



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

STEVE COOLEY
DISTRICT ATTORNEY

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NUMBER: 2010-01 DATE: 01-27-09 BY: Devallis Rutledge TOPIC: Student Interviews

ISSUE: What procedure should police follow when conducting a schoolhouse interview of a minor alleged to be the victim of abuse in the home?

PC § 11174.3(a) provides for law enforcement access to students at school in order to investigate suspected abuse or neglect at home or in a care facility. In an Oregon civil rights lawsuit, the Ninth Circuit considered the claim that a schoolhouse interview about in-home abuse might violate the student's Fourth Amendment rights. *Greene v. Camretta* (9th Cir. 2009) 588 F.3d 1011.

In *Greene*, **three days** after receiving an abuse report, a visibly-armed **police officer** accompanied a child-welfare caseworker to elementary school and was present during the unrecorded (and therefore inevitably-disputed) interview of a student suspected to have been abused in the home by her father. Her mother later sued on the daughter's behalf, alleging as one claim a violation of the Fourth Amendment. Apparently, attorneys for the lawsuit defendants conceded that the interview constituted a Fourth Amendment "seizure." (***Contra: Muehler v. Mena*** (2005) 544 US 93, 101, reversing the Ninth Circuit: "***We have repeatedly held that mere police questioning does not constitute a seizure.***") The Ninth Circuit, grafting Fourth Amendment principles onto a victim interview, ruled that suit could proceed for unlawful seizure:

*"Once the **police** have initiated a **criminal investigation** into alleged abuse **in the home**, responsible officials must provide procedural protections appropriate to the criminal context. At least where there is, as here, **direct involvement of law enforcement** in an **in-school** seizure and interrogation of a suspected child abuse*

victim, ... [seizure] in the absence of a warrant, a court order, exigent circumstances, or parental consent was unconstitutional.” *Greene*, at 1030.

The *Greene* ruling expressly **does not apply** to caseworker interviews without police involvement (pp. 1027-30 and fn. 12). The ruling applies **only** where **police** are present, only **at school**, and only when questioning concerns allegations of **in-home** abuse. This decision has no broader application to interviews of minor victims and witnesses. **“It is axiomatic that cases are not authority for propositions not considered.”** [Citation omitted.] *People v. Avila* (2006) 38 Cal.4th 491, 566.

Nor does *Greene* affect the **admissibility** of a victim’s statements in state court, for at least 4 reasons: (1) *Greene* is a civil liability decision on a summary judgment motion; (2) Ninth Circuit decisions are **not binding** on California courts making admissibility determinations (*People v. Bradley* (1969) 1 Cal.3d 80, 86); (3) *Greene* is **contrary to** decisions of the US Supreme Court, which are binding on California courts, per Proposition 8; and (4) the abuser would have **no “standing”** to seek to suppress statements from his victim on Fourth Amendment grounds. *In re Lance W.* (1985) 37 Cal.3d 873, 879.

Pending its possible reversal, *Greene* could affect the potential **federal civil liability** of law enforcement officers (and prosecutors who give advice during the investigative phase of a case, per *Burns v. Reed* (1991) 500 US 478). To comply with *Greene* (or where demanded by school officials or others having custody of the minor), a **police-attended** interview of a minor **at school** about **in-home** abuse would need **parental consent** (sample form attached), or documented **urgency** (often present in **same-day investigations** of reported ongoing abuse), or a **court order** (sample attached—note that court orders require only "good cause," not "probable cause"). (Since an interview is not a “search,” PC § 1524 does not authorize *search* warrants to interview victims.)

BOTTOM LINE: In federal court cases, *Greene* requires a court order for non-urgent, schoolhouse police interviews of minors alleged to be victims of in-home abuse, absent parental consent. (Officers should consult civil advisors for appropriate content and format of forms and local policies for their use.)

(Bold emphases added in quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.