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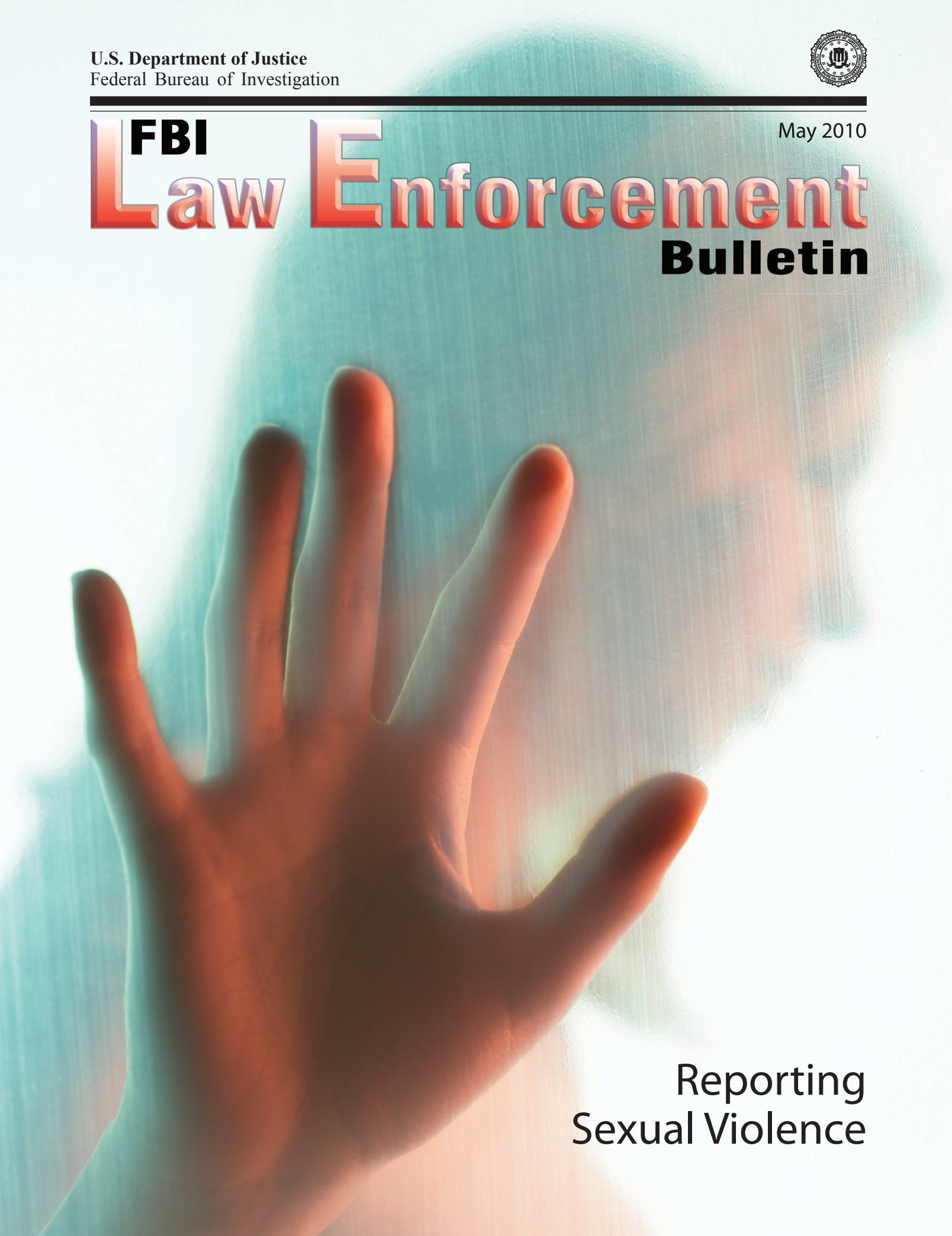

Reporting Sexual Violence

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Director

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Options for Reporting Sexual Violence

Developments Over the Past Decade

By SABRINA GARCIA, M.A., and MARGARET HENDERSON, M.P.A.

"Blind reporting can give victims of sexual violence, and other sensitive crimes, a safe haven to file a report at the same time that it removes that refuge from their assailants."[1] For the victim, the benefit of such a system lies in having time to build trust with the law enforcement officer and to consider all of the implications of participating in reporting, investigating, or prosecuting the case *before* making a decision whether to proceed. For the law enforcement agency, this type of reporting can help gain intelligence about the local incidence and perpetration of all sexual violence in the community, as well as build trust and credibility with populations vulnerable to assault.

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Developments in the field and changing social expectations have made law enforcement agencies reconsider and refine their processes for working with victims of sexual violence. Careful thought, clear direction, and institutional commitment are required to set up graduated reporting systems that respect the circumstances and challenges of victims, provide consistent response by investigators over time, and gather intelligence and evidence that will ultimately achieve law enforcement's primary goal: to protect and serve.

MAJOR CHANGES

Since 1999, these developments have affected the terms used to describe this practice and applied the concept to parallel processes. The two major changes involved the U.S. Department of Defense establishing a graduated reporting system (confidential, restricted, and unrestricted) in all branches of the military in 2004. Then, in 2005, Violence Against Women legislation (VAWA 2005) mandated that states afford forensic medical examinations to victims of sexual assault *without* 1) requiring cooperation with law enforcement or participation in the criminal justice system and 2) incurring any out-of-pocket expenses.[2]

U.S. Military Process

By 2004, the Department of Defense implemented landmark policies to address the incidence of sexual violence taking place within the military. They originally distinguished three levels of reporting.[3]

1) Confidential reporting: The service member reports the victimization to specified officials and gains access to supportive services. The service providers are not required to automatically report the incident to law enforcement or initiate an official investigation.

2) Restricted reporting: The service member reports the victimization to specified officials and gains access to supportive services. The service providers will not inform law enforcement unless the victim consents or an established exception is exercised under DoD Directive 6495.01.

3) Unrestricted reporting: The service member reports the victimization and gains access to supportive services. Both the report and any details from the service providers are reportable to law enforcement and may be used to initiate the official investigative process.

VAWA 2005 Mandate

States that do not comply with the VAWA 2005 requirement regarding forensic examinations will not be eligible to receive STOP Violence Against

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Women Formula Grant Program funds. According to the Office on Violence Against Women (OVW), "In fiscal year 2009, the STOP Program awarded almost $116 million in grant funds. Since 1995, OVW has made approximately 353 awards to states and territories, totaling more than $750 million, to address domestic violence, dating violence, sexual assault, and stalking."[4] This funding enables states to introduce innovations and improvements to their client services, law enforcement, and judicial systems.

Of importance, VAWA 2005 emphasizes health care and evidence collection, *not* reporting to law enforcement. It requires states to meet these forensic requirements but does not mandate a particular strategy for compliance. States, therefore, vary in their approaches.[5] Moreover, states also are not required to implement restricted reporting processes, but many are doing so voluntarily.[6]

OVW's Web site offers some frequently asked questions, including one concerning the effect of the VAWA 2005 forensic examination requirement on law enforcement. "Many victims refuse to undergo examinations because they are not ready to report the sexual assault to the police. Advocates for sexual assault victims maintain that the VAWA 2005 forensic examination requirement will encourage more victims to undergo examinations directly following the crime, thereby preserving forensic evidence for future prosecutions when victims are ready to cooperate with law enforcement. Jurisdictions that have implemented anonymous reporting, including the U.S. Military, have found this to be true."[7]

> "...VAWA 2005 emphasizes health care and evidence collection, not reporting to law enforcement."

Term Usage

Law enforcement officials and other professionals who work with victims of sexual violence might be unclear about the distinguishing characteristics among the terms *blind*, *restricted*, *confidential*, *Jane Doe*, or *anonymous* reporting processes and might use them differently. To aid the law enforcement community, the authors offer a clarification of these terms and provide general guidance on setting up these systems of reporting. They use the term *restricted reporting* to refer to processes in which victims contact law enforcement for assistance and the term *anonymous reporting* for those in which victims seek medical intervention and evidence collection but not necessarily investigation as set forth in VAWA 2005.[8]

In anonymous reporting processes, the victims are given a code number at the hospital that they can use to identify themselves if they choose to report at a later time. They are not required to cooperate with law enforcement or criminal justice authorities. Generally speaking, no direct connection is made between the victim and law enforcement officials unless the victim is willing to request their involvement. An advantage to anonymous reporting is that the integrity of the evidence is maintained while the victims have time to heal, consider their options, and make decisions. A disadvantage concerns hospitals and law enforcement investing resources in collecting and storing evidence that might not be used.

TWOFOLD BENEFITS

For Victims

In addition to dealing with the ordeal of the violence itself, victims also might be traumatized by the reactions of family, friends, or the professionals from whom they seek help. Historically, too many survivors

Basic Steps in Establishing a Restricted Reporting System

1. Clarify the goal of setting up a flexible system of reporting. Is the law enforcement agency interested in strengthening its service to victims, reacting to negative publicity, or responding to emerging trends in the field? If the ultimate goal is to investigate and enable the successful prosecution of more cases of sexual violence, the agency must understand that it might take a long time to gain the trust of the community.
2. Identify the resources available to support the system. Which staff will be trained and involved in receiving reports from victims? What kind of private office space is available for the interviews?
3. Designate who will receive, document, store, or have access to the information. Create a secure location for storing this information, preferably away from other records.
4. Determine the circumstances or processes in which information might be shared across types of investigations within the agency. For example, consider a situation in which a rape victim discloses significant information about a drug dealer. When does the victim of sexual violence hold all authority over the information shared? When might information related to the drug supply, storage, or sales be shared, anonymously or not, with another investigator?
5. Set forth the circumstances or processes in which information might be shared with other helping professionals outside the agency, such as the rape crisis center, sexual assault nurse examiner, or sexual assault response team. The victim should be informed of and preferably have the opportunity to clarify how much information must or could be shared with which other people.
6. Consider creating an information sheet that describes the reporting system for others so that they will understand the intention, the process, the involved staff, and any limitations victims should consider. Decide how best to share this information within the agency, directly with victims, or throughout the community.
7. Create a standardized intake form that, along with the details of the sexual offense, clarifies the victim's preferences for sharing or receiving information, conditions for future contact, and expected next steps. Similarly, standardized categorization of the information will aid in analyzing the report, retrieving data, and matching specific characteristics across investigations.
8. Institute training for and reinforcement of the following basic principles for working with victims of sexual violence:
   - Establish and uphold a policy of confidentiality. It is the basis of trust.
   - Accept as little or as much information as the victim is willing to provide. Putting pressure on the victim for immediate and full disclosure can threaten the sense of trust placed in the officer and sense of safety with the process.
   - Take information whenever the victim might offer it. A delay in disclosure might reflect more on the victim's sense of support than on the validity of the statement.
   - Allow information from third parties. Some victims might feel so threatened that they will only share information through other parties, such as the rape crisis center.
   - Clarify options for future contact. Specify the means (phone, e-mail, in person), the content (first name or professional title, code phrase, full disclosure), and the circumstances (if another victim comes forth, if more evidence is discovered).
   - Maintain these reports in separate files unless the victim decides to file a formal report.
   - Consistently categorize the information within each report.
   - Compare the information with that in other formal investigative reports to provide an ongoing analysis of sexual assault reports.

experienced revictimization through the law enforcement and criminal justice processes. Reporting systems that force—or are *perceived* to force—immediate all-or-nothing decisions whether to pursue investigation understandably scare off some victims. In contrast, allowing time to create dialogue between the victim and the law enforcement officer has the added benefit of building trust between them as well. A victim who trusts the integrity of the investigator is more likely to withstand the potential challenges, intrusions, or disappointments of the investigative process.

For Law Enforcement

Law enforcement officers might initially experience frustration in spending time with a victim who is uncertain about following through or in their being held back from a compelling investigation. However, victim-friendly reporting processes constitute an investment in both building positive community relationships and in gathering intelligence related to the commission of sexually violent crimes.

Agencies that implement some form of graduated reporting options likely will experience an increase in the initial reports that develop into formal investigations. For example, in 2005, the first year of the Department of Defense's graduated reporting system, 108 (24.8 percent) of the 435 victims who initially used the confidential reporting mechanism later chose to file formal reports.[9] And, for the Chapel Hill, North Carolina, Police Department, 22 percent of these types of reports developed into formal investigations over a period of 10 years.[10]

> "An advantage to anonymous reporting is that the integrity of the evidence is maintained while the victims have time to heal, consider their options, and make decisions."

UNTAPPED POTENTIAL

These graduated reporting options represent an innovation from over a decade ago that some in law enforcement have yet to fully embrace. Room for expansion in terms of both philosophy and implementation could prove beneficial for both victims and the law enforcement community. Where such systems exist, one learning opportunity now relates to how best to use the information while maintaining any promised expectations of confidentiality.

Using the Data

The initial report acts as a foundation document, offering the first account presented by the victim that can link to a suspect's method of operation, description, crime location, or identity. The information also might inform other existing investigations of the same or related types of crime or patterns of perpetration. The information presented to law enforcement by the victim of sexual violence is potentially unavailable by any other means or through any other person. Similarly, narcotics and vice operations commonly practice receiving, but not acting upon, such information to make the best strategic use of the data.

Specific information for any crime is primarily gained from two distinct sources, the victim and the offender. As law enforcement is aware, gaining access to a crime through the "eyes of a victim" lends unique insight to an offender's behavior and motivation. It also can provide links to other crimes that might not seem connected due to their nonsexualized presentation. Related crimes that can easily be overlooked are property crimes, such as breaking and entering, burglary, car jacking, or robbery. Perpetrators might employ these strategies

Comparison of Anonymous and Restricted Reporting Systems		
	Anonymous Reporting to Hospitals	**Restricted or Blind Reporting**
Authority behind the system	VAWA 2005 requires states to provide victims medical intervention and evidence collection at no charge and with no obligation to report to law enforcement.	established at the discretion of individual law enforcement agencies.
The evidence or information is collected by	the hospital.	an investigator or specialist designated by the agency.
The evidence or information is stored by	a central repository for the state.	the designated investigator or specialist.
The victim has the option to	report to law enforcement or take no action.	file a blind report (share information) or file a full report (request an investigation).
The evidence or information	is stored until the victim files a report with law enforcement, who retrieves and processes the medical evidence.	the victim specifies how the agency might use the information contained within a blind report. If a full report is filed, the evidence or information is processed for the investigation.

to gain access to potential victims for the purpose of sexual assault.

However, data collection and analysis must be grounded in the specific dynamics of sexual violence perpetration and victimization. The relationship between law enforcement and a confidential informant who provides drug or vice intelligence, for example, will not parallel the one between law enforcement and a victim of sexual violence.

Relating to Victims

For victims to risk talking at all, law enforcement officers should demonstrate a basic knowledge about the potential emotional and behavioral reactions to the violence and convey an understanding of the negative personal impact of working through the justice system. Affirming the challenges of both experiences (the violence and the reporting) does not mean the officers accept the victims' accounts with unquestioning belief but simply that they convey a basic understanding of some part of the experience.[11] It is appropriate to share legal definitions or potential interpretations of behavior, recognizing that sex offenders are effective in using these myths and misunderstandings to convince victims that their actions contributed to the sexually violent outcome of the encounter. Too often and too accurately, victims delay or avoid reporting the crime

because the perpetrator has convinced them that no one else will believe or care.

Linking Cases

Once a victim talks with an officer, another challenge lies in taking the initiative to consistently code and study the report. The end goal is to achieve case linkage through comparative analysis.

To structure reported information into a usable format, developing a restricted reporting form and using it consistently prove critical. The structure of the form should enable easy review with other formally submitted police reports. Assigning responsibility to one person, such as the department's crime analyst, investigation commander, or sex crime specialist, is a preferred way to consistently maintain and analyze the reports. In addition to asking traditional questions about the perpetrator, weapons, vehicle, and crime, this form also can be used to track custody of evidence kits or other collected evidence, as well as the strategies employed to identify, groom, isolate, intimidate, or control the victim. As a beginning, expectations of the information contained within the reports should be considered from four perspectives.

1) Collection: Designate space on the report form to document how the information and evidence were obtained, as well as from whom, where, and when.

2) Collation: Sort the information into specific categories, such as the time frame when crimes were committed, locations, and victimology.

> Agencies that implement some form of graduated reporting options likely will experience an increase in the initial reports that develop into formal investigations.

3) Analysis: Note the specific behaviors, features, controls, or dialogue/monologue by offender and victim. These characteristics can demonstrate ritualized behaviors or scripted language required by the perpetrator to complete the offense.

4) Dissemination: Clarify how, when, what, and with whom the information is shared, with the victim's permission. This includes internal and external sharing with professional peers or multidisciplinary teams.

If the victim decides to proceed with a full investigation, the original restricted report and the official incident report should be cross-coded by number. This will allow for easy retrieval of the information.

CONCLUSION

Setting up restricted reporting systems helps ensure that law enforcement agencies receive a more accurate account of the crimes committed within their jurisdictions. These endeavors provide a venue for victims to satisfy their need to notify others of the potential for harm, gain faith in a complex process unknown to them, and receive the response that they deserve.

As with most innovative techniques that address specialized crimes, law enforcement organizations should take time up front to clarify their goals for implementing the system and the resources they are willing to direct toward sustaining it. Planning and providing training for both the process of reporting and the dynamics of sexual violence also is critical for successful implementation. In the end, agencies should remember that the lack of confidential reporting can create a picture-perfect community but not always a safe one. ✦

Endnotes

[1] Sabrina Garcia and Margaret Henderson, "Blind Reporting of Sexual Violence," *FBI Law Enforcement Bulletin*, June 1999, 12-16.

[2] Access *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h3402enr.txt.pdf* for the complete text of VAWA 2005.

[3] The Web site for the U.S. Department of Defense Sexual Assault Prevention and Response, *http://www.sapr.mil*, now lists only two options for reporting—restricted and unrestricted—and refers to the policy on confidentiality for specific personnel.

[4] See, the Office on Violence Against Women Web site at *http://www.ovw.usdoj.gov/stop_grant_desc.htm*.

[5] States needing technical assistance in reaching compliance should contact End Violence Against Women (EVAW) International, designated by the Office on Violence Against Women as the national technical assistance provider on this issue, at *http://www.evawintl.org/*.

[6] See the Office on Violence Against Women Web site at *http://www.ovw.usdoj.gov*.

[7] For further information on forensic examination requirements and other STOP Program requirements, please visit *http://www.ovw.usdoj.gov/docs/FAQ_FINAL_nov_21_07.pdf* or contact the Office on Violence Against Women at 800 K Street, NW, Washington, DC 20530, Phone: (202) 307-6026 and Fax: (202) 305-2589.

[8] One disadvantage of using the term *Jane Doe* in relation to sexual assault forensic exams is that law enforcement often uses this phrase to refer to unidentified victims for whom investigations are initiated. In the circumstances addressed by VAWA 2005, investigation will not begin until or unless the victim decides to do so.

[9] See Department of Defense Report of Sexual Assaults in CY 2005 at *http://www.sapr.mil/contents/references/2005%20RTC%20Sexual%20Assaults.pdf*.

[10] Statistics provided by Sabrina Garcia, Chapel Hill, North Carolina, Police Department.

[11] Local rape crisis centers and state sexual assault coalitions are sources for training about the victim's perspective.

We Need Your E-mail Addresses

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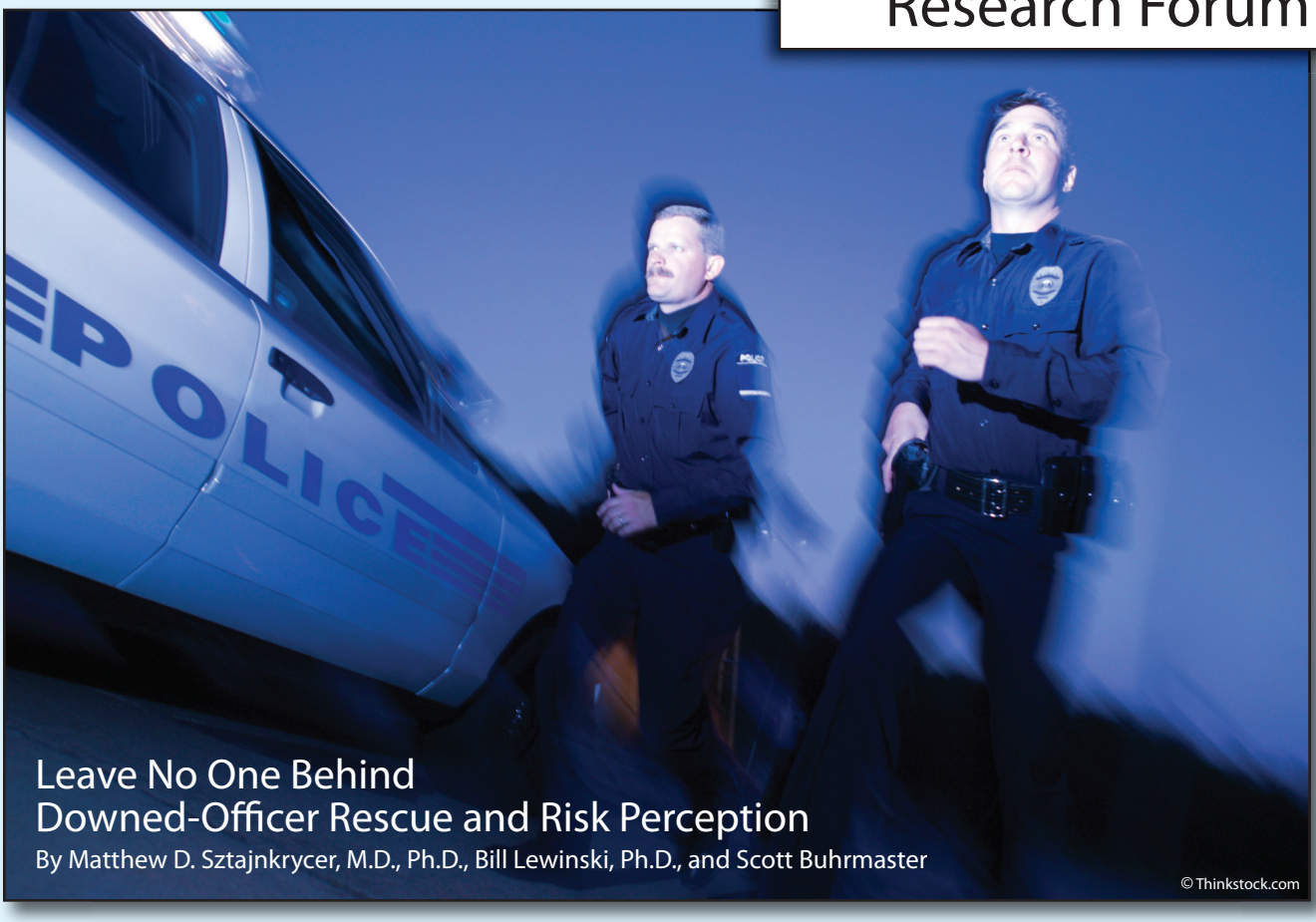

Leave No One Behind
Downed-Officer Rescue and Risk Perception

By Matthew D. Sztajnkrycer, M.D., Ph.D., Bill Lewinski, Ph.D., and Scott Buhrmaster

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Human decision making is classically described as a conscious, analytical process. In this context, the rescue of a downed officer reflects the fundamental conflict between the need to do what is perceived as right for the injured officer versus the risk such action creates. The reality is that such calculated reasoning frequently does not occur.

In a previous scenario-based observational study, despite specific education in downed-officer risk assessment, all participating officers proceeded into the kill zone to rescue a downed officer.[1] This occurred even when the injured officer had wounds incompatible with life. When subsequently questioned about their decisions, most of the officers could not provide an explanation for their actions. Based upon these observations, it appeared that under circumstances of simulated risk and perceived stress, these officers formed their decision-making strategies via a different process than an idealized conscious analysis.

To understand law enforcement officers' perceptions of risk and uncertainty in the context of downed-officer rescue, the authors surveyed 1,703 members of the law enforcement profession over a 1-month period (January 17-February 16, 2009). They present their findings to help improve officer education and training in the hope of minimizing the risk associated with these incidents, thereby saving the lives of those who willingly place themselves in harm's way.

STUDY OVERVIEW

Half of the respondents reported having participated in formal training on downed-officer rescue in the previous 5 years. Ninety-nine advised being

personally involved in a downed-officer rescue during the same time frame. The majority of those involved in a downed-officer rescue (44.4 percent) described their primary assignment as patrol. Only 9 identified their assignment as a full-time SWAT team member.

Limited by all of the factors present in survey-based research, including recall and selection bias, the study likely reflected partiality inherent in the selection process of law enforcement officers. After all, these individuals perform their duties despite an awareness of risk and danger, a quality sought in the hiring of sworn personnel. Selection for the character trait of a selfless willingness to place their lives on the line to help and protect others may explain the findings of the study. Not everyone is willing to accept these risks, and not everyone can be a police officer. However, the results of this study were geared toward implications for law enforcement, not the general public.

> "...the rescue of a downed officer reflects the fundamental conflict between the need to do what is perceived as right for the injured officer versus the risk such action creates."

In addition, the study tended toward the views of more senior officers, who may be removed from daily operations and street-level risk assessment. As noted by several survey respondents, many of the questions were deliberately vague and open to interpretation. While this was necessary to minimize potential bias of question phrasing on responses, it potentially detracted from the results.

KEY FINDINGS

Risk Acceptance

The study participants consistently viewed law enforcement as a high-risk profession. On a scale of 1 (least threatening) to 10 (most treacherous), the average respondent rated the risk of law enforcement as 7.9. This perception remained unchanged by an officer's number of years on the force or type of assignment. Respondents recognized and accepted that they could be injured or killed while performing their duties. The fact that officers—fully aware of the hazards—continue to perform their duties speaks volumes about the character of the members of the profession.

Any tactical decisions that involve an assessment of risk, such as a downed-officer rescue, must be made in the context of this baseline acceptance of danger. More than 96 percent of the respondents felt that it was acceptable or very acceptable to jeopardize their lives to help save another officer. Of course, by choosing the law enforcement profession, they already had committed themselves to operating under a baseline level of significantly elevated perceived peril. This willingness to place themselves in harm's way for their colleagues reflects a fundamental warrior ethos: leave no one behind.

Risk Preference

Traditionally, the major theory of decision making under risk has been the expected utility model.[2] Herein, gains and losses are viewed as absolutes, and rational decision making favors the choice that offers the highest profit. More recently, a modified version, prospect theory, has acquired enhanced acceptance.[3] In this model, outcomes are expressed in terms of relative increases and decreases from a neutral starting point. Deliberate, rational decision making still will favor the comparative greatest

return or smallest expense. However, some specific differences exist in the rational approaches to risk and uncertainty. The response to losses is more extreme than to similar gains; in other words, people dislike failure more than they like success. Decision making is context, or frame, dependent. In the setting of potential rewards, individuals tend to be risk averse, preferring a sure gain to a gamble. By contrast, in the setting of potential losses, they lean toward risk-taking behavior, preferring to chance a potential win over a certain defeat.

To assess risk preferences of the respondents to a downed-officer rescue, the survey included a scenario-based question framed as either a gain or a loss (see table 1). Depending on the version of the survey they received, respondents answered either question one, expressed as a gain (saving of officers), or question two, presented as a loss (death of officers). In each question, the overall number of surviving officers remained the same; the decision differed solely in terms of certainty versus gamble and, therefore, reflected risk preference. To keep

Table 1

Risk Preference Questions and Responses

Scenario: An explosive device detonates, injuring three officers as they respond to a reported man-with-gun call. They are lying on the ground, screaming, with shrapnel wounds to the lower extremities. There is quite a bit of blood. If they do not receive medical aid, all three officers will bleed to death. Which of the following do you feel is the best option?

Question One: 873 respondents replied to the version framed as a gain (saving of officers).

- A rescue attempt in which one officer will be saved: 269, or 30.8 percent, chose this response.
- A rescue attempt in which a one-third chance exists that all three officers will be saved and a two-thirds chance that no officer will be saved: 604, or 69.2 percent, selected this answer.

Question Two: 829 respondents responded to the version presented as a loss (death of officers).

- A rescue attempt in which two officers will die: 88, or 10.6 percent, agreed with this approach.
- A rescue attempt in which a one-third chance exists that nobody will die and two-thirds chance that all three officers will die: 741, or 89.4 percent, picked this course of action.

results comparable with previous studies of risk preference, neither option explicitly stated that the action could result in the death of a responder.[4]

Prospect theory would predict that in the setting of a potential gain, participants would be risk averse and favor the rescue attempt in which one officer would be saved over the all-or-nothing gamble by a margin of approximately 3 to 1.[5] However, the survey respondents chose the all-or-nothing approach nearly 2.5 times more often. Prospect theory would similarly forecast risk-taking behaviors for decisions framed in terms of losses. In question two, as in question one, only a single officer can survive. However, in contrast to question one, question two offered options relating to the deaths of officers (i.e., losses). As predicted by prospect theory, respondents took risks in this setting. In fact, they exhibited significantly more risk-taking behavior than previously published experimental controls.

> "This willingness to place themselves in harm's way for their colleagues reflects a fundamental warrior ethos: leave no one behind."

These findings proved consistent with results from the previous observational study.[6] In the setting of downed-officer rescue, the respondents violated decision-making rules as predicted by prospect theory. In contrast to the general population, the respondents were consistently risk permissive, and this risk preference was frame independent. As a consequence, regardless of whether the individuals were optimistic (gain) or pessimistic (loss) of a successful outcome, they still would have proceeded with a rescue attempt. These findings may be specific for downed-officer rescue or may reflect the general acceptance of danger required to be a law enforcement officer. The net result, however, revealed that the respondents would willingly take risks to save their colleagues regardless of eventual outcome.

Heuristic Techniques

While a conscious, rational process reflects the traditional view of risk assessment,[7] recent studies have demonstrated that the decision-making process of the brain is frequently illogical. A dual-process model involving two systems of thought and information processing best describes the current understanding of decision making.[8] The first, the experiential system, is characterized by intuitive, rapid, and frequently automatic information processing. The second, the traditional analytical rational system, is deliberate and methodical but slow.

When making critical decisions under time pressure, individuals do not have the luxury of a slow, reasoned judgment. They must make decisions swiftly, or catastrophic outcomes may occur. To quickly process available information and generate a response, the mind relies preferentially upon system one, which can generate rapid decisions, in part, by unconsciously simplifying complex problems into feasible judgments through the use of shortcuts, or heuristics.[9] These provide the brain with imperfect but generally efficient rules of thumb for expeditious problem solving. Identified rules include the representative, availability, anchoring, and affect heuristics.[10]

The affect heuristic has become known as the good-bad rule.[11] Simplistically, emotions (affect) felt toward the problem influence the decision-making process in an unconscious manner. This contrasts with the traditional view of the emotionally sterile, conscious process of rational thought. In applying the affect heuristic, people view good and bad as mutually exclusive categories. In other words, something seen as positive by the decision maker cannot have negative consequences.

Similarly, the prevention or correction of something harmful is desirable.

This heuristic may have significant implications for the decision-making process in downed-officer rescue. The vast majority of respondents (99.1 percent) regarded saving a life as good or very good. Nearly all (99.4 percent) described their personal feelings toward rescuing a downed officer as either good or very good. In the context of the affect heuristic, any potential negative consequences of actions perceived as positive were minimized. This finding may help explain why officers would attempt a rescue even when logic might dictate otherwise.

The respondents considered bleeding and trouble breathing as negative conditions, whereas they perceived the prevention of both as a positive action. In the context of the affect heuristic and the strong positive feelings identified with saving the life of a downed officer, the presence of bleeding or trouble breathing and the desire to intervene to fix both or either would be expected to drive officers toward a rescue attempt. The sight of blood produces extremely visceral negative emotions reflecting primitive fear circuits.[12] Although logic would argue that a large-caliber gunshot wound with exposed brain matter would prove incompatible with life, the sight of blood may unconsciously override logical decision-making processes.

Psychological Benefits

Officers who reported participating in an actual downed-officer rescue were significantly more likely to rate the experience as positive compared with those who reported seeing such an incident portrayed in the media. This simply may reflect a dislike of incidents concerning downed officers depicted for entertainment purposes. Alternatively, it may indicate that active involvement in the rescue provides some measure of comfort and speeds the healing process. Some have argued that given the risks of their profession, officers could not perform their duties without the knowledge that should they require aid, their colleagues would respond without hesitation to extract them from danger. Thus, the performance of a downed-officer rescue may be altruistic and, at the same time, meet a personal need by confirming that the expected response will indeed occur.

Law Enforcement Implications

The results of this research were not surprising and essentially confirmed the findings noted in the earlier observational study.[13] However, they revealed some important insights into the decision-making process in downed-officer rescue. Most important, the respondents did not demonstrate classic framing dependency of rational risk assessment. Based upon this finding, the vast majority of respondents would proceed with a rescue regardless of anticipated outcome.

The tragedy at Columbine led to a new paradigm in the response to the active shooter, completely reversing previous tactics, techniques, and procedures of containment. In a similar manner, new strategies and approaches to downed-officer rescue must be developed, disseminated, and incorporated into police training. Only half of the respondents reported participating in any formal training in a downed-officer rescue in the past 5 years. Although not specifically asked, it would be interesting to know how many respondents had participated in active-shooter training during the same time period. Instruction in downed-officer

rescue must begin at the police academy or its equivalent. Two percent of respondents reported having been involved in downed-officer rescues despite being on the force less than 1 year, yet only 22 percent of respondents with less than 1 year of law enforcement experience reported any formal training in downed-officer rescue.

Analogous to the introduction of the tactical patrol rifle, specialized equipment must be made available for immediate response in downed-officer rescue. This may include ballistic shields or blankets, drag straps and handles, and appropriate tactical medical supplies. Unfortunately, this equipment and the necessary training can have heavy costs associated with them. However, in much the same way that it would be unthinkable in this country to send an officer into the field without a weapon, deploying officers without providing the means for effecting their rescue seems unconscionable.

Most important, this training and equipment cannot solely be limited to specialized tactical units. In this study, the majority of officers involved in actual downed-officer rescues (44.4 percent) were assigned to the patrol division. No-notice deployments, such as active-shooter incidents and downed-officer rescues, must be viewed and trained for as a patrol-level function if lives are to be saved.

> "...the respondents would willingly take risks to save their colleagues regardless of eventual outcome."

CONCLUSION

Members of the law enforcement profession openly acknowledge the dangers inherent in the performance of their sworn duties. As with soldiers on the battlefield, they have come to expect that should they find themselves in life-threatening circumstances, their fellow officers will respond with maximum effort to rescue them.

The authors' recent research has shown that officers will risk their lives for their colleagues regardless of the potential outcome. With this in mind, these valiant warriors deserve the best training and equipment available to enhance their attempts to rescue a fellow downed officer. The most innovative tactics, superior weaponry, and protective clothing cannot completely safeguard those charged with enforcing this nation's laws. They also must posses the knowledge that their fellow officers will be able to successfully rescue them without unduly risking their own lives. Referring to the debt the British people owed members of the Royal Air Force during the Battle of Britain, Prime Minister Winston Churchill said, "Never in the field of human conflict was so much owed by so many to so few." Today, his words hold true for all law enforcement officers who willingly place themselves in harm's way to protect their communities and their fellow officers. ✦

Endnotes

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The authors thank all of the individuals who took the time to participate in their study and dedicate this work to Officers Paul Sciullo, Stephen Mayhle, and Eric Kelly of the Pittsburgh, Pennsylvania, Police Department; to Sergeants Mark Dunakin, Daniel Sakai, and Ervin Romans and Officer John Hege of the Oakland, California, Police Department; and to all officers who willingly place their lives at risk on a daily basis to protect and serve their communities.

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Dr. Lewinski is the executive director of the Force Science Institute in Mankato, Minnesota.

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Wanted: Photographs

The *Bulletin* staff is always looking for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

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Interviewing Compliant Adolescent Victims

By CATHERINE S. CONNELL, M.S.W.,
and MARTHA J. FINNEGAN, M.S.W.

Many child and adolescent victims of exploitation require interviews significantly different from the ones investigators typically have training and expertise in. Special dynamics surround these situations, and, accordingly, the forensic interviewing of children and adolescents has become a specialized field.[1]

More specifically, law enforcement personnel sometimes find adolescent crime victims who—in various degrees and for different reasons—comply with the perpetrators. While investigators may encounter such juveniles in many types of cases, the authors have chosen to focus on computer-facilitated crimes. Interviewers must understand the development and complexity of these teenagers, as well as the dynamics involved in the relationship between victim and offender.

Victims and Perpetrators

Although they may look and talk like adults, teenagers are at a significant and definitive stage of development. While attempting to reach maturity and independence, they remain

immature and dependent. During this time, adolescents' social, emotional, and sexual development and behaviors, such as vulnerability to flattery and attraction to recklessness,[2] can put them at risk for victimization.

In adolescence, the part of the brain responsible for reasoning, inhibiting impulses, controlling emotions, and determining right from wrong has not completely formed.[3] As a result, teenagers tend to be impulsive, use poor judgment, and lack decision-making ability. They also do not always recognize the potential consequences of their choices. Often, they take risks and break rules as they consider themselves invincible.[4] However, they blame themselves for any negative outcomes that ensue.[5]

Also significant, sexual curiosity coincides with the physical changes that occur. Chat rooms and other online methods of communication now offer a resource, although not always accurate, for teens who want to learn or resolve confusion about their sexuality. Perhaps, they have questions pertaining to their sexual orientation and feel they have no family members or friends with whom to relate. Some teenagers seek out an adult online to experiment sexually with. In fact, most adolescents who meet an adult online acquaintance in person know it is for sexual purposes.[6]

Adolescents easily fall prey to the grooming process of online predators who appeal to their need to be "special" and "mature." Teens often know the significant age difference of the person they chat with and, perhaps, send pictures to, but this does not change their behavior. For instance, an adolescent girl may engage in a relationship with a 40-year-old man she met online and not consider it problematic. She may enjoy receiving expensive gifts that a male her age could not provide. Further, in spite of the risks involved, this teen may rather communicate with someone who makes her feel grown-up than with her peer group members who may not have matured yet themselves. While other adults would consider this man a criminal, the girl may view him as her boyfriend.

Rarely do these adults use threats or deception to lure their teenage victims.[7] Online perpetrators groom adolescents in a way that tends to gain complicity. Victims may cooperate in certain acts, but not in others. Some teens might go along reluctantly with sexual contact to receive material benefits from the adult, while others may actively participate in what they consider a relationship.[8]

Investigators and Interviews

Investigators must treat these incidents as crimes despite victims' complicity with the

Ms. Connell, a licensed social worker, is a child/adolescent forensic interview specialist in the FBI's Macomb County, Michigan, resident agency.

Ms. Finnegan, a licensed social worker, is a child/adolescent forensic interview specialist at FBI Headquarters.

perpetrator. However, they will find that conducting an investigation and interviewing these adolescents pose challenges when the victims do not see themselves as such. Complications and problems may arise if interviewers do not understand and acknowledge the dynamics of or recognize compliant victimization.[9] Further, investigators must avoid turning the victim interview into an interrogation, which could pose problems for both the juvenile and the investigation.

Interviews of compliant teenagers in computer-related cases differ from other child/adolescent interviews for several reasons: investigators usually uncover evidence of victimization during the investigation leading to the interview; the lack of disclosure prior to the interview tends to result in a greater rate of denial, even despite available evidence; and interviewers usually have media evidence, such as child pornography images and chat logs, to present to the adolescent during questioning. Forensic interviews with compliant teenage victims often require the verbal or tangible presentation of evidence to increase the chance of disclosure.

Investigators should carefully consider where to conduct the interview. Inaccurate statements may result from choosing an inappropriate setting. Interviewers should use a neutral location, such as a child advocacy center, unless it proves inappropriate, is not available, or does not allow for the presentation of evidence or interviewing of adolescents who have not made disclosures. A soft interview room at a local police department can serve as another option.

"Investigators…will find that conducting an investigation and interviewing these adolescents pose challenges when the victims do not see themselves as such."

The interviewer's approach can influence the accuracy of the adolescent's statements. Such tactics as trying to convince compliant teens that they are victims, telling them that their relationship with a perpetrator differs from how they perceive it, passing judgment, or conveying parental advice, while interviewing them could affect the disclosure process.

For instance, investigators may think it necessary to explain the dangers of the Internet and to offer safety tips. Although such education can prove valuable, the forensic interview is not the appropriate time for it. Teens may perceive this as blame. Instead, investigators must keep an open mind and allow victims to explain what occurred. If not, adolescents may provide inaccurate responses by, for instance, exaggerating violence or minimizing or denying complicit involvement, depending on their perception of what the investigator wants to hear.[10]

As another example, interviewers may approach compliant victims, such as those who willingly traveled with their online acquaintances, by saying, "What happened to you was a bad thing" or "Your parents have been so worried." In response, the teens might acquiesce to what they think an interviewer wants to hear to avoid trouble with their parents.

Many of these victims became compliant because of the perpetrator's skill in making them see the relationship as a real one based on love, not fantasy. These adolescents truly believe that the perpetrator cares about them. During interviews, these teens may become angry and defiant and not provide information about the person they "love." They may give outright denials even when presented

with evidence to the contrary,[11] which can cause frustration for victims and investigators.

By staying focused on the teen as a victim, the forensic interviewer avoids inflicting additional trauma, inhibiting disclosure, and instilling in the adolescent a fear of not being believed. Further, defending the interview in court becomes easier if it does not cross the line into an interrogation. However, interviewers still can confront victims in a developmentally appropriate way. For example, if the adolescent states that no sexual contact with the perpetrator occurred, yet the chat logs have clearly stated it has, the investigator can say to the teen, "I'm confused. You said Joe never touched your body, but in these chat logs you and Joe talk about having sex. Tell me about that." In this example, the interviewer confronts the adolescent without turning the interview into an interrogation by accusing the victim of lying.

Also, investigators must understand that sexual exploitation victims may have participated in criminal activity (e.g., using drugs or transmitting sexual images of themselves) as part of their victimization and anticipate factors, such as shame, guilt, embarrassment, and even thoughts of suicide, before conducting the interview. For example, two 13 year olds involved with the same perpetrator revealed during a forensic interview that one had physical contact with the perpetrator while the other only interacted with the subject via computer. However, both indicated that they had thought of or attempted suicide due to embarrassment.

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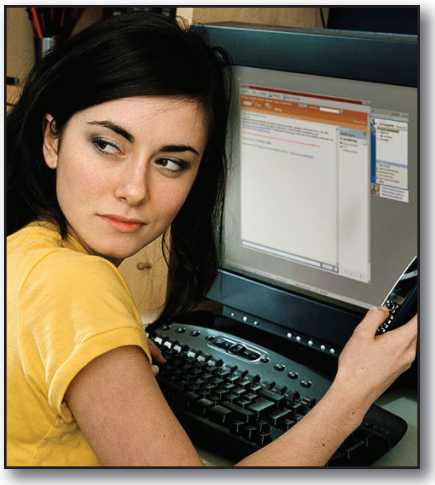

Conclusion

The process of investigating and interviewing child and teen victims has changed over the past several years. Forensic interviewing protocols and guidelines have developed based on research and in response to several court cases overturned on the basis of poor interviewing. Investigators must conduct forensic interviews in a developmentally sensitive, unbiased manner that will support decisions made in the criminal justice and child welfare systems.[12] They should test, rather than confirm, hypotheses.[13] If investigators interview compliant adolescent victims, they must follow guidelines established for the appropriate state, county, or agency. To avoid possible negative consequences, interviewers should receive training in forensic interviewing and use a trained forensic interviewer, multidisciplinary teams, or such resources as child advocacy centers. Investigators must understand that they cannot approach teenagers like adults and that doing so could adversely impact any statements they hope to obtain from the interview.

While services exist to accommodate younger, actively disclosing children, they are not always conducive to teenagers. Certain mental-health issues need to be addressed postinterview so appropriate services can be offered to the victims and their families. Interviewers should learn about state and federal statutes regarding victim's rights and child protection issues. And, they must provide a defensible forensic interview for the adolescent victim. ✦

Endnotes

[1] Forensic interviews are designed to obtain statements from children in a developmentally sensitive, unbiased, and legally defensible manner that will support accurate and fair decision making in the criminal justice and child welfare systems.

There are two overriding features of a forensic interview: they are hypothesis testing, rather than hypothesis confirming, and child centered. Interviewers try to rule out alternative explanations for the allegations, and they go through a series of phases, letting the child dictate the vocabulary and content of the conversation as much as possible. See State of Michigan, Governor's Task Force on Children's Justice and Department of Human Services, *Forensic Interviewing Protocol*; and M.E. Lamb and D.A. Poole, *Investigative Interviews of Children: A Guide for Helping Professionals* (Washington, DC: American Psychological Association, 1998).

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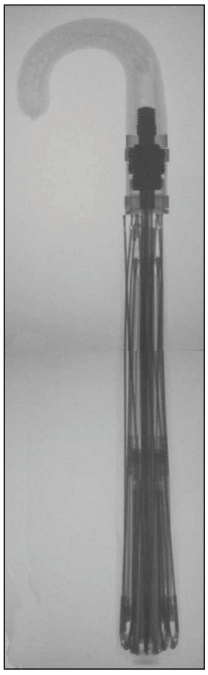
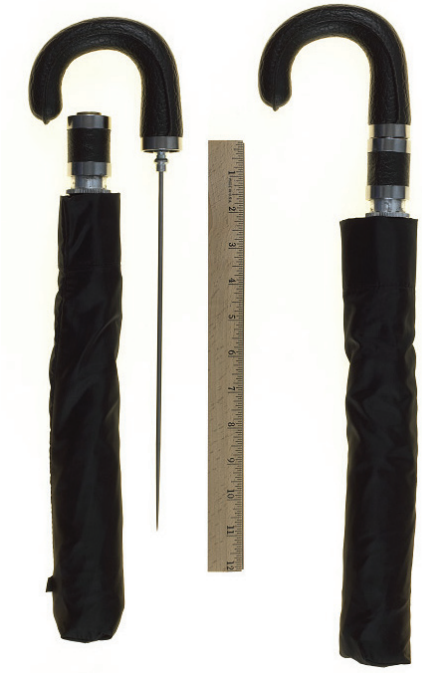
[13] Ibid.

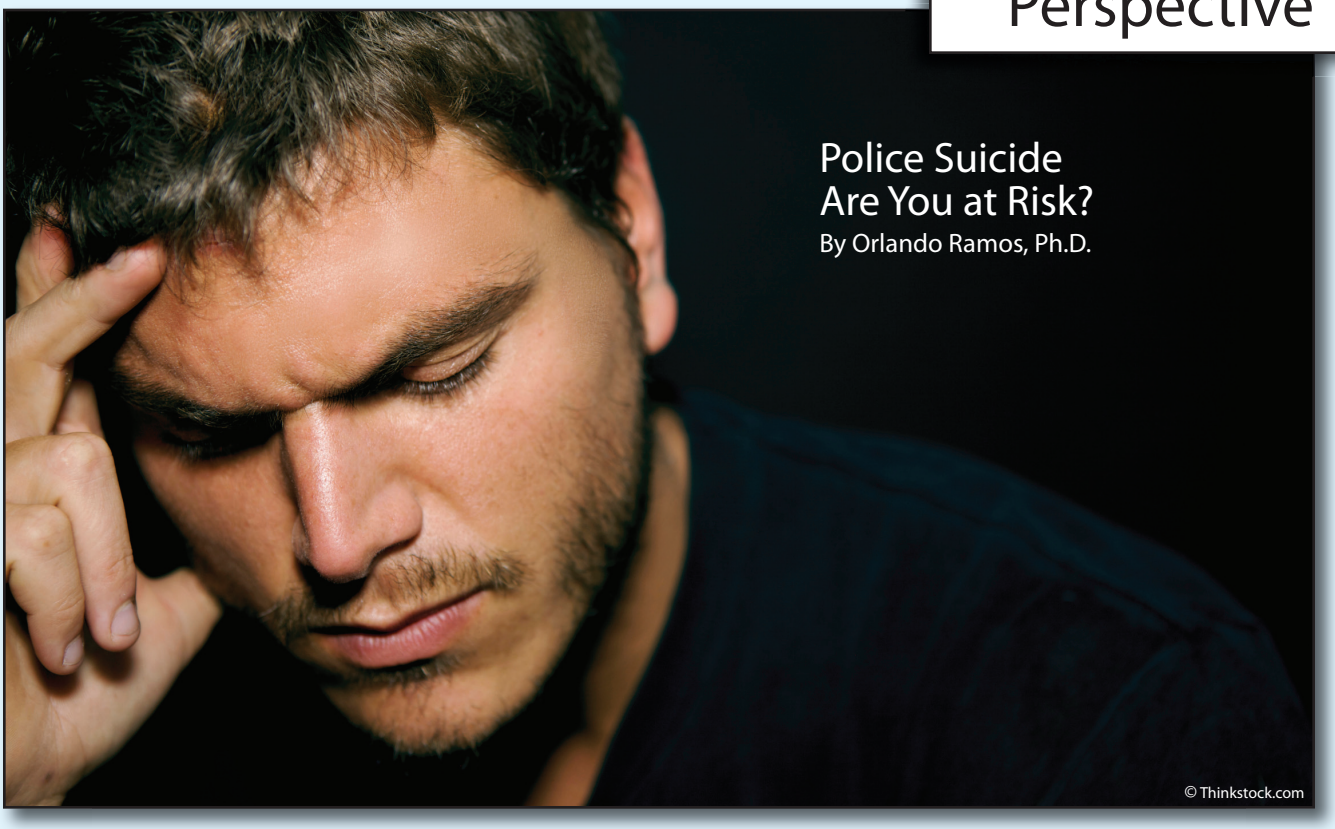
Unusual Weapon

Sword Umbrella

Law enforcement officers should be aware that offenders may attempt to use this sword umbrella. It looks like a normal folding umbrella, but the handle pulls free to expose a 10-inch steel spike.







Police Suicide Are You at Risk?

By Orlando Ramos, Ph.D.

Those of us in the profession have many reasons for choosing a career in law enforcement. We want to help others and make a difference. We care about people and often feel that it is a calling we are compelled to answer. Soon, however, we realize that it takes a special person with a heart for service to respond to the problems of society on a daily basis.

During academy training, we discovered a common theme that quickly emerged: the importance of officer survival. As impressionable new officers, we were inculcated into a quasi-military environment and taught to take control. In every situation, we must take control of the scene, the suspects, and—most of all—our emotions.

The nature of police work is inherently negative. Citizens do not call us when things are good. They call us when things go bad. Over the course of an officer's career, memories of the profession often are filled with many negative thoughts and few positive ones. The bulk of service calls are

Dr. Ramos is a New Jersey State Police trooper assigned to the Peer Advocate Services Unit and a member of the State Critical Incident Response Team and the National Police Suicide Foundation.

geared toward taking care of others. However, who is taking care of us?

Tragically, too many times suicide becomes the way officers deal with the horrors they have witnessed in the daily performance of their duties, along with internal stressors from their departments and external problems in their personal lives.[1] Relationship problems, coupled with alcohol abuse and the accessibility of a firearm, create a recipe for disaster among troubled officers who may view suicide as the only way out. They are in so much pain that they cannot see any other option. Officers often do not seek assistance because of concerns about confidentiality, changes in duty status, perceptions of weakness, and possible issues with future promotions.

> "Tragically, too many times suicide becomes the way officers deal with the horrors they have witnessed in the daily performance of their duties...."

What Are Some Causes?

First, identifying solely with our professional role can increase our risk for committing suicide. If we are not careful, our career can dominate other areas of our lives. The tactics and communications skills learned on the job are effective when dealing with suspects. However, problems occur when we take these home and use them with our significant others, family members, and children.

In addition, the profession can be lonely at times. Often, we feel that only other officers can relate to what we are experiencing because they have been there before. This can lead to cynicism and a lack of trust in others. Initially, we may begin to depend exclusively on other officers and then limit these to ones in our own department. Over time, that circle can become even smaller and include only a select few of our colleagues. This dangerous cycle can easily lead to social and professional isolation.

Third, when we spend every day seeing the negatives that society has to offer, it can be difficult to find the positives. We begin to view life as one problem after another. Because we become consummate problem solvers, we try to take control by figuring out all difficult situations quickly and effectively, including those that may arise in our personal lives.

Finally, stress in the police profession is unique because it is constant. The type of stress simply varies in degree and duration. The role of a police officer in itself is stressful because we are never off duty. Operating in an environment where we are frequently exposed to high levels of frustration and danger leads to physical, emotional, and psychological wear.

Stress in law enforcement also is kaleidoscopic in nature. It may come from many directions: our administration, the type of calls we handle, the media attention, the court system, and our personal lives. If not managed properly, stress can cause us to become prone to depression, alcoholism, anxiety disorders, and burnout that, in turn, may increase our risk for committing suicide.[3]

What Can Be Done?

Training is critical in addressing the problem of police suicide. Law enforcement personnel and their families need to be educated about the risk factors and warning signs of police suicide. Family members should receive this information because they may be the first to see changes in an officer's mood or behavior. Such training also should include information about making the transition from workplace to home life smoother for officers.

At work, officers must remain cognizant of their individual tolerance for stress. Supervisors and peers need to respond to any deterioration in an officer's appearance, performance, or

attendance, as well as an increase in citizen complaints. Agencies should encourage their officers to seek confidential assistance from personal physicians, employee assistance programs, peer support teams, and crisis intervention counselors.

Conclusion

The law enforcement profession must convey to its members that suicide is a permanent reaction to a temporary situation. If officers were suffering from a physical condition, they would seek professional medical attention. What is the difference when an emotional one exists? Trained professionals can help prevent officers from committing suicide.

We are taught officer survival skills while on duty but seldom receive guidance on how to handle what we experience at work when we take off the uniform and go home. Training on how to make the role transition from police officer to civilian life should be required. Officer survival should not be just a day-to-day on-duty event. Instead, our goal should be to survive throughout our careers, making a commitment to living a full life well into retirement.

As law enforcement professionals, we have sworn to protect and serve our communities. We also must begin to protect and serve our fellow officers and ourselves if we are to reduce the tragic toll of officers who commit suicide. Training on the dangers of suicide and identifying resources available may help reduce the stigma of seeking professional assistance. As officers, we must begin to take an active role in helping all members of our profession understand the paramount importance of preventing police suicides. ✦

Endnotes

[1] Orlando Ramos, *A Leadership Perspective for Understanding Police Suicide: An Analysis Based on the Suicide Attitude Questionnaire* (Dissertation.com, January 15, 2008). The author presented this research at the second annual Beyond Survival: Wellness Practices for Wounded Warriors conference hosted by the FBI Academy's Behavioral Science Unit. For additional information, see the May 2009 issue of the *FBI Law Enforcement Bulletin* at *http://www.fbi.gov/publications/leb/leb.htm*.

[2] Access the National Police Suicide Foundation at *http://www.psf.org* for more information, including specialized training in police suicide prevention.

[3] For additional information, see Inez Tuck, "On the Edge: Integrating Spirituality into Law Enforcement," *FBI Law Enforcement Bulletin*, May 2009, 14-21.

The Oliva family granted permission to use this photograph.

The suicide death of a close friend and coworker, Trooper John Oliva, motivated the author to research this sensitive topic. He ultimately completed his doctoral dissertation on the subject and dedicated it to his friend's memory. He has committed himself to educating members of the law enforcement profession on the dangers of police suicide. The views expressed in this article are his own and not those of either the New Jersey State Police or the New Jersey Department of Law and Public Safety.

Readers interested in discussing this issue further may contact Dr. Ramos at ORUSMC@aol.com.

Bulletin Reports

Methamphetamine Abuse

Combating Methamphetamine Abuse, a new fact sheet from the Bureau of Justice Assistance (BJA), describes resources available to communities to address meth abuse, including prevention and education programs. It also discusses support for enforcement efforts, such as investigative strategies and state and local drug task forces.

Some key points of the fact sheet reveal that the number of methamphetamine laboratory seizures in the United States decreased each year from 2004 through 2007; however, preliminary 2008 data and reporting indicate that domestic methamphetamine production is increasing in some areas of the country. Methamphetamine addiction is treatable, and problem-solving initiatives, such as drug courts and innovative reentry programs, can help communities stop the cycle of abuse. Resources and information must be made available to protect the most vulnerable victims of meth abuse—children. A new resource makes information available to communities, parents, and teens through a partnership between first responders and prevention professionals. The most effective strategies to fight methamphetamine abuse are comprehensive and collaborative ones—those that include prevention, education, treatment, and enforcement. BJA offers strategies and programs to assist states and local and tribal communities in developing comprehensive approaches to combat meth abuse. Access the National Criminal Justice Reference Service's Web site at *http://www.ncjrs.gov* for a copy of the fact sheet (FS 000318).

Electronic Crime Scenes

The National Institute of Justice has produced *Electronic Crime Scene Investigation: An At-the-Scene Reference for First Responders*. The publication is a quick reference for first responders who may be responsible for identifying, preserving, collecting, and securing evidence at an electronic crime scene. It describes different types of electronic devices and the potential evidence they may hold and provides an overview of how to secure, evaluate, and document the scene. It includes an overview of how to collect, package, and transport digital evidence and lists potential sources of digital evidence for 14 crime categories. The complete document (NCJ 227050) is available at the National Criminal Justice Reference Service's Web site, *http://www.ncjrs.gov*.

Body Armor

The Body Armor National Survey: Protecting the Nation's Law Enforcement Officers, Phase Two Final Report was produced by the Police Executive Research Forum (PERF) and the U.S. Department of Justice, Bureau of Justice Assistance (BJA). The purpose of this study was to add to the understanding of body armor policies and practices among law enforcement agencies across the nation. This BJA survey was the second phase of a large-scale project regarding body armor and officer safety. Phase One focused on the use of Zylon-based body armor by the 100 largest law enforcement agencies in the United States. This second study, Phase Two, collected additional data on the use of body armor from a large, nationally representative sample of law enforcement agencies. Data were collected on policies regarding the wearing of body armor, whether officers were provided with armor or had to purchase it themselves, the types of body armor used, fitting and maintenance of armor, and data on outcomes of use and officer safety.

Highlights of the findings included—

- almost all law enforcement agencies (99.4 percent) nationwide reported that their officers wear body armor when on duty;
- while not a requirement of many law enforcement agencies (41 percent do not require their officers to wear body armor), almost all agencies do provide fiscal support/resources to ensure their officers wear body armor; and
- there was an overall move by agencies toward promoting the wearing of body armor and providing the necessary resources to do so.

These findings of agencies' policies indicate that officers were more likely to be wearing body armor while assaulted in the line of duty and the number of officer deaths was lower than it otherwise would be. On the other hand, while most agencies did encourage the wearing of body armor, most did not have stringent fit and maintenance policies and did not conduct inspections of armor to ensure proper fit and maintenance. The complete study (NCJ 229250) can be found at the National Criminal Justice Reference Service's Web site, *http://www.ncjrs.gov*.

Legal Digest

Miranda Update

Fifth Amendment Protection and Break in Custody

By KENNETH A. MYERS, J.D.

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Because of the great value a statement obtained from a defendant has in a criminal prosecution, the government will invariably face a challenge to its admissibility. The most recognized challenge, to both law enforcement and the public at large, is an alleged violation of the Fifth Amendment protection adopted by the U.S. Supreme Court in *Miranda v. Arizona*.[1] While this challenge is well-known and over four decades old, its precise contours still are being established. Over the years, the Supreme Court has decided cases in which it reexamined the applicability and scope of *Miranda*. Now is one of those times. The purpose of this article is to discuss the recent decision of *Maryland v. Shatzer*,[2] where the Supreme Court ruled upon the legal significance and definition of a break in custody in terms of the Fifth Amendment privilege against compelled self-incrimination (*Miranda*). Law enforcement officers must have an understanding of this decision and its holding given its impact on their ability to engage in interrogation during various stages of a criminal investigation.

Prior Relevant Case Law

To best understand the significance of *Maryland v. Shatzer*, it is important to provide a brief overview of previous Fifth Amendment case law. In *Miranda v. Arizona*,[3] the Supreme Court created a set of measures to protect a defendant's Fifth Amendment

privilege against compelled self-incrimination by requiring law enforcement officers to provide certain warnings and obtain a waiver from a defendant prior to custodial interrogation.[4] The rationale behind the *Miranda* rule is to protect a defendant from the "inherently compelling pressures"[5] and the "police-dominated atmosphere"[6] of custodial interrogation. In *Miranda*, the Court created two basic prophylactic measures to protect a defendant's Fifth Amendment rights: the right to silence and the right to counsel.[7] When law enforcement provides the warnings required by *Miranda*, a defendant may relinquish these rights through a knowing, intelligent, and voluntary waiver or may invoke one or both of the rights.[8]

In subsequent cases, the Supreme Court has ruled that once a defendant invokes the Fifth Amendment right to counsel,[9] any current interrogation must cease and the defendant may not be subjected to further police-initiated custodial interrogation unless counsel is present.[10] This second layer of protection, often referred to as the *Edwards*[11] rule, creates a presumption that once a suspect invokes the Fifth Amendment right to counsel, any waiver of that right in response to a subsequent police-initiated attempt at custodial interrogation is involuntary.[12] The rationale behind the *Edwards* rule is that after the invocation of the right to counsel, "any subsequent waiver that has come at the authorities' behest, and not at the suspect's own instigation, is itself the product of the 'inherently compelling pressures' and not the purely voluntary choice of the suspect."[13]

It also must be remembered that this two-layered Fifth Amendment protection in *Miranda* and *Edwards* is not crime specific. Once a defendant invokes the Fifth Amendment right to counsel for one offense, the defendant may not be subjected to police-initiated interrogation regarding any offense while remaining in custody unless counsel is present.[14]

To date, lower courts uniformly have held that the *Edwards* protection ends with a break in custody.[15] While not specifically ruling on the issue, the Supreme Court in *McNeil v. Wisconsin*[16] used language (in dicta) indicating that the *Edwards* protection applies "assuming there is no break in custody."[17] In *Maryland v. Shatzer*,[18] the Supreme Court expressly ruled on this issue. In addition, in this case, the Court also addressed the impact of incarceration following a conviction—as opposed to pretrial custody—on the break-in-custody analysis. In other words, the Court decided whether a defendant who is serving time in a prison setting is deemed in continuous custody as some lower courts have ruled.[19]

> "...the Court decided [in Maryland v. Shatzer] whether a defendant who is serving time in a prison setting is deemed in continuous custody as some lower courts have ruled."

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Case Circumstances

Michael Shatzer, Sr., was incarcerated at a Maryland correctional facility while serving a sentence for a child-sexual-abuse offense. In August 2003, a police detective attempted to interview Shatzer at the correctional facility on allegations

that he had sexually abused his 3-year-old son (a charge unrelated to the crime for which he was incarcerated). The detective advised Shatzer of his rights and Shatzer, apparently thinking that the detective was an attorney who was there to discuss the crimes for which he was incarcerated, initially waived his rights. After learning of the true purpose of the interview, Shatzer declined to be interviewed without an attorney. Accordingly, the detective ended the attempted interview and returned Shatzer to the general prison population.

In March 2006 (approximately 2 1/2 years later and after developing new evidence against Shatzer), a different police detective from the same department and a social worker went to a second Maryland correctional facility (where Shatzer had been transferred) to interview Shatzer about the sexual abuse of Shatzer's son. This time, Shatzer waived his rights in writing. During subsequent interviews and a polygraph examination, he made various incriminating statements. At the end of the last interrogation, Shatzer requested an attorney and the interrogation ended.[20]

Lower Court Proceedings

After being charged with various child-sexual-abuse offenses, Shatzer moved to suppress the statements made in March 2006, on the grounds that they violated the *Edwards* rule. The trial court denied the motion, reasoning that Shatzer had experienced a break in custody for *Miranda* purposes between the 2003 and 2006 interrogations.[21] Shatzer was found guilty following a bench trial.[22]

> "...the Court distinguished incarceration from interrogative custody associated with Miranda."

The Court of Appeals of Maryland reversed and remanded the trial court's decision. The court of appeals held that the passage of time alone did not end the protection afforded by *Edwards* and that even if the *Edwards* protection ends with a break in custody, Shatzer's release back to the general prison population did not constitute a break in custody.[23]

Supreme Court Opinion

The Supreme Court granted certiorari and anounced its decision in February to resolve the uncertainty that existed with respect to the definition and impact of a break in custody in the *Miranda-Edwards* analysis.[24] The Supreme Court did not accept the premise that the *Edwards* protection automatically terminates with a break in custody. Instead, the Court held that this protection prohibiting law enforcement from attempting to interview a subject who has previously invoked his *Miranda* right to counsel continues for 14 days from the period of release from custody.[25] According to the majority, 14 days gives "plenty of time for the suspect to get reacclimated to his normal life, consult with friends and counsel, and shake off any residual coercive effects of prior custody."[26] After this 2-week period, the *Edwards* protection no longer applies.

In deciding how long to extend the *Edwards* rule, the Court did a cost-benefits analysis.[27] In starting with the benefits of the rule, the Court reasoned that the *Edwards* rule helps conserve judicial resources, "which would otherwise be expended in making difficult determinations of voluntariness."[28] However, the main purpose of the *Edwards* rule is to preserve the "integrity of an accused's choice to communicate to police only through counsel"[29] by "preventing police from badgering a defendant into waiving his previously asserted *Miranda* rights."[30] Accordingly, the Court reasoned that the "benefits of the rule are

measured by the number of coerced confessions it suppresses that otherwise would have been admitted."[31]

The Court found it easy to see the possibility of police badgering of a defendant who previously invoked the right to counsel and remained in uninterrupted pretrial custody, reasoning that the defendant remains in an "unfamiliar," "police-dominated atmosphere."[32] However, once a defendant is released from custody, the defendant is no longer isolated; can meet with family, friends, and counsel; and is less likely to be coerced by police into waiving his or her rights.[33] Accordingly, with a break in custody there are fewer benefits for extending the *Edwards* rule. Additionally, there are increased costs in the exclusion of otherwise voluntary statements and the deterrence effect on law enforcement for even attempting to obtain such confessions.[34]

As a result of this cost-benefits analysis, the Court concluded that the "only logical endpoint of *Edwards* disability is termination of *Miranda* custody and any of its lingering effects."[35] The Court was not inclined to make the *Edwards* rule eternal because the rule is broad enough to cover different crimes,[36] interrogations by different departments,[37] and attempted interrogations after the defendant has met with an attorney.[38] Moreover, if the *Edwards* protection expires, a defendant still may be protected by the provisions of *Miranda*, assuming it is a custodial interrogation situation.[39]

The Court declared its desire to create a clear rule for law enforcement as to when renewed interrogation is lawful and decided that the appropriate time period is after 14 days from release of custody.[40] The 14-day rule gives the defendant a chance to "shake off any residual coercive effects of his prior custody"[41] and seek any desired guidance from friends, family, and counsel. Any statements obtained by police after this 14-day period are unlikely to be compelled.[42] Furthermore, the courts will have an easy time in deciding if the subsequent confession was obtained outside this 14-day window.[43] Why the Court chose 14 days as the cutoff point for the termination of *Edwards* protection is unclear, other than its apparent view that it takes that long to eliminate the coercive effect of custody.[44]

Break in Custody?

After announcing the 14-day rule, the Court had to decide whether there was a break in custody for *Miranda* purposes when police terminated the initial interrogation of Shatzer and released him back to the general prison population. Prior to this case, the Court had not ruled on whether incarceration constitutes custody for *Miranda* purposes.[45]

To answer this question, the Court emphasized that it depends on whether incarceration "exerts the coercive pressure that *Miranda* was designed to guard against—the 'danger of coercion [that] results from the *interaction* of custody and official interrogation.'"[46] The Court distinguished between pretrial detention, where coercive pressures are present, and posttrial incarceration. For example, the defendant may be focused on the impact that cooperation with law enforcement may have on a pending prosecution as opposed to posttrial incarceration. The Court explained that to define custody for *Miranda* purposes, officers must go beyond the traditional freedom-of-movement test and examine whether the situation is one where the

coercive pressures identified in *Miranda* exist.[47] The Court recognized that there often are harsh conditions associated with incarceration but that these conditions are the result of the prison sentence and not due to coercive pressure of law enforcement as a result of the defendant's "unwillingness to cooperate in an investigation."[48] Moreover, once convicted and sentenced, a defendant lives in prison, gets accustomed to the surroundings and daily routine, and regains some degree of control over his or her life, including the ability to interact with other inmates, guards, workers, visitors, and have mail or telephonic contact with the outside world.[49] In summary, the Court distinguished incarceration from interrogative custody associated with *Miranda*.[50]

Based on the above, the Court found that there was a break in custody following the initial interrogation, when the detective terminated the attempted interrogation and Shatzer was returned to the general prison population.[51] Because the break in custody was over 14 days (approximately 2½ years in this situation), *Edwards* does not require suppression of Shatzer's statements. Therefore, the Supreme Court reversed the decision of the Court of Appeals of Maryland and remanded the case for further proceedings.[52]

Conclusion

The principles from this decision are significant in traditional Fifth Amendment analysis and both answer and raise questions of vital importance to law enforcement. On the one hand, the Court has announced a bright-line 14-day break-in-custody rule that is helpful to law enforcement in assessing whether further attempts to interrogate can occur. If law enforcement attempts to interrogate an incarcerated individual and, after being provided advice of rights, the individual invokes the Fifth Amendment right to counsel, the attempted interrogation must cease. However, law enforcement may reapproach this individual after 14 days from the time the person is returned to the general prison population in an attempt to interrogate the individual on the same or a different offense. Therefore, as a result of this decision, it is clear that a prisoner's *Edwards* protection does not last forever but expires 14 days after being returned to the general prison population as this is considered a break in custody.

> "...law enforcement must assess whether the individual is in custody for Miranda purposes under the new circumstances to determine if advice of rights are necessary."

In terms of dealing with incarcerated prisoners, it is unclear if law enforcement is required to provide a prisoner his advice of rights prior to any attempted interrogation. In this decision, the Court discusses the concept of interrogative custody and distinguishes it from everyday incarceration.[53] This implies that when a prisoner is removed from the general prison population and confronted by law enforcement for questioning, the prisoner is in interrogative custody for *Miranda* purposes and the required warnings should be provided before any attempted interrogation. However, it is unclear if this is true in every attempted prison interrogation context.

As to the situations outside prison incarceration, there are several possible scenarios that law enforcement may encounter. If the defendant remains in continuous pretrial custody after previously invoking his Fifth Amendment right to counsel, the *Edwards* rule prohibits law enforcement from initiating contact with the subject about any criminal activity unless

counsel is present. If the defendant is released from custody after previously invoking the Fifth Amendment right to counsel, law enforcement may initiate contact with the defendant in an attempt to interrogate following a 14-day waiting period. However, in this situation officers must consider whether other possible legal obstacles exist, such as the attachment of the Sixth Amendment right to counsel and the legal consequences thereto.[54] Moreover, law enforcement must assess whether the individual is in custody for *Miranda* purposes under the new circumstances to determine if advice of rights are necessary.

Finally, if there is a break in custody but a subject still is within the 14-day window, it is clear that the individual may not be reapproached by law enforcement about the same crime until the 14 days have lapsed. However, the Fifth Amendment right to counsel is not crime specific. Therefore, it appears from the holding of this decision that an individual who has been released from custody on one charge and arrested on another charge during the 14-day window may not be interrogated by law enforcement prior to the expiration of the 14-day period. If true, this creates a substantial obstacle to conducting postarrest interviews and raises a legitimate question as to how police will know that an individual is within this 14-day protective bubble. The answers to these questions are unclear and will be determined only through future litigation. ✦

Endnotes

[1] 384 U.S. 436, 86 S. Ct. 1602 (1966).

[2] 559 U.S. _____ (2010).

[3] 384 U.S. 436, 86 S. Ct. 1602 (1966).

[4] *Id*. at 478-479.

[5] *Id*. at 467.

[6] *Id*. at 445. *See also Illinois v. Perkins*, 496 U.S. 292, 110 S. Ct. 2394 (1990).

[7] *Id*. at 468-472; 478-479.

[8] *Id*.

[9] The Fifth Amendment right to counsel must be distinguished from the Sixth Amendment right to counsel. For an overview of the attachment and critical stages of the Sixth Amendment right to counsel, see Kenneth A. Myers, "Avoiding Sixth Amendment Suppression: An Overview and Update," *FBI Law Enforcement Bulletin*, March 2009. *See also Montejo v. Louisiana*, ____U.S. ____, 129 S. Ct. 2079 (2009) for the current law as to the legal significance of invoking the Sixth Amendment right to counsel.

[10] *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880 (1981); *Minnick v. Mississippi*, 498 U.S. 146, 111 S. Ct. 486 (1990).

[11] *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880 (1981).

[12] *Arizona v. Roberson*, 486 U.S. 675, 108 S. Ct. 2093 (1988).

[13] *Id*. at 681.

[14] *Id*.

[15] *See United States v. Harris*, 221 F.3d 1048 (8th Cir. 2000); *People v. Storm*, 28 Cal. 4th 1007, 1023-1024, and n. 6, 52 P. 3d 52, 61-62, and n. 6 (2002).

[16] 501 U.S. 171, 111 S. Ct. 2204 (1991).

[17] *Id*. at 177.

[18] 559 U.S. ____ (2010).

[19] *See United States v. Arrington*, 215 F.3d 855 (8th Cir. 2000) (defendant not "in custody" for purposes of *Miranda* once defendant has pleaded guilty and was transferred from police custody to correctional custody to serve his sentence); *Isaacs v. Head*, 300 F.3d 1232 (11th Cir. 2002) (*Edwards* does not apply to a defendant that has been convicted and who remains in custody only in the sense that he is incarcerated in the general prison population). But, *see Kochutin v. State*, 813 P.2d 298, 304 (Alaska App. 1991) ("we find nothing in *Edwards* or in subsequent decisions of the Supreme Court to indicate that *Edwards* should be relaxed by the mere passage of time. Nor are we persuaded that [the defendant's] status as a sentenced prisoner removed his case from coverage of the *Edwards* rule"); *United States v. Green*, 592 A.2d 985 (D.C. App. 1991).

[20] 559 U.S. ____ (2010), No. 08-860, slip op. at 1-3.

[21] *Id*. at ____, No. 08-860, slip op. at 4; No. 21-K-06-37799 (Cir. Ct. Washington Cty., Md., Sept. 14, 2006), App. 55.

[22] *Id*. at ____, No. 08-860, slip op. at 4; No. 21-K-06-37799 (Cir. Ct. Washington Cty., Md., Sept. 21, 2006).

[23] *Id*. at ____, No. 08-860, slip op. at 4, *Shatzer v. Stat*e, 405 Md. 585, 954 A.2d 1118 (2008).

[24] 559 U.S. ____ (2010); Scalia, J., delivered the opinion of the Court in which Roberts, C.J., and Kennedy, Ginsburg, Breyer, Alito, and Sotomayor, J.J., joined, and in which Thomas, J., joined as to part III. Thomas, J., filed an opinion concurring in part and concurring in the judgment. Stevens, J., filed an opinion concurring in the judgment.

[25] 559 U.S. ____ (2010); No, 08-860, slip op. at 11.

[26] *Id*.

[27] *Id*. at ____, No. 08-860, slip op. at 6-9.

[28] Id. at ____, No. 08-860, slip op. at 6-7, quoting *Minnick v. Mississippi*, 498 U.S. 146, 151 (1990).

[29] Id. at ____, No. 08-860, slip op. at 7, quoting *Patterson v. Illinois*, 487 U.S. 285, 291 (1988).

[30] *Id*., quoting *Michigan v. Harvey*, 494 U.S. 344, 350 (1990).

[31] Id. *See also Montejo v. Louisiana*, 556 U.S. ____ (2009), slip op. at 14.

[32] *Id*.

[33] *Id*. at ____, No. 08-860, slip op. at 9.

[34] *Id*.

[35] *Id*.

[36] *Id*. at ____, No. 08-860, slip op. at 10; citing *Arizona v. Roberson*, 486 U.S. 675 (1988).

[37] *Id*. at ____, No. 08-860, slip op. at 10; citing *Minnick v. Mississippi*, 498 U.S. 146 (1990).

[38] *Id*.

[39] *Id*. at ____, No. 08-860, slip op. at 10-11, 16-17.

[40] *Id*. at ____, No. 08-860, slip op. at 11.

[41] *Id*.

[42] *Id*. at ____, No. 08-860, slip op. at 12.

[43] *Id*. at ____, No. 08-860, slip op. at 12-13.

[44] *Id*. at ____, No. 08-860, slip op at 12.

[45] *Id*. at ____, No. 08-860, slip op. at 13.

[46] *Id*., quoting *Illinois v. Perkins*, 46 U.S. 292, 297 (1990) (emphasis added).

[47] *Id*. at ____, No. 08-860, slip op. at 13.

[48] *Id*. at ____, No. 08-860, slip op. at 14.

[49] *Id*.

[50] *Id*. at ____, No. 08-860, slip op. at 14, 15, n.8.

[51] *Id*. at ____, No. 08-860, slip op. at 18.

[52] *Id*.

[53] *Id*. at ____, No. 08-860, slip op. at 14, 15, n.8.

[54] *Supra* note 9.

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

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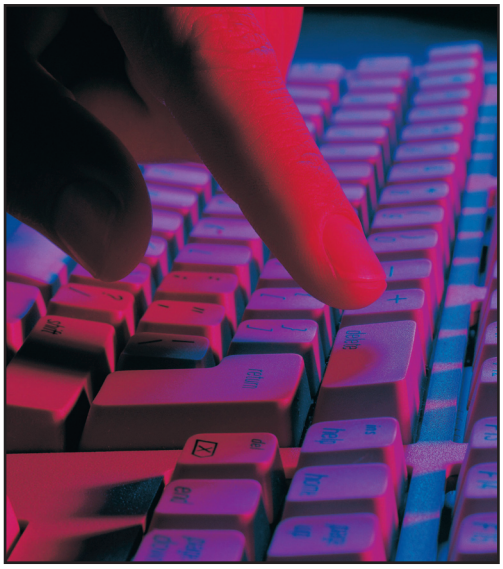

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The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The Bulletin also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.

Lieutenant Laux

Officer Strojny

Lieutenant John Laux of the Green Bay, Wisconsin, Police Department responded to a report of a vehicle in a local river. Upon arrival, he observed a vehicle partially submerged approximately 30 to 40 feet from shore—this distance consisted of nearly half ice, and only the trunk and a few inches of the back window were visible. Lieutenant Laux heard screaming and pounding from inside the vehicle. Officer Mark Stojny obtained a 30-foot aluminum ladder from a neighbor, and both officers walked onto the ice as far as possible before extending the ladder, which reached the rear of the vehicle. Lieutenant Laux tried to break the window with a window punch but was unsuccessful because his hands were so cold. He shattered the rear window with an expandible baton and rescued a woman, the lone vehicle occupant. She panicked and dragged Lieutenant Laux into the water before he calmed her and pulled her to safety. Lieutenant Laux received stitches for cuts on both forearms, and the woman ultimately was arrested for driving while intoxicated.

Officer Sullivan

Officer Jerry Sullivan of the Longview, Texas, Police Department was the first responder to a house fire. Upon his arrival, he saw and reported that heavy smoke was coming from much of the residence, and he began inquiring about the number and location of the residents. Officer Sullivan learned that an elderly female had reentered the burning structure to obtain her belongings. Quickly, Officer Sullivan went inside, battling heavy smoke and fire, and found the woman. He carried her outside to arriving fire and rescue units. The victim was treated at a local medical center for smoke inhalation and burns.

Nominations for the Bulletin Notes should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, FBI Law Enforcement Bulletin, FBI Academy, Outreach and Communications Unit, Quantico, VA 22135.

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Patch Call

The city of Fredericksburg, Virginia, is rich in history. The patch of its police department contains many symbols that honor its British colonial heritage and its significant role in America's past, present, and future.

The Fayetteville, West Virginia, Police Department's patch has a depiction of the New River Gorge Bridge, the tallest in the Western Hemisphere at 876 feet above the water. It spans the New River, the second oldest, behind the Nile, in the world.