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By Anthony J. Pinizzotto,
Edward F. Davis, and
Charles E. Miller III

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The Deadly Mix

Officers, Offenders, and the Circumstances That Bring Them Together

By ANTHONY J. PINIZZOTTO, Ph.D., EDWARD F. DAVIS, M.S., and CHARLES E. MILLER III



“He wouldn’t give me a good shot. He stood too far back. I had to stretch around to fire. Because of that, my shots went low, and I missed,” said an offender as he related why he had failed to shoot an officer in the head.

“I could jump through cuffs before your mind could think about what happened. I used to put my gun on the coffee table, stand 4 or 5 feet away, jump up in the air through the cuffs, come down, grab the gun, and

bring it back up in seconds,” advised an offender who had attacked an officer while handcuffed.

“It’s a cost-benefit question. Is the cost of catching this person at this time worth risking my life?” asked an officer as he stated his views on pursuing suspects.

“Retreat was my only option. The subject had a rifle, and I wasn’t sure where in the home he was located. Obviously, I did the right thing because no one got hurt,” explained an officer

concerning an encounter he had with an armed subject.

These actual statements graphically illustrate the real-world experiences of law enforcement officers and the offenders they interact with on a daily basis. The authors interviewed these individuals and many others for the third and final installment in their trilogy on law enforcement officer safety.¹ *Violent Encounters: Felonious Assaults on America’s Law Enforcement Officers* concludes an arduous yet rewarding journey

undertaken for the sole purpose of saving the lives of law enforcement officers so they can continue to perform their sworn duties, protecting and serving their communities. During this sojourn, the authors witnessed transitions and various emphases in types of tactical training, physical conditioning, and mental preparedness. As researchers and law enforcement officers, they hope that their efforts will point to ways that help officers patrol more safely.²

THE DISCOVERY OF THE DEADLY MIX

One question remained during these years of inquiry into law enforcement safety. With all of the modern developments in technology and training, why do the numbers of officers killed

and assaulted each year remain, on average, the same? The law enforcement community knows many of the tactical problems and issues facing officers on the street. Instructors and agencies continue to redesign training to reflect this ever-increasing knowledge. Officers themselves have sought additional training in street tactics and survival at their own expense. And, yet, these numbers of killings and assaults remain somewhat constant. Why?

Perhaps, a significant part of the answer to this question lies in understanding the deadly mix as developed and explained in the authors' first study, *Killed in the Line of Duty*. The deadly mix consists of three components: 1) the officer, 2) the offender, and 3) the circumstances

that brought them together. However, it often remains difficult to determine the specific role and amount of influence each of these played in a particular assault. To further complicate quantifying these factors, elements within each component are affected by changes within each of the other two. As a way to better understand this, the authors present two incidents involving the same offender interacting with two different officers.

Assumptions and Perceptions

A lone officer stopped an offender for speeding but did not check the license plate number of the vehicle or the violator's name in NCIC. Although he normally followed this procedure in every traffic stop, he



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planned to meet a fellow officer for lunch in 5 minutes. The officer obtained the driver's license and registration and returned to the rear of his patrol unit to write the traffic citation. The offender, wanted for a felony violation in a nearby jurisdiction, remained in his vehicle and closely watched the officer in his side-view mirror. At that point, the officer received a radio transmission from the officer he was meeting for lunch. He answered the radio, confirmed that he was on his way to the restaurant, and then approached the offender who shot him several times with a handgun and drove away.

Although seriously wounded, the officer survived. Authorities captured the offender 2 days later in a neighboring jurisdiction. When asked about the incident, the officer replied, "I wasn't aware at any time that I was in danger. The offender appeared very cooperative and polite." When asked what prompted him to attack the officer, the offender said, "It was nothing personal. The officer seemed like an okay guy. I was willing to take a traffic ticket for speeding; that was the least of my worries. But, when I saw the officer talking on the radio, I thought he discovered I was wanted on a felony warrant. If he had not gotten on that radio, I would have thought everything was okay, taken the ticket,

and left." In this incident, the perceptions of both the officer and the offender proved incorrect. The offender perceived the officer's acknowledgment of the lunch appointment as a threat, assuming that the officer was talking to the dispatcher retrieving information regarding his felony warrant status. Conversely, the officer perceived the offender's courteous and cooperative behavior as posing no threat to him.

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How each component (officer, offender, and circumstances) of the deadly mix interacts with the others represents the heart of the authors' research.

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In contrast, this same offender advised that under a similar set of circumstances in the past, another officer had stopped him. In that situation, the professional manner of the officer (i.e., the officer focused directly on him and the movements he made in the vehicle) impressed the offender so much that he did not use the weapon he had under his seat. The offender watched the officer in

his side-view mirror and, at one point, made eye contact with him. He saw the officer touch the back of his car, look in the rear passenger area, and take a position slightly behind the center post of the car. The offender decided, "It wasn't worth taking the chance that I might get over on him. He had his stuff together. I didn't feel I'd be able to get my gun without getting hurt."

How each component (officer, offender, and circumstances) of the deadly mix interacts with the others represents the heart of the authors' research. By altering only one aspect of only one component in an event where an officer and offender come together, the outcome can change dramatically. In the two incidents presented, it was the offender's *perception* of both officers' behaviors and the *assumptions* that he made that significantly altered his actions and resulted in the attack on the one officer and not on the other.

After examining the officer's behavior in the first situation, some may conclude that he made what could have been a fatal error. But, looking at the incident on three levels—the officer's view, the offender's impressions, and the context in which they came together—can reveal critical implications. The officer failed to notify the dispatcher of the license plate number and his location,

certainly an important consideration. However, stopping at that point will dilute the meaning of this encounter and miss a significant training principle: the perceptions and assumptions of the offender and the officer and how they affected the outcome of the situation. Instead, a reexamination of the scene would show that what eventually became an assault on the officer began in the offender's mind. His assumption that the officer received a broadcast that would lead to his arrest, *combined with* what he perceived about the officer's inattentiveness, resulted in the attack. The inaccurate meaning the officer gave to his perceptions of the offender heightened the threat level. Although the officer accurately perceived the courteousness and cooperation of the offender, he believed that this indicated a lack of dangerousness.

In this offender's past, a similar situation had arisen. Stopped by an officer for a traffic violation, he perceived that the officer was too professional for him to attempt any offensive action even though he feared arrest and jail. He quickly evaluated the officer's abilities and matched them with his own and determined that this situation did not indicate a favorable outcome for him.

The aspects within each of the components of the deadly mix that result in an officer's

death or injury are fluid and dynamic. Misperceptions and inaccurate interpretations of perceptions continue to affect how officers and offenders react.

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Officers

In all three of the authors' studies, the officers generally had been raised in warm, caring, and stable environments by their biological parents. Most experienced relatively little, if any, exposure to violence in their childhoods. They chose the law enforcement profession because they wanted to better the communities they served.

Some of the descriptors developed for the officers remained constant. In particular, the term *hardworking* seemed to apply to every officer interviewed. Hardworking usually has positive connotations. In law enforcement, however, some possible negative consequences can result. Hardworking officers effect more arrests,

write more traffic citations, respond to more calls for service, and initiate more interactions. Because they have more contact with members of both the general public and the criminal element, they become the target of more complaints. These officers also appear more likely to get involved in incidents where property damage and injury to the officer and offender may occur. When their agencies review these complaints and injuries, they may see the same officers' names emerge, causing them to punish, rather than reward, the officers.

On the other hand, potentially serious administrative and safety issues can arise with hardworking officers. Some may take unnecessary safety and procedural shortcuts to increase their levels of production. They may rush into a building totally engulfed in flames to save a family pet; they may continue a pursuit that could increase their chances of being injured or killed; they may charge headfirst into a situation where, logically and tactically, most officers would retreat. The community and the media often consider these as acts of heroism and applaud an officer for taking needless and, perhaps, irresponsible risks. This kind of reaction can send a harmful message to other officers, "If I work hard and get too many complaints, I may be

disciplined or possibly lose my assignment. But, if I take unnecessary and foolish chances, I may be rewarded.” Where this occurs, supervisors should recognize this dynamic and take the necessary steps to correct it.³

Another descriptor of the officers that remained constant throughout all three of the authors’ studies was the ability to “read” people and situations. This belief, rarely found in relatively inexperienced officers, usually was held by veteran officers. The amount of street time needed to lose the rookie status varies from agency to agency. Many officers expressed that this generally occurs after spending 5 years on patrol and becoming comfortable with their position in the law enforcement profession, feeling that they can deal with anything from a traffic violation to a homicide. They have successfully handled so many intoxicated individuals, so many disorderly incidents, and so many domestic disputes that they believe that they can accurately read people and situations and predict the successful outcome of an incident before it actually happens. They begin to depend on experience to get them through situations because it always worked in the past. This can result in officers walking a dangerous tightrope. They become complacent, thinking

that they can shortcut a thorough examination of a situation. Complacency, however, is the worst enemy of the veteran officer.

An example shows how this belief can become dangerous. An officer encounters an individual who fits a certain pattern of behavior that he has seen



many times.⁴ He feels comfortable with this person because he *knows* how the subject will react. The officer tests his theory. After giving several commands and seeing that the individual complies, the officer’s level of caution begins to wane. With the person’s increased compliance, the officer now makes a fatal error: he drops his guard. Although previous subjects followed the officer’s commands, this one does not. This suspect waited for an opportunity to take the advantage away from the officer, and the officer gave it to him.

Offenders

What qualities, aspects, preconceived notions, and emotions does the offender add to the other two components (the officer and the circumstances) that can result in an assault or death of a member of the law enforcement profession? The authors determined from their research that no clear profile of an offender who assaults or kills a law enforcement officer exists. And, yet, many officers continue to possess a picture of this imaginary offender. Many anticipate a physically dominating individual who exudes danger from every pore. Research, however, does not support this image.

Overall, some offenders had criminal records; some had psychiatric histories; some belonged to gangs; some consistently carried weapons; and, yet, many defied placement in any category. The only well-defined characteristic the offenders shared was that they assaulted or killed a law enforcement officer.

Some qualifying aspects of these offenders, however, frequently reoccurred. In *Violent Encounters*, for example, the authors noted that a number of offenders were affiliated with gangs, many more were exposed to violence at a much earlier age than their counterparts, and most abused alcohol and other drugs. Most of all, the

authors found that an analysis of these officer-offender encounters offered some lessons. Not unlike anyone who interacts with another person, offenders assess people, including law enforcement officers. This interaction may involve an exchange of money or drugs or an interview by an officer. The higher the stakes in the encounter, the greater and more extensive the assessment.

Most dangerous in such situations are the offenders often described as predatory or as psychopaths or antisocial personalities. Even in life-and-death circumstances, these types of offenders can coldly calculate their chances of survival. Because they do not experience the same levels of anxiety as most people, they are less distracted by either internal or external factors. Quickly and decidedly, they weigh their chances and options and make a choice. Where they believe that they can overcome an officer, they attempt an assault or murder. In circumstances where they feel that an officer has the edge, they respond as one such predator advised, “I just sit back and wait, somebody gonna make a mistake. That’s when I win.”⁵

Only the offenders know how high the stakes are in a particular situation. They have more information—or believe they do—than officers. This

puts officers at a disadvantage from the beginning of the encounter and greatly increases it when they judge dangerousness based on the erroneous belief that offender risk is displayed by physical characteristics. In several incidents, officers, by their own admissions, missed obvious danger cues because

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Do hardworking, dedicated, and service-oriented officers also project the image of being attentive, vigilant, and professional?

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they viewed the offender as safe. They based these judgments on assessing physical characteristics without giving any thought to what might be the offender’s emotional state or possible mind-set.

What, then, is known about offenders who have assaulted or killed law enforcement officers? Because offenders cannot be described by their physical characteristics and do not meet any profile, this apparent dearth of information paradoxically brings to light the most salient fact regarding individuals who might assault or kill an

officer—it can be anyone. Whether they chose to assault an officer came from their assessing a significant number of items in an astonishingly short amount of time. Although some assaults occurred during an extended interaction with an officer, many were more impulsive and reactive.

Because the deadly mix always involves an officer, an offender, and the circumstances in which these two individuals meet, the way in which that encounter begins and develops has a dynamic effect on the offender and the choices that person makes. Those decisions will have an important effect on the way the officer acts. And, so, the dynamic continues and changes.

Constant assessment and reassessment on the part of the offenders, although at times rapidly accomplished, determine their next move. Their internal environment, including their thoughts, feelings, expectations, fears, hopes, and experiences, interacts with their external surroundings, which, of course, include the officer.

Circumstances

In the majority of cases in the authors’ research, the hardworking officers initiated contact with the offenders who subsequently attacked them. In other instances, dispatchers sent officers to the scene of the

An Overview of Violent Encounters: Felonious Assaults on America's Law Enforcement Officers

The authors examined 40 cases selected from over 800 incidents of felonious assaults supplied by the law enforcement community nationwide. They visited the crime scenes, reviewed all case data, and conducted in-depth interviews to obtain, in detail, pertinent information concerning the interaction of 43 offenders with 50 officers.

The report includes a chapter on how the offenders acquired and used their weapons, how often and where they practiced with them, and why they believed that they could successfully defeat the officers. It also identifies the commonalities and traits of armed offenders, including similarities and differences between males and females, who attempted to or did kill law enforcement officers.

The study points to the need for nationally accepted definitions and reporting procedures regarding the phenomenon of suicide by cop and includes recommended guidelines. The effects on officers, families, and local communities following incidents where offenders have deliberately compelled officers to use deadly force are both traumatic and long lasting. Officers involved in these tragedies reiterated the necessity of additional training, an increase in conscious awareness of these incidents within their communities, and greater interaction with the media to correctly and adequately cover these occurrences.

A chapter on how officers and offenders acknowledged the details of their encounters covers perception, memory, and retrieval of information, all dynamic processes. After reviewing one theory of how humans perceive their environment, it goes on to examine and explain how officer and offender perceptions at the crime scene may have affected their actions, as well as their recollections of what transpired, during their encounters. The chapter ends with a discussion of the implications of these findings for law enforcement training.

Through the interview process, both officers and offenders identified what they considered as important training issues or how the lack of training resulted in the outcome of their encounters. Case examples supplement a discussion of these training issues, which also identifies implications for administrators, trainers, supervisors, and officers.

Source: Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, U.S. Department of Justice, Federal Bureau of Investigation, Violent Encounters: Felonious Assaults on America's Law Enforcement Officers (Washington, DC, 2006).

encounter. Those who initiated contact with the offenders generally chose an environment that they believed was tactically advantageous to them. In some cases, offenders did not stop at a location of the officers' choosing but attempted to find

a spot where they felt they held the advantage. For example, an officer attempted to make a stop in a well-lit area. However, the offender did not comply but, instead, eventually pulled over at a place that provided much less light.

When dispatched to a location while answering a call for service, officers had no control over the site of the encounter, only their approach. Of course, in any situation, officers and offenders cannot control certain elements, such as weather

conditions, pedestrian and vehicular traffic, natural lighting, availability of cover, and the distance of backup units from the scene.

Any encounter where an officer was assaulted or killed transpired as an evolving scene that included the perceptions and interpretations of the officer and the offender. These perceptions and the concomitant interpretations were altered by the actions of each person as they interacted. And, based on those assessments of each other's behaviors, each acted accordingly. At that point, the participants had set the potential of a deadly mix in motion.

THE IMPLICATIONS OF THE DEADLY MIX

Understanding the deadly mix can offer many benefits for use-of-force investigators, academy and in-service trainers, first-line supervisors, law enforcement managers, and officers. By evaluating all three components (officer, offender, and circumstances), they can more clearly grasp some of the dynamics that result in serious assaults or deaths.

Officers

Do hardworking, dedicated, and service-oriented officers also project the image of being attentive, vigilant, and professional? Their appearance and the verbal and nonverbal messages they communicate

can potentially protect them as much as their weapons and body armor. Officers always must be alert, attentive, and professional. Their demeanor must convey that, if necessary, they can become a formidable opponent. Although officers cannot control certain elements of a deadly confrontation, they can greatly influence others.

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...a complicated issue compounded further by an officer's actions or the decision not to act that may affect the safety of other officers and the public.

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Use-of-Force Investigators

Investigators should remain aware of the components, interactions, and implications of the deadly mix. Understanding the complexities of perception and memory, including sensory distortions and information storage and retrieval by both officers and offenders, can assist those charged with investigating use-of-force incidents.

Trainers

Understanding the concept of the deadly mix and incorporating these principles into

realistic training can better prepare officers for potential violent encounters. This training can bring together the multiple tasks of report writing, handcuffing, and defensive tactics in the same scenario. Altering just one element of the deadly mix can provide a multitude of changing circumstances and outcomes with which to challenge each officer. Law enforcement training must teach officers to be vigilant, attentive, and mentally prepared to deal with ever-changing circumstances on the street.

Field training officers need to observe the behaviors and messages that recruits project as they interact with the public. They must ensure that their trainees never evaluate individuals based solely on physical characteristics. They must instill the knowledge that part of being a professional law enforcement officer is to remain mentally focused for the unexpected during the entire tour of duty.

First-Line Supervisors

Supervisors should monitor officers constantly to ensure their compliance with departmental safety policies and practices. They should scrutinize their officers' interactions with citizens and evaluate the messages these officers project. Supervisors should not commend officers for inappropriate risk-taking behaviors that place them, their fellow officers, or

citizens in danger *regardless* of the outcome.

Managers

Managers set the tone for the entire agency. They must ensure that easily understood written policies and directives that clearly outline safety policies and procedures exist and that supervisory personnel enforce them. Executive officers should not limit their training programs to their specific state's established minimum standards but ensure that personnel continually receive timely, updated in-service training. They should meet regularly with members of the local media and explain such matters as suicide by cop and policies and procedures regarding the use of force, including the use of deadly force. Managers also should interact frequently with civic groups and provide citizen academies with relevant safety training information so that members of the general public can better understand law enforcement safety matters and issues regarding the use of force. Executives should ensure that local citizens are educated on how to conduct themselves during situations, such as traffic stops, where they may encounter sworn personnel in their official capacity.

Law enforcement managers should recruit the best available applicants based on job-specific criteria. A major component



includes safety, a complicated issue compounded further by an officer's actions or the decision *not* to act that may affect the safety of other officers and the public.

CONCLUSION

Violent encounters between officers and offenders will continue to plague America, sometimes resulting in serious injury or death to those charged with safeguarding its citizens. Only by examining the various components of the deadly mix of officers, offenders, and the circumstances that brought them together will a greater understanding of these encounters occur. Only by this kind of careful and complete review of each event will the facts of the case surface and an objective assessment be made.

It is in the best interest of all law enforcement agencies, officers, communities, and

citizens to take the time to fully and impartially examine these events. In this way, America's law enforcement officers will continue to ably protect and serve their communities and their brothers and sisters in the law enforcement family. Most of all, they will survive these encounters, return home to their loved ones each day, and continue to fulfill their roles as society's guardians. ♦

Endnotes

¹ In their first study, *Killed in the Line of Duty*, published in 1992, the authors presented the results of their interviews with offenders convicted of killing law enforcement officers. In the second, *In the Line of Fire*, published in 1997, they provided the findings from their interviews with offenders who had assaulted law enforcement officers and those with officers who had survived felonious attacks.

² *Violent Encounters: Felonious Assaults on America's Law Enforcement Officers* is available from the UCR Program Office, FBI Complex, 1000 Custer Hollow

Road, Clarksburg, WV 26306-0150 or by calling 888-827-6427. Readers who wish to discuss the topic of officer safety but do not want to request copies of *Violent Encounters* should contact Mr. Charles E. Miller III, head of the Officer Safety Research and Training Program, at 304-625-2939.

³ Unfortunately, the inappropriate actions and overly aggressive behaviors of a very small percentage of officers have brought disgrace to all who have worn a law enforcement uniform. These few compromise the integrity of all dedicated and professional officers who, finding such behavior repugnant, would favor

the removal of these individuals from their ranks.

⁴ For illustrative purposes and to promote clarity, the authors refer to officers as males.

⁵ The authors recommend that officers read *Without Conscience: The Disturbing World of the Psychopaths Among Us* (New York, NY: Guilford Press, 1999) by Dr. Robert D. Hare, whose keen insight can enable officers to identify many encounters they have had with such a person.

The authors gratefully acknowledge all of the individuals who have assisted them throughout their research.

Most of all, they thank the officers who agreed to reveal their personal experiences, private reflections, and occasional demons associated with these violent encounters. As with all of their previous works, the authors dedicate this article to all law enforcement officers who serve and protect their communities without regard for their own safety and comfort. They also honor the quiet heroes—the parents, siblings, spouses, and children of these brave officers—who willingly share the burdens and sacrifices of their loved ones and anxiously await their safe return each day.

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Enlightened Leadership

“Those who really seek the path to enlightenment dictate terms to their mind. Then they proceed with strong determination.”

Buddha

Much of the talk in leadership development circles today involves enlightened leadership. Most often, the discussion describes this in terms of a goal, or end state, to which all leaders should aspire. But, that is not an accurate evaluation. It detracts from the magnitude of what makes a leader. No subset of enlightened leaders who have “made it” exists within a larger group of those who have not.

This notion equates leadership with a position or title, which

it is not. It is a calling. The qualities attributed to enlightened leadership are those essential to every effective leader. Effective leaders have vision, constantly seek insight, and continually reflect on and look with honesty at their choices and actions to develop better self-knowledge. At first blush, it seems that enlightened leadership is really just a grandiose name for common effective leadership.

But, effective leadership is not that common. What, then, separates an enlightened leader from an effective one? Perhaps, it stems from awareness, those who are cognizant of their choices, decisions, beliefs, and actions.

Effective leaders who become enlightened realize that enlightenment is not the idealistic ultimate goal but, instead, just the beginning—that unidentifiable moment, event, or insight that thrusts them on the lifelong path of conscious leadership development. Lao Tzu said, “Knowing others is wisdom, knowing yourself is enlightenment.” From this perspective, enlightened leaders constitute individuals

who recognize that they have stepped onto the path and accept the

ENLIGHTENMENT

responsibilities and challenges that come with the journey. Enlightenment is not a type of leader; it is the conscious decision to grow and develop as a leader with no turning back. It is the spark of leadership fanned to a flame.


The best leaders will catch that spark and fan it to a flame over and over again. Each time they come to a new level of self-knowledge and self-mastery, they will become enlightened—not once, but often. ♦

Deborah Southard, a leadership program specialist in the Office of Leadership Development at the FBI Academy, prepared Leadership Spotlight.

Focus on Technology

E-Sourcing *Another Tool for Law Enforcement?*

By Timothy A. Capron, Ph.D.,
and Rhonda A. Capron, M.B.A.



The evening shift commander returned from a meeting to find a note from the chief requesting that he immediately prepare a sealed bid for 10 new, front-wheel drive, 4-door patrol cars.¹ Further, the chief wanted him to deliver the bid to the city's purchasing agent the next morning. A postscript on the note asked that the commander also determine how to get rid of the surplus patrol vehicles when the new ones arrive. Thinking that a better way must exist, the weary supervisor began preparing the proposal form and specifications.

Most law enforcement supervisors or fleet managers can identify with this scenario. Depending on the size of an organization and its jurisdiction, this process can become onerous, especially without a purchasing agent. To procure vehicles, the commander will prepare the specifications and proposal and determine which merchants to advise. Then, he must decide when and where the bidding process will occur and publish a notice of the event in a local newspaper. The commander will not know how many vendors will bid or their qualifications. The number of steps to this process may total over a dozen in some areas. Suppliers have only one opportunity to submit a bid and do not know what others will offer.² Whether buying motorcycles or selling surplus property or vehicles, e-sourcing—purchasing negotiations conducted online—may prove helpful for law enforcement agencies.

Types of E-Sourcing

There are two main types of e-sourcing events. Online *reverse* auctions have only one buyer but many sellers. A buyer initiates reverse auctions by distributing purchasing specifications, such as requests for quotes, and suppliers compete against each other in Web-based, real-time auctions to win the buyer's business, driving down the price in the process. Online *forward* auctions have one seller but many buyers. A seller notifies buyers of the products or services available, and buyers compete against each other in Web-based, real-time auctions, driving up the demand and prices as they bid.³

When law enforcement departments need new vehicles, using an online reverse auction could dramatically expedite the purchasing process, potentially attract new vendors, and possibly result in lower prices. For example, an agency could contract with an e-sourcing company to host and conduct the reverse auction, providing it with the specifications, suggested vendors, and a region from which to draw them. The company might suggest expanding the vendor list nationally or even globally. The department can employ other potential sources, such as state procurement agencies, to determine a fair price as many have arrangements for fleet purchases. From that point, the e-sourcing company takes over, quickly qualifying vendors and examining their track records for reliability

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and quality. The actual event can occur within days, and the agency has the right to say no if, in the end, it can obtain a better price elsewhere.

Law enforcement organizations also have the option of purchasing the software and conducting these auctions themselves. They can buy a license effective for a certain period of time for an unlimited number of events. For example, the Kentucky Council of Area Development Districts recently formed a partnership with an e-sourcing company to create the Area Development District Online Procurement Services (ADD-OPS).⁴ In this case, buyers from any Kentucky municipality, county, region, or private agency can connect with thousands of vendors. The instructional technology coordinator for the council recounted how the Green River Area Development District recently contacted ADD-OPS about purchasing a high-end digital copier.⁵ Based on research, the price for the copier and a 3-year maintenance contract was over \$36,000. A reverse auction was held with bidders able to see competing bids in real time. Closing bids ranged from \$22,460 to \$31,076, a savings in the first amount of almost 40 percent.⁶

What does this cost? “There is no fee charged to the local government for setting up and running an auction, and there is no fee charged to any vendor for participating. It is only when an auction results in a low bid, which is accepted by the local government buyer, and a purchase order is issued that any fees are charged. In this case, the winning bidder pays [the e-sourcing company] a fee (on a sliding scale less than 2 percent of the selling price) for the benefit they have received from participating in and winning the auction. The local government pays nothing and neither do any of the other participating bidders.”⁷ Further, the council hopes to gain significant savings in future

procurements by consolidating quantities in bulk and seeking larger numbers of geographically dispersed vendors that might otherwise not be aware of the procurement.⁸

Pros and Cons

What do vendors and suppliers think about this process? One article detailed Minnesota’s reverse auction efforts and quoted an all-terrain vehicle vendor saying he is comfortable with the process, and it has helped move inventory.⁹ Some vendors and suppliers may have reservations about the process, and their experiences will affect their openness. Additionally, law enforcement executives will have to consider the political ramifications involved. For instance, a sheriff facing reelection who conducts reverse auctions online and awards contracts to out-of-state vendors might face repercussions, finding it difficult to ask local car dealers to support his next

election campaign. In the opening scenario, the chief directed the commander to find a way to dispose of 10 surplus vehicles. He could hold a live, public auction, although that entails a lot of work, such as posting notices of the sale, hosting viewing opportunities, conducting the auction, and, then, collecting the money. For many agencies, this may be the time to contemplate online forward auctions—the more familiar type where buyers bid for excess property, materials, or equipment.¹⁰ Using e-sourcing to conduct a forward auction offers an enhanced pool of potential buyers, a speedier process, and bidders who see the amounts bid as the auction moves forward.

Departments must address other considerations as well. In some jurisdictions, the laws, statutes, or codes of the state and local region currently may prevent these types of auctions, although areas are changing rapidly to allow them. These processes

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**This tool potentially
may save agencies
money and time....**

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may not be a panacea for all procurement efforts; a literature review reveals a cautionary note when applying reverse auctions to such things as intellectual and construction services.

Conclusion

E-sourcing is simply a tool—one that also can be abused. While e-sourcing may result in a lower price, law enforcement agencies should consider additional factors in their decision to use it. Quality, reliability, and long-term relationships are just as important. However, departments should contemplate e-sourcing for commodity purchases with many suppliers or when they need to dispose of inventory. If the shift commander in the opening scenario performs a quick search on the Internet, he may discover e-sourcing before spending a great deal of time preparing a sealed bid and being disappointed with the results. This tool potentially may save agencies money and time—significant factors to their communities' residents. ♦

Endnotes

¹ For illustrative purposes, the author employs masculine pronouns throughout the article.

² For additional information, see Curtis W. Exley, "Fleet Management: Vehicle Rotation Criteria," *FBI Law Enforcement Bulletin*, August 2002, 1-10.

³ Information in this paragraph is derived from Jemin Patel, "Establishing Mutual Equity for Buyers and Sellers with E-Sourcing," *Contract Management*, March 2005, 18-19.

⁴ Area development districts are a means to collaboratively serve regions as clearinghouses, technical centers, and conveners. For an explanation of the concept of an area development district and more information regarding ADD-OPS, see <http://www.kycadd.org/id1.html>.

⁵ John Penfield, IT coordinator for the Kentucky Council of Area Development District, e-mail to author, September 20, 2005.

⁶ Ibid.

⁷ John Penfield, e-mail to author, September 25, 2005.

⁸ Ibid.

⁹ Kevin Duchshere, "Reverse Auctions Helping State to Find Lowest Bids Online," *Minneapolis Star Tribune*, February 16, 2004, sec. B, p. 3.

¹⁰ For additional information, see Nole Bullock, "Dynamic Selling of Surplus Property," *Police Fleet Management*, January/February 2004; retrieved on March 21, 2006, from <http://www.pfmag.com/JanFeb04/janfeb2004dynamicselling.htm>; and the state of Oregon Web site at <http://www.oregon.gov/DAS/PFSS/SURPLS/index.shtml>.

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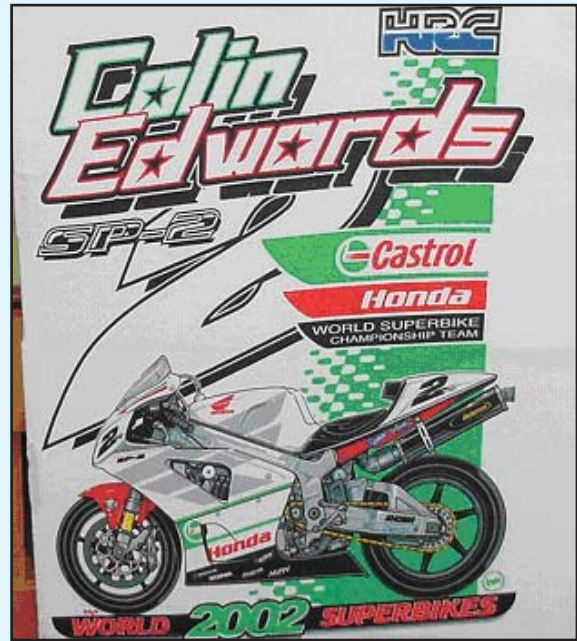
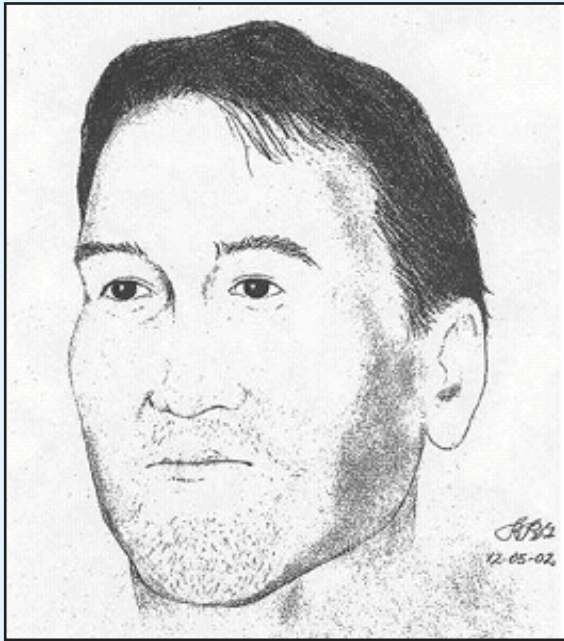
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Unidentified Deceased Victim



On October 6, 2002, the Gainesville, Texas, Police Department responded to a call of a body found in Moss Lake. The body was that of a white male, possibly in his mid to late 20s or as old as early 30s, between 5' 10" inches and 6' tall, with an approximate weight of 170 to 180 pounds, brown or black hair, and unknown eye color. No tattoos or scars on the body can be used for identification purposes. The victim was in the water for approximately 3 to 4 days. The medical examiner's office has ruled this death a homicide. The person remains unidentified.

The victim was wearing a Colin Edwards motorcycle T-shirt like the one pictured, along with Ralph Lauren blue jeans and Faded Glory athletic hiking boots. The shirt worn by the victim was sold

at a motorcycle race at Laguna Seca, California, on July 14, 2002.

Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all missing persons and crime analysis units. A dental chart is available, and the victim's DNA is registered with the FBI's National Missing and Unidentified Person DNA Database. Any agency with a missing person case that may match this unidentified victim may contact Detective Daniel Orr of the Gainesville, Texas, Police Department at 940-668-4779 or Dorr@gvps.org or Crime Analyst Lesley Buckles of the FBI's Violent Criminal Apprehension Program (ViCAP) Unit at 703-632-4179 or at lbuckles@leo.gov. ♦

Child Sex Tourism A Dark Journey

By TERRI PATTERSON

“It’s called the star effect. It’s like being a star. They want to try my food. They want to see what clothes I wear. They want to watch my television.” These statements comprised a convicted sexual offender’s description of how children respond to an American male in some foreign countries.

The United Nations (UN) defines child sex tourism (CST) as organized tourism (the nature of which encompasses many activities) that facilitates the commercial sexual exploitation of anyone under 18 years of age.¹ A global problem, CST has become the topic of increased dialogue among members of the international law enforcement community. Of importance, 191 countries have endorsed this description of CST by ratifying the UN’s Convention on the Rights of the Child.² Having a clear, operational definition constitutes a crucial first step in investigating these cases that permeate international boundaries.

THE PROBLEM

CST poses a unique problem to the law enforcement community for several reasons.



Because these cases involve the commercial sexual exploitation of children (more commonly

referred to as child prostitution), they often have negative consequences for the victims

because of the stigma attached to prostitution in general. Many are reluctant, even under the best circumstances, to report these crimes. When victims do come forward, most find it difficult to cooperate for the duration of the investigation and subsequent prosecution. Also, many lack a strong support system or suffer a variety of functional difficulties. The subsequent victimization sometimes exacerbates these problems, making these children problematic witnesses at trial. Others do not cooperate because of their reluctance to revisit the pain of their abuse. Also, for many victims, their own family members and loved ones share some of the responsibility, thereby causing them emotional difficulty that prevents their full participation in the investigation and subsequent trial. Although present in many child sexual-exploitation investigations, these obstacles are more pronounced in CST cases due to the lack of victim-related services in many developing countries.

In the past, the international component of the crime has posed the greatest difficulty. Studies have shown that 25 percent of international child sex tourists come from the United States.³ For American law enforcement agencies, the typical CST investigation involves a U.S. citizen or resident traveling

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The problem of child sex tourism requires an aggressive, transnational, and multijurisdictional response by law enforcement.
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Special Agent Patterson serves in the FBI's Miami office.

abroad to engage in commercial sex with a child. Much of the evidence needed for prosecution remains in another country having different legislative tools, societal attitudes, and law enforcement responsiveness to these matters. Limited resources, lack of specialized training, and language barriers add to the challenges in these transnational investigations.

On a brighter note, recent legislative reforms in the United States have made the investigation and prosecution of CST offenders less daunting. Specifically, the Protect Act of 2003 eliminated the requirement that investigators provide evidence of the offender's intent to engage in commercial sex with a child *prior* to departing from the United States, clearing the way for aggressive prosecution in cases that previously would have proven impossible to pursue in U.S. courts.⁴ For

example, since 2004, 11 individuals have been convicted as a result of CST investigations in the Southern District of Florida.

INVESTIGATIVE SOLUTIONS

Faced with a growing number of complaints about CST and armed with new, aggressive legislation, the FBI's Miami office began an initiative designed to aggressively pursue child sex tourists in the United States. To do so, agents gathered intelligence about how subjects committed CST offenses and established informal investigative response protocols. In the months that followed, the agents employed both reactive and proactive techniques to investigate CST offenders. To illustrate, the author presents examples of these investigations, along with the benefits and limitations to each approach.

Reactive Investigations

Best characterized as cases where the victimization has occurred or is imminent, reactive CST investigations generally begin with a citizen's complaint or a victim's statement. Typically, the offender resides in one country and the offense occurs in another, requiring a coordinated effort among the international law enforcement community to gather background information and evidence. These cases also can become extremely expensive, often stretching the limited budgets of law enforcement agencies. Many police departments in the United States and abroad do not have specialized units to investigate child exploitation and abuse, which can hinder eventual prosecution, particularly in international cases. Finally, the victims in these cases often are reluctant to report their victimization and even more hesitant to follow a long, protracted investigation and subsequent trial. All of these factors make reactive CST cases extremely challenging for law enforcement authorities and prosecutors.

Ben

Ben, a retired dentist from Florida, traveled frequently to Central America, eventually buying a house near the beach in a popular tourist town.⁵ Soon after his arrival, he sought out

young girls in his new neighborhood, inviting them to his home to listen to music and swim in his pool. Joined by an American friend who came to visit, both men began sexually abusing the youngsters and paying them to remain quiet. The victims, ranging in age from 12 to 15, all belonged to impoverished families to whom a few U.S. dollars equaled an entire month's salary. Ben and his codefendant paid one young girl extra money to serve as their recruiter and bring additional

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victims to the house. After Ben gave the girls alcohol and illicit drugs and photographed their abuse, one victim went to the authorities who eventually arrested him. Because of limited resources and a large backlog of cases, however, they freed Ben while he was awaiting trial. After he fled the country and became a fugitive, the authorities requested FBI assistance.

The subsequent fugitive investigation followed Ben to two additional countries before he returned to the United States and was arrested. A postarrest investigation revealed that Ben planned to return to his Florida home to gather money to travel to Southeast Asia. Following his arrest in Florida, FBI agents searched Ben's computer and found numerous images of child pornography. This case represents the first time that a U.S. citizen was extradited to that Central American country.

Ron

Like Ben, Ron, a 35-year-old U.S. citizen, traveled to several countries before deciding where to finally settle. Soon after his move to a Central American country, Ron met another local man, and the two began to invite young boys to Ron's home. In the months that followed, Ron sexually abused several children before a tip from a local citizen led law enforcement officials to his residence. During a search of his home and office, the police found information leading to a possible codefendant in the United States. Believing that Ron was photographing young victims in his Central American home and sending the pictures to his contact in the United States for editing, duplication, and distribution, the police

requested FBI assistance. Eventually, Ron's associate in the United States was indicted for possession of child pornography and later entered a guilty plea. Evidence believed relevant to Ron's investigation was forwarded to Central American authorities. Convicted of the commercial sexual exploitation of several young boys, Ron received the equivalent of a life sentence, in part, because the investigation revealed that he knew he was HIV positive while he was abusing the children.

Proactive Investigations

Proactive investigations incorporate sophisticated investigative techniques, such as undercover operations, to identify offenders and prevent the abuse of potential victims. The use of proactive techniques in CST cases allows law enforcement officials the opportunity to gather valuable evidence while controlling the pace of the investigation. Unfortunately, because undercover operations require the dedication of extensive law enforcement resources, countries with budgetary or legislative constraints often cannot use them.

The FBI's Miami office, in collaboration with the Fort Lauderdale Police Department and the Southern District of Florida U.S. Attorney's Office, employed an undercover

operation to identify, investigate, and prosecute individuals traveling in foreign commerce with the intent to have sex with minors; transporting juveniles in foreign commerce for the purpose of engaging in sex; enticing youngsters to perform illegal commercial sex acts; or taking part in the trafficking of children for commercial sex acts. To accomplish these objectives, an undercover officer interacted with subjects known to be predisposed to engage in CST. Authorities then arrested those who accepted the undercover officer's offer before they departed the United States, thereby preventing the foreign travel of child sexual offenders. Advantages of this operation included gathering valuable evidence, controlling the investigation, and, most important, preventing the abuse of children in foreign jurisdictions.

THE OFFENDERS

Examining information provided by the individuals arrested as a result of the FBI's undercover operation in Miami can help investigators learn more about CST offenders. Although only 13 subjects supplied the data, they offered some insight into the mind-set of such individuals.

Data Review

While most of the offenders were male, one female was arrested with her husband for paying to engage in sex with two minor girls. Over one-half of the offenders were between the ages of 40 and 60 with nearly one-fourth over 60 years old. Most offenders were either divorced or separated from their spouses with the smallest percentage in the single/never married category. Because travel to another country

Features of Child Sex Tourists

- Highly mobile, requiring coordination among varying law enforcement agencies and governments
- Likely to continue abusing children in many different countries if not arrested and prosecuted
- Usually leave evidence in multiple jurisdictions that cross national boundaries, making CST a global problem for law enforcement

requires a somewhat substantial monetary obligation, many potential offenders likely do not become international child sex tourists because of external controls, such as limited financial resources. All offenders were employed, some in rather lucrative jobs, except for the female, a stay-at-home mother with three children.

When asked by agents why they had chosen to travel to another country, most offenders stated that they never would attempt to pay for sex with a child in the United States out of fear of arrest. Thirty-eight percent went on to say that they thought it was legal in that particular foreign country. Almost one-third said that they did not believe anyone would report the offense. And, in another nearly one-third of the cases, the offenders believed that the behavior would not actually victimize a child. Some even stated that the person selling the child was the only one doing harm.

Ben, the offender arrested in Florida after fleeing Central America, told the arresting agent that he believed that, no matter the age of the child, if she was willing to take money in exchange for sexual acts, she should be considered a professional prostitute. He further advised that because he considered these girls professional prostitutes, he should not be prosecuted. Although it is legal

for people over the age of 18 to engage in prostitution in many developing countries, that does not extend to individuals under 18. The victims in Ben's case ranged in age from 13 to 15. In addition, whereas Ben said that he never would engage in the same conduct in the United States, evidence revealed that he, in fact, was grooming potential victims in this country even while fleeing prosecution in Central America.

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These cases also can become extremely expensive, often stretching the limited budgets of law enforcement agencies.

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Ron, the offender serving a life sentence, argued that he gave the victims money for clothing, entertainment, or bus fare as a gift, not in exchange for sex. When confronted with evidence that he paid the mother of at least one boy for continued access to her child, he advised that he did that because the mother could not afford her electric bill.

John, a teacher from New Jersey, was arrested in Miami after making arrangements with

an undercover agent to pay for sex with two 12-year-old girls in a foreign country. He told agents that he did not think this was wrong. During recorded conversations, however, John informed an undercover officer that he did not plan to take the young girls out of his hotel room because of the danger of being seen with them in public.

Instead of traveling out of the United States to pay for sex with young girls, Bob, a Florida police officer, requested that children be brought from a foreign country and delivered to him in a Miami hotel room. After negotiating with an undercover agent for a cheaper price for sex with two minor girls, Bob was arrested and later convicted under the commonly called Sex Tourism Statute that criminalizes the recruitment, enticement, harboring, or transporting of a minor to engage in prostitution in the United States.⁶

Child Oriented Versus Nonchild Oriented

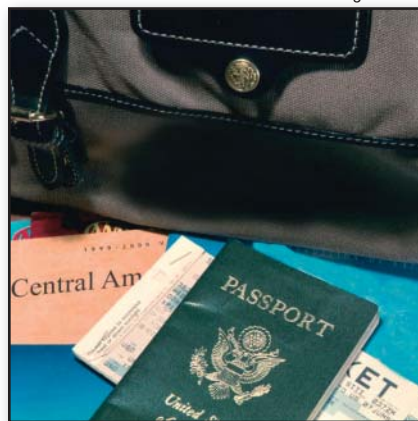
A common question among investigators about child sex tourists involves whether they are predominantly child-oriented or nonchild-oriented offenders. In recent years, many television news shows and documentaries have featured perpetrators who traveled to foreign countries to sexually abuse very young children for small

sums of money, leaving viewers with the impression that all CST offenders have a preference for extremely young, prepubescent children.

From an investigative standpoint, understanding whether the offender is child oriented may provide direction for follow-up investigation into the subject's background. Typically, this preference is revealed through an examination of evidence in the case, including computer forensic information, the pornography collection of the offender, and the ages of the victims or potential victims.⁷ Most of the perpetrators in the *reactive* cases examined by the FBI's Miami office fell into the child-oriented category. That is, they seemed to have a clear preference for young, prepubescent children. On the contrary, most of the offenders arrested as a result of the *proactive*, undercover operation appeared to be nonchild oriented. That is, based on all of the evidence available, these subjects did not demonstrate a clear preference for prepubescent children. In those incidents where probable cause existed to search the offender's computer, agents found child pornography in only 20 percent of the cases. They discovered adult pornography on every computer searched.

This represents an interesting finding that challenges the

intuitive notion that, behaviorally, offenders in CST cases mirror those in domestic Internet enticement or child pornography investigations. It constitutes a difficult question to examine because of the limited number of studies focusing exclusively on international CST offenders. Perhaps, as more CST perpetrators are identified both in the United States and abroad, more research will follow, and a clearer prototype of these subjects will emerge.



CONCLUSION

As the number of international travelers from the United States and other economically developed countries continues to rise, so does the risk posed by child sexual offenders to innocent victims around the world. The problem of child sex tourism requires an aggressive, transnational, and multijurisdictional response by law enforcement. The success

of the FBI's first international undercover operation designed to combat CST demonstrated the necessity of joint, proactive law enforcement initiatives that cross national boundaries. These efforts allow the pooling of resources and utilization of multiple legislative options in the apprehension of CST offenders. Most important, proactive undercover operations enable law enforcement to prevent the abuse of children. Although recent successes have occurred, the biggest challenge for the international criminal justice community continues to rest with the generation of creative investigative initiatives designed to stay one step ahead of child sex tourists. ♦

Endnotes

¹ Convention on the Rights of the Child, UN GA Res 44/25; retrieved on December 30, 2005, from <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

² Ibid.

³ "The Paedo File," *ECPAT Newsletter* (ECPAT International, Bangkok, Thailand, August 1996). Visit <http://www.ecpat.net/eng/index.asp> for additional information.

⁴ Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, Stat. 650.

⁵ To ensure confidentiality, the author uses pseudonyms for all offenders.

⁶ 18 U.S.C. §§ 1591, 2421, 2422, and 2423.

⁷ K.V. Lanning, *Child Molesters: A Behavioral Analysis*, 4th ed. (Alexandria, VA: National Center for Missing & Exploited Children, 2001).

Consular Notification and Access The “International Golden Rule”

By JONATHAN L. RUDD, J.D.



Police officers face increasing challenges because of the blurred lines between domestic law enforcement activities and the international community. Complying with the rights afforded foreign nationals when arrested or detained is one such area recently revisited by the U.S. Supreme Court.

This article begins with a brief overview of the rights afforded foreign nationals in the *Vienna Convention on Consular Relations (Vienna Convention)*,¹ details the substance and purpose of consular notification and access, summarizes the meaning

and impact of the Supreme Court’s most recent ruling in this area, provides practical guidance for law enforcement officers regarding the implementation of notification requirements; and concludes with an explanation of why it is important for law enforcement officers at all levels of government to know, understand, and enforce the law with regard to consular notification.

THE VIENNA CONVENTION

One of the many functions of any national government is to provide services and assistance

to its citizens who live and travel abroad. This assistance generally is carried out by employees of the national government, known as consular officers, who work in established embassies or consulates within the foreign country. These consular officers are authorized to provide a variety of services, which range from simple notarization of legal documents to large-scale evacuation of citizens in times of danger. The need for consular assistance is, arguably, at its zenith when a citizen is arrested or otherwise detained by the foreign government. In these situations, consular officers, if

notified of the detention, can provide their citizens with vital support, such as “attempting to ensure that they receive a fair and speedy trial with benefit of counsel; visiting them in prison to ensure that they are receiving humane treatment; and facilitating communications with their families.”²

Traditionally, consular functions were performed as part of customary international law and not codified by formal treaty. In time, however, countries began to formalize their consular relations in bilateral contracts called treaties, conventions, or agreements—all of which carry the binding status of a treaty for purposes of international law.³

In 1963, over 90 countries, including the United States, convened at the United Nations Conference on Consular Relations in Vienna, Austria, to create the *Vienna Convention*.⁴ The *Vienna Convention* is a multilateral treaty that codified the international common law governing consular relationships and has been referred to as “undoubtedly the single most important event in the entire history of the consular institution.”⁵ The *Vienna Convention* was completed on April 24, 1963, at which time countries throughout the world began the ratification process.⁶

It was not until December 24, 1969, after being ratified by President Richard Nixon upon the advice and consent

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**The Vienna Convention
is a multilateral treaty
that codified the
international common
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relationships....**

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Special Agent Rudd serves as a legal instructor at the FBI Academy.

of the Senate, that the *Vienna Convention* became enforceable in the United States.⁷ “The Nixon Administration finally sought ratification of the *Vienna Convention* because it believed the agreement ‘constitutes an important contribution to the development and codification of international law and should contribute to the orderly and effective conduct of consular relations between [nations].’”⁸

Today, most countries—170 different nations—are party to the *Vienna Convention*.⁹ “Because of its comprehensive nature and near-universal applicability, the [*Vienna Convention*] now establishes the ‘baseline’ for most obligations with respect to the treatment of foreign nationals in the United States, and for treatment of U.S. citizens abroad by foreign governments.”¹⁰ In addition to the *Vienna Convention*, other bilateral consular treaties exist, which, in many instances, provide additional obligations for

the nations participating in such bilateral agreements.¹¹

The *Vienna Convention* is made up of 79 articles, most of which provide rules for the operation of consulates, outline the functions of consular officers, and address the privileges and immunities afforded consular officials working in a foreign country.¹² A few of the articles specify what consular officials may do for citizens of their country who may be facing special difficulties in the foreign country.¹³ Of particular interest to the law enforcement community is Article 36 of the *Vienna Convention*, which outlines certain obligations law enforcement officers have to notify consular officials when they arrest or otherwise significantly detain a foreign national.¹⁴

CONSULAR NOTIFICATION AND ACCESS

Article 36 of the *Vienna Convention* generally requires

that law enforcement officials inform arrested or detained foreign nationals, without delay, of their entitlement to have their consulate notified of the detention. Article 36 further provides that if the detainees request such notification, the consular post must be notified, without delay. Moreover, consular officials must be allowed to communicate with and have reasonable access to the detainees.¹⁵

As indicated above, in addition to the *Vienna Convention*, the United States also has entered into a number of bilateral consular treaties with specific countries. Many of these bilateral treaties mandate that consular officials be notified of the arrest or detention of one of their nationals regardless of the detainee's wishes. These are known as "Mandatory Notification Countries."¹⁶

In the United States, the obligations of consular notification and access provided for in the *Vienna Convention*, as well as other bilateral consular treaties, are binding on federal, state, and local governments by virtue of the Supremacy Clause of the Constitution.¹⁷ Article VI of the Constitution states that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of

any State to the Contrary notwithstanding."¹⁸ In other words, federal, state, and local law enforcement officials are required by law to comply with consular notification and access rules every time they arrest or significantly detain a foreign national in the United States.

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170 different
nations—are party
to the Vienna
Convention.**

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THE SUPREME COURT AND CONSULAR NOTIFICATION

The Supreme Court has addressed issues dealing with consular notification in a handful of cases.¹⁹ On June 28, 2006, the Court issued its most recent decision in this area—*Sanchez-Llamas v. Oregon*.²⁰ *Sanchez-Llamas* is actually the consolidation of two state court cases (*Sanchez-Llamas v. Oregon* and *Bustillo v. Johnson*), which dealt with separate issues relating to the availability of judicially imposed remedies for violations of consular notification requirements under Article 36 of the *Vienna Convention*.²¹

Sanchez-Llamas v. Oregon

Moises Sanchez-Llamas, a Mexican national, was involved in a shoot-out with police in December 1999. After being arrested, the police gave him *Miranda* warnings²² in both English and Spanish and then interrogated him with the assistance of a Spanish interpreter. Sanchez-Llamas made several incriminating statements and subsequently was charged with attempted murder and several other offenses. The police failed to inform Sanchez-Llamas that he was entitled to have the Mexican consulate notified of his detention.

Prior to trial, Sanchez-Llamas moved to have the statements suppressed. He argued that the statements were made involuntarily and that the police failed to comply with Article 36 of the *Vienna Convention*. The trial court denied the motion and Sanchez-Llamas was convicted and sentenced to 20 years in prison. He appealed, and both the Oregon Court of Appeals and the Oregon Supreme Court affirmed the conviction, concluding that Article 36 does not create rights enforceable by an individual in a judicial proceeding.²³

Bustillo v. Johnson

Mario Bustillo, a Honduran national, was implicated in a violent homicide in December 1997. He was arrested by

police the following day and eventually charged with murder. Bustillo never was informed that he could ask to have the Honduran consulate notified of his detention. At trial, Bustillo was convicted of first-degree murder and sentenced to 30 years in prison. His conviction and sentence were affirmed on appeal. It was not until later in the appeals process that Bustillo first claimed a violation of his rights to consular notification under Article 36 of the *Vienna Convention*. The court dismissed Bustillo's claim, concluding that he failed to raise the issue at trial or on direct appeal and was, therefore, procedurally barred from bringing the matter up too late in the appeals process—a concept known as “procedural default.”²⁴

The Supreme Court agreed to hear these cases to address whether 1) Article 36 of the *Vienna Convention* grants rights that may be invoked by individuals in a judicial proceeding; 2) suppression of evidence is a proper remedy for a violation of Article 36; and 3) an Article 36 claim may be deemed forfeited under state procedural rules because a defendant failed to raise the claim at trial.²⁵

Individual Rights

At the heart of the authority to bring a challenge is whether the individual has a legal right to do so. The Supreme Court declined to definitively resolve

this issue, stating that it is not necessary to decide whether the *Vienna Convention* creates individual rights because Sanchez-Llamas and Bustillo are not entitled to relief on their claims. Therefore, the Court addressed the petitioner's claims and assumed, “without deciding, that Article 36 does grant Bustillo and Sanchez-Llamas such rights.”²⁶



The central issue of whether Article 36 of the *Vienna Convention* grants individuals enforceable rights remains unanswered. Most of the lower courts that have dealt with this issue, much like the Oregon court in *Sanchez-Llamas*, have held that the *Vienna Convention* does not grant individual rights.²⁷ On the other hand, some courts, including the dissenting justices in *Sanchez-Llamas*²⁸ and certain international courts, have held that Article 36 does, in fact, grant individual rights to arrested foreign nationals.²⁹

Suppression

The focus of the Supreme Court's ruling in *Sanchez-Llamas* was deciding whether suppression was the appropriate remedy for a violation of Article 36.³⁰ In holding that suppression is not the appropriate remedy, the Court recognized that Article 36 of the *Vienna Convention* leaves the implementation of its provisions in the hands of individual nations: “Rights under Article 36 are to ‘be exercised in conformity with the laws and regulations of the receiving [nation.]’”³¹ Therefore, the *Vienna Convention* does not mandate suppression as a remedy. In fact, it does not prescribe any remedy but leaves the matter to domestic law. With this in mind, the Court noted, “the exclusionary rule as we know it is an entirely American legal creation” and one that almost no other nation recognizes as a matter of domestic law.³² Moreover, the Court acknowledged that it holds no supervisory authority over state judicial proceedings and could only create a judicial remedy that would apply in state courts if the treaty itself provided for the same. To do otherwise would be to disregard the separation of powers set forth in the U.S. Constitution.³³

The Court questioned whether Article 36 requires any judicial remedy in the context of criminal prosecution for consular notification violations, noting that hardly any of the parties to

the *Vienna Convention* provide remedies for such violations through their domestic criminal justice systems.³⁴ Moreover, even if a judicial remedy is implied by Article 36, “under our domestic law, the exclusionary rule is not a remedy we apply lightly.”³⁵ The Court emphasized that the exclusionary rule is applied primarily to deter constitutional violations of the Fourth and Fifth Amendments. To apply suppression for a violation of Article 36 would be a “vastly disproportionate remedy.”³⁶ This is particularly true in light of the fact that “Article 36 has nothing whatsoever to do with searches or interrogations,” “is only remotely connected to the gathering of evidence,” and “does not guarantee detainees any assistance at all.”³⁷

Finally, the Court concluded that there are additional constitutional and statutory safeguards that assist in protecting the rights and interests of all persons arrested in the United States, whether or not they are citizens of this country. For example, foreign nationals enjoy the protections of the Due Process Clause, are entitled the right to an attorney, and are protected against compelled self-incrimination. Significantly, Chief Justice Roberts acknowledged that despite the Court’s ruling with regard to suppression, “a defendant can raise an Article 36 claim as part of a broader

challenge to the voluntariness of his statements to police.”³⁸

Procedural Default

In *Sanchez-Llamas*, the Court unequivocally held that a state may apply its procedural default rules to an Article 36 claim.³⁹ In other words, because Bustillo failed to raise the Article 36 claim on direct appeal, he was effectively barred from raising the claim in state post-conviction proceedings.

“

...consular officials must be allowed to communicate with and have reasonable access to the detainees.

”

The Court noted that it had already settled this exact issue in 1998 with its holding in *Breard v. Greene*.⁴⁰ However, it appears that the Court granted certiorari in this case because of a larger issue that has sparked considerable controversy in recent years over U.S. court rulings on the application of procedural default rules on Article 36 claims for foreign nationals facing the death penalty. Indeed, Bustillo was asking the Court to reconsider its ruling in *Breard*

in light of recent decisions by the International Court of Justice (ICJ), which interpreted the *Vienna Convention* as prohibiting the application of procedural default rules to Article 36 claims.⁴¹

In its decisions, the ICJ noted that the rights conferred by Article 36 are governed by each nation’s domestic laws and regulations, “subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.”⁴² The ICJ ruled, in the cases before it, that the application of procedural default rules prevented the “full effect” required by the express language of Article 36 and, therefore, should not be allowed.⁴³

In declining to reconsider *Breard*, the Court recognized the need to give “respectful consideration” to the ICJ’s interpretation of the *Vienna Convention*; however, the Court explained that in the United States, it is the Supreme Court, not the ICJ, that interprets the law and establishes precedent.⁴⁴

The Court added that procedural default rules “take on greater importance in an adversary system such as ours than in the sort of magistrate-directed, inquisitorial legal system characteristic of many of the other countries that are signatories to the *Vienna Convention*.”⁴⁵

Under our legal system, “the responsibility for failing to raise an issue generally rests with the parties themselves.”⁴⁶ The Court noted, for example, that if a defendant fails to bring a *Miranda* claim at trial, procedural default rules can bar such claims from subsequent postconviction proceedings.⁴⁷ It would be disingenuous to preclude the application of procedural default rules for violations of the *Vienna Convention* when the United States does not afford the same exception for “many of our most fundamental constitutional protections.”⁴⁸

The Court, in concluding the *Sanchez-Llamas* opinion, stated that, “Our holding in no way disparages the importance of the *Vienna Convention*. The relief petitioners request is, by any measure, extraordinary.... It is no slight to the Convention to deny petitioners’ claims under the same principles we would apply to an Act of Congress, or to the Constitution itself.”⁴⁹

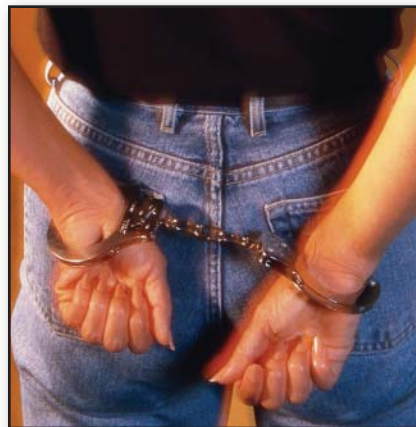
PRACTICAL CONSIDERATIONS

Key aspects of consular notification and access requirements include answers to fundamental questions such as: what is the definition of a foreign national, who is required to make the notification, and how should the notification be communicated. As part of its efforts to educate domestic authorities

and improve U.S. compliance with international treaties on consular notification and access, the U.S. Department of State has provided direction pertaining to a number of commonly asked questions.⁵⁰

What Is the Definition of a Foreign National?

The Department of State has clarified that “For purposes of consular notification, a ‘foreign national’ is any person who is not a U.S. citizen.” This includes lawful permanent resident aliens (“green card” holders), as well as illegal aliens.⁵¹



Who Is Responsible for Consular Notification?

The *Vienna Convention* actually states that “competent authorities” are responsible for providing notification. The Department of State has maintained that “as a practical matter: compliance with the notification requirements works

best when it is assumed by those government officials closest to the foreign national’s situation and with direct responsibility for it.”⁵² Accordingly, the law enforcement officers who actually make the arrest are responsible for the notification, not the judicial or prosecuting officials.⁵³

What Constitutes Detention?

Under the *Vienna Convention*, the requirements of consular notification are triggered whenever a foreign national is arrested or “detained in any other manner.”⁵⁴ However, this “detention” has been interpreted as follows: “The purpose of this requirement [...] is to ensure that a government does not place an alien in a situation in which the alien cannot receive assistance from his/her own government. When an alien is cited and immediately released, this consideration is not relevant because the alien is free to contact consular officials independently. The Department of State, therefore, does not consider brief routine detentions such as for traffic violations or accident investigations to be the type of situation contemplated by the [*Vienna Convention*].”⁵⁵ It should be kept in mind, however, that detentions that last for an extended period of time or include the actual transportation of a detainee may trigger consular notification obligations.⁵⁶

When Does Consular Notification Have to Be Given?

A distinction should be made regarding notification. There are two types of notice at play under the *Vienna Convention*. First, detained foreign nationals must be informed that they are entitled to have their consulate notified, if desired. Article 36 requires that detainees be informed of this fact “without delay.”⁵⁷ This notification should occur without any deliberate delay and “as soon as reasonably possible under the circumstances.”⁵⁸ As a practical matter, detainees could be advised of the right to have their consulate notified as a part of routine booking procedures.

Second, if the foreign national, in response to the initial inquiry made by the detaining officials, requests that the consulate actually be notified, the *Vienna Convention* requires that this notification to the consulate also take place “without delay.” Similarly, the Department of State advises that this notification should occur “as soon as reasonably possible” within the consulate’s regular work hours.⁵⁹

What Type of Notification Must Be Given?

There is no required wording with regard to notification. To assist in this regard, however, the Department of State has created sample statements

for informing foreign nationals of their rights in this area.⁶⁰ One statement is for use when consular notification is at the foreign national’s option (i.e., under the *Vienna Convention*).⁶¹ The other statement can be used when consular notification is mandatory (i.e., under other bilateral consular treaties).⁶²

“

...consular officials are not allowed to interfere with police investigations.

”

With regard to the notification given to consular officials, law enforcement officers need only provide the minimum information necessary to put the consulate on notice that one of their citizens has been detained. The reasons for the detention usually do not need to be provided with the initial notification.⁶³ The easiest and best way to provide this notification is by using the fill-in-the-blank fax form created by the Department of State.⁶⁴ This form allows law enforcement officers to notify the consulate while, at the same time, creating a record of the notification. It is important that law enforcement officers keep written records regarding any actions taken in

this area to show compliance with consular notification and access requirements.⁶⁵

What Are the Parameters of Consular Communication and Access?

The *Vienna Convention* and other bilateral treaties require that consular officers be allowed to communicate with and have access to their citizens.⁶⁶ However, consular officials are not allowed to interfere with police investigations. Moreover, the law enforcement authorities are allowed to “make reasonable regulations about the time, place and manner of consular visits. Those regulations cannot, however, be so restrictive that the purpose of consular assistance is defeated.”⁶⁷

STATUTES, REGULATIONS, AND PROCEDURES

Article 36 of the *Vienna Convention* expressly leaves the exact manner of executing its provisions to the discretion of the individual nations. Paragraph 2 of Article 36 states that “The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving [Nation].”⁶⁸ It has long been held that the *Vienna Convention* and other bilateral consular agreements are self-executing and do not require any additional federal or state legislation to be implemented.⁶⁹ Accordingly, “executive, law

enforcement, and judicial authorities can implement these obligations through their existing powers.”⁷⁰

The federal government and some states have enacted provisions offering law enforcement practical guidance regarding consular notification.⁷¹ In 1970, the federal government established a uniform procedure for the U.S. Department of Justice regarding notification of consular officers upon the arrest of foreign nationals.⁷² The procedure requires that “In every case in which a foreign national is arrested the arresting officer shall inform the foreign national that his consul will be advised of his arrest unless he does not wish such notification be given.”⁷³ The federal regulation further instructs the arresting officer to advise the nearest U.S. attorney of the detainee’s wishes regarding notification and requires the U.S. attorney to notify the appropriate consulate post.⁷⁴

In January 2000, the state of California enacted legislation requiring “every peace officer, upon arrest and booking or detention for more than two hours of a known or suspected foreign national, shall advise the foreign national that he or she has a right to communicate with an official from the consulate of his or her country.”⁷⁵ California further requires that “law enforcement agencies shall ensure that policy or procedure and training

manuals incorporate language based upon provisions of the [*Vienna Convention*] that set forth requirements for handling the arrest and booking or detention for more than two hours of a foreign national pursuant to this section prior to December 31, 2000.”⁷⁶

Recognizing the interplay between domestic law enforcement and the international community, agencies now realize the need for education and



training in this area. In fact, a written directive governing procedures for assuring consular notification compliance is now mandatory for accreditation with the Commission on Accreditation for Law Enforcement Agencies (CALEA). “This new standard is mandatory; it appears fourth on a list of approximately one thousand requirements of varying degrees of importance, right after the obligation to uphold the Constitution. Any U.S. law enforcement agency seeking or

renewing CALEA accreditation will now be required to have a written consular notification and access directive.”⁷⁷

In this regard, the Department of State has done much to educate and provide federal, state, and local law enforcement officials with the tools and resources necessary to fulfill these obligations.⁷⁸ The following resources from the Department of State are available, free of charge, to law enforcement and government agencies in the United States.

- 1) The *Consular Notification and Access* booklet⁷⁹ is a 72-page reference manual that explains and outlines the steps to be taken by law enforcement officers when arresting a foreign national. It also includes answers to commonly asked questions, provides suggested notification statements in English and 17 other languages, and lists all necessary contact information for foreign embassies and consulates in the United States.
- 2) Consular notification pocket cards are available as convenient, ready-references for individual officers.
- 3) “It’s the Right Thing to Do” is an 11-minute roll-call training and reference video.
- 4) A CD-ROM contains all of the material listed above,

a graphic presentation with talking points for officer training, and other helpful reference materials.⁸⁰

CONCLUSION

The nature of criminal activity today and the diversity existing in U.S. communities can easily put law enforcement officers in the international spotlight. Recognizing the sensitive legal, political, and diplomatic issues triggered when interacting with foreign nationals is critical not only in ensuring compliance with the law but also in safeguarding how U.S. citizens are treated by foreign countries.

The concept of reciprocity is something a law enforcement officer may understandably neglect to consider in the heat of an ongoing investigation. Simply put, the manner and consistency with which law enforcement officers implement consular notification requirements in the United States has a reciprocal effect on the way American citizens may be treated if detained abroad. At this time in history, when international travel is commonplace and respect between governments is particularly crucial, it is more important than ever for U.S. officers to live by what some have called the “international golden rule,” and consistently provide consular notification and access to all

foreign nationals arrested or otherwise detained within the United States of America. ♦

Endnotes

¹ *Vienna Convention on Consular Relations* (hereafter *Vienna Convention*), Apr. 24, 1963, 21 U.S.T. 77; T.I.A.S. No. 6820; 596 U.N.T.S. 261.

² U.S. Department of State, *Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them* (Revised January 2003), at page 42 of a 72-page booklet, (hereafter *Consular Notification and Access*), <http://www.travel.state.gov/law/notify.html>.

“
...detentions that last for an extended period of time...may trigger consular notification obligations.
”

³ *Id.*

⁴ *Vienna Convention*, *supra* note 1.

⁵ William J. Aceves, *The Vienna Convention on Consular Relations: A Study of Rights, Wrongs, and Remedies*, 31 Vand. J. Transnat'l 257, 264 (1998), quoting from Luke Lee, *Consular Law and Practice* 3-7 (2nd ed., 1991), at 27. See also, Emily Deck Harrill, *Exorcising the Ghost: Finding a Right and a Remedy in Article 36 of the Vienna Convention on Consular Relations*, 55 S.C. L. Rev. 569 (2004).

⁶ *Vienna Convention*, *supra* note 1.

⁷ The multilateral Vienna Convention was completed on April 24, 1963; entered into force March 19, 1967; approved by the U.S. Senate on October 22, 1969; ratified by President Richard Nixon on November 12, 1969; and, officially became U.S. law as a treaty on December 24, 1969. Aceves, *supra* note 5, at 269-270.

⁸ Aceves, *supra* note 5, at 269; quoting from Ex. E, 91st Cong., 1st Sess., at VII (Statement of Secretary of State William Rogers) (1969).

⁹ *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669, 2675 (U.S. 2006).

¹⁰ *Consular Notification and Access*, *supra* note 2, at 42.

¹¹ *Id.* at 43-44.

¹² *Id.* at 42.

¹³ *Id.* at 42-46. See, specifically, Articles 5, 36, and 37 of the *Vienna Convention*. Article 5 authorizes consular officers to assist its citizens and otherwise safeguard their interests. It further provides a “catch-all” provision allowing consular officials to perform any necessary functions not prohibited by law. Article 36 addresses consular notification and access rules, which is the topic of this article. Article 37 requires the host government to notify consular officials when their citizens experience a special need for assistance (e.g., in cases of death, vulnerability due to incompetence, and major accidents).

¹⁴ *Vienna Convention*, *supra* note 1, at 100-101. In its entirety, Article 36 states:

“Article 36: Communication and Contact With Nationals of the Sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.”

¹⁵ *Id.*

¹⁶ *Consular Notification and Access*, *supra* note 2, at page 5.

¹⁷ *United States v. Hongla-Yamche*, 55 F. Supp. 2d 74, 77 (D. Mass. 1999).

¹⁸ U.S. CONST., Art. VI, cl. 2.

¹⁹ See *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669 (U.S. 2006); *Medellin v. Dretke*, 544 U.S. 916, 125 S. Ct. 2088, 161 L.Ed. 2d 982 (2005); and *Breard v. Greene*, 523 U.S. 371, 118 S. Ct. 1352, 140 L. Ed. 2d 529 (1998).

²⁰ *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669 (U.S. 2006); the case was argued on March 29, 2006, and decided on June 28, 2006.

²¹ *State v. Sanchez-Llamas*, 108 P.3d 573 (Or. 2005), cert. granted in *Sanchez-Llamas v. Oregon*, 126 S. Ct. 620 (2005); *Bustillo v. Johnson*, 63 Va. Cir. 125 (Cir. Ct. 2003).

²² *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

²³ *Sanchez-Llamas*, *supra* note 20, at 2676-2677.

²⁴ *Id.* at 2677-2678.

²⁵ *Id.* at 2678.

²⁶ *Id.* at 2678-2679

²⁷ *U.S. v. Jimenez-Nava*, 243 F.3d 192 (5th Cir. 2001), cert. denied, 121 S. Ct. 2620, 150 L. Ed. 2d 773 (U.S. 2001) (Consular notification provisions of the *Vienna Convention* do not bestow on foreign nationals any private, judicially enforceable right.); *U.S. v. Emuegbunam*, 268 F.3d 377 (6th Cir. 2001) (The *Vienna Convention* does not create in a detained foreign national a right of consular access. The court further noted that the preamble to the *Vienna Convention* expressly disclaims the creation of any individual rights.); *Cardenas v. Dretke*, 405 F.3d 244 (5th Cir. 2005); *Medellin v. Dretke*, 371 F.3d 270 (5th Cir. 2004); *U.S. v. Banaban*, 85 Fed. Appx. 395 (5th Cir. 2004); *Diaz v. Van Norman*, 351 F. Supp. 2d 679 (E.D. Mich. 2005); *Mendez v. Roe*, 88 Fed. Appx. 165 (9th Cir. 2004); *Gordon v. State*, 863 So. 2d 1215 (Fla. 2003); *Rahmani v. State*, 898 So. 2d 132 (Fla. Dist. Ct. App. 5th Dist. 2005), reh'g denied (Apr. 7, 2005); *Rodriguez v. State*, 837 So. 2d 478 (Fla. Dist. Ct. App. 5th Dist. 2002); *Gomez v. Com.*, 152 S.W.3d 238 (Ky. Ct. App. 2004); and *State v. Gegia*, 157 Ohio App. 3d 112, 2004-Ohio-2124, 809 N.E.2d 673 (9th Dist. Summit County 2004). See Ann K. Wooster, *Construction and Application of Vienna Convention on*

Consular Relations (VCCR), Requiring that Foreign Consulate Be Notified When One of its Nationals Is Arrested, 175 A.L.R. Fed. 243 (originally published 2002; updated 2006).

²⁸ *Sanchez-Llamas*, *supra* note 20, at 2674-2675 (Justice Ginsburg filed an opinion concurring in judgment with Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, and Alito. However, Justice Ginsburg joined Justices Breyer, Stevens, and Souter in Part II of the dissenting opinion, which argued that Article 36 of the *Vienna Convention* grants individual rights to a foreign national that may be invoked in a judicial proceeding, an issue the majority opinion declined to decide.)



²⁹ *U.S. v. Hongla-Yamche*, 55 F. Supp. 2d 74 (D. Mass. 1999) (Article 36 of the *Vienna Convention* confers an individual right and, therefore, a detained individual has standing to challenge a violation.); *Standt v. City of New York*, 153 F. Supp. 2d 417, 175 A.L.R. Fed. 685 (S.D.N.Y. 2001) (The *Vienna Convention* provides for a private right of action that is enforceable by individuals through 42 U.S.C.A. §1983.); *U.S. v. Briscoe*, 69 F. Supp. 2d 738 (D.V.I. 1999), aff'd without published opinion, 234 F.3d 1266 (3rd Cir. 2000); *U.S. v. Torres-Del Muro*, 58 F. Supp. 2d 931 (C.D. Ill. 1999); *U.S. v. Esparza-Ponce*, 193 F.3d 1133 (9th Cir. 1999); and *U.S. v. Lombera-Camorlinga*, 206 F.3d 882 (9th Cir. 2000), cert. denied, 531 U.S. 991, 121 S. Ct. 481, 148 L. Ed. 2d 455 (2000). See also, the *LaGrand Case* (F.R. G.v.U.S.), 2001 I.C.J. 466 (Judgment of June 27), and the *Case Concerning Avena and other Mexican Nationals* (Mex. v. U.S.), 2004 I.C.J. No. 128 (Judgment of Mar. 31) (These cases are from international tribunals whose decisions are not binding, but may be persuasive, on U.S. courts). See Wooster, *supra* note 27.

³⁰ *Sanchez-Llamas*, *supra* note 20 at 2675.

³¹ *Id.* at 2679, quoting from the *Vienna Convention*, *supra* note 14, Art. 36 para. 2.

³² *Id.* at 2679.

³³ *Id.* at 2679. See also, U.S. Const. Art. II, § 2, cl. 2, which authorizes the president, with the advice and consent of the senate, to make treaties.

³⁴ *Id.* at 2681.

³⁵ *Id.*

³⁶ *Id.* at 2682.

³⁷ *Id.*

³⁸ *Id.* at 2683. See also, *Wong Wing v. United States*, 163 U.S. 228, 238, 16 S. Ct. 977, 41 L. Ed. 140 (1896) (“[A]ll persons within the territory of the United States are entitled to the protections guaranteed by” the Fifth and Sixth Amendments).

³⁹ *Id.* at 2675.

⁴⁰ *Breard v. Greene*, 523 U.S. 371, 118 S. Ct. 1352, 140 L. Ed. 2d 529 (1998) (*per curiam*).

⁴¹ The *LaGrand Case* (F.R. G.v.U.S.), 2001 I.C.J. 466, 40 I.L.M. 1069 (2001), and the *Case Concerning Avena and Other Mexican Nationals* (Mex. v. U.S.), 2004 I.C.J. No. 128, 43 I.L.M. 581 (2004).

⁴² See *Id.*, *LaGrand Case*, para. 91, and the *Avena Case* para. 113.

⁴³ *Id.*

⁴⁴ *Sanchez-Llamas*, *supra* note 20, at 2684, footnote 4. Also see *Statute of the International Court of Justice*, Art. 59, 59 Stat. 1062, T.S. No. 993 (1945), (quoted by the Court as stating that the ICJ’s decisions have “no binding force except between the parties and in respect of that particular case.”) Additionally, the Court noted that on March 7, 2005, the United States gave notice of its withdrawal from the Optional Protocol Concerning the Compulsory Settlement of Disputes, which granted for disputes about the interpretation or application of the *Vienna Convention* to fall within the compulsory jurisdiction of the ICJ).

⁴⁵ *Id.* at 2687.

⁴⁶ *Id.*

⁴⁷ *Id.* at 2688.

⁴⁸ *Id.* at 2689.

⁴⁹ *Id.* at 2688-2689.

⁵⁰ *Consular Notification and Access*, *supra* note 2.

⁵¹ *Id.* at 18.

⁵² *Consular Notification and Access*, *supra* note 2, at 18.

⁵³ However, the Department of State encourages judicial officials and prosecutors to make adequate inquiries to ensure that consular notification requirements have been complied with. See *Id.* at 18-19.

⁵⁴ *Vienna Convention*, *supra* note 14, Art. 36, para. 1, sub. para. (b).

⁵⁵ *Consular Notification and Access*, *supra* note 2, at 19.

⁵⁶ *Id.*

⁵⁷ *Vienna Convention*, *supra* note 15, Art. 36, para. 1, sub. para. (b).

⁵⁸ *Consular Notification and Access*, *supra* note 2, at 20.

⁵⁹ *Id.* The Department of State expects that notification to consular officials be made within 24 hours and no later than 72 hours. As mentioned earlier, some of the United States bilateral consular treaties mandate that their government's consular officials be notified whenever a citizen of their country has been arrested or detained, irrespective of the detainee's wishes. The Department of State has a list of these countries on their Web site and provides the same in the resource materials noted in this article, including the pocket cards. Many of the mandatory notification countries require that notification take place "immediately" but then qualify this requirement by adding words such as, "but not later than 2 calendar days after arrest." Once law enforcement officers have determined that they have arrested a foreign national from a mandatory notification country, they should inform the detainee that their government officials will be notified of the detention. (For a further description of these bilateral agreements see *Consular Notification and Access*, *supra* note 2, at 47-49.)

⁶⁰ These sample statements are included on the consular notification pocket cards, and the Department of State has had them translated into at least 17 different languages. See *Consular Notification and Access*, *supra* note 2, at 27-39.

⁶¹ Statement 1, "When Consular Notification is at the Foreign National's Option," reads as follows: As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel, and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials? See *Consular Notification and Access*, *supra* note 2, at 25.

⁶² Statement 2, "When Consular Notification is Mandatory," reads as follows: Because of your nationality, we are required to notify your country's consular representative here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may

be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible. See *Consular Notification and Access*, *supra* note 2, at 25.

⁶³ *Consular Notification and Access*, *supra* note 2, at 21.

⁶⁴ Copies of the Department of State's "Suggested Fax Sheet for Notifying Consular Officials of Arrests or Detentions" can be found on page 9 of the *Consular Notification and Access* booklet, *supra* note 2, or at the U.S. Department of State Bureau of Consular Affairs Web site at http://www.travel.state.gov/law/consular/consular_753.html.

⁶⁵ *Consular Notification and Access*, *supra* note 2, at 14.

⁶⁶ See *Vienna Convention*, *supra* note 14, Art. 36, para. 1(a), (b), and (c).

⁶⁷ *Consular Notification and Access*, *supra* note 2 at 22-23.

⁶⁸ See *Vienna Convention*, *supra* note 14.

⁶⁹ See S. Exec. Rep. No. 91-9, p5 (1969); see also *Foster v. Neilson*, 2 Pet. 253, 314, 7 L. Ed. 415 (1829) (Chief Justice Marshall explained that under the Supremacy Clause a treaty is "to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision." Referenced in the dissenting opinion in *Sanchez-Llamas*, *supra* note 20, 2695-2696 (U.S. 2006).

⁷⁰ *Consular Notification and Access*, *supra* note 2, at 44.

⁷¹ For an extensive, up-to-date review of the various statutes and regulations regarding consular notification and access see Mark Warren, *Consular Notification: Statutory and Regulatory Provisions*, http://www3.sympatico.ca/aiwarren/compliance.htm#State_Codes. Examples include Federal Regulations: U.S. Department of Justice—28 C.F.R. § 50.5(a); Bureau of Immigration and Customs Enforcement—8 C.F.R. § 236.1(e); Military Regulations—AR 27-52; Internal Revenue Service—Internatl. Revenue Manual 9.4.12.9; and State Regulations (To date, only 3 U.S. states have codified consular notification and access obligations): Florida—Recognition of International Treaties Act (1965), Chapter 901.26 (This is the oldest state statute in this area and actually predates U.S. ratification of the *Vienna Convention*. Of note, the Florida statute was amended in 2000 to state that "Failure to provide consular notification under the Vienna Convention on Consular Relations or other bilateral consular conventions shall not be a defense in any criminal proceeding against any foreign national and shall not be cause for

the foreign national's discharge from custody." As quoted in Warren, *supra* this note.); California—California Penal Code § 834c (1999) and § 5028 (2004) (Although the California statute requires compliance with the *Vienna Convention*, it does not expressly provide any remedies for a breach of the statute); Oregon—Oregon Revised Statutes (2003) (The Oregon statute generally states that officers must "understand the requirements" of the *Vienna Convention*; however, it expressly states that officers cannot be held civilly or criminally liable, and that exclusion of evidence is not a remedy, for failing to provide consular notification.)

⁷² 28 C.F.R. § 50.5.

⁷³ *Id.* sub. para. (a)(1).

⁷⁴ *Id.* sub. para. (a)(3).

⁷⁵ Cal. Penal Code § 834c. para. (a)(1).

⁷⁶ *Id.* para. (c).

⁷⁷ Warren, *supra* note 71, under Law Enforcement Accreditation Standards. See also, U.S. Department of State Bureau of Consular Affairs Web site at http://www.travel.state.gov/law/consular/consular_2244.html.

⁷⁸ Since 1998, experts from the Department of State have provided more than 400 free training classes and seminars about consular notification and access to federal, state, and local officials in 36 states and territories. They have also distributed more than 1,000,000 pieces of consular notification and access instructional materials and published several articles targeting the law enforcement community. See the Department of State Bureau of Consular Affairs Web site at http://www.travel.state.gov/law/consular/consular_2244.html.

⁷⁹ *Consular Notification and Access*, *supra* note 2.

⁸⁰ *Id.* These resource materials are available for review and may be ordered online at the U.S. Department of State Bureau of Consular Affairs Web site at http://www.travel.state.gov/law/consular/consular_726.html. Resources also can be ordered directly from the Office of Policy and Public Affairs, CA/P, Room 4800, Bureau of Consular Affairs, U.S. Department of State, Washington, DC 20520; telephone: (202) 647-4415; fax: (202) 736-7559; e-mail: consnot@state.gov.

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.

The Bulletin Notes

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



Officer Tarr

While on duty during New Year's Eve, Officer Noel Tarr of the Chicago State University Police Department observed a car approaching at a high rate of speed. The vehicle crossed three lanes of traffic, ran a red light, hit a light pole, and burst into flames. Immediately, Officer Tarr went to check on the driver. The female victim was pinned underneath her steering wheel; Officer Tarr forced back the front seat and freed her. As he pulled the woman to safety, she shouted that her kids remained inside. Officer Tarr ran back to the vehicle, observed two young children lying face down in the back seat, and removed them. Fire and police personnel arrived and transported the victims to local hospitals. Officer Tarr demonstrated the utmost in bravery and professionalism while responding to this situation.



Officer Rose

One afternoon while on patrol, Officer Adam Rose of the Gatlinburg, Tennessee, Police Department noticed smoke coming from a residential area. Upon locating the house, he observed heavy smoke. Officer Rose yelled inside in an attempt to make contact with someone. In response, he heard a faint cry for help. With only a few feet of visibility, he made his way through the residence and used voice commands to locate a woman in the living room. Officer Rose escorted her outside to safety by feeling his way back to the front door. He then went back inside and retrieved the owner's dog. Fire personnel arrived shortly thereafter to treat the woman for smoke inhalation. As it turned out, the victim was on medication from a recent surgery and was unaware of the danger she faced. Thanks to the courage and quick actions of Officer Rose, she made a full recovery.

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

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Patch Call



The patch of the Spring Lake Park, Minnesota, Police Department highlights Lakeside Park, located on Spring Lake. In the background is one of the unique water towers the city is known for that features the painted red, white, and blue stars and stripes. The black panther is the mascot of the Spring Lake Park School District.



Founded in 1744, Winchester, Virginia, is the oldest city in the Blue Ridge Mountains. The patch of its police department features a combination of historic symbols, including the British Union Jack, the Virginia state seal, the Confederate Square, the flag displayed by the federal troops during the Civil War, and the American Indian.