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FBI Law Enforcement BULLETIN

Features

Departments

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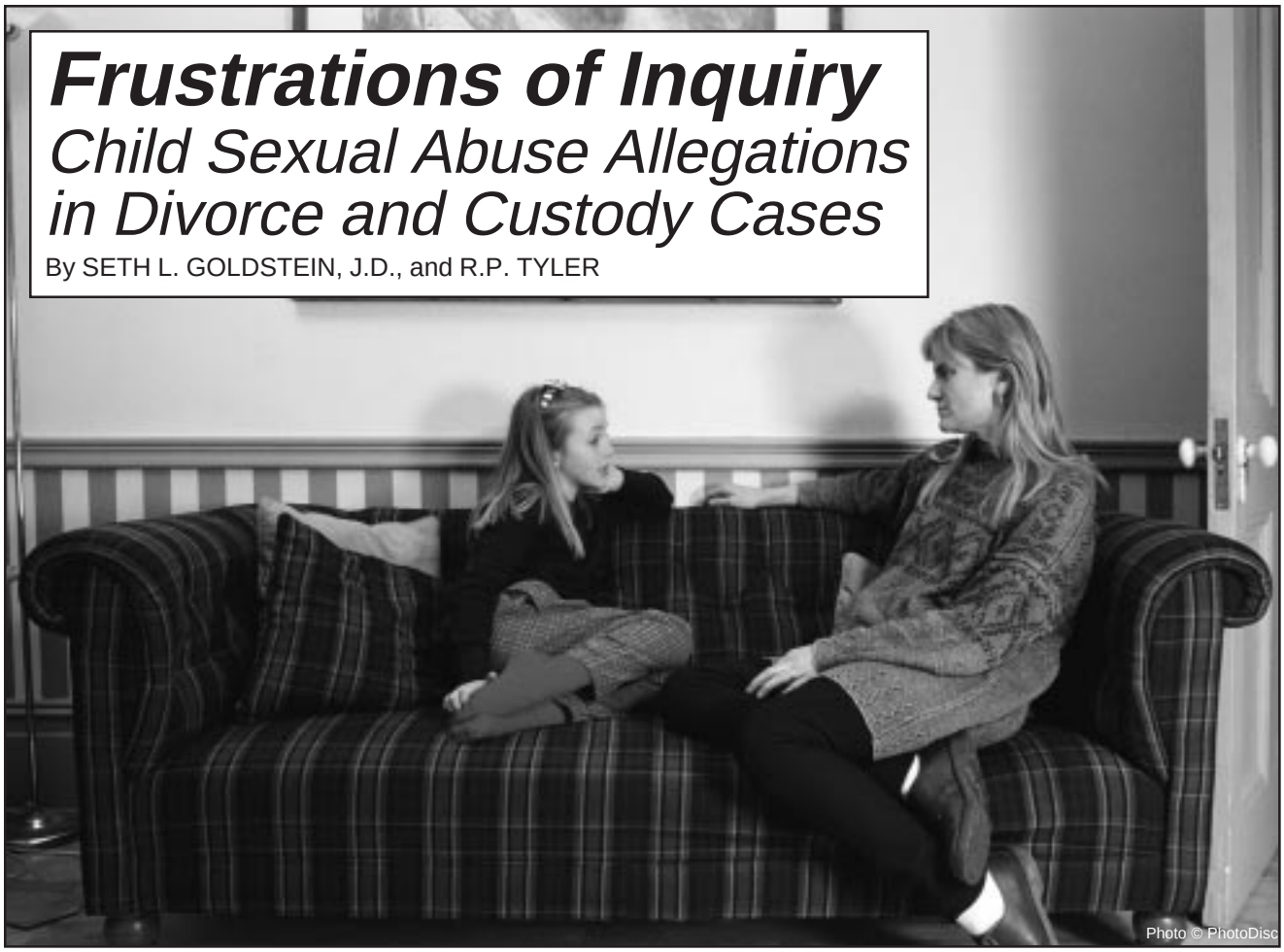
Frustrations of Inquiry

Child Sexual Abuse Allegations in Divorce and Custody Cases

By SETH L. GOLDSTEIN, J.D., and R.P. TYLER



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When a marriage disintegrates, the partners often change from allies to enemies. They can become bent on winning and employ tactics designed to crush the opposition despite the casualties. All too often, their children get caught in the cross fire.

Sometimes, allegations of child sexual abuse arise in the context of divorce and custody cases. A study of 9,000 families embroiled in contested divorce proceedings found that 1 to 8 percent involved allegations of child sexual abuse.[1] Unfortunately, the warlike atmosphere inherent in divorce often discredits valid claims. Though rare, false allegations of abuse do occur. Another study revealed that out of 169 cases of alleged child sexual abuse arising in marital relations courts, only 14 percent were deliberate, false allegations.[2] This means that the overwhelming majority were legitimate reports.

Sexual abuse allegations that surface during divorce or custody cases cause more frustration for law enforcement investigators than any other because of a lack of evidence, possible biases, and the acrimony between partners on the verge of divorce. Indeed, the stakes are high—an improper allegation may ruin the reputation of an unjustly accused person; at the same time, a valid allegation that goes unrecognized may subject a child to continued abuse.

Investigators often forget they have a fourfold responsibility in these cases. First, they must determine whether the child is at risk. Then, they have an equal duty to determine if the accused is responsible or innocent. When investigators decide out of hand that insufficient evidence exists to establish that the accused committed the act, they have not conducted a complete investigation. Instead, they must seek evidence to either prove or disprove the allegations.

Third, investigators must distinguish a valid allegation from one

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that may have resulted from a parent's misguided but honest belief that a child was abused. Finally, they must consider whether the allegation is a malicious complaint made solely to gain an advantage in a divorce or custody settlement. Each scenario requires a different course of action. Although the unique concerns associated with these types of cases make them more difficult to solve, investigators can follow certain guidelines to uncover the truth behind the allegations.

INVESTIGATIVE OBSTACLES

Time Constraints

Competent investigations of sexual abuse allegations take an exorbitant amount of time. Moreover, shrinking budgets and changing priorities have reduced agency staffing levels, leaving fewer people to handle these investigations. The problem becomes compounded when the children involved are too young to articulate what happened to them in only one or two interviews—the minimum amount of time required in the preliminary phase of a sexual abuse investigation.

Credibility Concerns

Child abuse investigations can be the most difficult cases to prove. In divorce and custody cases, added credibility concerns make abuse allegations even more likely to be unsubstantiated or unfounded.[3] To help address these concerns, investigators must ask certain questions, including:

- To whom did the child first make the disclosure?
- What triggered the disclosure?
- When did the disclosure first occur?
- How did the original disclosure surface?
- Why is the child telling now?
- How many people have talked to the child and who are they?
- What exactly did the child say to each of these people?
- How did these individuals respond to the child?
- How, if at all, did these responses affect what the child is saying now?
- What independent evidence, apart from the statements of the witnesses, is available to confirm or refute the allegation?
- What evidence is available to confirm or refute what the child is saying?
- Do any alternative explanations exist for what the child is saying or how the child is behaving?

The answers to these questions can help investigators assess the credibility of the charges. The mere fact that the allegations have surfaced during a divorce or custody battle may impugn the veracity of the disclosure. These times are ripe for one party to invent allegations to gain the upper hand in the litigation. Yet, children often disclose valid sexual abuse allegations during highly volatile and divisive custody or visitation litigation, and they have sound reasons for doing so.

On one hand, a child separated from an abusive parent and faced with the prospect of reuniting with that parent may feel frightened enough to come forward. On the other hand, a child removed from an abusive situation finally may feel safe enough to make a disclosure. Another child may become angry enough during the turbulent throes of divorce to expose the abuser.

CASE CHARACTERISTICS

In general, three types of cases exist:

1) The abuse actually has occurred.

2) Behavior or statements made by the child are misinterpreted and reported as abuse.

3) A parent deliberately and maliciously makes a false allegation.

Too often, abuse cases break down because investigators fail to make the crucial distinction between the motives in each type of case and incorrectly conclude that the reporting parent had a malicious motive. In short, motive establishes the difference between sincere, justified beliefs; innocent, but false, accusations; and intentional, fraudulent charges.

In the first type of case, the reporting parent has legitimate motives; the child has been victimized and may be at risk for additional abuse. The second case, in which a parent is falsely but innocently accused, may occur for a number of reasons.[4]

In the absence of a pathological cause, a parent or other individual may merely misinterpret something the child said or did. For example, a young girl returning from a visit with her noncustodial parent had her photograph taken by a relative. When the relative said, "Show me your smile," the girl responded by lifting her dress to expose her diaper. The relative reported the incident to a child protective services (CPS) worker, who questioned the child and learned that she had been trying to show the relative that her diaper was dry; the water-reactive "smiles" on the diaper were still intact.

In some cases, a child's actions or words seem to indicate abuse when none occurred. The reasons for the child's behavior may never come to light.

> ***"Only good investigative practices can establish the proof needed to support or refute an allegation of sexual abuse."***

In the third type of case, a parent who deliberately makes a false allegation—for whatever reason—has committed a crime and may be prosecuted. More important, the child caught in the middle may suffer emotionally from being used as a tool or wedge between the parents or from forced separation from the wrongly accused parent. When this happens, law enforcement or CPS personnel may need to step in and protect the child.

In all three cases, the manner in which the allegation surfaces and the parent makes the report is very much alike. The dilemma, then, becomes how investigators can determine which type of allegation has been made and whether abuse actually has occurred. Only good investigative practices can establish the proof needed to support or refute an allegation of sexual abuse.

THE INVESTIGATIVE PROCESS

The serious nature of sexual abuse allegations demands police attention, and whoever receives the initial complaint must notify local law enforcement. The investigator in charge of the case should interview this person, who may not be the estranged parent, to identify the source of the disclosure and, if possible, to separate the allegation from the supporting parent. This means developing independent evidence to establish that a crime has occurred and to prove the allegation.

Independent Evidence

In one case, a preschool teacher observed the 3-year-old child of divorced parents kneeling over a table to draw. Seeing his obvious discomfort, the teacher suggested that he sit down. He replied that he could not because his "bottom" hurt, so the teacher asked if he needed to go to the bathroom. The child again responded that he could not because it hurt too much. When asked why, after some shifting and reluctance, the child revealed that his father had sodomized him.

The boy was considered credible because he revealed his secret independent of his parents and displayed obvious emotion, fear, and hesitancy when doing so. The investigator's ability to recognize these characteristics helped to support the child's claim and refute the father's contention that his son had

lied. Unfortunately, investigators may find it difficult to develop such evidence.

Oftentimes, witnesses, relatives, and other involved parties draw battle lines, establish alliances, and attempt to influence the child. When this occurs, any subsequent information gathered can be of questionable value. To prevent this from happening, investigators must address four important concerns:

1) The parties involved may talk to one another or draw alliances once the secret is out, thereby contaminating any information they provide.

2) The offender may learn of the investigation and try to intimidate the child or witnesses or fabricate a story before the investigator can obtain an admission or confession.

3) Offenders or their supporters—often the other parent—may destroy evidence after learning of the investigation.

4) Medical evidence may exist that can prove the allegation.

The first concern represents a time, space, and logistics problem. It may require more than the investigative resources allocated to the case. Investigators should interview witnesses as soon as possible to prevent them from talking to one another and influencing one another's perceptions and understanding of the facts and events.

The second concern requires that investigators obtain as much information about the incident and confront the suspect as soon as possible. Because investigators commonly encounter denial when they confront suspects, they should consider using techniques that encourage offenders to tell the truth. Offenders are more likely to be honest when they do not feel threatened by the person confronting them. The most successful way to accomplish this is through a pretext confrontation by the victim or other involved party. If the victim is too young or incapable, the nonoffending parent or any other party the offender trusts can perform the task.

> ***"The serious nature of sexual abuse allegations demands police attention...."***

The pretext confrontation involves recording a telephone or personal conversation with the offender.[5] During the call or meeting, the victim or other party confronts the offender with the specific acts committed. The objective is to provide an opportunity for the offender to admit the crime, try to explain it away, or convince the person not to tell anyone about it. When this technique is used, although offenders may not admit specifically what they did, they often will promise that it will not happen again.

In one case, a child called her father and told him she thought she had contracted venereal disease from him. He responded that this was impossible because he was not having sex with anyone else but her. In another instance, a child told her father that the sex that was going on between them was wrong. He said that he knew—that he had wanted to tell her that it was wrong and also that "we have to stop; we shouldn't be doing this."

The personal safety and mental state of the person confronting the offender are essential, which may preclude allowing the victim to confront the suspect in person, if at all. In a case that used an alternate ploy, the victim's mother confronted the father, who had been accused of having intercourse with their daughter. When she asked him what she should tell the authorities, he replied that she should "tell them it was a mistake; I shouldn't have done it."

Some law enforcement officers have initiated phone call confrontations on the pretext of being a counselor working with the child. In doing so, they use the pretense that the child is having problems with disclosure, and as counselors, they need complete details to ensure effective and proper treatment.

The technique of using a child to initiate a pretext confrontation has drawn fire from critics who say that using children in this fashion to secure evidence might make them feel more guilty. However, the opposite is often true.[6] Such confrontations are more likely to result in empowerment for the children involved. It helps them master the event and heal from the trauma, and, in fact, has had more positive effect on the children than any other technique.

The third investigative concern involves securing and preserving evidence. Investigators must consider initiating pretext confrontations at the same time they prepare search warrants. All evidence must be sought in the earliest stages of an investigation, whether it consists of the offender's admissions or tangible objects.

The best tangible proof corroborates what the child has independently reported. Graphic photographs and videos frequently taken by incest offenders to record acts of abuse often are overlooked by investigators. Other corroborational evidence can include lubricant or condoms. Most important, independent evidence that investigators find as a result of the victim's own statements is always more compelling than evidence discovered and brought forward by the accusing parent.

Finally, the fourth concern compels investigators to allow only qualified forensic examiners with experience in child sexual abuse to conduct medical examinations. Moreover, because the body often heals so quickly, every case requires an immediate medical examination using specialized equipment that provides a photographic record of the findings, for example, a colposcope.


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Additional Considerations

Investigators must gather essential background information on all crucial witnesses and the accused. What connections do witnesses have with the parties involved? What opportunities did the witnesses have to observe or interact with the child or the parties? What behaviors did the child exhibit before the disclosure? What were the circumstances of the disclosure? What exactly was said? Who was present? Answers to these questions—all basic areas of inquiry in any abuse case—help to establish the validity of the allegations and to ensure that when the case goes to court, the judge will have the most complete, credible evidence possible.

It is particularly important that investigators conduct all interviews in person, not by phone. The investigation of sexual abuse charges and the potential risk factors involved require the kind of sensitivity achieved only by personal contact. Moreover, investigators cannot effectively evaluate the credibility of anyone by phone. Nothing can substitute for a direct, visual, in-person examination of the facts.

Above all, investigators should not stop their inquiries until they have explored every avenue. They also should not delegate their responsibilities to anyone other than unbiased, independent, well-trained professionals. In other words, if a mother reports that her child is exhibiting unusual behavior, she should not be told to go back and question the child further. This advice also holds true for third parties, such as teachers. Untrained individuals who question the child improperly or misperceive what the child says may cast doubts upon the case and discredit the child. Or, in cases where no abuse has occurred, a false, though not malicious, allegation may be triggered.

Finally, investigators and other allied professionals must receive proper, regular training. For example, a therapist who helps determine what happened to a child must be properly versed in the art of forensic interviewing. Nothing proves more devastating to a case than to have the validity of the information called into question because someone may have inadvertently influenced what the child said.

CONCLUSION

The answers to the questions raised by allegations of child sexual

abuse in divorce and custody cases are not simple. Investigators should have policies in place and child protection resources available to handle these cases well before the need arises. Only well-planned and well-executed investigations can produce the sound evidence required to prove the allegations and, at the same time, overcome the frustration many investigators now experience.

Both child abuse victims and their accused deserve a complete and competent investigation. Investigators owe it to them to provide it. ✦

Endnotes

[1] N. Thoennes, et al., "The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes," in *Child Abuse and Neglect* 14 (1980): 153.

[2] J. Bulkley, citing N. Theonnes, "Summary of Findings from the Sexual Abuse Allegations Project" (Denver, CO: The Association of Family and Conciliation Courts Research Unit), in *Think Tank Report: Allegations of Sexual Abuse in Child Custody and Visitation Situations* (Huntsville, AL: The National Resource Center of Child Sexual Abuse, 1989), 17.

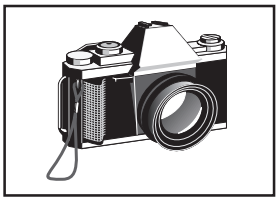
[3] Allegations are *unsubstantiated* when the evidence gathered fails to establish whether a crime actually occurred. By contrast, allegations are *unfounded* when the evidence proves either that a crime did not occur or that it is highly improbable a crime occurred.

[4] *Achieving Equal Justice for Women and Men in the Courts, the Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts*, California Judicial Council, Administrative Office of the Courts, San Francisco, March 1990.

[5] Because the laws of each state differ, investigators should review privacy and wiretapping statutes or consult their local prosecutors before employing this technique.

[6] Based on the authors' experience. See also Seth Goldstein, *The Sexual Exploitation of Children: A Practical Guide to Assessment, Investigation, and Intervention* (Boca Raton, FL: CRC Press, 1987).

Wanted: Photographs



The *Bulletin* staff is always on the lookout 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.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

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Suspended Students

A Practical Approach

By William B. Berger, M.P.A.
and Alan P. Graham, M.S.

With a truancy rate projected as high as 25 percent of the student population at both the elementary and middle school levels, a problem in North Miami Beach, Florida, schools quickly became a community and police concern. School administrators did not want suspended students back until they served 3 to 10 days out of school; the regional school district had nowhere to send them; working parents could not stay home or bring their children to the office. Thus, instead of staying home under parental supervision, suspended students loitered at the local convenience store, hung out at the mall, or broke into homes and vehicles.

Together, the police, city council, and city manager developed a creative solution to resolve this community problem. The Alternative to Suspension Program (ASP)[1] brought together parents, teachers, city and school officials, and police officers in an effort to keep suspended students off the streets and from getting involved in criminal activities. At the same time, the program was designed to provide students with an alternative to staying home alone and an opportunity to remove their suspensions from their permanent records. But first they would have to earn it.

A Disciplined Approach

The key to the alternative program is structure. Students serve their suspensions in a classroom setting away from the school. Their parents or guardians drop them off each day at 8:30 a.m. and pick them up at 3 p.m. Students bring a brown-bag lunch—a significant change for children accustomed to cutting class and going out for lunch. A part-time teacher provides instruction in reading and math, a school counselor holds group and individual behavior-modification sessions, and police officers from the department's community policing and crime prevention units discuss crime and criminal behavior.

Two disruptive elementary students—a fifth and sixth grader—attended the first class. The teacher taught the basic curriculum. The police officer "rapped" about teens, crime, and the community. The counselor was able to "get inside their heads," and the students paid attention. They completed the program and returned to their regular classes without further incident.

The Middle School Program

Building on the success of the elementary school program, the community partners tailored a new curriculum to middle school students. According to police department records, these youths caused the most disruption in school and committed the majority of youth-related crimes in the city. The size of the middle school class quickly grew to 40 students by the end of the first month. Most of these youths had been given 5- to 10-day suspensions.

The middle school curriculum focuses on math—a subject in which most of the students perform at a level far below their peers in the same grade, as well as the national average. When students begin the program, the teacher administers a test to gauge their proficiency level. Then, using mnemonics and repetition, the teacher helps them learn and memorize formulas. Moreover, the nature of the ASP curriculum, which requires complete immersion in the lessons without distractions, almost ensures complete learning.

By the end of their suspension periods, more than 90 percent of the students had improved their math skills. Many of the students had been conditioned through repeated past failures to believe that they could not solve complex math problems. When they realized that they did possess these skills, their self-esteem increased dramatically.

The police officers also modified their instruction to suit the needs of the middle school students. Topics of discussion include drug and alcohol abuse, burglary and robbery, gangs, sexual assault and date rape, vandalism, conflict resolution, and self-esteem issues. The methods used to convey these messages are as diverse as the students themselves. Officers use printed materials, audio and videotapes, and role-play scenarios, as well as more traditional discussions and lectures.

"...keeping youths off the streets decreases the fear residents feel when they observe groups of teens loitering in public places."

Guest speakers may prove the most successful way of communicating with the youths. Listening to their peers retell the horrors of addiction, abuse, gang life, arrest, and incarceration makes a greater impact on today's youths by giving them the opportunity to relate these issues to their own lives, while quieting the mantra of youth, "It can't happen to me."

Graduation

By the end of the school year, 121 out of 165 students had successfully completed the program and returned to school, resuming their educations without further mishap. Only 44 were terminated from the program; the majority of these students had signed up but never attended. They had to serve their suspensions without supervision, and in contrast to students who graduated from ASP, their suspensions remained a mark on their records.

With property crime rates—which traditionally indicate juvenile involvement—dropping as much as 28 percent, this program appears to be an effective remedy to deter crime. Moreover, keeping youths off the streets decreases the fear residents feel when they observe groups of teens loitering in public places.

The Future

The community partners continue to refine ASP, with plans to move the program into a larger facility to accommodate both elementary and middle school students at the same time and location. Because state law allows 16-year-olds to drop out of school, the program has not reached the high school level. This may change if policy makers vote to amend the law.

Conclusion

Disruptive students ruin the educational experience for all youths. When detention and other in-school programs fail to make an impression on unruly students, many schools turn to out-of-school suspensions. Yet, without adult supervision, many suspended students get into trouble with the law.

North Miami Beach's Alternative Suspension Program gives youths an option usually not available to them. By providing discipline, structure, and an intensive educational environment, in conjunction with counseling and frank discussions about the consequences of delinquent behavior, the program helps students develop latent learning skills, increase self-esteem, and gain a new perspective toward school and their attitudes and actions. In doing so, the Alternative Suspension Program creates a win-win situation between the police and the community they serve.✦

Endnote

[1] Funding for this program initially came from a Metropolitan Dade County Community-Based Organizations Crime Prevention Services Grant and, later, from the county and a U.S. Department of Justice Local Law Enforcement Block Grant.

Chief Berger commands the North Miami Beach Police Department in North Miami Beach, Florida. Sergeant Graham serves as the liaison for the North Miami Beach Police Department's Alternative to Suspension Program.

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Passport Fraud

Protecting U.S. Passport Integrity

By JOHN M. DAVIS

A foreign national and organized crime boss residing in the United States eludes conviction on other crimes for several years but is arrested and convicted for altering U.S. passports.[1]

A college professor, and known pedophile, is apprehended attempting to bring a 15-year-old Central American youth into the United States using a false U.S. passport.[2]

After obtaining a U.S. passport under an assumed identity, a Jamaican drug dealer is located and arrested in Durham, North Carolina.[3]

In Gaithersburg, Maryland, a woman is arrested on several counts of passport fraud, crimes which had facilitated an alien-smuggling operation.[4]

Because it attests to the identity and citizenship of the bearer and provides safe passage, a U.S. passport remains essential to international travel. Unfortunately, as these cases illustrate, a significant percentage of passports are obtained by fraudulent application, alteration, or counterfeiting. To combat this problem, the Diplomatic Security Service (DSS) of the U.S. Department of State employs approximately 750 special agents in 22 offices across the United States and in more than 133 American embassies and consulates around the world. In conjunction with other federal, state, and local law enforcement agencies, DSS works to identify and arrest the growing number of perpetrators of these crimes.

The Passport: Past and Present

The Old Testament of the Bible contains one of the first recorded references of the use of a passport. King Artaxerxes of Persia gave documents to his servant Nehemiah in 455 B.C., ensuring his safe passage from Persia to Jerusalem.[5] Today's passports convey the same benefits to the bearer, but with more than 170 countries in the world, they encompass a wide variety of designs, features, and styles. The typical construction consists of a hard cover embossed with the country's seal or coat of arms. Inside, several blank pages stitched to the binding provide space for visas and cachet stamps. The most important identifying data of the document is contained on the biographical page, which normally

> ***"...passports no longer can be held as irrefutable evidence of identity or citizenship."***

Special Agent Davis is assigned to the Antiterrorism Assistance Training Program with the Diplomatic Security Service of the U.S. Department of State in Washington, DC.

includes a serialized passport number and the full name, date and place of birth, and a facial photograph of the bearer placed under a plastic laminate or embossed with a dry seal or wet seal impression. Most passports contain security features to discourage alterations or counterfeiting.

The U.S. Passport Application Process

The United States issues three types of passports to its citizens and nationals: one for tourists, one for government officials, and a third for diplomats. Tourist passports remain the most common, with over 5 million issued to the American traveling public each year. Individuals applying for a passport must complete a detailed application and provide evidence of citizenship, such as a certified birth certificate, certificate of naturalization, or previous U.S. passport. They also must present photographic identification, such as a driver's license or state identification card.

Application Fraud

Application fraud usually involves applicants' making false statements regarding their true identity or citizenship. To create a new identity, a perpetrator often obtains a "breeder" document, usually a birth certificate purporting another identity or place of birth, to support the passport application. Several avenues exist for obtaining such fraudulent documents. The perpetrator may purchase a false certificate from an illegal document vendor. With the advent of color photocopiers, computer scanning technology, and laser printers, these vendors can produce authentic-looking counterfeit birth certificates. Alternately, the perpetrator may purchase or steal a genuine birth certificate from a U.S. citizen.

Additionally, in many states, the perpetrator legally may request and receive a noncertified copy of another person's birth certificate. Thirteen states classify a birth certificate as a public record.[6] Moreover, a legally obtained, noncertified birth certificate can help support a perpetrator's written request to a state bureau of vital statistics for a certified birth certificate. Finally, the perpetrator may request the birth record of a deceased individual. Because there is no likelihood of being discovered by the true person, this method of obtaining false birth certificates is very common.

With the support of the fraudulently acquired birth certificate, the perpetrator obtains a state driver's license or other identification document. Then, armed with the necessary instruments to support an assumed identity, the perpetrator applies for a U.S. passport. Two federal felony violations cover this type of fraud, each of which carries a punishment of imprisonment, fine, or both.[7]

Alteration Fraud

In the United States, law enforcement authorities do encounter altered U.S. passports. However, due to the passport's value as a travel and identity document abroad, foreign law enforcement officers report more encounters. The typical scenario of passport alteration begins with the theft or loss of personal belongings of an American tourist traveling abroad. Usually, a document vendor then recycles the passport by replacing the original holder's photograph with that of the new holder. The vendor's client may be someone ineligible for a U.S. visa, such as a known criminal or terrorist. Prices vary, but a well-made, altered U.S. passport may cost several thousand dollars.

While most altered U.S. passports will not pass American port-of-entry inspections, high-quality alterations may pass border or port inspections in other countries. At some foreign international airports, the confusion, rapid pace, and lack of scrutiny by inspectors contribute to these occurrences. The primary federal felony violation for this offense carries a punishment of incarceration, fine, or both.[8]

Counterfeiting Fraud

In the past, counterfeiting of the U.S. passport was a rare occurrence. In recent years, however, law enforcement and international authorities have confiscated increasing numbers of meticulously manufactured counterfeit passports. Like many other passports of the developed world, the U.S. passport contains numerous security features, including special paper stock with security threads, microprinting on visa pages, plastic laminate with imbedded great seal, unique spine stitching, watermarks, and ultraviolet markings. Adding to this array of countermeasures, the security features and design of the passport change periodically. Therefore, complete reproductions occur less frequently than altered U.S. passports. In some cases, however, a passport may be modified with only a few counterfeit pages incorporated into a genuine passport. This hybrid alteration may be more difficult to detect because the majority of the passport remains genuine. Depending on the quality, a well-made counterfeit U.S. passport may sell for $2,000 to $12,000. For counterfeiting a U.S. passport, the federal felony violation carries a punishment of imprisonment, fine, or both.[9]

Offender Motivations

Driven by the need to acquire proof of U.S. citizenship, illegal aliens residing in this country commit the majority of U.S. passport application fraud. Those with limited hope of naturalization fraudulently obtain U.S. passports so they can return to their homelands and then reenter the United States without fear of deportation. Similarly, those aliens unable to obtain a U.S. visa acquire altered U.S. passports in an attempt to enter this country.[10]

> ***"...a significant percentage of U.S. passports are obtained by fraudulent application, alteration, or counterfeiting."***

Moreover, many criminals obtain fraudulently issued U.S. passports to assist them in their illegal activities. By presenting a U.S. passport when entering this or any other country, criminal aliens involved in the illegal importation of narcotics may attempt to lower their profile as potential drug smugglers. Also, financial fraud perpetrators often seek false identity documents to create new identities so they can establish additional credit. Presentation of the well-respected U.S. passport allows credit card, check, and bank fraud perpetrators easy access to lenders and retailers. Obtaining a U.S. passport in an assumed identity provides a criminal with a document that rarely is challenged by authorities and enables unrestricted international travel. This is why fugitives frequently seek to obtain U.S. passports in another identity through fraud.

Fraud and Foreign Country Passports

Fraud affects every passport issued worldwide. Compared to the United States, other countries do not employ as stringent security controls in the manufacturing and issuance of passports. Misconduct by government officials or lax security measures for storing blank passports allow easy access to anyone wanting to fraudulently assume a new identity. Many foreign governments cannot properly secure valid blank passports (those still in the box awaiting issuance). Often, stolen blank passports fall into the hands of document vendors who then can create nearly perfect passports for their clientele. In some countries, people obtain passports by bribing officials in charge of the issuing process. Law enforcement officers and prosecutors should remember that foreign passports obtained by fraud, alteration, or counterfeiting can be prosecuted in this country under the same federal statutes used in U.S. passport fraud violations.

Diplomatic Security Service Offices and Telephone Numbers

Atlanta, GA	404-331-3521	New Orleans, LA	504-589-2010
Boston, MA	617-565-8200	New York, NY	212-264-1292
Chicago, IL	312-353-6163	Philadelphia, PA	215-597-7435
Dallas, TX	214-767-0702	Phoenix, AZ	602-640-4842
Denver, CO	303-236-2781	Portsmouth, NH	603-334-0519
Dunn Loring, VA	703-204-6100	St. Louis, MO	314-539-2721
Greensboro, NC	(Opening 9/98)	San Diego, CA	619-557-6194
Honolulu, HI	808-541-2854	San Francisco, CA	415-705-1176
Houston, TX	713-209-3482	San Juan, PR	787-766-5704
Los Angeles, CA	213-894-3290	Seattle, WA	206-220-7721
Miami, FL	305-536-5781	Stamford, CT	203-975-0820

Fraud Countermeasures

While Diplomatic Security Service agents engage in a variety of law enforcement and security activities, their primary investigative purpose remains passport and visa fraud. They also focus their investigations on document vendors, individuals engaged in the illegal manufacture, sale, and distribution of false identity documents. Along with supplying forged documents, vendors sometimes complete passport applications and accompany perpetrators to passport acceptance facilities to serve as facilitators or identifying witnesses.

DSS receives referrals of possible U.S. passport fraud in two ways. Whether passport applications are submitted through post offices, courthouses, or offices of the passport agency, acceptance clerks or passport examiners screen all applications for accuracy. If they suspect fraud, the employees forward the applications to the passport agency where fraud program managers conduct closer examinations. When their review indicates the potential presence of fraud, the program managers refer the applications to DSS for criminal investigation. In U.S. passport application fraud situations, the passport usually has not been issued at the time of the referral to DSS. At this point, the application process stops and future issuance of the passport depends on the outcome of the DSS investigation.

Additionally, DSS receives referrals from police departments and other investigative agencies, including private sector security organizations. Often, police and private sector financial fraud investigators refer cases to DSS when suspects use falsified passports to establish credit, write bad checks, or support their identity on credit card transactions.

To help identify altered U.S. passports, officers should look for the following indications of passport alteration: a stiff or inflexible photograph area, unrounded corners on the photograph itself, razor cuts in the plastic laminate along the top or side margin of the photograph, or significant creases in the laminate. However, in cases where a valid U.S. passport has been obtained through fraudulent application, these clues cannot be considered. In these situations, only discrepancies in identification or questions of nationality may help investigators conclude that fraud exists. Law enforcement agencies should contact DSS offices whenever they confiscate a passport they know or suspect is false. Police also should advise DSS offices when a suspect possesses fraudulent birth certificates or other false identity documents that might indicate possible passport fraud.

Conclusion

Like many other forms of identification, passports no longer can be held as irrefutable evidence of identity or citizenship. While fraud, alteration, and counterfeiting greatly affect the world's premier identification document, passport fraud is not a new problem nor is it necessarily a crisis for law enforcement or national security.

However, while Diplomatic Security Service agents arrest many individuals for passport fraud, subsequent investigations often reveal that some suspects were involved in more vicious and corrupt criminal activities. The examples at the beginning of this article point out the variety of criminals that have been arrested through passport fraud investigations. Some had eluded capture for years but were brought to justice when they committed a seemingly victimless crime.

Apprehending such offenders through passport fraud enables law enforcement officers to pursue another avenue of attack on those criminals who may have avoided capture on more serious charges. Passport fraud cases not only can impact other more critical investigations but also can reduce the number of criminals who use fraudulent identification to further their more costly and violent illegal activities. ✦

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[10] These offenses violate 18 U.S.C. § 911, False Claim to U.S. Citizenship, which carries a penalty of fine and/or imprisonment of up to 3 years.

Author Guidelines

Manuscript Specifications

Length: 2,000 to 3,500 words or 8 to 14 pages.

Format: All manuscripts should be double-spaced and typed on 8 1/2- by 11-inch white paper. All pages should be numbered, and three copies should be submitted for review purposes. When possible, an electronic version of the article saved on computer disk should accompany typed manuscripts.

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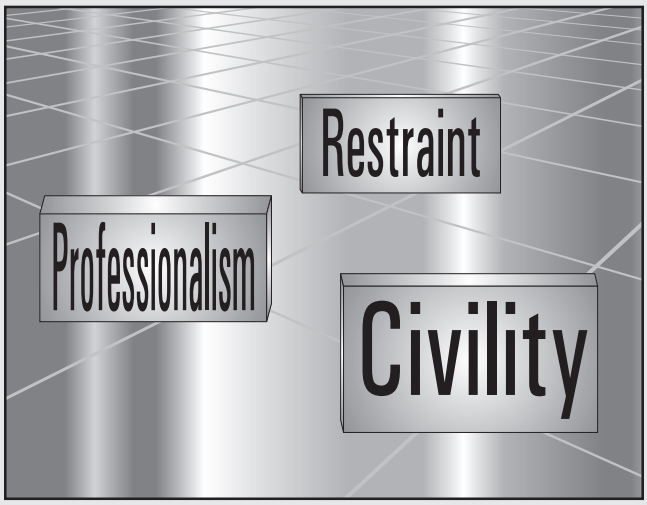
CPR
Career-Saving Advice for Police Officers

By Larry E. Capps, M.S.



Cardiopulmonary resuscitation (CPR) has long been recognized as a lifesaving measure. As a basic component of emergency first aid, CPR plays a role in the academy training of every new police officer. In addition, most departments mandate regular refresher training to keep officers prepared for emergencies.

Yet, the term CPR has new meaning for today's police officers. Although not a lifesaving technique, *civility*, *professionalism*, and *restraint* can represent the lifeblood of a police department. These three symbiotic and complementary components serve as the foundation for all actions within a police department. Once internalized by all members of the department, this easy-to-remember moniker can provide a source for decision making during difficult situations.

Civility

Civility describes a state of affairs characterized by tolerance, kindness, consideration, and understanding. Civility can be represented by action or, in some cases, inaction. For example, a friendly greeting or other social courtesy, such as holding open a door, qualifies as a civil action. At the same time, when police officers exhibit self-control and fail to respond in kind to verbal assaults from upset citizens, they demonstrate civility, even without performing overt acts.

In *The Police and the Public*, A. J. Reiss lists three conditions of civility between the police and the public. First, citizens must act civil in their relations with one another and the police. Second, citizens must grant legitimacy to police authority and also show respect for the right of the police to intervene in their private affairs. Finally, to prevent police tyranny, the police may be held accountable to civil authority.[1] Balancing police and citizen responsibilities in this area might require expanding Reiss' conditions to include two more: that the police be civil in their relations with one another and with the public and that the police recognize the citizen's right to remain free of arbitrary intrusion and to maintain personal dignity.

These additions balance the equation and call for a civil reciprocity between the police and the public. In short, "civility must be met with civility."[2] Deviation from this standard by the police or by citizens requires corrective measures, which may range from mere verbal disapproval to incarceration of either the citizen or the officer.

While the police have a duty to uphold the constitutional rights of all citizens, they must juggle the competing demand of enforcing the law, and as a result, they must compel individuals to behave in certain ways. Yet, all citizens "...care about the officer's effort, concern, and respect in dealing with

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them—the equivalent of the physician's 'bedside manner'...."[3] Experienced police officers, particularly supervisors, are well aware of the large number of complaints that can stem from an officer's poor bedside manner, or lack of civility.

Rudeness likely is the most common complaint leveled by citizens against the police. Yet, as challenging as some encounters with citizens prove, officers must strive to avoid rudeness and to maintain civility. The chief of the Apache Junction, Arizona, Police Department deplores what he calls "attitude complaints" against his officers. He does not resent citizens for filing such complaints; rather, he resents the fact that an encounter between a citizen and one of his officers resulted in such a complaint. The chief holds his officers to high standards and, as a result, has increased the level of civility between his officers and citizens significantly.[4]

Clearly, civility represents a core component of an effective, modern police department, and officers should manifest it in all of their daily contacts with citizens. Moreover, officers must bear a greater burden than the citizens they serve. While the police officer's position in society demands no less, the Constitution allows citizens to talk back to public officials.[5]

> **...*civility*, *professionalism*, and *restraint* can represent the lifeblood of a police department."**

Honest reflection by police officers will invariably bring to mind past incidents where they failed to live up to an acceptable standard of civility. Police officers are human, however, and should not be held to a standard of perfection. Nevertheless, they must constantly strive for perfection and be held accountable to the appropriate extent when they miss the mark. Only then will the art of civility become a beacon for leading policing into the future.

Professionalism

Professionalism, the second component of CPR, is defined, in the broadest sense, as a concept of excellence or a continual striving toward perfection.[6] Exhibiting professionalism in the purest fashion requires being recognized as a professional. The term "professional" encompasses a wide array of occupations. A number of markers identify a profession, among them:

- a consensus by customers regarding the profession's product or service;
- a specialized body of knowledge and skills usually attained through extensive training and education;
- certification or accreditation through a professional organization;
- an orientation toward clients or service;
- a primary objective other than profit;
- use of an esoteric language;
- development of symbols, artifacts, and journals; and
- considerable discretion given to members.[7]

Can policing be considered a profession? Many experts think so. Reiss believes that policing represents one of the few occupations that qualifies as a profession, possessing all of the necessary core elements, including technical knowledge, moral judgments, and a practice with clients. Moreover, policing represents one of the few "moral call" occupations; the police are "duty bound to come when and where called, regardless of who calls them."[8] Which marker or ingredient remains most critical to the establishment of a profession? According to Wilensky, "...the service ideal is the pivot around which the moral claim to professional status revolves."[9]

In addition, professional status may depend largely on a community's attitude. In other words, the police only can be considered professionals if the public grants or bestows such status upon them.[10]

Yet, a continuum of professionalism exists. One department may be more professional than another but less professional than a third. Moreover, the level of professionalism in any organization depends

entirely upon the level of professionalism of its members, and in fact, "professionalism begins with workers and then overflows to encompass organizations."[11]

As a profession, the police may not represent the low-end of the continuum, but they do not sit at the top, either. Room for growth and maturation exists, and the police have a personal and professional obligation to actively engage in the process.

Individually, officers first must make a commitment to the service ideal that remains so important for policing, whether an agency practices community policing or maintains a more traditional enforcement approach. Additionally, officers should direct considerable energy toward enhancing their specialized body of knowledge. Individually, they can accomplish this through formal education, a historic marker of a profession. Although the debate continues about the necessity of a college education in policing, its value is well recognized.[12] Finally, officers must hold themselves accountable for their actions and not seek special treatment. A strong state licensing program, sufficiently funded and staffed, can allow proper oversight and regulation of police officers, but ultimately, officers must do the right thing because they want to, not because they have to.

> **"...the use of force never should be as satisfying to an officer as a resolution reached by persuasion and reason."**

The police organization also can play a pivotal role in enhancing and maintaining professionalism. The organization, via its chief executive and management team, can set standards for entry-level officers commensurate with a profession. The organization also can foster the service ideal through its mission statement, values, and principles. Additionally, the organization can help officers achieve professional development by providing tuition reimbursement incentives. Agencies also can provide high-quality in-service training/education or send officers to such programs as the FBI National Academy and the Southwestern Law Enforcement Institute, among many others. Working together, officers and their agencies can move the mark of policing professionalism toward the high end of the continuum.

Restraint

The final component of CPR in policing, restraint represents perhaps the most crucial component because of its potential impact on the individual citizen and the community. Restraint refers to the self-control exercised by officers and the selection of the least intrusive means of accomplishing a legitimate police objective. Police officers interact with citizens in a multitude of situations, many of which require the exercise of control over the actions of the citizen. Four types of control remain available to officers in their dealings with citizens.[13]

First, authority, described as unquestioning obedience by the citizen, requires no additional action by the officer. The citizen abides by the officer's command or request simply because the officer issued it.

Power, a correlate of authority, represents the second type of control. Power manifests itself as the potential ability to mandate compliance, that is, recognition by the affected party that the officer has resources available to bring about compliance. Power excludes those occasions where compliance is coerced by force or some other means but succeeds, instead, based on the "probability that *if* one resists, one will be overcome" (emphasis original).[14]

Police officers commonly exercise the third type of control, persuasion. By using signs, symbols, words, and arguments, the police frequently convince recalcitrant subjects that it is in their best interests to comply.

Authority, power, and persuasion represent types of mental domination.[15] By contrast, the fourth type of control, force, represents a physical domination. Although all forms of control ideally should be minimized, the use of force points up the importance of restraint. First, in a democratic society, citizens are entitled to the minimal intervention necessary for police to achieve compliance. Because it represents the high end of the control continuum, the police should use force sparingly.

Moreover, the police's use of mental domination does not foster community revolt and resentment. The use of force, even when properly applied, can create significant problems for police administrators and officers alike. Administrators can become consumed with defusing a tense community, while police officers in the field are exposed to increased dangers and a greater test of their skills, self-discipline, and professional maturity.

The use of force by police can erupt into a communitywide issue in a matter of hours, and no community remains exempt. For example, even though the chief of the St. Petersburg, Florida, Police Department is an ardent supporter of community policing and is recognized nationally as a progressive police administrator, a night of rioting ensued after his officers shot and killed an auto theft suspect.[16]

Photo © Tribute

Force is manifested in a variety of ways. A national survey on the use of force by police identified and ranked a variety of force options used by the police to control subjects.[17] From the use of come-along techniques and chemical agents to actual shootings, the diversity of force options used shows clearly that physical domination is not uncommon to policing. This issue has gained sufficient significance that the U.S. Congress, in passing the Violent Crime Control and Law Enforcement Act of 1994, requires the attorney general to collect data on the use of excessive force by police officers and to publish an annual report. Many scholars believe that such a mandate requires more than a report on the use of excessive force but a closer examination of the issue, as well.

Yet, the use of force remains inevitable, and police officers are expected to use force when necessary to resolve conflict. Still, the use of force should not be taken lightly. Police officers have an obligation to protect society and to overcome resistance with the appropriate amount of force, always striving to keep the force to the minimum level necessary to accomplish the task at hand.[18] They should hold back from "...threats when reasoned persuasion will suffice, from force when threats will suffice, and from greater force when lesser force will suffice."[19] By mastering the techniques of mental domination, officers can maximize the opportunity to use minimum force.

Conclusion

Individually, the components of civility, professionalism, and restraint represent recognized aspects of policing. Civility provides an environment conducive to problem resolution. It establishes an atmosphere for collaboration with citizens and builds a foundation of trust for future encounters. The proper use of civility by officers relates directly to the exercise of restraint; the appropriate use of civility results in a judicious application of force. Moreover, developing restraint remains crucial to democratic policing. Although force remains a necessity in policing, the use of force never should be as satisfying to an officer as a resolution reached by persuasion and reason.[20]

Professionalism is intertwined with civility and restraint. Possessing technical competence in a chosen discipline results in confidence and the ability to confront difficult issues. Having a true service ideal provides a solid foundation for policing and supports civil actions, as well as practices consistent with restraint. True professionals commit themselves to their clients' best interests and recognize that civility and restraint enhance goal achievement and personal status. Professionals do the right thing because it is the right thing to do; they do not seek personal fame or glory at the expense of those they serve, nor become occucentric, thinking that their occupation is superior to all others. Professionalism represents the center ring of the three interlocking rings of civility, professionalism, and restraint.

Police officers serve as society's synthetic lubricant, flowing among all levels of the community,

reducing tension, smoothing over rough spots, and facilitating peaceful interaction among all citizens. Developing, cultivating, and maintaining civility, professionalism, and restraint should become a priority at every level of the police organization. CPR in policing can equip officers to effectively handle the difficult tasks of policing, while gaining community support along the way. In short, CPR can breathe new life into today's police agencies. ✦

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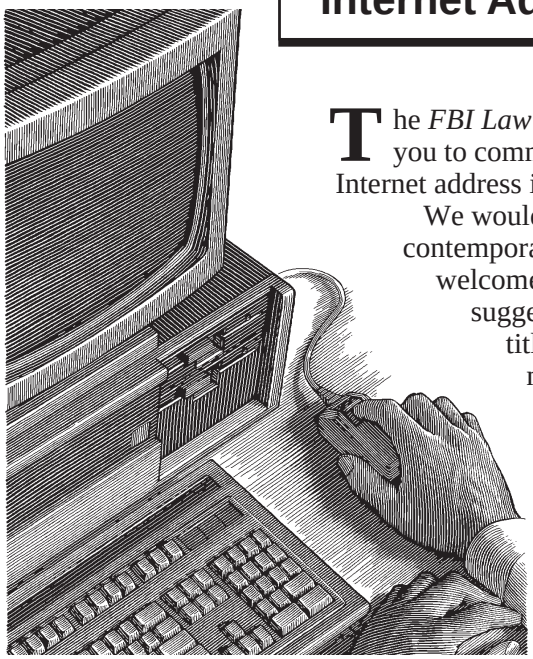

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QPR
Police Suicide Prevention

By PAUL QUINNETT, Ph.D.

A 5-year veteran uniformed police officer, in acute distress about his wife divorcing him, hints to his shift supervisor, "Forget that transfer I asked for; I've decided to work things out permanently."

The shift supervisor takes him aside and asks, "What's the matter? Is something going on in your personal life?"

After this inquiry, the officer announces his wife is leaving him, describes his sense of devastation, and laments his inability to reverse her decision. The supervisor says, "I'm worried about you and concerned for your safety. Have you had any thoughts about killing yourself?"

The officer nods.

"Then I want you to see a professional immediately—strictly confidential. I'll make the arrangements. Chaplain or psychologist?"

"Psychologist," the officer replies, accepting help. Then he asks, "Do I have to give up my badge and gun?"

"No," replies the supervisor. "But for your safety you have to promise me you will not kill yourself until you've gotten some help. Are you willing to do that?"

"O.K.," the officer sighs. "O.K. O.K. How soon can I see the psychologist?"

"Today. I will take you myself," replies the supervisor.

With only an hour of training, the supervisor in this abbreviated interaction applied a new, direct suicide intervention methodology. Called QPR, the intervention consists of three bold steps: *questioning* the meaning of possible suicidal communications, *persuading* the person in crisis to accept help, and *referring* the person to the appropriate resource.

BACKGROUND

The supervisor of this officer did all of the right things at the right time. The officer received the necessary professional help immediately, resulting in a positive outcome.

Typical of most suicidal crises, the nature of this man's troubles took a long time to develop, but appeared brief, transient, and remedial during the crisis itself. A timely and caring confrontation about his hinted plan to commit suicide ("I've decided to work things out permanently"), together with an immediate referral, which included an

> ***"Although suicide is always complex and multifactorial, most experts feel the majority of suicides remain preventable."***

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agreement not to take his own life, enabled this officer to receive the counseling necessary to prevent a suicide attempt. This officer weathered his emotional storm and returned to duty in a few days with his pride and self-esteem intact.

Three things happened to help avert a possible tragedy, not only for the officer and his family but for the department, as well. First, the supervisor used training received in suicide prevention. Second, the supervisor acted immediately, with courage and by offering strong support. By contrast, those close to individuals contemplating suicide often respond to a suicidal communication with fear, denial, avoidance, and passivity. These responses heighten the sufferer's sense of isolation, helplessness, and hopelessness. Third, the availability of a mental health resource to the supervisor and the officer provided immediate support. Having ready access to a safe, tolerant, and helpful professional reduces the customary resistance many officers feel when seeking help.

SUICIDE RESEARCH

While statistics remain limited, law enforcement personnel are overrepresented in the suicide data. More officers lose their lives to suicide than to homicide. Research shows that the suicide rate of officers is 3 times the national average.[1] Another researcher reported that the suicide rate among police officers doubled from 1950 to 1990.[2] Considering the emotional wreckage suicides cause in friends, colleagues, and family members, even a single officer suicide is one too many.

Law enforcement personnel present an elevated suicide risk to themselves based on the often-cited reluctance of officers to seek help voluntarily or in a timely fashion. For example, if suffering from stress-induced depression, the psychological condition of suicidal people worsens over time and leads, in some cases, to a sense of utter hopelessness that clouds their thinking. When added to the well-documented risk factors of being a white, black, or Hispanic male[3] and working in a high-stress environment that requires access to a firearm, a potentially toxic psychosocial formula for personal disaster exists.

People contemplating suicide make a decision about the method they intend to use to bring about death. This decision almost always adheres with their values, personal identity, training, and the availability of the selected method. Thus, anesthesiologists tend to use drugs, pilots may use an aircraft, and law enforcement professionals almost always use a firearm. The use of a firearm provides little opportunity for rescue, resuscitation, or second chances.

Although research literature on suicide and its prevention has grown slowly due to a lack of funding, steady progress is being made. Researchers know a great deal more today than they knew 10 years ago about the psychological conditions under which people consider suicide. Among the information learned recently:

- suicidal crises tend to be short;
- most suicides are completed by people suffering from stress-triggered, untreated clinical depression, often complicated by acute or chronic alcohol intoxication;
- if treated aggressively, 70 percent of depressed, suicidal people will respond favorably to treatment in a matter of a few weeks; and

- the newer antidepressant medications cause few side effects that impair job or family functioning, and as a result, compliance with medication regimes results in excellent treatment responses.[4]

Attempted or completed suicide signifies the end of a journey that begins with the idea that suicide solves problems and ends in a fatal or nonfatal self-destructive act. Once a person considers suicide, the journey to find a time, place, and means to make an attempt may be short or long. Sometimes the journey takes only hours or days, but typically, it takes a matter of weeks or even years. For most people, the hot phase of a suicide crisis begins and ends within approximately 3 weeks. With early intervention during this journey, lives can be saved.

Recent, unpublished research from the U.S. Department of the Navy found that among 41 completed suicides, 90 percent of those who took their lives communicated their intentions prior to their deaths.[5] In 66 percent of these cases, the person directed suicidal communication to a shipmate, spouse, family member or significant other. Unfortunately, communications directed to a professional with any responsibility to take action occurred in only 34 percent of these cases. Still, this predictable suicidal communication provides an opportunity to intervene and prevent suicide.

THE NATURE OF SUICIDAL COMMUNICATIONS

The success of the QPR method hinges on the fact that those considering suicide tell someone, either by word or deed, what they plan to do before they do it. This interpersonal communication functions as a window of opportunity for people close to individuals contemplating suicide to act boldly.

Suicidal communications fit into four categories: direct verbal, indirect verbal, behavioral, and situational. Direct verbal communications are relatively easy to understand and do not require special listening skills or interpretive powers. One experienced sheriff advised

> ***"More officers lose their lives to suicide than to homicide."***

that when he was in the acute phase of his one and only suicide crisis, he drove up to an old friend having coffee in his patrol car. When his friend rolled down the window, the sheriff said, "I'm going to kill myself tomorrow." His friend stared at him in apparent disbelief, rolled up his window, and drove off. Fortunately, the sheriff survived his crisis.

All suicidal communications are not as direct and easily interpreted. Because potential rescuers often reject direct communication about suicidal intent, suicidal persons frequently revert to coded clues or "hints" they are considering suicide. Men often make a "dire prediction." A man made the statement, "You will find a dead man in a car in front of the house," to his wife after she filed for divorce.

Behavioral clues may prove even more difficult to interpret. Individuals in a suicidal crisis do not always verbally communicate their intentions in coded language. Some people engage in behaviors that clearly indicate they plan to end their lives. Examples include making a will, giving away prized possessions, and arranging their funerals.

Finally, suicidal situations are not communications, but crisis contexts in which individuals feel caught up in a web of seemingly impossible circumstances for which suicide becomes an acceptable solution. For example, best friends since elementary school, two 13-year-old boys start high school together. Two weeks later, one of the boys is struck and killed by a drunk driver. Feeling depressed and isolated, the boy left behind views suicide as the only answer.

LAW ENFORCEMENT APPLICATIONS

QPR has particular application to law enforcement environments because of the nature of close-knit associations and the necessity of teamwork, both between the officers and their partners, as well as among spouses and family members throughout the organization. More opportunities for early intervention exist when members of a socially integrated organization are trained to recognize a potential suicide crisis in progress.

In the same way a homicide requires opportunity (some experts have referred to suicide as homicide in the 180th degree), so too, does a

suicide. Distressed officers often create this opportunity by picking a fight with a friend, avoiding colleagues, resigning from the department ball team, and withdrawing from the very people who might help them survive. Those who know and work with police officers must raise their own awareness about the depth and breadth of this problem. The more people who know what to do and when to do it, the tighter the suicide prevention safety network and the better the prognosis for any officer caught in a personal crisis.

With very few exceptions, most officers in crisis benefit from counseling, even when the problem, illness, or crisis threatens their careers and futures. QPR proves especially helpful in environments where individuals at risk are unlikely to seek assistance on their own because they believe that voluntarily seeking mental health care may end their careers.

By resolving the stigma of mental health treatment and expanding the pool of properly trained individuals so that effective, officer-friendly mental health services are more readily available, a distressed officer who receives a direct order, strong recommendation, or even a soft referral to seek help can quickly take this support lifeline.

GATEKEEPER TRAINING

Gatekeepers, or first finders, represent those people in every community or institution who, because of their contact with those at risk for suicide, are in the best position to identify and refer people thinking about suicide. The QPR gatekeeper training module enhances general awareness about suicide, teaches the warning signs of suicidal thinking and behavior, and explains three basic intervention skills. The training module also includes a QPR information booklet and a three-part folding card, summarizing key information on the nature of depression and suicide, the role of alcohol in suicide crises, and if necessary, how to access the involuntary civil commitment laws to save a life, currently enforced in all

> ***"QPR does not require an advanced degree to administer."***

50 states. Although these laws vary by state, when a law enforcement officer believes individuals may harm themselves or commit suicide, the officer should contact a mental health provider to ensure that those individuals receive a mental health evaluation.

Following QPR training of executives in a health maintenance organization, two women asked to speak privately with the instructor. The first woman stated, "A family friend told me my 16-year-old son held a pistol to his head at the Christmas party last week. Should I be concerned?" This question led to an affirmative answer and an immediate referral for evaluation of this teenage boy. The boy had been considering suicide for several weeks. Pointing a gun to his temple may have indicated a behavioral rehearsal.

The second woman told the instructor, "My husband has kept a revolver near our bed all of our married lives. He recently took it to a pawn shop and hocked it. When I asked him why he'd done it, he said 'Don't ask stupid questions!' What should I do?" In this case, the woman brought her husband to the instructor's office, and the instructor conducted a suicide evaluation. Interestingly, the gentleman said, "I wasn't going to use the pistol...but I was going to go to the lake and gas myself."

In both of these cases, someone close to the suicidal person, not a professional, asked the *question*, and the individual at risk was *persuaded* to accept a *referral*. Such recognition and referral activity is common in the hours, days, and weeks following QPR training.

A REASON TO HOPE

By acknowledging and responding to the need to provide proper training, perhaps the nation's attitudes about suicide and prevention are changing. A group called the Suicide Prevention Advocacy Network recently delivered some 32,000 letters to members of Congress in Washington, DC, to request more attention to this unnecessary tragedy in American life.

With the help of several senators, Senate Resolution 84 was passed unanimously on May 6, 1997.[6] The language of this resolution included the following: "Now, therefore, be it resolved, that the Senate recognizes suicide as a national problem and declares suicide prevention to be a national

Direct Verbal Clues

- "I've decided to kill myself."
- "I wish I were dead."
- "I'm going to end it all."
- "if [such and such] doesn't happen, I'll kill myself."
- "I'm going to commit suicide."

Behavioral Clues

- Donating body to a medical school
- Changes in behavior, especially episodes of screaming or hitting, throwing things, or failing to get along with family, friends, or peers
- Sudden interest or disinterest in religion
- Relapse into drug or alcohol use after a period of recovery
- Making or changing a will

Indirect, or Coded, Verbal Clues

- "I'm tired of life."
- "My family would be better off without me."
- "Nobody needs me anymore."
- "It was good at times, but we must all say goodbye."
- "Here, take this [cherished possession]; I won't be needing it."

Situational Clues

- Sudden rejection by a loved one (e.g., girlfriend or boyfriend), or an unwanted separation or divorce
- Recent move—especially if unwanted
- Death of a spouse, child, or friend (especially if by suicide or accident)
- Diagnosis of terminal illness
- Sudden, unexpected loss of freedom (e.g., about to be arrested)
- Anticipated loss of financial security

priority." This resolution encourages initiatives to prevent suicide, respond to people at risk for suicide, promote safe and effective treatment for persons at risk for suicidal behavior, and encourage the development of mental health services, thus enabling persons at risk for suicide to obtain the services they need without fear of any stigma.

In April 1998, the U.S. House of Representatives is scheduled to review House Resolution 212, which contains a clause focusing on the rising epidemic of suicide among young African American males, while also acknowledging suicide as a national problem and declaring suicide prevention a national priority.[7]

CONCLUSION

Although suicide is always complex and multifactorial, most experts feel the majority of suicides remain preventable. Increased knowledge, coupled with straightforward intervention, can cut through the denial, ignorance, resignation, and apathy many people feel about the ability to prevent suicide. Many people's cultural consciousness contains dangerous and erroneous myths about suicide, many of which serve to foster the hopelessness that suicidal people experience on their journey toward self-destruction.

Suicidal people may communicate their intentions to commit suicide to only one other person. Therefore, support staff, dispatchers, administrative personnel, officers, and family members must learn the basic and necessary steps to take or at least know whom to contact if they become suspicious or concerned that someone they know may be considering suicide.

QPR does not require an advanced degree to administer. In fact, assuming the role of diagnostician or trained counselor is discouraged. The act itself involves confrontation, intervention, and referral, not a formal psychological evaluation, ongoing counseling, or treatment. Merely learning what intervention steps to take and when to take them could mean the difference between life and death. People

expect an officer trained in cardiopulmonary resuscitation (CPR) to apply knowledge and skill in an attempt to save the life of a fellow officer unable to breathe. Wouldn't people expect the same officer, similarly trained in suicide prevention, to make a good faith effort to save another life in peril? Indeed, a good faith effort to prevent the suicide of a fellow officer is not a matter of choice but a matter of duty. ✦

Endnotes

[1] K. O. Hill and M. Clawson, "The Health Hazards of Street Level Bureaucracy: Mortality Among the Police," *Journal of Police Science* 16 (1988): 243-248; and T. Baker and J. Baker, "Preventing Police Suicide," *FBI Law Enforcement Bulletin*, October 1996, 24-27.

[2] J. M. Violanti, "The Mystery Within: Understanding Police Suicide," *FBI Law Enforcement Bulletin*, February 1995, 19-23.

[3] National Center for Health Statistics, in American Association of Suicidology, public information sheet, 1996.

[4] Nicholas Ward, M.D., *Clinical Aspects of Depression*, paper presented at the "Workplace Strategies for Depression Conference," Portland, Oregon, January 10, 1997.

[5] Commander Paul Anjeski, "U.S. Department of the Navy Suicide Prevention," satellite training, September 1996.

[6] Congress, House, *Recognizing Suicide as a National Problem*, 105th Cong., 1st sess., H.R. 84, *Congressional Record*, (May 6, 1997).

[7] Suicide Prevention Advocacy Network USA (SPANUSA) quarterly publication, February 1998, 5.

Crime Data

Juvenile Crime

In 1996, the number of juveniles arrested for Violent Crime Index offenses—murder, forcible rape, robbery, and aggravated assault—decreased for the second straight year, according to the FBI's Uniform Crime Reporting Program. After a 3 percent decline in 1995, the number of violent crime arrests dropped by 6 percent in 1996. Though encouraging, these numbers represent a 60 percent increase over 1987 levels. By contrast, the number of adult arrests for violent crime index offenses have increased 24 percent since 1987.

With a 14 percent decrease in 1996, juvenile murder arrests reached their lowest level of the 1990s but remained 50 percent higher than in 1987. The number of robbery arrests declined by 8 percent; aggravated assault, 4 percent. The number of arrests for rape remained the same, although posting a 7 percent drop since 1992 and a 3 percent decline since 1987.

In contrast to the decline in violent crime arrests, the number of arrests for nonindex crimes, which range from other assaults and weapons violations to driving under the influence and running away from home, rose in many categories. For example, the number of arrests for liquor law violations went up 21 percent, as did the number of arrests for curfew and loitering violations. Arrests for driving under the influence increased by 20 percent.

The third category of index crimes—the property crimes of burglary, larceny-theft, motor vehicle theft, and arson—remained stable overall, with motor vehicle theft dropping 10 percent, arson falling 6 percent, burglary rising 3 percent, and larceny-theft remaining unchanged. In 1996, 40 percent of the juvenile arrests for these offenses involved youths under age 15; property crime arrests tend to decline with age.

Overall, the declines posted for juvenile crime arrests project a brighter future for the juvenile population, whose growth will continue into the next decade. In *Crime in the United States 1996*, the FBI will present its findings in all crime categories for both youths and adults.

Source: U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States 1996, *in U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, "Juvenile Justice Bulletin," NCJ 167578, November 1997.*

Protective Sweeps

By THOMAS D. COLBRIDGE, J.D.

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Police officers obtain an arrest warrant and enter a house to arrest a suspect for a violent crime. They quickly locate and arrest the suspect. A second group of officers simultaneously moves through the house looking for any other individuals who might interfere with the arrest. During this walk-through, the officers find evidence of the crime in plain view. The subject subsequently files a motion to suppress the evidence, alleging that it is the fruit of an unconstitutional search.

The officers who walked through the house were conducting a common procedure known as the protective sweep. The lawful protective sweep is an important law enforcement tool because evidence seized in plain view during the sweep is admissible in court.[1] This article will define a protective sweep,[2] discuss the Supreme Court's only protective sweep decision, and review issues recently raised in lower federal courts regarding the practice.

A BRIEF HISTORY

Prior to 1969, incident to a lawful arrest on a premises, police generally searched the arrestee, as well as the entire premises where the arrest occurred, for weapons, evidence, or means of escape.[3] However, in *Chimel v. California*[4] the Court limited this search incident to

arrest to the "arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from which he might gain possession of a weapon or destructible evidence."[5] In today's parlance, this area is known as the "lunging distance" of the arrestee.[6] The legal prerequisite for this search is the lawful arrest; no other factual justification is necessary.[7]

The *Chimel* case left police officers in a quandary. *Chimel* clearly was aimed at protecting officers from the arrestee, but the decision did not address what authority, if any, police have to search beyond the arrestee's lunging distance if they fear an attack from someone other than their subject. The following language in the *Chimel* decision seemed to rule out any search beyond the Court's narrowly defined limits: "There is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs....Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant."[8]

Lower federal courts soon recognized the dilemma created by the *Chimel* decision, reasoning that no police officers will, or should be expected to, ignore threats to their safety from unseen third parties present during an arrest. Consequently, in certain circumstances, courts began to approve warrantless protective sweeps of premises to counter such threats.[9] Courts differed, however, on the legal justification.[10] The Supreme Court resolved these conflicts in *Maryland v. Buie.*[11]

THE SUPREME COURT SPEAKS

In 1986, an armed robbery was committed in Maryland. Witnesses told police that one of the robbers wore a red jogging suit. Warrants quickly were issued for Jerome Buie and Lloyd Allen. Two days later, police made a pretextual telephone call to verify that Buie was at home. Several officers entered Buie's house to arrest him. They immediately separated to search for him. One officer called down the basement steps, demanding that any occupants come out. Buie eventually emerged and was arrested and handcuffed. Another officer then entered the basement to ensure it was empty. He noticed a red running suit in plain view on a stack of clothing and seized it.

Buie filed a motion to suppress the running suit evidence, claiming it was seized as a result of an illegal search. The trial court denied the motion, and Buie was convicted of armed robbery and a weapons offense. The Maryland State Court of Appeals reversed the decision. It ruled that the protective sweep of the basement was unlawful because the officer did not have probable cause to believe that someone in the basement posed a serious danger to the officers.[12] The U.S. Supreme Court agreed to review the case.[13]

SUPREME COURT ANALYSIS

The Supreme Court never questioned the concept of the protective sweep or the authority of arresting officers to conduct it in appropriate circumstances. The Court simply defined a protective sweep in the first sentence of the opinion, then quickly moved on to resolve the issue of the proper legal justification for such a sweep, as well as its scope. The Court established several broad principles regarding the protective sweep that are important for police officers to remember.

First, the protective sweep of a premises clearly is a search under the Fourth Amendment to the Constitution.[14] The *Buie* Court defined

"The lawful protective sweep is an important law enforcement tool...."

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the protective sweep as "a quick and limited *search of premises*, incident to an arrest and conducted to protect police officers or others."[15] As a search, the Fourth Amendment commands that the protective sweep be reasonable.[16] A search of a house or office, like the protective sweep, generally is not considered reasonable unless conducted with a search warrant issued upon probable cause; however, there are contexts in which neither a warrant nor probable cause is required for the search.[17]

Second, the *Buie* Court ruled that the lawful protective sweep is one of those contexts where neither a warrant nor probable cause is required for the search. The *Buie* Court analogized the protective sweep to the "on-the-street 'frisk' for weapons" and the " 'frisk' of an automobile for weapons" it had previously approved.[18] All three situations involve the need for quick action, based upon observations made by officers at the scene, which, as a practical matter, cannot be subject to the warrant requirement. Also, all three are aimed at protecting police officers and the public from harm and are considered limited searches that must end when the danger has been eliminated.

Third, because the frisk for weapons and the protective sweep are closely related, the Court decided that the legal justification for all three actions should be the same. It concluded that the Fourth Amendment permits a "properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based upon specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene."[19] This is the familiar reasonable suspicion standard the Court approved in the frisk context in *Terry v. Ohio*.[20] The Court ruled that the probable cause justification required by the lower court in the *Buie* case was unnecessarily strict.

> ***...a protective sweep is different from a search of the premises for the person to be arrested.***

DISTINGUISHING PROTECTIVE SWEEPS FROM OTHER SEARCHES

The Supreme Court made two important distinctions in this case. First, a protective sweep is different from a search of the premises for the person to be arrested. The Court noted that the police in this case had the right, based upon the authority of their arrest warrant, to search anywhere in the house that Buie might be found.[21] However, that authority ended when Buie was located. Any additional search had to be justified on other grounds.

Second, a protective sweep is not the same as a search incident to arrest, a recognized exception to the Fourth Amendment warrant requirement.[22] The search incident to arrest requires no additional justification beyond the lawful arrest;[23] the protective sweep requires reasonable suspicion of danger. The search incident to arrest is intended to protect the arresting officer from the danger posed by the arrestee and to protect destructible evidence;[24] the protective sweep protects the arresting officer from danger posed by unknown third parties. The scope of the two searches is also different. The search incident to arrest is limited to a search for evidence and weapons on the arrestee's person, within the arrestee's lunging distance, and following the *Buie* opinion, a search for persons in the "spaces immediately adjoining the place of arrest from which an attack could be immediately launched."[25] The scope of the protective sweep is more limited.

The *Buie* opinion said little about the scope of the protective sweep or what factors officers may consider when deciding a sweep is warranted. Those details were left to the lower courts to decide.

THE LEGAL JUSTIFICATION

The *Buie* case held that before police officers may conduct a protective sweep, they must have reasonable suspicion to believe that a person presenting a danger to them is hiding in the area to be swept. What does that mean? The Supreme Court gave no real guidance. However, lower federal courts have dealt with several important issues regarding the prerequisites for a lawful protective sweep.

How Protective is the Protective Sweep?

The *Buie* opinion contained the following language: "...such a protective sweep, aimed at protecting officers, *if justified by the circumstances*...."[26] In a concurring opinion, Justice Stevens argued that language such as this implies that the government has the burden of showing it was safer to conduct the protective sweep than to do something less intrusive, such as simply leaving the premises.[27] Some lower courts have agreed.[28] However, most of the opinions dealing with protective sweeps simply never raise the issue at all[29] or resolve the issue of safety in favor of the police.[30] One commentator doubts that the "police must use any available, less intrusive alternative to the sweep" argument will gain any widespread favor in the courts.[31]

What Consitutes a Reasonable Suspicion of Danger?

It is impossible to specify all the factors that can create a reasonable suspicion of danger. However, it is possible to identify facts that courts generally have agreed are important, or irrelevant, to the issue.

Conducting a protective sweep simply to determine if someone who could pose a danger is present is never sufficient justification. Lack of information never can provide the sole basis for justifying a protective sweep[32] because it violates the command of the Supreme Court in *Buie* that the police have reasonable suspicion of danger. In addition, courts have expressed the fear that permitting such a rationale would provide an incentive for the police to "stay ignorant,"[33] and would threaten to "swallow the general rule requiring that the police obtain a warrant...."[34]

The danger posed by the arrestee also is not relevant to the justification for conducting a protective sweep.[35] The threat must come from some person other than the arrestee. "If district courts are allowed to justify protective sweeps based on the dangerousness of the arrestee, nearly every arrest taking place in or near a home will include a protective sweep."[36]

> ***"...the protective sweep requires reasonable suspicion of danger."***

The existence of accomplices in a crime is likewise irrelevant if the crime occurred in the distant past. Courts have said multisuspect homicides that occurred as long as 7 months or as soon as 1 month prior to the time of the arrest, cannot justify reasonable suspicion of danger from the missing accomplice(s).[37]

Courts will not consider stereotypes based upon race, ethnicity, or economic class as a basis for a protective sweep. For example, the fact that an arrest takes place in a housing project or in a poor neighborhood is irrelevant to the court when deciding if the protective sweep is justified.[38]

Threats of future harm to the officers may not be considered. In *United States v. Akrawi*,[39] DEA agents executed an arrest warrant. They arrested Akrawi and detained his mother. During her detention, the mother "wished death upon the agents and their families" and hoped the agents "would experience the same pain that she had experienced."[40] Akrawi told the agents that the next time they "came through the door, he would meet them with .223-caliber bullets that would pierce both sides of their bullet-proof vests."[41] The court considered these mere threats of future harm, not immediate threats to the agents that would justify a protective sweep of the premises. Assertions by the arrestee or others on the scene that no one else is present are also irrelevant. Courts have recognized that criminals and their associates have a motive to lie in these situations.[42]

Relevant Factors

Most protective sweeps are justified on the basis of the unknown whereabouts of an armed cohort of the arrestee.[43] As noted, the reasonableness of the concern for the armed cohort depends in large measure upon the passage of time. Information that the arrestee was seen the day before with the suspected partner in a homicide is relevant.[44] However, the unknown whereabouts of the partner in a 1- to 7-month-old crime would not be relevant.

The nature of the crime for which the arrestee is being sought

may have an impact. If it is a violent crime and one that is likely to have more than one participant, courts are inclined to find it relevant to justifying a sweep of the premises. For example, one case upheld a protective sweep in a home labeled the "headquarters for the conspiracy" to rob armed security personnel;[45] another case considered it relevant that the premises were considered a major drug distribution point.[46] However, there is no one rule that states protective sweeps are permissible in all arrests for violent crimes. That approach was rejected by the Supreme Court in *Buie,* which demands a reasonable, particularized suspicion of danger in every case.[47]

While stereotypes regarding race, ethnicity, or economic class are irrelevant, historical fact may be considered. It is relevant that the neighborhood where the arrest occurred had been the scene of violence or civil strife directed at law enforcement.[48] Additional relevant factors include the configuration of the dwelling;[49] a known propensity of the arrestee to associate with armed people;[50] and seeing or hearing others on the premises in the course of the arrest.[51]

Where the Arrest Takes Place

Language in the *Buie* case makes it clear that the Supreme Court was talking about protective sweeps following arrests of people inside a premises.[52] Does that rule out the protective sweep of premises if the arrest occurs outside? It clearly does not. Lower federal courts have recognized the authority of the police to enter and sweep a building when the arrest occurs in proximity to the building and reasonable suspicion justifies it.[53] The cases permitting a protective sweep following an arrest outside the premises all have required a reasonable suspicion of danger on the part of the officers. No courts have ruled in favor of police entering a premises on the theory that it is a search of an immediately adjoining area following a lawful arrest.[54]

THE SCOPE OF THE PROTECTIVE SWEEP

The Supreme Court emphasized that the protective sweep should be limited in both its intensity and its duration. "It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding."[55] The protective sweep survived the limitations placed on the search incident to arrest in *Chimel v. California*[56] because it was a more limited intrusion than the full-blown search of the house involved in *Buie.*[57]

Logically, the protective sweep can include rooms and closets, as well as cabinets and spaces large enough to hide a human being. But courts will not permit sweeps that are excessive in scope. For example, in *United States v. Ford,*[58] an FBI agent exceeded the scope of the sweep when he looked under a mattress and behind a window shade, places where a person could not hide. Other courts suppressed a checkbook found in a wastebasket,[59] and business receipts found in the defendant's closet[60] pursuant to a protective sweep. Both courts reasoned that the evidence was located in areas that could not harbor a person.

The protective sweep is also of limited duration. In *Buie,* the Supreme Court said: "The sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises."[61] Many factors, such as the size of the premises

and the number of officers available, can affect the duration of the sweep, but officers must think in terms of minutes, not hours. For example, in *United States v. Hogan*, a federal appellate court criticized a protective sweep lasting 2 hours as a "fishing expedition."[62] Another federal appellate court thought 30 minutes was too long.[63]

One federal appellate court described a properly limited protective sweep in these words: "Officer Mathews' sweep was also limited in scope. He did not search in drawers or dawdle in each room looking for clues. He moved briefly through two bedrooms, the bathroom, and the kitchen. When satisfied that the apartment was secure he returned to the living room and called for assistance. The Court in *Buie* requires no more."[64]

DISCOVERY OF A THIRD PERSON

What can officers do if they discover a third person during their lawful protective sweep? Surprisingly few cases since *Buie* have dealt with this issue. The U.S. Court of Appeals for the Second Circuit court has decided two recent cases on the issue.

In 1989, deputy U.S. marshals arrested Geraldo Hernandez for a parole violation. They had information that Hernandez was armed and accompanied by others. The deputies entered Hernandez' apartment and arrested him. During a warrantless sweep of the apartment, a deputy found Betty Barlow sitting on a bed in the bedroom. He handcuffed her and put her on the floor. As he did so, he ran his hand across the top of the bed and between the box spring and mattress where she had been sitting. He also searched the drawers of a dresser next to the bed. The deputy found a loaded revolver between the mattress and box spring. Other evidence was found in plain view during the sweep of other rooms of the apartment.[65] Hernandez was indicted for pos-session of the weapon. His motion to suppress was denied, and he appealed.

> ***"[The protective sweep]...can last no longer than necessary to dispel the suspicion of danger."***

Hernandez argued that the deputy should not have been allowed to search the bed and drawers once he had handcuffed Barow and determined there were no other dangerous people in the room. The Second Circuit Court disagreed. The court said the purpose of the protective sweep is to ensure the house where an arrest just occurred does not harbor other people who are dangerous and could launch an attack. Where the protective sweep uncovers a dangerous person, officers are permitted to "neutralize the threat of physical harm"[66] from that person by determining if there are weapons within that person's reach. In other words, this court permitted the officer to conduct a quick search of both Barlow and the area into which she could reach for weapons. The court analogized this situation to the street encounters discussed in both *Terry v. Ohio*[67] and *Michigan v. Long*,[68] where the Supreme Court permitted officers to frisk the person (*Terry*) and the interior of a car (*Long*) when they reasonably suspected weapons were present.

The Second Circuit court heard a similar case in 1996,[69] specifically dealing with the scope of the frisk of a dangerous person found during a sweep. DEA agents arrested Ogarro in the hallway of his apartment building. During a brief struggle, Ogarro was thrown against the entry door of Blue's apartment, which gave way. Ogarro and the agent fell inside. Agents subdued Ogarro, then approached Blue, who appeared lethargic and unresponsive, as if under the influence of drugs. Both Blue and Ogarro were handcuffed behind the back, laid on the floor about 2 feet from Blue's bed, and placed under guard. Two other agents then performed a protective sweep of Blue's one-room apartment. They lifted the mattress off the box spring and found a package wrapped in brown paper, a machine gun, and an ammunition clip. Blue was charged with a weapons violation, and he moved to suppress the evidence. The trial court denied the motion, and he appealed.

The Second Circuit Court reaffirmed the authority of the police to frisk potentially dangerous people located during a protective sweep, as well as their "immediate grab area."[70] However, it decided that the bed where the evidence was found in this case was within neither Blue's nor Ogarro's immediate control. The court looked at two factors

at the time the search of the "grab area" was conducted: the location of the detainees and the nature of their restraints. Both men were on the floor and 2 feet from the bed. They were guarded and handcuffed with their arms behind their backs. The court found that, under those circumstances, the suspects could not have reached deep into the bed and retrieved the gun. Consequently, the sweep was overbroad, and the evidence was suppressed.

CONCLUSION

The Supreme Court has approved protective sweeps of premises following an arrest if officers have reasonable suspicion that the area to be swept harbors a dangerous person. To justify the sweep, officers must be able to articulate specific facts about their particular arrest that justify their suspicion. The sweep itself must be limited to areas that could hide a person and can last no longer than necessary to dispel the suspicion of danger. Under no circumstances should the sweep take longer than the time necessary for officers to arrest the subject and leave the scene. When the arrest occurs in close proximity to a premises, officers may sweep the premises if they have reasonable suspicion that it harbors a dangerous person. If a person is found during that sweep and is reasonably believed to be dangerous, officers may frisk that person for weapons and search the area where a weapon could be reached. Any evidence or contraband found in plain view during the lawful sweep may be seized and used as evidence in court. ✦

Endnotes

[1] *See Coolidge v. New Hampshire*, 403 U.S. 443 (1991); *Horton v. California*, 496 U.S. 128 (1990).

[2] This article discusses the warrantless search undertaken to protect the police and others from dangers posed by unseen third parties on the premises during an arrest. Some courts have recognized police authority to conduct warrantless searches for other purposes (to protect evidence or locate victims and accomplices), also calling it a protective sweep. The latter search is not considered in this article.

[3] *See United States v. Rabinowitz*, 339 U.S. 56 (1950).

[4] *Chimel*, 395 U.S. 752.

[5] *Id.* at 763.

[6] As discussed later, this area of search incident to arrest was enlarged by the Supreme Court in *Maryland v. Buie*, 110 S. Ct. 1093 (1990).

[7] *United States v. Robinson*, 414 U.S. 218 (1973).

[8] *Chimel*, 395 U.S. at 763, citing *Katz v. United States*, 389 U.S. 347 (1967).

[9] For a discussion of the judicial development of the protective sweep concept, see Paul R. Joseph, *The Protective Sweep Doctrine: Protecting Arresting Officers from Attack by Persons Other Than the Arrestee*, 33 Cath. U. L. Rev. 95 (Fall, 1983); Mark A. Cuthbertson, *Maryland v. Buie: The Supreme Court's Protective Sweep Doctrine Runs Rings Around the Arrestee*, 56 Alb. L. Rev. 159 (1992).

[10] *See United States v. Cravero*, 545 F.2d 406 (6th Cir. 1976) (requiring probable cause to believe there was a threat to safety); *United States v. Gardner*, 627 F.2d 906 (9th Cir. 1980) (requiring reasonable suspicion); *United States v. Blake*, 484 F.2d 50 (8th Cir. 1973) *cert. denied* 417 U.S. 949 (1974) (requiring no additional justification beyond the arrest).

[11] 110 S.Ct. 1093.

[12] *Buie v. State*, 314 Md. 151, 550 A.2d 79 (Md. 1988).

[13] *Maryland v. Buie*, 109 S. Ct. 2447 (1989).

[14] U.S. Constitution Amendment IV reads: "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 person or thing to be seized." The Supreme Court defined a search as a government intrusion into a person's reasonable expectation of privacy (*see Katz v. United States*, 389 U.S. 347 (1967)).

[15] *Buie*, 110 S. Ct. at 1094 (emphasis added).

[16] *Id.* at 1096, citing *Skinner v. Railway Labor Executives' Assn.*, 109 S. Ct. 1402, (1989).

[17] *Id.* at 1097.

[18] *Terry*, 392 U.S. 1 (frisk of the person); *Michigan v. Long*, 463 U.S. 1032, (1983) (frisk of the automobile).

[19] *Buie*, 110 S. Ct. at 1099-1100.

[20] 392 U.S. 1.

[21] *Buie*, 110 S. Ct. at 1096.

[22] *Id.* at 1099.

[23] *Robinson*, 414 U.S. at 235.

[24] *Chimel*, 395 U.S. at 762-763.

[25] *Buie*, 110 S. Ct. at 1098.

[26] *Id.* at 1099 (emphasis added).

[27] *Id.* at 1100, Stevens, J., concurring.

[28] *See United States v. Hogan*, 38 F.3d 1148 (10th Cir. 1994), *cert. denied* 514 U.S. 1008 (1995) (at page 1150: "...he [the officer] agrees that 'he could have just put Mr. Hogan in the car and driven away' after the initial arrest. This statement calls into question the need for a protective sweep at all...."); *see also United States v. Henry*, 48 F.3d 1282 (D.C. Cir. 1995), *rehearing and suggestion for rehearing en banc denied*, May 27, 1995.

[29] *See United States v. Soria*, 959 F.2d 855 (10th Cir. 1992), *cert. denied*, 506 U.S. 882 (1992); *United States v. Barker*, 27 F.3d 1287 (7th Cir. 1994); *United States v. Ford*, 56 F.3d 265 (D.C. Cir. 1995).

[30] See *Henry*, 48 F.3d 1282.

[31] Wayne R. LaFave, *Search and Seizure* (3d ed.), Section 6.4.

[32] *See United States v. Akrawi*, 920 F.2d 418, (6th Cir. 1990); *United States v. Colbert*, 76 F.3d 773 (6th Cir. 1996); *Sharrar v. Felsing*, 128 F.3d 810 (3rd Cir. 1997).

[33] *Colbert*, 76 F.3d at 778.

[34] *Id*.

[35] See *Sharrar*, 128 F.3d 810; *Colbert*, 76 F.3d 773; *Ford*, 56 F.3d 265; *Henry*, 48 F.3d 1282.

[36] *Colbert*, 76 F.3d at 777.

[37] *See Ford*, 56 F.3d 265; *Hogan*, 38 F. 3d 1148.

[38] *See United States v. Burrows*, 48 F.3d 1011 (7th Cir. 1995), *cert. denied* 515 U.S. 1168 (1995); *rehearing and suggestion for rehearing en banc denied*, 106 F. 3d 403 (1997).

[39] 920 F.2d 418 (6th Cir. 1990).

[40] *Id*. at 419.

[41] *Id*.

[42] *See United States v. Richards*, 937 F.2d 1287 (7th Cir. 1991); *Henry*, 48 F.3d 1282.

[43] *Sharrar*, 128 F.3d 810 at 824 ("The reasonable possibility that an associate of the arrestees remains at large is the salient...concern for which a warrantless protective sweep is justified.").

[44] *Richards*, 937 F.2d 1287.

[45] *United States v. Kimmons*, 965 F.2d 1001, 1009 (11th Cir. 1992); *cert. granted and judgment vacated on other grounds*, *Small v. United States*, 508 U.S. 902 (1993); *judgment reinstated on remand to United States v. Kimmons*, 1 F.3d 1144 (11th Cir. 1993).

[46] *United States v. Mickens*, 926 F.2d 1323 (2nd Cir. 1991); *cert. denied* 502 U.S. 1060 (1992); *vacated on other grounds and remanded for resentencing*, *United States v. Jacobs*, 955 F.2d 7 (2nd Cir. 1992); *vacated on other grounds and remanded for resentencing*, *United States v. Mickens*, 977 F.2d 69 (2nd Cir. 1992).

[47] *Buie*, 110 S. Ct. at 1098, note 2.

[48] *Burrows*, 48 F.3d 1011.

[49] *Id.* at 1016, citing *Richards*, 937 F.2d at 1291 ("...an ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings.").

[50] *United States v. Looney*, 481 F.2d 31 (5th Cir.1973), *cert. denied*, 414 U.S. 1070 (1973).

[51] *Burrows*, 48 F.3d 1011.

[52] *Buie*, 110 S. Ct. at 1098 ("...taking steps to assure themselves that the house in which a suspect is being...arrested is not harboring other persons....The risk of danger in the context of an arrest in the home is as great as...it is in an on-the-street or roadside investigatory encounter.").

[53] *Burrows*, 48 F.3d 1011; *Colbert*, 76 F.3d 773.

[54] *See Sharrar*, 128 F.3d 810.

[55] *Buie*, 110 S. Ct. at 1094.

[56] *Chimel*, 395 U.S. 752.

[57] *Buie*, 110 S. Ct. at 1099.

[58] 56 F.3d 265 (D.C. Cir.1995).

[59] *United States v. Wilson*, 36 F.3d 1298 (5th Cir. 1994).

[60] *United States v. Noushfar*, F.3d , 1998 WL 146418 (9th Cir. 1998).

[61] *Buie*, 110 S. Ct. at 1099.

[62] *Hogan*, 38 F.3d at 1150.

[63] *Noushfar*, 1998 WL 146418.

[64] *Richards*, 937 F.2d at 1292.

[65] *United States v. Hernandez*, 941 F.2d 133 (2nd Cir. 1991).

[66] *Id*. at 137 (*citing Terry v. Ohio*, 392 U.S. 1 at 24).

[67] 392 U.S. 1.

[68] 463 U.S. 1032.

[69] *United States v. Blue*, 78 F.3d 56 (2nd Cir. 1996).

[70] *Id*. at 59.

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.

Clarification

The article, "The Workplace Privacy of Law Enforcement and Public Employees," which appeared in the June 1998 issue, contained an error. The first sentence of the third paragraph on page 27 should read as follows:

> If employees have no reasonable expectation of privacy in their offices, desks, files, lockers, or cruisers, intrusions into these areas would not constitute searches under the Fourth Amendment.

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 their exemplary service to the law enforcement profession.

Officer Teske

While on night patrol, Officer Brent Teske of the Libby, Montana, Police Department observed a column of smoke in the downtown area. Upon investigation, Officer Teske discovered a vehicle engulfed in flames parked beside a large propane tank. Unable to see inside the vehicle because of the heavy smoke, Officer Teske approached the car to determine if anyone was inside. Officer Teske opened the driver's door and found an unconscious man, apparently overcome by the smoke. As Officer Teske pulled the man from the vehicle, the interior of the car erupted in flames. Until other police officers and the fire department arrived on the scene, Officer Teske administered first aid to the victim. Officer Teske's quick-wittedness and valiant actions averted a dangerous explosion and saved not only the man's life but possibly other lives, as well.

Deputy Walker

On a cold winter afternoon, Deputy Robert A. Walker of the Dorchester County, Maryland, Sheriff's Office arrived at an apartment fire in Hurlock, Maryland. Deputy Walker entered the apartment to search for a male resident reportedly still in the apartment. Although confronted by heavy smoke, Deputy Walker searched the apartment and found the resident. Dragging the unconscious man partially outside the apartment, Deputy Walker was met by two firefighters who helped carry the resident to safety. Suffering second- and third-degree burns to his hands, legs, back, and neck, the victim subsequently recovered from his injuries. The swift and persistent efforts of Deputy Walker prevented the man's death.

Officer May

Officer Kenneth F. May, Jr., of the Enfield, New Hampshire, Police Department responded to the report of an individual choking on some food. Arriving at an assisted-care facility, Officer May found a 60-year-old handicapped woman choking on some food. She was unable to breathe and was beginning to panic. Officer May quickly performed the Heimlich maneuver and partially cleared her airway, gaining critical time before responding emergency medical personnel arrived at the scene. Officer May's prompt action led to the woman's full recovery.

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