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Remember 9/11/01, 12/7/41; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

“Calling an illegal alien an ‘undocumented immigrant’ is like calling a drug dealer an ‘unlicensed pharmacist.’” (Unknown.)

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ADMINISTRATIVE NOTES:

Working Out the Bugs: If you see that others are getting notice of the Updates as they are published, but you are not, it could be because your employer is blocking the messages (they being sent out en mass) as possible “spam.” If this appears to be the problem, you might check with your own IT experts and ask for them to clear e-mails from RCPhillips@legalupdateonline.com. Also, if clicking on the link provided hasn't been working for you, try typing in the website

“legalupdateonline.com” into your browser and getting into the system that way. In the mean time, please excuse the bugs in the system while we’re trying to put together what will soon be a very useful website. We’re getting there.

CASE LAW:

Miranda; Custody, Interrogation, Due Process and Expectation of Privacy

People v. Leonard (May 17, 2007) 40 Cal.4th 1370

Rule: (1) A suspect who is told that he is not under arrest and is free to leave is not “*in custody*” for purposes of *Miranda*. (2) Recording a conversation between an in custody suspect and a visitor is not an interrogation. (3) The suspect’s due process rights are not violated under these circumstances. Also, (4) videotaping a suspect’s telephone conversations is not illegal, there being no expectation of privacy, when the suspect knows he is being taped.

Facts: Two employees and a customer of a “Quik Stop” convenience store in Sacramento were shot dead during a robbery in 1991. A week later, three employees of a nearby Round Table Pizza restaurant were similarly murdered in another robbery. A man in dark clothing, including a trenchcoat, had been seen at or near both homicide scenes. Defendant, who lived nearby, was questioned two days later when he was seen walking in the area similarly dressed. But because he was quiet, timid, frightened, confused, and appeared to be mentally disabled, he was determined “not a likely suspect.” His photograph was taken and he was released. Three and a half months later, defendant was tentatively identified in a photo lineup by the witnesses who had seen the person in a trenchcoat near the murder scenes. Detectives went to defendant’s home and asked him to come to the station to provide fingerprints and answer some questions. Because defendant had epilepsy and couldn’t drive, detectives drove him, in the backseat but unhandcuffed, to the station. Defendant was not advised of his *Miranda* rights, but rather told that he was not under arrest, that he did not have to answer any questions, and that he was free to leave at any time. Asked to take a polygraph test, defendant declined to do so without consulting an attorney, but agreed to answer questions. When asked if they could search his apartment, defendant again said “no,” at least until he could talk to an attorney. During this interview, defendant received permission to make several phone calls to a friend and to his father. During the calls, which were openly videotaped, the friend suggested to defendant that he should leave, but defendant said that he wanted to “get it over with.” After two calls to his father, defendant admitted to the officers that he had purchased and given to his father some bullets that were of the same type used in the murders. After taking defendant home, the detectives went to defendant’s father’s home and retrieved a gun defendant had left there. After the gun was determined through ballistics to be the murder weapon, defendant was arrested and taken back to the sheriff’s station. His father was asked to come to the station and allowed to talk with his son. During this conversation, defendant told his father that he had committed the murders and that he had done them alone. Using at trial the tapes of both his interview by detectives

and his conversation with his father, defendant was convicted and sentenced to death. His appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. Among the issues litigated on appeal was the admissibility of the taped interview by detectives and his conversation with this father. (1) Defendant argued that the statements obtained in the interview with the detectives were illegally obtained because he had not been advised of his *Miranda* rights. The Court, however, noted that a *Miranda* admonishment and waiver is not necessary unless the defendant is “*in custody*” at the time of the interview. “Whether a person is in custody is an objective test; the pertinent inquiry is whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” Under the circumstances of this interview, having been told that he was not under arrest and that he was free to leave, “a reasonable person in [the] defendant’s position would have felt free to end the questioning and leave.” Defendant, however, asserted that the issue was “whether a reasonable person with defendant’s age, low intelligence (78 to 80), and developmental disability (“mild to moderate” brain damage) would have felt free to leave.” Without conceding that these factors should even be considered, the Supreme Court found that this initial interview was non-custodial despite defendant’s problems. Aside from being told that he was not under arrest and that he was free to leave, defendant was in fact released after the interview. The interrogation room they used was unlocked. He was allowed to use the bathroom whenever he wanted. Defendant himself expressed a desire to stay and “get it over with.” He also obviously understood that he could say “no” to various requests and consult with an attorney if he wished, having invoked that right in response to several inquiries. Under these circumstances, no reasonable person, even with defendant’s disabilities, would have believed that he was not free to leave. (2) Defendant also challenged the admissibility of the taped conversation he had with his father because no one had advised him of his *Miranda* rights. The Court, however, held that while defendant at that point was clearly in custody, having just been formally arrested, there was no “*interrogation*” as the term is legally defined. *Miranda* does not apply unless “*custody*” coincides with an “*interrogation*.” An “*interrogation*” includes any “practice that the police should know is reasonably likely to evoke an incriminating response from a suspect.” Defendant argued that the detectives should have expected defendant to incriminate himself when they let him talk to his father. However, prior U.S. Supreme Court authority has held that a suspect’s “conversations with his own visitors are not the constitutional equivalent of police interrogation.” The fact that the detectives were hoping that defendant would make incriminating statements to his father does not make it an interrogation. There being no interrogation, a *Miranda* admonishment was not a prerequisite to the admissibility of his statements to his father. (3) Next, defendant argued that both sets of statements should not have been admitted into evidence as a 14th Amendment “*due process*” violation. Under the 14th Amendment, coerced (i.e., “*involuntary*”) statements, being potentially unreliable, should not be allowed into evidence. Defendant here argued that due to his limited intelligence and developmental disabilities, his lack of experience with law enforcement, the fact that the interrogation took place in a small, windowless room, the length of the interrogation (3½ hours), and the fact that defendant had to rely upon the detectives for a ride home, all worked together to make the statements obtained

in both situations “*due process*” violations. The Court disagreed. The 14th Amendment is not violated absent some “*coercive*” police activity. The detectives here did nothing to affirmatively coerce defendant into talking. To the contrary, they repeatedly told him that he was not required to talk to them. (4) Lastly, defendant complained that videotaping his telephone call to his father violated the Fourth Amendment, the California Constitution’s right to privacy, and Title III of the federal Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3711). The Court, however, found that none of these provisions are violated where a suspect knows he is being videotaped. Under these circumstances, defendant did not have a reasonable expectation of privacy. His statements, therefore, were properly admitted into evidence against him.

Note: All the rulings in this case are standard, well-settled rules, with no surprises. The only issue I can see is the Court’s belief that it *might* be proper to consider defendant’s mental and emotional issues in determining whether he was in custody during the initial interrogation. This is an incorrect statement of the law. The U.S. Supreme Court, in *Yarborough v. Alvarado* (2004) 541 U.S. 652, specifically decided that “*custody*” is an “*objective test*,” and does *not* take into consideration *subjective* factors relevant to a particular person, such as his youth. But either way, the Court here decided that even if you consider the fact that defendant had mental and emotional issues, he should have understood that he was not in custody under the circumstances. As for the propriety of letting defendant talk with his father, see the next case, below.

Interrogations; Using an Unwitting Agent:

People v. Thornton (June 28, 2007) 41 Cal.4th 391

Rule: Putting a relative in with an in-custody suspect, prior to arraignment, and recording their conversation, is not a Fifth, Sixth, or Fourteenth Amendment violation.

Facts: Defendant, a 19-year-old piece of crap with absolutely no redeeming social value, needed a car to use in his plan to kidnap his 16-year-old former girlfriend of two months; Stephanie C. Upon seeing Kellie Colleen O’Sullivan sitting in her Ford Explorer in a parking lot in Ventura County, defendant abducted her at gunpoint and drove her to a secured area where he shot her to death. Leaving O’Sullivan’s body there, and after stopping to have “*Stephanie*” tattooed on his shoulder, defendant confronted Stephanie and her mother at gunpoint at their home, firing a shot at her mother while forcing Stephanie into the car. Defendant took Stephanie to Reno, Nevada. In Reno, Stephanie sought the help of a casino security guard while defendant was distracted with his gambling. Reno police arrested defendant after an armed confrontation. With O’Sullivan’s body yet to be found, Ventura County Sheriff’s Sergeant Michael Barnes came to Reno to interview him. Defendant admitted stealing O’Sullivan’s car, but claimed that he found it sitting unattended with the key in the ignition. He denied knowing anything about O’Sullivan herself. Six days later, after defendant was ordered to be extradited, Sgt. Barnes returned to Reno to escort defendant back to Ventura. On that same day, Kellie O’Sullivan’s decomposed body was found. After bringing defendant back to Ventura, but before defendant was arraigned, Sgt. Barnes arranged for

defendant's grandmother to speak with him at the police station in the hope of obtaining incriminating statements. She was not told, however, to ask questions for the police or otherwise act on their behalf. The police also did not tell her, at least initially, that they had found O'Sullivan's body. But while she was talking to defendant, they interrupted their conversation and told her out of defendant's presence that they had found O'Sullivan's body, suggesting that she tell defendant this. During the recorded conversation between defendant and his grandmother, defendant denied committing any violent crimes. However, he told her: "I don't care about her, I'm just tired." He also made some "*consciousness of guilt*" comments, such as expressing a fear of never leaving prison. The tape-recording of this conversation was used at defendant's trial. Defendant was eventually convicted of murder (and other charges) with special circumstances, and sentenced to death. His appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. One of the issues on appeal was the admission into evidence of the taped conversation between defendant and his grandmother after being extradited but before arraignment. Defendant argued that this orchestrated meeting between him and his grandmother, "manipulat(ing)" her into speaking to him for the purpose of eliciting incriminating statements, violated his Fifth (self-incrimination), Sixth (right to an attorney) and Fourteenth (due process) Amendment rights. The Court, however, found no error in this evidence-gathering tactic. *Fifth Amendment:* Noting that the rule of *Miranda* is intended to protect a defendant from custodial interrogations absent a waiver of his Fifth Amendment rights, the Court pointed out that putting defendant's grandmother into an interrogation room with him did not constitute an "*interrogation.*" An "*interrogation . . .* refers to questioning initiated by the police, or its functional equivalent, not voluntary conversation. . . . The 'functional equivalent' to express questioning involves police-initiated deceptive techniques designed to persuade or coerce a criminal defendant into making inculpatory statements." But merely placing a relative with defendant (at least as long as she is not acting as a police agent) is not conduct "reasonably likely to elicit an incriminating response." Here, grandma was not directed to ask any specific questions. To the contrary, defendant's grandmother was hoping to elicit information to "*exculpate,*" not incriminate, him. Under these circumstances, there was no police-initiated interrogation or its functional equivalent. Therefore, the Fifth Amendment was not violated. *Sixth Amendment:* The Court noted that defendant had not yet been arraigned on any of the California charges at the point in time when his grandmother was allowed to talk to him. One's Sixth Amendment rights don't kick in until he's been arraigned. *Fourteenth Amendment:* Defendant's Fourteenth Amendment complaint was that using his statement about the victim that "I don't care about her" was "so fundamentally unfair as to violate . . . due process" The Court found no unfairness in the use of this statement against him. Admitting this statement into evidence was a discretionary call on the part of the trial judge. There was no abuse of this discretion here.

Note: Although the Court mentions that defendant's extradition attorney tried to invoke his constitutional rights while still in Reno, advising defendant on the record not to submit to any questioning and securing defendant's agreement that he would not, the legal effect of this tactic is never discussed. Had this argument been made, however, it would have

failed. Such an attempted invocation, prior to the time when an interrogation is “imminent” (commonly referred to as an “anticipatory invocation”) is totally ineffective from a legal standpoint. (See *People v. Avila* (1999) 75 Cal.App.4th 416; *People v. Beltran* (1999) 75 Cal.App.4th 425.) The main importance of this case, however, is in discussing the tactic of putting a friend, relative, or maybe even a co-suspect, in with an arrested, but as of yet unarraigned, suspect. Just be careful that you don’t tell your “informant” what to ask, or he will likely become your agent; held to the same standards as any law enforcement officer. If you do that, all the rules change. And note that you cannot do this *after* his arraignment, at which time he is thereafter protected from any attempts to “deliberately elicit” incriminating statements. (*Massiah v. United States* (1964) 377 U.S. 201.), a serious Sixth Amendment violation.

Computer Checks on License Plates and Vehicle Passengers:

***United States v. Diaz-Castaneda* (9th Cir. Jul. 18, 2007) 494 F.3d 1146**

Rule: Random computer checks on license plates is not a search and does not implicate the Fourth Amendment. It is also lawful to “ask” a passenger for his identification and to run a computer check on him.

Facts: An Oregon deputy sheriff ran a random computer check on the license plate of a Ford pickup truck that was ahead of him on the highway. The license came back registered to a Soilio Diaz and showed that Diaz’s driver’s license had been suspended. The physical appearance of the person driving the pickup was consistent with the information the deputy received on Diaz. Suspecting that Diaz was the driver of the car, he was stopped and, upon verifying his identity, arrested for driving on a suspended driver’s license. Diaz’s brother, defendant, was a passenger in the car. Turning his attention to defendant, the deputy said “*licencia*,” in effect, asking for his driver’s license. Defendant handed him an Oregon driver’s license that correctly identified him. In order to determine whether defendant could legally drive Diaz’s car so that he wouldn’t have to impound it, the deputy ran a computer check on him. It was discovered from this that defendant had an outstanding immigration detainer for his arrest as an illegal alien. In fact, defendant had been deported five times before and had a record for manslaughter. Defendant was later indicted in federal court on a charge of illegal re-entry into the United States subsequent to an aggravated felony conviction (8 U.S.C. § 1326(a), (b)(2)). The district court judge denied defendant’s motion to suppress his identity and his status as an illegal alien. After pleading guilty, defendant appealed.

Held: The Ninth Circuit Court of Appeal affirmed. First, the Court noted that defendant, even though merely a passenger in the car, had standing to challenge the legality of the stop of Diaz’s car. (See *Brendlin v. California* (2007) 127 S.Ct. 2400.) He also had standing to challenge the legality of the deputy asking him for his identification. With standing not an issue, defendant first challenged the legality of checking Diaz’s license plate without an articulable suspicion of any wrongdoing. In response, the Court held that checking a license plate does not qualify as a search under the Fourth Amendment. “[W]hen a vehicle is [at a] location where it is readily subject to

observation by members of the public, it is no search for the police to look at the exterior of the car.” With a license plate that is observable on the exterior of the car, in plain view, there is no reasonable expectation of privacy in that license plate. Then, a computer check of a license plate—something that the driver likely never even knows occurred—is not intrusive. The U.S. Supreme Court has previously held that there is no reasonable expectation of privacy in one’s vehicle identification number (VIN) that is normally visible on the dash from outside of the car. The same rule applies to a license plate number. As for the propriety of running a computerized check on that license plate, Supreme Court precedent has held that there is no expectation of privacy in such information about a vehicle or its operator even though that information is not otherwise readily available to the public. Also, the possibility of database error or police abuse does not create an expectation of privacy where none existed before. The Fourth Amendment, therefore, does not prevent an officer from randomly checking license plates and running computer checks on them. In this case, discovering through the license plate check that the vehicle’s registered owner had a suspended license, and that the driver physically resembled the registered owner, the deputy had sufficient cause to make a traffic stop. Next, it is also not a Fourth Amendment violation to “ask” a passenger for his driver’s license. Once that identification is lawfully (i.e., consensually) obtained, it is then lawful to access non-private law enforcement databases seeking information about that person. And even if there is some Fourth Amendment implications in doing this, the officer’s actions here, attempting to determine whether defendant could lawfully drive Diaz’s car, was not unreasonable.

Note: “Asking” for the identification of a vehicle’s passenger is lawful. There is even 9th Circuit authority for the proposition that an officer may “demand” it. (*United States v. Christian* (9th Cir. 2004) 356 F.3rd 1103.) But should the passenger decline to identify himself, the officer is left without any recourse. Absent at least a reasonable suspicion to believe that the passenger himself either is, was, or is about to be involved in criminal activity, there is no legal requirement that a vehicle’s passenger identify himself. (See *Kolender v. Lawson* (1983) 461 U.S. 352; *Brown v. Texas* (1979) 443 U.S. 47, 52.) Also note that even if the Court had ruled that it was illegal to randomly check license plates or that it was improper to ask defendant for his identification, it is a rule of law that neither a person’s *body* nor his *identity* is subject to suppression “even if it is conceded that an unlawful arrest, search, or interrogation occurred.” (*INS v. Lopez-Mendoza* (1984) 468 U.S. 1032; *United States v. Gudino* (9th Cir. 2004) 376 F.3rd 997.) So the defendant here was fighting a losing battle no matter what.

Probable Cause to Arrest:

***John v. City of El Monte* (9th Cir. Sep. 26, 2007) 505 F.3rd 907**

Rule: A victim’s believable account of sexual abuse, supported by other consistent factors and the officer’s training and experience, establishes probable cause to arrest.

Facts: Ten-year-old Ashley got caught by her teacher, Margaret John, passing a note to another student. In the note, Ashley wrote that she “hop[ed] Ms. John dies today like

poisoning her or something,” and that Ms. John was “a fucken [sic] perv” and a “lesbian bitch.” John took the note to the school principal who called in the police. Eric Youngquist, a ten-year veteran police officer with child abuse experience and training in interview techniques, conducted the investigation. Officer Youngquist attempted to interview Ashley at the school about why she’s written that note but found her unresponsive. So he asked her if she’d rather do the interview at the police station, and she said she would. At the police station, Ashley described an incident where Ms. John touched her on her breast and vaginal area, both over her clothing. Consistent with his training, Youngquist interpreted Ashley’s mannerisms, her reluctance to talk about the incident, and her refusal to go along with Youngquist’s attempts to exaggerate what happened, as indications that she was telling the truth. Officer Youngquist also considered her note, written shortly after the incident and in secret to a friend, but without an apparent intent to cause Ms. John any trouble, as corroboration. Based upon all these circumstances, Officer Youngquist determined that he had probable cause to arrest John. When he attempted to interview John, she called an attorney who told her that prior to any interview to make sure she documented her request for an attorney. She told Officer Youngquist this at which time he told her that because she was requesting an attorney he couldn’t interview her and had no choice but to arrest her. So he did. John remained in custody for 36 hours before being released when the district attorney declined to file charges. John then filed a civil suit in federal court alleging that she had been arrested without probable cause. The federal district court declined to grant Youngquist’s motion for summary judgment (i.e., pre-trial motion to dismiss). Youngquist appealed.

Held: The Ninth Circuit Court of Appeal reversed. The issue here is whether Officer Youngquist, under the circumstances and based upon the information he had at the time, had probable cause to arrest Ms. John. The Court held that he did, and that the trial court therefore should have granted his motion for summary judgment. “Probable cause to arrest exists when officers have knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe an offense has been or is being committed by the person being arrested.” A court is to consider the “totality of the circumstances.” In this case, Officer Youngquist didn’t just accept Ashley’s story on its face. Rather, he used his training and experience with child abuse cases, as well as the advanced interview techniques he’d learned, in evaluating her story. Youngquist tested Ashley’s veracity and reliability in various ways which, in his experienced judgment, indicated to him that she was telling the truth. For instance, Youngquist provided a “false and exaggerated” version of the story she’d told him. Ashley didn’t take the bait, but rather corrected him to a version that was consistent with what she’d already told him. Also, Youngquist reasonably believed that the note itself, written by Ashley shortly after the incident and under circumstances that were not in contemplation of litigation, tended to corroborate her story. These circumstances in their totality, and viewed objectively (i.e., as a reasonable officer would have), establish sufficient facts and circumstances upon which Officer Youngquist could deduce that he had “reasonably trustworthy information” establishing probable cause. The Court also disagreed with the trial court’s conclusion to the effect that Officer Youngquist should have investigated Ashley’s allegations further before arresting Ms. John. While it might have been prudent for him to do so, that does not mean that he didn’t have probable cause to arrest her when he did.

The arrest, therefore, was lawful. The trial court should have granted Youngquist's motion for summary judgment.

Note: After finding that Officer Youngquist had probable cause to arrest Ms. John when he did, the Court offers some good investigative advice. Just because you have probable cause does not always mean that you should necessarily act on it right then and there. As noted by the Court; "Youngquist appears to have acted with unseemly haste in arresting her. Had he investigated the matter further before doing so, he might not have taken that action at all." While there may be instances when an arrest is necessary and prudent (i.e., the suspect is an escape risk or a danger to others), many situations do not require such immediate action. Justice tends to be accomplished more often when an officer takes his (or her) time and thinks about what he (or she) is doing before charging in blindly.

Search Warrants; Execution in an Unreasonable Manner:

Macias v. County of Los Angeles (Oct. 27, 2006) 144 Cal.App.4th 313

Rule: Forcing a detained person to stand in public with his genitals exposed for an hour, absent justification for doing so, is constitutionally unreasonable.

Facts: Detective Ruben Nava of the Los Angeles County Sheriff's Department received information from a confidential informant that a person named Steve Hernandez, a reputed member of the Pico Nuevo street gang, lived in a garage belonging to Trinidad Macias. According to the informant, Hernandez sold methamphetamine from Macias' garage without Macias' knowledge. Hernandez supposedly also stored weapons either in the garage or under the house. Detective Nava took certain unspecified steps to corroborate the informant's information. Hernandez was observed at one point standing in the doorway to Macias' garage. Based upon this information, a search warrant (the validity of which was not contested) was obtained for Macias' home and garage. The warrant was executed at about 5:00 a.m. one morning. According to Macias' later filed civil suit, Macias was found by detectives sitting on his toilet praying the rosary, naked from the waist down. Macias was at the time a 60-year old retired college professor with a 90% hearing loss. The first he knew that anyone was in his house was when he felt rumbling, like an earthquake, as the officers broke into his home. Three officers "burst into the bathroom with their guns drawn" (still according to Macias' allegations). While trying to signal to the officers that he was deaf, Macias was "pulled . . . off the toilet, (thrown) . . . to the floor, and dragged . . . outside, striking his shoulder against the wall in the process." Forced to stand in his driveway with nothing on but a t-shirt, "with his genitals exposed," he was held there for roughly one hour even though it took only four minutes to check his house for other suspects. After finally being allowed to reenter his house, get dressed, and recover his hearing aid, Macias told deputies that Hernandez lived down the street with his mother. The deputies continued to detain Macias in his home for another 20 to 40 minutes while they attempted to find Hernandez at his mother's home. Macias later filed a civil suit in state court against the involved deputies and everyone up the chain of command, alleging that the deputies acted unreasonably in the manner that they executed the search warrant. The civil defendants (the deputies) filed a motion for summary judgment (i.e., to dismiss the civil suit prior to trial), arguing a whole different

(and much more civilized) version of what had occurred. The trial court granted the officers' summary judgment motion (i.e., dismissing the lawsuit), finding that Macias had failed to show a triable issue as to whether a reasonable officer would have understood that he was violating a clearly established constitutional right. Macias appealed.

Held: The Second District Court of Appeal (Div. 1) reversed, agreeing with Macias that the trial court should not have granted the deputies' summary judgment motion. In considering a motion for summary judgment, the issue for the court is not whether the deputies did in fact violate the plaintiff's constitutional rights, but rather whether the facts as alleged by the plaintiff, assuming them to be true, would constitute a violation of the plaintiff's constitutional rights. If not, then the case will be dismissed. If yes, then the officers might still escape liability through "*qualified immunity*" if it is found by the court that the plaintiff's rights that were violated were not clearly established in the law. Aside from criticizing the manner in which the trial court reviewed these issues (going straight to the qualified immunity issue without first having decided whether the deputies violated any constitutional rules), the Court held here that if Macias' allegations can be proved, then a civil jury could find that the deputies did in fact violate his constitutional rights. Specifically, it is a Fourth Amendment violation to detain a person incident to the execution of a search warrant in an unreasonable manner. Holding a half-naked person, with his genitals exposed, out on his driveway for an hour when it only took four minutes to determine that there was no one else in the house who might pose a danger to them, is "patently unreasonable." "While (the officers) argument might justify briefly whisking Macias out of the house both for his own safety and to prevent him from destroying evidence or picking up a weapon, it fails to show that Macias' semi-nude, hour-long, outdoor detention was reasonable." On the next issue; i.e., whether despite the constitutional violation, the officers are entitled to "qualified immunity" protection from civil liability, the test is "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." The Court held here that if Macias can prove that he was in fact held out on his driveway with his genitals exposed as alleged, the deputies should have recognized that this was unreasonable. They will not be entitled, therefore, to qualified immunity. The trial court should not have granted the deputies summary judgment motion.

Note: Most of the rest of the decision discusses which of the deputies are potentially liable, referring to those with possible responsibility for what happened as "*integral participants*." But I think it's enough for you to know at this point that if you are one of the officers involved in a situation like this, there is the *potential* for you to be civilly liable along with your partners. But don't get all excited and indignant about the allegations Macias makes in this case. All the Court is saying here is that as long as there are allegations from the civil plaintiff supporting a finding of liability, then it must be left for a jury to decide who is telling the truth. The Court did not say that they believe Macias, or that a jury will. Being falsely accused is a part of the job. It has happened to all of us at one time or the other, so don't feel like the Lone Ranger when it happens to you. All you can do to minimize the possibility of this happening to you is to act reasonably in all your contacts with the public.