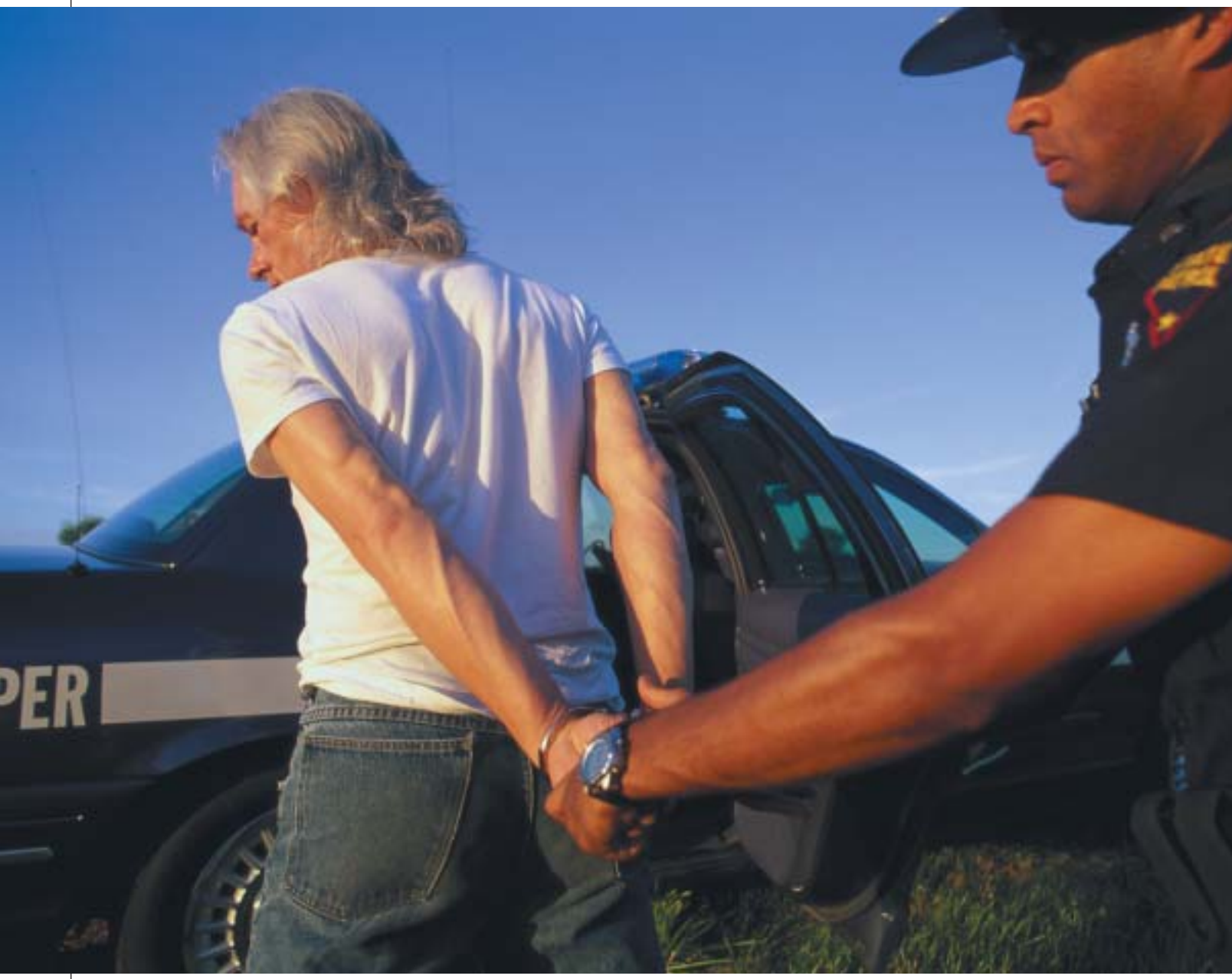
Death or injury cases involving law enforcement officers

Part 2: lessons learned



By Gareth Jones and Barry Nolan

In Part One, that appeared in the July 2002 issue of *The Champion*, we discussed the proactive steps defense counsel may want to consider in these cases. In Part Two we continue by discussing approaches to analyzing the information you have obtained, and the inferences you may be able to draw that will work to your client's advantage. We also talk about the problems inherent in retaining and using expert witnesses in these cases.

Analyzing what you have

How then does one go about identifying and exploiting the imperfections of the investigation and its findings in favor of one's client? Fortunately, the principles of sound investigative practice are universal. However, as mentioned previously, cases involving police use of force have their own unique complexities and difficulties that many defense counsel will likely not be intimately familiar with.

At a minimum, counsel should consider the following areas. In our experience, they are amongst the key areas in assessing whether any investigation was conducted thoroughly and objectively.

- What happened at the scene;
- Forensic issues;
- Statement quality;
- What happened to witnesses after the incident; and
- What assistance did the police department provide the involved officer.

This can be a complex and time-consuming task. In many cases, counsel will require expert assistance in assessing the inferences and implications to be drawn from information, lack of information or tainted information on each of these fronts.

What happened at the scene?

The more that was done by the involved police force to properly preserve the scene of the incident, the more confident you can be in the objectivity and thoroughness of the entire process. However, it is not unknown for crime scenes in police-involved cases not to be preserved as they would have been had police not been directly involved in the incident.

In one particularly grievous case of scene preservation involving a brief pursuit and a fatal shooting by an officer, the involved police service secured the scene pending our arrival. However, the senior detective in charge of the scene allowed the two cruisers involved in the incident to be driven from the scene, by the very officers who had been involved in the incident no less. Incredibly, the cruisers were driven out of the scene the same way as they had entered the scene, thereby driving over evidence that had originated from the shooting, altering some of it while doubtless taking some of it away with them. We knew that there was important evidence inside the vehicles, including which radio channel the officers had on, what equipment they had with them, what was in the trunk, whether the windows were open, etc, etc. To make matters worse, it appeared that several other police vehicles drove into and exited the scene by the same route.

The detective in charge of the scene then ordered two officers to assist his search for the cartridge case discharged by the shooting officer's weapon. It was 3:30 a.m. and relatively dark. He decided not to wait for daylight, nor did he employ grid search techniques. The search may have been necessary had cartridge cases developed a propensity to grow legs and go for a stroll. The excuse that was floated on the detective's behalf at subsequent court proceedings was that he was concerned that the cartridge case may have been washed away had there been a downpour. Fair enough, provided he has good notes that he can see Noah's Ark coming down the street at the same time.

The officers spent between 30 and 45 minutes searching through the scene before they found the cartridge case. Thankfully, in retrospect, any footwear impressions they may have obliterated would probably have had no probative value. Unfortunately, the same was not true for other trace evidence, such as glass, blood or fibers that may have been dislodged or otherwise altered in the course of their efforts.

Not content with that, the detective then decided to place a tarpaulin over a broken window in a vehicle involved in the chase. That was the sensible thing to do as it had begun to rain lightly and blood spatter evidence inside the vehicle could have been contaminated. Unfortunately, Murphy's Law being what it is, the detective came into contact with the vehicle as he put up the tarp, possibly leaving fiber evidence on the same side of the vehicle where an officer directly involved in the shooting subsequently claimed he was hit. Both officers were wearing jeans, and jean material was found on the vehicle near the window. Not surprisingly, the origin of the jean fibers became a very contentious issue at subsequent proceedings.

In another case, a driver was seen by a uniform police officer on radar duty exceeding the speed limit by about 15 mph. The man drove into the driveway of his own home before the officer could catch up to him and pull him over. Undeterred, the officer followed the man onto the driveway and attempted to give him a ticket. The man told the officer that he had no right to be on his property and asked him to leave. The officer insisted on giving the man a ticket. Allegedly, the man then threatened the officer with a sledgehammer, which he dropped and ran into his house, reportedly punching the officer as he did so. The officer followed the man into the house where there was a struggle in the living room, in front of the man's two teenage sons. According to the sons, their father was yelling at them to call the police as he ran into the house. Backup officers, summoned by the arresting officer, arrived. In the course of the altercation, the man stopped breathing. An ambulance was called and the man was taken to hospital where he was pronounced dead.

Cause of death was subsequently determined to be asphyxiation due to compression of the neck. Once paramedics had cleared the scene, the house was completely abandoned by the involved officers, as well as by two supervising officers who had arrived as the altercation was ongoing. It should have been an obvious priority on the part of all officers present to preserve the scene pending our arrival. In fact, nothing at the scene was protected or preserved. When we arrived, we found family members (some of whom had witnessed the incident) cleaning up the mess in the house. Vital evidence was lost forever.[1]

Finally, in another telling example of dubious scene preservation practices and the damage they inflict on investigative integrity, an inmate had apparently hanged himself in his cell while in police custody. We arrived at the police precinct less than two hours after the prisoner had been pronounced dead. The cell area had been secured once the paramedics had left, and officers were posted at all access points into the cellblock. We met with the station commander and counsel for the police department and were assured that the scene had been secured and preserved pending our arrival and that nothing had been altered or removed. They then took us to the cellblock where, as we approached the main door to the cellblock, we saw counsel for the subject officers emerge from inside the cellblock area accompanied by one of his clients. That did not give us a particularly warm and fuzzy feeling.

You may want to count the times you as defense counsel have been invited into a potential crime scene with your client, prior to it being processed. There was no evidence that the lawyer or his client had done anything other than view the scene; however, perhaps understandably, everything that subsequently flowed from that police department in that investigation was met with a rather jaundiced eye. And while we do not suggest that you necessarily meet every piece of police evidence with a "jaundiced" eye, this and the other "Keystone Cop" tales described above point to the need for an ever vigilant scrutiny of police practices at the scene of an incident. Beneath the farce of these incidents, we found grave lapses in scene preservation practices with very serious implications for the reliability of the evidence seized at the scene and the integrity of the subsequent investigation.

Forensic issues

The importance of this area of file review can be encapsulated in two letters: O.J.

This is a very important area that is sometimes overlooked, but always crucial in assessing the merits of a particular investigation. It has proven to be a robust area of inquiry which has often yielded great dividends in our investigations of police conduct.

To begin with, be cognizant of the fact that the place where the incident in question occurred is usually not the only scene. In most cases important physical evidence will also be found at the police precinct closest to the incident, as this is where involved officers and civilian witnesses tend to congregate. This evidence may include involved officers' clothing, footwear and firearms.

Another potential scene is the police building in which involved officers were based, if it is not the local precinct. It may, for example, contain notes or diagrams concerning the planning of the operation that led to the incident. The hospital or hospitals where involved parties were taken, as well as the transporting ambulance(s), are also important scenes, which should be thoroughly processed in accordance with accepted forensic techniques. Very important physical evidence, sometimes forgotten or neglected in the course of an investigation, is often found in these locations. This evidence can include such things as: excised clothing, pre-transfused blood and discarded bandages. A failure on the part of the police to identify and collect evidence from all potential scenes is a fertile source of doubt, reasonable and otherwise.

Below is a checklist of other inquiries you will want to canvass with respect to forensic evidence:

- How was the evidence collected and preserved?
- What are the qualifications, training and experience of those involved in the evidence gathering process?
- What tests or examinations were requested? What were not?
- What was actually done forensically?
- What should have been done, but was not? (Sometimes, a lack of evidence speaks volumes)
- What is the potential for contamination of evidence at any point in the process?[2]
- Can the prosecution prove continuity?
- Who were the analysts and what are their credentials?
- How good is the lab?[3]

This is not an exhaustive list. There are many other avenues worth exploring in this field, to ascertain how thoroughly the forensic aspect of the investigation of the incident was conducted. Consider retaining an appropriate expert in the event that you require assistance in evaluating the significance of the forensic investigation performed or not performed in relation to your client.

Statement quality

Analyze all statements taken by any party, line by line. Ask yourself if the difficult questions were posed, both of civilian witnesses and involved officers. Be vigilant for interviewers avoiding or skirting pertinent issues or asking leading questions. Did the interviewers have a consistent approach to each party? Were civilians treated differently from involved officers? Was the questioning exhaustive?

Take note of how each statement was taken. For example, was it handwritten? If so, who wrote it and was it written contemporaneously? Who was present? Where and when was it taken? Was there any preamble? Are any times shown on the statement indicating when it began and finished and, if so, are the times consistent with the length of the statement? If not, what else happened or was said during the taking of the statement? This may also seem like minutiae, particularly to the busy criminal defense lawyer without the luxury of time. Rest assured, it is not. The devil really *is* in the details. In one case we investigated, we were given a copy of a written statement taken from an independent witness by a detective. According to the detective's notes, the statement took 45 minutes to complete. It was two paragraphs long. Just think what you might be able to make of that in front of a judge or jury, assuming you have taken the time to look for it.

If the statements are in the form of transcripts of audio or video tapes, have the transcripts been proofed? If not, you should request a copy of the original audio or videotape, and take the time to listen to or watch them, or have someone do it on your behalf.

For example, in a fatal police shooting, a potentially very important

witness was interviewed on audio tape at the scene within a few hours of the incident. He was asked to point out where the vehicle in which the suspect had been killed was located at the time of the shooting. The witness pointed to a set of cones put up by forensic identification officers around a pool of glass that had originated from the vehicle and, in heavily accented English, told the investigators "It's around where you put the cones." The transcriber interpreted and recorded his answer as "It's the wrong place you put the cones." The investigator who took the statement never proofed it. The transcript was provided to defense counsel, but the original audiotape was not.

The mistake was never corrected. More accurately, it was not until a civil trial for malicious prosecution some four years later, in which the plaintiff was the police officer who had shot the suspect. The lead investigator spent a significant portion of his five days in the witness stand attempting to explain, with varying degrees of success, why the discrepancy had never been dealt with.

Lastly, you will want to scrutinize the statements and notes of involved officers particularly carefully. It is widely acknowledged that investigations into allegations of police misconduct are hampered by reluctance on the part of some officers to "rat" on other members. The Christopher Commission investigation into the Los Angeles Police Department noted that "perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers— unwritten 'code of silence' . . . (the principle that) an officer does not provide adverse information against a fellow officer."[4] We suggest you critique everything attributed to involved officers, including the investigators assigned to the incident. What did they write? When did they write it? What would you expect to be there? What, if anything, was missed or glossed over? What language and phraseology did they employ and are there similarities with other officers' accounts? Were the notes produced in compliance with the published standards and policies of the police service in question. Finally, consider whether there is any evidence of recalcitrance or coloring apparent on the face of the statements and notes of involved officers in your case.

What happened to witnesses after the incident?

One of the key indicators of investigative integrity is what police and civilian witnesses were permitted by investigators to do in the hours immediately after the incident.

Assess if there was any opportunity for collusion prior to officers making notes or giving statements. Who did the officers speak to? Where? When? Who else was present? Is there a possibility that information may have been transferred through a third party, including police union representatives or police department investigators? Careful analysis may provide some basis to argue that certain evidence may be unreliable.

Consider also what happened to civilian witnesses, and compare their treatment to how involved police officers were dealt with. It is accepted police practice (not to mention basic common sense) in serious investigations that all civilian witnesses are identified, strictly segregated and interviewed without automatically being offered access to counsel or the opportunity to meet with each other.

In stark contrast, in serious investigations involving the police as an active participant in the incident, such as police shootings or fatal pursuits, the involved police officers are sometimes exempted from such restrictions. It is not unknown for involved officers to meet together in the wake of an incident. These meetings are at times justified on the basis of established protocol, particularly in respect of task force or SWAT units who refer to the importance of immediate de-briefings of incidents among team personnel to defend this practice.[5] Whatever the justification proffered for these meetings, they inevitably call into question the reliability of the officers' "independent" recollections of the incident and expose the officers to allegations of possible collusion among fellow officers.

The officers in many cases will be permitted to meet with counsel prior to making any record of what occurred during the incident or giving any statement to investigators. In one instance, we arrived at a police precinct to find that nine officers who had witnessed a police shooting had been placed, unsupervised, in a room together, and had been there since the shooting had occurred several hours previously. No restrictions had been placed on them

speaking together or communicating with other parties. Additionally, they spoke as a group with counsel retained for them by the police union. Though none of them had been physically injured, they then proceeded to book off duty without first giving waiting investigators statements. In the same incident, several independent civilian witnesses willingly gave statements to investigators immediately after the incident, including two bystanders who had been taken to hospital with injuries resulting from the incident. Judges or juries cannot help but be perplexed with apparent double standards of this nature. The investigators certainly were.

What assistance did the police department provide the involved officer(s)?

Another key indicator of how objectively an investigation was conducted is the extent of support offered to the involved officer(s) by the police department. Did the chief or senior police management publicly indicate their position on the involved officers' conduct? If so, at what point in the process? Did they release any "facts" concerning the incident, or express an opinion indicating whether the officer was justified in his or her actions? Above all else, chiefs of police are public officials whose interest at all times should be one and the same with the public interest. Statements of this nature may call into question the fairness and objectivity that one would expect of a police chief and impugn the motives and integrity of any corresponding police investigation.

In some cases, the nature of the assistance afforded the subject officer is far more serious, and potentially lethal to a fair and objective investigation. In a case a police department provided a copy of all the information it had gathered in relation to a fatal shooting by one of its officers to us within seven days of the incident. This material had been gathered by the department to further the investigation into a civilian who was with the deceased when he was shot, and had been charged with possession of the stolen vehicle in which they were alleged to have been at the time of the shooting. The material consisted of over 200 pages of evidence, including a large number of statements from police and civilian witnesses. Much of it directly related to the circumstances of the shooting itself. Unknown to us, the department simultaneously supplied an identical copy of the material to counsel for the officer who had shot the suspect. This was prior to the completion of our investigation, and prior to the officer making a final decision whether or not to consent to be interviewed by us. This monumentally inappropriate disclosure by the police department to counsel representing the officer under investigation was only brought to light when an invoice from the officer's counsel, indicating his billable hours for reviewing the material, was produced in subsequent civil litigation several years later.

The motto of the involved police department, which is prominently displayed on its letterhead and emblazoned along the sides of its cruisers is "Deeds Speak." Indeed.

In another case, a SWAT team officer was convicted of criminal negligence causing death after he shot and killed a civilian. The case was appealed up to the Supreme Court of Canada. The appeal was disallowed. A newspaper investigation revealed that a portion of the involved officer's costs, estimated at over $100,000 (Canadian).[6] had been paid for by the officers' police department, even though he was convicted.[7]

Another particularly egregious example of the lengths to which a police department may go to assist one of its members involved an officer who shot a member of the public and was subsequently charged with manslaughter after an investigation by a civilian agency. A senior detective from the same department was assigned on an as-needed basis by the department to assist the officer's counsel prepare the officer's defense. The detective, although in effect acting as an agent of defense counsel, was permitted access to police databases and used police equipment while working for the defense. He continued to be paid by the police department. The prosecution was not informed that this had been authorized. None of the fruits of the investigation completed by the detective were disclosed to the prosecution, which was considered to be subject to attorney-client privilege. That this had occurred only came to light at trial, and then only through accident.[8]

Experts

Expert evidence is being used more and more in cases where police conduct is at issue. It is rare to find a serious case in this area where counsel on both sides do not consider leading such evidence. In many cases, experts provide essential opinion evidence on the appropriate standard to be exercised by law enforcement officers in a given situation. These include situations that appear on their face to be clear breaches of common sense upon which a trier of fact could, presumably, exercise their own judgment. Do not be so sure that a court will accept what appears to you to be obvious. In one case we investigated, a judge expressed dismay that the prosecution had not led expert evidence on why it was inappropriate for officers to apparently carry a man into a police station with a nightstick under his neck. The lesson — take nothing for granted.

A prerequisite to engaging in a "battle of the experts" is the ability to retain an expert to battle on your behalf. Normally, you will have little problem engaging experts in various fields of particularized knowledge, such as pathologists, toxicologists, firearms examiners and so on. However, if our experience is any indication, you will encounter considerable difficulty retaining a suitable expert in the field of police conduct who is prepared to give evidence against police officers. This includes experts on such issues as use of force, motor vehicle operation and standards of care in custody situations. Why? Experts in these fields tend to be serving law enforcement officers, law enforcement trainers or retired law enforcement officers. They tend to be reluctant to testify as experts on behalf of a civilian accused in cases where police conduct is at issue.

In one case, after an extensive and oftentimes frustrating search, the prosecuting attorney managed to retain a serving officer from an out-of-town police department. He agreed to give expert evidence about use of force and takedown tactics in the trial of a police officer accused of manslaughter. The expert was a firearms trainer who regularly taught at a prestigious police academy, and had been frequently invited to lecture on the topic. He was duly qualified as an expert and gave evidence. His evidence was by no means damning to the accused police officer. In fact, it helped the accused in many ways, as indeed we knew it would, but we felt we had a duty to be fair. Nevertheless, there was tangible animosity from the legion of uniformed and plainclothes police officers who made a point of attending court

the day our expert was scheduled to give evidence.

We met up with the "expert" officer a year or so later. He told us that his giving evidence against an officer had been "a career-ending decision." Word of his alleged perfidy had quickly spread throughout the law enforcement community. He stated he had been ostracized by some fellow officers and had not since been invited back to lecture at the academy. Even though he could not bring himself to admit it directly, he clearly regretted ever agreeing to assist the prosecution in the case.

In another civil case in Ontario, the defendant, a former senior government lawyer who had charged a police officer with an offense and was being sued by the officer for malicious prosecution, was unable to find an expert to support his position. His counsel contacted several, all of whom very politely refused to assist. One expert did review the report tendered by the plaintiff's expert (a serving police officer), which he verbally assessed as having considerable weaknesses. He declined to assist however, on the unexpressed but very clearly implied grounds he would not likely work in the field again.

Even if you do manage to retain an expert, do not assume he or she will remain steadfast when giving testimony. Any chilling effect may be subconscious. As one very experienced lawyer who represents police officers on occasion told opposing counsel, he was confident he could lead an expert witness in policing to agree with virtually anything he put to the expert during cross-examination, particularly in use of force situations. He may well be correct. Experts in this field, because of their backgrounds, tend to have an affinity with the officers and the work that they do. A former senior prosecuting attorney termed it the "there but for the grace of God go I" syndrome.

To help mitigate these contingencies at trial, we recommend subjecting your expert to an exhaustive mock cross-examination once you receive his or her written report, and certainly prior to putting him or her into the witness stand. Clear up any and all potential ambiguities. Have a witness with you, keep very good notes, and make sure you are absolutely clear exactly what your expert's opinion is on any given issue.

If you are unable to retain an appropriate expert to testify on your client's behalf, do not throw in the towel just yet. Consider the utility of retaining an expert who, though not prepared to take the stand to tender evidence detrimental to another police officer, may be willing to assist defense counsel prepare for cross-examination of the opposing side's expert or key witnesses.[9]

We have barely touched on all "the tricks of the trade" that we employ when we review investigations on behalf of counsel. There are numerous other steps that can be pursued to assess the strengths and weaknesses of an investigation into a client, depending on the nature of the case. Each case has its own complexities and dynamics, which will most often require a tailor-made approach. Experts will assist you identify the nugget(s) of information within the investigation that you need to represent your client effectively, and to use them to maximum advantage. Get them involved as soon as you can.

Defending a client involved in a police related death or serious injury is a complex, challenging and very often thankless task.

Everybody is entitled to due process. Police officers under investigation are the first to avail themselves of all the protections available to them under the law. Further, they and their counsel are the first to exploit any flaw in the investigation of the incident they have been involved in, however minuscule that flaw may be. And quite rightly so. Police officers should not be treated like second-class citizens.

Best defense

Give your client the same advantage. Every investigation has its Achilles heel. Investigations of civilians involved in police related deaths or serious injury are no exception. Scrutinize the material you receive. Make sure you have everything you should have. Look for the weaknesses that inevitably exist. Get expert help if you need it. Ultimately, you may not secure everything your client thinks he or she deserves. But you will be satisfied that you have given him or her the very best defense possible.

Notes

1. The officer was charged and convicted of manslaughter. He appealed and was acquitted at a retrial.

2. Particularly important in cases where fiber evidence may be at issue.

3. See, THE CHAMPION, May 2000. *Forensic Labs: Shattering the Myth*, by Janine Arvizu

4. Independent Commission on the Los Angeles Police Department (Christopher Commission Report) at page 168

5. Dubious logic perhaps, particularly if the suspect is dead.

6. About $64,000 in U.S. dollars.

7. *OPP conceded that it should not have paid officer's legal fees*, TORONTO STAR, March 28, 2001, p. A20.

8. Ontario Civilian Commission on Police Services. *Report of an Inquiry into the Nepean Police Service*, July 1994 .

9. There are several excellent expert witness directories, available on the Internet or through various organizations.

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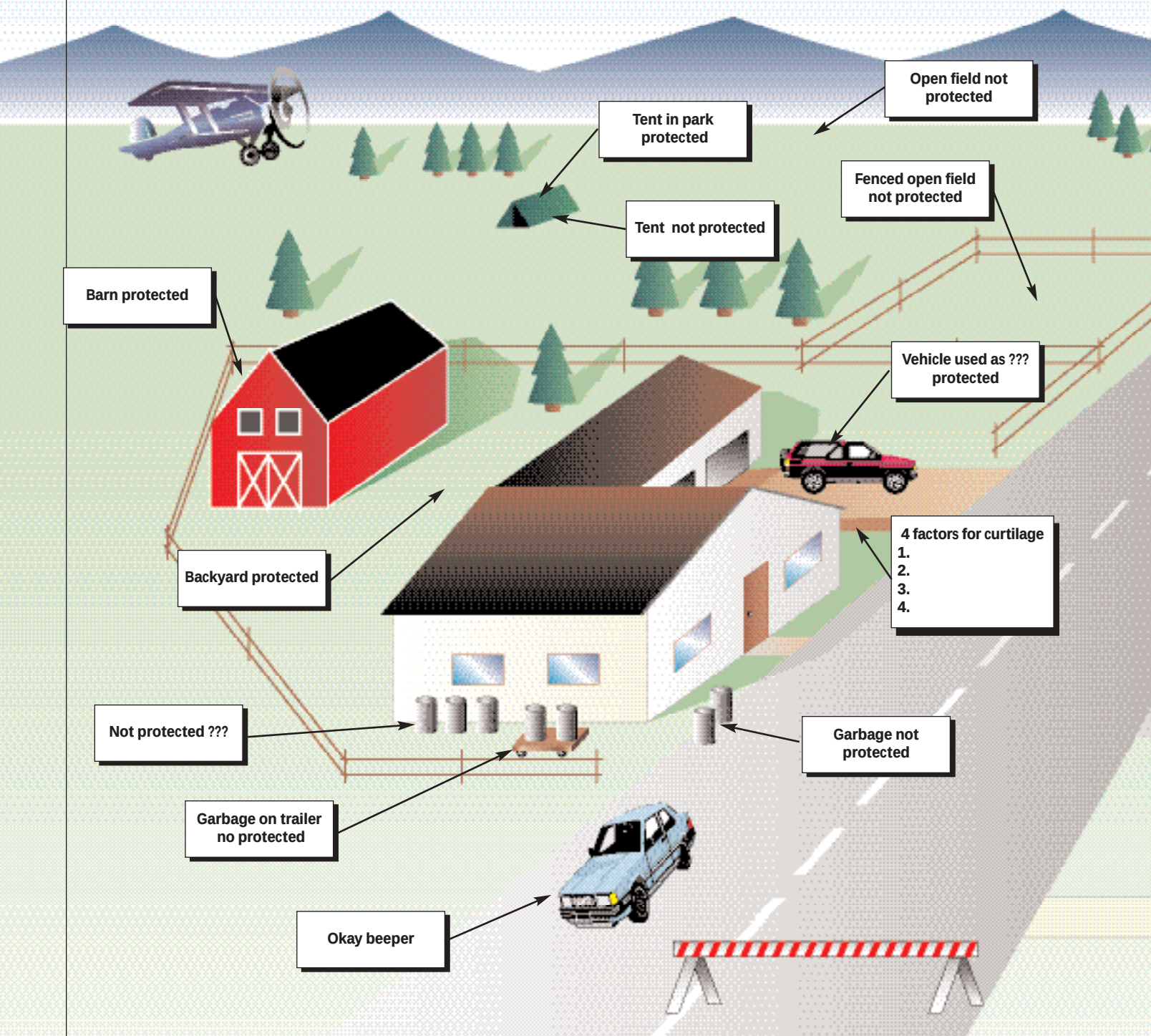
Boundaries of the Fourth Amendment:

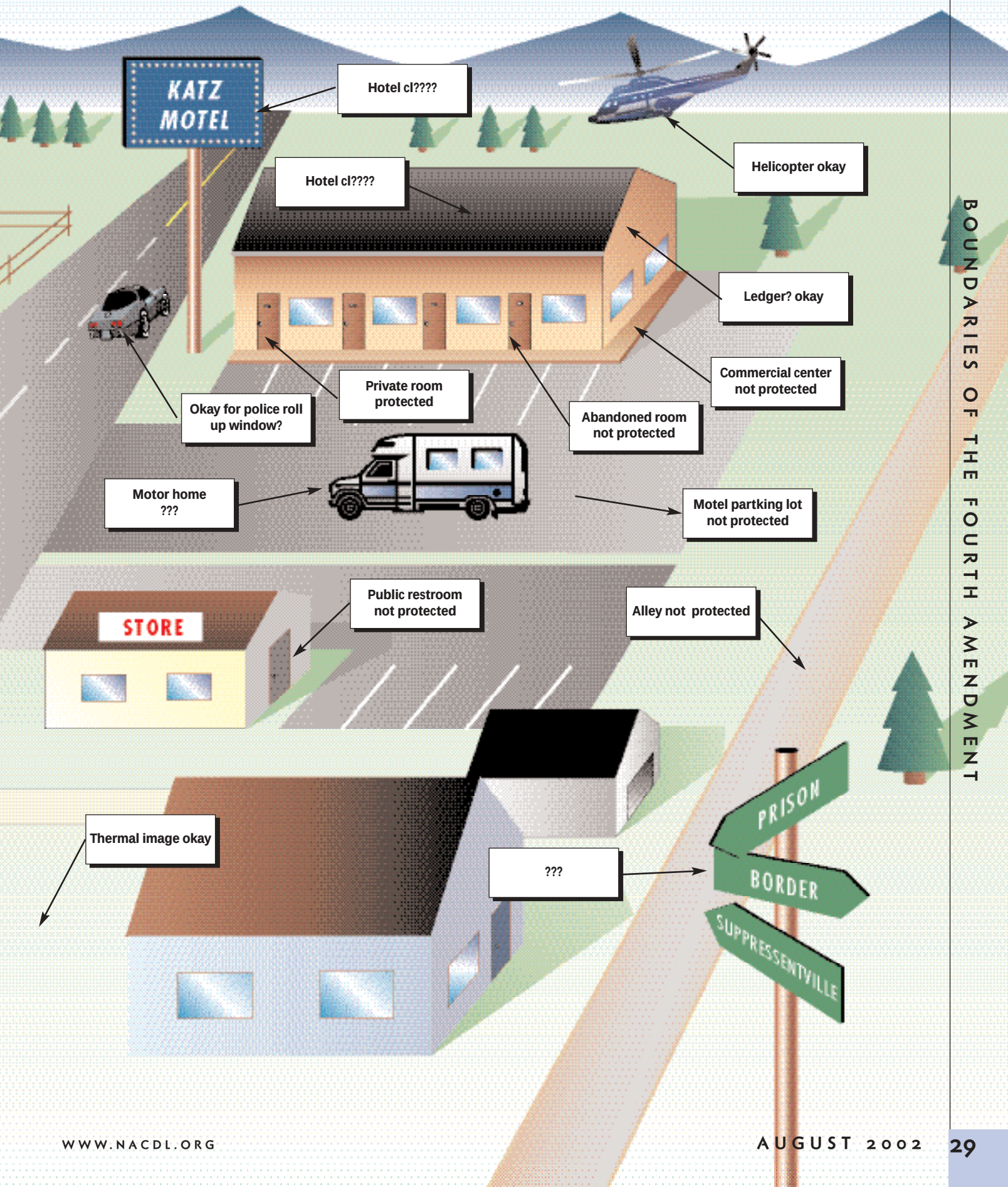


Peoples' homes (or motel rooms or RVs) may still be their castles for Fourth Amendment purposes; but the courts, as legal realtors, have parceled out prime privacy property over the years. This subdivision of the Fourth Amendment has now shrunk what were expansive contours of one's private property, homestead, and curtilage to a small plot, necessarily fenced or walled. Indeed, the constitutional barricades protecting home privacy increasingly has been breached with warrantless exceptions.

(Continued on page 30.)

by Jon M. Sands & Robyn Greenberg-Varcoe

a warrantless view of curtilage



Peoples' homes (or motel rooms or RVs) may still be their castles for Fourth Amendment purposes; but the courts, as legal realtors, have parceled out prime privacy property over the years. This subdivision of the Fourth Amendment has now shrunk what were expansive contours of one's private property, homestead, and curtilage to a small plot, necessarily fenced or walled. Indeed, the constitutional barricades protecting the home privacy increasingly has been breached with warrantless exceptions. It is not, as a rule, as "exclusive" as it use to be. Backyards can be scrutinized from the air; and garbage in the driveway can be examined — without the warrants. What is a person seeking privacy to do? A map would help. As such, this graphic attempts to illustrate some of the "boundaries" of the Fourth Amendment in relation to homes, businesses, buildings and curtilage. Curtilage itself is a term of art, meaning the adjacent property to a house that falls under the home's protection for Fourth Amendment purposes. The United States Supreme Court, in marking off the perimeters of curtilage, devised a test in *United States v. Dunn*, 480 U.S. 294 (1987), looking at (1) the property's proximity to the home; (2) whether there is an enclosure; (3) the nature or use of the property; and (4) any privacy steps that have been taken. Such a well-*Dunn* test is also a "Mapp" applicable to the State. Because we are a nation on the move, we have also included in this graphic a "stop" at a motel, a stroll past some businesses, a scenic view of some open fields, and various vehicles for "cite-seeing."

Notes

1. Florida v. Riley, 488 U.S. 445 (1989) (observation by helicopter from 400 feet of contents of greenhouse did not violate Fourth Amendment.)

2. California v. Ciraolo, 476 U.S. 207 (1986) (observation by airplane in public airspace of marijuana plants within curtilage did not violate Fourth Amendment).

3. Stoner v. California, 376 U.S. 483 (1964) (hotel clerk cannot consent for guests who properly rented room).

4. Chapman v. United States, 367 U.S. 610 (1961) (landlord consent for tenant in possession).

5. California v. Greenwood, 486 U.S. 35 (1988) (Fourth Amendment does not prohibit search of opaque plastic garbage bags outside of curtilage of home.)

6. Abel v. United States, 362 U.S. 217 (1960) (abandoned effects of departed guest in hotel room not protected by the Fourth Amendment).

7. Hester v. United States, 265 U.S. 57 (1924) (an open field which can be observed has no privacy interest).

8. Oliver v. United States, 466 U.S. 170 (1984) (no privacy interest in open field regardless of fences, signs saying "No Trespass" or seclusion).

9. United States v. Knotts, 460 U.S. 276 (1983) (warrantless use of beeper on car to trace does not violate Fourth Amendment); United States v. McIver, 186 F.3d 1119 (9th Cir. 1999) (magnetic electronic device okay).

10. Texas v. Brown, 460 U.S. 730 (1983) (use of a flashlight or binoculars not prohibited as a search); Val Chemical Company v. United States, 476 U.S. 227 (1986) (enhanced vision permissible but not a device used to penetrate walls or windows to see or hear); United States v. Lee, 274 U.S. 559 (1927) (cite with use of search light permissible).

11. United States v. Dunn, 480 U.S. 294 (1987) (curtilage determined by considering proximity to residence, whether the same enclosure has house, nature of uses and steps to shield from observation).

12. United States v. Cormier, 220 F.3d 1103 (9th Cir. 2000) (no expectation of privacy in guest registration); United States v. Willis, 759 F.2d 1486 (11th Cir. 1985).

13. United States v. Jeffers, 342 U.S. 48 (1951) (Fourth Amendment extended to hotel room); Stoner v. California, 376 U.S. 483 (1966) (same); Hoffa v. United States, 385 U.S. 293 (1966) (same); United States v. Nerber, 222 F.3d 597 (9th Cir. 2000) (motel room used for drugs reverted to private after deal); United States v. Ramos, 12 F.3d 1019 (11th Cir. 1994) (use of hotel has privacy expectations); United States v. Foxworth, 8 F.3d 540 (7th Cir. 1993), cert. denied, 114 S. Ct. 1414 (date) (same); United States v. Winsor, 846 F.2d 1569 (9th Cir. 1988) (same).

14. Lewis v. United States, 385 U.S. 206 (1966).

15. United States v. Gorman, 104 F.3d 272 (9th Cir. 1996) (area outside of bus that is used as a residence is curtilage for Fourth Amendment purposes).

16. United States v. Depew, 8 F.3d 1424 (9th Cir. 1993) (area six feet from garage and 50 to 60 feet from home was still within curtilage as it was within the privacy scope of home); United States v. Jenkins, 124 F.3d 768 (6th Cir. 1997) (enclosed by fence).

17. United States v. Boden, 854 F.2d 983 (7th Cir. 1988).

18. United States v. Billings, 858 F.2d 617 (10th Cir. 1988).

19. United States v. Brown, 169 F.3d 89 (1st Cir. 1999) (no expectation of privacy in common area of apartment complex); United States v. Acosta, 965 F.2d 1248 (3rd Cir. 1992) (no expectation of privacy in common hallway of apartment).

20. United States v. Ludwig, 10 F.3d 1523 (10th Cir. 1993) (no expectation of privacy in motel parking lot).

21. United States v. Redman, 138 F.3d 1109 (7th Cir. 1998), cert. denied, 119 S. Ct. 794 (no expectation of privacy in garbage cans next to home when local ordinance states it cannot be on street).

22. United States v. Wilkinson, 926 F.2d 22 (1st Cir. 1991), cert. denied, 111 S. Ct. 2813 (no expectation of privacy with trash on lawn and bags in wheelbarrows).

23. United States v. Long, 176 F.3d 1304 (10th Cir. 1999) (garbage bags atop trailer parked between a garage and alley not within curtilage).

24. United States v. Wright, 991 F.2d 1182 (4th Cir. 1993) (expectation of privacy in barn but officer could look in windows).

25. United States v. Hendrick, 922 F.2d 396 (7th Cir. 1991), cert. denied, 112 S. Ct. 147 (garbage cans in driveway 20 feet from garage and 50 feet from back door were still within curtilage).

26. United States v. Scott, 975 F.2d 927 (1st Cir. 1992), cert. denied, 113 S. Ct. 1871 (shredded garbage outside curtilage not protected).

27. United States v. Shanks, 97 F.3d 977 (3rd Cir. 1996), cert. denied, 117 S. Ct. 1002 (garbage adjacent to garage and placed in alley outside curtilage).

28. United States v. Reilly, 76 F.3d 1271

(2nd Cir. 1996) (curtilage within 100 yards of main house when residence is on property of ten acres with fence and other indications of private use).

29. Taylor v. United States, 286 U.S. 1 (1932); United States v. Frazin, 780 F.2d 1461 (9th Cir. 1986) (no distinction between attached garage from rest of home).

30. United States v. Gooch, 6 F.3d 673 (9th Cir. 1993); LaDuke v. Nelson, 762 F.2d 1318 (9th Cir. 1985) (tent on private property); but see United States v. Rigsby, 943 F.2d 631 (6th Cir. 1991) (no indication tent was like home), cert. denied, 503 U.S. 908 (1992).

31. Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990); see also Delaware v. Prouse, 440 U.S. 648 (1979) (road block for purpose of verifying drivers' licenses and vehicle registrations).

32. City of Indianapolis v. Edmond, 121 S. Ct. 447 (2000).

33. Katz v. United States, 389 U.S. 347 (1967) (telephone booth).

34. Exclusionary rule suppresses legally seized evidence. Weeks v. United States, 232 U.S. 383 (1914) (origin of the rule in federal courts); Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920) ("fruit of the poisoned tree" origin); Mapp v. Ohio, 367 U.S. 643 (1961) (rule applied to states).

35. California v. Carney, 471 U.S. 386 (1985).

36. United States v. McIver, 186 F.3d 1119 (9th Cir. 1999).

37. United States v. Gooch, 6 F.3d 673 (9th Cir. 1993) (person has no expectation of privacy in a tent pitched on a public campground); United States v. Rigsby, 943 F.2d 631 (6th Cir. 1991) (mere presence of tent does not create the privacy interest in the non-private area surrounding it).

38. United States v. Schroeder, 129 F.3d 439 (8th Cir. 1997), but see United States v. Eastland, 989 F.2d 760 (5th Cir. 1993) (motor home in an "open field"); see also United States v. Morehead, 959 F.2d 1489 (10th Cir. 1992) (no violation of Fourth Amendment to look through windows of camper).

39. United States v. Morehead, 959 F.2d 1489 (10th Cir. 1992) (no violation of Fourth Amendment to look through windows of camper).

40. United States v. Griffin, 827 F.2d 1108 (7th Cir. 1987).

41. Oliver v. United States, 466 U.S. 170 (1984).

42. Martinez-Fuerte v United States. , 428 U.S. 543 (1976).

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