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

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THIS EDITION'S WORDS OF WISDOM:

"*Nothing sucks more than that moment during an argument when you realize you're wrong*." (Anonymous)

IN THIS ISSUE: Page:

ADMINISTRATIVE NOTES:

Electronic Surveillance of a Vehicle in Public: The clear rule has always been that there is no constitutional impediment to the warrantless attaching of a battery operated electronic surveillance device (e.g., a beeper or GPS) to the outside or undercarriage of a motor vehicle and monitoring the movements of that vehicle as it travels in any place open to the public. (See *United States v. Knotts* (1983) 460

U.S. 276.) But a recent federal circuit court of appeal decision out of Washington D.C. has questioned the validity of this rule, at least in those cases where the monitoring of the vehicle is for an extended period of time. In *United States v. Maynard* (D.C. Cir., 2010) __ F.3rd __ [2010 U.S. App. LEXIS 16417], the federal court found that *Knotts* (where the surveillance was for only a day) did not intend to allow for warrantless surveillances over an extended period of time, and that use of a GPS attached to the defendant's car for over a month (1) was a search, and (2) required a search warrant. Based upon this, I went back and re-read *Knotts*. In my not-always-so-humble opinion, aside from that fact that a federal circuit court of appeal decision is not binding on our state courts, the *Maynard* decision is just plain wrong. *Knotts* based its decision on the lack of an expectation of privacy in the act of driving a motor vehicle in places where the car is exposed to public view; not upon the brevity of the surveillance. While the Supreme Court did note that law enforcement's abuses of this rule will be dealt with when and if they occur, nowhere did the Court even intimate that surveilling a vehicle in public for an extended period of time was such an abuse. You should also note the dissenting opinion by the federal Ninth Circuit's Chief Justice Kozinski (joined by four other justices) to the Court's denial of an en banc rehearing in the case of *United States v. Pienda-Moreno* (9th Cir. Jan. 11, 2010) 591 F.3rd 1212 (which upheld the warrantless attaching of a GPS to the undercarriage of the defendant's car while his car was parked in his own driveway and the subsequent warrantless monitoring of that device; see *Legal Update*; Vol. 15, #5). The dissent is reported at __ F.3rd __ [No. 08-30385]. Justice Kozinski argues that (1) the warrantless entry into the curtilage of a person's home for the purpose of attaching an electronic tracking device is a Fourth Amendment violation, and (2) "beepers," as used in *Knotts*, are a far cry from the more sophisticated "GPS," as used in the instant case. Justice Kozinski would require a warrant to record and download a vehicle's movements in such a circumstance. But being a dissenting opinion, and from a federal circuit court, Justice Kozinski's opinion is also not controlling. So while I think we need to note this disturbing trend in the case law tending to tighten up on the use of electronic monitoring devices, until we get a decision out of our own state courts (or a majority of the Ninth Circuit) to the contrary, my advice is to simply ignore *Maynard* as well as Chief Justice Kozinski and continue doing what you are doing.

Contacting Me by Telephone: It is not unusual for some of you to attempt to contact me by my cell phone number, as listed above. It is also not unusual for me to miss the call. Although I continue to carry my trusty BlackBerry with me wherever I go, and to try to catch all calls as they come in, I now live in a location when reception is spotty, at best. So if you don't get through, *leave me a message*. I try to check for messages periodically and might even be attempting to call you back immediately. But if you're calling from a law enforcement telephone, the return number may be marked as "private" or with the numbers jumbled, and I won't be able to call you back unless you leave me a message. Also note that I don't take calls or answer e-mails from private parties, except to say that I don't give legal advice (with rare exceptions) to anyone other than cops,

prosecutors, their agents, and (sometimes) educators. So please don't refer private parties to me for legal opinions.

CASE LAW:

***Residential Burglaries*:**

People v. Aguilar **(Feb. 3, 2010) 181 Cal.App.4th 966**

Rule: Residential burglary is of the first degree even though the residence has been evacuated, and even though, unbeknownst to the resident, the residence is no longer inhabitable, so long as he intends to return.

Facts: The occupant of an apartment was moved into a hotel after a fire. The displaced resident was allowed to remove some of his personal belongings and his apartment was boarded up. The resident was led to believe that he would be moving back as soon as the damage was cleaned up. Unbeknownst to him, however, the city considered the damaged apartments to be uninhabitable as of the date of the fire. Several days later, still believing that he would eventually be returning to his apartment, the resident was again allowed to return and retrieve some more of his belongings. Upon reentering his apartment, the resident found defendant sitting at his table, drinking his wine, and wearing some of his clothes. Other items belonging to the resident were stacked in the living room as if in preparation for taking them from the apartment. Defendant was arrested for residential (first degree) burglary. Pre-trial, the judge refused to allow defendant to present evidence to the effect that at some time before the burglary, it had been decided by the city that the apartment was no longer inhabitable and that the displaced residents were to be moved to other apartments. Defendant was convicted of first degree burglary and appealed.

Held: The Fourth District Court of Appeal (Div. 2) affirmed. Defendant's argument on appeal was that at the most, his crime was only second degree burglary because the victim's apartment was no longer an "*inhabited dwelling house*." The Court disagreed. A person is guilty of burglary when he "enters any house, room, apartment, . . . or other building . . . with the intent to commit grand or petit larceny or any felony . . . ." (P.C. § 459) A burglary is of the first degree when it is of "an inhabited dwelling house." (P.C. § 460(a)) "*Inhabited*" is defined as when the burglarized place is "currently being used for dwelling purposes, whether occupied or not." Based upon this, it is clear that the burglarized place need not be "*occupied*" at the time to be the subject of a first degree burglary, so long as it is still "*inhabited*." Whether or not it is inhabited is dependent upon the intent of the resident. "A formerly inhabited dwelling becomes uninhabited only when its occupants have moved out permanently and do not intend to return to continue or to resume using the structure as a dwelling." In this case, even thought the resident had been evacuated from his apartment and was living in a hotel at the time of the burglary, it was his expectation, and his intent, to return to his apartment once it was cleaned up. The fact that others had decided that his apartment was not longer inhabitable and that he was to be moved to another apartment, at least in the absence of

any evidence that the victim had been told this, was irrelevant. The apartment, therefore, was still inhabited for purposes of the burglary statute, making it a first degree burglary.

Note: Nothing new here, but a good reminder as to what makes a burglary of an "*unoccupied*" residence one of the first degree. This is of course important because of the significant differences between the potential sentences for second and first degree burglary, and the fact that first degree burglary mandates a prison sentence in the absence of unusual mitigating circumstances.

***Metal Knuckles, per P.C. § 12020(c)(7)*:**

People v. David V. **(Feb. 8, 2010) 48 Cal.4th 23**

Rule: A cylindrical object grasped in the hand, even though held in such a manner as to increase the force of the resulting impact, does not meet the legal definition of "metal knuckles." Such an object must be "*worn*," as opposed to merely held.

Facts: A Los Angeles Police Officer stopped 14-year-old David V. one afternoon for failing to wear a helmet while riding his bicycle. During a consensual search, the officer recovered a metal footrest from defendant's pants pocket. The hollow, cylindrical, footrest measured 4½ inches in length and a little over 1½ inches in diameter. It was made to be installed on threaded posts on each side of a bicycle's wheel hub. However, defendant's bike neither had such a threaded post nor any other type of footrest. The officer further knew from his own experience that such objects are used by gang members as metal knuckles, held in the hand to increase the force of impact from a blow to another person. Charged in Juvenile Court with possession of metal knuckles, per P.C. § 12020, the Juvenile Court judge sustained the allegation. The Second District Court of Appeal affirmed. Defendant petitioned to the California Supreme Court.

Held: The California Supreme Court unanimously reversed, finding that the bicycle footrest at issue in this case did not meet the legal definition of metal knuckles. In reaching this conclusion, the Court considered the statutory definition of metal knuckles, as contained in P.C. § 12020(c)(7), and the legislative history leading to this definition. Specifically, metal knuckles are defined as "any device or instrument made wholly or partially of metal which is *worn* for purposes of offense or defense *in or on the hand* and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow." The operative words here are, as in italics above, "*worn*" and "*in or on the hand*." In reviewing the legislative history behind the writing of this definition, the Court found that it was not intended to include an object that is merely "*held*" or "*grasped*," in the hand. Although declining to specifically define "*worn*" (e.g., refusing to disapprove *In re Martin Alonzo* (2006) 142 Cal.App.4th 93, where it was held that a leather wallet qualified as metal knuckles when the wallet had embedded in it inch-long spikes that protruded through the fingers when it was rolled up and held in a fist), the Court did note that objects like the bike footrest in this case might be considered a "deadly weapon," per P.C. § 245,

depending upon the circumstances of its use. But merely being capable of being grasped in the closed fist does not qualify it as metal knuckles.

Note: In mentioning the rolled up studded wallet, as described in *In re Martin*, the Court *did not* specifically say that that item was "*worn*" in or on the hand. The Court merely said that what is, and what is not, "*worn*," as opposed to "*grasped*" in the hand, is an unresolved issue. But the Court hinted that we're talking about something a lot broader than how the traditional metal knuckles are typically worn. Also, the Supreme Court did *not* rule on defendant's second contention; i.e., that there was insufficient evidence to support the Juvenile Court magistrate's finding of a criminal intent in possessing the footrest. That's too bad, because we could all have benefited from a discussion of that topic as well; the issue of one's criminal intent in possessing any atypical 12020-listed weapon being something most of us have a hard time understanding. But it appeared to me that the prosecution put on a pretty good case that David V. wasn't carrying the footrest around in his pocket to use on his bike, or to impress girls. And while finding a difference between "*wearing*" and "*grasping*" an object sounds like a lot of legal hair splitting, the Court's analysis of the legislative history behind this definition dictates the correctness of their decision.

***Narcotics; Transitory Possession*:**

People v. Paz **(Feb. 10, 2010) 181 Cal.App.4th 1413**

Rule: Transitory possession of drugs is not a defense when abandonment of the drugs is not voluntary.

Facts: Defendant and a rival gangster named Jose Sanchez got into a physical altercation during which, with Sanchez holding defendant in a choke hold and telling his girlfriend to call the police, defendant tossed an "Altoids" tin underneath a car. Defendant had fled by the time the police arrived. But the Altoids tin was recovered and found to contain 13½ grams of methamphetamine along with two empty baggies. A search warrant was obtained for defendant's home and another 1.12 grams of meth were recovered. Charged in state court with possession of methamphetamine for sale (H&S § 11378; for what was in the Altoids tin) and simple possession of meth (H&S § 11377; for what was recovered from his house), along with active participation in a criminal street gang (P.C. § 186.22(a)), defendant testified that the meth in the Altoids tin belonged to Sanchez. He claimed to have met with Sanchez for the purpose of buying the methamphetamine but then changed his mind and stole it instead. Defendant discarded the meth when Sanchez chased him down and caught him, with the fight ensuing. The meth in his home, according to defendant, belonged to his brother. The jury didn't believe a word he'd said and convicted him of everything. Defendant appealed.

Held: The Fourth District Court of Appeal (Div. 3) affirmed. It is a rule, as announced by the California Supreme Court and since expanded upon by other courts, that when the possession of dangerous items such as controlled substances or firearms is merely momentary or transitory, held for the purpose of disposal, abandonment, or destruction,

the possessor may have a defense to the otherwise illegal possession of that item. (*People v. Mijares* (1971) 6 Cal.3rd 415; *People v. Martin* (2001) 25 Cal.4th 1180.) However, as inferred in these cases, the disposal of the offending item must be voluntary. Contrary to defendant's argument, the length of time possessed is not the determining factor. Rather, the defendant's mental state must be examined. In this case, all the evidence indicates that defendant stole the methamphetamine from Sanchez for the purpose of keeping it. It was only after Sanchez caught him, holding him in a choke hold, and the police were summoned, that defendant was faced with the decision of either being choked and arrested, or getting rid of the dope. Choosing to get rid of the dope under these circumstances was not a voluntary relinquishment and does not justify a finding that his possession was only transitory.

Note: As noted by the Court, the typical transitory possession situation occurs when someone takes drugs or a firearm from someone else for the purpose of preventing that other person from getting into trouble with it, intending to dispose of the item, abandon it, or destroy it. It's been referred to as either an affirmative defense, which defendant has the burden of proving, or a lack of the defendant's general criminal intent. Either way, it is incumbent on officers in the field to be familiar with the potential for such an issue, note the evidence that either supports it or not (as in the present case), and allow the system to work as it's supposed to.

***Standing*:**
***Residential Entries*:**
***The Use of Deadly Force*:**

Espinosa v. City and County of San Francisco **(9th Cir. Mar. 9, 2010) 598 F.3rd 528**

Rule: (1) An overnight guest has standing to challenge the legality of a warrantless entry into a residence. (2) For a warrantless entry into a residence to be lawful, an officer must have an objectively reasonable belief that there exists an emergency that threatens life or limb, or that there is probable cause to believe that a crime has been or is being committed and a reasonable belief that entry is needed to stop the destruction of evidence or a suspect's escape or to carry out other crime prevention or law enforcement efforts. (3) Whether or not the use of deadly force is reasonable depends upon a balancing of the extent of the intrusion on the suspect's Fourth Amendment rights (i.e., "seizure") with the government's interest in apprehending him.

Facts: Officers of the San Francisco Police Department were sent to an apartment when a neighbor called to report that the front door was open and that the place was a possible "drug house." The call was to do a "premises check." Only one officer was dispatched. Officer Paulo Morgado found the door shut and nothing else appeared suspicious. But pushing up against the door caused it to open slightly. Looking in the windows resulted in the observation of "several items" inside. (It was never explained what.) Officer Morgado called for a backup unit and for apartment security. Security officers arrived and apparently told Officer Morgado that the place was supposed to be vacant and that the locks on the door were not those of the apartment management. Officer Morgado

made entry and found a bloody (whether fresh blood or not was not determined) t-shirt hanging over a door. When Officers Michelle Alvis and John Keesor arrived, the first floor was searched and nobody was found. On the second floor, however, one of the bedroom doors was found to be locked. Hearing noises inside that room, the officers "knock(ed) and notice(d)," and then forced entry. A person later determined to be a resident, Jason Martin," was found inside. He was immediately taken into custody. A four-inch "ninja" knife was recovered from his pocket. While dealing with Martin, officers heard noise from the attic above them. The only entrance to the attic was via a 2 x 2½ foot hole at the top of a closet. After determining that there was no way onto the roof from the attic, the officers, one by one, made entry. Using flashlights, 25-year-old Asa Sullivan, who was 5' 9" tall, and 208 pounds, was found sitting on the floor, partially hidden by insulation on the attic's floor. The officers pointed their firearms at Sullivan and ordered him to show his hands. Sullivan refused while telling officers that he would not be taken into custody. For the next approximately 13 minutes, officers unsuccessfully attempted to talk Sullivan into cooperating. Sullivan made comments to the effect that he was attempting to commit "suicide by cop." Finally, Sullivan made movements with his hand and arm that caused the officers to believe he might be armed and was about to shoot. Two of the officers therefore shot defendant multiple times, killing him. As it turned out, defendant was not armed, but held a dark-colored eyeglass case. Sullivan's estate representative later sued the San Francisco Police Department and the officers involved in federal court, alleging that Sullivan's Fourth Amendment rights had been violated. The district court judge denied the civil defendants' motion for summary judgment (i.e., dismissal before trial). The civil defendants appealed.

Held: The Ninth Circuit Court of Appeal affirmed, with one justice dissenting on the issue of whether excessive force was used. The issue at this juncture was whether there were "issues of fact" that would have to be decided by a civil trial jury. (1) The Court first discussed the issue of whether Sullivan (or rather his estate) had standing to challenge the legality of the entry into the apartment, noting that there was evidence that he was the guest of the lease holder and another resident, Jason Martin. An overnight guest has an expectation of privacy in the residence in which he is staying; i.e., he has standing. (2) As to the legality of the entry, the Court questioned whether the officers' warrantless entry into the apartment was a Fourth Amendment violation, finding that the issue must be decided by a civil jury. The civil defendants argued the applicability of one or both of two possible exceptions to the Fourth Amendment's requirement that the officers must have a warrant. Under the "*emergency exception*," an officer may enter a home without a warrant to investigate an emergency that threatens life or limb so long as there is "objectively reasonable grounds to believe that an emergency exists and that his immediate response is needed." This exception derives from a police officer's community caretaking function. The other possible exception to the warrant requirement is known as the "*exigency exception*," which stems from the officer's investigatory function. Under this theory, an officer may enter a residence without a warrant if he has "probable cause to believe that a crime has been or is being committed and a reasonable belief that his entry is needed to stop the destruction of evidence or a suspect's escape or to carry out other crime prevention or law enforcement efforts." Both exceptions require that the officer have an objectively reasonable belief that the circumstances justify an

immediate entry. In this case, the Court noted that it was questionable whether the officers could establish the applicability of either exception given the lack of any indication that an on-going crime or other emergency was then occurring within the apartment. Per the Court, the fact that the apartment was supposed to be vacant and that the door locks had apparently been changed would not support the legality of Officer Morgado's initial entry. (3) Lastly, the Court considered whether the officers had used unnecessary force in shooting and killing Sullivan; a Fourth Amendment, "seizure" issue. In evaluating the reasonableness of the force used, the Court must consider the severity of the intrusion on the suspect's Fourth Amendment rights, whether the suspect posed an immediate threat to the officers' or the public's safety, and whether the suspect was resisting arrest or attempting to escape. Despite the fact that Sullivan had refused to show his hands and was uncooperative, the Court noted that he had not yet been accused of any crime, did not appear to be a threat to the public, and could not escape. As such, in that he might have been a threat to the officers themselves, whether or not it was reasonably necessary to shoot and kill him was something a civil jury needed to determine. The trial court, therefore, was correct in denying the civil defendant's motion for summary judgment.

Note: A lot of the detail of the shooting itself was gleaned from the dissenting opinion, which argued that the officers were, as a matter of law, entitled to qualified immunity on this allegation and that the summary judgment motion concerning the use of force should have been granted. The majority makes it sound like these out-of-control cops merely slaughtered Asa Sullivan (pointedly noting that they'd fired 12 and 13 rounds, respectively) without cause. The dissenting opinion, on the other hand, discussed the multiple attempts these officers made to gain his cooperation over some 13 minutes, all during which Sullivan refused to show his hands and, had he been armed, could have easily killed one or more officers before they would have had a chance to react. The officers didn't finally shoot him until he began to raise his arm and hand, apparently holding a dark-colored eyeglass case which, in the dark of an attic, could just as easily have been a firearm. But you have to read the dissenting opinion to get all these details. To the majority justices' credit, however, they never really said that the officers did anything wrong; only that the evidence as seen in light of the plaintiff's allegations (as is required) raises issues of fact that a civil jury must ultimately decide. So despite resolving nothing here, I briefed this case anyway as a reminder that (1) the courts are getting more and more restrictive on allowing warrantless entries into private residences, and (2) any time you choose to use your firearm, you have to expect to be second-guessed for years to come. That's just the nature of the business.

***Detention of a Residence*:**

United States v. Cha **(9th Cir. Mar. 9, 2010) 597 F.3rd 995**

Rule: Seizure of a defendant's home, barring a resident from reentering while a search warrant is obtained, is lawful, but must be expedited. An unreasonably prolonged detention of the residence will result in the evidence being suppressed.

Facts: A woman complained to the Guam police that defendant Song Ja Cha (Mrs. Cha), owner of the Blue House Lounge, was holding her passport and also held against their will two of her cousins. Officers went to the lounge to check it out. It was late Saturday evening. Upon arrival, one of the cousins was found waiting tables. The other, according to employees, was in a so-called "comfort room" where she was entertaining a customer. In checking the room, the cousin was found in the company of a gentleman whose pants were "'barely on'—unzipped, unbuttoned, and unbuckled." Upon their rescue, the cousins told the officers that they were being "prostituted against their will" and that defendant was holding their passports. They also complained that if they refused to have sex with a customer, they wouldn't be feed. The bar was closed and customers were interviewed. Afterwards, the officers asked defendant for a tour of the business and her adjoining residence. She agreed and some plain sight observations of incriminating evidence were made. Also in the residence, defendant's husband, In Han Cha (Mr. Cha; later to become a codefendant), was found asleep. He was awakened and forced to come outside. At about 1:00 a.m., Sunday morning, everyone was transported (or drove themselves) to the police station where defendant was interviewed. At about 6:00 a.m. defendant was arrested. Mr. Cha subsequently returned home at about 8 a.m., Sunday, only to find his house being guarded by a police officer who would not let him back inside even to obtain his medication (i.e., insulin; Mr. Cha, a diabetic, was later allowed to obtain his medication and glucose monitor with a police escort.). So he called his lawyer and waited outside. Meanwhile, the officers were finishing up their reports in preparation for obtaining a search warrant for the lounge and the Chas' residence. At about 9:20 a.m., Sunday, another officer was called and told to come to the office for a noon briefing, after which he was to prepare a search warrant. Work on the warrant application, however, did not begin until 6:30 p.m., and was not finished until 4 a.m., Monday morning. At 7:50 a.m., the officer took the warrant for review by a prosecutor. An available magistrate to review and sign the warrant couldn't be found until 10:25 a.m., Monday. The warrant was finally executed beginning at 2 p.m., Monday, and not finished until 1 a.m., Tuesday morning, when Mr. Cha was finally allowed to reenter his home. The total time during which the Cha residence was detained was determined to be almost 26½ hours (i.e., from 8:00 a.m., Sunday, to 10:15 a.m., Monday). With both defendant and Mr. Cha charged in federal court with sex trafficking, conspiracy and coercion, they brought a motion to suppress the evidence recovered from their home. The district court judge found the length of the detention of the Chas' residence to be unconstitutionally excessive and granted the motion. The Government appealed.

Held: The Ninth Circuit Court of Appeal affirmed. It was agreed that the officers had sufficient probable cause to seize the Blue House Lounge and defendant's home and detain both for a reasonable time while a search warrant was obtained. The issue here is whether the 26½ hours between when Mr. Cha was first refused admittance into his home until a magistrate finally signed the search warrant was unreasonably prolonged. The trial court held that it was, and the Ninth Circuit agreed. In determining what is reasonable, a court must balance the privacy-related concerns of the resident with the law enforcement-related concerns, considering four factors: (1) Whether the police had probable cause to believe that the defendant's residence contained evidence of a crime or contraband; (2) whether the police had good cause to fear that, unless restrained, the

defendant would destroy the evidence or contraband before the police could return with a warrant; (3) whether the police made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy; and (4) whether the police imposed the restraint for a limited period of time; i.e., whether the time period was no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant. Although the first factor favored the Government, in that the Guan police had probable cause, the next three favored the Chas. Specifically, the Court upheld the trial court's determination that there was no "good reason" to fear that Mr. Cha would destroy evidence. And defendant, Mrs. Cha, was in custody. Next, delaying Mr. Cha's reentry into his home to retrieve his medicine, even if escorted, didn't show an effort to reconcile the officers' needs with the Chas' privacy rights. And lastly, the police made little if any effort to expedite the obtaining of a search warrant, unnecessarily delaying the process for an unreasonable 26½ hours. The Court further considered whether the officers' good faith precluded the use of the Exclusionary Rule, as explained in the U.S. Supreme Court's decision of *Herring v. United States* (2009) __ U.S. __ [172 L.Ed.2nd 496]. In *Herring*, the High Court told us that unless the officers' illegal actions were deliberate, reckless, or grossly negligent, or the product of recurring or systemic negligence, then the resulting evidence may not be excluded. Evidence should only be excluded where the police conduct is sufficiently deliberate that exclusion can meaningfully deter it, and where the officers' actions are sufficiently culpable that such deterrence is worth the price paid by the justice system when it suppresses relevant evidence. The Court here found *Herring* inapplicable in that the officers' actions were deliberate, culpable and systemic. Specifically, the Court held that the officers, who proceeded with a "nonchalant attitude" and in a "relaxed fashion," should have known that the law requires that they act with due diligence, expediting the process and minimizing the time the defendant's residence was put off limits to its occupants. This "mistake of law" (as opposed to a simple "mistake of fact") cannot be excused by the officers' good faith. The resulting evidence, therefore, was properly suppressed.

Note: The Court agreed with one of the Government's arguments but, in an analysis I totally don't understand, decided that they would suppress the evidence anyway. The Government's argument was that the evidence recovered from the defendant's residence was not the product of the prolonged detention of that residence. The Court agreed. The defendant did not contest the legality of the "tour" of defendant's home during which certain observations were made and incorporated into the search warrant. Everyone agreed that despite the prolonged detention, the officer's had probable cause and the search warrant was lawful. There is no causal connection between the prolonged detention and the recovered evidence; i.e., "*fruit of the poisonous tree*" doesn't apply. But the Court suppressed the evidence anyway as a "direct result of the Fourth Amendment violation." Their reasoning: A seizure of evidence must be supported by probable cause "*and (be) reasonable*." And also, there has to be some punishment for the prolonged detention of the residence. This is a whole new theory of suppression, as far as I'm concerned, and should have been tested on appeal. Aside from this, however, please don't lose sight of the importance of this case. If you're going to detain a person's residence, or any other container, while a search warrant is obtained, at least where the defendant is being deprived of its use while you do so, you need to expedite the process.