



# IPSA JOURNAL

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*Peer-reviewed articles*

EDITOR-IN-CHIEF

Heather R. Cotter



## Editor's Note

*By Heather R. Cotter, IPSA Executive Director/CEO, Founder and Editor-in-Chief*



Thank you for your interest in the **Seventh Edition** of the *IPSA Journal*.

This scholarly resource is available to all public safety professionals. The

IPSA was fortunate to have several public safety authors and peer reviewers

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*Journal* is an opportunity to publish manuscripts about leadership issues and best practices applicable to all facets of public safety.

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1. *Stressors Related to Administrative Discipline of Police Officers: A Grounded Theory Study* by Brad J. Castle, Columbia Southern University; Eric J. Russell, Utah Valley University and Rodger E. Broomé, Utah Valley University
2. *Fourth Amendment Administrative Searches of Students and Public Employees: The Special Needs Exception* by Gregory L. Walterhouse, Bowling Green State University
3. *An Inquiry into the Experience of Firefighter-Paramedics during the COVID-19 Pandemic: A Qualitative Case Study* by Chris Lindquist, Utah Valley University; Eric

***Russell, Utah Valley University; Margaret Mittelman, Utah Valley University; and  
John Fisher, Utah Valley University***

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Stay safe,

*Heather R. Cotter*

Heather R. Cotter



## *IPSA Journal*

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**Stressors Related to Administrative Discipline of Police Officers  
A Grounded Theory Study**

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# **Stressors Related to Administrative Discipline of Police Officers: A Grounded Theory Study**

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## **Abstract**

The purpose of this qualitative grounded theory study was to identify the stressors police officers experienced relating to the administrative disciplinary processes within law enforcement. The study's aim was to explore the aspects of police officer stressors using the experiences, interpretations, and responses of current or former police officers. The participants (n = 10) interviewed in this study were uniformed and sworn officers from multiple law enforcement agencies throughout the United States. Utilizing a grounded theory design, the thematic analysis of the data revealed multiple negative experiences associated with both administrators within the law enforcement profession, as well as the actual disciplinary processes. In all, the participant's interpretations of the disciplinary experience revealed 24 specific stressors. The finding of this study spotlights underlying negative psychological issues associated with certain administrative disciplinary practices within law enforcement.

**Key Words: Police Stress, Bureaucracy, Police Disciplinary Process, Grounded Theory, Stressors, Police Oversight, Police Administration**

## Introduction

Doing meaningful work is a very essential part of being a human person. Police officers take an oath of office as an expression of their willingness to serve society through protection services and peacekeeping among the civilian community. Kroes (1976) noted, however, that there was a psychological impact for a highly trained and often experienced police officer, who sees him or herself as an asset to the community yet is suddenly accused of being harmful to that community through the nature of a complaint. Additionally, Stinchcomb (2004) noted the tendency of police supervisors to micromanage police officer decisions with the intent to minimize mistakes and malfeasance. These studies and a few others point to the stress and anxiety inherent in bureaucratic administrative systems such as police organizations (Moon & Jonson, 2012; Reynolds & Hicks, 2015; Reynolds et al., 2018; Russell et al., 2015; Violanti et al., 2015). Bureaucratic structures and processes tend to dehumanize both the officers and the civilians they serve as a side-effect to their intended use: to rationally manage human affairs (Wender, 2008).

Currently, there is a lack of literature available from the perspective of the street level police officers regarding the stressors associated with organizational discipline. As a result, the purpose of this grounded theory study was to explore the nature of the police disciplinary process from the perspective of the line officers themselves. The participants for this study (n =10) were current and former uniformed and sworn law enforcement officers from across the United States. The perspective of police administrators is not addressed herein in order to narrow the scope of the study and strengthen the findings. A ‘sister’ study of police administrators is still ongoing. The central research questions guiding this study focused on the officer’s *experiences*, *interpretations*, and *responses* to being subjected to a disciplinary action. It was hoped that

intuitively recognized aspects of the police disciplinary processes could be documented, and also that insight into possible causes might be gained.

Ultimately, a list of 24 specific stressors were identified and compiled. The results of this study might be useful to police officers to have some insights of what they might expect if they ever find themselves under an internal affairs investigation. Police leaders might draw ideas about how to conduct inquiries on complaints against officers in a way that minimizes the psychological impact on the officer, in the process. Police leaders might also find a level of self-awareness through these results that make them aware of their own blind spots that can affect their judgement and decision-making when personal feelings might be involved or perceived by the officer to be playing a role in the inquiry.

It may be important to note at the onset that people in general tend to view a disciplinary process brought against someone as a negative event. Similarly, the participants of this study when recounting their stories focused overwhelmingly on negative aspects of their experiences. Additionally, this study generated general theoretical findings, not findings generalizable to a population of all police officers in the United States as noted by Englander (2019).

## **Literature Review**

Policing has long been recognized as a stressful occupation and therefore, police officers are at risk of negative physical and psychological health issues related to stress (Aleksandra Basinska et al., 2014; Anderson et al., 2002; Deschênes et al., 2018; Reid, 2015). A number of researchers have recognized the internal complaint investigation process as a notable source of police officer stress (Kroes, 1976; Reiser, 1974; Tuckey et al., 2012). Organizational stressors such as the complaint or disciplinary processes have been found to be more potentially stressful to officers than operational or interpersonal stressors (Aleksandra Basinska et al., 2014;



Garbarino et al., 2013; Habersaat et al., 2015; Kroes, 1976; Moon & Jonson, 2012; Mumford et al., 2015; Noblet et al., 2009; Shane, 2013; Stinchcomb, 2004; Tuckey et al., 2012; Vuorensyrjä, 2014; Waters & Ussery, 2007).

Both Stinchcomb (2004) and Russell (2014) noted the antagonistic nature of chronic stress over time. Other researchers have suggested a high mental stress load (Oldenburg et al., 2014), and stress and anxiety may have negative effects on decision making and may impair or even damage one's cognitive ability (Gutshall et al., 2017; Nieuwenhuys et al., 2012; Ranta, 2012). As written by Nieuwenhuys et al. (2012), "anxious individuals perceive negative events as more likely to occur and, hence, are quicker to interpret perceived stimuli in a threat related manner" (p. 828). Violanti et al. (2015) found that internal police administrations and organizational structure can be the cause of chronic stress to which officers are subjected. It becomes important to understand that most police officers do not experience acute stress related events more often than they put on a uniform and go to work. Therefore, if an officer is subjected to chronic organizational stressors, it is reasonable to see how this can become troubling. Further, being accused of wrongdoing and as a result being subjected to a disciplinary process may negatively influence responses both personally and professionally to the officers who are experiencing these events (Broomé, 2014; Kroes et al., 1974; Kroes, 1976; Reiser, 1974; Tuckey et al., 2012). This situation is even further exacerbated when the officers in question have in fact done nothing wrong.

Most police organizations are organized as para-military or strict hierarchical bureaucracies (Sarver & Miller, 2014). These types of organizational structures are designed to control assets and concentrate power at the top levels of administration (Hajjar, 2014; Schlueter, 2015; Shane, 2013; VanLandingham, 2015). However, this organizational style is not without

issue (Huda, 2014; Phillips, 2015; Rose & Unnithan, 2015; Russell et al., 2015; Shane, 2013). As Stinchcomb (2004) noted, employees are often treated as children when it comes to decision making. “In law enforcement, they are issued a gun and a badge, but are still micro-managed by a centrally controlled bureaucracy” (Stinchcomb, 2004, p. 266). Kilo and Hassmén (2016) suggest this lack of control may lead to less organizational commitment and job satisfaction. Specifically mentioning autocratic leadership styles, Deschênes et al. (2018) posited that organizational factors can negatively affect the psychological health of officers.

Kroes (1976) noted police officers often view themselves as professionals with extensive training and experience and being accused of wrongdoing challenges that interpretation. Broomé (2014) discussed the good guy/bad guy dichotomy and Rose and Unnithan (2015) the *us against them* mentality of police officers generally. So, when an officer is suddenly accused of having done something wrong, the stress and anxiety experienced can lead to a notable degree of *existential crisis* (American Psychological Association [APA], 2021). For human beings, it is fundamentally distressing for our sense of self to be called into question by others, regardless of how much stock one puts into the others’ expressed opinion or question.

The literature in the field of police stress is somewhat problematic in that it is often contradictory and lacks clear methodological foundation (Abdollahi, 2002; Webster, 2014). Webster (2014) noted that police stressors have been most commonly studied in groups (e.g., organizational or operational). Anderson et al. (2002), Spielberger et al. (1981), and Webster (2013), called for the identification of specific stressors and their influences on police officers. Identification of specific interpersonal stressors would not only provide a solid foundation for further research but would provide a specific focal point from which policy makers and other stake holders can address areas of police organizational operation. The limitation of studying

*stressors* without considering their fundamental personal meanings is that doing so reduces the police officer to an organism in an environment rather than a sworn professional engaged in community safety praxis. Simply put, it ignores the first-person dimension of *why* a police officer is meaningfully impacted by interpersonal criticism differently than mere environmental stimuli. As such, qualitative research aims at the *subjective perspective* of the human person engaged in real-world contexts.

Levine (2016) pointed to the lack of firsthand knowledge and direct observation of scholars writing about certain aspects of police activity, and Meares et al. (2016) addressed the general detachment between police and civilians when interpreting police action. Most commonly available articles which include a police perspective seek that perspective from administrative officers. Yet, there is evidence that a vast divide exists between administrative and street level officers (Pearce v. University of Louisville & Hill v. City of Mt. Washington, Ky. 2014). Street level officers typically consider administrators as “out of touch” with the dynamic complexities of their decision-making in exigent circumstances. The decision-making that renders an optimal solution is very different from decision-making under time pressure, eminent dire consequences, and in need of immediate satisfactory intervention to prevent such consequences (Klein, 1999). Many administrative decisions are made in the context of hindsight incident analyses, policy reviews, and implementing new or changes in policy. Wender (2008) points out that this kind of *rationalistic* mentality was adopted from *scientific frameworks* as if human problems could be solved by preformulated definitions and subsequent prefabricated solutions in policy and procedure manuals. Police administrators are vulnerable to being stuck in the rationalistic mental model of which their typical work is based.

In the Kentucky Supreme Court case *Pearce v. University of Louisville, and Hill v. City of Mt. Washington*, (Ky. 2014), an aspect of this divide is evident. Both the Pearce and Hill cases (i.e., the cases were similar and therefore combined when they arrived at the Kentucky Supreme Court) addressed issues wherein the officers were disallowed rights by their administrators which were guaranteed by Kentucky law. In the Hill case, an officer was disciplined (i.e., reduced in rank and suspended) because he had spoken critically of the chief. Wilson and Wilson (2013) described an event where an officer was disciplined for subjective and potential political reasons even though he had arguably done nothing wrong. Phillips and Morrow (2016) outline a case where a police captain refused to withdraw citations to the chief's stepson. The captain was subjected to increased scrutiny and several disciplinary actions that a court later found to be pretext justifications for termination by the chief in retaliation. Crenshaw-Logal et al. (2016) also discuss cases where officers may have been disciplined or even criminally prosecuted as a result of acts that arguably fall within their lawful duties and discretion. It is therefore unlikely that positive progress will ever be made regarding the friction between law enforcement and civilians until the voice of the street level officers themselves are adequately represented in the literature. Therein lies a significant part of the reason for conducting this study using the qualitative grounded theory design –to bring the voices of the officers themselves into the literature of the field.

## **Methodology**

This study employed a grounded theory design as originally described by Glaser and Strauss (1967) and practiced by Charmaz (2014). Grounded theory employs a systematic approach of data collection and analysis focusing on theoretical discovery (Charmaz, 2006; Glaser & Strauss, 1999). Constructivist grounded theory as noted by Charmaz (2014) accepts

the role of researchers in crafting meaning from the words and language of the participants into an accurate depiction of their stories. This design was particularly appropriate in this situation because the subject of this study is a deeply subjective phenomenon situated in a highly complex, dynamic, interactive, and multi-faceted environment. Further, this design allows the voices of the participant officers to come forward and carry interpretive value for readers, scholars, policy makers, and other stakeholders.

### **Sampling**

The general population from which the non-probability purposive sample was drawn is United States law enforcement officers. As such, the respondent officers are regarded as *exemplar persons* that have *experienced a particular phenomenon*. This should not be confused with the statistical concept of generalizability goals of probability sampling strategies. It is the experience of the phenomenon that is the focus of this research, not the general opinion of police about the topic of *disciplinary action*. The term law enforcement officers and police officers are used interchangeably as the only difference might be only the type of government body for which they work. The sample of the population consisted of  $n = 10$  current or former law enforcement officers from various locations around the United States *who have been subjected to a disciplinary action*. The agencies for which these participant officers worked ranged in size from 6 to over 1500 officers located throughout the United States from the east and west coasts, the gulf states to the great lakes region and locations in between. Therefore, the general theoretical findings of this study are wrought from a diverse population in terms of regional culture, agency size, community socioeconomic status, and organizational policy and procedure regarding officer misconduct. As such, the result have a strong applicability and transferability to social and political frames beyond those particularly included in this study. Consistent with the

concept of theoretical sampling, only officers who had experienced being subjected to a disciplinary action were eligible to be participants in the present study (Patton, 2002). Cho and Lee (2014) referred to this concept as purposeful and defined it as “selecting information-rich cases strategically and purposefully” (p. 5). Whether termed theoretical sampling or purposeful sampling, the chosen participants have “pertinent data to elaborate and refine categories” (Charmaz, 2014, p. 192). No stance was taken in regard to the nature or magnitude of a complaint, the manner in which the participant officer’s agency resolved them, or the final outcome. No other qualifications were required with the exception that participants not be pregnant, and that they were between the age of 21 and 70 and were willing to be interviewed for this study. All participants were male, between 33 and 66 years old and had between 8 and 34 years of service.

### ***Data Collection***

A set of open-ended questions were developed by the researchers for use in the interviews as a baseline between all participants. These questions were all related to individual research questions which sought to discover the experiences, interpretations, and responses of the officers in relation to being the subject of a disciplinary process. The questions were constructed so as to avoid bias or leading the participants to particular answers (Babbi, 2010). Once each of the voluntary participants signified their understanding of informed consent, participation during the interviews and any follow up clarifications generally took less than two hours.

All participants were personally interviewed by the researchers. The interviews were recorded digitally and later transcribed resulting in 227 pages of raw data. The raw data was then subjected to thematic analysis consistent with constructivist grounded theory practices (Charmaz, 2014). Coding was done manually, and the codes and examples of the transcripts

transferred into an Excel workbook which served as a codebook. The participants were contacted for clarification when needed and again for member checking purposes.

### ***Data Analysis***

Data analysis actually began during the interviews. By utilizing a semi-structured approach incorporating a baseline script of questions, the researchers were free to inquire more deeply into participant responses which may have offered further hidden meaning. This form of *intense interviewing* (Charmaz, 2014) along with resulting researcher note taking may have helped to shape the researchers' initial understandings of the participants' perspectives.

Once the raw transcripts were de-identified, they became the raw data of the study. The raw data was then subjected to thematic analysis consistent with established constructivist grounded theory process (Braun & Clarke, 2006; Charmaz, 2014; Glaser & Strauss, 1967; Saldana, 2013). The first step was open or initial coding which was conducted manually. The researchers would read through the raw data noting lines or phrases in which the language of the participants conveyed specific meaning. That meaning would then be assigned a code (i.e., descriptive word or short phrase) (Charmaz, 2006; Glaser & Strauss, 1999). The second of the three step thematic analysis processes are focused coding (Braun & Clarke, 2006; Charmaz, 2014; Cho & Lee, 2014; Vaismoradi et al., 2013). In focused coding, the researchers sought connections between the open codes. In some cases, focused coding might result in the splitting up of open codes into more than one open code in order to draw more detail from the data. The final step is theoretical coding in which the researchers sought to connect the open and focused codes into meaningful themes which may help to understand the lived experiences of the participants. It is important to remember that in grounded theory designs, data collection and all

stages of analysis occurs simultaneously. Therefore, a researcher may be involved with data collection, three phases of analysis as well as memo writing concurrently.

Data was added (i.e., new participants were recruited and interviewed) until theoretical saturation had been achieved. Theoretical saturation is achieved at the point of diminishing return (Charmaz, 2014). For instance, once enough relevant data is obtained to fully understand the phenomenon, and no new information is forthcoming from additional participants, there is no reason to continue interviewing participants and generating additional data. In the present study, after the first five interviews, researchers had identified 43 open codes. Then, in the five interviews which followed, only one additional open code was identified. Theoretical saturation had at that point been achieved.

## **Results**

A primary finding of the study is that there is a top administrator, or a group of administrators near the top of an organization, who determines the nature of the disciplinary process within that organization. In some situations, this may be a person or group outside the organization proper. For instance, in some situations, a Safety Service Director, or Mayor may hold this role instead of a Police Chief.

The most surprising result was that in police organizations, disciplinary processes exist on a continuum of sorts (Castle et al., 2020). The first type of process along the continuum is the Legitimate disciplinary process. Legitimate processes are generally positive in nature and are recognizable by their adherence to the policies listed within employee handbooks. Departure from Legitimate processes denote Illegitimate disciplinary processes. This is often recognized by officers as disciplinary action in the “real world.” Illegitimate disciplinary processes include personal and arbitrary discipline often based on favoritism or political expedience. Creative



*rationalization* presented as *interpretation* is also commonly seen with Illegitimate disciplinary processes. Finally, at the most negative –actually aggressive and abusive- disciplinary process is the Baboon-like processes. This name is based upon the behaviors of wild baboons in Africa as a model for organizational stress (Sapolsky, 2004), and connected to human organizational hierarchies in the Whitehall Studies (Marmot, 2003). The Baboon-like disciplinary processes may include Machiavellian behaviors, but often a more primal *motivated* type of behavior is evident. For instance, a baboon-like administrator may even view questions of clarification from an officer as a form of challenge to the administrator’s authority rather than the officer holding a different perspective about the issue. These administrators often meet these differences, experienced and understood as challenges, in a highly aggressive manner. As a reaction by the person in authority, up to and including the maligning of an officer personally and damaging the officer’s career to the point of ruin. Therefore, it became evident that a disciplinary continuum can and does emerge within police organizations.

Table 1 lists the stressors which were identified in this study. These stressors are grouped according to one of the three research questions which focused on experiences, interpretations, and responses of the officers as a result of the disciplinary processes within their organizations.

Table 1.

<i>Identified Stressors</i>		
Experiences	Interpretations	Responses
Blacklisting	Targeting	Disbelief
Baboon-like Behavior	Ultimate Power	Fear of Admin Reprisal
Unfair, Subjective, or Arbitrary Discipline	Feeling powerless	Lost Faith in the System
Cliques	Jealousy	Fear of Disciplinary Action
Conflict Between Duty and Administration	Lack of Trust, Feeling Alone	Lack of Outlet
Confused by Administrative Action	Gained Attention	Cumulative Stress
Communication	Politics	
Disciplinary Progression	Not Being Trusted	
Disciplinary Challenges	Humiliation, Loss of Status, Insulted	

## **Discussion**

The disciplinary process is a normal, positive function of every organization, and intended to govern professional practices and correct undesirable behavior. Advice and coaching are part of the disciplinary process which encourages adherence to the mission of the organization generally. At times there may be a need for caution or correction as part of this normal organizational process. All of this can be positive in nature. However, action that is positive in nature has come to be disassociated with disciplinary processes. As a result, the participants generally spoke about events which they found negative and stressful. Some of the concepts which were identified as codes, can be either positive and helpful, or negative and abusive depending on their circumstance. As noted by Englander (2019), meaning is context dependent. Communication is a good example. An administrator telling an officer that he or she made a reasonable decision in a difficult situation is positive and encouraging. Conversely, given the same event, an administrator who aggressively approaches an officer, accuses him or her of lying on the incident report or goes on to threaten the officer with criminal charges, is negative and even abusive communication. The continuum accounts for gradations of positivity to negativity in between these extremes and describes where correction becomes punitive.

### **Stressors Associated with Officer Experiences**

These stressors are generally based on the personal experiences of the officer participants. Some participants experienced these stressors as a direct party, and others as observers to the events. Peers that witness the abuse of a counterpart by a manager can suffer greater impacts than the person being abused directly, and these impacts are a catalyst to self-protective behaviors (Sutton, 2010). As such, regardless of whether the officers considered these

incidents to be stressful to them personally or not, they experienced them as harsh and abusive indirectly speaking. In the diagnostic criteria for posttraumatic stress disorder, the stress inducing traumatic situation can involve the trauma of another with whom the individual personally identifies (American Psychiatric Association [APA], 2013). Several of the respondents in this study expressed, even if an officer were to observe this happening to another officer, at some level it must be realized that this could be done to them just as easily. Therefore, even indirectly experienced abuse is psychologically detrimental to others in the police department and has subsequent effects on their behaviors as well. To the degree that this abusiveness affects how officers interact with citizens is a subject matter that needs further inquiry. At this time, most complaints of officers are investigated as if the officer is not already operating within an organizational context which tends to focus on *problematizing the officer* as an individual agent and not as part of a larger organizational way of being.

### ***Blacklisting***

Blacklisting, or the threat of blacklisting was clearly stressful to participant officers. A common aspect among the participants was that there was always the threat of losing their jobs. Based on the participant stories, blacklisting only occurs when a baboon disciplinary process is present. The participants were also concerned about being able to find work at a different law enforcement agency because of the negative disciplinary profile (i.e., whether deserved or not) or personal reference of the administrator. Often times it was observed that an administrator who utilized baboon-like disciplinary processes would often enact a propaganda-like campaign against the subject officer through misuse of the disciplinary process to force the officer to quit or as pretext for the officer's termination.

### ***Baboon-like Behavior***

Baboon-like behavior suggests an administrator that is going outside reasonable, warranted, or ethical methods to punish an officer in an aggressive and even abusive manner as interpreted by the participants. These administrators often use the disciplinary process as a power tool to harm the officer's standing in the organization and law enforcement community in general. It was clear from the participants that they believed often times the disciplinary process was used as a cover of legitimacy to harm the officer for personal reasons. For instance, if the baboon-like administrator perceived (warranted or not) a challenge to his or her authority, the administrator might target the officer with excessive, and unwarranted disciplinary actions which would lend the appearance of justified actions against the officer to those who do not care to look deeper. Even micromanagement has been shown to be a form of passive-aggressive punishment when it is aimed at one or a few particular officers. The support for this experience in the data was very strong and as a result became its own process along the disciplinary continuum and one of the themes of the data analysis. This was the second most prominent code of the study. This behavior is nothing if not aggressive, abusive, and very stressful for the subjected officer.

### ***Unfair, Subjective, Arbitrary Discipline***

This was the most common code in the study and was documented by 9 of the 10 study participants. It is important to remember that these participants were all veteran officers and would readily recognize unusual disciplinary actions. All of the participants expressed the opinion that an officer need not do anything improper to be accused and as a result face disciplinary charge. These events could be the result of creative interpretation of written policy, and at other times based solely upon political standing of a complainant from the community. Unfortunately, it can also be as simple as a personality conflict between the officer and his or her administrator. Once unfair, subjective, or arbitrary discipline is recognized, it affects other areas

of organizational life in a negative, stressful way. For instance, if an administrator brings charges against an officer for questionable motives and/or determines the need for disciplinary action based on perceived favoritism, other officers in the organization find themselves on uneven ground realizing that the same thing could happen to them. This is incredibly stressful for all officers who might one day find themselves outside the graces of the administrator –to a much greater degree the officers at whom the disciplinary action is targeted.

### ***Cliques***

Cliques suggest a division within the police organization. This is the opposite of organizational belonging. In cases where participants described a feeling of organizational belonging prior to a change in administration, the formation of cliques was the harbinger of illegitimate and even baboon-like disciplinary processes within the organization –often related to favoritism. Based on the experiences and interpretations of the participants, the presence of cliques seem to coincide with unfair, subjective, and arbitrary discipline and a host of other stressful experiences, interpretations, and responses which are consistently found under illegitimate and baboon disciplinary processes. When the baboon-like dynamic emerges in an organization, it is typical for other officers to socially distance themselves so as not to be regarded as guilty by association with a targeted officer. This social isolation adds to the psychological pressure of the subject officer.

### ***Conflict Between Duty and Administration***

Whenever there is conflict between one's understood duty and his or her administration's preference or orders, stressful cognitive dissonance (Festinger, 1957) ensues. This can be a small thing like ignoring traffic violations of a councilmember's family. Or, it can be a relatively large issue resulting in disciplinary charges for an officer writing a valid citation to a friend of

someone who knows the officer's chief. In the present study, none of the participants had less than eight years of service. It seems reasonable to assume that they should know what their job is and how to conduct it, but also, they should know what is reasonable and prudent. When these participants faced circumstances wherein, they felt that their administration was demanding actions which violated their sense of duty, this became a very stressful issue for those officers.

### ***Confused by Administrative Action***

When an officer has enough experience on the job, there should be no surprises related to a disciplinary action. For example, an officer is going down a dark alley and scrapes against a piece of debris sticking out of some overgrown bushes at 0300 hours. This of course damages the side of a cruiser. It was dark; the debris could not be seen by the officer at the time. It would be objectively reasonable for that officer to receive anything from a verbal counseling to a written warning as a result. However, if that officer receives a 10-day suspension for willful damage to city property on the first offence, that would seem excessive. Most veteran officers would be confused by that administrative action. This type of confusion results in stressful cognitive dissonance (Festinger, 1957) where the officer's expectations and knowledge of the subject do not match up with the reality of the administrative action.

### ***Communication***

Communication is a universal experience so it can be both positive and negative depending on its nature and the circumstances in which it takes place. Accusing an officer of criminal behavior would be an understandably highly stressful experience. The participant stories suggest that the presence of other experiences and certain interpretations can also affect communication in a negative and stressful way. For instance, tone of voice and non-verbal

communication may turn the words “great job” from a very positive and supportive communication into a very sarcastic and demeaning communication.

### ***Disciplinary Progression***

Disciplinary progression can be legitimate or illegitimate. However, its nature determines it to always be stressful at some level based on the experiences and observations of the officer participants. The presence of administrative disciplinary progression under a legitimate process is arguably much less stressful than under a baboon-like process. For instance, the officer who damaged his or her car in a dark alley likely would not worry excessively about a progressive discipline policy because he or she would be more careful and try harder to not have a similar occurrence in the future. However, were the officer under a baboon-like process, he or she might be extremely stressed about this event. Perhaps disciplinary action is inconsistent, or the officer has knowledge that the administration might skip steps in the progressive discipline policy. Further, the administrator might use language which would tie the current instance to future instances which might be beyond the control of the officer entirely. Thus, resulting in multiple interpreted violations all creatively interpreted to be similar in order to stack severity against the officer. In some cases, the officer participants have noted a common progressive disciplinary policy to be used as a form of propaganda to tarnish the officer’s record and diminish his or her acceptability to other agencies, or increase stress and anxiety to the point the officer is forced out of the organization.

### ***Disciplinary Challenges***

Disciplinary challenges can be routine in larger agencies with union protections in place. However, as the disciplinary process moves farther along the continuum into the illegitimate and baboon processes, there is a decided downside to challenging a disciplinary determination or

accusation from the perspectives of the officer participants. First and foremost, the officer is challenging an action by a governmental bureaucracy. Most often this takes place in courtrooms with expensive attorneys. Secondly, there is evidence in the participants' stories which shows that challenging an accusation or determination can be seen as non-conforming behavior by the police subculture (i.e., the in-group), or even a direct challenge to the authority of the administrator bringing the charges. For example, with creative interpretation and willingness, the administrator could conceivably charge the officer with insubordination for challenging his authority which could be a terminable offense. More commonly, however, the participant data suggests administrators simply target the officer for further discipline as the opportunities arise. The stressful nature of these events seems obvious. But deciding to act to defend against unreasonable or untrue accusations knowing it might ultimately end one's career is not taken casually.

### **Stressors Associated with Officer Interpretations**

These stressors are associated with the interpretations of the officer participants. The participants' experiences and interpretations do not appear to have a clear separation between them and tend to overlap. For instance, consider the following statement: "The chief fired him for no reason at all." Analysis suggests that the participant experienced another officer being terminated under questionable circumstances. However, the participant also is making an interpreted understanding that there was no justification for the termination. The researchers have taken the participant stories and understandings at face value in this regard. There may have been details known to the officer that were not shared in detail during the interviews which lead the participant to his understanding of the nature and characteristics of the events which understandably resulted in a stressful experience for those officer participants.



## ***Targeting***

Like blacklisting, targeting only occurs where baboon disciplinary processes are present. Targeting suggests an officer is being singled out for unwarranted or unreasonable disciplinary actions with an evident goal of forcing the officer from the organization. Targeting suggests inconsistency in the disciplinary process. Targeting is perhaps one of the more common codes across participants. Not only is it stressful for officers to feel as if they are being targeted, but also to observe interpreted targeting behaviors leveled against others in their organization. One participant described targeting behavior as being “under a microscope all the time.” Targeting is interconnected to experiences such as blacklisting, cliques, subjective and arbitrary discipline, and disciplinary progression along with a host of other interpretations and many responses.

## ***Ultimate Power***

Ultimate power refers to the supreme authority of the top administrator over a police organization. As noted by Manning (2008), the para-military hierarchy of police organizations “includes the elevation of chief as an honorable position, hyper-elevation of rank and deference to command” (p. 23). For this person who is symbolically larger than life, to single out one of his or her own officers for unwarranted punishment (as interpreted by the study participants) which might be based on creative interpretation of rules or fictitious information, is understandably a stressful event. But the real stress of the matter according to the experiences and interpretations of the participants is the inability of the officer to effectively fight back if the officer in fact did nothing wrong. The realization that this administrator can cause all manner of harm to an officer’s career –both in and out of law enforcement- is understandably daunting. The realization that an administrator can effectively punish an officer who dare challenge the administrator’s position on some issue is simply frightening. The fact is that most people see the person in the

position as being worthy of that position without objective basis and regardless of fact. They see that person as expertly knowledgeable and most of all assume the office holder must be honorable and are therefore beyond reproach –which often can enable an administrator to avoid challenge by those outside law enforcement such as civilian government officials. As noted by Castle et al. (2019) this can foster a “culture of corruption” within a police organization. Therefore it is reasonable to extrapolate that for the men and women –the good guys and gals- who serve at the lower ranks of police organizations, observing and realizing these contrary concepts could be incredibly stressful.

### ***Feeling Powerless***

Feeling powerless is most commonly one result of the interpretation of an administrator wielding ultimate power. The study participants expressed that officers feel intimidated when facing such power. Further, resisting such a powerful force would be more harmful to them than to simply accept whatever the administrator decides right or wrong rather than anger him or her. The premise can be conceptualized as who would believe a street cop over the exalted, expert police chief who surely must be honorable and just to hold such a position. Lack of control is commonly recognized as one of the conditions for stress and anxiety. There in fact can be few situations with less control than a trained, experience, professional officer facing false allegations by his or her administrator and recognizing there is nothing they can do to affect the outcome.

### ***Jealousy***

When an officer interprets action taken against him or her by the administrator as being prompted by jealousy, this is an inherently stressful situation. After all, if an administrator is willing to take actions against an officer over a personal emotion such as jealousy, they are already outside the area of objectivity, professionalism, and ethics. A notable issue related to

jealousy which surfaced often during the study was a subordinate officer's educational level being higher than the administrator's. One participant related a story where he was threatened with disciplinary action if he did not change a report using the word "intermittently" because his supervisor did not understand the meaning of the word.

### ***Lack of Trust, Feeling Alone***

Referring frequently to the feeling of being betrayed by people within their organizations, participants experienced a feeling of stress and anxiety when they interpreted that they could no longer thoughtlessly trust those with whom they worked. Likewise, when officers interpreted prudence to have less trust in their organization's members, they often felt alone when working. Feeling alone can be as simple as recognizing that an administrator will always take every opportunity to charge an officer with some violation as a result of targeting behaviors, or as major as peers in a different clique avoid backing up the officer on a dangerous call. Being ostracized by one's peers is certainly stressful –particularly when one's profession requires going into harm's way.

### ***Gained Attention***

Most of the participant officers who reported they had interpreted targeting behaviors directed against them, also reported some point at which they believe they negatively gained attention of the administration. In the case of one participant, this moment took the form of a minor remark about a friend of the administrator which was overheard. Other participants noted these events related to an attempt to defend themselves against a disciplinary action they believed was improper. In one participant case, it was the refusal to give property to the chief – which is the equivalent of a teacher demanding a student's lunch money with the implied threat that the student would fail the class if he or she did not comply. Arguably recognition of the

event of gaining attention of an administrator would not necessarily be stressful unless the event was recognized as it was happening. For instance, if there was a confrontation such as the participant refusing to hand over property to the chief, the event could be reasonably anticipated to produce negative repercussions from that point forward. Filing a formal rebuttal or defense to a disciplinary charge was another example given. In these and similar cases it is reasonable to assume this would cause a notable amount of stress and anxiety for that officer.

### ***Politics***

Politics is the first of three potentially stressful interpretations that fall into the universal category. Being universal in nature implies that the concept can be present in all disciplinary processes. All but one participant referred directly to politics. None of those who mentioned politics did so in a positive manner, however. Politics suggests decisions (including disciplinary decisions) were being made based on relationships of power, acquisition of power, for personal advantage, or for a supported cause rather than being based on objective standards, reasonableness, or factual wrongdoing. It is easy to understand how politics could cause stressful cognitive dissonance for police officers. First, they are highly trained, subjected to a ponderous number of rules, policies, and laws. However, they are then held accountable for decisions made based on politics rather than if they followed the rules, policies, and laws –or even whether they just did the right thing.

### ***Not Being Trusted***

When officers feel they are not being trusted by their peers or administrators, this causes a notable amount of stress and anxiety. These officers might have been a member of the local police subculture for many years, and then for some reason an administrator determines the officer is no longer worthy to be a member of the in-group. The most stressful part of this issue is

that once an officer is considered no longer part of the in-group, that makes them part of the out-group which must be removed from the organization –particularly when an “us vs. them” mentality is in play. When an officer participant suspected he was not being trusted, he knew his job was in jeopardy. Importantly, this can occur throughout the disciplinary continuum. The only differences are its justifications (or lack thereof) and the other interpretations and responses it may affect.

### ***Humiliation, Loss of Status, Insulted***

The interpretations of participants who felt humiliated, that felt they had lost status, or been insulted in relation to a disciplinary process proved to be very stressful for them. The participants who discussed these interpretations recounted a notable amount of stress went along with them. As a universal category concept, these interpretations may occur at any place along the disciplinary continuum. As noted by the participants, it is reasonable to expect officers to feel somewhat humiliated when they actually violated a known policy and received some degree of punishment for doing so. However, in the more illegitimate disciplinary processes, the participant data shows an officer does not have to actually violate a policy or commit an act of misconduct to be accused or disciplined for doing so. Based further on the experiences and observations of the participants, it is not at all uncommon for a baboon-like administrator to promulgate negative information (not always accurate or even true) about an officer to other police organizations. This not only affects the officer’s status and his or her reputation, but also, can have the actual effect of making the officer unemployable by a different police organization.

### **Stressors associated with officer responses**

The third research question focuses on officer responses. Certainly, stressors may cause responses. However, based on the stories of the officer participants, some of these responses

became stressors of their own. Those responses which increased stress and anxiety are listed as stressors here.

### ***Disbelief***

Disbelief in reference to the disciplinary process suggests that the officers felt a mistake had been made or they had no indication that a certain action would be forthcoming. This is a testament to their belief that they had been falsely accused or some form of unfair, subjective, or arbitrary action was occurring. As an example, one participant officer was called into the chief's office and terminated for not successfully completing his probationary period –after he had been with the organization full time for six years. The situations described by the officers where they had a feeling of disbelief would certainly cause any officer to experience cognitive dissonance which in turn increased stress and anxiety.

### ***Fear of Administrative Reprisal***

Fear of reprisal occurs when officers begin to fear doing their job. When officers have understood that they are being targeted by an administrator, they know that anything they do or say could be used as a pretext for a disciplinary action against them. The data from participant officers show many examples of avoidance and other protective behaviors intended to keep the officer from increasing the likelihood of doing anything that might generate a complaint. Often this means simply doing the very minimum amount of public and agency interaction possible. As explained by several of the participant officers, traffic stops were a classic example. One of the most common complaints received by police organizations is that the officer was “rude” during a traffic stop – which is a wholly subjective interpretation. Therefore, the fewer traffic stops the officers initiated, the lower the statistical probability of generating a complaint. The understanding of the participants was that any complaint, no matter how trivial, had a high

probability of being decided against the officer and becoming a disciplinary action of record.

Clearly, fear that they may face disciplinary action which can harm their career for a subjective quasi violation with no way to influence the outcome was stressful for these officers.

### ***Lost Faith in the System***

When the participants lost faith in the criminal justice system, it was generally a result of one of two events. The first is a criminal who received leniency to the point of being completely illogical, and the second when an innocent person is harmed by the bureaucratic machinery on which the system operates. Arguably, the saying “*if you have done nothing wrong you have nothing to worry about*” is simply not true, and that realization created a stressful cognitive dissonance for these officers who saw themselves as the “good guys” (Broomé, 2014). This stressor becomes even greater when the officer participants realized that it was not only criminals and everyday civilians who could be caught up in this bureaucratic machinery, but the system could just as easily be used against police officers as well.

### ***Fear of Disciplinary Action***

This stressor is different than fear of administrative reprisals. Fear of disciplinary action is a universal category code in the study which can also occur under all disciplinary process types. The data shows that officer participants experienced some degree of stress even when legitimate disciplinary actions were taken that might well have exonerated the officer. Further, even though the officer knew he or she did nothing wrong, any complaint can result in an adverse result for the officer. The pervasiveness of politics in decision making at the administrative levels of police organizations (particularly small departments) has the ability to cause anxiety and stress for officers. Officer participants feared facing a complaint because they realized the complaint might not be settled based on objectivity and fact, but instead on the

political and community standing of the complainant. When politics are in play, officers never know where their administration will stand on a given issue.

### ***Lack of Outlet***

Lack of outlet refers generally to the inability of officers to talk about things that bother them. This is a universal code and is present throughout the entire disciplinary continuum. One participant spoke of not being able to tell his wife about certain aspects of his job for fear of distressing her, but in doing so she gets angry that he will not talk to her about things that bother him. Under the more illegitimate disciplinary processes, the police subculture discourages officers from talking about certain aspects of their jobs. For instance, it is common among police policies for officers to be restricted from making any comments that are deemed (i.e., this means as interpreted by the administrator most generally) to be negative towards law enforcement in general, toward their department, and in particular toward their administration. One participant received a weighty suspension for critical comments he made while off duty. That suspension was ultimately reversed in a courtroom. But for officers who do not have the means to fight a governmental bureaucracy in the courts, they must keep their opinions to themselves for fear of retaliation should their administrator find out about them. This becomes even more commonplace when cliques have formed inside a police organization. According to the participants, the presence of cliques lead to the understanding that no one in the organization can be trusted and as a result, officers are afraid to comment openly even to their peers. The stress levels appear to increase for all stressors if there is a lack of available release.

The psychological pressures and impacts are great enough that therapeutic support would be useful. However, officers are likely to prefer to go-it-alone rather than face the salient stigma of receiving psychological services. Moreover, Rostow and Davis (2004) say that some police



administrators attempt to use fit-for-duty psychological evaluations as a way to remove officers from service. This is an example of targeting and using administrative powers as a cover to legitimize terminating the officer's employment. Psychologists who would work with police officers would need to be accessible and not in a dual-relationship with the department as their fit-for-duty evaluator.

### ***Cumulative Stress***

That stress accumulates for police officers was clearly shown in the stories of the participants. Cumulative stress suggests there is an accumulation of stress that is carried as a load with the officers from prior stressful events. This cumulative stress load may alter the way in which officers interpret additional stressful events and sensitizes them to future stressors. Notwithstanding operational stressors such as horrific crime scenes or horrible car crashes, chronic organizational stress is perhaps the most destructive force officers face. Most rural officers do not experience critical incidents on a frequent basis. However, they experience organizational stress every time they put on that uniform. The participants suggest carrying this stress load is harmful to those officers.

### **Limitations**

The researchers acknowledge that there are several limitations inherent to this qualitative inquiry. The first was the reliance on data collected from the study's participants, specifically their ability to recall past experiences. Second, was the willingness of each respondent to be completely forthright even when fear of reprisal existed, were anyone to find out they participated. Law enforcement culture has been known to promote a culture of remaining silent and not speaking out, to protect the reputation of police who are already under the salient scrutiny of society. Third, the study was limited to the perspective of law enforcement officers,

leaving out the voice of police administrators. The fourth limitation of the study involved the data analysis. Though the researchers adhered to strict study protocols; there are always limitations in the analysis and interpretations of the data (Charmaz, 2014). In contrast with statistical analyses in quantitative approaches, nuanced variations of expression and interpretation are analogous to the *confidence levels* or *standard deviations* accounted for in statistical variances. What is important is that the general meanings are found and presented accurately and defensibly. Finally, some would suggest a low sample of 10 participants to be problematic. However, the purpose of this study was not to develop findings which are generalizable to police officer populations in general, but rather to develop general theoretical findings which may or may not be applicable to similar circumstances (Englander, 2019). The focus of the study was on the phenomenon of experiencing and understanding disciplinary actions, not describing the attitudes of the general population of United States police officers.

## **Recommendations**

Future research is needed to identify and understand the connections and interactions between these stressors or other elements not yet identified. For example, there is evidence in the data that the presence of cliques within a police organization affects other aspects contributing to perceived stress of the officers such as various responses, communication, subjective discipline, fear of unwarranted disciplinary action, among others. The presence of cliques within the organization also signifies the lack of a feeling of organizational belonging as the two are mutually exclusive.

The issues which rise up to cause stressors within organizations –particularly organizations with strictly hierarchical social structures such as police or other quasi-military organizations- are not at all new. From King Henry I of England, to Lord Acton (e.g., power

tends to corrupt), to Abu Ghraib prison in Iraq and the present study of police organizations, it has been shown throughout the ages that a vast power differential is often involved when abuses are present. The issue is that those who have that power are the individuals who must agree to alter the course or make the changes necessary to prevent abuses of the system and even daily operations within the organization. The alternative is a restraint of the available power and additional or more effective oversight for these positions. “It seems clear in light of historical perspective and current research that an individual or small group of individuals who has/have authority over a police organization may wield unrestrained power if there exists little or no effective oversight from higher authority” (Castle et al., 2019, p. 13).

It may be casually observable that these same concepts may exist beyond law enforcement organizations. The general hierarchical power structure appears to be the catalyst for the existence of these stressors. Therefore, it is reasonable to assume that the same stressors may be present in any organization which structures itself in such manner.

It is very important to note that researchers who intend to do research involving police officers and the internal operation of police organizations recognize the difficult and complicated nature of this endeavor. Indeed, law enforcement officers possess their own unique culture and are generally distrustful of outsiders. The police subculture frowns upon open disclosure of negative aspects of policing and police culture. Therefore, if a researcher is not culturally competent in the eyes of the study participants, the whole story may never be told.

## **Conclusion**

It has been well documented that police work is stressful. Furthermore, that stress leads to a number of serious negative health outcomes. Yet, there appears to be a scarcity of literature about this important topic. This study directly addresses the issue of stress and anxiety of law


enforcement officers by inquiring into the experience, interpretations, and responses of a number of officers who have been subjected to a police disciplinary process.

The participants did provide evidence of positive disciplinary process and admirable administrators. However, the vast majority of things the participants talked about during the interviews were generally negative to them. Consider that we seldom think about our breathing until there is a problem. Then, our breathing becomes the complete and total center of our concentration. So, the study participants were likewise talking about things they felt were not normal or not as they should be. They saw these negative aspects of the disciplinary process as a problem that is not being talked about. So, they talked about them. Some were more hesitant than were others. Some experienced positive disciplinary processes where others only mentioned positive experiences in passing because that was not where their attention rested at the moment during the interviews. Therefore, any negative lean which might be perceived from this study should not be interpreted as bias, but rather as the realities of the officers as they experienced these events.

During the study, the officer participants provided evidence in the data of 24 specific stressors that affected them. These stressors are generally associated with one of the three research questions which inquired about the officers' experiences, interpretations, and responses to their encounters or observations of the disciplinary processes carried out within their organizations. Since the focus scope of this study was the police disciplinary process, it stands to reason that all of these stressors are related to that general area. However, it is important to note that approximately 20 of the 24 specific stressors documented herein related directly to the organizational top administrator and the disciplinary processes employed (or enabled) by that

administrator. Perhaps future research should inquire into the benefit a different leadership style or organizational structure might have.

Psychological services for officers need to be available and accessible for dealing with workplace pressures, not just critical incident stress and trauma. This study has shown what it is like from the participant officers' perspectives and the psychophysical strain of their experiences is beyond that of the typical workplace. Police Associations should seek such services that go beyond the department's *employee assistance program* and actually find culturally competent clinicians to support the officers on a regular basis. Over time, this practice can normalize and reduce the stigma of psychological services as only for treating "mental illness." Psychological services can provide mental, communication, and interpersonal skills to help officers be more effective in the performance of their duties while also promoting posttraumatic growth when officers face critical incidents. Being investigated by their administration should be regarded as a critical incident for emergency workers and psychological supports are important.



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**Fourth Amendment Administrative Searches of Students and Public Employees: The  
Special Needs Exception**

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**Abstract**

This research analyzed United States Fourth Amendment case law doctrine relative to the authority granted public school officials and public administrators to search personal or government issued electronic devices of students and public employees under the special needs doctrine. This research set out to answer two questions: (1) what establishes the standard of reasonableness for school officials and public administrators to conduct warrantless searches of student or employee cell phones and computers both government issued and personal, (2) what effect does evidence of criminality have on warrantless administrative searches. This research found that schools administrators have a special need to maintain an environment in which learning can take place and therefore the probable cause standard and warrant requirement of the Fourth Amendment to search a student under their authority yields to a standard of reasonableness. The search must be reasonable under all the circumstances and must be justified at its inception and reasonably related in scope to the circumstances that justified the search in the first place. Government as an employer also has a special need of balancing the government interest of ensuring efficient and proper workplace operation with private interests and the standard of reasonableness rather than probable cause best serves the public interest. The question whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis to determine if a search warrant may be necessary. Finally, the government employer does not lose its special need for efficient and proper operation of the workplace when the investigating official is serving a dual role as a law enforcement officer and supervisor or because the search produces evidence criminality.

**Key Words: Fourth Amendment, Government Employees, Search, Computer, Cell Phone, Reasonableness, Probable Cause, Special Needs Exception, Students, Text Messaging, Warrantless, Workplace Searches**

## Introduction

The special needs doctrine provides an exception to the probable cause and search warrant requirement of the Fourth Amendment. The Supreme Court first recognized the exception in 1985 in *New Jersey v. T.L.O. (Skinner)*, 489 U.S. 602). In *Skinner v. Railway Labor Executive's Association* (1989), the Court expanded the exception from schools to the workplace. There are critics of the exception including Justice Thurgood Marshall, joined by Justice Brennan, who dissenting in *Skinner* cautioned “But the damage done to the Fourth Amendment is not so easily cabined. The majority's acceptance of dragnet blood and urine testing ensures that the first, and worst, casualty of the war on drugs will be the precious liberties of our citizens” (p. 489). As Justice Marshall warned, Vaughn and del Carmen (1997) argue that the special needs exception has morphed from applying to administrative searches to allowing criminal investigative searches under broad interpretation of the exception.

On the other side of the debate, Justice O'Connor authoring an opinion in *O'Connor v. Ortega* reasoned, “operational realities of the workplace make some public employees' expectations of privacy unreasonable when the intrusion is by the supervisor rather than a law enforcement official” (p. 479). Justice Scalia concurring in *O'Connor* opined that because government employers often need access to offices, desks and files for work related purposes, “government searches to retrieve work-related materials or to investigate violations of workplace rules....do not violate the Fourth Amendment” (p. 732). Holding in *T.L.O.*, that school officials do not need to obtain a warrant before searching a student under their authority, Justice White reasoned that a certain degree flexibility is required because maintaining order in the classroom has never been easy, “but in recent years school disorder has often taken particularly ugly forms” (p. 339).

Unlike private educational institutions and private employers, when the government is the educator or employer, students and employees enjoy limited Fourth Amendment protections. Public administrators and school officials must understand the limitations of searching public employees and students for disciplinary and administrative investigative purposes under the special needs exception to the Fourth Amendment. The special needs exception to the Fourth Amendment is fact dependent on a case-by-case basis, making it an evolving and complex area of law. This research will attempt to add some clarity by answering the questions: (1) what establishes the standard of reasonableness for school officials and public administrators to conduct warrantless administrative searches of student or employee cell phones and computers both government issued and personal, and (2) what effect does evidence of criminality have on warrantless administrative searches?

The methodology used herein is the doctrinal research method which is a theoretical research method focusing on case or statutory law. This is a common methodology used in legal research. Doctrinal research is the most common method of researching law and seeks to find the “one right answer to certain legal issues or questions” (Ali et al., 2017, p. 493). In doctrinal research, the “researcher examines primary sources in order to draw logical conclusions about what the law is” (Hutchinson & Duncan, 2012, p.117). This research will be limited to the review and analysis of federal district and appellate case law. Because of the considerable number of cases to draw from particularly at the federal circuit court level, and the voluminous number of pages contained in the opinions, data reduction is necessary. Accordingly, discussion of court opinions are limited to the pertinent facts, the question of law, the holding of the court and the court’s rationale. Research focuses on recent cases except where older cases still stand as controlling case law. Case law as established by the U.S. Supreme Court is applicable to all

states and political subdivisions. Case law established by the various circuits of the U.S. Court of Appeals is binding within the circuit where established and persuasive in the sister circuits.

## Literature Review

### Fourth Amendment

The incorporation doctrine has rendered the Fourth Amendment fully applicable to the states through the Due Process clause of the Fourteenth Amendment. The Supreme Court affirmed the applicability of the Fourth Amendment to the states in *Mapp v. Ohio*. The Fourth Amendment of the United States Constitution guarantees:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Case law has established some exceptions to the Fourth Amendment probable cause and warrant requirements. The Supreme Court has held there is no expectation of privacy where an individual places personal information in the public domain. In *California v. Greenwood* the U.S. Supreme Court held that the Fourth Amendment does not prohibit the warrantless search of garbage left for collection outside the curtilage of the home. There is also no expectation of privacy for information turned over to third parties. The U.S. Supreme Court upheld the third party exception in *Smith v. Maryland*, holding there is no expectation of privacy for dialed phone numbers that are stored by the phone company's pen register, a device that records dialed phone numbers but does not record conversations. However, in *Katz v. U.S.* the Supreme Court held that the Fourth Amendment protects people not places, and may protect what a person seeks to preserve as private even in areas accessible to the public. In his concurrence, Justice Harlan

developed the reasonable expectation of privacy test that requires the individual exhibit a subjective expectation of privacy and that the expectation of privacy be reasonable by societal standards. For example, even though a property owner attempts to maintain privacy by installing a fence at ground level does not afford the property owner an expectation of privacy from navigable air space. See *California v. Ciraolo*, (naked-eye observation of marijuana plants in residential back yard by aircraft) and *Dow Chemical Co. v. U.S.*, (aerial observation of industrial complex). There are also exceptions for public school students and public employees (*New Jersey v. T.L.O.* & *O'Connor v. Ortega*).

### **Special Needs Exception**

*New Jersey v. T.L.O.*, involved a search by the assistant vice principal of a purse belonging to a student suspected of smoking in the restroom. During the search of the purse for cigarettes, the assistant vice principal found evidence of marijuana use and sales resulting in delinquency charges being brought against the student in juvenile court. The Supreme Court held that the Fourth Amendment prohibition of unreasonable searches applies to school officials, who, acting under disciplinary policies established by state statute are acting as “representatives of the state.” In balancing the legitimate privacy interest of students against the equally legitimate interest of school officials to “maintain an environment in which learning can take place”, the Court eased the probable cause restrictions for public school officials, applying a reasonableness under the circumstances standard. Citing *Terry v. Ohio*, the Court in *T.L.O.*, established a twofold inquiry for school officials conducting searches. The first inquiry is whether the action is justified at its inception. Second, is if the search is reasonably related in scope to the circumstances that justified the interference. The dissent argued that this “ill-defined reasonableness under all the circumstances test....will leave teachers and administrators



uncertain as to their authority and encourage excessive fact-based litigation” (internal quotation marks omitted, J. Brennan concurring in part and dissenting in part).

However, is a search conducted by school officials and a police liaison officer subject to the reasonableness standard established in *T.L.O.*? The Eighth Circuit held that it is (*Cason v. Cook*). Vice Principal Cook identified high school student Shy Cason as being a suspect in thefts from school lockers. Accompanied by a non-uniformed female police liaison officer, Cook searched the purse of Cason finding a stolen coin purse. At this point, the liaison officer conducted a pat-down search of Cason. Cook then searched Cason’s locker and brought Cason to the office where Cook questioned her and though present, the police liaison officer did not participate in the questioning. After the questioning the liaison officer presented Cason with a juvenile appearance card. Cason and her mother subsequently met with the liaison officer at the police station after signing a waiver and consent form. Cason filed a lawsuit alleging violation of due process and her right to be free from unreasonable search and seizure. The Eighth Circuit held that at most this case “represents a police officer working in conjunction with school officials” finding no Constitutional violation (*Cason*, 810 F.2d at 192).

The Court has also held that “special needs” exist in schools. In response to a growing drug abuse problem in their schools, the Vernonia School District instituted a policy of random drug testing of student athletes. A student and his parents filed suit seeking declaratory and injunctive relief because the policy violated the Fourth and Fourteenth Amendments (*Vernonia School District 47j v. Acton*). On appeal, the Supreme Court held that the policy that authorized random urinalysis drug testing of student athletes was reasonable and therefore constitutional under the Fourth Amendment. Citing *Griffin v. Wisconsin* the court held a search unsupported by probable cause might be constitutional when “special needs beyond the normal need for law

enforcement make the warrant and probable-cause requirement impractical” and the “special needs” exception exists in the public school context (*Vernonia*, 515 U.S. at 653).

The Supreme Court has also held that government as an employer has far broader powers compared to government as a sovereign, being elevated from a relatively subordinate interest in achieving its goals as sovereign to a significant interest when acting as employer (*Waters v. Churchill*). Like *T.L.O.* in the school setting, the Supreme Court has held that search and seizure of public employee private property by government is “subject to the restraints of the Fourth Amendment.” However, in the Court’s view, requiring probable cause and a warrant for an employer to enter an employee’s office, desk or file cabinets for work-related purposes would be disruptive and overly burdensome. In the case of *O’Connor v. Ortega*, hospital officials were concerned that a staff member, Dr. Ortega, may have acquired a computer with coerced contributions from resident doctors, and that Ortega had sexually harassed two female hospital employees. As result, hospital officials opened an investigation, and permitted Dr. Ortega to take two weeks of vacation time while they conducted the investigation. Later, hospital officials placed Dr. Ortega on paid administrative leave during which time hospital officials searched his office seizing several items as evidence used at a later hearing before a state personnel board. Dr. Ortega filed suit alleging the search of his office violated his Fourth Amendment rights. The Court held the search did not violate the Fourth Amendment applying the standard of reasonableness instead of probable cause. In the Court’s opinion, a standard of reasonableness best serves the public interest of balancing governmental and private interests. The Court also qualified that some offices may be so open to fellow employees that no expectation of privacy is reasonable and therefore “the question whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis” (*O’Connor*, 480 U.S. 718).

In summary, to qualify as reasonable, a search must be justified at its inception and permissible in scope. Justified at inception exists when there are reasonable grounds to suspect the search will turn up evidence of work-related misconduct or a non-investigatory work related purpose such as retrieving a file. A search will be “permissible in scope” when “the measures adopted are reasonably related to the objectives of the search and not excessively intrusive” meaning the search is limited to only “those areas where the item sought is reasonably expected to be located” (Lemons, n.d., p. 16). If the purpose of a search is solely to uncover evidence of criminal activity probable cause and a search warrant are required. In conducting searches for both criminal and work-related misconduct, the courts have been “fairly generous in finding the “special needs” rules announced in *O’Connor* apply” (Lemons, n.d., p.19).

## **Computers**

The FBI identified a computer with an IP address from the University of Wisconsin as responsible for hacking into a business’ network. The FBI notified the University of Wisconsin resulting in the University opening an internal investigation. Savoy, the university investigator, verified connection of the computer to the university’s network from student housing on campus. Savoy identified the graduate student by the IP address. The student had a history of unauthorized access while working at the University’s computer help desk, resulting in termination. Savoy blocked the computer’s connection only to find it later connected to the university network from a different location on campus. Savoy remotely logged into the computer to determine if the computer still posed a risk and confirmed that it did. Working independently of the FBI’s criminal investigation and concerned for the protection of the University’s computer network, and because the student knew he was being investigated, Savoy contacted the university police department. Savoy and a detective went to the room where the

computer was located, disconnected the computer from the network and with the student's consent copied the hard drive.

The following day with a warrant the FBI seized the computer. Federal prosecutors charged the student with multiple offenses. The student moved for suppression of all evidence including the remote search (*U.S. v. Heckencamp*). The Court held the student had an objectively reasonable expectation of privacy in his personal computer and the mere fact he connected his computer to the university's network did not extinguish privacy expectations. Yet, the Court concluded the remote search of the computer was justified under the special needs exception citing *T.L.O.* and *Griffin*. The Court reasoned that Savoy was acting within his scope as a system administrator and not in concert with law enforcement. His concern for the security of the university's system provided a compelling government interest requiring immediate attention, the remote search was limited to fifteen minutes wherein no computer files were viewed, deleted or modified, and he only sought to identify the computer as the one used for unauthorized access to the University network.

Another remote search case involved a Foreign Bureau of Information Services (FBIS) employee who supervisors suspected of having downloaded pornographic images including those of minors on his government owned computer (*U.S. v. Simons*). The Fourth Circuit held that the remote search of the employee's computer by FBIS management did not violate his Fourth Amendment rights because of an FBIS internet policy restricting employee use of the internet to official government business and expressly prohibiting the access of unlawful material. The Fourth Circuit did hold that the employee had a reasonable expectation of privacy in his office but found the entry into his office by FBIS management to remove the hard drive

from his computer fell within the warrant exception of *O'Connor* and was reasonable under the Fourth Amendment.

The Eighth Circuit also relied on *O'Connor* to determine that the search of a university owned computer assigned to an employee, did not violate the employee's Fourth Amendment rights (*Biby v. Board of Regents of the University*). Because the university had a computer policy that informed users not to expect privacy if the university had a legitimate reason to conduct a search, the Court concluded that the employee did not have a reasonable expectation of privacy. The Court also found the search, conducted to gather work related files relevant to a pending arbitration justified at its inception and permissible in scope.

Unlike *Biby*, where the University had a computer use policy informing users not to expect privacy if the university had a legitimate reason to conduct a computer search; in *Leventhal v. Knapek* the Accounting Bureau of the New York State Department of Transportation had no such policy. This along with the fact that Leventhal occupied a private office with a door, had exclusive use of his desk, filing cabinet and computer and did not share his computer with other employees led the court to conclude that he had a reasonable expectation of privacy in the contents of his computer. Nevertheless, the court found that the search of the employee's work computer, based on an anonymous complaint, that the employee was improperly using state equipment for personal gain did not violate his Fourth Amendment rights. Relying on the special needs exception articulated in *O'Connor* and *T.L.O.* the court found the search to be reasonable, justified at its inception, and permissible in scope. The facts considered by the court included the search was reasonably related to the investigation of misuse of State equipment, the employee's office door was open, his computer was not password protected, and

investigators did not run any programs or open any files but simply copied a list of programs contained on the computer's hard drive.

Citing *Leventhal* and *Simons* the Eighth Circuit Court of Appeals held that the Missouri Division of Child Support Enforcement (DCSE) did not violate an employee's Fourth Amendment rights by conducting a remote search of the employee's office computer (*U.S. v. Thorn*). (See *United States v. Angevine* and *United States v. Slanina* for cases with similar fact patterns cited by the court). Justification for the search was purported workplace misconduct by the employee including being inaccessible and distributing non-work-related email messages in violation of the written computer-use policy. While searching for the email messages a computer technician found adult pornographic photographs also in violation of the computer-use policy. The technician seized the computer and floppy discs in order for the Division of Legal Services (DLS) investigators to examine the contents to determine the scope of employee's computer-use policy violations. Upon searching the floppy disks, investigators discovered child pornography, and immediately terminated their search and notified law enforcement. Law enforcement obtained a search warrant and based on the evidence collected, prosecutors criminally charged the employee. The employee moved to have all evidence obtained from his office computer suppressed. The DCSE computer-use policy prohibited employees from using agency computers for personal use, prohibited all messages and pictures of a sexual or pornographic nature and expressly stated employees have no expectation of privacy regarding the use of agency computers. Accordingly, the court held the employee had no expectation of privacy in his office computer. Relying on *O'Connor*, the court held that the search of the employee's office computer did not violate the Fourth Amendment because DCSE had reasonable grounds to suspect work-related misconduct.

Another case involving pornographic materials on a state university owned computer is instructive. A university professor used his office computer to download child pornography and then deleted the files. Pursuant to a search warrant, law enforcement searched the professor's computer resulting in evidence leading to his arrest. The professor filed a motion to suppress the pornographic images seized from his computer challenging the legality of the search warrant. The district court held that the professor had no objectively reasonable expectation of privacy because of the university computer policy. The policy expressly prohibited employees from using university computers to access obscene material, reserved the right for system administrators to view and scan all files or software passing through the network, and confidentiality of data stored on network computers could not be guaranteed and a splash screen appeared at each login warning the user of criminal penalties for misuse. Therefore, the district court held that police did not need a search warrant to seize the university computer. On appeal, the Tenth Circuit affirmed. The Tenth Circuit also held that deleting files alone was not sufficient to establish a reasonable expectation of privacy because the computer use policy warned users that system administrators maintained file logs recording when and who deleted files.

A search of a personal computer occurred on the U.S. Army Depot in Richmond, Kentucky. A sergeant received an anonymous tip that a soldier had child pornography on his computer. Under the direction of the captain, the sergeant and a computer network-engineering specialist searched the soldier's personal computer located in his living area of the barracks. The next day the captain seized the computer. After facing criminal charges, the soldier moved for suppression of all evidence obtained from his computer alleging an unreasonable and unconstitutional search of his personal computer was conducted (*U.S. v. Rosario*). The Court denied the motion finding the soldier did not have a reasonable expectation of privacy in his

personal computer. The Court reasoned, that the soldier connected his computer to a network through which files on his computer were accessible by other computers, he left his computer on at all times, he allowed others access to his computer and the computer was not password protected. The court also held that the soldier had a diminished expectation of privacy in his living space by the fact he lived in an Army barracks. Further, the court found that six individuals having observed child pornography on his computer established probable cause and seizure of the computer without a warrant was valid under the plain view doctrine.

For a case with a similar fact pattern, see *United States v. Barrows* where the court held that a city treasurer who brought his personal computer to work containing child pornography and connected the computer to the city computer network and took no precautions to protect the contents from public inspection did not enjoy a reasonable expectation of privacy.

The courts have also held that civilian contractors residing on military bases, who have connected their personal computers to the base computer network, have no expectation of privacy in their personal computers (*U.S. v. King*). A civilian contractor residing in a dormitory at the Prince Sultan Air Base in Saudi Arabia connected a personal computer to the base computer network as a “shared” drive. An enlisted Airman searching the network for music files discovered pornography on the contractor’s computer and reported the finding to a military investigator. Command officers instructed a military computer specialist to verify the presence of the pornographic material that she did without any special means because everybody on the network had the same access. Investigators then obtained a search warrant for the contractor’s room and seized the computer containing child pornography. The military referred the matter to the FBI, resulting in prosecutors charging the contractor with possession of child pornography. The contractor moved for suppression of the evidence seized from his dorm room alleging



violation of his Fourth Amendment rights. Reasoning that the computer was accessible by everyone on the network, and investigators obtained files without special means, the Court held the contractor had no reasonable expectation of privacy in the contents of his computer and the search constituted a proper workplace search.

A former assistant attorney general in the Kansas Attorney General's office had the option of accepting another position or termination. He chose not to accept the new position. After termination, employees of the Kansas Attorney General viewed certain files including email messages on the former employee's office computer. The former employee filed a lawsuit asserting violation of his Fourth Amendment rights. The Court found as compelling evidence, that the former employee did not have a reasonable expectation of privacy in his office computer, the fact that each morning when he logged onto his computer the "Computer Use Procedures" including the message that there shall be no expectation of privacy in using the system appeared on his computer screen. The court in this case found that other courts that have considered this issue have viewed this type of warning as extremely significant in finding that employees do not have a reasonable expectation of privacy. (See *United States v. Simons*; *United States v. Bailey*, (screen notification); *United States v. Monroe*, (network banner); *United States v. Angevine*, (policy).

*U.S. v. Slanina* is a case that involves the complexities of an administrative search by a law enforcement employer with the fruits of the search providing evidence of criminality. The Case also brings full circle the case law on searches by public employers that existed at the time. The case involves a fire marshal supervised by both the fire chief and police chief who served as public safety director. The fire marshal was charged and pled guilty to possession of child pornography images stored on his city computer preserving his right to appeal the search of said

computer. Upon appeal, he argued the evidence obtained from his office computer and home be suppressed because the searches violated his rights under the Fourth Amendment. During the installation of the city computer network at the fire station the city's Management Information Systems Coordinator needed access the fire marshal's computer. Being the fire marshal was off work due to recent surgery the fire chief called the fire marshal and ordered him to provide the system coordinator with his password, and he complied. During the network installation, the system coordinator observed news groups suggesting the presence of pornography. To verify his suspicions the coordinator conducted a JPEG search, found child pornography, and immediately reported to the Fire Chief and Public Safety Director who subsequently searched the computer and a zip drive for about two hours viewing child pornography. The city terminated the fire marshal and reported the incident to the FBI.

The first question the Court had to decide was whether the fire marshal had a subjective expectation of privacy in his office computer. Because the fire marshal had, a private office with locked door and password protected screen saver and files the Court held he had a subjective expectation of privacy. The Court further held that the fire marshal did not forfeit his expectation of privacy by providing his password to the system coordinator for the limited purpose of accessing his computer for network installation. The next question for the Court was if the fire marshal's expectation of privacy was objectively reasonable. Looking to *Leventhal v. Knapek* for guidance the Court found that access by network administrators was infrequent weighing in the fire marshal's favor. Moreover, relying on *U.S. v. Simons*, the fact that the city did not have a policy prohibiting storage of personal information on city computers nor any warning that the city monitors computer use and internet access weighed in his favor. Accordingly, the Court held that the fire marshal's expectation of privacy was reasonable. Next, the Court had to decide if the

warrantless search of his office computer violated the Fourth Amendment. Again relying on *Simons* for guidance the Court agreed with the *Simons* Court that a government employer does “not lose its special need for efficient and proper operation of the workplace” merely because the evidence obtained is evidence of a crime (*U.S. v. Simons at 724*). The Court also concluded that even though the public safety director was a law enforcement officer, he was also the fire marshal’s supervisor and his search of the computer falls under the standard established in *O’Connor v. Ortega*. In sum, the Court found the search of the fire marshal’s office computer was justified at its inception and permissible in scope and did not violate his Fourth Amendment rights.

In the realm of public education, one district took monitoring student activity a step too far when they surveilled student’s activity at home via the webcam located on the laptop computers assigned to the students (*Robbins v. Lower Merion Sch. Dist.*). The computers utilized software called Lan Rav that captured video and photographs of students, friends and even parents in front of the webcam in compromising or embarrassing positions including various stages of undress (Bensur, 2015). The snapshot feature on the computers activated automatically every fifteen minutes resulting in the school district being in possession of 56,000 snapshots taken by the laptops (Bellas & Ellison, 2014). The District settled for \$615,000 and the Court enjoined the District from “purchasing any software, hardware, or other technology that allows for the remote activation of webcams on student laptops or the remote monitoring or recording of audio or video from student laptops” (*Robbins ex rel. Robbins v. Lower Merion Sch. Dist.*) However, this case is not precedent setting, as the court did not issue a written opinion because the case settled before trial.

Koster (2007) sums up in a succinct fashion workplace searches. Such searches are permissible without probable cause or a warrant to locate a work related file or investigate workplace misconduct so long as the search is reasonable under the circumstances, and does not invade an employee's reasonable expectation of privacy. Searches are reasonable when they are justified at inception and permissible in scope. Specific to computers, public employers need to implement and distribute written policies stating that computers are subject to searches to ensure compliance with the employer's work rules. Employees must also be required to sign an acknowledgment that they have read all employer issued policies. Searches must be limited in scope to only that area where there is a reasonable suspicion that the item sought is located. Documentation of all investigatory steps is necessary, and for corroboration purposes, have more than one person present on behalf of the public employer during searches.

### **Cellular Phones**

A teacher found a student using his cell phone in school to retrieve a text message. The teacher acting under school district policy that prohibited students from possessing or using cell phones at school asked the student for his phone. The teacher, assistant principal and a city police officer then viewed photographs stored on the phone. School administrators, accused the student of having "gang pictures" on his phone resulting in his suspension. At a subsequent hearing, the hearing officer determined the student was a "threat to school safety" and expelled him for the remainder of the academic school year. The School Board affirmed the decision of the hearing officer. The student's parents filed a lawsuit alleging violation of his Fourth Amendment right to be secure against unreasonable search and seizure, and challenging the expulsion (*J.W. v. Desoto Cnty. Sch. Dist.*).

The defendant school district filed a motion to dismiss which the Court granted with regard to the Fourth Amendment claim finding that the plaintiffs failed to establish a Fourth Amendment violation. The Court found that the search was not contrary to clearly established law citing *New Jersey v. T.L.O.* The Court considered the fact that the student was caught using his cell at school as being a critical factor. Once school officials observed him using the phone it was reasonable for school officials to determine to what end the student was improperly using it. The Court found the search to be justified at its inception and permissible in scope. The Court differentiated *J.W.* from *Klump v. Nazareth Area School District* on a number of points. First, in *Klump* the student unintentionally violated school policy by having his phone fall from his pocket. Second, school officials used the accident as a pretext for a “wholesale fishing expedition” into the student’s personal life. Third, by contrast in *J.W.* the student knowingly violated school rules by bringing the phone onto school grounds, leading to a diminished expectation of privacy. Fourth, in *J.W.* the search of the student’s phone by school officials was far more limited and justified than in *Klump*. Though finding no Fourth Amendment violation, the Court did express serious concerns regarding the school district’s actions in expelling the student and suggested the district consider settling the lawsuit.

Another case of interest is *In Re: Rafael C.* where the defendant/appellant argued that the probable cause and warrant requirement embraced in *Riley v. California* was applicable to a search of his cell phone by school administrators. To summarize the facts of the case, a juvenile high school student was acting “odd” after school administrators recovered two firearms from a trash container at the school and were detaining two other students in the office. Fearing that the “odd” acting student was involved, administrators brought him to the office for questioning where upon he became “physically fidgety” and reached into his pocket. Fearing he may be

reaching for a weapon, administrators subdued the student and found he was reaching for his cell phone. Believing the student may have been trying to communicate with other students about the weapon incident, school administrators searched his phone. Administrators found photographs among text messages, with one depicting the student holding one of the firearms recovered from the trash container. Administrators connected the phone to an office computer where they printed copies of the photographs then deleted the files from the office computer. After conviction of felony firearms possession in juvenile court, the student appealed his conviction moving to suppress the evidence citing *Riley*.

The California Court of Appeals held the proper standard to apply to school searches is the warrant exception outlined in *T.L.O.* The Court differentiated *Riley* on a number of points. These include that *Riley* focused on the reasonableness of a warrantless search by police officers incident to a lawful arrest, both subjects in *Riley* were adults and the arrests did not occur in the context of a school, and the Court in *Riley* acknowledged that certain “fact-specific threats” might justify warrantless searches of cell phone data. The Appellate Court in *Rafael C.* found that the Juvenile Court properly applied *T.L.O.* finding the search of the student’s phone was justified at its inception and permissible in scope under the circumstances.

The Sixth Circuit Court of Appeals had occasion to analyze two of the aforementioned district court opinions. In *G.C. v. Owensboro Public Schools*, a student was caught sending text messages in class in violation of school policy. The teacher confiscated the phone and gave it to the assistant principal who read four text messages on the premise that she was aware of the student’s prior suicidal thoughts, angry outbursts, and drug use and was concerned for his and others safety. Because the student was on a last chance agreement due to previous disciplinary matters, the superintendent revoked the student’s out-of-district status. The student filed suit

alleging among other claims violation of his Fourth Amendment rights for the search of his cell phone by school administrators. The district court granted summary judgment to the defendant school district and the student appealed.

Because the Sixth Circuit had not at this point addressed how *T.L.O.* applied to searches of student cell phones the parties pointed to the district court cases of *J.W. v Desoto Cnty. Sch. Dist.* and *Klump v. Nazareth Area School District*. Analyzing the two cases, the Sixth Circuit declined to accept the broad standard set forth by *Desoto* concluding the “fact-based approach taken in *Klump* more accurately reflects our court’s standard than the blanket rule set forth in *Desoto*” (*G.C.* at 633). Applying *Klump* to the facts of *G.C.*, the Sixth Circuit held that general prior knowledge of drug abuse or depressive tendencies without more, fails to justify the search of a student’s cell phone by school officials, where the search would otherwise be unwarranted.

James (2016) opines that *Riley* modifies *T.L.O.* stopping just short of requiring school officials to obtain a warrant to search student smart devices. James believes that *Riley* makes *T.L.O.*’s permissible in scope provision more rigid resulting in an altered *T.L.O.* that prohibits searches of student cell phones unless school administrators have additional justification of a reasonable suspicion of danger, or the student is using the device to conceal evidence of wrongdoing.

Closely related to searching cell phones for text messages, are text message logs maintained by third party service providers. Concerned that SWAT team officers were exceeding the monthly character limits on department issued alphanumeric pagers, the police chief ordered an audit of two months of message transcripts provided by the wireless provider. The audit revealed that a high percentage of text messages were non-work related and some were sexually explicit. As a result, the chief discipline a sergeant for violating department rules related to text

messages. The sergeant subsequently filed a lawsuit alleging violation of his Fourth Amendment rights (*Ontario v. Quon*). Reversing the Ninth Circuit, the Supreme Court held that the search of the sergeant's text messages was reasonable and did not violate the Fourth Amendment. Relying on *O'Connor v. Ortega* the court held that the search was "justified at its inception" and motivated by a legitimate work-related purpose to determine if the monthly character limit on the pagers was adequate. That fact that the city had a computer policy that indicated the city reserved the right to monitor email activity without notice and users should have no expectation of privacy or confidentiality weighed in the city's favor. Though the policy did not expressly address text messages, the city made clear to employees that text messages would be treated the same as e-mail. The Court also found the search to be minimally intrusive as the audit was limited to only two months of messages, and messages sent by the sergeant while off-duty were redacted.

Clarifying *O'Connor*, the majority opined, that principles applicable to a government employer's search of an employee's physical office apply with at least the same force when the employer intrudes in the employee's privacy in the electronic sphere. The Court chose to dispose of the case on narrow grounds reasoning that rapid changes in the dynamics of communication and information transmission are not only evident in evolving technology but also what society accepts as proper behavior. In a separate concurring opinion Justice Scalia wrote that the Court should not "hedge our bets" nor should cases be decided with less than the principle of law necessary to resolve the case; summing up his position with "The-times-they-are-a-changin' is a feeble excuse to disregard duty" (p. 768).

Speaking of "times-they-are-a changin'" are accusations that one student is making fun of another student via text messages sufficient justification for a warrantless search of the allegedly



offending student's cell phone? Based on the facts presented in *Jackson v. McCurry* the Eleventh Circuit says yes. First, the Court found that the school had a policy prohibiting bullying and rude behavior towards other students. Second, school administrators had received a complaint with two corroborating witnesses that a student was making fun of another student via text messages. Combined these facts provided reasonable grounds that a search of the student's cell phone would turn up evidence that she violated school rules and therefore did not violate the Fourth Amendment nor contravene clearly established law. Though the search did include messages between the student and her parents and ex-boyfriend, the court reasoned that because the student labeled her contacts with emoji and nicknames, it was reasonable to assume the student may have disguised both her contacts and messages. The Court differentiated *Riley's* warrant requirement as being applicable only to searches of cell phones by police officers. The appellant cited *Gallimore*, *Klump* and *G.C.* in support of his appeal all of which the Court distinguished because those searches were not justified at inception.

Finally, in *Port Authority Police Benevolent Association Inc. v. Port Authority of N.Y. & N.J.* the court had to decide if *O'Connor* or *Riley* applied to searches of text message on personally owned cell phones of Probationary Police Officers (PPO). Briefly, the factual background is this. Recent Port Authority Police Department (PAPD) graduates and instructors held a post-graduation event at a bar where the probationary officer's and instructors became rowdy with reports of damaging property, stealing beer, inappropriately touching female patrons and employees, and pulling a knife on a bouncer. A PAPD Sergeant responded to the location and ordered the probationary officer's to disperse but they defied the order. A subsequent internal affairs investigation revealed those attending the party had used a cell phone application called GroupMe to communicate about the party. Investigators informed the probationary

officers that if they did not cooperate with the investigation they could face termination.

Investigators requested the probationary officers to submit to a search of their personal cell phones and gave them opportunity to speak to a union representative prior to the search. Many of the probationary officers acceded to the search of their phones.

Probationary officers sued the Port Authority alleging violation of their Fourth Amendment rights. The Court held that *Riley* applies to all cell phone searches by law enforcement officers absent a “case-specific” exception. Finding no such exception the Court ruled that *Riley* applied to the case. The Court further reasoned that the personally owned cell phones were like the closed “handbag or briefcase” described in *O’Connor* and therefore the probationary officers had a strong expectation of privacy in their phones. Finding the *O’Connor* exception did not apply, and investigators did not obtain a search warrant as required by *Riley*, the Port Authority violated the probationary officers Fourth Amendment rights. Additionally, the Court held that the probationary officers consent to search their phones was not voluntary and that a reasonable jury could find the probationary officers had been given a choice between losing their jobs, and “consenting” to the search of their cell phones.

### **Consent to Law Enforcement**

An assistant professor at the New York University School of Medicine used a university owned laptop computer purchased with federal grant funds. The professor encrypted the hard drive and created several layers of passwords and took the computer home with him at the end of the day. The professor used the laptop for both personal and professional matters. The university officials began a fraud investigation involving the professor and asked him to turn over the computer, which he did, but refused to provide the passwords. University officials contacted the FBI and provided them with a signed consent to search the computer. The FBI without a warrant

searched the computer and charged the professor with several crimes. The professor moved to suppress evidence seized from the computer.

The court denied the professor's motion holding that even though he had a reasonable expectation of privacy in his computer by virtue of the encryption, passwords and taking the computer home, the search did not violate his Fourth Amendment rights. The Court found that the university had legal access to the professor's computer by virtue of the authorization that he signed acknowledging that NYU could inspect its own computers to ensure "its data and software are being used according to its policies and procedures (*Yudong Zhu*, 23 F.supp.3d at 240). The court further held that NYU had common authority and a substantial interest in the laptop.

## Discussion

The Supreme Court has held that special needs exist in schools that permit school officials to search students without a warrant and without probable cause when they believe a student has violated school rules, procedures or the law. See *Vernonia School District v. Acton*, (random drug testing of student athletes) and *New Jersey v. T.L.O.*, (probable cause and warrant requirements unsuited for public-school setting.) Probable cause is not required for searches in school settings as it would interfere with swift informal discipline needed to maintain order in schools. The same principle applies for government as an employer, because requiring a search warrant every time the employer needs to enter an employee's office, desk or file cabinet for work-related reasons would seriously disrupt business activities and be overly burdensome (*New Jersey v. T.L.O.*; *O'Connor v. Ortega*).

Though the Fourth Amendment prohibition of unreasonable searches applies to school officials acting under disciplinary procedures established by state statute; school officials may

exercise a degree of supervision and control greater for students committed to the custody of the state schoolmaster than would be exercised for free adults. Reasonable suspicion, which varies depending on the specific circumstances, is all that is required in the school and government employment settings. The court recognizes that there must be a balance between the legitimate privacy interests of students and government employees and the legitimate interest of school and government administrators to maintain an environment conducive to learning and conducting business (*New Jersey v. T.L.O.*; *O'Connor v. Ortega*). To be reasonable under the circumstances searches must be justified at inception and permissible in scope meaning appropriate based on the circumstances with limited intrusion. Courts have held that the *T.L.O.* warrant exception is the proper standard to apply to school searches and not *Riley* whose scope is limited to police officers conducting cell phone searches subsequent to arrest (*In Re: Rafael C.*; *Jackson v. McCurry*). However, in the public sector workplace, one court has held that *Riley's* probable cause and warrant requirement and not *O'Connor's* warrant exception applies to the search of public employees privately owned cell phones by governmental supervisors.

There are two issues at hand in school searches one being students' reasonable expectation of privacy and second, reasonable suspicion. The courts have held that bringing a cell phone to school in contravention of school policy results in a diminished expectation of privacy (*J.W. v. Desoto Cnty. Sch. Dist.*). Courts have also held that using a cell phone in school, in violation of established policy prohibiting such use, is reasonable grounds for school administrators to conduct a search to determine to what end the student was improperly using the phone (*J.W. v. Desoto Cnty. Sch. Dist.*). Threats or suspicion of possible violence also provides reasonable grounds to search a student's cell phone (*G.C. v. Owensboro Public Schools*). Policies prohibiting bullying and rude behavior toward other students along with a credible

complaint that such activity is occurring through text messaging, provides reasonable grounds to search the offending students cell phone for evidence the student is violating school rules (*Jackson v. McCurry*). However, prior knowledge by school administrators of a student's drug abuse or depressive tendencies without more fails to provide reasonable justification to search the student's cell phone (*G.C. v. Owensboro Public Schools*).

The law concerning the expectation of privacy in a public employees work computer is in a state of flux and not clearly established (*Haynes v. Attorney General of Kansas*). Accordingly, whether a public employee has a reasonable expectation of privacy in their work computer is fact dependent on a case-by-case basis. The Supreme Court has held that careful balancing of government and private interests in the public sector workplace is needed and the "public interest is best served by the Fourth Amendment standard of reasonableness that stops short of probable cause" (*O'Connor*, 780 U.S. 722). The rationale is that the need for efficient and proper operation of the government workplace outweighs the privacy rights of government employees found at home. This balancing however must take place on a case-by-case basis and include the consideration of the employee's reasonable expectation of privacy and the special need of the government employer. There are a number of factors courts consider in holding that public employees have no reasonable expectation of privacy in the use of public employer owned computers, or their personal computers connected to public employer networks. File encryption, multiple layers of passwords, password protected screen savers, locked private office doors and taking computers home at night have been held by the courts to establish a reasonable expectation of privacy (*U.S. v. Youdong Zhu*; *U.S. v. Slanina*). Even providing a password to system administrators for a limited purpose such as network administration does not forfeit an expectation of privacy (*U.S. v. Slanina*).

Detailed computer use policies will generally defeat any expectation of privacy that public employees have in use of the government employer's computer system. These include provisions that restrict the use of employer computer systems to official government use and prohibit accessing or storing unlawful material (*U.S. v. Simons*). Warnings to employees that employers reserve the right to search computers when the employer has a legitimate reason to do so also defeat any expectation of privacy (*Biby v. Board of Regents of the University; Ontario v. Quon*). In order to remove doubt whether a policy defeats an employee's expectation of privacy, policies with more expressly stated provisions are preferable. These include policies that prohibit personal use and messages or images of a sexual or obscene nature. Policies that state employees have no expectation of privacy in use of the agency's computers and the employer reserves the right to view and scan all files and software stored on the system for the purpose of ensuring compliance with policies and procedures (*U.S. v. Thorn; U.S. v. Angevine*).

Courts have also looked favorably on computer screen notification such as splash screens and banners at login warning that misuse or violation of policy may result in disciplinary or criminal consequences as a means of sufficiently warning employees and defeating any expectation of privacy. (See *U.S. v. Angevine; U.S. v. King; Haynes v. Attorney General of Kansas; U. S. v. Bailey; U. S. v. Monroe*). The courts have also held that warning employees that the employer maintains file logs recording when and who deletes files is an effective measure, and that a user simply deleting a file in such cases is not sufficient to establish privacy (*U.S. v. Angevine*). Finally, employers have legal access to search computers where employees have signed an authorization acknowledging that the employer may conduct searches to ensure data and software are being used in accordance with policies and procedures (*U.S. v. Yudong Zhu*).

Another issue is the connection of employee-owned computers to public employer or university computer networks. Mere connection of a private computer to a government owned network by itself does not extinguish expectations of privacy (*U.S. v. Heckencamp*). However, there is no expectation of privacy in connection of a private computer to a government network where the computer is not powered down when not in use, others are permitted to access the computer or files, and the device and files are not password protected (*U.S. v. Rosario*; *U.S. v. King*). The courts have upheld several special needs that present a compelling government interest. These include accessing work related files (*Biby v. Board of Regents of the University*), investigation of misuse of government equipment (*Leventhal v. Knapek*), security of computer networks (*U.S. v. Heckencamp*), and review of work-related text messages to identify why the monthly character limit was regularly being exceeded (*Onatrio v. Quon*). Employees have a diminished expectation of privacy where offices are open or shared and computer access and files are not password protected (*Leventhal v. Knapek*; *U.S. v. Simons*). There is also a diminished expectation of privacy in dormitory rooms (*U.S. v. King*) and barracks (*U.S. v. Rosario*). Employers may generally enter these areas to access computer equipment.

Some workplace investigations will turn up evidence of criminal wrongdoing. In addition, in the field of public safety, supervisors are often law enforcement officers. So, how does this impact the application of the *O'Connor v. Ortega* warrant exception? The courts have held that a public employer does not lose the special need exception for efficient and proper operation of the workplace merely because evidence obtained during a workplace investigation reveals evidence of criminality (*U.S. v. Slanina*; *U.S. v. Simons*). Further, investigations by a law enforcement officer who is also a supervisor fall under the *O'Connor* standard (*U.S. v. Slanina*).

## **Limitations**

Doctrinal research outcomes may be too technical and conservative lacking critical analysis and without due consideration of the social, economic and political significance of the law. Another limitation with this methodology is that it looks at the law within itself and often does not attempt to look at the effect of the law or how it is applied, but instead examines law as a written body of principles. Another limitation is because data reduction is necessary; something could be lost by choosing one case over another for analysis or by synthesizing the selected cases. This research attempted to analyze the practical application of Fourth Amendment case law in the public employment and education settings; it is hopeful that this effort was successful to some degree. Because court opinions are often lengthy and, in some instances, vaguely written, a researcher's interpretations of the opinions can be a limitation because as the gap between reader and author widens there is potential for varying interpretation on how the law is applied. This potential interpretation bias of the researcher also applies to the recommendations offered.

## **Recommendations**

School and public administrators have limited authority to conduct warrantless searches of student and public employee computers and cell phones under the standard of reasonableness based on the compelling government interest of maintaining an environment where learning can take place and ensuring an efficient and proper operation of the workplace. Where a reasonable expectation of privacy exists, and absent a compelling government interest, probable cause and a search warrant are required. Where detailed computer use policies have been established and communicated, there is generally no reasonable expectation of privacy. Accordingly, schools and public employers need to implement the following recommendations:



- Establish and communicate computer use policies that at a minimum expressly state that government owned computer systems shall only be used for official government business or educational purposes and prohibit the access and storage of unlawful, obscene or sexual messages or images. Policies also need to state that system administrators reserve the right to view and scan all software and files stored on or passing through the network to ensure computer usage accords with established policies and procedure, and users have no expectation of privacy in use of the system.
- Establish policy either prohibiting connection of privately owned computers to government networks, or if permitted that use restrictions and system administrator viewing and scanning privileges are the same as those for government owned computers, and no expectation of privacy exists.
- Schools additionally need policies regulating the use of student cell phones on school campuses and policies that prohibit cyber bullying and harassing behavior toward other students through the use of text messages, instant messaging, email and other electronic and cyber modes of communication.
- School and public employer computers need to display a splash screen or banner at login warning that use of the computer must conform to the established computer use policy, and prohibits unlawful use, and disciplinary or criminal consequences could result from misuse.
- Administrators of publicly owned computer systems need to maintain files logs that record when files are deleted and by whom and notify users that such logs are maintained.

- Students and public employees must be required to sign forms acknowledging that they have read computer use policies and procedures and agree to use the system in accordance with established policy.
- Because potential for abuse exists when bureaucracies police themselves, and subjective and arbitrary decisions may result from reliance on varying case-by-case fact patterns, administrators need to obtain the advice of legal counsel when developing policies, and prior to conducting searches if possible.

Certain circumstances may dictate that a compelling government interest, for example accessing work related files, network security, misuse of government equipment, or threats of violence outweigh individual privacy rights. When a compelling government interest exists, or a reasonable expectation of privacy does not exist, warrantless searches must be justified at inception meaning the search must be reasonable under the circumstances bringing the need for investigation to light. This includes having credible information that a threat of violence or violation of policy or procedures has occurred. The search must also be permissible in scope and related to the circumstances that justified the search in the first place. Searches must not be excessively intrusive and be limited in scope to the evidence sought. However, if the purpose of a search is solely to uncover evidence of criminal activity probable cause and a search warrant are required.

As this research revealed workplace investigations often produce evidence of criminal activity. Government does not lose its special need for efficient and proper operation of the workplace simply because evidence of criminal activity is uncovered, and the reasonableness standard still applies. Further, the involvement of law enforcement officers who are also supervisors or school liaison officers who are passive participants does not automatically invoke

the Fourth Amendment probable cause and warrant requirement. However, when evidence of criminality is uncovered, to the extent possible, conduct administrative and criminal investigations independently.

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## **An Inquiry into the Experience of Firefighter-Paramedics during the COVID-19 Pandemic: A Qualitative Case Study**

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**An Inquiry into the Experience of Firefighter-Paramedics during the COVID-19 Pandemic: A Qualitative Case Study**  
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**Abstract**

This qualitative case study inquiry set forth to understand the experiences of  $n = 10$  uniformed and sworn firefighter-paramedics during the COVID-19 pandemic of 2020. The participants of the study served with two uniformed and sworn, metropolitan fire departments in the Western United States. The researchers chose to focus on firefighter-paramedics due to the uniqueness of their work, where operationally they must enter the lives and homes of others, function in uncontrolled settings, and facing unknowns. Specifically, while sanitation and isolation steps became standards of practice within the hospital settings, a practice used even when working with non-infected COVID-19 patients, firefighter-paramedics found themselves operating in the pre-hospital setting where they would care for, treat, and transport patients in confined, unknown, close-quarter environments. This study puts forth the experience of being a firefighter-paramedic during the COVID-19 pandemic in the words of the participants to understand their experiences as well as what can be gleaned that can improve future response and responder wellbeing. The study findings are consistent with other studies discussed in the literature review; however, a standout finding noted by all participants was an increase of Emergency Medical Services calls of despair; specifically, physical, and domestic abuse, drug overdoses, and suicides.

**Key Words: Firefighter-Paramedic, COVID-19, First-Responder, Pre-Hospital Care, Wellbeing**

## Introduction

Firefighter-paramedics play a critical role in delivering care, treatment, and transport to persons in the prehospital setting. Their role brings them into the personal lives and spaces of patients and victims, as well as near individuals needing emergency medical transport. The reality of response, patient care, and transport of the sick and injured, seem to be contrary to the Centers for Disease Control (CDC) social distancing recommendations. In the prehospital setting, firefighter-paramedics are placed in confined spaces for care, treatment, and transport of patients. During the COVID-19 pandemic, these same firefighter-paramedics, who had standard bloodborne pathogen and infectious disease training, are now faced with providing care to patients who are asymptomatic yet possibly infected, patients with a suspected diagnosis of COVID-19 or Patient Under Investigation (PUI), or patients who have tested positive for COVID-19. The challenges of continually responding to and caring for infected or possibly infected patients with a highly communicable disease seem to add to the level of stress responders face (Iserson, 2020; Jalili, 2020). The work of Sun et al. (2020) highlights the impact of working with COVID-19 patients. Sun et al. (2020) focused on nurses in the hospital setting. However, it is still unknown how responding to and caring for patients during COVID-19 in the pre-hospital setting has influenced the experience of firefighter-paramedics.

The purpose of this qualitative case study was to understand the experiences of firefighter-paramedics in pre-hospital care settings. The researchers set forth to discover how  $n = 10$  uniformed and sworn firefighter-paramedics experienced emergency operations and patient care during the COVID-19 pandemic. The goal of the research and the central question surrounding the study was to discover how firefighter-paramedics experienced emergency medical service response during a global pandemic. Moreover, what can be learned from these

experiences that can improve both future emergency medical service operations and add to literature associated with the wellbeing of first responders.

This qualitative case study inquiry begins with a review of the literature. The researchers' note that since COVID-19 is a novel virus, and with this situation being the first global pandemic in a century, that the amount of literature on the subject is both limited and continuously changing. Though the literature review is limited, there seemed to be a foundation to build this study upon as well as add to the subject matter.

## **Literature Review**

To be able to respond effectively to pandemics, preparedness is considered essential for healthcare organizations and their personnel. Belfroid et al. (2017) captured the views of first responders on what they recommended for high-quality preparedness before the COVID-19 pandemic. According to Belfroid et al. (2017), large differences were found in the selection of the ten most urgent recommendations. Differences existed mainly on triage protocols. First responders agreed on the following recommendations: The organization's infectious disease preparedness plan should be generic and healthcare organizations should consult on the plan with all local, regional, and national organizations that they will interact with during outbreaks. The plan should include items for staff protection; protection of employees should be guaranteed and adapted for the specific situation. The plan should include items supporting infection control (including measures to prevent contamination) for all phases of the outbreak. All designated professionals should be trained.

Mackler et al. (2007) posed the question, "Will first responders show up for work during a pandemic?" They examined the impact on first responders of a possible worldwide pandemic like the one which occurred in 1918. Should a worldwide pandemic occur, it was estimated that

up to 1.9 million people in the United States could die and it would be unlikely that a vaccine for a pandemic strain would be available quickly enough to protect first responders. In a survey of 300 hundred paramedics, they found that only 20% would stay on duty if there was no vaccine and no protective gear (Mackler et al., 2007). Only 39% would remain on duty if they had protective gear but no vaccine. If both were available, 91% would remain on duty. However, the number fell to 38% if immediate families were not protected. They concluded that every effort must be made to protect first responders in case of an influenza pandemic and educate them about it (Mackler et al., 2007).

### ***Pandemic Challenges for First Responders***

Hoffman (2013) examined New York City's response to the 2009 H1N1 pandemic in the context of security following 9/11. Hoffman (2013) found the federal 'all-hazards' approach created unrealistic expectations on a local response that was at odds with an effective local response. The structures and policies in place and the strengths of local health officials allowed New York City to meet the challenges of the pandemic. The Hoffman (2013) study demonstrated the importance of local leaders as the first line of defense linked to good health governance policy.

Iran was one of the earliest countries with high levels of COVID-19 among its population. Jalili (2020) discussed these challenges to Emergency Medical Services (EMS) personnel in a study that focused on Iranian EMS during the early phases of the outbreak. One of the findings spotlighted how EMS personnel have limited information about their patients and are put in situations where they are in proximity with the sick (Jalili, 2020). Meaning, EMS personnel are at risk of catching infections from their patients because of this proximity. Thus, as Jalili's (2020) work highlighted, it's imperative that responders understand and follow the

procedures for dealing with contagious diseases and have the necessary equipment to protect themselves.

In addition to Jalili's (2020) work, Iserson (2020) found that many first responders during the COVID-19 pandemic made a daily decision whether to work. A notion circling back to Mackler et al. (2007) question, asking would responders choose to work during a pandemic. According to Iserson (2020), the decision was made based on the current environment, considering personal risk and risk to families. Equipment shortages, including personal protective equipment, influenced the medical personnel's attitude toward risk this finding goes back to the Mackler et al. (2007) study regarding paramedic attitudes towards pandemic operations when personal protective equipment was scarce. Family considerations ranked high in determining whether medical personnel would stay on the job. Many who worked, isolated themselves from their families when they went home. Where healthcare workers had elderly family members and children, many chose to care for their own families rather than put their family members at risk (Iserson, 2020).

Iserson's (2020) findings shed light on the multiple considerations which guided the responder's decision to work or not work. These findings included the risk to or safety of the responder, risk to or safety of responder's family and loved ones, child and elder care, the risk to or safety of pets, trust or confidence in health care organization or leadership, inadequate disaster-related to human resources policies, inadequate reimbursement for time and activities, safe, guaranteed transportation, mandatory quarantine, personal illness or PTSD, and job requirements or expectations (Iserson, 2020).

Alwidyan et al. (2020) examined the views of EMS providers about work during disasters in public health emergencies. Though one could generalize that each responder was faced with

the considerations Iserson (2020). The work of Alwidyan et al. (2020) discovered that while participants expressed concerns about working during disasters and pandemics, they accepted their role despite the high risk. Some participants expressed excitement, others concern, while some saw no difference between responding to natural disasters or pandemics (Alwidyan et al., 2020). While responders were concerned, they felt there was no additional risk during pandemics (Alwidyan et al., 2020).

### ***The Psychology of Working During a Pandemic***

The fear or consideration of the physical dangers associated with EMS work during a pandemic is not the only concern; but also, the psychological impact of the experience as well as the psychological fear of spreading disease to others (Sindena et al., 2021; Sritharan et al., 2020). For instance, Aufderheide and Gondles (2020) explored the psychological aspects of the Covid-19 pandemic. The research found that there was an emotional toll even among experienced first responders (Aufderheide & Gondles, 2020). When dealing with the uncertainty of the COVID pandemic, the findings showed that responders felt fear and anxiety. Aufderheide and Gondles (2020) found first responders could take back control and manage their mental health by practicing good hygiene and physical distancing and being positive.

In a study of nurses in the hospital setting, Sun et al. (2020) found, as nurses cared for COVID-19 patients, they went through three psychological stages. In the early stage, nurses felt negative emotions consisting of fatigue, discomfort, and helplessness, caused by high-intensity work, fear and anxiety, and concern for patients and family members. Then, nurses developed self-coping styles including psychological and life adjustment, altruistic acts, team support, and rational cognition. Finally, nurses went through a stage of “growth under pressure,” which included increased affection and gratefulness, development of professional responsibility, and

self-reflection. Nurses showed positive emotions simultaneously with negative emotions (Sun et al., 2020). Though the work of Sun et al. (2020) focused on nursing, the similarity between nursing and EMS allows these findings to be at least analytically generalizable to the EMS profession.

### ***Summary of the Literature***

As noted by Friese (2020), COVID-19 will have a permanent impact on EMS in the United States. Some of the changes being the use of respiratory and eye protection on every call and transporting patients to urgent care centers. In addition, social distancing has become part of EMS training and some agencies have changed protocols for cardiac arrest care (Friese, 2020). Moreover, EMS providers have fought to have Medicare pay for treatment in place and transport to alternative locations like doctor's offices and urgent care centers. The pandemic has made these services an essential part of providing care. These service modifications will likely continue after the crisis is over. Call volumes for EMS and ambulance services have dropped by 30 to 40 percent (Friese, 2020). The citizenry is calling less for non-essential services. This trend is also likely to continue after the pandemic and change the way EMS services are funded. The government and the healthcare industry are relying more on EMS and realizing EMS is not just providing a ride to the hospital. Noting each of these issues, it is still unknown how each one impacts the lived experiences of responders.

## Methodology

This qualitative case study set forth to understand the experiences associated with emergency medical services response of  $n = 10$  uniformed and sworn firefighter-paramedics during the COVID-19 pandemic. The setting of this qualitative research study took place at two professional fire departments within a large metropolitan area within the Western United States. Before conducting this study, the researchers obtained university IRB permission. The researchers employed a case study design to conduct the study (Yin, 2018). The strength of case study design is its ability for looking at unique situations in a way that can reveal theoretical propositions (Yin, 2018). In this case, the unique situation was the pre-hospital emergency medical service response during the COVID-19 pandemic. The target population for this study was identified as uniformed and sworn professional firefighter-paramedics working in large metropolitan fire departments located in a western state in the United States. The expert purposive sample examined in this study consisted of  $n = 10$  uniformed and sworn professional firefighter-paramedics. The participants served and responded as firefighter-paramedics throughout the COVID-19.

The researchers used a type of non-probability purposive sampling known as expert sampling because the research study focused solely on uniformed and sworn professional firefighter-paramedics (Corbin & Strauss, 2008; Patton, 2002). The participants were members of two different metropolitan fire departments in the western United States. The inclusion criteria included (1) firefighter-paramedics who have treated /transported a Person Under Investigation for COVID-19 (PUI) or (2) firefighter-paramedics personnel who have treated/transported a positive COVID-19 patient.



Each participant consented and took part in semi-structured virtual interviews due to in-person COVID-19 restrictions, utilizing video conference platforms based upon whatever platform was accessible to each participant. Semi-structured interviews were used because they encouraged participant reflexivity (Perera, 2020). Interviews took approximately 40-60 minutes. Follow-up calls were made where clarification was needed for any responses. The researchers removed any personally identifying information from the data to protect participant anonymity. The interview script consisted of questions developed from the literature that asked questions focused on emergency medical service response.

The data analysis consisted of a hand-coding process that involved color-coding the data (Basit, 2003). Hand-coding allowed each researcher to spend time reading the data, coding different attributes, and taking notes (Basit, 2003; Corbin & Strauss, 2008). The researchers spent time reading and coding the data independently allowing for comparisons and rigor. To ensure reliability and validity of the study findings, each researcher reviewed and verified the data analysis and coding, ensured data saturation, triangulation, and compared the findings of each researcher for accuracy (Morse et al., 2002; Patton, 2002; Yin, 2018). Using inductive reasoning, the data analysis led to the development of case descriptions employing a systematic, hierarchical approach (Coyne, 1984; Stake, 1995; Yin, 2018). The case descriptions are presented as themes in table format in the results section.

## **Results**

These results of the study are presented in table form to highlight the participant's experiences as they relate to the study questions (see tables 1 thru 4). The responses of the participants are ordered by theme. Each theme is grouped with subthemes as well as the unmanipulated words of the study participants in quotations.

**Table 1**

*Theme I: Emergency Medical Services (EMS) calls for both routine and serious health emergencies decreased because of people's fear and anxiety of the COVID-19 virus.*

Subtheme	Quotations
<b>Call volume</b>	<p>"Call numbers were down at the beginning of the pandemic"</p> <p>"Call volumes have been cut in half"</p> <p>"Call volumes were down, because people were not traveling much"</p> <p>"Extremely slow days"</p> <p>"We had low call volumes and very few calls from people who were positive for COVID"</p> <p>"But in the last months [of 2020] we saw a return to normal volumes although not as high as in past years"</p> <p>"There was a reduction in overall calls by 15-20%"</p>
<b>Call anxiety</b>	<p>"People were less likely to call 9-1-1 out of fear of the unknown"</p>
	<p>"People seemed to be afraid to call for help, even if they had COVID"</p>
<b>Fear of COVID-19</b>	<p>"During the pandemic, the number of Against Medical Advice (AMA) patients increased"</p> <p>"Patients waited too long to seek medical advice, and when they received advice, they ignored it"</p> <p>"Patients were afraid if they contacted EMS and they were to go to hospital, it would be like a death sentence, so they were worried about calling when they really needed help"</p> <p>"Older patients were really afraid of getting the virus, so they refused transport, sometimes when their condition was critical"</p> <p>"COVID potentially created more critical patients, because they were afraid to seek out care, may have taken longer to heal"</p> <p>"People are afraid and unsure during these times, very frustrated and it transfers over into their medical care and wellbeing"</p>

**Table 2***Theme II: COVID-19 impact on patient care*

Subtheme	Quotations
<b>More severe calls</b>	<p>“We would approach toward treatment may have also led to patients refusing care initially...we tried to limit their exposure to the COVID virus”</p> <p>“We were happy to evaluate patients, if we saw a patient that was stable, we advised the caregivers to transport the stable patient to the hospital themselves”</p> <p>“Sometimes we actually discouraged stable patients from being transported because of the potential risk to exposure”</p> <p>“Patients were waiting longer to contact EMS for stroke and chest pain and other symptoms”</p> <p>“Some didn’t call because they were concerned about giving the virus to the responders or were concerned that they might get sick by using the medical system”</p> <p>“Many patients felt if they went to the hospital, they would die”</p>
<b>High-risk calls</b>	<p>“We saw an increase in anxiety attacks, substance abuse, mental health calls, domestic abuse, and suicide”</p> <p>“There was an increase in suicide calls often as a result of abusive, dysfunctional situations”</p> <p>“The number of suicide attempts and domestic abuse calls were higher than in previous years”</p> <p>“Full arrest calls (because of heart failure) were occurring more frequently among the younger generation, sometimes in late 20s to 30s, from opioid overdose and street drugs”</p>
<b>Mental health calls</b>	<p>“There is greater stress on everyone. It is constant. With all the social issues, there are more frustrated people”</p> <p>“We were doing more psych transports [sic], including attempted suicides”</p> <p>“The leading calls were, first, mental health, then domestic, substance abuse, and finally, suicide”</p> <p>“Some people are looking for attention whether from family or healthcare workers”</p>

**Table 3***Theme III: Responder behavior*

Subtheme	Quotations
<b>Paramedic fear and anxiety</b>	<p>“A third of the EMS personnel do not care, a third believe the pandemic is real, and a third are unsure”</p> <p>“Some people think the pandemic is a conspiracy; others think it is going to kill everyone”</p> <p>“We were cautious because of the chance of taking the disease home. We were not worried for ourselves, but for our wives and children, their parents, and grandparents”</p>
<b>Dichotomy of attitudes</b>	<p>“Some thought COVID was not serious, also didn’t worry about it”</p> <p>“Some felt they were not going to get COVID, and some shamed anyone who showed any signs of fear”</p> <p>“Some had the attitude; we can’t get it, asking others, what are you worried about”</p> <p>“It was a sensitive topic that if you talked to them, they would get angry or upset”</p> <p>“The medics act like they are not afraid but when they have a confirmed case some are reluctant - a bit disconnected”</p> <p>“COVID wears on everyone, and everyone reacts differently”</p>

**Table 4***Theme IV: Working procedures during COVID*

Subtheme	Quotations
<b>Lack of personal protective equipment</b>	<p>“The amount of medical PPE (personal protective equipment) available was limited”</p> <p>“Initially PPE had to be rationed and saved for critical calls with potential for COVID”</p> <p>“Some were using N95 masks on every call, while others would only wear masks if they were dispatched for a call with flu-like symptoms”</p>
<b>Changing procedures</b>	<p>“Before COVID, we were donning gloves, eyewear maybe. Now we wear N95, Tyvek suits, gloves, goggles, etc.”</p> <p>“We always have gone in with PPE but not the face-covering unless we had a reason to suspect airborne problem like TB or carbon monoxide poisoning”</p> <p>“We saw face coverings as useless, not effective. The N95 mask made it difficult for patients to hear responders”</p> <p>“Policy required we wear face masks and medical gloves. We were required to wear N95 masks and Eye Pro goggles on every call and gown up if we knew the patient was positive with COVID-19”</p>
<b>Staying clean and healthy</b>	<p>“A good healthy fire station lifestyle is helpful to get through this”</p> <p>“If we were called on a known positive, we would wipe down equipment and apparatus as soon as we got back to the station and prior to going back in service”</p> <p>“New policies require us to take our boots off when returning to the fire station and leave them in the bays with apparatus and other equipment”</p>
<b>Changing procedures</b>	<p>“We now change clothes and don’t allow boots in station houses”</p> <p>“We now wear indoor shoes inside the office and living quarters”</p> <p>“Fogging the bays and buildings is being done regularly”</p> <p>“Cleaning up at the end of each shift is required”</p>

## Discussion

The following discussion involves a summarization of the identified themes (Yin, 2018). The researchers note that the data analysis and thematic coding seemingly conferred certain aspects found in the literature review relating to equipment, and the health and wellness of the responders (Alwidyan et al. 2020; Iserson, 2020) as well as revealed new discoveries as they relate to the firefighter-paramedic experience during the COVID-19 pandemic. The discussion follows the five thematic sections to offer a dialogue regarding the influence COVID-19 had on the lived experience of participants.

The study findings of Mackler et al. (2007) and Iserson (2020) both noted there was a concern about working under different pandemic scenarios amongst EMS professionals. Moreover, there were different attitudes, levels of anxiety, and understanding of COVID-19 amongst responders. The participants of this study confirmed these findings, noting different issues of opinions, attitudes, and fear throughout their agencies. However, the participants of this study seemed to demonstrate that the concern about EMS, specifically, calling EMS for help existed with the public. This finding confirmed the work of Friese (2020) that noted a reduction in EMS calls. All participants noted that during the height of COVID-19, call volumes essentially fell. One participant stated that “There was a reduction in overall calls by 15-20%”. Another stated that “People seemed to be afraid to call for help, even if they had COVID”. This attitude towards calling EMS places the sick and injured in a life-threatening situation. As one participant put it, “People are afraid and unsure during these times, very frustrated and it transfers over into their medical care and wellbeing”.

Additionally, the participants noted COVID-19’s impact on patient care. The participants of the study discussed that even when individuals would call 9-1-1 for EMS response, they

would be reluctant to allow the responders to transport them to a hospital setting for fear of infecting others. For instance, one participant stated, “some didn’t call because they were concerned about giving the virus to the responders or were concerned that they might get sick by using the medical system.” Moreover, even when the firefighter-paramedics would be on the scene, patients feared to leave their homes with the responders. A participant stated, “Many patients felt if they went to the hospital they would die”.

The Aufderheide and Gondles (2020) study found that there were issues of mental health impacting the first responder when it came to pandemic EMS response. However, the participants of this study demonstrated that issues associated with mental health, despair, and wellness were realized in the public. A participant stated, “We saw an increase in anxiety attacks, substance abuse, mental health calls, domestic abuse, and suicide”. Another participant noted, “Full arrest calls (because of heart failure) were occurring more frequently among the younger generation, sometimes in the late 20s to 30s, from opioid overdose and street drugs”. Moreover, all the participants that took part in this study noted a heavy increase in both suicide and suicide attempt calls. One of the participants summed this up stating, “the leading calls were, first, mental health, then domestic, substance abuse, and finally, suicide”. Seemingly, an increase in societal despair.

### **Limitations and Recommendations**

The limitations and weaknesses of qualitative research are recognized as part of the study. Acknowledging, and bracketing bias is a step in addressing the limitation as the researchers make observations and draw conclusions related to the information. Because the qualitative research process is mostly open-ended, participants have more control over the data collection process. Researchers may not be able to verify all information. Also, it is difficult to

determine causality; participant information may vary leading to non-consistent conclusions. Sampling is limited and therefore not generalizable from the  $n = 10$  participants interviewed. Also, because the information is limited, it is possible that problems could go unnoticed (Chetty, 2016).

Second, the study is limited to only firefighter-paramedics. The experiences of other responders, firefighter-Emergency Medical Technicians (EMTs), and firefighter-engineers, who would normally go out on an emergency call, were not interviewed. However, the experiences of other first responders, such as Emergency Medical Technicians, law enforcement, firefighter-EMTs (Basic Life Support), and other ranks within the fire service should be explored further. Third, this was a short-term study. A long-term qualitative approach to the participant's experiences would add value to the current study and should be explored for future research.

## **Conclusion**

This qualitative case study offered a window into the experiences of firefighter-paramedics who cared for, transported, and treated patients suspected of having or diagnosed with COVID-19 in the pre-hospital setting. The results from the data analysis and coding highlighted that during the early days of the COVID-19 virus, there was much uncertainty with caring for and treating patients with the COVID-19 virus. Issues of equipment availability as noted in the literature review were highlighted by the participants in this study. The researchers note that these things were anticipated because of the literature review. However, the more serious issues associated with the experiences of the participants seem to be in the areas of patient fear and calls of despair. Each participant highlighted underlying problems that go beyond COVID-19. These problems include an increase in abuse, both of people and substances, mental health, and suicide. It seems more research is needed in this area to understand the impact



that COVID-19 has had on society itself and whether these issues are transient or more long-lasting.

Because of the fluid nature of the pandemic, firefighter-paramedics were left to deal with anxiety and fear with little resources. Patients were also left to decide whether to wait and see or choose care and place themselves in greater danger of contracting the COVID-19 virus in a hospital setting. This study offers a snapshot of how these specific firefighter-paramedics experienced emergency response and patient care during the COVID-19 pandemic. The findings of this study only begin to address the lack of pandemic preparedness and funding that exists within the fire and emergency services. Again, it seems that more research is needed to understand the barriers and pitfalls associated with pandemic readiness.

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