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Remember 9/11/01: Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"The problem with socialism is that you eventually run out of other people's money." (Margaret Thatcher)

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ADMINISTRATIVE NOTES:

Handling Unwanted Solicitors: The California Supreme Court recently published its latest decision on the sticky issue of what to do with persons who insist upon soliciting money or signatures, or passing out political, religious, or other leaflets, from a card table set up on privately-owned property; e.g., shopping malls, big-box stores (e.g. Costco, Wal-Mart, etc.), school campuses, and, now, the grounds of an international airport. The case is *International Society for Krishna*

Consciousness of California, Inc. v. City of Los Angeles (Mar. 25, 2010) __ Cal.4th __ [2010 WL 1071387; 2010 DJDAR 4443]. I didn't brief the case because the outcome is unique to its specific circumstances, being based on a violation of a city ordinance prohibiting such activity instead of the typically used "trespass" sections; e.g. P.C. §§ 602, 602.1. It also concerns *only* the immediate solicitation of money in an airport and does not prohibit asking for future donations, passing out literature, or simply talking to people who are willing to stop and listen. But because I get many calls and e-mails on this issue in general, I've added this new case to an article I've written that recommends to you, as a law enforcement officer, how to handle the various circumstances of this type that commonly occur. If you want a copy, you need only ask.

CASE LAW:

Search Warrants; Searching for Evidence Not Authorized by the Warrant:

People v. Carrington (Apr. 27, 2009) 47 Cal.4th 145

Rule: Officers using another agency's search warrant as a pretext for looking for evidence of a second crime is lawful so long as they limit themselves to looking into places authorized under the warrant; i.e., in "plain sight."

Facts: Between January and March, 1992, defendant Celeste Carrington committed a series of nighttime commercial burglaries using keys she'd obtained by working as a janitor in each building. In the first burglary, defendant took a .357 magnum pistol and some bullets. In the second burglary, she used the stolen firearm to rob and then kill Victor Esparza, who was in the closed business cleaning it, shooting the kneeling victim pointblank in the head. In the third burglary, defendant confronted Carolyn Gleason when Gleason came to work in the morning. She killed Gleason, shooting her at close range as Gleason kneeled, covering her face with her hands. Defendant then stole Gleason's money and car. In a fourth burglary, defendant hid in a closet of a medical building until she thought everyone had left. While trying her keys on various offices, she came across Dr. Allan Marks who had had a late appointment. In a violent confrontation, defendant shot and wounded Dr. Marks. Defendant fled as the injured Marks locked the doors and called police. Because Dr. Marks recognized defendant as a former janitor in the building, she was soon identified and arrested. Defendant's apartment was later searched three times, each via a separate search warrant. The first search was conducted by officers of police agency #1 (the Los Altos Police Department), investigating a burglary unrelated to any of the above. Officers from agency #2 (the Palo Alto Police Department), investigating Gleason's murder, accompanied the agency #1 officers. When the agency #2 officers observed in plain sight items taken from Gleason, the search was stopped without seizing any evidence and a second search warrant, looking for items related to Gleason's murder, was executed. This second warrant noted the items observed in plain sight during the execution of the first warrant. These same observations were used in an on-going interrogation of defendant, leading her to confess to each of the above burglaries, murders, and assault on Dr. Marks. Using this confession

as related to Esparza, agency #3 (the Redwood City Police Department) obtained a third search warrant for defendant's apartment. Evidence connecting defendant to each of these crimes was recovered from defendant's apartment during the execution of the three warrants. In a pretrial motion to suppress, defendant argued that the later two search warrants, and her confession, were all products of the officers from agency #2 illegally observing evidence while accompanying the agency #1 officers during the execution of the first search warrant. The trial court, however found that the agency #2 officers only observed items related to Gleason's murder that were in plain sight (i.e., areas authorized to be searched by the first warrant) and that there was therefore no constitutional violation. Defendant's motion was denied. She was convicted of each of the above crimes (along with other charges, allegations, and special circumstances) and sentenced to death. Her appeal to the California Supreme Court was automatic.

Held: The California Supreme Court affirmed. Among defendant's arguments on appeal was, as it was before the trial court, that it was illegal for the agency #2 police officers to accompany the agency #1 officers when the later executed a burglary search warrant at defendant's apartment. As a result, the agency #2 officers' plain sight observations of evidence relating to Carolyn Gleason's murder were illegal, as was the two later search warrants and defendant's resulting confessions to all the crimes, all being the products of the agency #2 officers illegal observations. The Supreme Court disagreed, finding this procedure to be lawful. It was conceded that the agency #1's burglary search warrant was lawful. The Court ruled, without discussing the issue, that there is nothing improper with officers from another agency accompanying officers from a different agency in the execution of a search warrant. The fact that the agency #2's officers may have been looking for evidence of the Gleason murder when they entered defendant's apartment under the authority of a burglary warrant is irrelevant. Pursuant to *Whren v. United States* (1996) 517 U.S. 806, an officer's subjective motivations are irrelevant. So long as the officers were acting lawfully from an "objective" standpoint, any plain sight observations (i.e., observations into places authorized by the first warrant) connecting defendant to another crime are lawful. Such evidence, found in plain sight, may be seized. Or, as occurred in this case, it may be used as evidence to support the necessary probable cause for the issuance of a second search warrant to look for more evidence of the other crime. Having lawfully discovered the evidence connecting defendant to the Gleason murder, it was proper to use those observations in the second warrant. It was also lawful to confront defendant with this information in the on-going interrogation. Defendant's confessions, and the evidence discovered during the execution of each of the warrants, therefore, was properly admitted into evidence against her.

Note: It was a rule as set out in *People v. Albritton* (1982) 138 Cal.App.3rd 79, that using one search warrant as a pretext to enter a residence to look for evidence of another crime not authorized under the warrant, even if you limit yourself to plain sight observations, was unlawful. I've been advising officers for years that *Albritton* forbids such a "pretext" search. But now, this new case effectively overrules *Albritton* even though it's never mentioned by name. But it makes sense. The U.S. Supreme Court found in *Whren v. United States* some 14 years ago that an officer's *subjective* reasons for doing something is generally going to be irrelevant, so long as there is some *objectively* legal justification

for doing whatever it is the officer is doing. The fact that, subjectively, the officers in this case hoped to find evidence of a crime for which they did not yet have probable cause is irrelevant. But it's important to remember that you can only look in places authorized under the first warrant. Those "plain sight" observations then can be used to justify the issuance of a second warrant to look for evidence of the new crime.

Search Warrants; Stale Information:

People v. Hirata (Jul. 28, 2009) 175 Cal.App.4th 1499

Rule: Information concerning a defendant's possession of a controlled substance that is 82 days old, even if that possession was a part of an on-going drug-trafficking conspiracy, is insufficient to justify the search of that defendant's home.

Facts: On September 4, 2007, police obtained 13 search warrants (with a 53-page supporting affidavit) for various residences and businesses, including defendant's San Luis Obispo home. The warrant sought cocaine, methamphetamine, and other controlled substances along with other evidentiary items associated with a drug-trafficking enterprise. Execution of the warrants marked the culmination of a nine-month investigation of a drug-trafficking organization run by three individuals, not including the defendant. Defendant himself was apparently a one-time buyer. Between May 28 and June 14, defendant's name was overheard in a number of telephone conversations obtained by the police through a lawful wiretap. After purchasing a half pound of methamphetamine for \$7,000 from the organization on June 14, defendant was not heard from again until the search warrant was served on his house on September 6; some 82 days later. Methamphetamine and other controlled substances were seized from defendant's home. Defendant and ten other suspects were subsequently charged in state court with conspiracy and other drug-related charges. Defendant filed a motion to suppress the evidence seized from his home, arguing that as to him, the information concerning the possible presence of controlled substances in his home was stale; i.e., that there was no showing that he might still be in possession of those drugs. The trial judge, who was also the magistrate who authorized the warrant in the first place, granted the motion, rejecting the People's argument that defendant's continued possession of the drugs could be inferred because he was a part of an on-going criminal conspiracy. The People appealed from the resulting dismissal of the case against defendant.

Held: The Second District Court of Appeal (Div. 6) affirmed, agreeing with the trial court that the information related to defendant was too stale to justify a search of his house. Stale information, by itself, does not support a finding of probable cause sufficient to allow for the issuance of a search warrant. While there is no bright line test, information concerning a person's possession of a controlled substance that is older than four weeks is generally insufficient to show present probable cause. While a search warrant for a person's home may still be justified when there is a reasonable inference that defendant's illegal actions have continued up until the time of the search, here there was nothing to show any such reasonable inference. Although defendant had been a player in an on-going drug-sales enterprise, his only provable involvement was between

May 28 and June 14 when he made a single purchase. From June 14 to September 4, when the warrants were obtained, even though the drug-trafficking organization continued to deal in controlled substances, there was no evidence of defendant himself having any further involvement. As such, at least as to him, the information is too stale to justify a finding of probable cause of his continuing possession of the drugs, or that he might have drugs in his home. The motion to suppress, therefore, was properly granted.

Note: We can often overcome a staleness argument by showing a history (sometimes referred to as a “*historical warrant*”) of a defendant’s continued involvement, even though any one part of that history, by itself, may not be enough. But even in a historical warrant, there has to be at the very least a “*reasonable inference*” of the defendant’s continuing drug possession up to no more than four weeks before the issuance of the search warrant. In this case, at least as the facts are described by the Court, I have to agree that there was none. The fact that defendant was a one-time participant in a continuing criminal drug-dealing conspiracy is not enough, by itself, to establish that necessary reasonable inference. The Court, by the way, further rejected the People’s argument that “*good faith*” saved this warrant. Any “*reasonably well-trained officer*” should have recognized that the information, as to defendant, was stale. And if the officer didn’t, any prosecutor (well-trained or not) who reviewed the warrant (as is the practice at least in San Diego County) should have caught it.

Medical Marijuana Dispensaries:

People v. Hochanadel (Aug. 18, 2009) 176 Cal.App.4th 997

Rule: Under the medical marijuana laws, a “*primary caregiver*” must be one who, aside from providing a qualified patient with marijuana, has consistently assumed responsibility for the housing, health, or safety of the patient. Also, to qualify for protection from prosecution, a “collective” or “cooperative,” must be an organization run by its members for the benefit of its members, and not for-profit.

Facts: Defendant and two others opened up a “medical dispensary” they called “CannaHelp” in the City of Palm Desert, Riverside County, doing so openly and “transparently.” They filed a “certificate of use statement” with the State, identifying their business as a dispensary for medical marijuana, and obtained a business license from the City of Palm Desert. Financial and employee records were kept, with written policies and procedures. Customers had to have a physician’s authorization for the use of medical marijuana. Its authenticity would be checked before allowing a patient to buy marijuana. Each customer was also required to sign a form designating CannaHelp as their “primary caregiver.” Employees were further trained to evaluate a customer’s needs and recommend a specific type of marijuana depending upon the ailment. Riverside County Sheriff’s Detective Robert Garcia investigated CannaHelp, sending in an undercover officer with a forged physician’s authorization. CannaHelp employees refused to sell the officer marijuana when they couldn’t verify the authenticity of the authorization. So another undercover officer went to a doctor in Los Angeles complaining of chronic back pain. He obtained a letter from the doctor authorizing him

to use marijuana. This officer then went to CannaHelp where, after the doctor's authorization was verified, he was able to purchase marijuana on two separate occasions. Also, surveillance of the business resulted in discovery that defendant was buying his marijuana from a person, not a member of CannaHelp, who was growing it illegally in his garage. Based upon his investigation, Detective Garcia determined that CannaHelp (1) was "selling" marijuana, in violation of H&S §§ 11359 (possession for sale) and 11360 (transportation); (2) was selling it for approximately twice the price it cost on the street; (3) didn't meet the legal definition of a "primary caregiver," and (4) was a "for-profit" enterprise. He sought and obtained a search warrant for defendant's residence and CannaHelp. In the affidavit, Garcia listed his training and experience in narcotics investigations. However, notably missing, as brought out at defendant's preliminary examination, was evidence of any specialized training in medical marijuana laws. The search warrant was executed and incriminating evidence was seized. Defendant filed a motion to quash the search warrant, arguing that CannaHelp was in fact the lawful "primary caregiver" of the patients it serviced and was engaged in a lawful enterprise, as allowed pursuant to the 1996 "Compassionate Use Act" ("CUA," H&S § 11362.5) and the 2003 "Medical Marijuana Program Act" ("MMPA," H&S §§ 11362.7 et seq.). Defendant also argued that Detective Garcia, with his admittedly limited training in the medical marijuana statutes themselves, did not qualify as an expert sufficient to allow for his opinions as listed in the search warrant affidavit. The Superior Court agreed as to both arguments and quashed the search warrant. The People appealed.

Held: The Fourth District Court of Appeal (Div. 1) reversed. In discussing whether Detective Garcia's search warrant was properly quashed (i.e., insufficient probable cause to justify its issuance), the Court first discussed whether CannaHelp qualified as a "primary caregiver." Contrary to the trial court's conclusion, the Appellate Court found that it did not. A primary caregiver under the CUA and MMPA is someone who (1) has been designated as such by a qualified patient and (2) has consistently assumed responsibility for the housing, health, or safety of that patient. The problem in this case was that CannaHelp did not "consistently" assume responsibility for the housing, health, or safety of any of its customers. Such evidence, if it existed, would have had to show that CannaHelp had an existing, established relationship with the patients distinct from merely providing them with marijuana. "Individuals operating a marijuana-buying cooperative do not, by providing medical patients with medicinal marijuana, consistently assume responsibility for the health of those patients." A storefront dispensary that merely provides walk-in customers with medical marijuana does not have the type of "consistent" relationship necessary to achieve primary caregiver status. As to whether CannaHelp qualified as a "collective" or "cooperative," as exempted from criminal prosecution per H&S § 11362.775, the Court first noted that the only issue here was whether Detective Garcia's affidavit was sufficient to establish probable cause, *not* whether the defendants might be able to prove, at trial, that they were in fact a collective or cooperative. The Attorney General, per authority entrusted to him under H&S § 11362.81(d) (see Note, below), has set out the requirements for an organization to qualify as a collective or a cooperative. Aside from having to file articles of incorporation with the state, a collective or cooperative must conduct its business for the mutual benefit of its members. It must be jointly owned and operated by the members of the group. As

such, it must be an organization that merely facilitates the collaborative efforts of patient and caregiver members, including the allocation of costs and revenues. Lastly, it must not purchase marijuana from, nor sell to, non-members. In this case, it was noted that Detective Garcia lawfully relied upon information to the effect that the purchasers of marijuana had no other relationship with CannaHelp than as mere purchasers; i.e., not as members of CannaHelp. Also, at least part of CannaHelp's marijuana came from an outside source. Third, the apparent inflated price of the marijuana and the cash-only nature of the business, along with a large number of transactions, all tended to indicate that CannaHelp was not operating as a nonprofit enterprise. All these factors tended to indicate that CannaHelp did not qualify as a "collective" or "cooperative," but rather a for-profit business run by defendant and others for their own benefit. As such, it reasonably appeared to Detective Garcia, as describe in his warrant affidavit, that CannaHelp did not qualify for the protections from prosecution as provided for under H&S § 11362.775 of the MMPA. Lastly, the trial court was in error when it found that Detective Garcia was not sufficiently qualified to offer an opinion in his affidavit that CannaHelp was in violation of the marijuana statutes. Despite the lack of any specific training on the medical marijuana laws themselves, his knowledge and experience in the area were clearly sufficient to find him to be qualified as an expert. The trial court, therefore, erroneously quashed the search warrant in this case.

Note: The Court relied heavily on definitions for "*primary caregiver*" and "*collective or cooperative*" as described in the Attorney General's "*Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*," issued pursuant to a legislative mandate as provided for in H&S § 11362.81(d), and found on the Internet at http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.

If you're going to be enforcing the laws against the illegal use and/or distribution of marijuana, this document is a must read. I also have an outline that I try to keep up to date on the medical marijuana statutes and applicable case law. I'll send it to you upon request. But note that the full legalization (I don't know the specifics) of the possession and use of marijuana is on the June ballot, making this case irrelevant if it passes. So why did I brief it? I don't know. I guess I'm forever hopeful California voters will regain some level of sanity and finally figure out where all this is taking its citizenry.

Searches of a Vehicle Incident to Arrest:

United States v. Gonzalez (Aug. 24, 2009) 578 F.3rd 1130

Rule: The rule in *Arizona v. Gant*, finding most warrantless searches incident to arrest illegal, is to be applied retroactively to any case not yet final when *Gant* was decided.

Facts: Defendant was a passenger in a vehicle that was lawfully stopped. During the traffic stop, another passenger was arrested on outstanding warrants. Defendant was also removed from the car, handcuffed, and put into a patrol car. The car was then searched incident to the other passenger's arrest. A loaded 9 millimeter Baretta firearm was found in the glove box which was determined to belong to defendant. Because defendant had a prior felony record, he was prosecuted in federal court for being a felon in possession of a

firearm. Defendant's motion to suppress the firearm was denied by the trial court. His subsequent conviction was affirmed on appeal, the Ninth Circuit Court of Appeal ruling that pursuant to the Supreme Court's own rule in *New York v. Belton* (1981) 453 U.S. 454, a warrantless search of a vehicle incident to an occupant's arrest was lawful. The U.S. Supreme Court granted certiorari. While this appeal was pending, the Supreme Court decided *Arizona v. Gant* (2009) 556 U.S. ___ [129 S.Ct. 1710], which, in reversing *Belton*, found that a search incident to arrest was unlawful whenever the defendant has already been secured and can no longer reach for the evidence. This case was therefore remanded back to the Ninth Circuit in light of the decision in *Gant*.

Held: The Ninth Circuit Court of Appeal reversed. Pursuant to *Gant*, a search of a vehicle incident to arrest is illegal when the defendant has already been secured and can no longer reach for the evidence. "Police may search a vehicle incident to a recent occupant's arrest *only* if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." With the defendant secured in a patrol car, and the arrest of the other occupant being for warrants only, neither exception to the rule applied in this case. The Government, however, argued that the officer's good faith in using the former rule under *Belton* should save the search in this case. The Court rejected this argument. While an officer's good faith might save a search in a case where the officer relies on a warrant that is later held to be invalid, or on a statute or regulation that is subsequently found to be unconstitutional, neither such circumstance applied here. Where an officer relies upon case authority (i.e., *Belton*) that is reversed by a new case (i.e., *Gant*) while the legality of the current search at issue is still on direct appeal, then the new rule will be retroactive despite the officer's good faith. This is based upon U.S. Supreme Court authority to the effect that if it didn't apply a new case decision retroactively, it would violate the integrity of judicial review by putting the Court in a position of not following its own rules and failing to treat similarly situated defendants the same. The officer's good faith, therefore, doesn't save this illegal search.

Note: Well, that sucks. Interestingly enough, in checking the subsequent history of this case, there have been no less than eight separate state and federal cases that have either disagreed with, declined to follow, or declined to extend, the decision here. But none of them are from California or the Ninth Circuit, and this case wasn't appealed, so I guess we're stuck with it. *Gant* was decided on April 21, 2009. So any search-incident-to-arrest case that was still on appeal as of that date must abide by *Gant* and not *Belton* even if the actual search occurred prior to that date. Go figure.

***Child Molest Victim's Allegations and Probable Cause:
Fifth Amendment Self Incrimination Violations Before Trial:***

***Stoot v. City of Everett* (9th Cir. Aug. 13, 2009) 582 F.3rd 910**

Rule: (1) A child victim's (age 4) allegations of being molested that are confused and inconsistent does not, by itself, establish probable cause. (2) A coerced confession from the suspect does not become a Fifth Amendment self-incrimination violation until the

statement is relied upon to file formal charges against the suspect, to determine judicially that the prosecution may proceed, and/or to determine pretrial custody status.

Facts: Nicki Johnson contacted the City of Everett (Washington) Police Department in December, 2003, to report that her four-year-old daughter, A.B., had complained to her that 14-year-old Paul Stoot had touched her in the area of her vagina. According to A.B., this occurred on five different occasions and involved Paul touching his penis to A.B.'s vaginal area. A.B. had stayed with the Stoots for about four months between June and September, 2002, over a year earlier, while Nicki worked out some financial problems. The responding patrol officer interviewed A.B. and got a similar story. The case was assigned to Detective Jonathan Jensen the next day. With 24 years experience as a police officer, and five years working child sexual abuse cases, Detective Jensen contacted Nicki to get the circumstances of A.B.'s complaint. He then interviewed A.B. and got a somewhat confused and inconsistent story, with A.B. changing her account of what had happened and even at one point who had done it to her. Detective Jensen contacted Paul at his school. After reading him his *Miranda* rights and getting a written waiver, Jensen asked Paul about A.B.'s allegations. Paul denied ever touching A.B. inappropriately some 13 times over the next two hours. He eventually, however, admitted to touching her vagina three times. Paul later claimed that he'd been coerced into making these admissions by Detective Jensen threatening him and offering him leniency if he confessed; accusations Jensen denied. After the interview, Paul was allowed to return to class. Criminal charges were later filed in state court. A hearing was held concerning Paul's allegations that his confession had been coerced. The trial court found that Paul was the more credible witness. The court also found that Paul was too young to understand his *Miranda* rights and that his waiver, therefore, was invalid. The confession was subsequently suppressed. The Court further held that A.B. was incompetent to testify (she having a history of hallucinations and panic attacks, along with the inconsistency of her account as to what had happened) and that all her statements to her mother and the officers were inadmissible hearsay. The case, therefore, lacking any admissible evidence, was dismissed. The Stoots thereafter sued Detective Jensen (as well as the City of Everett) in federal court per 42 U.S.C. § 1983. The trial court granted Jensen's motion for summary judgment, dismissing the civil case. The Stoots appealed.

Held: The Ninth Circuit Court of Appeal affirmed in part and reversed in part. (1) *Fourth Amendment:* The Stoots alleged that Detective Jensen seized their son, Paul, without probable cause; A.B.'s statements alone being insufficient to establish probable cause. The civil defendants (Detective Jensen and the City of Everett) acknowledged that when Paul was taken from class to the principal's office, he was in fact "*seized*" under the Fourth Amendment. The question was whether A.B.'s story, by itself, was sufficient to establish probable cause to justify such a seizure. The Stoots' argument was that "A.B. provided 'vastly different reports about what was alleged to have happened, when, where, and with whom'—inconsistencies that should have raised 'serious concerns about the veracity and reliability of the allegation made by A.B.'" In such a situation, the Stoots argued, it was incumbent on Detective Jensen to conduct a more thorough investigation prior to seizing and interrogating Paul. The Court agreed that the information received from A.B. alone did not support a finding of probable cause. Specifically, given A.B.'s

age, the fact that the alleged molests had occurred over a year earlier, the fact that A.B.'s story changed a number of times, and that she had at one point confused Paul with another boy, made her allegations suspect. However, there is no case authority supporting the argument that an investigator cannot rely upon the statement of a youthful victim, by itself, to establish probable cause. Detective Jensen, therefore, who personally interviewed A.B. and who was (as he testified) convinced of the truth of her allegations, was not on notice that her contradictory story was, per se, insufficient to establish probable cause. He therefore is entitled to qualified immunity on plaintiffs' (The Stoots') Fourth Amendment claim. (2) *Fifth Amendment*: The Stoots next argued that Detective Jensen violated their son's Fifth Amendment self-incrimination rights by coercing a false confession out of him. However, the United States Supreme Court, in *Chavez v. Martinez* (2003) 538 U.S. 760, specifically ruled that one's Fifth Amendment self-incrimination right is a "trial right," i.e., it is not violated until the statements in issue are actually used in a criminal prosecution. But *Chavez* did not resolve the question at issue here. Does *Chavez* mean that before a person can claim that his Fifth Amendment rights were violated, the statements must actually be used in the trial of the matter, or does any use of the statements, such as in the filing of the case, qualify? The federal circuits are split on this issue. The Ninth Circuit Court of Appeal sided with those courts that have held: "A coerced statement has been 'used' in a criminal case when it has been relied upon to file formal charges against the declarant, to determine judicially that the prosecution may proceed, and to determine pretrial custody status." In this case, the prosecutor used defendant's statements in an affidavit to secure the accusatory information which was filed in court, initiating the criminal proceedings against Paul. His statements were also used in court at a pretrial arraignment and bail hearing. That was sufficient. The Court further held that because it was reasonably foreseeable that a prosecutor would use the results of the interrogation (i.e., defendant's confession), the fact that those statements were in fact used by a prosecutor to file charges did not supersede the interrogating officer's potential civil liability. On this issue, the Court noted that Detective Jensen was on notice under clearly established law that Paul was entitled to an appropriate *Miranda* admonishment, and that a coerced statement from him "could ripen into a Fifth Amendment violation." The detective, therefore, was *not* entitled to qualified immunity on this issue. The Ninth Circuit therefore reversed the trial court's dismissal of this allegation.

Note: Don't confuse this with the *Greene v. Camreta* (9th Cir. 2009) 588 F.2nd 1011 situation where the 9th Circuit ruled that a child molest *victim* cannot be interviewed at school without the contact being considered a *seizure*, under the Fourth Amendment. To be lawful, such a seizure requires a court order, a search warrant, the parents' permission, or an exigent circumstance. (See *Legal Update*, Vol. 14, #15, p. 2, 12/31/09.) Fourteen-year-old Paul, here, was the suspect; not the victim. So the situations are different. But I still have a hard time with the argument that interviewing anyone (suspect or victim), must always be classified as "a seizure." In this case, Paul might very well have been subjected to a "de facto" arrest (i.e., a "seizure") as opposed to a mere detention or even consensual encounter. But since the civil defendants rolled over on the issue, it was never discussed. What is the problem up there in the Northwest (Camreta was out of Oregon) where every police-juvenile contact seems to be considered a "seizure?"