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**Greene v. Camreta - The Ninth Circuit's Ruling
on Questioning Minors in Abuse Investigations**

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Introduction

Agencies and people involved in child protective services, and specifically involved in or concerned with investigating allegations of child abuse, including child sexual abuse need to be aware of the details of a recent important decision of the U.S. Court of Appeals for the Ninth Circuit on the application of the Fourth Amendment to the questioning of a minor in an office at her school concerning suspicion of such abuse. In a case where the questioning involved both a caseworker and a police officer, the court found that the interview amounted to a seizure, and violated the Fourth Amendment when carried out without a warrant, a court order, exigent circumstances, or parental consent.

This article will present the facts of this case, as well as the legal analysis developed by the appeals court. It will then briefly examine some of the implications of the decision, and some of the initial responses to it from persons involved in child protective services. A subsequent article will examine how other courts have approached similar issues.

At the end of the article, a number of useful or pertinent online resources and references are listed. Inclusion of an item there does not necessarily represent endorsement of or agreement with the point of view expressed.

Summary of Ninth Circuit Decision

The child interviewed in [Greene v. Camreta](#), #06-35333, 2009 U.S. App. Lexis 26891, 588 F.3d 1011 (9th Cir.), was not suspected of having committed a crime of any kind or even an infraction of school rules. Instead, those seeking to talk to her thought that she might herself be a victim of abuse and need protection and assistance.

The mother of the child, who is the plaintiff in a federal civil rights lawsuit, claimed that the actions of a child protective services caseworker and a deputy sheriff, motivated by concern for the well-being of two young girls, her daughters, violated the Fourth Amendment.

They “seized and interrogated” her minor daughter, S.G., in a private office at her school. The interview lasted over two hours, and took place, the plaintiff complains, without a warrant, probable cause, or parental consent. The mother further argued that the caseworker’s later actions in obtaining a court order removing her daughters from her custody, and in subjecting them to “intrusive sexual abuse examinations outside her presence, violated her family’s rights under the Due Process Clause of the Fourteenth Amendment.

The woman’s husband was arrested for suspected sexual abuse of a seven-year-old boy. Investigators subsequently obtained statements suggesting that he also had his two minor daughters sleep in his bed when he was drunk, and that the mother doesn’t like “the way he acts when they are sitting on his lap.” The husband allegedly told a man that his wife was accusing him of molesting his daughters.

The social worker learned of these statements, as well as learning that the father had been released and was having unsupervised contact with his daughters.

He went to S.G.’s school to talk to her. He believed that the school would be a good and safe place to do this, outside of the influence of suspects, including parents. No warrant or court order was obtained, and the mother was not notified.

The caseworker brought a deputy sheriff with him. They obtained a private office to hold the interview in. The deputy did not ask any questions. During the two-hour discussion, the girl made a number of statements indicating that her father tried to molest her, that her mother “knew about the touching,” and that so did her little sister.

The girl later denied this, however, asserting that she just indicated that he was a loving father and that she liked to hug and kiss him. She claimed that the caseworker pestered her to say her father did something bad, and that she finally just said yes “to whatever he said.”

The caseworker and deputy then visited the couple at home and spoke with them. The parents denied any sexual abuse. The father was indicted for felony sexual assault of both daughters. A court order was obtained to remove the daughters from the home. A jury at the father’s trial could not reach a verdict. Before a retrial could be held, the father entered a plea under [North Carolina v. Alford](#), #13, 400 U.S. 25 (1970) on the charges concerning his younger daughter, and the charges concerning the older daughter were dismissed. His plea did not admit guilt but admitted that there was evidence from which a judge or jury could find him guilty.

The mother sued the caseworker and deputy for violation of civil rights. The appeals court characterized the two-hour questioning of the daughter at her school as a seizure for purposes of the Fourth Amendment.

The federal appeals court found that the "special needs" search doctrine could not apply to justify the seizure, given the deep involvement of law enforcement personnel and purposes. It rejected the argument that it should apply the legal standard used in [New Jersey v. T.L.O.](#), #83-712, 469 U.S.325 (1985), in which an in-school search of a student’s purse by an assistant principal in response to the observation of two girls smoking in a bathroom in violation of school rules was held reasonable under the special needs doctrine. This was justified by the special need for a swift and informal disciplinary procedure in public schools to maintain order.

The decision to seize and interrogate the first daughter without a warrant, court order, exigent circumstances or parental consent was held to be unconstitutional, in violation of the Fourth Amendment. But the defendants were entitled to qualified immunity because the application of the Fourth Amendment to an in-school seizure of a suspected sexual abuse victim was not clearly established. The court noted the presence of the deputy sheriff, and the caseworker, neither of whom was a school official.

The court rejected the argument that a special government need to protect children from sexual abuse justified a departure from the warrant and probable cause requirements.

The appeals court noted that the “threshold inquiry” in a “special needs” case is whether the government has identified a need “beyond the normal need for law

enforcement” justifying a departure from the normal Fourth Amendment requirements. No such departure, the court reasoned, is justified when the main purpose of a search is to gather evidence for use in the prosecution of a crime or when law enforcement personnel are “substantially involved.”

In this case, the court pointed out, the police were then involved in an active investigation of allegations of child sexual abuse by the child’s father, and an officer was present at the interview. As a result, the court believed, law enforcement purposes and personnel were too deeply involved in the seizure of the child to justify a special needs exception to normal Fourth Amendment requirements, especially as the social worker requested that the deputy, who was a uniformed officer carrying a visible firearm, be present, despite a state regulation which mandated such caseworkers interviewing a child outside the presence of other persons, unless the worker believes the presence of another person, such as a school employee, would “facilitate” the interview.

The court believed that the deputy’s presence could only be thought to “facilitate” the interview in two ways—either by serving the purpose of gathering evidence firsthand, for criminal law enforcement purposes, or by providing a “threat of law enforcement intervention” as “leverage” to compel the nine-year-old child to speak truthfully.

Once police have begun a criminal investigation into suspected child abuse, the court opined, procedural protections “appropriate to the criminal context” must be provided.

In summary, the appeals court concluded, the decision to seize and interrogate the child, absent a warrant, court order, exigent circumstances, or parental consent was unconstitutional. The court commented in a footnote that there were no exigent circumstances here as the defendants waited three days after receiving the initial report before conducting the interview, and then returned her to her parents’ custody immediately afterwards, with those actions refuting any claim that they had reasonable cause to believe that she was in danger of imminent sexual or physical abuse.

The court determined that the defendants were entitled to qualified immunity from damages since the law on the subject at the time was not then “clearly established.” It is apparent, however, that the opinion of the court establishes that it believes that now, following its decision, the applicable principles are “clearly established,” so that the next investigators to carry out a child interview in this manner, if sued, will not be so fortunate:

“We hasten to note that government officials investigating allegations of child abuse should cease operating on the assumption that a ‘special need’ automatically justifies dispensing with traditional Fourth Amendment protections in this context.”

The caseworker was not entitled to qualified immunity on a claim of having made a false representation. Further proceedings were required on due process claims regarding

the obtaining of the child removal order and the exclusion of the mother from her daughter's medical examination.

The Investigator's Dilemma

Given the court's decision, the investigator looking into allegations of child abuse, including child sexual abuse, faces a few dilemmas. Often the only witness to such abuse, other than the perpetrator, is the child victim him/herself. Often, the accused perpetrator is one or both of the parents, or someone that a parent has a close relationship with.

The child is far less likely to talk truthfully and in a disclosing manner in the presence of the alleged abuser, and often even giving a parent prior notice of the interview, such as for the purpose of obtaining consent, may result in the child, a relatively vulnerable, if not helpless and powerless, person, being subjected to coaching, threats, intimidation, or the "sugar-coated bullets" of rewards in exchange for concealment.

Parental consent, obviously, may often be difficult to obtain, and the request may be especially futile when the parent him/herself is either the alleged perpetrator or someone with knowledge of the abuse and some motive or desire to cover it up.

The obtaining of a warrant or other court order will require more than mere allegation that there is some suspicion of abuse. It will require that there already be some sort of credible evidence gathered, and the whole purpose of the interview is usually to determine if any such evidence exists.

Additionally, as the appeals court's discussion of the exigent circumstances issue reveals, the investigator, upon hearing what may amount to gossip or a rumor of abuse faces another dilemma, in that if they act too fast, such as by suddenly removing a child from the parent's custody without some more tangible proof, they will face criticism, sanctions, or lawsuits for acting improperly, while if they delay in conducting an interview or otherwise acting on the information received, a court may point to the delay itself as belying any claim that exigent circumstances exist.

And, of course, investigators, genuinely concerned about the welfare of vulnerable children, are certainly loathe not to attempt to act in some manner, since the consequences for the child may be horrendous. On the other hand, those tempted to do something like ignore the court's decision may regret the consequences, such as the

suppression of evidence found to have been gathered in an unconstitutional manner, or civil lawsuits.

An Initial Response

There have already been a number of responses to the court's decision. In the State of Washington, the Department of Social and Health Services, Children's Administration, issued a [memo](#) entitled "Urgent Policy and Procedure Update Regarding Interviews of Children by Child Protective Services Social Workers," on January 7, 2010, in response to the *Greene v. Camreta* decision.

Commenting on the case, the memo states that it appears that child protective services are only impacted by the decision when law enforcement is directly involved in the seizure and interrogation of the child, and it is believed that a crime has been committed, in addition to which the child is "seized" for the purposes of interrogation, "that is, the child is not free to leave or believes he or she is not free to leave, and is questioned involuntarily."

The memo states the opinion that the decision is not likely to apply to interviews where law enforcement personnel is not present and a crime is not suspected, such as neglect cases, or to contacts or interviews with children not constituting a seizure, such as when a child previously told a school staff member, another adult, or a child protective services worker that they want to talk about something or are asked if they want to talk and agree to do so.

The agency that issued the memo also sets forth new interview procedures designed to, whenever possible, ensure that alleged child abuse interviews are voluntary, rather than seizures, by asking for the child's consent, providing breaks or seeking continued consent to talk periodically, and allowing the child to have a third party present or to consult with school staff upon request, or to return to class at school.

Given that one of the difficulties present in the Ninth Circuit case were disparities between the caseworker's version of what transpired during the interview and what the child related as their memory of the interview, the memo also makes a good recommendation that notes be taken indicating questions and responses, if the interview is not recorded.

The agency is also working together with prosecutors and law enforcement to develop guidelines for joint in-school interviews.

It is also worth noting that the court's decision does not appear to impact on interviews of students conducted directly by school personnel within the context of the school disciplinary process.

In jurisdictions covered by the Ninth Circuit court's decision, the best approach to be sure that all possible avenues are explored to make sure that child sexual abuse allegations are adequately investigated will involve consultation between prosecutors, law enforcement, school management, and child protective services.

It is also worth noting that groups and persons with other agendas are already publicizing this recent decision with a different slant and emphasis, such as one [website](#) whose page reporting on the case states, in a portion evidently aimed at children, "You don't have to talk with CPS agents, so DON'T." Another such website carries an article entitled "[Teaching Children To Resist Interrogation](#)."

Resources

The following are some useful resources related to the subject of this article.

- [Interrogation](#). Summaries of cases reported in AELE publications.
- [Interrogation: Children](#). Summaries of cases reported in AELE publications.
- [Pandora's Box, The Secrecy of Child Sexual Abuse](#). Child protection and abuse prevention information.
- State of Washington, Department of Social and Health Services, Children's Administration, "[Urgent Policy and Procedure Update Regarding Interviews of Children by Child Protective Services Social Workers](#)," Jan. 7, 2010. [Memo in response to *Greene v. Camreta* decision].
- Schools /Legal Services Education Law Update on *Greene v. Camreta* decision, "[On-Campus Interviews of Students May Be Subject to Fourth Amendment Standards](#)," May 5, 2010.
- California School Board Association [Policy News](#) report on *Greene v. Camreta* case.

- Forms to be filled out by the [Peace officer](#) or [CPS](#) agent (child protective services) seeking the interview or detention of a pupil. Developed by the Bakersfield City, California School District.

Prior Relevant Monthly Law Journal Articles

- [Civil Liability for Intentional Violations of Miranda. Part One: Liability Considerations](#), 2009 (7) AELE Mo. L. J. 501.
- [Civil Liability for Intentional Violations of Miranda. Part Two: Criminal Admissibility](#), 2009 (8) AELE Mo. L. J. 501.
- [Civil Liability for Coercive Interrogation](#), 2010 (3) AELE Mo. L. J. 101.

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- B.A. Robinson. "[How young children disclose sexual abuse](#)." (Updated Jan. 28, 2009)
- Tamar R. Birkhead, "[The Age of the Child: Interrogating Juveniles after Roper v. Simmons](#)," 65 Wash. & Lee L. Rev. 2008.
- Lindsay E. Cronch, Jodi L. Viljoen, and David J. Hansen, "[Forensic interviewing in child sexual abuse cases: Current techniques and future directions](#)," 11 Aggression and Violent Behavior No. 3, pgs. 195-207 (May-June 2006).
- Doriane Lambelet Coleman. "[Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment](#)," 47 Wm. & Mary L. Rev. 413, 417 (2005).
- Michael Compitello, "[Parental Rights and Family Integrity: Forgotten Victims in the Battle Against Child Abuse](#)," 18 Pace L. Rev. 135 (Fall 1997).

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