

Exigent Circumstances

*“Police officers are often forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving.”*¹

Most people would probably agree that officers who encounter exigent circumstances should be permitted to do whatever is reasonably necessary to quickly defuse the situation. Certainly, everyone who pays taxes would insist upon it. But strangely, the courts have been unable to provide officers with a useful definition of the term “exigent circumstances.” Probably the most honest definition comes from the Seventh Circuit which said that “exigent circumstances” is merely “legal jargon” for “emergency,” explaining that lawyers employ the more grandiose terminology “because our profession disdains plain speech.”²

Some of the less cynical courts have floated a variety of definitions, such as a “compelling need for official action,”³ “an immediate major crisis,”⁴ and a situation in which “real, immediate, and serious consequences will certainly occur.”⁵ But these definitions cannot possibly be correct because it would mean that, in many cities, the entire shifts of many officers would consist of one long, uninterrupted procession of exigent circumstances.

Not only is the definition of the term elusive, the number of situations that are deemed “exigent” keeps expanding. For example, it used to be limited to situations in which there was an immediate threat to public safety. But then, in a series of decisions beginning in 1963, the United States Supreme Court expanded the term to include investigative emergencies consisting mainly of attempts by suspects to destroy evidence or escape.⁶

More recently, the courts added a third subcategory of exigent circumstances that goes by the name “community caretaking” or sometimes “special needs.” This development became necessary because today’s officers have become “jacks-of-all-emergencies” who are “expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety.”⁷ And, even though community caretaking situations do not technically constitute “emergencies,” they often call for immediate action, sometimes even a warrantless entry or search.

Because of these developments, the term “exigent circumstances” has become a bloated and almost meaningless abstraction. For instance, while the term would certainly apply to a burning home in which the residents are trapped, it might also apply to a home in which the residents were playing their stereo too loudly. Taking note of this problem, the Ninth Circuit observed that exigent circumstances has become “more of a residual group of factual situations that do not fit into other established exceptions [to the warrant requirement].”⁸

Such imprecise terminology would not matter much except, as often happens, it confuses people. For example, it has been suggested that “community caretaking” is not actually an exigent circumstance; that it is a mysterious hybrid state of affairs that is subject to standards and principles that are still undefined.⁹ An example of the confusion surrounding the subject is provided by the Virginia Court of Appeals which tried, without success, to explain how the subject of exigent circumstances is organized:

¹ *County of Sacramento v. Lewis* (1998) 523 U.S. 833, 853 [quoting from *Graham v. Connor* (1989) 490 U.S. 386, 397].

² *U.S. v. Collins* (7th Cir. 2007) 510 F.3d 697, 699.

³ *Michigan v. Tyler* (1978) 436 U.S. 499, 509. ALSO SEE *People v. Ramey* (1976) 16 Cal.3d 263, 276 [an exigent circumstance is “an emergency situation requiring swift action”].

⁴ *In re Sealed Case* (D.C. Cir. 1998) 153 F.3d 759, 766.

⁵ *U.S. v. Williams* (6th Cir. 2003) 354 F.3d 497, 503.

⁶ See *Ker v. California* (1963) 374 U.S. 23, 40 [destruction of evidence]; *Warden v. Hayden* (1967) 387 U.S. 294 [fresh pursuit]; *United States v. Santana* (1976) 427 U.S. 38, 42 [“hot” pursuit].

⁷ *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 784-5. ALSO SEE *People v. Molnar* (2002) 774 N.E.2d 738, 740 [“Police are required to serve the community in innumerable ways, from pursuing criminals to rescuing treed cats.”].

⁸ *Murdock v. Stout* (9th Cir. 1995) 54 F.3d 1437, 1440. ALSO SEE *People v. Macioce* (1987) 197 Cal.App.3d 262, 272 [“A myriad of circumstances could fall within the terms ‘exigent circumstances’”].

⁹ See, for example, *People v. Ray* (1999) 21 Cal.4th 464.

[T]he emergency doctrine may apply independent of investigatory functions, or it may apply as a complement to such functions. When applied as a complement to investigatory functions of the police, the emergency exception becomes subsumed within the doctrine of exigencies....¹⁰

Caution: Do not drive a motor vehicle or operate heavy machinery after reading the above snippet as it may cause dizziness.

In addition to the lack of a consistent and comprehensible structure, the very nature of exigent circumstances is guaranteed to generate even more uncertainty. As the Supreme Court observed, the officers in these situations “are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made in haste, under pressure, and frequently without the luxury of a second chance.”¹¹

The situation is not, however, as hopeless as it sounds. That is because several courts have become aware of the problem and have taken steps to correct it. In fact, there may now be a consensus on the composition, basic principles, and requirements of the subject. Consequently, now would be a good time to reexamine this area of the law, which is what we are about to do.

But first, it should be noted that one of the oldest rules pertaining to exigent circumstances has not changed at all over the years: When officers reasonably believe they are facing a life-and-death emergency, they must disregard all the other rules and do whatever is necessary to save people. Thus, the following is still the most widely-quoted passage in the law of exigent circumstances:

But the business of policemen and firemen is to act, not to speculate or meditate. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process.¹²

The Balancing Test

The most significant development in the field of exigent circumstances is the general acceptance of a balancing test for determining whether a warrantless entry or search of a home was justified. Before this happened, many courts would employ a modified probable cause analysis, looking to see if the officers' information pertaining to the threat was sufficiently reliable and, if so, whether it demonstrated a fair probability or some other level of proof that an emergency existed.¹³ But while this type of analysis was useful in major emergencies, it was problematic when the threat was less serious, especially in the growing number of cases that were classified as community caretaking. That was because a court that looked only at the magnitude of a community caretaking threat would almost always rule that exigent circumstances did not exist.

But then the United States Supreme Court ruled that the legality of an entry or search based on exigent circumstances depends, not on some artificial standard of proof, but simply on whether it was objectively reasonable under the circumstances.¹⁴ It also ruled that a police action will be deemed objectively reasonable if the need for it outweighed its intrusiveness. As the Court explained in *Illinois v. Lidster*, “[I]n judging reasonableness, we look to the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.”¹⁵ Thus, the Fourth Circuit observed, “As the likelihood, urgency, and magnitude of a threat increase, so does the justification for and scope of police preventive action.”¹⁶

The question, then, is what circumstances are relevant in determining, (1) the need for a search, and (2) the intrusiveness of the officers' actions?

¹⁰ *Kyer v. Commonwealth* (2004) 601 S.E.2d 6, 11.

¹¹ *County of Sacramento v. Lewis* (1998) 523 U.S. 833, 853. ALSO SEE *U.S. v. Dunavan* (6th Cir. 1973) 485 F.2d 201, 204 [“[T]he Good Samaritan of today is more likely wear a blue coat than any other.”].

¹² *Wayne v. U.S.* (D.C. Cir. 1963) 318 F.2d 205, 212 (conc. opn. of Burger, J.). Edited.

¹³ See, for example, *People v. Ormonde* (2006) 143 Cal.App.4th 282, 292.

¹⁴ See *Brigham City v. Stuart* (2006) 547 U.S. 398, 404; *People v. Rogers* (2009) 46 Cal.4th 1136, 1160; *Hopkins v. Bonvicino* (9th Cir. 2009) 573 F.3d 752, 763 [“the reasonable grounds [requirement] survives *Brigham City*, and indeed remains the core of the analysis”].

¹⁵ (2004) 540 U.S. 419, 426. ALSO SEE *Illinois v. McArthur* (2001) 531 U.S. 326, 331 [“we balance the privacy-related and law enforcement-related concerns”]; *Henderson v. Simi Valley* (9th Cir. 2002) 305 F.3d 1052, 1059 [“[W]e must now assess the constitutionality of the [‘special needs’] search by balancing the need to search against [intrusiveness].”].

¹⁶ See *Mora v. City of Gaithersburg* (4th Cir. 2008) 519 F.3d 216, 224.

Establishing the need for the search

The first step in deciding whether a warrantless entry or search is justified is to determine the strength of the need for taking immediate action. As in most Fourth Amendment determinations, this depends on how the situation would have appeared to a reasonable officer, especially in light of his training and experience.¹⁷ “The core question,” said the Second Circuit, “is whether the facts, as they appeared at the moment of entry, would lead a reasonable, experienced officer to believe that there was an urgent need to render aid or take action.”¹⁸

Accordingly, the courts will make their determination based on “common sense,”¹⁹ oftentimes asking, “How would the public have responded if the officers had neglected to act or delayed taking action until a warrant was issued?”²⁰ As the court observed in *People v. Bradford*:

In testing the reasonableness of the search we might ask ourselves how the situation would have appeared if the fleeing gunman armed with a shotgun had shot and possibly killed other officers or citizens while the officers were explaining the matter to a magistrate.²¹

Although the courts will consider the totality of circumstances in determining the need for an entry or search,²² the following are especially important:

MAGNITUDE OF POTENTIAL HARM: The most weighty of all the circumstances is, of course, the magnitude of the potential harm that might result, especially if it involves a threat of death, injury, or destruction of valuable property.²³

HOW PROBABLE: The question arises: Must officers have *probable cause* to believe the threat existed? The answer is technically no because the test is whether the need for their response outweighed its intrusiveness.²⁴ But, as a practical matter, probable cause will almost always be required to search or forcibly enter a home because, without it, the need for the response would seldom outweigh its intrusiveness.²⁵ Furthermore, as we discuss later, probable cause is an absolute necessity if officers entered or searched a residence because of an investigative emergency.

HOW IMMINENT: While the courts often say that the threat must have been imminent, this just means that the officers must have reasonably believed that the threat would have materialized before they could have obtained a warrant.²⁶

¹⁷ See *People v. Panah* (2006) 35 Cal.4th 395, 465; *People v. Ammons* (1980) 103 Cal.App.3d 20, 30.

¹⁸ *U.S. v. Klump* (2nd Cir. 2008) 536 F.3d 113, 117-18.

¹⁹ See *People v. Higgins* (1994) 26 Cal.App.4th 247, 254; *In re Sealed Case* (D.C. Cir. 1998) 153 F.3d 759, 766.

²⁰ See *People v. Superior Court (Peebles)* (1970) 6 Cal.App.3d 379, 382 [“One way of testing the reasonableness of the search is to ask ourselves what the situation would have looked like had another bomb exploded, killing a number of people”]; *People v. Duncan* (1986) 42 Cal.3d 91, 98-99 [“It would have been poor police work indeed for an officer to fail to investigate”].

²¹ (1972) 28 Cal.App.3d 695, 704.

²² See *People v. Ortiz* (1995) 32 Cal.App.4th 286, 293; *Hopkins v. Bonvicino* (9th Cir. 2009) 573 F.3d 752, 764.

²³ See *Illinois v. McArthur* (2001) 531 U.S. 326, 336; *Welsh v. Wisconsin* (1984) 466 U.S. 740, 753 [“gravity of the offense” is “an important factor”]; *People v. Sirhan* (1972) 7 Cal.3d 710, 739 [“the gravity of the offense is an appropriate factor to take into consideration”]; *People v. Remiro* (1979) 89 Cal.App.3d 809, 831 [“Where circumstances reasonably justify the apprehension that a criminal conspiracy constitutes an imminent threat to life it is essential that law enforcement officers be allowed to take fast action”]; *People v. Profit* (1986) 183 Cal.App.3d 849, 883 [“Nor can we ignore the seriousness of the offense involved, which is a highly determinative factor in any evaluation of police conduct.”].

²⁴ See *Florida v. J.L.* (2000) 529 U.S. 266, 273 [“We do not say that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.”]; *U.S. v. Najjar* (10th Cir. 2006) 451 F.3d 710, 718 [“Neither did the [Supreme Court in *Brigham City*] require probable cause in this type of exigent circumstances”; i.e. emergency aid].

²⁵ See *Murdock v. Stout* (9th Cir. 1995) 54 F.3d 1437, 1441 [exigent circumstances “do not relieve an officer of the need to have probable cause to enter the house”]; *U.S. v. Alaimalo* (9th Cir. 2002) 313 F.3d 1188, 1193 [“Even when exigent circumstances exist, police officers must have probable cause to support a warrantless entry into a home.”]; *U.S. v. Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1444, fn.5 [“Exigent circumstances justify a warrantless entry into a home only where there is also probable cause to enter the residence.”]; *U.S. v. Brown* (6th Cir. 2006) 449 F.3d 741, 745 [“To justify a warrantless entry based on exigent circumstances, there must also be probable cause to enter the residence.”].

²⁶ See *People v. Dickson* (1983) 144 Cal.App.3d 1046, 1065 [“Imminent essentially means it is reasonable to anticipate the threatened injury will occur in such a short time that it is not feasible to obtain a search warrant.”]; *People v. Koch* (1989) 209 Cal.App.3d 770, 782 [“[T]he government must establish that because of the urgency of the situation a warrant could not be obtained in time.”]; *Bailey v. Newland* (9th Cir. 2001) 263 F.3d 1022, 1033 [“[T]he presence of exigent circumstances necessarily implies that there is insufficient time to obtain a warrant”].

ATTEMPT TO UTILIZE LESS INTRUSIVE MEANS: The need for an entry or search would necessarily be increased if officers attempted, but were unable, to resolve the situation by less intrusive means, such as knocking on the door or looking in a window. As one court pointed out, there is usually a “continuum of intermediate responses” which are “characteristic of the reasonableness to which the Fourth Amendment makes reference.”²⁷

WARRANT COULD NOT HAVE BEEN ISSUED: The need for a warrantless entry or search would be greater if a judge would not have issued a search warrant because the circumstances did not fit within the requirements for a warrant under Penal Code § 1524; e.g., there was no “crime” and therefore no evidence of a crime.²⁸

NEED DEMONSTRATED BY THE OFFICERS’ CONDUCT: Although the strength of the need for a police response is based on the objective circumstances, the courts sometimes note whether the officers were diligent in their response, as this tends to show that they, themselves, believed that an emergency existed.²⁹ While a delay might be considered proof that the situation was not acute,³⁰ a delay will not be held against the officers if it was reasonably necessary to evaluate the situation or devise an appropriate response. As the court observed in *U.S. v. Najjar*, “A delay caused by a reasonable investigation into the situation facing the officers does not obviate the existence of an emergency.”³¹ Thus, in *People v.*

Duncan the California Supreme Court pointed out, “An officer is not required to rush blindly into a potential illicit drug laboratory and possibly encounter armed individuals guarding the enterprise, with no regard for his own safety just to show his good faith believe the situation is emergent.”³²

THE OFFICER’S MOTIVATION: It used to be the rule in California and elsewhere that a police action could not be upheld under exigent circumstances if it appeared that the officers’ sole or primary motivation was to obtain evidence of a crime as opposed to defusing an emergency.³³ In 2006, however, the U.S. Supreme Court rejected this rule in *Brigham City v. Stuart* when it said, “An action is ‘reasonable’ under the Fourth Amendment, regardless of the individual officer’s state of mind, as long as the circumstances, viewed *objectively*, justify the action.”³⁴

Establishing the degree of intrusiveness

After the courts determine the nature and importance of the need for immediate action, they will determine the extent to which the action intruded on the defendant’s privacy interests. Later in this article, we will discuss the various types of responses and how the courts view their intrusiveness. For now, it will suffice to note the most common ones (from most to least intrusive): entering and conducting a full search, conducting a sweep of the interior, merely entering, securing the premises pending issuance of a search warrant, and trespassing on the property.

²⁷ *U.S. v. Meixner* (2001) 128 F.Supp.2d 1070, 1072.

²⁸ See *U.S. v. Rohrig* (6th Cir. 1996) 98 F.3d 1506, 1523, fn..9 [“If a warrant cannot be obtained under these circumstances, we can only conclude that the warrant mechanism is unsuited to the type of situation presented in this case.”]; *People v. Molnar* (2002) 774 N.E.2d 328, 334 [“the police encountered no evidence of any crime, and the circumstances did not lend themselves to criminal process”].

²⁹ See *In re Jessie L.* (1982) 131 Cal.App.3d 202, 214 [“The police did not idly sit by during a period in which a warrant could have been obtained, but promptly gathered together a number of officers and went to the locations involved.”].

³⁰ See *People v. Ramey* (1976) 16 Cal.3d 263, 276 [three hour delay, “during which no effort whatever was made to obtain a warrant”]; *People v. Baird* (1985) 168 Cal.App.3d 237, 244-45 [“the evidence does not support a finding that either the fire marshal or anyone else believed that the situation posed an imminent danger and required immediate action”]; *U.S. v. Moss* (4th Cir. 1992) 963 F.2d 673, 679 [“no real sense of emergency”].

³¹ (10th Cir. 2006) 451 F.3d 710, 719. ALSO SEE *People v. Stegman* (1985) 164 Cal.App.3d 936, 945 [OK to wait for backup]; *U.S. v. Bradley* (9th Cir. 2003) 321 F.3d 1212, 1215 [the officers had taken “several other steps” to investigate the matter].

³² (1986) 42 Cal.3d 91, 104.

³³ See, for example, *People v. Boragno* (1991) 232 Cal.App.3d 378, 386; *People v. Blackwell* (1983) 147 Cal.App.3d 646, 652.

³⁴ *Brigham City v. Stuart* (2006) 547 U.S. 398, 404. ALSO SEE *U.S. v. Arellano-Ochoa* (9th Cir. 2006) 461 F.3d 1142, 1145 [“the officer’s entry must be evaluated objectively”]; *U.S. v. Snipe* (9th Cir. 2008) 515 F.3d 947, 952 [“*Brigham City* rejected any subjective analysis”]; *U.S. v. Najjar* (10th Cir. 2006) 451 F.3d 710, 718 [court notes that *Brigham City* rejected the requirement that “the search must not be motivated by an intent to arrest or seize evidence”].

Having examined the manner in which the courts determine whether a warrantless entry or search was justified under exigent circumstances, we will now discuss the circumstances that usually qualify as “exigent.” While these circumstances usually fall into one of three categories—imminent danger, community caretaking, or investigative emergency—these are not hard-and-fast classifications, as a slight change in circumstances may bump a threat into a higher or lower category. For example, an insecure home (community caretaking) could become a burglary in progress (imminent danger); and a 911 hangup call (community caretaking) could become a life-or-death emergency, depending on what the officers saw and heard when they arrived.

Imminent Danger

Commonly known as the “emergency exception” to the warrant requirement, an imminent threat to a person is the quintessential exigent circumstance. While the others are important, the Court of Appeal observed that “[t]he most pressing emergency of all is rescue of human life when time is of the essence.”³⁵ Similarly, the Fourth Circuit noted that “protecting public safety is why police exist.”³⁶

Because the need to respond quickly to these threats is so strong, there is seldom any contention that a response was too intrusive, even if officers entered or maybe even searched a home.³⁷ Thus in *Brigham City v. Stuart* the United States Supreme Court flatly ruled that “law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.”³⁸

SICK OR INJURED PERSON: Although officers may not enter a residence merely because they reasonably believed that someone inside was sick or injured, they certainly may if they reasonably believed that the person needed immediate aid. In most cases, such a belief will be based on direct evidence, such as the following:

- **SICK PERSON:** Having learned that one of the occupants of an apartment “was sickly,” officers knocked on the door. No one responded, and they heard “several moans or groans” inside.³⁹
- **OVERDOSE:** Officers were walking by the open door of a hotel room when they saw a man “seated on the bed with his face lying on a dresser at the foot of the bed.” They also saw a “broken, jagged piece of mirror” and “dark balls” that appeared to be heroin.⁴⁰
- **OVERDOSE:** Officers received an anonymous call that a man in a residence had overdosed on heroin. When they arrived, a young girl answered the door and said the man was in bed and she couldn’t wake him up.⁴¹
- **ACCIDENTAL STABBING:** Officers responded to a 911 call of an accidental stabbing in a house.⁴²
- **FIGHT IN PROGRESS:** From outside the house, officers saw a fistfight in progress.⁴³
- **IRRATIONAL AND VIOLENT:** According to a motel manager, a guest appeared to be “irrational, agitated, and bizarre”; he displayed “a violent streak”; he had been carrying two knives; his motel room was “in disarray, with furniture overturned, beds torn apart, and the floor littered with syringes and a bloody rag.”⁴⁴

³⁵ *People v. Riddle* (1978) 83 Cal.App.3d 563, 572.

³⁶ *Mora v. City of Gaithersburg* (4th Cir. 2008) 519 F.3d 216, 228.

³⁷ See *People v. Hill* (1974) 12 Cal.3d 731, 754 [“A warrantless entry of a dwelling is constitutionally permissible where the officers’ conduct is prompted by the motive of preserving life and reasonably appears to be necessary for that purpose.”]; *People v. Amaya* (1979) 93 Cal.App.3d 424, 428 [“Nor is a warrant required when, having come upon the scene of a crime, officers reasonably suspect a victim or victims might be inside a dwelling and in need of immediate aid.”].

³⁸ (2006) 547 U.S. 398, 403. ALSO SEE *People v. Ray* (1999) 21 Cal.4th 464, 470 [“Under the emergency aid exception, police officers may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance.”].

³⁹ *People v. Roberts* (1956) 47 Cal.2d 374.

⁴⁰ *People v. Zabelle* (1996) 50 Cal.App.4th 1282, 1287-88.

⁴¹ *People v. Gallegos* (1970) 13 Cal.App.3d 239, 243.

⁴² *People v. Snead* (1991) 1 Cal.App.4th 380, 386.

⁴³ *Brigham City v. Stuart* (2006) 547 U.S. 398, 399.

⁴⁴ *U.S. v. Arch* (7th Cir. 1993) 7 F.3d 1300, 1304-5.

The existence of an emergency may also be based on circumstantial evidence. For example, in *People v. Cain*,⁴⁵ officers were dispatched at 4 A.M. to a report that a man broke into a woman's apartment and attempted to rape her. After confirming that the woman had been attacked, the officers heard the audio from a television in the apartment next door. Concerned that the occupant might also have been victimized, they knocked but no one answered. So they entered. In ruling that the officers reasonably believed that someone inside had been injured, the court noted that "it was in the early morning hours when most people are asleep, the officers were aware of a recent brutal attack on a defenseless elderly woman next door, the search was close in time to the attack, and they relied on their substantial experience in finding the situation unusual."

Similarly, in *U.S. v. Russell*⁴⁶ Sacramento County sheriff's deputies were dispatched to a reported shooting at Russell's home. They did not know whether it was accidental or an ADW. When they arrived, they found Russell outside the house and saw that he had been shot. Russell's account of the incident was inconsistent, so the deputies entered to check for additional victims. In ruling that the entry was justified, the court said, "Given the substantial confusion and conflicting information, the police were justified in searching the house in order to determine whether there were other injured persons."

Finally, in *People v. Hill*⁴⁷ officers were notified that a man had just been shot in a residence, and that he had been taken to a hospital by friends. When they arrived at the house, they saw blood on the floor and, because no one responded to their knocking, they made a forcible entry. In ruling that the entry was warranted, the California Supreme Court said, "Although only one casualty had thus far been reported, others may have been injured and may have been abandoned on the premises."

THREAT OF INJURY: Even if officers had insufficient reason to believe that a person on the premises had been injured, an entry will ordinarily be upheld if they reasonably believed that an injury would result if they failed to act. For example, in *People v. Payne* the court ruled that officers lawfully entered the defendant's home because they reasonably believed he was presently molesting a young boy.⁴⁸

In another case from Sacramento County, *People v. Neighbors*,⁴⁹ a woman called the sheriff's department and said that Neighbors had broken a glass over her baby's head. When deputies arrived, they confirmed that the baby had been seriously injured. They also learned from the mother that Neighbors was drunk, that he had probably gone to his apartment, and that his three-year old son was with him. When the deputies arrived at the apartment, they saw "a trail of broken glass and blood on the front steps." They then knocked on the door but no one answered but, just then, someone turned off the lights in the apartment. At that point, the deputies kicked open the door and entered. This was entirely justifiable, said the court, as it "was premised on the reasonably perceived need to protect the child inside."

OFFICER SAFETY: If officers reasonably believed that someone on the premises posed an immediate threat to them, they may enter and search for him, even if they were outside the premises when the threat materialized.⁵⁰ Some examples of entries that were deemed justified:

- Officers arrested a murder suspect after he was ordered out of his girlfriend's house. Because they knew that he often worked with accomplices, they conducted a sweep of the house.⁵¹
- When an officer knocked on the door of a motel room occupied by a suspected car thief, the door swung open and he saw a woman "reaching under one of the two beds." Said the court, the officer's "conduct in taking a step over the thresh-

⁴⁵ (1989) 216 Cal.App.3d 366.

⁴⁶ (9th Cir. 2006) 436 F.3d 1086.

⁴⁷ (1974) 12 Cal.3d 731, 755.

⁴⁸ (1977) 65 Cal.App.3d 679, 683 ["The police officers reasonably believed that David S. was in need of their assistance."].

⁴⁹ (1990) 223 Cal.App.3d 1115.

⁵⁰ See *Maryland v. Buie* (1990) 494 U.S. 325, 336; *In re Elizabeth G.* (2001) 88 Cal.App.4th 496, 507; *People v. Maier* (1991) 226 Cal.App.3d 1670, 1675.

⁵¹ *People v. Maier* (1991) 226 Cal.App.3d 1670.

old so he could more clearly see defendant as she was reaching under one of the beds met the Fourth Amendment objective standard of reasonableness.”⁵²

- Responding to a report of screams coming from inside a house, an officer knocked on the door. The man who opened the door “appeared to be nervous, looked over his shoulder and—without explanation—moved toward the bedroom in a seemingly hasty fashion.” The officer went in after him because he feared for the safety of his partner and himself.⁵³
- FBI agents were conducting surveillance on a motel room which they reasonably believed was occupied by an armed carjacker and serial bank robber (27 robberies in 23 cities in 10 states). When a woman exited the room, agents detained her—at which point she yelled, “Run, Buddy!” Agents kicked in the door to the motel room and arrested the suspect.⁵⁴

REPORT OF DEAD BODY: Officers who respond to a report of a dead body inside a home or other place need not assume that the reporting person was able to make a medical determination that the person was deceased. Consequently, they may enter to confirm.⁵⁵ As noted in *Wayne v. U.S.*, “Acting in response to reports of ‘dead bodies,’ the police may find the ‘bodies’ to be common drunks, diabetics in shock, or distressed cardiac patients. Even the apparently dead often are saved by swift police response.”⁵⁶

If officers detect the odor of a decaying body coming from the premises, the courts seem to take the position that if one person is dead under suspicious circumstances, it is not unreasonable for officers to enter for the purpose of making sure there is no one on the premise who needs assistance.⁵⁷

CRIME SCENES: The fact that a crime occurred inside a residence does not constitute an exigent circumstance; i.e., there is no “crime scene” exception to the warrant requirement.⁵⁸ Still, the circumstances surrounding the commission many serious crimes may justify a sweep of the premises pending issuance of a search warrant. As the United States Supreme Court pointed out in a murder case, “[W]hen the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises.”⁵⁹

911 HANGUPS: While a 911 hangup call will not justify a forcible entry,⁶⁰ it certainly will if there was some additional reason to believe that someone inside might be hurt. For example, in *U.S. v. Najar*⁶¹ police received a 911 hangup call at 2 A.M., but each time the dispatcher called back, the caller hung up. When officers arrived at the house they saw that the lights were on and they heard movement inside, but no one answered the door. Eventually, Najar opened up but denied making a 911 call and claimed he was the only person on the premises. At that point, the officers forcibly entered to make sure that no one inside needed emergency assistance. Najar argued the entry was unlawful because the facts “show merely that someone was home and did not want to talk on the phone at 2 A.M.” The court disagreed. After noting that “911 calls are the predominant means of communicating emergency situations,” the court ruled that a “reasonable person could well be concerned that someone was trying to prevent communication with safety officials, not merely avoid it.”

Similarly, in *U.S. v. Snipe*⁶² a “very hysterical sounding” man phoned the police at 5 A.M. and shouted, “Get the cops here now!” After the man gave his

⁵² *People v. Wilson* (1997) 59 Cal.App.4th 1053, 1061.

⁵³ *People v. Frazier* (1977) 71 Cal.App.3d 690, 694.

⁵⁴ *U.S. v. Reilly* (9th Cir. 2000) 224 F.3d 986, 991.

⁵⁵ See *People v. Wharton* (1991) 53 Cal.3d 522, 578 [“Because there existed the possibility that the victim was still alive, we cannot fault the officers’ decision to investigate further.”]; *U.S. v. Stafford* (9th Cir. 2005) 416 F.3d 1068, 1074 [“[A] report of a dead body can easily lead officers to believe that someone might be in need of immediate aid.”]; *U.S. v. Richardson* (7th Cir. 2000) 208 F.3d 626 [officers testified that “in their experience, laypersons without medical knowledge are not in a position to determine whether a person is dead or alive”].

⁵⁶ (D.C. Cir. 1963) 318 F.2d 205, 241. Edited.

⁵⁷ See *U.S. v. Stafford* (9th Cir. 2005) 416 F.3d 1068, 1074.

⁵⁸ See *Mincey v. Arizona* (1978) 437 U.S. 385; *Thompson v. Louisiana* (1984) 469 U.S. 17, 22.

⁵⁹ *Mincey v. Arizona* (1978) 437 U.S. 385, 392.

⁶⁰ See *U.S. v. Najar* (10th Cir. 2006) 451 F.3d 710, 720, fn7; *U.S. v. Richardson* (7th Cir. 2000) 208 F.3d 626, 631.

⁶¹ (10th Cir. 2006) 451 F.3d 710.

⁶² (9th Cir. 2008) 515 F.3d 947.

address, the phone was disconnected. Finding the front door ajar, the responding officers stepped inside and saw a lot of drugs on the kitchen table. In ruling the entry was justified, the court noted that one of the officers testified that “the residence itself looked suspicious because the front door was ajar and he could see light coming from inside.” Under these circumstances, said the court, “the officers had an objectively reasonable basis to believe there was an immediate need to protect others from serious harm when they entered.”

DOMESTIC VIOLENCE: Like 911 hangup calls, a report of domestic violence inside a residence will not automatically justify a forcible entry.⁶³ The courts are aware, however, that these incidents can be dangerous to the officers and the parties. As the Ninth Circuit observed, “The volatility of situations involving domestic violence make them particularly well-suited for an application of the emergency doctrine.”⁶⁴ Similarly, the Second Circuit noted that the courts are aware of “the combustible nature of domestic disputes, and have accorded great latitude to an officer’s belief that warrantless entry was justified by exigent circumstances.”⁶⁵ Thus, a warrantless entry may be permitted if there was some additional indication of violence such as blood, a broken window, broken furniture, or if one of the parties cannot be located or is acting in a manner consistent with a violent episode; e.g., visibly agitated.⁶⁶

For example, in *People v. Higgins*⁶⁷ officers were dispatched at 11 P.M. to an anonymous report of a domestic disturbance involving “a man shoving a woman around.” No one responded to their knocking, but they saw a man inside the residence and then heard a “shout.” So they knocked again, and a woman answered the door. According to the officers, she

“was breathing heavily and appeared extremely frightened . . . very nervous.” In addition, there was a “little red mark” under one eye and “slight darkness under both eyes.” The woman tried to explain away the officers’ concern by saying that she was injured when she fell down some stairs, and that the noise from the fall might have prompted someone to call the police. She also said that her boyfriend had left, and that she was alone. At this point, the officers forcibly entered because of the following circumstances: the woman’s demeanor, her false claim that she was alone, and the officers’ knowledge that “battered women commonly deny being abused.” In upholding the entry, the court said, “Viewed objectively, these circumstances justified the officers’ actions to ensure [the woman’s] safety.”

Similarly, in *U.S. v. Martinez*⁶⁸ the Ninth Circuit ruled that an immediate entry was justified based on the following: an officer was dispatched to a 911 “domestic violence” call involving an “out of control” male, but the phone was disconnected before the call was completed. One of the responding officers remembered that he had been to that address before on a domestic violence call in which the woman had a “fat lip because the male subject had hit her.” When he arrived, the officer saw the woman outside, and she was “very upset, crying.” He also heard “angry, hostile” yelling inside the house, although he could not determine what the person was saying. The officer then entered “in order to make sure that the person yelling was not injured, that someone else in the house was not being injured, and to make sure the individual yelling was not going to come out of the house with weapons.” The court ruled that the requirements of the emergency exception “were satisfied in this case.”

⁶³ See *U.S. v. Davis* (10th Cir. 2002) 290 F.3d 1239, 1244 [“[G]ranting unfettered permission to officers to enter homes, based only upon a general assumption domestic calls are always dangerous, would violate the Fourth Amendment.”].

⁶⁴ *U.S. v. Martinez* (9th Cir. 2005) 406 F.3d 1160, 1164.

⁶⁵ *Tierney v. Davidson* (2nd Cir. 1998) 13 F.3d 189, 197.

⁶⁶ See *Tierney v. Davidson* (2nd Cir. 1998) 133 F.3d 189, 197 [“broken window pane,” no sounds from inside the apartment]. COMPARE *People v. Ormonde* (2006) 143 Cal.App.4th 282, 291 [no reason to enter because officers knew that the victim “was safely away from the premises”].

⁶⁷ (1994) 26 Cal.App.4th 247.

⁶⁸ (9th Cir. 2005) 406 F.3d 1160, 1165. ALSO SEE *U.S. v. Brooks* (9th Cir. 2004) 367 F.3d 1128, 1135 [entry justified when 911 caller reported hearing sounds indicating a woman in the next motel room was being beaten; a man opened the door and admitted there had been a disturbance and that a woman was in the bathroom; officers could hear a woman crying in the bathroom; the motel room was in “total disarray.”].

⁶⁹ (9th Cir. 2007) 482 F.3d 1035.

Finally, in *U.S. v. Black*⁶⁹ the court upheld a warrantless entry resulting from a 911 call from a woman who said that Black had beaten her and that she needed officers to stand by while she removed clothing from the apartment they shared. When officers arrived a few minutes later, they found Black but not the woman. Fearing that she had been beaten or shot by Black, they entered. The court ruled the officers' entry was justified "because they feared that [the woman] could have been inside the apartment, badly injured and in need of medical attention." The court added, "This is a case where the police would be harshly criticized had they not investigated and [the woman] was in the apartment."

MISSING PERSONS CALLS: The courts will usually uphold a forcible entry into a home for the purpose of locating a missing person when, (1) officers reasonably believed the report was reliable, (2) the circumstances surrounding the disappearance were sufficiently suspicious, and (3) there was reason to believe that an immediate warrantless entry was necessary to confirm or dispel their suspicions.

For example, in *People v. Rogers*⁷⁰ a woman notified San Diego police that a friend named Beatrice had been missing under suspicious circumstances. The woman said that Beatrice was living with Rogers in an apartment complex that he managed; and even though Beatrice had been missing for three weeks, Rogers was refusing to file a missing person report. This was especially suspicious because she had heard him threaten to lock Beatrice in a storage room in the basement. An investigator, Det. Richard Carlson, phoned Rogers who claimed that Beatrice had been missing only a week or so, at which point Rogers said he "had to go" and quickly hung up.

Later that day, Carlson and uniformed officers went to the apartment but Rogers wasn't there. Carlson then spoke with a tenant who said that she had not seen Beatrice for several weeks, and she confirmed that Rogers has a storage room in the basement. Just then, Rogers arrived. Carlson asked him how long Beatrice had been missing and he said "a week and a half," adding that he thought she had

gone to Mexico "with someone." Carlson told Rogers that he knew about his threat to lock Beatrice in the storage room, at which point Rogers' neck "began to throb." Having noticed that Rogers had not denied making the threat, Carlson asked if he could look in the storage room, just to confirm that she was not being held there. Rogers said no, so Carlson forcibly entered and found Beatrice's remains. In ruling that the entry was justified, the court pointed to, among other things, Rogers' "noticeable lack of concern over the whereabouts of his child's mother" and his "physical reaction" when Carlson mentioned his threat to lock Beatrice in the storage room.

Similarly, in *People v. Macioce*⁷¹ friends of Mr. and Mrs. Macioce notified San Jose police that the couple was missing. The friends said they were especially concerned because the Macioce's missed a regular church meeting which they usually attended, and because Mr. Macioce failed to appear for a knee operation. They said the Macioce's car was parked in the carport but, during the past two days, they had knocked on the door to the house several times but no one responded, and the mail was accumulating in the mailbox. The officers then entered the apartment and discovered the body of Mr. Macioce. The entry, said the court, "was eminently reasonable."

Not surprisingly, the courts are especially likely to uphold an entry into a house when a child was missing under suspicious circumstances and there was at least some indication that the child might be inside. For example, in *People v. Panah*⁷² LAPD officers learned that an 8-year old girl had been missing for several hours and that she was last seen talking with a man outside a certain apartment. When they knocked on the door, they could hear the sound from a TV set, but no one responded. When they returned 30-60 minutes later and knocked, there was still no response but the TV had been turned off which, said the trial court, "indicated someone may have been in the apartment." So, the officers forcibly entered and the California Supreme Court summarily ruled the entry "fell within the exception to the warrant requirement for exigent circumstances."

⁷⁰ (2009) 46 Cal.4th 1136. ALSO SEE *People v. Hochstraser* (2009) __ Cal.4th __ [2009 WL 3430322]; *People v. Ammons* (1980) 103 Cal.App.3d 2030-31; *People v. Wharton* (1991) 53 Cal.3d 522, 577-78 [person missing for two weeks; mail accumulating in mailbox, neighbors heard "someone banging" on the door, the door was unlocked].

⁷¹ (1987) 197 Cal.App.3d 262.

⁷² (2005) 35 Cal.4th 395. ALSO SEE *People v. Coddington* (2000) 23 Cal.4th 529, 577.

Finally, in *People v. Lucero*⁷³ two girls were reported missing after they went to play in a park near their homes in San Bernardino County. While the search was underway, a home across the street from the park caught fire. After putting out the blaze, firefighters discovered a large bloodstain on the living room carpet and notified the sheriff's deputies who entered to investigate. In ruling that the entry was justified by exigent circumstances, the court said, "The girls, their bodies, or clues to their location might be somewhere in the burning house."

UNATTENDED CHILDREN: While an unattended child does not constitute an exigent circumstance, it may if there was reason to believe the lack of supervision placed the child in danger or resulted from a parent's illness or injury.⁷⁴ For example, in *People v. Miller* a two-year old boy named Jeffrey was found "wandering the neighborhood wearing only a diaper and calling for his mother." When an officer arrived at Jeffrey's home with the child, the door was ajar and no one responded to his knocking and announcing, so he entered. On appeal, the court ruled the entry was justified "to determine whether Jeffrey's parents and siblings were home, if they were in need of assistance, and whether Jeffrey could be safely reunited with them."⁷⁵

DANGER RESULTING FROM MENTAL INSTABILITY: An entry may be justified if officers reasonably believed that, as the result of mental instability, someone on the premises might harm himself or others. For example, in *Mora v. Gaithersburg Police Department*⁷⁶ a hotline operator in Maryland notified police at about 1 P.M. that she had just spoken with a caller named Anthony Mora who said he was suicidal, that he had weapons in his apartment, that he could "understand shooting people at work," and that "I might as well die at work." When officers arrived, they saw Mora outside his apartment loading suitcases and gym bags into a van. They handcuffed him and, after finding a handgun in the luggage, they

entered his apartment to make sure that he had not created a dangerous situation by taking steps to carry out his threat. In ruling that the action was justified, the court pointed out that a credible threat to commit mass murder must, of course, be taken seriously, especially in light of tragic events that have shocked the country in recent years. As the court observed, "At Columbine High School in Littleton, in Blacksburg, Omaha, and Oklahoma City, America has had to learn how many victims the violence of just one or two outcasts can claim."

Similarly, in *U.S. v. Arch*,⁷⁷ discussed earlier, the court found that a warrantless entry into a motel room was reasonable because motel employees had reported that the guest appeared to be "irrational, agitated, and bizarre"; he displayed "a violent streak" and had been carrying two knives; his motel room was "in disarray, with furniture overturned, beds torn apart, and the floor littered with syringes and a bloody rag."

On the other hand, in *Kerman v. City of New York*⁷⁸ an anonymous caller phoned 911 and said that a man inside a certain house was mentally ill, that he was "off his medication," and that he was "acting crazy and possibly had a gun." When officers arrived, Kerman opened the door and they allegedly forced their way inside. But the court ruled that the entry was not justified because the officers "had no corroborating evidence of the alleged danger" and, therefore, their belief that a forcible entry was necessary was not reasonable.

BURGLARY IN PROGRESS: An emergency entry is certainly appropriate if officers reasonably believed—based on direct or circumstantial evidence—that the premises were being burglarized. Thus, the Sixth Circuit observed, "This and other circuits have held that an officer may lawfully enter a residence without a warrant under the exigent circumstances exception when the officer reasonably believes a burglary is in progress."⁷⁹

⁷³ (1988) 44 Cal.3d 1006, 1017.

⁷⁴ See *People v. Gemmill* (2008) 162 Cal.App.4th 958 [through a window, an officer saw "an infant playing with a plastic bag near its face and a nonresponsive adult"]; *People v. Sutton* (1976) 65 Cal.App.3d 341, 352-53.

⁷⁵ (1999) 69 Cal.App.4th 190, 200.

⁷⁶ (4th Cir. 2008) 519 F.3d 216.

⁷⁷ (7th Cir. 1993) 7 F.3d 1300, 1304-5.

⁷⁸ (2nd Cir. 2001) 261 F.3d 229.

⁷⁹ *U.S. v. Brown* (6th Cir. 2006) 449 F.3d 741, 748. Citations omitted. ALSO SEE *U.S. v. Erickson* (9th Cir. 1993) 991 F.2d 529, 533; *In re Sealed Case* (D.C. Cir. 1998) 153 F.3d 759, 766; *U.S. v. Tibolt* (1st Cir. 1995) 72 F.3d 965, 970.

While an open door or window would not constitute sufficient circumstantial evidence of a burglary,⁸⁰ it may become significant in light of other suspicious circumstances. For example, in *People v. Bradley* the court ruled there was sufficient evidence of a burglary in progress when a citizen informant reported hearing “breaking glass and footsteps” from an upstairs apartment that had recently been burglarized, and the resident was not home. In addition, when officers arrived, they saw that a large glass pane had been broken out of the door.⁸¹

Similarly, in *People v. Ray* the court ruled that Richmond police officers had sufficient reason to enter a residence based on a report from neighbors that the front door “has been open all day and it’s all a shambles inside.”⁸² And in *People v. Duncan* the court upheld a warrantless entry after an officer “found an open window with a television and other articles beneath it.” Said the court, “It would have been poor police work indeed for an officer to fail to investigate under circumstances suggesting a crime in progress.”⁸³

DRUG LABS: While an illegal drug lab in a home or business might be dangerous to the occupants and maybe the neighbors, it will become an exigent circumstance only if officers were aware of facts that reasonably indicated the lab posed an imminent

threat.⁸⁴ For example, this requirement would be satisfied automatically if officers reasonably believed it was a methamphetamine or PCP lab because the chemicals used in the production of these substances tend to explode.⁸⁵ As the California Supreme Court observed, “The extremely volatile nature of chemicals, including ether, involved in the production of drugs such as PCP and methamphetamine creates a dangerous environment, especially when handled unprofessionally by residential manufacturers of illicit drugs.”⁸⁶

What about the odor of ether? It is arguable that any detectable odor of ether coming from a house constitutes an exigent circumstance because ether is highly volatile.⁸⁷ Certainly, an emergency would exist if the odor was strong or if it could be detected some distance away, as this would indicate that the volume of ether on the premises was substantial. For example, in *People v. Stegman*, in which the odor was detected two houses away, the court said, “Ether at such high levels of concentration would be highly dangerous regardless of purpose, thus constituting an exigent circumstance.”⁸⁸

FIREARMS IN A RESIDENCE: While the presence of a firearm inside a house is not an exigent circumstance,⁸⁹ an emergency may result if officers had reason to believe that an occupant was about to use

⁸⁰ See *People v. Ray* (1999) 21 Cal.4th 464, 477 [“Which is not to say that every open door—even if an urban environment—will justify a warrantless entry to conduct further inquiry.”]; *Murdock v. Stout* (9th Cir. 1995) 54 F.3d 1437, 1442 [“[T]he open door at Murdock’s house was itself not sufficient to satisfy the starts in these cases where physical signs of burglary were evident.”]; *U.S. v. Bute* (10th Cir. 1994) 43 F.3d 531, 539 [“We simply cannot accept the notion that an open door of a commercial building at night is, in and of itself, an occurrence that reasonably and objectively creates the impression of an immediate threat to person or property as to justify a warrantless search of the premises.”].

⁸¹ (1982) 132 Cal.App.3d 737, 743.

⁸² (1999) 21 Cal.4th 464.

⁸³ (1986) 42 Cal.3d 91, 98-99.

⁸⁴ See *People v. Duncan* (1986) 42 Cal.3d 91, 103 [“[T]here is no absolute rule that can accommodate every warrantless entry into premises housing a drug laboratory. It is manifest that the emergency nature of each situation must be evaluated on its own facts.”].

⁸⁵ See *People v. Messina* (1985) 165 Cal.App.3d 937, 944 [“[T]he chemicals normally used in the manufacture of methamphetamine are quite dangerous.”]; *People v. Patterson* (1979) 94 Cal.App.3d 456, 464 [officer testified that a PCP lab is “once of the most dangerous operations there is.”]; *U.S. v. Clarke* (8th Cir. 2009) 564 F.3d 949, 959 [meth lab presented “a potential threat”].

⁸⁶ *People v. Duncan* (1986) 42 Cal.3d 91, 105.

⁸⁷ See *People v. Osuna* (1986) 187 Cal.App.3d 845, 852 [expert witness “stressed that the primary danger associated with ethyl ether anhydrous is flammability. Its vapors are capable of traveling long distances and can be ignited by a gas heater, a catalytic converter on a car, a cigarette”].

⁸⁸ (1985) 164 Cal.App.3d 936, 946.

⁸⁹ See *Florida v. J.L.* (2000) 529 U.S. 266, 272 [“Firearms are dangerous, and extraordinary dangers sometimes justify unusual precautions. But an automatic firearm exception would rove too far.” Edited]; *Bailey v. Newland* (9th Cir. 2001) 263 F.3d 1022, 1033 [“the presence of a firearm alone is not an exigent circumstance”]; *U.S. v. Jones* (5th Cir. 2001) 239 F.3d 716, 720 [“This Court has consistently held that the presence of a firearm alone does not create an exigency”].

it on himself, the officers or others;⁹⁰ or if the weapon was readily accessible to children or passerby.⁹¹ For example, in *U.S. v. Adams*⁹² an officer who was conducting a consent search of a suspected drug house picked up a jacket belonging to one of several visitors and noticed that it was “unusually heavy” and that the weight was consistent with that of a handgun. So he searched the jacket and found a gun. These circumstances, said the court, demonstrated a “risk of danger to the police.”

Community Caretaking

As noted earlier, the role of law enforcement officers in the community has expanded over the years. In fact, it now includes an “infinite variety of services”⁹³ that are “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.”⁹⁴ These include “check the welfare” calls, “keep the peace” calls, checking on open doors, and looking for lost children. Sometimes the officers who are on these calls find that they cannot resolve the matter unless they enter or maybe even search a car, home, or business. Can they do this without a warrant?

In the past, the answer was usually no because there was no demonstrable threat to life or property.⁹⁵ But as time went on, cases started cropping up in which the courts would acknowledge that, despite the absence of a true emergency, the officers were performing a public service that, under the circumstances, was reasonable. So these courts would try to

find some way of avoiding the suppression of evidence that was found on the premises, oftentimes invoking the “harmless error” or “inevitable discovery” rules, or saying that a true emergency existed even though it obviously didn’t.

Now, however, the courts are confronting the issue head-on. As the Sixth Circuit observed, “[T]he Fourth Amendment’s broad language of ‘reasonableness’ is flatly at odds with any claim of a fixed and immutable list of established exigencies.”⁹⁶ In addition, as the California Supreme Court observed, many people nowadays “do not know the names of [their] next-door neighbors” and so “tasks that neighbors, friends or relatives may have performed in the past now fall to the police.”⁹⁷ Thus, the court noted that severe restrictions on what officers may do in these situations may result in “seriously undesirable consequences for society at large,” as officers inform citizens, “Sorry. We can’t help you. We need a warrant and can’t get one.”

As a result, the courts now recognize an exception to the warrant requirement known as “community caretaking” or sometimes “special needs.”⁹⁸ Although some have suggested that community caretaking and exigent circumstances are completely different concepts,⁹⁹ it appears that the trend is to view community caretaking as a type of exigent circumstance—but with one important difference: Because community caretaking situations are, by definition, not as dangerous as traditional exigent circumstances, the need to resolve them is not as great, which means they will

⁹⁰ See *People v. Stamper* (1980) 106 Cal.App.3d 301, 306; *People v. Dyke* (1990) 224 Cal.App.3d 648, 660; *People v. Mitchell* (1990) 222 Cal.App.3d 1306, 1313-14; *Bailey v. Newland* (9th Cir. 2001) 263 F.3d 1022, 1033.

⁹¹ See *Cady v. Dombrowski* (1973) 413 U.S. 433, 448; *Mora v. City of Gaithersburg* (9th Cir. 2008) 519 F.3d 216, 227 [officers arrested a suicidal person outside his home; the man had threatened to kill co-workers and was armed; officers entered to secure any other weapons]; *U.S. v. Janis* (8th Cir. 2004) 387 F.3d 682, 687-88 [accidental shooting in residence, victim at hospital, gun at scene; the officer “testified he entered the house for safety reasons, that an unsafe weapon was still out in the open].

⁹² (6th Cir. 2009) ___ F.3d ___ [2009 WL 3271187].

⁹³ *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 784-85.

⁹⁴ *Cady v. Dombrowski* (1973) 413 U.S. 433, 441.

⁹⁵ See, for example, *People v. Smith* (1972) 7 Cal.3d 282, 286.

⁹⁶ *U.S. v. Rohrig* (6th Cir. 1996) 98 F.3d 1506, 1519.

⁹⁷ *People v. Ray* (1999) 21 Cal.4th 464, 472.

⁹⁸ See *Cady v. Dombrowski* (1973) 413 U.S. 433, 441 [“[C]ommunity caretaking functions [are] totally divorced from the detection, investigation, or acquisition of evidence”]; *People v. Ray* (1999) 21 Cal.4th 464, 472 [“Courts refer to these diverse police duties and responsibilities collectively as ‘community caretaking functions.’”]; *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 785 [“Recognition of this multi-faceted role led the [Supreme] Court’s coinage of the ‘community caretaking’ label”]; *State v. Acrey* 738 P.3d 594, 599, fn.33 [“Community caretaking is based on a service notion that police serve to ensure the safety and welfare of the citizenry at large.”].

⁹⁹ See *People v. Ray* (1999) 21 Cal.4th 464.

usually be upheld only if the officers' response was relatively nonintrusive. Consequently, while community caretaking will occasionally permit a brief entry into a home, and occasionally a sweep, it will seldom justify a full-blown search. As the lead opinion in the California Supreme Court's decision *People v. Ray* put it, "The appropriate standard under the community caretaking exception is one of reasonableness: Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?"¹⁰⁰

One advantage of not mandating a separate test for community caretaking situations is it eliminates the need to figure out the point at which a community caretaking situation becomes an exigent circumstance. This is important because that point is often difficult to detect, especially because many situations that first appear to involve mere community caretaking turn out to have serious consequences.¹⁰¹ For example, while a water leak might fall within community caretaking, the damage caused by a leak can cause as much damage as a small fire.¹⁰² Similarly, a noxious odor that is unpleasant to some people may make others sick.¹⁰³

This does not mean that officers are now expected to resolve every complaint or situation they confront, no matter how unimportant. As the New York Court of Appeals explained:

[W]e neither want not authorize police to seize people or premises to remedy what might be characterized as minor irritants. People sometimes create cooking odors or make noise to the point where neighbors complain. But as we live in a free society, we do not expect the police to react to such relatively minor complaints by breaking down the door.¹⁰⁴

Still, even a noise complaint may, under certain circumstances, constitute a community caretaking problem. A good example is found in *U.S. Rohrig*¹⁰⁵ where officers responded to a report of loud music coming from Rohrig's house. The time was 1:30 A.M., and the music was so loud that the officers could hear it when they were about a block away. As they pulled up, several "pajama-clad neighbors emerged from their homes to complain about the noise." The officers knocked on Rohrig's door and "hollered to announce their presence" but no one responded. Having no apparent alternatives (other than leaving the neighbors at the mercy of Rohrig's thunderous speakers), the officers entered the house through an unlocked door and saw "wall to wall marijuana plants."

Not only did the court rule that the officers' response was appropriate, it pointed out the absurdity of prohibiting them from resolving the matter:

[I]f we insist on holding to the warrant requirement under these circumstances, we in effect tell Defendant's neighbors that "mere" loud and disruptive noise in the middle of the night does not pose "enough" of an emergency to warrant an immediate response, perhaps because such a situation "only" threatens the neighbors' tranquility rather than their lives and property. We doubt that this result would comport with the neighbors' understanding of "reasonableness."

Thus, the court ruled that "a compelling governmental interest supports warrantless entries where, as here, strict adherence to the warrant requirement would subject the community to a continuing and noxious disturbance for an extended period of time without serving any apparent purpose."

Two other differences between community caretaking and traditional exigent circumstances should be noted. First, because community caretaking situ-

¹⁰⁰ (1999) 21 Cal.4th 464, 476-77. ALSO SEE *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 785 ["The imperatives of the fourth amendment are satisfied in connection with the performance of such noninvestigatory duties, including community caretaker tasks, so long as the procedure employed (and its implementation) is reasonable."].

¹⁰¹ See *State v. Blades* (1993) 626 A.2d 273, 279 ["Police often operate in the gray area between their community caretaking function and their function as criminal investigators"].

¹⁰² See *U.S. v. Boyd* (S.D.N.Y. 1976) 407 F.Supp. 693, 695 ["The leaking water presented a dangerous condition which, if allowed to continue might well have caused the collapse of ceiling and walls"]. NOTE: In *U.S. v. Williams* (6th Cir. 2003) 354 F.3d 497, 505 the court concluded that a water leak was not serious "because the potential danger was merely the risk of damage to property. We imagine that the judges would view the situation differently if the water leak resulted from bursting fire sprinklers on the ceilings above their chambers.

¹⁰³ See *People v. Lanthier* (1971) 5 Cal.3d 751, 757.

¹⁰⁴ *People v. Molnar* (2002) 774 N.W.2d 738, 741.

¹⁰⁵ (6th Cir. 1996) 98 F.3d 1506. COMPARE *State v. Price* (1999) 731 N.E.2d 280, 468 ["The neighbors were apparently not upset by the noise"].

ations do not ordinarily require an immediate response, the reasonableness of the officers' response may depend, at least in part, on whether they took time to evaluate the circumstances before taking action.¹⁰⁶ For example, in *People v. Molnar* the court said, "[M]ost commendably, the police spent about an hour exploring alternatives before forcing their way in. . . . They proceeded with restraint and took time to deliberate, using force only after exhausting other reasonable avenues."¹⁰⁷

In contrast, in *People v. Camacho* the California Supreme Court ruled that a late night trespass by officers onto the defendant's side yard to speak with him about a noise complaint could not be upheld under community caretaking because the noise had stopped before they arrived and, more important, "[w]ithout bothering to knock on defendant's front door, [the officers] proceeded directly into his darkened side yard."¹⁰⁸

Second, the courts are much more likely to uphold an entry if the officers' were plainly motivated by the desire to assist a citizen, not to obtain evidence of a crime.¹⁰⁹ Again quoting from *Molnar*, "The police were not functioning in a criminal arena, but acting as public servants in the name of protecting public safety."¹¹⁰

Investigative Emergencies

In addition to community caretaking and emergency aid situations, there is a third category of exigent circumstances known as an investigative emergency. These are situations that threaten the completion of a criminal investigation because of, (1) the actual or impending escape of the suspect, or (2)

the actual or impending destruction of evidence. Although the propriety of an entry or search based on an investigative emergency is determined by employing the same balancing test that the courts utilize in the other exigent circumstances, there are two important differences, both of which result from the fact that, unlike the other exigent circumstances, investigative emergencies pertain directly to "the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."¹¹¹

First, an entry or search based on an investigative emergency will be permitted only if the quantum of proof on the "need" side of the balancing equation consisted of *probable cause*.¹¹² To put it another way, an entry or search will not be upheld as an investigative emergency unless the officers had probable cause to believe it was necessary to prevent an escape or the destruction of evidence.

Second, an entry or search will not be upheld under the investigative emergency exception if a court finds that the officers intentionally or negligently created the threat. These situations—sometimes called "do-it-yourself" exigencies—are discussed later in this section.

As we will now discuss, there are two exigent circumstances relating to the imminent escape of a suspect: "hot" and "fresh" pursuits.

"Hot" pursuits

In the context of exigent circumstances, a "hot" pursuit occurs when officers make some attempt to arrest a suspect in a public place, but he responds by running into his home or other private place. When this happens, the law is clear: officers do not need a warrant to pursue him inside.

¹⁰⁶ See *People v. Ray* (1999) 21 Cal.4th 464, 478 ["[The officers'] failure to take additional action must be viewed in the totality of the circumstances to determine the ultimate reasonableness of their intrusion."]; *U.S. v. Bradley* (9th Cir. 2003) 321 F.3d 1212, 1215 ["[B]efore the officers entered the house, they took several other steps."].

¹⁰⁷ (2002) 774 N.E.2d 738, 741, 742.

¹⁰⁸ (2000) 23 Cal.4th 824, 836.

¹⁰⁹ See *People v. Ray* (1999) 21 Cal.4th 464, 477 ["[C]ourts must be especially vigilant in guarding against subterfuge, that is, a false reliance upon the personal safety or property protection rationale when the real purpose was to seek out evidence of crime."]; *People v. Morton* (2004) 114 Cal.App.4th 1039, 1047 ["[C]ourts must be particularly careful to ensure that officers are not allowed to falsely rely on [the community caretaking] exception when their true intention is to seek out criminals or evidence"].

¹¹⁰ (2002) 774 N.E.2d 738, 742. Edited.

¹¹¹ *Cady v. Dombrowski* (1973) 413 U.S. 433, 441.

¹¹² See *People v. Strider* (2009) 177 Cal.App.4th 1393, 1399 ["The United States Supreme Court has indicated that entry into a home based on exigent circumstances requires *probable cause* to believe that the entry is justified by one of [the investigative emergency] factors"]; *People v. Ormonde* (2006) 143 Cal.App.4th 282, 292 ["[A]n exigency excusing the warrant requirement does not also excuse the requirement that probable cause exists for searching a home for evidence or suspects."].

To be more specific, the “hot” pursuit exception applies if the following circumstances existed:

- (1) **Probable cause to arrest:** Officers must have had probable cause to arrest the suspect for a felony or misdemeanor.¹¹³
- (2) **Attempt to arrest outside:** They must have attempted to make the arrest in a public place.
- (3) **Suspect goes inside:** The suspect must have tried to escape by going inside a residence or other structure.¹¹⁴

For example, in *United States v. Santana*¹¹⁵ officers in Philadelphia went to “Mom” Santana’s house to arrest her because she had just sold drugs to an undercover officer. As they pulled up, they saw her standing at the doorway. She saw them, too, and retreated inside. So the officers went in after her and, in the course of apprehending her, seized evidence in plain view. Santana contended that the warrantless entry was unlawful, but the Supreme Court disagreed, ruling that officers in “hot” pursuit do not need a warrant, defining “hot” pursuit as a situation in which an arrestee attempts to “defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place.”

Note that a suspect who runs from officers triggers the “hot” pursuit exception even though the crime occurred at an earlier time; e.g. the suspect was wanted on a warrant, or he eluded them earlier. For example, in *People v. Patino*,¹¹⁶ LAPD officers were dispatched late at night to a silent burglary alarm at a bar. As they arrived, they saw a man “backing

through the front door carrying a box.” When he saw the officers, he dropped the box and ran. The officers chased him but he got away. About an hour later, the officers saw him again and the chase resumed, with the man eventually running into an apartment. The officers went in after him and encountered Patino who was eventually arrested for obstructing. Patino contended that the officers’ entry was unlawful, but the court disagreed, saying, “The facts demonstrate that the officers were in hot pursuit of the burglary suspect even though an hour had elapsed after they were first chasing the suspect.”

“Fresh” pursuits

Unlike “hot” pursuits, “fresh” pursuits are not physical chases. Instead, they are investigative pursuits in the sense that officers are actively attempting to apprehend the suspect and, in doing so, are quickly responding to developing information as to his whereabouts; and eventually that information adds up to probable cause to believe that he is presently inside a certain home or other private structure.¹¹⁷

Although there is no formal checklist of circumstances that must exist before officers may enter in “fresh” pursuit, the cases indicate there are four:

- (1) **Serious felony:** Officers must have had probable cause to arrest the suspect for a serious felony, usually a violent one.¹¹⁸
- (2) **Diligence:** After the crime occurred, officers must have been diligent in their attempt to apprehend the suspect.¹¹⁹

¹¹³ See *People v. Lloyd* (1989) 216 Cal.3d 1425, 1430; *In re Lavoyne M.* (1990) 221 Cal.App.3d 154, 159.

¹¹⁴ See *People v. Superior Court (Quinn)* (1978) 83 Cal.App.3d 609, 615-15; *People v. Abes* (1985) 174 Cal.App.3d 796, 807; *People v. White* (1986) 183 Cal.App.3d 1199, 1203-04 [“In the archetypical [hot pursuit] the officers arrive at the scene of the crime as the suspect jumps in his car and speeds away. The officers pursue him in their own vehicle for several miles without losing track of him. The suspect finally pulls into a driveway and flees into a house. The officers pull in right behind him and chase after him into the house.”].

¹¹⁵ (1976) 427 U.S. 38.

¹¹⁶ (1979) 95 Cal.App.3d 11. ALSO SEE *People v. Mack* (1980) 27 Cal.3d 145, 149 [when two men who were suspects in an earlier burglary saw officers, one of them yelled, “Look out! The cops!” at which point they ran into a garage].

¹¹⁷ See *People v. Escudero* (1979) 23 Cal.3d 800, 808 [“the fresh pursuit of a fleeing felon may constitute a sufficiently grave emergency to justify an exception to the warrant requirement”].

¹¹⁸ See *Minnesota v. Olson* (1990) 495 U.S. 91, 100 [consider “gravity of the crime”]; *People v. Escudero* (1979) 23 Cal.3d 800, 811 [“The need to prevent the imminent escape of a [nighttime residential burglar] is clearly an exigent circumstance”]; *People v. Lanfrey* (1988) 204 Cal.App.3d 491, 509 [“The officers had reason to believe that the suspect was armed with a knife and could be a risk to others.”].

¹¹⁹ See *People v. Lanfrey* (1988) 204 Cal.App.3d 491, 509 [“There does not appear to have been any unjustified delay by the officers during which probable cause had jelled and a warrant could have been obtained.”]; *People v. Williams* (1989) 48 Cal.3d 1112, 1139 [“There was no unjustified delay by the investigating officers during which time an arrest warrant for the homicide could have been obtained.”].

(3) **Suspect is inside:** The officers must have developed probable cause to believe that the suspect was inside a certain house.¹²⁰

(4) **Evidence of flight:** Officers must have had probable cause to believe that the suspect's flight was in progress or imminent.¹²¹ As we will discuss, such a belief may be based on circumstantial evidence or reasonable inference.

DIRECT AND CIRCUMSTANTIAL EVIDENCE OF FLIGHT:

In some cases, an officer's belief that a suspect is fleeing will be based on direct evidence. An example is found in *People v. Lopez* where LAPD officers learned that a murder suspect was staying at a certain motel, and that someone would soon be delivering money to him so that he could escape to Texas.¹²²

In many cases, however, an officer's conclusion that a suspect is fleeing will be based on circumstantial evidence, such as the following:

- **LEAVING A TRAIL:** Officers followed a fresh trail of blood leading from a murder scene to the suspect's house, prompting them to believe he would run when he realized he'd left a trail.¹²³
- **PERPETRATOR KNOWS HE'S BEEN ID'D:** It may be reasonable to believe that the suspect will flee if he was aware that a witness could identify him, or if he had dropped ID at or near the crime scene.¹²⁴

- **SERIOUS FELONY:** It might be reasonable to believe that anyone who had just committed a serious felony would be on the run because he would expect that officers would have launched an immediate and intensive effort to identify and apprehend him.¹²⁵ The length of such an effort will vary depending on the seriousness of the crime and the number of leads. In any event, if during this time officers develop probable cause to believe that the perpetrator is inside a residence, a warrantless entry ought to be justified.
- **ACCOMPLICE ARRESTED:** If an accomplice of the perpetrator was arrested, and if officers have probable cause to believe that the perpetrator learned of the arrest or soon would, it may be reasonable for them to believe that the perpetrator will flee because he would figure that, given the poor ethical standards that exist among the nation's criminals, it was likely that his accomplice would roll over on him.¹²⁶

Destruction of evidence

Probably the most common investigative emergency is a threat that evidence would be destroyed before officers could obtain a warrant.¹²⁷ This is because most evidence can be destroyed quickly, and its destruction is a top priority for most criminals

¹²⁰ See *U.S. v. Gorman* (9th Cir. 2002) 314 F.3d 1105, 1111 ["[T]he 'reason to believe,' or reasonable belief, standard . . . embodies the same standard of reasonableness inherent in probable cause."]; *U.S. v. Hardin* (6th Cir. 2008) 539 F.3d 404, 416, fn.6 [although dicta, court explains why it thinks probable cause is required]. **NOTE:** Some circuit courts have ruled that a lesser standard of proof—"reason to believe"—is needed. See *U.S. v. Jackson* (7th Cir. 2009) 576 F.3d 465, 469 [Court notes that three circuits have ruled that probable cause is required, while four have ruled that reasonable. Citations omitted]. The California Supreme Court has not ruled on the issue. See *People v. Jacobs* (1987) 43 Cal.3d 472, 479, fn.4.

¹²¹ See *People v. Bacigalupo* (1991) 1 Cal.4th 103, 122 [consider "the likelihood that the suspect will escape if not promptly arrested"].
¹²² (1979) 99 Cal.App.3d 754, 766.

¹²³ *People v. McDowell* (1988) 46 Cal.3d 551.

¹²⁴ See *People v. Bacigalupo* (1991) 1 Cal.4th 103, 121-22 [a man who had killed two people while robbing a jewelry store, attempted to kill a third party who escaped; the third party knew the robber's name]; *People v. Kilpatrick* (1980) 105 Cal.App.3d 401, 410 [kidnapping victim escaped from her sleeping kidnapper; she immediately notified police; "The police could well have believed that the victim's absence upon defendant's arousal would sound an alarm for him to flee."]; *People v. Escudero* (1979) 23 Cal.3d 800, 810-11; *People v. Superior Court (Dai-re)* (1980) 104 Cal.App.3d 86, 91 [although no direct evidence that anyone saw the defendants ramming a car through a clothing store which they then burglarized, the court seemed to infer that the existence of witnesses as they "must have known that they would attract attention, even at 4 a.m."]; *People v. Trudell* (1985) 173 Cal.App.3d 1221, 1231 ["he knew he was wanted for a violent crime; and the arresting officers knew that he had just learned about police interest in him."]; *People v. Lanfrey* (1988) 204 Cal.App.3d 491, 509 [stabbing suspect knew that witnesses could ID him].

¹²⁵ See *People v. Daughette* (1985) 165 Cal.App.3d 574 [right after an armed robbery, officers went to the home of the registered owner of the getaway car]; *People v. Gilbert* (1965) 63 Cal.2d 690, 706 ["The officers identified Gilbert and found out where he lived less than two hours after the robbery."]; *In re Jessie L.* (1982) 131 Cal.App.3d 202, 214 ["Immediate flight was a reasonable possibility in light of the seriousness of the crime involved, murder."]; *In re Elizabeth G.* (2001) 88 Cal.App.4th 496 [drive-by].

¹²⁶ See *People v. Gilbert* (1965) 63 Cal.2d 690, 697; *In re Jessie L.* (1982) 131 Cal.App.3d 202, 213-14.

¹²⁷ See *People v. Thompson* (2006) 38 Cal.4th 811, 820.

when they think the police are closing in. But, as we will now discuss, this exigent circumstance can exist only if, (1) officers had probable cause to believe there was destructible evidence on the premises, (2) the crime under investigation was fairly serious, and (3) the officers had probable cause to believe that the evidence would be destroyed if they delayed taking action until a warrant was issued.

EVIDENCE IS PRESENT: As noted, officers must have had probable cause to believe there is destructible evidence on the premises.¹²⁸ In the absence of direct proof on the issue, probable cause may be based on logical inference, oftentimes the following: people who commit certain crimes usually possess certain instrumentalities or fruits of the crime, and that they usually keep these things in their homes.¹²⁹ For example, if officers have probable cause to arrest a suspect for drug trafficking, it is usually reasonable to believe there are drugs and sales paraphernalia inside his home.

SERIOUS CRIME: While the crime under investigation need not be “serious” or even a felony,¹³⁰ the

courts are less apt to find exigent circumstances if the evidence did not pertain to a serious crime.¹³¹

IMPENDING DESTRUCTION: The mere presence of evidence inside a home is not an exigent circumstance. Instead, it becomes one only if officers reasonably believed that it would be destroyed if they waited for a warrant. Such a belief will ordinarily require proof of the following:

- (1) **SOMEONE INSIDE:** Officers must have reasonably believed that the suspect or an accomplice was inside.¹³²
- (2) **THREATENED DESTRUCTION:** They must have been aware of some circumstance that reasonably indicated the suspect or his accomplice would attempt to destroy the evidence before a warrant could be issued.¹³³

Although officers will occasionally see the occupants attempt to destroy evidence, the existence of such a threat is usually based on circumstantial evidence, especially proof that the occupants had become aware that they were about to be searched or arrested.¹³⁴ As the D.C. Circuit observed, “[T]he

¹²⁸ See *Illinois v. McArthur* (2001) 531 U.S. 326, 331 [“[T]he police had probable cause to believe McArthur’s trailer home contained evidence”]; *U.S. v. Alaimalo* (9th Cir. 2002) 313 F.3d 1188, 1193 [“Even when exigent circumstances exist, police officers must have probable cause to support a warrantless entry into a home.”].

¹²⁹ See *People v. Miller* (1978) 85 Cal.App.3d 194, 204 [“A number of California cases have recognized that from the nature of the crimes and the items sought, a magistrate can reasonably conclude that a suspect’s residence is a logical place to look for specific incriminating items.”]; *U.S. v. Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 978.

¹³⁰ See *Illinois v. McArthur* (2001) 531 U.S. 326, 331-32; *People v. Thompson* (2006) 38 Cal.4th 811, 824.

¹³¹ See *People v. Thompson* (2006) 38 Cal.4th 811; *People v. Hua* (2008) 158 Cal.App.4th 1027, 1035-36 [entry unreasonable to prevent destruction of less than 28.5 grams of marijuana]; *Hopkins v. Bonvicino* (9th Cir. 2009) 573 F.3d 752 [straight DUI not sufficiently serious, but seemingly contrary to *Illinois v. McArthur* (2001) 531 U.S. 326, 331 [destruction of drugs for personal use “involves a plausible claim of specially pressing or urgent law enforcement need”]; *U.S. v. Johnson* (9th Cir. 2001) 256 F.3d 895, 908 [the fact the crime was a misdemeanor “does not definitely preclude a finding of exigent circumstances, [but] it weighs heavily against it.”].

¹³² See *People v. Camilleri* (1990) 220 Cal.App.3d 1199, 1209 [“Where the emergency is the imminent destruction of evidence, the government agents must have an objectively reasonable basis for believing there is someone inside the residence who has reason to destroy the evidence.”]. COMPARE *Vale v. Louisiana* (1970) 399 U.S. 30, 34 [“[B]y their own account the arresting officers satisfied themselves that no one else was in the house when they first entered the premises.”].

¹³³ See *Illinois v. McArthur* (2001) 531 U.S. 326, 332 [“[T]he police had good reason to fear that, unless restrained, McArthur would destroy the drugs before they could return with a warrant.”]; *People v. Koch* (1989) 209 Cal.App.3d 770, 782 [“[W]hen the claimed emergency circumstances involve threatened destruction of evidence, the officers must reasonably and in good faith believe from the totality of the circumstances that the evidence or contraband will be destroyed imminently.”].

¹³⁴ See *United States v. Santana* (1976) 427 U.S. 38, 43 [“Once Santana saw the police, there was likewise a realistic expectation that any delay would result in destruction of evidence.”]; *Richards v. Wisconsin* (1997) 520 U.S. 385, 395 [“Once the officers reasonably believed that Richards knew who they were . . . it was reasonable for them to force entry immediately given the disposal nature of the drugs.”]; *People v. Murphy* (2005) 37 Cal.4th 490, 500 [“The officers could also reasonably expect that the commotion occurring immediately outside defendant’s open door, including the officers’ loud [knock-notice] would alert defendant to destroy or conceal any drugs on the premises”]; *People v. Williams* (1989) 48 Cal.3d 1112, 1139 [“[D]efendant might have learned from friends of family that the police were looking for him and might, as a result, dispose of any blood-stained clothing”]; *People v. Abes* (1985) 174 Cal.App.3d 796, 807 [officers reasonably expected that Luna would destroy evidence “once Luna knew the police wanted her”]. COMPARE *U.S. v. Santa* (11th Cir. 2000) 236 F.3d 662, 670 [“Ramirez and Santa, unaware of their impending arrest, had no reason to flee or to destroy [evidence].”].

police will have an objectively reasonable belief that evidence will be destroyed if they can show they reasonably believed the possessors of the contraband were aware that the police were on their trail.”¹³⁵

What circumstances tend to satisfy this requirement? The following are the most common:

A SHOUTED WARNING OR FRANTIC ACTIVITY: If officers have probable cause to believe there is destructible evidence inside a house, it may be reasonable to believe it will be destroyed if, when they arrived, they heard someone inside or outside shouting a warning that the police had arrived, or if they saw the occupants running around or engaging in some other frantic activity.¹³⁶

FLUSHING TOILETS: If there is probable cause to believe there are drugs on the premises, the sound of a flushing toilet that coincides with the officers' arrival is a classic sign that some drugs are headed for the sewer, and the rest of the stash will soon follow unless officers intervene.¹³⁷

CONTRABAND IN PLAIN VIEW: If officers saw contraband or other evidence in plain view from outside the home, and if they reasonably believed that an occupant knew they had seen it, they might rea-

sonably believe that the evidence would be destroyed if they delayed making an entry.¹³⁸

ACCOMPLICE ARRESTED: If the suspect's accomplice was arrested, and if there was reason to believe that the suspect learned about it or soon would, it may be reasonable to believe he will soon start destroying any evidence in his possession.¹³⁹

CO-OCCUPANT COOPERATING WITH POLICE: A suspect inside the house might be apt to destroy evidence if he had just learned that a co-occupant outside the house was cooperating with officers.¹⁴⁰

Fabricated threat of destruction

Even though there was a real threat that evidence would soon be destroyed, a warrantless entry or search will not be upheld if officers knowingly created the threat and had no overriding reason for doing so. As the Sixth Circuit explained, “Exigent circumstances must be unanticipated, meaning that an officer cannot manipulate a situation so as to create the exigency.”¹⁴¹ Similarly, the Fifth Circuit observed, “Exigent circumstances may not consist of the likely consequences of the government's own actions.”¹⁴²

¹³⁵ *U.S. v. Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1445, fn.6.

¹³⁶ See *People v. Seaton* (2001) 24 Cal.4th 598, 632 [“[After knocking] they heard noises that sounded like objects being moved”]; *People v. Mendoza* (1986) 176 Cal.App.3d 1127, 1130 [upon seeing officers, the suspect “ran inside yelling”]; *People v. Hull* (1995) 34 Cal.App.4th 1448, 1456 [“An occupant of the residence appeared to see [the officer] outside and moved toward the front of the house”]; *People v. Hill* (1970) 3 Cal.App.3d 294, 299-300 [“Appellant then disappeared behind the curtains, and the officers heard a shuffling of feet and the sound of people moving quickly about the apartment.”]; *People v. Freeny* (1974) 37 Cal.App.3d 20, 26 [after officers at the front door identified and demanded entry, they heard “shrill female sounds emanating from within the house and the sound of footsteps running away from the door.”]; *People v. Meyers* (1970) 6 Cal.App.3d 601, 607 [when the officers identified themselves, “two of the females in the doorway jumped back into the apartment and the sole male in the group made a furtive movement towards his waist”]; *U.S. v. Scroger* (10th Cir. 1997) 98 F.3d 1256, 1259 [sounds of running, then someone said, “go out the back”]; *U.S. v. Leveringston* (8th Cir. 2005) 397 F.3d 1112, 1116 [when officers knocked, the occupant reacted by “looking through the curtains, expressing surprise, and then immediately shutting the curtains. This response was followed by sounds of pots and pans slamming, dishes breaking, water flowing, and a garbage disposal running.”].

¹³⁷ See *People v. Alaniz* (1986) 182 Cal.App.3d 903, 906 [officers were “[k]eely aware of appellant's penchant for flushing toilets even when nature did not call”]; *People v. Hill* (1970) 3 Cal.App.3d 294, 300 [“It is common knowledge that a ‘usable quantity’ of narcotics is readily disposed of by depositing the illegal substance in the toilet bowl and flushing the toilet.”]; *U.S. v. Fiasche* (7th Cir. 2008) 520 F.3d 694, 698 [if the officers had waited, “it is certain here that the Chicago sewage system would have been in ecstasy after receiving some 25,000 pills flushed down the toilet”].

¹³⁸ See *People v. Ortiz* (1995) 32 Cal.App.4th 286, 293-94; *People v. Negrete* (1978) 82 Cal.App.3d 328, 336.

¹³⁹ See *People v. Camilleri* (1990) 220 Cal.App.3d 1199, 1211 [officers reasonably believed that when the accomplice of a drug trafficking suspect did not return (because he'd been arrested), the dealer “would shortly become alarmed and would likely conceal or destroy contraband”]; *People v. Freeny* (1974) 37 Cal.App.3d 20, 26 [officers reasonably believed that “Mrs. Freeny would learn that appellant had been arrested and would destroy any narcotics in the residence.”]; *In re Elizabeth G.* (2001) 88 Cal.App.4th 496, 505 [officers could have reasonably believed that defendant's accomplice would destroy the evidence after she learned that another accomplice had been arrested].

¹⁴⁰ See *Illinois v. McArthur* (2001) 531 U.S. 326, 332; *Georgia v. Randolph* (2006) 547 U.S. 103, 116, fn.6.

¹⁴¹ *U.S. v. Atchley* (6th Cir. 2007) 474 F.3d 840, 850-51.

¹⁴² *U.S. v. Gomez-Moreno* (5th Cir. 2007) 479 F.3d 350, 355

In most cases, fabricated emergencies result when the following occurred: (1) officers had probable cause to believe there was evidence on the premises; (2), without having an overriding reason for doing so, they went to the premises without a warrant and made their presence known; and (3) the officers knew, or should have known, that, by alerting the occupants, they would have given them a motive to immediately destroy the evidence. Thus, the Sixth Circuit observed, “[T]he created-exigency cases have typically required some showing of deliberate conduct on the part of the police evincing an effort intentionally to evade the warrant requirement.”¹⁴³

For example, in ruling that officers manufactured such a threat, the courts have noted the following:

- “Yet, without justification, they abandoned their secure surveillance positions and took action they believed might give the suspects cause and opportunity to . . . dispose of drugs.”¹⁴⁴
- “[E]xigent circumstances did not arise until the agents announced themselves.”¹⁴⁵
- “In approaching [the] residence, it was clear that the officers’ actions might give the suspects cause and opportunity to retrieve weapons.”¹⁴⁶
- “[T]he record reveals no urgency or need for the officers to take immediate action, prior to the officers’ decision to knock on Coles’s hotel room door and demand entry.”¹⁴⁷

On the other hand, a threat to evidence will not ordinarily be deemed manufactured if probable cause developed after the officers arrived at the scene, or if their conduct did not trigger the threat.¹⁴⁸ As the court explained in *U.S. v. Socey*, “[T]here is a key distinction between cases where exigent circumstances arise naturally . . . and those where officers have deliberately created the exigent circum-

stances.”¹⁴⁹ Thus, in rejecting a manufactured exigency claim in *People v. Coddington*, the California Supreme Court observed, “Only the subsequent rapidly developing events, events precipitated by appellant himself, necessitated action prior to obtaining the warrant.”¹⁵⁰

Manner of Responding

The courts understand that officers must act quickly when they are facing an emergency, but they impose on officers a duty to act responsibly. This means that officers may do those things—but only those things—that are reasonably necessary to prevent harm or otherwise stabilize the situation.¹⁵¹ As the court explained in *People v. Hill*, “The privilege to enter to render aid does not justify a search of the premises for other purposes. To the contrary, a warrantless search of a dwelling must be suitably circumscribed to serve the exigency which prompted it.”¹⁵²

This does not mean that officers must employ the least intrusive means,¹⁵³ so long as they did not act unreasonably in failing to pursue other options.

Common responses

The following are the most common responses to emergency situations that occur inside homes (in increasing level of intrusiveness).

TRESPASSING: In some cases, the existence of a threat can be determined by simply walking around the outside of the premises, and maybe looking through windows. If so, such a response will ordinarily be upheld. “[E]ven without a warrant,” said the California Supreme Court, “police officers may intrude onto private property if the surrounding facts provide cause to believe an emergency situation exists.”¹⁵⁴

¹⁴³ *Ewolski v. City of Brunswick* (6th Cir. 2002) 287 F.3d 492, 504. ALSO SEE *U.S. v. Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1449.

¹⁴⁴ *U.S. v. Vega* (5th Cir. 2000) 221 F.3d 789, 800. ALSO SEE *People v. Rodriguez* (1981) 123 Cal.App.3d 269, 272; *People v. Bellizzi* (1995) 34 Cal.App.4th 1849, 1852; *U.S. v. Chambers* (6th Cir. 2005) 395 F.3d 563, 569.

¹⁴⁵ *U.S. v. Richard* (5th Cir. 1993) 994 F.2d 244, 249.

¹⁴⁶ *U.S. v. Gomez-Moreno* (5th Cir. 2007) 479 F.3d 350, 356-57. ALSO SEE *U.S. v. Santa* (11th Cir. 2000) 236 F.3d 662, 670.

¹⁴⁷ *U.S. v. Coles* (3rd Cir. 2006) 437 F.3d 361, 371.

¹⁴⁸ See *People v. Ortiz* (1995) 32 Cal.App.4th 286, 294 [“an unexpected situation”]; *People v. Kizzee* (1979) 94 Cal.App.3d 927, 935; *People v. Daughhetee* (1985) 165 Cal.App.3d 574, 579; *U.S. v. Richard* (5th Cir. 1993) 994 F.2d 244, 248.

¹⁴⁹ (D.C. Cir. 1988) 846 F.2d 1439, 1448.

¹⁵⁰ (2000) 23 Cal.4th 529, 580.

¹⁵¹ See *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1261, fn.2; *People v. Ray* (1999) 21 Cal.4th 464, 477.

¹⁵² (1974) 12 Cal.3d 731, 755.

¹⁵³ See *People v. Ortiz* (1995) 32 Cal.App.4th 286, 294; *People v. Ray* (1999) 21 Cal.4th 464, 478.

¹⁵⁴ *People v. Camacho* (2000) 23 Cal.4th 824, 836. ALSO SEE *People v. Gemmill* (2008) 162 Cal.App.4th 958, 971.

PREVENT ENTRY: If a threat could be defused by temporarily cordoning off the premises, officers may do so pending issuance of a search warrant or a determination to take some other action.¹⁵⁵ Thus, the court in *People v. Bennett* pointed out:

Permitting police officers the limited intrusion of temporarily prohibiting entry to a dwelling when they have a reasonable suspicion that contraband or evidence of a crime is inside, while the officers themselves remain outside, will enable them to carry out their investigations free from the fear that such evidence or contraband will be destroyed.¹⁵⁶

SEARCH FOR PEOPLE (SWEEPS): There are several situations in which it is appropriate to enter the premises and conduct a sweep, which is defined as a limited search for *people*, as opposed to evidence.¹⁵⁷ Specifically, sweeps are often employed when officers need to make sure that no one is present who poses a threat to evidence, to apprehend fleeing fugitives or burglars, or to determine if anyone on the scene needs emergency assistance.¹⁵⁸

SEARCH FOR EVIDENCE: A full warrantless search for evidence or other property is seldom necessary to defuse an emergency because most exigent circumstances can be abated by utilizing less intrusive means, such as conducting a sweep or cordoning off the premises until a warrant is issued. If, however, a search is absolutely necessary, officers may do so. For example, in *People v. Sirhan* the California Supreme Court ruled that, after the defendant shot and killed Senator Robert Kennedy, “[o]nly a thorough search in [Sirhan’s] house could insure that there was no evidence therein of [a] conspiracy.”¹⁵⁹

STRUCTURE FIRES: CAUSE AND ORIGIN SEARCHES: Officers may, of course, enter a structure that is on fire for the purpose of saving occupants or trying to extinguish the blaze.¹⁶⁰ The exigency does not, how-

ever, automatically end when the fire is out; i.e., it does not terminate with the “dousing of the last flame.”¹⁶¹ Instead, it ends after investigators have, (1) made sure the premises were safe for re-occupancy,¹⁶² and (2) determined the cause of the fire.¹⁶³ As the United States Supreme Court observed, “Fire officials are charged not only with extinguishing fires, but with finding their causes. Prompt determination of the fire’s origin may be necessary to prevent its recurrence” or to “preserve evidence from intentional or accidental destruction.”¹⁶⁴

Thus, fire and police officials who are investigating the cause of a structure fire may remain in and about the premises for a reasonable time as necessary to conduct their investigation. If, however, investigators have left the scene, they may not reenter without a warrant if the owners or occupants have reasserted a reasonable privacy interest in the premises.¹⁶⁵

What’s a “reasonable” amount of time for an investigation? It depends on the size of the structure; conditions that made the investigation more time-consuming, such as heavy smoke and poor lighting; and whether there were other circumstances that delayed the investigation, such as the presence of explosives or dangerous chemicals.¹⁶⁶

Vacating and Reentry

Officers who have lawfully entered a home because of exigent circumstances may remain until the emergency is over. After that, they must either vacate the premises; obtain consent to search; or, if they decide to seek a warrant, secure the premises pending issuance of one. If officers have vacated the premises they may, however, reenter if, (1) while inside, they saw contraband or other evidence; and (2), due to the exigent circumstances, it was impossible or impractical to seize the evidence until after they had secured the scene.¹⁶⁷

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¹⁵⁶ (1998) 17 Cal.4th 373, 387.

¹⁵⁷ See *Maryland v. Buie* (1990) 494 U.S. 325, 327.

¹⁵⁸ See *Segura v. U.S.* (1984) 468 U.S. 796, 811; *Mincey v. Arizona* (1978) 437 U.S. 385, 392 [murder scene].

¹⁵⁹ (1972) 7 Cal.3d 710, 740. ALSO SEE *Mora v. City of Gaithersburg* (4th Cir. 2008) 519 F.3d 216, 226.

¹⁶⁰ See *Michigan v. Tyler* (1978) 436 U.S. 499, 509; *People v. Glance* (1989) 209 Cal.App.3d 836, 844.

¹⁶¹ *Michigan v. Tyler* (1978) 436 U.S. 499, 510.

¹⁶² See *U.S. v. Buckmaster* (6th Cir. 2007) 485 F.3d 873, 876.

¹⁶³ See *People v. Glance* (1989) 209 Cal.App.3d 836, 845; *People v. Avalos* (1988) 203 Cal.App.3d 1517, 1523.

¹⁶⁴ *Michigan v. Tyler* (1978) 436 U.S. 499, 510. ALSO SEE *Michigan v. Clifford* (1984) 464 U.S. 287, 293.

¹⁶⁵ See *Michigan v. Clifford* (1984) 464 U.S. 287, 297. COMPARE *People v. Glance* (1989) 209 Cal.App.3d 836, 844.

¹⁶⁶ See *Michigan v. Tyler* (1978) 436 U.S. 499, 510, fn.6; *People v. Avalos* (1988) 203 Cal.App.3d 1517, 1523.

¹⁶⁷ *People v. Justin* (1983) 140 Cal.App.3d 729, 736; *People v. Ngaue* (1992) 8 Cal.App.4th 896, 905.