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Remember 9/11/01; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*A life spent making mistakes is not only more honorable, but more useful than a life spent doing nothing.*" (George Bernard Shaw)

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***ADMINISTRATIVE NOTES*:**

Fisher v. City of San Jose; *En Banc Hearing Granted*: On March 14, the Ninth Circuit Court of Appeal withdrew this terrible decision ((9th Cir. 2007) 509 F.3rd 952), announcing that an en banc (full panel) hearing was to be held reevaluating the case. This is the civil case, if you recall, that held that police officers should have obtained an arrest warrant before forcing an armed, drunk, barricaded

suspect (who, during a 12-hour standoff, was threatening to kill police officers) out of his house. We can only hope that sanity will now prevail.

CASE LAW:

***Air Fresheners in the Windshield, per V.C. § 26708(a)(2)*:**

People v. Colbert **(Dec. 11, 2007) 157 Cal.App.4th 1068**

Rule: An air freshener hanging from a vehicle's rearview mirror is a violation of V.C. § 26708(a)(2), at least where the evidence is properly presented to the court.

Facts: Agent Scott McCrossin of the Los Altos Police Department observed defendant driving a vehicle with a tree-shaped paper air freshener dangling from his rearview mirror. The air freshener, which was flat, measured some 4¾ inches tall, 1¾ inches at its base, and 2¾ inches at its widest point. McCrossin was familiar with this type of air freshener, having used one in his own personal vehicle until he figured out that it obstructed his view of pedestrians and other vehicles. He was also aware of an accident in the past year that had been caused by such an item hanging from a vehicle's rearview mirror. Officer McCrossin stopped defendant intending to cite him for what he perceived to be a violation of V.C. § 26708(a)(2); obstruction of the driver's view through the front windshield. Upon making the traffic stop, it was determined that defendant was on parole. A parole search resulted in the recovery of a methadone pill and a credit card in someone else's name. He was also determined to be under the influence of a controlled substance. Defendant's motion to suppress, arguing that an air freshener hanging from the rearview mirror was not illegal, was denied. Defendant pled no contest and appealed.

Held: The Sixth District Court of Appeal affirmed. This issue has already been decided once before in *People v. White* (2003) 107 Cal.App.4th 636, where it was held that the same type of air freshener was *not* of sufficient size to obstruct the driver's view. In *White*, however, there was no testimony from the officer that could lead the court to find that the air freshener obstructed the driver's view. To the contrary, the defense in *White* presented the testimony of a civil engineer who determined that based upon experiments he conducted, the air freshener covered less than .05% of the total surface of the car's windshield. The engineer was allowed to give his "expert" opinion that such an item would not obstruct the view of a six-foot driver. Also, the defendant in *White* testified that his vision was not obstructed. In contrast, only the officer testified in the present case, and was able to present articulable reasons (as noted above) for his conclusion that the tree-shaped air freshener did in fact cause an obstruction of a driver's view when hanging from the rearview mirror. The defendant did not present any evidence to the contrary. Defendant's motion to suppress, therefore, was properly denied.

Note: The obvious difference here between this case and *People v. White* is the prosecutor's preparedness and a whether a good in-court evidentiary foundation was laid. In *White*, the defense made a good record supporting the court's finding that such an air freshener did not obstruct the driver's view. In the present case, the prosecutor went in

prepared and with a sharp cop who testified to a variety of reasons for his conclusion. The defendant failed to counter the officer's testimony. Don't tell me that the quality and preparedness of the attorneys involved doesn't make all the difference in the world. You, as the arresting officer, can help greatly by insuring that your conclusion that the object is in fact obstructing the driver's view is supported by articulable facts. Such facts might include your prior personal experience, the size of the object, the observed driving indicating that the driver couldn't see as well as he should have been able to, etc., etc.

***Detentions and Reasonable Suspicion*:**

United States v. Berber-Tinoco **(9th Cir. Dec. 19, 2007) 510 F.3rd 1083**

Rule: Sufficient reasonable suspicion justifying a temporary detention, based upon the totality of the circumstances and an officer's training and experience, found in this case.

Facts: Border Patrol agents, working the U.S./Mexico border at about 10:30 p.m., knew that a "seismic intrusion device" (i.e., ground sensor) at the border had been activated two hours earlier. From their experience, they knew that it would take someone walking north across the border about two hours to reach their location; a completely rural area which was "notorious" for illegal alien smuggling activity. Right on cue, two vehicles came up the road. The cars aroused the agents' suspicions because they were "right next to each other, not more than a car or two car lengths apart, traveling at a slow rate of speed." The two cars braked repeatedly, and then continued on. They both continued westbound for awhile, eventually turning around at a spot that "was heavily used for loading aliens;" almost a nightly occurrence. Based upon all of this, the agents suspected that the vehicles were looking for, and picking up, illegal aliens. The agents therefore made an investigatory stop of both vehicles. Defendant, an illegal alien, was a passenger in one of the vehicles. He was arrested and charged in federal court with unlawful re-entry into the United States after deportation, per 8 U.S.C. § 1326. Defendant brought a motion to suppress evidence of his fingerprints and some statements he made when arrested, arguing that the stop of the vehicles, leading to his arrest, was without sufficient reasonable suspicion. The trial court denied his motion. Defendant appealed.

Held: The Ninth Circuit Court of Appeal affirmed. The issue here was whether the agents had "a particularlized and objective basis for suspecting the particular person stopped of criminal activity." In evaluating this issue, the "*totality of the circumstances*" is to be considered. In the context of a border patrol stop, the totality of the circumstances may include "(1) characteristics of the area; (2) proximity to the border; (3) usual patterns of smuggling in the area; (4) previous alien or drug smuggling in the area; (5) behavior of the driver, including 'obvious attempts to evade officers;' (6) appearance or behavior of passengers; (7) model and appearance of the vehicle; and (8) officer experience." An experienced law enforcement officer may make reasonable deductions and inferences based upon his experience and specialized training that "might well elude an untrained person." When consideration of the above factors, and any other applicable factors, add up to at least an objectively "*reasonable suspicion*" that the vehicles' occupants are engaged in some sort of criminal activity, an investigative stop or

detention is justified. In evaluating all the above, the Court held here that the agents had a reasonable suspicion that the two vehicles in question were engaged in picking up illegal aliens who had just come over the border. The timing, the place, and the unique actions of the two vehicles, when added to the fact that a border seismic intrusion device had just been triggered, were all indicative, in the agents' training and experience, of vehicles that were out to pick up illegal aliens who had just come over the border.

Note: The Court also noted several times that alternate innocent explanations for any one or more of the applicable factors (a common defense argument) does not detract from the conclusion that the suspicious circumstances, when considered as a whole, and in light of the agents' training and experience, add up to a "reasonable suspicion." All this decision really says is that an officer must use his or her common sense in evaluating the circumstances. The problem, of course, is that not all of us in law enforcement have been blessed with the necessary common sense. Reading cases like this, however, and getting a feel for where the line is between a "reasonable suspicion" and just a "hunch," will add to your expertise as a cop. It all comes with practice.

***Peace Officers' Rights*:**

Aguilera et al v. Baca **(9th Cir. Dec. 27, 2007) 510 F.3rd 1161**

Rule: Law enforcement officers, commanded to remain at the station pending an Internal Affairs interview, were not "*in custody*" under the circumstances of this case.

Facts: Martin Flores complained from the emergency room of a hospital that he had been beaten "without provocation" (never heard that one before) by a Los Angeles sheriff's deputy. Before the shift was even over, Sheriff's Department supervisors initiated an Internal Affairs investigation. The deputies who had been at the scene of the alleged beating (five of them becoming plaintiffs in this civil suit) were informed that they were to remain at the station following their patrol shift at 6:00 a.m. until interviewed by Internal Affairs investigators. One of the involved deputies was informed that they were all the focus of an Internal Affairs criminal investigation. With the deputies being 5 to 20-year veterans, they were aware that they had an affirmative duty to cooperate during such an investigation, being subject to administrative discipline for doing otherwise. While the Sheriff's polices allow the supervisors to require them to remain at the station, the deputies were entitled to, and were in fact, compensated at overtime rates. While the deputies waited, they remained in specific rooms, all of which were unlocked. They were offered food and drink, with a drinking fountain available. They were not required to relinquish their weapons or badges. They were allowed to talk with each other, sleep, make and receive telephone calls, and go to the bathroom at will. They were not touched, searched, arrested, physically restrained, or subjected to any force. At about 6:30, they were all called into the station commander's office and, "in a harsh, accusatory manner," threatened with prosecution for the involved deputies, with the only way to avoid criminal charges being to "come forward now." The Internal Affairs interviews did not begin until 11:30 a.m. Without being advised of their rights under *Miranda*, each deputy was asked to provide a statement. Each deputy declined "on

the advice of counsel." Upon declining to give a statement, each deputy was allowed to leave. While the Internal Affairs investigation continued on for the next two months, the deputies were all reassigned to station duties. At some point, "compelled statements" were obtained from four of the deputies at the request of the District Attorney's Office. None of these deputies were asked to waive their rights against self-incrimination. Within days of obtaining these statements, each of these four deputies was transferred back to his or her original patrol duties. The fifth deputy was cleared and sent back to patrol some three months later after the District Attorney declined to file criminal charges. The five deputies later sued the Sheriff's Department in federal court alleging that their Fourth (seizure), Fifth (self-incrimination) and Fourteenth (due process) rights had been violated. The trial court granted summary judgment in favor of the Sheriff's Department, dismissing the law suit. The plaintiff/deputies appealed.

Held: The Ninth Circuit Court of Appeal, in a split 2-to-1 decision, affirmed the dismissal of the lawsuit. (1) *Fourth Amendment, illegal seizure*: The deputies argued that their detention at the station pending questioning amounted to an illegal seizure under the Fourth Amendment. Whether or not the deputies were "detained" depends upon whether their decision to submit to their superior's order to remain at a designated location was based upon fear that if they tried to leave they would be subjected to physical restraint, or merely adverse employment consequences. Police supervisors have the right to direct their officers to remain on duty and to answer questions as a part of a criminal investigation into their alleged misconduct. But this doesn't mean that they would be physically restrained if they chose to leave. The Court listed some 13 factors to consider when determining whether, under these circumstances, the deputies were subject to a Fourth Amendment detention. In this situation, it was held that there was no detention because the deputies were not precluded from moving about the station, were not closely supervised while they waited, retained their badges and guns, and were paid overtime for the time spend waiting to be interviewed. The fact that they were threatened with criminal prosecution was not enough, by itself, to overcome the other circumstances tending to negate any argument that they were being detained. (2) *Fifth Amendment, self-incrimination*: The deputies further argued that by forcing them to choose between giving a voluntary, non-immunized statement that could be used against them in subsequent criminal or administrative proceedings, and keeping their current job assignments and work shifts, their Fifth Amendment right against self-incrimination was violated. The Court disagreed. Although a public employee cannot be compelled to choose between providing unprotected incriminating testimony or lose their jobs, the public employer *does* have the right to question the employee about matters relating to the employee's possible misconduct while on duty. The employee's rights are not violated unless the employer requires the employee to waive his self-incrimination rights and answer the employer's questions. In this case, the deputies were not required to waive their Fifth Amendment self-incrimination rights, so any resulting statements could not have been used against them even if they'd been charged with a crime (which they were not). Until their statements are used, there is no Fifth Amendment violation. (3) *Fourteenth Amendment due process*: Lastly, the Court rejected the deputies' argument that their due process rights had been violated. To the contrary, the Sheriff's Department has a duty to investigate allegations of officers using excessive force. The reassignments

made pending the completion of the Internal Affairs investigation was consistent with the Department's duty to protect the public from the potential for further assaults by the unknown deputy who might have committed the alleged offense in this case. There being no violation of he deputies' rights, the trial court properly dismissed the lawsuit.

Note: In briefing this case, I was primarily interested in the often reoccurring problem of determining whether an employee, student, or military subordinate, or perhaps even a probationer or parolee, is "*in custody*" for either Fourth Amendment or *Miranda* purposes (the in-custody, *Miranda* issue not being discussed here) when "summoned" to an employer's, principal's, commanding officer's, or probation or parole officer's, office for an interview with law enforcement. There are only a couple of cases on this issue, but the bottom line is that (like all other search and seizure issues) *it depends upon the circumstances*. At pages 1169 to 1170 of this case, the Court, while listing the 13 factors to consider, held that generally, an employee, etc., who responds to his boss's, etc., office is more likely doing so as a part of his general obligation as an employee, etc. That is *not* a detention under the Fourth Amendment, per this case. Although the Court did not get into the issue of whether the deputies were in custody for purposes of *Miranda*, a similar argument could certainly be made. Also, a probationer or parolee's situation may require a different analysis, with their freedom more likely to be at risk under such circumstances. But a similar analysis is probably appropriate when evaluating the issue.

***Traffic Stops and Reasonable Suspicion*:**

People v. Dean **(Dec. 21, 2007) 158 Cal.App.4th 377**

Rule: A traffic stop of a vehicle for an expired registration tab, when there is a current and apparently valid DMV registration sticker displayed in the car's window, is illegal.

Facts: A Contra Costa Sheriff's deputy, working on a county-wide suppression team in October, 2005, and driving a marked patrol vehicle, observed a minivan with an expired registration tap. Although the deputy could not later recall, there may also have been, however, a red DMV temporary registration sticker in the rear window with an "11" (indicating that it was good until the end of November) printed on it. However, the deputy later testified that even if he had seen a sticker, he would have stopped the van anyway. The deputy made a traffic stop and contacted defendant; the driver. The deputy recognized him from having served a narcotics-related search warrant at his house on a previous occasion. Defendant didn't have either a driver's license or the vehicle's registration. When asked, defendant denied having anything illegal on his person. Asked for consent to search his person, defendant got out of his car, turned around and faced the car, holding his hands up in the air. The deputy took this as a "yes" and searched him, finding some 33 individually wrapped baggies of rock cocaine. Defendant was arrested and his minivan impounded. Charged in state court with numerous narcotics-related charges, defendant filed a motion to suppress. The defense introduced into evidence a red DMV temporary registration sticker that a defense investigator claimed to have retrieved from the rear window of defendant's impounded minivan. There was also presented evidence to the effect that the rear window of the minivan was both heavily

tinted and dirty, and that the temporary registration sticker may have been difficult to see. The trial court denied defendant's suppression motion. Defendant pled guilty and appealed.

Held: The First District Court of Appeal (Div. 2) reversed. Working its way through a lot of conflicting testimony (as well as numerous "I don't recall(s)" from the deputy), the Court ruled that the issue was whether it was reasonable to assume that defendant was in violation of V.C. § 4000(a)(1) (unregistered vehicle) when the deputy observed the expired registration tabs (V.C. § 5402), but when there was also a current red DMV temporary registration sticker in the rear window. Noting that the California Supreme Court has yet to decide the issue, this Court ruled that this circumstance *does not* establish reasonable suspicion that the vehicle was unregistered. Despite the argument that a DMV temporary registration sticker is easily forged and/or put into a vehicle other than the one for which it was intended, to allow traffic stops to check the validity of apparently valid temporary registration stickers "would be to subject many thousands of Californians driving vehicles displaying temporary forms of registration . . . to unnecessary traffic stops that waste our law enforcement resources." In this case, the deputy testified that he couldn't recall whether he'd seen the red sticker in the rear window of defendant's minivan, but that even he had, he would have made a traffic stop anyway. Based upon this testimony, there was insufficient evidence to support the trial court's conclusion that the temporary registration—good until the end of November—was not visible to the officer regardless of whether the window was dirty or tinted. The traffic stop, therefore, was illegal. The resulting evidence should have been suppressed.

Note: I've heard the argument on more than one occasion that officers should be able to stop vehicles with temporary registration stickers for the simple reason that those stickers are so often abused; the displayed month being changed or because they are put into cars for which they were not intended. But to allow stops to check what appears to be an otherwise valid registration sticker violates the constitutional principle that an officer must have, at the very least, a "*particularized suspicion*" that the vehicle being stopped, as opposed to all the other vehicles on the road with those stickers, is in violation of the law. Stopping the car to check and see if there is a violation, with no pre-existing reason to believe that this particular driver is using the sticker illegally other than the fact that such abuses are common, is not a "*particularized suspicion*." As such, a traffic stop for this reason violates the Fourth Amendment. (See *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1.) But for those of you who disagree, take heart. This very issue is presently before the Supreme Court and due to come down any time now. (See ***People v. Hernandez*** (2006) 146 Cal.App.4th 773; review granted.) The other problem I have with this case (assuming the Court's rendition of the facts is accurate; my apologies to the Contra Costa Sheriff's deputy if they are not.) is that I counted no less than nine "I don't recall(s)" from the deputy's testimony, many of which related to the legality of the traffic stop. You *HAVE* to give your prosecutor a little more to work with than that. Not being able to remember occurrences that are central to the litigated issues are going to necessarily lead to disputes in the evidence being decided in the defendant's favor. Thorough and accurate reports, as well as being prepared for your testimony, help to minimize this problem.

***First Amendment Freedom of Expression, Trespassing, and Shopping Malls*:**

Fashion Valley Mall, LLC v. National Labor Relations Board **(Dec. 24, 2007) 42 Cal.4th 850**

Rule: Passing out leaflets and advocating the boycott of a store on the private property of a shopping mall, being protected under the California Constitution, is not a trespass.

Facts: An employee union (Graphic Communications International Union Local 432-M) of San Diego's largest newspaper, the San Diego Union-Tribune, had a labor dispute with the newspaper. As a result, Labor Union members set up a table in front of the Robinsons-May department store in the Fashion Valley Mall, passing out leaflets to potential customers, calling for a boycott of Robinsons-May because the store advertises in the Union-Tribune. The Union members conducted their activity in a courteous and peaceful manner without a disruption of any kind and without hindrance to customers entering or leaving the store. Within 15 to 20 minutes, however, Mall officials arrived and asked the Union members to leave, telling them that because they had not obtained a permit to hand out leaflets, they were trespassing and were subject to civil sanctions and/or criminal arrest. The police were called. Upon the arrival of a police officer, and after a brief argument concerning the Union's right to be there, the Union members rolled over and moved their activity to public property near an entrance to the Mall. However, the Union subsequently filed a charge before the National Labor Relations Board (NLRB) in Washington D.C., alleging that the Fashion Valley Mall violated the National labor Relations Act (Sec. 8(a)(1); 29 U.S.C. § 158(a)(1)) by refusing to allow leafleting on the Mall's property. An administrative law judge agreed. The Mall appealed.

Held: In an appeal that was transferred from the D.C. Circuit Court of Appeal, the California Supreme Court affirmed in a split, 4-to-3 decision. In a lengthy decision, outlining the entire history of the state and federal case decisions dealing with "First Amendment, freedom of expression" demonstrators and leafleteers doing their thing on private property that belonged to various department stores and shopping malls, the majority of the Court found that prohibiting the Union members from advocating a boycott of Robinsons-May violated California's constitutional protection of freedom of expression (Cal. Consti., Art. I, § 2, subd. (a)). While federal interpretation of the First Amendment tends to allow private shopping malls more leeway in restricting such activity on their property, the California Supreme Court, interpreting California's Constitution, have found that shopping malls, although private property, have developed into the equivalent of the old-style "town centers" which were historically used as public forums for expressing opinions. (See *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3rd 899.) In applying for a permit at the Fashion Valley Mall, anyone wishing to engage in any First Amendment "expressive activity" on the Mall's property was required to apply for a permit five business days beforehand. To obtain a permit, the group was required to agree to follow all the Mall's rules, one of which was to refrain from "(u)rging or encouraging in any manner customers not to purchase the merchandise or services offered by any one or more of the stores or merchants in the shopping mall."

This is exactly what the Union was attempting to do by advocating the boycotting of Robinsons-May. Therefore, they would not have been able to get permission to hand out leaflets even if they had applied for a permit. While a Mall or other businesses (e.g., box-style discount stores, such as Costco) may regulate such activity by placing reasonable "time, place and manner" restrictions on the use of their property, the Malls' rules here sought to prohibit altogether the activities of the Labor Union. This type of "*content-based*" (as opposed to "*content-neutral*") restriction is a violation of the California Constitution. The Court further noted that it is irrelevant whether the target of the demonstrators' ire is a business contained within the Mall or not; the rules are the same. The Union members, therefore, should not have been required to leave the Mall's property.

Note: This is an extremely important decision for police officers who are called to a scene similar to what San Diego P.D. was summoned to here in this case. They don't tell us what the San Diego officer told the Union members, except to note that there was "an argument" and that the Union members, as a result, moved their activities out of the Mall. When you get the call to one of these situations, be it leaflet distributors, signature collectors, abortion protestors, or simply someone on his soapbox expressing an unpopular opinion of some sort, my suggestion to you is *not to take any affirmative action*. You can expect that the Mall officials or a store manager will thrust a court decision under your nose saying that the demonstrators are trespassing. But there is a reason why all the cases they throw at you are civil cases. That's because this is a civil issue. My strong suggestion to you is, except when necessary to keep the peace, "*do not arrest anyone*." First, absent a complete blocking of a store's entrance (P.C. § 647c) or a physical altercation (P.C. §§ 240, 242), there is likely no trespass or other section in the California Penal Code that covers what the demonstrators are doing. And secondly, even if there is, the demonstrators have a constitutional right to do what they are doing that takes precedence over any statutes. The application of reasonable "*time, place and manner*" restrictions on their activities can only be determined in a civil suit after an evidentiary hearing. You, off the cuff at the scene, with all the emotions and turmoil involved, cannot properly decide this issue and shouldn't even attempt to do so. Don't take sides. Tell the warring parties to seek an injunction or other court order in a civil court. And then, with the rules set out in detail by a civil judge, the next call you get you can resolve with a P.C. § 166(a)(4) (violation of a court order) arrest. Until then, *stay out of it*." I've written a whole article on this issue which I will send you upon request.

***Fourth Waiver Probation Searches Without Suspicion*:**

People v. Medina **(Dec. 27, 2007) 158 Cal.App.4th 1571**

Rule: Probation Fourth Waiver searches do not require any suspicion to be lawful.

Facts: Noting that defendant was driving a vehicle with an inoperable taillight, a Bakersfield police officer made a traffic stop on him as he pulled into his driveway. A records check resulted in discovery that defendant was on felony probation and subject to search and seizure conditions for narcotics paraphernalia. Pursuant to defendant's

"Fourth wavier," and despite the fact that there was no reason to believe defendant possessed anything illegal, the officer searched defendant's car. Nothing was found. The officer then went to defendant's house and, after being let into the house by defendant's father, conducted a Fourth wavier search of defendant's room. A small amount of methamphetamine and some ammunition was found. Charged in state court, and relying upon *United States v. Knights* ((2001) 534 U.S. 112., the trial court found that defendant's car and house were searched illegally in that the officer did not have a "*reasonable suspicion*" justifying the search. Defendant's motion to suppress the resulting evidence was therefore granted. The People appealed.

Held: The Fifth District Court of Appeal reversed. Defendant's argument on appeal was that because the search of his room was conducted without any suspicion, the search was illegal. The People, on the other hand, contended that no suspicion is needed to conduct a probation Fourth wavier search. The Court, noting that the legal basis for a probation search is "*consent*" and not reasonableness, agreed with the People. Defendant, when sentenced on his prior felony case, consented to submitting his person, house, and vehicle to warrantless searches. The rule in California has been for 20 years that for a probation Fourth waiver search, "(a) probationer's consent is considered 'a complete waiver of that probationer's Fourth Amendment rights, save only his right to object to harassment or searches conducted in an unreasonable manner'" or when done for arbitrary or capricious reasons. (*People v. Bravo* (1987) 43 Cal.3d 600.) A search is "arbitrary or capricious" when the motivation for it is unrelated to rehabilitative, reformative or legitimate law enforcement purposes, or when it is motivated by personal animosity toward the probationer. There is no indication that the officer in this case searched the defendant's car or home for any of these purposes. *U.S. v. Knights*, relied upon by the trial court in finding that reasonable suspicion is needed for the search to be lawful, involved a case where an officer searched the defendant's apartment based upon a reasonable suspicion that it contained explosives. The Supreme Court in *Knights*, however, expressly declined to decide whether a reasonable suspicion was in fact needed to justify such a search, leaving that issue for later determination. More recently, the U.S. Supreme Court in *Samson v. California* (2006) 547 U.S. 843, held that a parolee is subject to search without any suspicion. But the Supreme Court has yet to rule on whether the rule of *Samson* applies to probationers as well. Until it does, this Court found that it is bound by prior California authority (*Bravo*, above) that has found suspicionless probation searches to be lawful.

Note: This case is correct, in that *Bravo*, a California Supreme Court decision, clearly established the rule for probation Fourth wavier searches in California; i.e., no suspicion is needed. And there is presently no federal (Ninth Circuit or U.S. Supreme Court) case telling us that they are wrong. But having studied carefully the U.S. Supreme Court decision in *Samson*, where the U.S. Supreme Court expended a great deal of effort noting that parolees, for whom no suspicion is needed, have fewer rights that probationers, it is still my prediction that when the U.S. Supreme Court finally deals with the issue they will require a "*reasonable suspicion*" for probation Fourth waiver searches. People smarter than me disagree. We'll just have to wait and see.