

# The Inquisitive Prosecutor's Guide



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**2020-IPG-45 (FORFEITURE BY WRONGDOING -RENEAUX)**

This IPG discusses the latest case (*People v. Reneaux* (2020) 50 Cal.App.5th 852) to weigh in on the scope of the forfeiture by wrongdoing doctrine and the hearsay exception (Evidence Code section 1390) that embodies the doctrine. This IPG is a joint production with Points and Authorities and the podcast may be viewed as a video that can be accessed by the link below. Accompanying this IPG is a 36-page bench memo stocked with all the recent case law explaining how the doctrine and hearsay exception should be interpreted. The memo serves double duty as a up to date and comprehensive compendium of the law governing the forfeiture by wrongdoing doctrine and section 1390.

The bench memo is more informational than adversarial in content. And it may be filed, as is, for that purpose. However, it also may easily be modified, significantly reduced in length, and culled by prosecutors for use as a motion to introduce a witness's statement under the forfeiture by wrongdoing doctrine or, depending on the circumstances, by defense attorneys seeking to exclude the statement.

The podcast features Alameda County Deputy District Attorney Mary Pat Dooley and provides **30 minutes of (self-study) MCLE general credit**.

It may be accessed and downloaded at: <http://sccdaipg.podbean.com/>.

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**The Doctrine of “Forfeiture by Wrongdoing” Can Apply to Admit Hearsay Against a Criminal Defendant Even if the Defendant’s Affirmative Act of Wrongdoing is Not Criminal or Threatening So Long as the Defendant Engaged in the Wrongdoing with the Intent to Procure, and Did Procure, the Witness’ Absence. *People v. Reneaux* (2020) 50 Cal.App.5th 852 [pin cites are to 2020 WL 3263666] [petition for review filed (July 17, 2020)]**

**Facts and Procedural Background**

The defendant began living with the victim in June of 2015. Shortly thereafter, the two engaged in a series of disputes. On August 13, an officer came out to their residence in response to a call of vandalism. The victim told the officer that the defendant had become “very angry, threw things around the house, and punched a hole in the wall.” (*Id.* at p. \*1.) She also said defendant followed her when she got into her car to leave for work and vandalized her car, cracking her windshield, denting her roof, and damaging the ignition. The victim said she was “afraid for her life and did not want defendant to hurt her. (*Ibid.*)

About two weeks later, the defendant again got angry with the victim, grabbed her, and pushed and pulled her around the apartment. When officers came out to investigate the disturbance, defendant grabbed the victim, covered her mouth, held her down, and prevented her from answering the door. Defendant then punched holes in the wall, threw the victim’s belongings out the window, and screwed the door closed. (*Id.* at p. \*2.) It appears the victim reported this incident to the victim’s landlord and the police, both of whom noticed bruises on the victim’s arms and jaw the next morning. (*Ibid.*) When she spoke with police, the victim appeared scared, hesitant, and uncomfortable. An officer helped her obtain an emergency protective order. (*Ibid.*) A few days later, the victim told police that defendant had come to the house, trying to “make peace” before turning himself in. She reported they argued prior to him leaving. (*Ibid.*)

After the defendant was arrested, the defendant called the victim from jail. (*Id.* at p.\*3.) “He told her she needed to call law enforcement and tell them she had made a false report. She agreed to make the call. He continued, that she needed to tell law enforcement it was all a lie. She agreed to tell them that. He told her it was ‘the only way,’ the only thing she could do, because he wanted to marry her, and if he went to prison he would not have her anymore. She

promised she would get him out. He told her in his arms was the only place he wanted to be.” He urged her to ‘fuckin’ do this baby.’ She again promised she would.” (*Id.* at p. \*6.)

About two weeks later, the victim requested a copy of the police report, left a voicemail with the investigating officer that she wanted to change the report and said that what the officer had written down was not exactly what had happened. She also called the district attorney’s office to say she had lied. (*Ibid.*)

In January of 2016, the victim was subpoenaed to appear for a trial readiness conference on January 14. About five days before the readiness conference, the defendant again spoke with the victim (edited to highlight the relevant portions):

Defendant: So you got me though?

Victim: For sure. . . .

Victim: . . . Alright, I’m coming, am I gonna come to see you? Can I come see you like Tuesday or something?”

Defendant: No.

Victim: Huh?

Defendant: What?

Victim: I’m gonna come see you Tuesday or something[.]

Defendant: No.

Victim: Why?

Defendant: What do you mean, ‘why?’

Victim: Well what’s Tuesday? Is it on Wednesday?

Defendant: I have court Tuesday, Wednesday and Thursday.

Victim: That ... it says the 14th.

Defendant: I got court Tuesday, Wednesday, Thursday.

Victim: Well, my paper says the 14th.

Defendant: Well, what does that mean?

Victim: Well, I didn’t know, I just figured ... so you have it for three days? That’s ridiculous.

Defendant: Yeah.

Victim: Oh, I didn’t know that. (*Id.* at p. \*3.)

The victim did not show up for the readiness conference. (*Ibid.*)

The People filed a motion in limine seeking to admit the victim's statements to the police. "The People argued defendant had forfeited his confrontation rights by discouraging the victim from attending hearings and encouraging her to call authorities and claim she had lied in her previous reports; that is, forfeiture by wrongdoing." (*Id.* at p. \*3.) The People observed that a warrant had been issued and law enforcement had been unable to find the victim. (*Ibid.*)

Defense counsel argued the forfeiture by wrongdoing doctrine did not apply because the victim had, "in fact lied and made a false report, and defendant was not threatening her, but asking her to correct the record. Counsel also argued there was no inference of a threat, intimidation or coercion for [the victim] to not come to court." (*Ibid.*)

After the trial court ruled the victim's statements were admissible pursuant to the forfeiture by wrongdoing doctrine, the victim miraculously appeared in court with an attorney. The victim's attorney told the court that the victim was not willing to testify and would be asserting her Fifth Amendment privilege against self-incrimination because the prosecution could not offer her "effective immunity since there's nothing to preclude them from charging her with perjury based on whatever testimony she gives. [¶] ... if they don't believe she testified truthfully." (*Id.* at p. \*4.) The attorney said even if the victim were given immunity, she would not testify. (*Ibid.*)

At a foundational hearing, the victim took the witness stand and refused to answer any questions, notwithstanding the People's offer of a grant of immunity. The victim's attorney stated, "she's not going to answer any questions period. That's her instruction to me. However on the legal side of this there is no warranty from the prosecution, nor can there be, that if they believe she does not testify truthfully that she would not be prosecuted for perjury. The prosecution cannot immunize her from perjury, and she has no control over what they believe is perjury or not." The victim's attorney stated that the victim had given him instructions that even if the witness were given "all encompassing" immunity, she would not testify. (*Id.* at p. \*4.) Given the victim's refusal to testify, even with a grant of immunity, the trial court held her in contempt of court and ordered her to go into counseling.\* (*Id.* at pp. \*4, \*7.)

**\*Editor's note:** The trial court was not at liberty to incarcerate the victim for contempt because of the limitations imposed by Code of Civil Procedure section 1219(b), which, in relevant part, provides: "Notwithstanding any other law, a court shall not imprison or otherwise confine or place in custody the victim of a sexual assault or domestic violence crime for contempt if the contempt consists of refusing to testify concerning that sexual assault or domestic violence crime."

The prosecution nonetheless called the victim at trial. She answered a few general questions about where she lived, but when asked where she was living in August 2015, she answered, “On the advice of my counsel, I claim the Fifth Amendment. I’m not answering any more questions.” (*Id.* at p. \*4.) The People then indicated they were willing to offer her a grant of immunity but the victim continued to claim her Fifth Amendment privilege. “The trial court found the privilege did not apply and ordered her to testify. She refused. The trial court instructed the jury [the victim] did not have the right to refuse to testify and they could consider that fact in their deliberations.” (*Ibid.*)

**\*Editor’s digression on the Fifth Amendment Privilege:** The victim could properly assert a Fifth Amendment privilege if her testimony at the trial would provide evidence that she *earlier* had lied to the police. (See *People v. Seijas* (2005) 36 Cal.4th 291, 305-306.) The prosecution could eliminate the right to assert this privilege by giving the victim use immunity. (See *Kastigar v. United States* (1972) 406 U.S. 441, 449; *People v. Cooke* (1993) 16 Cal.App.4th 1361, 1366.) If the victim then perjured herself, she would still be subject to a prosecution for perjury. (See *People v. Ervin* (2000) 22 Cal.4th 48, 81 [Penal Code section 1324 permits grants of immunity to secure testimony but withholds immunity from prosecution for perjury committed in giving that testimony].) However, notwithstanding defense counsel’s claim that the victim could be potentially subject to a perjury prosecution if the People did not believe the victim testified truthfully, this concern is not a basis for continuing to claim a Fifth Amendment privilege once immunity has been granted. The Fifth Amendment privilege does not apply to protect a witness from having to testify just because a witness *might commit perjury* during the immunized testimony - just as it does not protect a witness (who is testifying after having been immunized) from having to answer questions that might result in the witness committing perjury. (See *United States v. Apfelbaum* (1980) 445 U.S. 115, 130 [Fifth Amendment privilege does not protect a person “against false testimony that he *later might decide to give*”, emphasis added]; *State v. Corbett* (Alaska 2012) 286 P.3d 772, 776 [Immunized witness does *not* retain the ability to assert the privilege against self-incrimination, and the concomitant right to refuse to testify, based on the possibility that the State will disbelieve the testimony that the witness gives under the grant of immunity, and will prosecute the witness for committing perjury during that immunized testimony]; *People v. Hathcock* (1971) 17 Cal.App.3d 646, 649.) And the prosecution cannot likely grant immunity in advance for perjury committed during the immunized testimony. (See *People v. Ervin* (2000) 22 Cal.4th 48, 81 [declining to address “contention that the prosecutor’s grant of immunity for future perjury was illegal and constituted a denial of due process, confrontation, and “reliable evidence” rights” because, properly interpreted, the grant of immunity actually given did not cover future perjury]; *cf.*, *Rodriguez v. Yates* (Unreported in F.Supp.2d) [2009 WL 1212102, at \*19] [prosecutor justified in declining to grant witness use immunity based on concerns that she intended to perjure herself].)

The victim’s statements to the police were admitted at trial. And the defendant was convicted of false imprisonment and of dissuading the victim from testifying against him – albeit the jury hung on the charge infliction of corporal injury. (*Id.* at p. \*1, \*2.)

The defendant appealed his conviction, arguing the trial court erred in finding the doctrine of forfeiture by wrongdoing permitted admission of the victim’s hearsay statements made to law enforcement over his Sixth Amendment right to confront the witnesses against him because there not substantial evidence he intended to make the victim unavailable to testify and the independent advice of the victim’s attorney is what caused her refusal to testify. (*Id.* at p. \*3.)\*

**\*Editor’s note:** The defendant also argued that “the trial court abused its discretion when it imposed consecutive rather than concurrent terms.” (*Id.* at p. \*1.) This claim was rejected (*id* at p. \*1) and is not the focus of this IPG. The appellate court, however, remanded the case to the trial court to decide whether to use its newly-legislated discretion (see Senate Bill No. 1393, effective January 1, 2019) to strike or dismiss the prior serious felony conviction enhancements imposed under Penal Code section 667(a). (*Id.* at p. \*1.)

### **Analysis and Holding**

1. The Confrontation Clause generally bars admission of testimonial hearsay unless “the declarant is unavailable” and “the defendant has had a prior opportunity to cross-examine.” (*Id.* at p. \*5.)
2. However, the unconfrosted statements of an unavailable witness may be admissible under an exception to the general rule barring such statements, “where the defendant ha[s] engaged in wrongful conduct designed to prevent a witness’s testimony.” (*Ibid*, citing to *Giles v. California* (2008) 554 U.S. 353, 366.) This exception is based on equitable concerns and is called the “forfeiture by wrongdoing” doctrine. (*Id.* at p. \*5.)
3. “The goal of the doctrine [is] to remove the ‘otherwise powerful incentive for defendants to intimidate, bribe, and kill the witnesses against them—in other words, it is grounded in “the ability of the courts to protect the integrity of their proceedings.”” (*Ibid*, citing to *People v. Kerley* (2018) 23 Cal.App.5th 513, 549-550.)
4. “[T]he doctrine of forfeiture by wrongdoing permits admission of unconfrosted statements of an unavailable witness only if the trial judge finds by a preponderance of the evidence that the defendant by a wrongful act made the witness unavailable with the intent of preventing the witness from testifying.” (*Ibid.*)
5. The doctrine does not apply just because “the defendant had by his own culpable acts [i.e., killing the declarant] rendered the witness unavailable. (*Id.* at p. \*8 [bracketed information added by IPG].) The defendant must engage in “conduct *designed* to prevent a witness from testifying[.]” (*Id.* at p. \*8, citing to *Giles v. California* (2008) 554 U.S. 353, 365.)

6. Moreover, there must be “*affirmative action on the part of the defendant that produces the desired result*, non-appearance by a prospective witness against him in a criminal case. Simple tolerance of, or failure to foil, a third party’s previously expressed decision either to skip town himself rather than testifying or to prevent another witness from appearing does not ‘cause’ or ‘effect’ or ‘bring about’ or ‘procure’ a witness’s absence.” (*Id.* at p. \*9, citing to ***Carlson v. Attorney General of California*** (9th Cir. 2015) 791 F.3d 1003, 1009-1010.)
7. However, the “standard of wrongdoing is broad.” (*Id.* at p. \*9.) The wrongdoing need not even be “explicitly threatening or directive.” (*Id.* at p. \*7.) Indeed, “[t]he defendant’s affirmative action need not be criminal or even threatening.” (*Id.* at p. \*9.)
- “Rather, the action becomes “wrongdoing” because the defendant acted with the intent to interfere with the court’s truth-finding function and his action caused the witness not to appear.” (*Id.* at p. \*9.)
8. “This doctrine is codified\* in California Evidence Code section 1390, which provides: “Evidence of a statement is not made inadmissible by the hearsay rule if the statement is offered against a party that has engaged, or aided and abetted, in the wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.” (*Id.* at p. \*6.)

**\*Editor’s note:** It is not completely accurate to say section 1390 “codifies” the forfeiture by wrongdoing” doctrine. Rather, section 1390 embodies a *version* of the doctrine. (See ***People v. Quintanilla*** (2020) 45 Cal.App.5th 1039, 1050, 1057 [describing the doctrine as being “similar” and “analogous” to section 1390].) The United States Supreme Court has said the *federal* rule of evidence, *rule 804(b)(6)*, “codifies the forfeiture doctrine.” (***Giles v. California*** (2008) 554 U.S. 353, 367; ***Davis v. Washington*** (2006) 547 U.S. 813, 833; **see also *People v. Banos*** (2009) 178 Cal.App.4th 483, 500.) Rule 804(b)(6) uses different language than section 1390. In particular, it states: A statement offered against a party that wrongfully caused--or *acquiesced in wrongfully causing*--the declarant’s unavailability as a witness, and did so intending that result.” (***Ibid.***, emphasis added.) In contrast, section 1390 does not include the italicized language allowing for application of the exception when the party “acquiesces” in the wrongdoing. Moreover (and largely due to opposition in the state legislature to passage of a forfeiture by wrongdoing hearsay exception in a form tracking the federal rule), section 1390 has a number of other aspects to it that do not exist under the federal rule. For example, subdivision (b)(2) of section 1390 states “a finding that the elements of subdivision (a) have been met shall not be based solely on the unconflicted hearsay statement of the unavailable declarant, and shall be supported by independent corroborative evidence.” (***Ibid.***) Whereas, in the federal system, the rules of evidence do not apply at foundational hearings. (Fed. Rules Evid., rule 104, 28 U.S.C.A.) Also, unlike the federal exception (which properly recognizes that the exception is based on an equitable doctrine and not on the statement’s inherent reliability), subdivision (b)(4) adds: “In deciding whether or not to admit the statement, the judge may take into account whether it is trustworthy and reliable.” (***Ibid.***) Regardless, any distinction between the hearsay exception version of the doctrine and the Confrontation Clause version of the doctrine was not significant in the ***Reneaux*** case.

8. “The underlying factual issues to be resolved by the trial court in applying the forfeiture by wrongdoing doctrine include: (1) whether by his wrongful conduct the defendant caused a witness to be unavailable to testify; and (2) whether the defendant intended to cause the witness to be unavailable.” (*Id.* at p. \*6.)

**\*Editor’s note:** In determining whether the forfeiture by wrongdoing doctrine applies, there can occasionally be issues arising as to whether a statement was testimonial or whether the person who made the statement was unavailable. In the instant case, it was not disputed that the statements were testimonial nor that the declarant (the victim) was unavailable. (*Id.* at p. \*5.)

9. Under the standards outlined above, the appellate court held the statements of the victim were properly admitted under the forfeiture by wrongdoing doctrine because there was substantial evidence “to support the trial court’s ruling that defendant caused, and intended to cause, [the victim’s] unavailability as a witness and her refusal to testify against him at trial.” (*Id.* at p. \*6.)

“It was reasonable to infer from [the] evidence, that defendant’s statements telling her not to cooperate with law enforcement and promising to marry her but only if she got him out of jail were intended to, and did, cause [the victim] to recant her statements to law enforcement, and later, to refuse to testify despite a grant of immunity.” (*Ibid.*)

The appellate court noted that the victim had not indicated during her earlier contact with law enforcement that she wanted to recant her statements or had lied in her statements. It was only after defendant encouraged her to not cooperate with law enforcement and cajoled her by promising to marry her, but only if she could get him out of jail by not cooperating with law enforcement that the victim recanted and claimed to have lied. (*Ibid.*)

The appellate court held the trial court was entitled to **reject** an alternative inference suggested by the defense that defendant was criticizing the victim for lying and did not want her to absent herself from trial; but, instead, was trying to persuade her to talk to law enforcement and tell the truth. (*Ibid.*) The appellate court noted there was substantial evidence for rejecting this inference and that the inference was “belied in no small part by the evidence of her physical bruising and other injuries observed by the law enforcement officers.” (*Id.* at p. \*11.)

The appellate court also considered (more so than the trial court)\* the conversation the defendant had with the victim five days before the trial readiness conference.

**\*Editor's note:** The appellate court recognized the trial court “was not particularly persuaded by this phone call” in finding the forfeiture by wrongdoing exception applied. However, appellate court went on to point out that “in our substantial evidence review, we are not precluded from considering this evidence in determining whether substantial evidence supports the trial court’s finding. Our task is not to decide whether the trial court’s decision is the only reasonable outcome given the facts. Rather, we must decide whether, viewing the facts in the light most favorable to the decision, a rational decision maker could find as the trial court did.” (*Id.* at p. \*6.)

The appellate court noted that during that call: (i) the defendant confirmed with the victim, “you got me, though?” and she assured him she did; (ii) while discussing upcoming court dates, the victim said her “paper” told her that the date was the 14th, and that defendant “asked what that meant, and she said she did not know”; and (iii) when the defendant then asked if she remembered what he told her, she said she knew, “no worries.” (*Ibid.*)

The appellate court believed it was a reasonable inference that “the paper” was a reference to the subpoena the victim received for that date. And, considering that the victim did not appear at the hearing, that it was also a reasonable inference the defendant was intimating the victim not appear at the hearing when (i) he inquired whether the victim “had him”; (ii) when he challenged her by asking her “what she meant” when she pointed out the paper told her to appear on the 14th; and (iii) by asking whether she remembered what he had told her. (*Id.* at p. \*7.)

In addition, the appellate court took into account that the victim remained unavailable until after the trial court initially ruled her prior statements were admissible under the forfeiture by wrongdoing doctrine\* and that the victim refused to testify irrespective of her counsel’s advice—even though she had no Fifth Amendment privilege, was offered a grant of immunity, and was held in contempt. (*Ibid.*)

**\*Editor's digression:** The fact that the witness miraculously appeared after it became apparent her absence would not stop her earlier statements from coming into evidence is certainly evidence from which an inference could be drawn that she was absent until then at defendant’s behest. However, an argument could be made that her continual refusal to testify (assuming she was aware her statements would also be admissible if she refused to testify) after she appeared undermines this inference. On the other hand, she may have refused to testify without realizing the ramifications of her refusal on the admission of the statements or simply figured that defendant was harmed with or without her testimony and preferred not to go on the stand and perjure herself.

10. The court rejected the most significant assertion made by the dissenting justice; namely, that while the cajoling conduct engaged in by the defendant (i.e., exhortations to stop lying and to

reveal false reports previously given, and to expressions of love and desire - contrived or not) was wrong and “even illegal such that the jury found him guilty of dissuading a witness,” it was not the *type of* wrongdoing of the nature contemplated by the forfeiture by wrongdoing doctrine. (*Id.* at p. \*7.)

11. The appellate court stated that affirmative action, such as the type engaged in by the defendant in the instant case (i.e., action that is neither criminal nor threatening) “qualifies as wrongdoing under the appropriate legal standard where the defendant acted with the intent to procure the witness’s absence from court.” (*Id.* at p. \*8.)
12. The court recognized that most of cases involving the forfeiture by wrongdoing exception to the Confrontation Clause involve serious criminal conduct, but held that, “consistent with the broad construction of the elements required for the application of this doctrine, and the underlying purpose to prevent defendant from undermining the judicial process,” the wrongdoing need not be “explicitly threatening or directive.” (*Id.* at p. \*7.)

The court stated this interpretation was “particularly apt in the context of domestic violence offenses and abusive relationships, which typically include an element of inherent psychological coercion, and the reality that “[t]his particular type of crime is notoriously susceptible to intimidation or coercion of the victim to ensure that [the witness] does not testify at trial.” (*Ibid*, citing to *Davis v. Washington* (2006) 547 U.S. 813, 832-833.)

13. In light of the paramount interest protected by the doctrine, i.e., the disclosure of relevant information at a public trial, “any significant interference with that interest, other than by exercising a legal right to object at the trial itself, is a wrongful act. Wrongful conduct obviously includes the use of force and threats, but it has also been held to include persuasion and control by a defendant, the wrongful nondisclosure of information, and a defendant’s direction to a witness to exercise the fifth amendment privilege.” (*Id.* at p. \*10 citing to *Steele v. Taylor* (6th Cir. 1982) 684 F.2d 1193, 1201.)
14. “Depending on the facts, trial strategies, letters and phone calls from jail colluding or confirming that a witness will not appear, and even a marriage proposal may constitute wrongdoing for purposes of the forfeiture-by-wrongdoing doctrine if the defendant engaged in those actions with the intent to prevent the witness from testifying.” (*Id.* at p. \*11.)

15. The court **rejected** the defense argument that defendant’s own actions did not result in [the victim’s] refusal to testify, but instead it was [the victim’s] attorney’s advice to her that she not testify that caused her refusal.” (*Id.* at p. \*11.)

This argument was rejected as “a non-starter,” primarily because there is nothing in the record that showed the victim’s counsel advised her not to testify. The appellate court observed the victim’s attorney repeatedly stated that the victim’s *instructions to him* were that she would not testify regardless of a prosecution grant of immunity. (*Ibid.*) And that while the record showed her attorney advised the victim of the possible consequences of her testifying or not testifying and she “presumably listened to and considered her lawyer’s explanations on the question of her refusal to testify . . . , the record show[ed] that [the victim’s] decision not to testify was her own.” (*Ibid.*)

**\*Warning:** Prosecutors need to be aware of the impact of a defendant retaining an attorney for the witness as well as the significance of advice provided by an attorney independently retained by the victim or appointed for the victim by the court. See this IPG, below, at pp. 15-20.

16. The appellate court went through a litany of cases\* involving circumstances illustrating the broad scope of what constitutes “wrongdoing” under the doctrine of forfeiture by wrongdoing.

**\*Editor’s note:** We recount the summaries of these cases as described in *Reneaux* because they provide a good guide as to outer parameters of the doctrine when being applied to factual circumstances commonly encountered by prosecutors.

***Carlson v. Attorney General of California*** (9th Cir. 2015) 791 F.3d 1003

In *Carlson*, “the defendant was charged with assaulting his child. At trial, the defendant’s wife and child, although subpoenaed to testify, did not appear.” (*Reneaux* at p. 9, citing to *Carlson* at pp. 1004-1005.) “The evidence showed that the wife was distraught and would require emotional care, the defendant was not at home on the nights during trial when his wife and child were also not home, and the defendant had instructed the other children not to call their mother. (*Reneaux* at p. 9, citing to *Carlson* at p. 1012.) “From this evidence, the trial court could infer that the defendant knew where his wife and child were and was with them when they were absent, he wanted to keep their whereabouts secret, so they could not be compelled to appear, and he wished to keep his wife away from any influence that might persuade her to reappear. (*Ibid.*) “The trial court invoked the forfeiture-by-wrongdoing exception and admitted the wife’s and child’s prior statements to police. The Ninth Circuit

Court of Appeals held it could not say the state court’s decision was unreasonable.” (***Reneaux*** at p. 9 citing to ***Carlson*** at pp. 1004-1005.)

***Steele v. Taylor*** (6th Cir. 1982) 684 F.2d 1193

In ***Steele***, several defendants were charged with a conspiracy to commit murder. The witness (who was a participant in the conspiracy) gave a statement to the FBI. By the time of trial, the witness was living with one of the defendants (Owen) and had given birth to a child. The defense used a combination of tactics to prevent the witness from testifying. Defendant Owen obtained a lawyer for the witness, and Defendant Owen’s own lawyer remained as the witness’s co-counsel. The defense objected to the witness being deposed in advance of trial based on the marital privilege. “The court ordered the deposition go forward, during which the witness stated her previous statement to the FBI was false. The defense then sought to prevent her testimony at trial by claiming the deposition established marital privilege, she could assert her Fifth Amendment right, and her prior statement was false. The trial court overruled the objections and ordered the witness to testify. At trial, the witness’s lawyer [who was no longer defendant Owen’s own attorney but a new lawyer who was paid for by [defendant Owen] stated the witness would not testify and he had counseled her not to do so.” (***Reneaux*** at p. 9, citing to ***Steele*** at pp. 1197-1199 [bracketed information added by IPG].)

The trial court admitted evidence of the witness’s earlier statement based on the defendants’ wrongdoing. (***Ibid.***) On habeas review, the Sixth Circuit court held “it could not say the state court committed constitutional error by inferring from the facts that the defendants acting in concert wrongfully induced the witness not to testify, even though there was no evidence of specific threats.” (***Reneaux*** at p. 10, citing to ***Steele*** at p. 1203.) The Sixth Circuit noted “[t]he defendants had jointly agreed that [defendant] Owen would use his influence and control over the witness to induce her not to testify” and “[t]here was also evidence that the witness was afraid of [defendant] Owen, he obtained her lawyer, and that lawyer advised her not to testify.” (***Ibid.***)

**\*Editor’s note:** Although ***Steele*** pre-dates the High Court holdings in ***Crawford v. Washington*** (2004) 541 U.S. 36 and ***Giles v. California*** (2008) 554 U.S. 353, it “remains viable, as its holding was based on the wrongfulness of the defendants’ actions, the standard upheld by ***Giles***, not on any indicia of reliability on which hearsay was deemed admissible prior to ***Crawford***, although it addressed the latter standard in the alternative. (***Steele, supra***, 684 F.2d at p. 1203; see ***United States v. Ponzo*** (1st Cir. 2017) 853 F.3d 558, 579 [no reason why pre-***Crawford*** forfeiture-by-wrongdoing case law is not valid under ***Giles***].)” (***Reneaux*** at p. \*10.)

**Commonwealth v. Szerlong** (2010) 457 Mass. 858 [933 N.E.2d 633]

In ***Szerlong***, the court “held that a defendant’s agreement to marry the victim to enable her to claim the spousal privilege and not have to testify against the defendant was wrongdoing that forfeited the right to challenge admitting the victim’s out-of-court statements.” (***Reneaux*** at p. \*10 citing to ***Szerlong*** at pp. 864-866.) “The marriage occurred after a warrant had been issued for the defendant’s arrest but before the defendant surrendered to authorities, and the victim informed others she had married the defendant so she would not have to testify in his case. (***Reneaux*** at p. \*10 citing to ***Szerlong*** at pp. 859, 863-864.)

**Commonwealth v. Edwards** (2005) 444 Mass. 526, 830 N.E.2d 158

In ***Edwards***, the prosecution made an offer of proof indicating the defendant in telephone calls from jail conspired with the witness and others to procure the witness’s unavailability. The court stated: “A defendant’s involvement in procuring a witness’s unavailability need not consist of a criminal act, and may include a defendant’s collusion with a witness to ensure that the witness will not be heard at trial.” (***Reneaux*** at p. \*11, citing to ***Edwards*** at p. 540.) Accordingly, the court remanded the matter for an evidentiary hearing to determine whether the collusion could qualify as wrongdoing. (*Ibid.*)

**State v. Hallum** (Iowa 2000) 606 N.W.2d 351

In ***Hallum***, defendant’s half-brother (a juvenile) gave a statement incriminating the defendant in a murder. While juvenile proceedings against the half-brother were still pending, “he refused to give a deposition in the defendant’s case, invoking his Fifth Amendment privilege against self-incrimination. Shortly thereafter, the half-brother was adjudged guilty of two counts of assault causing bodily injury and received a suspended two-year sentence. Although he was then granted immunity as to the events surrounding [the murder], he persisted in his refusal to testify in the defendant’s case. The district court held [the half-brother] in contempt and confined him in the county jail pending his cooperation.” (***Id.*** at p. 353.) At an evidentiary hearing on whether to admit the half-brother’s statement, the prosecution introduced a letter from the defendant to his brother telling him “to ‘hang in there,’ as there were only two months left until defendant’s trial. He did not think the trial court would admit the brother’s recorded testimony. He told him to calm down and not discuss anything of importance on the phones.” (***Reneaux*** at p. \*11 citing to ***Hallum*** at pp. 356-357.) A second letter was introduced from the step-brother who had incarcerated for fourteen months for his refusal to testify in his

brother's trial implying that he was going to break down and testify if the defendant chooses to go to trial. (*Id.* at p 357.) At the evidentiary hearing, the step-brother continued to refuse to testify and stated that he would not testify even if requested by the defendant, but admitted that he was apologizing to his brother in the letter for the possibility that he would testify. (*Ibid.*) The appellate court upheld the trial court's finding the doctrine of forfeiture by wrongdoing applied because it was "naive to think that the defendant was not encouraging his brother to persist in his refusal to testify" in the first letter and because the letter from the step-brother to the defendant showed he "was influenced by the defendant and was concerned about how the defendant would feel . . . if [the step brother] broke down and testified." (*Id.* at p. 358, bracketed information added by IPG [and noting the trial court properly disbelieved the step-brother's claim he would not testify if defendant asked him to].)

### **The Dissenting Opinion and Petition for Review**

The dissenting opinion's primary concern was that the conduct involved was not sufficiently "serious" to qualify as "wrongdoing" as contemplated under the doctrine – and claimed that there must be wrongdoing that is not "derived solely from findings of intent and causation before the doctrine may be properly applied." (*Id.* at p. \*14.) The petition for review challenges the majority opinion on this basis as well (and also claims there was insufficient evidence of intent or causation).

**\*Editor's note:** Contrary to the dissenting opinion, the wrongdoing in this case was not derived solely from the defendant's intent and the victim's failure to appear. The defendant *engaged* in cajoling conduct in an attempt to dissuade the witness into not testifying. That would be an affirmative act of wrongdoing *even if* the victim did not appear. (See Pen. Code, § 136.1(b) [". . . every person who **attempts** to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense . . . : . . . (2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and **assisting in the prosecution thereof**."] )

## Questions an Inquisitive Prosecutor Might Have After Reading *Reneaux*

1. If a defendant hires an attorney to “represent” the witness, knowing the attorney will advise the witness not to testify or to invoke the Fifth Amendment privilege, is this a form of wrongdoing or evidence of wrongdoing?

There are only a few cases that touch upon the significance of a defendant hiring an attorney to represent a witness who is later deemed unavailable. The question of whether the act of hiring of an attorney for the witness knowing that the attorney is going to advise the witness not to testify *is itself* an act of wrongdoing has not been directly addressed in any case. Though in the case of *United States v. Mayes* (6th Cir. 1975) 512 F.2d 637, the court held a defendant forfeited his confrontation right when his attorney (who jointly represented defendant and three witnesses) convinced the witnesses to invoke their Fifth Amendment privileges. (*Id.* at p. 651.)

On the other hand, several courts have considered the significance of a defendant hiring an attorney for the witness as evidence bearing on whether the defendant intended or caused the witness to be unavailable.

In *Steele v. Taylor* (6th Cir. 1982) 684 F.2d 1193 (discussed above at p. 12), the witness provided information to the police implicating the defendants in a murder. However, at the time of trial, the witness was living with one of the defendants. Fearful the witness would not be available to testify, the state placed her in protective custody. One of the defendant’s (Owen) obtained a lawyer for the witness, and defendant Owen’s own counsel also remained as co-counsel for the witness. All defense counsel contested protective custody and sought her release. The trial court released her from custody. (*Id.* at pp. 1197-1198.)

Over objections by the witness’ lawyer and other defense counsel that the witness had a marital privilege not to testify, the witness was deposed. At trial, the defense to prevent her testimony “on the grounds that the deposition established the marital privilege, that she was entitled to refuse to testify under the fifth amendment, and that her previous statement was false. The trial court overruled these objections and ordered her to testify.” (*Id.* at p. 1198.) Counsel for defendant Owen advised the court the witness would refuse to testify, even if held in contempt.

Defendant's counsel eventually withdrew as co-counsel for the witness. But the remaining attorney for the witness appealed the court's ruling on the marital privilege. (*Ibid.*)

At the trial, the witness was called over the objection of all defense counsel. Her lawyer stated that "she would not testify and acknowledged that he had counseled her to follow this course in view of the fact that the marital privilege question was on appeal." (*Id.* at pp. 1198-1199.) After the witness refused to testify, the trial court allowed in the previous statement. (*Id.* at p. 1199.)

The Sixth Circuit held the doctrine of forfeiture by wrongdoing could be applied because, inter alia, of the fact defendant Owen "obtained her lawyer and that the lawyer advised her to refuse to testify and to place herself in contempt." (*Id.* at p. 1203.) The Sixth Circuit held the trial court was entitled to infer "from the facts before it that the defendants acting in concert wrongfully induced [the witness] not to testify" even though there was no evidence of specific threats, even though the attorney for the witness had another purported reason for advising the witness not to testify, and even though the defendants sought to subpoena the witness to testify after the trial court ruled the witness's statements were admissible. (*Ibid.*)

In *People v. Pappalardo* (N.Y. Sup., 1991) 576 N.Y.S.2d 1001, the defendant was charged with murder. The sole eyewitness was a woman named Lerman, who gave "a detailed account of the shooting to a detective on the day of the homicide and testified fully before the grand jury." (*Id.* at p. 1001.) However, two years later, when Lerman was called to testify, she refused to testify, claiming to be suffering from "amnesia" and was unable to remember what happened on the day of homicide or providing statements to the authorities. Albeit her memory was otherwise intact. (*Id.* at p. 1002.) The People contended that witness was refusing to testify (and thus unavailable) based on feigning amnesia and claimed that the defendant was involved in procuring the witness' unavailability by convincing the witness to feign amnesia. (*Id.* at pp. 1001-1003.)

The district court issuing the opinion found that the amnesia was nothing "other than a subterfuge [the witness] is employing in order to avoid testifying in this case." Among the factors the court stated strongly supported this conclusion was the fact that the witness, *with the defendant's assistance, retained an attorney* and effectively shielded herself from having to discuss this case with the prosecution – even though previously she "maintained a close relationship to the assistant assigned to prosecute the case, confided her fears to the Assistant District Attorney and sought her help in insuring that the defendant would not harm her." (*Id.* at p. 1003.)

The district court held the defendant was involved in the witness' unlawful refusal to testify through "knowledge, complicity, planning or in any other way." (*Id.* at p. 1004.) The district court observed the defendant financed, supported and was actively involved in implementing a plan to prevent the witness from testifying. In particular, the court noted (i) the defendant and the witness resumed a relationship; (ii) the witness "told her sister-in-law that she was going to see an attorney so that she would not have to testify in this case and that the defendant was paying \$4,000 for the lawyer"; (iii) "the defendant drew a \$5,000 check to himself and cashed that check" and a letter was sent from an attorney notifying the prosecution that he represented [the witness], but before the letter was delivered "counsel for the defendant informed the court and the prosecutor that [the witness] had retained an attorney and would be invoking her Fifth Amendment rights; (iv) the number and length of the calls between the defendant and the witness increased before and on the dates of court appearances; (v) "the defendant, in addition to retaining an attorney for this witness, shared his own attorney with her"; (vi) counsel for the defendant repeatedly "took up the gauntlet for the witness and argued that the witness would, in fact, be entitled to invoke the Fifth Amendment notwithstanding the fact that the witness had received transactional immunity for her grand jury testimony," and made many arguments in support of the witness' position with his client's apparent encouragement and approval; and (vii) on a number of occasions, the attorney for the witness had to remind defendant's counsel that he did not represent the witness. (*Id.* at p. 1005.)

In contrast, in *United States v. Williamson* (1992) 792 F.Supp. 805 [overruled on another ground in *Williamson v. United States*] (1994) 512 U.S. 594], two defendants were separately tried on drug related charges. The government subpoenaed one defendant (Harris) to testify at the trial of the other defendant (Williamson). After defendant Harris was convicted, he refused to testify at defendant Williamson's trial and his statements were admitted at trial. After defendant Williamson was convicted, he appealed, and the Eleventh Circuit ordered the case remanded to the district court for "post-verdict" evidentiary hearing on whether the doctrine of forfeiture by wrongdoing applied. (*Id.* at p. 806.)\*

**\*Editor's note:** Do not even ask about whether a court has the authority to do something like this. For our purposes, it does not matter.

At the time of post-verdict hearing, defendant Harris and mother were no longer aligned with defendant Williamson and both testified at the evidentiary hearing hoping to get a reduced sentence for defendant Harris. At that hearing, the mother of defendant Harris said that

defendant Williamson came to her home after defendant Harris was arrested and promised to hire an attorney for Harris. Harris' mother stated she accompanied defendant Williamson to the law offices of two attorneys (Adams and Salo). Defendant Williamson handed the attorneys a sack of money he claimed contained money to help Harris. When attorney Salo told the mother of Harris that the government would want to know who paid her fees and how the mother was able to pay the fees, Harris' mother suggested saying that the money came from a personal injury settlement Harris had received. Salo responded "Fine." "The meeting ended and on the way home [defendant] Williamson told her it would be best if [defendant] Harris did not know who paid the fees." (*Id.* at pp. 809-810.) At the end of the evidentiary hearing, the district court held it was error to admit the statements because the government failed to present clear and convincing evidence on the causation and purpose requirements of the forfeiture by wrongdoing doctrine. (*Id.* at p. 810.)

**\*Editor's note:** The district court applied an unduly high burden of clear and convincing evidence instead of merely a preponderance of the evidence. (**See** this IPG at p. \*6.)

The district court stated, even assuming defendant Williamson paid Harris' attorneys, the government failed to establish "either that there was an agreement between [defendant] Harris and [defendant] Williamson that [defendant] Williamson would pay [defendant] Harris's legal fees if [defendant] Harris remained silent or a conspiracy to keep [defendant] Harris from testifying involving [defendant] Williamson [and attorneys] Adams, and Salo." (*Id.* at p. 810.)

The court observed that the "only evidence the government presented that [defendant] Williamson instructed [defendant] Harris to remain silent was [defendant] Harris's testimony that the first time he saw [defendant] Williamson after he was arrested, [defendant] Williamson said "... just hang in there, don't say nothing. If it takes my very last dime I'm going to get you out." (*Id.* at p. 810.) The court believed that since this statement was ambiguous (i.e., it could just be "the kind of common sense advice and support one conspirator would give to a recently arrested co-conspirator" or it could be interpreted to mean "don't implicate me"), it could not be clear and convincing evidence. (*Ibid.*) The court also believed that evidence was unclear whether defendant Harris knew defendant Williamson was paying his fees – which the district court believed would be a prerequisite for showing that defendant Harris invoked his Fifth Amendment right due to the payment of the fees. (*Id.* at p. 810.)

The district court rejected the argument that defendant Williamson and *his attorneys* caused Harris to be unavailable for the purpose of preventing him from testifying at trial. The court recognized attorneys Adams and Salo caused Harris to be unavailable by advising him to invoke his Fifth Amendment privilege. But the court then stated there was no direct evidence that defendant Williamson instructed Salo and Adams to keep Harris from testifying and there was another reason for invoking the Fifth Amendment at the trial since defendant Harris' case was still on appeal at that time. (*Id.* at p. 811.)

The district court ignored a statement of defendant Harris that when he told attorney Adams he wanted to cooperate with the government, attorney Adams refused to contact the government. The court recognized this was evidence of an effort to protect defendant Williamson; but dismissed its significance in light of reservations concerning the credibility of defendant Harris. (*Ibid* [and expressing reservations about all the testimony of the witnesses called at the post-conviction evidentiary hearing].)

In the unreported case of *People v. Bangham* (unpublished) 2015 WL 1297479, the court noted both the case of *Steele* (*see* this IPG at pp. 15-16) and *Williamson* (*see* this IPG at pp. 17-19) establish that hiring an attorney for a witness to prevent the witness from testifying *may* constitute forfeiture by wrongdoing. However, the court also stated both cases also establish that the prosecution must show the defendant, by hiring the attorney, *caused* the witness to be unavailable." (*Id.* at p. \*26.)

In *Bangham*, defendant was arrested for two incidents of domestic violence against his girlfriend. After defendant was taken into custody, his girlfriend inculcated him in statements to the police. However, "she also stated she would not testify, and she refused to cooperate with law enforcement. Defendant subsequently communicated with [his girlfriend] from jail through phone calls and letters. He repeatedly pressed her to recant her statements and proclaim his innocence to the prosecutor and the court." (*Id.* at p. \*1.)

Although defendant was represented by the public defender, he consulted separately with a private lawyer (Lempert). Lempert advised the defendant the prosecution would be unable to convict him if the girlfriend did not testify. Lempert proposed to represent the girlfriend, whereupon defendant relayed the advice to the girlfriend and arranged for her to meet with Lempert. "Lempert then advised [the girlfriend] not to testify. But after defendant and [the girlfriend] failed to pay Lempert's fees, he no longer represented her." (*Ibid.*) There were a

series of letters and calls in which the defendant both asked the girlfriend to invoke her Fifth Amendment privilege if called to testify and asked her to come in and recant her testimony. (*Id.* at pp. \*6-\*16.)

“When the prosecution called [the girlfriend] to testify at the preliminary hearing, the trial court appointed counsel from the Alternate Defender’s Office to represent her. The alternate defender independently advised [the girlfriend] not to testify, whereupon she invoked the Fifth Amendment and refused to testify notwithstanding an offer of immunity. At trial, [the girlfriend] once again refused to testify. The trial court found her in contempt but imposed no penalty. Under the doctrine of forfeiture by wrongdoing, the court admitted into evidence [the girlfriend’s] out-of-court statements, including inculpatory statements she made to police.” (*Ibid.*)

The *Bangham* court indicated that defendant engaged in wrongdoing by repeatedly pressuring the girlfriend to recant and tell the prosecutor and court he was innocent, and by engaging in several forms of conduct intended to further this goal, including emotional manipulation, promises of monetary assistance, promising to marry [the girlfriend], and conspiring [with a friend of defendant’s] to assist [the girlfriend] in recanting . . .”. (*Id.* at p. \*24.) Nevertheless, the court stated that *even if* wrongdoing occurred, there was an insufficient *causal* link to apply the doctrine for several reasons. “First, although the evidence establishes that defendant pressured [the girlfriend] to recant her statements, this alone does not show he caused her not to testify. Second, . . . [the girlfriend] had decided of her own volition not to testify after defendant was taken into custody. And although defendant arranged for [the girlfriend to meet with Lempert, his involvement was temporary. Thereafter, defendant actually encouraged [the girlfriend] to testify, but a court-appointed alternate defender advised her to invoke the Fifth Amendment.” (*Id.* at p. \*24.)

**2. If an attorney *independently appointed* by the court to represent the witness advises the witness not to testify or to invoke the Fifth Amendment privilege, will this be deemed a reason not to find defendant’s wrongdoing “caused” the witness’ absence?**

If an attorney is appointed to represent a witness who is refusing to testify and advises the witness not to testify, will this advice somehow be deemed to break the causality between defendant’s wrongdoing and the witness’ unavailability? Only one unpublished opinion has

weighed in on the situation (*see People v. Bangham* (unreported) 2015 WL 1297479 [discussed in depth in this IPG at pp. 19-20]). In *Bangham*, the witness refused to testify after first being advised not to do so by an attorney hired by the defendant and again after she was appointed independent counsel. However, the court held the witness’s refusal to testify was not the product of coercion, fear, or intimidation and was entirely volitional, i.e., independent of either attorney’s advice. (*Id.* at p. \*27, \*28.) The court also noted that there was no evidence that appointed counsel colluded or conspired with the defendant or his attorney. (*Id.* at p. \*29.)

Without much guidance from any case directly on point, it is probably fair to say that, in general, the advice of independent counsel not to testify (at least when the witness has a Fifth Amendment privilege and is not being granted immunity) will be viewed as something that weighs against a finding the defendant caused the witness’ unavailability. Nevertheless, it should not be dispositive if the witness states she or he would refuse to testify *regardless* of the appointed attorney’s advice and *regardless* of a grant of immunity. Prosecutors should make sure to probe as far as possible into this question – although privileges may prevent deep probing.

### **3. Any prediction on whether the case of *Reneaux* will be taken up for review?**

Although the bigger issue in *Reneaux* was the question of what constitutes “wrongdoing,” the question of the sufficiency of the evidence was actually the closer issue. There is some force to the defense argument that (i) defendant asking the victim to recant and lie in the first phone call is not the same as asking the victim to render herself unavailable and (ii) the most reasonable (if not the only) inference is that defendant was telling the victim in the second phone call not to come visit him in jail, rather than not to show up for court. (*See* this IPG at pp. 2-3.) However, the trial court’s drawing of inferences is entitled to some deference, and the California Supreme Court rarely grants review based solely on the sufficiency of the evidence where the facts are unique to the case and thus little precedent will be set by the ruling.

The bigger issue of what type of conduct constitutes wrongdoing is certainly the kind of issue that might capture the California Supreme Court’s attention. But the principle adopted by majority (i.e., that “any significant interference with [the interest in disclosure of evidence at trial], other than by exercising a legal right to object at the trial itself, is a wrongful act”) stands

on fairly solid ground in light of the purpose behind the doctrine of forfeiture by wrongdoing and is even more well-established than the decision in **Reneaux** suggests. Other cases not cited in **Reneaux** also accept this principle. (See **United States v. Gray** (4th Cir. 2005) 405 F.3d 227, 242 and **State v. Maestas** (N.M. 2018) 412 P.3d 79, 88; see also **Scott v. State** (Ind. Ct. App. 2020) 139 N.E.3d 1148, 1155 [“forfeiture by wrongdoing doctrine applies when the defendant engages in conduct designed to prevent the witness from testifying, regardless of its severity”]; **Commonwealth v. Rosado** (Mass. 2018) 106 N.E.3d 651, 657 [“the ‘wrongdoing’ in the doctrine of forfeiture by wrongdoing is simply the intentional act of making the witness unavailable to testify or helping the witness to become unavailable.”]; **Cody v. Commonwealth** (Va. Ct. App. 2018) 812 S.E.2d 466, 482 [“conduct by a defendant that is intended to prevent a witness from testifying and successfully results in a witness being unable or unwilling to do so, satisfies the requirements for application of the doctrine of forfeiture by wrongdoing”]; **State v. Franklin** (Ariz. Ct. App. 2013) 307 P.3d 983, 987 [“any form of witness tampering can constitute a ‘wrongdoing’ for purposes of invoking the forfeiture exception under Rule 804(b)(6)”] and **People v. Pappalardo** (N.Y. Sup. Ct. 1991) 152 Misc.2d 364, 369 [“the specific method used by a defendant to keep a witness from testifying is not determinative”]; **Fowler v. Fox** (E.D. Cal., Feb. 7, 2020) 2020 WL 605349, at p. \*5 [“conduct causing the absence of a witness satisfies the doctrine of forfeiture by wrongdoing, whatever the nature of the wrongdoing”].)

Moreover, this approach is *not inconsistent* with any other California decision, and is consistent with the California Supreme Court’s approach in **People v. Giles** (2007) 40 Cal. 4th 833, 850 - a case that was later vacated by the High Court in **Giles v. California** (2008) 554 U.S. 353 but on different grounds. (Cf., **People v. Banos** (2009) 178 Cal.App.4th 483, 503 [finding that since the High Court in **Giles v. California** did not reject the California Supreme Court’s burden of proof analysis in **People v. Giles**, that burden of proof remained the law in California].) All of this does not eliminate the possibility of review; but it does render the argument for review less compelling.

**NEXT EDITION - ONE OF THE FOLLOWING: A DISCUSSION OF A NEW CALIFORNIA SUPREME COURT CASE ON DEFENSE SUBPOENAS FOR THIRD PARTY SOCIAL MEDIA RECORDS; A REVIEW OF THE LATEST DEVELOPMENTS IN SEARCH AND SEIZURE; OR A PRINT ONLY EDITION ON PROTECTING CONFIDENTIAL INFORMATION AND INFORMANTS,**

Suggestions for future topics to be covered by the Inquisitive Prosecutor’s Guide, as well as any other comments or criticisms, should be directed to Jeff Rubin at (408) 792-1065. 🐕