment relationship. The Court concluded that Dr. Ortega has a reasonable expectation of privacy because he had occupied his office for 17 years, did not share his desk or file cabinets with any other employee, and the hospital had not established any reasonable regulation or policy discouraging employees from storing personal papers and effects in their desks or file cabinets.[10]

Reasonableness Determination

The warrantless search of Dr. Ortega's office must meet the reasonableness test of the fourth amendment. The appropriate standard of reasonableness depends on the context within which a search takes place and is determined by balancing " ... the invasion of the employees' legitimate expectations of privacy against the government's need for supervision, control and the efficient operation of the workplace."[11] In that regard, a majority of the Court concluded that " ... requiring an employer to obtain a warrant whenever the employer wished to enter an employee's office, desk, or file cabinets for a work-related purpose would seriously disrupt the routine conduct of business and would be unduly burdensome."[12] A probable cause requirement for such work-related searches was aiso rejected as an inappropriate standard because it " ... would impose intolerable burdens on public employers."[13] Instead, the plurality adopted the lesser standard of reasonableness (also referred to as reasonable suspicion)[14] to regulate employer workspace searches:

> "Ordinarily, a search of an employee's office by a supervisor will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a noninvestigatory work-related purpose such as to retrieve a needed file."[15]

Justice Scalia expressed somewhat differently his understanding of the appropriate standard to govern such searches:

> "Government searches to retrieve work-related materials or to investigate violations of workplace rules—searches of the sort that are regarded as reasonable and normal in the private-employer context—do not violate the Fourth Amendment."[16]

Despite these differing formulations of the appropriate standard of reasonableness, a majority of the Court would probably reach the same result in most cases and uphold employer workspace searches that are reasonably employment-related.

It is important to note that the Court's determination of a reasonableness standard in *O'Connor* is limited to certain types of employer searches. The Court acknowledges "... the plethora of contexts in which employers will have an occasion to intrude to some extent on an employee's expectation of privacy"[17] and restricts the precedental value of its reasonableness determination in *O'Connor* to "... either a noninvestigatory work-related intrusion or an investigatory search for evidence of suspected work-related employee misfeasance. ... "[18] In that regard, the Court offered the following three examples of legitimate work-related reasons for employers to search employee workspace: (1) The need for correspondence or a file or report available only in an employee's office while the employee is away from the office; (2) the need to safeguard or identify State property or records in an office in connection with a pending investigation into suspected employee misfeasance; and (3) a routine inventory conducted for the purpose of securing government property. Finally, it is important to note that the Court in *O'Connor* declined to address the appropriate reasonableness standards for situations where "... an employee is being investigated for criminal misconduct or breaches of other nonwork-related statutory or regulatory standards."[19]

Lower Court Decisions Involving Law Enforcement

While there is surprisingly little case law on the appropriate fourth amendment standard of reasonableness for a law enforcement employer's work-related search of employee workspace, courts that have addressed the issue are consistent with the holding in *O'Connor* in three respects. First, law enforcement employees, like other public employees, can acquire a reasonable expectation of privacy in their offices, desks, lockers, and other workspace areas. Second, the existence of a legitimate inspection policy may defeat an employee's expectation of privacy. Third, workplace searches that implicate an employee's reasonable expectation of privacy must meet the fourth amendment's test of reasonableness.

It should be noted that while the lower court decisions discussed below were decided prior to *O'Connor*, the holdings retain precedental significance to the extent they are compatible with the Court's constitutional analysis. Not surprisingly, some of these decisions reveal analytical disagreement similar in kind to that which emerged from the Court in *O'Connor*. To be consistent with the decisional methodology used by the Court, this discussion examines lower court decisions by addressing as separate issues the following two questions that are pertinent to any workplace search: (1) What factors determine whether a law enforcement employee has a reasonable expectation of privacy? and (2) what constitutes a reasonable search?

Factors that Determine Privacy in Workspace

The Court in *O'Connor* unanimously rejected the argument that public employees never have a reasonable expectation of privacy in their workspace. As a general rule, courts determine on a case-by-case basis whether employees have a reasonable expectation of privacy by focusing on the operational realities of the workplace, including the area's openness to others, the existence of an inspection policy, and the nature of a particular employee's responsibilities. Courts also seem influenced by the fact a particular workplace search was aimed at gathering evidence of criminal misconduct as opposed to purely administrative work-related intrusions which employees should reasonably expect to occur.

In *United States* v. *Speights*,[20] the U.S. Court of Appeals for the Third Circuit ruled unconstitutional the warrantless search and seizure of a sawed-off shotgun from a police department locker which was assigned to Officer Speights. The court recited the lengthy facts of the case as follows:

> "In the course of an investigation into a breaking and entering ring, the police chief, at the request of the prosecutor, consented to having a sergeant open eight lockers, including Officer Speights' which was secured by both a police-issued lock and a personal lock. The sergeant opened the issued lock with a master key and he sawed off the personal lock with bolt cutters. Of the 113 police lockers, forty or fifty percent were secured by personal locks. In fact, seven of the eight lockers opened by the sergeant had personal locks which had to be sawed off. The eleven most recently purchased police lockers did not have issued locks and could only be secured with personal locks. There was no regulation concerning the use of private locks on the lockers. No officer had been given permission to put a personal lock on the locker, nor had any officer been told that such locks were impermissible or been required to provide the department with a duplicate key (or combination). A master key to the issued locks was available to those police officers who might have misplaced their key and this was common knowledge. In fact, Speights admitted he was aware of the existence of the master key. There was no regulation as to what officers might keep in their lockers. The lockers were often utilized for safekeeping personal belongings as well as police equipment. No officer was ever forbidden from keeping personal items in the locker. There was no regulation or notice to the ranks that the lockers might be searched. However, on one occasion three years earlier, a search was conducted of an officer's locker who another officer had claimed was in possession of the latter's weapon. In addition, in the past twelve years there were three or four routine inspections of the lockers to check on cleanliness."

The court ruled that Speights had a reasonable expectation of privacy in his locker by virtue of the police department's acquiescence in his attempt to secure privacy by permitting the use of personal locks and by not requiring that duplicate keys or combinations be made available to the department.[21] The court rejected the government's claim that the following operational realities of the department negated Speights' expectation of privacy: (1) The need to search for confiscated property or contraband; (2) some lockers could be opened with a master key; (3) lockers were primarily used for the storage of police equipment; and (4) the locker was owned by the government, not Speights.[22] The court ordered suppression of the sawed-off shotgun because the locker search for evidence of criminal misconduct violated a constitutionally justified expectation of privacy.[23] The court did not determine, however, the appropriate standard of reasonableness to govern employer searches for evidence of criminal misconduct and whether a lesser standard would apply to noncriminal work-related intrusions.

In *United States* v. *McIntyre*,[24] the U.S. Court of Appeals for the Ninth Circuit ruled that an assistant chief of police had a reasonable expectation of privacy in his office which was violated when the chief of police approved the bugging of the office with a briefcase equipped with a microphone and transmitter. The court considered the follow-

"In law enforcement organizations, the reasonableness of workplace searches depends on the nature of law enforcement and the responsibilities of the employee involved."

ing factors relevant in finding a reasonable expectation of privacy in the office: (1) Normal conversations in the office could not be overheard, even when the doors were open; (2) there was no regulatory scheme or specific office procedure which would have alerted the assistant chief to expect random monitoring of his conversations; and (3) the "bugging" was not part of an "internal affairs investigation" or a search for lost government property, but part of a criminal investigation.[25]

The most important factor in this reasonable expectation of privacy analysis is the existence of a valid inspection policy. Lower courts have consistently held that a valid inspection policy may diminish or defeat an employee's claim of privacy in workspace.[26] The constitutional legitimacy of such policies for law enforcement organizations is premised on the heightened need for discipline, integrity, and credibility. In that regard, a Federal district court ruled in *Los Angeles Police Protective League* v. *Gates*[27] that a police officer had no reasonable expectation of privacy in his locker because of the existence of a valid government regulation providing that police lockers could be searched in an officer's presence, with his consent, or where he has been notified that a search will be conducted.[28]

In *Shaffer* v. *Field*,[29] a Federal district court concluded that a deputy sheriff had no reasonable expectation of privacy in his locker. The court considered the following factors in determining the deputy's expectations were not reasonable: (1) The nature of the allegations prompting the locker search related to a matter of serious official misconduct; (2) the search was to determine whether he had any unauthorized service revolvers; (3) lockers were owned by the department; (4) the locks given deputies had both keys and combinations and the commander kept a master key and the combination to all locks; (5) lockers and locks could be changed at the discretion of the sheriff; and (6) lockers had been searched by commanders without the deputies' permission on at least three prior occasions. The court emphasized that law enforcement organizations have a substantial interest in assuring not only the appearance but the actuality of police integrity, and that it is not unreasonable that they have the right to inspect lockers so that the public may have confidence in law enforcement employees.[30]

What Constitutes a Reasonable Search?

The fourth amendment guarantees freedom from unreasonable searches and seizures. It does not protect against all governmental intrusions but only those that are unreasonable. If a particular intrusion into employee workspace does not invade an employee's reasonable expectation of privacy, the fourth amendment is not implicated. The preceding discussion illustrates how an inspection policy and other workplace realities can defeat an employee's privacy claim. However, where employees retain a reasonable expectation of privacy—albeit diminished—in a particular workspace area, the fourth amendment requires that employer intrusions meet the test of reasonableness.

A reasonableness analysis determines whether probable cause or some lesser standard should govern a particular workplace search. Determining the appropriate standard of reasonableness depends on the context within which a search takes place and requires a case-by-case balancing of competing interests. With respect to workplace searches, courts balance the invasion of an employee's legitimate expectations of privacy against the government's need for supervision, control, and the efficient operation of the workplace. The nature of the employment is a relevant factor in this balancing process.[31]

In law enforcement organizations, the reasonableness of workplace searches depends on the nature of law enforcement and the responsibilities of the employee involved.[32] In that regard, employee discipline and obedience to rules and regulations is essential in the quasi-military environs of a law enforcement organization; supervisors must have the flexibility to move swiftly and decisively to search employee workspace to prevent and/or detect any transgressions. Law enforcement employees are also given access, by virtue of their employment, to classified and confidential information, and supervisors need wide latitude to search employee workspace to uncover any breaches of security and to retrieve pertinent files and papers. Government also has a heightened interest in police integrity. Law enforcement officers interact with the public in ways that require a high degree of trust and confidence. The public rightly expects that officers who work to enforce the law will also obey the law, and the ability of law enforcement officers to offer credible testimony is dependent on their integrity which must be above reproach.

The purpose or reason for a particular workspace search is another relevant factor in determining reasonableness. Workplace searches in law enforcement organizations occur for a variety of reasons, including: (1) The need to secure government property, such as a gun or badge; (2) the need to retrieve a file or government documents

believed to be in an officer's locker or desk; (3) the need to seize evidence of work-related misconduct or improper performance; and (4) the need to gather evidence of criminal misconduct. A majority of the Court in *O'Connor* recognized that "... employers most frequently need to enter the offices and desks of their employees for legitimate work-related reasons wholly unrelated to illegal conduct."[33] By implication, the Court suggests that a different standard of reasonableness might govern workplace searches for evidence of criminal activity unrelated to employment.

Lower courts have also suggested that the appropriate standard of reasonableness depends on whether a particular workplace search was administrative in nature and work-related or aimed at uncovering evidence of criminal misconduct unrelated to public employment.[34] That distinction has less significance for workspace searches in law enforcement organizations where suspected criminal activity by employees frequently constitutes a legitimate work-related reason for conducting a search. Workspace searches in law enforcement organizations, even for the sole purpose of discovering evidence of criminal activity, may be related to law enforcement employment because of a heightened governmental need for officer integrity and credibility. The U.S. Court of Appeals for the Fifth Circuit held that the search of a Federal employee's office and desk was reasonable because the employer's investigation of suspected employee misconduct "... was within the outer perimeter of ..." the employer's line of duty.[35] Suspected criminal activity by a law enforcement employee is arguably always related to and within the outer perimeter of law enforcement responsibilities. Courts have applied a similar rationale to justify strip searches of law enforcement employees on a reasonable suspicion standard, even though such searches would probably not be reasonable for public employees whose employment responsibilities did not involve a heightened need for integrity and credibility.[36]

Developing a Valid Inspection Policy

Workplace searches conducted without a valid inspection policy are likely to implicate an employee's reasonable expectation of privacy and must meet the appropriate standard of reasonableness. A valid organizational policy providing for the reasonable inspection of employee workspace offers the best protection against legal problems emanating from workplace searches. Courts have consistently ruled that a reasonable organizational inspection policy will reduce or defeat an employee's privacy expectations and provide a legal basis for subsequent workspace searches conducted pursuant to that policy.[37] However, governmental policies providing for inspections or searches of workspace are only enforceable by employers if they are reasonable under the fourth amendment. Governmental employers do not have the power through the adoption of inspection policies "... to refashion the contours of the Fourth Amendment merely by proclamation."[38]

The reasonableness of a particular policy depends on the nature of the employer's responsibilities and should be carefully tied to organizational goals and objectives. In this regard, a Federal district court upheld a regulation providing for the random spot checking of bags, packages, and large parcels carried by employees leaving the workplace. Concluding that the package control system adopted by the employer was a reasonable method of coping with a serious pilferage problem, the court ruled that the reasonableness of a particular inspection policy is dependent on "... the strength of the public necessity for the search; the efficacy of the search; and the degree and nature of the intrusion upon the individual."[39] The court noted with approval that the policy provided employees with an alternative procedure to check their personal effects upon entering the workplace, thereby avoiding "... all risk of a random spot check."[40]

Governmental interests in the integrity and credibility of law enforcement personnel and the need to protect confidential information establish a compelling justification for the adoption of a reasonable workspace inspection policy that may be broader in scope than would be constitutionally permissible for other public employees.[41] In *Lederman* v. *New York City Transit Authority*,[42] the court held that the employer's authority to inspect the locker it provided a patrolman reasonably extended to all its contents, including a locked box found therein. Some jurisdictions have adopted more-limited inspection policies that provide for the warrantless search of workspace only in the employee's presence, or with his consent, or after he has been notified that a search will be conducted.[43] In some cases, it may be appropriate to limit an inspection policy to government-owned property.

Law enforcement organizations that choose to adopt a workspace inspection policy should do so in writing and carefully tailor the scope of the inspection authority to documented institutional needs and objectives. Workspace searches should be no more intrusive than reasonably necessary to accomplish those goals. The policy should include a statement regarding the personal effects that employees bring into the workplace and the extent

"A valid organizational policy providing for the reasonable inspection of employee workspace offers the best protection against legal problems emanating from workplace searches."

to which such items are subject to search. Finally, records should be maintained documenting the fact that all employees have been given fair notice of the policy and its implications for workspace privacy.

CONCLUSION

The divided vote of the Court in *O'Connor* complicates the task of interpreting the decision and offering advice to law enforcement organizations regarding the constitutionality of workplace searches. Language in the opinions regarding the appropriate fourth amendment standard of reasonableness to govern workplace searches is specifically limited to "... either a noninvestigatory work-related intrusion or an investigatory search for evidence of suspected work-related employee misfeasance...."[44] While the Court did not address the fourth amendment standards governing searches for evidence of criminal misconduct or the validity of inspection policies, lower court decisions discussed in this article establish several general principles that are applicable to workspace searches in law enforcement organizations. First, law enforcement employees can acquire a reasonable expectation of privacy in their workspace areas. Second, workspace searches that invade an employee's reasonable expectation of privacy are constitutionally reasonable if based on a reasonable work-related justification. Third, workspace searches conducted pursuant to a valid organizational inspection policy are constitutionally reasonable. In that regard, law enforcement organizations should promulgate a written policy that clearly forewarns employees of the possibility of work place searches and provides clear notice of their privacy rights regarding personal effects carried into the workplace and in workspace such as offices, desks, lockers, and file cabinets. A valid inspection policy provides necessary guidance to administrators, promotes consistent treatment, and helps insure that workplace searches are based on legitimate governmental interests that are consistent with the reasonableness requirements of the fourth amendment.

Footnotes

[1]*Garrity* v. *New Jersey*, 87 S.Ct. 616, 620 (1967).
[2]*Kirkpatrick* v. *City of Los Angeles*, 803 F.2d 485 (9th Cir. 1986).
[3]107 S.Ct. 1492 (1987).
[4]*Id.* at 1497.
[5]*Ortega* v. *O'Connor*, 764 F.2d 703 (9th Cir. 1985).
[6]Joining Justice O'Connor were the Chief Justice and Justices White and Powell.
[7]Justice Blackmun wrote the dissenting opinion and was joined by Justices Brennan, Marshall, and Stevens.
[8]107 S.Ct. at 1498.
[9]*Id.* ...
[10]*Id.* at 1499.
[11]*Id.*
[12]*Id.* at 1502.
[13]*Id.* at 1501.
[14]The plurality used interchangeably the terms "reasonable grounds" and "reasonable suspicion." In that regard, Justice O'Connor wrote that "... the delay in correcting the employee misconduct caused by the need for probable cause rather than reasonable suspicion will be translated into tangible and often irreparable damage to the agency's work, and ultimately to the public interest." *Id.* at 1502.
[15]*Id.* at 1503.
[16]*Id.* at 1506 (Justice Scalia concurring).
[17]*Id.* at 1501.
[18]*Id.*
[19]*Id.* at 1504.
[20]557 F.2d 362 (3d Cir. 1977).
[21]*Id.* at 364.
[22]*Id.*
[23]*Id.* at 365.
[24]582 F.2d 1221 (9th Cir. 1978).
[25]*Id.* at 1224.
[26]*See, e.g., Gillard* v. *Schmidt*, 579 F.2d 825 (3d Cir. 1978) where the court ruled that "... an employer may conduct a search in accordance with a regulation or practice that would dispel in advance any expectations of privacy." *Id.* at 829. In *United States* v. *Donato*, 269 F. Supp. 921 (E.D. Pa. 1967), aff'd, 379 F.2d 288 (3d Cir. 1967), the court upheld the search of a mint employee's locker based on a regulation that provided: "No mint lockers in mint institutions shall be considered to be private lockers ... an employee who wishes to put his own lock on a locker assigned to him may do so only if he provides the superintendent of the institution with a duplicate key so that if necessary an inspection may be made of the contents of the locker." *Id.* at 923.
[27]579 F.Supp. 36 (C.D. Calif. 1984).
[28]*Id.* at 44.
[29]339 F. Supp. 997 (C.D. Calif. 1972), aff'd, 484 F.2d 1196 (9th Cir. 1973).
[30]*Id.* at 1003. In *People* v. *Neal*, 486 N.E.2d 898 (Sup. Ct. Ill. 1985), the court used a similar rationale to uphold the search of a State-owned raincoat pouch assigned to a particular officer. The court considered the following factors in rejecting the officer's reasonable expectation of privacy claim: The pouch was State-owned and was subject to periodic inspections by the officer's superiors under the policy and practice of the Illinois State Police; the inspections conduct were both with or without notice to the officer concerned and were within or without his presence; the officer was aware of such inspections and the manner in which they were conducted; and the inspection, as well as the search here, was limited to State-owned property related to the defendant's employment and duties.
[31]*See, e.g., Commonwealth* v. *Gabrielle*, 409 A.2d 1173 (Pa. Super 1979).
[32]The U.S. Courts of Appeals for the Fifth and Ninth Circuits have suggested that searches of postal employees' lockers by postal inspectors based on a suspicion of theft are reasonable because of the heightened governmental interest in protecting the safety of the mail and the need to prevent and discover theft of the mails. *United States* v. *Sanders*, 568 F.2d 1175 (5th Cir. 1978); *United States* v. *Bunkers*, 521 F.2d 1217 (9th Cir. 1975), *cert. denied*, 96 S.Ct. 400 (1975).
[33]107 S.Ct. at 1500.
[34]In *United States* v. *Collins*, 349 F.2d 863 (2d Cir. 1985), *cert. denied*, 86 S.Ct. 1228 (1966), the court upheld the search of a work jacket belonging to a clerical employee of the Customs Service that hung in the supervisor's outer office; the court concluded the employer was not investigating a crime unconnected with the performance of a Customs employee whose job included handling valuable mail. *See also, State* v. *Ferrari*, 357 A.2d 286 (N.J. Super. 1976) where the court ruled that the warrantless search of the locked desk of the deputy chief of police was unreasonable because it was not necessary to the day-to-day business but part of a criminal investigation.
[35]*Williams* v. *Collins*, 728 F.2d 721, 728 (5th Cir. 1984).
[36]In *Kirkpatrick* v. *City of Los Angeles*, 803 F.2d 485 (9th Cir. 1986), the court held that "... in spite of the government's interest in police integrity, strip searches of police officers for investigative purposes must be supported by a reasonable suspicion that evidence will be uncovered." *Id.* at 488. The court did not decide whether evidence uncovered in an investigative search without a warrant or probable cause would later be admissible against an officer in a criminal proceeding. *See also, Security and Law Enforcement Employees* v. *Carey*, 737 F.2d 187 (2d Cir. 1984).
[37]In this regard, the Court in *O'Connor* noted that an employee's expectation of privacy in workspace " ... may be reduced by virtue of actual office practices and procedures, or by legitimate regulation." 107 S.Ct. at 1498.
[38]*Chenkin* v. *Belleville Hospital Center*, 479 F. Supp. 207, 213 (S.D.NY. 1979).
[39]*Id.* at 213.
[40]*Id.* at 215.
[41]*See, e.g., United States* v. *Blok*, 188 F.2d 1019 (D.C. Cir. 1951).
[42]317 N.Y.S.2d 976 (Sup. Ct. N.Y. 1970).
[43]*See*, California Government Code §3309 and discussion of same in *Los Angeles Police Protective League* v. *Gates*, 579 F.Supp. 36, 44 (C.D. Calif. 1984).
[44]107 S.Ct. at 1501.