Executing Search Warrants

"Police with a search warrant! Open the door or we'll kick it in!"
Excerpt from *To Live and Die in L.A.*

The execution of a warrant to search a home is, from start to finish, a frightening display of police power. It is nothing less than an armed invasion into the sanctity of the home. And although most people can avoid having their homes searched by not committing crimes, the law views the procedure as one that must be closely and scrupulously regulated. It accomplishes this in two ways.

First, the law strictly controls when a judge may issue a warrant; i.e., the probable cause requirement. Second, it regulates the manner in which warrants are executed.[1]

People who watch a lot of television might think that executing search warrants is a snap—just break in and look around for something suspicious. But in real life, it is both dangerous and tedious work. It also requires a thorough understanding of a body of law that regulates virtually everything officers do, from knocking on the door to leaving a receipt on the way out.

For example, there are rules covering the manner in which entry is made, officer safety precautions, what places and things may be searched, and what items may be seized. There are rules that specify who may accompany officers when they enter, the legality of videotaping the search, when officers may detain the occupants, when they can remove files and computers for an extended search at another location, and the preparation and filing of post-search paperwork such as "returns" and inventories. And then there are the rules for obtaining and executing specialized warrants, such as covert entry warrants, anticipatory warrants, warrants conducted by "special masters," and warrants for computer data.

Simply put, executing search warrants is a complex undertaking that requires a command of a wide variety of rules—rules the courts enforce by suppressing some or all of the evidence discovered on the premises.

In this article, we examine these rules, with emphasis on the most common type of warrant—the warrant to search a house for contraband, such as drugs, illegal weapons, or stolen property.

Two things before we begin. First, in the 2002 editions of *Point of View* we covered the subjects of probable cause, the preparation of warrants, and specialized search warrants. Those articles may be downloaded from Point of View Online at www.acgov.org/da. Second, because of its scope and complexity, the subject of knock-notice is covered in the accompanying article.

PRE-SEARCH PLANNING

As in most things, planning is essential to the success of warrant execution. Not only will planning help make it safer and more efficient, if things get messy the officers'

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[1] See *People* v. *Peterson* (1973) 9 Cal.3d 717, 722, fn.6 ["The propriety of the execution of the search warrant is essential to establishing the admissibility of the evidence upon which the People's case rests."]; *United States* v. *Ramirez* (1998) 523 US 65, 71 ["The general touchstone of reasonableness . . . governs the method of execution of the warrant."]; *Wilson* v. *Layne* (1999) 526 US 603, 611 ["(T)he Fourth Amendment does require that police actions in execution of a warrant be related to the objectives of the authorized intrusion."]; *Groh* v. *Ramirez* (2004) 540 US __ ["It is incumbent on the officer executing a search warrant to ensure the search is lawfully authorized and lawfully conducted."].

attempt to plan things out is a factor that is highly relevant in determining the overall reasonableness of their conduct.[2]

Entry strategy

There are no rigid rules that must be followed when entering.[3] Instead, the courts require only that officers enter in a reasonable manner with due regard for the safety of everyone, and the need to prevent the occupants from destroying evidence or otherwise sabotaging the search.[4]

KNOCK-NOTICE: Officers must plan on complying with the knock-notice requirements unless they reasonably believe that compliance will be excused for good cause. As noted, knock-notice is covered in the accompanying article.

DAMAGING PROPERTY: Planning should include a procedure for making a forced entry if need be.[5] As a general rule, a forced entry is permissible if it was reasonably necessary. In the words of the U.S. Supreme Court, "[L]aw officers constitutionally may break and enter to execute a search warrant where such entry is the only means by which the warrant effectively may be executed."[6]

FLASHBANGS: If officers reasonably believe that armed resistance or destruction of evidence is likely, they may consider using flashbangs when making entry, especially before making a no-knock entry. Because officers have been using good judgment in determining when and how to use flashbangs, court authorization is not required.

For example, in *Langford* v. *Superior Court*,[7] the California Supreme Court refused to require the LAPD to obtain court authorization because, (1) the department had reduced the explosive power of its flashbangs to minimize the risk of injury, (2) the department prohibited the use of flashbangs unless officers could see fully into the targeted room before tossing the flashbang inside, and (3) officers were required to obtain authorization from a police administrative panel which gave its approval only if it determined that flashbangs were the safest means of making a forcible entry.

MOTORIZED BATTERING RAMS: Using a motorized battering ram to get inside is highly dangerous because, among other things, it may cause a fire by rupturing electrical or gas lines. It might even cause the building to collapse. Consequently, motorized battering rams may be used only if, (1) the issuing judge authorized it; and (2) when the ram was utilized, officers reasonably believed that evidence inside the premises was presently being destroyed, or there was an immediate threat of resistance from the occupants which posed a serious danger to officers.[8]

Other pre-search issues

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[2] See, for example, *U.S.* v. *Heldt* (D.C. Cir. 1981) 668 F.2d 1238, 1261-2.
[3] See *Wilson* v. *Arkansas* (1995) 514 US 927, 934.
[4] See *Wilson* v. *Arkansas* (1995) 514 US 927, 934 ["(W)e have little doubt that the Framers of the Fourth Amendment thought that the method of an officer's entry into a dwelling was among the factors to be considered in assessing the reasonableness of a search or seizure."].
[5] See *United States* v. *Banks* (2003) 540 US __ ["Since most people keep their doors locked, entering without knocking will normally do some damage"].
[6] *Dalia* v. *United States* (1979) 441 US 238, 247. ALSO SEE *United States* v. *Ramirez* (1998) 523 US 65, 71 ["Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful."]; *United States* v. *Banks* (2003) 540 US __ ["(P)olice in exigent circumstances may damage premises so far as necessary for a no-knock entrance without demonstrating the suspected risk in any more detail than the law demands for an unannounced intrusion simply by lifting the latch."].
[7] (1987) 43 Cal.3d 21.
[8] See *Langford* v. *Superior Court* (1987) 43 Cal.3d 21, 29-32.

BRIEFING: Before heading out, everyone on the search team must be thoroughly briefed on what places and things they may search and what evidence they may seize.[9] This helps ensure that the search is properly limited in scope and does not degenerate into an illegal "general" search. As the U.S. Court of Appeals observed, "In order for a warrant's limitations to be effective, those conducting the search must have read or been adequately apprised of its terms."[10]

For example, in *Guerra* v. *Sutton*[11] a search by INS agents was ruled unlawful because, said the court, the agents "had differing views of the type and scope of the local police warrant, demonstrating that they were not given an advance briefing as to the source and extent of their authority to enter, search, and arrest."

DOUBLE-CHECK PROCEDURE: If officers may have trouble determining whether a document or other item may be seized under the warrant, there should be a procedure in place whereby they can get a determination from one of the lead investigators.[12]

For example, in *U.S.* v. *Heldt*[13] FBI agents conducted extensive searches for documents at three Church of Scientology offices. At the pre-search briefing, they were "instructed that if they had questions regarding particular documents, they should seek out their search team leaders who would determine whether the documents fell within the scope of the warrants." On appeal, this was one of the circumstances cited by the court as proof the search was conducted in a reasonable manner.

THE TEN-DAY RULE: Search warrants must be executed within ten days after they were issued. After that, they are void.[14] When calculating ten days, do not count the day on which the warrant was issued.[15]

It will sometimes be impractical or impossible to complete the search within ten days. This commonly occurs when officers remove a large number of documents to be read later, when they remove a computer for an off-site search, or when the warrant

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[9] See *U.S.* v. *Wuagneux* (11th Cir. 1982) 683 F.2d 1343, 1353 ["(A)ll the agents were adequately briefed and supervised in this case."]; *People* v. *Bradford* (1997) 15 Cal.4th 1229, 1306-7 ["The record does not demonstrate that the officers had not been briefed or prepared as to the objects of the search"]; *U.S.* v. *Whitten* (9th Cir. 1983) 706 F.2d 1000, 1009-10 ["Officers conducting a search should read the warrant or otherwise become fully familiar with its contents, and should carefully review the list of items which may be seized."].

[10] *U.S.* v. *Heldt* (D.C. Cir. 1981) 668 F.2d 1238, 1261.

[11] (9th Cir. 1986) 783 F.2d 1371, 1375.

[12] See *U.S.* v. *Wuagneux* (11th Cir. 1982) 683 F.2d 1343, 1353 ["(T)his [double-check procedure] indicates an attempt by the responsible officials to assure that the search is conducted in a manner that minimizes unwarranted intrusions into privacy."]; *U.S.* v. *Sawyer* (11th Cir. 1986) 799 F.2d 1494, 1509 ["Moreover, during the search, the case agent did review items seized and determined a quantity of records reviewed were not those of SMC and left them on the premises."].

[13] (D.C. Cir. 1981) 668 F.2d 1238.

[14] See Penal Code § 1534(a); Fed. Rules Crim. Proc. rule 41. NOTE: The reason for the ten-day requirement is to prevent situations in which warrant service is delayed for so long that probable cause no longer exists. See *People* v. *Head* (1994) 30 Cal.App.4th 954, 958; *People* v. *Larkin* (1987) 194 Cal.App.3d 650, 656; *People* v. *Kibblewhite* (1986) 178 Cal.App.3d 783, 785. A warrant executed within the ten-day window is presumed valid; i.e., supported by probable cause. See Penal Code § 1534(a). Although this presumption may be rebutted, as a practical matter warrants remain valid for ten days unless officers were aware that probable cause no longer existed. See *People* v. *Hernandez* (1974) 43 Cal.App.3d 581, 589 ["(A) delay in the execution [within the ten-day period] is justified if—inevitably by hindsight—it appears that the probable cause upon which the warrant issued still existed at the time the warrant was executed."]; *People* v. *Cleland* (1990) 225 Cal.App.3d 388, 394.

[15] See *People* v. *Clayton* (1993) 18 Cal.App.4th 440, 445. NOTE: The warrant may be served on the day it was issued. *Ibid.*

requires a bank or other third party to produce documents. In any event, the rule is satisfied if the warrant was delivered or otherwise served within ten days of its issuance.[16]

NIGHT SEARCHES: Search warrants must ordinarily be executed between 7 A.M. and 10 P.M.[17] If, however, it is reasonably necessary to serve the warrant between 10 P.M. and 7 A.M. the affiant may seek night-service authorization from the issuing judge. This is accomplished by including information in the affidavit that demonstrates "good cause" for night service; e.g., it is likely the evidence would be destroyed if officers waited until morning.[18] If the judge determines that good cause exists, he or she will authorize night service on the face of the warrant.[19]

Note that if officers enter before 10 P.M., night service authorization is not required to remain on the premises after 10 P.M. to complete the search.[20]

WHO WILL ENTER: The only people who are expressly authorized to enter the premises are officers. Other people may, however, be permitted to enter if their assistance is reasonably necessary.[21]

NEWS REPORTERS: Reporters, photographers, and television camera operators may not be permitted to accompany officers when they enter a private residence to execute a warrant when their purpose is to get material for a news or public affairs story, or for police public relations purposes.[22]

CRIME VICTIMS, EXPERTS: As discussed in more detail later, the owner of stolen property and others may accompany officers if their presence or expertise is necessary to determine what items on the premises are stolen or are otherwise seizable.

OFFICERS FROM OTHER AGENCIES: Officers who are executing a warrant may be assisted by officers from other divisions within their own department and officers from outside agencies.[23] In some cases, these officers will have an ulterior motive:

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[16] See *People* v. *Zepeda* (1980) 102 Cal.App.3d 1, 7 ["(T)he warrant was actually served when the search began, and certainly no later than when the warrant was presented to defendant at his workplace."].

[17] See Penal Code § 1533. ALSO SEE Fed. Rules Crim. Proc. Rule 41 ["The warrant shall be served in the daytime, unless the issuing authority . . . authorizes its execution at times other than daytime."].

[18] NOTE: Technically, "good cause" exists when, (1) there is reason to believe that some or all evidence would be destroyed or removed before 7 a.m., or (2) when night service is necessary for the safety of the search team or others. See Penal Code § 1533; *People* v. *Kimble* (1988) 44 Cal.3d 480, 494-5; *People* v. *Watson* (1977) 75 Cal.App.3d 592, 597-8; *People* v. *Mardian* (1975) 47 Cal.App.3d 16, 34-5; *People* v. *Egan* (1983) 141 Cal.App.3d 798, 806; *Tuttle* v. *Superior Court* (1981) 120 Cal.App.3d 320, 328; *Nunes* v. *Superior Court* (1980) 100 Cal.App.3d 915, 938; *People* v. *Morrongiello* (1983) 145 Cal.App.3d 1, 13; *People* v. *Cletcher* (1982) 132 Cal.App.3d 878, 884; *People* v. *Siripongs* (1988) 45 Cal.3d 548, 569-70; *People* v. *Swan* (1986) 187 Cal.App.3d 1010, 1019; *In re Donald R.* (1978) 85 Cal.App.3d 23, 25-6; *People* v. *Lopez* (1985) 173 Cal.App.3d 125, 136; *People* v. *McCarter* (1981) 117 Cal.App.3d 894, 907; *People* v. *Lowery* (1983) 145 Cal.App.3d 902, 909-10; *People* v. *Flores* (1979) 100 Cal.App.3d 221, 234. In reality, however, "good cause" exists whenever a judge determines, for whatever reason, a night search is reasonably necessary. See *People* v. *Kimble* (1988) 44 Cal.3d 480, 494 ["It is difficult to anticipate all the numerous factors that may justify the authorization of a nighttime search."].

[19] See Penal Code § 1533.

[20] See *People* v. *Zepeda* (1980) 102 Cal.App.3d 1, 7; *People* v. *Maita* (1984) 157 Cal.App.3d 309, 322.

[21] See Penal Code § 1530.

[22] See *Wilson* v. *Layne* (1999) 526 US 603, 614.

[23] See Penal Code § 1530. NOTE: Officers may execute a search warrant in any county in California if the evidence pertains to a crime committed in their jurisdiction. See Penal Code §

they think they might find evidence that would be relevant in an investigation *they* are conducting, but they do not have probable cause for a warrant. Despite such an ulterior motive, their presence and assistance is lawful if they limit their search to those places and things they are authorized to search pursuant to the warrant.[24] This subject is covered in more detail in the section on "plain view" seizures.

CONFIRM ADDRESS AND LAYOUT: If officers have not seen the place to be searched—whether it's a home, office, or other structure—they should almost always conduct pre-search reconnaissance. This is necessary to confirm that the address on the warrant is the same as the address of the place for which probable cause exists, and to provide an accurate description for the warrant if a street address is unknown or if the house number is obscured or nonexistent.[25]

CONDUCT SIMULTANEOUS SEARCHES: If two or more homes or businesses will be searched, officers should consider executing the warrants simultaneously. This will help prevent situations in which suspects at one location are somehow alerted that a search at the other location is underway, resulting in the destruction of evidence.[26]

BRING WARRANT: Officers who are executing a California warrant are not required to bring the warrant with them or display it to the occupants.[27] It is, however, considered good practice, especially because it is tangible proof to the occupants that the search was authorized by a judge. Officers who are executing a federal warrant must give the occupants a copy.[28]

ENTRY BEFORE WARRANT ARRIVES: If necessary, officers may execute the warrant when they have been notified it was signed by a judge; i.e., they need not wait for the warrant to be brought to the location. As noted in *U.S.* v. *Bonner*, "Courts have repeatedly upheld searches conducted by law enforcement officials notified by telephone

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830.1; *People* v. *Fleming* (1981) 29 Cal.3d 698, 704, fn.4; *People* v. *Emanuel* (1978) 87 Cal.App.3d 205, 210-11; *People* v. *Galvan* (1992) 5 Cal.App.4th 866, 870-1.

[24] See *Whren* v. *United States* (1996) 517 US 806; *People* v. *Williams* (1988) 198 Cal.App.3d 873, 886 ["The fact an officer may have knowledge of possible criminal activity of the suspect, not necessarily connected with the criminal activity which is the subject of the warrant, should not necessarily impugn the integrity of his search pursuant to a valid warrant."].

[25] See *Maryland* v. *Garrison* (1987) 480 US 79, 85 ["Plainly, if the officers had known, or even if they should have known, that there were two separate dwelling units on the third floor . . . they would have been obligated to exclude respondent's apartment from the scope of the requested warrant."]; *Mena* v. *City of Simi Valley* (9th Cir. 2000) 226 F.3d 1031, 1037 [although the warrant inaccurately described the place to be searched as a single-family residence (several families lived in separate bedrooms), the court noted there was "absolutely no evidence in the record sufficient to create a genuine issue of material fact that [the officers] knew or should have known prior to the application of the warrant that the Mena residence was a multi-unit building."]. ALSO SEE *Swedlund* v. *Foster* (2003) 657 NW2d 39, 52 [although officers sent "scouts" to conduct reconnaissance, the scouts "took pictures which only showed trees and a door and which admittedly were inadequate to determine whether they had scouted the right house."].

[26] See *Ganwich* v. *Knapp* (9th Cir. 2003) 319 F.3d 1115, 1123 ["If the officers searched other Ear-Tec offices at about the same time as they searched the Puyallup office, then the need to restrict the plaintiff's communications to prevent the destruction of evidence disappeared once the searches of the other sites was underway; *Leveto* v. *Lapina* (3rd Cir. 2001) 258 F.3d 156, 171 ["(I)t appears that the agents could have minimized [the risk of destruction of evidence] by executing the warrants at the hospital and home simultaneously"].

[27] See *Nunes* v. *Superior Court* (1980) 100 Cal.App.3d 915, 935-6; *People* v. *Calabrese* (2002) 101 Cal.App.4th 79, 84; *People* v. *Rodriguez-Fernandez* (1991) 235 Cal.App.3d 543, 553.

[28] See Federal Rules of Criminal Procedure Rule 41(f)(3); *U.S.* v. *Celestine* (9th Cir. 2003) 324 F.3d 1095, 1100; *U.S.* v. *Silva* (9th Cir. 2001) 247 F.3d 1051, 1058, fn.4.

or radio once the search warrant was issued."[29] If, however, the judge made any changes in what officers may search or seize, officers must be notified of those changes before they begin the search.[30]

VIDEOTAPES OR PHOTOS OF ENTRY, SEARCH: For various reasons, officers should consider videotaping the entry and search. For one thing, the United States Supreme Court has pointed out that videotaping might be useful as a "quality control" measure and to prove that officers conducted the search in a proper manner.[31] In addition, it may help protect officers against false claims that they damaged or destroyed property during the execution of the warrant. And if the case goes to trial, and if the location of the evidence is relevant, videotapes or photographs will enable officers and prosecutors to show the jury exactly where it was found and in what condition.[32]

SECURING THE PREMISES

After officers make entry, the first step is to take control of the premises. This is considered standard practice because, as the U.S. Supreme Court observed, "The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation."[33] It will also minimize the risk that the suspects will escape, destroy evidence, or otherwise impede the search.[34]

In most cases, officers take control by quickly spreading out throughout the premises in order to locate and identify everyone there. As the California Supreme Court explained, because of the "risk posed by residents or familiars of the household who may be involved in the criminal activities therein," officers "have a legitimate interest in determining the identity and connection of a person present at or entering a search site."[35]

Note that any weapons discovered in plain view may be temporarily seized for officer safety even if they were not contraband or seizable under the warrant.[36]

Detaining and pat searching occupants

Detentions and pat searches of people on the premises are permitted as follows.

INVESTIGATIVE DETENTIONS: Officers may detain a person if they reasonably believed he would be arrestable if any of the listed evidence was found.[37] Like all seizures, the

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[29] (1st Cir. 1986) 808 F.2d 864, 868-9. ALSO SEE *People* v. *Rodriguez-Fernandez* (1991) 235 Cal.App.3d 543, 553-4.

[30] See *Guerra* v. *Sutton* (9th Cir. 1986) 783 F.2d 1371, 1375.

[31] *Wilson* v. *Layne* (1999) 526 US 603, 613. ALSO SEE *Marks* v. *Clarke* (9th Cir. 1996) 102 F.3d 1012, 1032, fn.37 ["A review of our cases suggests that we have assumed without deciding that videotaping of the execution of a valid search warrant is lawful." Citations]; *U.S.* v. *Stowe* (7th Cir. 1996) 100 F.3d 494, 500 ["(V)ideotaping a scantily-clad woman, even only incident to the search, is grounds for a legitimate complaint."].

[32] See *People* v. *Smith* (1994) 21 Cal.App.4th 942, 951, fn.3; *U.S.* v. *Stowe* (7th Cir. 1996) 100 F.3d 494, 499; *People* v. *Hines* (1997) 15 Cal.4th 997, 1041-2; *U.S.* v. *Carpenter* (9th Cir. 1991) 933 F.2d 748; *U.S.* v. *Myers* (8th Cir. 1994) 21 F.3d 826, 828 [officers made a videotape of the search of a farm on which marijuana was growing, "showing the setup of the farm and the seizure of approximately 393 marijuana plants and large amount of marijuana-growing equipment"]. NOTES: The videotape is not a public record and may not be inspected by, or released to, the news media. See *Oziel* v. *Superior Court* (1990) 223 Cal.App.3d 1284, 1294 [videotape is not subject to the California Public Records Act because it is being held on behalf of the court which is not subject to the Act].

[33] *Michigan* v. *Summers* (1981) 452 US 692, 702-3.

[34] See *Michigan* v. *Summers* (1981) 452 US 692, 702-3.

[35] *People* v. *Glaser* (1995) 11 Cal.4th 354, 368.

[36] See *People* v. *Gallegos* (2002) 96 Cal.App.4th 612, 628, fn.13.

detention will be deemed unlawful if it was unduly prolonged;[38] or if officer-safety measures, such as the use of handcuffs, were not reasonably necessary.[39]

OFFICER-SAFETY DETENTIONS: Officers may detain a person on the premises solely for officer-safety if, (1) officers reasonably believed the detainee would pose a threat to them while they conducted the search (even though the element of danger was not strong enough to justify a pat search or investigative detention); and (2) the need for the detention outweighed its intrusiveness.[40] For example, if the threat was minimal, the detention would have to be brief and fairly unintrusive.

DRUG HOUSE DETENTIONS: Because of the increased danger associated with the execution of warrants to search a private residence for evidence of trafficking in drugs, illegal weapons or other contraband, officers who are executing such warrants may, as a matter of routine, detain the following people.[41]

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[37] See *Terry* v. *Ohio* (1968) 392 US 1, 22; *People* v. *Glaser* (1995) 11 Cal.4th 354, 374; *People* v. *Gabriel* (1986) 188 Cal.App.3d 1261, 1265 ["Assuming for the moment there was no probable cause to arrest defendant during the [1 ½ to 2-hour search], defendant cites no authority for the assertion that the Constitution prohibits a one-and-a half to two-hour detention during the execution of a valid search warrant."]; *Leveto* v. *Lapina* (3rd Cir. 2001) 258 F.3d 156, 170 ["It is not uncommon for a search for contraband to produce items that justify an immediate arrest of the owner or resident of the premises, and a person who anticipates that a search may imminently result in his or her arrest has a strong incentive to flee."]; *U.S.* v. *Moreno* (9th Cir. 1989) 891 F.2d 247, 249 ["When the officer learned that she lived at the address where substantial evidence of criminal activity had been found, there was probable cause to place her under arrest."]; *Ganwich* v. *Knapp* (9th Cir. 2003) 319 F.3d 1115, 1120 [detention of employees "prevented any of [them] from fleeing in the event that incriminating evidence was found."].. NOTE: In *Michigan* v. *Summers* (1981) 452 US 692 the Court authorized limited detentions of occupants of premises that are being searched for drugs or other contraband. Although the Court did not discuss the propriety of such detentions when the object of the search was non-contraband evidence (see *Summers* at p. 705, fn.20), most of the reasons cited by the Court for permitting detentions during contraband searches would seem to apply to most non-contraband searches. See *Summers* pp. 701-5.

[38] See *People* v. *Gabriel* (1986) 188 Cal.App.3d 1261, 1265.

[39] See *Franklin* v. *Foxworth* (9th Cir. 1994) 31 F.3d 873, 876 ["A detention conducted in connection with a search may be unreasonable if it is unnecessarily painful, degrading, or prolonged, or if it involves an undue invasion of privacy."]; *Meredith* v. *Erath* (9th Cir. 2003) 342 F.3d 1057 ["(D)etaining a person in handcuffs during the execution of a warrant to search for evidence is permissible, but only when justified by the totality of the circumstances."]; *Heitschmidt* v. *City of Houston* (5th Cir. 1998) 161 F.3d 834, 839 ["Once the premises were secure and police were proceeding with their work without interference, there was no justification for prolonging the physically intrusive aspect of [the suspect's] detention."]; *Mena* v. *Simi Valley* (9th Cir. 2000) 226 F.3d 1031, 1041 ["(The officers) have produced no evidence that Ms. Mena had committed a crime, posed any sort of threat to [them], or was in any way resisting arrest or attempting to flee."].

[40] See *People* v. *Glaser* (1995) 11 Cal.4th 354, 363; *People* v. *Matelski* (2000) 82 Cal.App.4th 837, 849; *Michigan* v. *Summers* (1981) 452 US 692, 699; *Michigan State Police* v. *Sitz* (1990) 496 US 444, 449-50; *Ingersoll* v. *Palmer* (1987) 43 Cal.3d 1321, 1329; *People* v. *Samples* (1996) 48 Cal.App.4th 1197, 1206; *People* v. *Hannah* (1996) 51 Cal.App.4th 1335, 1342; *People* v. *Loudermilk* (1987) 195 Cal.App.3d 996, 1001-2; *People* v. *Dominguez* (1987) 194 Cal.App.3d 1315, 1317; *People* v. *Grant* (1990) 217 Cal.App.3d 1451, 1458; *Ganwich* v. *Knapp* (9th Cir. 2003) 319 F.3d 1115, 1120 ["We balance the privacy-related and law enforcement-related concerns to determine if the [detention] was reasonable."]; *U.S.* v. *Fountain* (6th Cir. 1993) 2 F.3d 656, 663 ["When the ATF agents entered Fountain's home pursuant to the warrant to search for narcotics, they faced a confined, unfamiliar environment that was likely to be dangerous."].

[41] See *Michigan* v. *Summers* (1981) 452 US 692, 705 ["If the evidence that a citizen's residence is harboring contraband is sufficient to persuade a judicial officer that an invasion of the citizen's privacy is justified, it is constitutionally reasonable to require that citizen to remain while officers

RESIDENTS: All residents may be detained pending completion of the search.[42]
VISITORS: All visitors may be briefly detained to determine their connection to the premises.[43] If it turns out they are not residents and are not involved in the illegal activity under investigation, they must be released. In determining the visitor's status, officers may rely on direct and circumstantial evidence. For example, it may be reasonable to believe a visitor was a criminal associate if he ran or made a furtive gesture when he saw the officers; or, while the search was underway, he entered the house without knocking or announcing his presence.[44]
ARRIVALS: Officers may briefly detain people who arrive outside the residence at or about the same time as they did, and whose identity and connection to the premises are unknown and cannot be immediately determined.[45] The purpose of the detention is to find out if the person is a detainable occupant or an uninvolved visitor.[46]
DETAINING OCCUPANTS OF A BUSINESS: Officers who are searching a business open to the public may detain a person on or near the premises only if there is reasonable suspicion that the person is connected with the illegal activities under investigation.[47]

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of the law execute a valid warrant to search his home."]; *People* v. *Ingram* (1993) 16 Cal.App.4th 1745, 1751-2; *People* v. *Gabriel* (1986) 188 Cal.App.3d 1261, 1264-5.

[42] See *Michigan* v. *Summers* (1981) 452 US 692, 705 ["(A) warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted."]; *People* v. *Glaser* (1995) 11 Cal.4th 354, 373 ["(A) resident or intimate of the home, who may have criminal interests there to protect, may present a substantial risk . . . "]; *People* v. *Thurman* (1989) 209 Cal.App.3d 817, 823; *People* v. *Gabriel* (1986) 188 Cal.App.3d 1261, 1264. ALSO SEE *People* v. *Ingram* (1993) 16 Cal.App.4th 1745, 1751-2.

[43] See *People* v. *Glaser* (1995) 11 Cal.4th 354, 374-5.

[44] See *People* v. *Huerta* (1990) 218 Cal.App.3d 744, 749 ["When defendant entered the residence without knocking or announcing his presence the officers executing the warrant had reason to believe defendant was directly connected to the premises in some way."]; *People* v. *Fay* (1986) 184 Cal.App.3d 882, 892-3 ["Once Totah had entered the apartment building and was seen standing in front of the apartment about to insert keys into the lock, the officers had reasonable grounds to believe that he was a resident of the apartment"]; *People* v. *Glaser* (1995) 11 Cal.4th 354, 365 [defendant "appeared to be more than a stranger or casual visitor"]; *People* v. *Valdez* (1987) 196 Cal.App.3d 799, 802-4 [although defendant's connection to the premises was unknown, he and another man who were standing close together "started turning away from officers" when the officers identified themselves]; *People* v. *Samples* (1996) 48 Cal.App.4th 1197, 1206 ["(A)ppellant was clearly in close association with several subjects of a search warrant which was then being executed."]; *People* v. *Tenney* (1972) 25 Cal.App.3d 16, 26-7 [defendant opened the door without knocking and ran when he saw the officers inside]; *U.S.* v. *Fountain* (6th Cir. 1993) 2 F.3d 656, 663 [the concerns that justify the detention of people inside a house being searched for drugs "are the same regardless of whether the individuals present in the home being searched are residents or visitors."]; *Burchett* v. *Kiefer* (6th Cir. 2002) 310 F.3d 937, 943 ["(T)he Supreme Court's discussion of 'occupants' in *Summers* included nonresidents who are present at the scene of a search when police arrive"; suspect approached the house, saw the officers, and fled]. PROSECUTOR'S NOTE: Defense attorneys may cite *People* v. *Gallant* (1990) 225 Cal.App.3d 200 in visitor-detention cases. *Gallant* has been implicitly overruled by *Glaser*. See *People* v. *Samples* (1996) 48 Cal.App.4th 1197, 1206.

[45] See *People* v. *Glaser* (1995) 11 Cal.4th 354, 374.

[46] See *People* v. *Glaser* (1995) 11 Cal.4th 354, 366, 374.

[47] See *People* v. *Ingram* (1993) 16 Cal.App.4th 1745, 1752-3 ["(W)hen executing a search warrant at a business open to the public, law enforcement officers may detain those persons on the premises when the circumstances create a reasonable suspicion of a relationship between the person and the place sufficient to connect the individual to the illegal activities giving rise to the warrant."].

This means a person may not be detained merely because he was present in a place open to the public.[48]

ARRESTING OCCUPANTS AND VISITORS: Officers may arrest any person on the premises for whom probable cause to arrest exists upon entry or develops during the search; i.e., neither an arrest warrant nor a *Ramey* warrant is required.[49]

PAT SEARCHES: Officers may pat search people on the premises as follows.

ARMED OR DANGEROUS: Officers may pat search any person who is reasonably believed to be armed with a conventional weapon or an object that could be used as a weapon, or who otherwise constitutes a threat them or others.[50]

DRUG HOUSE: Officers who are executing a warrant to search a private residence for drugs or illegal weapons may pat search, (1) everyone who is present when they arrive and, (2) everyone who enters while they are on the scene if the manner in which they entered reasonably indicated they lived there or were otherwise closely associated with the residence; e.g., person entered without knocking.[51]

QUESTIONING OCCUPANTS: As a safety measure, officers may question the occupants about the location of weapons, needles, and any other dangerous substance or condition. Even if the person was "in custody" for *Miranda* purposes, a waiver is not required if, as is usually the case, officers reasonably believed the answer to such questions were necessary to help prevent serious injury to them while conducting the search.[52]

WHAT MAY BE SEARCHED

After the premises have been secured, officers will normally begin the search. But before starting, they must know precisely what places and things they may search. It is sometimes permissible to search every structure, storage area, vehicle, piece of furniture, person, and item of personal property on and around the premises. In most cases, however, the search must be limited to some extent.

It is important that officers are aware of any limitations because evidence may be suppressed if it was obtained while they were exceeding the permissible scope of the search. Moreover, *all* evidence obtained during the search may be suppressed if a court concludes they were conducting the search in "blatant disregard" of the terms of the

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[48] See *Ybarra* v. *Illinois* (1979) 444 US 85, 91-3.

[49] See *People* v. *McCarter* (1981) 117 Cal.App.3d 894, 908; *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 15.

[50] See *Terry* v. *Ohio* (1968) 392 US 1, 27-8.

[51] See *People* v. *Thurman* (1989) 209 Cal.App.3d 817, 823; *People* v. *Glaser* (1995) 11 Cal.4th 354, 373 ["(A) resident or intimate of the home, who may have criminal interests there to protect, may present a substantial risk . . . "]; *People* v. *Huerta* (1990) 218 Cal.App.3d 744, 750 [because the defendant "opened the front door and walked inside without knocking or otherwise announcing himself," "the police could reasonably conclude defendant was lying or was in some way linked [to the criminal activity]."]; *People* v. *Valdez* (1987) 196 Cal.App.3d 799, 802-4 [although defendant's connection to the premises was unknown, he and another man who were standing close together, "started turning away from officers" when they identified themselves]; *People* v. *Samples* (1996) 48 Cal.App.4th 1197, 1206 ["(A)ppellant was clearly in close association with several subjects of a search warrant which was then being executed."]. ALSO SEE *People* v. *Galant* (1990) 225 Cal.App.3d 200, 207-8 [insufficient grounds to connect defendant to the premises or the criminal activity].

[52] *People* v. *Simpson* (1998) 65 Cal.App.4th 854, 862. ALSO SEE *People* v. *Cressy* (1996) 47 Cal.App.4th 981, 989 [officers, who were about to conduct a lawful search of a suspect, asked him if he had any needles or other sharp objects in his possession]; *People* v. *Sims* (1993) 5 Cal.4th 405, 451 [dangerous suspect who had been arrested and handcuffed was asked, "Where are the guns?"].

warrant.[53] As noted in *U.S.* v. *Kimbrough*, "Blatant disregard by executing officers of the language of a search warrant can transform an otherwise valid search into a general one and, thus, mandate suppression of all evidence seized during the search."[54]

Three requirements

As a general rule, officers who are executing a warrant may search a place or thing on the premises if the following three requirements are met:

(1) EXPRESS OR IMPLIED AUTHORIZATION: The warrant must have expressly or impliedly authorized a search of the place or thing. The subject of implied authorization is discussed in detail in the next section.

(2) PLAUSIBLE LOCATION OF THE EVIDENCE: If authorization was implied, officers must have reasonably believed the evidence could have been located in the place or thing that was searched.[55] This means the smaller the evidence (drugs, documents) the more places may be searched.[56] Conversely, a warrant that authorized a search for only large objects would be quite limited. As the court in *U.S.* v. *Evans* put it, "If [officers]are looking for an adolescent hippopotamus, they can search the living room or garage but not the microwave oven."[57] Here are some other (more realistic) examples.

- LISTED EVIDENCE: Cocaine. OK to search "a container large enough to hold a gram, or perhaps less."[58]
- LISTED EVIDENCE: Shell casings, bullets, bullet fragments. OK to search the vehicle's trunk, under the seat covers, a binder.[59]
- LISTED EVIDENCE: Rug fibers, victim's hair, piece of glass. OK to conduct an "[i]ntensive inspection" of the defendant's room.[60]
- LISTED EVIDENCE: Small gold spoon, jade pin. OK to explore "every corner and cranny which might conceal items as small as a jewelry pin."[61]

Two additional notes. First, officers need not confine their searches to places and containers in which the listed evidence is *usually* or *commonly* found. If that were

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[53] See *People* v. *Bradford* (1997) 15 Cal.4th 1229, 1304-6; *People* v. *Gallegos* (2002) 96 Cal.App.4th 612, 624; *U.S.* v. *Kimbrough* (5th Cir. 1995) 69 F.3d 723, 728.

[54] (5th Cir. 1995) 69 F.3d 723, 728.

[55] See *Florida* v. *Jimeno* (1991) 500 US 248, 251 ["The scope of a search is generally defined by its expressed object."]; *Maryland* v. *Garrison* (1987) 480 US 79, 84-5 ["(P)robable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase."]; *People* v. *Gallegos* (2002) 96 Cal.App.4th 612, 626 ["The officers did not seek an elephant in a breadbox."]; *People* v. *Berry* (1990) 224 Cal.App.3d 162, 167 ["During a residential search authorized by a warrant, officers may lawfully search all of the residents' personal effects which are plausible repositories of the contraband described in the warrant."]; *People* v. *Kibblewhite* (1986) 178 Cal.App.3d 783, 785 ["A search of the residence authorizes the search of all areas of the residence, including containers therein, which could hold the contraband described in the warrant."].

[56] See *People* v. *Senkir* (1972) 26 Cal.App.3d 411, 420 [search for indicia may call for a minute search]; *Skelton* v. *Superior Court* (1969) 1 Cal.3d 144, 158 ["Since the warrant mandated a search for and seizure of several small and easily secreted items, the officers had the authority to conduct an intensive search of the entire house, looking into any places where they might reasonably expect such items to be hidden."]; *Warden* v. *Hayden* (1967) 387 US 294, 299-300 [ok to search for a gun in a washing machine].

[57] (7th Cir. 1996) 92 F.3d 540, 543.

[58] *U.S.* v. *Evans* (7th Cir. 1996) 92 F.3d 540, 543.

[59] *People* v. *Kraft* (2000) 23 Cal.4th 978, 1043-5.

[60] *People* v. *Atkins* (1982) 128 Cal.App.3d 564, 570 ["Here, the officers necessarily engaged in an intensive inspection of defendant's room in conducting the authorized search for certain of the minute items."].

[61] *People* v. *Superior Court (Meyers)* (1979) 25 Cal.3d 67, 77.

required, criminals could easily prevent the discovery of evidence by storing it in unusual places.[62] Second, officers may look in places they might expect the suspect to have hidden or disposed of the evidence. Thus, in upholding a search of trash cans, the California Supreme Court in *People* v. *Diaz* noted, "The officers looked in places where they might expect to find the documents listed in the search warrant in the event defendant had attempted to hide them or throw them away."[63]

(3) REASONABLE INTENSITY: The intensity of the search—its thoroughness, destructiveness, and length—must have been reasonable, as follows.

THOROUGHNESS: A search must be thorough, otherwise it is "of little value."[64] As the court noted in *U.S.* v. *Snow*:

> The word "search" carries a common meaning to the average person. Dictionary definitions furnish some guide: "to go over or look through for the purpose of finding something; explore, rummage; examine," "to examine closely and carefully; test and try; probe," "to find out or uncover by investigation."[65]

There are, of course, limits. For example, a warrant that authorizes a search of a certain person would not permit a bodily intrusion search of that person unless it expressly said so.[66]

DESTRUCTIVENESS: In most cases, evidence is hidden or, at least, not in plain view. This means that officers must hunt for it,[67] which means that things may be broken or damaged. This will not, however, render the search unlawful unless the damage was unnecessary or excessive.[68] As the U.S. Court of Appeals explained, "[O]fficers executing a search warrant occasionally must damage property in order to perform their duty. Therefore, the destruction of property during a search does not necessarily violate the Fourth Amendment. Rather, only unnecessary destructive

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[62] See *People* v. *Smith* (1994) 21 Cal.App.4th 942, 950.

[63] (1992) 3 Cal.4th 495, 563.

[64] See *U.S.* v. *Torres* (10th Cir. 1981) 663 F.2d 1019, 1027 ["(P)ermission to search contemplates a thorough search. If not thorough it is of little value."]; *U.S.* v. *Snow* (2nd Cir. 1995) 44 F.3d 133, 135 ["The word 'search' carries a common meaning to the average person. Dictionary definitions furnish some guide: 'to go over or look through for the purpose of finding something; explore, rummage; examine,' 'to examine closely and carefully; test and try; probe,' 'to find out or uncover by investigation' . . . ."]; *People* v. *Crenshaw* (1992) 9 Cal.App.4th 1403, 1415 ["(A) consent search, to be effective, must be thorough."]; *People* v. *Williams* (1980) 114 Cal.App.3d 67, 72-4; *Florida* v. *Jimeno* (1991) 500 US 248, 251-2.

[65] (2nd Cir. 1995) 44 F.3d 133, 135.

[66] See *People* v. *Bracamonte* (1975) 15 Cal.3d 394, 401; *Jauregui* v. *Superior Court* (1986) 179 Cal.App.3d 1160, 1164.

[67] See *United States* v. *Ross* (1982) 456 US 798, 820 ["Contraband goods rarely are strewn across the trunk or floor of a car."].

[68] See *United States* v. *Ramirez* (1998) 523 US 65, 71 ["Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful."]; *Dalia* v. *United States* (1979) 441 US 238, 258 ["(O)fficers executing search warrants on occasion must damage property in order to perform their duty."]; *United States* v. *Ross* (1982) 456 US 798, 818 [Court noted that in *Carroll* v. *United States* (1924) 267 US 132 it had ruled that prohibition agents who were lawfully searching Carroll's car for liquor did not violate the Fourth Amendment by ripping open the upholstery]; *Liston* v. *County of Riverside* (9th Cir. 1997) 120 F.3d 965, 979 ["(O)ther circuits have held that only unnecessarily destructive behavior, beyond that necessary to execute a warrant, effectively violates the Fourth Amendment."]; *People* v. *Kibblewhite* (1986) 178 Cal.App.3d 783, 786 [ok to damage safe to open it]; *U.S.* v. *Weinbender* (8th Cir. 1997) 109 F.3d 1327, 1330 [removal of a portion of drywall lawful because suspect was known to have hiding places, plus damage was minimal].

behavior, beyond that necessary to execute a warrant effectively violates the Fourth Amendment."[69]

For example, in *U.S.* v. *Becker*[70] the court ruled it was reasonable for officers to use a jackhammer to break up a recently-poured slab of concrete in the suspect's back yard because they had "ample reason to believe that the concrete slab was being utilized to hide the very evidence they were legally on the premises to find." The only way to find this evidence, said the court, "was to use a jackhammer to break up the concrete."

LENGTH OF THE SEARCH: A search is not unreasonably intensive merely because it took a long time. What counts is whether officers were diligent.[71] If so, the length of the search is virtually irrelevant. Thus, in rejecting an argument that a search took too long, the court in *People* v. *Gallegos* said, "[W]hile the search lasted approximately seven hours, this was not necessarily unreasonable given that officers searched the residence, truck, garage, and motor home. It goes without saying that the review of even a box of documents can take substantial time. . . . Moreover, the garage was cluttered, making a search more time consuming."[72]

Implied authorization

Affiants cannot be expected to describe every place or thing in which the listed evidence might be found. Consequently, officers may search unlisted places and things if authorization to search them can be implied, based on a commonsense reading of the warrant.[73]

SEARCHING GARAGES, SHEDS: A warrant to search a residence (e.g., "the house at 123 Main Street") impliedly authorizes a search of attached and unattached structures on the same lot that are controlled by the occupants; e.g., detached garage, storage shed.[74]

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[69] *Mena* v. *Simi Valley* (9th Cir. 2000) 226 F.3d 1031, 1041.

[70] (9th Cir. 1991) 929 F.2d 442, 446.

[71] See *People* v. *Gabriel* (1986) 188 Cal.App.3d 1261, 1265 ["More important than the length of the detention involved in a valid warrant search is the officers' conduct during such a search. Here, the record is devoid of any evidence that the officers engaged in any misconduct or in any way delayed the search."]; *People* v. *James* (1990) 219 Cal.App.3d 414, 420 ["(A) search reasonable at its inception can become constitutionally infirm if unduly prolonged"].

[72] (2002) 96 Cal.App.4th 612, 625. ALSO SEE *U.S.* v. *Squillacote* (4th Cir. 2000) 221 F.3d 542, 557 [six day search not excessive "given the number and type of items that can be evidence of espionage-related activities"].

[73] See *People* v. *Minder* (1996) 46 Cal.App.4th 1784, 1788 [descriptions must be read "in a commonsense and realistic fashion, recalling that they are drafted by nonlawyers amidst the haste of a criminal investigation. Technical requirements of elaborate specificity have no proper place in this area."]; *U.S.* v. *Bonner* (1st Cir. 1986) 808 F.2d 864, 868 ["hypertechnical readings should be avoided."]; *U.S.* v. *Ferreras* (1st Cir. 1999) 192 F.3d 5, 10 ["hypertechnical readings should be avoided."].

[74] See *U.S.* v. *Cannon* (9th Cir. 2001) 264 F.3d 875, 880 ["If a search warrant specifying only the residence permits the search of closets, chests, drawers, and containers therein where the object searched for might be found, so should it permit the search of similar receptacles located in the outdoor extension of the residence, i.e., the curtilage, such as the container in this case. To hold otherwise would be an exercise in pure form over substance."]; *People* v. *Mack* (1977) 66 Cal.App.3d 839, 859 ["The word 'premises' as used in the warrant embraces both the house and garage."]; *People* v. *McNabb* (1991) 228 Cal.App.3d 462, 469 ["The word 'premises' in a search warrant describing a house with a detached garage has been held to embrace both the house and the garage."]; *People* v. *Smith* (1994) 21 Cal.App.4th 942, 949-50 [ok to search barn]; *U.S.* v. *Bonner* (1st Cir. 1986) 808 F.2d 864, 868 ["In the present case, the word 'properties' was used in the warrant instead of 'premises'; these words are sufficiently synonymous to be considered interchangeable."]; *U.S.* v. *Frazin* (9th Cir. 1986) 780 F.2d 1461, 1467 [attached garage]; *U.S.* v.

As the Ninth Circuit explained, "The curtilage is simply an extension of the residence's living area, and we have previously held that such extensions become part of the residence for purposes of a search warrant."[75]

For example, in *People* v. *Grossman*[76] the court ruled that a warrant to search "the premises located and described as 13328 Merkel Ave., Apt. A" impliedly authorized a search of a cabinet in the carport marked "A."

There is language in some cases that might be interpreted to mean the word "premises" must appear in the description of the place to be searched in order to expand the scope of the warrant to include outbuildings and appurtenances; e.g., "the premises at 123 Main St."[77] While such an interpretation would seem to elevate form over substance, it is a good idea to use the word "premises" in the description so as to avoid litigating the issue in court.

SEARCHING RECEPTACLES: A warrant to search a residence also impliedly authorizes a search of receptacles on the premises that are controlled by the occupants, such as mailboxes and garbage cans. For example, in *People* v. *Estrada*[78] the court ruled a warrant to search "the apartment house occupied by Manuel Estrada at 18 S. 19th Street, San Jose" authorized a search of a garbage can located outside the apartment building. And in *People* v. *Weagley*[79] the court ruled a warrant to search the "premises" located at "209 #1 Mirimar, City of San Clemente" authorized a search of a mailbox for the apartment.

SEARCHING ROOMS: A warrant to search a residence that is a "single living unit" impliedly authorizes a search of all rooms in the structure, including bedrooms occupied solely by non-suspects. For example, a warrant that authorizes a search of a two-bedroom apartment occupied by a suspected drug dealer and his non-suspect roommate would permit a search of both bedrooms.[80] As the court noted in *U.S.* v. *Ayers*, "The most obvious place for the police to search would be the drug dealer's bedroom. Therefore, any other portion of the house would be a more secure hiding place."[81]

On the other hand, a search of a "multiple-living unit," such as a dormitory or motel, would not impliedly authorize a search of any rooms or areas other than common areas and those listed in the warrant; e.g., "Room 123".[82]

If the warrant authorizes a search of a single living unit but, upon arrival, officers discover it is a multiple-living unit, they must confine their search to common areas and

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Principe (1st Cir. 1974) 499 F.2d 1135 [cabinet three to six feet from entrance to apartment was searchable]. NOTE: A warrant to search a home impliedly authorizes a search of the yard and attic. See *People* v. *Barbarick* (1985) 168 Cal.App.3d 731, 740; *U.S.* v. *Becker* (9th Cir. 1991) 929 F.2d 442, 444 [the warrant to search Becker's home "was sufficient to permit a search of Becker's yard as the home and yard were within a single fenced enclosure."] *U.S.* v. *Ferreras* (1st Cir. 1999) 192 F.3d 5, 10 [attic].

[75] *U.S.* v. *Gorman* (9th Cir. 1996) 104 F.3d 272, 274.

[76] (1971) 19 Cal.App.3d 8, 12.

[77] See, for example, *People* v. *Weagley* (1990) 218 Cal.App.3d 569, 573; *People* v. *Dumas* (1973) 9 Cal.3d 871, 881, fn.5.

[78] (1965) 234 Cal.App.2d 136.

[79] (1990) 218 Cal.App.3d 569.

[80] See *People* v. *Gorg* (1958) 157 Cal.App.2d 515, 522-3; *People* v. *Garnett* (1970) 6 Cal.App.3d 280; *Hemler* v. *Superior Court* (1975) 44 Cal.App.3d 430, 433 ["(T)hree individuals lived in the residence, sharing the living room, bathroom, kitchen and hallways, and that defendant's bedroom opened onto the other rooms and was not locked."].

[81] (9th Cir. 1990) 924 F.2d 1468, 1480.

[82] See *People* v. *MacAvoy* (1984) 162 Cal.App.3d 746, 754; *People* v. *Estrada* (1965) 234 Cal.App.2d 136, 146; *People* v. *Govea* (1965) 235 Cal.App.2d 285, 300; *People* v. *Sheehan* (1972) 28 Cal.App.3d 21; *Mena* v. *Simi Valley* (9th Cir. 2000) 226 F.3d 1031, 1039.

places the suspect controls. For example in *Mena* v. *Simi Valley*,[83] officers developed probable cause to believe that Romero and Gonzales took part in a gang-related drive-by shooting, and that Romero had the gun. Officers also learned that Romero, and possibly Gonzales, lived at 1363 Patricia Avenue in a so-called "poor house," meaning a single-family house occupied by a large number of people, mostly unrelated.

Officers executed the warrant at 7 A.M. Shortly after they entered they determined that several of the residents were actually sub-lessees who leased rooms adjacent to the living room. And to assure privacy, these residents kept their doors shut and, in some cases, padlocked from the outside. One of the rooms was occupied by Iris Mena, a non-suspect.

The officers forcibly entered Mena's room and found her asleep. They then detained her in handcuffs for two to three hours while the search was conducted. Mena later filed a civil rights lawsuit against the officers, claiming they should have realized the house was a multiple-unit residence (as opposed to a single living unit in which several people lived) and therefore they should not have entered her room or detained her.

The court agreed. Although it ruled the officers had no reason to believe the house was a multiple-unit residence when they entered, they should have realized it when they learned that "many of the rooms were padlocked from the outside," and that some of the rooms "were set up as studio apartment type units, with their own refrigerators, cooking supplies, food, televisions, and stereos." At that point, said the court, the officers were obligated to limit their search to areas in which there was probable cause, such as common areas and rooms occupied by Romero or Gonzales.

SEARCHING PERSONAL PROPERTY: Officers may search personal property (e.g., purse, luggage, clothing) belonging to an occupant if at least one of the listed items was small enough that it might be found there.[84] Furthermore, officers may assume that all personal property on the premises belongs to an occupant unless they know otherwise,[85] in which case it may be searched only if one or both of the following circumstances existed.

> CONNECTION TO CRIMINAL ACTIVITIES: A visitor's property may be searched if officers reasonably believed the visitor was involved in the criminal activities under investigation. As the Court of Appeal explained, "If the circumstances suggest a relationship between the person and place sufficient to connect the individual to the illegal activities giving rise to the warrant, search of the person's property on the

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[83] (9th Cir. 2000) 226 F.3d 1031. ALSO SEE *U.S.* v. *Kyles* (2nd Cir. 1994) 40 F.3d 519, 524.

[84] See *People* v. *Berry* (1990) 224 Cal.App.3d 162, 167 ["During a residential search authorized by warrant, officers may lawfully search all of the residents' personal effects which are plausible repositories of the contraband described in the warrant."]; *United States* v. *Ross* (1982) 456 US 798, 820-1.

[85] See *People* v. *Berry* (1990) 224 Cal.App.3d 162, 167; *People* v. *McCabe* (1983) 144 Cal.App.3d 827, 830 ["The police may ordinarily assume that all personal property which they find while executing a search warrant is the property of a resident of the premises subject to search."]; *People* v. *Reyes* (1990) 223 Cal.App.3d 1218, 1224 ["(T)here is simply no basis for concluding that the officers had actual knowledge of defendant's status. On the contrary, his use of the shower leads one to suspect he lived at the house."]; *U.S.* v. *Gray* (1st Cir. 1987) 814 F.2d 49, 51 ["(T)he jacket itself was bereft of any external indicia of ownership—there was no lettering, nametag, or the like to alert the searchers. Nor was the jacket part of a group of personal effects identified with a particular individual."]; *People* v. *Saam* (1980) 106 Cal.App.3d 789, 794 [officers may search personal property which is reasonably believed to belong to a resident]; *U.S.* v. *Evans* (7th Cir. 1996) 92 F.3d 540, 543 ["(U)nless it is apparent that the trunk does not belong to anyone connected with the illegal activity—a condition that will rarely be satisfied—the police can search the trunk and if it happens to contain evidence that the guest is a criminal after all, albeit innocent of any involvement in the criminal activities of his host, he is out of luck."].

premises is permitted."[86] For example, a sufficient connection between the visitor and the illegal activities has been found when the visitor was an overnight guest who was alone in the residence when officers arrived;[87] and when officers searched a jacket belonging to a visitor who was alone in the house "outside of which a drug deal had just 'gone down,' at the unusual hour of 3:35 A.M."[88]

OPPORTUNITY TO CONCEAL: A visitor's property may also be searched if officers reasonably believed that someone had an opportunity to conceal at least one of the listed items inside it before the premises were secured.[89]

SEARCHING FOR DOCUMENTS: In most cases, officers who are searching for documents, such as indicia, correspondence and financial records, may search every room and most containers on the premises. This is because documents can be kept virtually anywhere.[90] As the court noted in *People* v. *Gallegos*, "Documents may be stored in many areas of a home, car, motor home or garage. It is not unusual for documents to be stored in drawers or closets, on shelves, in containers, or even in duffle bags."[91]

Two other things should be noted about searches for documents. First, officers may read any document they find to the extent necessary to determine if it should be seized.[92] Second, when a seizable document is found in a folder, file, or binder along with other documents, officers may seize the entire folder, file, or binder. Thus, in ruling such a seizure was lawful, the court in *U.S.* v. *Wuagneux* said:

> It was reasonable for the agents to remove intact files, books and folders when a particular document within the file was identified as falling within the scope of the

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[86] *People* v. *Berry* (1990) 224 Cal.App.3d 162, 169.

[87] *U.S.* v. *Giwa* (5th Cir. 1987) 831 F.2d 538, 544-5.

[88] *U.S.* v. *Gray* (1st Cir. 1987) 814 F.2d 49, 51-2.

[89] See *People* v. *McCabe* (1983) 144 Cal.App.3d 827, 830 [search ok "if someone within the premises has had an opportunity to conceal contraband within the personal effects of the nonresident immediately prior to the execution of the warrant."]; *U.S.* v. *Johnson* (D.C. Cir. 1973) 475 F.2d 977, 979. PROSECUTORS NOTE: There is language in *Wyoming* v. *Houghton* (1999) 526 US 295, 302 that arguably indicates that all personal property may be searched. The only problem is that *Houghton* was a car search case that was based, at least in part, on a vehicle passenger's diminished expectation of privacy. Although it is arguable that a visitor to a residence also has a diminished expectation of privacy due to the issuance of the warrant, we are not aware of any supporting cases.

[90] See *People* v. *Kraft* (2000) 23 Cal.4th 978, 1044-5; *People* v. *Senkir* (1972) 26 Cal.App.3d 411, 420; *People* v. *Alcala* (1992) 4 Cal.4th 742, 799 [a rent receipt "easily could be concealed in a variety of other locations, such as a book placed inside a nightstand."].

[91] (2002) 96 Cal.App.4th 612, 626. Edited.

[92] See *Andresen* v. *Maryland* (1976) 427 US 463, 482, fn.11 ["(I)t is certain that some innocuous documents will be examined, at least cursorily, in order to determine whether they are, in fact, among those papers authorized to be seized."]; *People* v. *Alcala* (1992) 4 Cal.4th 742, 799 ["(L)aw enforcement officers would be unable to conduct a search for a rental receipt were they prohibited from reading papers found during the course of an authorized search."]; *People* v. *Nicolaus* (1991) 54 Cal.3d 551, 575; *U.S.* v. *Tamura* (9th Cir. 1982) 694 F.2d 591, 595 ["(A)ll items in a set of files may be inspected during a search, provided that sufficiently specific guidelines for identifying the documents sought are provided in the search warrant and are followed by the officers conducting the search."]; *U.S.* v. *Santarelli* (11th Cir. 1985) 778 F.2d 609, 615-6 ["(T)he agents were entitled to examine each document . . . to determine whether it constituted evidence they were entitled to seize under the warrant."]; *U.S.* v. *Hunter* (1998) 13 F.Supp.2d 574, 582 ["Records searches are vexing in their scope because invariably some irrelevant records will be scanned in locating the desired documents."].

warrant. To require otherwise would substantially increase the time required to conduct the search, thereby aggravating the intrusiveness of the search.[93]

SEARCHING COMPUTERS: Nowadays, people store many of their documents on computers located in their homes and offices.[94] Consequently, a warrant that authorizes a search for any document that might be stored on a computer impliedly authorizes a search of computers on the premises. As the Colorado Supreme Court noted in such a case, "[T]he computers found in the defendant's closet were reasonably likely to serve as 'containers' for writings, or the functional equivalent of written or printed material, of a type enumerated in the warrant."[95]

SEARCHING VIDEO AND AUDIO TAPE: If a warrant authorized the seizure of documents, officers may search video and audio tapes on which such documents might have been stored.[96]

SEARCHING PEOPLE: Officers may search a person on the premises for the listed evidence only if the person was named in the warrant. As noted by the U.S. Supreme Court, "[A] warrant to search a place cannot normally be construed to authorize a search of each individual in that place."[97]

A person not listed on the warrant may, however, be searched if there is probable cause to arrest him on any charge for which he will be taken into custody. Under such circumstances, the search is permitted as a search incident to the arrest.[98] Note that probable cause to arrest does not exist merely because the person happened to be at a place where criminal activity had occurred, or because the person was associating with suspects.[99]

SEARCHING CARS: It is seldom necessary to rely on a warrant to search a car because vehicles may be searched without a warrant so long as probable cause exists.[100] A warrant will, however, be required to access the vehicle if it is parked in a private garage or other place in which the owner has a reasonable expectation of privacy.

In cases where officers or prosecutors must rely on the warrant as authority to search a car that was not listed in the warrant (e.g., to invoke the good faith rule), such authorization has been found as follows.

CAR OWNED BY OCCUPANT, SUSPECT: The vehicle was parked within the curtilage of the house to be searched (e.g., in the driveway or garage) and it was owned, registered to,

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[93] (11th Cir. 1982) 683 F.2d 1343, 1353.

[94] See *U.S.* v. *Hunter* (1998) 13 F.Supp.2d 574, 581 ["Today computers and computer disks store most of the records and data belonging to businesses and attorneys."]; *People* v. *Loorie* (1995) 165 Misc.2d 877, 881 ["Indeed, the computer and the discs were the most likely place the police could expect to find the records."].

[95] *People* v. *Gall* (2001) 30 P.3d 145, 153. ALSO SEE *U.S.* v. *Lucas* (8th Cir. 1991) 932 F.2d 1210, 1216 [warrant authorizing a search for documents impliedly authorized search of cassette tapes because documents could be stored on tapes]; *U.S.* v. *Simpson* (10th Cir. 1998) 152 F.3d 1241, 1248; *U.S.* v. *Upham* (1st Cir. 1999) 168 F.3d 532, 535-6; *U.S.* v. *Raymond Wong* (9th Cir. 2003) 334 F.3d 831.

[96] See *U.S.* v. *Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 655 ["A microcassette is by its very nature a device for recording information in general. . . . The failure of the warrant to anticipate the precise container in which the material sought might be found is not fatal."].

[97] *Ybarra* v. *Illinois* (1979) 444 US 85, 92, fn.4. ALSO SEE *People* v. *Reyes* (1990) 223 Cal.App.3d 1218, 1224.

[98] See *United States* v. *Robinson* (1973) 414 US 218.

[99] See *Ybarra* v. *Illinois* (1979) 444 US 85, 91; *People* v. *Valdez* (1987) 196 Cal.App.3d 799, 806.

[100] See *United States* v. *Ross* (1982) 456 US 798, 800, 809, 825.

or controlled by one of the occupants of the premises or a person who was reasonably believed to be implicated in the crime under investigation.[101]

SEARCH OF "PREMISES": The warrant authorized a search of "premises" at the suspect's address (e.g., the "premises at 123 Main St"), and the vehicle was within the curtilage of the house; e.g., in the driveway or garage.[102]

SEARCH OF "APPURTENANT BUILDINGS": The warrant authorized a search of a residence "and appurtenant buildings," and the car was parked inside a garage on the premises.[103]

SEARCH OF STORAGE AREAS: The warrant authorized a search of "storage areas" on the premises, and the car was, (1) inoperable, and (2) used solely for storage.[104]

SEARCHING SAFES: A safe may be searched if any of the listed evidence might be located inside.[105]

SEARCHING PAGERS: A warrant authorizing the seizure of phone numbers of customers or suppliers of drugs or other contraband impliedly authorizes the seizure of a digital display pager which, "by its very nature, is nothing more than a contemporary receptacle for telephone numbers."[106]

SEARCHING ANSWERING MACHINES: A warrant to search for records relating to the sale of drugs or other contraband impliedly authorizes a search for data stored in an answering machine.[107] A warrant to search for other kinds of documents or records may also authorize a search of the answering machine if it is reasonable to believe it contains the listed records.[108] A warrant to search for indicia would authorize a search of data stored in an answering machine because such data ordinarily reveals the identities of the people in control of the premises.

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[101] See *U.S.* v. *Pennington* (8th Cir. 2002) 287 F.3d 739, 745 ["(A) vehicle found on a premises (except, for example, the vehicle of a guest or other caller) is considered to be included within the scope of a warrant authorizing a search of that premises."]; *U.S.* v. *Patterson* (4th Cir. 2002) 278 F.3d 315, 318 ["Where a warrant authorizes the search of an entire property or premises, the scope of the warrant includes automobiles on the property or premises that are owned by or are under the dominion and control of the premises owner or which reasonably appear to be so controlled."]; *U.S.* v. *Evans* (7th Cir. 1996) 92 F.3d 540, 543-4 ["Although the police happen to know that the car they were searching was Fort's, it does not matter whose it is unless it obviously belonged to someone wholly uninvolved in the criminal activities going on in the house."].

[102] See *People* v. *Gallegos* (2002) 96 Cal.App.4th 612, 626 ["(The warrant) described the house, porch, driveway, and garage. Thus, the premises to be searched included the motor home [parked on the premises], truck [in the driveway], and garage."]

[103] See *People* v. *Elliott* (1978) 77 Cal.App.3d 673, 688-9.

[104] See *People* v. *Childress* (1979) 99 Cal.App.3d 36, 42-3.

[105] See *People* v. *Kibblewhite* (1986) 178 Cal.App.3d 783, 785 ["A safe, by definition, is a very secure container."].

[106] See *U.S.* v. *Meriwether* (6th Cir. 1990) 917 F.2d 955, 958.

[107] See *U.S.* v. *Lucas* (8th Cir. 1991) 932 F.2d 1210, 1215; *U.S.* v. *Upton* (1991) 763 F.Supp. 232, 243 ["(T)he two audio cassettes seized from defendant's answering machine were authorized by the warrant . . . because they could constitute records of drug trafficking, tools used in the sale of drugs, or evidence of ownership or occupancy of the premises."].

[108] See *U.S.* v. *Lucas* (8th Cir. 1991) 932 F.2d 1210, 1215 [warrant authorizing seizure of "books, records, receipts, notes, ledgers and other papers relating specifically to the transportation, ordering, purchase and distribution of controlled substances" impliedly authorized the seizure of a telephone answering machine tape].

WHAT MAY BE SEIZED

The "plain view" rule

Officers who are executing a search warrant may, of course, seize any item listed in the warrant. Under the so-called "plain view" or "nexus" rule,[109] they may also seize unlisted items if both of the following requirements are met:

(1) LAWFUL SEARCH: The item was discovered while officers were conducting a lawful search for listed evidence.

(2) PROBABLE CAUSE: When officers seized the item, they had probable cause to believe it was evidence or would aid in the apprehension of a criminal.

Lawful search

The seizure of unlisted property in plain view is lawful only if officers discovered it while searching places and things they were expressly or impliedly authorized to search. For example, if a warrant authorized a search of an apartment for a shotgun and nothing more, officers would have exceeded the permissible scope of the search if they opened a cigar box. Consequently, the plain view rule would not apply, and any evidence discovered in the cigar box would be suppressed. But if the warrant also authorized a search for drugs, indicia, or some other object that could fit inside a small container, the search of the cigar box would have been lawful and, consequently, any evidence inside it would not be suppressed.

PICKING UP UNLISTED PROPERTY: Officers may pick up or move any items in order to access or view a place or thing in which the listed evidence may be found. They may not, however, pick up or move an item for a reason unrelated to the execution of the warrant.[110]

PRETEXT SEARCHES: As noted earlier, it sometimes happens that one or more of the officers conducting the search will be interested in finding evidence that was not listed in the warrant. This typically occurs when the officers have reason to believe the evidence is on the premises but they could not list it on the warrant because they lacked probable cause. Does this make the search unlawful?

No. A search is not unlawful merely because officers hoped or expected to find unlisted evidence. As the U.S. Supreme Court explained, "The fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of the warrant . . . "[111]

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[109] NOTE: The term "nexus" is outdated. It was coined by the California Supreme Court to express the requirement that there be a nexus or link between the unlisted evidence and criminal activity. See *People* v. *Superior Court (Meyers)* (1979) 25 Cal.3d 67, 73. In 1987, however, the U.S. Supreme Court ruled that something more than a link is required: there must be probable cause to believe the item was contraband or other evidence of a crime. *Arizona* v. *Hicks* (1987) 480 US 321, 326.

[110] See *Arizona* v. *Hicks* (1987) 480 US 321, 325 ["But taking action, unrelated to the objectives of the authorized intrusion, which exposed to view concealed portions of the apartment or its contents, did produce a new invasion of respondent's privacy unjustified by the exigent circumstances that validated the entry."]; *People* v. *McGraw* (1981) 119 Cal.App.3d 582, 601 ["As a warrant cannot authorize a general exploratory search by its own terms, neither can officers make any kind of search they wish merely because a warrant has opened the door."].

[111] *Horton* v. *California* (1990) 496 US 128, 138. ALSO SEE *People* v. *Williams* (1988) 198 Cal.App.3d 873, 886 ["(T)he fact an officer may have knowledge of possible criminal activity of the suspect, not necessarily connected with the criminal activity which is the subject of the warrant, should not necessarily impugn the integrity of his search pursuant to a valid warrant."]; *People* v. *Gallegos* (2002) 96 Cal.App.4th 612, 625, fn.11; *U.S.* v. *Ewain* (9th Cir. 1996) 88 F.3d

Conversely, a search will become unlawful if the officers look in places in which the listed evidence could not reasonably be found. For example, in *People* v. *Albritton*[112] an auto theft investigator accompanied narcotics officers when they went to execute a warrant to search for drugs at Albritton's home. The investigator knew that Albritton had stolen cars in the past.

When the search began, the investigator split off from the other officers and went into Albritton's garage and backyard where he found 18 vehicles. He then searched the vehicles for their VIN numbers, ran the numbers, and learned that eight of the vehicles were stolen. The court ruled, however, the search was unlawful because, by examining the VIN numbers of the cars, the officer was conducting "a general exploratory search for unlisted property."[113]

In contrast is the case of *People* v. *Williams*[114] in which Kern County sheriff's narcotics officers obtained a warrant to search Williams' home for drugs. Before leaving, they called the burglary detail and requested "two bodies" to help with the search. It turned out the "two bodies" they got were detectives who had previously received information that Williams was dealing in stolen property. Upon arrival, the detectives were assigned to search certain areas for drugs, which they did. While in these areas, they found a "plethora of electronic equipment, household articles, silverware, clocks and firearms." They were able to obtain serial numbers from some of the property which came back stolen.

In rejecting the argument that the detectives were engaging in an unlawful search when they determined the property was stolen, the court pointed out that "the evidence indicates the officers did not move articles to get serial numbers or other indicia of ownership to any greater degree than one might expect in looking for hidden drugs pursuant to the warrant."[115]

Probable cause

The second requirement for seizing evidence in plain view is that officers have probable cause to believe it is evidence of the crime under investigation or some other crime.[116] In discussing this type of probable cause, the U.S. Supreme Court noted it "does

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689; *People* v. *Gall* (2001) 30 P.3d 145, 154 ["A policeman's ulterior motive could no more bar a search within the scope of a properly issued warrant than could his pure heart entitle him to exceed the scope of the warrant."].

[112] (1982) 138 Cal.App.3d 79, 87-8.

[113] NOTE: *Albritton* was based, at least in part, on the court's belief that a plain view seizure must be "inadvertent." At p. 88. Although inadvertence is no longer required (see *Horton* v. *California* (1990) 496 US 128, 140), it appears *Albritton* was correctly decided because the officer, by examining the VIN numbers of the cars, was engaging in a search that arguably exceeded the permissible scope of the warrant. See *Arizona* v. *Hicks* (1987) 480 US 321, 325.

[114] (1988) 198 Cal.App.3d 873. ALSO SEE *People* v. *McGraw* (1981) 119 Cal.App.3d 582; *People* v. *Miller* (1987) 196 Cal.App.3d 846, 853 ["(T)here is ample evidence that the search was not a general exploration for narcotics and that all officers involved conducted their search in good faith for the purpose of discovering the objects specified in the warrant."].

[115] COMPARE *People* v. *Williams* (1988) 198 Cal.App.3d 873, 886 ["(T)he officers did not move articles to get serial numbers or other indicia of ownership to any greater degree than one might expect in looking for hidden drugs pursuant to the warrant."].

[116] See *Arizona* v. *Hicks* (1987) 480 US 321, 326; *Horton* v. *California* (1990) 496 US 128, 136; *People* v. *Senkir* (1972) 26 Cal.App.3d 411, 420 ["If the authorized search for marijuana discovered other evidence tending to support a charge of the crime of possession of marijuana, it was proper to seize such evidence whether or not described in the warrant"]; *People* v. *Rios* (1988) 205 Cal.App.3d 833, 840; *People* v. *Stokes* (1990) 224 Cal.App.3d 715, 719; *People* v. *Kraft* (2000) 23 Cal.4th 978, 1043 ["(I)t is sufficient that the investigators have probable cause to believe the item is evidence of *some* crime."]; *People* v. *Gallegos* (2002) 96 Cal.App.4th 612, 623

not demand any showing that such a belief be correct or more likely true than false. A practical, nontechnical probability that incriminating evidence is involved is all that is required."[117]

As we will now discuss, this issue arises mainly when officers seize unlisted drugs, stolen property, or instrumentalities of a crime while they are executing a warrant to search for other things. It may also arise when they answer the suspect's phone.

DRUGS: Not surprisingly, illegal drugs top the list of unlisted evidence that is likely to be found. If, as is usually the case, the drugs were inside a container, probable cause will often be based on the nature of the container.[118] As the Court of Appeal explained, "Courts have recognized certain containers as distinctive drug carrying devices which may be seized upon observation: heroin balloons, paper bindles and marijuana smelling brick-shaped packages." But the court also pointed out that "[o]ther common carriers, however, such as pill bottles, cigarette packs, plastic bags, film canisters are seen as more generic and may not be seized merely because they may be used to store narcotics."[119]

["(T)he required nexus is that between the item discovered and a criminal activity, though not necessarily the criminal activity denominated in the warrant."].

[117] *Texas* v. *Brown* (1983) 460 US 730, 742. NOTE: In the past, the courts would say that evidence could not be seized unless there was a "nexus" or link between it and criminal activity. See *People* v. *Superior Court (Meyers)* (1979) 25 Cal.3d 67, 73. In 1987, however, the U.S. Supreme Court ruled that something more than a link is required: there must be *probable cause* to believe the item was evidence. *Arizona* v. *Hicks* (1987) 480 US 321, 326.

[118] See *Texas* v. *Brown* (1983) 460 US 730, 742-3 [knotted balloon]; *Arkansas* v. *Sanders* (1979) 442 US 753, 764, fn.13; *Henry* v. *United States* (1959) 361 US 98, 104; *People* v. *Chapman* (1990) 224 Cal.App.3d 253, 257 ["Probable cause to believe a container holds contraband may be adequately afforded by its shape, design, and the manner in which it is carried."]; *People* v. *Banks* (1990) 217 Cal.App.3d 1358, 1364 [Zip-lock bags "are routinely used to carry rock cocaine."]; *People* v. *Nonnette* (1990) 221 Cal.App.3d 659, 666 [bundle of tiny baggies of the type used for drugs]; *People* v. *Guajardo* (1994) 23 Cal.App.4th 1738, 1743, fn.3 ["Times have changed since 1976 and we cannot in this day and age (at least in Los Angeles County) give serious consideration to the holding in *People* v. *Knisely* (1976) 64 Cal.App.3d 110, 117 that, in the absence of some evidence showing a cigarette pack is a common hiding place for narcotics, the fact that a small object is placed in the pack is not a suspicious circumstance."]; *People* v. *Arango* (1993) 12 Cal.App.4th 450, 454-5; *People* v. *Gonzales* (1989) 216 Cal.App.3d 1185, 1191; *People* v. *Fay* (1986) 184 Cal.App.3d 882, 893; *People* v. *Rodrigues-Fernandez* (1991) 235 Cal.App.3d 543, 547; *People* v. *Ross* (1968) 265 Cal.App.2d 195, 201, fn.2 ["Judicial notice may be taken that certain articles innocuous in themselves are part of the paraphernalia of narcotic users."]; *People* v. *Rodriquez* (1969) 274 Cal.App.2d 770, 776 ["(I)t is common knowledge in police work that balloons or contraceptives are often used to carry narcotics because they can be swallowed to avoid detection."]; *People* v. *Clayton* (1970) 13 Cal.App.3d 335, 337-8 ["It is now common knowledge among law enforcement officers, and trial counsel and judges, that small usable quantities of heroin are customarily carried in 'bindles,' small intricately folded papers aptly described by the police officer of our case as a 'pharmaceutical paper.'"]; *People* v. *Lilienthal* (1978) 22 Cal.3d 891, 898 [bindle]; *United States* v. *Jacobsen* (1984) 466 US 109, 121; *People* v. *Ortiz* (1995) 32 Cal.App.4th 286 290-1; *U.S.* v. *Ayon-Meza* (9th Cir. 1999) 177 F.3d 1130, 1133 [court notes "duct tape covering was favored by drug dealers"]; *People* v. *Smith* (1981) 120 Cal.App.3d 282, 289; *People* v. *Sotelo* (1971) 18 Cal.App.3d 9, 17; *People* v. *Poole* (1975) 48 Cal.App.3d 881, 885-6; *People* v. *McKinnon* (1972) 7 Cal.3d 899, 917 [brick-shaped package smelling of marijuana]; *People* v. *Ortiz* (1995) 32 Cal.App.4th 286 290-1 [tinfoil bindles next to plastic, knife, and razor blade]; *People* v. *Superior Court (Gilbert)* (1981) 116 Cal.App.3d 450, 454 [bag "commonly used for illicit drugs hastily deposited under the hood of a car"; odor of PCP]; *People* v. *Guy* (1980) 107 Cal.App.3d 593, 599, fn.4 [baggie containing white powder].

[119] *People* v. *Holt* (1989) 212 Cal.App.3d 1200, 1205.

Probable cause may also be based on a distinctive odor emanating from the container,[120] the distinctive feel of objects inside it,[121] the size and shape of the package (e.g., "rectangular kilogram size packages"),[122] or an alert by a narcotics-detecting dog.[123]

STOLEN PROPERTY: Unless there is something distinctive or identifiable about an item believed to have been stolen, probable cause to seize it will normally be based on a combination of things,[124] such as obliterated serial numbers, clipped wires, pry marks or other signs of forced removal, the presence of store tags or anti-shoplifting devices that are usually removed when goods are sold,[125] and the suspect's criminal record for theft-related offenses.[126]

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[120] See *United States* v. *Ventresca* (1965) 380 US 102, 111; *United States* v. *Johns* (1985) 469 US 478, 482; *People* v. *Benjamin* (1999) 77 Cal.App.4th 264, 273; *New York* v. *Belton* (1981) 453 US 454; *People* v. *Shandloff* (1985) 170 Cal.App.3d 372, 380-1; *In re Willy L.* (1976) 56 Cal.App.3d 256, 263; *People* v. *Lovejoy* (1970) 12 Cal.App.3d 883, 887; *People* v. *Wilson* (1986) 182 Cal.App.3d 742, 754; *In re Elisabeth H.* (1971) 20 Cal.App.3d 323, 327-8; *People* v. *Superior Court (Gilbert)* (1981) 116 Cal.App.3d 450, 454; *People* v. *Fitzpatrick* (1970) 3 Cal.App.3d 824, 826-7; *People* v. *Cook* (1975) 13 Cal.3d 663, 668; *Mann* v. *Superior Court* (1970) 3 Cal.3d 1, 7; *New York* v. *Belton* (1981) 453 US 454; *People* v. *Divito* (1984) 152 Cal.App.3d 11, 14; *Johnson* v. *United States* (1948) 333 US 10, 13. NOTE: An odor of drugs may also provide probable cause to search. See *In re Willy L.* (1976) 56 Cal.App.3d 256, 263; *People* v. *Lovejoy* (1970) 12 Cal.App.3d 883, 887; *People* v. *Wilson* (1986) 182 Cal.App.3d 742, 754; *In re Elisabeth H.* (1971) 20 Cal.App.3d 323, 327-8; *People* v. *Superior Court (Gilbert)* (1981) 116 Cal.App.3d 450, 454; *People* v. *Gale* (1973) 9 Cal.3d 788, 794; *People* v. *McKinnon* (1972) 7 Cal.3d 899, 917.

[121] See *People* v. *Lee* (1987) 194 Cal.App.3d 975, 984; *Minnesota* v. *Dickerson* (1993) 508 US 366; *People* v. *Dibb* (1995) 37 Cal.App.4th 832; *People* v. *Valdez* (1987) 196 Cal.App.3d 799, 806-7; *People* v. *Chavers* (1983) 33 Cal.3d 462, 471.

[122] See *People* v. *Rodriguez-Fernandez* (1991) 235 Cal.App.3d 543, 546-7.

[123] See *Estes* v. *Rowland* (1993) 14 Cal.App.4th 508, 529; *People* v. *Salih* (1985) 173 Cal.App.3d 1009, 1015; *People* v. *Russell* (1987) 195 Cal.App.3d 186, 189-190; *People* v. *Mayberry* (1982) 31 Cal.3d 335, 342; *People* v. *Lester* (1980) 101 Cal.App.3d 613; *Grant* v. *Long Beach* (9th Cir. 2002) 315 F.3d 1081, 1085-6 ["(W)e have routinely held that a canine identification or alert of illegal narcotics provides probable cause for the issuance of a search warrant, so long as the dog's reliability is established."]; *U.S.* v. *Buchanon* (6th Cir. 1995) 72 F.3d 1217, 1219; *U.S.* v. *Garcia* (9th Cir. 2000) 205 F.3d 1182; *U.S.* v. *Hill* (6th Cir. 1999) 195 F.3d 258 273-4; *U.S.* v. *$404,905* (8th Cir. 1999) 182 F.3d 643, 647; *U.S.* v. *$42,500* (9th Cir. 2002) 283 F.3d 977, 982-3; *U.S.* v. *Booker* (8th Cir. 1999) 186 F.3d 1004, 1006; *U.S.* v. *Garcia* (7th Cir. 1990) 897 F.2d 1413,1420; *U.S.* v. *Strickland* (11th Cir. 1990) 902 F.2d 937, 943.

[124] See *People* v. *Rios* (1988) 205 Cal.App.3d 833, 840 ["In determining whether there is probable cause to believe property has been stolen, a police officer may consider all circumstances reasonably bearing on the question; the officer is not limited to an examination of the item of property itself."]; *People* v. *Stokes* (1990) 224 Cal.App.3d 715, 721.

[125] See *People* v. *Gorak* (1987) 196 Cal.App.3d 1032, 1039; *In re Curtis T.* (1989) 214 Cal.App.3d 1391, 1398 [wires cut to same length]; *People* v. *Sedillo* (1982) 135 Cal.App.3d 616, 623; *People* v. *Williams* (1988) 198 Cal.App.3d 873, 890; *People* v. *McGraw* (1981) 119 Cal.App.3d 582, 603; *In re Donald L.* (1978) 81 Cal.App.3d 770, 775 [assortment of jewelry, including women's jewelry, in possession of man]; *People* v. *Baker* (1968) 267 Cal.App.2d 916, 919-920; *People* v. *Atkins* (1982) 128 Cal.App.3d 564, 570; *People* v. *Garcia* (1981) 121 Cal.App.3d 239, 246; *People* v. *Superior Court (Thomas)* (1970) 9 Cal.App.3d 203, 210; *People* v. *Jennings* (1965) 231 Cal.App.2d 744. ALSO SEE *Nunes* v. *Superior Court* (1980) 100 Cal.App.3d 915, 933 [owner of stolen property had provided officers with a detailed description].

[126] See *Brinegar* v. *United States* (1949) 338 US 160, 172; *People* v. *Aho* (1985) 166 Cal.App.3d 984, 992; *Ramey* v. *Murphy* (1985) 165 Cal.App.3d 502, 510 ["In determining whether there was reasonable cause for arrest without warrant, police officers are justified in taking into account past conduct, character and reputation of the person suspected."]; *People* v. *Price* (1991) 1 Cal.4th 324, 410; *People* v. *Lim* (2000) 85 Cal.App.4th 1289, 1298 [even "stale" arrest information is

It may also be based on the large quantity of items on the premises, especially if the property was of a type that is commonly stolen; e.g., TV's, cell phones, jewelry.[127] As noted earlier, this is what happened in *People* v. *Williams*[128] where officers who were executing a warrant for drugs discovered "an inordinate amount of television sets, video cassette recorders, stereo equipment, clocks, firearms, silverware and other household items." In ruling the seizure of these items was lawful, the court noted that the officers "knew from experience that firearms and electronic equipment are among the 'hottest' items encountered by the burglary detail."

If officers anticipate finding property that was stolen from a certain person, they may arrange to have that person accompany them and watch as they search. And if he sees any of his property, officers may seize it even if it was not listed in the warrant.[129] For example, in *People* v. *Superior Court (Meyers)*[130] officers obtained a warrant to search Meyers' house for property taken in a residential burglary. The victims of the burglary accompanied the officers and, during the course of the search, identified several dozen unlisted items that had been stolen from them. The officers seized those items and, on appeal, the California Supreme Court ruled the procedure was lawful.

There are, however, two limitations in victim-assisted searches. First, the victim may not do any searching. Instead, he must be instructed to simply watch as officers conduct the search for listed evidence and notify them if he sees any of his property.[131] Second, if a victim identifies an item, officers may not seize it until he has explained *how* he was able to identify it. Although the victim need not provide a lengthy or elaborate explanation, something more than "That's mine" is required; e.g., "I recognize it because of the design."[132]

If the warrant authorizes a search for property that cannot be identified without assistance from an expert, an expert may accompany officers when they execute the warrant and may, if necessary, conduct the search himself while officers watch.[133]

For example, in *People* v. *Superior Court (Moore)*[134] officers in Santa Clara County were investigating an attempted theft of trade secrets from Intel Corp. During the course of the investigation, they obtained a warrant to search the suspect's business for several computer-related items, such as a "Magnetic data base tape containing Intel Mask data or facsimile for product No. 2147 4K static Ram." The affiant realized he would need a computer expert to identify the listed items, so he obtained authorization from the

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somewhat relevant]; *People* v. *Guajardo* (1994) 23 Cal.App.4th 1738, 1742; *People* v. *Bush* (2001) 88 Cal.App.4th 1048, 1052-3; *United States* v. *Harris* (1971) 403 US 573, 582-3 [officers may also consider the suspect's reputation].

[127] See *People* v. *Martin* (1973) 9 Cal.3d 687, 696; *People* v. *Wolder* (1970) 4 Cal.App.3d 984, 994; *In re Donald L.* (1978) 81 Cal.App.3d 770, 775; *In re Curtis T.* (1989) 214 Cal.App.3d 1391 [large quantity of car stereo equipment piled on the floor].

[128] (1988) 198 Cal.App.3d 873.

[129] See *Wilson* v. *Layne* (1999) 526 US 603, 611-2 ["Where the police enter a home under the authority of a warrant to search for stolen property, the presence of third parties for the purpose of identifying the stolen property has long been approved by the Court and our common-law tradition."]; Penal Code § 1530; *People* v. *Tockgo* (1983) 145 Cal.App.3d 635, 645; *People* v. *Carpenter* (1997) 15 Cal.4th 312, 364.

[130] (1979) 25 Cal.3d 67.

[131] See *People* v. *Tockgo* (1983) 145 Cal.App.3d 635, 645, fn.6 [For various reasons "there is a risk that some victims will lead the police to unnecessarily broaden or lengthen the search or to seize property not actually stolen from them."]; *People* v. *Superior Court (Meyers)* (1979) 25 Cal.3d 67, 84-5 [dis.opn. of Mosk J.].

[132] See *People* v. *Superior Court (Meyers)* (1979) 25 Cal.3d 67, 75, fn.6.

[133] See Penal Code § 1530.

[134] (1980) 104 Cal.App.3d 1001.

issuing judge to have Intel technicians assist in the search. Actually, the technicians did the searching while the officers watched. As the court explained:

> [N]one of the officers present actually did any searching, since none of them knew what items described in the warrant looked like. Rather, at the direction of the officer in charge, they stood and watched while the experts searched.

In rejecting the argument that the officers could not seize an item until an expert had explained to them how he was able to identify it, the Court of Appeal said, "[T]here is no requirement that such experts, prior to stating their conclusions, engage in the futile task of attempting to educate accompanying police officers in the rudiments of computer science, or art forgery, or any other subject of scientific or artistic expertise."[135]

DOG-ASSISTED SEARCHES: A dog trained in detecting an item that is listed in the warrant, such as explosives and drugs, may accompany officers to assist in the search.[136]

INSTRUMENTALITIES OF CRIME: While searching for listed evidence, officers sometimes discover unlisted items that appear to have been used in the commission of the crime under investigation or some other crime.[137] If so, they may seize it if there is probable cause, which existed in the following examples:

- Murder warrant. An officer seized wire clippers because he knew that bailing wire had been used to bind the victims.[138]
- Murder warrant. An officer seized "cut-off panty hose" because he knew the murderers had worn masks and that cut-off panty hose are used to make masks.[139]
- Burglary warrant. An officer who was executing a warrant to search for property taken in a series of residential burglaries seized bolt clippers because he was aware that the burglars had used bolt cutters to gain entry into one of the homes.[140]
- Murder warrant. An officer seized a hand-drawn diagram of a house because it was the house where the suspect arranged to have his wife murdered.[141]
- Murder warrant. An officer seized shoes with waffled soles because he knew that "waffled-like shoe prints" were found at the crime scene.[142]

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[135] NOTE: Because Penal Code § 1530 specifically authorizes the use of civilians to help officers conduct the search when necessary, it does not appear that a judge must authorize the use of this procedure. As the court in *Moore* pointed out, "The assistance of experts, we note, is authorized under Penal Code section 1530." At p. 1005.

[136] See *People* v. *Russell* (1987) 195 Cal.App.3d 186, 190. ALSO SEE *People* v. *Superior Court (Moore)* (1980) 104 Cal.App.3d 1001, 1010 ["Our courts have, in effect, pragmatically accepted the 'expertise' of a dog whose sense of smell led to the detention of marijuana"].

[137] NOTE: Officers need not have probable cause to believe the item is evidence of a particular crime; probable cause to believe it is evidence of "some" crime is sufficient. See *People* v. *Kraft* (2000) 23 Cal.4th 978, 1043, 1050.

[138] *People* v. *Easley* (1983) 34 Cal.3d 858, 872.

[139] *People* v. *Hill* (1974) 12 Cal.3d. 731, 763.

[140] *People* v. *Mack* (1977) 66 Cal.App.3d 839, 859.

[141] *People* v. *Miley* (1984) 158 Cal.App.3d 25, 35-6.

[142] *People* v. *Gillebeau* (1980) 107 Cal.App.3d 531, 553-4. [NOTE: In *Gillebeau*, an officer also lawfully seized a newspaper in the suspect's house because it contained an article about the crime under investigation, and the officer knew that "suspects commonly harbor newspaper accounts of their offenses."]. ALSO SEE *People* v. *Carpenter* (1997) 15 Cal.4th 312, 364 ["The nexus existed here. The officer who seized the shoes testified that their soles were 'somewhat compatible' with cast impressions of the gunman's shoes."]; *People* v. *Atkins* (1982) 128 Cal.App.3d 564, 570 [officer seized an English coin because he knew such coins had been taken from the murder victim]; *Horton* v. *California* (1990) 496 US 128, 130-1, 142 [officer seized an Uzi, stun gun, and a handcuff key because he knew that the perpetrator was armed with such weapons and the victim had been handcuffed]; *Andresen* v. *Maryland* (1976) 427 US 463, 484 [seizure of documents pertaining to lots similar to the lots that were the subject of the warrant]; *People* v. *Diaz* (1992) 3 Cal.4th 495, 563 [seizure of unlisted lidocaine was lawful because the suspect was suspected of

ANSWERING THE PHONE: Under certain circumstances, officers who are executing a warrant may "seize" incoming phone calls by answering the phone, posing as the suspect or an accomplice, and engaging the caller in a conversation about the illegal activities under investigation. In many cases, the caller's words may be admissible against the suspect.[143]

Officers may answer the phone for this purpose if they have probable cause to believe the caller would say something that would tend to show the defendant was guilty of the crime under investigation. More specifically, this requirement will be met if officers had information that rendered incoming phone calls "reasonably suspect"; e.g., the phone was being used for illegal activities, or the premises were being used in an ongoing criminal enterprise such as drug dealing, bookmaking, or prostitution.[144]

The seizure of incoming calls may also be expressly or impliedly authorized in the warrant. For example, the U.S. Court of Appeals has ruled that a warrant to search for indicia impliedly authorized officers to answer the phone because the calls "would provide evidence that [the defendant] resided there."[145]

POST-SEARCH PROCEDURE

When the search is completed, the usual procedure is as follows.

LEAVE RECEIPT: Before departing, officers must leave a receipt listing the property that was seized.[146]

RETURN WARRANT: Within ten days after the warrant was issued, the original signed warrant must be filed with the issuing judge (i.e., "returned") along with a sworn inventory of all seized property.[147] In calculating the ten-day period, do not count the day on which the warrant was issued.[148] If the tenth day falls on a weekend or holiday, the warrant may be returned on the next court day.[149] Failure to make a timely return will not invalidate the search unless the delay was prejudicial to defendant.[150] If reasonably

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killing his victims with lidocaine]; *People* v. *Gallegos* (2002) 96 Cal.App.4th 612, 623-30 [seizure of guns and brass knuckles was lawful because there was probable cause to believe the suspects were drug dealers]; *People* v. *Duncan* (1981) 115 Cal.App.3d 418, 426 [seizure of poetry from a rape suspect's home because the rapist read poetry to the victim]; *People* v. *Miller* (1976) 60 Cal.App.3d 849, 854-5 [search of unlisted diary was lawful because "[w]hen the defendant snatched it [away from officers], he created probable cause to believe that it contained evidence of a crime."]; *People* v. *Ramos* (1982) 39 Cal.3d 553, 573; *Cady* v. *Dombrowski* (1973) 413 US 433, 448-9.

[143] NOTE: The conversation is not hearsay when prosecutors seek to admit it for the purpose of showing the purpose for which the premises are used. See *People* v. *Warner* (1969) 270 Cal.App.2d 900, 907; *People* v. *Ventura* (1991) 1 Cal.App.4th 1515, 1517-9; *People* v. *Nealy* (1991) 228 Cal.App.3d 447, 452.

[144] See *People* v. *Sandoval* (1966) 65 Cal.2d 303, 308; *People* v. *Drieslein* (1985) 170 Cal.App.3d 591, 599-602; *People* v. *Vanvalkenburgh* (1983) 145 Cal.App.3d 163, 167; *U.S.* v. *Stiver* (3rd Cir. 1993) 9 F.3d 298, 302-3. NOTE: Answering the phone under such circumstances does not violate the federal wiretap law. See *U. S.* v. *Campagnuolo* (5th Cir. 1979) 592 F.2d 852; *U.S.* v. *Gallo* (9th Cir. 1981) 659 F.2d 110, 113-4; *U.S.* v. *Ordonez* (9th Cir. 1983) 722 F.2d 530, 541-2; *U.S.* v. *Vadino* (11th Cir. 1982) 680 F.2d 1329, 1335.

[145] *U.S.* v. *Stiver* (3rd Cir. 1993) 9 F.3d 298, 303.

[146] See Penal Code § 1535. ALSO SEE *West Covina* v. *Perkins* (1999) 525 US 234, 240 ["(W)hen law enforcement agents seize property pursuant to warrant, due process requires them to take reasonable steps to give notice that the property has been taken . . . "].

[147] See Penal Code §§ 1534 and 1537.

[148] See *People* v. *Clayton* (1993) 18 Cal.App.4th 440, 445.

[149] See *People* v. *Stevenson* (1976) 62 Cal.App.3d 915.

[150] See *People* v. *Larkin* (1987) 194 Cal.App.3d 650, 656; *People* v. *Bowen* (1982) 137 Cal.App.3d 1020, 1034 ["Even were we to find a violation of section 1534, it would not raise an issue of

necessary, officers may file a partial inventory, so long as they file a complete inventory as soon as possible.[151]

DISPOSING OF SEIZED PROPERTY: Only a judge can authorize the release of property that was lawfully seized pursuant to a search warrant. This is because such property, although in the custody of officers, is being held on behalf of the judge who signed the warrant.[152] It can therefore be released only by means of a court order.[153]

PROPERTY SEIZED BY MISTAKE: Officers who erroneously seized property that was not listed in the warrant may return it to its owner without court authorization.[154]

ONE WARRANT, ONE SEARCH: A search warrant authorizes only one search of each place and thing that is listed. After that search is completed, officers may not conduct a second search unless they obtain a new warrant.[155]

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constitutional magnitude and would not result in the suppression of evidence absent a showing of prejudice to the defendant."]; *People* v. *Couch* (1979) 97 Cal.App.3d 377, 380; *Cady* v. *Dombrowski* (1973) 413 US 433, 449 ["(W)e do not deem it constitutionally significant that [the seized items] were not listed in the return of the warrant."]; *People* v. *Guillebeau* (1980) 107 Cal.App.3d 531, 554-5; *People* v. *Head* (1994) 30 Cal.App.4th 954; *People* v. *Clayton* (1993) 18 Cal.App.4th 440, 446; *People* v. *Schroeder* (1979) 96 Cal.App.3d 730, 733; *U.S.* v. *Towne* (9th Cir. 1993) 997 F.2d 537 542, fn.3 ["California courts uniformly recognize that statutory provisions covering the filing and return of a search warrant are ministerial in nature, the violation of which does not in itself invalidate an otherwise lawful search or require suppression of evidence seized thereby, at least in the absence of demonstrated prejudice to the defendant."].

[151] See *People* v. *James* (1990) 219 Cal.App.3d 414, 420 ["(The Penal Code) does not preclude the issuance of several inventories pursuant to a single search."].

[152] See Penal Code §§ 1523, 1536; *Oziel* v. *Superior Court* (1990) 223 Cal.App.3d 1284, 1292-3; *People* v. *Icenogle* (1985) 164 Cal.App.3d 620, 623. ALSO SEE *People* v. *Lamonte* (1997) 53 Cal.App.4th 544 [re nonstatutory motion for the return of property].

[153] See *People* v. *Superior Court (Laff)* (2001) 25 Cal.4th 703, 713 ["Law enforcement officials who seize property pursuant to a warrant issued by the court do so on behalf of the court, which has authority pursuant to Penal Code section 1536 to control the disposition of the property. . . . [T]he superior court possesses the inherent power to conduct proceedings and issue orders regarding property seized from a criminal suspect pursuant to a warrant issued by the court."]; Penal Code § 1536; *Oziel* v. *Superior Court* (1990) 223 Cal.App.3d 1284, 1293; *People* v. *Von Villas* (1992) 10 Cal.App.4th 201, 239.

[154] See *Andresen* v. *Maryland* (1976) 427 US 463, 482, fn.11 ["(T)o the extent such papers were not within the scope of the warrants or were otherwise improperly seized, the State was correct in returning them voluntarily."]. ALSO SEE *U.S.* v. *Tamura* (9th Cir. 1982) 694 F.2d 591, 597 ["We likewise doubt whether the Government's refusal to return the seized documents not described in the warrant was proper."].

[155] See *People* v. *James* (1990) 219 Cal.App.3d 414, 418 ["(M)ost jurisdictions have unfailingly adopted the rule that a warrant is executed when a search it conducted, and its legal validity expires upon execution. After execution, no additional search can be undertaken on the same warrant."].