Entry to Arrest
Ramey, Payton, and *Steagald*

An intrusion by the state into the privacy of the home for any purpose is one of the most awesome incursions of police power into the life of the individual.[1]

There was a time when officers who had developed probable cause to arrest someone would simply drive over to his house and arrest him. If they needed to break in, no problem. If they needed to search the premises for him, that was okay, too. And if they happened to see any evidence in plain view while they were looking around, they could seize it. This was, in fact, standard police practice in most states for around two hundred years and it was, to say the least, efficient. (It was also good for the environment because there was no paperwork.) But despite its efficiency and usefulness, it became illegal. What happened?

The immediate cause was a pair of landmark court decisions. The first was the California Supreme Court's 1976 decision in *People* v. *Ramey* in which the court ruled that entries into a person's home to arrest him were prohibited unless the officers had an arrest warrant.[2] Then, four years later, the U.S. Supreme Court in *Payton* v. *New York* essentially adopted the *Ramey* rule in its entirety and made it a constitutional requirement.[3]

But the underlying cause was that routine warrantless entries into homes to arrest a resident had become repugnant to the American people, especially since such intrusions had been common occurrences in Nazi Germany and were still the norm in many dictatorships and communist countries. The court in *Ramey* described it as "[t]he frightening experience of certain foreign nations with the unexpected invasion of private homes by uniformed authority to seize individuals therein, often in the dead of night."

While the decisions in *Ramey* and *Payton* were based in part of the need to protect the privacy interests of arrestees, there was equal—maybe even greater—concern about the impact of warrantless entries on innocent occupants, especially any children in the residence.[4] After all, such an intrusion into a home is a "frightening experience" to everyone there.[5]

These were the reasons that the courts in *Ramey* and *Payton* ruled that officers must ordinarily have an arrest warrant for a suspect in order to enter his home to take him into custody. But the Court in *Payton* announced two additional requirements: the officers must have had reason to believe that the arrestee currently lived in the residence, and they must have had reason to believe that he was inside when they made entry.

As the title of this article suggests, there is a third case that has a bearing on entries to arrest. That case is *Steagald* v. *United States*,[6] and it was announced by the U.S. Supreme Court just one year after it decided *Payton*. In *Steagald* the Court ruled that, while an arrest warrant was sufficient to enter the home of the arrestee, greater protections were necessary when officers needed to search for the arrestee in the home of a friend or relative. In these situations, said the Court, officers must have a special type of search warrant that has become known as a *Steagald* warrant.

Later in this article, we will explain exactly what officers must do to comply with *Ramey-Payton* and *Steagald*, how the courts enforce these rules, and the exceptions to the warrant requirement. But because the first issue that officers are apt to confront is whether compliance is, in fact, required, that is where we will start.

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[1] *People* v. *Ramey* (1976) 16 Cal.3d 263, 275.
[2] (1976) 16 Cal.3d 263.
[3] (1980) 445 U.S. 573.
[4] See *Minnesota* v. *Olson* (1990) 495 U.S. 91, 95.
[5] See *People* v. *Tillery* (1979) 99 Cal.App.3d 975, 978 ["The emphasis is on the intrusion, not on the residential status of the arrestee"].
[6] (1981) 451 U.S. 204.

When Compliance Is Required

Because *Ramey-Payton* and *Steagald* apply only if officers entered a "private" building for the purpose of making an arrest, compliance is required only if all of the following circumstances existed: (1) the location of the arrest was a home or other structure in which the occupants had a reasonable expectation of privacy, (2) the officers physically entered the structure, and (3) they entered with the intent to immediately arrest an occupant.

Private Buildings

At the top of the list of places in which most people can reasonably expect privacy are homes—whether detached houses, apartments, duplexes, or condominiums.[7] Thus, one of the Supreme Court's most-quoted observations is that "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."[8]

Ramey-Payton and *Steagald* are not, however, limited to homes and other residences.[9] Instead, as the court explained in *People* v. *Willis*, "for *Ramey* purposes, 'home' should be defined in terms as broad as necessary to protect the privacy interests at stake and, therefore, would include any premises in which the occupant had acquired a legitimate expectation of privacy."[10] Thus, the term includes such places as motel and hotel rooms, mobile homes, even sheds and tents that serve as residences.[11] It also covers those areas of businesses and other commercial structures in which the arrestee could reasonably expect privacy; e.g., his private office.[12] On the other hand, *Ramey-Payton* and *Steagald* would not apply if the arrest occurred in a place or area that was open to the public, such as a store, restaurant, or the reception area of an office.[13]

Physical entry

Since the sole concern of *Ramey-Payton* and *Steagald* is the intrusion into the structure,[14] they do not apply unless officers actually entered; i.e., crossed the threshold.

ARREST OUTSIDE THE DOORWAY: Officers do not violate *Ramey-Payton* or *Steagald* if they arrest the suspect anywhere outside the doorway; e.g., on the front porch.[15] Furthermore, officers may ask the arrestee to exit, then arrest him as he steps outside. For example, in *People* v. *Tillery* the court ruled that an officer did not violate *Ramey* when he arrested the defendant in the hallway of his apartment building after asking him to step out to talk. Said the court, "Once he stepped outside, it was lawful for the officer to arrest him."[16]

Officers may also trick or even order the arrestee to exit the premises—then arrest him as he does so. As for trickery, the Court of Appeal observed that "the use of a ruse to persuade a potential arrestee to leave a house, thereby subjecting himself to arrest

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[7] See *People* v. *Ramey* (1976) 16 Cal.3d 263; *Payton* v. *New York* (1980) 445 U.S. 573.
[8] *Payton* v. *New York* (1980) 445 U.S. 573, 590.
[9] See *People* v. *Lee* (1986) 186 Cal.App.3d 743, 746 [*Ramey* covers any structure of "private retreat"]; *U.S.* v. *Driver* (9th Cir. 1985) 776 F.2d 807, 809 ["The relevant question . . . is the individual's expectation of privacy."].
[10] (1980) 104 Cal.App.3d 433, 443.
[11] See *People* v. *Tillery* (1979) 99 Cal.App.3d 975, 979 ["The expectation of privacy against warrantless searches and seizures applies to tenancy of any kind, regardless of duration of the stay or nature of any consideration paid."]; *People* v. *Bennett* (1998) 17 Cal.4th 373, 384 [hotel room]; *People* v. *Superior Court (Arketa)* (1970) 10 Cal.App.3d 122 [shed in which a light was burning, the shed was about 25 yards from a house]; *People* v. *Bigham* (1975) 49 Cal.App.3d 73, 81 [converted garage]; *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 744 [mobile home]; *People* v. *Watkins* (1994) 26 Cal.App.4th 19 [motel room].
[12] See *People* v. *Lee* (1986) 186 Cal.App.3d 743, 750 ["Lee had a reasonable expectation of privacy in his locked interior office, which was not accessible to the public without permission."]; *U.S.* v. *Driver* (9th Cir. 1985) 776 F.2d 807, 810 ["Mrs. Driver was not in an area exposed or visible to the public, but in an area of the warehouse with a reasonable expectation of privacy."]; *O'Rourke* v. *Hayes* (11th Cir. 2004) 378 F.3d 1201, 1206 [area was "off-limits to the general public"].
[13] See *United States* v. *Watson* (1976) 423 U.S. 411, 418, fn.6 [restaurant]; *People* v. *Lovett* (1978) 82 Cal.App.3d 527, 532 [a store]; *People* v. *Pompa* (1989) 212 Cal.App.3d 1308, 1311 [upholstery store open for business].
[14] See *New York* v. *Harris* (1990) 495 U.S. 14, 17; *Minnesota* v. *Olson* (1990) 495 U.S. 91, 95; *People* v. *McCarter* (1981) 117 Cal.App.3d 894, 908 ["It is the intrusion into, rather than the arrest in, the dwelling which offends constitutional standards under *Ramey*."]; *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 672.
[15] See *Steagald* v. *United States* (1981) 451 U.S. 204, 221 [the arrestee "can be readily seized . . . after leaving"].
[16] (1979) 99 Cal.App.3d 975, 979-80. Also see *People* v. *Jackson* (1986) 187 Cal.App.3d 499, 505.

on the street where the concerns attendant to *Ramey* are not present is not necessarily precluded."[17] For example, in *People* v. *Porras*[18] an undercover narcotics officer, having developed probable cause to arrest Porras for drug trafficking, phoned him and identified himself as one of Porras's drug customers. He then warned him that some underhanded officers had forced him to reveal that Porras was his supplier and, in fact, a bunch of them were on their way to Porras's house now with a search warrant. The officer concluded by suggesting that Porras immediately "get rid of the dope."

Shortly thereafter, officers who were watching the house saw Porras stick his head out the door, look around, then advise someone inside that "the coast is clear." He then ran off with a tool box filled with drugs which the officers recovered after he tripped and dropped it. On appeal, the court ruled there was nothing illegal about the officers' trickery, noting that "[m]any cases have held that the mere fact that a suspect is led to incriminate himself by use of some ruse or stratagem does not make the evidence thus obtained inadmissible."

As noted, officers may also order the suspect to exit, then arrest him when he complies. This happened in *People* v. *Trudell*[19] in which Fremont officers arrested a rape suspect after he exited his house in response to a command by an officer using a loudspeaker. On appeal, he claimed the arrest violated *Ramey-Payton* because his decision to exit was not consensual. But the court ruled the validity of his consent did not matter because, "[g]iven that the police made no warrantless entry into appellant's residence," *Payton* and *Ramey* were "inapplicable."

"DOORWAY" ARRESTS: A "doorway" arrest occurs when officers, having probable cause to arrest a suspect, make the arrest as he is standing in his doorway.[20] Such an arrest is permissible because the Supreme Court ruled in *United States* v. *Santana* that a person who is standing in the doorway of a home is in a "public" place (i.e., "one step forward would have put her outside, one step backward would have put her in the vestibule").[21] The Court reasoned that Ms. Santana "was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house."

Note that if the arrestee runs inside after officers attempt to arrest him at the doorway (as occurred in *Santana*) officers may chase him inside. This subject is covered later in the section on the exigent circumstance exception to *Ramey-Payton* and *Steagald*.

ARRESTS JUST INSIDE THE DOORWAY: If the arrestee is standing just inside an open doorway, the question arises: Do officers violate *Ramey-Payton* or *Steagald* if they reach in and grab him? Unfortunately, this is a gray area. On the one hand, there is a case from the Eleventh Circuit in which the court announced a broad rule that any intrusion past the threshold violates *Payton*.[22] On the other hand, the Ninth Circuit has ruled that a violation would not result if (1) the arrestee voluntarily opened the door; (2) he opened it so widely that he was exposed to public view; and (3) he knew, or should have known, that the callers were officers; e.g., the officers identified themselves as they knocked.

In the Ninth Circuit case, *U.S.* v. *Vaneaton,*[23] several Portland police officers went to Vaneaton's motel room to arrest him for a series of burglaries. When they knocked on the door, Vaneaton "opened the curtains of a window, looked at the officers, and opened the door." As he was standing "just inside the

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[17] *In re Danny E.* (1981) 121 Cal.App.3d 44, 51. Also see *People* v. *Martino* (1985) 166 Cal.App.3d 777, 789 ["The cops are getting a search warrant. If you have any dope, you had better get it out of there."]; *U.S.* v. *Michaud* (9th Cir. 2001) 268 F.3d 728, 733.

[18] (1979) 99 Cal.App.3d 874.

[19] (1985) 173 Cal.App.3d 1221.

[20] See *People* v. *Watkins* (1994) 26 Cal.App.4th 19, 29.

[21] (1976) 427 U.S. 38. Also see *People* v. *Hampton* (1985) 164 Cal.App.3d 27, 36; *U.S.* v. *Whitten* (9th Cir. 1983) 706 F.2d 1000, 1015.

[22] *McClish* v. *Nugent* (11th Cir. 2007) 483 F.3d 1231, 1248.

[23] (9th Cir. 1995) 49 F.3d 1423. Compare *U.S.* v. *Johnson* (9th Cir. 1980) 626 F.2d 753, 757 ["[I]t cannot be said that Johnson voluntarily exposed himself to warrantless arrest by opening his door to agents who misrepresented their identities."]; *U.S.* v. *McCraw* (4th Cir. 1990) 920 F.2d 224, 229 ["By opening the door only halfway, Mathis did not voluntarily expose himself to the public to the same extent as the arrestee in *Santana*"]; *U.S.* v. *Edmondson* (11th Cir. 1986) 791 F.2d 1512 [entry unlawful because the suspect opened the door after an agent yelled, "FBI. Open the door"].

threshold," an officer arrested him and obtained his consent to search the room. The search produced a gun which Vaneaton argued should have been suppressed on grounds that, unlike Santana, he was standing *inside* the threshold. Even so, said the court, the arrest did not violate *Payton* because, "[w]hen Vaneaton saw [the officers] through the window, he voluntarily opened the door and exposed both himself and the immediate area to them."

Although the California Supreme Court has not directly addressed the issue, it seemed to indicate that it, too, would rule that a violation would not result if the arrestee voluntarily opened to door to officers who had identified themselves. Specifically, in *People* v. *Jacobs* the court indicated that a warrantless entry might not violate *Ramey-Payton* if, under the circumstances, it did not "undermine the statutory purposes of safeguarding the privacy of citizens in their homes and preventing unnecessary violent confrontations between startled householders and arresting officers."[24]

Entry to arrest

Because *Ramey-Payton* and *Steagald* apply only if officers entered with the intent to immediately arrest an occupant, neither would apply if officers entered for some other purpose, even though the entry culminated in an arrest.

ENTRY TO INTERVIEW: Apart from the fact that *Ramey-Payton* and *Steagald* do not pertain to most consensual entries (a subject we will discuss shortly), they are also inapplicable to situations in which officers were admitted for the purpose of interviewing a person about a crime for which he was a suspect. Thus, a violation would not occur if officers made the arrest after the suspect said or did something that provided them with probable cause. As the California Court of Appeal explained, "[I]f probable cause to arrest arises *after* the officers have been voluntarily permitted to enter a residence in connection with their investigative work, an arrest may then be effected within the premises without the officers being required to beat a hasty retreat to obtain a warrant."[25]

If, however, the officers had probable cause to arrest when they entered, a court might find that they intended to make an arrest (which, as we will also discuss later, would probably invalidate the consent) unless the court was satisfied that the officers had not yet made the decision to do so. In other words, it must appear that the evidence against the suspect was such that he might have been able to explain it away, or at least cause the officers to postpone making an arrest until they could investigate further.

For example, in *People* v. *Patterson*[26] an untested informant told LAPD narcotics officers that he had observed the manufacture and sale of PCP inside a certain house. While an officer listened in on an extension, the informant phoned the house and spoke with an unidentified woman who said he could pick up an ounce for $105. About ten minutes later, four officers arrived at the house and knocked on the door. A woman, Patterson, came to the door and, after being informed of the tip and the ruse phone call, told the officers, "I don't know anything about any angel dust. Come on in." As the officers entered, they saw some vials containing a crystalline substance, and they could smell a strong chemical odor that was associated with cooking PCP. At that point, they arrested Patterson, obtained her consent to search the premises, and seized additional evidence.

On appeal, Patterson argued that, because the officers had probable cause when they entered, they must have intended to arrest her. The court disagreed, pointing out that the informant did not name Patterson as the source, plus the officers were not certain that Patterson was the woman who spoke with the informant on the phone. It was, therefore, possible that Patterson could have provided information that undermined or negated probable cause. "There is nothing in the record," said the court, "to indicate that the police intended to arrest Patterson immediately following the entry or that they were not prepared to discuss the matter with Patterson first in order to permit her to explain away the basis of the officers' suspicions."

[24] (1987) 43 Cal.3d 472, 480-81. Edited.
[25] *In re Danny E.* (1981) 121 Cal.App.3d 44, 52. Also see *People* v. *Villa* (1981) 125 Cal.App.3d 872, 878.
[26] (1979) 94 Cal.App.3d 456.

ENTRY TO MAKE UNDERCOVER BUY: Undercover officers are often admitted into the homes of suspects to buy or sell drugs or other contraband. As the officers walk through the door, they may intend to arrest the suspect *if* the sale is made. Nevertheless, the restrictions imposed by *Ramey-Payton* and *Steagald* do not apply because (1) the intent to arrest was contingent on what happened after the officers entered, and (2) the entry was consensual. We will discuss the subject of undercover entries below in the section on the consent exception.

PROBATION SEARCH, SEARCH WARRANT: *Ramey-Payton* and *Steagald* do not apply if officers entered to conduct a probation or parole search, or to execute a search warrant.[27] Accordingly, a violation would not result if officers arrested an occupant after they found incriminating evidence and thereby developed probable cause to arrest. (As noted on the next page, such authorization to search also constitutes authorization to enter to arrest.)

EXIGENT CIRCUMSTANCES: If officers entered because they reasonably believed an immediate entry was necessary to save lives or prevent the destruction of evidence, they do not violate *Ramey-Payton* or *Steagald* if they arrested an occupant after having developed probable cause.[28] Also see "Exceptions" (Exigent Circumstances) on page 13.

How to Comply: Entering the Arrestee's Home

As we will now discuss, if *Ramey-Payton* apply, officers may enter a suspect's home to arrest him only if all of the following circumstances existed:

(1) **Authorization to enter**: The officers must have had a legal right to enter.
(2) **Arrestee's home**: The officers must have had reason to believe the arrestee lived in the house or that he otherwise owned or controlled it.
(3) **Arrestee now inside**: The officers must have reasonably believed the arrestee was inside.

Authorization to enter

Legal authorization to enter the suspect's home will exist if the officers were aware that a conventional or *Ramey* warrant for his arrest had been issued, or that a warrant to search the premises had been issued, or that a warrantless entry was authorized by the terms of the suspect's probation or parole.

CONVENTIONAL ARREST WARRANT: A conventional arrest warrant is issued by a judge who, based on the filing of a criminal complaint by prosecutors and supporting documents (e.g., witness statements, laboratory reports, police reports), determined that there is probable cause to arrest.[29] A conventional warrant may be based on either a felony or a misdemeanor.[30]

RAMEY WARRANT: A so-called *Ramey* warrant is an arrest warrant that is issued by a judge *before* a complaint has been filed by prosecutors. As the name implies, *Ramey* warrants were developed in response to the *Ramey* decision, the reason being that, until then, most arrest warrants were conventional; i.e., they were issued only after prosecutors were satisfied that they could establish the arrestee's guilt beyond a reasonable doubt. But in many cases, officers could not obtain such proof unless they were able to take the suspect into custody and, for example, interrogate him, place him in a lineup, monitor his phone calls or visitor conversations, or obtain his fingerprints or a DNA sample.

As prosecutors considered the situation, they concluded that, because the Fourth Amendment permits judges to issue search warrants based on nothing more than probable cause, there was no reason to impose a higher standard for arrest warrants. And the courts subsequently agreed, ruling that an arrest warrant need not also demonstrate that prosecutors had made the decision to charge the suspect with the crime. As the Court of Appeal explained in *People* v. *Case*:

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[27] See *Payton* v. *New York* (1980) 445 U.S. 573, 576 [restrictions apply only if officers enter "in order to make a routine felony arrest"].
[28] See *People* v. *Bacigalupo* (1991) 1 Cal.4th 103, 122 ["The [arrest] warrant requirement is excused when exigent circumstances require prompt action by the police to prevent imminent danger to life or to forestall the imminent escape of a suspect or destruction of evidence."].
[29] See *Steagald* v. *United States* (1981) 451 U.S. 204, 213 ["An arrest warrant is issued upon a showing that probable cause exists to believe that the subject of the warrant has committed an offense."].
[30] See Pen. Code § 813 [felony warrants], Pen. Code § 1427 [misdemeanor warrants].

> From a practical standpoint the use of the "*Ramey* Warrant" form was apparently to permit, prior to an arrest, judicial scrutiny of an officer's belief that he had probable cause to make the arrest without involving the prosecutor's discretion in determining whether to initiate criminal proceedings.[31]

Today, the procedure for obtaining *Ramey* warrants has been incorporated into the Penal Code which authorizes judges to issue them if officers comply with the following procedure:[32]

(1) PREPARE DECLARATION: The officer prepares a Declaration of Probable Cause which, like a search warrant affidavit, contains the facts upon which probable cause is based.

(2) PREPARE *RAMEY* WARRANT: The officer prepares the *Ramey* warrant, which is technically known as a "Warrant of Probable Cause for Arrest."[33] A sample *Ramey* warrant is shown on page 19.

(3) SUBMIT TO JUDGE: The officer submits the declaration and warrant to a judge for review. This may be done in person, by fax, or by email.[34]

(4) WARRANT ISSUED: If the judge finds there is probable cause, he or she will issue the warrant.

(5) FILE CERTIFICATE OF SERVICE: After the warrant is executed, officers must file a "Certificate of Service" with the court clerk.[35] Such a certificate must include the date and time of arrest, the location of arrest, and the location of the facility in which the arrestee is incarcerated.

It is important to note that, although *Ramey* warrants sometimes contain the arrestee's last known address or some other address at which he might be staying, this does not constitute authorization to enter the home at that address. The reason (as we will explain in more detail below in the section "Arrestee's house?") is that, regardless of the inclusion of an address on the warrant, a *Ramey* warrant constitutes authorization to enter only a home in which officers—at the moment they entered—had reason to believe the arrestee was living and is now present. Thus, unlike an address that appears on a search warrant, an address on a *Ramey* warrant has no legal significance; i.e., it serves only as an aid in locating the arrestee.[36] (A sample *Ramey* Warrant is shown on page 19. Officers and prosecutors may obtain a copy of this form in Microsoft Word format (which can be edited) by sending a request from a departmental email address to POV@acgov.org.)

SEARCH WARRANT: Because a search warrant authorizes officers to enter the listed premises, it satisfies the "legal authorization" requirement even if they intended only to make an arrest. As the court observed in *People* v. *McCarter*, "[N]o *Ramey* violation as to [the arrestee] could have occurred under the present facts since the police had judicial authorization to enter her home via a validly issued and executed search warrant."[37] (It is arguable that officers with a search warrant who intended only to make an arrest could enter even if they lacked reason to believe that the arrestee lived there or that he is now on the premises. We are, however, unaware of any cases in which this issue was raised.)

PROBATION OR PAROLE SEARCH CONDITION: Officers have legal authorization to enter the arrestee's home for the purpose of arresting him if they were legally authorized to search it without a warrant pursuant to the terms of probation or parole.[38]

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[31] (1980) 105 Cal.App.3d 826, 831 [Edited]. Also see *Godwin* v. *Superior Court* (2001) 90 Cal.App.4th 215, 225.

[32] Pen. Code § 817.

[33] See Pen. Code §§ 815, 815a, 816; *People* v. *McCraw* (1990) 226 Cal.App.3d 346, 349.

[34] See Pen. Code § 817(c)(2).

[35] See Pen. Code § 817(h).

[36] See *Wanger* v. *Bonner* (5th Cir. 1980) 621 F.2d 675, 682 [court rejects the argument that "the inclusion of an address for the person to be arrested in the warrant provided the deputies with a reasonable basis for the belief that the [arrestee] could be found within the premises"]; *U.S.* v. *Lauter* (2d Cir. 1995) 57 F.3d 212, 215 ["Any discrepancy between the address in the supporting affidavit and the address where Lauter was ultimately arrested is irrelevant because all an arrest warrant must do is identify the person sought."]; *U.S.* v. *Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1263 [insignificant "that the arrest warrant listed the 132nd Place address"].

[37] (1981) 117 Cal.App.3d 894, 908.

[38] See *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 15 ["Since the officers had authorization to enter the home to search, the arrest inside was of no constitutional significance."]; *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 673 ["The parolee who could not stop entry into the home for a search can have no greater power to prevent an entry for an arrest. The intrusion for the latter purpose is virtually the same as for the former."].

OTHER ARREST WARRANTS: There are five other types of arrest warrants that provide officers with authorization to enter:

PROBATION VIOLATION WARRANT: Issued by a judge based on probable cause to believe that the arrestee has violated the terms of his probation.[39]

PAROLE VIOLATION WARRANT: A parole violation warrant (also known as a parolee-at-large or PAL warrant) is issued by the parole board based on probable cause to believe that the parolee absconded.[40]

INDICTMENT WARRANT: Issued by a judge on grounds that the arrestee was indicted by a grand jury.[41]

BENCH WARRANT: Issued by a judge when a defendant fails to appear in court.[42]

WITNESS FTA WARRANT: Issued by a judge for the arrest of a witness who failed to appear in court after being ordered to do so.[43]

Arrestee's house?

In addition to having legal authorization to enter the residence, officers must have reason to believe the arrestee is, in fact, living there.[44] In many cases, however, this requirement is difficult to satisfy, especially when the arrestee is a transient or when he knows he is wanted, in which case he may try to conceal his whereabouts or move around a lot, staying with friends and relatives, or moving in and out of motels.[45] To complicate matters even more, it is common for a suspect's friends to furnish officers with false leads as to his current residence.[46] Nevertheless, this requirement is strictly enforced by the courts and is frequently litigated.

"LIVES" = COMMON AUTHORITY: An arrestee will be deemed "living" in a home if he has "common authority" or some other "significant relationship" to it.[47] As the Eighth Circuit observed, when a person has common authority over a residence, "that dwelling can certainly be considered her 'home' for Fourth Amendment purposes."[48]

Although there is no easy definition of the term "common authority,"[49] the Supreme Court noted that people will ordinarily have it if they had "joint access or control for most purposes."[50] Thus, in discussing this subject in *U.S.* v. *Franklin,* the Ninth Circuit observed that "[r]esidential arrangements take many forms. A 'residence' does not have to be an old ancestral home, but it requires more than a sleepover at someone else's place. It is insufficient to show that the [arrestee] may have spent the night there occasionally."[51]

On the other hand, an arrestee may be deemed to be "living in" a residence in which he stays on a regular basis for any significant period. For example, in *Washington* v. *Simpson* the Eighth Circuit ruled that an arrestee "resided" in a house in which she stayed two to four nights per week, kept some of her personal belonging there, and had previously given that address as her residence when she was booked."[52]

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[39] See Pen. Code § 1203.2(a).
[40] See Pen. Code § 3060(a); *People* v. *Hunter* (2006) 140 Cal.App.4th 1147, 1153-54; *U.S.* v. *Harper* (9th Cir. 1991) 928 F.2d 894, 896; *U.S.* v. *Pelletier* (1st Cir. 2006) 469 F.3d 194, 200.
[41] See Pen. Code § 945.
[42] See Pen. Code §§ 978.5, 813(c), 853.8, 983; *Allison* v. *County of Ventura* (1977) 68 Cal.App.3d 689, 701-2; *U.S.* v. *Gooch* (9th Cir. 2007) 506 F.3d 1156, 1159; *U.S.* v. *Spencer* (2nd Cir. 1982) 684 F.2d 220, 222.
[43] See Code Civ. Proc. § 1993.
[44] See *Payton* v. *New York* (1980) 445 U.S. 573, 602-3 [officers must have "reason to believe the suspect is within" the residence].
[45] See *U.S.* v. *Gay* (10th Cir. 2001) 240 F.3d 1222, 1227 ["Indeed the officers may take into account the fact that a person involved in criminal activity may be attempting to conceal his whereabouts."]; *U.S. Magluta* (11th Cir. 1995) 44 F.3d 1530, 1538.
[46] See *Motley* v. *Parks* (9th Cir. en banc 2005) 432 F.3d 1072, 1082 ["It is not an unheard-of phenomenon that one resident will tell police that another resident is not at home, when the other resident actually is hiding under a bed when the police came to call."].
[47] See *Case* v. *Kitsap County Sheriff's Department* (9th Cir. 2001) 249 F.3d 921, 931; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1120, 1225; *U.S.* v. *Gay* (10th Cir. 2001) 240 F.3d 1222, 1226.
[48] *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 217.
[49] See *U.S.* v. *Nezaj* (S.D.N.Y. 1987) 666 F.Supp. 494, 500 ["The question of when a dwelling is someone's home can be a difficult factual and legal issue"].
[50] *United States* v. *Matlock* (1974) 415 U.S. 164, 171, fn.7.
[51] (9th Cir. 2010) 603 F.3d 652, 656. Also see *Perez* v. *Simpson* (9th Cir. 1989) 884 F.2d 1136, 1141 [arrestee did not reside in the house merely because "he spent the night there on occasion"].
[52] (8th Cir. 1986) 806 F.2d 192, 196.

It should be noted that a person may have common authority over two or more residences, or a residence that is owned by someone else.[53] Consequently, when this issue arose in *U.S.* v. *Risse* the court explained:

> [S]o long as [the arrestee] possesses common authority over, or some other significant relationship to, the Huntington Road residence, that dwelling can certainly be considered her "home" for Fourth Amendment purposes, even if the premises are owned by a third party and others are living there, and even if [the arrestee] concurrently maintains a residence elsewhere as well.[54]

"REASON TO BELIEVE": As noted, officers must have "reason to believe" that the arrestee currently lives in the residence. Unfortunately, when the United States Supreme Court announced the "reason to believe" standard in *Payton* v. *New York* it neglected to mention whether it means probable cause, reasonable suspicion, or some hybrid level of proof. Not surprisingly, the Court's failure has resulted in much confusion, and has required the lower courts to expend substantial resources in trying to resolve the matter.[55]

In any event, most courts have concluded that the term means reasonable suspicion,[56] while only one—the Ninth Circuit—has categorically ruled that it means probable cause.[57] Other courts that have been presented with the issue—including the California Supreme Court—have declined to rule on the issue in cases where it was unnecessary to do so since it was apparent that, even if probable cause were required, the officers had it.[58]

It would be pointless to try to resolve the matter here, except perhaps to note that, because the U.S. Supreme Court is quite familiar with the term "probable cause" (after all, it plays a central role in the text of the Fourth Amendment), and because the Court elected not to use it in *Payton*, there is a strong possibility that it had something else in mind.[59] As the District of Columbia Circuit aptly observed, "We think it more likely that the Supreme Court in *Payton* used a phrase other than 'probable cause' because it meant something other than 'probable cause.'"[60]

That being said, it doesn't seem to matter much whether the standard is reasonable suspicion or probable cause. This is because officers usually have sufficient information as to where arrestees live to

[53] See *Case* v. *Kitsap County Sheriff's Department* (9th Cir. 2001) 249 F.3d 921, 931 [officers reasonably believed that the arrestee lived at the house "at least part of the time"]; *U.S.* v. *Litteral* (9th Cir. 1990) 910 F.2d 547, 553 ["But if the suspect is a co-resident of the third party, then . . . *Payton* allows both arrest of the subject of the arrest warrant and use of the evidence found against the third party."]; *U.S.* v. *Junkman* (8th Cir. 1998) 160 F.3d 1191, 1194 ["As long as the officers reasonably believed Kent Junkman was a co-resident of the room, the entry into the room to arrest Kent Junkman was a reasonable one."].

[54] (8th Cir. 1996) 83 F.3d 212, 217.

[55] See *U.S.* v. *Diaz* (9th Cir. 2007) 491 F.3d 1074, 1077 ["The question of what constitutes an adequate 'reason to believe' has given difficulty to many courts, including the district court in the present case. The Supreme Court did not elaborate on the meaning of 'reason to believe' in *Payton* and has not done so since then."]; *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1533 ["The 'reason to believe' standard was not defined in *Payton,* and since *Payton,* neither the Supreme Court, nor the courts of appeals have provided much illumination."].

[56] See *U.S.* v. *Lauter* (2nd Cir. 1995) 57 F.3d 212, 215; *U.S.* v. *Lovelock* (2nd Cir. 1999) 170 F.3d 339, 343; *U.S.* v. *Thomas* (D.C. Cir. 2005) 429 F.3d 282, 286; *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 62; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1220, 1224.

[57] *U.S.* v. *Gorman* (9th Cir. 2002) 314 F.3d 1105, 1111. Also see *Cuevas* v. *De Roco* (9th Cir. 2008) 531 F.3d 726, 736 [court notes the "inconsistency" between the Ninth Circuit and other circuits]; *U.S* v. *Harper* (9th Cir. 1991) 900 F.2d 213; *U.S.* v. *Diaz* (9th Cir. 2007) 491 F.3d 1074, 1077 ["The phrase 'reason to believe' is interchangeable with and conceptually identical to the phrases 'reasonable belief' and 'reasonable grounds for believing,' which frequently appear in our cases."]. Also see *People* v. *Downey* (2011) 198 Cal.App.4th 652, 661 ["The Ninth Circuit stands alone among the federal circuits in its interpretation of *Payton* as requiring probable cause."].

[58] See *People* v. *Jacobs* (1987) 43 Cal.3d 472, 479, fn.4 ["Whatever the quantum of probable cause required by the Fourth Amendment, the officers in this case did not have it"; but the court also noted that Pen. Code § 844 requires "reasonable grounds" which has been deemed the "substantial equivalent" of probable cause, at p. 479.]; *People* v. *White* (1986) 183 Cal.App.3d 1199, 1207 [California cases "leave open the question whether this means a full measure of probable cause or something less"].

[59] See *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1534 ["The strongest support for a lesser burden than probable cause remains the text of *Payton,* and what we must assume was a conscious effort on the part of the Supreme Court in choosing the verbal formulation of 'reason to believe' over that of 'probable cause.'"].

[60] *U.S.* v. *Thomas* (D.C. Cir. 2005) 429 F.3d 282, 286. Also see *People* v. *Downey* (2011) 198 Cal.App.4th 652, 661.

satisfy the higher standard. In fact, we are unaware of any case decided on grounds that the officers had reasonable suspicion but not probable cause. As the Fifth Circuit observed, "The disagreement among the circuits has been more about semantics than substance."[61]

It is, however, clear that, in applying the "reason to believe" standard, the courts will consider the totality of circumstances known to the arresting officers; and they will analyze the circumstances by applying common sense, not hypertechnical analysis.[62] And although a single circumstance will sometimes suffice, in most cases it will take a combination of two or more. Finally, the significance of a particular circumstance will naturally depend on when it occurred. Thus, if the information concerning the arrestee's residence is old, officers will be required to prove that they had reason to believe he still lives there.[63]

RELEVANT CIRCUMSTANCES: Although the courts will consider the totality of circumstances in making a determination as to where the arrestee lives, the following are especially relevant:

LISTED ADDRESS: The address was listed as the arrestee's residence on one or more of the following: rental or lease agreement,[64] hotel or motel registration,[65] utility billing records,[66] telephone or internet records,[67] credit card application,[68] employment application,[69] post office records,[70] DMV records,[71] vehicle repair work order,[72] jail booking records,[73] bail bond application,[74] police or arrest report,[75] parole or probation records.[76]

INFORMATION FROM ARRESTEE OR OTHERS: The arrestee, a reliable informant, or a citizen informant notified officers that the arrestee was presently living at that address.[77] On this subject, two things should be noted. First, the significance of information from an untested informant will usually

[61] *U.S.* v. *Barrera* (5th Cir. 2006) 464 F.3d 496, 501, fn.5.
[62] See *U.S.* v. *Graham* (1st Cir. 2009) 553 F.3d 6, 14; *U.S.* v. *Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1263; *U.S.* v. *Lovelock* (2nd Cir. 1999) 170 F.3d 339, 344; *U.S.* v. *Gay* (10th Cir. 2001) 240 F.3d 1222, 1227.
[63] See *People* v. *Bennetto* (1974) 10 Cal.3d 695, 699-700; *U.S.* v. *Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1264.
[64] See *U.S.* v. *Edmonds* (3d Cir. 1995) 52 F.3d 1236, 1247-48 [arrestee "signed the lease and paid the rent"]; *U.S.* v. *Bennett* (11th Cir. 2009) 555 F.3d 962, 965 ["Bennett had recently delivered the rent for the apartment to the building's landlord"].
[65] See *People* v. *Fuller* (1983) 148 Cal.App.3d 257, 263 [hotel room was registered to suspect]; *U.S.* v. *Franklin* (9th Cir. 2010) 603 F.3d 652, 657 ["When the location in question is a motel room, however, especially one identified as having been rented by the person in question, establishing that location as the person's residence is much less difficult."].
[66] See *People* v. *Downey* (2011) 198 Cal.App.4th 652, 659 [officer testified that "utility bills were a very good source in finding out where someone lives because in his experience many probationers and parolees . . . did not know that police had access to utility bills"]; *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 61, fn.1; *U.S.* v. *Romo-Corrales* (8th Cir. 2010) 592 F.3d 915.
[67] See *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 581; *U.S.* v. *Terry* (2nd Cir. 1983) 702 F.2d 299, 319.
[68] See *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 62, fn.1.
[69] See *People* v. *Jacobs* (1987) 43 Cal.3d 472, 478.
[70] See *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 61, fn.1; *U.S.* v. *Stinson* (D. Conn. 1994) 857 F.Supp. 1026, 1031.
[71] See *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 62, fn.1; *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 740; *U.S.* v. *Ayers* (9th Cir. 1991) 924 F.2d 1468, 1480.
[72] See *U.S.* v. *Manley* (2d Cir. 1980) 632 F.2d 978, 983.
[73] See *Washington* v. *Simpson* (8th Cir. 1986) 806 F.2d 192, 196; *U.S.* v. *Clayton* (8th Cir. 2000) 210 F.3d 841, 842-43.
[74] See *U.S.* v. *Barrera* (5th Cir. 2006) 464 F.3d 496, 504.
[75] See *People* v. *Ott* (1978) 84 Cal.App.3d 118, 126; *U.S.* v. *Graham* (1st Cir. 2009) 553 F.3d 6, 13; *U.S.* v. *Ayers* (9th Cir. 1991) 924 F.2d 1468, 1479.
[76] See *U.S.* v. *Lovelock* (2nd Cir. 1999) 170 F.3d 339, 344; *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 645, 648; *U.S.* v. *Thomas* (D.C. Cir. 2005) 429 F.3d 282, 286; *U.S.* v. *Mayer* (9th Cir. 2008) 530 F.3d 1099, 1104; *U.S.* v. *Graham* (1st Cir. 2009) 553 F.3d 6, 13.
[77] See *People* v. *Dyke* (1990) 224 Cal.App.3d 648, 659 [motel desk clerk had reason to believe that the arrestee was staying with a guest]; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216-17; *People* v. *Alcorn* (1993) 15 Cal.App.4th 652, 655; *U.S.* v. *Junkman* (8th Cir. 1998) 160 F.3d 1191, 1192 [motel desk clerk ID'd the arrestee as a guest]; *U.S.* v. *De Parias* (11th Cir. 1986) 805 F.2d 1447, 1457 ["The apartment manager had informed the FBI agents that the De Pariases lived there"]; *U.S.* v. *Franklin* (9th Cir. 2010) 603 F.3d 652, 656 [an officer "previously received a tip that Franklin was living in the room from a credible informant"]; *U.S.* v. *Edmonds* (3d Cir. 1995) 52 F.3d 1236, 1248 [apartment manager notified agents that the arrestee had just been observed "exiting his apartment and departing the area"]; *U.S.* v. *Mayer* (9th Cir. 2008) 530 F.3d 1099, 1104 ["one of Mayer's Hansen Lane neighbors called Rauch to report that Mayer was residing at 103 Hansen Lane"]; *U.S.* v. *Graham* (1st Cir. 2009) 553 F.3d 6, 13 ["officers showed a picture of Graham to a person outside the apartment who pointed the officers towards the apartment"].

depend on whether there was some corroboration or other reason to believe the information was accurate.[78]

Second, officers are not required to accept information from a friend or relative that the arrestee lives or does not live in a certain residence. Thus, in *Motley* v. *Parks* the court noted that "Motley's statement that [the parolee] did not live at that address, coming from a less-than-disinterested source, did not undermine the information that officers previously had received from their advance briefing."[79]

DIRECT OBSERVATION: Officers, neighbors, landlords, or others had repeatedly or recently seen the arrestee on the premises.[80] It is especially relevant that the arrestee was observed doing things that residents commonly do; e.g. taking out the garbage, chatting with neighbors, leaving early in the morning, opening the door with a key.[81]

ARRESTEE'S CAR PARKED OUTSIDE: The arrestee's car (or a car he was using) was regularly parked in the driveway, in front of the residence, or nearby; e.g., "cars known to be driven by [the arrestee] were at the [residence],"[82] the apartment manager confirmed that the arrestee "used the black Ford Mustang then parked immediately in front of the apartment."[83]

Arrestee is now inside

Even if officers had reason to believe that the arrestee was living in a certain residence, they may not enter the premises unless they also had reason to believe that he was presently inside.[84] This requirement may be satisfied by direct or circumstantial evidence, so we will start with the most common examples of direct evidence:

SURVEILLANCE: Officers saw the arrestee enter but not exit.[85]

INFORMATION FROM OTHERS: A friend, relative, property manager, or other person provided officers with firsthand information that the arrestee was now inside; e.g., the person had just seen him inside.[86] Again, officers are not required to accept the word of a friend or relative of the arrestee as to his current whereabouts because, as the Ninth Circuit observed, "It is not an unheard-of phenomenon that one resident will tell police that another resident is not at home, when the other resident actually is hiding under a bed when the police came to call."[87]

INFORMATION FROM PERSON WHO ANSWERED THE DOOR: The person who answered the door said the arrestee was now inside.[88]

ARRESTEE ANSWERED THE PHONE: Officers phoned the residence, and the arrestee answered.[89]

[78] See *U.S.* v. *Mayer* (9th Cir. 2008) 530 F.3d 1099; *People* v. *Spratt* (1980) 104 Cal.App.3d 562, 568; *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 581.

[79] (9th Cir. en banc 2005) 432 F.3d 1072, 1082.

[80] See *People* v. *Gibson* (2001) 90 Cal.App.4th 371, 381; *U.S.* v. *Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1263; *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 645, 648-49; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 217; *U.S.* v. *Romo-Corrales* (8th Cir. 2010) 592 F.3d 915, 919; *People* v. *Ford* (1975) 54 Cal.App.3d 149, 156.

[81] See *U.S.* v. *Dally* (9th Cir. 1979) 606 F.2d 861; *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 648 [officers saw the suspect leaving the house at 7:30 A.M. with his wife and child]; *U.S.* v. *Harper* (9th Cir. 1991) 928 F.2d 894, 896 ["the police observed David entering the home with his own key once or twice during a three day period"]; *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 582; *People* v. *Ford* (1975) 54 Cal.App.3d 149, 156.

[82] *U.S.* v. *Barrera* (5th Cir. 2006) 464 F.3d 496, 504. Also see *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 581; *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1537-38; *U.S.* v. *Edmonds* (3d Cir. 1995) 52 F.3d 1236; *U.S.* v. *Harper* (9th Cir. 1991) 928 F.2d 894, 896; *U.S.* v. *Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1264; *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 750.

[83] *U.S.* v. *Edmonds* (3d Cir. 1995) 52 F.3d 1236, 1248.

[84] See *Payton* v. *New York* (1980) 445 U.S. 573, 603; *People* v. *Alcorn* (1993) 15 Cal.App.4th 652, 655.

[85] See *People* v. *Ford* (1975) 54 Cal.App.3d 149, 156. *People* v. *Wader* (1993) 5 Cal.4th 610, 633 [an officer saw the suspect inside the house in the early morning hours; at about 2:30 A.M. the lights in the house were turned off; officers entered at 6:15 A.M.]; *U.S.* v. *Agnew* (3d Cir. 2005) 407 F.3d 193, 196, ["they saw him through the window"].

[86] See *U.S.* v. *Jackson* (7th Cir. 2009) 576 F.3d 465, 469; *People* v. *Jacobs* (1987) 43 Cal.3d 472, 479; *People* v. *Alcorn* (1993) 15 Cal.App.4th 652, 655; *People* v. *Superior Court (Dai-Re)* (1980) 104 Cal.App.3d 86, 89; *People* v. *Bacigalupo* (1991) 1 Cal.4th 103, 121; *U.S.* v. *Hardin* (6th Cir. 2009) 539 F.3d 404, 414; *People* v. *Manderscheid* (2002) 99 Cal.App.4th 355, 361-62; *People* v. *Marshall* (1968) 69 Cal.2d 51, 56; *People* v. *Dyke* (1990) 224 Cal.App.3d 648, 659.

[87] *Motley* v. *Parks* (9th Cir. en banc 2005) 432 F.3d 1072, 1082.

[88] See *U.S.* v. *Clayton* (8th Cir. 2000) 210 F.3d 841, 844; *U.S.* v. *Taylor* (D.C. Cir. 2007) 497 F.3d 673, 679.

[89] See *Maryland* v. *Buie* (1990) 494 U.S. 325, 328; *Case* v. *Kitsap County Sheriff's Department* (9th Cir. 2001) 249 F.3d 921, 931.

As for circumstantial evidence, the following will help support an inference that the arrestee is now inside the residence:

SUSPICIOUS RESPONSE BY PERSON AT THE DOOR: The person who answered the door did not respond or was evasive when officers asked if the arrestee was inside.[90]

ARRESTEE'S CAR WAS PARKED OUTSIDE: The arrestee's car (or a car he was known to be using) was parked at or near the residence. As the court observed in *United States* v. *Magluta,* "The presence of a vehicle connected to a suspect is sufficient to create the inference that the suspect is at home."[91] It is, of course, also relevant that the hood over the engine compartment was relatively warm.[92]

ARRESTEE LIVED ALONE, PLUS SIGNS OF ACTIVITY: Officers reasonably believed that the suspect lived alone and there were indications that someone was inside; e.g., sounds of TV or radio, a "thud," lights on. Thus, the court in *U.S.* v. *Morehead* pointed out that the illuminated lights "could have reasonably led the officers to believe that [the arrestee] was inside."[93]

SUSPICIOUS RESPONSE TO KNOCKING: When officers knocked and announced, they heard sounds or saw activity inside the premises that reasonably indicated an occupant was trying to hide or avoid them; e.g., someone yelled "cops," then there was a "commotion in the room."[94]

WORK SCHEDULE, HABITS: Officers entered when the arrestee was usually at home based on his work schedule or habits. As the Eleventh Circuit observed, "[O]fficers may presume that a person is at home at certain times of the day—a presumption which can be rebutted by contrary evidence regarding the suspect's known schedule."[95]

Also note that the failure of anyone to respond to the officers' knock and announcement does not conclusively prove that the arrestee was not at home, especially if there were other circumstances that reasonably indicated he was present.[96]

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[90] See *People* v. *Dyke* (1990) 224 Cal.App.3d 648, 659 [the person who opened the door "appeared nervous and uncooperative"]. Compare *People* v. *Jacobs* (1987) 43 Cal.3d 472, 479 ["When they asked Gretchen if defendant was home, she told them he would be back in an hour. The evidence does not suggest that Gretchen's response or behavior further aroused the officers' suspicions."].

[91] (11th Cir. 1995) 44 F.3d 1530, 1538. Also see *People* v. *Williams* (1989) 48 Cal.3d 1112, 1139 ["The proximity of the [murder] victim's car clearly suggested defendant's presence in the apartment"]; *U.S.* v. *Morehead* (10th Cir. 1992) 959 F.2d 1489, 1496 ["[T]he presence of a car in the carport and a truck in front of the house gave the officers reason to believe [the arrestee] was on the premises."]; *U.S.* v. *Litteral* (9th Cir. 1990) 910 F.2d 547, 554 ["The informant told the agents that if Litteral's car was there, he would be there."]; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1120, 1225 ["The suspect's presence may be suggested by the presence of an automobile."]; *U.S.* v. *De Parias* (11th Cir. 1986) 805 F.2d 1447, 1457 ["The apartment manager had informed the FBI agents that the De Pariases lived there and that they were home if a certain car was parked in front of the apartment."]. Compare *People* v. *White* (1986) 183 Cal.App.3d 1199, 1209 ["[W]hen they arrived at the house they did not see any car fitting the victim's description anywhere in the vicinity."]; *People* v. *Jacobs* (1987) 43 Cal.3d 472, 479 ["Defendant's vehicles were nowhere in sight."].

[92] See *U.S.* v. *Boyd* (8th Cir. 1999) 180 F.3d 967, 978 ["the hood of Troup's black Volvo was still warm which confirmed the CI's statement that Troupe had just arrived"].

[93] (10th Cir. 1992) 959 F.2d 1489, 1496-97. Also see *U.S.* v. *Gay* (10th Cir. 2001) 240 F.3d 1222, 1227 [a "thud"]. Compare *People* v. *Bennetto* (1974) 10 Cal.3d 695, 700 ["the police heard no sounds during the short time they listened outside the apartment"].

[94] *U.S.* v. *Junkman* (8th Cir. 1998) 160 F.3d 1191, 1193. Also see *People* v. *Dyke* (1990) 224 Cal.App.3d 648, 659 [someone inside said "it's the fucking pigs"].

[95] *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1535. Also see *U.S.* v. *Diaz* (9th Cir. 2007) 491 F.3d 1074, 1078 [the arrestee previously told officers that he was usually home during the day, and that he worked at home as a mechanic]; *U.S.* v. *Terry* (2d Cir. 1983) 702 F.2d 299, 319 ["[T]he agents arrived at the apartment at 8:45 A.M. on a Sunday morning, a time when they could reasonably believe that [the arrestee] would be home."]; *U.S.* v. *Edmonds* (3d Cir. 1995) 52 F.3d 1236, 1248 ["Normally a person who is currently living at an apartment returns there at some point to spend the night and does not leave prior to 6:45 A.M."]; *U.S.* v. *Lauter* (2d Cir. 1995) 57 F.3d 212, 215 [reliable informant said the arrestee was unemployed and usually slept late]; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1120, 1227 [officer was aware that the suspect "was unemployed, liked to stay out late drinking, sometimes abused drugs such as heroin and cocaine, and was suspected of having committed at least two nighttime burglaries"]. But also see *People* v. *Jacobs* (1987) 43 Cal.3d 472, 478-79 ["Although [the officer's] testimony supports an inference that [the unemployed] defendant *could* be home at 3:20 P.M. . . . it does not, without more, support a finding that the officers had reasonable grounds to believe defendant was in fact home."].

[96] See *U.S.* v. *Beck* (11th Cir. 1984) 729 F.2d 1329, 1332; *U.S.* v. *Edmonds* (3d Cir. 1995) 52 F.3d 1326, 1248; *Case* v. *Kitsap County Sheriff's Department* (9th Cir. 2001) 249 F.3d 921, 931.

Steagald Warrants: Entering a Third Party's Home

Until now, we have been discussing the requirements for entering the arrestee's home. But officers will often have reason to believe that the arrestee is temporarily staying elsewhere, such as the home of a friend or relative. This typically occurs when the arrestee does not have a permanent address or when he is staying away from his home because he knows that officers are looking for him.

Although officers may enter a third party's home to arrest a guest or visitor if they obtained consent from a resident or if there were exigent circumstances (discussed below), they may not enter merely because they had an arrest warrant. Instead, the Supreme Court ruled in *Steagald* v. *United States* that they must have a search warrant—commonly known as a *Steagald* warrant—that expressly authorizes a search of the premises for the arrestee.[97]

There are essentially two reasons for this requirement. First, a warrant helps protect the privacy interests of the people who live in the home because it cannot be issued unless a judge has determined there is, in fact, probable cause to believe that the arrestee is on the premises. Second, there would exist a "potential for abuse"[98] because officers with an arrest warrant would have carte blanche to forcibly enter any home in which the arrestee was reasonably believed to be temporarily located.

As we will now discuss, there are two types of *Steagald* warrants: conventional and anticipatory.

Conventional Steagald warrants

Conventional *Steagald* warrants can be issued only if there is both probable cause to search the premises for the arrestee, and probable cause to arrest him. Thus, the affidavit in support of a conventional *Steagald* warrant must establish the following:

PROBABLE CAUSE TO ARREST: There are two ways to establish probable cause to arrest the suspect:

(1) WARRANT OUTSTANDING: If an arrest warrant had already been issued, the affiant can simply attach a copy and incorporate it by reference; e.g., *"Attached hereto and incorporated by reference is a copy of the warrant for the arrest of [name of arrestee]. It is marked Exhibit A."*

(2) SET FORTH FACTS: If an arrest warrant had not yet been issued, probable cause to arrest can be established in two ways, depending on whether officers are seeking a conventional *Steagald* warrant or an anticipatory *Steagald* warrant.

STANDARD STEAGALD WARRANT: The affidavit must contain the facts upon which probable cause to arrest is based.

ANTICIPATORY STEAGALD WARRANT: If officers are seeking an anticipatory *Steagald* warrant (discussed below), the affidavit must contain the facts demonstrating that probable cause to arrest will exist when a triggering event occurs.

PROBABLE CAUSE TO SEARCH: To establish probable cause to search the premises for the arrestee, the affidavit must contain facts that establish a "fair probability" or "substantial chance"[99] of the following: (1) the arrestee was inside the residence when the warrant was issued, and (2) he would still be there when the warrant was executed. A sample *Steagald* Warrant is shown on page 20. (Officers and prosecutors may obtain a copy of this form in Microsoft Word format (which can be edited) by sending a request from a departmental email address to POV@acgov.org.)

Anticipatory Steagald warrants

If officers expect that it will be difficult to establish probable cause for a conventional *Steagald* warrant, they may be able to obtain an "anticipatory" *Steagald* warrant which will authorize them to enter the premises and search for the arrestee if and when a "triggering event" occurs; e.g., a completed sale of drugs. As the Fourth Circuit observed, "[M]ost anticipatory warrants subject their execution to some condition precedent—a so-called 'triggering condition'—which, when satisfied, becomes the final piece of evidence needed to establish probable cause."[100]

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[97] (1981) 451 U.S. 204, 216.
[98] *Steagald* v. *United States* (1981) 451 U.S. 204, 215.
[99] See *Illinois* v. *Gates* (1983) 462 U.S. 213, 238, 244, fn13.
[100] *U.S.* v. *Andrews* (4th Cir. 2009) 577 F.3d 231, 237. Edited.

To obtain an anticipatory warrant, the affiant must describe the triggering event in terms that are "explicit, clear, and narrowly drawn."[101] In addition, the affidavit must contain facts that establish the following:

(1) PROBABLE CAUSE TO ARREST: Probable cause to arrest the suspect will exist when the triggering event occurs.

(2) PROBABLE CAUSE FOR TRIGGERING EVENT: There is probable cause to believe the triggering event will occur,[102] and that it will occur before the warrant expires.[103]

(3) PROBABLE CAUSE TO SEARCH: There is probable cause to believe the arrestee will be inside the premises when the triggering event occurs.[104]

An example of an Anticipatory *Steagald* Warrant is shown on page 20.

Alternatives to Steagald warrants

Steagald warrants—whether conventional or anticipatory—are often impractical. Anticipatory warrants are problematic because it may be difficult to satisfy the triggering event requirement. And conventional warrants may not be feasible because it is often difficult to prove that the arrestee will still be inside the residence when officers arrive to execute the warrant. As the Justice Department noted in its argument in *Steagald*, "[P]ersons, as opposed to objects, are inherently mobile, and thus officers seeking to effect an arrest may be forced to return to the magistrate several times as the subject of the arrest warrant moves from place to place."[105]

In many cases, however, officers can avoid the need for a *Steagald* warrant if they can locate the arrestee inside his own home (in which case only an arrest warrant would be required) or if they can wait until he leaves the premises or is in a public place (in which case only probable cause would be required).[106] Also, as we will discuss next, officers may enter if they obtained consent or if there were exigent circumstances.

Exceptions

There are three exceptions to the rule that officers must have an arrest warrant or a *Steagald* search warrant to enter a residence to arrest an occupant: (1) exigent circumstances, (2) consent, and (3) "consent once removed."

Exigent circumstances

While there are many types of exigent circumstances that will justify a warrantless entry, there are essentially only four that are relevant in situations where officers enter with the intent to arrest an occupant: hot pursuits, fresh pursuits, armed standoffs, and evidence destruction.

HOT PURSUITS: In the context of *Ramey-Payton* and *Steagald*, a "hot" pursuit occurs when (1) officers attempt to arrest a suspect in a public place, and (2) he responds by fleeing into his home or other private structure. When this happens, as the Court of Appeal explained, officers may go in after him:

> As the term suggests, this exception dispenses with the warrant requirement when officers are chasing a suspect who is in active flight. The justification is that otherwise he might escape again while the police sit around waiting for the warrant to be issued.[107]

For example, in *United States* v. *Santana*[108] officers in Philadelphia went to Santana's home to arrest her shortly after she sold heroin to an undercover officer. As they pulled up, Santana was standing in the doorway to the house, but then quickly ran inside. The officers followed her and, in the course of making the arrest, they seized some heroin in plain view. On appeal, the Supreme Court ruled that the entry fell within the "hot pursuit" exception, explaining that "a suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place." Note that an entry under the hot pursuit exception is permitted even though the arrestee was wanted for only a misdemeanor.[109]

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[101] *U.S.* v. *Penney* (6th Cir. 2009) 576 F.3d 297, 310.
[102] See *United States* v. *Grubbs* (2006) 547 U.S. 90, 96; *People* v. *Sousa* (1993) 18 Cal.App.4th 549, 559-60.
[103] See *Alvidres* v. *Superior Court* (1970) 12 Cal.App.3d 575, 581.
[104] See *United States* v. *Grubbs* (2006) 547 U.S. 90, 96; *People* v. *Sousa* (1993) 18 Cal.App.4th 549, 559.
[105] *Steagald* v. *United States* (1981) 451 U.S. 204, 220-21.
[106] See *Steagald* v. *United States* (1981) 451 U.S. 204, 221, fn.14.
[107] *People* v. *White* (1986) 183 Cal.App.3d 1199, 1203.
[108] (1976) 427 U.S. 38, 43.
[109] See *People* v. *Lloyd* (1989) 216 Cal.3d 1425, 1430.

FRESH PURSUITS: Unlike "hot" pursuits, "fresh" pursuits are not physical chases. Instead, they are better defined as investigative pursuits in the sense that officers are actively attempting to apprehend the perpetrator of a crime and, in doing so, are quickly responding to leads as to his whereabouts; and eventually they develop reason to believe that he is presently inside a certain home or other private structure. In such situations, officers may enter the premises under the "fresh pursuit" exception if the following circumstances existed:

(1) SERIOUS FELONY: The crime under investigation must have been a serious felony, usually a violent one.

(2) DILIGENCE: After the crime was committed, the officers must have been diligent in their attempt to apprehend the perpetrator.

(3) PROBABLE CAUSE: At some point in their investigation, the officers must have developed probable cause to arrest the suspect.

(4) SUSPECT LOCATED: The officers must have developed "reason to believe" that the perpetrator was inside the premises. (The "reason to believe" standard was covered earlier.)

(5) CIRCUMSTANTIAL EVIDENCE OF FLIGHT: The officers must have been aware of circumstances indicating the perpetrator was in active flight or soon would be; ė.g., he knew he had been identified by a witness or that an accomplice had been arrested.[110]

ARMED STANDOFFS: An armed standoff is loosely defined as a situation in which (1) officers have probable cause to arrest a person who is reasonably believed to be armed and dangerous, (2) the person is inside his home or other structure, and (3) he refuses to surrender. In these situations, officers may enter without a warrant for the purpose of arresting him. As the Ninth Circuit explained in *Fisher* v. *City of San Jose*:

> [D]uring such a standoff, once exigent circumstances justify the warrantless seizure of the suspect in his home, and so long as the police are actively engaged in completing his arrest, police need not obtain an arrest warrant before taking the suspect into full physical custody.[111]

DESTRUCTION OF EVIDENCE: Officers may also make a warrantless entry to arrest an occupant if they reasonably believed (1) there was evidence on the premises, and (2) the arrestee would destroy it if they waited for a warrant.[112] Note that, although the crime under investigation need not be "serious" or even a felony,[113] the courts may be less apt to find exigent circumstances if the evidence did not pertain to a serious crime.[114] Also, officers must be able to cite specific facts that reasonably indicated the evidence was about to be destroyed. For example, in *People* v. *Edwards* the court ruled that an officer's testimony that the arrestee "might destroy evidence" was insufficient because, said the court, "Those generalized misgivings present in every case do not constitute exigent circumstances."[115]

Consensual entry

Officers may, of course, enter a home if they had obtained voluntary consent to do so from a person who reasonably appeared to have had the authority to admit them. But such consent may be ineffective if the officers intended to immediately arrest the consenting person or other occupant but neglected to reveal their intentions. This is because such consent would not have been "knowing and intelligent," and also because an immediate arrest would have been beyond the scope and intensity of the consent.

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[110] See *Minnesota* v. *Olson* (1990) 495 U.S. 91, 100; *People* v. *Bacigalupo* (1991) 1 Cal.4th 103, 123; *People* v. *Escudero* (1979) 23 Cal.3d 800, 811; *People* v. *Lanfrey* (1988) 204 Cal.App.3d 491, 509; *People* v. *Williams* (1989) 48 Cal.3d 1112, 1139.

[111] (9th Cir. 2009) 558 F.3d 1069, 1071.

[112] See *Kentucky* v. *King* (2011) __ U.S. __ [2011 WL 1832821] ["to prevent the imminent destruction of evidence has long been recognized as a sufficient justification for a warrantless search"]; *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."]; *People* v. *Ramey* (1976) 16 Cal.3d 263, 276 ["exigent circumstances" exist if reasonably necessary to "forestall the . . . destruction of evidence"].

[113] See *Illinois* v. *McArthur* (2001) 531 U.S. 326, 331-32.

[114] See *People* v. *Thompson* (2006) 38 Cal.4th 811, 820-25; *People* v. *Hua* (2008) 158 Cal.App.4th 1027, 1035-36; *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"].

[115] (1981) 126 Cal.App.3d 447.

DETERMINING THE OFFICERS' INTENT: In determining the officers' intent, the courts are especially interested in the following circumstances: (1) whether they had probable cause to arrest an occupant when they obtained consent; and (2) whether they made the arrest immediately after entering. For example, consent that was given to officers who said they wanted to come inside to "talk" with a suspect will ordinarily be deemed invalid if they had probable cause to arrest him and immediately did so. As the Court of Appeal explained, "A right to enter for the purpose of talking with a suspect is not consent to enter and effect an arrest."[116]

On the other hand, if the officers had something less than probable cause, their entry may be deemed consensual if they made the arrest only after they saw or heard something that generated it. For example, in *People* v. *Villa*[117] a man raped and beat a woman who immediately reported the attack to Sacramento County sheriff's deputies. A deputy who overheard a description of the rapist on the sheriff's radio thought the attacker might have been Villa because he had been arrested about a month earlier for prowling in the victim's yard. So the deputy and others went to Villa's home, knocked on the door, and spoke with his mother. After explaining that they wanted to talk with her son about the attack, she consented to their entry and told them that Villa was sleeping in his bedroom. As they entered the bedroom, they saw that Villa was not sleeping; he was watching television. More importantly, he was wearing clothing that matched the clothing worn by the rapist, and he had scratch marks on his face. So the deputies arrested him.

Villa argued that his mothers' consent was ineffective because the deputies lied to her about their intentions. The Court of Appeal disagreed, saying "the evidence disclosed the entry was for the purpose of investigating the earlier incident. There was no evidence of subterfuge at the time consent to enter was given."

While the existence of probable cause is a strong indication that the officers intended to make an immediate arrest, in some cases they may have good reason to defer making the arrest until they had heard what the suspect had to say; e.g., his explanation of what had occurred. This might happen, for example, if the officers' probable cause was not so overwhelming that they would have disregarded the suspect's story in determining whether an immediate arrest was appropriate. Under such circumstances, an arrest may not invalidate the consent if officers made it clear that they wanted to enter for the purpose of talking with the suspect. As the court observed in *People* v. *Superior Court (Kenner)*:

> A person may willingly consent to admit police officers for the purpose of discussion, with the opportunity, thus suggested, of explaining away any suspicions, but not be willing to permit a warrantless and nonemergent entry that affords him no right to explanation or justification.[118]

OFFICERS' INTENT WAS REASONABLY APPARENT: Even if officers had probable cause and intended to make an immediate arrest, consent may be deemed knowing and intelligent if a court finds that they had effectively notified the consenting person of their intentions based on a reasonable interpretation of their stated purpose. As the Supreme Court explained, "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?"[119]

For example, in *People* v. *Newton*[120] LAPD officers, having developed probable cause to arrest Newton for rape, went to a house in which they thought he might be staying. When a woman answered the door, an officer asked if Newton lived there. The woman said no, claiming she had not seen him for several months. One of the officers then asked if they could "come in and look around." She replied, "Yes, come on in, but you are not going to find anything,

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[116] *In re Johnny V.* (1978) 85 Cal.App.3d 120, 130. Also see *People* v. *Williams* (1979) 93 Cal.App.3d 40, 57-58; *U.S.* v. *Johnson* (9th Cir. 1980) 626 F.2d 753.
[117] (1981) 125 Cal.App.3d 872.
[118] (1977) 73 Cal.App.3d 65, 69.
[119] *Florida* v. *Jimeno* (1991) 500 U.S. 248, 251.
[120] (1980) 107 Cal.App.3d 568. Also see *People* v. *Ford* (1979) 97 Cal.App.3d 744.

I am here by myself." As the officers entered one of the bedrooms, they found Newton watching TV and arrested him. Apparently, they also saw some evidence because Newton filed a motion to suppress, claiming his arrest violated *Ramey*. Specifically, he argued that the woman had given the officers consent to "look around," not arrest him. The motion was denied and, on appeal, the court ruled that the nature of the conversation between the woman and the officers at the front door would "lead the officers reasonably to believe that they had a consent to enter to find defendant for any purpose they desired, either to question him or to arrest him."

ENTRY TO ARREST FOR DOMESTIC VIOLENCE: In domestic violence cases, if one spouse consented to an entry for the purpose of arresting the other, officers may enter even though the other spouse objected. This is because the rule that prohibits an entry if one spouse objects—the rule of *Georgia* v. *Randolph*[121]—applies only when the objective of the officers' entry was to obtain evidence against the non-consenting spouse. Thus, it does not apply when the purpose was to arrest him or protect the consenting spouse.

Consent to undercover officers

Suspects will frequently consent to an entry by undercover officers for the purpose of engaging in some sort of illegal activity, such as selling drugs. If the suspect was immediately arrested, the analysis will depend on whether the arrest was made by the undercover officers themselves, or whether it was made by backup officers.

ARREST BY UNDERCOVER OFFICERS: When undercover officers obtain consent to enter from a suspect, they will necessarily have misrepresented their identities and purpose. Although such consent is therefore not technically "knowing and intelligent," it is nevertheless valid based on an overriding rule that criminals who admit strangers into their homes to commit or plan crimes are knowingly taking a chance that the strangers are officers or police informants. As the Ninth Circuit pointed out, "It is well-settled that undercover agents may misrepresent their identity to obtain consent to entry."[122] Consequently, even if the undercover officers had probable cause to arrest the suspect when they entered, and even if they fully intended to arrest him after the sale was completed, the entry does not violate *Ramey-Payton* or *Steagald* because it was consensual.

It should also be noted that, apart from the validity of the consent, *Ramey-Payton* and *Steagald* do not apply to most entries by undercover officers because, even if they arrested the suspect on the premises, their intent upon entering would ordinarily have been contingent on what happened inside. Thus, when this issue arose in *People* v. *Evans* the court found no violation because the officers "were inside with consent, with probable cause to arrest but with the intent to continue the investigation by effecting a purchase of [drugs]."[123]

ARREST BY BACKUP OFFICERS: Because it would be extremely dangerous for an undercover officer to arrest a suspect who had admitted him into his home (and it would be foolhardy for a police informant to make a citizens arrest), the courts developed a rule—known as "consent once removed"—by which backup officers may be permitted to forcibly enter to make the arrest.[124] While the term "consent once removed" suggests that the suspect's act of consenting to an entry by an undercover officer may somehow be conferred on the backup officers, in reality the rule is based on the theory that a suspect who admits someone into his home for a criminal purpose has assumed the "incremental risk" that officers would immediately enter to arrest him.[125]

This does not mean, however, that the arresting officers may enter whenever a suspect has allowed an undercover officer or police agent inside for a criminal purpose. Instead, such entries are permitted only if the following five circumstances existed:

(1) CONSENT: The undercover officer or police agent must have entered with the consent of someone with apparent authority to do so.

(2) PROBABLE CAUSE: Probable cause must have developed after the undercover officer entered.

[121] (2006) 547 U.S. 103, 108.
[122] *U.S.* v. *Bramble* (9th Cir. 1997) 103 F.3d 1475. 1478. Also see *Toubus* v. *Superior Court* (1981) 114 Cal.App.3d 378, 383.
[123] (1980) 108 Cal.App.3d 193, 196.
[124] See *Pearson* v. *Callahan* (2009) 555 U.S. 223, 244; *People* v. *Cespedes* (1987) 191 Cal.App.3d 768,771-73.
[125] *U.S.* v. *Paul* (7th Cir. 1986) 808 F.2d 645, 648. Also see *Toubus* v. *Superior Court* (1981) 114 Cal.App.3d 378, 384.

(3) NOTIFICATION: The undercover officer or police agent must have notified the backup officers by radio signal or other means that probable cause now existed.

(4) DILIGENCE: The notification must have been made without unnecessary delay after probable cause developed.

(5) ENTRY WHILE UNDERCOVER IS INSIDE: The backup officers must have entered while the undercover officer or police agent was on the premises, or at least so quickly after he stepped outside that there existed an implied right to reenter.[126]

One other thing: A suspect's attempt to withdraw "consent" (e.g., by trying to close the door on the arresting officers) is ineffective if they had probable cause to arrest.[127]

Entry and Search Procedure

Even when the officers' entry was authorized under *Ramey-Payton* or *Steagald*, there are certain restrictions on what they may do after they enter. For example, if the entry was consensual, they may do only those things that they reasonably believed the consenting person authorized them to do. If, however, the entry was based on the issuance of a conventional arrest warrant, a *Ramey* warrant, a *Steagald* warrant, exigent circumstances, or on "consent once removed," the required procedure is as follows:

POSSESSION OF ARREST WARRANT: Although it is "highly desirable" for officers to possess a copy of the warrant when they enter, this is not a requirement.[128]

KNOCK-NOTICE: If officers entered under the authority of a search or arrest warrant, they must comply with the knock-notice requirements unless there were exigent circumstances that justified an immediate entry. On the other hand, if the entry was based "consent once removed," compliance will ordinarily be excused because (1) an announcement would alert the arrestee that he had been "set up" by the undercover officer or police agent, who would then be in imminent danger;[129] and (2) when an undercover officer or police agent is already inside the residence, the purposes behind the knock-notice requirements would not be sufficiently served by compliance.[130]

SEARCH FOR THE ARRESTEE: If it is necessary to search the premises for the arrestee, officers may look in those places in which a person might be hiding.[131]

SEARCH INCIDENT TO ARREST: If officers arrest the suspect, they may, as an incident to the arrest, search those places and things to which he had immediate access when the search occurred.[132] Even if the suspect lacked immediate access, officers may inspect areas and things that were (1) "immediately adjoining the place of arrest," and (2) large enough to conceal a hiding person.[133]

ACCOMPANY ARRESTEE: If officers permit the arrestee to go into any other rooms (e.g., to obtain a wallet or jacket) they may accompany him and stay "literally at his elbow."[134]

PROTECTIVE SWEEP: Officers may conduct a protective sweep if they reasonably believed there was another person on the premises who posed a threat to them.[135]

Three other things should be noted about the required procedure. First, if the officers have probable cause to believe that an item they observed in plain view is evidence, they may seize it.[136] Second, if they decide to seek a search warrant after they have entered, they may secure the premises for a

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[126] See *People* v. *Cespedes* (1987) 191 Cal.App.3d 768, 774; *U.S.* v. *Bramble* (9th Cir. 1996) 103 F.3d 1475,1478; *O'Neil* v. *Louisville/Jefferson County Metro Government* (6th Cir. 2011) __ F.3d __ [2011 WL 5345409].

[127] See *U.S.* v. *Jachimko* (7th Cir. 1994) 19 F.3d 296, 299.

[128] See *Nunes* v. *Superior Court* (1980) 100 Cal.App.3d 915, 935-36; *Washington* v. *Simpson* (8th Cir. 1986) 806 F.2d 192, 196, fn.4.

[129] See *United States* v. *Banks* (2003) 540 U.S. 31, 37; *U.S.* v. *Pollard* (6th Cir. 2000) 215 F.3d 643, 646.

[130] See *People* v. *Toubus* (1981) 114 Cal.App.3d 378, 384.

[131] See *Maryland* v. *Buie* (1990) 494 U.S. 325, 330; *U.S.* v. *Harper* (9th Cir. 1991) 928 F.2d 894, 897.

[132] See *Arizona* v. *Gant* (2009) 556 U.S. 332; *People* v. *Arvizu* (1970) 12 Cal.App.3d 726, 729.

[133] *Maryland* v. *Buie* (1990) 494 U.S. 325, 333.

[134] *Washington* v. *Chrisman* (1982) 455 U.S. 1, 7. Also see *U.S.* v. *Roberts* (5th Cir. 2010) 612 F.3d 306, 310-11.

[135] See *Maryland* v. *Buie* (1990) 494 U.S. 325, 334; *People* v. *Dyke* (1990) 224 Cal.App.3d 648, 661-62.

[136] See *Arizona* v. *Hicks* (1987) 480 U.S. 321, 326-28; *Payton* v. *New York* (1980) 445 U.S. 573, 587.

reasonable period of time pending issuance of the warrant.[137] Third, if the entry was made under the authority of a *Ramey* warrant, they must file a "Certificate of Service" with the clerk of the issuing court within a reasonable time after the arrest.[138] (To obtain a copy of a certificate in Microsoft Word format (which can be edited), send a request from a departmental email address to POV@acgov.org.)

Suppression Rules

Because the sole purpose of *Ramey-Payton* and *Steagald* is to protect the reasonable privacy expectations of the occupants of homes and other protected structures, a violation will render the entry—and the fruits of the entry—unlawful. But it will not render the arrest unlawful. As the Court of Appeal explained, "[I]t is the unlawful *intrusion* into the dwelling which offends constitutional safeguards and which is therefore at the heart of the matter, rather than the arrest itself."[139]

Consequently, the admissibility of statements and other evidence obtained after officers made an entry in violation of *Ramey-Payton* or *Steagald* will depend on two things: (1) whether the evidence was the "fruit" of the entry; i.e., whether the officers obtained it while they were inside the building, and (2) whether the defendant had a reasonable expectation of privacy in the premises.

EVIDENCE OBTAINED IN THE ARRESTEE'S HOME: If officers entered the arrestee's home in violation of *Ramey-Payton*, their presence there is illegal. Consequently, any evidence and statements they obtained while inside will be suppressed.[140]

EVIDENCE OBTAINED AFTER EXITING: Evidence and statements obtained from the arrestee after he had been removed from the premises will not be suppressed so long as officers had probable cause to arrest.[141] This is because, as noted above, a violation of *Ramey-Payton* or *Steagald* renders the entry illegal—but not the arrest. As the Ninth Circuit explained in *U.S.* v. *Crawford*, "[T]he presence of probable cause to arrest has proved dispositive when deciding whether the exclusionary rule applies to evidence or statements obtained after the defendant is placed in custody."[142]

For example, in *New York* v. *Harris*[143] NYPD officers arrested Harris in his home in violation of *Payton*. While still inside the house, an officer obtained a *Miranda* waiver from Harris who essentially confessed. The officers then took him to a police station where, after again informing Harris of his *Miranda* rights, they resumed the questioning which produced a written incriminating statement. Although the trial court suppressed the statement obtained inside Harris's home because of the *Payton* violation, it admitted the written statement obtained at the police station.

The United States Supreme Court upheld the trial court's ruling, explaining that, "where the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after an arrest made in the home in violation of *Payton*."

EVIDENCE OBTAINED IN A THIRD PARTY'S HOME: If officers entered the home of an arrestee's friend, relative, or other third party in violation of *Steagald*, any evidence they discovered inside the premises will be inadmissible against the third party.[144] It will, however, be admissible against the arrestee unless he had a reasonable expectation of privacy in the place or thing in which it was found.[145] POV

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[137] See *Illinois* v. *McArthur* (2001) 531 U.S. 326, 331-32.
[138] See Pen. Code § 817(h).
[139] *People* v. *Ford* (1979) 97 Cal.App.3d 744, 748.
[140] See *New York* v. *Harris* (1990) 495 U.S. 14, 20.
[141] See *People* v. *Marquez* (1992) 1 Cal.4th 553, 569 ["[T]he lack of an arrest warrant does not invalidate defendant's arrest or require suppression of statements he made at the police station."]; *People* v. *Watkins* (1994) 26 Cal.App.4th 19, 29; *In re Jessie L.* (1982) 131 Cal.App.3d 202, 214.
[142] (9th Cir. 2004) 372 F.3d 1048, 1056.
[143] (1990) 495 U.S. 14.
[144] See *Steagald* v. *United States* (1981) 451 U.S. 204, 219; *People* v. *Dyke* (1990) 224 Cal.App.3d 648, 658.
[145] See *U.S.* v. *McCarson* (D.C. Cir. 2008) 527 F.3d 170, 172; *U.S.* v. *Agnew* (3d Cir. 2005) 407 F.3d 193, 196. Compare *Minnesota* v. *Olson* (1990) 495 U.S. 91, 96-97 [overnight houseguest had a reasonable expectation of privacy].

SUPERIOR COURT OF CALIFORNIA

County of _____

ARREST WARRANT

Probable Cause Arrest Warrant
Ramey Warrant

The People of the State of California
To Any California Peace Officer:

Warrant No. _____

Arrestee's name: *[Insert name]*, hereinafter "Arrestee."

Declarant's name and agency: *[Insert name and agency]*, hereinafter "Declarant."

Order: Proof by Declaration of Probable Cause having been made to me on this date by Declarant pursuant to Penal Code § 817, I find there is probable cause to believe that Arrestee committed the crime(s) listed below. You are therefore ordered to execute this warrant and bring Arrestee before any judge in this county pursuant to Penal Code §§ 821, 825, 826, and 848.

Crime(s): *[List crime(s)]*

Bail: ☐ No bail ☐ Bail is set at $_____.

Night service authorization [Required only for misdemeanor arrests] ☐ Good cause for night service having been established in the supporting Declaration of Probable Cause, this misdemeanor warrant may be executed at any hour of the day or night.

_____ _____

Date and time warrant issued Judge of the Superior Court

◆ Arrestee Information ◆

For identification purposes only

Name:

AKAs:

Last known address(es):

Sex: M F Race: Height: Weight: Color of hair: Color of eyes:

Scars, marks, tattoos:

Vehicle(s) linked to Arrestee:

Other identifying information:

SUPERIOR COURT OF CALIFORNIA

County of _____

SEARCH and ARREST WARRANT Steagald Warrant

The People of the State of California
To Any Peace Officer in _____ County **Warrant No. _____**

Name of arrestee: *[Insert name]*, hereinafter "Arrestee."
Premises to be searched: *[Insert address]*, hereinafter "Premises."
Affiant: *[Insert name and agency]*, hereinafter "Affiant."

Findings: Based on the affidavit sworn to and subscribed before me on this date (hereinafter "Affidavit"), I make the following findings in accordance with Penal Code § 1524(a)(6):

Probable cause to arrest: There is probable cause to arrest Arrestee for the following crime[s]: *[List crime(s)]*:

Basis of probable cause to arrest: Probable cause to arrest was established as follows:

☐ **Affidavit:** The facts are set forth in Affidavit.

☐ **Arrest warrant**: A warrant for the arrest of Arrestee has been issued and is outstanding.

Probable cause to search: There is probable cause to believe that Arrestee is now inside the Premises and will be there when this warrant is executed.

Orders: You are hereby ordered to search the Premises for Arrestee forthwith and, if located, place Arrestee under arrest for the crime[s] listed above and bring Arrestee before a magistrate in this county pursuant to Penal Code §§ 821, 825, 826, and 848.

Bail: ☐ No bail ☐ Bail is set at $_____

☐ **Night service**: Good cause for night service having been established in Affidavit, this warrant may be executed at any hour of the day or night.

_____ _____
Date and time issued Judge of the Superior Court

◆ Arrestee Information ◆

For identification purposes only

Name:

AKAs:

Last known address(es):

Sex: M F Race: Height: Weight: Color hair: Color eyes:

Scars, marks, tattoos:

Vehicle(s) linked to Arrestee:

Other information:

SUPERIOR COURT OF CALIFORNIA

County of _____

SEARCH and ARREST WARRANT Anticipatory Steagald Warrant

The People of the State of California
To Any Peace Officer in _____ County **Warrant No. _____**

Name of arrestee: *[Insert name]*, hereinafter "Arrestee."
Premises to be searched: *[Insert address]*, hereinafter "Premises."
Affiant: *[Insert name and agency]*, hereinafter "Affiant."

Findings: Based on the affidavit sworn to and subscribed before me on this date (hereinafter "Affidavit"), I make the following findings in accordance with Penal Code § 1524(a)(6):

Probable cause to arrest: Probable cause to arrest Arrestee for the following crime(s) will exist upon the occurrence of the Triggering Event described in Affidavit: *[List crime(s)*

Probable cause for triggering event: There is probable cause to believe the Triggering Event will occur.

Probable cause to search: There is probable cause to believe that Arrestee will be inside the Premises when the Triggering Event occurs.

Orders: Without undue delay after the Triggering Event occurs, you are ordered to search Premises for Arrestee and, if located, place Arrestee under arrest for the crime[s] listed above and bring Arrestee before a magistrate in this county pursuant to Penal Code §§ 821, 825, 826, and 848.

Bail: ☐ No bail ☐ Bail is set at $_____

☐ **Night service**: Good cause for night service will exist, and is therefore authorized, if the Triggering Event occurs at night.

_____ _____
Date and time issued Judge of the Superior Court

◆ Arrestee Information ◆

For identification purposes only

Name:

AKAs:

Last known address(es):

Sex: M F Race: Height: Weight: Color hair: Color eyes:

Scars, marks, tattoos:

Vehicle(s) linked to Arrestee:

Other information: