San Diego District Attorney

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This Edition dedicated to the Memory of Arylnn "Sam" Bove
San Diego Sheriff's Department and District Attorney's Office
Passed Away October 19, 2013
An all-around super human being who will be sorely missed

Remember 9/11/01; Support Our Troops

THIS EDITION'S WORDS OF WISDOM:

"*Of course your opinion matters; just not to me*." (Anonymous)

IN THIS ISSUE: Pg.

ADMINISTRTIVE NOTES:

Note Getting the Legal Update? Not infrequently, I receive e-mails from intended *Legal Update* recipients complaining that despite requesting to be included on the *Update* e-mail list, they haven't been getting them as promised. It seems like almost every time I attempt to track down where the system has failed, it turns out

to be a problem with your employer. Many agencies, in an understandable attempt to prevent viruses and spam from getting into their Internet and office computer systems, automatically weed out incoming e-mails coming from unrecognized addressees. So if you're not getting the *Legal Update* despite a request to be included, or you've sudden stopped receiving them after even years of being included, check first with your own office's IT section to see if they might be blocking the *Update*. If you have your own office computer nerds clear messages from RCPhillips@legalupdate.com, the problem should go away. If it doesn't, then check your own computer's spam file. And if that also fails, then let me know and I'll double check to make sure you haven't been erroneously deleted.

***CASE LAW*:**

***Border Searches*:**

United States v. Cotterman **(9th Cir. Mar. 8, 2013) 709 F.3rd 952**

Rule: Seizing a computer from a person entering the United States from Mexico and subjecting it to a comprehensive forensic analysis over five days requires the agents to have a reasonable suspicion in order to be lawful.

Facts: Defendant and his wife attempted to cross the United States border from Mexico at Lukeville, Arizona. At the primary inspection, the Treasury Enforcement Communication System ("TECS") returned a hit for defendant, indicating that he was a sex offender and was potentially involved in child sex tourism. TECS is an investigative tool of the Department of Homeland Security that keeps track of individuals entering and exiting the country, noting as well whether they are suspected of being involved in crimes. Based upon information obtained from the contact person listed in the TECS entry, along with the defendant's criminal history (a 1992 conviction for two counts of the use of a minor in sexual conduct, two counts of lewd and lascivious conduct upon a child, and three counts of child molestation), it was believed that defendant might be involved "in some type of child pornography." Two laptop computers and three digital cameras were seized from defendant's car. An initial inspection of the computers and cameras revealed what appeared to be family and other personal photos, along with several password-protected files, but nothing incriminating. Border agents had various discussions with supervisors at the Immigration and Customs Enforcement (ICE) office in Sells, Arizona, the ICE Pacific Field Intelligence Unit, and the ICE office in Tucson. It was learned that the alert on defendant was a part of "Operation Angel Watch," which was aimed at combating child sex tourism by identifying registered sex offenders in California, particularly those who were known to travel frequently outside the United States. ICE agents from Sells traveled to Lukeville and interviewed the defendant and his wife. Defendant and his wife were allowed to leave, but his laptops and a digital camera were detained, later being sent to Tucson, some 170 miles away, for a forensic examination. Eventually, hundreds of images of child pornography, many showing defendant molesting a specific 7-to-10-year-old girl over a two to three year period. The

first of these images weren't found until five days after the computers were originally seized. Eventually, hundreds of pornographic images, stories, and videos depicting children were found. Defendant was indicted in federal court for a "host" of child pornography offenses. He filed a motion to suppress, arguing that the evidence gathered from his laptop computer was the fruit of an unlawful seizure. Adopting the findings of a magistrate judge, the federal district court judge granted defendant's motion, ruling that although the search of defendant's computer qualified as an "extended border search," it was not supported by sufficient reasonable suspicion of criminal activity and was therefore illegal. The Government appealed. A split three-judge panel of the Ninth Circuit Court of Appeal reversed, the majority finding that a reasonable suspicion was not required for such an extended border search. However, a rehearing was granted, the ultimate decision to be made by an eleven-justice en banc panel.

Held: The en banc 11-justice panel of the Ninth Circuit Court of Appeal reversed the trial court's dismissal in a split 8-to-3 decision. The government argued on appeal that the forensic examination was part of a routine border search not requiring any suspicion, and alternatively, that reasonable suspicion did in fact exist. The Court first determined that in balancing the Government's interest in protecting its borders from the importation of contraband, including child pornography, with every citizen's Fourth Amendment protects against unreasonable searches and seizures, the search of defendant's laptop in this case required a reasonable suspicion to believe that it contained child pornography. While simply looking through a person's personal computer upon crossing the border requires no suspicion, a full five-day comprehensive forensic analysis of the computer's hard drive is considerably more intrusive. Looking at the totality of the circumstances, and remembering that "reasonableness" is the "touchstone" of any Fourth Amendment analysis, the Court considered a number of factors in determining that reasonable suspicion was required in this case. The factors the court considered included the amount of personal information such a computer may potentially contain along with the fact that agents conducted a comprehensive five-day analysis of the computer's hard drive, delving into things not visible through a cursory look the computer's obvious files. Interestingly enough, the Court held that it was irrelevant that the computer was transported some 170 miles away before it was searched, noting that the location of the search had no effect on the defendant's rights. Also, the fact that the search took five days was important only as to the issue of the degree of intrusiveness involved, particularly in that ultimately defendant never did get his computer back. "It is the comprehensive and intrusive nature of a forensic examination—not the location of the examination—that is the key factor triggering the requirement of reasonable suspicion here." In this case, defendant's prior history alone did not constitute a reasonable suspicion. However, the TECS alert, prior child-related conviction, frequent travels crossing from a country known for sex tourism, and collection of electronic equipment, plus the parameters of the Operation Angel Watch program, taken collectively, that gave rise to reasonable suspicion of criminal activity. When combined with the other circumstances, the fact that an agent encountered at least one password protected file on the laptop, contributed to the basis for finding a reasonable suspicion, thus justifying the more extensive forensic examination. Therefore, the five-day comprehensive forensic

examination of defendant's laptop computer, under the circumstance of this case, was lawful.

Note: The Court further pointed out that this search did *not* fall into either the "extended border search" (such as with the various immigration check points typically found some miles north of the border on major north-south thoroughfares [e.g., Interstate 5 or 15]) or the "functional equivalent of a border" (e.g., international airports and other ports of entry) categories. Neither of these types of locations require any suspicion to conduct routine searches for illegal immigrants and contraband. This case was a simple border search case despite the taking of defendant's computers 170 miles away to Tucson for analysis. Some cases have classified border search cases as "routine" (requiring no suspicion) and "non-routine" (requiring a reasonable suspicion) searches. When agents dismantle cars, x-ray suspects, cut open luggage, or conduct extended detentions of a suspect, the search becomes "non-routine" and requires reasonable suspicion to be lawful. Looking at defendant's cameras and laptops, as in this case, at the border, not taking a lot of time to do so, was very routine. But then by taking them away for days and subjecting them to a "comprehensive computer analysis," it becomes a lot more intrusive and very "non-routine," requiring a reasonable suspicion to be lawful. Looking at it this way, in my opinion, makes the outcome obvious. But three justices dissented, so not everyone agrees. And where you draw the line between the two types of searches—routine vs. non-routine—can still be an issue in any particular case.

***Arresting an Out of Control Minor per W&I 601/625*:**

C. B. v. City of Sonora **(9th Cir. Sep. 12, 2013) __ F.3rd __ [2013 U.S. App. LEXIS 18931]**

Rule: Arresting an 11-year-old minor by handcuffing him, removing him from school, and releasing him to a relative, where the minor is out of control and perhaps a danger to himself, is not clearly in violation of the minor's rights, entitling the arresting officers to at least qualified immunity from civil liability.

Facts: C.B. was an 80-pound, 11-year-old boy who suffered from attention-deficit and hyperactivity disorder (i.e., "A.D.H.D"). On September 28, 2008, C.B. had gone to school without taking his medication which he needed to keep him focused and under control. At some point during the morning, C.B. failed to return to class after a break. The physical education instructor, Coach Karen Sinclair, assisted in returning C.B. to class. However, C.B. was later brought to Coach Sinclair's office because, having caused more disruptions, he "needed to be there for a while." Coach Sinclair's prior history with C.B. included one incident where C.B. had said that he was "tired of feeling the way he felt and he wanted to go out into traffic and kill himself." In exploring these feelings, C.B. told Coach Sinclair that "sometimes I feel like running into traffic." On this date, however, after some "quiet time," C.B. indicated that he was ready to return to class. But then, after having a "rough" morning, C.B. became unresponsive on the playground. Sinclair attempted to speak with C.B. but he wouldn't respond to her inquiries. Concerned that he might run out of the playground area and into the street, Coach

Sinclair had someone call the police for assistance. Sonora Chief of Police Mace McIntosh and Officer Harold Prock, defendants in this civil suit, responded. After being informed that C.B. was "a runner," Officer Prock likewise had concerns about C.B.'s welfare if he were to run. He observed that the school grounds could be easily exited onto a nearby busy roadway. Officer Prock therefore attempted to engage C.B. in conversation for approximately four to five minutes. C.B., however, continued to be unresponsive. Determining that C.B. was "uncontrollable," the officers had C.B. standup and put his hands behind his back. He was handcuffed. After insuring that the handcuffs were not too tight, C.B. was put into a patrol car and transported to his uncle's place of business, the uncle having declined to come to the school to pick him up, where he was released. The entire contact lasted about 30 minutes. C.B., as a Plaintiff/minor, later sued the Sonora Police Department, Chief McIntosh and Officer Prock in federal court, alleging several state (i.e., false imprisonment and the intentional infliction of mental distress) and federal allegations, including Fourth Amendment unlawful seizure and excessive force violations. After some confusion concerning the wording of the jury instructions and verdicts forms, the officers were held civilly liable. The trial court denied the civil defendants' motion for judgment notwithstanding the verdict. Defendants appealed.

Held: The Ninth Circuit Court of Appeal, in a split 2-to-1 decision, reversed. Other than resolving the issue of the trial court's handling of the confusing jury instructions and verdict forms, determining that a new trial was needed, the Court on appeal discussed whether the Sonora P.D. officers were entitled to qualified immunity from civil suit at least as to the federal allegations. In determining whether the officers were entitled to qualified immunity, the Court decided to skip (as is their prerogative) the issue of whether C.B.'s constitutional rights were in fact violated, turning directly to the question of whether the rules concerning the constitutionality of the officers' actions were "so clearly established at the time the defendant(s) acted" that they should have reasonably been aware of them. Welfare and Institutions Code section 601(a) provides in part that "(a)ny person under the age of 18 years . . . who is beyond the control of [his or her parents, guardian, or custodian] . . . is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court." Section 625(a) authorizes a peace officer to take into temporary custody a minor when the officer has "reasonable cause for believing that such minor is a person described in Section 601." The Court noted that section 601(a) does not specifically include school officials when talking about a minor being beyond the control of a "parent, guardian or custodian." Arguably, however, a school official can be considered to be a "custodian." Because California law does not answer this question, the Court found that the officers could not have reasonably known whether or not school officials are in fact temporary custodians of a minor. So civil liability cannot be predicated on this point. The only issue left was whether a reasonable officer could have believed (even if mistakenly) that C.B. was beyond the control of the school officials, as required under section 601, and that he needed to be taken into custody. In this case, the officers were informed by school officials that C.B. (1) was out of control, (2) was "a runner," (3) had been "yelling and cussing," (4) had not taken his medications, and (5) could not remain at school any longer. The Court could find no established case law that would have put a reasonable officer faced with these

circumstances on notice that taking C.B. into temporary custody under section 625(a) would be unlawful. Also, no clearly established case law at the time suggested that the officers were required to conduct additional investigation beyond talking to C.B. before they could rely on the information they received from the school officials, particularly when a prolonged investigation might increase the risk of C.B. running away and into a readily accessible busy street. To the contrary, case law does support the argument that handcuffing during the course of an arrest is lawful, absent proof that the handcuffs caused injury or that the officer ignored s complaint from the arrestee, with nothing to indicate that the same rules don't apply to minors. Based upon all this, with no clearly established case law to the effect that the officers were violating C.B.'s rights by taking him into custody and transporting him to his uncle, the civil defendant's here were entitled to qualified immunity as a matter of law at least as to the federal constitutional violations. The case was therefore remanded to the trial court for further proceedings and a new trial on the state allegations.

Note: But think about it. Would it have been reasonable for the officers to simply tell Coach Sinclair that C.B. was her problem and then just leave? While there is generally no civil liability for a police officer to *not* act at all (as opposed to acting and doing so negligently or in violation of someone's constitutional rights), that's not what police officers are paid to do. C.B. was disrupting the school environment and was potentially a danger to himself. So why anyone could have argued that these officers acted illegally in seeking to end the problem is beyond me. It was also noted by the Court that the incident in issue here occurred prior to the Ninth Circuit's unfortunate decision in *Greene v. Camreta* (9th Cir. 2009) 588 F.3rd 1011, which found civil liability for yanking a minor/victim out of school for an interview without a parent's permission or a court order. Also, *Camreta* was vacated by the U.S. Supreme Court (131 S.Ct. 2020) in 2011. So if you're wondering how *Camreta* might apply to this case, it does not. (See fn. 8 of the decision.)

***Vehicle Code Sections 21650 & 21650.1; Bicycles on Sidewalks*:**

***Spriesterbach v. Holland* (Apr. 9, 2013) 215 Cal.App.4th 255**

Rule: Riding a bicycle on a sidewalk against the direction of traffic is not illegal absent a city or county ordinance making it illegal.

Facts: Plaintiff Michael Spriesterbach, a student at Santa Monica College, was riding his bicycle home from school on National Boulevard in the City of Los Angeles, traveling on the shoulder of the street in the same direction as the flow of traffic. As he approached the intersection of National Blvd. and Barrington Avenue, he saw construction signs up ahead indicating that the sidewalk was closed, and which would leave very little space between the construction barriers and the traffic lanes. So for reasons of safety, Spriesterbach crossed the street so that he could take advantage of the sidewalk on that side, at least until he got past the construction zone. Riding, therefore, on the sidewalk on the left of National Blvd., against traffic, he came to a driveway leading to the parking lot of a supermarket. Janice Holland was stopped in her vehicle at that driveway, waiting to

move into traffic on National Blvd. from the parking lot. Spriesterbach saw her there and figured that she was waiting for him to pass. Holland did not see him, however, and began to move her vehicle forward onto the sidewalk portion of the parking lot exit just as Spriesterbach got in front of her. Holland's vehicle hit the left peddle of Spriesterbach's bike, causing him to fall onto the hood of her car and then onto the sidewalk. Spriesterbach suffered what was later diagnosed as a tear in the labrum in his left shoulder, resulting in having to submit to surgery and some $80,000 in medical expenses. Spriesterbach sued Holland in state court for damages. The jury returned a verdict for Holland, finding that she was not negligent. Spriesterbach appealed from the denial of his motion for a new trial.

Held: The Second District Court of Appeal (Div. 4) affirmed. Spriesterbach first argued on appeal that the trial court erred by not instructing the jury that Holland was "*negligent per se*" (i.e., as a matter of law) for having violated V.C. § 21804.1. Section 21804.1 reads as follows: "The driver of any vehicle about to enter or cross a highway from any public or private property, or from an alley, shall yield the right-of-way to all traffic . . . approaching on the highway close enough to constitute an immediate hazard, and shall continue to yield the right-of-way to that traffic until he or she can proceed with reasonable safety." The Court disagreed, noting that violating a vehicle code prohibition such as section 21804.1 does not mean that a driver was negligent as a matter of law. Rather, it merely raises a presumption of negligence which is subject to rebuttal. Violation of a traffic regulation may be excused, at least from a civil liability/negligence standpoint, whenever "[t]he person violating the statute, ordinance, or regulation did what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law . . . ." (See Evid. Code § 669(b)(1).) The jury in this case was instructed as to the general principles of negligence. With these instructions in mind, the jury found in a special verdict that despite violating section 21804.1, Holland was not negligent. Secondly, Spriesterbach complained that the jury was erroneously instructed that he was negligent per se because immediately before the accident, he had been riding his bike on the sidewalk against the flow of traffic in violation of V.C. § 21650.1. On this issue, the Court agreed with Spriesterbach, but held that the error was harmless and did not require reversal. Specifically, the Court ruled that section 21650.1 is not violated by a bicyclist riding on the sidewalk against the direction of traffic. Section 21650 provides that vehicles must be driven on the "right half of the roadway," but that bicycles may be operated "on any sidewalk, on any bicycle path within a highway, or along any crosswalk or bicycle path crossing, where the operation is not otherwise prohibited by this code or local ordinance." The incident in this case occurred in the City of Los Angeles which does not have an ordinance prohibiting the riding of a bicycle on a sidewalk. Vehicle Code sections 360 & 590 (highway), 530 (roadway) and 555 (sidewalk), must be consulted for what constitutes a highway, roadway, or sidewalk, respectively. From these sections, it is clear that a "highway" has two distinct parts; a "roadway," intended for vehicular travel, and a "sidewalk," intended for pedestrian travel. A sidewalk, therefore, is not a part of the roadway. Section 21650.1 provides that a bicycle operated "on a roadway, or the shoulder of a highway, shall be operated in the same direction as vehicles are required to be driven upon the roadway." But because Spriesterbach was not riding in the "roadway," nor the shoulder

of a highway, as those terms are defined, he was not violating section 21650.1. There is no statutory requirement, therefore (absent a city or county ordinance), that bicycles be ridden in the same direction as the traffic while on a sidewalk. To instruct the jury that Spriesterbach was violating a statute by riding on the sidewalk while facing opposing traffic was error. But because the jury in this case found that Holland was not negligent, thus forestalling any civil liability on her part, whether or not Spriesterbach was in violation of any statute is irrelevant. The trial court's error in so instructing the jury, therefore, would not have made any difference in the outcome.

Note: Although the legal analysis is a bit confusing, the rule is straightforward. Riding a bike on a sidewalk in any direction is lawful absent a more restrictive local ordinance. So you need to check your city or county ordinances before using a perceived violation as your cause to stop and talk to a bike rider. The fact that this rule is explained here in a civil case is irrelevant to its validity should you attempt to use it in a criminal context. The Court, in footnote 3, by the way, suggested that rather than allowing for individual cities and counties to establish their own ordinances dealing with the riding of bicycles on sidewalks, the state Legislature needs to take the initiative and establish a state-wide rule on this. This, per the court, citing all the different conflicting rules within Los Angeles County alone, would eliminate the confusion caused as one passes from one city to another.

***Fourth Waiver Searches; Property of a Third Person*:**

People v. Ermi **(May 14, 2013) 216 Cal.App.4th 277**

Rule: A police officer conducting a Fourth waiver probation search may search those portions of a residence over which the officer reasonably believes the probationer has joint control or access.

Facts: Oxnard Police Officer Paul Knapp, a 16-year veteran, went to the apartment of Ronald Williams intending to conduct a Fourth waiver probation search. Williams was on probation and on Fourth waiver search and seizure conditions. Defendant, Williams's girlfriend, and who was not on search and seizure conditions herself, answered the door. She called to Williams who came out of a bedroom. Defendant told Officer Knapp that she, Williams, and their son all shared the bedroom. In conducting the Fourth-waiver search, Officer Knapp entered their bedroom and found it cluttered with boxes, bags, and other things "strewn about." In the middle of the room Officer Knapp found a tan purse on a chair. As he picked up the purse, defendant said that it was her purse and that she needed some medication out of it. Officer Knapp told her that he'd retrieve the medication for her. Opening the purse, Officer Knapp found a small makeup bag. In his training and experience he knew that both males and females would commonly carry drugs in similar makeup bags. Defendant (surprisingly; . . . *NOT*!) claimed that the bag was not hers, that she didn't know how it got into her purse, and that a friend had recently borrowed the purse. However, she appeared nervous, had dilated pupils, and appeared to be under the influence of a controlled substance. In the makeup bag, Officer Knapp found a glass vial of methamphetamine and some other narcotics paraphernalia. Other

dope and paraphernalia was found in other parts of the apartment. Defendant was arrested and charged in state court with various narcotic-related offenses. Her motion to suppress the contents of the makeup bag was denied. Defendant appealed.

Held: The Second District Court of Appeal (Div. 6) affirmed. The issue on appeal was the legality of Officer Knapp's warrantless search of defendant's purse when she was not the one who was subject to search and seizure conditions. Defendant argued on appeal, as she did in the trial court, that Officer Knapp had no reason to believe that the purse belonged to Williams. The Court ruled that that was not the test. Persons who are subject to warrantless search and seizure conditions cannot be allowed to so easily secret illegal contraband, hiding it from authorities. To prevent this, the rule has developed that an officer conducting a probation Fourth wavier search may search those portions of a residence (or other areas) over which the officer reasonably believes the probationer has joint control or access. The fact that the item searched may be a "distinctly female depository," even though the probationer is male, does not mean that it is not an area where the probationer might seek to secret illegal contraband. Here, the purse was on a chair in the middle of a cluttered bedroom that the probationer shared with defendant. Officer Knapp saw Williams, the probationer, emerge from the bedroom just moments before the search. Based upon Officer Knapp's training and experience, he knew that it was not unusual for probationers to hide contraband in a roommate's belongings to avoid detection. The Court found that "substantial evidence supported the trial court's express factual findings of (the probationer's) control or access" over defendant's purse. The search of that purse, therefore, was lawful. "To rule otherwise would enable a probationer to flout a probation search condition by hiding drugs in a cohabitant's purse or any other hiding place associated with the opposite gender."

Note: "*Joint control or access*" has become the watchword in these Fourth waiver search cases of a non-probationer or parolee's belongings. (See also *People v. Smith* (2002) 95 Cal.App.4th 912; & *People v. Schmitz* (2012) 55 Cal.4th 909, 916-933.) The standard of proof is merely a "*reasonable suspicion*." (*People v. Boyd* (1990) 224 Cal.App.3rd 736, 745-346, 749-750.) But you do have to be able to articulate some reason to believe (amounting to at least a reasonable suspicion) that the item or place to be searched constitutes an area over which the one on the Fourth waiver has control or access. (*People v. Baker* (2008) 164 Cal.App.4th 1152; & *People v. Alders* (1978) 87 Cal.App.3rd 313, 317-318.) This is a good case further solidifying this rule about which, at least in the past, there has been a lot of confusion.

***Miranda*; *Spanish Language Admonishments*:**

United States v. Botello-Rosales **(9th Cir. July 15, 2013) 728 F.3rd 865 [2013 U.S. App. LEXIS 14209]**

Rule: While a *Miranda* admonishment need not include the exact language as dictated in the *Miranda* decision, it must still "reasonably convey" the defendant's Fifth Amendment self-incrimination rights.

Facts: Defendant was arrested on charges of conspiracy to manufacture marijuana and possession of a firearm by a person unlawfully in the United States. (The circumstances of defendant's offense and arrest were not described in this "per curiam" decision, other than where it relates directly to the issues in this case.) Upon his arrest, defendant was advised of his *Miranda* rights in English. With defendant being a Spanish-speaker, however, the detective (apparently *not* a native Spanish-speaker) then attempted a Spanish-language advisement. In advising defendant of his rights in Spanish, the detective told him what was later translated into English as: "*You have the right to remain silence. Anything you say can be used against you in the law. You have the right to talk to a lawyer and to have him present with you during the interview. If you don't have the money to pay for a lawyer, you have the right. One, who is free, could be given to you*." Charged in federal court with the above offenses, defendant filed a motion to suppress his resulting statements. Although acknowledging the inadequacies of the above admonition, the trial court found that they were legally sufficient. The judge therefore denied defendant's suppression motion. Defendant entered a conditional plea of guilty and appealed.

Held: The Ninth Circuit Court of Appeal reversed. The Court ruled that the above advisal failed to "*reasonably convey*" his rights as required by *Miranda v. Arizona* (1966) 384 U.S. 436. Although the Supreme Court has held that a "talismanic incantation" is not required (*California v. Prysock* (1981) 453 U.S. 355.), there are limits as to how far an admonishment can stray. When talking about a "free" attorney, the detective used the Spanish term "*libre*," intending it to mean "*without cost*." However, the correct Spanish-to-English translation for this term is "*to be available or at liberty to do something*." Also, telling defendant that a lawyer "*who is free, could be given to you*" is legally inadequate. Phrased like this makes it sound like the right to appointed counsel is contingent on the approval of a request, or on the lawyer's availability, rather than that the government has an absolute obligation to provide one. Given the inadequacies of the above parts of the advisal, the Court declined to reach the issue of whether telling defendant that; "*Anything you say can be used against you in the law*" is legally sufficient. Lastly, the Court rejected the argument that the prior English (and presumably correctly stated) advisal helped. All this did was create some confusion as to which set of warnings was the correct one. Defendant is not expected to have the legal expertise to be able to resolve this conflict. The case was therefore remanded for defendant to withdraw his guilty plea and a trial court ruling on the motion to suppress that is consistent with this decision.

Note: For many years now, I've consistently counseled officers to (1) read the *Miranda* admonishment from a card or preprinted form no matter how well you think you know it, and (2) don't try to do a Spanish (or other foreign language) advisal unless you know and speak the language fluently. This issue is one that could have, and should have, been avoided by the use of a little common sense, an admonishment card, and someone who is intimately familiar with the Spanish language. You can't wing it like this and expect a positive result.