

THE VOICE

Newsletter Spring / Summer 2010

CALIFORNIA SEXUAL ASSAULT INVESTIGATORS ASSOCIATION



President's message

Summer is here! I wish to take this opportunity as the President of your Association to Thank all of the members and the California Sexual Assault Investigators Association Board of Directors for your attendance and participation in the 2010 Spring Training Conference in Shell Beach. The Training Conference, in the most beautiful venue in California was a success for all. A new collaboration with the California Clinical Forensic Medical Training Center, University of California, Davis, brought some truly exciting training for the members, allowing the participants to learn forensic photography tips through hands-on training. Members were also instructed in the areas of forensic interviewing, resources of the National Center for Missing and Exploited Children, Human Trafficking and the Investigation and Prosecution of Sexual Assaults.

The CSAIA promises a very rewarding year for the members of the Association. As you will see through the many useful articles you will read in our newsletter, The Voice, our field changes and we hope to provide you with the knowledge and training you need to keep

on top of your profession. We have traditionally recognized the value of promoting a team approach to solving sexual assaults, through collaboration between law enforcement, forensic medical professionals, and victim advocates. This year will be no different. Watch for more training in our upcoming one-day training venues and the 2010 Fall Training Conference to provide you with state-of-the-art instruction and networking opportunities.

As the President of YOUR Association, I plan to meet our mission: To promote collaborative efforts, provide superior training and monitor legislative matters to ensure the highest quality services for all victims of sexual assault. We can only accomplish these goals through our membership. I challenge you to talk to your co-workers, supervisors and managers to get involved and become members of our Association for better networking and training opportunities. The CSAIA is truly the only statewide organization that offers and promotes the collaborative learning environment. Join me and the Board of Directors in making a difference!

Our Association is dedicated to recognizing those individuals that truly are the heroes in our profession. Annually, we offer awards to recognize sustained accomplishment in the field of investigation and forensics, and legislators involved in the field of sexual assaults. In this business, our partners and colleagues are not recognized nearly enough for their efforts. Please take the time to think about making a nomination. You will find information about our award program in the newsletter and on our website at www.CSAIA.org.

Finally, I find that one of the best tools we offer our membership is at your fingertips—the CSAIA website, Members Only Area. Be sure that you log on and check it out! The information is there for you. You can network with other professionals, share information, inquire about new trends, post news worthy articles, obtain prior training articles and handouts, and offer your innovative suggestions for training, education, and venues.

We've made a great start, lets all make 2010 count! I hope to see everyone at the upcoming One-Day training opportunities and at the 2010 Fall Conference!

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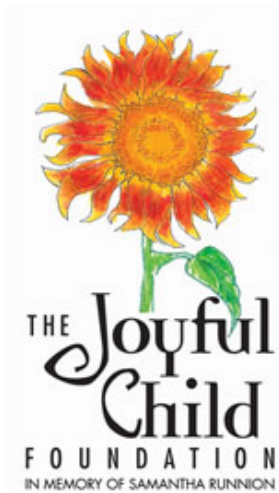


2010 President
Karen Sherwood



Spring 2010 Raffle Funds go to The Joyful Child Foundation and the Polly Klass Foundation

It was a privilege to donate the Spring 2010 Raffle proceeds to The Joyful Child Foundation and The Polly Klass Foundation. Thanks to all of our members for their generosity and support



Polly Klaas Foundation
www.pollyklaas.org

Save the Date ... CSAIA Fall Training Conference

Don't miss the fall

training

Conference!

Save the Date

CSAIA
2010 Fall Training
Conference

November 2-4,
2010

Napa Valley
Marriott



Napa Valley Marriott Hotel
3425 Solano Avenue Napa,
CA, 94558, USA
Phone: 1-707-253-8600
Fax: 1-707-258-1320

Find registration information at www.csaia.org

Rooms will be available at a special rate of \$119.00 for single, double per night.

Reservation link for CSAIA members who want to book their room reservations on-line is below.

<http://www.marriott.com/hotels/travel/SFONP?groupCode=CSAIA&app=resvlink&fromDate=10/30/10&toDate=11/3/10>

According to new POST Regulations, all participants must provide their individual POST ID number from their employing agency

THE *GREENE* FALLOUT Coping with the Ninth Circuit's ruling on interviews of child-abuse victims *by Devallis Rutledge*

A "perfect storm" occurs when the worst things that could possibly happen all happen at the same time. We got one of those on December 10, 2009, when the Ninth Circuit filed a decision in the case of *Greene v. Camreta* (9th Cir. 2009) 588 F.3d 1011.

The *Greene* case

In Oregon, a boy told his parents that he had been molested by Mr. Nimrod Greene. The boy's parents called the sheriff and told deputies they had heard that Nimrod's wife Sarah complained about Nimrod's lewd actions toward the Greens' two daughters. Nimrod was arrested on the boy's complaint and was later released. Three days later, child caseworker Bob Camreta and Deputy Sheriff James Alford went to the elementary school, where Camreta questioned one of the Greens' daughters for two hours. This interview was not taped, and the girl later contradicted Camreta's version of her statements and denied that her father had ever done anything bad. Nimrod was not convicted of any crimes against his daughters.

Sarah sued Camreta and Alford in federal court on her

daughter's behalf, claiming, among other things, that the interview violated the girl's right against unreasonable seizure. Attorneys for Camreta and Alford did not challenge the claim that a victim interview is a Fourth Amendment seizure. They argued instead that the "seizure" was permissible under *New Jersey v. TLO* (1985) 469 US 325. They lost their motion for dismissal on summary judgment and appealed to the Ninth Circuit Court of Appeals.

The Ninth Circuit agreed with the concession that a victim interview is a "seizure" and ruled that the seizure of Sarah's daughter at school was unreasonable, because (1) officials waited three days after Nimrod's release to question his daughter, showing that there was no exigent need for an interview; (2) "police were conducting an ongoing investigation;" (3) the state statutory scheme created a "broader entanglement of law enforcement and social services officials in the investigation;" (4) Camreta "was accompanied by Deputy Sheriff Alford," who wore a visible sidearm; (5) *TLO* does not apply to police-aided

seizures of students, but only to searches of students conducted by school officials; and (6) the interview/seizure of the girl was not justified by exigency, parental consent, search warrant or court order, and was therefore unreasonable.

The court's actual holding (which has already been misinterpreted by some school officials, social workers and law enforcement agencies) was limited to specific sets of facts:

"[W]e hold...that [o]nce the police have initiated a criminal investigation into alleged abuse in the home [and] [a]t least where there is, as here, direct involvement of law enforcement in an in-school seizure and interrogation of a suspected child abuse victim...the traditional Fourth Amendment requirements [apply]." *Greene*, 588 F.3d at 1030.

Greene applies *only* if (1) a police investigation has commenced, *and* (2) police are *directly involved* in the interview, *and* (3) the interview takes place *at school*, *and* (4) the interview relates to alleged abuse in the *victim's home*. Obviously, therefore, *Greene* has no application to an interview by

a social worker, before police have opened an investigation; nor if police do not accompany the social worker; nor if the child is interviewed someplace other than at school; nor if the abuse is alleged to have occurred outside the victim's home—such as at a motel or a neighbor's house. *Greene* has no application to schoolhouse questioning by police of a *witness* to a crime or to the questioning of a criminal *suspect*.

The Oregon Attorney General filed a petition for rehearing in the Ninth Circuit, again arguing that the "seizure" of the alleged victim at school was reasonable under Supreme Court detention and search cases. Footnote 3 of the petition again conceded that "*Whether the child was seized for purposes of the Fourth Amendment is not an issue in the petition.*" The Ninth Circuit denied rehearing, and the Oregon Attorney General is considering whether to ask the US Supreme Court to review the case.

Supreme Court precedent

At least twice before, the Ninth Circuit has sought to apply the Fourth Amendment *detention* rules to police *questioning*. In both cases, the result at the US Supreme Court has been the same: reversal.

THE *GREENE* FALLOUT

Coping with the Ninth Circuit's ruling on interviews of child-abuse victims, Continued

In *INS v. Delgado* (1984) 466 US 210, armed immigration agents holding badges and radios walked throughout a garment factory, questioning workers about their immigration status. Other agents were stationed at the exits. The Ninth Circuit ruled that this questioning amounted to an unreasonable Fourth Amendment detention.

On appeal, the Supreme Court reversed the Ninth Circuit. Even though the workers were normally confined to their worksite during work hours, this situation was not a result of police restrictions but merely an incident of their employment there (just as a student's presence at school during school hours is merely an incident of her enrollment there). Said the Supreme Court: "*The Fourth Amendment does not proscribe all contact between the police and citizens. What is apparent from [our cases] is that police questioning, by itself, is unlikely to result in a Fourth Amendment violation.*"

In *Muehler v. Mena* (2005) 544 US 93, officers serving a search warrant at a house questioned one of the occupants about her immigration status. The Ninth Circuit held that this questioning constituted a violation of the Fourth Amendment. Once again, the

Supreme Court reversed the Ninth Circuit: "*This holding, it appears, was premised on the assumption that the officers were required to have independent reasonable suspicion in order to question Mena concerning her immigration status because the questioning constituted a discrete Fourth Amendment event. But the premise is faulty. We have held repeatedly that mere police questioning does not constitute a seizure.*"

Based on Supreme Court jurisprudence, these conclusions may be stated incontestably:

(1) The Ninth Circuit has twice before held that police questioning is a Fourth Amendment *seizure*, requiring independent justification.

(2) The Supreme Court has twice *reversed* the Ninth Circuit *on this very point*.

(3) The US Supreme Court has *never held* that a victim interview is a seizure, but has repeatedly held that even when police question a suspect, **questioning does not constitute a seizure.**

Much less would questioning of a *victim* amount to a seizure.

The perfect storm

How many things could go wrong in *Greene v. Camreta*? Among other things, neither the social workers nor law

enforcement acted promptly on the reported abuse; the schoolhouse interview was not taped; the girl repudiated her earlier statements; Nimrod was not convicted; attorneys defending the lawsuit conceded that the potential victim was seized during the schoolhouse interview; the matter was decided by the Ninth Circuit. The only law that was vindicated in this case was Murphy's Law: "Anything that can go wrong *will* go wrong."

Avoiding civil liability

Unless and until *Greene* is corrected, law enforcement officers, public school officials, child services officers and other government employees may face the risk of financial liability for conducting certain schoolhouse interviews of students without meeting *Greene's* restrictions. Because state statutes cannot authorize unconstitutional conduct, PC § 11174.3(a) is subject to *Greene's* constitutional ruling. Also, attorneys who represent school districts and social-services agencies may take an overly-cautious approach and advise their clients to require court orders in situations not expressly covered by the *Greene* holding. As a practical matter, this will often mean that officers who want to go to a school and question a student will need a court order to do so. (*Greene* also suggested

exigency, parental consent and search warrants as satisfactory justifications. However, school officials cannot realistically be expected to assess claimed exigencies; unless principals are willing to accept an officer's judgment that an exigency exists, this option has little practical potential.

(If the child is being abused in the home, a request for parental consent could compromise the investigation and trigger retaliation against the child; nor is there any Fourth Amendment authority for the proposition that a parent can authorize police to "seize" a child—unless the parent happens to be a magistrate.

(An interview is not a "search," and so is not an activity for which a search warrant will issue under PC § 1524—unless a medieval view is taken that children are chattel and can therefore constitute "the property or things to be seized." This leaves only a court order as a viable means of complying with *Greene*.)

Typically, court orders require four documents—an application, a memorandum of points and authorities, a declaration, and a proposed order. The Los Angeles County District Attorney's Office has composed samples of all four forms and distributed them to

THE GREENE FALLOUT, Continued

all law enforcement agencies in the County. These forms can be modified as appropriate to the case. Criminal court judges in the County have agreed to establish a system to allow the faxing of these materials between police and the courts. So far, this system appears to be working as intended. Other jurisdictions may have similar arrangements for allowing officials to avoid liability under *Greene* while taking necessary steps to protect endangered children and

apprehend perpetrators of violence and neglect. (The LA County sample forms are available on official request made to drutledge@da.lacounty.gov.)

As always, it is important for those involved in the investigation of claimed neglect and abuse to consult closely with city attorneys, county counsel or other civil legal advisers as to the policies and procedures to be followed. And hopefully, a future article will announce the reversal or modification of the *Greene* decision and its

replacement by guidelines that more sensibly accommodate the important work of medical and social workers, law enforcement officers, school officials and others in helping to protect the most vulnerable among us. Copyright © 2010 by the Los Angeles County District Attorney's Office. Reprinted by CSAIA with permission.

Devallis Rutledge is Special Counsel to Los Angeles County District Attorney Steve Cooley. His most recent book is "Investigative Constitutional Law." (LawTech Publishing, 2010, 482 pages.)



Membership Corner



Weldon "Linc" Lincoln

We are currently 262 members strong! If you have any recruitment ideas or would like to encourage members of your team or organization to become members of CSAIA, please contact our Membership Coordinator Weldon "Linc" Lincoln. Linc can be reached at Weldon.Lincoln@csaia.org, or by telephone at (209) 223-6747.

Check out your membership status at www.csaia.org. All memberships are now based on an annual renewal from the date you joined the Association!

Training Ideas??

CSAIA is always looking for new and innovative ideas in training to bring to membership.



If you have any ideas for our Conference Training or One-Day Training, please contact:

Rich.Nickel@csaia.org or Weldon.Lincoln@csaia.org with your ideas

Still No Way to Enforce the 2000-Foot Restriction Except Against Parolees: Best Bet for Public Safety is Child Safe Zones and Targeting the Residency Restriction to High Risk Child Molesters

by DAG Janet Neeley

Jessica's Law, effective November 8, 2006, was a voter initiative that enacted a law that says a registered sex offender can't live within 2000 feet of a school or park where children congregate. (PC 3003.5(b).) Ever since its enactment there has been litigation over who the law applies to, and what it means. In February 2010, the California Supreme Court issued a long-awaited opinion. (*In re E.J.* (2010) 47 Cal. 4th 1258.) The opinion answered very few questions about the law, however.

The opinion held that someone paroled from state prison after the effective date of Jessica's Law is subject to the law, even if they committed their sex offense or completed parole or probation on the sex offense prior to the enactment of Jessica's Law. So the petitioners, whose offenses were long before Jessica's Law, were found subject to it at least while on parole for other offenses they committed years later. The Court sent these cases back to the trial courts to determine whether the law was constitutional, and the availability of housing in the parolee's area is one critical factor in determining if the law can constitutionally be applied to that parolee.

The opinion did not tell us if a registrant who is no

longer on probation or parole is subject to the 2000 foot restriction. Even if that person moved into a home within the 2000 foot zone after November 2006, it is unclear whether the law can be applied to him/her. The opinion did not decide if the law applies to persons released on probation after November 2006 who moved into a 2000 foot zone. Nor did it tell us if a registrant who owned a house in a 2000 foot zone has to move if a park or school later locates within 2000 feet of the house.

Parole was already enforcing the 2000 foot restriction against all parolees, and the *E.J.* case said this was proper as long as they were paroled after November 8, 2006. Probation was taking a wait and see stance in most jurisdictions, and may still be since none of the issues about probationers were decided.

Local law enforcement still cannot enforce this law against registrants because the law failed to create an arrestable crime, at least in the opinion of the Attorney General's office and most district attorneys. The Supreme Court specifically declined to decide whether Jessica's Law created a criminal offense in *E.J.*, because the parolees in that case had parole revoked but were not arrested.

The bad news is that we still don't know for sure who the law applies to, except for parolees released from prison after November 7, 2006. Now for the good news. There is a chance to fix this law so it would more effectively protect the public. The current law has caused a huge increase in homeless parolee sex offenders, which studies show also increases their risk of reoffense. The law will not protect the public in the way that people thought. The California Sex Offender Management Board in its January 2010 report recommended a better solution, which requires changing state law.

A better approach would be to create child safe zones—specified places where registered sex offenders could not loiter or linger. This would be combined with residency restrictions that would apply to high risk and predatory child molesters—not to every registrant. These state laws would be uniformly applied and would supersede all local ordinances, so registrants would understand the law. The Board recommends tiering registrants into three tiers, based on criteria that take dangerousness and risk of sexual reoffense into account. Not every tier would register for life. This would allow law enforcement to focus its

resources on monitoring the higher risk offenders, because low risk offenders would eventually drop off case loads. California is one of only four states that require lifetime registration for all offenders without regard to risk or seriousness of offense.

Finally, GPS monitoring would be used only on probation or parole, but there would be extended parole periods for higher risk offenders, and lifetime supervision for the highest risk. This model is based on evidence showing that these solutions, and use of the Containment Model while on supervision (victim-centered approach involving close communication between parole or probation, treatment provider, and polygraph examiner), are more likely to protect our communities.

Article submitted by Deputy Attorney General Janet Neeley, California Attorney General's Office

Know the Risk Level of Your Sex Offender Registrants—And Learn to Use Risk Assessment As Part of Your Monitoring of the 290's in Your Area by DAG Janet Neeley

Did you know that the California Department of Justice (DOJ) has a database with the risk assessment scores on 30,000 registered sex offenders in California? Probably you didn't, because until summer 2010, when DOJ rolls out its new California Sex and Arson Registry (CSAR), you have to call DOJ to find out the risk score of a registered sex offender. (Call the SHOP unit at 916-227-6421 until then.) Knowing that score (derived from an empirical, evidence-based risk assessment instrument, the Static-99) means you have a statistical prediction (about 70% accuracy, not 100%) of the registrant's risk of committing another sex crime. The factors on the instrument were correlated to statistical risk of reoffense by studies around the world looking at

sex offenders who reoffended, and at what factors were most strongly associated with sexual reoffense.

Knowing the registrant's assessed static risk level is only part of the picture, because it is based mainly on criminal history factors. The other part of the picture is called dynamic risk assessment. This is available if the registrant is on probation or parole, but only by talking to the supervising officer. So far, it is not state-mandated that probation or parole use a dynamic risk assessment instrument, although officers are often aware of dynamic risk factors when they occur. Dynamic factors are things such as emotional collapse, social factors (such as hanging with the wrong people), job loss, relationship breakups, alcohol or drug use, and accessing victim groups

(e.g., hanging out where kids do, by a pedophile).

Parole has been doing the Static-99 risk assessment prior to releasing sex offenders on parole since 2005. Probation started using it pre-sentencing in summer 2008, and providing the score to the courts. Both parole and probation officers are trained to do the scoring at trainings provided by the state's risk assessment experts. There are a lot of registrants out there who were paroled or got probation before risk assessment started in California. There is a new law that allows local law enforcement agencies to send officers or qualified personnel to be trained to score the Static-99. (PC 290.06.) Trainings will be in fall 2010 and dates will be posted on the state risk assessment committee (SARATSO Committee) web

site soon: go to www.cdcr.ca.gov, click on link on left side to sex offender management resources; click on link on right side to SARATSO Committee. Note that if an offender has been released from custody in the community for over 10 years and has not committed a new sex offense or serious/violent offense during that time, he cannot be risk assessed under the Coding Rules for scoring the Static-99.

Article submitted by Deputy Attorney General Janet Neeley, California Attorney General's Office



CSAIA 2010 Achievement Award Nominations

Awards:

- The Michiel Hyder Sustained Achievement Award
- Sustained Achievement Award in Forensic Services
- Legislator of the Year Award
- Outstanding Agency of the Year Award
- The Patrick Sullivan Investigator of the Year Award

CSAIA will be presenting the Sustained Achievement Awards at the 2010 Fall Conference in Napa, California. All nominations need to be submitted to Roberta Hopewell by September 5, 2010. All nominations need to include a nomination form as well as a letter describing the nominee and his/her qualifications. Please visit the web site at www.csaia.org for nomination forms.

CSAIA Collaborating with CCFMTC A Total Success



"... a beautiful and relaxing environment ... for networking with professionals from around the state."

Spring training 2010 in Shell Beach proved to be a special training with the collaboration between CSAIA and the California Clinical Medical Training Center (CCFMTC) from UC Davis. Coordinator and board member Margie Jessen assisted with the collaboration and those in attendance were in for a special treat. CCFMTC and full faculty showed up in Shell Beach and provided training for forensic nurses, law enforcement officers and advocates alike. They brought with them advanced knowledge and training like no other which became apparent with the increase in attendance filling the room with eager nurses willing to

learn new and updated training. With this combination of the entire SART team it increases the importance of teamwork between all disciplines. The collaboration came about with the acknowledgement of budget cuts, lack of funding and multiple associations and training courses being cancelled throughout the state. Even in the face of these tough times, CSAIA and CCFMTC recognized that those treating and investigating sexual assault crimes need continued training in order to care for victims so to combine efforts turned out to be a total success. "This just seemed to be a great fit state's Margie Jessen and the turnout was

much more than we expected and the board was very excited and pleased with the number of attendees." CSAIA and CCFMTC plan on collaborating for future trainings and hope to increase members who search for a better team approach to solving and working together on these types of cases.

Mj Jessen RN, FNP
Board Member



Members Training, Learning and Participating!



CSAIA Board of Directors



Top row from left to right:
 Member – Weldon “Linc” Lincoln
 President Elect – Steven Welch
 Treasurer – Tim McFadden
 Member – Richard Nickel
 Member – Scott Currie

Bottom row from left to right:
 Secretary – Roberta Hopewell
 Member – Jesse Grant
 Member – Margie Jessen, RN
 President – Karen Sherwood
 Member – Anthony Hickman

About Our Organization



CSAIA NEW PHONE NUMBER:
 (559) 277-1481

<http://www.csaia.org>

California Sexual Assault Investigators Association

750 S. Lincoln Avenue
 #104-287
 Corona, CA 92882

Membership is now on a 12 month annual cycle! Watch your e-mail for an electronic notification to renew your membership. RENEW ONLINE!

You must renew to continue to have access to the Members Area on the website and to continue to receive information by mail!!

