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Dedicated to the Memory of San Diego Deputy District Attorney Claudine Ruiz
Wife, Mother, and Respected Colleague: You are Missed
Passed away on February 6, 2014

THIS EDITION'S WORDS OF WISDOM:

"*When people get used to preferential treatment, equal treatment seems like discrimination*." (Thomas Sowell; Syndicated Columnist.)

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***Cases*:**

CASES:

***Consensual Residential Entries and the Objecting Absent Cotenant*:**

***Fernandez v. California* (Feb. 25, 2014) __ U.S. __ [__ S.Ct. __; 188 L.Ed.2nd 25].)**

Rule: A consensual warrantless entry and search of a residence is lawful despite an earlier objection from a cotenant, so long as the objecting cotenant is no longer present and his removal from the premises was objectively reasonable.

Facts: Defendant, a gang member, and some of his "homies," robbed Abel Lopez at knife point, beating Lopez in the process. Everyone fled into an adjoining apartment complex. Gang Detective Kelly Clark and Officer Joseph Cirrito responded, driving to a nearby alley where they knew gang members gathered. Upon their arrival, an individual directed them to an apartment building indicating that that was where the suspects had fled. A minute or so later, the officers heard screaming from that same apartment building. Detective Clark and Officer Cirrito knocked on the door of the unit from where they had heard the screaming. Roxanne Rojas, who was holding a baby and appeared to be crying, opened the door. She appeared to have been battered and bleeding. She told the officers that she had been in a fight, but denied that anyone else was in the apartment other than her son. When Officer Cirrito asked her to step outside so he could conduct a protective sweep of the apartment, defendant suddenly appeared. He was very agitated, telling the detectives, "*You don't have any right to come in here. I know my rights*." Defendant was promptly arrested for battery and removed from the scene so that they could talk to Rojas. Lopez, the robbery victim, identified him in a curbstone lineup as the man who had robbed and assaulted him. About an hour after defendant had been taken into custody and transported to the police station, Detective Clark went back to the apartment. He told Rojas that defendant had been arrested for robbery and asked for her consent to search the apartment. Rojas gave her consent both orally and in writing. During the ensuing search, evidence connecting defendant to the robbery and other gang paraphernalia was recovered. A sawed-off shotgun with its ammunition was also recovered. Criminal charges were filed in state court, including robbery, spousal abuse, and possession of the sawed-off shotgun, along with various gang-related and weapons-use allegations. Defendant's motion to suppress the items found in his apartment was denied. He pled no contest to the weapons-related charges and was convicted by a jury of the robbery of Lopez with the use of a knife and the abuse of Rojas. The gang allegations were found to be true. Defendant appealed. The Second District Court of Appeal (Div. 4) affirmed. (See *People v. Fernandez* (2012) 208 Cal.App.4th 100; and *Legal Update*, Vol. 17, No. 12.) The California Supreme Court denied defendant's petition for review, but the United States Supreme Court granted certiorari.

Held: The United States Supreme Court, in a 6-to-3 decision, affirmed. Generally, a search warrant is required in order to enter and search a residence. But "the ultimate touchstone of the Fourth Amendment" restrictions on such searches is "reasonableness." Certain categories of permissible warrantless searches have long been recognized as "reasonable." Consent searches, as a "wholly legitimate aspect of effective police activity," is one of those categories. The issue here, however, is what happens when two co-occupants of a residence are present and one consents to a warrantless search while the other objects? In *Georgia v. Randolph* (2006) 47 U.S. 103, the U.S. Supreme Court held that where two equally situated co-occupants (e.g., husband and wife) are present at the scene, and one co-occupant consents to a search while the other objects, then a warrantless entry is unlawful, at least as to the objecting party. "(A) physically present inhabitant's express refusal of consent to a police search [of his home] is dispositive as to him, regardless of the consent of a fellow occupant." (*Randolph*, at pp. 122-123.) But *Randolph* made it clear that this rule applies only when the objecting party is present at the scene. In this case, the Court noted that by the time Rojas consented, defendant, who

had earlier objected to law enforcement's entry into his apartment, was no longer present. He had been arrested for battery, and later robbery, and taken to the police station. Defendant argued that the only reason he was absent was because the police had taken him away. To this, the Court ruled that the officers' motivations for removing an objecting cotenant from the scene are irrelevant so long as there was an "*objectively reasonable*" reason for doing so. "(A)n occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason." In this case, the officers had a need to remove defendant from the apartment so that they could interview Rojas concerning her injuries and not have to worry about her being intimidated by defendant. Further, they had probable cause to arrest him for battery, if not the earlier robbery itself. As such, taking defendant from his apartment was lawful. Defendant further argued however, that his objection to law enforcement's entry into his apartment should be good until he later changes his mind and removes the objection himself. The Court found that such a rule would be unworkable. Once lawfully removed from his apartment, any prior objection he might have voiced is no longer valid and does not take precedence over Rojas's consent. The officers' entry and search of defendant's apartment, based upon the consent provided by Rojas, was therefore lawful.

Note: The Ninth Circuit specifically held to the contrary in *United States v. Murphy* (9th Cir. 2008) 516 F.3rd 1117. *Murphy*, although not mentioned by the Supreme Court in this new case, is effectively overruled. It is also interesting to note that the Supreme Court held here that the officers' subjective motivations for removing the objecting cotenant from the property are irrelevant. The officers may very well be doing so to avoid the rule of *Randolph*. But the officers' subjective motives don't matter so long as the removal is lawful, such as with an objectively reasonable need to detain the suspect, supported by at least a reasonable suspicion, or with probable cause to arrest him. Anyway, this case provides an easy rule to follow, eliminating the need to determine what an officer's subjective motivations might have been or how long a prior objection remains effective.

***Cell Phones and Driving, per V.C. § 23123(a)*:**

***People v. Spriggs* (Feb. 27, 2014) __ Cal.App.4th __ [2014 Cal.App.LEXIS 190]**

Rule: V.C. §23123(a), prohibiting the use of a cellphone while driving, does not include uses other than engaging in a conversation in other than a hands-free mode.

Facts: Stuck in heavy traffic, defendant pulled out his wireless telephone (i.e., "cellphone") and checked a map application, looking for a way around the congestion. A California Highway Patrol officer spotted him holding his cellphone, pulled him over, and cited him for a violation of V.C. § 23123(a), which prohibits drivers from "using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving." Defendant took the ticket to court, arguing that he did not violate the statute. Specifically, defendant argued that V.C. § 23123(a), by its terms, only prohibits listening and talking on a cellphone when not being used in a hands-free manner. Per defendant, looking at a map "app" is not included within the prohibitions of this section. A traffic court

commissioner disagreed and found him guilty. His conviction was upheld by the Appellate Department of the Superior Court (Fresno). (See *People v. Spriggs* (2013) 215 Cal.App.4th Supp. 1; *Cal. Legal Update*, Vol. 18, No. 11.) Defendant appealed.

Held: The Fifth District Court of Appeal Reversed. The issue on appeal was simple: Does V.C. §23123(a) prohibit the use of a cellphone by a driver of a motor vehicle when he does no more than look at a map application on his phone? The People argued for a broad interpretation, which would include any use of a cellphone while driving. Defendant argued, as he did in the trial court, that the section was intended to cover only the when a driver is engaging in a conversation on a cellphone in other than a hands-free mode. The Court agreed with defendant. The Court reached this conclusion by "discern(ing)" the Legislature's intent (the complicated and often conflicting rules for doing this being described in detail in the decision). Section 23123(a) provides: "A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving." The term "*using*" is not defined in the statute. The People would give the term a broad interpretation, to include any use of a cellphone. Defendant argued that the section was intended to be limited to conversing over the cellphone. While noting that the People's position was not unreasonable, the Court nevertheless agreed with defendant's more restrictive interpretation. "(T)he statute is reasonably construed as only prohibiting engaging in a conversation on a wireless telephone while driving and holding the telephone in one's hand." Had the Legislature intended to prohibit drivers from holding the telephone and using it for other purposes, it would not have limited the cellphone's lawful use to when it is designed and configured to "hands-free listening and talking." By including the phrase "hands-free listening and talking" in the section, the Legislature apparently intended the scope of the statute to cover verbal conversations only. In looking at the legislative history, as well as public statements from the Executive Branch upon enactment of the new section, the Court found that section 23123 was intended to address only the physical distraction of placing a telephone call and holding the phone to one's ear to converse while driving. Lastly, the Legislature's later enactment of sections 23124 (Use of cellphones or mobile service devices by minors) and 23123.5 (Texting while driving), with broader applications of what constitutes "using," supports a finding that the Legislature intended section 23123 to be limited to manually placing cellphone calls and conversing while physically holding the cellphone (i.e., other than hands-free use). Defendant, therefore, by using the map app of his cellphone, did not violated section 23123.

Note: Interestingly enough, the Appellate Department of the Superior Court did the same analysis of the Legislature's intent and reached exactly the opposite conclusion. What does that tell you? And, quite frankly, I disagree with the Fifth District's conclusions in this case. To me, "use," unless specifically limited, means "use." Defendant in this case did in fact "use" his cellphone, even though for some purpose other than to carry on a conversation. The distraction from his driving and the dangers incumbent in such a use are the same (if not greater) whether talking to someone else or trying to find and use a map. I would expect this decision to be taken up and reconsidered.

***Miranda*; *Offers of Leniency*:**

People v. Gonzalez **(Oct. 29, 2012 [as modified Nov. 14, 2012]) 210 Cal.App.4th 875**

Rule: An express or clearly implied promise of leniency or advantage which is a motivating cause of the decision to confess will negate a later *Miranda* waiver and confession.

Facts: Defendant was having a bad day, and it was early yet. After having a 4:00 a.m. argument with his father, he walked over to his father's ex-girlfriend's house, Maria, only a couple of blocks away. Maria quieted defendant down and walked him back to his house. But when defendant and his father merely continued the argument, defendant and Maria returned to her house. On the way back, they both noticed a hammer lying on the ground. Back at Maria's house, Daniel Castillo, Maria's son (Robert), and teenage daughter (Selina), were all present. Maria eventually went to work leaving defendant, Robert, Selina, and Daniel in the house watching T.V. It still being early, Robert and Selina eventually went back to bed and defendant went outside to have a smoke. He returned, however, shortly thereafter. When Selina heard suspicious sounds coming from the living room, she looked out from her room and saw defendant standing behind the couch with his arm behind his back. Defendant told Selina that Daniel, lying on the couch, was sleeping. Not buying it, she went back into her room and called the police. In fact, defendant had retrieved the hammer he and Maria had seen earlier and had struck Daniel twice in the face with it causing serious injuries. After assaulting Daniel, defendant ran from the scene, discarded the hammer (as observed by a witness), and went home to change his clothes. He was arrested shortly thereafter. Upon being taken to a San Diego Sheriff's substation, defendant was interviewed by two detectives. He first asked, however, if he could speak with his parole agent, Michael Lum. The detectives told defendant that they needed to talk to him first. After some general intake questions, the detectives read defendant his *Miranda* rights, which he waived. He then told the detectives that he and Daniel had some problems because Daniel was "talking some stuff" to him. But then when the detectives attempted to seek details, defendant unambiguously invoked his right to speak with an attorney. So the detectives ended the interview, telling him that having invoked his right to counsel, they would not be able to speak with him further. Defendant responded that he wanted to talk to his parole agent. Agent Lum was brought in and talked to defendant alone for about ten minutes. The parole agent encouraged defendant to cooperate with the detectives and to tell the truth. He told defendant that "*talking about your side of the story helps me out (and) helps yourself out*." When defendant expressed concern about going back to prison and getting the maximum punishment, Agent Lum told him: "*So help yourself out for yourself. Help yourself out. I don't want to write the report that says subject was uncooperative with the . . . investigating detectives*. '*Parole agent recommends maximum in-custody time*.' *I don't want to write that*." As soon as Agent Lum left, defendant changed his mind and asked to speak with the detectives without counsel being present. The detectives reread the *Miranda* rights to him. He then confessed, telling detectives that Daniel provoked the attack by calling him a "half-breed." Charged with attempted murder and related charges, defendant moved to suppress his post-invocation statements. The trial court

denied the motion. A recording of defendant's confession was used against him at trial. He was convicted and sentenced to a total of 23 (determinate and indeterminate) years to life in state prison. Defendant appealed.

Held: The Fourth District Court of Appeal (Div. 1) affirmed. However, they first held that defendant's confession should *not* have been admitted into evidence against him. As happened in this case, when a questioned suspect clearly asserts his or her right to have counsel present, the interrogation must stop immediately. However, he is then free to reinitiate the questioning, if he so chooses. The decision to reinitiate the questioning, however, must be "*self-motivated*," without "*any form of compulsion or promise of reward*." An express or clearly implied promise of leniency or advantage for the accused which is a motivating cause of the decision to confess will negate a later waiver and confession. However, mere advice or encouragement that it would be better for the accused to tell the truth, when unaccompanied by either a threat or a promise, does not make a subsequent confession involuntary. The Court had no quarrel with Agent Lum's statement to defendant that to help himself, he needed to tell the truth and cooperate with police. But Agent Lum didn't stop there. He then told defendant that unless he cooperated with police, he (Agent Lum) would be forced to write a parole report recommending defendant for the "maximum in-custody time," which he said he didn't want to write. Implied within Agent Lum's statements to defendant, who had already expressed his fear of returning to prison, was that if he agreed to talk with detectives without counsel present, his parole agent would recommend a shorter sentence in the parole report. "(I)f . . . (a) defendant is given to understand that he might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement, even a truthful one, such motivation is deemed to render the statement involuntary and inadmissible . . ." Immediately after his meeting with Agent Lum, defendant changed his mind and agreed to talk with the investigators, fully confessing to what he did to Daniel. Given the timing of defendant's confession, being right after Agent Lum's exhortations to open up to the investigators in exchange for a more favorable parole report, the Court found that Lum's statements were the motivating cause of defendant's decision to confess. The confession, therefore, was inadmissible as the product of an offer of leniency and should have been suppressed. However, due to the abundance of other evidence of defendant's guilt, the Court also found that it was "harmless beyond a reasonable doubt" for the jury, under the circumstances of this case, to have heard that confession. Defendant's conviction, therefore, was upheld anyway.

Note: In reading the facts of this case, I really thought the Court would discuss a secondary issue; that being the lawfulness of a government agent talking a defendant, who had already invoked, out of his decision to have counsel present. The law is quite clear (despite what you see on T.V.) that once a suspect invokes his right to counsel, absent the suspect's own decision to reinitiate the questioning, you, as an interrogator, are done (with limited exceptions not relevant here). You cannot say or do anything in an attempt to motivate him to change his mind. (*Minnick v. Mississippi* (1990) 498 U.S. 146; and see *People v. Peracchi* (2001) 86 Cal.App.4th 353; asking a subject "*why*" after he had invoked, causing him to eventually change his mind, is not permissible.)

***Miranda; Advisement of Rights and Attempts to Invoke*:**

***Lujan v. Garcia* (9th Cir. Oct. 29, 2013) 734 F.3rd 917**

Rule: (1) Failing to tell an in-custody suspect as a part of a *Miranda* admonishment that he is entitled to the assistance of counsel before and during an interrogation is legally insufficient. (2) When a defendant attempts to invoke his right to counsel, it is improper for the police to demean the pre-trial role of counsel. (3) Upon asking for an attorney, an officer must scrupulously honor that invocation and cut off any further questioning. (4) Defendant reiterating in trial testimony an illegally obtained confession does not render the illegal use of his pretrial confession by the prosecution at trial harmless error.

Facts: Reuben Lujan was upset when his wife, Monica, left him. Being of the "*if I can't have you, no one will*" mentality, he constantly stalked and threatened her. When Monica threated to get a restraining order, Lujan's response was to: "*Go ahead. That is, if you're still alive*." Simulating shooting her, pantomiming a gun with his fingers, he told her: "*This is going to be you*." Monica reported this threat to the sheriff, resulting in Rueben's arrest for stalking and making a P.C. § 422 terrorist threat. But he was soon out of jail, resuming his stalking activities. Late on August 15, 1998, Lujan drove by Monica's house and observed Monica in front, in the company of an off-duty deputy sheriff, Gilbert Madrigal. As Lujan watched, Monica and Madrigal "became intimate." They then walked to Madrigal's nearby residence and went inside. Lujan hid outside the residence behind a truck in the driveway and waited until Monica and Madrigal came out of the house. Armed with a 15-pound concrete block he found nearby, Lujan attacked the couple, hitting Madrigal in the head and knocking him unconscious. He then struck Monica repeatedly with the block, killing her instantly. Deputy Madrigal died at a hospital after a week in a coma. Lujan was arrested shortly after the attack. Taken to the Norwalk Sherriff's Station (Los Angeles County), Detective Rodriguez advised Lujan of his *Miranda* rights, telling him that he had "*the right to remain silent*." He was also told that "(*w*)*hatever we talk about, and you say, can be used in a court of law against you. And if you don't have money to hire an attorney, one's appointed to represent you free of charge. So those are your rights*." Lujan was never told of his right to have an attorney assist him before or during the interrogation. After three interview sessions, Lujan eventually confessed to the murders. However, during the third interview, and before confessing, Lujan asked: "*Can I have an attorney present*?" Detective Rodriguez responded: "*You . . . want an attorney present*?" *You feel you need one*?" Lujan responded: "*Yes I do*." Rodriguez agreed, but when Lujan asked if he could have an attorney right away, Detective Rodriguez responded: "*I really doubt it*." He then proceeded to tell Lujan that he'd get an attorney when arraigned in a couple of days, or he could hire one at any time. Rodriguez also told Lujan: "*If you want to make a statement without an attorney, that's up to you. I doubt that if you hire an attorney they'll let you make a statement, they usually don't. That's the way it goes*." Lujan continued to talk with the detective, confessing to "a brutal, surprise attack upon both victims with the concrete block." At his criminal trial on two counts of murder, Lujan brought a motion to suppress his confession. The trial court, despite finding the *Miranda* advisal to be "*incomplete*," allowed his confession to be used against him. After the prosecution had

Detective Rodriguez testify to Lujan's confession, Lujan himself testified in rebuttal, admitting again to having committed the murders but presumably also offering some circumstances in mitigation. Lujan was convicted of two counts of first degree murder with special findings of using a deadly weapon, lying in wait, and being convicted of multiple murders. Sentenced to prison for life without parole, his conviction was upheld on appeal. The Second District Court of Appeal ruled that while his confession should not have been admitted into evidence, the error was harmless in that Lujan confessed a second time when he testified at trial, reiterating all the details of his improperly admitted confession. (See *People v. Lujan* (2001) 92 Cal.App.4th 1389.) After the California Supreme Court summarily denied his petition, Lujan filed a Writ of Habeas Corpus in the federal District Court. The federal District Court granted the Writ, ruling that because Lujan's in-court confession was the product of the erroneously admitted pretrial confession, it cannot be considered harmless error. The Government appealed.

Held: The Ninth Circuit Court of Appeal affirmed the District Court's granting of the Writ of Habeas Corpus. (1) Among the issues discussed on appeal was the lack of sufficiency of the *Miranda* admonishment and the subsequent use of Lujan's confession at trial. The respondent in the Habeas Corpus proceedings (i.e., the prison warden) argued that the admonishment provided by Detective Rodriguez was legally sufficient in that the *Miranda* decision does not require an admonishment to use any specific wording. However, it must be found that the admonishment as given "*reasonably conveyed*" to Lujan that he had the right to consult with an attorney both before and during his custodial interrogation. The Court ruled (as did the state Appellate Court and the lower federal District Court) that while Lujan was advised of his right to silence, and that an attorney would be provided without cost to him if he couldn't afford one, it was never reasonably conveyed to him (at least until after he confessed during the third interview, and after he'd invoked) that he was entitled to the assistance of an attorney before and during his custodial interrogation. (2) To the contrary, the Court held it to be improper to tell a subject who has asked for the assistance of an attorney, as Lujan did during the third interrogation immediately before confessing, that even if he consulted with an attorney, all that attorney was likely to do was to tell him not to make a statement. In the face of an attempted invocation, the police may not demean the pre-trial role of counsel, as was done here. (3) When Lujan asked for the assistance of counsel, Detective Rodriguez was legally obligated to "scrupulously honor" that invocation and cut off any further questioning. That was not done here. Lujan's confession, under these circumstances, was obtained in violation of *Miranda* and should have been suppressed. (4) Lastly, the Court noted that the fact that Lujan later reiterated his confession when testifying on his own behalf did not render the prior use in trial of his illegally obtained pretrial confession by the prosecution to be harmless error. U.S. Supreme Court precedent (*Harrison v. United States* (1968) 392 U.S. 219.) prohibits the use a defendant's in-court confession when his motivation for testifying in the first place is to respond to an illegally obtained pretrial confession. "(T)he same principle that prohibits the uses of confessions so procured (i.e., illegally) also prohibits the use of any testimony impelled thereby—the fruit of the poisonous tree, to invoke a time-worn metaphor." (*Harrison*, at p 222.) Therefore, Lujan's in-court confession cannot be used as an excuse for finding the admission of his pre-trial confession as non-prejudicial.

Note: The detective's *Miranda* admonition was clearly insufficient. How an experienced homicide detective, in this day-in-age, can screw up an admonishment so severely is just beyond comprehension. This error on the detective's part was of course the result of trying to recite the admonishment from memory rather than playing it safe and reading it from a card or other form. But that having been said, the Court here also screwed up in ruling that Lujan's in-court confession was not relevant to the question of whether the wrongly admitted pre-trial confession was merely non-prejudicial error, as the California District Court of Appeal ruled in *People v. Lujan*, *supra*, at pp. 1403-1410. *Harrison* (above), cited as authority for the Court's conclusions on this point, involved the inadmissibility of a confession obtained in violation of a Sixth Amendment, "speedy trial" issue, along with a federal procedural rule dealing with the use of a juvenile's in-court admissions when his case is later transferred to adult court. (*Harrison* was a federal, Washington D.C. case). The "fruit of the poisonous tree" doctrine is a Fourth Amendment rule. (See *Wong Sun v. United States* (1963) 371 U.S. 471.) It has specifically been held by the U.S. Supreme Court that fruit of the poisonous tree does not apply to the products of a *Miranda* violation, so long as the statement in issue is otherwise held to be voluntary. (*United States v. Patane* (2004) 542 U.S. 630.) Lujan, in this case, never argued that his pre-trial confession was involuntary. It is contrary to well-established Supreme Court authority that the rule of *Harrison* can be extended to a *Miranda*-violation situation.

Hotel/Motel Guest Registers:

Patel v. City of Los Angeles **(9th Cir. Dec. 24, 2013) 738 F.3rd 1058**

Rule: Absent consent or an exigent circumstance, warrantless inspections of a hotel or motel's guest register is a Fourth Amendment violation.

Facts: The City of Los Angeles enacted Municipal Code § 41.49, mandating that hotel and motel owners collect, record, and maintain on the premises (i.e., in the guest check-in area or an office immediately adjacent thereto) for a minimum of 90 days detailed information about their guests, the completeness and content of such records being dependent upon the manner and circumstances of the guest's initial registration. The ordinance also contained a provision providing that these guest records "shall be made available to any peace officer of the Los Angeles Police Department for inspection" when such inspection is done "at a time and in a manner that minimizes any interference with the operation of the business." The parties stipulated that as worded, the ordinance authorized police officers to inspect the records without consent or a search warrant. Refusal to comply is a misdemeanor. Plaintiffs (Naranjibhai Patel et al.), hotel owners, challenged in federal court the warrantless inspection aspects of section 41.49, arguing that as a Fourth Amendment search, it was facially invalid as to the hotel and motel owners. After a bench trial, the District Court judge entered judgment for the City of Los Angeles, dismissing the lawsuit. On appeal, the Ninth Circuit Court of Appeal, in a split 2-to-1 decision, affirmed (686 F.3rd 1085). However, an en banc (11 justice) rehearing was granted.

Held: An en banc panel of the Ninth Circuit Court of Appeal, in a split 7-to-4 decision, reversed. The Court first determined that inspections of a hotel or motel guest register, as authorized by section 41.49, do in fact constitute a "search." The Fourth Amendment protects against unreasonable searches and seizures of "*persons, houses, papers and effects*." Hotel/motel guest register information falls into the category of one's "*papers*," whether contained in a book or a computer. "Record inspections under § 41.49 involve both a physical intrusion upon a hotel's papers and an invasion of the hotel's protected privacy interest in those papers." While the guest has no privacy rights in the information he has voluntarily provided to the hotel/motel (*United States v. Cormier* (9th Cir. 2000) 220 F.3rd 1103), the hotel/motel itself does. The fact that the hotel/motel is required by statute to maintain such records is irrelevant. The Fourth Amendment, therefore, protects the hotel/motel's privacy interest in its records even though the guest himself has no standing to make a similar challenge. The next question: Is a warrantless, suspicionless search of a hotel/motel's guest registers as authorized by section 41.49 "reasonable" (i.e., "lawful") under the Fourth Amendment? In reaching its conclusions on this issue, the Court assumed for the sake of argument that section 41.49 is intended to authorize administrative records inspections as opposed to general "searches for evidence of crime." It was also assumed that such inspections were to occur in the guest reception-registration areas, and not in private areas of a hotel or motel. (Section 41.49 did in fact authorize such records to be kept in an adjacent office. To conduct a search in such an office, not open to the general public, an administrative search warrant would be necessary.) To be reasonable, an administrative record-inspection scheme need not require issuance of a search warrant, but it must at a minimum afford an opportunity for pre-compliance judicial review, an element that section 41.49 lacks. The hotel/motel owner, who is operating a business that is *not* considered to be a "closely regulated" business (for which different rules apply), must be afforded an opportunity to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." Section 41.49 does not provide for such a prior review, and in fact attaches criminal penalties for a refusal to comply. There is thus no protection against arbitrary or abusive inspection demands. "To comply with the Fourth Amendment, the city must afford hotel (and motel) operators an opportunity to challenge the reasonableness of the inspection demand in court before penalties for non-compliance are imposed." As such, section 41.49 is "facially invalid" as to the plaintiff hotel/motel owners, as a violation of the Fourth Amendment.

Note: Despite finding section 41.49 invalid as to the Fourth Amendment rights of hotel and motel owners, such warrantless checks of their guest registers may still be made under two circumstances: (1) With the consent of the hotel or motel operator or his agent. The guest has no standing to challenge the search. (2) As noted by the Court, with "exigent circumstances" excusing the lack of prior judicial approval. But should the hotel or motel representative (recognizing you will not likely find the owner sitting at the front counter) object, and you can't justify an exigency, routine suspicionless inspections of guest registers are unlawful, pursuant to this decision. Although the guest still won't have standing to challenge the search, the hotel or motel has grounds for a civil lawsuit.