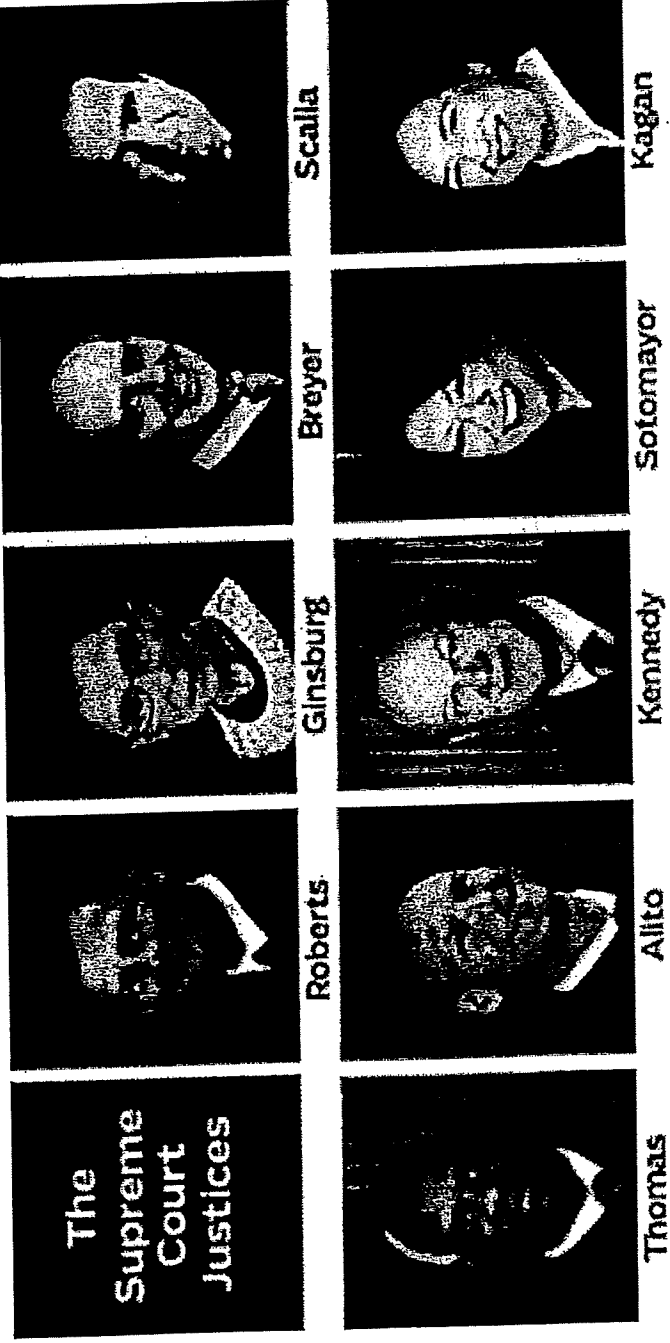


SHASTA COUNTY DA

11 December 2015

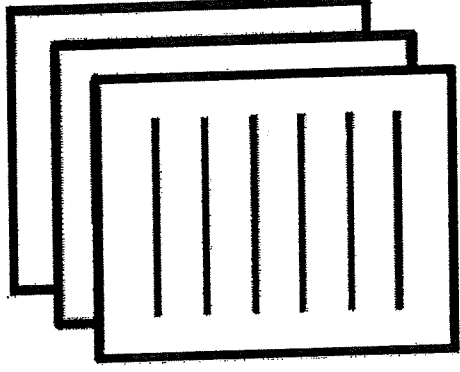
The 4th Amendment, Informants & Search Warrants



HANDOUTS

- I. A copy of the PowerPoint slides.
- II. Non-Narcotic SW Checklist.
- III. A copy of the Generic SW, Affidavit & SW Return.

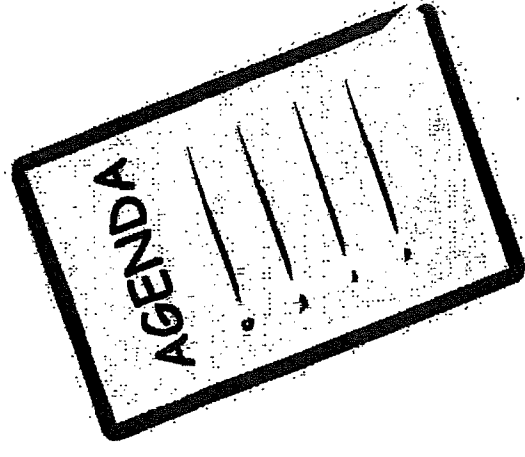
CLASS HANDOUTS



SW MANUAL CD CONTENTS (#1 of 2)

Name	Date modified	Type	Size
Files Currently on the Disc (27)			
CD Use Instructions			
Exhibit A - GENERIC SW AFFIDAVIT FORM	3/11/2014 9:11 AM	Adobe Acrobat Document	41 KB
Exhibit A - GENERIC SW FORM	3/11/2014 9:11 AM	Microsoft Word Document	50 KB
Exhibit A - GENERIC SW RETURN FORM	3/11/2014 9:11 AM	Microsoft Word Document	46 KB
Exhibit B - BACKYARD MJ SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	44 KB
Exhibit C - CONTROL BUY SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	66 KB
Exhibit D - CELL PHONE SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	68 KB
Exhibit E - NARCOTICS SW CHECKLIST	3/11/2014 9:11 AM	Microsoft Word Document	72 KB
Exhibit F - NON-NARCOTIC SW CHECKLIST	3/11/2014 9:11 AM	Adobe Acrobat Document	56 KB
Exhibit G - BLANK TELEPHONIC SW FORM	3/11/2014 9:11 AM	Adobe Acrobat Document	52 KB
Exhibit G - TELEPHONIC CHECKLIST 1-2014 ALONE	3/11/2014 9:11 AM	Microsoft Word Document	29 KB
Exhibit H - GANG SW CHECKLIST	3/11/2014 9:11 AM	Adobe Acrobat Document	24 KB
Exhibit I - ELECTRONIC SW CHECKLIST	3/11/2014 9:11 AM	Adobe Acrobat Document	54 KB
Exhibit J - SAMPLE INFORMANT IN-CAMERA DECISION ORDER	3/11/2014 9:11 AM	Adobe Acrobat Document	35 KB
Exhibit K - SAMPLE RIVAS-LUTTENBERGER DECISION ORDER	3/11/2014 9:11 AM	Microsoft Word Document	47 KB
Exhibit L - SW SEALING ORDER & SUPPORTING DECLARATION	3/11/2014 9:11 AM	Microsoft Word Document	50 KB
Exhibit M - SAMPLE HOBBS ATTACHMENT	3/11/2014 9:11 AM	Microsoft Word Document	54 KB
Exhibit N - SW UNSEALING ORDER & DECLARATION	3/11/2014 9:11 AM	Microsoft Word Document	43 KB
Exhibit O - DUI FORCED BLOOD SW AFFIDAVIT TEMPLATE	3/11/2014 9:11 AM	Microsoft Word Document	53 KB
Exhibit O - DUI FORCED BLOOD SW TEMPLATE	3/11/2014 9:11 AM	Microsoft Word Document	44 KB
Exhibit O - DUI SW RETURN FORM	3/11/2014 9:11 AM	Microsoft Word Document	37 KB
Exhibit P - DUI TELEPHONIC CHECKLIST SCRIPT	3/11/2014 9:11 AM	Microsoft Word Document	33 KB
Exhibit P - DUI TELEPHONIC SW FORM	3/11/2014 9:11 AM	Adobe Acrobat Document	23 KB
Exhibit Q - BANK RECORDS SW & AFFIDAVIT FORM	3/11/2014 9:11 AM	Microsoft Word Document	37 KB
Exhibit R - TRACKER HARDWARE INSTALLATION SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	78 KB
Exhibit S - GPS TRACKER SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	52 KB
Exhibit T - SAMPLE GOVERNMENT CODE 57480(E)(1) LETTER	3/11/2014 9:11 AM	Microsoft Word Document	58 KB
	3/11/2014 9:11 AM	Microsoft Word Document	26 KB

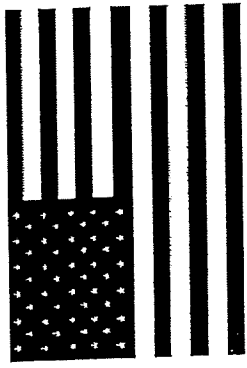
Today's Agenda



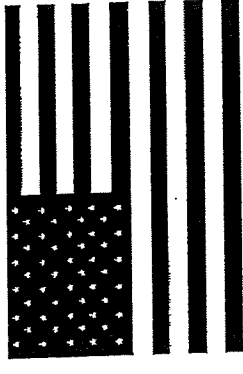
- I. Overview
- II. Constitutional Provisions
- III. Search Warrant Drafting
 - A. Including Informants
- IV. California Search Warrant Statutes
- V. Good Faith

General Rule

- A search is **illegal unless** you have
 1. either a **search warrant (SW)** or
 2. an **exception** to the SW requirement.



The 4th Amendment



The right of the people to be **secure** in their persons, houses, papers, and effects, **against unreasonable searches and seizures**, shall not be violated, **AND no Warrants shall issue**, but upon **probable cause**, supported by Oath or affirmation, and particularly describing **the place to be searched**, and the **persons or things to be seized**.

General Warrants

- ➔ General Warrants are **forbidden** by both the U.S. & California Constitutions.
- ➔ Historical Overview.
 - General Warrants **specified only an offense.**
 - *Historical Example*: “Seditious Libel”
 - *Modern Example*: “Burglary”
 - Writs of Assistance **specified only the object** of the search.
 - *Historical Example*: “Un-customed Goods”
 - *Modern Example*: “Stolen property”

Search Warrants vs. SDTs

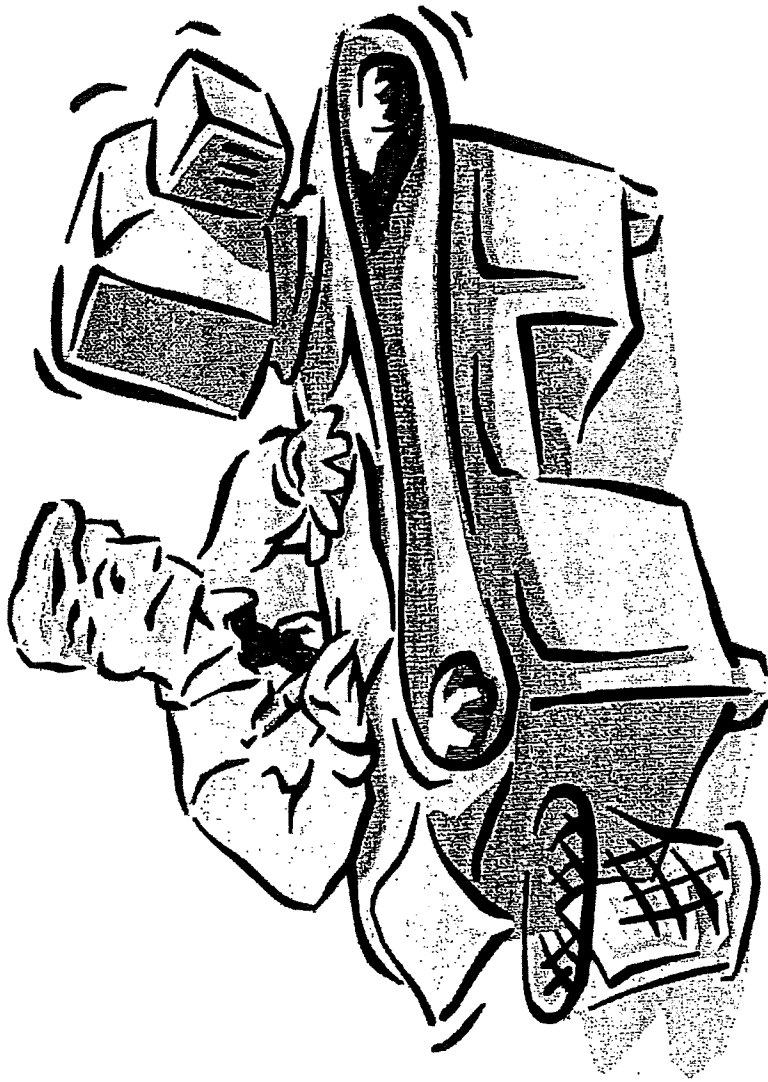
Search Warrants are better because:

- 1. Incredibly useful in Investigation stage.**
- 2. Secrecy.**
 - Sealing orders (P. v. Hobbs (1994) 7 Cal.4th 948)
 - Non-Disclosure orders
- 3. Almost immediate release of information.**
- 4. Documents obtained are “free” .**
 - Evid. Code §1563 – Cost recovery in civil suits.
 - Financial records & Gov’t. Code §7475.
 - **PC §653.53(c)** – Reasonable Compensation.



PART II

Search Warrant Drafting (Chapter IV, pgs. IV – 1 to IV – 104)



PC §1529 – Search Warrant Form

Following things must always be in a search warrant:-

1. Name of every person supplying an affidavit to the magistrate.
2. Statutory grounds for issuance.
3. Descriptions, with particularity  (Persons, places & vehicles).
4. **Items list** – Described with particularity.
5. Date of issuance.
6. Issuing Magistrate's signature.

GENERIC SW AFFIDAVIT

SUPERIOR COURT OF CALIFORNIA
[INSERT COUNTY NAME, IN UPPERCASE, but not bold] COUNTY JUDICIAL DISTRICT
[INSERT LOCATION, IN UPPERCASE, but not bold] FACILITY

STATE OF CALIFORNIA)
AFFIDAVIT IN SUPPORT
OF SEARCH WARRANT
COUNTY OF Inset County Name, in UPPER CASE, but not in bold)

Personally appeared before me this _____ [Judge fills in day date] day of _____ [Affiant inserts month, but not in bold or uppercase], 20____ [Affiant inserts year, but not in bold] _____ [INSERT AFFILIANT'S NAME IN BOLD & UPPERCASE] who, under penalty of perjury, says that there is just, probable and reasonable cause to believe, and that he/she [Cross the area between that applies and delete the other one] does believe, that there is now in the possession of _____ [INSERT ADDRESS TO BE RESEARCHED IN BOLD & UPPERCASE], on the premises located at [INSERT ADDRESS TO BE RESEARCHED IN BOLD & UPPERCASE] _____ COUNTY, CALIFORNIA, which premises consist of [insert description of premises to be searched, but not in bold or uppercase];

AND THE PERSON OF [INSERT SUSPECT'S NAME IN BOLD & UPPERCASE], described as a [Insert Race & gender, e.g., White male, but not in bold or uppercase] _____ adult, approximately _____ [insert measurement, e.g., 5 feet 11 inches, but not in bold or uppercase] tall, weighing approximately _____ [insert weight measurement, e.g., 196, but not in bold or uppercase] pounds, with _____ [insert color, but not in bold or uppercase] hair, _____ [insert color, but not in bold or uppercase] eyes, and having a date of birth of _____ [insert DOB, e.g., July 4, 1976, but not in bold or uppercase], wherever located in [insert County name, but not in bold or uppercase] _____ County, California;

INTO - VERBIC F described as a 20
[Insert year, but not in bold or uppercase],

Printed inside model & color, but not in bold or uppercase, bearing California license #

Generic SW Affidavit – Page 3

GENERIC SW AFFIDAVIT

- ☐ When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.
- ☐ When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.
- ☐ When the information to be received from the use of a tracking device constitutes evidence that tends to show:
- ☐ Any felony has been committed or is being committed.
 - ☐ Any misdemeanor if
 - ☐ A violation of the Fish and Game Code or Public Resources Code has been or is being committed, OR
 - ☐ Tends to show a particular person has committed a violation of the Fish and Game Code or Public Resources Code OR
 - ☐ Will assist in locating an individual that has committed or is committing a violation of the Fish and Game Code or Public Resources Code.
- ☐ When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.
- ☐ Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100 of Title 2 of Part 6, if a prohibited firearm, or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.
- ☐ When the property or things to be seized are controlled substances or a device, container, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority in Health & Safety Code section 11472.

Generic SW Affidavit – Page 5

GENERIC SW AFFIDAVIT

be disposed of in accordance with the procedures set forth in California Penal Code §§1407 to 1422, without the necessity of further Court Order issued pursuant to California Penal Code §1536.

INSERT AFFIANT'S NAME
AFFIANT

YES ☐ NO ☐

HOBBS SEALING REQUESTED:
(People v. Hobbs (1994) 7 Cal.4th 943).

YES ☐ NO ☐

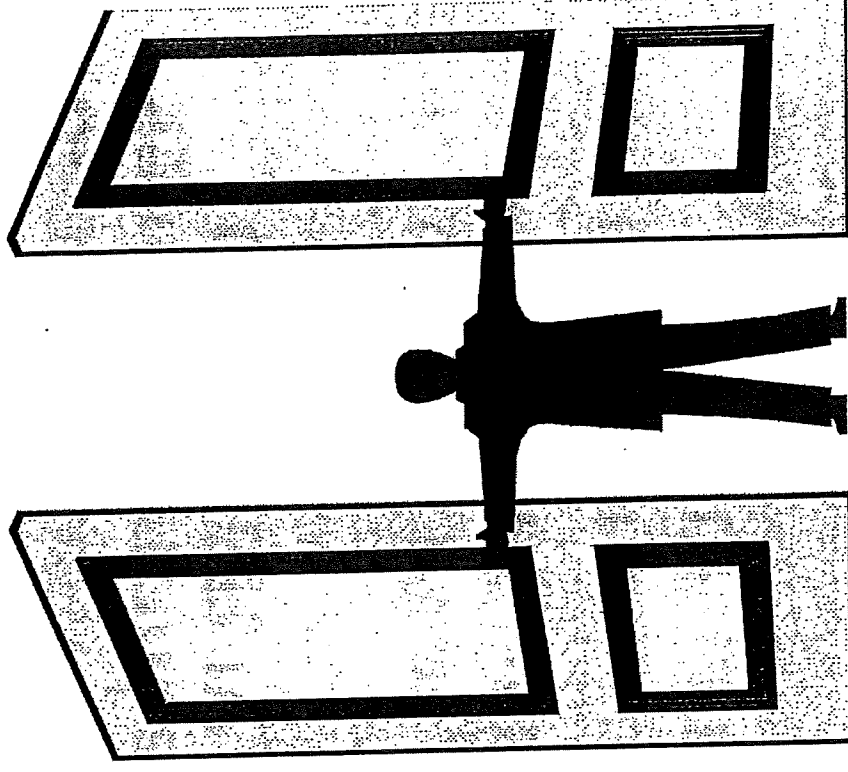
NIGHTTIME SERVICE REQUESTED:

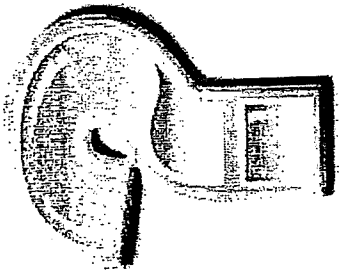
Subscribed and sworn to before me this _____ [Judge fills in the day date] day of _____
[Affiant inserts month, but not in bold or uppercase], 20____ [Affiant inserts year, but not in bold].

JUDGE OF THE SUPERIOR COURT

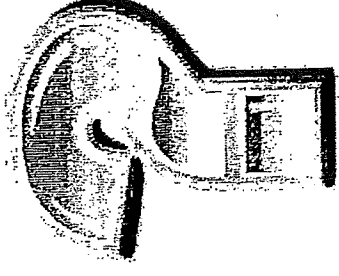
The Opening – Contents

- Date of the affidavit
- Identifies the affiant
 - P. v. Bell (1996) 45 C.A. 4th 1030.
- Descriptions
 - Premises / Location(s)
 - Surrounding areas
 - Persons
 - Vehicles
- PC §1524 Grounds

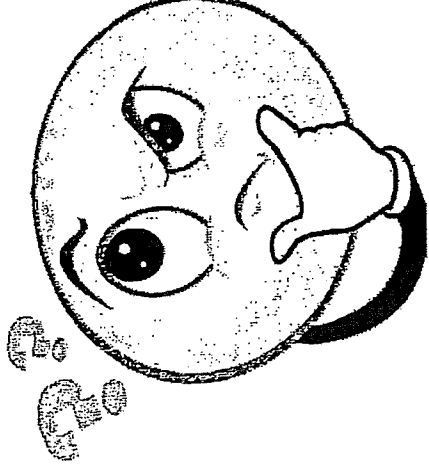




QUESTIONS

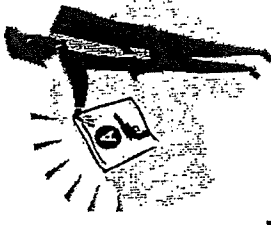


1. Can a search warrant be issued for a misdemeanor offense?
2. How about for an infraction?
3. How about for installation of a GPS or tracking device?
4. What about forced blood draws?
 - DULs.
 - H&S 11550 cases.

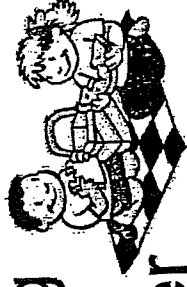


Grounds for Issuance Cont. (PC §1524)

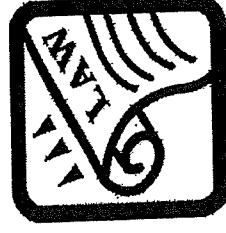
4. When the property or things consist of any item or constitutes any **evidence tending to show a felony has been committed** or that a particular person committed a felony.



5. Any evidence that tends to show the **sexual exploitation of a child** within the meaning of **PC §311**, or possession of matter depicting sexual conduct of a person under the age of 18 years, in **violation of PC §311.11**.

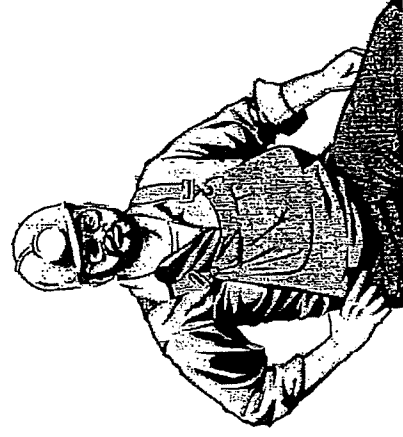


6. A warrant to arrest a person.

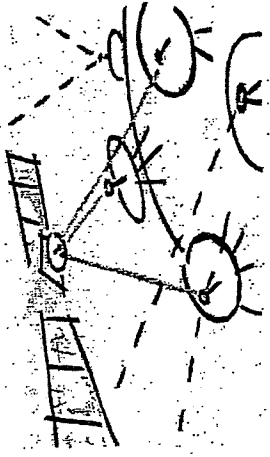


Grounds for Issuance Cont. (PC §1524)

8. When the property or things to be seized include an item or any evidence that tends to show a **violation of Section 3700.5 of the Labor Code**, or tends to show that a particular person has violated that section.



Grounds for SW Issuance (PC §1524)



GPS\Tracking Devices:

12. A tracking device

- ➔ Clearly a response to United States v. Jones (2012) 565 U.S. ____.
- ➔ Applies under following circumstance:
 - Any felony.
 - Any **misdemeanor** if:
 1. A violation of F&G Code or Public Resources Codes has been or is being committed, OR
 2. tend to show a **particular person** has committed that act or is committing that act OR
 3. Will **assist in locating an individual** that has committed or is committing that act.

Tracking SW Service [PC §1534]

(Cont'd.)

- **Sub §2: Knock – Notice not required before service of SW.**
- **Sub §3: A return shall be filed no later than 10 calendar days after the use of the tracking device has ended.**
- **Sub §4: No later than 10 calendar days after the use of the tracking device has ended, the Officer who executed the SW shall serve a copy on the person tracked or whose property was tracked.**
 - **Upon request of a governmental agency, the magistrate may, for good cause, delay service of a copy of the SW.**

TRACKING DEVICE SEARCH WARRANT AIDS

→ See:

- **EXHIBIT R** (Pgs. A-201 to A-205)
re: Hardwiring a tracking device SW
& Affidavit.
- **EXHIBIT S** (Pgs. A-209 to A-215)
re: GPS SW & Affidavit sample.

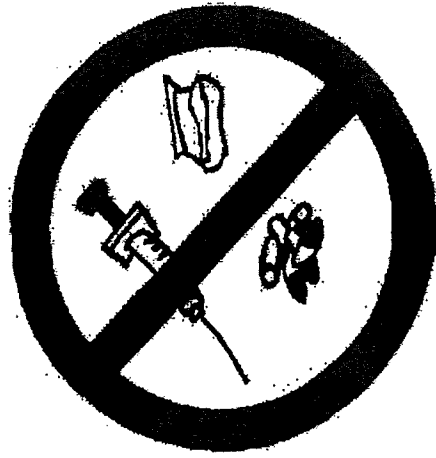
DUI SEARCH WARRANT AIDS

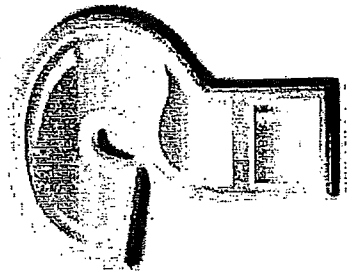
→ See:

- **EXHIBIT O** (Pgs. A-163 to A-174)
re: DUI forced blood SW, Affidavit &
Return.
- **EXHIBIT P** (Pgs. A-175 to A-184)
re: DUI telephonic SW form & Checklist
Script.

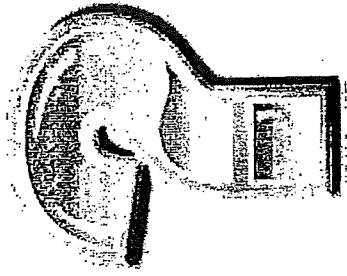
Grounds for SW Issuance (PC §1524)

15. When the property or things to be seized are **controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance** pursuant to the authority in Health & Safety Code section 11472.

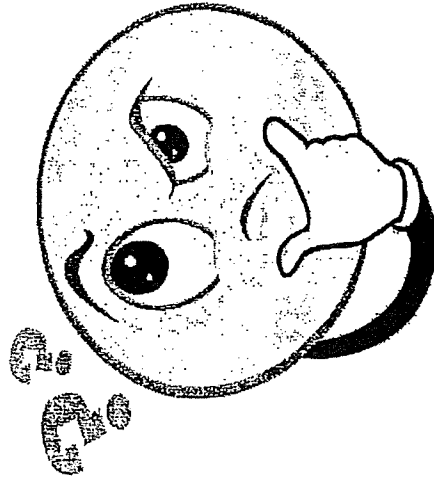




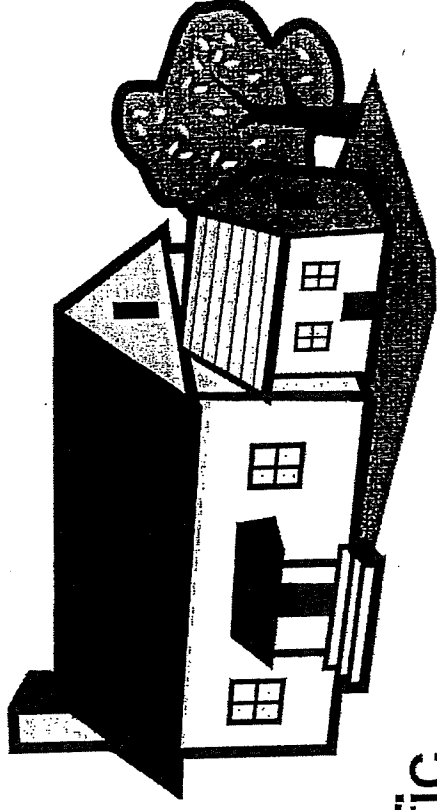
QUESTION



Can a search warrant be used to find evidence leading to the location of a known victim or witness to a crime for production of that person at a court hearing?



DESCRIPTIONS – RESIDENCE

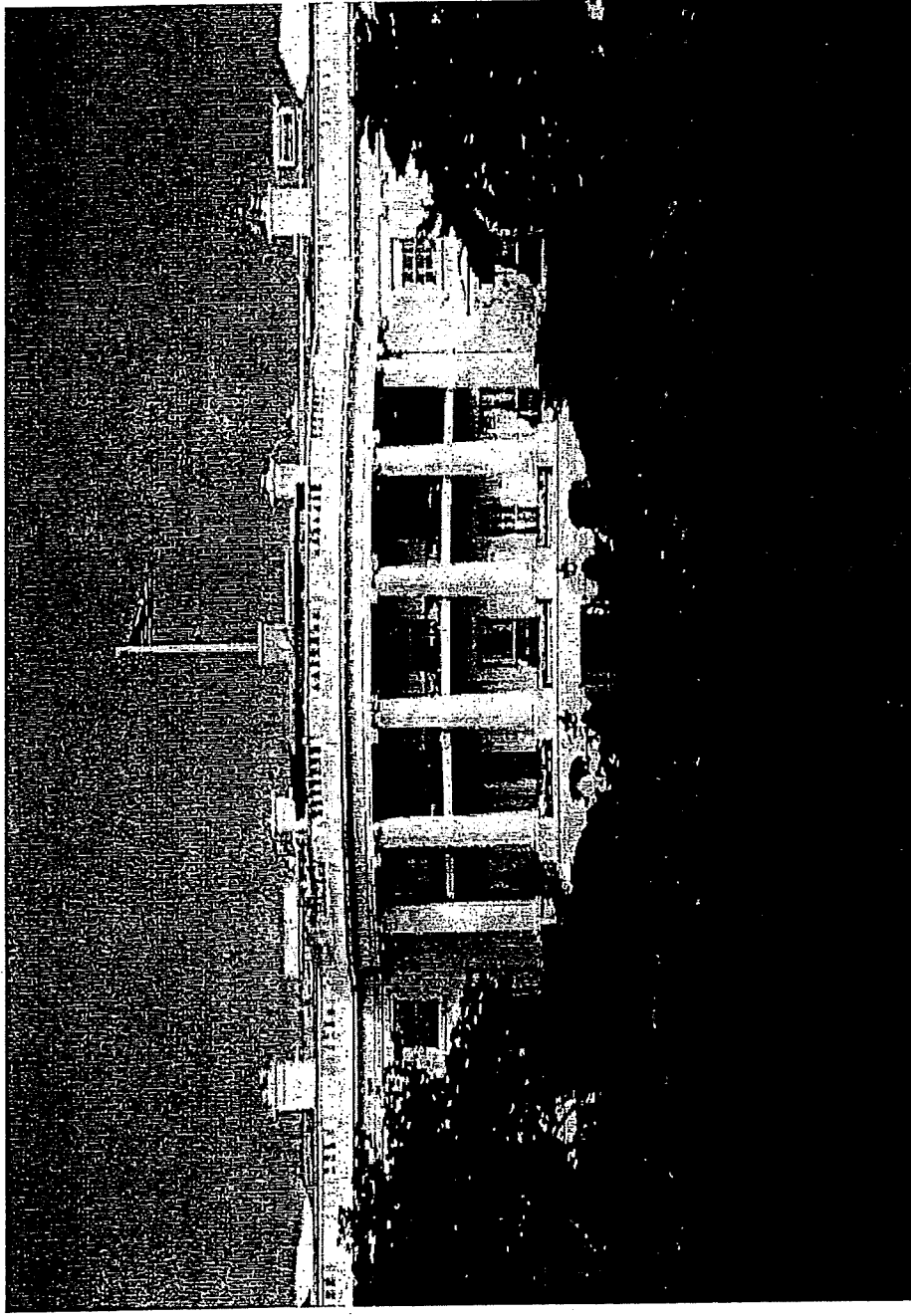


- Street address.
- Cross streets.
- Go from general to specific.
- Garage? Detached or attached?
- Color & type of exterior, including roof.
- Location of numbers on/near residence.
- Any other characteristics that make location unique.

Test When Description Inaccurate

- **When the warrant contains an inaccurate description,** “[t]he test for determining the sufficiency of the description of the place to be searched is **whether the place to be searched is described with sufficient particularity as to enable the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premise might be mistakenly searched.**” *United States v. Gitcho* (8th Cir. 1979) 601 F.2d 369 “In applying this test, we are mindful of the general rule that affidavits for search warrants must be tested and interpreted in a common sense and realistic, rather than a hypertechnical, manner.” (*United States v. Turner, supra*, 770 F.2d at p. 1510.)”
 - **People v. Amador** (2000) 24 Cal.4th at 392-393.

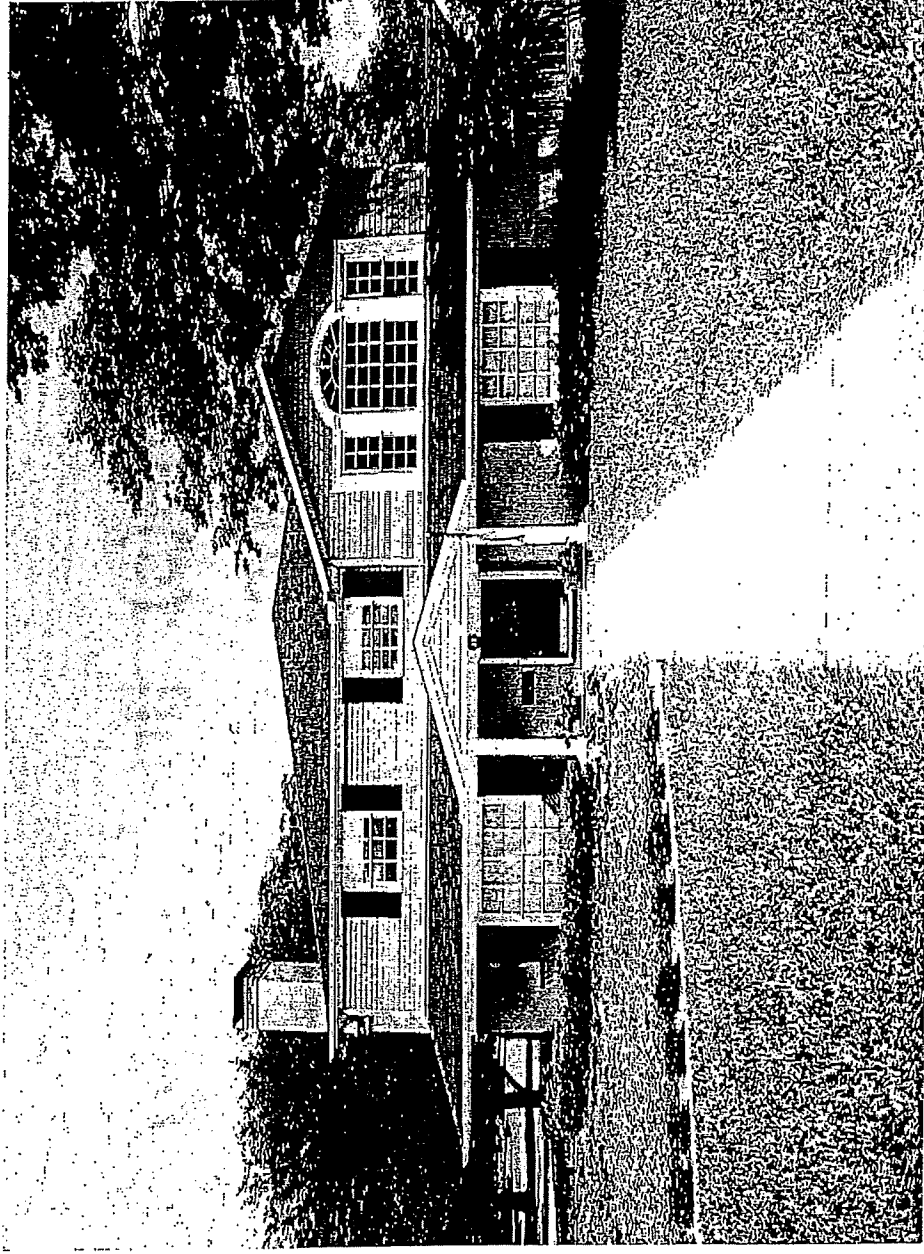
Location Description E.g. (#1 of 4)



Location Description E.g. (#3 of 4)



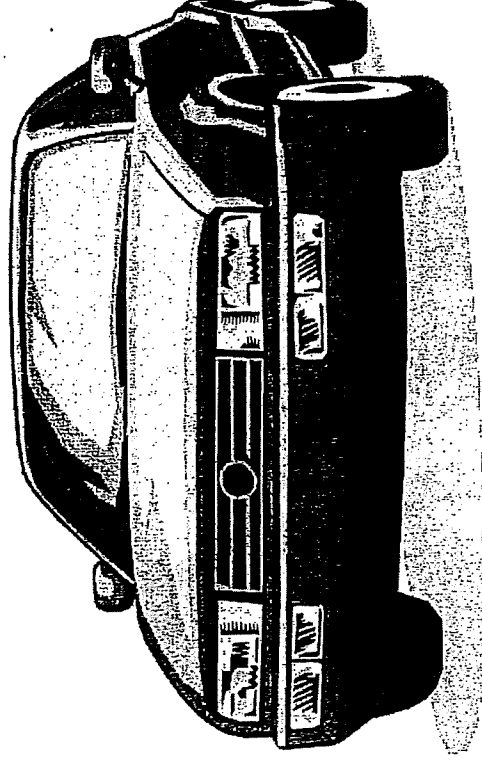
Location Descriptions (#4 of 4)



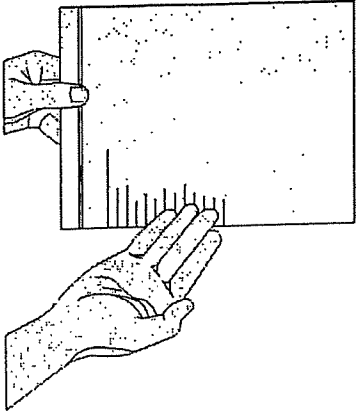
DESCRIPTIONS – PERSONS

- “Wherever located in County” vs.
“Associated with a particular location.”
- 1. “**And other unidentified persons**” is flawed bcs:
 - A. It was too broad
 - B. It lacked particularity
- 2. “The phrase would allow an unlimited search of persons and thus impregnates the warrant with the infirmity present in a “general warrant”, an infirmity that has long been condemned.” Id. @ 23.
 - People v. Tenney (1972) 25 Cal.App.3d 16.

DESCRIPTIONS – VEHICLES



- Year
- Color
- Make
- Model
- License number, if known
- Any other characteristics that make the vehicle unique [E.g., bumper stickers]
- “Wherever located in County” vs. “Associated with a particular location.”



The Items List

Summary of a typical SW items list in narco sales case:

1. Type of substance sought.
2. Type of cutting agents.
3. Type of packaging materials & paraphernalia used in the sale of the type of substance sought.
4. Items documenting sales of controlled substances.
5. Evidence of **occupancy and control** of the location(s) searched.
6. Large sums of money.

Lack of Items List Particularity (#2 of 4)

II. Diaries.

- The **affidavit** was held to be **overbroad** because the item list was **not specific enough to cover the search of the defendant's diary**, which contained graphic descriptions of the defendant's sexual and physical torture of children.



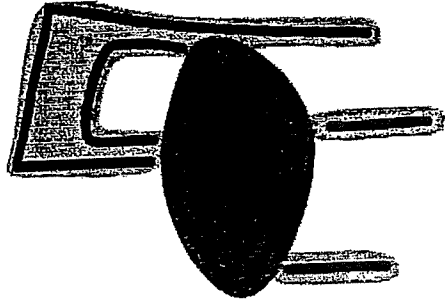
- While the **affidavit** contained 24 pages of factual allegations about the crime, it **never stated one single fact to support an inference that the defendant actually possessed the "personal diary notations" or "writings"** or, if he did, that they would be located in a particular place.

➤ **People v. Frank** (1985) 38 Cal.3d 711.

Lack of Items List Particularity (#4 of 4)

IV. Overbreadth Issues.

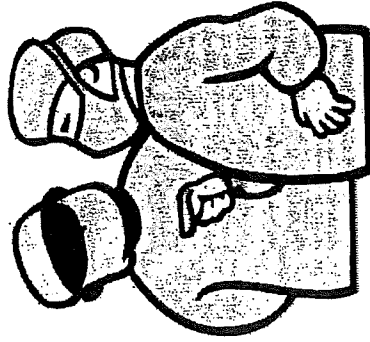
- It is analogous to a search warrant affidavit that concerns stolen property consisting of **brown leather-covered chairs** and a **search warrant which on its face states that all chairs are to be seized**. The executing officer would understand the general category of the items to be seized but, **because of the deficiency in the description, would pick up all chairs** without regard to whether they were brown leather-covered chairs or red, etc.
(Id. at 1027.)



- **Bay v. Superior Court (Fresno County)**
(1992) 7 Cal.App.4th 1022.

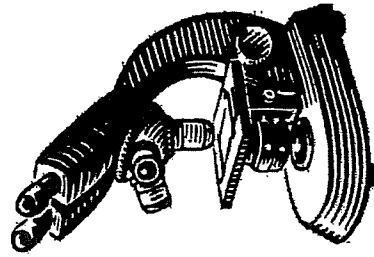
Case Law Particularity Examples (#2 of 4)

- The seizure of “all patient files” was upheld against an overbreadth challenge because **90% of all the patient’s files contained fraudulent treatment notes.**



➤ People v. Hepner (1994) 21 Cal.App.4th 761.

- “Scientific evidence, including but not limited to fingerprints, powder burns, blood, blood spatters, photographs, measurements, bullet holes, hairs, fibers.”



➤ People v. Schilling (1987) 188 C.A.3d 1021.

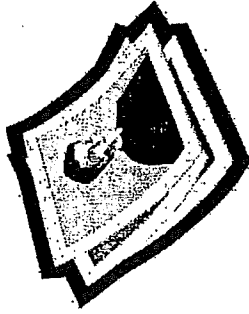


Case Law Particularity Examples (#4 of 4)

Child Pornography

➤ U.S. v. Hill (9th Cir. 2006) 459 F.3d 966.

- “Image 1: Is a color picture of a female, white, approximately 15 years old, with long dark brown hair. The female is in a room standing between a couch and a coffee table. There is a framed picture on the wall above the couch. She is wearing only a long blouse and pair of socks. The blouse is open and she is exposing her breast and pubic area to the camera, which she is facing while leaning to her left.”



➤ U.S. v. Simpson (10th Cir. 1998) 152 F.3d 1241.

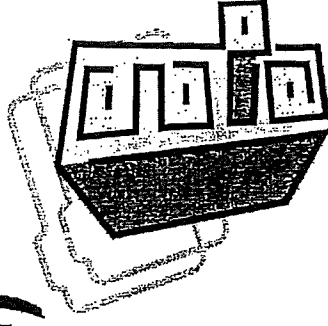
- “[W]hen discussing the validity of warrants which generally authorize the search for evidence of child pornography, courts have acknowledged that such generalized descriptions as ‘child pornography’ are adequate to convey to the officer executing the search warrant the nature of the material sought. . . . This is so because the words ‘child pornography’ ‘need no expert training or experience to clarify their meaning.’”



Item List Examples (#2 of 4)



(Payroll Records)

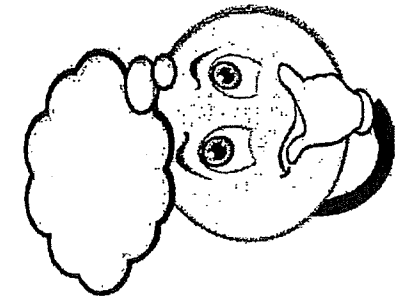


Legible copies of all payroll records for **JOHN DOE**, for the period covering **March 26, 1996 through July 1, 1997**, including, but not limited to copies of paychecks and W-2 forms. Said payroll records to also include a breakdown by month and year showing the hours worked, the beginning and ending dates of the pay period, the hours worked in a given pay period, the actual date of payment of earnings to **JOHN DOE**, the gross wages earned in a given pay period, and any other compensatory benefits paid to **JOHN DOE**, by **[INSERT COMPANY NAME]** during a given pay period.

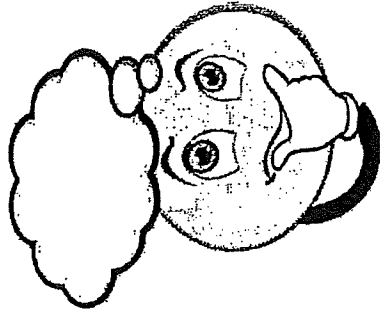
Justification – Example

Stolen Property Search Justification:

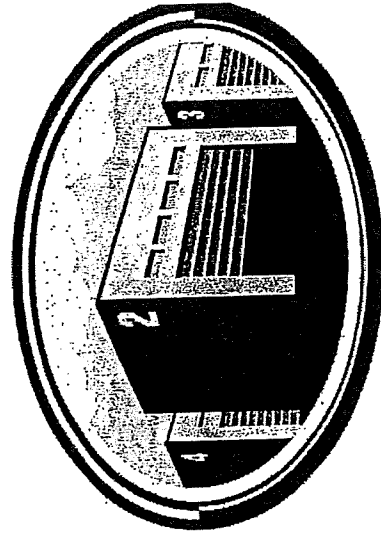
“I request permission to view, record and run an automated record check on any and all items bearing serial numbers inside the above described premises during the execution of this search warrant because I know, based on my previously described training and expertise, that people who deal in stolen property (“Fences”) commonly exchange money and other things of value for stolen property. I know that the items of stolen property can include, but are not limited to Blue Ray players, cameras, cellular telephones, DVD players, firearms, Ipods, microwave ovens and other small appliances, power tools, stereos and their components, television sets, video cassette recorders (VCRs) and video game consoles.”

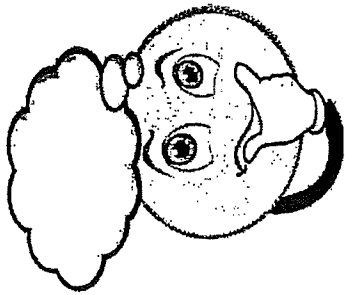


You Decide

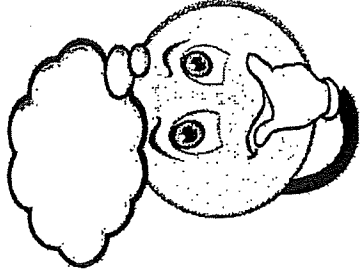


- Any storage spaces located in the State of California for which keys, locks or documents such as rental receipts or bills are found during the search of **[Insert Address]**, which shows the suspect **[Insert Name]** maintains current possession or dominion and/or control over such storage spaces.





You Decide



- Any property which is suspected to be stolen, because of identification located with the property or because the property does not appear to belong to any persons residing at **[Insert Address]**, including but not limited to any property that has value that can be exchanged for drugs.



Sample Expertise Summary

The table below is a summary of an officer's formal training in narcotics:

DATE	HOURS	TITLE & SPONSOR
May 2002	4	Parole LEADS class – SJPD
Oct. 2002	4	Informant Development & Management Course – SJPD
Feb. 2003	8	Parolee Contacts Class – CNOA
June 2004	3	Clandestine Drug Laboratories – CA DOJ
Oct. 2004	40	Entry Level Class – SJPD Violent Crimes Enforcement Team Academy
Sept. 2005	40	Metro Unit Academy – SJPD



Justification Section

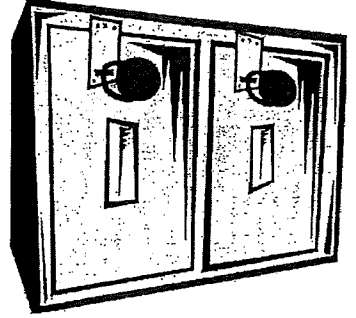
- ➔ This explains why the affiant wants the items listed in the search warrant items list.
- ➔ Sometimes merges with the probable cause section.
 - Theft cases
 - Sexual assault cases
- ➔ Be careful about using boilerplate language.
 - People v. Banuelos (1993) 13 Cal.App.4th 1428; 17 Cal.Rptr. 56.
 - NOTE: Case has been DEPUBLISHED.
 - United States v. Winn 79 F.Supp.3d 904; (S.D. Ill., 2015))



CA Evidence Code §1040

(Official Information)

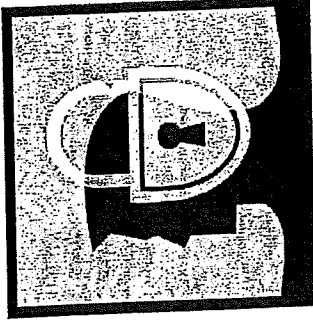
- Information acquired in confidence.
- By a public employee in the course of his or her duty.
- Not open or officially disclosed to the public prior to the claim of privilege.



Top Secret

CA Evidence Code §1041 (#2 of 3)

(Privilege of Informant's ID)

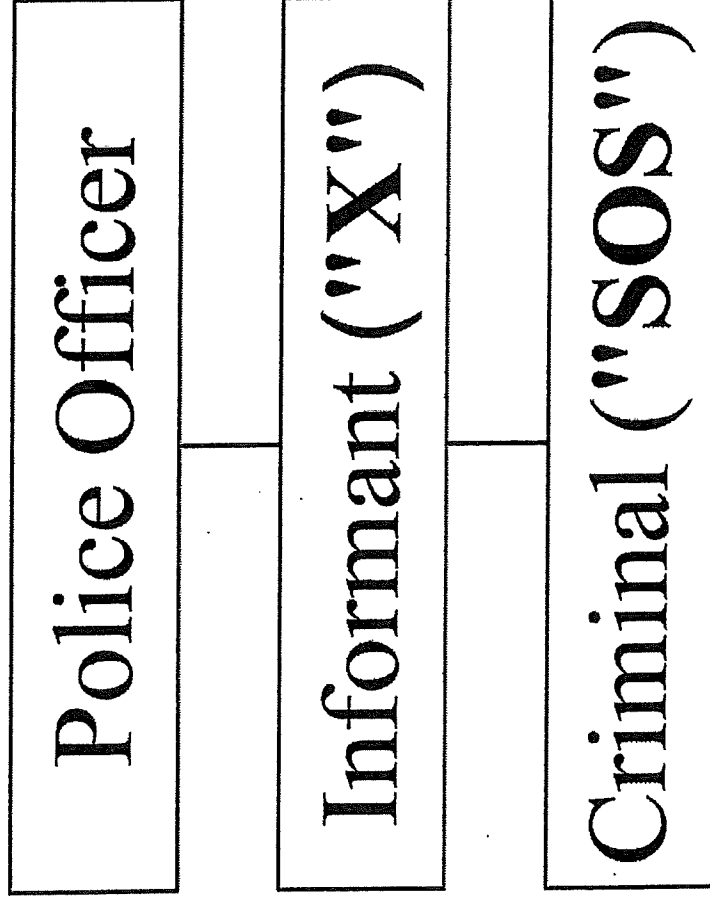


Per §1041 – definitions:

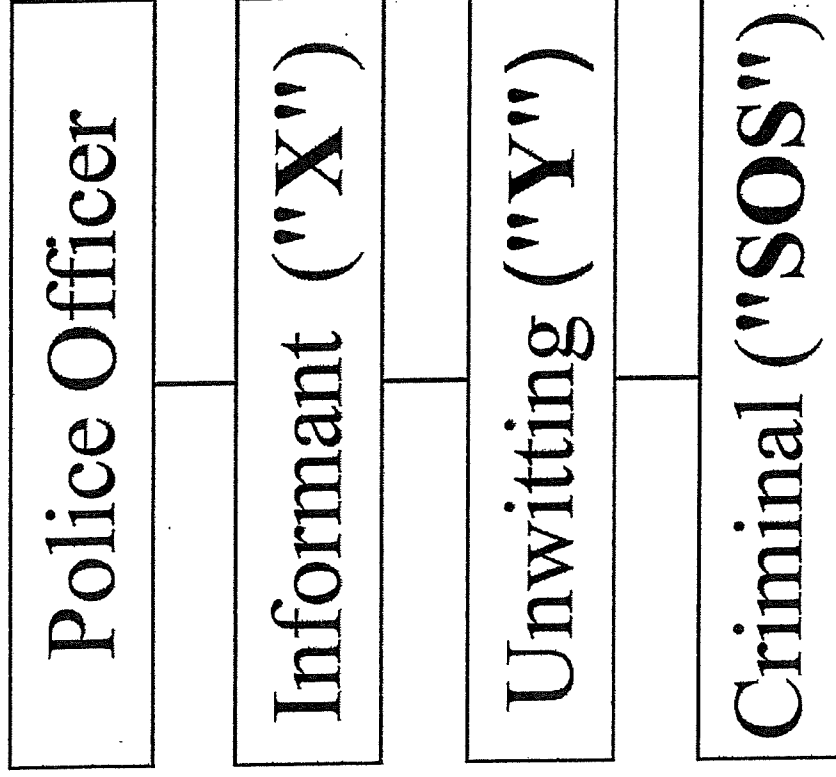
- Sub§ (b)(3), “**Person**” includes a volunteer or employee of a crime stopper organization.
- Sub§ (d), “**Crime stopper organization**” means a private, nonprofit organization that accepts & expends donations used to reward persons who report to the organization information concerning alleged criminal activity, and forwards the information to the appropriate law enforcement agency.

[Added on June 24, 2013, AB #1250]

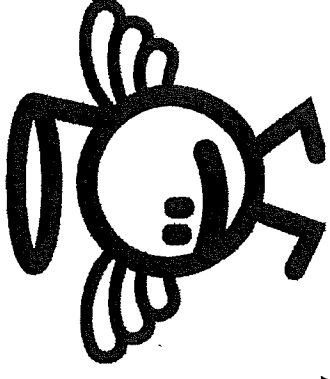
Typical Informant Situation



Informant & Unwitting Situation



Citizen Informants



→ Definition:

- A citizen informant is one who is generally **motivated by good citizenship**, i.e., a desire to help the community.
- They are **presumed reliable**.
 - People v. Hill (1974) 12 Cal. 3d 731, 761.
 - Humphrey v. App. Div. (2002) 29 Cal.4th 569.
- Motivation is important regardless of history.
 - People v. Schulle et al. (1975) 51 Cal.App.3d 809
- Not necessary to disclose citizen's name in a SW affidavit.
 - People v. Lombera (1989) 210 Cal.App.3d 29.

Reliable Informants



→ Definition:

- A reliable informant is one who has generally:
 1. Worked with the police prior to the current investigation;
 2. Given **truthful & reliable past info**;
 3. May have a pending criminal matter;
 4. May want something in exchange for helping the police.
- They generally **don't need to be corroborated.**

Informant Corroboration Summary

TYPE	RELIABLE	NEED TO CORROBORATE
<i>Citizen</i>	Yes	No*
<i>Untested</i>	No	Yes
<i>Reliable</i>	Yes	No*

* Attempts should be made to corroborate as much info as possible.

Surveillance Disclosure Test

- The following two requirements must be met **before disclosure is required**:
1. The surveillance location is material to the defendant's guilt or innocence and
 2. Nondisclosure would deprive the defendant of a fair trial.



Legal Problems of Working with CIs

(#1 of 2)

A. Boulas v. Superior Court (1986) 188 Cal.App.3d 422.

1. Case dismissed because DA & Police told the CI to dump his attorney if the CI was going to work with the Police, and then chose his new attorney.
2. DA & Police later backed out of the deal.
3. **“We find the government’s conduct in the present matter to be outrageous in the extreme, and shocking to the conscience; we are thereby, compelled to order the dismissal of the present case.” Id. at 434.**

Franks v. Delaware (1978) 438 U.S. 154.

(Decisional Chart)

TYPE OF OMISSIONS OR MISSTATEMENTS	REMEDY	ACTION
Negligent	None.	None.
Innocent	None.	None.
Material omissions made with a deliberate or reckless disregard for the truth.	FRANKS Hearing.	Add material omission & re-test Probable Cause in the affidavit.
Material misstatements made with a deliberate or reckless disregard for the truth.	FRANKS Hearing.	Correct material misstatement & re-test Probable Cause in the affidavit.

Defense Attacks on CI Reliability

(#2 of 2)

➔ To justify a Rivas type hearing a Defendant must raise some reasonable doubt regarding either:

1. The existence of the CRI; or
2. The truthfulness of the affiant's report concerning the CRI's prior reliability; or
3. The information the CRI furnished.

➤ People v. Luttenberger (1990) 50 Cal.3d 1.

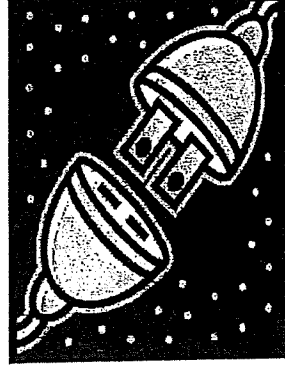
HOBBS Attachment Stays With The Court Unless:

1. “that **disclosure** of the information **would impair further investigation of criminal conduct or endanger the safety** of the confidential informant;
2. that **security procedures at the court clerk’s office** governing a sealed search warrant affidavit are **inadequate to protect the affidavit against disclosure to unauthorized persons;**
3. that **security procedures at the law enforcement agency or other entity are sufficient** to protect the affidavit against disclosure to unauthorized persons;
4. that the law enforcement agency or other entity has **procedures to ensure that the affidavit is retained for 10 years after final disposition** of the noncapital case, **permanently in a capital case**, or until further order of the court (see Gov. Code §68152, subd. (j)(18)), so as to protect the defendant’s right to meaningful judicial review; and
5. that the **magistrate has made a sufficient record of the documents that were reviewed**, including the sealed materials, so as to permit identification of the original sealed affidavit in future proceedings or to permit reconstruction of the affidavit, if necessary.” (*Id.* at 368.)

➤ **People v. Galland** (2008) 45 Cal.4th 354.

Probable Cause Section – (#1 of 8)

- The guts of the search warrant affidavit.
- California Penal Code §1525, ¶ #1.
 - “A search warrant cannot be issued but upon probable cause supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched.”



Probable Cause Section – (#3 of 8)

Shopping List

1. X
2. XX
3. XXX
4. XXXX
5. XXXXXX
6. XXXXXXXX

P\C =

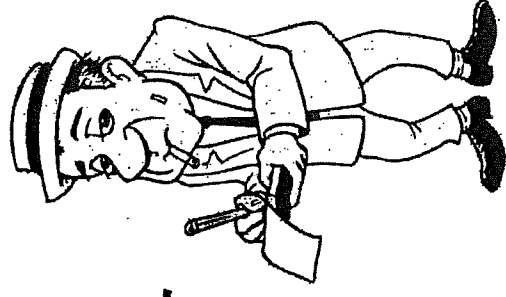
Probable Cause Section – (#5 of 8)

Four Components:

1. Introductory paragraph identifying the players:
 - “I am currently investigating the _____ occurring at _____. Assisting me in this investigation is _____, who has discussed all of _____ relevant information and observations in this investigation with me. Also assisting me in this investigation is a confidential _____ informant (hereinafter referred to as “X”).”
 - Example:

A. See Control Buy affidavit, page 3:1–6.

(PDF of EXHIBIT C → Page IV–132)



Probable Cause Section – (#7 of 8)



Four Components Continued:

4. Police corroboration.

(See PDF of CI Buy affidavit, pages 5:19 – 7:25.)

- ➔ Crime stopper reports
 - People v. Callen (1987) 194 Cal.App.3d 558
- ➔ Prior police reports on location(s) or suspect(s)
- ➔ Automated criminal history information (CII & CJIC)
- ➔ DMV information on suspects(s) and/or vehicle(s)
- ➔ Phone # cross directory checks
- ➔ Controlled buy or monitored phone call
- ➔ Anything else that applies

PC Example for Serial Case

VICTIM	DATE	LOCATION	M.O.	ITEMS TAKEN
V#1	1-1-2013	Manor Estates Hotel	Hotel pass key	Jewelry & Cash
V#2	1-2-2013	River City Inn	Hotel pass key	Jewelry & a black velvet bag.
V#3	1-3-2013	River City Plaza Suites	Hotel pass key	Ceramic ducks, horses & dancers

STALENESS EXAMPLES

- Child Pornography evidence on a computer downloaded 10 months earlier. – **Okay**.
 - United States v. Lacy (9th Cir. 1997) 119 F.3d 742.
- Narcotics SW issued 52 days after a controlled buy. – **Not okay**.
 - People v. Hulland (2003) 110 C.A.4th 1646.
- Narcotics SW issued 82 days after last instance of illegal activity. – **Not okay**.
 - People v. Hirata (2009) 175 C.A.4th 1499.

Valid Probable Cause Egs. – (#1 of 4)

I. General:

- Totality of the circumstances standard.
 - Illinois v. Gates (1983) 462 U.S. 213.
- Statement of **co-conspirator** is sufficient for SW.
 - People v. Aho (1985) 166 Cal.App.3d 984.
- Info from **CRI alone** is sufficient for a SW.
 - P. v. Hansborough (1988) 199 C.A.3d 579.

Valid Probable Cause Egs. – (#3 of 4)

III. Monitored phone calls:

- **Monitored phone call by untested CI sufficient for a search warrant.**
 - **People v. Levine** (1984) 152 C.A.3d 1058.
- **Monitored phone call between CI & suspected PCP dealer sufficiently corroborates CI to justify the issuance of a search warrant for the PCP dealer's residence.**
 - **People v. Rochen** (1988) 203 C.A.3d 684.



Non-Disclosure Order

Pursuant to an official criminal investigation by the [INSERT AGENCY NAME IN UPPER CASE & BOLD] _____ POLICE DEPARTMENT of suspected felonies, it is ordered that your company furnish on presentation of this search warrant, legible copies of subscriber information, as more particularly set forth in this search warrant.

[INSERT COMPANY NAME IN UPPER CASE & BOLD] _____ COMPANY is not to disclose the existence of this search warrant, search warrant affidavit, or request for documents unless Officer

[INSERT NAME & TITLE OF AFFIANT IN UPPER CASE & BOLD] _____ is first notified of such disclosure and prior approval for such disclosure is obtained from the Court. There is probable cause to believe that any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Search Warrant Conclusion – (#2 of 3)



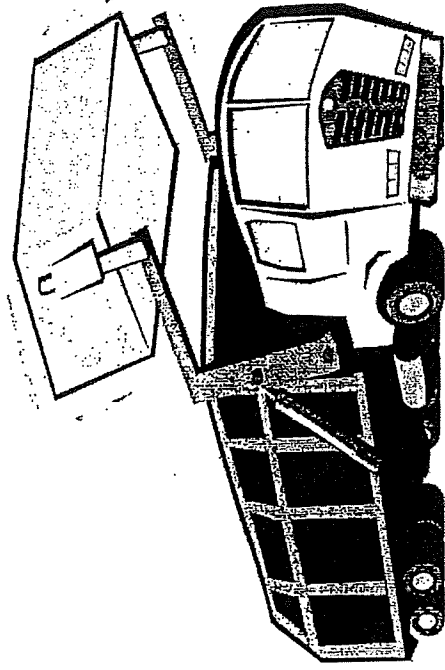
2nd Paragraph:

That based upon the above facts, I request that a daytime (**or nighttime**) search warrant be issued with respect to the above location for the seizure of said property, and that the same be held under California Penal Code Section 1536.

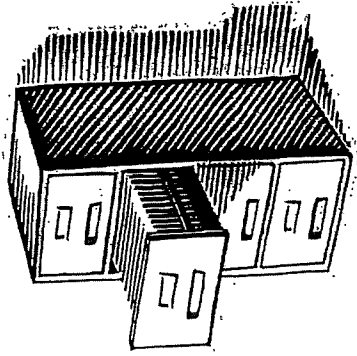
Search Warrant

Conclusion – (#3 of 3)

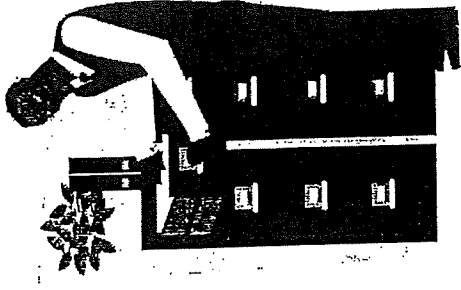
3rd & Final Paragraph:



I also request that upon adjudication of the case(s) against all defendant(s) in this action, including the resolution of any and all appeals, and the written concurrence of the Santa Clara County District Attorney's Office, the **property be disposed of in accordance with the procedures set forth in California Penal Code §§1407 to 1422**, without the necessity of a further Court Order pursuant to California Penal Code §1536.



Special Masters (#1 of 2)



- Discussed in PC §§1524(c)-(f).
- **Purpose** behind the section is to **protect** the **privacy** of the communications between persons who avail themselves of the services of certain professionals.
- **Applies only when seeking documentary evidence in the possession of certain professionals, who are not suspected of being involved in the crime.**

Probable Cause (PC §1525)

→ PC §1525, Paragraph #2:

- “The [search warrant] application shall specify when applicable that the place to be searched is in the possession or under the control of an attorney, physician, psychotherapist or clergy person.”
- **Clear relation back to the Special Masters issue.**

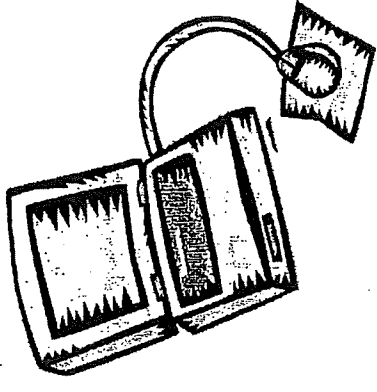
PC §1524(g) – Newsman Privilege

- Provides an exception to the issuance of a search warrant.
- Refers to Newsman Privilege of Evidence Code §1070 [“**Shield Law**”], which is also found in Article 1, §2(b), of the California Constitution.
- Deals with **protection for a newspaper’s failure to disclose “source of information”**.
- Provides a newsperson immunity from being found in contempt for failing to disclose info.



Computers, Publishers & Criminals

(#1 of 3)



- The Privacy Protection Act
 - 42 U.S.C. 2000aa et. seq.
- Application to blogs, public websites and web pages.
- Restricts law enforcement seizure of “documentary materials” [2000aa-7(a)] or “work product materials” [2000aa-7(b)] intended for publication to the public.

Computers, Publishers & Criminals

(#3 of 3)

→REMEDY:

- Not Suppression of the evidence.
- Civil liability, per 42 USC 2000aa-6(a).
- See Steve Jackson Games v. U.S. Secret Service, et. al.
(5th Cir. 1994) 36 F. 3d 457 .
 - \$51,040 award of actual damages against the Secret Service.
 - \$195,000 in damages (\$1K each per individual).
 - \$57,000 in attorney's fees & costs.

Anticipatory Search Warrants

- They are constitutional.
 - U.S. v. Grubbs (2006) 547 U.S. 90.
- The triggering condition does not need to be placed on the face of the warrant.
 - U.S. v. Grubbs (2006) 547 U.S. 90.
 - People v. Sousa (1993) 18 Cal.App.4th 549.
 - Triggering condition should be placed on the face of the Warrant.
- Requirement:
 - Probable cause to believe the contraband sought will be at the location searched when the warrant is executed.

Magistrate's Role in Reviewing Warrants

- “The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a **fair probability** that contraband or evidence of a crime will be found in a particular place.”

➤ Illinois v. Gates (1983) 462 U.S. 213, 238.

Jurisdiction of Magistrates – (#1 of 4)

→ May issue SWs for any location within their county.

- Heroin SW issued by Magistrate in Long Beach District valid when served in Lakewood District.

➤ People v. Easley (1983) 34 Cal.3d 858.

- Magistrate's authority not limited to own judicial district.

➤ People v. Smead (1985) 175 Cal.App.3d 1104.

➤ People v. Emanuel (1987) 87 Cal.App.3d 205.

Jurisdiction of Magistrates – (#3 of 4)

- Good faith saved a SW issued by a San Bernardino Magistrate for San Bernardino County, directed to any peace officer in L.A. County and served by L.A. Co SO in San Bernardino County.

➤ **People v. Galvan** (1992) 5 Cal.App.4th 866.

- **PC 830.1(A)**

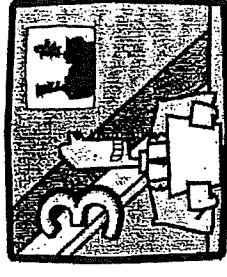
1. Public offense committed in political subdivision employing peace officer.
2. Consent.
3. Offense committed in immediate presence of peace officer & “there is immediate danger to person or property, or of the escape of the perpetrator of the offense.”

Service of SW (PC §1530)

“A search-warrant may in all cases be served by any of the officers mentioned in it's directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.”

Assistants:

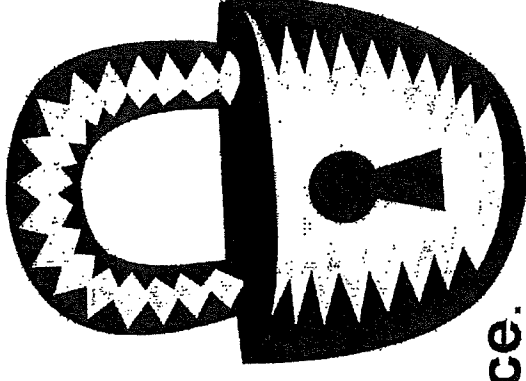
- *Press:* Wilson v. Layne (1999) 526 U.S. 603.
Hanlon v. Berger (1999) 526 U.S. 808.
- *Dogs:* People v. Russell (1987) 195 Cal.App.3d 186.
- *Victims:* P. v. Sup. Ct. (Meyers) (1979) 25 Cal.3d 67.



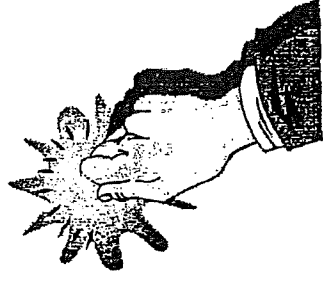
Securing Scenes Pending a SW

This is illegal unless:

1. There is some type of **emergency**.
2. There is an **arrest** inside the location.
3. There is **consent** to search.
4. There is a **valid need to preserve evidence**.
 - **U.S. v. Segura** (1984) 468 U.S. 796.
 - **Murray v. U.S.** (1988) 487 U.S. 533.
 - **Illinois v. McArthur** (2001) 531 U.S. 326.



Knock Notice & SWs – Statutes



➤ PC §1531:

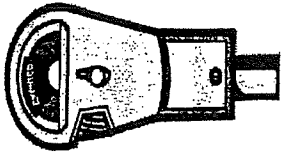
- “The officer may break open any outer or inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if, **after notice** of his authority and purpose, **he is refused admittance.**”

➤ PC §1532:

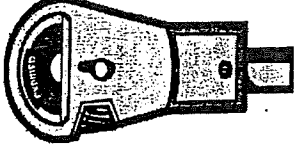
- “He may break open any outer or inner door or window of a house, for the **purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.**”

Arrest Warrant Entries

- ➔ Must have either an arrest warrant or a search warrant to arrest someone in a residence.
 - Payton v. N.Y. (1980) 445 U.S. 573.
- ➔ Must have a search warrant to enter a 3rd party's residence to arrest someone on a warrant.
 - People v. Ramey (1976) 16 Cal.3d 263.
 - Steagald v. U.S. (1981) 451 U.S. 204.



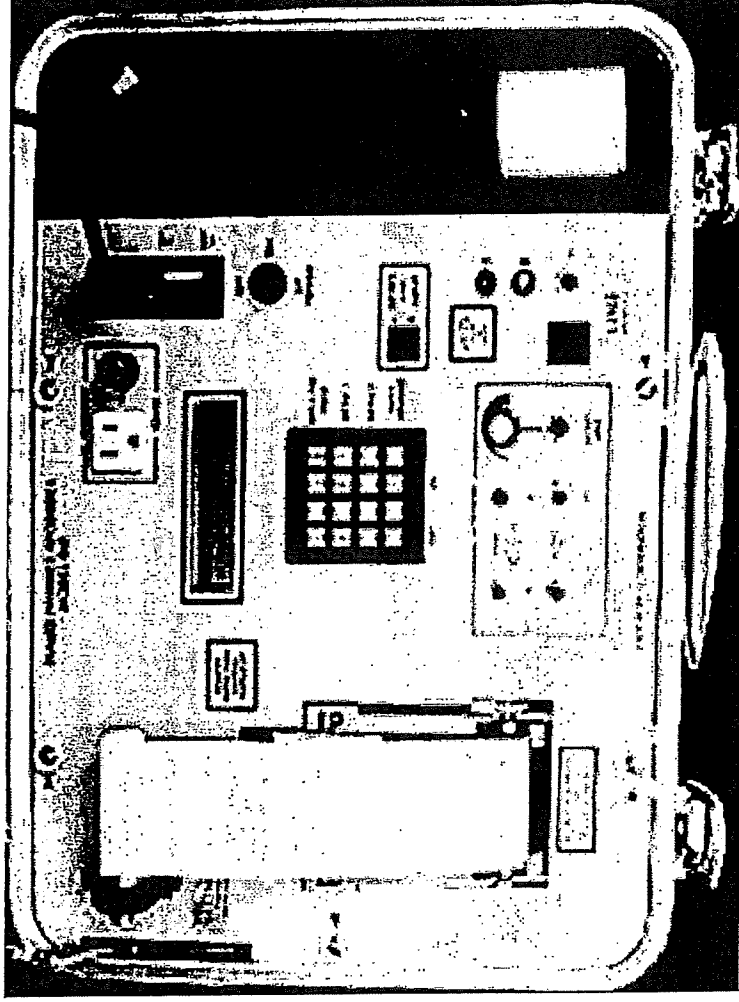
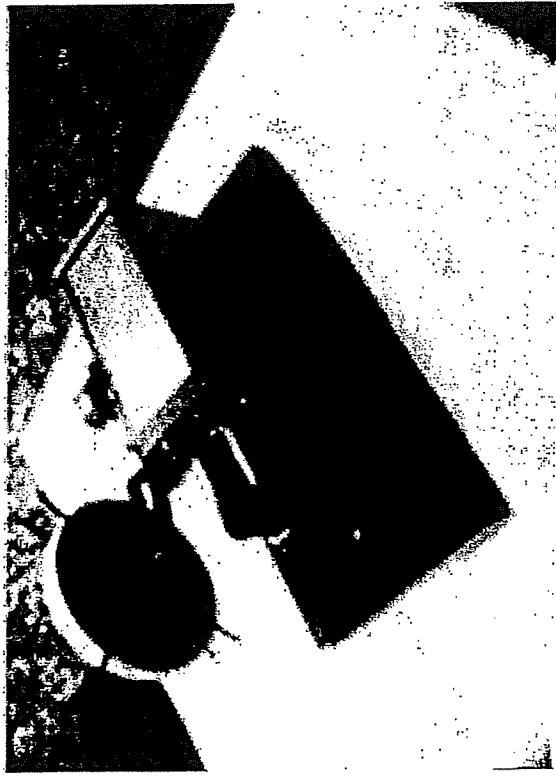
Reissuing Expired Search Warrants



- The issuance of a second warrant is essentially a new proceeding.” Id. at 263.
 - Srigo v. United States (1932) 287 U.S. 206.
- A search warrant may be reissued after it expires, provided the information in support of the search warrant is not stale and the magistrate makes a new finding of probable cause.
 - People v. Brocard (1985) 170 C.A.3d 239.



PEN REGISTERS



California PC §§ 638.50 – Definitions

(#1 of 4)

- a. “Wire Communication” & “electronic communications” have the meanings set forth in §629.51(a).**
- **“Wire communication”** means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of a like connection in a switching station), furnished or operated by any person engaged in providing or operating these facilities for the transmission of communications.

California PC §§ 638.50 – Definitions

(#3 of 4)

- b. **“Pen register”** means a device or process that records or decodes dialing, routing, addressing or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, **but not the contents of a communication.**
- **Does not include** a billing device or process used by a provider or customer of a wire or electronic communication service, or a device or process used for cost accounting or other similar purpose in the ordinary course of its business.

California PC §§ 638.51 – Court Order

- A court order is required to install or use a pen register or trap & trace.
- Court Order allowable:
 1. To operate, maintain & test a wire or electronic communication service.
 2. To protect the providers rights or property.
 3. To protect the user from abuse of service or unlawful service use.
 4. To record the fact that a wire\electronic communication was done to protect the provider or a user from fraudulent, unlawful, or abusive serve use.
 5. If the user's consent obtained.
- Sub§ (c): Penalty is \$2.5K fine, or up to 1 year in CJ or imprisonment per PC §1170(h).
- Good faith reliance defense in civil or criminal action.

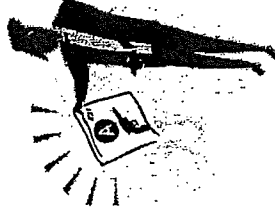
California PC §§ 638.52 – Application (#2 of 4)

→ Magistrate's Responsibility:

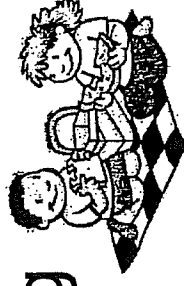
- Shall enter an ex parte order if he\she finds the info likely to be obtained is relevant to an ongoing investigation & there is PC to believe the info will lead to any of the following:
 - Items 1-5, 8 & some of 12 of PC §1524
 - “The location of a person unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is PC.”
- Physical location of subscriber can't be disclosed, except to the extent determined from the phone #.
- Hobbs (1994) 7 Cal.4th 948, sealing allowed.

Grounds for Issuance Cont. (PC §1524)

4. When the property or things consist of any item or constitutes any **evidence tending to show a felony has been committed** or that a particular person committed a felony.



5. Any evidence that tends to show the **sexual exploitation of a child** within the meaning of **PC §311**, or possession of matter depicting sexual conduct of a person under the age of 18 years, in **violation of PC §311.11**.



Grounds for SW Issuance – (PC §1524)

12. GPS\Tracking Devices:

→ Any felony if:

- Tends to show that a felony has been committed or is being committed, **OR**
- Tends to show that a **particular person** has committed or is committing a felony, **OR**
- Will **assist in locating an individual** who has committed or is committing a felony

→ Any **misdemeanor** if:

1. A violation of F&G Code or Public Resources Codes has been or is being committed, **OR**
2. Tend to show a **particular person** has committed that act or is committing that act **OR**
3. Will **assist in locating an individual** that has committed or is committing that act.

California PC §§ 638.52 – Application (#4 of 4)

→ Order Period:

- **Good for a maximum of 60 days.**
 - Can extend for another 60 days upon a new application if the officer shows there is continuing Probable Cause that the info or items sought are likely to be obtained under the extension.

→ Information Obtained:

- Unless otherwise ordered by the magistrate, results provided to the Officer at reasonable intervals during regular business hours.

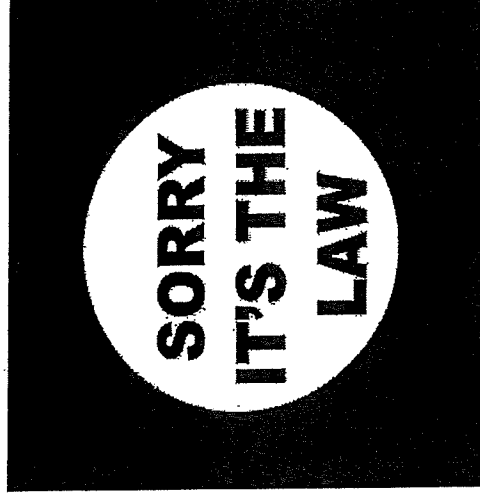
→ Reasonable compensation per PC §653.53(c).

California PC § 638.53 – Issuance w/o Order (#2 of 2)

- By midnight of 2nd full court day after installation, a written application per §638.52 be submitted to the same magistrate.
- If an order is issued, the order shall recite the time of the oral approval & **apply retroactively**.
 - If order is not issued, the use shall **immediately terminate** when:
 1. The sought info is obtained or
 2. The application for the order is denied or
 3. Midnight of the 2nd full court day after installation, **whichever is earlier**.

CA ECPA (aka: SB 178) (#2 of 2 – General Info)

- **Adds 4 sections:**
 - **§1546 — Definitions**
 - **§1546.1 – Governmental restrictions**
 - **§1546.2 – Notice Requirements**
 - **§1546.4 – Standing granted to anyone**



CA ECPA (aka: SB 178)

(#2 of 5 – Definitions)

- **Some §1546 Definitions (Cont'd):**
 - **§1546(e):** “**Electronic communication service**” means a service that provides to its subscribers or users
 - **§1546(f):** “**Electronic device**” means a device that stores, generates, or transmits information in electronic form.
 - **§1546(g):** “**Electronic device information**” means any information stored on or generated through the operation of an electronic device, including the current & prior locations of the device.

CA ECPA (aka: SB 178)

(#4 of 5 – Definitions)

- **Some §1546 Definitions (Cont'd):**
 - **§1546(k): “Specific consent” means consent provided directly to the government entity seeking information, including, but not limited to, when the government entity is the addressee or intended recipient or a member of the intended audience of an electronic communication. Specific consent does not require that the originator of the communication have actual knowledge that an addressee, intended recipient, or member of the specific audience is a government entity.**

CA ECPA (PC 1546.1(b))

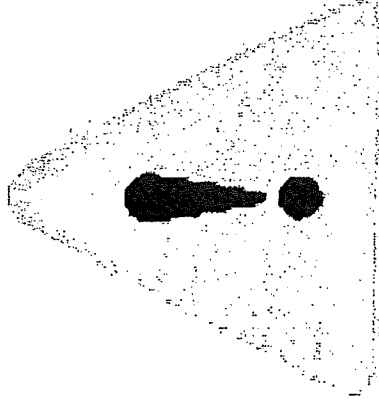
- ➔ **Government entity may only compel production of or access to electronic communication info from a service provider, or compel the production of or access to electronic device info from any person or entity other than the authorized possessor under the following (4) circumstances:**
1. A warrant.
 2. A wiretap order.
 3. Order for electronic reader records.
 4. Subpoena, but
 - a) **Info not sought for the purpose of investigating or prosecuting a criminal offense.**

CA ECPA (PC 1546.1(b))

5. If the gov't entity believes **in good faith** that an emergency involving danger of death or serious physical injury to any person requires access to the electronic device info.
6. If the gov't entity believes **in good faith** that the device is lost, stolen, or abandoned, **provided that** the entity shall only access electronic device info in order to attempt to ID, verify, or contact the owner or authorized possessor of the device.
7. The device is **seized from an inmate's possession** or found in an area of a correctional facility under the jurisdiction of the DOC&R where inmates have access and the device is not in the possession of an individual and the device is not known or believed to be in the possession of an authorized visitor.

SW LIMITATIONS – PC §1546.1(d)(2)

- **Info obtained that is unrelated to the objective of the warrant shall be sealed & not subject to further review, use or disclosure w/o a court order.**
 - Court shall issue an order upon a finding that there is **PC to believe that the information is relevant to an active investigation or review, use, or disclosure is required by state or federal law.**



PERMISSIVE COURT ACTION – PC 1546.1(e)

- Appoint a **special master**, as described in PC 1524(d), charged w\ensuring that only info necessary to achieve the objective of the SW or order is produced or accessed.
 - Per **People v. Superior Court (Laff)**, (2001) 25 Cal. 4th 1546, **court pays** for the special master, **not the People**.
- Require that any **info obtained** that is **unrelated to the SW objective be destroyed** as soon as feasible after the termination of the current investigation & any related investigations or proceedings.

Notice Contents – PC 1546.2 (b)(3)

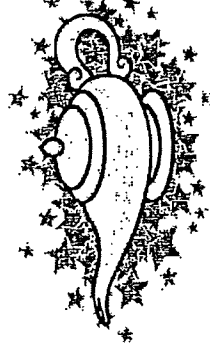
- Service by registered or 1st class mail, email or other means reasonably calculated to be effective.
 1. ID of the SW target(s).
 2. **Copy of all electronic info obtained or a summary or that info including, at a minimum,**
 - a. The # & types of records disclosed
 - b. The date & time when the earliest & latest records were created
 - c. **A statement of the grounds for the court's determination to grant delayed notice.**

GOOD FAITH EXCEPTION – GENERAL POINT

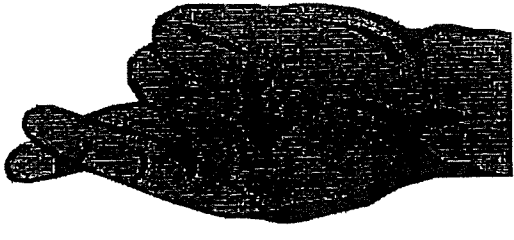
- It bears emphasis, however, that the good faith exception requires a **sincerely held and objectively reasonable belief** that the warrant is based on a valid application of the law to all the known facts. **Good faith is not a blanket excuse for any police behavior. A warrant is not a general hunting license, nor is it a mantle of omnipotence, which cloaks its holders in the King’s power to “do no wrong.”** And perhaps most important, **it is not an excuse if the police are not frank with the magistrate in proceedings to obtain the warrant —** proceedings that are typically *ex parte*.
 - **United States v. Reilly** (2nd Cir., N.Y. 1996) 76 F.3D 1271.

- “Good faith is not a magic lamp for police officers to rub whenever they find themselves in trouble.”

Id. @ 1280.



Good Faith & Invalid Search Warrants

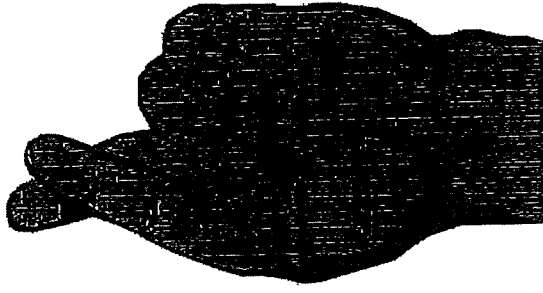


Won't Apply If:

1. Affidavit is false or written with a reckless disregard for the truth, **or**
2. Non-neutral magistrate, **or**
3. Affidavit so lacking that no reasonable officer can believe it states PC, **or**
4. SW is facially deficient by being overbroad.

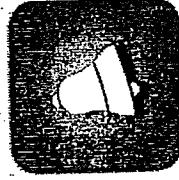
PART IV

Good Faith Exception (Chapter VIII)



Notifications – PC 1546.2.

- **Serve notice on target** unless delay granted by the court.
- Required a **sworn affidavit for an order delaying notification** and prohibiting provider of info from notifying the party that info sought.
- Court allowed to grant **extensions of up to 90 days each time.**



NOTICE

INFO ADMISSIBILITY – PC §1546.1(d)(3)

- If directed to a service provider, the warrant shall be accompanied by an order requiring the service provider to verify the authenticity of the produced electronic info by providing an affidavit that complies with the requirements set for in Evid. Code §1561.
 - Admission of that info subject to Evid. Code §1562.

SW CONTENTS – PC §1546.1(d)

- **Describe with particularity the info to be seized by specifying:**
 - a. **The time periods covered and, as appropriate and reasonable,**
 - b. **The target individuals or accounts**
 - c. **The applications or services covered, and**
 - d. **The types of information sought.**

CA ECPA (PC 1546.1(b))

➔ **Government entity may access electronic device information by means of physical interaction or electronic communication with the device only under the following (7) circumstances:**

1. A warrant.
2. A wiretap order.
3. Specific consent of the authorized possessor
4. Specific consent of the owner of the device, only when the device has been reported as lost or stolen

CA ECPA (aka: SB 178)

(#5 of 5 – Definitions)

- **Some §1546 Definitions (Cont'd):**
 - **§1546(l): “Subscriber information”** means the name, street address, telephone number, email address, or similar contact information provided by the subscriber to the provider to establish or maintain an account or communication channel, a subscriber or account number or identifier, the length of service and the types of services used by a user of or subscriber to a service provider.

CA ECPA (aka: SB 178)

(#3 of 5 – Definitions)

- **Some §1546 Definitions (Cont'd):**
 - **§1546(h): “Electronic information”** means electronic communication information or electronic device information.
 - **§1546(i): “Governmental entity”** means a department or agency of the state or a political subdivision thereof, or an individual acting for or on behalf of the state or a political subdivision thereof.
 - **§1546(j): “Service provider”** means a person or entity offering an electronic communication service.

CA ECPA (aka: SB 178)

(#1 of 5 – Definitions)

- **Some §1546 Definitions:**
 - **§1546(b): “Authorized possessor”** means the possessor of an electronic device when that person is the owner of the device or has been authorized to possess the device by the owner of the device.
 - **§1546(c): “Electronic communication”** means the transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system.

CA ECPA (aka: SB 178) (#1 of 2 – General Info)

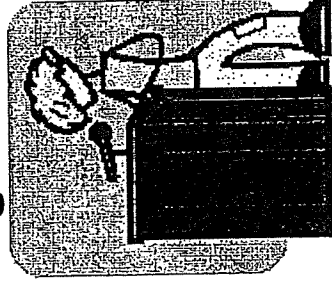
- Signed by Governor Brown on October 8, 2015, but **effective 1-1-2016**.
- Enacts §§1546, 1546.1, 1546.2 & 1546.4.
- Per Proposition 8 exception, it **replaces the Federal ECPA in CA**.
- It is **more restrictive than federal law** and was aimed at cell phone searches, but is much broader than that.
 - **2705(d) orders** are definitely dead in California.

California PC § 638.53 – Issuance w/o Order (#1 of 2)

→ Oral application & oral order allowed

→ Magistrate must determine all of the following:

- 1. Grounds upon which an order could be issued under §638.52.**
- 2. PC to believe emergency situation exists w\respect to crime investigation.**
- 3. PC to believe a substantial danger to life or limb exists authorizing immediate installation.**



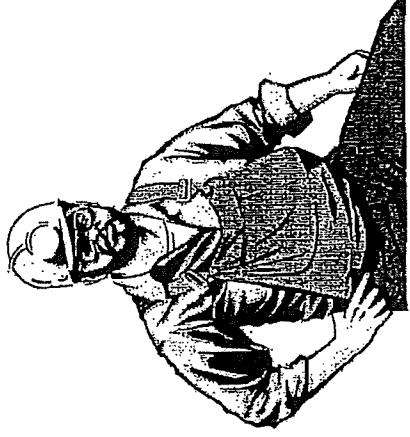
California PC §§ 638.52 – Application (#3 of 4)

→ Order shall specify:

1. ID, if known, of the person to whom the phone line is leased or in whose name the phone is listed.
2. ID, if known, of the person who is the subject of the criminal investigation.
3. # & if known, physical location of the phone line to which device attached.
 - If trap & trace, the geographical limits of the order.
4. A statement of the offense to which the info obtained relates.
5. If requested, direct the furnishing of info, facilities & technical assistance necessary to install the device.

Grounds for Issuance Cont. (PC §1524)

8. When the property or things to be seized include an item or any evidence that tends to show a **violation of Section 3700.5 of the Labor Code**, or tends to show that a particular person has violated that section.



Grounds for SW Issuance (PC §1524)

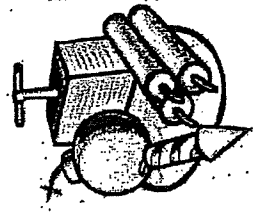


1. (Recovery of) stolen or embezzled property.

2. Property or things used as a means of committing a felony.



3. Property or things in possession of anyone with the intent to use them as a means of committing a public offense, or in the possession of a 3rd Party to whom delivered for the purpose of hiding them.



California PC §§ 638.52 – Application

(#1 of 4)

- **Requirements:**
 - **In writing**
 - **Under Oath**
 - **Shall ID the peace officer**
 - **Shall ID the agency doing the investigation**
 - **Applicant shall certify “the information likely to be obtained is relevant to an on-going criminal investigation”**
 - **Shall include a statement of the offense to which the info relates.**

California PC §§ 638.50 – Definitions (#4 of 4)

- c. “Trap & trace device” means a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but not the contents of a communication.**

California PC §§ 638.50 – Definitions

(#2 of 4)

• **“Electronic communication”** means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system, **but does not include any of the following:**

- A. Any wire communication defined in paragraph (1).
- B. Any communication made through a tone-only paging device.
- C. Any communication from a tracking device.
- D. Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

California PC §§ 638.50 – 638.53

- **Assembly Bill 929 – Signed into law August 13, 2015, effective January 1, 2016.**
- **Adds 4 sections:**
 - A. §638.50 – Definitions**
 - B. §638.51 – Court Order Requirement**
 - C. §638.52 – Application**
 - D. §638.53 – Magistrate Findings**

Specific Search Warrant Problems

HIV Situations & Penal Code §1524.1

- Humphrey v. Sup. Court (2002) 29 Cal.4th 569.

Financial Records & Gov't. Code §§7460 - 7493

- See pgs. V – 11–12, §2.8 of search warrant manual for items list.
- See **EXHIBIT Q** for sample Bank Records SW & Affidavit.

Phone Records

Pen Registers

➔ **See:** PC §§638.50 – 638.53 (**Added 8-13-2015**).

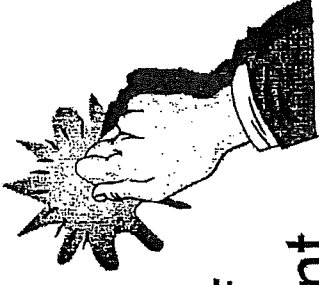
Computers, Publishers & Criminals

- See pg. III – 10, §4.6 of search warrant manual for a **proposed language solution**.

Miscellaneous Search Warrant Points

- PC §1534 (Valid for 10 days).
 - GC §6800 – 1st Day doesn't count in time period.
 - People v. Clayton (1993) 18 Cal.App.4th 440.
- PC §1535 (Receipts).
 - W. Covina v. Perkins (1999) 525 U.S. 234.
 - People v. Calabrese (2002) 101 Cal.App.4th 79.
- PC §1536 (Hold pursuant to Court Order).
 - Remember our drafting discussion and search warrant endings.
- PC §1537 (Returns & Sworn Inventories).

Knock Notice & SWs – Case Law



- Common law knock-notice principles are part of the reasonableness inquiry of the 4th Amendment.
 - Arkansas v. Wilson (1995) 514 U.S. 927.
- Knock-notice cannot be excused in advance under California law, but it is possible under Federal law.
 - People v. Parsley (1975) 9 Cal.3d 934.
 - Richards v. Wisconsin (1997) 520 U.S. 385.
- The remedy for a knock notice violation is **no longer suppression of the evidence**.
 - Hudson v. Michigan (2006) 547 U.S. 586.

Knock Notice – Purposes & Policies

1. **The protection & privacy of the individual in their home.**
2. **The protection of innocent persons who might be on the premises.**
3. **The prevention of situations that could lead to a violent confrontation between the residents and people entering the home without notice.**
4. **The protection of the police who could be injured by a startled homeowner.**

Sample Use of PC §1530

In the event the above described records are not located at the **[INSERT BANK' S NAME & BRANCH]** located at **[INSERT ADDRESS TO BE SEARCHED]**, **SANTA CLARA COUNTY, CALIFORNIA**, pursuant to this search and seizure order and California Penal Code §1530, the bank branch manager is hereby ordered to produce those records at the above described **[INSERT BANK' S NAME & BRANCH]** within 10 days of service of this warrant.

Jurisdiction of Magistrates – (#4 of 4)

→ Statutes:

- PC §781 [Offenses in 2 Jurisdictions.]
- PC §782 [Offenses on Jurisdictional boundaries.]
- PC §1524(j) [Victim of ID theft resides in issuing court's county.]

→ CA Judges have no jurisdiction in other states.

Jurisdiction of Magistrates – (#2 of 4)

→ Okay for another county if prosecuting crime in Magistrate's county.

- Santa Clara County Case.
 - People v. Ruster (1976) 16 Cal.3d 690.
- Search warrant issued in Santa Barbara County for defendant's home in L.A. County upheld.
 - People v. Fleming (1981) 29 Cal.3d 698.

Magistrates – Neutral & Detached

→ Not Neutral & Detached:

- Attorney General
 - Coolidge v. New Hampshire (1971) 403 U.S. 443.
- Paid magistrate
 - Connally v. Georgia (1971) 429 U.S. 245.
- Voyeuristic Judge
 - LoJi Sales, Inc. v. N.Y. (1979) 442 U.S. 319.



Magistrates



Defined in Penal Code §808.

- Supreme Court Justices
- Justices of the Court of Appeal
- Superior Court Judges

NOT MAGISTRATES:

- Court Commissioners
- Judges pro tems
- Court referees

Types of Affidavits

→ Written. [PC §1526(a)]

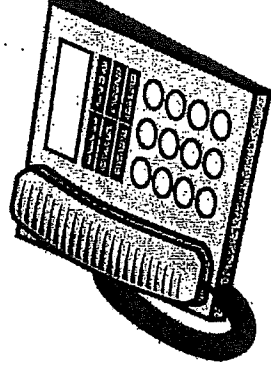
→ Oral.

- Telephonic search warrants.
- PC §§ 1526(b) & 1528(b).
- See checklist (EXHIBIT G, A-97 to A-101) & blank telephonic form on CD.

→ Facsimile transmission & electronic mail search warrants.

- Procedure set forth in PC §1526(b)(2).
- See §7.4, pages III-20, in the SW Manual.
- See checklist (EXHIBIT I, A-127 to A-131) on CD.

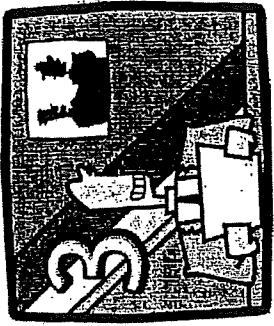
→ Hybrid approach.



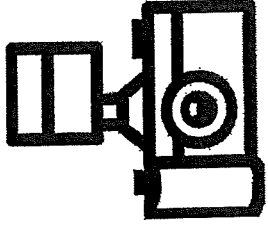
Computers, Publishers & Criminals (#2 of 3)

- **Proposed Solution:**

- I know that under the First Amendment Privacy Protection Act (hereinafter “PPA”), which can be found at 42 U.S.C. 2000aa, that the law protects work product and documentary materials that are in the possession of persons who intend to publish that information to the public. **However**, the materials sought under this search warrant fall within an **exception** to the PPA based on the fact that I have probable cause to believe and do believe that the suspect(s) under investigation, are engaged in hate crimes, specifically crimes against **[INSERT VICTIM CATEGORY AS DEFINED IN PENAL CODE SECTIONS 422.55 and 422.56]**, and that the suspect(s) in possession of the above described materials has committed or is committing a crime to which the materials relate.



Evidence Code §1070(c)



Unpublished information includes:

... “information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.”



PART III

Statutory & Case Law Related Search Warrant Issues (Chapter III)



Special Masters (#2 of 2)

Applies to the following 4 professionals:

- **Lawyer** (Evidence Code §950).
- **Doctor** (Evidence Code §990).
- **Psychotherapist** (Evid. Code §1010).
 - Special master not required because psychiatrist involved in fraudulent Medi-Cal billing.
 - **People v. Blasquez** (1985) 165 C.A.3d 408.
- **Clergy member** (Evidence Code §1030).

Special Requests

- **Photographing & videotaping SW service**
 - See page IV – 89–90, §6.1.1 in search warrant manual.
- **Assistance of federal officers**
 - See pages IV – 91–92, §6.1.2 in search warrant manual.
- **Civilian experts**
 - See pages IV – 92–93, §6.1.3 in search warrant manual.
- **Off-site forensic analysis of computers**
 - See pages IV – 93–94, §6.1.4 in search warrant manual.
- **Non-disclosure orders**
 - See pages IV – 94–95, §6.1.5 in search warrant manual.
 - See **EXHIBIT Q, Pages A-187 to A188.**

PC §1533 – Nighttime Endorsements



→ Justifiable Factors:

1. Criminal enterprise operates only @ night.
2. Co-Conspirators are still outstanding & will destroy contraband if learn of suspect's arrest.
3. Arrest in house @ night & need to avoid all night vigil by police.
4. Evidence will dissipate by morning.
 - A. Gasoline traces on arsonist's clothes.
 - B. Recently stolen food.

1. In re Donald R. (1978) 85 Cal.App.3d 23.

Search Warrant Conclusion – (#1 of 3)



1st Paragraph:

Based on the above facts, which I swear under penalty of **perjury are true and correct to the best of my knowledge and belief**, I have reasonable cause to believe, and do believe, that evidence of the commissions of felonies, to wit: violation(s) of **CALIFORNIA PENAL CODE §118 (PERJURY), §487(A) (GRAND THEFT) and WELFARE & INSTITUTIONS CODE §10980(C)(2) (WELFARE FRAUD)**, and property used in the commission of said felonies, will be located on the premises described above.

Valid Probable Cause Egs. – (#4 of 4)

IV. Multiple Informants:

- (4) informants [2 citizens & 2 drug users] sufficiently corroborated each other and established probable cause for the issuance of a search warrant.
- **P. v. Terrones** (1989) 212 C.A.3d 139.

Valid Probable Cause Egs. – (#2 of 4)

I. General (Cont'd):

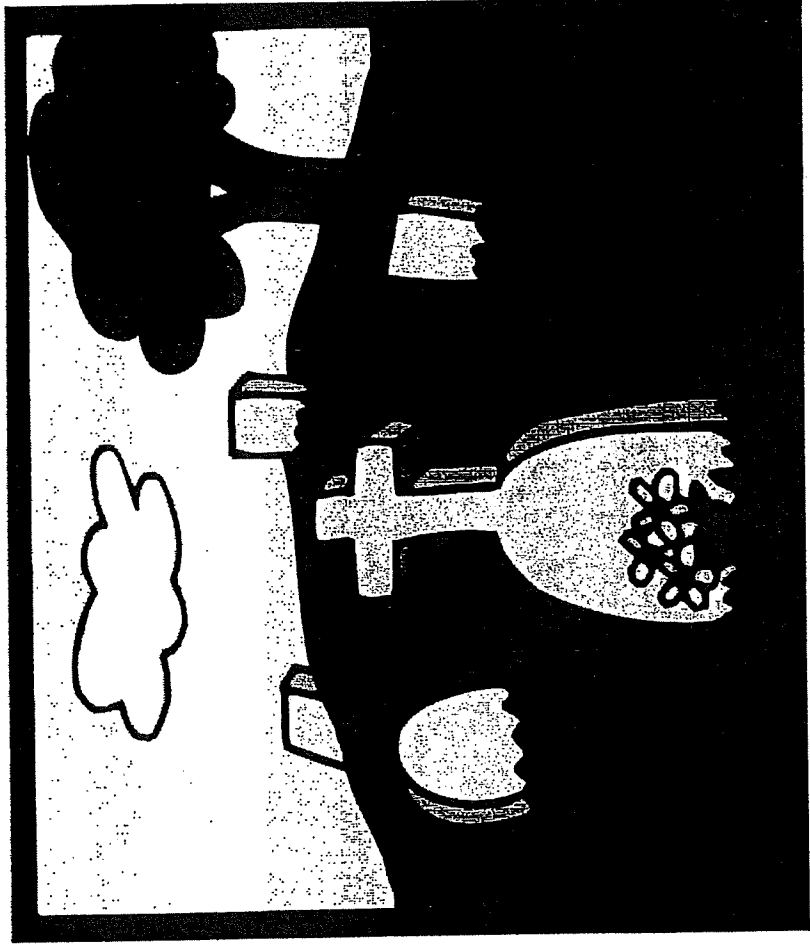
- **Anonymous tip, narcotics traffic and outstanding narcotics arrest warrant sufficient for a search warrant.**
 - **People v. Kershaw (1983) 147 C.A.3d 750.**

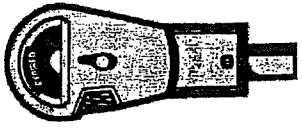
II. Control Buys:

- **CI buy from suspect who is followed to his SOS is enough to search SOS' home.**
 - **People v. Ashton (1985) 39 Cal.3d 481.**
- **Control buy sufficient for a search warrant.**
 - **P. v. Hernandez (1988) 43 C.A.3d 581.**

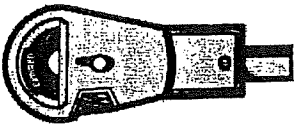
True Tale of Probable Cause

→ Dead men do tell tales





PC Staleness Considerations



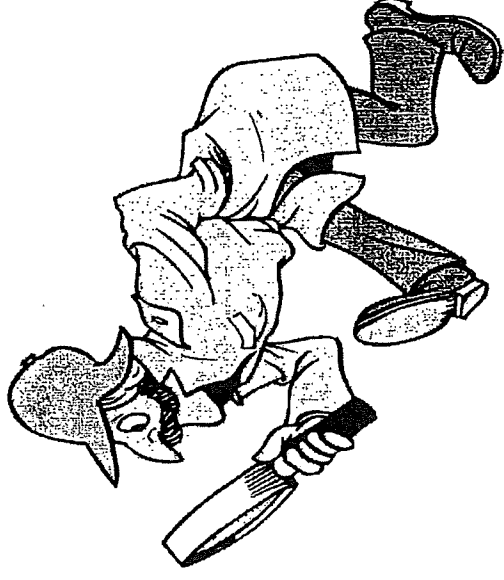
Factors to consider when drafting PC §:

1. Length of time since the information was received
2. Nature of the crime under investigation
 - Isolated criminal act vs. continuing criminal acts
3. Type of object(s) sought
 - Would the object(s) sought be of continuing utility to the suspect?
4. Location of contraband

Probable Cause Section – (#8 of 8)

- **Examples of police corroboration**

- A. See Backyard MJ affidavit, pages 6:15 – 7:3.
(PDF of EXHIBIT B → Pages IV–124 to 125)
- B. Control Buy affidavit, pages 5:19 – 7:25.
(PDF of EXHIBIT C → Pages IV–134 to 136)



Probable Cause Section – (#4 of 8)

Section includes CI information & police corroboration

Must state facts, not conclusions.

- You must set forth a nexus between the persons or locations to be searched and the items sought by the search warrant.

➤ People v. Hernandez (1994) 30 Cal.App.4th 919

Hearsay & Search Warrants,

➤ Jones v. United States (1960) 362 U.S. 257

- The United States Supreme Court held that a search warrant can be issued based on hearsay.

➤ People v. Senkir (1972) 26 Cal.App.3d 411

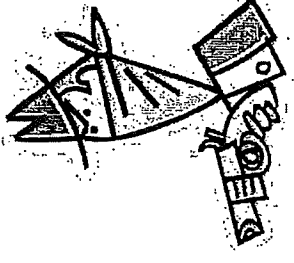
CAVEAT:

- Penal Code §964 & Personal ID Information.

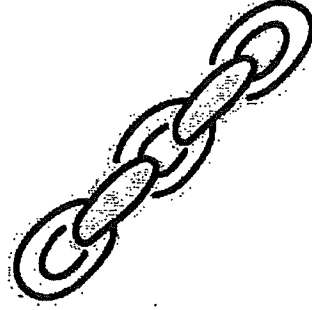
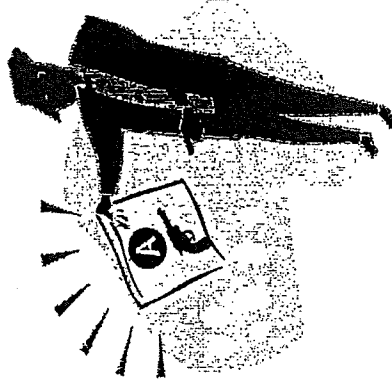
Probable Cause Section — (#2 of 8)

[PC §1525]

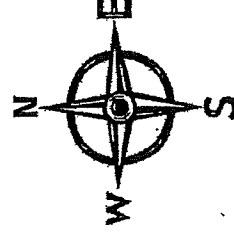
• CRIME



SW = P\IC = • EVIDENCE



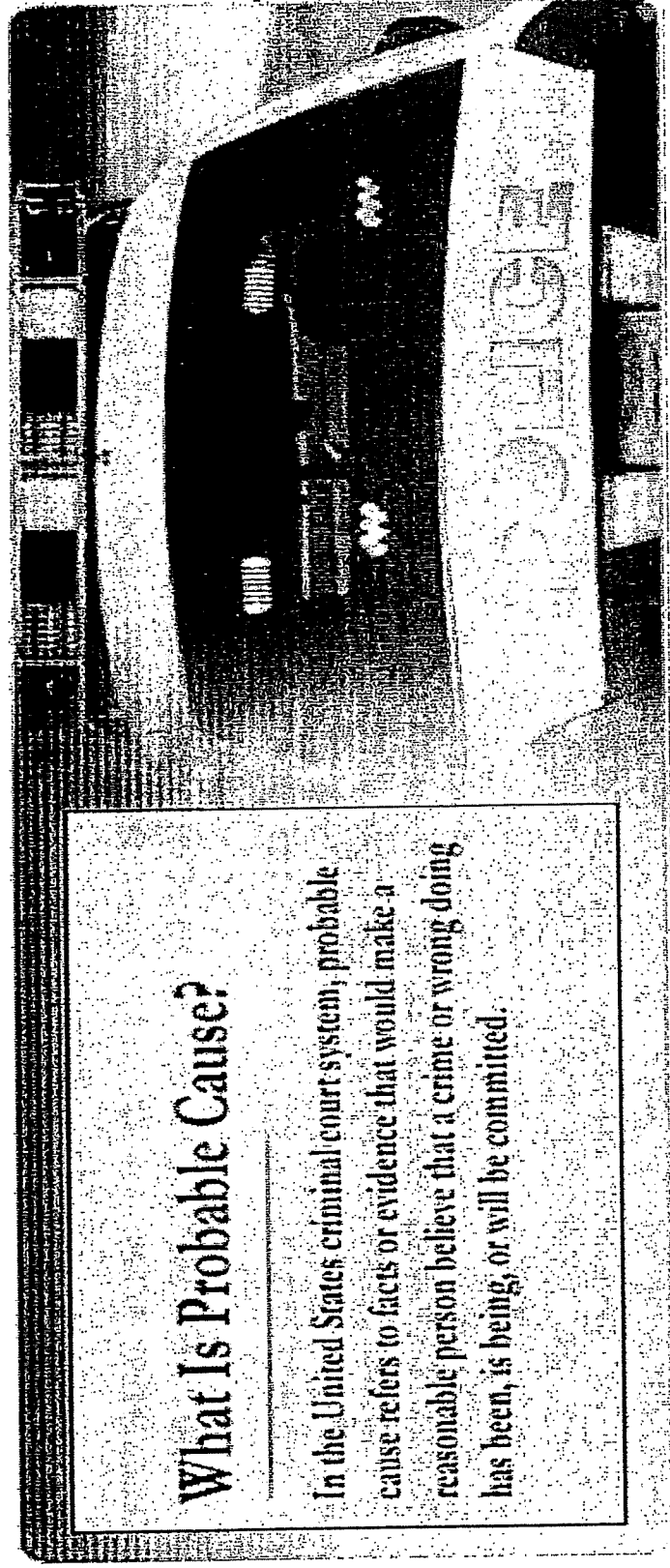
• LOCATION



THE PROBABLE CAUSE SECTION

What Is Probable Cause?

In the United States criminal court system, probable cause refers to facts or evidence that would make a reasonable person believe that a crime or wrong doing has been, is being, or will be committed.



Sealing Search Warrant Affidavits

➤ **People v. Hobbs** (1994) 7 Cal.4th 948.

➔ Underpinnings of the decision:

1. Informant privilege of CA Evid. Code §1041.
2. Long standing rule that disclosure of a CI's ID is not required to establish the legality of a search pursuant to a warrant valid on its face.
3. CA Evid. Code §915(b), which expressly authorizes Courts to use an in-camera review & discovery procedure.

Defense Attacks on CI Reliability

(#1 of 2)

→ Definition:

- A motion whereby the defense attempts to discover information about the prior reliability of a CI, as set forth in a search warrant affidavit, through pre-preliminary examination discovery, which would assist in traversing and possibly quashing the affidavit, thereby leading to a dismissal of the charges.

→ The Cases:

- People vs. Rivas (1985) 170 C.A.3d 312.
- People vs. Luttenberger (1990) 50 Cal.3d 1.

Legal Problems of Working with CIs

(#2 of 2)

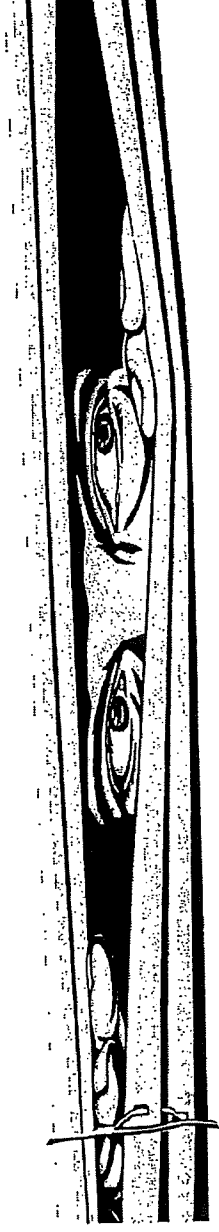
B. People v. Hayes (1988) 199 C.A.3d 1439.

1. Defendant improperly contacted about working as a CI when represented by counsel.
 - a. Need attorney's consent and involvement.
 - b. " 'Studied ignorance' generated by a failure to inquire will not be treated as equivalent to innocent or blameless conduct by law enforcement officials." Id. at 1446.

Informant Management Issues

- “When an informer becomes a material witness to the crime, the prosecution must demonstrate that it has attempted in good faith to locate him; the duty to disclose the identity of the informer cannot be evaded by deliberate failure to acquire information necessary to find him.” (Id. at 849.)
 - People v. Eleazer (1970) 1 Cal.3d 847.
- “Where an informant anonymously volunteers information about a crime, the police are under no duty to identify the source as a condition of acting on the information.” (Id. at 564.)
 - People v. Callen (1987) 194 Cal.App.3d 558.

Surveillance Locations



- The informant privilege also applies to surveillance locations.

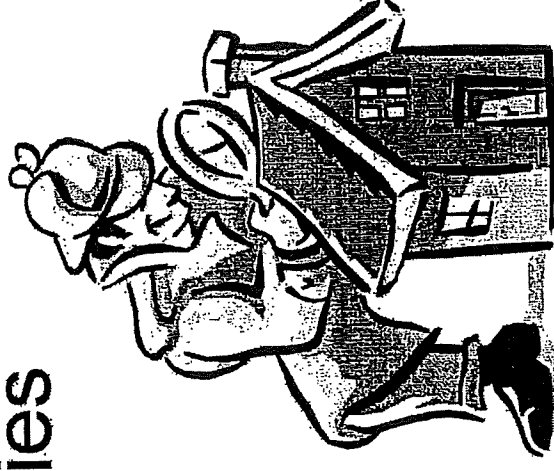
- Supporting cases:

- **People v Montgomery** (1988) 205 Cal.App.3d 1011.

- Great quote in handout.

- **People v. Walker** (1991) 230 Cal.App.3d 230.

- **In re Sergio M.** (1993) 13 Cal.App.4th 809.



Ways to Make An Informant a CRI.

- Control buys.
- Prior instances of reliability.
 - See People v. Murphy (1974) 42 Cal.App.3d 81.
[Low batting average ≠ unreliability.]
[1 out of 9; See Page II – 22.]
 - See People v. Mayer (1987) 188 Cal.App.3d 1101.
[Great sample language; See Page II – 21–22].
- Judicial Finding of Reliability.
 - Skelton v. Superior Court Of Orange County
(1969) 1 Cal. 3d 144.

Untested Informants



→ Definition:

- An untested informant is one who has generally:
 1. Not worked with the police prior to the current investigation;
 2. Has a pending criminal matter;
 3. Wants something in exchange for helping the police.

→ They are presumed unreliable.

→ They generally need to be corroborated.

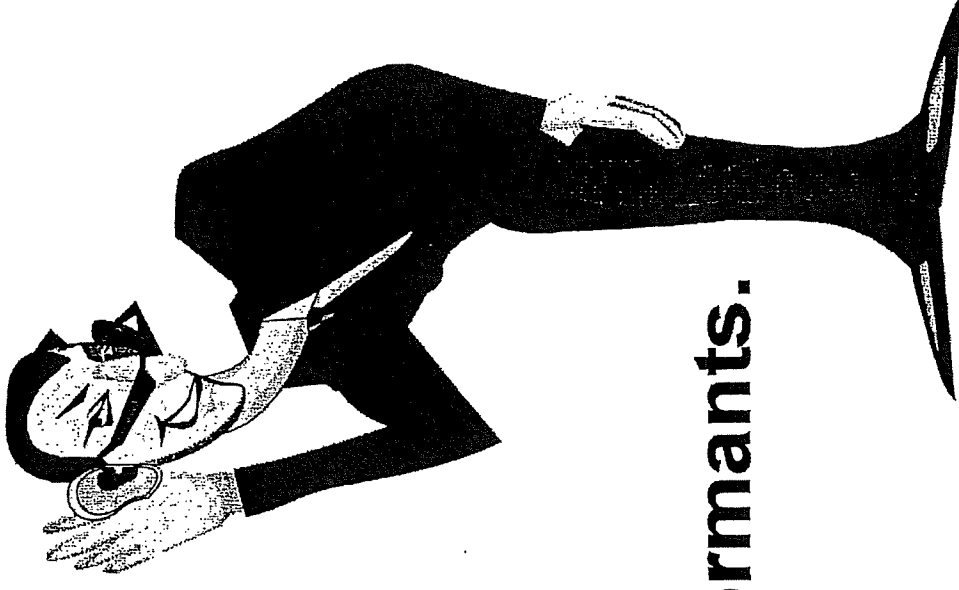
Types of Informants (CIs)

I. Citizen informants.

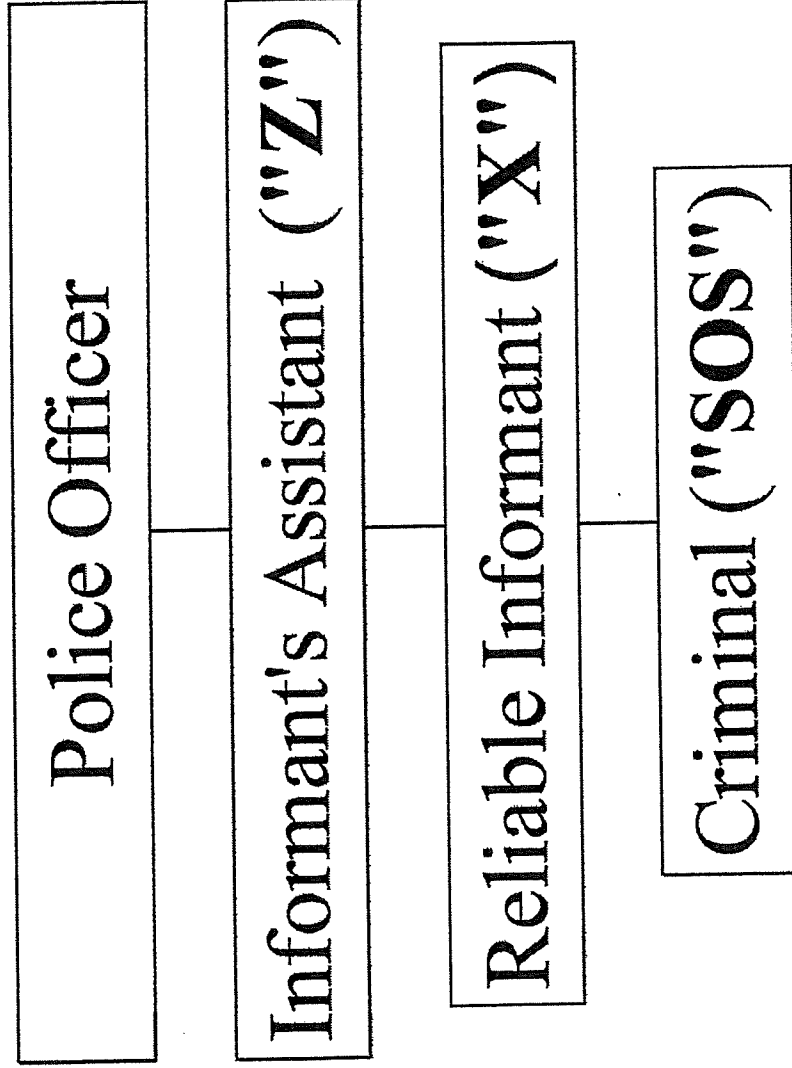
- A. Police officers.**
- B. Crime victims.**
- C. Crime witnesses.**

II. Untested informants.

III. Confidential reliable informants.

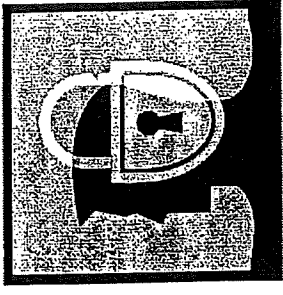


Dual Informant Situation



CA Evidence Code §1041 (#3 of 3)

(Privilege of Informant's ID)

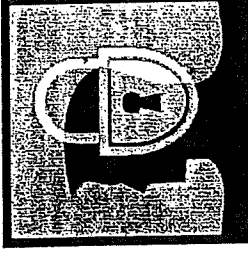


CAVEATS:

1. Per §1041(c), nothing prevents the informant from disclosing his\her identity.
2. The **CI's identity is privileged**, not the communication.
3. The DA is also a holder of the privilege.
 - **People v. Johnson** (1970) 13 C.A.3d 742.

CA Evidence Code §1041 (#1 of 3)

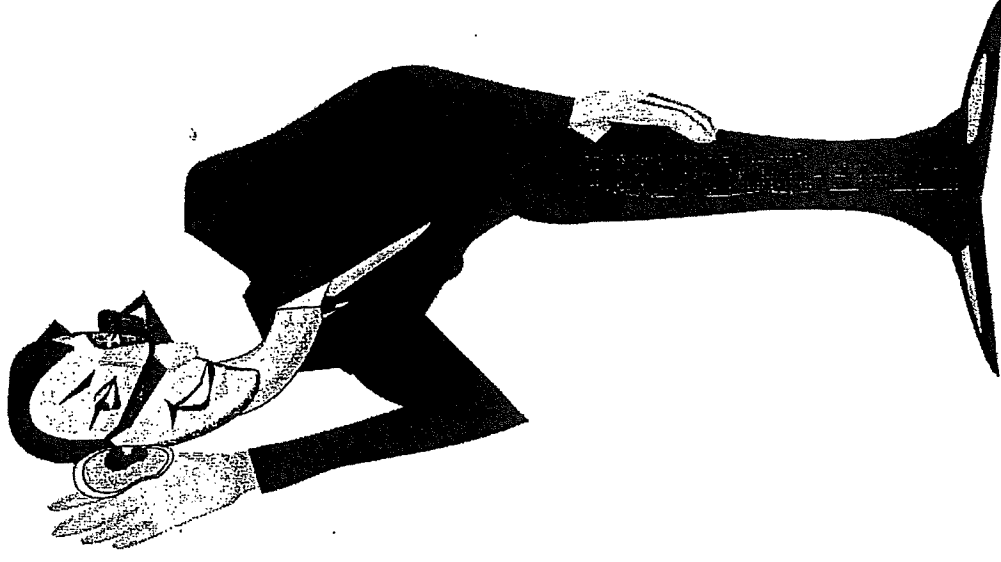
(Privilege of Informant's ID)

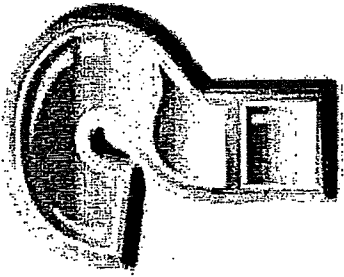


Per §1041(b), the section applies only if:

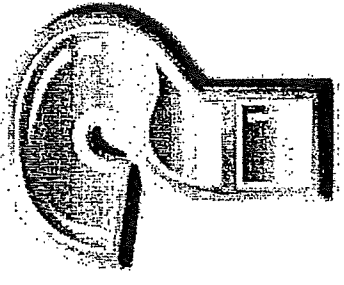
- The **information** is furnished in confidence to a law enforcement officer, or
- A representative of an administrative agency, or
- **Any person for transmittal** to a law enforcement officer or a rep. of an administrative agency.

INFORMANTS & Probable Cause (P\IC) (Chapter II)

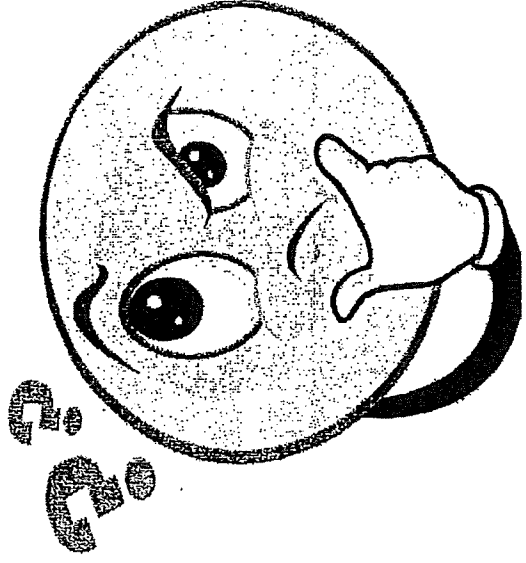




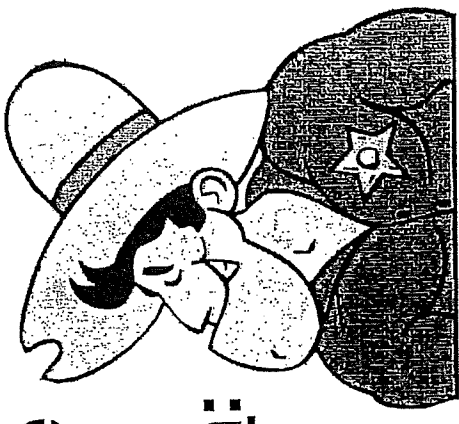
QUESTION



Can an affiant rely on another's expertise in establishing probable cause for a search warrant?

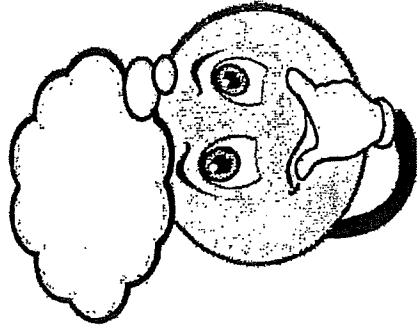


The Affiant's Expertise

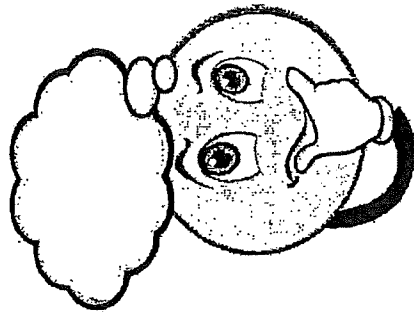


Summary of typical expertise section:

1. Summary of police agency employers.
2. Summary of relevant academy training.
3. Statement regarding annual training updates.
4. Summary of specialized classes, conferences and units.
5. Total # of relevant criminal investigations.
6. Search warrant involvement (affiant & service).
7. Total # of arrests for the crime under investigation.
8. Qualification in Court as an expert for the type of crime.



You Decide

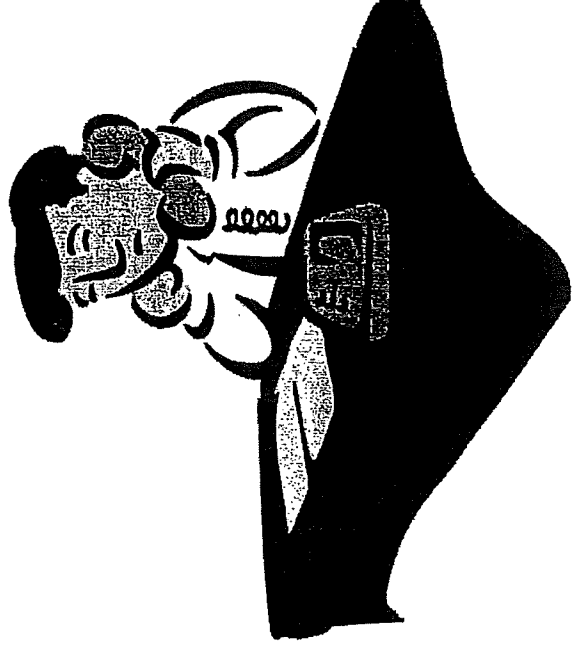


- “Any unlawful weapons or weapons whose possession is unlawful, and any ammunition, speed loaders, gun cleaning equipment, carrying cases, holsters or boxes for said firearms or unlawful weapons or any other items associated with maintaining a firearm or ammunition, and any indicia showing ownership of said weapons or firearms or ammunition.”

Item List Examples (#4 of 4)

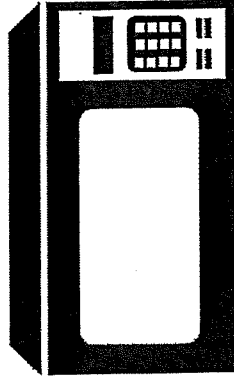
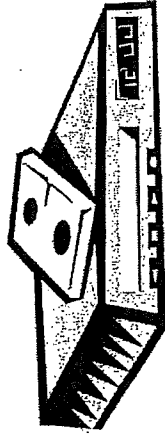
(Answering the Telephone)

The answering and recording of any and all incoming telephone calls at **[INSERT ADDRESS TO BE SEARCHED], SANTA CLARA COUNTY, CALIFORNIA**, during the execution of this search warrant.



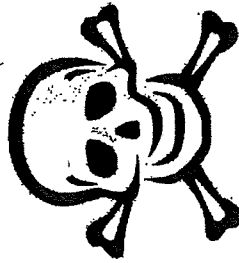
Item List Examples (#3 of 4)

(Stolen Property Record Checks)

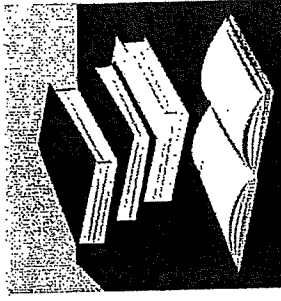


The viewing, recording and automated record checking of any and all items bearing serial numbers in the common areas of the residence and other areas of the residence that are or were under the dominion and control of **JOHN DOE 1** and or **JOHN DOE 2**, during the execution of this search warrant, said items to include, but not be limited to Blue Ray players, cameras, cellular telephones, DVD players, firearms, Ipods, microwave ovens and other small appliances, power tools, stereos and their components, television sets, video cassette recorders (VCRs) and video game consoles.

Item List Examples (#1 of 4)



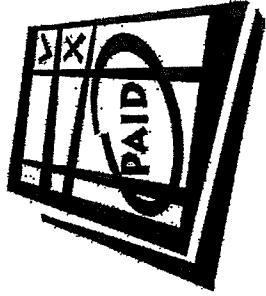
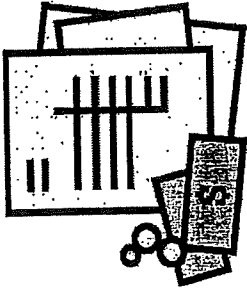
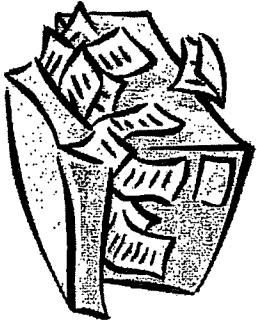
(Hate Based Organizations)



Any evidence of membership in, affiliation with, attachment with, activity of, or identity of any hate based organization targeting **[INSERT TYPE OF VICTIM TARGETED]**, including, but not limited to, clothing, drawings, emblems, flags, newspaper articles, paintings, photographs, photograph albums, posters, scrap books, signs, textbooks and training manuals, videotapes and writings, or anything else which may appear by content to depict or contain mention of membership in, affiliation with, activity of, or identity of any hate based organization targeting **[INSERT TYPE OF VICTIM TARGETED]**.

Case Law Particularity Examples (#3 of 4)

- “Articles of personal property tending to establish the identity of the person or persons in control of the premises, vehicles, storage areas, or containers where controlled substances may be found, **consisting of and including, but not limited to, utility company receipts, rent receipts, cancelled mail, envelopes and keys.**”



➤ People v. Rogers (1986) 187 C.A.3d 1001.

Case Law Particularity Examples (#1 of 4)

- “... home computers are now common, and the officers had specific information that defendant had been communicating with the minor by computer. It was reasonable to assume that the computer would contain relevant incriminating information and that the computer would be located in defendant’s home.” Id. at 1007.

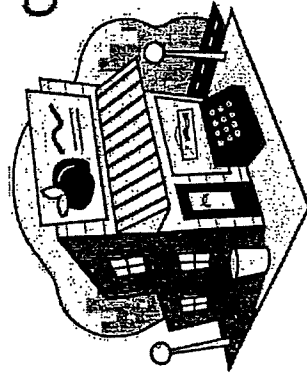
➤ People v. Ulloa (2002) 101 C.A.4th 1000.



Lack of Items List Particularity (#3 of 4)

III. Stolen Property.

- “Merchandise stolen.”
 - **Lockridge v. Sup. Ct** (1970) 3 Cal.3d 166.
- “Stolen property.”
 - **Thompson v. Sup. Ct.** (1977) 70 C.A.3d 101.
- “Television sets, power tools, appliances, hand tools, home furniture, clothing, power drill press.”
 - **People v. Murray** (1978) 77 Cal.App.3d 305.
- “Merchandise owned by Certified Grocers, LTD. and determined by Certified Grocers to be stolen.”
 - **People v. Tockgo** (1983) 145 C.A.3d 639.



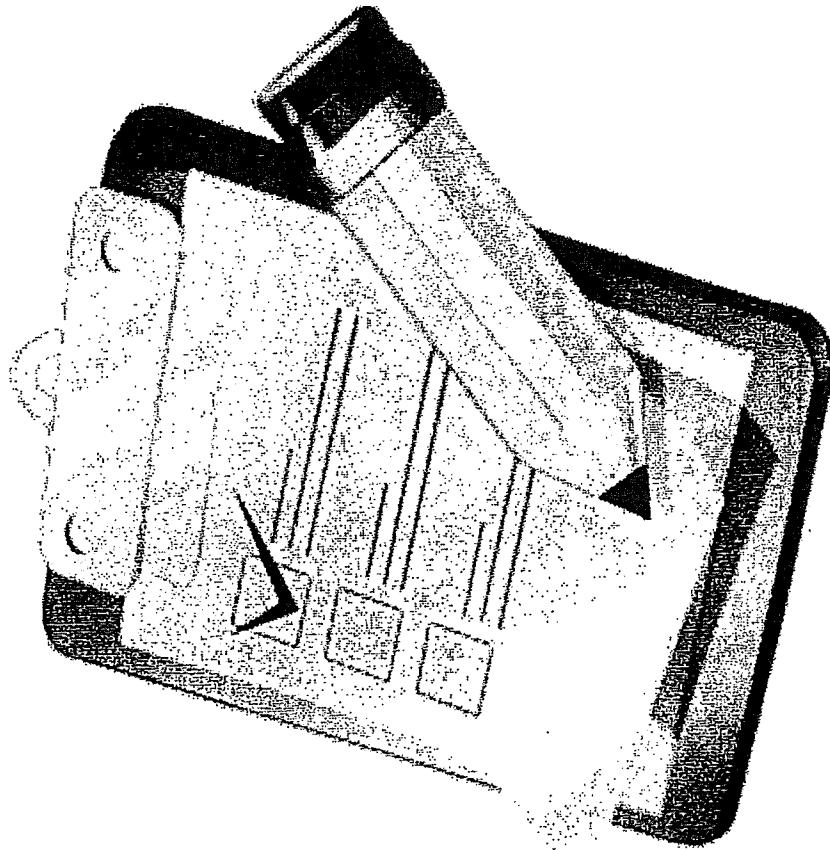
Lack of Items List Particularity (#1 of 4)

I. Books & Papers.

- The invalid phraseology read as follows:
“books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas.”
 - Stanford v. Texas (1965) 379 U.S. 476, at 486.
- “... the constitutional requirement that warrants must particularly describe the ‘things to be seized’ is to be accorded the most scrupulous exactitude when the ‘things’ are books, and the basis for their seizure is the ideas which they contain. No less a standard could be faithful to First Amendment freedoms.”
 - Stanford v. Texas (1965) 379 U.S. 476, at 485.



THE ITEMS LIST

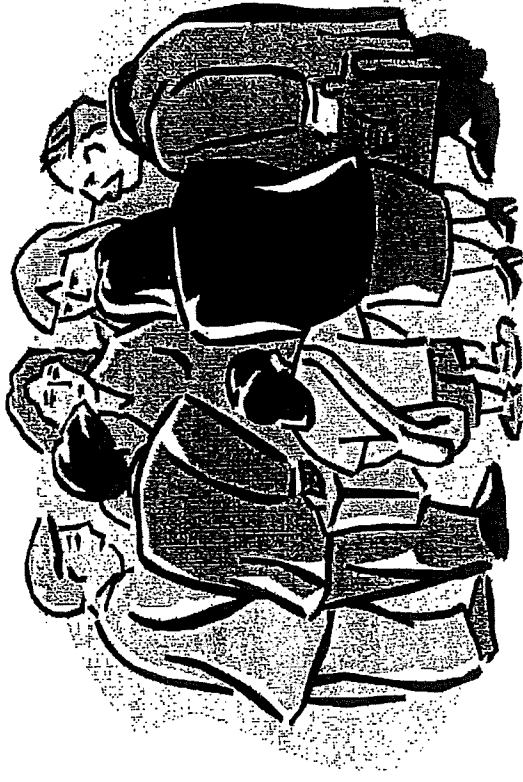


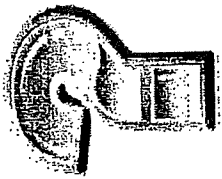
People Description Example



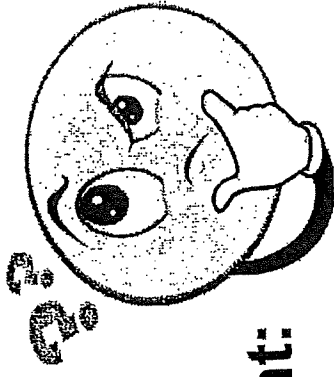
DESCRIPTIONS – PERSONS

- Suspect(s)' name(s). [Include any AKAs]
- Physical description:
 - Gender
 - Height & weight
 - Hair & eye color
- DOB, if known





QUESTION

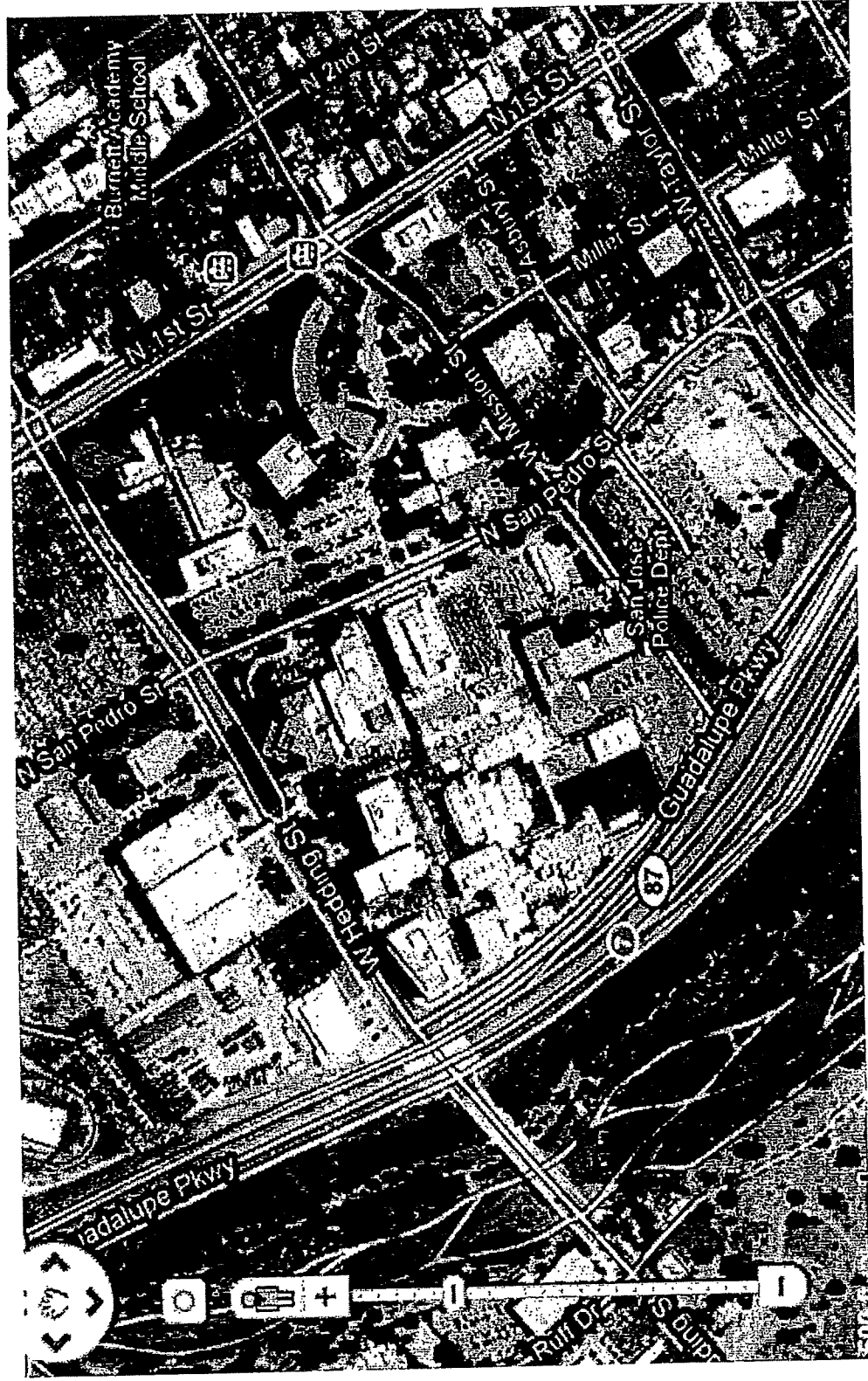


Is this rural residence description sufficient:

“ . . . premises located at and described as . . . 9110 Temettate Drive, Nipomo, CA; further described as a white and aluminum side, double-wide mobile home. The mobile home is marked by a blue wood-sided shed which is at the base of the dirt driveway leading to the mobile home. To reach this driveway you take Highway 166 to Suey Creek Road and turn left. You continue approximately 4.5 miles up Suey Creek Road, where you reach about 100 mailboxes and a road named Wildflower. You turn left on Wildflower, which turns into Temettate Drive, and continue to about one mile. The driveway is located 1.2 miles on Temettate from Suey Creek Road. . . . ”

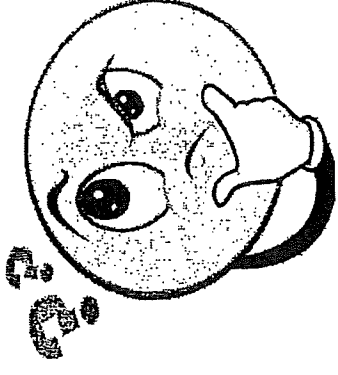
➤ **P v. Smith** (1994) 21 Cal.App.4th 942 @ 945.

Location Description E.g. (#2 of 4)





QUESTION

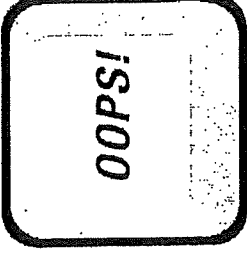


Is this residence description sufficient:

“The premises located at 2128 W. 242nd Street, City of Lomita, County of Los Angeles, further described as a single family residence with white wood exterior, white wood trim and green composition roof. There is a detached garage located to the rear (south) of the residence. The numbers 2128 are painted on the curb adjacent to the driveway leading into the location. The location is on the south side of the street with the front door facing north.”

➤ **P v. McNabb** (1991) 228 Cal.App.3d 462 @ 467.

Descriptions – Lack of Particularity



1. 1 out of 3 right is not enough.
 - U.S. v. Collins (9th Cir., 1987) 830 F.2d 145.
2. “Premises identified by Trooper Sullivan prior to the execution of the warrant.”
 - Commonwealth v. Douglas (Mass. 1987) 503 N.E.2d 28.
3. Wrong street address, exterior description & location was not particular enough.
 - Shedd v. State (Fla. Ct. App. 1978) 358 So.2d 1117.

DESCRIPTIONS – Examples

Locations:

- See pages 3–5 in Narcotics SW checklist.
(EXHIBIT E)
- See pages 3–6 in Non-Narcotics SW checklist.
(EXHIBIT F)

Persons:

- See pages 6-7 in Narcotics SW checklist.
- See pages 6-7 in Non-Narcotics SW checklist.

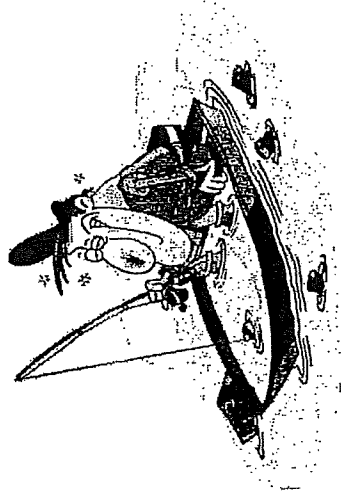
Vehicles:

- See page 6-7 in Narcotics SW checklist.
- See page 7 in Non-Narcotics SW checklist.

Grounds for SW Issuance (PC §1524)

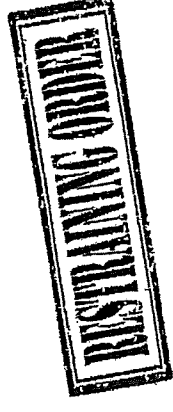
16. (A) When all of the following apply.

- i. A **sample of the blood** of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the **Harbors and Navigation Code**.
 - ii. **The person** from whom the sample is being sought has **refused an officer's request to submit to**, or has failed to complete, a **blood test** as required by Section 655.1 of the **Harbors and Navigation Code**.
 - iii. The sample will be drawn from the person in a **reasonable, medically approved manner**.
- B. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.



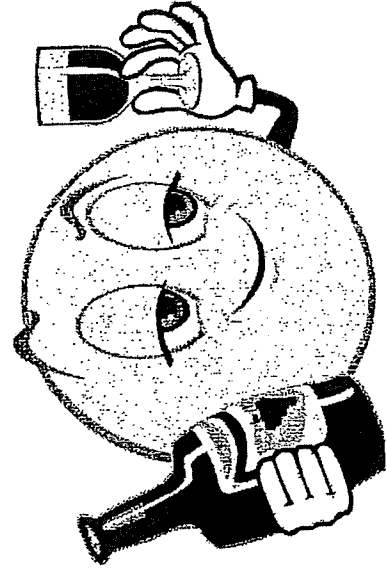
Grounds for SW Issuance (PC §1524)

14. Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100 of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.



Grounds for SW Issuance (PC §1524)

13. When a sample of the blood of a person constitutes evidence that tends to show a **violation of Section 23140, 23152, or 23153 of the Vehicle Code** and the **person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code**, and the **sample will be drawn from the person in a reasonable, medically approved manner**. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by case basis.



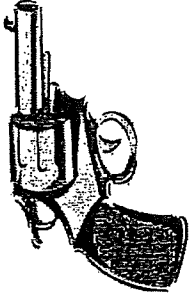
Tracking SW Misc. Points

- **Sub §5:** The device may only be installed & used in CA.
- **Sub §6:** Tracking device means “any electronic or mechanical device that permits the tracking of the movement of a person or object.”
- **Sub §7:** Daytime means **6:00 AM to 10:00 PM** according to local time.

Tracking SW Service [PC §1534]

- Mandates SW be executed in accordance w\PC §1534(b).
- **PC §1534(b):**
 - **Sub §1: The person or property to be tracked shall be indentified & the SW shall specify a reasonable length of time, not to exceed 30 days from the date the warrant is issued, that the device may be used.**
 - For good cause, the Court may grant 1 or more extensions of time, with each extension not to exceed 30 days.
 - The SW shall command the officer to execute the SW by installing a tracking device or serving the SW on a 3rd Party possessor of the tracking data.
 - **Installation shall be in the daytime** unless the magistrate, for good cause, expressly authorizes installation at another time.
 - Execution of the SW shall occur **no later than 10 days** immediately after the date of issuance.

Grounds for SW Issuance (PC §1524)

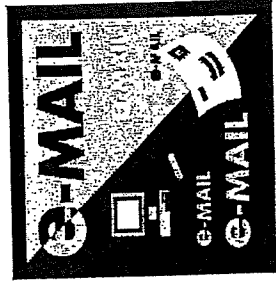


FIREARMS:

9. Or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with a **Domestic Violence incident involving a threat to human life or a physical assault.**
10. Or any other deadly weapon that is owned by, or in the possession of, or in the custody and control of a person described in W&I §8102.
 - **P. v. Sweig** (2008) 167 Cal.App.4th 1145. [DEPUBLISHED]
11. Owned by, or in the possession of, or in the custody and control of a person subject to a DV protective order that has been lawfully served and the person **failed to relinquish the firearm as required by law.**

Grounds for Issuance Cont. (PC §1524)

7. “When a provider of **electronic communication service** or remote computing service has **records or evidence, as specified in §1524.3** showing:
- That property was **stolen or embezzled**, constituting a **misdemeanor**, or
 - That property or things are in the possession of any person with the intent to use them as a means of committing a **misdemeanor** public offense, or
 - In the **possession of another** to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.”



Grounds for SW Issuance (PC §1524)

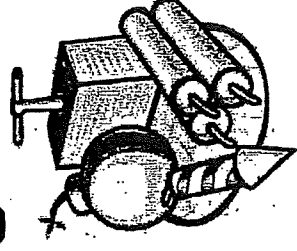


1. **Stolen or embezzled property.**

2. Property or things used as a means of committing a felony.



3. Property or things in possession of anyone with the intent to use them as a means of committing a public offense, or in the possession of a 3rd Party to whom delivered for the purpose of hiding them.

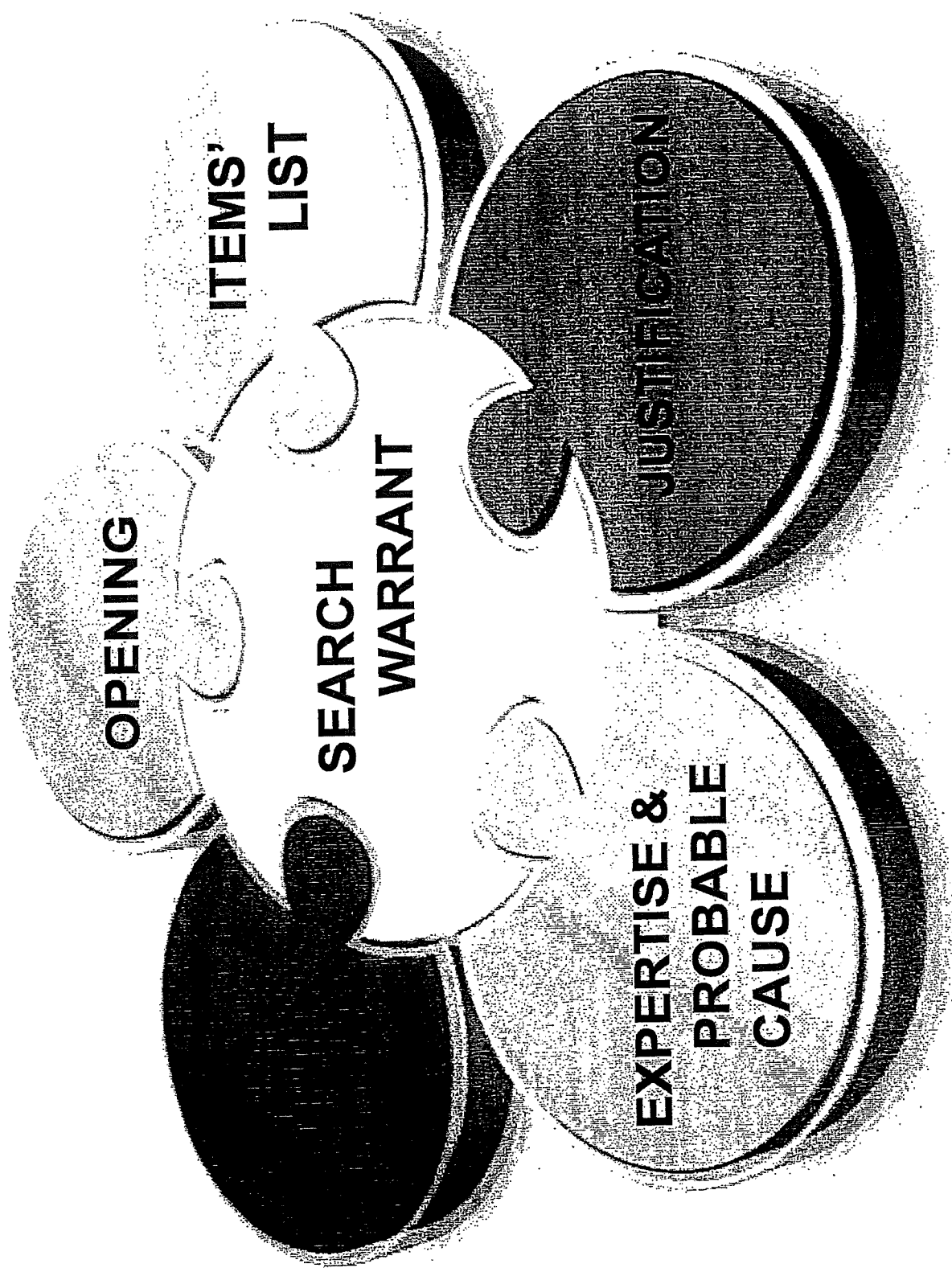


The Opening – Examples

See the following sections in the sample search warrant affidavits @ the end of

CHAPTER IV:

- 1. Generic SW affidavit – Pages 1:1 – 3:28.
(PDF of Exhibit A → IV-109 to IV-111)**
- 2. Backyard MJ affidavit – Pages 1:1 – 2:19.
(PDF of Exhibit B → IV-119 to IV-120)**
- 3. Control Buy affidavit – Pages 1:1 – 2:22.
(PDF of Exhibit C → IV-130 to IV-131)**



Generic SW Affidavit – Page 4

GENERIC SW AFFIDAVIT

☐ When all of the following apply.

- i. A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbor and Navigation Code.
- ii. The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbor and Navigation Code.
- iii. The sample will be drawn from the person in a reasonable, medically approved manner.

for the following property and evidence:

[Insert numbered Items List, but not in bold or uppercase.]

[Insert Affiant's Expertise, but not in bold or uppercase.]

[Insert Justification Section, but not in bold or uppercase.]

[Insert Probable Cause Section, but not in bold or uppercase.]
(NOTE: This may be several paragraphs and pages in length.)

Based on the above facts, which I swear under penalty of perjury are true and correct to the best of my knowledge and belief, I have reasonable cause to believe, and do believe, that evidence of the commissions of felonies, to wit: violation(s) of CALIFORNIA [INSERT CODE § & NAME(S) OF FELONY(S) IN BOLD & UPPERCASE, e.g. PENAL CODE §187 (MURDER)]

_____ and property documenting the commission of said felonies, will be located on the premises, persons, vehicles and in any and all containers, carports, garages, mailboxes, outbuildings, storage areas, sheds, trash containers and yards assigned to the above described premises.

That based upon the above facts, I request that a daytime search warrant be issued with respect to the above location for the seizure of said property, and that the same be held under California Penal Code §1536.

I also request that upon adjudication of the case(s) against all defendant(s) in this action, including the resolution of any and all appeals, and the written concurrence of the [Insert County name, but not in bold or uppercase] _____ County District Attorney's Office, the property

Generic SW Affidavit – Page 2

GENERIC SW AFFIDAVIT

plate number _____, [insert license plate # in **BOLD & UPPERCASE**] wherever located in [insert County name, but not in bold or uppercase] _____ County, California;

AND any and all containers, carports, garages, mailboxes, outbuildings, storage areas, sheds,

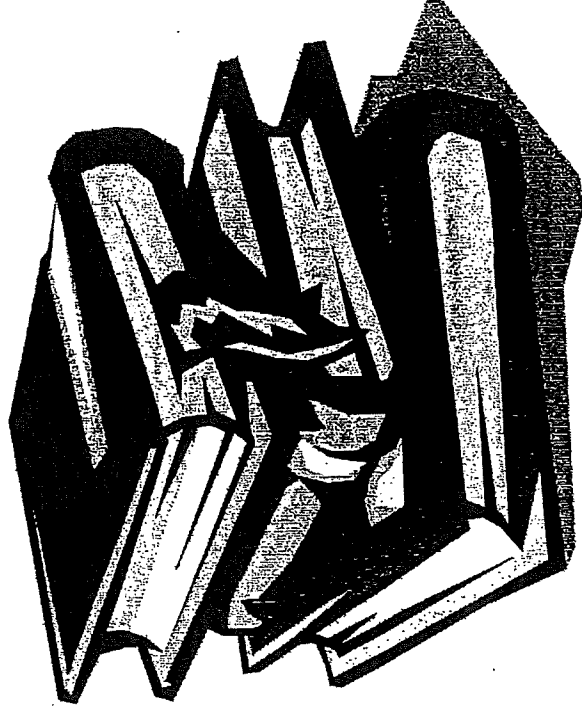
trash containers and yards assigned to the above-described premises;

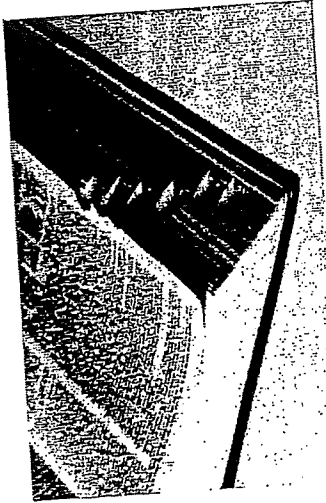
for the following property and evidence that is lawfully seizable pursuant to Penal Code §1524 in that:

- ☐ the property was stolen or embezzled.
- ☐ the property or things were used as the means of committing a felony.
- ☐ the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.
- ☐ the property or things to be seized constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.
- ☐ the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of California Penal Code §311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of California Penal Code §311.11, has occurred or is occurring.
- ☐ there is a warrant to arrest a person.
- ☐ a provider of electronic communication service or remote computing service has records or evidence, as specified in California Penal Code §1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.
- ☐ the property or things to be seized include an item or any evidence that tends to show a violation of California Labor Code §3700.5, or tends to show that a particular person has violated California Labor Code §3700.5.
- ☐ When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in subdivision (b) of Section 18250. This section does not affect warrants seizures otherwise authorized by Section 18250.

Drafting Formula

- The Opening
- The Items List
- The Affiant's Expertise
- The Justification
- The Probable Cause (PC) Section
- The Concluding Paragraphs





Penal Code §1523

Definition of a Search Warrant:

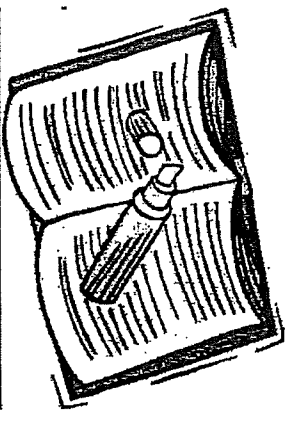
- “A search warrant is an order in writing in the name of the people, signed by a magistrate, directed to a peace-officer, commanding him or her to search for a person, a thing or things, or personal property, and in the case of the thing or things or personal property, bring the same before the magistrate.”
 - A search warrant is not an invitation officers can choose to accept, reject or ignore.

➤ **People v. Fisher** (2002) 96 Cal.App.4th 1147.

Search Warrant Advantages

1. **Deference** given to search warrants by the courts.
2. Can make an **arrest w/o an arrest warrant** if serving a search warrant in a residence.
3. No concern over **withdrawal of consent**.
4. Useful to keep **Informant's ID** confidential.
5. **Qualified immunity** from civil damages for an officer serving a search warrant.
 - **Malley v. Briggs** (1986) 475 U.S. 335.

Proposition 8 Highlights

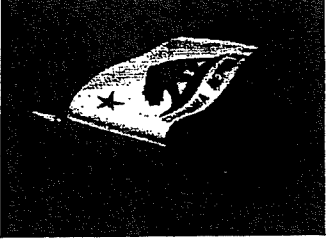


- California Constitution, Article 1, §28(d) [§ 28(f)]
- Adopted by initiative of the same name at the June 8, 1982, primary election.
- If **evidence** is obtained by a search, which would be **illegal under California law**, it may still be **admitted** in a California criminal proceeding, **unless exclusion is mandated by federal constitutional standards**.

➤ In re Lance W. (1985) 37 Cal.3d 873.

WARNING: Civil Liability is alive & well.

CA Constitution, Article I, §13



The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches may not be violated; AND a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

PART I

Basic Constitutional Provisions



Why We Proofread

• Semen	vs.	Seaman
• Steal	vs.	Steel
• Heal	vs.	Heel
• Waistband	vs.	Wasteband
• Morning	vs.	Mourning
• Toiletrie	vs.	Toilet tree

SW MANUAL CD CONTENTS (#2 of 2)

Name	Date modified	Type	Size
Files Currently on the Disc (27)			
CD Use Instructions	3/11/2014 9:11 AM	Adobe Acrobat Document	41 KB
Exhibit E - NARCOTICS SW CHECKLIST	3/11/2014 9:11 AM	Adobe Acrobat Document	36 KB
Exhibit F - NON-NARCOTIC SW CHECKLIST	3/11/2014 9:11 AM	Adobe Acrobat Document	52 KB
Exhibit G - TELEPHONIC CHECKLIST 1-2014 ALONE	3/11/2014 9:11 AM	Adobe Acrobat Document	24 KB
Exhibit H - GANG SW CHECKLIST	3/11/2014 9:11 AM	Adobe Acrobat Document	54 KB
Exhibit I - ELECTRONIC SW CHECKLIST	3/11/2014 9:11 AM	Adobe Acrobat Document	35 KB
Exhibit P - DUI TELEPHONIC CHECKLIST SCRIPT	3/11/2014 9:11 AM	Adobe Acrobat Document	23 KB
Exhibit A - GENERIC SW AFFIDAVIT FORM	3/11/2014 9:11 AM	Microsoft Word Document	50 KB
Exhibit A - GENERIC SW FORM	3/11/2014 9:11 AM	Microsoft Word Document	46 KB
Exhibit A - GENERIC SW RETURN FORM	3/11/2014 9:11 AM	Microsoft Word Document	44 KB
Exhibit B - BACKYARD MJ SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	66 KB
Exhibit C - CONTROL BUY SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	68 KB
Exhibit D - CELL PHONE SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	72 KB
Exhibit G - BLANK TELEPHONIC SW FORM	3/11/2014 9:11 AM	Microsoft Word Document	29 KB
Exhibit J - SAMPLE INFORMANT IN-CAMERA DECISION ORDER	3/11/2014 9:11 AM	Microsoft Word Document	47 KB
Exhibit K - SAMPLE RIVAS-LUTTENBERGER DECISION ORDER	3/11/2014 9:11 AM	Microsoft Word Document	50 KB
Exhibit L - SW SEALING ORDER & SUPPORTING DECLARATION	3/11/2014 9:11 AM	Microsoft Word Document	54 KB
Exhibit M - SAMPLE HOBBS ATTACHMENT	3/11/2014 9:11 AM	Microsoft Word Document	43 KB
Exhibit N - SW UNSEALING ORDER & DECLARATION	3/11/2014 9:11 AM	Microsoft Word Document	53 KB
Exhibit O - DUI FORCED BLOOD SW AFFIDAVIT TEMPLATE	3/11/2014 9:11 AM	Microsoft Word Document	44 KB
Exhibit O - DUI FORCED BLOOD SW TEMPLATE	3/11/2014 9:11 AM	Microsoft Word Document	37 KB
Exhibit O - DUI SW RETURN FORM	3/11/2014 9:11 AM	Microsoft Word Document	33 KB
Exhibit P - DUI TELEPHONIC SW FORM	3/11/2014 9:11 AM	Microsoft Word Document	37 KB
Exhibit Q - BANK RECORDS SW & AFFIDAVIT FORM	3/11/2014 9:11 AM	Microsoft Word Document	78 KB
Exhibit R - TRACKER HARDWARE INSTALLATION SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	52 KB
Exhibit S - GPS TRACKER SW & AFFIDAVIT	3/11/2014 9:11 AM	Microsoft Word Document	58 KB
Exhibit T - SAMPLE GOVERNMENT CODE 57480(E)(1) LETTER	3/11/2014 9:11 AM	Microsoft Word Document	26 KB

Search Warrant Law and Practice

Third Edition

by *Mike R. Galli*



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