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

Dedicated to the Memory of George "Woody" Clarke,
Judge, San Diego Superior Court;
Former San Diego County Deputy District Attorney
5/10/51–11/13/12
A Wonderful Person Who Will be Missed

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THIS EDITION'S WORDS OF WISDOM:

"*You cannot bring about prosperity by discouraging thrift. You cannot strengthen the weak by weakening the strong. You cannot help the wage earner by pulling down the wage payer. You cannot further the brotherhood of man by encouraging class hatred. You cannot help the poor by destroying the rich. You cannot keep out of trouble by spending more than you earn. You cannot build character and courage by taking away man's initiative and independence. You cannot help men permanently by doing for them what they could and should do for themselves.*" (Abraham Lincoln.)

IN THIS ISSUE:

ADMINISTRATIVE NOTES:

Secretly Recording Police Officer Contacts: I'm frequently asked whether it is a crime for a private citizen to secretly tape-record or videotape a contact between the citizen (or someone else) and a police officer, such as in the circumstance of a traffic stop or a field interrogation on the street. P.C. § 632(a) (Eavesdropping on Confidential Communications) is commonly the criminal violation suggested. Although I'm not aware of any California case authority on the issue, the simple answer has to be "*no*," it is not a crime. First, for section 632(a) to apply, it must be proved as an element of the crime that the conversation was intended to be "*confidential*." Subd. (c) of section 632 defines a "*confidential communication*" as one that is "*carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto*, . . ." A prosecutor would be hard pressed to convince a judge or a jury that any public contact between a private citizen and the police officer reasonably indicates a desire by either party that their conversation was to remain confined to the parties involved. In fact, state authority out of Washington State has interpreted a similar provision under their laws (see Wash. Rev. Code § 9.73.030(1)(b); prohibiting the secret recording of "private" conversations) as *not* applicable to the recording of contacts with "public officers performing functions on public thoroughfares." (*State v. Flora* (Wash Ct. App. 1992) 68 Wn.App. 802; 845 P.2nd 1355.) The Ninth Circuit Court of Appeal has cited the *Flora* case with approval. (See *Alford v. Haner* (9th Cir. 2004) 333 F.3rd 972, 976; Certiorari granted and overruled on other grounds; *Devenpeck v. Alford* **(**2004) 543 U.S. 146.) Further, the federal First Circuit Court of Appeal has held that a private citizen has a First Amendment constitutional right to videotape public officials including police officers performing their duties while in a public place, upholding a $170,000 civil judgment against the City of Boston for their officers having arrested the private citizen involved. (*Glik v. Cunniffe* (1st Cir. 2011) 655 F.3rd 78, 82-84.) Lastly, I have to ask those officers who believe it should be illegal to secretly tape-record their traffic or street contacts with the public: *What is it you said or did that you don't want your supervisors or the public to know*? If you are indeed "*acting in the performance of your duties*," the answer should be; "*Nothing*."

CASE LAW:

***Miranda*; *The Interrogation Element*:**
***Massiah*; *Use of an Informant after Appointment of Counsel*:**

People v. Dement **(Nov. 28, 2011) 53 Cal.4th 1**

Rule: (1) Casual conversation between a police officer and an in-custody criminal suspect, absent indications that the conversation might elicit an incriminating response, is

not an interrogation. (2) Unsolicited incriminating information obtained from a previously-charged defendant, and provided by an informant on his own initiative to law enforcement, is admissible in evidence.

Facts: On April 8, 1992, Greg Andrews was a new inmate in the Fresno County Jail. He was assigned to a three-bunk cell already occupied by three other inmates, including defendant. Having had prior contacts with Andrews, defendant indicated to others that he intended to hurt him. As the newbie, Andrews went to sleep that night on a mattress on the flour as defendant and his other two cellmates stayed up drinking "pruno." Saying he wanted to question Andrews about some woman they both knew, which turned out to be defendant's wife, defendant got Andrews up and started slapping him around. The assault got more aggressive as defendant stomped Andrews on his head and punched him in the face. At one point, defendant made Andrews kiss his penis, and then threatened to sodomize him. Throughout the rest of the night defendant continued the assault. Finally, defendant pulled a towel around Andrew's neck and choked him, eventually killing him. Andrews' battered and bruised body was pushed under one of the bunks before everyone went to breakfast. Defendant spent the better part of the morning bragging about having "killed the punk." Someone finally reported to the deputies that there was a body in defendant's cell. A later autopsy revealed that the primary cause of death was ligature strangulation with blunt force trauma being a significant contributing factor. Defendant was immediately identified as a suspect in Andrews' death. When Fresno County Sheriff's Detective Bradley Christian attempted to interview him, defendant immediately invoked his right to counsel thus terminating the questioning. Detective Christian then accompanied defendant to the hospital so that he could receive medical treatment for injuries he allegedly sustained during the assault. While awaiting treatment, the two of them engaged in some small talk. Detective Christian mentioned during this time that he had recently interviewed defendant's wife regarding a 1992 homicide after she'd been picked up with the suspect in that homicide; a man by the name of Thomas Rutledge. Defendant responded that he was aware of that, and that he was going to take care of Rutledge for getting his wife involved in that incident. Defendant told Christian that he and Rutledge were enemies and that if he ever got the chance, he'd kill Rutledge. Defendant then asked who the dead man was that was found in his cell. When told that he was Greg Andrews, defendant nodded his head and said, "He was a friend of Tom's" (referring to Rutledge). Detective Christian later testified that he was unaware at that time that defendant had any connection with, or knowledge of, Thomas Rutledge, or that Rutledge had any connection with Andrews. Some 9 months after Andrews' murder, Trinidad Ybarra was an inmate in the Fresno County Jail, charged with a drug-related offense. By this time, defendant had been charged with Andrews' murder and was awaiting trial. For the last two years Ybarra had been working on getting out of the Nuestra Raza criminal street gang. In order to do this, he'd been undergoing a "debriefing" process with the Corcoran State Prison authorities where by relaying all he could about gangs to the authorities he hoped to be removed from the list of documented gang members. As a part of this continuing process, after being paroled from Corcoran and later re-incarcerate in the Fresno County jail, he started collecting the names of gang members from defendant. When he discovered that defendant was awaiting trial on a murder charge, he got the idea that he could perhaps work a deal for himself by getting

defendant to confess. Although it was a known fact that the district attorney would give a prisoner a deal on his own case in exchange for useful information on a murder, no one told Ybarra to do that in this case. In pursuit of this plan, Ybarra met with Detective Christian and told him that he was already receiving "kites" (written messages) from defendant about gang members. He believed he could get defendant to maybe confess in writing via one of these kites. At that time, Ybarra already had at least one, and maybe a second kite from defendant in which defendant made statements about the murder. Detective Christian told Ybarra he could not tell him to actively seek information from defendant, but that if he did obtain information, the best thing Ybarra could do was turn it over to him and that he would then pass it along to the district attorney. Detective Christian did not promise Ybarra any deals or tell him he would work with the district attorney to try to do something for him. Detective Christian advised Ybarra to retain anything he received from defendant, but did not tell him to write letters to defendant. Christian further informed Ybarra that he could not ask defendant anything "specific to this case" because defendant had already invoked his right to counsel. Ybarra continued communicating with defendant via the kites, hoping he could work out a deal with the district attorney. He later turned over the kites he'd received from defendant to Detective Christian. Ybarra was in fact later released from custody after signing a contract for his testimony. At defendant's trial, the prosecutor conceded that Ybarra had interrogated defendant, but argued that he was not a government agent when he did so. The trial court found no violation and admitted into evidence the two kites in which defendant made incriminating admissions. Defendant was convicted of first degree murder with the special circumstances of a murder committed during the commission of an oral copulation, and with a prior murder conviction. Sentenced to death, his appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. (1) *Miranda/Edwards*: Among the issues on appeal was the admissibility of defendant's statements to Detective Christian made while at the hospital. Defendant's argument was that having previously invoked his right to counsel under *Miranda v. Arizona*, that his "*Edwards*" rights (i.e., *Edwards v. Arizona* (1981) 451 U.S. 477.) had been violated. The U.S. Supreme Court in *Edwards* had ruled than once a subject invokes his *Miranda* right to the assistance of counsel, he is off limits to any further questioning on any case for so long as he remains in custody. The Attorney General argued, however, that the conversation between defendant and Detective Christian while at the hospital was not an "interrogation," making *Miranda* and *Edwards* inapplicable. The Supreme Court agreed. An "*interrogation*," under *Miranda*, refers not only to express questioning, but also "to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect." (*Rhode Island v. Innis* (1980) 446 U.S. 291.) A court must also keep in mind the purpose behind the *Miranda* and *Edwards* decisions; i.e., to prevent officials from using the coercive nature of confinement to extract confessions that would otherwise not have been given in an unrestrained environment. Not all conversation between a police officer and a suspect constitutes an interrogation. The police may speak to a suspect in custody as long as the conversation would not reasonably be construed as calling for an incriminating response. In this case, Detective Christian did not have any prior knowledge of Tom Rutledge's

connection to defendant or Andrews, or that by mentioning that he'd interviewed defendant's wife, that defendant would begin talking about his hate for Rutledge. It therefore cannot be said that Detective Christian had any reason to believe that this conservation would lead to any incriminating statements. As such, the conversation that led to these admissions did not constitute an interrogation. Also, the Court rejected defendant's assertions that by telling defendant the victim's name, or by initiating a conversation about defendant's wife and her involvement in a separate murder investigation, that the conversation became an interrogation. There was also no evidentiary support for defendant's argument that the detective was trying to make defendant mad, and thereby provoking an "ill-considered incriminatory response."

(2) *Massiah*: Defendant further contended that the kites that were admitted into evidence against him were obtained by a government agent after defendant had been arraigned and appointed counsel, in violation of *Massiah v. United States* (1964) 377 U.S. 201 and the Sixth Amendment. Under *Massiah*, after adversarial judicial criminal proceedings have been initiated and in the unwaived absence of counsel, a government agent is not allowed to deliberately elicit from a defendant incriminating statements. Such a Sixth Amendment violation occurs when the government intentionally creates or knowingly exploits a situation likely to induce the defendant to make incriminating statements without the assistance of counsel, including through the use of an undercover informant. For there to be a Sixth Amendment violation through the use of an informant, 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) that he deliberately elicited incriminating statements from the defendant. In this case, the trial court properly determined that Ybarra was not a government agent at the time he received the two kites at issue from defendant. Ybarra had no preexisting relationship with law enforcement as an informant or government agent. His previous debriefing with the Corcoran prison authorities, done for the purpose of ending his gang affiliation two years earlier, did not establish him as a government agent. A general policy of encouraging inmates to provide useful information does not transform the inmate into a perpetual government agent, whether or not the inmate was aware of that policy. Even if one or more of the kites was obtained after Ybarra's meeting with Detective Christian, the detective made it clear to him that he could not actively solicit incriminating information from a charged criminal defendant, or even talk to defendant about the murder. Lastly, Ybarra was not promised any benefits in exchange for producing defendant's kits. "The requirement of agency is not satisfied when law enforcement officials 'merely accept information elicited by the informant-inmate on his or her own initiative, with no official promises, encouragement, or guidance." As a result, there was no *Massiah* violation and the incriminating kites were properly admitted into evidence against defendant.

Note: Two important legal issues are thoroughly discussed in this important decision. The *Miranda* issue is a give-me, and one with which all law enforcement officers should already be comfortable. While an officer is not allowed to do or say anything to encourage a suspect who has already invoked to talk about his crimes, casual conversations are okay. Despite this, however, I've seen a lot of cases where officers fail to report such casual conversations under the mistaken belief that anything the defendant

might say isn't going to be admissible anyway. When in doubt, write it up and let a prosecutor make that decision. There's no penalty should it be found that the defendant's statements are not admissible in court. The second issue, involving *Massiah*, is one with which most officers are *not* familiar, at least when it involves the use of undercover police agents. Should that agent be a criminal informant, such as in this case, the issue becomes even more difficult. When in doubt, work with the assigned prosecutor to insure that the circumstances can be tightly controlled and handled properly.

***Expectation of Privacy in a Campsite*:**
***Threatening or Deterring an Executive Officer, per P.C. § 69*:**

People v. Nishi **(July 13, 2012) 207 Cal.App.4th 954**

Rule: A campsite illegally located on public land may be subject to a warrantless search absent evidence that the defendant had a reasonable expectation of privacy.

Facts: Defendant sent an e-mail to The United States Air Force Freedom of Information and Privacy Act Office entitled "EMERGNCY COMMUNICATION." In his e-mail, defendant referred to himself as "The Shepherd" and noted that he had been located after numerous California Highway Patrol helicopter flights (whatever that meant). In a continuing nonsensical message, he complained that California's Department of Fish and Game had been repeatedly and unlawfully shooting mountain lions in the "Open Space" to "PROVOKE AN ATTACK which endangers the public." He petitioned for an immediate "shut down" of "Marin County Sheriffs and Fish & Games operations," and asked the United States Fish and Wildlife Service and the Department of Justice to "take control of all wild life activities" in the Marin County Indian Valley Open Space Preserve in order to prevent the further slaughter of mountain lions. He then declared that, "*I am armed and will now fire on all Sheriff and Fish & Game after this email so either shut them down or put some boots on the ground to join the battle, remember that if they kill me what is going to happen to the human race by APOLLO or the same beings on Codex Dresden*." Defendant's e-mail was forwarded to the Marin County Sheriff's Department which, considering the e-mail to be a "*credible threat*," distributed it to all the other regional law enforcement agencies including the Department of Fish and Game. Research identified defendant as The Shepard. The bulletin sent out to law enforcement warned that defendant was armed and would fire on Sheriff and Fish and Game personnel if confronted. As a result, the superintendent in charge of operations for the Indian Valley Open Space Preserve directed his staff not to go into the preserve until defendant was located. Also, the regional manager for the Bay Delta region of California's Department of Fish and Game advised his staff not to wear their uniforms and to be "a little more vigilant" while working in the field. Marin County Deputy Sheriff Brenndon Bosse, who was responsible for patrolling the Indian Valley Open Space Preserve, knew defendant, having citing him several times before for camping in the preserve without a permit. Defendant had also made unsubstantiated reports to Deputy Bosse about people shooting mountain lions. Although defendant had been cooperative and non-threatening in prior contacts, Deputy Bosse took certain safety precautions while looking for him in the preserve due to the threatening nature of the e-mail. Deputy Bosse soon located

defendant. Defendant admitted to sending the e-mail, commenting that it had "worked," by keeping officers off the preserve. Defendant was arrested and transported to the psychiatric facility at Marin General Hospital. A search of his campsite failed to recover any firearms. However, boxes of new shotgun shells were found under a tarp next to his tent. He was subsequently charged in state court with a violation of P.C. § 69, for "attempt(ing), by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law." Prior to trial, defendant's motion to suppress the shotgun shells was denied. After being convicted in a jury trial during which the shotgun shells were admitted into evidence, defendant appealed.

Held: The First District Court of Appeal (Div1) affirmed. Defendant initially argued that the trial court erroneously denied his motion to suppress. He complained that the warrantless search of his campsite, and specifically the seizure of the shotgun shells from under the tarp within "the curtilage of his tent," was done in violation of the Fourth Amendment. More specifically, defendant argued that as a homeless person, he had an expectation of privacy in his campsite that Deputy Bosse violated by searching his tent and under the tarp. The Court disagreed. Defendant has the burden of proving that he had standing to contest the warrantless search of his tent and the area around it. In other words, he must first prove that he had a "*reasonable expectation of privacy*" in the areas searched. A person seeking to invoke the protection of the Fourth Amendment must demonstrate both that he harbored a subjective (i.e., in his own mind) expectation of privacy and that the expectation was objectively reasonable. An objectively reasonable expectation of privacy is one that society is willing to recognize as reasonable. Among the factors considered in making this determination are whether a defendant has a possessory interest in the thing seized or place searched; whether he has the right to exclude others from that place; whether he has exhibited a subjective expectation that it would remain free from governmental invasion; whether he took normal precautions to maintain his privacy; and whether he was legitimately on the premises. In this case, the Court found it significant that defendant was not lawfully or legitimately on the premises where the search was conducted. The uncontradicted evidence revealed that camping on the Indian Valley Open Space Preserve was prohibited without a permit. Defendant had no authorization to camp within the preserve. He was well aware that he had no right to be there in that on at least four or five recent occasions he had been cited by officers for "illegal camping" and evicted from other campsites in the preserve. Nor did he have the right to exclude others from that place. He had no ownership, lawful possession, or lawful control of the premises searched. Also, the shotgun shells were seized from outside his tent in a pile of debris under a loose tarp. While a tent located in a public campground may in some circumstances be considered a private area where people sleep and keep valuables, functionally somewhat comparable to a house, apartment, or hotel room, the area around defendant's tent where the tarp was found was a dispersed, ill-defined site, exposed and open to public view. The area around the tent was not within a defined residential curtilage in which defendant had a reasonable expectation of privacy. Having no standing to contest the search of his tent or the area around it, defendant's motion to suppress was properly denied by the trial court. Defendant also argued that his conviction for P.C. § 69 as not supported by the evidence. The Court had no problem finding that defendant's threats clearly deterred law enforcement officers from several

agencies from performing their lawful duties. A violation of P.C. § 69 can be "established by a threat, unaccompanied by any physical force and may involve either an officer's immediate or future performance of his duty." Per the Court, "the evidence also convincingly demonstrates an intent to deter officials from patrolling or otherwise performing duties in the Indian Valley Open Space Preserve by threatening to 'fire on' them if they appeared there." That is sufficient to constitute a violation of P.C. § 69. And lastly, the Court found that a person's First Amendment freedom of expression did not shield threats, such as occurred here, from being criminally prosecuted. Defendant's conviction, therefore, was upheld.

Note: The Ninth Circuit has been tougher on this issue. For instance, in *United States v. Sandoval* (9th Cir. 2000) 200 F.3rd 659, it was held that the defendant's tent, located on Bureau of Land Management property where he had camped without permission, exhibited a reasonable expectation of privacy under the circumstances (purposely hidden in the bushes), and that it was therefore illegal to search it without a search warrant. Although the circumstances are bit different in this new case (e.g., camped in the open, a lack of a necessary permit, and having been evicted before), just note that this case *does not* stand for the proposition that a search warrant is never going to be needed to search someone's tent in a campground. As with just about every search and seizure issue under the Fourth Amendment, it depends upon the circumstances.

***Protective Sweeps*:**

People v. Werner **(July 20, 2012) 207 Cal.App.4th 1195**

Rule: Protective sweeps of a residence following an arrest of an occupant is unlawful absent an articulable reasonable belief that there is someone in the residence who might constitute a danger to the officers or others.

Facts: Deputies Serg Palanov and Luis Orozco, from the Santa Clara County Sheriff's Office, took a report from a woman who told them that she'd been assaulted earlier that morning by her boyfriend; the defendant in this case. The assault had allegedly occurred at the defendant's home in Campbell. The deputies proceeded to defendant's residence and contacted him on his front porch where he was handcuffed and arrested. Defendant's roommate, named Ingram, came outside during the arrest. Ingram was checked by Deputy Orozco through "the wants and warrants system" and found to be "clear." He was also subjected to a patdown during which no weapons or suspicious items were found. Deputy Palanov asked Ingram whether there was anyone else inside the house, and was told that there was not. There was no indication at this point that any ongoing criminal activity was occurring inside the house. Defendant asked Ingram to retrieve his keys and shoes from his bedroom. When Ingram went back into the house for that purpose, Deputy Palanov accompanied him (apparently without asking for permission) to defendant's bedroom "for officer safety reasons." Per Deputy Palanov's later testimony, he followed Ingram into the house because "I didn't know what else might be in the house or what he might retrieve." As Deputy Palanov followed Ingram into defendant's bedroom, he immediately smelled marijuana and saw a partially filled Ziploc baggie

containing what appeared to be marijuana on top of a dresser. In a closet with its door ajar, the deputy observed "one or two large gallon-sized bags filled with marijuana bud(s)" and numerous fireworks. A notebook was observed on the dresser which, when opened, was found to contain what appeared to be a number of "pay/owe" entries common to drug sales. Looking inside the dresser, Deputy Palanov found $968 in cash and a quantity of psilocybin. Ingram was sent outside where he was detained. Deputy Orozco then asked Ingram for permission to search his room and the common areas of the house. Ingram consented. Searching Ingram's room and the rest of the house, Deputy Orozco found other drugs and related paraphernalia. Outside, a detached garage with blacked out windows was located from which the odor of fresh marijuana could be smelled. A humming sound was coming from the garage and industrial fans could be seen. A search warrant was obtained for the house and the garage, the execution of which resulted in the recovery of some 45 immature marijuana plants and related paraphernalia. Charged with a number of marijuana cultivation-related charges (plus the illegal possession of the fireworks and domestic violence offenses), defendant's motion to suppress was denied. He then pled no contest and appealed.

Held: The Sixth District Court of Appeal reversed. On appeal, defendant challenged the legality of the various searches of his home and garage. The Attorney General responded with the argument that the initial entry into the home that resulted in the discovery of contraband in defendant's bedroom, and which led to the subsequent searches, was justified by the protective sweep doctrine. This, per the Attorney General, justified the later-obtained consent search and the search warrant. The Court, however, sided with the defendant. It is a rule that warrantless searches of residences are "*presumptively unreasonable*" under the Fourth Amendment. However, as an exception to this rule, it has been held that police performing an in-home arrest, or as occurred in this case, immediately outside the home, may conduct a limited search through the home itself for their own protection. Known as a "*protective sweep*," such a search, however, may only be conducted when the officers have a reasonable suspicion to believe that there may be a dangerous person in the area to be swept. (*Maryland v. Buie* (1990) 494 U.S. 325.) A protective sweep is a quick and limited search of a premises, done incident to an arrest, and only when necessary to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding. But as noted in *Buie*, conducting protective sweeps cannot be done merely because an officer wishes to insure that there is no one else inside who might constitute a danger to him or others. Protective sweeps are only lawful in those limited instances where the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene. (*Buie*, supra, 494 U.S. at p. 337.) As such, a protective sweep may not be based on a mere "inchoate and unparticularized suspicion or 'hunch.'" (*People v. Celis* (2004) 33 Cal.4th 667, 678; also allowing a protective sweep in a detention situation.) In this case, there was no showing that Deputy Palanov was justified under the protective sweep exception in entering defendant's home and bedroom. Defendant was in handcuffs outside the residence and presented no threat to the deputies. The crime itself that the deputies were investigating (i.e., domestic violence) had occurred hours earlier and the alleged victim was no longer at the scene. The roommate, Ingram, likewise posed no

threat. He had been "clear[ed]" by Deputy Orozco of any warrants or wants, and had been frisked and found to have no weapons. The People presented no evidence that Ingram had a criminal history or that the deputies had other evidence suggesting he was a danger to them. Moreover, there was no evidence that deputies were aware of any ongoing criminal activity in the home, or that there were others even present inside, let alone that anyone inside might be dangerous. To the contrary, Deputy Palanov specifically asked Ingram if there was anyone in the house and was told that there was not. No evidence was presented indicating any reason to doubt him. A general, unsubstantiated concern for officer safety is legally insufficient to justify a warrantless entry into a residence. And a mere abstract theoretical "possibility" that someone dangerous might be inside a residence does not constitute "articulable facts"' justifying a protective sweep. Based upon this reasoning, Deputy Palanov's entry into defendant's residence, done without permission and without a warrant, was illegal. As a result, all the evidence seen by Deputy Palanov in plain sight as he followed Ingram into the house should have been suppressed. Further, under the "fruit of the poisonous tree "doctrine, Ingram's consent to conduct a more thorough search, as a product of Deputy Palonov's illegal protective sweep and Ingram's subsequent detention, should also have been suppressed; an issue conceded by the Attorney General. Lastly, the evidence recovered as a result of the subsequent search warrant might also be subject to suppression. However, due to an incomplete record, the Court remanded this case back to the trial court for a determination whether the warrant was indeed the product of the prior earlier searches that have herein been determined to be illegal.

Note: Protective sweeps are a problem in that police officers, in their understandable concern for their own safety and laudable tendency to be cautious, have been conducting them for a long time without too much concern over justifying the need to articulate a reasonable suspicion to believe that someone who might constitute a danger is actually in the house. (See the Administrative Note, *Legal Update*, Vol. 17, #7, dated 8/9/2012.) While such suspicionless sweeps are blatantly illegal, it is hard to criticize officers for wishing to stay alive. Not wanting to be the one who causes some officer's unnecessary injury or death by trying to convince you that you should ignore your basic survival instincts, please note my final comment in the above referenced Administration Note: "*So if you conduct protective sweeps as a routine without being able to justify why it was necessary, just know that you won't be able to use your "plain sight" observations to seize evidence or even to obtain a search warrant*." Further, it is a dangerous practice to let suspects, or even friends of the suspect, go back into the house to retrieve personal items for the arrestee, unescorted. In an attempt to avoid the issues discussed in this case, it might be beneficial to ask for permission to go with the person. Should that person be the arrestee, note that contrary to the above-discussed rule, there is authority for the proposition that it is reasonable for an officer to accompany the arrestee back into the house under such a circumstance. (See *Washington v. Chrisman* (1982) 455 U.S. 1.) Also note that there's another recognized exception to the rule of *Buie*: Areas immediately adjacent to the location of an in-the-house arrest, such as closets and other spaces "*immediately adjoining*" the place of arrest, may be searched without any cause to believe that there may be someone there. (See *Maryland v. Buie*, *supra*, at p. 334.)