LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

# ONE MINUTE BRIEF

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**NUMBER: 2011-12** **DATE: 05-26-11** **BY: Devallis Rutledge** **TOPIC: Student Interviews Redux**

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**ISSUE: Must police and social workers obtain a court order to conduct schoolhouse interviews of minor victims, witnesses or suspects?**

In *Greene v. Camreta* (9th Cir. 2009) 588 F.3d 1011, the Ninth Circuit said that a deputy sheriff and a child protective officer violated the Fourth Amendment when they interviewed a suspected child-abuse victim at her school without parental consent, search warrant, court order or exigent circumstances. Because the issue arose in a civil suit and no prior ruling had put the officials on notice that their conduct was unconstitutional, they were granted qualified immunity from suit. Despite the fact that the officials prevailed and were not subject to paying damages, they petitioned the US Supreme Court for review of the constitutional issue.

In *Camreta v. Greene* (2011) 563 US ___ , WL 2039369, **the US Supreme Court has vacated that portion of the Ninth Circuit's decision relating to the constitutionality of the interview.**

Significantly for government officials and their employers, the court held that officials may be granted Supreme Court review of appellate rulings on constitutional issues, even when qualified immunity is granted, This must be, the court reasoned, because both the defendant-officials in the case and all other similarly-situated officials would otherwise be forced to conform their conduct to what may well be faulty constitutional standards, or face certain liability if they do not. Because the Ninth Circuit *"specifically instructed government officials to follow those standards [for schoolhouse interviews]*

*going forward ... such a decision is reviewable in this Court at the behest of an immunized official." Camreta, supra.*

However, because the issue as between the parties to the *Greene* lawsuit had become moot (the minor, now nearly 18, relocated to Florida, outside the Ninth Circuit's jurisdiction; the deputy sheriff has retired; and the social worker will not encounter the minor again), the Supreme Court held that the case presented for review did not satisfy procedural jurisdictional requirements. Therefore, the court did not decide the Fourth Amendment issue but simply **vacated** that portion of the Ninth Circuit decision.

Vacating the Ninth Circuit's insistence on court orders (etc.) for schoolhouse interviews, said the Supreme Court, *"rightly* ***strips the decision below of its binding effect****. ... We therefore vacate the part of the Ninth Circuit's opinion that addressed that issue." Camreta, supra. "We leave untouched the [Ninth Circuit's] ruling on qualified immunity....* ***We vacate the Ninth Circuit's ruling addressing the merits of the Fourth Amendment issue****...." Id., fn. 11.*

With the Ninth Circuit's now-vacated command for parental consent, search warrant, court order or exigent circumstances for a schoolhouse interview of a minor "stripped of its binding effect" by the US Supreme Court, the law on this subject returns to its previous status: PC § 11174.3(a) allows law enforcement access to students at school to investigate suspected child abuse or neglect in the home or care facility. No court order is constitutionally required, because *"mere police questioning does not constitute a seizure." Muehler v. Mena* (2005) 544 US 93, 101 (reversing the Ninth Circuit on this very point).

**BOTTOM LINE: The troublesome portion of the Ninth Circuit decision in *Greene* is vacated. No controlling authority requires officials to obtain consent, warrants or court orders or to assert an exigency, in order to interview students at school.**

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