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Remember 9/11/01: Support Our Troops

Dedicated to, and in memory of, Officer Ryan Bonaminio, Riverside Police Department, murdered in the line of duty on 11/7/2010

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THIS EDITION'S WORDS OF WISDOM:

"*In America any boy may become President and I suppose it's just one of the risks he takes*." (Adlai Stevenson)

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***ADMINISTRATIVE NOTES*:**

Search Warrants for Computer Information: The Ninth Circuit Court of Appeal decision in *United States v. Comprehensive Drug Testing, Inc*. (9th Cir. Aug. 26,

2009) 579 F.3rd 989 (See *Legal Update*, Vol. 14, #10 (9/20/09)), judicially legislating some outrageous requirements for getting search warrants for computerized information such as requiring an investigator to waive his or her "plain sight" privileges while lawfully pulling information out of a computer, has been reconsidered by the Ninth Circuit and toned down a bit. Now, as the decision is rewritten at 621 F.3rd 1162, the procedures set out in this decision are considered to be *advisory only* (if they weren't already). But at any rate, those of you who have been avoiding writing search warrants for computer information because of this case can feel a little more secure in getting back into the habit.

CASE LAW:

***Live and Photographic Lineups*:**
***Miranda*; *The Court's Use of Suppressed Statements In Its Evidentiary Rulings*:**
***Miranda*; *Implied Waivers and Minimizing the Warnings*:**

People v. Johnson et al. **(Mar. 31, 2010) 183 Cal.App.4th 253**

Rule: (1) Live and photograph lineup procedures that are not unduly suggestive are lawful. (2) A trial court may use a defendant's suppressed confession in making its evidentiary decisions. However, the defendant cannot use evidence of an uncharged criminal act to which he confessed, but where the confession was suppressed, to advance an argument of a third party's culpability. (3) Implied waivers are lawful. Referring to a *Miranda* admonishment as a "*technicality*" does not necessarily trivialize it to the extent where the resulting incriminatory statements will be suppressed.

Facts: Defendants Joseph Johnson and Nicole Holmes, with the help of another individual, Corey Schroeder (not a party to this appeal), committed a series of at least five armed robberies and attempted robberies of gas station convenience stores in the Sacramento area during a two-week period in 2005. The M.O. involved Schroeder going in and casing the target prior to Johnson committing the robbery. Holmes drove the getaway car. In the final attempted robbery, Johnson shot and killed the cashier, Prem Chetty, when Chetty refused to give him any money and possibly (at least according to Johnson) attempted to disarm Johnson. Several of the robberies were recorded by surveillance cameras. After this murder, defendant Johnson told several other people that he was the one who killed Chetty. His uncle eventually convinced Johnson to turn himself into police. Following his arrest, a number of victims and other witnesses were shown photographic lineups and/or attended a live lineup. These lineups resulted in some of the victims and witnesses identifying defendant as the perpetrator. One of the victims, however, was shown a photo lineup from which he could not identify defendant. Five days later, that same victim went to the live lineup at which, after defendant was told to repeat certain phrases used by the robber, he *was* able to identify defendant. Defendant was the only person in the live lineup whose picture was also used in the earlier photo lineup. A second victim was asked by police officers to check out the Sacramento Sheriff's Department website where still photos taken from a surveillance tape of the Chetty homicide were posted. She did so and recognized defendant as the same man who

had robbed her; a fact she reported to the police department. A week later she attended the live lineup where she "quickly" identified defendant again. These victims all later identified defendant Johnson at trial. When defendant Johnson was questioned after his arrest, he confessed. However, due to a *Miranda* violation (which was not an issue on appeal), his confession was suppressed. As a result, one of the charged robberies where Johnson's confession was the only evidence connecting him to the crime was dismissed on the People's motion. Codefendant Holmes was also arrested and questioned. Although she continually denied knowing that Johnson was committing robberies, she did admit to being present for each of the robberies, including the one where Chetty was murdered, and driving the getaway car. Johnson and Holmes, tried by different juries, were both convicted of first degree murder with special circumstances, gun allegations, and numerous counts of robbery and attempted robbery. Both were sentenced to life without parole plus piles of years to be served consecutively. Both appealed.

Held: The Third District Court of Appeal (Sacramento) affirmed. (1) *Photo and Live Lineup Procedures*: As he did at trial, defendant Johnson argued on appeal that the various lineups were unduly suggestive and that as such, they tainted the later identifications by the victims and witnesses that occurred at his trial. Specifically, defendant argued that live "group lineups," as opposed to showing the suspects sequentially, are unfair. Also, defendant claimed that he stood out because he was skinnier than anyone else in the live lineup and that he was the only one with a braid protruding from one side of his hat. Lastly, defendant argued that showing witnesses either still photos from a video, or the video itself, of the defendant committing a robbery unfairly prejudiced the witnesses' later identifications of him in their respective cases. The law on lineup procedures is well settled. It is a defendant's burden to show that the procedures used were unduly suggestive and unfair as a demonstrable reality; not just speculatively. An identification procedure is considered suggestive if it caused defendant to stand out from the others in a way that would suggest to the witness that he or she should select him. This is a 14th Amendment "*due process*" issue. In evaluating the procedures used, a court must consider (1) whether the identification procedure was unduly suggestive and unnecessary, and, *if so*, (2) whether the identification itself was nevertheless reliable under the totality of the circumstances. Factors to take into account include (a) the opportunity of the witness to view the suspect at the time of the offense, (b) the witness's degree of attention at the time of the offense, (c) the accuracy of his or her prior description of the suspect, (d) the level of certainly demonstrated at the time of the identification, and (e) the lapse of time between the offense and the identification. If a defendant fails to show that the identification procedures were unduly suggestive, the court need not address the arguments regarding the identifications' reliability under the totality of the circumstances. In this case, defendant Johnson failed to show that the identification procedures were unduly suggestive. First, there is no authority for the argument that live "group lineups," as opposed to showing each individual to the witnesses sequentially, are suggestive. Also, everyone in the five-person lineup in this case wore the same clothing, were all Black, and were of similar age, body type and complexion. Several (including defendant) had braids or dreadlocks. Defendant did not stand out in any way. Also, prior case authority has found that having defendant appear in a photo lineup and then a live lineup is not "per se" a due process violation. As for

having the one victim view still photos taken from a surveillance of a similar robbery, such a procedure did not prove that that witness's later live lineup identification was prejudicial. Defendant failed to provide the Court with the surveillance photos that the victim saw, precluding the Court from determining whether there was any prejudice. Also, the Court could not say that this procedure was not necessary. Defendant, therefore, failed to carry his burden of proof on this issue. Another witness was shown the video tape of his own robbery before being shown a photographic lineup. The Court found this method of refreshing the victim's memory to be proper in that "the video surveillance camera has little serious potential to mislead." Lastly, the Court found no prejudice in the trial court allowing one victim who forgot to bring his glasses to court to approach counsel's table to get a clearer look at defendant. (2) *Third Party Culpability Evidence*: Defendant Johnson further complained that the trial court erroneously refused to allow him to present evidence of the dismissed robbery where the victim, in failing to identify defendant as the robber, commented that he thought the robber had a darker complexion. Defendant's cousin, with whom he lived and with whom he traded clothing, had darker skin but otherwise looked a lot like defendant. As to this robbery, the trial court had suppressed defendant's confession due to a *Miranda* violation (the details of which were not discussed), necessitating the prosecution to dismiss the case as to Johnson. The Appellate Court ruled that the trial court's ruling was correct in that it would have been dishonest and misleading (Evid .Code, § 352) for defendant to be allowed to present evidence as to a third party's (his cousin) culpability when he himself had confessed to it. It was also ruled that the trial court properly considered defendant's confession to this crime, even though it had been suppressed, in making this ruling, so long as the confession was otherwise reliable and not coerced. (3) *Miranda Admonishment and Implied Wavier*: When codefendant Natalie Holmes was interviewed by detectives, she was first read her *Miranda* rights. However, in leading into the admonishment, one of the detectives told her that they first had to "*clear the technicality*" of what her rights were, after which "*we can talk*." Secondly, Holmes argued that the admonishment was legally inadequate in that the detectives told her that her statements "*may*" be used against her in court, not that they "*will*" be used. Also, although asked if she understood her rights, she was never expressly asked whether she agreed to waive them. The detectives merely launched into their questions about the robberies. Lastly, Holmes complained that the detectives mislead her as to certain facts and pressured her into making incriminatory statements. Codefendant Holmes argued that as a result, she didn't freely and voluntarily waive her rights and that the resulting incriminatory statements she made were involuntary and should have been suppressed by the trial court. The Court disagreed. As for intimating that the *Miranda* admonishment was a mere "technicality," the Court agreed that it is improper to trivialize the legal significance of the rights she would be giving up. Commenting on the need to "*clear the technicality*," however, in the Court's opinion, did not minimize the significance of her rights and the risks of her speaking with the detectives. The record reflects that Holms fully understood the severity of the situation and the seriousness of the *Miranda* rights. Further, using "*may*" instead of "*will*," when referring to the possible use of her statements against her, is also proper and not misleading. *Miranda* does not require any specific language to be used in the admonition so long as the warnings as required by *Miranda* are reasonably conveyed to the suspect. As for implied waivers, the Court ruled

that so long as the circumstances indicate that, while understanding her rights, she freely and voluntarily agreed to answer questions, there is no legal requirement that her waiver be express. Here, Holmes never intimated in any way that she was reluctant to talk with the officers or that she wished to remain silent or to the assistance of counsel. As to falsely telling Holmes that her car had been caught on a surveillance video at one of the robberies, and that some of what she was telling the detectives was contradicted by Johnson, the Court noted that the fact police may have misrepresented these facts does not necessarily render an otherwise voluntary statement inadmissible. Nor does encouraging her to "*tell the truth*" or that "*it would be better to tell the truth*" make her resulting incriminatory statements involuntary. Based upon all this, the trial properly allowed Holmes' statements to be used by the prosecution at her trial. As to both defendants, therefore, their convictions were upheld.

Note: This is an excellent case on the use of lineups and the legal standards involved. Contrary to what we see on television cop shows, the fairness of lineups is an issue on which law enforcement tends to bend over backwards. To the contrary, it has been my experience that we sometimes make lineups *too* perfect, to the point where our victims and witnesses are confronted with the impossible task of selecting the right suspect from what appears to be six cloned reproductions of the same person. While the fillers in a lineup should all be similar in appearance, the real key is to merely make sure that there is nothing significant in our suspect that cries out, "*pick me*, *pick me*!" For instance, if the robber is described by the witnesses as having an afro hair style, using five fillers who are all skin heads would be a problem. As for showing a witness a surveillance video prior to a lineup, the Ninth Circuit has previously held that there is nothing wrong with this procedure. It is a legally proper way to help "refresh" the witness's memory. (*United States v. Beck* (9th Cir. 2005) 418 F.3rd 1008.) As for the individual photos obtained from the video, this new case doesn't go quite so far as to uphold a witness's viewing of these individual photos before a lineup. It merely found that because the defendant failed to provide the Court with copies of the stills from the surveillance video, the Court was unable to determine whether or not there was any prejudice to the defendant in this procedure. This failure of proof prevented the Court from determining whether defendant's claim that he had been prejudiced had any substance. As for Holmes' interrogation, I think we dodged a bullet on the "*trivializing*" issue when the detectives described for her the *Miranda* admonishment as a mere "technicality." Be careful not to do that. Fortunately, in this case, the detective's comment on this was brief and without any further elaboration. But that's an envelope I'd be very careful about pushing too far.

***Vehicle Impounds and Inventory Searches*:**

People v. Shafrir **(Mar. 29, 2010) 183 Cal.App.4th 1238**

Rule: The constitutional requirement for "standardized criteria" to guide officers doing inventory searches of impounded vehicles applies only to the inventory search itself and not necessarily to the decision to impound the car in the first place.

Facts: Defendant was stopped for speeding by two California Highway Patrol officers after they followed him off a freeway where he was clocked at a little over 110 mph. Stopped in Oakland, defendant was determined to be under the influence of alcohol. Believing that the neighborhood wasn't a safe place to leave defendant's newer Mercedes, the officers decided to tow it pursuant to V.C. § 22651(h). Preparatory to impounding it, one of the officers did an inventory search. In the trunk, the officer found three large bags of marijuana and $50,000 in cash. Defendant was charged in state court with various felony marijuana offenses as well as driving while under the influence. At his preliminary hearing, defendant filed a motion to suppress the contents of his car's trunk, which was denied. Bound over to superior court, defendant then filed a motion to dismiss, per P.C. § 995, arguing that the prelim magistrate erred in finding the impoundment of his car to be lawful. The trial court judge agreed with defendant's argument that the officers had abused their discretion in deciding to impound the Mercedes rather than leave it parked because the officers ignored policies as provided for in the CHP manual. In the manual, while describing various legal justifications for impounding a vehicle, nothing expressly authorizes removal of a vehicle in the case of a first offense DUI. Per the trial court, the officers' decision to remove defendant's vehicle pursuant to the safekeeping provision of V.C. § 22651(h) was "an improper contravention of the CHP manual's procedures." Although finding nothing unreasonable in what the officers did, the trial court was bothered by the lack of any "*standardized criteria*" in the CHP manual for impounding defendant's car under these circumstances. The People appealed from the trial court's dismissal of the case.

Held: The First Circuit Court of Appeal (Div 1) reversed. The legal authority relied upon by the defendant is the U.S. Supreme Court decision of *Colorado v. Bertine* (1987) 479 U.S. 367, where the High Court discussed the need for standardized criteria to guide officers in exercising their discretion while searching impounded vehicles. According to *Bertine*, the Fourth Amendment does not prohibit the police from using their own discretion so long as that discretion was exercised according to standard criteria and on the basis of something other than a mere suspicion that evidence of criminal activity will be found in the car. (See also *Florida v. Wells* (1990) 495 U.S. 1.) On appeal, the People's argument was that *Bertine* (and *Wells*), requiring an officer's discretion be exercised according to standardized criteria, applies only to the inventory search of a vehicle, and not necessarily to the decision to impound the car in the first place. The Appellate Court agreed. The decision to impound a vehicle is a part of an officer's "*community caretaking*" function. As such, the test for determining the legality of impounding a vehicle is merely one of reasonableness, based upon all the facts and circumstances. Although *Bertine* indicates that an impoundment decision made pursuant to standardized criteria is more likely to satisfy the Fourth Amendment than one *not* made pursuant to standardized criteria, it is not legally necessary that that be the case. "(T)he ultimate determination is properly whether a decision to impound or remove a vehicle, pursuant to the community caretaking function, was reasonable under all the circumstances." In this case, where the evidence supported the officers' opinion that it was not safe to leave defendant's Mercedes at the site of the arrest, and there was no indication that the car was impounded merely as a subterfuge for investigating the

possibility that it might contain evidence of criminal activity, impounding the car was in fact reasonable under the Fourth Amendment.

Note: The Court further held that even if it agreed with those few courts that have found *Bertine*'*s* standardized criteria requirements to apply to the impoundment decision, the officers here did have the necessary "standardized criteria" to guide their decision making. Specifically, the CHP manual directs officers to abide by the provisions of V.C. § 22651(h) when deciding to impound a car based upon a need to protect it and its contents. Despite the trial judge's contrary opinion, that's enough to meet *Bertine*'*s* "standardized criteria" requirements. This is an excellent case on this issue, even if a little difficult to decipher. For patrol and traffic officers faced with the decision whether or not to impound vehicles on almost a daily basis, its one worth being familiar with.

***Residential Fourth Waiver Searches and Probable Cause to Believe it's the Parolee's Residence*:**

United States v. Franklin **(9th Cir. Apr. 29, 2010) 603 F.3rd 652**

Rule: A motel room may be a parolee's residence when the parolee is in fact living there, even if temporarily. Probable cause to believe the motel room is in fact the parolee's residence justifies law enforcement's enforcement of the parolee's search and seizure conditions.

Facts: Defendant, with three prior felony convictions, was subject to "*community custody*" (i.e., parole) under Washington State law. As a condition of his community custody, defendant was to report his current address and any change of address to his "Community Corrections Officer," John Hernandez. Defendant was also subject to search and seizure without probable cause or a warrant (i.e., a "Fourth waiver"). On January 4, 2006, defendant told Hernandez that he was homeless. Hernandez instructed defendant to contact him and report where he was staying by midnight that night and be ready to say where he planned to reside in the future. He was also told to come in and report in person by January 17. Defendant was not heard from again. On January 18, a female informant with whom defendant had had a child called Hernandez and told him defendant was living in Room 254 at a local motel. She also said that defendant was staying with another man and that defendant had a handgun and ten rounds of ammunition. Hernandez believed the informant because he had had dealings with her before and knew her to be credible. Hernandez contacted Officer Michael Roberge of the Spokane Police Department and asked him to verify that defendant was in fact staying in Room 254 of the listed motel. A motel clerk identified a photograph of defendant as the resident in Room 254, and told Roberge that defendant had personally rented the room. Armed with this information, Hernandez went to Room 254 and knocked. A voice that Hernandez recognized as defendant's answered, "*Who is it*?" Hernandez identified himself and defendant opened the door. He was taken into custody and the room was searched. A handgun that defendant admitted was his was found. He was eventually indicted in federal court with being a felony in possession of a firearm and possession of

a stolen firearm. He filed a motion to suppress the gun, which was denied. Defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. Defendant's argument on appeal was that Hernandez did not have the necessary probable cause to believe that Room 254 was in fact his place of residence. It was not contested that he was subject to search and seizure conditions. As a part of these conditions, his place of residence was subject to a warrantless search when based upon no more than a reasonable suspicion to believe that he was in violation of his probation. (*United States v. Knights* (2001) 534 U.S. 112.) The Ninth Circuit, however, has previously decided that law enforcement officers must have full probable cause to believe that the place being searched is in fact defendant's residence. (*Motley v. Parks* (9th Cir. 2005) 432 F.3rd 1072.) "Probable cause requires 'that the facts available to the officer would warrant a man of reasonable caution in the belief' that Room 254 was Franklin's residence at the time." In this case, the facts "overwhelmingly" support the trial court's conclusion that Hernandez did in fact have the necessary probable cause to believe that defendant's residence, at that time, was Room 254. With reliable informant information, verified by the desk clerk, and Hernandez recognizing defendant's voice coming from the room when they knocked on the door, there is no doubt that probable cause existed to believe that defendant was staying in Room 254, at least at that time. A residence need not be "an old ancestral home." But it must involve something more than a one night "sleepover," or that the probationer spent the night there occasionally, or that he happens to have been seen there. When the location is a motel room identified as having been rented by the person in question, the issue is less difficult to resolve. Also, per the Court, the temporary nature of the occupancy does not change the fact that for the night or nights in question, defendant rented the room and was legally entitled to use it and to control access to it. For that time period, therefore, Room 254 was defendant's residence. Having the necessary probable cause to believe that Room 254 was defendant's residence, Hernandez lawfully entered and searched it pursuant to defendant's Fourth Amendment waiver.

Note: The apparent purpose of this case was to discuss the problem of establishing the necessary probable cause to believe a parolee lives there when the residence is something other than the traditional house or apartment. A motel room, even though not one's residence on a permanent basis, can still be a residence for that time period while the person is in fact living there. What constitutes "*living there*" is the issue. Your job is to clearly document what information you have on this issue so it can be thoroughly litigated. Also note that *U.S. v. Knights* did not say that a "*reasonable suspicion*" to believe evidence of a *probation* violation (as opposed to a *parole* violation) is a necessary prerequisite to a warrantless search, as claimed by the Court here. *Knights*, dealing with the rights of probationers as opposed to parolees, merely held that a warrantless Fourth wavier search is lawful whenever reasonable suspicion exists, specifically leaving open the question whether such a search is also lawful with *less* than a reasonable suspicion (p. 120, fn 6). The California rule is that no suspicion is needed. (See *People v. Medina* (2007) 158 Cal.App.4th 1571.) We're still waiting to hear from the U.S. Supreme Court on that issue. (See also *Samson v. California* (2006) 547 U.S. 843, where the U.S. Supreme Court held that searching a *parolee* without any suspicion is lawful.)

***Miranda*; *Equivocal Invocations*:**

People v. Bacon **(Oct. 21, 2010) __ Cal.4th __ [2010 DJDAR 16097]**

Rule: An attempt to invoke one's *Miranda* right to counsel must be unequivocal and unambiguous to be legally effective.

Facts: CHP officers found a car registered to Charles and Deborah Sammons stuck in the mud and abandoned on the edge of a slough in Solano County. While preparing to impound the car, the trunk was checked. Deborah Sammons' bloodied and mutilated body was found inside. A later autopsy revealed that she had been strangled and beaten. She had also been stabbed in the face and the side of her chest, penetrating her heart and lungs. She had no underclothing under her blouse and skirt. In a later autopsy, sperm was recovered from Deborah's vagina. A colposcopic examination of the victim revealed minor trauma to her vaginal opening and more severe trauma to her anal cavity. The next day, Solano County Sheriffs Deputies went to Charlie Sammons Vacaville home to notify him of his estranged wife's death. Charlie and Deborah had been separated for about a month with Deborah living elsewhere. Concerned with Charlie's reaction (or lack thereof), the officers asked him if he was involved in her death. Charlie responded; "*Not quite*." Based upon this unusual answer, the deputies asked Charlie for permission to search his house. He agreed. A couple drops of blood were found on the washing machine. The deputies asked Charlie to accompany them to the station for questioning. But when Charlie started to put on his tennis shoes the deputies noticed what appeared to be blood on them. The shoes were seized. DNA testing later revealed this blood to be Deborah's. After Charlie's arrest, a search warrant was obtained which resulted in the discovery of Deborah's blood in numerous places in the master bedroom and the living room. The remnants to a bra were found in the fireplace. A single-edged, wood-handled steak knife, fitting the pattern of the stab wounds, was recovered from the dishwasher. In an interview, Charlie's statements to the officers led to defendant's arrest and a search of his residence where a tire iron was recovered. An expert later testified that the tire iron "matched very nicely" with the peculiar bruises to Deborah's face. Also, the sperm recovered from Deborah's body was determined through DNA to be defendant's. Defendant was arrested the same day as Charlie and interrogated by Solano County Sheriff's Detective Patrick Grate. Defendant was read his *Miranda* rights and agreed to talk. Although defendant first denied ever having met Deborah, he soon admitted to being at Charlie's house the evening she was killed, but claimed that Charlie did the crime. He also admitted to having had sex with her that night, but claimed, he being quite the stud, that it was consensual. As the interrogation progressed, he eventually admitted to having been solicited by Charlie to kill his wife but denied that he followed through with the plan. He claimed that Charlie actually killed her but that he, defendant, helped dispose of her body. Thirty minutes into his interrogation, before making any significant admissions, defendant told Deputy Grate, "*I think it'd probably be a good idea for me to get an attorney*." Detective Grate responded, "*Alright*, *it's up to you*," and, "*It's up to you if you, you know, if you want an attorney, I mean I'm, I'm giving you the opportunity to talk*." But then defendant continued on by telling the detective to "*talk to me*," repeating this phrase three times. So the interrogation was continued. Both Charlie

and defendant were later charged with murder with special circumstances. Scheduled for separate trials, defendant was tried first. Charlie testified against defendant (in the hopes of getting a deal in his case, which eventually he did) and claimed that defendant committed the murder. His story was that Deborah had come over to the house to help pay the bills. When Deborah went into the bedroom to put away the receipts and checks, defendant raped and killed her. Defendant was convicted of first degree murder with special circumstances and sentenced to death. His appeal was automatic.

Held: The California Supreme Court unanimously affirmed. Among the issues on appeal was defendant's contention that Detective Grate ignored his invocation to the assistance of an attorney in violation of *Miranda v. Arizona* (1966) 384 U.S. 436. Specifically, telling the detective that, "*I think it'd probably be a good idea for me to get an attorney*" was an invocation that should have terminated the interrogation. However, the United States Supreme Court has previously held that "an officer is not required to stop questioning a suspect when 'a suspect makes a reference to an attorney that is ambiguous or equivocal.'" (*Davis v. United States* (1994) 512 U.S. 452.) The High Court also held that the 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." Defendant argued that his comment about having an attorney being "*probably . . . a good idea*" was sufficiently clear that the detective should have recognized it as an invocation of his rights under *Miranda*. The Court disagreed. Considering the context of defendant's comment, and his response by telling the detective to talk to him, the Court found it to be equivocal or ambiguous at best. In fact, the Court wasn't even sure what defendant meant by telling Detective Grate to "*talk to me*." Further, the Court disagreed with defendant in his argument that Detective Grate's comment about ". . . *giving you the opportunity to talk*" constituted "*badgering*" defendant into continuing with the interview. Lastly, the Court rejected defendant's argument that the rule of *Davis* had been overruled by the U.S. Supreme Court in *Dickerson v. United States* (2000) 530 U.S. 428. To the contrary, the Court noted that the U.S. Supreme Court has reaffirmed the *Davis* rule and in fact extended it to ambiguous attempts to invoke one's "*right to silence*" and not just when a suspect asks for an attorney. (See *Berghuis v. Thompkins* (2010) 560 U.S. ___ [176 L. Ed. 2d 1098].) Defendant's statements were therefore properly admitted into evidence against him.

Note: The Court further cited the *Davis* decision as authority for the suggestion that "when a suspect makes an ambiguous or equivocal statement it will often be good police practice for the interviewing officers to clarify whether or not he actually wants an attorney." But while encouraging you to ask the suspect for clarification, the Court has declined to adopt a rule that it is legally necessary for you to do so. The lesson here is to listen to the suspect's attempt to invoke, whether he's asking for an attorney or to remain silent. If ambiguous, you're not required to end the interrogation. It's not uncommon for an interrogator to unnecessarily err on the side of caution and consider any mention of the "A" word (i.e., attorney), or any of its common synonyms (e.g., lawyer, mouth piece, shyster, etc.), as an invocation and immediately cease an interrogation. I have and can send you all the cases where courts have found attempts to invoke to be ambiguous.