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THIS EDITION'S WORDS OF WISDOM:

"*I recently read that love is entirely a matter of chemistry. That must be why my wife treats me like toxic waste*." (David Bissonette)

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***Vehicle Inventory Searches*:**

People v. Torres **(Sep. 21, 2010) 188 Cal.App.4th 775**

Rule: Impounding and doing an inventory search of a vehicle as a pretext for looking for evidence of suspected criminal activity, and not pursuant to the officer's "community caretaking" function, is illegal.

Facts: An Orange County deputy sheriff observed defendant driving a pickup truck in Anaheim, and pulled him over when defendant made an unsafe lane change and failed to signal a turn. Defendant pulled into a parking stall in a public parking lot near a

restaurant. Upon being contacted, defendant admitted that he didn't have a driver's license. The deputy asked for and received consent to search his person, resulting in the discovery of four cell phones and $965. The deputy, deciding to impound defendant's pickup pursuant to V.C. § 24602.6(a)(1) (impoundment of a vehicle driven by an unlicensed driver), handcuffed him and put him into the back seat of his patrol car. An inventory of the contents of the pickup resulted in discovery of 12 ounces of methamphetamine under the driver's seat and a "pay and owe" sheet in the back seat. Based upon this information, a search warrant was obtained for his house where nearly three pounds of meth and $133,074 were found. Charged with a bunch of narcotics-related offenses in state court, defendant filed a motion to suppress (per P.C. § 1538.5) the items found in his truck and a motion to quash the search warrant and suppress the evidence recovered from his house. The prelim magistrate denied the motions and bound defendant over for trial. In the trial court, defendant renewed his motions to suppress evidence and quash the search warrant. He also filed a concurrent motion to dismiss, per P.C. § 995. The trial court denied these motions and defendant pled guilty. He appealed from his three-year prison sentence.

Held: The Fourth District Court of Appeal (Div. 3) reversed, finding the searches here to be illegal. At the above listed hearings (to suppress, quash and dismiss), the deputy candidly admitted stopping defendant's truck based upon information he'd previously received from a narcotics officer to watch for defendant and develop probable cause to stop him (sometimes referred to as a "*wall stop*"). So the deputy did that; watching defendant until he committed some Vehicle Code infractions. The deputy also admitted that his decision to impound the truck was for the purpose of facilitating an inventory search, and that he used the inventory search as a means to look for whatever narcotics-related evidence might be in defendant's truck. The deputy further testified, however, that he followed his department's policies pursuant to the so-called law enforcement "*community caretaking function*" in using his discretion as to whether or not to impound and conduct an inventory search of defendant's truck. First, the Appellate Court agreed with the prosecution that the stop of defendant's truck and his detention was lawful. Whatever the deputy's motives or intent were in stopping and detaining defendant, there was an "*objectively reasonable basis*" for the stop; i.e., the observed traffic violations. An officer's motives for a detention (including a traffic stop) are irrelevant, with certain exceptions, so long as there is an objectively legal basis for the stop. (*Whren v. United States* (1996) 571 U.S. 806.) The Court further held that handcuffing defendant and putting him into his patrol car while conducting the inventory search was not a "de facto arrest," but rather a reasonably necessary procedure for the officer's safety. However, the legality of impounding a vehicle turns on an officer's exercise of his discretion pursuant to law enforcement's community caretaking function, "*other than suspicion of evidence of criminal activity*." Under the community caretaking function, a car may be impounded pursuant to a state statute so long as the impoundment can be justified by a justifiable concern that if the vehicle is left at the scene, it may be stolen, broken into, that it is blocking a driveway or crosswalk, or that it poses a hazard or impediment to other traffic. There was no such showing in this case that any of these concerns were a factor in the deputy's decision to impound defendant's truck. To the contrary, the deputy testified that his primary reason for impounding the truck was to justify a search for

narcotics-related evidence. However, using an inventory search as an excuse to look for evidence of a crime (without probable cause or other legal justification) is illegal. While an officer's subjective motivations in stopping a vehicle in the first place are irrelevant so long as there is some objectively reasonable basis for doing so, the same is *not* true for an officer's decision to impound the vehicle. His subjective motives for impounding a vehicle *are* relevant. I.e., "(D)id he impound the truck to serve a community caretaking function or as a pretext for conducting an investigatory search." The deputy here candidly testified that his motive was the later. The *Whren* decision itself notes that inventory searches are an exception to the rule that the officer's subjective motives are irrelevant. (*Id*., at p. 812.) As such, the impoundment of defendant's truck, the inventory search, and because the search warrant for defendant's home was based upon evidence discovered in defendant's truck, the subsequent search of defendant's house, were all illegal. The evidence should have been suppressed.

Note: While I'm certainly not always right, I've been warning officers for years that using an impoundment and inventory search as a pretext to go looking through a suspect's car for evidence of criminal activity will come back to bite us some day. And here it is. *Ouch*! The case makes perfect sense, given the prior U.S. Supreme Court decision as announced in *Whren v. United States* (an officer's subjective intent is irrelevant) and its very clearly stated exceptions for administrative and inventory searches. Also, way too many officers are *still* of the belief that you can impound a vehicle so long as you can find a state statute that allows for it. *Wrong*! State and federal courts have been telling us for over 5 years now that despite an authorizing statute, you *cannot* impound the vehicle unless one or more of the "*community caretaking*" rules apply (or when it's stolen or is evidence of a crime). I have the briefs on the major cases discussing this issue that I can send to you if you want them. As a side note, by the way, the Court further points out that there's federal authority to the effect that just because an unlicensed driver may repeat his offense by driving the car away after being cited is *not*, by itself, one of the recognized community caretaking function concerns and does not justify the impoundment of the vehicle. Lastly, for prosecutors, this case further discusses the propriety of the defense filing both a 1538.5(i) motion for reconsideration of the prelim magistrate's denial of a motion to suppress *and* a motion to set aside the information based upon an illegal bindover, per P.C. § 995, with both targeting the legality of the search and seizure in your case. The standards are a bit different, but the result will likely be the same, win or lose. Check pages 783 to 785 for the Court's discussion of this issue.

***Miranda Waivers and Minimizing the Nature of the Interrogation*:**
***Miranda and the Use of Undercover Agents*:**

***People v. Tate* (Jul. 8, 2010) 49 Cal.4th 635**

Rule: (1) Failing to inform a suspect of the seriousness of an investigation is not a deception sufficient to invalid his waiver of *Miranda* rights. (2) Use of an undercover agent to question an in-custody suspect does not implicate *Miranda*.

Facts: Sarah LaChappelle was murdered in her Oakland home at some time between 8:00 p.m. on April, 18, 1988, and 11:00 a.m. the next morning. The autopsy showed that in addition to numerous blunt force injuries, defensive wounds, and a broken jaw and missing teeth, she had 24 stab wounds and 28 puncture wounds. When found, there was a butcher knife stuck in her back and a barbecue fork in her neck. Her ring finger had been cut off and her wedding ring was missing. Other jewelry, household items (e.g., a television and VCR), and her Oldsmobile Cutlass were all missing. Defendant sometimes lived with his grandmother across the street, but was presently living with a girlfriend, Lisa Henry, at another location. At about 6:00 p.m. on April 19th, defendant was arrested while driving LaChappelle's car. The car contained the victim's television and VCR. Defendant immediately volunteered that he'd gotten the car from "a guy named Fred Bush." He was transported to Oakland P.D.'s homicide division where a three-part all-night interview was initiated. Prior to obtaining a *Miranda* wavier, the investigators told defendant they were investigating the theft of LaChappelle's Oldsmobile and that a lady was injured in the incident. After waiving his rights, defendant denied any criminal acts, claiming to have been at Lisa Henry's house all night. He further claimed that he got the Oldsmobile from Fred Bush who lent it to him while giving him the VCR and television to settle an old debt. When a tape recorder was finally turned on after about an hour and a half of unrecorded interrogation, defendant was again read and waived his *Miranda* rights. In this second segment of his interrogation, he provided more details and identified Fred Bush from a photo. Another break was taken. At the beginning of the third segment of the interrogation, the investigators finally told defendant that the victim was dead. He denied ever being in the victim's home. Finally, the investigators told defendant that they knew he was lying because Fred Bush was in jail. After confronting him with other evidence connecting him to the murder, the interrogation was ended. A search warrant was obtained for Lisa Henry's residence resulting in the recovery of more of the victim's property which Lisa said had come from defendant. After being interviewed, she was allowed to talk with defendant for about five minutes. The investigators later testified that Lisa asked to talk with defendant. Lisa claimed that the investigators asked her if she wanted to talk to him and to see if she could get him to tell the truth. After five minutes with defendant, she told investigators that he denied committing the crime, that Fred Bush did it, and that he (defendant) had attempted to stop him. At trial, however, Lisa changed her story and testified that defendant didn't tell her anything. She was impeached on these claims with her prior inconsistent statements. Defendant also testified at trial. With his "Fred Bush" story in the toilet, he admitted having been in LaChappelle's residence but claimed she was already dead. He testified that he interrupted her killers, causing them to drop LaChappelle's belongings. Defendant said that took her property and her car in the hope of selling her property. He continued to deny that he'd killed Sarah LaChappelle. His testimony was impeached with his prior denials about never having been in the victim's house and claiming that Fred Bush was the culprit. The jury didn't buy his cock and bull story and convicted him of first degree murder with special circumstances. Sentenced to death, defendant's appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. (1) *Failing to Fully Inform as to the Nature of the Interrogation*: On appeal, defendant argued that he was

mislead as to the scope of the interrogation and that his *Miranda* waiver was therefore invalid. Specifically, before advising him of his *Miranda* rights, the detectives told him only that they were investigating the theft of the Oldsmobile and that a lady had been hurt in the incident. He therefore argued that his waiver was not "*knowingly*" made and his statements should not have been allowed into evidence against him. The Court rejected this argument. The U.S. Supreme Court has held that "a valid waiver does not require that an individual be informed of all information useful in making his decision or all information that might affect his decision to confess." (*Colorado v. Spring* (1987) 479 U.S. 564.) Failing to tell an in-custody suspect of all the possible topics of an interrogation is not trickery sufficient to vitiate an uncoerced wavier. It is also a rule of law that the use of deceptions do not invalidate a confession as involuntary unless the deception is of a type reasonably likely to procure an untrue statement. Defendant also argued that by deceptively minimizing the seriousness of the investigation, the officers induced false, unreliable statements that were later used against him. However, defendant continually denied any involvement in what had happened to the victim up until the time he was finally told that she was dead. Also, despite what the officers told him, defendant actually knew full well that the victim was dead. In response to his own inquiry at the beginning of the first segment of his interrogation, he was told that he was in the offices of the homicide division. Also, per his testimony at trial, he was in the victim's home and saw that the victim was dead. There was no error, therefore, in admitting into evidence his statements obtained during his interrogation. (2) *Use of an Undercover Police Agent*: Defendant further argued that the officers illegally used Lisa Henry, without providing him with a third *Miranda* admonishment, as an undercover agent to obtain more statements that were used against him at trial. The Court rejected this argument as well. It was an issue whether Lisa was actually used as a police agent. But even if she was, *Miranda* was not implicated. "*Miranda* protects the Fifth Amendment rights of a suspect faced with the coercive *combination* of custodial status *and* an interrogation *the suspect understands as official*." (Italics in original) "(O)ne who voluntarily speaks alone to a friend, even during a break in a custodial interrogation, has no reason to assume, during the private conversation, that he or she is subject to the coercive influences of police questioning." So even if Lisa Henry was acting as a police agent, there's no requirement that he be *Mirandized* prior to talking with her. Defendant's statements to Lisa were also lawfully used against him.

Note: Both of these arguments by defendant were a bit of a stretch, at least under these circumstances. The law has long been settled that it is not a legal requirement for officers to advise a suspect as to the subjects to be discussed before obtaining a *Miranda* waiver. Also, picture if you will an undercover police agent advising an in-custody suspect of his *Miranda* rights prior to talking with him. Do you not think the crook might be tipped off that the undercover agent isn't what he represents himself to be? Anyway, note that there is a whole body of law concerning the use of police informants in a jail setting that investigators need to know before purposely setting up such a situation. The legality of doing this depends upon the circumstances.

***Miranda*; *Equivocal Invocations*:**
***Miranda*; *Volunteered Statements*:**

***People v. Gamache* (Mar. 18, 2010) 48 Cal.4th 347**

Rule: (1) A defendant who has invoked his *Miranda* may reinitiate questioning by showing a clear willingness and intention to talk about his case. (2) Incriminating statements made during a suspect's "small talk" with a law enforcement officer that are not the product of an interrogation are admissible.

Facts: Eighteen-year-old defendant returned to San Bernardino County after an unsuccessful stint in the Army to reconcile with his estranged wife, Tammy. The two of them moved in with Thomas P., a minor. They decided they were going to steal some horses and move to Washington State and live in the wilderness off the land. Tammy knew a couple, Lee and Peggy Williams, who had horses, a horse trailer, and a motorhome; everything the Gamaches needed to start their new lives. With another acquaintance, Andre Ramnanan, they planned to take the Williams's horses and other property and to shoot the victims if they gave them any trouble. At about 11:00 p.m. on the evening of December 3, 1992, Lee and Peggy Williams were woken up by someone knocking on their door. When Lee opened the door, defendant, Tammy, Ramnanan, and Thomas P. burst in with guns. Defendant and his companions looted the house of personal belonging, cash, and firearms, and took the keys to their motorhome, car and truck. After forcing the Williams to sign bills of sale for the vehicles, defendant and Ramnanan drove them in the motorhome out into the desert where defendant, after telling them, "*Thank you and have a nice day*," shot them both in the head. Defendant and Ramnanan then left. Lee was dead but Peggy survived and remained conscious. When she was sure they were gone, she walked to a nearby truck stop and called police. Within an hour, the police located the motorhome in a café parking lot. Defendant and Tammy returned to the motorhome shortly before 5:00 a.m. driving the Williams's pickup truck. They were arrested. The murder weapon and other things taken from the Williams were recovered. Ramnanan was arrested shortly thereafter and the Williams's car was recovered. Thomas P.'s house was searched and bloody clothing and more of the Williams's possessions were recovered. Shortly after being arrested on December 4, defendant was questioned by Detective Tom Bradford. Defendant waived his rights and agreed to answer questions, but denied his crimes. When asked if he'd take a polygraph, defendant replied; "*OK, I do think before I take the polygraph I would like to talk to an attorney and just make sure, . . . I'd like to know what is going on before I answer any more questions.*" So questioning was ended. While walking defendant back to his cell, defendant asked about Tammy. Bradford told him that she was okay, but that she was going to jail for murder and that she and Ramnanan had given him up. Detective Bradford later testified that this statement was untrue but was not intended to elicit a response. Upon reaching the booking area, defendant told Bradford that he'd changed his mind, that he was only trying to protect Tammy and Ramnanan, but that he now wanted to talk. Reminded that he'd just asked for an attorney, defendant insisted on reinitiating the interview. Defendant then confessed to everything except for being the shooter, a fact he admitted later that morning to a polygraph examiner. The trial court later found

defendant's above request for an attorney to be an invocation of his right to counsel, and all statements provided to Bradford and the polygraph examiner to be inadmissible. However, that afternoon, defendant summoned Detective Bradford to his cell and tried to convince him that Tammy didn't know anyone would be killed. During this conversation, defendant agreed to participate in a joint interview. As a result, thirty minutes later, defendant, Tammy and Ramnanan were all interviewed together after each again waived their *Miranda* rights. Defendant confessed to their crimes in detail, including to being the shooter. Based upon defendant's reinitiation of his contact with Detective Bradford, the trial court found this confession, and all defendant's subsequent statements, to be admissible. That evening, defendant waived his *Miranda* rights yet a third time and participated in a reenactment of the crimes. The next day (December 5), while being booked by Deputy Ells, the deputy initiated some small talk with him about being in the Army. During this conversation, defendant volunteered that he'd "*f__ed up. I knew better. I should have used a .45*." Defendant continued: "*I shot her once. I saw her eyes flutter. I shot her again in the back of the head. I know the skull is thicker back there*." When asked how he felt about shooting the Williams, defendant responded; "*I almost got an erection*." He also talked about how he knew Lee Williams was dead because "*the blood came out of his head like you turned on a faucet*." Two days later (December 7), the three defendants were again interviewed jointly. After they were all reminded that they'd been advised of their *Miranda* rights, agreed that they understood those rights, and that they all still wished to waive those rights, each completely confessed, describing their crimes in detail. A video of these confessions was admitted into evidence at the penalty phase of their trial. Defendant, Tammy, and Ramnanan were jointly tried for first degree murder with special circumstances and attempted murder, along with other lesser charges. Convicted with the special circumstances found to be true as to each, Tammy and Ramnanan were both sentenced to life without parole. Defendant was sentenced to death. His appeal to the California Supreme Court is automatic. (The appeals for Tammy and Ramnanan were litigated separately.)

Held: The California Supreme Court unanimously affirmed. (1) On appeal, defendant first argued that once he'd invoked his right to the assistance of counsel, he was protected from any further interrogations and that all his subsequent incriminatory statements should have been suppressed. The Supreme Court assumed, without discussion or argument, that when defendant asked for an attorney as a prerequisite to taking a polygraph, he had effectively invoked his *Miranda* rights and was thereafter off limits for further questioning absent the presence of counsel or he, himself, reititiated questioning. The trial court suppressed defendant's statements to Detective Bradford made in the first interview, a conclusion with which the Supreme Court inferably agreed. However, that afternoon, when defendant summoned the detective to his cell and demonstrated his obvious intent to discuss Tammy's degree of participation, defendant showed a clear willingness and intention to talk about the case that was sufficient to satisfy the legal requirements for reinitiating an interrogation after a previous invocation. This willingness was again displayed when he waived his *Miranda* rights prior to the first joint interrogation done 30 minutes later. It is a rule of law that a defendant who invokes may reinitiate questioning so long it is done on his own initiative. Defendant here did just that, rendering all statements elicited during the various interrogations after that point

admissible. (2) Defendant also challenged the admissibility of his statements to Deputy Ells. The Court ruled, however, that even though in custody, defendant's statements to the deputy were not the product of an interrogation. An "(i)nterrogation consists of express questioning, or words or actions on the part of the police that are reasonably likely to elicit an incriminating response from the suspect." An interrogation refers to questioning initiated by the police or its functional equivalent. It does not include casual conversations. Volunteered statements don't count. Per the Court, "*smalltalk* (sic) *is permitted*." The Court found that there was no reason to think that Deputy Ells's "*small talk*" about defendant's military service would lead to the incriminatory statements defendant thereafter volunteered. Also, the deputy's subsequent "neutral questions" did not convert the conversation into an interrogation. Defendant's statements to the booking deputy, therefore, were admissible in evidence.

Note: The trial court ruled, and no one on appeal disputed, that defendant had effectively invoked his right to counsel when he said he wanted to talk to a lawyer before agreeing to a polygraph. This is a questionable conclusion (See *People v. Martinez* (2010) 47 Cal.4th 911, 952; briefed next.) But because this issue was not litigated here, I don't think this case can be used as authority for the argument that that wasn't itself an equivocal, ineffective attempt at an invocation. If it was an invocation, the detective falsely telling defendant that his co-murderers had given him up was clearly something that was calculated to get him talking again, even if the detective didn't want to admit it. Doing that is improper. But this too was not discussed in that defendant's first statement to the detective was never admitted into evidence. Too bad. It would have been an interesting issue to discuss.

***Miranda*; *Equivocal Attempts at Invocation*:**

People v. Martinez **(Jan. 14, 2010) 47 Cal.4th 911**

Rule: An invocation of one's right to silence and right to counsel, per *Miranda v. Arizona*, after an initial waiver, must be clear and unequivocal to be legally effective.

Facts: At sometime between 10:30 and 11:00 p.m. on November 15, 1996, Sophia Torres was beaten to death in a park near where she was living in Santa Maria. She had numerous blunt force and crushing injuries to multiple places on her body. She also received a deep laceration on the side of her face that appeared to have been inflicted by a knife. Semen recovered from her dress and a vaginal swab was later connected to defendant through DNA testing. At 11:07 p.m., an anonymous 911 call came into the Santa Maria Police Department reporting that a woman was being attacked in Oakley Park by two heavy set black girls wielding baseball bats. When the dispatcher noted that the caller was calling from a phone booth blocks from the park, and asked why, the caller hung up. A Santa Maria police officer responded to Oakley Park and found Sophia's broken and bloodied body. Also noted were bicycle tire tracks in the wet grass. Two weeks earlier, Maria M. was assaulted by a male wielding a knife as she walked to work. He forced her into an alley and attempted to pull off her pants. A passerby interrupted the attack and the male fled. Two weeks after Sophia's murder, Laura Z. was entering

her car at a local shopping mall when she noticed a male running towards her car. She locked the doors before he could get to her. Failing to get the car's door open, the male eventually ran away. Two days later, on December 4, Sabrina P. was sitting on a bench at the same shopping mall waiting for her mother to pick her up. A male sat down next to her and put a knife to her side, telling her not to scream or he'd stab her. He told her to come with him, but she refused. She then grabbed the handle of his knife and refused to let go. Eventually, the male lost the tug-of-war over the knife and walked away. Sabrina ran to a nearby restaurant and called police. Responding officers found defendant riding a bicycle on a street nearby and detained him. After Sabrina made a positive curbstone identification, defendant was arrested and transported to the police station. Maria M. and Laura Z. both subsequently positively identified defendant from a photographic lineup. At the station, the arresting officer advised defendant of his *Miranda* rights and obtained a waiver. Defendant denied that he had assaulted Sabrina P. About ten minutes into the interrogation, in response to the officer's question about why Sabrina would identify him, defendant responded; "*That's all I can tell you*." The interrogation was ended. The next morning (December 5), two detectives, unaware of defendant's prior comment that "*That's all I can tell you*," brought him to an interview room and asked him if he remembered being advised of his rights the night before, whether he still understood them, and whether he still wanted to talk with them. Defendant answered in the affirmative to each question. They questioned him about Sophia Torres's murder. After noting that his voice matched the voice on the anonymous 911 call, defendant admitted to making the call but denied being Sophia's killer. At the end of the interview, in preparing to take a break, defendant told the detectives that; "*I don't want to talk anymore right now*." That same evening the detectives took defendant to have a SART exam completed. He was asked at that time to repeat his story about the two female attackers, which he did. Back at the station, he was interrogated for another 30 to 45 minutes. At the end of this session, defendant was asked if he would take a polygraph exam. Defendant responded with; "*I think I should talk to a lawyer before I decide to take a polygraph*." The next morning (December 6), detectives asked defendant if he would mind talking to them again. He said "*no*," he wouldn't mind. During this session, defendant admitted to assaulting Sabrina P. and Maria M., but continued to deny that he'd killed Sophia Torres or that he'd been involved in the incident with Laura Z. Charged with capital murder and other offenses, defendant made a motion to suppress all his statements to police arguing that his attempts to invoke *Miranda* had been ignored. The trial court denied his motion. Defendant was convicted of first degree murder with special circumstances (plus other charges) and sentenced to death. His appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. On appeal, defendant renewed his arguments concerning his attempts to invoke his right to silence and to an attorney. The Supreme Court rejected these arguments noting that in attempting to invoke one's "*right to the assistance of counsel*," "a suspect must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." And although it would be a good idea for officers to stop and clarify an ambiguous attempt at invocation, there is no legal requirement that they do so. The Court also noted that until

the U.S. Supreme Court rules on this issue, California has applied the same rule, including the lack of any legal need to seek clarification, to ambiguous attempts to invoke one's "*right to silence*." (But see *Berghuis v. Thompkins* (2010) __ U.S. __ [130 S.Ct. 2250], where the U.S. Supreme Court later did in fact rule accordingly.) Defendant argued that a "*stop and clarify*" rule should apply to an ambiguous attempt to invoke one's *right to silence* in that this right is "the core right *Miranda* sought to protect" and that the *right to counsel* is merely a "'*second layer*' *Miranda* protection." The Court rejected this argument noting that such a rule would be too difficult to apply, particularly when a suspect asks for something resembling a combination of both (e.g., "*Maybe I should stop talking and get a lawyer*.") With these principles in mind, the Court found that defendant's comment on the first evening (Dec. 4) to the effect that, "*That's all I can tell you*" was ambiguous. The officer interpreted this statement to mean that that was all the information he had for him and not that he was attempting to invoke. Also, it was noted that the officer did in fact end the interrogation at that point. The next interrogation wasn't until the next morning, involved different officers about a different crime. Reinitiating an interrogation under these circumstances, where an invocation to one's right to silence was the issue, has been approved by the U.S. Supreme Court. (See *Michigan v. Mosley* (1975) 423 U.S. 96.) Also, defendant saying at the end of the December 5th interview that, "*I don't want to talk anymore right now*," was not an attempt to invoke, but rather an indication that he didn't want to talk anymore *at that time*. The interrogation was in fact terminated at that time with the detective suggesting to defendant that he "think about it" and that they were taking a break anyway. Had defendant intended a permanent invocation, he could have said so at that time. He did not. Lastly, at the end of the last questioning period on December 5, when defendant said that he wanted to talk to a lawyer before agreeing to a polygraph examination, the rule is that "a defendant does not unambiguously invoke his right to counsel when he makes that request contingent on an event that has not occurred." Since no polygraph exam was ever done, defendant's request to talk to an attorney first never ripened. Based upon this, defendant's motion to suppress his statements was properly denied by the trial court.

Note: The Supreme Court did note that these ambiguity rules apply to the situation where a suspect has already waived and an interrogation is underway, and the suspect then changes his mind and attempts to invoke mid-interrogation. (E.g., "In order to invoke the Fifth Amendment privilege *after it has been waived*, and in order to halt police questioning *after it has begun*, the suspect 'must *unambiguously*' assert his right to silence. . . .") But I've yet to find a case which specifically says that the same or similar rules *don't* apply at the initiation of an interrogation upon first advising the defendant of his rights. And in fact there are a pile of cases that do apply the same rules to both situations. Recent California Supreme Court authority has noted that an attempt to invoke at the initial admonition must be sufficiently clear that a reasonable officer would have understood it to be an invocation. (See *People v. Williams* (Jun. 28, 2010) 49 Cal.4th 405, 427-429; *Legal Update* Vol. 15, #11. Hopefully, we'll get more cases that discuss this issue in the near future and tell us whether there is in fact any difference between ambiguous attempts to invoke at the beginning of an interrogation and then after having already waived.