C.A. No. 05-56125

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARGARET JOHN,

Plaintiff and Appellee,

vs.

ERIC YOUNGQUIST,

Defendant and Appellant.

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On Appeal From The United States District Court
For The Central District of California
The Honorable A. Howard Matz, Presiding
CV 04-00048 AHM (VBKx)

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# APPELLANT'S REPLY BRIEF

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## INTRODUCTION

The omissions in plaintiff Margaret John's brief underscore precisely why appellant Eric Youngquist is entitled to qualified immunity in this case. While asserting that a factual conflict dictated that Youngquist's motion for summary judgment be denied, plaintiff does not directly quote her declaration testimony, instead simply characterizing it in conclusory fashion as establishing her intention to cooperate in the investigation. Yet, as noted in Youngquist's opening brief, taken at face value, John's declaration establishes that however much she may have harbored a subjective intention to cooperate in the investigation, she did not, at the time, make that desire known to Youngquist. Rather, based on what appears to be somewhat questionable advice, John immediately told Youngquist that she wanted to "make a record of [her] request to have an attorney present." (ER 261, ¶ 23.)

It is the ultimate secondguess to suggest that Youngquist was somehow unreasonable in interpreting this statement as a refusal to speak without an attorney being present, or that he should have continued questioning her because it was somehow "obvious" that this would not at a later date be characterized as a custodial interrogation and thus her statements and any

evidence leading from them subject to suppression. This is precisely what qualified immunity was designed to avoid.

Indeed, plaintiff's theory of this case is succinctly stated in the conclusion of her brief. Instead of arrest without probable cause, plaintiff is attempting to create a new sort of constitutional tort, not one where an officer purportedly ignores exculpatory evidence, but where an officer fails to conduct an adequate investigation. Yet, both this Court and other federal appellate courts have repeatedly recognized that once an officer has probable cause, he or she has no duty to conduct further investigation. And, while plaintiff asserts that Youngquist erred in not interviewing the victim's mother or school officials, who would have attested to John's sterling character, plaintiff ignores the fact that whatever they might say, it would not diminish the child's statement, elicited by Youngquist after careful interrogation, as a basis for probable cause. As case law makes clear, parents are often unaware that their children are victims of abuse, and school teachers, even teachers with sterling records, can unfortunately commit acts of abuse.

The undisputed evidence establishes that Youngquist did not simply unconditionally accept the victim's statement and summarily arrest John. To the contrary, Youngquist conducted a careful interrogation, on numerous occasions attempting to get the child to either contradict herself or to

exaggerate, but the child was consistent in her account. When he attempted to question John, John herself, through ill-chosen words, foreclosed further inquiry. Defendant submits that there was clearly probable cause for John's arrest. But even if the question is remotely close, as the Supreme Court has held, under such circumstances an officer is entitled to qualified immunity, and its application is particularly apt here in dealing with what the Supreme Court has repeatedly emphasized are the hazy and flexible standards of probable cause. The district court should have granted summary judgment.

## ARGUMENT

### IN LIGHT OF THE LAW AND THE FACTUAL DETAIL AND CIRCUMSTANCES SURROUNDING A.M.'S STATEMENT, YOUNGQUIST IS ENTITLED TO QUALIFIED IMMUNITY.

#### A. The Governing Law Establishes That Youngquist Had Probable Cause To Arrest, Or Could Reasonably Believe Probable Cause Existed For Purposes Of Qualified Immunity.

In her brief, plaintiff downplays two key points of law. The first is, as the Supreme Court has emphasized, that the concept of probable cause itself is flexible and "[r]igid legal rules are ill-suited to an area of such diversity." *Illinois v. Gates*, 462 U.S. 213, 232, 103 S. Ct. 2329, 76 L. Ed. 2d 527 (1983). Second, the doctrine of qualified immunity is itself designed to shield officers from liability in circumstances where the borders of a particular constitutional standard are "hazy." *Saucier v. Katz*, 533 U.S. 194, 206, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001) [qualified immunity operates "to protect officers from the sometimes 'hazy border between excessive and acceptable force'"]; *see also*

*Brousseau v. Haugen*, 543 U.S. 194, 125 S. Ct. 596, 600, 160 L. Ed. 2d 583 (2004) [same]. The doctrine of qualified immunity applies with particular force in determining whether there was probable cause for arrest in a given case. As a practical matter, officers are necessarily confronted on a daily basis with a need to evaluate the credibility of witnesses and, indeed, victims, often in circumstances where the victim and the perpetrator themselves may be the only witnesses to the crime. Officers are therefore given a wide latitude in assessing the credibility of a witness, even in the face of conflicting evidence.

The standard governing probable cause is not high. As this Court has observed: "Probable cause arises when an officer has knowledge based on *reasonably trustworthy information* that the person arrested has committed a criminal offense." *Gausvik v. Perez*, 345 F.3d 813, 818 (9th Cir. 2003), emphasis added. Thus, for probable cause, the question is whether an officer in given circumstances could believe that the testimony given to him by a witness is "reasonably trustworthy." For qualified immunity purposes, the officer is given even more leeway, i.e., that it need only be the circumstance that an officer could reasonably believe under governing standards, that the evidence of a particular witness is reasonably trustworthy. Critically, this does not mean that the witness's testimony must be uncontradicted, or that any doubts regarding the testimony must necessarily be resolved against a finding of

probable cause. To the contrary, as the Seventh Circuit noted, an officer is entitled to rely on a detailed statement of a victim even if it is contradicted by other witnesses, so long as the contrary evidence does not "render [the victim's] report incredible as a matter of law." *Woods v. City of Chicago*, 234 F.3d 979, 991 (7th Cir. 2000), emphasis added, parenthesis omitted. Somewhat tellingly, though cited in appellant's opening brief, plaintiff does not address, let alone distinguish, *Woods* or its analysis.

Plaintiff's claim here that an officer must necessarily conduct essentially a full blown investigation before arresting based upon a victim's statement where the victim was in a position to identify the perpetrator, is contrary to existing law. Indeed, courts have found probable cause or, at the very least, qualified immunity, under circumstances where the witness identification and account were far more precarious than the detailed statement A.M. provided to Youngquist here. In *Torchinsky v. Siwinski*, 942 F.2d 257 (4th Cir. 1991), the plaintiffs sued a law enforcement officer for false arrest, asserting that he arrested them without probable cause for assaulting an individual who had equivocated as to whether he had been the victim of an attack at all, and where the officer had not interviewed the plaintiffs prior to obtaining an arrest warrant based on this sketchy information. The Fourth Circuit affirmed summary judgment for the law enforcement officer, concluding that notwithstanding the

victim's equivocation or the officer's failure to interview the plaintiffs, the officer could reasonably believe he had probable cause for purposes of qualified immunity:

> Siwinski knew that Bull had been the victim of a brutal assault and he knew that Bull had identified the Torchinskys as his assailants. It is surely reasonable for a police officer to base his belief in probable cause on a victim's reliable identification of his attacker. Indeed, it is difficult to imagine how a police officer could obtain better evidence of probable cause than an identification by name of assailants provided by a victim, unless, perchance, the officer were to witness the crime himself.

942 F.2d at 262.

The Court similarly rejected the plaintiffs' assertion that the victim's statement could not furnish probable cause because of his mental state. The Court emphasized that the officer – as Youngquist did here – made an assessment of the victim's mental state and, hence, acted reasonably:

> [P]rior to questioning Bull about the assault, Siwinski asked him questions to ensure that he was oriented as to time and place and that he understood the nature of Siwinski's visit. Only after deputy

> Siwinski was satisfied of Bull's lucidity did he begin to inquire about the assault.

942 F.2d at 262-63.

The Court similarly found that the victim's contradictory statements as to whether he had been attacked by the plaintiffs or whether his injuries stemmed from an accident, did not defeat the officer's reasonable belief in the existence of probable cause, given the victim's previous statements concerning the crime, and the potential embarrassment of having been a victim. 942 F.2d at 263. As the Court emphasized, the fact that the victim was not an ideal witness did not erode the existence of reasonable belief in probable cause, especially where the victim and the perpetrators are the sole witnesses to the crime in question:

> The Torchinskys' various contentions disregard the realities of police work that must inform qualified immunity analysis. Criminal investigations are often conducted under trying conditions over which officers have limited control. Here, for example, there was only one witness to a brutal attack, the victim himself. Ideally, of course, additional witnesses would have been available and the victim would not have been so brutalized. In reality, however, the police were compelled to take the victim as

they found him and do the best they could under the circumstances.

942 F.2d at 263.

Finally, the Court rejected the plaintiffs' contention that the officer was required to interview them prior to making the arrest:

> We see two difficulties with their argument. For one, endorsing it would imply that whenever some question existed about the reliability of the identification of a suspect, the police must interview that suspect prior to arrest or later face the loss of immunity. We are skeptical of such a rule. There are, of course, many instances where pre-arrest interviews serve to confirm or dispel suspicion and where properly conducted conversations with suspects were proven an invaluable investigatory tool. There are also numerous reasons why a reasonable police officer might choose not to interview a suspect prior to arrest. For example, an officer might legitimately fear that questioning may alert a suspect that he is a target of an investigation, enabling him to destroy evidence or flee the jurisdiction before police have established probable cause for his arrest. The decision whether or not to interview is inescapably discretionary, and we are reluctant to

> imply an abrogation of immunity on the sole basis of the absence of an interview.

942 F.2d at 263-64.

Finally, the Court rejected the plaintiffs' contention that interviewing them would have necessarily eroded probable cause because it would have been inconceivable to believe they would have committed such a crime. As the Court held:

> The Torchinskys merely suggest that a reasonable officer who interviewed them would have instinctively concluded from their mild manner and slight appearance that they could not have assaulted Bull. It will, of course, always be possible to contend in court that an arresting officer might have gathered more evidence, but judges cannot pursue all the steps a police officer *might* have taken that *might* have shaken his belief in the existence of probable cause. Certainly in hindsight one wishes this arrest had not occurred, but with hindsight it becomes far easier to portray any person charged with making a close discretionary decision in a pejorative light.

942 F.2d at 264; emphasis in original.

Nor has this Court suggested that an officer may not reasonably rely upon a victim's statement as a basis for probable cause. Contrary to plaintiff's assertion, neither *Fuller v. M.G. Jewelry*, 950 F.2d 1437 (9th Cir. 1991) nor *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912 (9th Cir. 2001) hold that an officer may not rely on a victim's testimony without conducting further investigation, including obtaining corroborating statements from additional witnesses. Indeed, as noted in appellant's opening brief, in *Fuller*, the Court simply noted that in order for a victim's statement to provide a basis for probable cause, it need only "'furnish underlying facts sufficiently detailed to cause a reasonable person to believe a crime had been committed and the named suspect was the perpetrator.'" 950 F.2d at 1444, citing *People v. Ramey*, 16 Cal.3d 263, 269, 127 Cal. Rptr. 629, 545 P.2d 1333 (1976). As described at length in appellant's opening brief, A.M.' s statement to Youngquist was extremely detailed and, as did the officer in *Torchinsky*, *supra*, Youngquist interrogated the victim – A.M. – closely, including confirming her understanding of the difference between truth and falsehood and testing the veracity of her account by offering embellishments, which she declined. (AOB, pp. 9-13.) Moreover, there was physical evidence corroborating her account,

including the notes which referenced the very allegation she was making against John, i.e., that John was a lesbian and "pervert."[1]

Nor does *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912 aid plaintiff. As noted in the opening brief, there an officer took the plaintiff into custody pursuant to a citizen's arrest without even ascertaining the citizen/victim's basis of knowledge of the offense or attempting to interview other witnesses. Here, of course, Youngquist questioned A.M. at length to determine the basis of her knowledge and attempted to interview John, although the latter was foreclosed by John herself who, by her own admission, told him that she wanted to "make a record" of her request not to speak without an attorney being present. *Arpin* clearly does not hold that an officer confronted with a specific factual account by a witness after lengthy and close interrogation

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[1] Plaintiff's only response to the text of the notes is the extraordinary statement that they somehow erode A.M.'s credibility, because "[d]efendants cannot reconcile A.M.'s asking her friend whether she thinks their teacher is a lesbian or a pervert with her failure to disclose alleged touching to that friend." (Appellee's Brief p. 36.) This is a non sequitur. The notes do not disclose to her friend the fact that she was abused by Ms. John, which is not surprising, since as defendants noted, victims are often reluctant to come forward with such embarrassing information. There is nothing inconsistent about her remaining silent to a peer regarding the alleged assault, but still expressing her anger and other feelings towards Ms. John by disparaging her using extremely graphic language. Indeed, as Youngquist noted, the fact that the description of John was so specific, i.e., a "lesbian" and a "pervert" was significant in his evaluation of A.M.'s statement.

must conduct a full factual investigation, particularly where, as here, there were only two witnesses to the event – the victim and the perpetrator.

The other cases cited by plaintiff are similarly inapposite. Plaintiff cites *Beier v. City of Lewiston*, 354 F.3d 1058 (9th Cir. 2004) for the proposition that officers are required to conduct a full investigation, including seeking out virtually every possible witness before making an arrest. (Appellee's Brief, p. 28.) Review of *Beier* belies plaintiff's characterization. *Beier* does not involve an officer's failure to make a factual investigation. In *Beier*, the officers arrested the plaintiff for violating a protective order that none of the officers had seen, even though a call to dispatch would have provided them with the terms of the order. This Court found the officers were not entitled to qualified immunity, because they had no reasonable basis to believe the order had been violated since, under the governing law, while police officers can rely upon a victim's *factual* account of an incident, they cannot rely upon a witness's interpretation of the law:

> Susan's information *concerned not observed facts, but the content of the judicial order that was the basis for Beier's arrest.* Probable cause cannot be established by an erroneous understanding of the law.

354 F.2d at 1065, emphasis added.

Here, in contrast, A.M. provided an account of observable facts, not an interpretation of law. *Beier* is inapplicable here.

Nor does *BeVier v. Hucal*, 806 F.2d 123 (7th Cir. 1986) support plaintiff. There, police officers arrested parents for child neglect, based upon the fact that officers had found the plaintiffs' children exposed to excessive outdoor temperatures while in the presence of a babysitter. The officers summarily arrested the parents without making any effort to determine whether the parents in fact knew that the children were so exposed. Since the parents' knowledge of the neglect was an essential element of the crime, the Court found that a police officer could not reasonably believe that probable cause existed absent some evidence that the parents were aware that the babysitter was neglecting the children. 806 F.3d at 126-27. That is nothing like this case – plaintiff doesn't even attempt to claim that if A.M.'s statements were believed that they would not furnish a basis for concluding that a crime had been committed.

Plaintiff also invokes two cases cited by the district court – *Wallis v. Spencer*, 202 F.3d 1126 (9th Cir. 2000) and *Devereaux v. Abbey*, 263 F.3d 1070 (9th Cir. 2001) (en banc), as supposedly putting Youngquist on notice that he lacked probable cause here. Not so. First, as noted in appellant's opening brief, *Wallis* is so factually distinguishable from this action that even the district court acknowledged that "*Wallis* deals with a situation different than here . . . ." (AOB

p. 39, citing ER 93.) As Youngquist pointed out in his opening brief, in *Wallis*, police officers summarily removed a child from the plaintiff's custody based upon a *thirdhand* report of ritual satanic abuse made by an individual who was *confined in a mental institution for mental illness*. The officers did not interview the purported victim, or make any attempt to interview the accused parents. In contrast, of course, here, Youngquist received a firsthand report from the victim, whom he interrogated vigorously. He had consistent corroborating evidence, i.e., the notes passed in class. He also attempted to interview the perpetrator. *Wallis* isn't remotely like this case.

Similarly, as Youngquist also noted in his opening brief, *Devereaux* provides no support for plaintiff's claim. Significantly, plaintiff, like the district court, cites only to a footnote in the concurring and dissenting opinion in *Devereaux*. The majority opinion, in fact, concluded that police officers who had been sued by a criminal defendant accused of child abuse for purportedly using improper interviewing and investigative techniques on child abuse victims were entitled to qualified immunity on plaintiff's due process claim. This was because there is "no constitutional due process right to have child witnesses in a child sexual abuse investigation interviewed in a particular manner, or to have the investigation carried out in a particular way." 263 F.3d at 1075. Indeed, the *Devereaux* majority emphasized that "interviewers of child

witnesses of suspected sexual abuse must be given some latitude in determining when to credit witnesses' denials and when to discount them, and we are not aware of any federal law – constitutional, decisional or statutory – that indicates precisely where the line must be drawn." 263 F.3d at 1075.[2] That plaintiff must rely on *Wallis* – a case which even the district court found factually distinguishable – and ignore the majority opinion in *Devereaux*, relying instead on a footnote in a dissenting opinion, underscores the complete absence of any legal basis for her attempting to secondguess Youngquist's determination of probable cause here.

As this Court emphasized in *Peng v. Penghu*, 335 F.3d 970 (9th Cir. 2003), a police officer may rely upon a victim's statements concerning a crime, so long as the statements are sufficiently definite to establish that a crime has been committed and "is corroborated by *either* the *surrounding circumstances* or other witnesses." 335 F.3d at 979, emphasis added. Plaintiff's suggestion that *Peng* is inapposite because there the victim's statement was corroborated by other witnesses, does not withstand scrutiny. First, this Court expressly held *that the victim's statement in and of itself* was sufficiently detailed to support a reasonable belief in probable cause. 335 F.3d at 978 ["Here, Mei Hu provided

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[2] It is for this reason, as *Devereaux* recognizes, that secondguessing by police "experts" of the sort plaintiff cites here have no relevance to determination of probable cause in a given case, let alone qualified immunity.

sufficiently detailed facts regarding the incident to support a finding that probable cause for arrest existed"]. Second, as noted in appellant's opening brief, the two "corroborating" witness statements cited by plaintiff here were actually the product *of a single witness* who purported to translate for the corroborating witnesses. That single witness was related to the victim. 335 F.3d at 972. Nonetheless, the Court found that the police officer could rely on the testimony of that single witness – the translator – in reasonably concluding that probable cause existed for arrest. The Court specifically rejected the plaintiff's contention that the officer failed to make an adequate investigation of the basis of the victim's account and, more critically, the translator's "veracity." 335 F.3d at 979.

Under governing law, Youngquist could reasonably believe that he had probable cause to arrest John based upon A.M.'s statements which were sufficiently definite to establish that a crime had been committed. Moreover, A.M.'s complaint was plainly corroborated by "the surrounding circumstances." *Peng*, 335 F.3d at 979. A.M. did not freely volunteer the alleged attack without prompting, but rather only disclosed the allegations when the note passing was discovered and even then only when she was safely away from the site of the attack, i.e., off school premises. Her answers were short, her demeanor reserved and, as noted, her story consistent despite attempts by Youngquist to

"shake" her account. And as Youngquist also observed, the text of the notes themselves denoted activity that was consistent with the nature of the abuse allegations A.M. was making against John. All of these gave ample reason for Youngquist to believe A.M. was telling the truth, and certainly nothing in her statement was "incredible as a matter of law." *Woods v. City of Chicago*, 234 F.3d at 991.

Having obtained this information, Youngquist was not required to undertake further investigation, although he did attempt to interview the only other witness to the crime – John herself. Under the governing case law, the failure to conduct additional inquiry did not erode the basis for probable cause, and certainly for purposes of qualified immunity Youngquist could reasonably believe that he had probable cause to arrest. Moreover, as we discuss, none of the information that Youngquist would have purportedly gleaned from further investigation would, in and of itself, erode probable cause for arrest as a matter of law. Quite simply, even if Youngquist had all the information plaintiff asserts he should have gleaned, it would not bar John's arrest as a matter of law.

### B. None Of The Areas Plaintiff Has Urged As A Basis For Further Investigation Would Have Rendered It Unreasonable

**As A Matter Of Law For Youngquist to Believe He Had Probable Cause To Arrest John.**

As noted, there is no constitutional tort of "negligent investigation." Rather, there is either an arrest with or without probable cause. If an officer has information from a reasonably trustworthy source that a crime has been committed and a particular individual has committed the crime, he or she may make an arrest under the Fourth Amendment. Here, Youngquist concluded that A.M.'s account of child abuse by John was reasonably trustworthy based on numerous factors, including her demeanor, her consistency in relating the account, her refusal to exaggerate details even when given ample opportunity to do so and consistency between the charges she leveled at John and the contents of notes passed in class which referred to John as a "lesbian" and "pervert."

In asserting that Youngquist was required to conduct further investigation, at bottom, plaintiff's claim is that had Youngquist conducted further investigation, he could never have reasonably believed A.M.'s account. The problem with plaintiff's position – aside from the complete lack of support in the law – is that it defies common sense. Surely it cannot be unreasonable to believe the account of a child abuse victim who repeatedly and specifically describes an incident of abuse, notwithstanding attempts to "shake" her account.

It cannot be the case that such specific allegations must necessarily be discounted so long as the accused has a sterling reputation and there are no physical signs of the abuse.

As previously discussed, so long as A.M.'s account was even reasonably credible, it served as a proper basis for probable cause to arrest. Even the existence of contrary information would not render it incredible as a matter of law so as to defeat probable cause, let alone qualified immunity. Indeed, as we discuss, the bulk of lines of additional investigation plaintiff asserts Youngquist should have pursued, did not categorically erode probable cause, much less render A.M.'s accusation incredible as a matter of law so as to defeat qualified immunity.

### 1. Youngquist's Failure To Continue To Question John After She Stated She Wanted To "Make A Record" Of Her Request To Speak With An Attorney In No Way Eroded Probable Cause.

Plaintiff argues that summary judgment would be inappropriate here, because Youngquist and John vary widely in their account of what transpired when Youngquist attempted to interview her. However, as noted in appellant's opening brief, even taking John's account at face value, Youngquist would still be entitled to summary judgment. In her brief, plaintiff repeatedly asserts that she would have cooperated in Youngquist's investigation and spoken with him, but that he summarily arrested her before she had a chance to do so. However, John's own testimony establishes that while she may have harbored a subjective intention to cooperate, her unfortunate choice of words after speaking with an attorney via phone conveyed to Youngquist the intention not to speak without an attorney being present. Plaintiff asserts that Youngquist was unreasonable in refusing to question John further and instead placing her under arrest, contending that it was "patently absurd" for Youngquist to believe that he was required to honor her request not to speak without an attorney being present. (Appellee's Brief, p. 31.) Not so.

By her own admission, John emerged from her telephone conference with an attorney and her first words to Youngquist were that she "wanted him to make a record of my request to have an attorney present." (ER 26, ¶ 23.) It was hardly unreasonable for Youngquist to consider this an invocation of the right to have an attorney present during questioning. Nor is his reluctance to question her further surprising let alone unreasonable, given the Supreme Court's repeated and strong admonition against questioning a suspect once the right to counsel has been invoked. (*Miranda v. Arizona*, 384 U.S. 436, 474, 86 S. Ct. 1602, 1628, 16 L. Ed. 2d 694 (1966) ["If the individual states that he wants an attorney, the interrogation must cease until an attorney is present"]; *Edwards v. Arizona*, 451 U.S. 477, 486-87, 101 S. Ct. 1880, 1885-86, 68 L. Ed. 2d 378 (1981) [where suspect initially arrested and invokes right to counsel, statements obtained in subsequent interview without counsel subject to suppression]. Faced with the risk of even possibly compromising further investigation or ultimate prosecution, Youngquist was understandably reluctant to step into the minefield of determining when the amorphous line between non-custodial and custodial interrogation has been crossed. *United States v. Bekowies*, 432 F.2d 8, 12 (9th Cir. 1970) [defendant's statement suppressed, where defendant invoked right to counsel and testified that he believed he was not free to leave the room where he was being interrogated: a "suspect will be

held to be in custody if the actions of the interrogating officers and surrounding circumstances fairly construed, would reasonably have led him to believe he could not leave freely"]; *Rosario v. Territory of Guam*, 391 F.2d 869, 872 (9th Cir. 1968) ["[F]or one to be in custody, it is not required that he be in handcuffs or even that he be advised in express terms that he is under arrest"].

John may have been the victim of poor legal advice, or inartful expression, but Youngquist cannot be faulted for taking her at her word when she attempted to invoke her right to counsel. There is nothing "unreasonable" about the manner in which Youngquist attempted to interview John, nor his termination of the interview and subsequent arrest based upon A.M.'s specific and at this point uncontradicted account of what occurred.

### 2. Information Procured From School Officials Would Not Have Established That A.M.'s Statements Could Not Constitute Probable Cause For Arrest.

Plaintiff asserts that had Youngquist interviewed school officials, he would have learned of John's sterling reputation and that A.M. was a "troubled" child. As noted in appellant's opening brief, however, neither of these two bits of information would have rendered A.M.'s specific account of the molestation

unbelievable as a matter of law so as to eliminate it as a ground for probable cause. Unfortunately, even individuals with sterling reputations – including teachers – commit acts of molestation. *See* AOB, pp. 51-52, citing *John R. v. Oakland Unified School District*, 48 Cal. 3d 438, 769 P.2d 948, 256 Cal. Rptr. 766 (1989) [school district not vicariously for teacher's sexual assault on student], and *Jeffrey E. v. Central Baptist Church*, 197 Cal. App. 3d 718, 243 Cal. Rptr. 128 (1988) [church not liable for sexual assault of student by Sunday school teacher]. Conspicuously, plaintiff does not address Youngquist's argument nor the cited cases.

Moreover, A.M.'s reputation as a "troubled" child would not have made it unreasonable as a matter of law to credit her statements, especially when the statements were taken during a careful interrogation. As Youngquist noted in his opening brief, even "troubled" children are the subject of child abuse and, indeed, it may be a "chicken or the egg" proposition given that victims of abuse often become troubled. But in any event, as also noted, Youngquist took into account the fact that A.M. was troubled and, in fact, subjected to discipline by John. (AOB at pp. 44-45, citing ER 9, ¶ 9.) Youngquist, however, discounted retaliation as a motive, given the other credible aspects of A.M.'s account. *Id.*

Nothing that could be gleaned from school officials would have rendered Youngquist's reliance on A.M.'s statements unreasonable as a matter of law.

### 3. Information Gleaned From A.M.'s Mother Would Not Have Rendered A.M.'s Account So Incredible As To Make It Unreasonable To Believe It Could Serve As A Basis For Probable Cause.

Plaintiff argues that Youngquist should have interviewed A.M.'s mother, and that if he had, he would have learned that A.M. was a disciplinary problem, that A.M.'s mother liked John and that A.M. had not reported any abuse. Once again, all of these points are covered in Youngquist's opening brief, but not subject to any specific response by plaintiff. For example, the fact that A.M.'s mother liked John and thought she was a good teacher would not make it unreasonable for Youngquist to credit A.M.'s account. It is an unfortunate although understandable fact that until they learn of the molestation, parents may believe that an attacker is a good person who means no harm to the child. *See* AOB, pp. 51-52, citing *Jeffrey E. v. Central Baptist Church*, 197 Cal. App. 3d 718, 243 Cal. Rptr. 118 [church not vicariously liable for sexual of student by Sunday school teacher whom child's mother thought "was a perfect man" and "second father" for child]. Once again, plaintiff does not address this point or the cited authority.

Nor would A.M.'s failure to report the abuse to her mother necessarily be unusual, let alone a basis for disregarding her accusation concerning the alleged abuse. Courts have recognized that child abuse victims often delay reporting for months or even years. AOB, p. 46, citing *John R. v. Oakland Unified School District*, 48 Cal. 3d 438, 442, 444, 256 Cal. Rptr. 766, 769 P.2d 948 (1989) [noting 14-year-old student did not report sexual abuse by teacher until ten months after assault], and *Christopher P. v. Mojave Unified School District*, 19 Cal. App. 4th 165, 173, 23 Cal. Rptr. 2d 353 (1993) [case involving six-month delay in reporting assault, and court observing: "A common trait of 'child sexual abuse accommodation syndrome' is the child's failure to report, or delay in reporting the abuse. The very nature of the underlying tort deters the molested child from reporting the abuse"]. Again, plaintiff does not elect to address this point or these authorities.

### 4. Interviewing Other Students Or Searching For Detention Records Would Not Have Rendered A.M.'s Statement Incredible So As To Make It Unreasonable To Believe It Could Serve As A Basis For Probable Cause.

Plaintiff also asserts Youngquist should have attempted to interview other students who allegedly served detention with A.M. on the day the assault occurred or searched detention records to verify A.M.'s account. There are two significant problems with plaintiff's contention. First, as plaintiff acknowledges, A.M. told Youngquist that there were no witnesses to the assault, and could not identify students that were serving detention at the time of the assault – an event that happened weeks before A.M. spoke with Youngquist. (Appellee's Brief p. 22.) Given her specific description of the attack itself – a necessarily traumatic event – Youngquist could very well believe her account even if she could not identify any of the students who were allegedly present on the day of the detention. Similarly, he would have no means to know when the detention occurred for purposes of checking specific records, and even if he reviewed the records for a general time period, it could just as easily be the case that John didn't fill out the paperwork for A.M.'s detention for the very reason that she didn't want to leave a "paper trail." Once

again, even if he found no record of A.M.'s detention, it would not render belief in her specific statement unreasonable as a matter of law so as to defeat reasonable reliance on the statement as a basis for probable cause.

### C. Given A.M.'s Detailed Statement, Youngquist Had Probable Cause Or Could Reasonably Believe He Had Probable Cause To Arrest John For A Serious Felony Which Had Occurred On The Very Premises Where The Interview Occurred, And He Was Not Required To Delay Arrest Pending Further Investigation.

As noted, the authorities clearly establish that once Youngquist had probable cause to arrest John, no further investigation was required. Plaintiff, like the district court, asserts that even if John's invocation of counsel was equivocal, there was no reason to arrest John immediately, since any danger to potential evidence or further victims might be minimized if John was on administrative leave. (Appellee's Brief, p. 38 n.13.) As a threshold matter, although plaintiff states that John was on administrative leave once the investigation commenced, she does not assert that Youngquist had been advised of this fact.

Moreover, even if John were on administrative leave, this would not minimize the risk of her potential flight, or destruction of other evidence that might exist in other locations, such as her residence. As noted, courts have expressly recognized that a police officer that has a sufficiently detailed and credible victim statement, need not interview a suspect or delay arrest, for the very reason that the suspect might then be put on notice for purposes of destruction of evidence or flight. *Torchinsky*, *supra*, 942 F.2d at 264 ["[A]n officer might legitimately fear that questioning may alert a suspect that he is a target of an investigation, enabling him to destroy evidence or flee the jurisdiction before police have established probable cause for his arrest"]. In addition, as noted in appellant's opening brief and ignored by plaintiff, the Supreme Court has held that once an officer has probable cause, even if less intrusive means might be available, that does not render the officer's action unreasonable. (See AOB pp. 32-34.)

## CONCLUSION

At the end of the day, plaintiff's problem is that she was the subject of an allegation of child abuse by an individual who recounted the alleged attack in a very specific and consistent manner, despite close interrogation. A police

officer such as Youngquist must make credibility determinations on a regular basis, and the law gives him wide latitude to do so. If A.M.'s allegations were untrue, without a doubt Ms. John might have a valid cause of action for false arrest against A.M. However, under the governing law, it is clear that Youngquist had probable cause for arrest or, at the very least, in reviewing the governing law he could reasonably believe that he did so and, hence, was entitled to qualified immunity. For these reasons, the motion for summary judgment should have been granted.

Dated: February 2, 2006

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

PURSUANT TO CIRCUIT RULE 32-1

Case No. 05-56125

I certify that the Appellant's Reply Brief is proportionately spaced, has a typeface of 14 points and contains 6,096 words.

Dated: February 2, 2006

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