

THE FEDERAL LAW ENFORCEMENT TRAINING CENTER

# Journal

SPRING 2010

## WOUNDED WARRIORS



**FLETC**  
Helps Wounded Warriors  
Make the Most of Their  
Next Mission  
page 21

### **INSIDE:**

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Digital Evidence  
page 27

Rural Policing Institute  
page 15

FLETC Goes Green  
page 9

# Wounded Warriors



MARCUS HILL  
Assistant Director  
Administration  
FLETC

This issue's feature article pays tribute to America's wounded military services members and shares the Federal Law Enforcement Training Center's (FLETC) veteran employment outreach successes. On November 9, 2009, President Obama signed Executive Order 13518, Employment of Veterans in the Federal Government, which established policy within the Executive Branch, to enhance recruitment and promote employment of our veterans. While the FLETC has a rich history and reputation of employing veterans, this order strengthens our commitment to the soldiers, sailors and airmen who have served and sacrificed in defense of our Nation. Programs, such as the Operation Warfighter Initiative, have enabled the FLETC to recruit such talent as former U.S. Army Sergeant Jeff Buchalter, a wounded veteran of Operation Iraqi Freedom, whose story is shared in the feature.

As a veteran who hails from a great family heritage of military service, I am proud of our Veterans Outreach Initiative accomplishments. I am also proud of the many articles contained in this spring edition which represent a transformation of seasons.

**Marcus Hill**  
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## Contents

- 7 Employee Wellness**  
How the FLETC's new Employee Wellness Program is shaping up.
- 9 FLETC Goes Green**  
Learn about the green initiatives, events and programs underway at the FLETC in this two-part series.
- 15 Rural Policing Institute**  
How a new initiative plans to deliver training to rural law enforcement agencies and emergency responders.
- 18 Soft Power**  
Why the ability to get what you want through co-option and attraction can sometimes trump *hard power*.
- 21 Wounded Warriors**  
How the FLETC's Veterans Outreach Program is reaching out to wounded warriors.
- 27 Digital Evidence**  
As digital devices have become increasingly prolific in society, the FLETC training curriculum has adapted as well.
- 31 Law Enforcement Operations in Rural Cold Weather Environments**  
When it's cold outside and weather conditions become hazardous, remember this article.
- 35 Feds Feed Families**  
Find out how the FLETC and Partner Organization employees collected over four tons of food for area families.
- 38 Private Searches in Cyberspace**  
Explore in depth the legal issues involved in cybercrime investigations.
- 43 Commentary: Health & Fitness**  
It's easier than you think to start a fitness program. No special equipment required.

**Employee Wellness**

**Tony Madero** is a Health and Fitness Instructor assigned as the Employee Wellness Program Manager. He is responsible for the implementation and management of health promotion services at all FLETC training sites and was recently detailed to the Office of Health Affairs to assist in the development of a DHS-wide employee and organizational resilience program.

Prior to coming to the FLETC in 2002, Tony retired from the U.S Navy after 20 years of service as Chief Hospital Corpsman.

**FLETC Goes Green**

**Willis Hunter** presently serves as the Chief of Environmental and Safety Division at the Federal Law Enforcement Training Center (FLETC), a component of the Department of Homeland Security.

In his current position, Mr. Hunter is responsible for ensuring FLETC's compliance with federal and state environmental laws as well as compliance with Occupational Safety and Health Administration laws and regulations. Prior to assuming his current position, Hunter was the FLETC's Chief Counsel for more than six years.

**Rural Policing Institute**

**Charles "Chuck" Daenzer** is the Chief of the Rural Policing Institute, Washington Operations Directorate, Federal Law Enforcement Training Center (FLETC), Glynco, GA.

He is a Certified Occupational

Instructor and holds a Bachelor of Science degree in Criminal Justice Administration and a Master of Education degree (Criminal Justice emphasis) from Troy State University. He is also a graduate of the Federal Executive Institute and the Department of Homeland Security's Executive Leaders' Program at the Naval Postgraduate School.

A former Special Agent with the Air Force Office of Special Investigations, he gave more than 20 years of service to the U.S. Air Force, retiring in 2005 while assigned as the Superintendent of the Air Force Special Investigations Academy at the FLETC's Glynco Campus. After retiring from the Air Force and prior to his current position he served as the Division Chief of the FLETC's Counterterrorism Division and Technical Operations Division.

**Soft Power**

**Dominic Traina** is a Customs and Border Protection (CBP) Supervisor/ Course Developer Instructor (CDI) detailed to the Federal Law Enforcement Training Center (FLETC), Physical Techniques Division (PTD). He also has served as an M.P. in the Marine Corps. He holds a Bachelor's Degree from Loyola University in New Orleans and a Master's of Science in International Relations and National Security from Troy University in Alabama.

**Wounded Warriors**

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He earned dual B.A./B.S. degrees in Business Administration / Computer Information Systems from Chapman University, a Master’s degree in Management from National University, and a Master of Public Administration degree from the University of Colorado. Jim’s certifications include Career Development Facilitator Instructor (CDFI) and Senior Professional in Human Resources (SPHR). Jim is a participant in the FLETC Future Leaders Program, Class of 2010.

## Digital Evidence

**Preston L. Farley** is a Senior Instructor for the Technical Operations Division at the U.S. Department of Homeland Security’s Federal Law Enforcement Training Center (FLETC), the largest law enforcement

training organization in the United States, where he has been an instructor for the FLETC since 2004.

In 2006 Farley became the Program Coordinator for the Seized Computer Evidence Recovery Specialist Training Program (SCERS) which is the introductory digital forensic analysis class open to all law enforcement officers/agents at both the local and federal level.

His law enforcement career includes 20 years as a United States Military member in both the active duty Air Force and the active duty Army culminating in nine years of investigative experience with the United States Army Criminal Investigation Division Command as a Special Agent. Farley has served in Germany as a Digital Crime Lab Investigator, a General Crimes Agent and in the Balkans as a War Crimes Investigator. Mr. Farley has specialized training in Dignitary Protective Services, Child Abuse Investigations, Crime Scene Processing, Death Investigations and Financial Crimes. Farley retired from the U.S. Army in June 2004.

## Law Enforcement Operations in Rural Cold Weather Environments

**Duke Speed** is a firearms and tactics instructor assigned to FLETC, Cheltenham. He is a 20-year U.S. Marine Corps veteran (1979-1999, retired) and a graduate of the Marine Corps Mountain Warfare Training Center – Winter Mountain Leader Course.



Speed



O'Connor



Smotzer

## Feds Feed Families

**Vicki O'Connor** is a program analyst for the FLETC’s Public Affairs Office. She started her federal career in Artesia, NM, in 1990 first, as a training technician, then as secretary and later administrative officer with the Immigration Officer Academy. She has been with the FLETC ten years, working at the Office of Artesia Operations, and in the Director’s Office at the FLETC headquarters, Glynco, GA.

O'Connor has vast experience in radio and news broadcasting, working for KSVN/KTZA in Artesia, NM as the News Director. Her passion is working with local charities. She supports adult literacy programs, and teaches GED preparation to adults studying for their GED exam. O'Connor has served as a Court Appointed Special Advocate, and several of her children’s wall murals can be seen at various women’s and children’s shelters and family counseling interview rooms. She has also been active with community theatres for over 30 years.

## Private Searches in Cyberspace

**Bryan Lemons** is the Deputy Assistant Director, Office of Training Operations, Glynco Training Directorate. He began his career at the FLETC in 1999 as a Senior Instructor in the Legal Division. He became the Branch Chief, Basic Training Branch in the LGD in 2001. In 2005, Lemons was appointed to Division Chief, Environmental and Safety Division. In 2006, he assumed duties as the Deputy Assistant Director, Office of Training Support, Administrative Directorate, a position he held until 2008 when he assumed his current responsibilities.

## Health & Fitness

**Andy Smotzer** is a regular contributing writer to the Journal, and author of numerous articles in several nationally published law enforcement magazines. He is a former Secret Service Uniformed Division Officer. Currently, Andy is a Branch Chief for the Physical Techniques Division at FLETC, Glynco.





# Employee Wellness

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The Federal Law Enforcement Training Center (FLETC) has established an Employee Wellness Program (EWP) to enhance and maintain the health of all employees at its four national training sites. Program goals include providing education and guidance in health promotion areas such as fitness, diet and nutrition, weight management, stress management, tobacco cessation, men's and women's health issues, and substance abuse. In addition, health screenings and fairs will highlight the importance of regular medical check-ups and interventions when appropriate.

The Wellness Program has been under development for sometime and has experienced a recent surge in activity. Building on initial implementation efforts by former Physical Training Division (PTD) management members, current Health and Fitness Branch Chief Andy Smotzer has provided important program support and guidance. Working with the staff of the Critical Incident Stress Management Office and other key members of the FLETC employee workforce, the program has reached new developmental goals. With the dedication of a three office suite at its Glynco, Georgia training facility, the FLETC has shown its commitment to this important quality-of-life program.



This space includes an Education and Resource Room providing wellness brochures, handouts, magazines, and other health-related literature. Interactive displays allow visitors to readily see the benefits of maintaining a healthy lifestyle. Efforts are being made to establish these same services at FLETC Office of Field Training Sites. A Wellness Council has been formed and results from the recent Wellness Program Interest Survey are being reviewed in order to better provide targeted, relevant, and cost effective health promotion services. Work is continuing on a website that will enable all employees to have access to information to empower them to make healthy lifestyle choices.

Employee Wellness Program Manager Tony Madero is an experienced Health Promotion Director with many years designing and implementing wellness programs and services. While serving in the U.S. Navy, Tony designed and coordinated programs on board ships and at shore facilities and is very excited to bring these types of services to our employee population.

The FLETC EWP Office is located in Modular Building 742 directly across from PTD and is open Monday through Friday from 7:30 am to 4:30 pm. For additional information please visit the office or call (912) 267-3436.



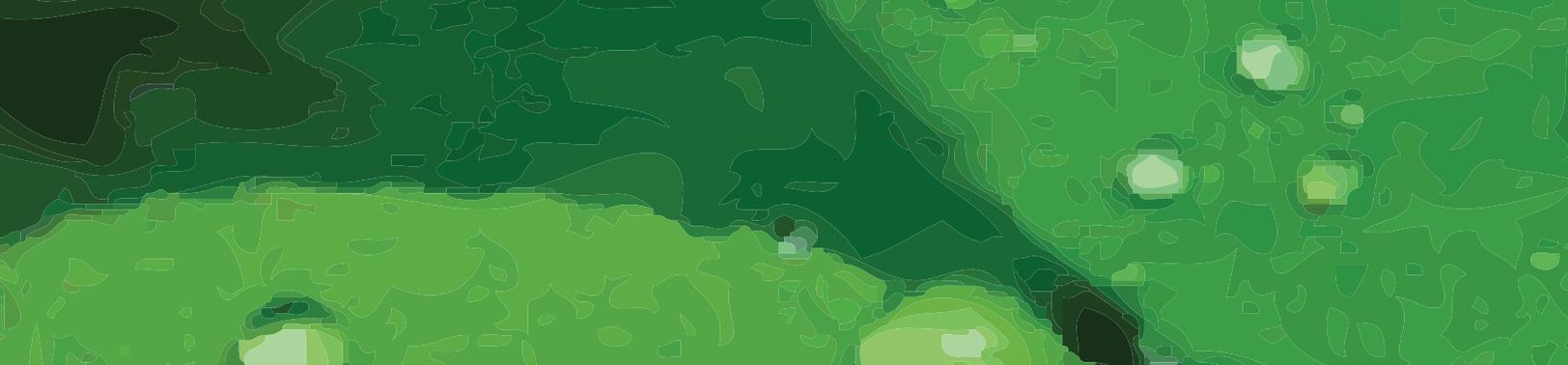


DIGGING GREEN. FLETC Director Connie Patrick (right), Environmental and Safety Division Chief Willis Hunter, and FLETC Deputy Director Ken Keene help plant a new tree to celebrate Earth Day.

## FLETC Goes Green

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In a recent issue of Federal Times, the newspaper for government employees, there were several articles about environmental projects at a variety of Federal agencies. One article went into great detail about a massive solar energy project currently underway at the Army's Fort Irwin training center in California. Another discussed the Navy's quest for a green fleet. Still another described the 5.3 million ton carbon footprint of the U.S. Postal Service. And finally, there was a brief note about the Department of Defense's search for alternative fuels.



These days it seems Americans are being bombarded daily with the importance of making lifestyle changes to benefit the environment. From television commercials advertising hybrid, flex-fuel vehicles and clean diesel engines to magazine articles discussing global warming, we are being constantly reminded that there is a need to be “green.” It should come as no surprise then, that Federal Law Enforcement Training Center (FLETC) employees from the Environmental and Safety Division (EVS) and other divisions have seemingly been working at warp speed to implement environmental awareness activities and other programs in order to reduce the impact of law enforcement training on the environment.

The new programs and activities have run the gamut from developing green ammunition to conducting summer and winter bird counts at the

Glynco campus. This article is presented in an effort to keep FLETC and partner organization employees informed about some of the “green” activities, events and programs that have been underway at the FLETC.

#### **Earth Day 2009**

In April of this year, the EVS staff hosted the first ever Earth Day celebration at the Glynco campus as an awareness event. Joining the more than 20 million Americans celebrating Earth Day nationwide, approximately 50 employees, including Director Connie Patrick, participated in the event and listened to remarks from Deputy Director Ken Keene who spoke on the history of Earth Day and some of the ongoing environmental projects underway at the FLETC. Director Keene also shared with attendees that the Earth Day celebration was a special event for him personally because

he had participated in the very first Earth Day celebration in the United States on April 22, 1970, while he was a student at Florida State University.

To commemorate the Earth Day celebration, Director Patrick and Deputy Director Keene helped EVS employees plant six crepe myrtles trees in front of Building 90. The crepe myrtles were selected because they produce a beautiful pink flower all summer long and they require no irrigation other than that provided by nature. The EVS staff hopes to make the Earth Day event an annual celebration and plans are already underway to partner with the Keep Brunswick and The Golden Isles Beautiful organization for next year’s Earth Day event.

#### **Executive Orders 13423 and 13514**

A very significant environmental event occurred in January 2007 when President George W. Bush issued Executive





Order (EO) 13423, “Strengthening Federal Environmental, Energy, and Transportation Management” which mandated sweeping changes in the way governmental agencies conduct their activities; some of which are only now being implemented across the FLETC. Among some of the mandates included in EO 13423 are requirements to implement “green purchasing” programs, to improve fleet management by using more fuel efficient vehicles and hybrid vehicles, to better manage computers and other electronics throughout their useful life, to reduce water and energy use, to reduce solid waste by recycling, and implement an overall environmental management system.

On October 5, 2009, President Barack Obama issued his own Executive Order, EO 13514, “Federal Leadership in Environmental, Energy and Economic Performance” which

builds on the EO 13423 requirements. The new EO keeps many of the targets detailed in EO 13423, but adds a new requirement that Federal agencies begin to implement steps to reduce greenhouse gases. As a result of these orders, several FLETC divisions are working more closely than ever to identify and implement beneficial changes across a wide range of activities.

#### **EMS Implementation**

One of the key components of EO 13423 and EO 13514 is the requirement that each agency implement an environmental management system (EMS). An EMS is a management tool designed to make the organization more proactive in its management of activities that could harm the environment. EVS met the requirement to implement an EMS in late 2006 and has designed its EMS to meet the

requirements of International Organization for Standardization (ISO) standard 14001. The ISO is an organization that establishes international standards for various management systems and standard 14001 is specifically designed for EMSs.

The FLETC EMS meets the Plan, Do, Check, Act methodology established by ISO 14001. The Plan aspect is establishing objectives and targets for environmental programs. The Do aspect is the actual implementation of the environmental program and the Check aspect is accomplished by conducting annual audits to determine the effectiveness of the program. Finally, the Act aspect is served through an annual senior management review of the EMS and its effectiveness.

The FLETC EMS presently consists of approximately 20 environmental programs, including a Green Purchasing Program, an Energy Conserva-



tion Program, a Fleet Management Program, a Hazardous Waste Management Program, a Storm Water Management Program, a Fuel Tank Management Program, a Recycling Program, as well as several others. Each of these programs has been implemented at all FLETC campuses and is under the day-to-day control of an environmental protection specialist who provides feedback to the EMS manager at Glynco.

### **Chief Financial Officer's Directorate**

Another of the key EO 13423/13514 components is the requirement that each Federal agency implement a green purchasing program. A green purchasing program is a commitment to looking for recycled products or environmentally friendly products that will meet the user's needs rather than using products that may not be environmentally friendly. To meet this mandate, the Chief Financial

Officer's Directorate (CFO) and EVS researched the green purchasing programs at other Federal facilities to find a program it could use as a model. Eventually, the White House Closing the Circle award winning program at Robins Air Force Base in Warner Robins, Georgia was chosen as the model for the FLETC program.

Once the model was identified, EVS published a green purchasing handbook and the CFO's staff provided training on the program requirements to all credit card holders and approving officials. EVS also published a pamphlet describing the green purchasing program.

### **Chief Information Officer's Directorate**

EO 13423/13514 contains several requirements that impact the use of electronics and computer equipment. The orders require that when agencies acquire electronic products, they must seek products that meet Electronic

Product Environmental Assessment Tool (EPEAT) standards, they must enable the Energy Star features on all electronic products to the maximum extent possible, they must establish policies to extend the useful life of electronic equipment, and they are required to implement environmentally friendly disposition practices when electronic products have reached the end of their useful life.

To meet these requirements, EVS has worked closely with the Office of the Chief Information Officer to implement policies to meet these EO goals. Earlier this summer, EVS published a directive entitled "Environmental Management of Electronics" which lists many of the changes that have been implemented to achieve these objectives. Among these is a commitment to purchasing computers and monitors that meet at least EPEAT-silver standards of efficiency and environmental friendliness. Other changes have included enabling En-





ergy Star features, acquisition of copiers that allow duplex printing, and setting computers and monitors to “sleep mode” after a certain period of inactivity.

### Property Management Division

As part of the electronics management program, EVS has partnered with the Property Management Division (PMD) as well. PMD’s role in electronics management has been to implement the EO 13423/13514 reuse and recycling requirements. PMD has worked diligently to reuse electronics either at FLETC or at another partner organization if at all possible. If reuse by government entities is not an option, the PMD has done an outstanding job of finding schools or other charitable organizations where they can be put to beneficial use.

Electronics equipment that cannot be reused is recycled. PMD has entered into a partnership with UNICOR, an entity of Federal Prisons

Industries, Inc., to recycle all unusable electronics. This collaboration is a win-win for FLETC and UNICOR. By taking FLETC’s obsolete and unusable electronics it is able to put Federal prisoners to work in the recycling business. For PMD, they have a recycler that takes obsolete equipment for recycling at no cost to the agency and with a guarantee that the recycled products will not end up as roadside trash in some third world country.

The results of the collaboration in the recycling of electronics between EVS, the CIO and PMD have been phenomenal. In the past two years, FLETC has been recognized at the national level as having one of the most environmentally sound electronics management programs in government. In 2008, FLETC received a silver-level award from the Environmental Protection Agency (EPA) for its overall electronics management program as part of the EPA’s Federal Electronics Challenge (FEC) pro-

gram. PMD was also recognized as having the best reutilization and recycling program for small government agencies as part of the EPA’s Electronics Reuse and Recycling (ERRC) competition. And in 2009, FLETC was again recognized in connection by the FEC program with the award of EPA’s FEC gold-level award.

As an aside, as part of the management of electronics, PMD has established an electronics recycling program for FLETC and partner organization employees. This program allows FLETC employees at any site to bring in their obsolete or worn out electronic equipment and the FLETC property staff will recycle it for the employee at no cost. FLETC makes no money off of the recycling, but it does prevent a potentially toxic item from being disposed in a community landfill where it could cause harm at some point in the future. Employees who wish to recycle old cell phones can choose from one of two recycling





programs – they can be turned into the local property management staff for recycling, or they can be placed in collection boxes at each FLETC campus where Critical Incident Stress Management (CISM) employees collect them and recycle them for battered women and children’s programs.

Another requirement of EO 13423/13514 is a mandate that agencies operating a fleet of motor vehicles must seek to reduce the fleet’s total consumption of petroleum products by 2 percent annually, increase the use of non-petroleum based fuels by 10 percent annually and use plug-in hybrid vehicles when commercially available at costs that are comparable to traditional petroleum based vehicles. This mandate has resulted in numerous changes in the way that FLETC’s fleet is being managed and the types of vehicles FLETC is bringing into the inventory.

One of the first changes has been PMD’s acquisition of numerous Tiger brand vehicles. The Tiger vehicles are smaller, low-fuel usage vehicles that are capable of being used on campus

only due to their low speed levels. Several of these vehicles have been acquired and are being utilized by FMD personnel and other FLETC organizations who have a need for a low speed, low energy consuming vehicle.

Another fleet change is the current

**Biodiesel is a domestic, renewable fuel for diesel engines derived from natural oils like soybean oil. FLETC has been using these alternative fuel products to meet the Presidential mandate.**

inventory exchange of older fleet vehicles for more than 150 new high fuel mileage vehicles. This one-for-one swap of older, low fuel mileage vehicles for new high fuel mileage vehicles is part of President Obama’s economic recovery program and it will go a long way toward helping FLETC meet our required 20 percent fuel use reduction.

And while these changes are significant, more will occur as FLETC begins to examine the use of hybrid fuel vehicles both in the non-law enforcement and the law enforcement training environment since many of our customers in the field are beginning to consider the idea of using hybrid vehicles in day-to-day operations.

Still another change has been the implementation of E85 and biodiesel fuels at FLETC facilities. E85 is an alcohol fuel mixture that typically contains a mixture of up to 85 percent fuel ethanol mixed with gasoline. Biodiesel is a domestic, renewable fuel for diesel engines derived from natural oils like soybean oil. FLETC has been using these alternative fuel products in order to meet the Presidential mandate to increase the use of non-petroleum fuels.

EDITOR’S NOTE: This concludes part one of a two part series on the FLETC’s environmental initiatives. Part two will examine “green” activities to improve training in the Driver Marine Division, improvements in construction in the Facilities Management Division, the Firearms Division, and in EVS’s own natural resources management activities.



# Rural Policing Institute

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The most recent US Census Bureau estimate places the population of the United States at over 300 million. Of those 300 million, more than 60 million live in rural areas, which actually make up about 97% of our nation's land mass. Our fellow citizens who live in these rural lands rely on various law enforcement agencies for their law and order.

Law enforcement in rural America is provided by Police Departments, Sheriff's Offices, Constables, Town Marshalls, Tribal and Campus Police. In addition to facing the normal challenges associated with working in the field of law enforcement, these rural agencies also experience issues with inadequate staffing and budgets. These factors make it difficult, if not impossible for the officers assigned to these agencies to receive much needed advanced training. With all of these various factors in mind, the US Congress created the Rural Policing Institute (RPI).

In 2007, legislation that was part of the 9/11 Implementation Act, Public Law 110-53, mandated the Secretary of Homeland Security to create a RPI to be administered by the Federal Law Enforcement Training Center (FLETC). FLETC Director Connie Patrick chose the Office of State and Local Training (OSL) as the new home for the RPI.

In the 2009 Department of Homeland Security (DHS) Appropriations, the RPI was funded for operation in the amount of \$20 million (\$4 million annually from 2009 through 2013). With funding and a mission to deliver training to rural law enforcement agencies and other emergency responders in rural areas, the RPI began to deliver its first training programs in February 2009.

The RPI must perform four very distinct functions, according to our enabling legislation. One, we must assess the training needs of rural law enforcement and emergency



responders. This we are doing through an interagency agreement with the US Department of Justice's Community Oriented Policing Services Office (COPS). The assessment will be one of the most complex and thorough training needs assessments ever done for the law enforcement community. Two, the RPI must develop expert training programs that are responsive to the needs assessment. Congress also specified three topical areas in which they want training programs developed; they are Intelligence-Led Policing, Protection of Privacy and Protection of Civil Rights/Civil Liberties. Three, we must then deliver those programs that we develop. Four, we must conduct outreach so law enforcement agencies are aware of the RPI training.

Two questions asked most frequently are how agencies know whether or not they are "rural" according to the government and what is the benefit to qualifying. The answer to the second question is straightforward ... tuition-free training and for at least fiscal year 2010, free lodging for RPI

students who work more than 50 miles from the training site. The first question takes a bit more to answer.

With the creation of the RPI, we were required to qualify agencies based on a very narrow definition of the word "rural" as any area located outside of a metropolitan statistical area (MSA) as defined by the Office of Management and Budget. This definition did not adequately cover the intended customers and only allowed about 16% of all law enforcement agencies in the country to qualify. We know that there are many jurisdictions within MSAs that have very small departments and service small populations, and unfortunately this definition did not allow them to qualify as "rural" for our purposes. The RPI pursued a change of definition that would greatly increase the number of qualifying agencies and include those agencies that really need the training most. When President Obama signed the DHS 2010 Appropriations Bill, the definition was expanded to include "... any area that is located in a MSA and a county, borough, par-

ish, or area under the jurisdiction of an Indian tribe with a population of not more than 50,000." The effect was such that the number of agencies that became RPI-qualified went to more than 16,000, which actually covers about 90% of all state and local law enforcement agencies in the United States. These agencies bring with them individual needs for how they will most realistically be able to attend to their training needs.

Knowing this, the RPI is taking a multi-faceted approach to our development and delivery of training programs. We know that not all students learn the same and that the circumstances that exist in some agencies will require different approaches for development and delivery. The RPI will develop and deliver training through traditional classroom training, distance learning and the integration of technology such as satellite broadcasts and webcasting, as well as blending these approaches to provide potential students with varying options for learning. For many agencies, they are unable to afford the travel costs of



sending an officer to training, so we go to them. We conduct regional training to bring in students from multiple locations to make the most of our tuition and travel dollars. Without this regional approach, many of our students would not get to our training programs. There are, however, those who would not be able to get away from their jurisdiction for training no matter how close we get to them, for staffing or budget reasons. With this in mind, we are taking another approach by putting technology to work.

The RPI recently contracted with Critical Information Network (CiNet), which owns the Law Enforcement Training Network (LETN), to provide 1,000 subscriptions to the LETN Digital Video On-Demand learning portal, free of charge to rural agencies across the country. These one-year subscriptions provide officers with 24/7 access to hard-hitting, contemporary law enforcement training topics via the Internet.

The RPI will also rely very heavily on the FLETC's Electronic Learning Portal (ELP), currently under develop-

ment and projected to be fully operational in mid-January 2010. With the advent of the ELP, FLETC will provide to RPI-qualified students subscriptions to the learning content at no cost to the student or his agency.

As mentioned earlier, outreach is also a major component of the RPI. If agencies are not aware of the RPI and its benefits, they cannot take advantage of them. The OSL and RPI spend a lot of time conducting outreach and marketing of the FLETC training programs available to RPI students. I personally spend a lot of time talking with rural police chiefs and sheriffs in various forums to tell them about the RPI and what we have to offer. We are also working closely with the membership of the State and Local Training Advisory Committee, which is an official, federally approved committee to the FLETC. To further our mission, and to maximize the taxpayer dollars we are appropriated, we are also working with organizations such as the International Association of Directors of Law Enforcement Standards and Training, the Rural Domestic Pre-

paredness Consortium, the International Association of Chiefs of Police and the National Native American Law Enforcement Association, among many others. These groups are very influential and we share a common goal of delivering the best possible training to America's rural law enforcement officers.

This initiative is a major undertaking and requires a lot of hard work by a lot of people. The RPI staff works daily with staff from various offices and divisions from the FLETC Directorates, Partner Organizations and other major stakeholders in order to get training out the door. Without the teamwork of all of our partners, we would not be able to completely and effectively carry out the RPI's mission of taking training to the heartland of America.

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More information about the RPI and training opportunities can be found at <http://www.fletc.gov/state-and-local/rural-policing-institute>.

Michael Chertoff states that, “to prevail, we must not only work hard to prevent terrorists from attacking, but we must also expend equal effort to prevent people from becoming terrorists in the first place.” In addition, Chertoff noted in an interview conducted by the Wall Street Journal that “a lasting victory in the safeguarding of the country can be achieved only by marrying traditional security with winning a contest of ideas, and a battle for the allegiance of men and women around the world.” Even General McChrystal’s new strategy of changing the mission in Afghanistan from pursuing the Taliban to focusing on protecting the Afghani’s has an underlying tone of soft power.

### **What is Soft Power in State Responsibility?**

Defining power in a relational sense is noted that you have power over someone if you can get them to do something that they otherwise would not do. How does a state encourage soft power and states to become responsible stakeholders? A simple answer but often difficult to do is for a state to simply lead by example or just set an example through integrity, moral influence and diplomacy. This is what personifies the ideals that Professor Joseph S. Nye<sup>2</sup>, former Dean of The Kennedy School of Government at Harvard University and author of the 2004 book *Soft Power*, promotes in his writings on the subject. According to Nye, who is considered by many scholars to have coined the term “soft power,” there are three types of approaches to foreign policy issues? One is “carrots” and that is essentially paying a state or encouraging a state to take action and be rewarded with some payment. Another is a “stick” and this is hard power. This is usually some type of economic sanctions, or a threat of or use of military force. Lastly, there is “soft power,” which essentially encourages states to make changes because they like you. You can get them to do what you want through attraction. An example of soft power is American popular culture such as Hollywood, a global icon such as the Statue of Liberty, or the Bill and Melinda Gates Foundation. Soft power in the realm of cost is very inexpensive in comparison to carrots and sticks. This is not to say that one is better than the other all tools of statecraft are critical in promoting security.

## Soft Power

The strategic benefits of applying soft power to homeland and national security

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*The continued use of soft power will strategically benefit both homeland and national security. There is a layered approach to both homeland and national security and the roots start at relationship building. In a recent article, written by the former Secretary of Homeland Security Michael Chertoff<sup>1</sup> published in the Harvard International Review, Chertoff makes a case for soft power.*

## Current Soft Power Efforts in Homeland Security

The Department of Homeland has several roles to play in the promotion of soft power. First and foremost is the training that is provided at the International Law Enforcement Academies (ILEAs). The opportunities for Homeland Security instructors to teach in foreign countries and to share ideas with colleagues from other states are beneficial in attracting all towards a common goal. Other departments and agencies also offer similar types of training such as the Office of International Operations for the FBI, which establishes relationships with foreign countries by training thousands of foreign law enforcement personnel. The FBI also has liaisons that can effectively and responsibly combat terrorism, and other international criminal activity. Also, the DEA has formed Foreign-Deployed Advisory Support Teams (FAST), which are specially trained units that will set up schools to train local police on countering the drug trade. In addition, Customs and Border Protection, the nation's lead agency in border security, offers its frontline officers and agents to take part in the Detection Deception and Eliciting Response course that is offered at the FLETC. This program encourages officers and agents to garner information by eliciting small bits of information through conversation this is a soft powered approach to interviewing. This is the first step in the promotion of soft power towards international travelers. It is more likely that an officer will be approached from a traveler and possibly be able to gather intelligence from a traveler if a

relationship is developed. The eyes and ears of citizens who frequently travel abroad are some of the best sources of information in certain regions. Fostering a relationship with frequent travelers will make it more likely that the officer will be successful in obtaining intelligence. Since CBP Officers are the first person that a returning US citizen or international traveler will encounter it is imperative to leave a positive image. This is an easy yet inexpensive approach to soft power that is already a part of the Department of Homeland Security's mode of operation.

Other efforts that are taking place within homeland security such as the initiative by US Customs and Border Protection to have many of its officers and agents work with host countries overseas in securing the global supply chain. This effort is not just a security benefit for the US but is a benefit to the entire global supply chain. These initiatives such as the Container Security Initiative (CSI) and the Secure Freight Initiative (SFI) offers opportunities for US government officials to work with colleagues in many of the world's busiest seaports that are vital links in keeping the global supply chain secure. The innovative CSI program was launched in 2002 and currently has officers located in 58 foreign ports that are responsible for identifying high risk containers that are in the global supply chain. By using a system called the Automated Targeting System (ATS) that collects information along with current and strategic intelligence combing real time information from several CBP mainframe systems that filters this

information and provides a risk based assessment. CSI officers can determine if a container needs a more thorough inspection prior to its being loaded on the vessel.

Whenever US government officials either military or civilians have an opportunity to work with foreign governments then this is a win for soft power. There are many mid level military and civilian government officials that have influence over some of the highest ranking officials in foreign countries. It is not all that uncommon to find a mid career US military enlisted person or officer to be working with some of the highest ranking officials in many areas throughout the global community and this is also very common with US government civilian employees. This type of influence and attraction is critical to the future of US diplomacy and security.

All of these programs and other exchange programs and visits from foreign homeland security officials are also effective measures in soft power. Many civilian, law enforcement, and military officials have opportunities to train and work with officials of foreign states and the benefits from this training are lasting relationships and improvements in regional security for the host state as well as improvements in security for the US. Cooperation at all levels of law enforcement is enhanced through the international training programs that are offered by the FBI, DEA and DHS in both basic and advanced investigative techniques and the sharing of knowledge and intelligence. The training and relationship building will pay dividends via these soft power efforts.

1. Chertoff, Michael. (2008) Preventing Terrorism: A Case for Soft Power. Harvard International Review. Summer 2008. <http://www.harvardir.org/articles/1764/>

2. Nye, Joseph. (2004) Soft Power, Public Affairs New York, New York.

3. Simpson, Cay. (December 8, 2008) "Chertoff, Shifting Views on Security, Pushes Use of Soft Power." The Wall Street Journal.





Jeff Buchalter with Jim Tabb, Branch Chief, Driver Training, FLETC Cheltenham.

# Wounded Warriors

How the FLETC is helping wounded warriors make the most of their next mission

**JIM BRYANT**

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“Veterans hold a special place in our country, but they also hold a special place at the Department of Homeland Security (DHS),” said Secretary Janet Napolitano during a recruitment fair presentation at the American Legion’s annual conference in Louisville, Kentucky, earlier this year.

“Every day these men and women, who already have sacrificed so much for our nation, are helping achieve our mission to secure the country.” Secretary Napolitano estimated that roughly a quarter of the DHS workforce consists of veterans, including more than 2,100 who have a service-connected disability. Her goal is to employ 50,000 veterans throughout the department by 2012.

Capitalizing on the myriad experience and unique knowledge veterans and disabled veterans can offer today’s workforce, the Federal Law Enforcement Training Center (FLETC) makes the most of the skills honed by these former service members to fulfill its unique mission. Almost 40% of the FLETC’s workforce is comprised of American military veterans, and over 16% of the veterans hold a documented service-connected disability.



Joseph Kashnow

As the FLETC Recruitment Council’s (FRC’s) Veterans Outreach Co-



ordinator, Jim Bryant believes that these “Wounded Warriors” have made countless sacrifices and have voluntarily placed themselves in harm’s way for the purpose of protecting our freedom and our way of life, so the question he focuses on is, “How can we broaden our outreach to these veterans, especially those who have suffered serious wounds on the battlefield and are now trying to heal and transition back to civilian life?”

The FLETC FRC, co-chaired by Brenda Lloyd, Equal Employment Opportunity (EEO) Officer, and Brad Smith, Acting Deputy Assistant

Director, Administration Directorate, was chartered in March 2009 to identify hard-to-recruit areas and to tackle the task of targeting specific skills and competencies. The development of a recruitment calendar, establishment of a team of over 30 trained recruiters, identification of event coordinators, and establishment of a Veterans Outreach Coordinator are some of the multiple initiatives supported this year by the FRC.

Bryant, a 21-year United States Marine veteran, is a seven-year FLETC employee. When he completed his FRC Recruiter Training, led by Monte

Council of the FLETC EEO Division, he researched the authorities now available for veteran recruitment and found that DHS actively participates in two recruitment approaches. The first approach is through an active Veterans Outreach Program (VOP), which primarily assists veterans in becoming aware of and informed about veteran hiring preferences and other hiring flexibilities. The second approach is through programs to help injured soldiers and disabled veterans gain skills and transition to civilian work. The Operation Warfighter Initiative (OWFI) helps service members



who are recovering from injury to learn valuable skills and build their resumes. OWF offers a temporary assignment for service members who are convalescing at military treatment facilities throughout the United States. Primarily designed to provide recuperating service members with meaningful pursuits external to the hospital environment, the OWF offers a formal means of transition back to the military or civilian workforce. Detailed information on special veteran programs can be found at [www.dhs.gov/about/careers](http://www.dhs.gov/about/careers).

When asked to represent the

FLETC at the Hiring Heroes Career Fair at Walter Reed Army Medical Center (WRAMC) in Washington, D.C., Bryant, a Buffalo, New York native, was immediately engaged. He spoke with Ted Sparks, Deputy Assistant Director, FLETC Office of Cheltenham Operations, prior to the event. They both shared their interests in hiring disabled veterans with military police experience, and Sparks especially favored hiring a disabled veteran to fill a specific vacancy in Cheltenham's driver training branch. According to Bryant, "The hiring manager plays a critical role in defin-

ing the jobs that a disabled veteran can successfully perform, and Cheltenham is a great example. Cheltenham had been looking into hiring a disabled veteran, but getting little response through the myriad of websites." According to Sparks, there are endless sites dedicated to veterans outreach and employment opportunities, however, "Many shut down as fast as they stand up so e-mails and phone calls go unanswered."

The day of the Walter Reed Job Fair, Bryant interviewed U.S. Army Sergeant Jeffrey Buchalter and reported back to Sparks that he had spoken

with a potential candidate who met the experience requirements necessary for the open position. Bryant encouraged Buchalter to send his resume to Sparks and apply under the Voluntary Applicant File.

Later that same day, Sparks received Buchalter's resume, establishing a line of communication. Buchalter visited Cheltenham in June to meet the staff and see what the FLETC was all about. "There was no doubt that Jeff wanted to work for the FLETC, and we were determined on getting him on board," added Sparks. After the initial paperwork was completed, persistence paid off, and Buchalter reported to Cheltenham on September 13, 2009.

Buchalter's military career spanned over six years as a member of the Military Police Corps. During his active duty, his assignments included three deployments in support of Operation Iraqi Freedom. When Bryant asked him why he had so many deployments in six years, Buchalter simply said, "I was just doing my job. We hadn't completed our mission." He endured a myriad of injuries in 2007 when an improvised explosive device (IED) detonated underneath his vehicle, causing multiple shrapnel wounds and a broken back. Buchalter was sent to WRAMC where he began his two-year road to recovery which included numerous surgeries, hospitalizations and rehabilitation. "Overcoming the physical

injuries was tough, but the real challenge came when I faced the injuries that are not visible," Buchalter explained. He deals with Post Traumatic Stress Disorder (PTSD). "With a physical injury, we deal with a healing process that can be witnessed. As we watch wounds close and heal, and as bones regain their strength there is a general timetable for recovery. With PTSD, the healing is not so clear and not so easily defined. I have worked very hard and am always determined to break barriers and achieve what I thought or was told was impossible. I couldn't have done it alone. The credit should be given to the top notch staff at WRAMC and most importantly my loved ones who never let me quit."

When asked how he felt about the involuntary end to his military career, he said, "I'm full of mixed emotions; I loved being a soldier; wearing the uniform that bears the colors of the greatest nation on earth was an honor. I'm going to miss it all. On the other hand, I'm at a new beginning; it's time to rediscover myself as Jeff Buchalter."

Bryant serves as a Human Resources Specialist for the Talent and Position Management Branch within the FLETC's Human Capital Operations Division. He is a former Transition Assistance Program Manager for the U.S. Marine Corps and is proud of his work with veterans. As the Veterans Outreach Coordinator, Bryant believes that a wounded soldier is



not just going to walk up at a recruiting event and say, “Hey, I have a traumatic brain injury. Can you help me?” He believes the FLETC Recruiters must know what questions to ask and how to them.

On the same day Buchalter began his career with FLETC, Joseph Kashnow arrived at Cheltenham to start training for a position at the U.S. Mint. He completed the pilot class of the Infrastructure Protection Officer Training Program (IPOTP). Like Buchalter, Kashnow was hired by the U.S. Mint through the VOP. Kashnow served as a Calvary Scout with the U.S. Army and was injured during a convoy mission in September 2003 when a roadside IED was remotely detonated. He spent nearly five years at the WRAMC undergoing 29 surgeries, and in 2005 his right leg was amputated. He faced countless challenges with countless others soldiers, but now he is employed as a Physical Security Specialist. According to Bryant, Kashnow also relies on the support of the wife (who he married just before deploying)

and his three-year-old. Kashnow believes, “I am privileged for the opportunity to continue to serve the United States of America. I cannot express enough gratitude to those who made it possible.”

“Joe Kashnow shares defensive tactics as a U.S. Mint student in Cheltenham.”

“For those interested in hiring veterans and disabled veterans, especially those who have suffered serious injuries,” Sparks explained, “I say nothing short of OUTSTANDING, given our experience. These veterans want to work. They have a great attitude and work ethic and generally, they have experience that far exceeds those we see in the typical applicant pool. The bottom line is we owe them a debt of gratitude and we all win,” he added.

DHS Leadership Journal. “Saluting the Contribution of Veterans to Our Department.” 27 Aug 2009. [www.dhs.gov/journal/leadership/2009/08/saluting-contribution-of-veterans-to.html](http://www.dhs.gov/journal/leadership/2009/08/saluting-contribution-of-veterans-to.html). Accessed 26 October 2009.

Veterans Today. “Why Hire an Injured Veteran?” by Captain Lonnie Ryan. October 1, 2009. <http://www.veteranstoday.com>. Accessed 22 October 2009.

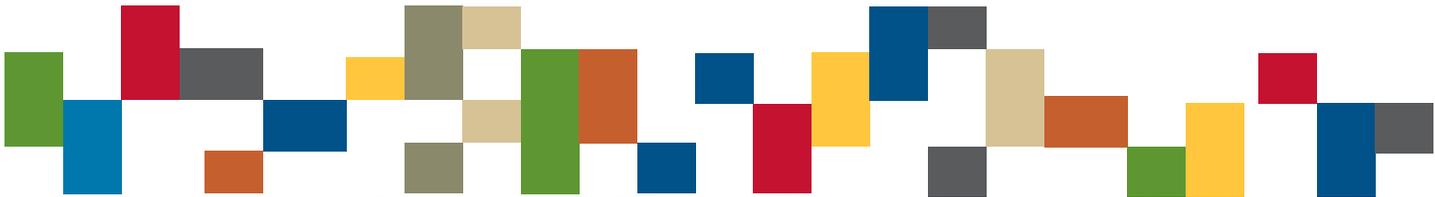
## FLETC Recruitment Council FLETC at Forefront of Recruitment Initiatives

Serving as the senior-level advisory body in support of recruitment activities at the Federal Law Enforcement Training Center (FLETC), the FLETC Recruitment Council (FRC) was chartered to review and analyze enterprise-wide recruitment initiatives, develop an effective and efficient operational budget that meets a list of identified targeted events, and benchmark innovative solutions that can positively impact the Center’s recruitment challenges.

Working closely with various FLETC organizational units and stakeholders, the Council developed and implemented a recruitment strategy in conjunction with the FLETC Strategic Plan, the FLETC Human Capital Strategic Plan and the Department of Homeland Security (DHS) Human Capital Strategic Plan. The Council was also chartered to review various recruitment strategies in alignment with diversity goals to deliver recruitment recommendations to senior FLETC leadership.

The FRC successfully trained over 30 recruiters to participate in various expositions, conferences and job fairs, has built an enterprise-wide annual recruitment budget, collaborated with DHS on various recruitment activities, and is developing a marketing plan. The FLETC Recruiting Team is specifically trained to participate in these key events.

The Council is co-chaired by Brenda Lloyd, FLETC Equal Employment Opportunity (EEO) Officer, and Brad Smith, Deputy Assistant Director, Administration Directorate. The FRC Event Coordinators are Connie Delaney and Monte Council, both of the FLETC EEO Division. Jim Bryant of the Human Capital Operations Division serves as the FLETC’s Veterans Outreach Coordinator.



```
//Assign CLICK is...
page01Button.addEventListener(MouseEvent.CLICK, click);
page02Button.addEventListener(MouseEvent.CLICK, click);
page03Button.addEventListener(MouseEvent.CLICK, click);

//Make the buttons look like buttons (hand cursor)
page01Button.buttonMode = true;
page02Button.buttonMode = true;
page03Button.buttonMode = true;

//This loader is used to load the external swf files
var loader:Loader;

//URLRequest stores the path to the file to be loaded
var URLRequest:URLRequest;

//This array holds all the tweens,
//don't get garbage collected
var tweens:Array = new Array();

//Stores the current page we are displaying
var currentPage:MovieClip = null;

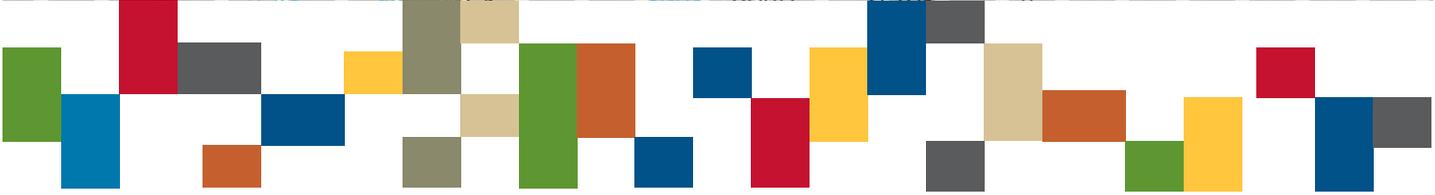
//Stores the next page to be displayed
var nextPage:MovieClip = null;

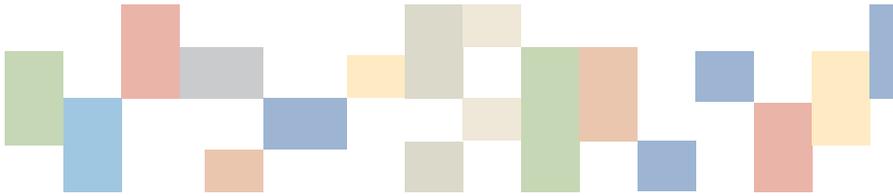
import flash.geom.Point;
import flash.events.MouseEvent;
import fl.motion.Motion;

if(_motion_box_2:MotionBase;
if(_motion_box_2 == null) {
import fl.motion.Motion;
_motion_box_2 = new Motion();
_motion_box_2.duration = 40;

// Call overrideTargetTransform to prevent the scale, skew,
// or rotation values from being made relative to the target
// object's original transform.
// _motion_box_2.overrideTargetTransform();

// The following calls to addPropertyArray assign data values
// for each tweened property. There is one value in the Array
// for every frame in the tween, or fewer if the last value
// remains the same for the rest of the frames.
_motion_box_2.addPropertyArray("x", [0,162.255,321.063,437.574,473.95]);
_motion_box_2.addPropertyArray("y", [0,-12.8994,18.8873,128.249,285.95]);
_motion_box_2.addPropertyArray("scaleX", [1.000000]);
_motion_box_2.addPropertyArray("scaleY", [1.000000]);
_motion_box_2.addPropertyArray("skewX", [0]);
_motion_box_2.addPropertyArray("skewY", [0]);
_motion_box_2.addPropertyArray("rotation", [0]);
}
```



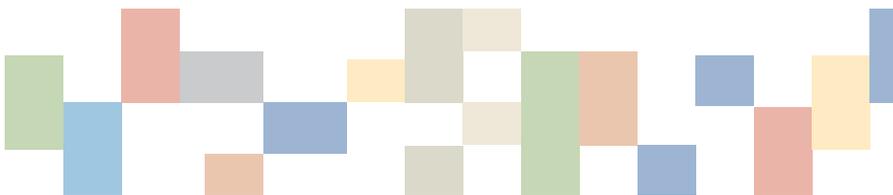


# Digital Evidence

**PRESTON FARLEY**

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*The FLETC's digital evidence curriculum is now segmented into various courses, which reflect the major divisions of digital evidence.*



Do you have a personal computer at home? How about a cell phone? Do you exercise with an MP3 player? How many thumb drives are laying around your home or office? What about CDs and DVDs? Would it bother you if these items were seized and their contents were put up on the Internet for all to see? In the past 30 years we have seen the growth of the personal computer go from a purely academic or commercial pursuit to an indispensable part of our professional and personal lives. And this phenomenon is not isolated to only law enforcement professionals, but to nearly every segment of society. This includes the criminal element. This is why the Federal Law Enforcement Training Center (FLETC) responded by creating a digital evidence response course in the 1980s. This course initially dealt with telecommunication fraud, as it was the electronic crime of choice for the period. As digital devices became increasingly prolific in our society, the FLETC curriculum adapted as well. Through various iterations and adaptations the FLETC's digital evidence curriculum is now segmented into various courses, which reflect the major divisions of digital evidence. The home for this curriculum is FLETC's own Technical Operations Division (TOD). The TOD was constituted in 2008 in an effort to streamline FLETC's major digital evidence training efforts by combining a branch from Investigative Operations Division (IOD) and a branch from the former Computer & Financial Investigations (CFI) Division. This new division is housed in FLETC's newest building, 217, a state-of-the-art training facility which opened its doors in June 2009.



For newly trained law enforcement, we have the First Responder to Digital Evidence or FRDE. This course, as the title implies, is for any agent or law enforcement official, particularly first responders, who need a good grounding in the basics of digital evidence identification, protection and seizure. Since the mid-1990s, the FLETC has been teaching a two-hour block of this curriculum in the Criminal Investigator Training Program (CITP). As of FY 10 this course has doubled to four hours in length and now includes a two-hour lab and hands-on cellular phone and live computer seizure, which is now included in their final practical exercise. This course has also been expanded into a full three day training program which is held both locally, as well as being exported on a routine basis.

The next course in our curriculum is the first one specifically designed with the digital evidence investigator in mind. This course is called the Digital Evidence Acquisition Specialist Training Program or DEASTP. The course is two weeks in length and is an in-depth introduction to the foundation of digital forensics. DEASTP is designed for the investigator who has, or will have primary responsibility for seizing digital evidence at the crime scene. A basic working knowledge of computers and Microsoft Windows is expected before a student begins this course. In addition to the knowledge gained by the participants, the student also receives the industry standard in digital media imaging hardware and software, which will enable them to seize the vast majority of digital evidence in the

modern crime scene and forensically image it. This forensic image becomes the focus of the next course in the digital forensics curriculum, SCERS or the Seized Computer Evidence Recovery Specialist Training Program. This is a two week program.

The SCERS program, as currently taught, provides a strong foundation in digital forensic analysis to investigators who have successfully completed the DEASTP or an equivalent training program. The SCERS program has been running continuously for nearly 22 years and in that time the FLETC SCERS program has become an internationally renown digital forensic program for law enforcement professionals from local, state and federal agencies. The TOD's training philosophy is to "train as you fight". This means, to the greatest extent possible, that the tools and techniques we use in the classroom environment are the same tools and techniques we provide to the students upon graduation, so that they can immediately utilize their new skill sets upon return to their organization. In the case of SCERS, we currently teach the basics from the two industry-leading forensic software suites, Access Data's Ultimate Toolkit and Guidance Software's EnCase forensic edition. Upon successful completion of the course the students receive licensed copies of the forensic software and a computer configured to run them. This has been our training paradigm for the past five years and has proven highly successful; so much so, that successful completion of SCERS is now mandatory for computer forensics certifica-

tion for many of our partner organizations who conduct digital forensics.

The next course in our curriculum is essentially a hybrid of DEASTP and SCERS, and it is called the Computer Network Investigations Training Program, or simply CNITP. CNITP is best described as a digital forensic analysis course whose emphasis is on computer network investigations, which is presented in two weeks. While SCERS has historically been focused on dead system forensics, CNITP is more focused on live systems, particularly live network servers. As the network server universe is very large, CNITP expands beyond the Microsoft Windows environment and incorporates elements from Novell, Linux, and Macintosh operating systems. A portion of this training also covers a relatively recent technology called virtualization. Virtualization is a powerful environment which allows the forensic practitioner to operate virtually any operating system from most any other operating system while sharing a single computer's hardware. In order to fully leverage the power of virtualization, CNITP students are issued a Macintosh laptop with the power and flexibility to allow the student to process most any digital crime scene. The last course in our curriculum can generally be taken by any student at any time in their law enforcement career. It focuses on mobile digital devices, and is a one week course. Fittingly, its name is the Mobile Device Investigations

Program or simply MDIP. With the proliferation of cell phone technology, combined with the advanced features of smart phones; today we can truly say that the lowly cell phone has morphed into a handheld computer. With more and more features in smaller and smaller spaces, these devices have truly come into their own. Unfortunately, this field is even younger than that of home PC-based forensics and the tools and techniques to properly process these devices are still in their relative infancy. An additional handicap is that cell phone technology is amongst the fastest evolving in the world. This makes the process of keeping the curriculum current a full time job.

As the tides of change continue to affect how people interact with technology, we will have to continue to evaluate our training curriculum to ensure it meets the emerging role of law enforcement in this regard. On the immediate horizon, the TOD will be rolling out a forensic program which focuses exclusively on the Apple Macintosh computer system. The pilot for this program is scheduled to run in the second quarter of FY 10. As technology continues to evolve, we will continue to assess, evaluate and create curriculum which will support and enhance the investigative process for all of our partner organizations,; while also supporting local, state and international agencies to ensure they can meet this increasingly relevant and crucial aspect of their investigations.





# Law Enforcement Operations in Cold Weather Environments

**DUKE SPEED**

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The law enforcement community typically does a fairly adequate job of preparing officers for rural operations in warm or mild climate environments, yet very little attention is given to rural operations (patrol or tactical) in cold weather environments. Cold weather rural operations may include the following: pursuit of fleeing felons, rural crime investigations, hazardous waste dumping, eco-terrorism, immigration/border operations, counter-smuggling, counter-poaching, investigation of militant/separatist organizations, counter-terrorism, and infiltration of reconnaissance/surveillance elements, designated marksmen/observers, and specialized tactical/rescue forces. This article will address considerations for extended rural operations in cold weather environments.

Imagine a law enforcement operation in a desolate, remote and bitter cold environment where the terrain is so rough that officers can barely carry their equipment without tiring or losing their footing. Visualize a climate so cold that exposed skin freezes within seconds and winds seem to come out of nowhere and send equipment adrift. Here, officers find themselves perspiring profusely one minute, freezing the next and in snow so deep they

can barely move in any direction. This is the cold weather experience – a difficult challenge for any rural law enforcement organization, regardless of the skill level and proficiency of the officers.

Many law enforcement officers are woefully unprepared for the complexity of rural cold weather operations. An organization that excels in urban, jungle, or desert settings often fails miserably when placed in the cold for hours on end because their training hasn't adequately prepared them for this environment. Very few folks desire to train outdoors when the temperature is cold and it is this mindset that leaves law enforcement officers (LEOs) ill-equipped for a rural cold weather operation. When it comes to cold weather scenarios, there are a number of considerations that should be addressed and planned for during training and eventually implemented into organizational standard operating procedures (SOPs). The following text features those at the top of the list.

## **Know Your Environment**

Law enforcement tends to do a superb job of knowing where gang activity is, where drug trafficking occurs and other crime-related data within its

jurisdiction, but often departments fail to learn anything about their geographic regions and the tactical considerations that can be derived from this data. Whether located in Alaska, Colorado, Florida, or Honolulu, an organization needs to be familiar with its tactical environment and must develop SOPs with this in mind.

It's critical to identify the regional elevation changes and respective temperature shifts. Law enforcement also should be aware of the region's average monthly temperatures and other weather patterns throughout the year. This information helps agencies properly equip their officers and in the development of SOPs.

When determining high-value criminal and terrorist targets within the jurisdiction and developing contingency plans for real-world tactical scenarios, agencies must consider the location of these targets. If potential targets lie in mountainous regions or rural environments, it is imperative for officers to train in this environment and fully rehearse contingency plans under these conditions.

## **The Right Person for the Job**

It's important to evaluate the performance of individual officers as well



as tactical teams in a cold weather environment. An officer who is cold, wet, tired, and miserable may “cocoon out” or lose interest in many of his/her leadership, teamwork, and technical skills as well as his awareness and observatory senses. Because cold weather affects how a person performs, find out during training if all members are up to the challenge.

### **Cold Weather Medical Considerations**

Every member of an agency in a cold weather region, from administration to patrol officers, should be familiar with and able to recognize the signs and symptoms of cold weather-related medical conditions. This is a serious safety concern and potential tactical liability when ignored.

**Hypothermia:** Officers must learn to recognize the signs and symptoms of hypothermia in themselves and fellow officers. Hypothermia is a serious medical issue and severely detrimental

to operations. Exposure to the environment without adequate protection (i.e. hiking in wet clothes in the rain and wind, or immersion in cold water) can lead to hypothermia, or unsustainable heat loss. This condition occurs when the body fails to conserve heat and can be aggravated by hunger, fatigue, illness, and high altitude. This loss of heat causes mental confusion and, unless treated, the victim’s condition may deteriorate, resulting in coma and even death. One of the first signs of hypothermia is that the victim feels extremely cold and begins to shiver, which is the body’s natural defense mechanism as it tries to generate heat (see “Stages of Hypothermia” chart).

**Frostbite:** This is an injury to the skin and other tissues that results from prolonged exposure to cold. It can occur with exposure to below-freezing temperatures if there is a strong wind or if a person is working in high altitudes or wet conditions. Frostbite usually affects the hands, feet, nose,

cheeks, and ears. Superficial frostbite injures the skin and tissues just beneath it. It typically resolves within three to four weeks. Deep frostbite, which also affects muscles, nerves, and blood vessels, may result in tissue death, a condition known as gangrene. Frostbite’s symptoms include pain progressing to numbness, white color or waxy appearance of the skin in the affected area, blood rushing to the area after it’s re-warmed, a burning sensation or swelling from collected fluid that may last for weeks, blisters and a black scab-like crust that may develop several weeks later.

**Altitude Mountain Sickness (AMS):** The higher a person climbs above sea level, the less oxygen there is available to breathe. At altitudes above 8,000 feet, the oxygen level becomes very low. AMS can cause loss of appetite, nausea or vomiting, fatigue or weakness, dizziness or light-headedness, difficulty sleeping, confusion and a staggering gait.





**Snow Blindness:** This is a temporary loss of sight caused by ultraviolet rays from the sun reflecting off snow or ice. The condition is similar to a welding flash burn and caused by damage to the cells covering the cornea. Snow blindness is more likely to occur in hazy, cloudy weather than when the sun is shining. The signs and symptoms of snow blindness include a scratchy feeling in the eyes, decreased vision, watery eyes, reluctance or inability to open the eyes, headache and pain as much as 3 to 5 hours later.

### **Wear Your Hat**

An officer should be able to adapt his clothing to rapidly changing weather conditions, dramatic temperature shifts and be protected from the wind, sun, and rain. Layering clothing correctly will facilitate this.

Within the mountaineering community, the axiom wick, warmth, and wind is utilized to illustrate proper layering. The wick layer is underwear

and its purpose is to wick moisture away from the body. This includes such fabrics as polypropylene, which is designed to draw moisture onto itself. The thermal layer (warmth) is a loose layer of clothing that traps a layer of air which the body then heats. This fabric should limit air circulation yet expel moisture from perspiration. The outer layer or shell (wind) protects against rain, snow, and wind. This layer typically includes both a zippered and hooded parka as well as trousers.

Other clothing considerations include footwear, gloves, and hats. A large percentage of heat is lost through the top of the head, but wearing a wool cap or hood can greatly reduce this heat loss. Fingers are among the first body parts to become cold and uncomfortable, so gloves are essential. A good glove provides excellent dexterity (for manipulating equipment) in addition to insulating qualities. Footwear should be well insulated, waterproof, and breathable to wick away perspira-

tion and moisture. When selecting mission-essential clothing, check to make sure the officer will be able to function in his/her role while wearing it. Clothing should be thoroughly tested and proven during training.

### **Cold Weather Equipment**

The officer behind the equipment is a far more valuable tool than the equipment itself, but without the equipment, the officer may not be able to properly accomplish the mission. Four basic categories should be taken into account when gearing up for cold weather operations:

### **Individual Officer's Kit**

This equipment includes the clothing as well as individual patrol and/or tactical equipment (weapons, ammunition, duty belt, web gear, optics, communications, etc.) Any officer who typically works in cold weather or high altitude regions should also have a basic survival kit that addresses the basic human survival requirements (shelter,





food-gathering, water-gathering, fire-starting, and signaling).

### **Team and Mission-Specific Equipment**

This equipment includes items that are not common to every officer, such as cameras, additional optics, night vision, special weapons, breaching equipment, etc.

### **Mountaineering Equipment**

This includes climbing ropes, anchor systems, rigging equipment, caving ladders, shelter systems, etc.

### **Rescue Equipment**

This equipment is needed to rescue crime victims, fellow officers, and to augment tactical equipment, when necessary.

### **Train Hard and Train Often**

The bottom line when it comes to successful rural cold weather operations is training. Agencies must train realistically and as often as possible in order to build proficiency and cohesiveness amongst officers. In addition to the previously-discussed topics, training should also address the following skills-set:

- Cold weather environment
- Cold weather and high-altitude medicine, first responder skills, MEDEVAC
- Physical fitness/wellness and nutrition
- Clothing criteria and selection
- Effects of cold weather on weapons, ammo, and other equipment

- Wilderness survival skills
- Land Navigation with map, compass and GPS
- Long-Range communication
- Rope management and basic mountaineering
- Tactical patrolling
- Air/helicopter operations
- Command/Control/Communications

Without adequate training, operating in a cold weather environment can be uncomfortable, miserable, and even hazardous. Through proper leadership and training, an agency can develop a competent skill level under these conditions. Being able to effectively operate in cold weather is just another tool for an officer to place in his tool box.

As summer began to warm up, the “Warm Up to Giving” food drive went into high gear at the Federal Law Enforcement Training Center. Sponsored by the Office of Personnel Management, in partnership with the Chief Human Capital Officers Council, the Department of Homeland Security announced the “Feds Feed Families” food drive would go through the summer months and encouraged all of its components to get involved. John Berry, Director of the Office of Personnel Management, said on the Feds Feed Families website ([www.fedsfeedfamilies.gov](http://www.fedsfeedfamilies.gov)), “With economic troubles and without school nutrition programs, many...children and families are at risk of hunger this summer. They need your help. Together with your agency and the Chief Human Capital Officers Council, we’ve set a goal of gathering one million pounds of food for those in need.” Feds Feed Families was held under the guidance of 5 CFR Part 950.102(b) which allows an exception for the solicitation of gifts-in-kind, such as food, clothing and toys.

FLETC Director Connie Patrick was one of the first to enthusiastically jump on board for the project. “What a wonderful way for us to have a chance to give back and help those who have a need,” She encouraged all of FLETC and Partner Organization staff to participate. The Director held the kick-off to Feds Feed Families on July 29, 2009 at a Family Fun Day. The price of admission was one non-perishable food



## Feds Feed Families

FLETC Collects Four Tons of Food for Area Families

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item per person. By the end of the evening a covered 12-foot trailer was filled to capacity yielding over 2,000 pounds that would be delivered to America’s Second Harvest.

America’s Second Harvest is a network of 185 affiliated food banks in the United States which provide food to the hungry through nearly 50,000 social service and non-profit community-based organizations. In Southeast Georgia Second Harvest services over 50 agencies, and 28 agencies in Glynn County alone. Some of these agencies include church pantries which distribute food directly to families, as well as providing food to Emergency Feed-

ing Programs. Emergency Feeding Programs are programs that include emergency food pantries, soup kitchens, after school programs, low-income day care, food programs for seniors and meals served in homeless shelters.

Chandra Mahoney, Executive Director of the Second Harvest in Glynn County said, “We are seeing more and more two-parent families where the bread winner has lost their job or work hours have been cut back severely that are now in need.”

The food bank also services domestic violence shelters such as Safe Harbor, Amity House, Salvation Army and re-entry/recovery houses.



Mahoney went on to say, “We have agencies which have programs feeding children at night and on weekends, those which serve meals to families and afterschool programs. By donating to us, know that every food item will find a needy home, whether it be baby items, kid friendly food, ethnic food, or nutritional supplement items for seniors.”

According to Second Harvest, 23.3 percent of all households with children that are served by their network reported that during the previous 12 months, the children in the household were sometimes or often not eating enough because they couldn’t afford enough food. Another fact that they shared was that 37 percent of adults requesting food assistance were employed at the time.

Food insecurity is the inability to access food in a consistent manner and may require emergency food assistance. In 2007, the United States Department of Agriculture (USDA)

reported that Georgia was in the top ten states with the highest food insecurity.

FLETC again rose to the occasion when the Chief Information Officer Directorate’s (CIO) Management Team volunteered to take a pie in the face to help support the food collection campaign. In exchange for food donations, CIO Directorate employees earned raffle tickets that they placed in selected management collection containers. One ticket was drawn for each manager and the winning employees were able “take aim” with the pies. These contributions pushed FLETC and the Partner Organizations over the 5,000 pound mark. Mahoney had this to say, “Of these last donations, several hundred pounds were distributed to United Way agencies. Also distributed was 4,060 pounds through eight local agencies. This allowed agencies to distribute food to families who may have had to choose between back-to-school needs and food. The

variety available reflected the thoughtfulness of your donors.”

The Investigative Operations Division answered the challenge handed them by the CIO Directorate by choosing not to throw pies but to serve them at a “Souper” luncheon in August as a part of the continuing effort to collect food. Staff members prepared their favorite soup and chili recipes with the cost of lunch being a donation of two non-perishable food or toiletry items. The event netted over 220 food items.

Food collection efforts events didn’t stop in Glynco. The field sites in Artesia, New Mexico; Cheltenham, Maryland; and Charleston, South Carolina, were also busy collecting food at their sites as well. Artesia and Charleston together collected almost 2,000 pounds which were donated to local agencies in their immediate area. Cheltenham joined the Washington, DC, “Feds Feed Families” for their donations.



One of agencies that benefitted from the food drive locally was the Cowboys and Roses Renegade Ranch. This organization provides children ages two to eighteen who are disabled and or disadvantaged with a chance to attend a camp setting in a safe and secure place. Renegade Ranch spokesperson Janet Carswell wrote, "I wanted to extend my gratitude for the food drive that FLETC did. Our Renegade Food bank is an agency of America's Second Harvest, so we were allowed to shop the food drive products. We brought back over 1,300 pound of food to our food bank! Thank you!"

Finishing out the summer of events was a silent auction and dessert tasting held Sept. 17. Food items were "bid" instead of money for auction items that ranged from paintings, crafts, jewelry, table runners, baby quilts, gift cards and Holiday decorations. Bids were able to be placed anytime from 10 a.m. to precisely at 4 p.m. when official time was called. The ballots were

collected and the winners were notified the next day, giving the winners time to bring their food in to collect their winnings.

FLETC's first dessert tasting event ran simultaneously with the silent auction. By bringing a minimum donation of two items, staff members were allowed to sample their choice of homemade pies, cheesecakes, decadent cakes, cookies, brownies and cupcakes.

The Feds Feed Families ended the drive with an incredible 8,561 pounds that represented 11,110 individual items. Carlos Vales, a food drive volunteer committee member said of the final results, "It was an awesome thing for FLETC and the Partner Organizations to be able to help in this way. Those of us who work here have much to be grateful for, and this was a wonderful opportunity to be part of something great."

Another volunteer who helped unload the food barrels at the recipient's warehouses said, "The look of gratitude

from the staff receiving the donations say it all. It was a good feeling to be able to help make a difference in someone's lives."

Ms. Zandra Miles, Client Services representative at the Sparrow Nest, another recipient of Second Harvest, said, "FLETC's food drive has kept us going these last months as we continue to try and meet the greatest need we have seen in recent history. Even though several large deliveries have been made, the food goes out as quickly as we get it in, with FLETC's help we are making a difference."

Director Patrick expressed her gratitude by saying, "Thank you to all of the FLETC staff, students and Partner Organizations that made this possible. Even though there remains a great need in our local area, we can feel good about what we were able to accomplish together and together we did make a difference."

This is true for two reasons: First, today's personal computers and other electronic devices are capable of storing a wealth of digitized information, including such things as diaries, personal letters, medical information, photos, videos, and financial records. In light of this, courts have observed that "the information contained in a laptop and in electronic storage devices renders a search of their contents substantially more intrusive than a search of the contents of a lunchbox or other tangible object."<sup>2</sup> Second, through the use of devices such as "spyware"<sup>3</sup> or computer viruses, such as a "Trojan Horse,"<sup>4</sup> "electronic searches of vast amounts of information can be conducted efficiently and anonymously by even amateur hackers."<sup>5</sup> Thus, "information stored electronically on personal computers—which in its physical form may be safely stored behind locked doors—is vulnerable to warrantless searches by private parties doing the job of law enforcement."<sup>6</sup> This article will discuss the application of the Fourth Amendment to private searches of personal computers in a variety of situations.

## I. The Fourth Amendment and Private Action

The Supreme Court has repeatedly held that the "Fourth Amendment is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the government or with the participation or knowledge of any government official."<sup>7</sup> Stated more plainly, the Fourth Amendment does not regulate private conduct, regardless of whether that conduct is reasonable or unreasonable. Of course, "the government may not do, through a private individual, that which it is otherwise forbidden to do."<sup>8</sup> Thus, if in light of all the circumstances, a private party conducting a search is doing so as an "instrument or agent" of the government, the Fourth Amendment will apply to that party's actions.<sup>9</sup> Whether a private search has become governmental "necessarily turns on the degree of the government's participation in the

**"While private assistance in law enforcement is not a new phenomenon, when done in the context of cybercrime investigations, unique problems emerge,"**

wrote Monica Shah in "The Case for a Statutory Suppression Remedy to Regulate Illegal Private Party Searches in Cyberspace."<sup>1</sup>

# Private Searches

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private party's activities ... a question that can only be resolved in light of all the circumstances."<sup>10</sup> In making such a determination, the lower courts have almost uniformly applied the following two-part test or a close variant: (a) whether the government knew of or acquiesced in the intrusive conduct, and (b) whether the party performing the search intended to assist law enforcement efforts or to further his own ends.<sup>11</sup> While, a court must find both before an agency relationship can be deemed to exist,<sup>12</sup> it is important to note that the greater the government involvement in the search, the less important is the private searcher's intent.<sup>13</sup>

### A. Acquiescence

The first factor courts typically consider in determining whether a search is private or governmental is the extent of the government's knowledge of, and participation in, the private actor's conduct.<sup>14</sup> Within the context of private searches, "knowledge" and "acquiescence" "encompass the requirements that the government agent must ... affirmatively encourage, initiate, or instigate the private action."<sup>15</sup> Consequently, a private search can be converted into a

governmental one only where there is "some exercise of governmental power over the private entity, such that the private entity may be said to have acted on behalf of the government rather than for its own, private purposes."<sup>16</sup> In making this determination, Federal courts will "consider whether the private actor performed the search at the request of the government, or whether the government otherwise initiated, instigated, orchestrated, encouraged, or participated in the search."<sup>17</sup> "Mere knowledge of another's independent action does not produce vicarious responsibility absent some manifestation of consent and the ability to control."<sup>18</sup> Similarly, simply taking control of evidence "gathered by a private party without the State's instigation or direction" does not transform a private search into a governmental one.<sup>19</sup> In order for a private search to be considered governmental, courts typically require that a government agent be either involved in the search directly as a participant, or indirectly as an "encourager" of the private person's search.<sup>20</sup> As one court has noted: "Where Federal officials actively participate in a search being conducted by private parties or else stand by watching with



## in Cyberspace

approval as the search continues, Federal authorities are clearly implicated in the search and it must comport with Fourth Amendment requirements.<sup>21</sup> Implicit in this requirement, of course, is that the government must have knowledge of the private actor's conduct before it actually occurs. "Where no official of the Federal government has any connection with a wrongful seizure, or any knowledge of it until after the fact, the evidence is admissible."<sup>22</sup> Thus, for example, if a law enforcement officer actively sought out and requested that a private citizen conduct a search of a suspect's property (e.g., his or her computer), this would almost certainly qualify as a governmental search due to the initiation and instigation of the private action.<sup>23</sup> Alternatively, where a private citizen conducts a search without the government's knowledge and only later provides law enforcement personnel evidence of any crime uncovered during that search, it is likely this situation would not implicate the Fourth Amendment.<sup>24</sup>

### B. Intent to Assist

The second factor courts typically consider when analyzing the validity of a private search is whether the private actor

intended to assist law enforcement efforts or was, instead, attempting to further his own ends. Of course, there are many reasons why a private citizen might, of their own volition, seek out criminal activity:

*A private citizen might decide to aid in the control and prevention of criminal activity out of his or her own moral conviction, concern for his or her employer's public image or profitability, or even a desire to incarcerate criminals, but even if such private purpose should happen to coincide with the purposes of the government, "this happy coincidence does not make a private actor an arm of the government."*<sup>25</sup>

Further, at least one court has noted that a private individual conducting a search "almost always ... will be pursuing his own ends – even if only to satisfy curiosity – although he may have a strong intent to aid law enforcement."<sup>26</sup> However, as discussed above, a "private party cannot be deemed a government agent unless it was induced to act by some government action."<sup>27</sup> "Where the private party has a legitimate independent motivation for engaging in the challenged conduct,

the Fourth Amendment would not apply."<sup>28</sup> Thus, "where the private person is motivated both to assist the government and to further his or her own objectives, the private citizen is not acting as an agent of the government."<sup>29</sup> Additionally, whether the government offered a reward would be relevant to determining the private actor's motivation for conducting the search,<sup>30</sup> as would whether the private actor was a confidential informant.<sup>31</sup> Finally, a long-line of cases holds that "an off-duty police officer acts as a government agent where he or she stumbles upon criminal activity and attempts to collect evidence for law enforcement."<sup>32</sup>

## II. Private Searches and Computers

Private searches of computers occur in a variety of circumstances. Some fairly common examples are discussed below.

### A. Roommates and Spouses

In some instances, a roommate or spouse performs the search and provides any evidence recovered to law enforcement personnel. Illustrative on this point is *United States v. Ellyson*. In *Ellyson*,<sup>33</sup> the defendant was arrested for possessing child pornography after a search of his trailer. While he was confined, his friend (Burr) continued living in his trailer. During this time, Burr was informed by local police officers that, if the trailer was searched again while she was living in it, she would possibly be charged with "aiding and abetting." She was also informed that, if she came across anything illegal, it would be in her best interest to provide it to the police or she could be held liable for it. Approximately one week after Ellyson's arrest, Burr visited him in jail in order to ascertain whether she would be allowed to continue living in the trailer while he was confined. Burr stated she did so of her own accord, and that she was not asked to meet with Ellyson or elicit any information from him on behalf of the police. During their conversation, Ellyson inquired of Burr as to whether police officers had returned to conduct another search of the trailer. When Burr told him they had not, Ellyson directed

her to dispose of some computer disks that he had hidden in the trailer. The next day, Burr located a box containing, among other things, several computer disks. In light of what she had been previously told by the police, she contacted them and turned over the materials. Ultimately, Ellyson was convicted of possessing child pornography based upon the computer disks provided to law enforcement by Burr.

On appeal, Ellyson claimed the search by Burr was illegal and that the evidence she provided should have been suppressed. More specifically, Ellyson claimed that Burr had acted as an “agent of the government” in carrying out the search. Accordingly, he claimed the search violated the Fourth Amendment. In rejecting his claim, the court affirmed the denial of his motion to suppress, based upon the following facts: (a) Burr’s meeting with Ellyson in the jail was for the purpose of discussing whether she could continue residing in the trailer; (b) the search for the computer disks was not instigated by the police, but by Ellyson, who had requested Burr to locate and destroy them; (c) Burr had made no effort to seek this evidence until after her meeting with Ellyson; (d) Burr’s actions were based not on her desire to assist the police, but on her wish to avoid liability for any evidence subsequently discovered in the trailer; (e) the police never asked Burr to visit Ellyson in jail; (f) the police were not aware that Ellyson had requested that Burr locate and dispose of the disks; and (g) the police did not prompt Burr to search the trailer further after the discovery of the disks.<sup>34</sup> In light of the fact that “Burr had a ‘legitimate independent motivation’ for performing the search and the police had not participated or acquiesced in the search,” the court concluded that Burr had not been acting as an agent or instrument of the state.<sup>35</sup>

## B. Computer Repairmen

Another fairly typical scenario involves

computer repairmen who, in the course of their duties, uncover evidence of criminal activity and notify the police. “Courts have consistently (albeit not uniformly) held that observations by private computer technicians made during their examination of a computer given to them to repair do not implicate the Fourth Amendment.”<sup>36</sup> A fairly representative example of this type of situation is *United States v. Hall*.<sup>37</sup> In *Hall*, the defendant took his central processing unit (CPU) to a computer repairman (Goodwin) at CDS Office Technologies. While attempting to diagnose the problems with the CPU, Goodwin observed a number of files that, based upon their unusual names (e.g., “Boys 6-12”), implied potential sexual content. Goodwin viewed 3-5 of these files, and discovered numerous pornographic images of boys that, based upon their appearance and physical development, he estimated to be between 10 and 12 years of age. In all, Goodwin estimated there were a total of approximately 1,000 video files on the CPU that had names implying child pornography. Subsequent to viewing these images, Goodwin contacted a friend of his who worked for the Illinois State Police, who, in turn, contacted the Federal Bureau of Investigation. Based upon Goodwin’s description of the files and the images he had observed, a search warrant was obtained to search Hall’s CPU and associated computer disks. In sum, 403 files were found to contain visual depictions of minors engaged in sexually explicit conduct, with many of the files depicting pre-pubescent minors (under the age of 12). Hall was indicted and convicted of violating Title 18 United States Code Section 2252 (knowingly possessing images, transported in interstate commerce, which contained visual depictions of minors engaged in sexually explicit conduct). Ultimately, the court found that the search by the repairman of Hall’s CPU constituted a private search and did not violate the Fourth Amendment. Specifically, the court noted:

*Goodwin’s search of Hall’s CPU, which involved the viewing of several of Hall’s*

*computer files, was made pursuant to the maintenance work Goodwin had performed in his capacity as a technician for CDS. The Government had no knowledge that Goodwin was going to repair Hall’s computer and thus, did not instruct Goodwin to inspect the files. Goodwin did not contact the Government until after the evidence was discovered. The search was initiated by Goodwin, and was completed in the normal course of CDS’s business, with the sole purpose of testing Hall’s CPU. Therefore, the Fourth Amendment is inapplicable both to Goodwin’s search, and to his later description of the pornographic evidence to law enforcement officials.*<sup>38</sup>

## C. Computer Hackers

Perhaps the most instructive case on the use of information provided by computer hackers is *United States v. Steiger*.<sup>39</sup> In *Steiger*, law enforcement officials were made aware of Steiger’s criminal conduct through the actions of a computer hacker. Specifically, an anonymous computer hacker, known as “Unknownuser” and claiming to be from Turkey, sent an e-mail to the Montgomery, Alabama Police Department (MPD) and related the following:

*I found a child molester on the net. I’m not sure if he is abusing his own child or a child he kidnapped. He is from Montgomery, Alabama. As you see, he is torturing the kid. She is 5-6 y.o. His face is clearly seen on some of the pictures. I know his name, internet account, home address and I can see when he is online. What should I do? Can I send all the pics and info I have to these e-mails? Regards P.S. He is a doctor or a paramedic.*<sup>40</sup>

Attached to the e-mail was an electronic image of a white male sexually abusing a young white female who appeared to be approximately four to six years of age. A few days after receiving the initial note, a police officer (Murphy) responded to “Unknownuser,” telling him to “feel free to send the information you have.” In response, “Unknownuser” sent an e-mail with eight attached images showing an adult white male nude from the waist

down fondling and pressing the young girl against his body in various positions and exposing her genitalia. The girl was nude in several photographs and partially dressed in others. Finally, the anonymous e-mail identified the molester as "Brad Steiger," and provided Steiger's Internet service account information with AT & T WorldNet, possible home address, telephone number used to connect to the Internet, and a fax number. The anonymous source also informed the officer that he had Steiger's Internet Protocol number (IP address). After viewing the images, Murphy asked "Unknownuser" to send Steiger's IP address, which he did. In subsequent e-mails, the source sent law enforcement officials Steiger's checking account records and the specific folders on Steiger's computer where pornographic pictures were stored.

Although an agent with the Federal Bureau of Investigation stationed in Turkey attempted to interview "Unknownuser" to determine how he had acquired the information regarding Steiger, the source refused to reveal his identity. Instead, he sent a lengthy e-mail that explained how he had discovered the picture on Steiger's computer:

*How did I get access to his pc? I used the well known trojan horse named subseven .... I made it undetectable so av softwares [sic] couldn't [sic] see it and bind it with a fake program. After this I posed it to the news group "alt.binaries.pictures.erotica.pre-teen" where one can find 1000s of sick people.<sup>41</sup>*

Stated differently, "Unknownuser" had accessed Steiger's computer illegally by attaching a virus (Trojan horse) to a picture that he posted to a news group frequented by individuals interested in pornography. When Steiger downloaded the picture, the virus was also downloaded and permitted "Unknownuser" to access the files contained on Steiger's computer. Based upon the information provided by "Unknownuser," a search warrant was obtained for Steiger's residence and

computer. In the affidavit, the affiant noted the information was provided by "an anonymous source ... [that] had located a child molester on the Internet."<sup>42</sup> No mention was made in the affidavit that the information had been obtained by illegally hacking into the defendant's computer. Ultimately, Steiger was indicted and convicted of various crimes related to child pornography. On appeal, he challenged the government's use of the information provided by "Unknownuser" in the search warrant, claiming, among other things, that "Unknownuser" was an agent of the government and had illegally come across the information only by hacking into his computer.

In rejecting the defendant's arguments, the court first noted that "Unknownuser" was not a government agent when the searches of Steiger's computer were conducted. Because the information in the search warrant affidavit was limited to information provided by "Unknownuser" before he made contact with the MPD, the government did not "know of" or "acquiesce" in the source's conduct. The court also rejected the defendant's argument that the evidence should be suppressed because the information obtained from "Unknownuser" had been procured through illegal activity (i.e., computer hacking). The Supreme Court has repeatedly noted that, "a wrongful search or seizure conducted by a private party does not violate the Fourth Amendment and ... such private wrongdoing does not deprive the government of the right to use evidence that it has acquired lawfully."<sup>43</sup> In this instance, the important consideration for the court was not whether "Unknownuser" had acquired the evidence illegally, but whether the MPD had done so. Based upon the "after the fact" nature of the government's involvement, the court found that the MPD had obtained the evidence legally, and could thus use it to establish probable cause for the search warrant.<sup>44</sup>

### III. Conclusion

In sum, the Fourth Amendment is not applicable to searches conducted by private parties. In determining whether an individual is a private actor or a government agent, courts will typically consider the following factors: (a) whether the government knew of or acquiesced in the intrusive conduct, and (b) whether the party performing the search intended to assist law enforcement efforts or to further his own ends. Both prongs of the analysis must be met. Finally, "[b]ecause the protection afforded by the Fourth Amendment is aimed exclusively at state action,"<sup>45</sup> courts have held that evidence obtained through an illegal act is not automatically subject to the exclusionary rule.<sup>46</sup> Thus, "evidence secured by private searches, *even if illegal*, need not be excluded from a criminal trial."<sup>47</sup>

<sup>1</sup>Monica R. Shah, *Note: The Case for a Statutory Suppression Remedy to Regulate Illegal Private Party Searches in Cyberspace*, 105 Colum. L. Rev. 250 (2005) (internal footnote omitted)

<sup>2</sup>*United States v. Arnold*, 454 F. Supp. 2d 999, 1004 (C.D. Cal 2006)

<sup>3</sup>Sagi Schwartzberg, *Note and Comment: Hacking the Fourth: How the Gaps in the Law and Fourth Amendment Jurisprudence Leave the Right to Privacy At Risk*, 30 U. La Verne L. Rev. 467, 470-471 (2009) ("Spyware" is software installed on a computer with the target user's knowledge and meant to monitor the users conduct. The program can be installed either by someone with access to the target computer or remotely, for example, by sending a picture to someone with the program embedded in the picture. As soon as the unsuspecting victim opens the picture file, the program is installed on the computer without the user's knowledge. Spyware programs are very common and can be purchased for between \$30-100.) (citation, internal footnotes, and internal quotations omitted)

<sup>4</sup>*Id.* at 471 ("While not as common as spyware, the Trojan virus is one of the most dangerous viruses known today, with over 1000 strands in circulation. The Trojan virus infects the computer in the same way the spyware is set upon on a system. It can be attached in a picture, downloaded as an attachment to an e-mail or by executing a file from an unknown source. The difference between spyware and the Trojan virus is that while spyware allows the intruder to see what the victim is doing, the Trojan virus furnishes access to the hard drive, allowing the intruder to make changes, add and delete files, and copy any file to the intruder's own hard drive.") For more information, see [http://www.petri.co.il/whats\\_a\\_trojan\\_horse.htm](http://www.petri.co.il/whats_a_trojan_horse.htm).

<sup>5</sup>Shah, *supra* note 1, at 250

<sup>6</sup>*Id.* at 251

<sup>7</sup>*United States v. Jacobsen*, 466 U.S. 109, 113

(1984) (citation omitted)

<sup>8</sup>*United States v. Feffer*, 831 F.2d 734, 737 (7th Cir. 1987) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 487)

<sup>9</sup>*Coolidge*, 403 U.S. at 487

<sup>10</sup>*Skinner v. Railway Labor Executives' Association*, 489 U.S. 602, 614-15 (1989) (quotation omitted)

<sup>11</sup>*United States v. Alexander*, 447 F.3d 1290, 1295 (10th Cir. 2006); *United States v. Gingles*, 467 F.3d 1071, 1074 (7th Cir. 2006); *United States v. Steiger*, 318 F.3d 1039, 1045 (11th Cir.), cert. denied, 538 U.S. 1051 (2003); *United States v. Young*, 153 F.3d 1079, 1080 (9th Cir. 1998); *United States v. Jenkins*, 46 F.3d 447, 460 (5th Cir. 1995); *United States v. Malbrough*, 922 F.2d 458, 462 (8th Cir. 1990); and *United States v. Jarrett*, 338 F.3d 339, 345 (4th Cir. 2003), cert. denied, 540 U.S. 1185 (2004) (combining the two factors into "one highly pertinent consideration"). In *United States v. Pervaz*, 118 F.3d 1, 6 (1st Cir. 1997), the First Circuit Court of Appeals refused to adopt "any specific standard or test," identifying instead several factors that may be relevant to this determination: "the extent of the government's role in instigating or participating in the search, its intent and the degree of control it exercises over the search and the private party, and the extent to which the private party aims primarily to help the government or to serve its own interests."

<sup>12</sup>*Jarrett*, 338 F.3d at 345. See also *United States v. Poe*, 556 F.3d 1113, 1123 (10th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 130 S. Ct. 395 (2009)

<sup>13</sup>*Presley v. City of Charlottesville*, 464 F.3d 480, 488 fn 7 (4th Cir. 2006)

<sup>14</sup>*United States v. Alexander*, 447 F.3d 1290, 1295 (10th Cir.), cert. denied, 549 U.S. 933 (2006)

<sup>15</sup>*United States v. Smythe*, 84 F.3d 1240, 1243 (10th Cir. 1996)

<sup>16</sup>*United States v. Shahid*, 117 F.3d 322, 325 (7th Cir.), cert. denied, 522 U.S. 902 (1997). See also *Jarrett*, 338 F.3d at 344 ("[T]o run afoul of the Fourth Amendment ... the Government must do more than passively accept or acquiesce in a private party's search efforts. Rather, there must be some degree of Government participation in the private search.")

<sup>17</sup>*State v. Santiago*, 217 P. 3d 89, 94 (N.M. 2009)

<sup>18</sup>*United States v. Koenig*, 856 F.2d 843, 850 (7th

Cir. 1988)

<sup>19</sup>*United States v. D'Andrea*, 497 F. Supp. 2d 117, 122 (D. Mass. 2007). See also *Jarrett*, 338 F.3d at 345-346 (in order to find a private search has become governmental, there must be evidence of government "participation in or affirmative encouragement of" the private search, as "passive acceptance" by the government is "not enough.")

<sup>20</sup>*United States v. Leffall*, 82 F.3d 343, 347 (10th Cir. 1996)

<sup>21</sup>*United States v. Mekjian*, 505 F.2d 1320, 1327 (5th Cir. 1975)

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

<sup>23</sup>*Malbrough*, 922 F.2d at 462 (noting that, in addition to the two factors commonly used, other "useful criteria" would include whether the private actor performed the search at the request of the government). See also *United v. Walther*, 652 F.2d 788, 793 (9th Cir. 1981) (noting "the government cannot knowingly acquiesce in and encourage directly or indirectly a private citizen to engage in activity which it is prohibited from pursuing where that citizen has no motivation other than the expectation of reward for his or her efforts")

<sup>24</sup>*Steiger*, 318 F.3d at 1045

<sup>25</sup>*Id.* at 362

<sup>26</sup>*Leffall*, 82 F.3d at 347

<sup>27</sup>*Shahid*, 117 F.3d at 325-326

<sup>28</sup>*United States v. Attson*, 900 F.2d 1427, 1432 (9th Cir.), cert. denied, 498 U.S. 961 (1990). See also *Koenig*, 856 F.2d at 843 (noting that, "once the court has considered all of the circumstances surrounding the search and is satisfied that a private entity has conducted a search for its own, private reasons and not as an instrument or agent of the government, the specific reason for the search no longer matters")(internal quotation marks omitted)

<sup>29</sup>*United States v. Jackson*, 617 F. Supp. 2d 316, 326 (M.D. Pa. 2008)

<sup>30</sup>*Malbrough*, 922 F.2d at 462

<sup>31</sup>Compare *United States v. McAllister*, 18 F.3d 1412, 1417-1419 (7th Cir. 1994) (in finding confidential informant (CI) to be private actor, court noted that "neither the case law nor common sense supports the proposition that a CI automatically obtains and retains an ongoing status as a law enforcement officer or

a governmental agent ....") with *United States v. Barth*, 26 F. Supp. 2d 929, 935-936 (W.D. Tex. 1998) (confidential informant's actions attributable to government)

<sup>32</sup>*United States v. Gingles*, 467 F.3d 1071, 1075-1076 (7th Cir. 2006) (collecting cases)

<sup>33</sup>326 F.3d 522 (4th Cir. 2003)

<sup>34</sup>*Id.* at 528

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

<sup>36</sup>Thomas K. Clancy, *Symposium: The Search and Seizure of Computers and Electronic Evidence: The Fourth Amendment Aspects of Computer Searches and Seizures: A Perspective and a Primer*, 75 Miss. L.J. 193, 229 (2005)

<sup>37</sup>142 F.3d 988 (7th Cir. 1998)

<sup>38</sup>*Id.* at 993

<sup>39</sup>318 F.3d 1039 (11th Cir.), cert. denied, 538 U.S. 1051 (2003)

<sup>40</sup>*Id.* at 1042

<sup>41</sup>*Id.* at 1044

<sup>42</sup>*Id.* at 1043

<sup>43</sup>*United States v. Walter*, 447 U.S. 649, 656 (1980)

<sup>44</sup>Interestingly, this was not the last the government was to hear of "Unknownuser." A short while later, he was involved in a second case involving child pornography, this time in a different jurisdiction, but with a very similar fact pattern to *Steiger*. While the court in this second case also found that "Unknownuser" was acting as a private party, it was a much closer call than in *Steiger* based, in part, upon the exchanges between the source and the officers involved. See *United States v. Jarrett*, 338 F.3d 339 (4th Cir. 2003), cert. denied, 540 U.S. 1185 (2004)

<sup>45</sup>*Ellyson*, 326 F.3d at 527 (citing *United States v. Kinney*, 953 F.2d 863, 865 (4th Cir. 1992))

<sup>46</sup>See *Coolidge*, 403 U.S. at 488 ("It is no part of the policy underlying the Fourth and Fourteenth Amendments to discourage citizen's from aiding to the utmost of their ability in the apprehension of criminals"); *United States v. Souza*, 223 F.3d 1197, 1202 (10th Cir. 2000) (holding that police are under no duty to discourage citizens from conducting searches of their own volition)

<sup>47</sup>*Ellyson*, 326 F.3d at 527 (emphasis added)

# Commentary

## Health & Fitness

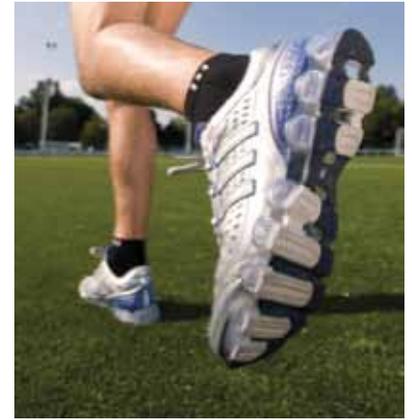
ANDY SMOTZER  
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Are you over-weight? Don't like the way you look? Tired all the time? Have trouble sleeping at night? Stressed out? If you answered yes to some or all of these questions, you may want to consider exercising. You may ask, "How do I get started?" Did you ever think about just walking? Walking can do wonders for your health and has many benefits. Walking conditions the body, strengthens your legs and back muscles, gives you better flexibility, and most importantly, strengthens your heart. I suggest taking long, slow walks at a moderate pace for about 15-30 minutes and see how you feel. After a couple of weeks of doing this for three to four times a week and feeling good, I suggest picking it up a notch and try for 45-60 minutes, five to six days a week. This allows your system to burn more calories, improve cardiac functions, and reduce weight and body fat.

"Researchers found that walking can burn more calories than biking or swimming, because walkers support their total body weight by themselves, rather than having a bike or water support their weight. People have to bike or swim a lot more to gain the same calorie-burning effect as walking," said Dr. Philip Ades, a professor of medicine and director of cardiac

rehabilitation and prevention at the University of Vermont College of Medicine, and the study's lead researcher." (Brunswick News, "Health & Fitness," July 21, 2009). Just remember, if you can walk from the couch to the refrigerator, you are not too heavy or too old to go take a walk.

Let's say you have been walking for a few months and now you want to pick things up and want to try running. I suggest a combination of doing both. Why not add some running, or I should say jogging, to your walks? If you can walk continuously for 30 minutes, you can add some running to your program. Once you start doing this and begin to run, only run until you get tired or start breathing heavy; then go back to walking. After regaining your breath and walking for a while, start running again. As you continue your work outs, run more and walk less. If you stay with this routine, after a few months you may be ready for what is called Long Slow Distance (LSD). LSD means running for a long period of time but slowly, and covering a long distance (three miles and more). I personally started the LSD running style over three years ago and have lost about 20 pounds and have run in the last three Jacksonville River Runs which is a



15K run (9.3 miles). So if I can do this I feel anyone can! I'm 56 years old and look forward to continuing my runs until I can't run anymore. When that happens then I'll go back to walking.

Before you start a workout program you may want to consider having a physical exam to get cleared by your doctor. Once you begin you may want to consider doing different things to stay in shape, such as a combination of different workouts that work different muscle groups so you don't get too bored. Here's some examples: walk, jog, swim, bike, use light weights, or even get involved with different sports to keep things fun. If you are a Federal Law Enforcement Training Center (FLETC) employee please keep us in mind over here in the Physical Techniques Division (PTD). We have special classes that FLETC staff can attend such as fitness, diet and nutrition, weight management, stress management, tobacco cessation, men's and women's health issues, substance abuse, running, and weight training. To find out more, contact our Wellness Program Manager Tony Madero at 912-267-3436. Tony will be more than happy to help. So what are you waiting for? As that famous brand advises, "Just Do It!"

*So long winter!*



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