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Remember 9/11/01: Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*Those who hammer their guns into plows will plow for those who do not.*" (Thomas Jefferson)

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* Connotes important case "*Hot Off the Press*"

ADMINISTRATIVE NOTES:

Camreta vs. the California Penal Code: For those of you choosing to ignore the Ninth Circuit's opinion on how an officer must conduct the interview of a child victim at school (*Greene v. Camreta* (9th Cir. Dec. 10, 2009) 588 F.2nd 1011; *Legal Update* Vol. 14, #15, p. 2; Dec. 31, 2009) should note that the California Legislature has voiced its opinion on this issue as well. Penal Code Section 11174.3 specifically provides for the interview of a suspected victim of child

abuse or neglect at school during school hours. Contrary to the dictates of *Camreta*, no mention is made of the need for a warrant or court order. So where does this leave a law enforcement officer or social services employee? The Fourth Amendment to the U.S. Constitution, on which *Camreta* is premised, takes precedence over a statute. But by the same token, Ninth Circuit cases, while entitled to "*great weight*," are considered to be "*persuasive*" only, and *are not controlling* in California state courts. (*Raven v. Deukmejian* (1990) 52 Cal.3rd 336, 352.) Considering this conflict, you can ignore the court order requirement of *Camreta*, following instead the procedures set out in section 11174.3, and you *might* not compromise your case. But you have to remember that a state court *may* choose to follow *Camreta* and suppress the result of your interview as the product of a Fourth Amendment violation. And even if it doesn't, even though we win your case in state court, you may still be liable in federal civil court should the child's family choose to sue you. Beyond this useless advice, I have not received any foolproof investigative technique you can use to avoid the effects of *Camreta* although several, untested, suggestions have been made: E.g., tell the child that he or she does not have to submit to an interview and may return to class whenever he or she chooses, thus taking the "seizure" out of the contact. My suggestion is that you check with your own supervisors and/or legal representative (i.e., city attorney or county counsel) and find out from them how they want child interviews to be handled in light of *Camreta*. If your agency has developed a formal policy on how to handle *Camreta*, and wouldn't mind sharing it with other agencies, I'd like to see it so I can pass it on in response to the many requests I receive on this issue.

CASE LAW:

***Miranda*; *Advisal of Rights*:**

***<u>Florida v. Powell</u>* (Feb. 23, 2010) 559 U.S. __ [130 S.Ct. 1195; __ L.Ed.2nd __]**

Rule: An in-custody suspect must be told that he has a right to the assistance of counsel both before *and* during an ensuing interrogation.

Facts: Tampa Florida police officers entered defendant's girlfriend's apartment looking for defendant in reference to a robbery investigation. In searching the apartment (presumed to be a lawful search), after finding defendant, a nine-millimeter handgun was found under defendant's bed. Being a convicted felon, defendant was arrested. Taken to the police station, defendant was advised of his *Miranda* rights including "*the right to talk to a lawyer before answering any of our questions*." He was not specifically told that he had the right to consult with a lawyer *during* the interrogation. However, as a part of the advisal, he was told that he had "*the right to use any of these rights at any time you want during this interview*." Defendant waived his rights and confessed to having purchased the firearm and to carrying it for his own protection. Charged in state court with being a felon in possession of a firearm, defendant made a motion to suppress his confession arguing that it was a violation of *Miranda* not to specifically tell him that he

had the right to consult with an attorney *during*, as well as before, his interrogation. The trial court disagreed and denied his motion. Defendant was convicted and he appealed. A Florida appellate court reversed, agreeing with defendant that he should have been specifically told that he had the right to consult with a lawyer during the interrogation. The Florida Supreme Court agreed that the catch-all admonition that he could invoke any of his rights at any time during the interrogation was legally insufficient under both federal and state law. In the Florida Court's reasoning, this last phrase failed to make it clear to a suspect that he had the right to the assistance of counsel *during* the interrogation. The state appealed and the United States Supreme Court granted certiorari.

Held: The United States Supreme Court, in a 7-to-2 decision, reversed Florida's appellate courts, finding that the *Miranda* admonishment was legally sufficient as given. The Court first rejected defendant's argument that the lower courts' decisions, suppressing his statements, was based upon Florida's own state Constitution and thus not a question with which the U.S. Supreme Court must be concerned (i.e., an "*independent state grounds*" argument). Because the Florida courts appeared to make their decision based upon a federal interpretation of the *Miranda* requirements, the Supreme Court assumed that the Florida state constitutional interpretation of the *Miranda* requirements is either irrelevant or the same as interpreted by the federal courts. As for the real issue here, it is essential (as dictated by *Miranda v. Arizona* (1966) 384 U.S. 436, at p. 471.) that an in-custody suspect be aware "that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." Defendant in this case was never specifically told this. But the Court has also declined to dictate the exact wording that must be used so long as "the warnings reasonably conve[y] to [a suspect] his rights as required by *Miranda*." Having been told that he had the right to consult with a lawyer before answering any questions, *and* that he could "use any of these rights at any time" during the interrogation, defendant was adequately advised. In so holding, the Court rejected Florida's argument that a suspect in such a circumstance would be confused as to whether he could indeed have the assistance of a lawyer during the interrogation. Defendant's confession, therefore, was properly admitted into evidence at his trial.

Note: "*Independent state grounds*" is not an issue with which we must be concerned. California's voters disposed of the power of our courts to suppress evidence based upon a violation of California's traditionally stricter Constitution way back in June, 1982, with passage of Proposition 8. So don't worry yourself about that part of this decision. The important issue here, of course, is whether you can get away with failing to tell an in-custody suspect that he has the right to the assistance of counsel both *before* and *during* an interrogation. The Florida cops here dodged a bullet when they added the one-liner about being able to invoke any of the enumerated rights (to silence and to the assistance of counsel) at any time during the interrogation. In finding the admonishment the Florida cops used to be constitutionally "*adequate*," the Court did note that "the warnings were not the *clearest possible* formulation of *Miranda's* right-to-counsel advisement, . . ." (italics in original.) So don't play that game. Just tell your suspect that he has the right to counsel "*before and during*" the interrogation and save a bunch of lawyers a whole lot of litigation. (see *Legal Update*, Administrative Note, Vol. 14, #15, Dec. 31, 2009.)

***Miranda*; *After an Invocation of Right to Counsel*:**

Maryland v. Shatzer **(Feb. 24, 2010) 559 U.S.__ [130 S.Ct. 1213; __ L.Ed.2nd __]**

Rule: After a *Miranda* invocation of a suspect's right to counsel, the interrogation may be reinitiated following a 14-day break in custody. Retuning a prison inmate, serving time on a prior conviction, to the general prison population is such a break in custody.

Facts: In August. 2003, a detective from the Hagerstown, Maryland, Police Department visited defendant where he was serving time at a correctional institution for a prior child sexual abuse conviction. The detective asked to talk to defendant about new allegations that he had also sexually abused his own son. Although defendant initially waived his *Miranda* rights, he changed his mind and invoked his right to counsel upon discovering what the detective wanted to talk about. The interview was promptly ended and the investigation subsequently terminated. Defendant was returned to the prison's general inmate population. In March, 2006, two and a half years later, Detective Paul Hoover of the same police department received additional details concerning defendant's molest of his son. After interviewing the then 8-year-old victim, Detective Hoover sought an interview with defendant. Defendant was again advised of his *Miranda* rights which he again waived. Although defendant admitted to masturbating in front of his son. He agreed to submit to a polygraph examination which he subsequently failed. Upon being confronted with the results of the polygraph, defendant broke down and exclaimed, "*I didn't force him. I didn't force him*." He then invoked his right to counsel, terminating the interview. Defendant's admissions were used against him at trial resulting in his conviction. The Maryland Court of Appeals, however, reversed, holding that under *Edwards v. Arizona* (1981) 451 U.S. 477, any law enforcement-initiated interrogation after defendant's 2003 invocation of his right to counsel was forbidden so long as defendant remained in custody. With defendant remaining incarcerated between 2003 and the later interview in 2006, Detective Hoover's interview of defendant was in violation of *Edwards*. Per the Maryland Court, a return of defendant to prison's general population was insufficient to constitute a break in custody. Defendant's admissions to Hoover, therefore, should not have been admitted into evidence at his trial. The state appealed and the U.S. Supreme Court granted certiorari.

Held: The United States Supreme Court reversed, reinstating defendant's conviction. *Miranda v. Arizona* was decided for the purpose of protecting the in-custody criminal suspect from the inherent compelling pressures of the incommunicado interrogation in an unfamiliar police-dominated atmosphere. To accomplish this, the suspect in such a situation must be advised of his rights to silence and to the assistance of counsel. Should he invoke either of these rights, the interrogation must cease. In the case of an invocation of one's right to the assistance of counsel, the Supreme Court determined that a "second layer of prophylaxis" was required to further protect a defendant in such a situation. Specifically, pursuant to *Edwards v. Arizona*, once an in-custody suspect has indicated a preference for dealing with law enforcement only through a lawyer, "any subsequent waiver (of his right to counsel) that has come at the authorities' behest, and not at the suspect's own instigation, is itself the product of the 'inherently compelling pressures'

and not the purely voluntary choice of the suspect." In other words, once the suspect has requested the assistance of counsel, until his lawyer is present, he is off limits to any further attempts by law enforcement to reinitiate the questioning. The purpose of this rule is to prevent law enforcement from taking advantage of "*prolonged police custody*" by wearing him down (i.e., "*badgering*" him) with repeated attempts to obtain a wavier. However, this presumption of involuntariness, as established by *Edwards*, goes away with a break in custody. Such a break in custody serves to relieve the pressures of continued custody while giving him the opportunity "to seek advice from an attorney, family members, and friends." Only after such a break in custody may law enforcement reinitiate questioning. With the pressure thus relieved, the defendant, if taken into custody a second time, should fully understand that he may merely re-invoke if he still does not wish to talk with the officers. As to how long this break in custody must be, the Court declined to leave the issue for case-by-case determination and imposed a 14-day rule, giving a suspect plenty of time to "shake off any residual coercive effects of his prior custody" and to "reacclimate to his normal life." With the period between defendant's two interrogations in this case being 2½ years, the only issue is whether being returned to the general prison population qualifies as a break in *Miranda* custody. While noting that prison life itself is subject to many restrictions, the Court also found that a prisoner in such a situation (i.e., "lawful imprisonment imposed upon conviction of a crime") is not being subjected to repeated attempts at custodial interrogations, which is what *Miranda* was intended to address. Prison is where defendant lived his "normal life," at least for that time period. Because of "the vast differences between *Miranda* custody and incarceration pursuant to conviction," returning defendant to the general prison population was akin to the break in custody contemplated by *Edwards*. Detective Hoover's interrogation of defendant in this case, therefore, did not violate *Edwards*.

Note: I've often been asked how long a subject who invokes his right to counsel is off limits when detectives wish to later question him about another case. The rule of thumb has been to wait at least until he's convicted on the first case, if not until after the expiration of his appeal. While the defendant in this case had long since been convicted on the prior case, I don't think that that's the point the Court was trying to make. In my opinion, even if his prior case is still pending, so long as he's been free from any new attempts at interrogation for at least 14 days, he's fair game for another try. You just need to remember that because the 6th Amendment applies to any case where the suspect has been charged and is still on trial, any discussion about that particular case should be avoided at all costs. (But See *Montejo v. Louisiana* (May 26, 2009) __ U.S. __ [129 S.Ct. 2079; 173 L.Ed.2nd 955]; Sixth Amendment right to counsel may be waived even after arraignment.) The Court did not discuss (it not being the issue here) the applicability of the 6th Amendment right to counsel; a whole different bucket of worms than the 5th Amendment right to counsel. One's 6th Amendment right to counsel, which kicks in upon the filing of a criminal complaint (*People v. Viray* (2005) 134 Cal.App.4th 1186.) and lasts at least through the first appeal (*Douglas v. California* (1963) 372 U.S. 353.), applies whether or not the suspect is in custody. The two rights have to be analyzed separately because they cover different situations. *Confused*? You are not alone. Upon request, I can send you separate outlines that include discussions with the applicable cases on the two rights, i.e., 5th and 6th Amendment rights to counsel. I'm also often been

asked how long the "*break in custody*" must be before a suspect can be questioned again. Based upon some hints in prior cases (e.g., see *People v. Storm* (2002) 28 Cal.4th 1007.), I've always suggested at least three days. While two weeks isn't as good for us as three days, at least now we know. End of issue. The Court also noted, by the way, that the "*Edwards* rule" (i.e., illegality of law enforcement reinitiating an interrogation after an invocation of one's Fifth Amendment right to counsel absent a break in custody) applies even though (1) the questioning is about a different case, (2) the questioning is conducted by a different law enforcement authority, and/or (3) the suspect has met with an attorney between the two interrogations.

***Detaining Mailed Packages*:**

United States v. Jefferson **(9th Cir. May 26, 2009) 566 F.3rd 928**

Rule: Detention of a mailed package with a guaranteed delivery date and time, does not require any reasonable suspicion for doing so until that date and time expires, at which point the continued detention of the package requires at least a reasonable suspicion to believe it contains contraband or other seizeable evidence.

Facts: Juneau Alaska postal authorities received a package addressed to defendant on the morning of April 6, 2006. Having been previously alerted by postal inspectors to be on the watch for packages addressed to defendant, the Juneau clerks called the inspectors. The inspectors directed them to hold the package. Arriving the next day with a drug-sniffing dog, an inspection of the package itself revealed that the it was indeed addressed to defendant and that it had a guaranteed delivery of June 7, at 3:00 p.m. After the drug-sniffing dog alerted on the package, a search warrant was obtained. Some 253 grams of methamphetamine was found inside the package. A "beeper warrant" was thereafter obtained. All this occurred by 1:30 p.m. on the 7th. The package, with a beeper inside, was delivered to defendant's home at around 5:00 p.m. Defendant was arrested when the beeper sounded. Charged in federal court with the attempted possession of methamphetamine with the intent to distribute, defendant's motion to suppress the contents of his package was denied. He was eventually convicted and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. It has long since been established that an addressee has both a *possessory* and a *privacy* interest in a mailed package. One's privacy interest, however, is not implicated by a visual inspection of the outside of the package. There is no privacy interest in what one exposes to public view. It is also well established that one's privacy interest is not violated by the use of a well-trained narcotics-sniffing dog. Defendant, however, argued that his "*possessory interest*" in the package was violated when it was taken out of circulation and held for the postal inspectors. The Court found that a person's possessory interest in a mailed package is only in the package's timely delivery. Until the previously agreed upon delivery date and time expires, a defendant's possessory interest in the package has not been violated. A suspicionless detention of the package prior to the expiration of the delivery date and time is not a Fourth Amendment violation. Once the delivery time passes, however, a continued detention of the package must be justified by at least a reasonable suspicion

that the package contains contraband. In this case, by the time the 3:00 p.m. deadline had passed, the postal inspectors had already established more than a reasonable suspicion—i.e., "*probable cause*," in fact—to believe that the package contained contraband. Defendant's Fourth Amendment rights were not violated. His motion to suppress, therefore, was properly denied by the trial court.

Note: The Court does not directly say how the rule here might differ when there is no previously agreed upon delivery date and time. While you can infer from this decision that no detention is lawful in such a case absent a reasonable suspicion to believe it contains contraband, prior cases have held that the Fourth Amendment is not implicated merely by a temporary diversion of that package. (E.g., see *United States v. Demoss* (8th Cir. 2002) 279 F.3rd 632, 639; *United States v. England* (9th Cir. 1992) 971 F.2nd 419, 420-421; see also *United States v. Hoang* (9th Cir. 2007) 486 F.3rd 1156; a ten-minute delay does not significantly interfere with the timely delivery of a package in the normal course of business.) So the best I can suggest to you is that unless you already have a reasonable suspicion to believe that a mailed package contains contraband or other seizeable evidence, act with haste, document your actions, and hope for the best.

***School Searches*:**

<u>Stafford Unified School District #1 vs. Redding</u>

Rule: A strip search of a female middle school student is unconstitutional when based upon little more than a reasonable suspicion to believe that the targeted student had supplied a friend with a few prescription pills at some prior time.

Facts: Stafford Middle School Assistant Principal Kerry Wilson received information from a student that another student, Marissa Glines, had given him a prescription drug (400-mg ibuprofen). Marissa was contacted. She was found to be in possession of several more ibuprofen pills and an over-the-counter 200-mg naproxen, along with a day planner. Marissa claimed that she had been given the pills and the day planner by Savana Redding. In the day planner were found several knives, lighters, a permanent marker, and a cigarette, all prohibited under school rules. Marissa denied ownership of any of these items. In addition to this, Wilson also had reason to believe that both Marissa and Redding were apart of an "unusually rowdy group" of students who were suspected of bringing cigarettes and alcohol to a school dance. Wilson was also told by another student that alcohol had been served to other students at a party at Savana's house. With this knowledge, Wilson pulled Savana out of class and took her to his office where he showed her the day planner and the contraband he'd found in it, and the pills. Savana admitted that the day planner was hers, but claimed that she'd loaned it to Marissa days earlier. She denied that the items found in the day planner or the pills were hers. With Savana's consent, Wilson searched her backpack. Nothing was found. Wilson then had a female administrative assistant and the school nurse (also female) take Savana to the nurse's office where they had her remove her outer garments. Savana was then told to pull her bra out and to the side and shake it, and to pull out the elastic on her underpants, thus partially exposing her breasts and pelvic area. Again, nothing was found. Savana's

mother later sued the school and its administrators for violating her daughter's Fourth Amendment rights by illegally subjecting her to a strip search. The federal district court granted the civil defendant's summary judgment motions (thus dismissing the case), finding that the school administrators had qualified immunity. An en banc panel of the Ninth Circuit reversed that judgment as to the school and Assistant Principal Wilson, finding that Savana's Fourth Amendment right to be free from such a search was clearly established and that summary judgment before trial was therefore not appropriate. The school appealed to the U.S. Supreme Court.

Held: The United States Supreme Court, in a 6-to3 decision, reversed the Ninth Circuit, finding that although Savana's Fourth Amendment rights were in fact violated (assuming the facts at trial are proven as Savana alleged), the school and the assistant principal are entitled to qualified immunity. Contrary to the normal requirement of probable cause, the search of a student at school by school administrators may be based upon no more than a "*reasonable suspicion*." A school search "will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 342.) In this case, Assistant Principal Wilson certainly had a reasonable suspicion to believe that the pills found on Marissa had been Savana's at one point. This was enough to justify a search of Savana's backpack and outer clothing. However, the civil defendants went further, having Savana pull our her bra and underpants. Noting that the term "strip search" is a "fair way to speak of it," the Court here found that the information available to Wilson at that point did not justify the degree of intrusiveness involved in such a search. Similar searches in other cases have been referred to as "patent(ly) intrusive," given the "adolescent vulnerability" of someone of Savana's age. Recognizing the intrusiveness of such a search, some jurisdictions have banned any form of strip search in schools altogether no matter what the circumstance. (E.g., see Cal. Ed. Code, § 49050.) The intrusiveness in the search involved in this case outweighs the degree of the suspicion Assistant Principal Wilson had as to Savana's involvement in the distribution of prescription pills on the campus, or the seriousness of the suspected offense itself (given the limited number and type of pills involved). Also, there was really very little, if any, evidence to support the conclusion that Savana might have had pills secreted in her undergarments at the time she was searched. The search of her undergarments, therefore, was constitutionally unreasonable. However, this having been said, the Court also found that the standards to be applied to such a circumstance are the subject of some debate, with courts reaching divergent views on the issue under similar circumstances. Because this rule to date has not been well settled, the school officials here are entitled to "*qualified immunity*" from civil liability. The summary judgment in their favor, therefore, should have been upheld.

Note: California's Education Code, as I noted above (that was my note, not the Court's. The Court cited a similar New York City rule) prohibits strip searches altogether. Specifically; Ed. Code § 49050: "No school employee shall conduct a search that involves conducting a body cavity search of a pupil manually or with an instrument, or removing or arranging any or all of the clothing of a pupil to permit a visual inspection of the underclothing, breast, buttocks, or genitalia of the pupil." But the Fourth Amendment

does not outlaw such a search altogether. Had it been a serious student-run cocaine distribution cartel, with students over-dosing in the hallways, or with stronger evidence that Savana Redding was then and there carrying the dope, the result would likely have been different. Where you draw the line between Savana's suspected involvement with giving a couple of ibuprofens to friends and a drug cartel openly operating on the campus, I have no idea. That's for you to figure out, which is why you get the big bucks you do, feeling your way blindly around the legal gray areas of search and seizure law.

***Hotel Rooms; Searches and Expectation of Privacy*:**

United States v. Young **(9th Cir. July 14, 2009) 573 F.3rd 711**

Rule: A hotel guest does not lose his reasonable expectation of privacy in his room even though the hotel management had locked him out, absent an intent to evict.

Facts: A guest at the Hotel Hilton in San Francisco reported that someone had stolen items from his room. The hotel's Assistant Director of Security, Kirk Carr, checked the hotel records and noted that defendant, who was registered to a room across the hall from the theft victim, had mistakenly been given a key to the victim's room. Carr called defendant to verify which room he was registered in, and asked him if he could come up later to talk. Defendant agreed. When Carr later went to defendant's room, accompanied by Security Supervisor Roger Hicks, defendant was not there. Carr and Hicks used a pass key to enter defendant's room. Although they were unable to find any of the victim's property, they did find a backpack in the closet that contained checkbooks belonging to other people, and a firearm. They also found an empty key package for the victim's room. Carr called the hotel's security director, Bill Marweg. Marweg told Carr to place the room on electronic lockout, thus preventing defendant from being able to enter his room. This procedure was consistent with the hotel's unwritten policy of evicting residents who the hotel believed had committed a crime in the hotel. Carr was told to leave the gun where it was. Hotel policy was to place a room on electronic lockout any time a gun was found in a room, but to not handle or remove the gun. The resident would be left a note to contact the hotel management who would inform him about the rule that no firearms are allowed in the hotel. He would then be offered a secure place to store the weapon during his stay. When defendant later returned and found that his key no longer worked, he contacted the front desk clerk. When Hicks was informed that defendant had returned, he called Marweg again, who told him to call the police. San Francisco Police Department Officer Michael Koniaris responded and contacted defendant after being told that defendant was suspected of having committed a burglary of another hotel room. Defendant admitted to Officer Koniaris that he'd previously been to prison. After another 20 to 30 minutes, Hicks finally told Koniaris about the firearm in defendant's room. Koniaris therefore took defendant to the hotel's security office, searched him, and handcuffed him to a chair. Koniaris then went with Hicks and Carr to defendant's room where he watched them as they entered the room. Hicks and Carr retrieved the backpack from the closet, setting it on the bed with the firearm exposed in plain sight so that Officer Koniaris could see it from the hallway. Two months later it was discovered that defendant had used a stolen credit card to pay for

the room. Charged in federal court with being a felon in possession of a firearm, defendant's motion to suppress the gun was granted. The Government appealed.

Held: The Ninth Circuit Court of Appeal affirmed. In so doing, the Court noted that a person has a reasonable expectation of privacy in a rented hotel room just as he might with his own home. Whether a hotel guest retains a reasonable expectation of privacy in his room depends upon whether or not management had justifiably terminated his control of the room through "private acts of dominion." Evicting a guest is one way to terminate the guest's reasonable expectation of privacy. However, despite being locked out of his room, defendant was not evicted in this case. Even though it was the hotel's policy that a guest is evicted when it is discovered that he or she commits a crime within the hotel, nothing was said or done in this case that would have indicated that defendant had in fact been evicted. To the contrary, everyone considered defendant's room to still be his despite the lockout. Locking him out appeared to have been done merely to delay him after his return while the police were called, and not with an intent to evict him. As for the burglary across the hallway, there was never any evidence discovered that would have supported the conclusion that defendant was responsible for that crime, nor any indication that the hotel had evicted him as a result of that crime. As for the argument that the use of a stolen credit card negates any expectation of privacy a person might have had in the room, that rule applies only when it is known by the hotel staff that the room was obtained by such a fraud and it is their intent to evict the person because of it. Here, it wasn't discovered for some time afterwards that defendant had used a stolen credit card. The fact that it was the hotel employees who retrieved the gun from the closet was irrelevant. The Government conceded that the hotel employees were acting as the officer's agent when they did that. Having established a continuing reasonable expectation of privacy in the room, a search warrant or defendant's consent was needed. The Court also declined to find that because a non-law enforcement officer had previously looked into defendant's backpack, finding the gun, defendant's expectation of privacy had been destroyed thus allowing the officer to search for and seize the gun without a warrant. While a package shipped via a common carrier (e.g., UPS), and opened by non-law enforcement may thereafter be re-opened and searched by law enforcement without a warrant, (see *United States v. Jacobsen* (1984) 466 U.S. 109.), this rule doesn't extend to a person's hotel room and its contents. Contrary to the package at issue in *Jacobsen*, which contained nothing but contraband (i.e., cocaine), defendant's hotel room and his backpack in this case contained other items that were not illegal and to which the defendant maintained a reasonable expectation of privacy.

Note: California law is not so easy on a defendant. In *People v. Satz* (1998) 61 Cal.App.4th 322, it was held that the use of a stolen credit card was enough all by itself to negate the reasonableness of the tenant's expectation of privacy. "The defrauding occupant has no legitimate expectation of privacy in the room or 'an expectation that society is prepared to recognize as reasonable.'" Although in *Satz*, the manager admittedly called the police to help him evict the defendant, that fact is not what the case turned on. But Ninth Circuit cases, of which there are now four, have all required at the very least an intent on the part of the management to evict the defendant. We didn't have that intent in this case.