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Remember 9/11/01; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*I never drink anything stronger than gin before breakfast. A woman drove me to drink and I didn't even have the decency to thank her. What contemptible scoundrel has stolen the cork to my lunch?*" (W.C. Fields)

IN THIS ISSUE: Page:

ADMINISTRATIVE NOTES:

***Retirement, and the Internet*: *Help*:** This is a request for information: I will be retiring (after 28 years of service) in ten (that's *t e n*, . . . *10*, . . . *X*, . . . *diez*) months and moving out of the California. However, it is my intent to stay current on California law and continue producing the Legal Update, sending them out by Internet as I presently do. But I won't have access to the Internet Service

Provider (via the San Diego Sheriff) I am currently using, and I already know from prior experience that AOL (my personal account) won't cut it. Although sending the Update to employees of the San Diego District Attorney's Office won't be a problem (so long as my Office agrees to continue forwarding them for me), sending them to the other 600 to 700 subscribers throughout the country promises to be an issue. What I need, therefore, is suggestions for an Internet Service Provider that can handle the load (which sometimes can be up to a full MB, and averages about 75 to 78 KB), to multiple addressees, and without complaint. Any suggestions would be greatly appreciated.

CASE LAW:

***Knock and Notice, per P.C. § 844*:**

In re Frank S. **(Aug. 21, 2006) 142 Cal.App.4th 145**

Rule: A "*knock and notice*" (per P.C. § 844) violation in the making of a warrantless, but otherwise lawful, arrest, does not require the suppression of evidence recovered from the arrestee's person.

Facts: Officer Don Pearman of the Pittsburg, California, Police Department, observed defendant minor walking with companions in a neighborhood known for having a high rate of drug-related activity. Officer Pearman knew defendant from prior contacts, knew he was on parole, and knew that a condition of his parole was that he wasn't supposed to be in that area. Officer Pearman had warned defendant before that he might be arrested if caught there. Defendant knew he was in trouble, as he demonstrated when he tried to conceal himself from the officer by hiding behind one of his companions. The officer held off making contact because he knew defendant had a tendency to run when contacted by the police. As he called for assistance, Officer Pearman watched defendant walk down a driveway to a friend's house. After other officers arrived, they walked to the side of the house and stopped at a sliding glass door. From that location Officer Pearman could hear "a bunch of commotion" coming from inside. Reaching through an opening in the doorway, Pearman pulled a curtain aside. From that vantage point he could see defendant sitting on a couch about three feet away. Officer Pearman walked inside and arrested defendant. He patting him down for weapons and then, because other occupants were becoming agitated, escorted him outside. Later at the station, a more thorough search was done of defendant's person. Marijuana, including a sandwich bag containing some 31 smaller bags of the stuff, was recovered from his jacket. Defendant was charged by petition in Juvenile Court with possession of marijuana for sale. The Juvenile Court judge didn't buy his claim that the jacket was his brother's and that he didn't know what was in it. The petition was sustained and defendant was committed to the Division of Juvenile Justice of the Department of Corrections and Rehabilitation (formerly, the California Youth Authority). Defendant appealed.

Held: The First District Court of Appeal affirmed. Defendant argued that his trial counsel was "ineffective" for having failed to make a motion to suppress the marijuana.

Specifically, defendant contended that Officer Pearman violated California's "*knock and notice*" requirements, as described in P.C. § 844, and that that violation required the suppression of the evidence subsequently recovered from his person. Section 844 specifically states that a peace officer may enter a house to make an arrest only "after having demanded admittance and (after he has) explained the purpose for which admittance is desired." The Common Law "knock and announce" rule, from which P.C. § 844 is derived, "forms part of the reasonableness inquiry under the Fourth Amendment." The People conceded that Officer Pearman failed to comply with the requirements of P.C. § 844. However, The United States Supreme Court has recently ruled that the suppression of evidence is not an appropriate sanction for violating the knock and notice rules. (*Hudson v. Michigan* (2006) 547 U.S. ___ [126 S.Ct. 2159].) Per *Hudson*, the suppression of evidence is only necessary where the interests protected by the constitutional guarantee that has been violated would be served. The interests protected by the knock and notice rules include human life, because "an unannounced entry may provoke violence in supposed self-defense by the surprised resident." Property rights are also protected by providing residents an opportunity to prevent a forcible entry. And, "privacy and dignity" are protected by giving the occupants an opportunity to collect themselves before answering the door. What the knock and notice rules *do not* protect, however, is one's interest in preventing the government from seeing or taking evidence described in a search warrant (as in *Hudson*), nor the arrest of an individual for whom there is probable cause to arrest (as in this case). The rule as dictated by *Hudson* (a search warrant case) is applicable as well in a warrantless, yet lawful, arrest case. Therefore, defendant's counsel was not incompetent for having failed to make a motion to suppress the evidence in this case in that he would have lost that motion even if made.

Note: The value of this case is in its extending the rule of *Hudson* (which, itself, runs counter to years of courts suppressing the products of a knock and notice violation) to a warrantless arrest case. But don't take either this case, nor *Hudson*, as the Courts' blessing to officers to purposely ignore California's knock and notice requirements as described in P.C. §§ 844 and 1531. Just because there may not be an exclusionary rule tied to such a violation does not mean that it is any less a violation. In fact, it is still a constitutional violation, and may eventually get you sued. Despite the ruling in this case, there is still the possibility that Officer Pearman may be subject to civil liability in a suit filed by the owner of the house he entered. (See *Steagald v. United States* (1981) 451 U.S. 204.) Note also that the defendant did not argue that aside from the knock/notice issue, he could not be arrested in a home without an arrest warrant, per *People v. Ramey* (1976) 16 Cal.3rd 263. As noted by the Court; "The police were authorized to enter without a(n arrest) warrant because defendant was a parolee who had no legitimate expectation of privacy against warrantless arrests, even in the home."

***Invocation of Miranda*:**

United States v. Washington **(9th Cir. Sept. 6, 2006) 462 F.3rd 1124**

Rule: Agreeing to listen to interrogators without an attorney present is *not* an invocation of one's right to the assistance of counsel nor to remain silent.

Facts: Defendant and three others committed an armed bank robbery, with defendant's involvement being that of the lookout. Video cameras in the bank took pictures of the suspects, including defendant. As a result, he was promptly identified and, three months later, arrested. Taken to the office of the FBI and questioned, Special Agent Peter Taglioretti first asked the in-custody defendant a series of background questions such as his name, date of birth, address, medical condition, gang moniker and gang affiliation. The questions about defendant's gang moniker and affiliation were asked, per Agent Taglioretti's later testimony, to verify information about defendant that he had already received from the police, and for purposes of classification while in custody, for defendant's protection. After some more discussion about what defendant was charged with and the sources of Agent Taglioretti's information, defendant was advised of his *Miranda* rights. Defendant responded merely that he was willing to listen to the agents without an attorney present. So Agent Taglioretti wrote on a *Miranda* waiver form; "agreed to listen w/o atty present." Defendant signed and initialed this form. Agent Taglioretti showed defendant photographs of the other robbers they had in custody and explained to him what information they had about the robbery. Defendant then volunteered that; "I can't do no time but I know I am." When shown surveillance photographs of the robbery, defendant admitted that he was the person depicted in the photos. Charged in federal court with bank robbery (and other charges), his motion to suppress these statements was denied. His admissions were used against him at trial and he was convicted. Sentenced to 77 months in federal prison, defendant appealed.

Held: Except to remand the case back to the trial court for resentencing, the Ninth Circuit Court of Appeal affirmed defendant's conviction. Defendant first complained that to ask him for his gang moniker, which was done prior to being advised of his *Miranda* rights, was an improper interrogation. The Court, however, found that to ask for identification information, including his gang moniker, does not qualify as an interrogation. An "interrogation," for purposes of *Miranda*, is defined as "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response." (Parenthesis in original.) In this case, the FBI Agent testified that he asked this question to verify what he already knew, and to obtain information for the purpose of classification while in custody, to protect defendant's safety. As such, "the question about (defendant's) gang moniker was routine gathering of background information, not interrogation." The Court also rejected defendant's argument that his response to the *Miranda* advisal—that he was willing to listen to the agents without an attorney present—was an invocation of this right to an attorney and/or to his right to remain silent. To be legally effective, a request for the assistance of an attorney, made in response to a *Miranda* advisal, must be "clear and unequivocal." Here, the Court determined that defendant's response to the *Miranda* advisal could not even be classified as "equivocal," let alone "unequivocal." Neither did defendant invoke his right to silence. He told the agents that he was willing to listen to what they had to say, and didn't need an attorney to do that. This was not a *Miranda* invocation to either an attorney or to remain silent.

Note: Despite this ruling, the U.S. Supreme Court has noted previously that requiring a person to identify himself prior to a *Miranda* wavier, although not generally a violation of the in-custody suspect's Fifth Amendment rights, *may*, in some circumstances, be incriminatory. (*Hiibel v. Sixth Judicial District of Nevada* (2004) 542 U.S. 177, 191.) On that issue in the instant case, for instance, two of defendant's co-robbers testified against him. Both of them had told the FBI at some earlier time, when identifying defendant as a co-principal in the robbery, that defendant's gang moniker was "Rock." The trial court allowed into evidence the FBI agent's testimony concerning these prior hearsay statements as a "*prior consistent statement*" (admissible non-hearsay under the federal rules of evidence, and as an exception to the hearsay rule under the California Evidence Code) after the credibility of the two co-robbers was challenged by defense counsel. Arguably, therefore, defendant's un-Mirandized admission to the gang moniker of "Rock" helped to connect him to this offense, and, as theorized in *Hiibel*, was therefore "*incriminatory*." But the language in *Hiibel* on this issue is really just dicta, and the Supreme Court never explained when this theory might actually apply. So we can't really say for sure that the Ninth Circuit here violated *Hiibel* on this issue.

***Dogs and Deadly Force*:**

Thompson v. County of Los Angeles **(Aug. 22, 2006) 142 Cal.App.4th 154**

Rule: The proper use of a trained police dog does not constitute the use of deadly force.

Facts: Appellant in this civil case was not having a good day. His first attempt to commit a carjacking was thwarted by the victim who pulled the coil wire, killing the engine. A second attempt to steal another car ended when the victim telephoned for help. Then, if appellant's ego wasn't already shredded enough, an attempted robbery at a 7-Eleven store ended when a responding Los Angeles County Sheriff's Deputy arrived just as appellant ducked into an alley and jumped over a block wall. With the deputy at one end of the alley and some neighborhood youths getting into the fun by blocking the other end, another deputy sheriff responded with his K-9 partner. When it was learned that appellant was a parolee with a prior weapons-related offense, it was decided to send the dog in after him. After warning appellant of the impending peril by loudspeaker and a helicopter, the dog, on a 60-foot leash, was utilized in the search. Appellant was located hiding under a car in a carport. With the carport lit up, appellant was ordered to come out. But when he started to comply, the dog, who was at that moment out of his handler's sight, bit him in the leg. Appellant yelled to get the dog off of him, all the while struggling to force the dog to let go of his leg. Despite being told to quit struggling, appellant continued to fight with the dog by trying to twist the dog's muzzle and choking him with his collar. When appellant would not quit resisting the dog, the deputies struck him with their flashlights on his arm, shoulder and leg. The dog was eventually pulled away from appellant and he was subdued. Appellant ended up spending four days in the hospital with a large laceration to his lower left leg and backside, as well as dog bites on his hands. He later developed an infection that required daily care for several months. Long term, he lost some control over his left foot, had significant tissue loss, and suffered from prominent deformities and scar tissue that

negatively affected his mobility. Appellant sued the deputies in state court pursuant to 42 U.S.C. § 1983 for excessive force and negligence. After various pre-trail motions pretty much decimated appellant's case, the matter went before a jury. Appellant requested several jury instructions which included references to "*deadly force*" as "*force which is reasonably capable of causing serious bodily injury or death*." Denying these requests, the judge instructed the jury instead on the use of excessive force, finding that the pertinent inquiry was whether the deputies' use of force was reasonable under the circumstances. Specifically, the jury was told that "(f)orce is not excessive if it is reasonably necessary under the circumstances to make a lawful arrest," and that the appellant had the burden to show that the sheriff's deputies used excessive force. The jury was also instructed to determine whether, under the circumstances, the use of a trained police dog to bite a fleeing or hiding criminal suspect constituted a police use of force, and whether that force was reasonable under the circumstances known to the officers at the time the force was used. The jury returned a verdict to the effect that excessive force was not used. Appellant appealed.

Held: The Second District Court of Appeal (Div. 2) affirmed. Excessive force claims, when evaluating an arrest or seizure by law enforcement, are analyzed under the objective reasonableness standard of the Fourth Amendment. This requires a consideration of the facts and circumstances of each particular case including (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officer or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight. The jury was so-instructed. Citing *Smith v. City of Hemet* (9th Cir. 2005) 394 F.3rd 689, appellant argued that the use of a police dog constituted force likely to produce death or serious bodily injury, and that he was entitled to have the jury instructed accordingly. However, the Court here noted that *Smith* did no more than hold that the use of an improperly trained dog, or the use of a dog with the intent to cause death or serious bodily injury, might constitute the use of deadly force. However, the "*great weight*" of authority is that the proper use of a trained police dog does not constitute deadly force. When a criminal suspect suffers no more than non-life threatening injuries, as in this case, particularly where the bulk of the injuries were caused by appellant himself by fighting with the dog despite the deputies' efforts to get him to stop, a jury should not be instructed that the use of the dog constituted deadly force.

Note: This case is important in off-setting the *Smith* case, cited above, which did in fact create a great deal of confusion (myself included) as to whether the use of a police dog necessarily constituted the use of "deadly force." While this appellant did in fact suffer some serious injuries, at no time was he in danger of dying. The common definition of "deadly force" (i.e., force likely cause death or serious bodily injury), and which cannot be lawfully used by law enforcement except to stop, or arrest for, a "*forcible and atrocious crime*," just does not fit this situation and can only mislead a jury. This case, therefore, is greatly needed.

***Trespassing on School Property, per P.C. § 626.2*:**

In re Leon S. **(Oct. 24, 2006) 133 Cal.App.4th 1556**

Rule: Trespassing on school grounds, per P.C. § 626.2, requires proof of registered or certified notice being mailed to the juvenile's home address.

Facts: Defendant minor was suspended by the high school's Assistant Principal, Tad Scott, for two days for an incident which, other than to say that it involved defendant being "abusive," was not described. Defendant reacted to the news of the suspension by becoming even more "disruptive, uncooperative, and cursing." His rapidly deteriorating attitude was rewarded with an extra day of suspension for a total of three days. Scott wrote up the notice of suspension and, after explaining to defendant that he was not allowed back on the campus for the three days of his suspension, had him sign it. Scott then either gave defendant a copy, or gave all copies to his secretary (the testimony was inconsistent), and called defendant's mother. Scott told her that her son was suspended for three days, although she remembered being told two days. She told Scott to have her son walk home. The notice of suspension was given to Scott's secretary whose job it was to provide the offending student with a copy and to mail it by registered or certified mail to the student's home. Two days later, defendant's mother, who denied ever receiving the notice of suspension, drove defendant back to school. He was later contacted by a campus supervisor in the attendance office "yelling at the clerks." Although being told that he was still on suspension, he refused to leave. The police were called, but defendant, "acting belligerent," continued to refuse to leave. He as therefore arrested for trespassing on the school grounds, per P.C. § 626.2. With a petition filed in Juvenile Court, the petition was sustained (with other counts of disturbing the peace of a school and threatening a public officer being dismissed). Defendant appealed.

Held: The First District Court of Appeal (Div. 5) reversed, but only because all of the elements of P.C. § 626.2 were not proved. Section 626.2 reads in relevant part: "Every student . . . who, after a hearing, has been suspended . . . from . . . a school for disrupting the orderly operation of the campus or facility of such institution, and as a condition of such suspension . . . has been denied access to the campus or facility, or both, of the institution for the period of the suspension . . . ; who has been served by registered or certified mail, at the last address given by such person, with a written notice of such suspension . . . and condition; and who willfully and knowingly enters upon the campus or facility of the institution to which he or she has been denied access, without the express written permission of the chief administrative officer of the campus or facility, is guilty of a misdemeanor." Defendant, on appeal, argued that there was no proof that he had ever been mailed a registered or certified copy of the suspension, or that he had been accorded a pre-suspension hearing. Agreeing with the first argument, the Court didn't even get to the fact that there was no evidence of a hearing. Assistant Principal Scott testified only to having given his secretary a copy of the notice to be mailed to defendant's home. With no testimony from his secretary, there was no direct proof that the suspension notice had ever been mailed to defendant's home, or that if it had, that it was done by registered or certified mail. The statutory presumption that an official duty

has been "regularly performed" (Evid. Code, § 664) does not apply to the duties of a secretary, and even if it did, the presumption was rebutted by the testimony of defendant's mother who said that she never received the suspension notice. Given this lack of proof, not all the elements of P.C. § 626.2 were met. The petition, therefore, should not have been sustained.

Note: I have no way of knowing whether this situation was mishandled by defendant's school, or simply negligently prosecuted. Either way, someone should have taken the time to simply sit down and read the elements of P.C. § 626.2, if it is to be charged. The net result is that one more juvenile delinquent has been taught that insubordination and disrespect for school officials will be rewarded by a system that has lost sight of the idea that the purpose of the juvenile court system is supposed to be rehabilitation. The real tragedy, however, is the number of people who will inevitably be victimized by Leon S. as he continues to be coddled, at least until he suddenly becomes an adult on his 18th birthday, and is so suddenly thrust into the not-always-so-forgiving adult criminal justice system. Poor little Leon is going to be in for a real culture shock when that happens.

***Pat Downs for Weapons*:**

United States v. Flatter **(Aug. 9, 2006) 456 F.3rd 1154**

Rule: A pat down (or frisk) for weapons requires a reasonable suspicion that the person is armed and presently dangerous. Questioning a person about a mail theft in a small, crowded interview room does not, by itself, constitute a reasonable suspicion.

Facts: Defendant was a postal employee working as a "tug" driver at a postal facility in Spokane, Washington. A "tug" is a motorized vehicle used to move large containers, or "crab pots," of packages around the facility and load them onto delivery trucks. The Veterans' Administration notified the Post Office that fourteen packages of medications, all of which passed through the Spokane facility, had turned up missing. Suspecting that the packages were being stolen by a postal employee, postal inspectors set up a sting operation. Six similarly-colored decoy packages were placed on top of two crab pots of packages that had already been sorted. Video cameras were set up to monitor the packages. Defendant was observed unnecessarily handling the mail in the crab pots when he moved them into a mail truck. After removing one of the decoy packages from a crab pot, defendant disappeared from view into the truck. Shortly, thereafter, when he left the immediate area, the crab pots were checked. All of the decoys had been moved from where they were originally placed, and one was missing. Defendant was contacted by the postal inspectors in the employee break room. When his initial responses were found to be "evasive and unsatisfying," they asked him to accompany them to their office. With the proviso that he be allowed to have a union representative present, defendant agreed. Once in the postal inspectors' office, defendant was told that he was not under arrest, that he was free to leave, but that they were going to pat him down for weapons. The postal inspectors later testified that they had decided to pat defendant down for weapons because they were meeting in a small room where, with the presence of the union rep, it was a bit crowded and that they were concerned that the situation might turn

confrontational. While conducting the pat down, an envelope from the missing decoy was recovered from defendant's back pants pocket. Indicted on one count of mail theft (18 U.S.C. § 1709), defendant's motion to suppress the envelope was denied by the trial court. Convicted after a jury trial, defendant appealed.

Held: The Ninth Circuit Court of Appeal reversed. Under the Fourth Amendment, a search of a person requires "*probable cause*" to believe that there is something there subject to being seized. An exception to this rule is when an officer can articulate a "*reasonable belief*" that a person may be armed and presently dangerous, in which case a pat down (or "*frisk*") of that person's outer clothing for the feel of any objects that could be a weapon is lawful. But this lower standard of proof—i.e., a "*reasonable suspicion*"—is allowed only so that an officer may protect himself. The nature of the crime involved is one of factors to be considered in determining whether there exists sufficient reasonable suspicion to believe a person is armed. But mail theft is not a crime one might suspect to be associated with the need to carry a weapon. And conducting an interview of a theft suspect in a small room, while maybe justifying some safety concerns, is not a reason to suspect that defendant might be armed. Nothing else occurred in this case that might have suggested to the postal inspectors that defendant was actually armed. In fact, in testimony, one of the postal inspectors admitted that he "had no idea if (defendant) had weapons on him." There being no reasonable suspicion to believe that defendant was armed, therefore, patting him down, resulting in the discovery of the missing decoy package, was a violation of the Fourth Amendment.

Note: This case is no surprise. The law is quite clear that you can't pat someone down for weapons unless you are able to articulate why you believe he may be armed. Just because you may feel that it is "prudent to insure that (a suspect is) not carrying any weapons," as one postal inspector testified in this case, is clearly not enough. But that having been said, I am always reluctant to discourage pat downs for weapons. My biggest fear is to cause a cop to follow a rule, constitutionally mandated or not, that gets someone killed. If you choose to give yourself the benefit of the doubt (something I will never criticize you for) and push the envelope further than this rule allows, just know that any contraband you find in the process is going to be suppressed. But at least you'll be here to talk about it.

***Burglary of One's Own Residence*:**

People v. Smith **(Aug. 18, 2006) 142 Cal.App.4th 923**

Rule: A homeowner can burglarize his own home while court orders barring him from the residence are in effect.

Facts: Defendant and Geraldine married in 1995. They lived together in their home, purchased jointly (i.e., "community property"), in Blythe. However, within five years their marriage was on the rocks. Late one night, while accusing Geraldine of infidelity and homosexuality, defendant attacked and injured her. She reported the physical abuse to the police and defendant was arrested. Temporarily moving in with her sister,

Geraldine got a restraining order to keep defendant away from her and a separate court order removing him from their home. When defendant got out of jail, an attempted suicide earned him a 3-day stay in a mental hospital. Claiming to have no clothes or money upon his release from the hospital, defendant sought shelter in a storage shed behind his home. He'd already consumed some cocaine and alcohol, further muddling his not-too-coherent brain, when he noticed that Geraldine had returned home. He broke into the house by throwing a propane canister through a rear sliding glass door. Defendant then proceeded to attack Geraldine, hitting, kicking, biting and choking her, and threatening to kill her as he held a kitchen knife to her throat. He eventually forced her into her car in the garage. When he couldn't get the electric garage door opener to work (Geraldine having changed the code), he backed the car right through the garage door. As defendant drove, Geraldine opened her door and, during a struggle, was ejected from the car. Defendant stopped, walked back to her, struck her in the face several times with his fists, and banged her head against the curb five or six times, all the while threatening again to kill her. She eventually lost consciousness. Passersby intervened, causing defendant to stop. As he attempted to drive away, defendant drove into a parked tractor-trailer, injuring his head. He was subsequently arrested by the police. Geraldine lived, but suffered some very serious injuries. Defendant was tried and convicted of premeditated attempted murder, spousal abuse, kidnapping, making criminal threats and residential burglary. Sentenced to prison for 34-years-to-life, defendant appealed.

Held: Except to reduce his sentence by six years due to a sentencing error, the Fourth District Court of Appeal (Div. 2) otherwise affirmed. Defendant's primary argument on appeal was that the residential burglary conviction could not stand because it is a rule of law that a person cannot burglarize his own home. (*People v. Gauze* (1975) 15 Cal.3rd 709.) This is because a burglary is premised upon the requirement that the entry of the residence invade a possessory right in the building, and that it be committed by someone who has no right to be in the building, at least for an unlawful purpose. Typically, a person has an absolute right to enter his own residence. In this case, however, although defendant retained a possessory interest in the home, he did not have an absolute right to enter as a lawful occupant while Geraldine was there. Geraldine had court orders (1) preventing him from contacting her and (2) giving her the temporary right to be the home's sole occupant. Defendant's entry was in violation of both these orders. His rights in relation to entering his home, therefore, having been limited, he committed a burglary when he entered the house for the purpose of committing a felony upon his wife.

Note: The Court further determined that a misdemeanor P.C. § 273.6 (violating a protective order) does not take precedence over the burglary charge, and that the evidence was sufficient to prove the premeditation and deliberation elements of the attempted murder charge (increasing the punishment to life with the possibility of parole; see P.C. § 664(a)) The obvious importance of this case, however (citing *People v. Sears* (1965) 62 Cal.2nd 737, where the estranged husband came back to the house three weeks after moving out and assaulted his wife and murdered his step-daughter), is in spelling out the exceptions to the general rule that one cannot burglarize his or her own house.