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Remember 9/11/01*: *Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*I mean, life is tough. It takes up a lot of your time. What do you get at the end of it*? *A death. What's that, a bonus*? *I think the life cycle is all backwards. You should die first, get it out of the way. Then you live in an old age home. You get kicked out when you're too young. You get a gold watch and you go to work. You work for forty yeas until you're young enough to enjoy your retirement. You do drugs, alcohol, you party, you get ready for high school. You go to grade school, you become a kid, you play, you have no responsibilities. You become a little baby, you go back into the womb, spend your last nine months floating . . . and you finish off as an orgasm.*" (George Carlin)

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***ADMINISTRATIVE NOTES*:**

Greene v. Camreta; *Correction*: In *Legal Update* Vol. 15, # 9, I boldly announced the granting of certiorari on the Ninth Circuit's decision of *Greene v. Camreta* (9th Cir. Dec. 10, 2009) 588 F.3rd 1011, and how, with cert granted, the decision itself is no longer valid. However, as pointed out to me in about six million return e-mails from people who are obviously smarter than me, I was a bit premature in announcing *Camreta's* death. While a Supreme Court grant of certiorari does in fact commonly involve the vacating of the lower court's decision, not so here. Per the Attorney General's Office, when the prevailing party is the petitioner in what is apparently an "advisory opinion" (whatever that means), "(t)he grant of cert (does) not eradicate the advisory decision under the(se) very, very, very unusual facts." What this means is that the rule of *Camreta* is still valid pending a final decision from the United States Supreme Court. So while I still have my money on an eventual reversal, until then, you need to follow *Camreta* as San Diego's Unified School District, in a protocol previously worked out with the San Diego District Attorney's Office, is apparently already doing. If you need a refresher in what *Camreta* is all about, see *Legal Update*, Vol. 14, No. 15, Dec. 31, 2009, for my brief on this case, or ask me to send it to you.

CASE LAW:

***The Sixth Amendment Right to Confrontation and Interrogations*:**

***People v. Jennings* (Aug. 12, 2010) 50 Cal.4th 616**

Rule: Interrogating co-suspects together makes each of the respective suspect's admissions admissible in evidence against the other as "*party*" and "*adoptive*" admissions (E.C. §§ 1220, 1221).

Facts: Defendant impregnated 14-year old Michelle when he was 29, and the two of them "ran away" together. Baby Arthur Jennings was prematurely born in November, 1989. From birth, he was raised by a succession of relatives until defendant and Michelle finally retrieved him from his half-sister in November, 1995, telling her that he and Michelle were settled down and ready to raise Arthur. Arthur weighed 64 pounds at that time. Within two weeks, defendant and Michelle began to abuse "*the damn little brat*" (a quote from Michelle). Friends and neighbors began to notice bruises and other signs of physical abuse with Arthur looking "whipped" and unhappy. Among Arthur's injuries were black eyes, bruises, and a serious burn to his hand, He appeared to be very thin and undernourished, weighing approximately 35 to 40 pounds by the beginning of February. On February 4, 1996, while Michelle was not home, defendant and Arthur were watching TV when a female neighbor stopped by for a visit. Defendant attempted to kiss her, but she put him off. Arthur apparently witnessed this. When Arthur wouldn't stay in his room, defendant grabbed him and struck him in the back of his head with a fireplace shovel, and then tossed him onto his bed. The neighbor left. Arthur died within an hour of this incident. Defendant and Michelle eventually tossed Arthur's body into a nearby desert mine shaft. They reported Arthur missing to the San Bernardino Sheriff's

Department two days later claiming that he'd disappeared sometime during the night. When Arthur couldn't be found, his disappearance was treated as a homicide. Both defendant and Michelle were interviewed separately and both, independently, caved in and showed detectives where Arthur was dumped. Defendant and Michelle were then interviewed together where, after waiving their respective rights under *Miranda*, they detailed their abuse of Arthur. During this interrogation, defendant admitted to pushing, elbowing, kicking, shaking and hitting Arthur. Although denying that he wanted Arthur to die, he didn't deny attempting to suffocate him ("*I don't know, maybe*."). Defendant acknowledged giving Arthur the drug "Unisom," an over-the-counter sleep aid, as well as Vicodin and Valium; prescription painkillers. Michelle admitted that on the day Arthur died, at defendant's behest, she had given him Vicodin and sleeping pills. In defendant's initial interview, he'd claimed that Michelle did much of the abuse but changed his story in the joint interview when Michelle challenged him, exhorting him to tell the detectives the truth. After this, he took most of the blame himself. Defendant finally admitted that when Arthur saw him try to kiss the female neighbor, he knew that he would have to "*finish* (Arthur) *off*." He then admitted that he'd "*probably*" killed Arthur by "*abusing him and the medication and stuff*." Their trailer was later searched, resulting in the discovery of bloodstains throughout Arthur's bedroom. An autopsy showed that Arthur weighed 35 pounds when he died, was "severely emaciated and malnourished" with muscles that were "wasted," and had pneumonia. Arthur's injuries included numerous bruises as well as subdural hemorrhaging on the left side of his head and behind his eyes. In his blood were found three nervous system depressants with enough Unisom to cause seizures and cessation of breathing. Lesser amounts of Vicodin and Valium, also found in his blood, would have added to the depressive effects of the Unisom. The cause of death, per the pathologist, was "the entire problem," i.e., the drugs, the physical injuries (both "chronic" [old] and "acute" [occurring shortly before death]), and the malnutrition and emaciation—"all working together." Defendant and Michelle were charged with first degree murder with special circumstances. Prior to trial, defendant made a motion to sever their cases and be tried separately. The prosecution told the court, however, that they intended to introduce only the two defendants' statements made during the joint interview. The trial court denied the motion to sever. Defendant was convicted of first degree murder with the special circumstance of the use of torture. Sentenced to death, his appeal was automatic. Michelle was convicted of first degree murder only and sentenced to 25-years-to life, with the possibility of parole. Defendant's appeal to the California Supreme Court was automatic. (Michelle's appeal was litigated separately. See *People v. Jennings* (2003) 112 Cal.App.4th 459.)

Held: The California Supreme Court unanimously affirmed. On appeal, defendant argued that allowing into evidence testimony concerning Michelle's statements to the investigators that she made during their joint interrogation violated his Sixth Amendment right to confrontation. During the joint interrogation, both defendant and Michelle contributed their respective versions, each confronting the other when they disagreed. The net result of this interview was that they both admitted to being abusive towards Arthur, at different times, but that defendant committed most of the abuse. Contradicting much of his own original statement blaming Michelle, he eventually admitted to much of the abuse that Michelle claimed that he had committed. The Court ruled that the

evidence of Michelle's statements accusing defendant of different abusive acts to which he then admitted was admissible. Under the Evidence Code, Michelle's statements were admissible against defendant as "*party admissions*" (E.C. § 1220), as well as "*adoptive admissions*" (E.C. § 1221); exceptions to the "hearsay rule." What this means is that everything Michelle said about defendant's acts, while defendant was present and which he heard, understood, and had the opportunity to deny or contradict, were admissible against him just as if he had said them himself. "His silence, evasion, or equivocation may be considered as a tacit admission of the statements made in his presence." In other words, a suspect, such as defendant in this situation, who remains silent, makes equivocal responses, or admits, during a joint interrogation will be held to, in effect, have made those incriminating statements himself. One's constitutional right to confront his accusers under the Sixth Amendment is inapplicable when the accuser is, in effect, himself. As such, the Court found that the joint interrogation technique as used here can result in statements that are admissible at trial against the other involved party without violating either defendant's Sixth Amendment right to confrontation, as protected by a number of state and federal Supreme Court decisions (E.g., *Crawford v. Washington* (2004) 541 U.S. 36; *People v. Aranda* (1965) 63 Cal.2nd 518; *Bruton v. United States* (1968) 391 U.S. 123.). Michelle's statements made during their joint interrogation were therefore properly admitted into evidence against defendant.

Note: This case cites with approval the lower appellate court decision of *People v. Castille* (2005) 129 Cal.App.4th 863, where this same interrogation technique was used. Had the officers in this case not done a joint interrogation, each defendant would likely have been tried separately, doubling the time and effort it would have taken to obtain the same two convictions. If you read the facts of this interrogation, many of which I had to gloss over just to keep this brief down to a reasonable length, you will see that not only did it make each defendant's incriminatory statements admissible against the other, but caused the two defendants to talk even more about their respective abusive acts than they otherwise might have. Investigators (and serious patrol officers) should seriously think about using this interrogation technique. Note, however, that any of one party's statements that the other party does in fact deny *do not* come within this rule and will have to be redacted before the jury hears the evidence. That was the finding of the appellate court in Michelle's appeal. No big deal. Redacting is possible when necessary. So that's not anything with which a police interrogator really needs to be overly concerned and shouldn't cause an investigator to avoid doing joint interrogations.

***Sixth Amendment Right to Counsel*; *Housing Potential Co-Suspects in the Same Jail Cell*:**

***People v. Hartsch* (Jun. 28, 2010) 49 Cal.4th 472**

Rule: Putting an unwitting potential co-suspect into a charged defendant's jail cell to see what the two of them will talk about is lawful so long as the co-suspect knows nothing about the investigator's plan and is otherwise *not* a law enforcement agent.

Facts: The eighteen-year-old defendant and his friend, Frank Castaneda, left a party during the early morning hours of June 14, 1995, to go target shooting in a nearby orange grove near the town of Highgrove, in Riverside County. With Castaneda driving a stolen Honda, and the drunk defendant sporting a stolen .22 caliber pistol, defendant took five shots at a house they passed because, according to defendant, he'd had problems with the family that lived there. When they got to the orange grove, they happened upon a pickup truck parked in the dark and which defendant decided to "jack." When defendant walked up to the truck, however, he discovered a couple asleep in it. A woman, Ellen Creque, sitting in the passenger seat, sat up and woke her male companion, Kenneth Gorman, who spoke angrily to defendant. Defendant fired his gun several times at Gorman as Creque screamed. Defendant shot into the truck several more times. He then returned to the car where Castaneda (according to his testimony) was wanting to leave. Defendant, however told him that "*they're not dead yet*" and reloaded his gun. He then returned to the truck and shot Creque and Gorman several more times. Gorman was shot a total of seven times; Creque 13. As they drove away, defendant complained that "*the bitch didn't want to die*." Two days later, defendant was seen by several people, including Castaneda, with 14-year-old Angelica Delgado (the younger sister of Castaneda's girl friend, Veronica). Defendant told them that he and Angelica were going to the orange grove to have sex, inviting Castaneda along. Castaneda declined, but Angelica seemed to be happy with this plan. After midnight that same evening, defendant showed up at Castaneda's house alone, showing off some jewelry but declining to say where he got it. The jewelry was later determined to be Angelica's. Angelica's body was found two days later in the orange grove, having been shot four times in the top of her head and once between the eyes. Shoe prints at both homicide scenes and numerous witnesses to defendant's bragging about the homicides eventually led investigators to him. All the homicides were also committed by the same .22 caliber pistol which was never recovered. Defendant was arrested and waived his *Miranda* rights. In an interview, he denied doing any of the murders. He did admit, however, to being at the orange grove the night of the Creque/Gorman murders and to having had a .22 caliber pistol, but claimed that he sold it weeks earlier. Castaneda, meanwhile, had fled to Texas with Veronica in the stolen Honda. Arrested in Texas, he waived extradition back to California and cooperated, at least to some extent, with the investigators. He implicated defendant in the Creque/Gorman murders and, eventually, to Angelica's murder. After defendant was arraigned on murder charges, Castaneda was put by the investigators into the same jail cell as defendant where their conversations were recorded. The investigators' thinking on this was to see if Castaneda said anything to defendant that was inconsistent with what he had been telling them, and to see what defendant said about the murders, if anything. Castaneda was not told of this plan nor was he asked to ask defendant anything or given any other instructions. As a result, defendant made some incriminating statements to Castaneda which were used against him at trial. Convicted of three counts of first degree murder, the use of a firearm during the commission of each murder, and with a true finding as to a multiple murder special circumstance (plus one count of shooting at an inhabited dwelling), defendant was sentenced to death. His appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. One of the issues defendant raised on appeal was the use of his taped incriminating statements made to Castaneda when

the two of them were placed into the same jail cell. Defendant argued that this constituted a violation of his Sixth Amendment right to counsel under the U.S. Supreme Court decision of *Massiah v. United States* (1964) 377 U.S. 201; i.e., a so-called "*Massiah* violation." *Massiah* held that it is a violation of a charged defendant's right to counsel when an undercover police informant questions him. The rule applies whether or not the defendant has been released from custody pending trial. To prevail on a *Massiah* claim, however, a defendant must show that the police and the informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks. "Specifically, the evidence must establish that the informant (1) was acting as a government agent, i.e., under the direction of the government pursuant to a preexisting arrangement, with the expectation of some resulting benefit or advantage, and (2) deliberately elicited incriminating statements." Castaneda, in this case, would have to be shown to have acted as an agent of law enforcement. An agency relationship, however, does not exist when the informant acts on his own initiative, merely accepting information from the defendant, without being asked to do this and with no official promises, encouragement, or guidance. This preexisting relationship between the informant and the government, however, need not be explicit or formal, but may be inferred from evidence of the parties' behavior indicative of such an arrangement. Defendant argued that an investigator's comment to Castaneda while still in Texas that "*my door is always open*" was such an inferred arrangement. The Court, however, noted that when put into context (i.e., after Castaneda had first declined to talk with the investigators), the officer's comment to Castaneda was not intended to infer that he could help himself by acting as a police agent, but rather merely to cooperate by talking with the investigators. In this case, there was no indication at all, actual or inferred, that Castaneda acted as an agent of the police. As such, *Massiah* did not apply and the recorded statements between Castaneda and defendant in the jail cell were properly admitted into evidence against him.

Note: Interestingly enough, the Court makes no mention of other U.S. Supreme Court authority to the effect that doing what the investigators did here is a closer question than you might assume. For instance, *United States v. Henry* (1980) 447 U.S. 264, held that, "(e)ven if the (government) agent's (i.e., the investigator) statement that he did not intend that (the undercover agent) would take affirmative steps to secure incriminating information is accepted (in fact, the undercover agent was specifically instructed *not* to do so), he (the investigator) must have known that such propinquity likely would lead to that result." Therefore, even without questioning the defendant, an informant who "*stimulates*" conversation with the defendant for the purpose of attempting to elicit incriminating statements, as opposed to acting as a "*mere listening post*," may be violating the defendant's Sixth Amendment rights. (*Kuhlmann v. Wilson* (1986) 477 U.S. 436, 458-459, analyzing the rule of *Henry*.) It is noted, however, that the informant in *Henry* knew what the plan was and in fact was being paid for his cooperation, differentiating the situation from that which Castaneda found himself. But just note that you have to be very careful, as the investigators were in this case, to make sure that you do not do or say anything with the proposed cellmate you intend to stick in a jail cell with your suspect that could be considered an encouragement to him or her to act as your agent, or even to "*stimulate*" conversation about the crime under investigation. Sticking him into the cell with no instructions and in total ignorance of your plan seems to be the best way to avoid a *Henry*

problem. By the way, if you're wondering, *Castaneda* was not charged with these crimes, testified against defendant, but still did time for possessing the stolen Honda.

***Miranda*; *Equivocal Invocations and Seeking Clarification*:**
***Miranda*; *The Need to Readvise at Successive Interrogations*:**
***Interrogation Tactics and Involutariness*:**

***People v. Williams* (Jun. 28, 2010) 49 Cal.4th 405**

Rule: (1) An invocation of one's right to the assistance of counsel and/or to remain silent must be unequivocal under the circumstances. An officer seeking clarification is not badgering. (2) A new *Miranda* admonishment and waiver is not necessary for successive interrogations so long as the second interrogation is reasonably contemporaneous with the prior wavier. (3) Interrogation tactics and psychological ploys are lawful so long as, under all the circumstances, they are not so coercive that they would tend to produce a statement that is both involuntary and unreliable.

Facts: Forty-two year old Joanne Lacey left work at about 7:00 on the evening of March 20, 1989, driving her new blue Volvo. A witness later told police that at about 8:00 p.m. she observed a blue Volvo in the parking lot of the Altadena Boys Market being driven by a woman matching Lacey's description. She saw the car start to back out of a parking spot but it was still there minutes later when the witness left. At 9:45 p.m., a $200 withdrawal was made from Lacey's bank account at an automated teller in Pasadena. At about 10:30 p.m., Carrie Runnels, a friend of Lacey's, got a telephone call from her who, seemingly excited and rushed, asked Carrie for a $500 loan. Lacey said that she'd been in an accident and to meet her at a specific intersection in Pasadena, but to come alone. On the way to that location, Mrs. Runnels noticed Lacey's blue Volvo following her. She pulled over and Lacey's car drove up next to her with Lacey in the passenger seat. Lacey extended her hand out of the window, took the cash from Mrs. Runnels, and handed it to the driver. After telling Runnels that she was all right, they drove off. Thirty minutes later, a car exploded and burned in a Pasadena residential area. Seconds before the explosion, a neighbor heard apparent gun shots and someone shouting; "*Let's get out of here*." When the fire department finally got the fire extinguished, Joanne Lacey's badly burnt body was found in the trunk. She had third degree burns to 90% of body, a gunshot wound to the hand, and bruising to the neck indicating compression prior to death. The cause of death was smoke inhalation, burns, and suffocation, indicating that she had been burned alive. The car was set on fire by someone dousing the passenger area with gasoline and lighting it. A gun and money were found on the ground next to the vehicle. Soon thereafter, information was provided to Pasadena Police Department investigators that defendant's sister-in-law, Margaret Williams, knew something about the murder. Margaret, having an outstanding arrest warrant, was arrested and questioned. At trial, she testified (under a grant of immunity) that defendant and Loretta Kelly, a friend of defendant's, had come over to her house in the early morning hours of March 21. Defendant's hand and ankle were burnt and he smelled of gasoline. When asked what happened, defendant said that he had "*robbed a bitch*" and that he'd "*burnt the bitch up*." He'd apparently had a fender-bender accident with Joanne Lacey in the Boys Market parking lot (as evidenced by paint transfers between

his and her vehicles) and when she said she was going to call the police, he instead kidnapped her at gunpoint. Defendant was arrested shortly thereafter. Interrogated by Pasadena detectives four times over three days, defendant eventually provided a near-confession connecting him to Joanne Lacey's kidnapping, robbery and murder. Charged with first degree murder with special circumstances, defendant filed a motion to suppress his statements. The trial court denied defendant's motion and allowed his statements into evidence against him. Defendant was convicted of first degree murder with various special circumstances being found to be true. He was sentenced to death. His appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. (1) *Need for a Clear and Unequivocal Invocation*: Defendant's primary contention was that his *Miranda* rights had been violated in the first of the four interviews and that this poisoned everything after that. As a part of the standard *Miranda* admonition, defendant was asked in the first interview for an express wavier of his right to remain silent ("*Yeah*"), and then, separately; "*Do you wish to give up the right to speak with an attorney and have him present during questioning*?" This apparently confused defendant because he then said; "*You talking about now*?" The detective then said; "*Do you want an attorney here while you talk to us*?" Defendant answered; "*Yeah*." Detective: "*Yes you do*?" Defendant: "*Uh huh*." Detective: "*Are you sure*?" Defendant: "*Yes*." Detective: "*You don't want to talk to us right now*." Defendant: "*Yeah, I'll talk to you right now*." Detective: "*Without an attorney*." Defendant: "*Yeah*." In clarification, the detective explained that if he wanted to wait until Monday (two days later), they'd send over a public defender or he could talk to his own attorney. Defendant responded adamantly that he didn't want to wait until Monday, that he wanted to talk right then, and that he freely gave up his right to have an attorney present. The Court found that this showed that defendant had made a knowing and voluntary waiver of his rights under *Miranda*. The Court was satisfied that once the question whether counsel would be provided immediately had been resolved, defendant didn't have the slightest doubt that he wished to waive his right to counsel and commence the interrogation. In response to defendant's argument that the officers should have immediately ceased the interrogation when defendant first asked to have an attorney present, the Court noted that defendant's request, under the circumstances, was not clear and unequivocal. The officers had the right to seek clarification. The primary issue is whether a reasonable officer would have understood the defendant to be invoking his right to counsel. Here, it is apparent that there was no such understanding. "In certain situations, words that would be plain if taken literally actually may be equivocal under an objective standard, in the sense that *in context* it would not be clear to the reasonable listener what the defendant intends." Also, asking defendant for clarification of what he really wanted is not badgering under these circumstances. Later during this first interrogation, when one of the detectives openly accused defendant of killing Joanne Lacey, defendant finally said: "*I want to see my attorney 'cause you're all bullshitting now*." Defendant argues that this was a clear and unequivocal invocation. The Court again disagreed. When defendant made this statement, one of the detectives responded with; "*You want your attorney now*?" Defendant responded simply that he didn't want to talk to the detective who accused him of killing the victim, but that he'd talk to the other detective. Once a defendant has waived his right to counsel, any change of heart must be

clear and unequivocal. Here, defendant was merely expressing his frustration with the one detective who was accusing him of murder. It was "game playing" on the defendant's part and not an unambiguous invocation of his right to counsel. Towards the end of the first interview, when asked how he'd met the victim on that day, defendant finally responded that: "*I don't want to talk about it*." The Court held that this again was merely defendant's frustration with the subject at hand. Contrary to defendant's argument, refusing to talk about one topic is not an invocation of one's right to silence. (2) *Successive Interrogations*: Defendant next argued that he should have been readvised prior to initiation of the second interview that occurred two days after the first. However, "readvisement prior to continued custodial interrogation is unnecessary so long as a proper warning has been given, and 'the subsequent interrogation is "reasonably contemporaneous" with the prior knowing and intelligent waiver.'" Whether or not a suspect must be readvised before beginning a subsequent interview may proceed depends upon various circumstances including; (1) the amount of time that has elapsed since the first waiver, (2) changes in the identity of the interrogating officer and the location of the interrogation; (3) any reminder of the prior advisement; (4) the defendant's experience with the criminal justice system, and "[other] indicia that the defendant subjectively underst[ood] and waive[d] his rights." Under the circumstances of this case, the detectives were not required to readvise defendant of his rights at the second interview. There was only 40 hours between interviews. The same interrogators were involved at the same location. Also, defendant was experienced in the criminal justice system and expressed no reluctance to talk with the detectives again. (3) *Involuntariness*: Lastly, defendant argued that his incriminating statements were coerced in that he was threatened with the death penalty and told that he would be "better off if he told the truth;" i.e., that a jury is not going to have any sympathy for him if he does not tell the truth. In assessing allegedly coercive police tactics, "[t]he courts have prohibited only those psychological ploys which, under all the circumstances, are so coercive that they tend to produce a statement that is both involuntary and unreliable." In this case, defendant was openly told that unless he told the truth, the jury was going to "*send* (him) *to the gas chamber*." Despite these threats, defendant continued to deny the crime. Also, none of the ploys used by the detectives by telling defendant that they had evidence of his guilt that they didn't really have (e.g., eyewitnesses to his presence with the victim) were of the type of deceptions that would have made his resulting confession unreliable. Further, telling defendant that he may not have been the actual killer, or have intended the victim's death, is a permissible form of interrogation. Suggesting possible alternative explanations in the hope that the defendant will supply further details is not coercion. And telling defendant that a jury may be more impressed with a confession and a showing of remorse than with a defendant who lies is also permissible. "Absent improper threats or promises, law enforcement officers are permitted to urge that it would be better to tell the truth." It wasn't until the end of the fourth interview that defendant finally decided to admit to kidnapping, robbing, and taking part (with Loretta Kelly) in Lacey's murder. When asked why he finally decided to admit his guilt, defendant responded; "'*cause it's bothering my brain*." In actuality, it appeared that his eventual confession was the result of him realizing that they had enough evidence to convict him and that it was then to his own benefit to cooperate. The Court agreed with the trial judge that none of these interrogation tactics were the cause of defendant's decision to confess. "Once a suspect

has been properly advised of his rights, he may be questioned freely so long as the questioner does not threaten harm or falsely promise benefits. Questioning may include exchanges of information, summaries of evidence, outline of theories of events, confrontation with contradictory facts, even debate between police and suspect." The detectives here did no more than this.

Note: The detectives here were pushing the envelope a bit and maybe dodged a bullet or two. For instance, the general rule is that you can't threaten a suspect with the death penalty. The detectives made a big deal out of the idea that liars "*go to the gas chamber*." And while you can tell a defendant that it is better for him if he tells the truth, you can't go so far as to indicate that he will get a better deal by admitting to whatever it is you want him to admit; i.e., an "*offer of leniency*." Using the same tactics against a "*vulnerable or frightened*" suspect will likely result in any later confession being suppressed. (See *People v. Ray* (1996) 13 Cal.4th 313.) Or, had defendant confessed during the first interview when these tactics were used, we might very well have lost his statements. But as it was, none of these tactics seemed to be the cause of defendant's eventual decision to confess. Defendant made other claims that were not supported by the record. He argued, for instance, that his ultimate confession was caused by being held incommunicado for 3 days and subjected to prolonged interrogations. However, there was nothing in the record supporting his claim that he had been held incommunicado. And his four interrogations, none of which lasted more than half an hour, were broken up by long periods of no questioning. He also complained that he wasn't arraigned within the necessary 48 hours. (P.C. § 825) However, the Court held that his decision to finally inculpate himself was not caused by any such delay, but rather by his realization that the detectives had enough evidence to convict him. Lastly, defendant argued that Margaret Williams should not have been allowed to testify against him because when she was questioned, she'd been coerced by the officers, thus making her later trial testimony unreliable. What the officers did to her was in fact coercion, as held by the prelim magistrate, the trial court, and the Supreme Court. Specifically, the detectives told her that if she didn't tell the truth she would be held in custody without bail until she did, charged with murder, and separated from her children. Then, the officers played on her religious beliefs (e.g.: "*Jesus said the truth will set you free*."). The rule on these types of questions is really quite simple: *You just can't do that kind of stuff*!!!! The theory is that such threats make for unreliable statements and, if she sticks with the same story, unreliable testimony. However, in this case, the time between the interrogation and the preliminary examination (i.e., 9 months), and then the trial (3 years), was held to be sufficient to dissipate the taint. Also, she was no longer in custody, testified under a grant of immunity, and had legal counsel appointed to explain to her that she was not really in any trouble. Lastly, the immunity was based upon her telling the truth, not necessarily just repeating what she told her interrogators. Therefore, it did not violate defendant's due process rights to a fair trial to allow her to testify. But you're playing with fire when you use these mind games in your interrogations, whether the target is the suspect or a witness. This is a case anyone wanting to be a detective or an effective interrogator should read as it discusses a lot of the dos and don'ts of a legal interrogation.