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**SPECIAL INVESTIGATION DIVISION**

**KIDNAPPING GUIDELINES**



**JOSEPH BORRELLI  
CHIEF OF DETECTIVES**



**INSPECTOR CHARLES R. PRESTIA  
COMMANDING OFFICER, SPECIAL INVESTIGATION DIVISION**

**CAPTAIN GEORGE DUKE  
COMMANDING OFFICER, MAJOR CASE SQUAD**

**SERGEANT MICHAEL MIRKIN  
KIDNAPPING COORDINATOR MAJOR CASE SQUAD**

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## INTRODUCTION

The key to the successful investigation of a kidnapping is "flexibility". Investigation in a kidnapping is by nature reactive and the personnel involved in the investigation must be able to make plans or modify existing plans on a moments notice based on the exigencies of the situation. For this reason, no hard and fast instructions are being set forth in this plan, but only general guidelines.

All personnel should be aware that no one person has all the answers and accordingly any Detective with any ideas or techniques, which may prove helpful during the investigation should not hesitate to make them known.

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## THE MAIN CONCERN IN A KIDNAPPING INVESTIGATION

### IS THE SAFETY OF THE VICTIM

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**MISSING PERSON PERSONNEL**

**HOTLINE.....RECEIVE CALL.**

- A. CHECK COMPLAINANTS TELEPHONE NUMBER IN COLES DIRECTORY**
- B. CALL COMPLAINANT BACK TO VERIFY AND INSTRUCT**
  - 1. Code word for Police
  - 2. Deny contact with Police to Perpetrators
  - 3. Explain to stall for time
  - 4. Calm and reassure complainant
  - 5. Inform complainant Detectives will arrive in civilian clothes and will use code word "DOCTOR"
- C. Check tape with Communication Unit Supervisor**
- D. Complete Kidnap Notification Form with all Pertinent Information, Copy to go with responding team.**
- E. Contact Detective Squad concerned**
- F. Notify Communication Unit if situation is a bonafide kidnap and instruct C.U. NOT TO SEND UNIFORM PERSONNEL**
- G. Send residence Team, and when available personnel with equipment for Command Post opening.**

**NOTIFICATIONS**

**COMMANDING OFFICER, SPECIAL INVESTIGATION DIVISION**

**T.A.R.U.**

**CHIEF OF DETECTIVES OFFICE**

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## RESIDENCE TEAM

1- Supervisor

2-Detectives

- A. Respond in non POLICE TYPE vehicle, and or park vehicle away from residence.
- B. Install telephone recording equipment, AFTER HAVING telephone subscriber or family member **SIGN CONSENT FORM** to record conversation
- C. Head Tape: Day, Date, Name, Rank, Kidnap #, Location and number of telephone
- D. DOCUMENT, time and record **ALL** telephone messages
- E. Use extra cellphone or radio to **IMMEDIATELY** notify Command Post of all incoming calls and pertinent info
- G. Request to search residence
  - a. Weapons
  - b. Contraband
  - c. Misc. Papers, telephone books, address books etc.

**NOTE: IF A REFUSAL TO SEARCH IS INDICATED BY FAMILY, NOTIFY THE COMMAND POST IMMEDIATELY.**

- H. Interview all persons present at residence  
Ascertain victims occupation, DOB, Obtain current photo  
Establish who has knowledge of kidnap  
Other agencies involved (FBI, DEA, other PDs )  
Possibility of Custodial situation, Extortion by family
- I. Obtain photos of Courier (IF FAMILY MEMBER) and clothing description for possible drop
- J. Prepare Complaint Follow-Up Reports (DD-5s) & duplicate & voucher tape at end tour

## COMMAND POST PERSONNEL

### Command Post Supervisor:

- A. Notify Chief of Detectives
  - B. Notify T.A.R.U. 212-374-5437
  - C. Inspect kidnap kit, Extra tapes , Necessary forms, Cellphone, Radio Camera, Door Blanket Etc.
  - D. Assignments, Mobil Surveillance, Investigation
  - E. Assign one investigator to assist TARU in surveillance van to assist.
- .....
- .....
- .....

### Recorder/Log Officer:

- A. Maintain Log book, roll calls, Schedules & assignment sheet.
- B. Chronological log entries
- C. Maintain one phone with direct line to residence and **USE FOR ONLY THIS PURPOSE**
- E. List autos available, location, color, type & keys
- F. Log DD-5s
- G. Sign out sheet completed and collected, OT slips collected.

### NOTE: CASE OFFICER:

The Command Post Supervisor will work closely with the case officer. This includes review of all incoming material prior to assignments so they have a complete grasp of situation and knowledge of all facts in the case. Outgoing communications when possible should be handled by the case officer to insure that they are completed and recorded. All DD-5s, photocopies and completed inquiries (DMV, BCI, ETC.) will be recorded and kept by the case officer.

## **RESPONDING PERSONNEL**

- A. **SIGN IN** at Command Post desk
- B. Log auto assigned with Log Officer
- C. Receive Kidnap assignment call number
- D. Briefing by Supervisor
- E. **COPY AVAILABLE DATA FROM POSTED INFORMATION**
- F. Check radio Frequency, batteries, use general terms on transmissions, do not be specific, Scramblers are available through TARU
- G. **KEEP PHOTO OF VICTIM IF AVAILABLE**
- H. Inform Log Officer of assignment, Location, auto, etc.
- I. Upon return from assignment inform Log Officer
- J. Prepare DD-5s for Case Officer, Prepare OT slip
- K. Check for following tour and or assignment
- L. **SIGN OUT**
- M. Maintain confidentiality of investigation

## **RANSOM PACKAGE/PAYMENT**

A. When a demand is made the Police Department **WILL NOT** make a decision regarding payment or **SUGGEST** an amount. **THIS DECISION IS THE SOLE RESPONSIBILITY OF THE VICTIMS FAMILY**

B. Serial numbers recorded on money, further identification by dusting, fingerprinting, photocopying, and initialing if time permits.

C. Make all personnel aware of package makeup, include wrapping size and obvious markings.

D. Package wrapping should be initialed or fingerprinted and marked in such away as to **INSURE IDENTIFICATION** in future as evidence

E. When good faith money is supplied by the family for the safe return of the victim, two options will be offered.

(1)...If they want Police involvment where a Police Officer is used as the courier. (A back up team and limited moving surveillance is mandatory!)

(2)...No Police involvment in any form. (When these options are presented to the family, their understanding and agreement will be witnessed by a supervisor and documented for future reference!)

IF BOGUS MONEY IS USED, **IMMEDIATE APPREHENSION OF THE PICKUP PERSON IS DESIRABLE.**

F. If a vehicle is used for ransom delivery it should be electronically equipped to aid in surveillance if time permits

G. **WIRE COURIER (KELL)**

H. **IN ORDER TO MAINTAIN CONTROL OF THE SITUATION, A DETECTIVE SHOULD BE EMPLOYED AS THE COURIER WHEN WHEN POSSIBLE**



## T.A.R.U.

Members of TARU shall be assigned to the Command Post to advise on the availability and capability of the technical equipment. Because certain items of available equipment are precision devices and electronically delicate in both installation and operation the services of qualified personnel are required.

### TARU SERVICES:

- A. Liaison with New York Telephone Etc.
- B. Vehicles capable of Video.Photo, Electronic Surveillance
- C. Body Transmitters, Kells, Etc.
- D. Additional Radios, Base Stations, Scramblers
- E. Cameras, Binoculars, etc.
- F. Aerial Surveillance, & electronic tracking of vehicles

TARU's services and equipment are available on a 24 hour, 7 day a week schedule. Notify through Chief of Detectives

## **CRIME SCENE UNIT**

The Crime Scene Unit will be used when conditions allow for the purpose of photographing the scene , searching for latent prints and other forensic evidence.

The Crime Scene Unit will be required to prepare a follow up report indicating the results of their assignment.

The report will be given to the Case Officer at the Command Post.

## FORMS

Post: The following forms must be available at the Command

MAIL CONSENT FORM

TELEPHONE TRAP CONSENT

TELEPHONE RECORDING CONSENT

EQUIPMENT RECORD

LOG BOOK

ROLL CALL

ASSIGNMENT SHEETS

RADIO LOG

ROSTER SHEETS

UF-90s

DD-5s (PINK & BLUE)

NOTE PADS

TELEPHONE CARD FILE

AUTO CARD FILE

PLATE CARD FILE

## **COMPUTER ASSISTED ROBBERY SYSTEM**

### **..."CARS..."**

Cars maintains databases containing files on crimes, criminals and other information that could prove useful during kidnap investigations. The topics and information available are as follows:

**A. COMPLAINT REPORTS.....**Borough Robbery Squad Intelligence Officers enter in-depth data on robberies, sex crimes, homicides and serious grand larcenies from COMPLAINT REPORTS and COMPLAINT FOLLOW-UP REPORTS.

**B. ON-LINE BOOKING SYSTEM ARRESTS.....**Contains information on everyone arrested in NYC for assault (Felony), homicide, sex crimes (Felony), burglary, arson, grand larceny, robbery, criminal impersonation and criminal possession of deadly weapons.

**C. CAREER CRIMINALS.....**Designated targets for felony augmentation by Career Criminal Investigation Units.

**D. NICKNAMES.....**Nicknames listed on all people arrested in the on-line booking system arrest file.

**E. CITY CORRECTIONS.....**All persons incarcerated in the CITY Correction system (present location, next court date etc.).

**F. STATE CORRECTIONS.....**All persons incarcerated in New York State prison system.

**G. NEW YORK STATE PAROLE.....**All persons on parole in New York State. Information includes residence, prison release date, crime of conviction, parole officer, absconder status, etc.

**H. DOA.....**All criminals that have died since 1984 whose death was verified by fingerprints.

**I. COMPUTERIZED INVESTIGATION CARDS.....**All active "Wanted Cards".

**J. HOUSING PROJECT LOCATOR FILE.....**Allows name or address search of all Housing Projects in NYC.

**K. SECURITY DIRECTORS.....**Listing of private security directors and their employees that work in the midtown business district.

.....REFERENCE.....

- A. DETECTIVE GUIDE (KIDNAPPING INVESTIGATION)
- B. LEGAL BUREAU BULLETINS (VOL.20.no.5 & VOL. 20,no.6)
- C. PENAL LAW ARTICLE 135, (KIDNAPPING & RELATED OFFENSES)
- D. SUPERVISORS CHECK LIST
- E. PRESS RELEASES
- F. CASE FOLDER MAKEUP
- G. CELL PHONE OPERATION
- H. "CARS" TELEPHONE NUMBERS
- I. RESPONDING OFFICERS CHECK LIST



# DETECTIVE GUIDE

PROCEDURE No.

204-6

## INVESTIGATION KIDNAPPING

DATE ISSUED  
9-11-81DATE EFFECTIVE  
9-18-81

REVISION NUMBER

PAGE

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### PURPOSE

To provide investigative and technical expertise in kidnapping cases and fix responsibility for conduct of investigation.

### PROCEDURE

Upon receipt of a complaint of kidnapping:

#### DETECTIVE BOROUGH DISPATCHER

1. Dispatch Detective Borough Unit/Night Watch to scene when required.
2. Notify:
  - a. Detective Borough Captain/duty supervisor
  - b. Chief of Detectives Office
  - c. Special Investigations Division.

#### PRECINCT DETECTIVE UNIT/DETECTIVE BOROUGH INVESTIGATOR

3. Respond to scene immediately.
4. Interview complainant and witnesses, if any.
5. Notify Detective Borough dispatcher, IMMEDIATELY, of findings of preliminary investigation.
6. Request that Detective Borough Captain/duty supervisor respond to scene, IF KIDNAPPING IS VERIFIED.

### NOTE

If facts indicate that kidnapping HAS NOT OCCURRED, Precinct Detective Unit/Detective Borough Investigator will prepare COMPLAINT REPORT and proceed in accordance with provisions of PATROL GUIDE 108-3.

7. Continue investigation, if appropriate, pending arrival of supervisory officer.

#### DETECTIVE BOROUGH DISPATCHER

8. Direct Detective Borough Captain/duty supervisor to scene of all verified kidnappings.
9. Advise the following of all developments, as they occur:
  - a. Chief of Detectives
  - b. Special Investigations Division.

#### DETECTIVE BOROUGH CAPTAIN/DUTY SUPERVISOR

10. Respond to scene of ALL VERIFIED KIDNAPPINGS.
11. Ascertain facts from investigator(s) on scene.
12. Notify Detective Borough command of:
  - a. Circumstances of case
  - b. Anticipated further requirements of case.

#### DETECTIVE BOROUGH COMMANDER

13. Confer with:
  - a. Chief of Detectives
  - b. Patrol borough commander.

#### CHIEF OF DETECTIVES

14. Fix responsibility for investigation of kidnapping upon one of the following:
  - a. Special Investigations Division (Major Case Squad)
  - b. Detective borough concerned
  - c. Precinct detective unit concerned.

...A...

NEW YORK CITY POLICE DEPARTMENT



# DETECTIVE GUIDE

PROCEDURE No.

2046

## INVESTIGATION KIDNAPPING

DATE ISSUED  
9-11-81DATE EFFECTIVE  
9-18-81

REVISION NUMBER

PAGE

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CHIEF OF  
DETECTIVES  
(Continued)

15. Determine when, in those cases to be investigated by the Special Investigations Division:
  - a. COMPLAINT REPORT (PD 313-152) will be prepared
  - b. Notifications will be made to:
    - (1) Police Commissioner
    - (2) Chief of Operations
    - (3) Operations Division
    - (4) Commanding Officer, Intelligence Division
    - (5) Other law enforcement agencies.

DETECTIVE BOROUGH  
CAPTAIN/DUTY  
SUPERVISOR

16. Remain at scene until relieved by Major Case Squad in those cases to be investigated by the Special Investigations Division.
17. Retain responsibility for investigation in cases to be investigated by Detective Borough command.
18. Confer with precinct commander/duty captain PRIOR to referring investigation to Precinct Detective Unit.

ADDITIONAL DATA

The objective of a kidnapping investigation which is initiated prior to the return of the victim is the safe return of the victim. It is extremely important therefore, that such investigation be conducted with utmost confidentiality and that police response to reported kidnappings does not alarm the kidnappers. If possible, initial response to the victim's residence, place of business, etc. should be by non-uniformed personnel. The response and appearance of uniformed personnel in marked department vehicles must be avoided whenever possible due to the fact that the above locations may be under observation by the kidnappers.



NEW YORK CITY POLICE DEPARTMENT  
OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS  
**LEGAL BUREAU**  
**BULLETIN**

Vol. 20 No. 6

August 31, 1990

- I. **SUBJECT:** RIGHT TO COUNSEL
- II. **QUESTION:** May a suspect in custody waive her right to counsel and answer police questions even though she previously requested a lawyer when she was not in custody?
- III. **ANSWER:** Yes, says the Court of Appeals in *People v. Davis*, 75 N.Y.2d 517 (1990). A suspect who has requested counsel when not in custody may subsequently waive that right after her arrest if she has not yet hired an attorney and an attorney has not otherwise entered the proceeding.

IV. **DISCUSSION:**

1. **FACTS:**

Sheriff's deputies were investigating the brutal murder of a young woman found dead in a barn on a farm in Jefferson County, N.Y. They obtained a confession from James Davis, a relative of the defendant, Brenda Davis. Both James and Brenda lived on the farm where the body was found. James admitted that he and Brenda had assaulted and sexually abused the victim over a two-day period while she was tied up in the barn.

Following James' confession, the police returned to the farm at about 9 p.m. on August 25 to speak with Brenda about her involvement in the crime. They advised the defendant of her Miranda rights before questioning her, and Brenda agreed to answer questions without an attorney present. She was not in custody during this first interrogation.

The deputies eventually confronted Brenda with James' statements that implicated her in the murder. Brenda then became hysterical and asked for a lawyer. The deputies calmed her down, continued to ask questions, and eventually obtained incriminating statements from her. The deputies decided to leave without arresting Brenda but told her they would contact her the following day. Brenda responded by saying, "I hope you guys both come back . . . to talk to me tomorrow."

The deputies returned to the farm the following afternoon, August 26. The defendant had left a note telling them to meet her at her sister's house where she was doing laundry. When the deputies finally located Brenda, they asked her to come to the Sheriff's office for further questioning. Although Brenda came voluntarily, the deputies later conceded that she was in custody from this point on because she was no longer free to leave.

When the deputies began questioning Brenda at the Sheriff's office, 15 hours had elapsed since the first, non-custodial interrogation of Brenda the evening before. During this second *custodial* interrogation, the defendant was advised of her Constitutional rights several times. She waived her rights orally and in writing and later gave audiotape, videotape and written confessions detailing her involvement in the murder.

Brenda Davis was indicted for murder. At issue at her suppression hearing was the admissibility of her statements made at the farmhouse on August 25 and at the Sheriff's office the next day. The County Court



suppressed Brenda's first set of statements — those made at the farmhouse on the evening of August 25 — because the deputies did not honor her request for a lawyer. (There is no dispute that the court ruled correctly in suppressing this first set of statements.)

The County Court admitted into evidence the second set of statements — those made on the afternoon of August 26 in the Sheriff's office. The court inferred that Davis had withdrawn her August 25 request for counsel because she had failed to hire a lawyer during the intervening 15 hours.

Davis pled guilty to murder but appealed the suppression ruling. The Appellate Division reversed, suppressing her August 26 confession because she had invoked her right to counsel the evening before. The Appellate Division said that under New York law, once her right to counsel was invoked on the evening of August 25, she could not waive it except in the presence of her attorney. The District Attorney appealed to the Court of Appeals.

## **2. DECISION:**

The Court of Appeals reversed the Appellate Division and allowed into evidence the statements the defendant made at the Sheriff's office. The Court concluded that by her words and conduct, Brenda Davis had waived her right to counsel prior to her confession on August 26.

In its decision, the Court acknowledged the existence of a well-defined New York rule that once a suspect *in custody* requests the assistance of counsel, his or her right to counsel is absolute, meaning that it indelibly attaches and can no longer be waived, except in the presence of counsel. (See Legal Bulletin Volume 10, No. 3, *People v. Cunningham*.) The Court said, however, that no such rule exists when the suspect is not in custody. Said the Court: "We have never held . . . that an individual who has requested counsel in a non-custodial setting could not subsequently waive or withdraw that request, and the reasons underlying the New York rule do not warrant doing so now."

The Court reasoned that the right-to-counsel rules in New York exist to protect the individual citizen who is in custody from the "coercive power of the State" and to provide the citizen with an attorney at the moment when legal advice "is most critically needed." The Court said, however, that when the suspect's encounter with police is non-custodial, the police are much more constrained in their ability to coerce a confession, and the need for an attorney to be present is greatly diminished. For example, said the Court, a witness who is not in custody can always walk away from the police or simply refuse to answer questions. In addition, since Miranda warnings are not required, there is no need for an attorney to be present to interpret the meaning of the warnings.

The Court acknowledged that the presence of an attorney during a suspect's first, non-custodial encounter with police would be of great value in protecting the suspect from self-incrimination. However, said the Court, "as important as that (presence of an attorney) may be, there is no legal requirement that an attorney be present before the witness changes an earlier decision to remain silent and talks to the authorities." The Court ruled that when the right to remain silent is exercised in a non-custodial setting, even if it is accompanied by a specific request for a lawyer, it may still be waived at will by the suspect any time before the commencement of adversary judicial proceedings (i.e., before arraignment, indictment or issuance of an arrest warrant).

## **3. WHAT THIS CASE MEANS TO THE POLICE:**

The *Davis* decision makes clear that you have a great advantage in any criminal investigation in which your suspect is willing to be interviewed but is not yet in custody. The lesson of *Davis* and other cases is that, when possible, you should avoid taking a suspect into custody if you can still interview the suspect in a non-custodial setting, such as his home or office or on the street. The test of whether custody exists is whether a reasonable man, innocent of any crime, would still feel he was free to leave. (See Legal Bulletin Volume 7, No. 1, *Oregon v. Mathiason*.) If there is no custody, you are not required to read Miranda warnings. Furthermore, based on *Davis*, while you must cease questioning if your suspect asks for an attorney during the interview, your suspect may change his or her mind later on and talk without the attorney present.

As with any confession or admission, your careful documentation of the circumstances under which it was obtained will be critical to winning a suppression hearing. The Court in *Davis* cited several factors that can help support a police officer's claim that a suspect voluntarily waived his right to counsel, even when the

suspect initially asked for a lawyer in a non-custodial interview. The Court said that the following factors should be considered because they may support an inference that the waiver was voluntary:

1. Whether the defendant was fully informed of his Constitutional rights before invoking the right to counsel and subsequently waiving it. (Although it is not necessary to advise a suspect who is not in custody of his rights, under some circumstances it may be a good idea.);
2. Whether the defendant initiated the second conversation in which he changed his mind and decided to speak without the attorney present;
3. Whether there was a break in the interrogation after the defendant asserted the need for counsel, with a reasonable opportunity during the break for the suspect to contact an attorney.

Applying these factors to *Davis*, the County Court found that Brenda Davis was fully informed of and validly waived her right to counsel. The County Court said the defendant's willingness to talk further with the deputies was manifested by her request that they come back to her farm on August 26, by her note to them when they arrived, and by her voluntarily accompanying them to the Sheriff's office. In addition, the lapse of 15 hours between police interviews, during which time she did not attempt to hire an attorney, coupled with her waiver at the second interview in the Sheriff's office, showed that she was truly willing to talk to police. The Court of Appeals, therefore, upheld the County Court's determination that Brenda Davis voluntarily withdrew her earlier request for counsel.

## **V. CONCLUSION:**

A suspect's request for an attorney in a non-custodial police interrogation does not create an absolute right to counsel in New York. While the request must be honored by the police at the time it is made, the suspect may change his or her mind later on and voluntarily withdraw the request for counsel. The courts will look to the police for proof that the suspect's right to remain silent was honored and that the withdrawal of the request for counsel was truly voluntary. In analyzing the case, the courts will consider such factors as whether the defendant was fully informed of his Constitutional rights, whether the defendant was afforded an opportunity to contact a lawyer, and whether the police or the defendant initiated the conversation in which the defendant changed his mind.

This Legal Bulletin was prepared by  
Lt. Daniel Oates, Managing Attorney, Legal Bureau.



NEW YORK CITY POLICE DEPARTMENT  
OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS  
**LEGAL BUREAU**  
**BULLETIN**

Vol. 20 No. 5

August 31, 1990

- I. **SUBJECT:** RIGHT TO COUNSEL
- II. **QUESTION:** May the police question a suspect about charges for which he has been arrested if the police are aware that the suspect has an attorney on a prior, pending, unrelated criminal case?
- III. **ANSWER:** Yes. The Court of Appeals has reversed its nine-year-old decision in *People v. Bartolomeo*, 53 N.Y.2d 225 (1981). If the suspect is not represented by counsel on the charge for which he is arrested, and the suspect validly waives his right to counsel, he may be questioned by the police. The suspect can be questioned about any charge on which he is not represented by an attorney. *People v. Bing*, *People v. Cawley*, *People v. Medina*, \_\_\_ N.Y.2d \_\_\_, July 2, 1990.

IV. **DISCUSSION:**

A. The *Bartolomeo* Rule

Historically, the New York State Court of Appeals has interpreted the New York State Constitution as providing greater protection in the area of Right to Counsel than the federal Constitution requires. Indeed, New York's rules in this area are more stringent than any other state in the country. One doctrine, commonly referred to as the *Bartolomeo* rule, prohibited the police from questioning a suspect in custody on a new arrest whenever they were aware that the suspect was represented by counsel on a prior, pending, unrelated criminal case. This rule has significantly hampered criminal investigations, particularly when a suspect was a habitual criminal with numerous arrests. The fact that a suspect knowingly and voluntarily waived his *Miranda* rights and agreed to answer questions about the new arrest was irrelevant because the *Bartolomeo* rule created an "indelible" right to counsel. In other words, once the right to counsel attached, it could not be waived by the suspect unless the waiver was made in the physical presence of his attorney.

Over the years, the Court of Appeals created numerous exceptions to the *Bartolomeo* rule, apparently in recognition of the rule's harsh consequences. For example, the Court held that the officer interrogating a suspect on a new arrest must have actual knowledge of the pending case before the *Bartolomeo* protections apply. The Court also ruled that the police may rely on a defendant's false assertions that a prior case is disposed of or that he is not represented by counsel on the prior case. Finally, the court held that the police may postpone an interrogation until a prior case is adjudicated or request the District Attorney to dismiss a prior case solely to avoid a *Bartolomeo* problem.

The Court of Appeals has now taken the unusual step of reversing its own landmark decision. In a series of cases consolidated into one opinion, *People v. Bing*, *People v. Medina*, and *People v. Cawley*, \_\_\_ N.Y.2d \_\_\_, (July 2, 1990), the Court has reversed the nine-year-old rule of *People v. Bartolomeo*. It is no longer the law in New York that a suspect in custody cannot be questioned on a new arrest simply because he is represented by counsel on a prior, pending, unrelated criminal case. Provided the suspect is willing to waive his right to counsel and is not represented by counsel on the new charge for which he is in custody, he may be interrogated on the new charge.

## B. FACTS:

*People v. Bing*—Bing was a burglary suspect and was arrested on a warrant issued in Ohio. He was represented by counsel on the Ohio charge. The police made no inquiries about his representation on the Ohio charge and questioned him about the New York burglary. The lower courts held that representation on the Ohio charge did not trigger Bing's right to counsel on the New York charge.

*People v. Cawley*—After his arraignment on a robbery charge at which he was represented by a Legal Aid attorney, Cawley jumped bail. He was arrested six months later on a bench warrant and was questioned about two homicides and another robbery. After the initial robbery prosecution was adjudicated, the police arrested him and questioned him again about the homicides. The lower courts suppressed all of his statements, holding that the representation at arraignment on the first robbery was sufficient to trigger the right to counsel on the unrelated charges.

*People v. Medina*—The police were aware of Medina's recent arrest for an assault when they questioned him about an unrelated homicide and asked him the status of the case. When the defendant replied that he was released from jail because the complainant failed to appear in court, the detective assumed the case was concluded. In fact, it was still pending. The lower courts denied Medina's motion to suppress his inculpatory statements, finding that the police could reasonably rely on defendant's representations that the prior case had been dismissed.

## C. DECISION:

All three cases presented a common problem: A suspect is represented by counsel on a prior criminal case that the police are aware of and the police wish to question him on a new charge. In *Cawley* and *Bing*, the prosecution argued for new exceptions to the *Bartolomeo* rule—one exception would refuse to recognize the out-of-state case and the other would hold that a defendant who intentionally jumps bail is no longer said to be represented by his arraignment attorney. In *Medina*, the defense sought to have the jury decide whether the police acted in bad faith in accepting defendant's explanation of the status of his prior case.

The Court of Appeals rejected the notion that additional exceptions should be added to the *Bartolomeo* rule. It then went on to hold that the *Bartolomeo* rule, as developed by later cases, had little justification in law or in policy and exacted too great a price from society. The Court said that the rule does little more than protect the individual who has been arrested numerous times and who, unlike the first offender, probably has already received some legal advice. The Court said there is no justification to create an artificial barrier between the police and a suspect who is willing to talk simply because the suspect has counsel on a prior, pending, unrelated criminal case. In summary, said the Court, the rule is "unworkable" and must be overturned.

## D. HOW DOES THIS CASE AFFECT THE RIGHT-TO-COUNSEL RULES IN NEW YORK?

New York's right-to-counsel rules, while somewhat relaxed by this decision, remain more stringent than the federal Constitution requires. For example, a primary difference between the United States and New York State Constitutions in this area is the rule found in *People v. Rogers*, 48 N.Y. 2d 167 (1979), which states that once a suspect in custody on a particular charge requests or retains counsel on that charge, he cannot be questioned on that charge or any other unrelated matter. This rule is not affected by the reversal of *Bartolomeo*. Indeed, the Court of Appeals emphasized in *Bing* that *Rogers* remains good law. According to *Rogers*, once a suspect in custody requests or retains counsel, his right to counsel is indelible and he cannot change his mind and answer questions unless his attorney is physically present. For example, if a suspect who is being questioned while in custody states "I want a lawyer," you must stop the interrogation and obtain an attorney for him. You cannot continue the questioning unless the lawyer is physically present. Even if the suspect later says that he wants to answer questions, you cannot continue the interrogation unless the suspect's attorney is physically present when the suspect waives his rights.

In addition, in the following circumstances a suspect may *not* be questioned and may *not* waive his right to an attorney without an attorney being physically present:

1. Whenever an accusatory instrument has been filed, the suspect may not be questioned on the charges in the accusatory instrument regardless of whether he is in custody.
2. Whenever a suspect indicates unequivocally that he wants an attorney or has retained an attorney, he may not be questioned on the charge for which he has retained counsel. If he is not in custody, he may be

questioned on other unrelated charges. If he is in custody, the *Rogers* decision precludes *all* interrogation.

3. Whenever an attorney advises the police that he represents a suspect, the suspect may not be questioned on the charges for which the attorney has been retained. In addition, if the suspect is in custody, he may not be questioned on any other unrelated charges.

## V. CONCLUSION:

It is very rare that the Court of Appeals will overrule its own decision concerning an interpretation of the New York State Constitution, particularly where the rights of criminal suspects are concerned. The Court in *Bing*, however, recognized that it was time to reconsider the rule it created in 1981 in *People v. Bartolomeo*. The Court found that the benefits of the rule (*i.e.*, greater rights for repeat criminals) were far outweighed by the costs it exacted from society. The reversal of *Bartolomeo* should greatly increase the efficiency of law enforcement investigations. No longer will the police be prevented from questioning a suspect who is willing to answer questions and is not represented by counsel simply because he has an attorney representing him on a prior, pending case.

As a result of the *Bing* decision, the following changes are made in existing Legal Bulletins:

1. Legal Bulletin Volume 11, No. 4 is revoked.
2. Legal Bulletin Volume 14, No. 3 is amended as follows: Paragraph (ii) (4), near the top of page three, beginning with the words "the police know, or reasonably should know, that the accused . . ." is deleted.
3. Legal Bulletin Volume 19, No. 2 is revoked.

This Legal Bulletin was prepared by  
Thomas P. Doepfner, Esq.,  
Deputy Managing Attorney, Legal Bureau

....PENAL LAW....

ARTICLE 135 - Kidnapping, Coercion and Related Offenses

**\$135.00 Unlawful imprisonment, kidnapping and custodial interference; definitions of terms**

" The following definitions are applicable to this article:

1. "Restrain" means to restrict a person's movements intentionally and unlawfully in such manner as to interfere substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved, without consent and with knowledge that the restriction is unlawful. A person is so moved or confined "without consent" when such is accomplished by (a) physical force, intimidation or deception, or (b) any means whatever, including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of him has not acquiesced in the movement or confinement.

2. "Abduct" means to restrain a person with intent to prevent his liberation by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly physical force.

3. "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

**\$135.05 Unlawful imprisonment in the second degree.**

A person is guilty of unlawful imprisonment in the second degree when he restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

**\$135.10 Unlawful imprisonment in the first degree.**

A person is guilty of unlawful imprisonment in the first degree when he restrains another person under circumstances which expose the latter to a risk of serious physical injury.

Unlawful imprisonment in the first degree is a class E felony.

**\$135.15 Unlawful imprisonment; defense.**

In any prosecution for unlawful imprisonment, it is an affirmative defense that (a) the person restrained was a child less than sixteen years old, and (b) the defendant was

....PENAL LAW....

a relative of such child, and (c) his sole purpose was to assume control of such child.

§135.20 Kidnapping in the second degree.

A person is guilty of kidnapping in the second degree when he abducts another person.

Kidnapping in the second degree is a class B felony.

§135.25 Kidnapping in the first degree.

A person is guilty of kidnapping in the first degree when he abducts another person and when:

1. His intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct, or to refrain from engaging in particular conduct; or

2. He restrains the person abducted for a period of more than twelve hours with intent to:

(a) Inflict physical injury upon him or violate or abuse him sexually; or

(b) Accomplish or advance the commission of a felony; or

(c) Terrorize him or a third person; or

(d) Interfere with the performance of a governmental or political function; or

3. The person abducted dies during the abduction or before he is able to return or to be returned to safety. Such death shall be presumed, in a case where such person was less than sixteen years old or an incompetent person at the time of the abduction, from evidence that his parents, guardians or other lawful custodians did not see or hear from him following the termination of the abduction and prior to trial and received no reliable information during such period persuasively indicating that he was alive. In all other cases, such death shall be presumed from evidence that a person whom the person abducted would have been extremely likely to visit or communicate with during the specified period were he alive and free to do so did not see or hear from him during such period and received no reliable information during such period persuasively indicating that he was alive.

Kidnapping in the first degree is a class A-I felony.

§135.30 Kidnapping; defense.

In any prosecution for kidnapping, it is an affirmative defense that (a) the defendant was a relative of the person abducted, and (b) his sole purpose was to assume control of such person.

**§135.45 Custodial interference in the second degree.**

A person is guilty of custodial interference in the second degree when:

1. Being a relative of a child less than sixteen years old, intending to hold such child permanently or for a protracted period, and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; or
2. Knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.

Custodial interference in the second degree is a class A misdemeanor.

**§135.50 Custodial interference in the first degree.**

A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree under circumstances which expose the person taken or enticed from lawful custody to a risk that his safety will be endangered or his health materially impaired.

Custodial interference in the first degree is a class E felony.



SUPERVISORS CHECKLIST FOR  
KIDNAPPING INVESTIGATIONS

IMMEDIATE ACTIONS

VERIFY PHONE NUMBER WHERE DEMANDS ARE BEING MADE AS SOON AS POSSIBLE

INSTRUCT PERSON REPORTING THAT DETECTIVES ARE RESPONDING AND STATE THERE ARE NO POLICE HERE IF ANY CALLS ARE RECEIVED ASKING FOR THE POLICE. (GIVE RESIDENCE CODE WORD AT THIS TIME)

NOTIFY: TARU - REQUEST TRAP (374-5437)  
DETECTIVE BOROUGH  
CHIEF OF DETECTIVES (374-5430) C of D WILL NOTIFY  
SPECIAL INVESTIGATION DIVISION

THINK COMMAND POST

RESIDENCE TEAM

RESPOND QUICKLY & DISCREETLY - NO DEPARTMENT CARS

WITH KIDNAP KIT: TAPE RECORDER WITH TELEPHONE JACK  
2 BLANK TAPES  
TELEPHONE RELEASE FORM  
AND KIDNAP PERSON & FAMILY REPORT  
POLAROID CAMERA  
PORTABLE RADIO (KEEP AWAY FROM RANSOM PHONE)

PUT HEADING ON TAPE AND INSTALL RECORDER ON PHONE

HEADING: Today's date is \_\_\_\_\_, the time is \_\_\_\_\_, I am  
\_\_\_\_\_, shield # \_\_\_\_\_ of the New York City Police Department. I am installing recording equipment owned by the New York City Police Department to telephone # \_\_\_\_\_.

SUBSCRIBER: I am \_\_\_\_\_ and I consent to the recording of all telephone conversations on telephone # \_\_\_\_\_.

INTERVIEW AND INSTRUCT FAMILY MEMBERS

IF POSSIBLE HAVE THEM: NEGOTIATE  
BUY TIME &  
REQUEST TO TALK TO VICTIM

MAINTAIN ACCURATE LOG OF ALL INCOMING CALLS

RELAY INFORMATION TO COMMAND POST

### COMMAND POST

ESTABLISH CODE NAME FOR OPERATION AND GIVE DESIGNATION TO ALL INVESTIGATORS

IF USING CITY-WIDE 3 RADIO-FREQUENCY NOTIFY COMMUNICATIONS DIVISION PLATOON COMMANDER AT 374 -

ESTABLISH SEPARATE LINE FOR RESIDENCE ONLY

ESTABLISH ADDITIONAL INCOMING LINES FOR INVESTIGATORS

ENTER ALL INFORMATION CHRONOLOGICALLY IN COMMAND LOG

HAVE RADIO CONSOLE SET UP FOR CONTACT WITH ALL INVESTIGATORS

POST INFORMATION FOR ALL INVESTIGATORS ASSIGNED

HAVE INVESTIGATORS TEST RADIOS BEFORE LEAVING COMMAND POST

### SURVEILLANCE

MAKE SURE ALL INVESTIGATORS ARE EQUIPPED WITH NONDESCRIPT CARS, A FUNCTIONING RADIO AND AVAILABLE INFORMATION

IF TIME PERMITS CHECK ALL UNITS ON SURVEILLANCE TO MAKE SURE THEY ARE NOT CONSPICUOUS - IF YOU SEE SOMETHING WRONG CORRECT IT.

SUPERVISOR SHOULD ATTEMPT TO BE IN POSITION TO CALL THE SHOTS (USUALLY TARU VAN)

REMEMBER REAL MONEY - LOOSE TAIL - TRY TO PHOTOGRAPH DROP

DUMMY PACKAGE - PLAN TO JUMP PERSON PICKING UP RANSOM

### REMEMBER:

THE PRIMARY OBJECTIVE IN A KIDNAPPING INVESTIGATION IS THE SAFE RETURN OF THE VICTIM AND A LOST COURIER COULD BE A SECOND VICTIM.

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PRESS RELEASES

\_\_\_\_\_

UNDER NO CIRCUMSTANCES WILL A MEMBER OF THE SERVICE  
MAKE ANY STATEMENTS OR RELEASE ANY INFORMATION TO THE  
PRESS.     ALL INQUIRES SHALL BE REFERRED TO D.C.P.I.

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CASE FOLDER MAKEUP

.....  
.....  
INDEX.....DD-5s FOR RESIDENCE  
PHOTO I.D.s.....DD-5 INITIAL FACTS  
SURVEILLANCE PHOTOS (IF ANY).....DD-5s INTERVIEWS/CANVASS  
NOTES.....DD-5s BACKGROUND CHECKS  
COMPLAINT REPORT (UF61).....DD-5s VEHICLES DMV CHECKS  
VOUCHERS.....DD-5 CLOSING OF CASE

ARREST REPORTS

ARREST COMPLAINT

TELEPHONE PERMISSION

MISSING PERSON SQUAD NOTIFICATION FORM

.....  
INCLUDED WITH ABOVE WILL BE A SYNOPSIS OF INVESTIGATION  
INCLUDING RESULTS  
.....

IN BUSHMILL TYPE OF FOLDER INCLUDE:

1. EASEL SHEETS FROM COMMAND POST
2. PHOTO COPY OF ENTIRE CASE
3. MISC. PAPERS (DUPLICATE VOUCHERS, DMV CHECKS)
4. LOG BOOK

THE FOLLOWING INFORMATION WILL BE RECORDED OUTSIDE OF FOLDER:

1. MAJOR CASE SQUAD CASE # AND KIDNAPPING #
2. VICTIMS NAME, ADDRESS AND DOB
3. DATE & PLACE OF INCIDENT
4. PCT. AND COMPLAINT FOLLOW-UP #
5. DETECTIVE ASSIGNED
6. STATUS OF CASE

PWR - Turns the unit on/off.

MUTE - Serves as the "HOLD" button.

NITE - Illuminates the keypads.

STO - Stores telephone numbers within the memory of the unit.

END - Terminates the call.

SEND - Dials out the call.

FCN- 1. Displays the time lapse of the last call.

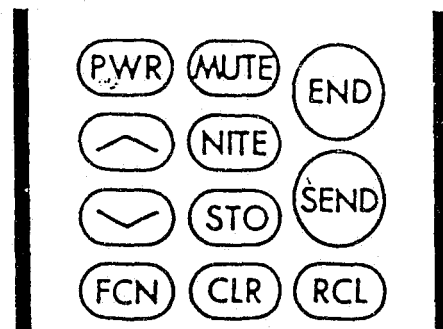
4. Allows for silent incoming calls. (No ring)

RCL- Last number dialed recall.

RCL + \* SEND will dial the last number.

## DESCRIPTION

### FUNCTION KEYS



PWR: Press to turn the phone on or off.

⤴: Electronic volume controls. ⤴ increases volume.  
⤵: decreases volume as follows: Off-hook and no call in progress: Adjust alert ringing volume. Off-hook and call in progress: Adjust handset ear-piece volume.

# CELL PHONE OPERATION

1. PUSH BUTTON LOCK RELEASE LOCATED ON LEFTSIDE OF RECEIVER TO REMOVE RECEIVER FROM CARRIAGE.
2. PRESS POWER BUTTON (PWR) ON RECEIVER KEY PAD TO ACTIVATE TELEPHONE
3. TO ILLUMINATE BUTTONS (KEY PAD PANEL) PRESS "NITE" KEY PAD.
4. VOLUME FOR HEADSET (RECEIVER) CAN BE REGULATED BY PRESSING "ARROW  
^V KEY PAD" UP OR DOWN. THIS WILL ALSO REGULATE RING OF  
IN-coming CALLS WHEN POWER IS ON AND RECEIVER IS IN CARRIAGE  
POSITION.
5. WHEN TALKING TO THIRD PARTY PRESS "MUTE" KEY PAD TO PUT PARTY ON  
LINE IN A HOLD POSITION. REPRESS "MUTE" TO BRING PARTY BACK ON  
LINE.
6. PWR BUTTON ON ----- NOTE BARS(-----) THESE BARS INDICATE BATTERY  
CHARGE CAPACITY 5 BARS BEING FULL POWER.
7. "NO SERVICE" INDICATES DEAD ZONE FOR TRANSMISSION OR AIR WAY  
IS TEMPORARILY FULL, WAIT 1 to 2 MINUTES AND TRY AGAIN.
8. DIAL NUMBER AS IN TOUCH TONE DIALING -- THEN DEPRESS "SEND" KEY  
PAD . NUMBER DIALED WILL BE DISPLAYED IN RECEIVER WINDOW.
9. AFTER CONVERSATION COMPLETED DISCONNECT SERVICE BY DEPRESSING  
"END" KEY PAD.
10. NUMBERS WILL THEN APPEAR IN RECEIVER WINDOW INDICATING LENGTH  
OF CALL.
11. TELEPHONE HAS THE CAPACITY TO STORE FROM 1 TO 99 TELEPHONE NUMBERS.  
THESE NUMBERS ARE PROGRAMED AND CAN BE RECALLED BY DEPRESSING KEY  
PAD "RECALL" (RCL) AND THEN NUMBER CORRESPONDING TO THE TELEPHONE  
NUMBER  
RCL #1 D.I. D,  
RCL #2 LT D.  
RCL #3 SGT. M  
ETC. TO NUMBER 99, RCL #1 NUMBER APPEAR IN WINDOW ON RECEIVER THEN DEPRESS  
"SEND" KEY PAD.
12. WHEN PROGRAMMING NUMBERS USE STORE KEY PAD "STO" ENTER BY  
AREA CODE, NUMBER, STO KEY THEN NUMBER 1 THROUGH 99
13. FUNCTION (FCN) THEN DEPRESS NUMBER 1 AND YOUR LENGTH OF TIME  
OF LAST CALL WILL BE DISPLAYED IN TERMS OF HOURS, MINS, AND SEC.

PAGE # 2  
CELL PHONE OPERATION

14. FUNCTION (FCN) NUMBER 4 , CUTS RING OUT ALL TOGETHER WINDOW DISPLAY WILL SHOW INCOMING CALL VISUAL. THIS ALLOWS SILENCE IN ROOM DURING OTHER POSSIBLE TRANSACTIONS.
15. RECALL (RCL) KEY PAD DEPRESS \* (STAR) THEN DEPRESS "SEND" PHONE WILL REDIAL AND SEND LAST NUMBER YOU DIALED.
16. TO DEACTIVATE TELEPHONE DEPRESS "PWR" KEY PAD TURNING OFF POWER.
17. TWO BATTERIES ARE SUPPLIED WITH THIS TELEPHONE. ONE IS IN TELEPHONE AND THE SECOND IS KEPT IN CHARGER ON CHARGE. AT ALL TIMES. BEFORE LEAVING BASE CHECK BATTERY IN TELEPHONE BY FOLLOWING STEP #6.  
SECOND BATTERY AND CHARGER SHOULD BE TAKEN TO RESIDENCE IN CASE OF LONG TERM USE.
18. AUTO ANTENNA IS AVAILABLE FOR BETTER RECEPTION IN VEHICLES. JACK IS LOCATED ON BASE OF CARRIAGE TOPSIDE RIGHT.
19. CAR POWER CAN BE UTILIZED D.C. CURRENT BY WORKING TELEPHONE OFF AUTO CIGARETTE LIGHTER. JACK IS LOCATED ON BASE OF CARRIAGE BOTTOMSIDE LEFT AND IS COVERED BY A RUBBER BOOT.

# **"CARS" TELEPHONE NUMBERS**

UNIT .....	LOCATION .....	PHONE NUMBER .....
CARS UNIT	1 Police Plaza	212-374-5340
CCAU	25 Pct.	212-860-6514
MANHATTAN CCAU	1 Police Plaza	212-374-5397
MANHATTAN ROBBERY SQUAD	34 1/2 E. 12th.St.	212-673-3435
MANHATTAN SEX CRIMES SQ.	20 Pct.	212-580-6436
BRONX CCIU	42 Pct.	212-402-1992
BRONX ROBBERY SQUAD	48 Pct.	212-579-9750
BRONX SEX CRIMES SQ.	48 Pct.	212-579-9753
BROOKLYN CCIU	77 Pct.	718-574-0623
BROOKLYN ROBBERY SQUAD	81 Pct.	718-574-0401
BROOKLYN SEX CRIMES SQ.	71 Pct.	718-735-0516
QUEENS CCIU	105 Pct.	718-990-0265
QUEENS ROBBERY SQUAD	109 Pct.	718-670-0322
QUEENS SEX CRIMES SQ.	112 Pct.	718-520-9363
STATEN ISLAND CRIMES AGAINST PERSONS SQUAD	122 Pct.	718-667-2293

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## RESPONDING OFFICERS CHECK LIST

- .....  
.....
1. **SIGN IN** with log officer **ONLY**, include sheduled tour.
  2. Obtain Kidnap Designation Number.
  3. Read and familiarize self with case from easel sheets on wall **DAILY**
  4. **Be Available** for briefing from previous tour.
  5. Check things to do on wall sheets.
  6. Keep autos filled with **GAS**, have keys available, **NOTE LOCATION WHERE PARKED, TYPE & PLATE #**, record with log officer.
  7. **OBTAIN ASSIGNMENTS FROM SUPERVISOR.**
  8. **Notify** log officer of nature of assignment, so it can be entered in log book **before** ,leaving **Command Post**.
  9. Check for proper radio frequency and obtain a fully **CHARGED** battery prior to leaving Command Post.
  10. **Upon completion of assignment:**
    - Have entry made in kidnap log book
    - Prepare DD-5s & make copies
    - DO NOT destroy case notes
    - Check for tour of duty
    - COMPLETE ALL PAPER WORK, OT SLIPS ETC.**

**SIGN OUT WITH LOG OFFICER ONLY**