

SEARCH WARRANTS

“There’s a simple way for the police to avoid many complex search and seizure problems: Get a search warrant.”¹

That’s good advice—except for one thing: there’s nothing “simple” about getting a search warrant. In fact, it’s a pain in the neck. After all, when it’s apparent that evidence of a crime is inside a suspect’s home or other place, an officer’s natural instinct is to go in and get it—not sit behind a word processor, writing an essay.

But in many cases—especially in complex or serious cases—there may be no other way to obtain critical evidence. So, for those officers who investigate, or want to investigate, these types of cases, writing affidavits and search warrants is essential.

The legal issues pertaining to search warrants can be divided up into two areas. First, there’s probable cause to search, which exists when there is a “fair probability” that certain evidence of a crime is now located in a certain place. This subject was discussed in detail in the Spring 2002 edition of *Point of View* in the article entitled “Probable Cause” which can be downloaded from POINT OF VIEW ONLINE at www.acgov.org/da.

Second, there are the requirements as to the form and content of search warrants and their supporting documents. These requirements are discussed here in two articles. In this article we examine the basic requirements for search warrants, affidavits, and statements of probable cause. In the accompanying article entitled “Search Warrant Special Procedures we discuss the ways in which officers can customize their warrants to obtain authorization for some special action, such as night service or an out-of-jurisdiction warrant.

Also note that we have developed several new search warrant forms that can be downloaded from Finally, we included a gallery of new search warrant forms which officers may use and modify as they see fit. These forms can also be downloaded from POINT OF VIEW ONLINE at www.acgov.org/da.

Terminology

Before we begin, it will be helpful to define some of the terms used in this article and by judges, prosecutors, and officers.

SEARCH WARRANT: A search warrant is a court order directing officers to search a certain person, place, or thing for specific property.² Note that because a warrant is a court order, officers *must* execute it.³ As one court put it, “A search warrant is not an invitation that officers can choose to accept, or reject, or ignore, as they wish, or think, they should. It is an order of the court.”⁴

AFFIDAVIT: A search warrant affidavit is a document signed under penalty of perjury that contains, (1) the facts establishing probable cause, and (2) certain technical information required by law.⁵

¹ *U.S. v. Harper* (9th Cir. 1991) 928 F.2d 894, 895.

² See Penal Code §§ 1523, 1536; *Steagald v. United States* (1981) 451 US 204, 213 [“A search warrant is issued upon a showing of probable cause to believe that the legitimate object of the search is located in a particular place.”].

³ **NOTE:** If, before conducting the search, officers obtain information that negates probable cause, they must not execute the warrant without notifying the magistrate of the change in circumstances.

⁴ *People v. Fisher* (2002) 96 Cal.App.4th 1147, 1150.

⁵ See Code of Civil Procedure § 2003 [“An affidavit is a written declaration under oath, made without notice to the adverse party.”]; Penal Code § 1527 [“The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing

AFFIANT: The affiant is the person who writes and signs the affidavit. In most cases, affiants are peace officers, usually the investigators who have the “most direct knowledge of the facts supporting probable cause.”⁶

STATEMENT OF PROBABLE CAUSE: This is where the affiant lays out the facts upon which probable cause is based. It is either written as part of the affidavit or, more commonly, as a separate document that is incorporated by reference into the affidavit.

MAGISTRATE: In the context of search warrants, a magistrate is any state or federal judge.⁷ In this article, the terms “magistrate” and “judge” are used interchangeably.

Other terms that will be defined and discussed in the article on special procedures include combination warrants, covert entry warrants, anticipatory warrants, special masters, sealing orders, and no-knock authorization.

THE STATEMENT OF PROBABLE CAUSE

Writing the statement of probable cause is, without question, the most taxing and time-consuming part of the warrant process. It is where the affiant must review all the police reports and handwritten notes pertaining to the case, call upon his or her memory of what was said and done, weed out the unimportant details, then arrange the facts in a logical manner so as to convince the judge that probable cause exists. One other thing: This must often be done under tremendous time pressure.

It’s no wonder, then, that most officers would rather be the first through the door of a drug house than have to sit down and write the statement of probable cause. There are, however, some ways to speed things up and, in the process, actually do a better job.

ORGANIZE: Although it’s not necessary to prepare an elaborate outline, some thought should be given as to how the affidavit should be organized. Oftentimes, simple chronological order is best. In any event, the facts should be presented in a fairly logical sequence. This may actually save time because it’ll make it easier for the magistrate to grasp the complexities of the case and see the interrelationship between facts. A logical presentation is especially important if the affidavit is lengthy or the case complex.⁸

BE SELECTIVE: The statement of probable cause should seldom include everything officers have learned about the case. Get to the point and be succinct. As the Court of Appeal explained, “The affidavit need not disclose every imaginable fact however irrelevant. It need only furnish the magistrate with information, favorable and adverse, sufficient to permit a reasonable, common sense determination [of whether probable cause exists].”⁹

REMEMBER THE OBJECTIVE: While writing, stay focused on the purpose of the affidavit: to establish probable cause to *search*. Although it may be necessary to prove there is probable cause to arrest the suspect, the affidavit will ultimately have to

that they exist.”]. ALSO SEE *People v. MacAvoy* (1984) 162 Cal.App.3d 746, 755 [“There is a fundamental distinction between a warrant and the underlying affidavit, and the affidavit is not necessarily a part of the warrant . . .”].

⁶ See *People v. Bell* (1996) 45 Cal.App.4th 1030, 1055 [the affiant need not be a peace officer].

⁷ See Penal Code §§ 807-8; *People v. Fleming* (1981) 29 Cal.3d 698, 703, fn.3; *People v. Ruiz* (1990) 217 Cal.App.3d 574, 586.

⁸ See *U.S. v. Pilotro* (9th Cir. 1986) 800 F.2d 959, 967 [the affidavit was “a nonindexed, unorganized, day to day narration, 157 pages in length.”]. ALSO SEE *U.S. v. Conley* (3rd Cir. 1993) 4 F.3d 1200, 1207 [an affidavit must not be judged as “an entry in an essay contest.”].

⁹ *People v. Sanchez* (1982) 131 Cal.App.3d 323, 332. ALSO SEE *People v. Easley* (1983) 34 Cal.3d 858, 871 [“A fact is material if its omission would make the affidavit substantially misleading.”]; *Illinois v. Gates* (1983) 462 US 213, 235 [“Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area.”]; *People v. Rothen* (1988) 203 Cal.App.3d 684, 689; *People v. Kurland* (1980) 28 Cal.3d 376, 384.

demonstrate there is a “fair probability” that the evidence you are seeking exists and is now located at the place to be searched.

RELIABLE INFORMATION: The facts upon which probable cause is based are virtually meaningless unless there is reason to believe they are accurate. So the affiant must give the magistrate a reason to believe the information is reliable.¹⁰

TRAINING AND EXPERIENCE: If the existence of probable cause is based, even in part, on the affiant’s opinions concerning the meaning or importance of information in the affidavit,¹¹ the affiant should *briefly* describe the training and experience that was relevant in forming the opinion. The affiant need not qualify as an expert witness in order to express an opinion, so long as the opinion is based on training and experience and appears to be reasonable.¹²

USING ATTACHMENTS: One of the easiest and most effective ways of getting information into an affidavit is to incorporate documents that already contain the information. For example, if a witness gave a written statement that is relevant in establishing probable cause, the affiant can simply incorporate the statement into the affidavit rather than write it out or summarize it. Similarly, if probable cause to believe the suspect committed the crime has been established in an earlier search warrant affidavit or in an affidavit in support of an arrest warrant, either or both of these documents can be incorporated into the new affidavit. Other documents that are commonly incorporated include police reports, autopsy reports, rap sheets, business records, and photographs.

The procedure for incorporating a document is very simple: The affiant need only identify the document and state that it is being incorporated by reference; e.g., “I am hereby incorporating by reference the written statement of the victim, filed herewith, dated October 2, 2002.”¹³ In addition, if the incorporated document is being used to describe the evidence to be seized or the place to be searched, or otherwise limit the manner in which the warrant is executed, it must be physically attached to the warrant. This is so the search team can—and, presumably, will—refer to it. These requirements are discussed later in the section on describing the evidence to be seized.

Keep in mind that because the attachments are part of the affidavit they must be legible¹⁴ and properly identified; e.g., “Exhibit A is a copy of the handwritten holdup note I found in the suspect’s pocket.”¹⁵ Furthermore, because attachments must be read by the judge,¹⁶ they should be kept to a minimum.

¹⁰ See *Illinois v. Gates* (1983) 462 US 213, 233.

¹¹ See *People v. Spears* (1991) 228 Cal.App.3d 1, 18; *People v. Andrino* (1989) 210 Cal.App.3d 1395, 1401-2; *Illinois v. Gates* (1983) 462 US 213, 232.

¹² See *Wimberly v. Superior Court* (1976) 16 Cal.3d 557, 565 [“It is not necessary that the officer qualify as an expert to be able to form the reasonable belief necessary to justify his actions.”]; *People v. Frank* (1985) 38 Cal.3d 711, 728; *People v. Meyer* (1986) 183 Cal.App.3d 1150, 162; *People v. O’Leary* (1977) 70 Cal.App.3d 323, 329.

¹³ See *U.S. v. Towne* (9th Cir. 1993) 997 F.2d 537, 547 [“All of our cases say that a separate document must be expressly incorporated by reference in the search warrant before it will be construed as part of it.”]; *People v. Egan* (1983) 141 Cal.App.3d 798, 803 [“Incorporation by reference occurs when one complete document expressly refers to and embodies another document. It is necessary that the incorporated document be clearly identified and in existence at the time of incorporation.”].

¹⁴ See *Kaylor v. Superior Court* (1980) 108 Cal.App.3d 451, 457 [“(I)llegible declaration or exhibits cannot form the basis for a probable cause ruling”].

¹⁵ See *Kaylor v. Superior Court* (1980) 108 Cal.App.3d 451, 455.

¹⁶ See *Kaylor v. Superior Court* (1980) 108 Cal.App.3d 451, 457 [“(A)ll the writings offered in support [of the warrant] must be read.”].

MAKING CHANGES: Changes may be made to the statement of probable cause until it is signed by the affiant. Handwritten changes must be initialed by the affiant.

THE OATH: The affiant will be required to sign the affidavit under oath. By doing so, he is swearing to two things. First, the information within his personal knowledge is true.¹⁷ Second, information within the personal knowledge of others was actually received from them.

Affiants should never swear that their information establishes probable cause or that they believe it does. The first is a legal conclusion; the second is irrelevant.¹⁸ Finally, the affiant must not sign the affidavit until he is directed to do so by the magistrate. This is because the magistrate must state on the warrant that the affidavit was “sworn to and subscribed before me.”¹⁹

THE WARRANT (1)

Technical Requirements

The warrant is the document that carries the legal punch: it gives officers the right to enter the premises—forcibly, if necessary—and search for the listed evidence.

To accomplish this purpose, the warrant must contain three things:

- (1) **Technical requirements:** Words that make it an enforceable court order.
- (2) **Where to search:** Descriptions of the place or thing to be searched.
- (3) **What to search for:** Descriptions of the evidence to be seized.

As for the technical requirements, they are as follows.

THE HEADING: The heading of the warrant must identify the court issuing it. As the result of court unification, most California counties have just one court—the Superior Court—not separate municipal courts. So most warrants are headed simply:

SUPERIOR COURT OF CALIFORNIA

County of _____

IDENTIFY OFFICERS: The warrant must identify the officers who are ordered to conduct the search.²⁰ The language commonly used for this purpose is: *The People of the State of California to any peace officer in the County of _____*.²¹

The county that is listed must be the same as the county in which the issuing magistrate sits.²² For example, if the warrant is issued by a magistrate in Alameda County, the warrant must be directed to peace officers in that county. As we will discuss later, this requirement does not prevent magistrates from issuing out-of-county search warrants.

¹⁷ See *People v. Egan* (1983) 141 Cal.App.3d 798, 804 [“The purpose of requiring an oath is to insure the good faith of the affiant and to hold the affiant responsible for any false statements.”].

¹⁸ See *People v. Leonard* (1996) 50 Cal.App.4th 878, 883 [“Warrants must be issued on the basis of facts, not beliefs or legal conclusions.”].

¹⁹ See *People v. Egan* (1983) 141 Cal.App.3d 798, 801, fn.3. ALSO SEE *Clifton v. Superior Court* (1970) 7 Cal.App.3d 245, 254; *People v. Chavez* (1972) 27 Cal.App.3d 883, 886 [failure to strictly comply with requirement that the magistrate deliver the oath did not invalidate the warrant where the affiant was outside the magistrate’s chambers and could have been questioned if the magistrate had so desired].

²⁰ See Penal Code § 1530 [warrant may “be served by any of the officers mentioned in its directions . . .”].

²¹ **NOTE:** Penal Code § 1529 states that warrants must contain language saying “substantially” that the warrant is directed to “any sheriff, marshal, or police officer in the County of _____”. But Penal Code §§ 1523 and 1528 say that search warrants must be directed to “peace officers.” Although either is acceptable, the term “peace officer” more accurately reflects who may serve warrants, so we use it, not the wordy, less accurate, phrase.

²² See Penal Code § 1528; *People v. Fleming* (1981) 29 Cal.3d 698, 703.

IDENTIFY AFFIANT: The affiant must be identified.²³ To accomplish this, most warrants contain a phrase such as, “*An affidavit by [name of affiant], sworn and subscribed before me on this date . . .*” If the affiant is a confidential informant who is covered under California’s non-disclosure privilege, his name need not be listed.²⁴

DISPOSITION OF PROPERTY: The warrant must tell officers what to do with the evidence they seize. Although the magistrate may order officers to bring the evidence directly to the court,²⁵ warrants almost always order the officers to retain possession of the evidence pending further court order.²⁶

Because the officers are holding the evidence on behalf of the magistrate, they may not transfer possession of it to any other person or agency except per further court order. As the California Supreme Court explained, “Law enforcement officials who seize property pursuant to a warrant issued by the court do so on behalf of the court, which has authority pursuant to Penal Code section 1536 to control the disposition of the property . . .”²⁷

NATURE OF THE EVIDENCE: California and federal law specifically authorize warrants to search for certain types of evidence. The federal rule is rather broad, authorizing a search for, among other things, “evidence of the commission of a criminal offense.”²⁸ The California statute contains broad authorization to search for evidence pertaining to felonies, but only limited authorization for evidence of misdemeanors.²⁹

Property: Felonies and Misdemeanors

²³ See Penal Code § 1529.

²⁴ See Evidence Code § 1041. **NOTE:** The “preferable practice” is to write “confidential informant” in the blank space. See *People v. Sanchez* (1972) 24 Cal.App.3d 664, 677-8, fn.8.

²⁵ See Penal Code §§ 1523 and 1529.

²⁶ See Penal Code §§ 1528(a) and 1536. ALSO SEE *People v. Superior Court (Loar)* (1972) 28 Cal.App.3d 600, 607, fn.3 [Penal Code §§ 1528(a) and 1536 prevail over conflicting language in Penal Code §§ 1523 and 1529].

²⁷ *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 713. ALSO SEE *Oziel v. Superior Court* (1990) 223 Cal.App.3d 1284, 1293; *People v. Von Villas* (1992) 10 Cal.App.4th 201, 239 [Section 1536 was enacted in order to provide controls over those officials in possession of property seized pursuant to a search warrant, pending resolution of the disposition of the property . . .]; *People v. Icenogle* (1985) 164 Cal.App.3d 620, 623.

²⁸ See Fed.R.Crim.P. 41(b).

²⁹ See Penal Code § 1524(a). **NOTE:** It’s not clear whether evidence can be suppressed in California on grounds it was obtained pursuant to a warrant authorizing a search for evidence not specifically listed in § 1524(a). It is arguable that such evidence would be admissible if, (1) all the other requirements for a valid search warrant were met, and (2) officers had a legitimate law enforcement interest in obtaining the evidence they seized. There are two reasons for this. First, the limitations contained in § 1524(a) are based on statute—not the U.S. Constitution. And, pursuant to Proposition 8, evidence can be suppressed only on grounds it was obtained in violation of the U.S. Constitution. See *People v. McKay* (2002) 27 Cal.4th 601, 608 [“With the passage of Proposition 8, we are not free to exclude evidence merely because it was obtained in violation of some state statute or state constitutional provision.”]. Second, § 1524(a) does not purport to limit or otherwise restrict searches for the things enumerated. Instead, it simply authorizes a search for such items. As the U.S. Court of Appeal observed while interpreting the comparable federal rule (Fed.R.Crim.P. 41(b)), “[R]ule 41 does not define the extent of the court’s power to issue a search warrant. . . . Given the Fourth Amendment’s warrant requirements, and assuming no statutory prohibition, the courts must be deemed to have inherent power to issue a warrant when the requirements of that Amendment are met.” Pursuant to the Fourth Amendment, there are three requirements for a valid search warrant: (1) probable cause, (2) a particular description of the place to be searched and the evidence to be seized, and (3) the warrant must be issued by a “neutral, disinterested” magistrate. See *Dalia v. United States* (1979) 441 US 238, 255.

- **STOLEN PROPERTY:** Stolen or embezzled property, regardless of whether the crime was a felony or misdemeanor.
- **TO BE USED TO COMMIT A CRIME:** Property in the possession of a person who intends to use it as a means of committing a felony or misdemeanor.³⁰
- **CONCEALED EVIDENCE:** Property in the possession of a person to whom it was delivered for the purpose of concealing it.

Property: Felonies only

- **INSTRUMENTALITY IN FELONY:** Property used to commit a felony.
- **SHOWS A FELONY COMMITTED:** Any item or other evidence tending to show a felony was committed.
- **SHOWS WHO COMMITTED A FELONY:** Any item or other evidence tending to show a particular person committed a felony.
- **SHOWS SEXUAL EXPLOITATION OF CHILD:** Property or other evidence tending to show that sexual exploitation of a child occurred or is occurring, in violation of Penal Code § 311.3.
- **CHILD PORNOGRAPHY:** Property or other evidence that tends to show that a person is in possession of matter depicting sexual conduct of a person under 18 years of age in violation of Penal Code § 311.11.

Wanted suspect: A person for whom an arrest warrant is outstanding. These types of warrants—commonly known as *Steagald* search warrants—are discussed in the accompanying article on special procedures.

Although there is no requirement that the warrant actually state the categories of evidence that are sought, most pre-printed warrants contain a list of these categories, and the affiant will ordinarily check off the ones that apply. If the warrant is being written on a word processor, however, the affiant can simply delete the categories of evidence that do not apply.

THE WARRANT (2)

Describing the places to be searched

The first substantive requirement for the warrant is that it contain a meaningful description of the person, place or thing to be searched.³¹ This requirement serves two important purposes. First, it tells officers where they can search.³² Second, it limits the search to those places and things for which probable cause has been demonstrated. As the United States Supreme Court explained:

By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will

³⁰ **NOTE:** Although the statute uses the term “public offense,” not misdemeanor, the term includes felonies and misdemeanors. See *People v. Wilkins* (1972) 27 Cal.App.3d 763, 768; *People v. Garcia* (1969) 274 Cal.App.2d 100, 103.

³¹ See U.S. Const., 4th Amend.; Cal. Const., art. I, § 13; Penal Code §§ 1525, 1529; *Maryland v. Garrison* (1987) 480 US 79, 84; *Burrows v. Superior Court* (1974) 13 Cal.3d 238, 249. **NOTE:** A warrant that does not contain such a sufficiently particular description is void. See *People v. Alvarez* (1989) 209 Cal.App.3d 660, 664; *People v. Estrada* (1965) 234 Cal.App.2d 136, 145; *People v. Superior Court (Fish)* (1980) 101 Cal.App.3d 218, 222.

³² See *People v. Weagley* (1990) 218 Cal.App.3d 569, 572 [“A search warrant must describe the premises to be searched sufficiently so that the officers executing the warrant, may, with reasonable effort, ascertain and identify the place intended.”]; *U.S. v. Haydel* (5th Cir. 1981) 649 F.2d 1152, 1157.

be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.³³

In order to “carefully tailor” the search, the warrant must, of course, describe the person, place, or thing to be searched with some degree of specificity. But how much is required?

The description must contain sufficient detail so that the search team can, with “reasonable effort,” determine who or what is to be searched.³⁴ This is a very pragmatic test, requiring a realistic and sensible description—not “elaborate specificity,” “complete precision,” or “technical nicety.”³⁵ As one court put it:

[The description] need not meet technical requirements nor have the specificity sought by conveyancers. It need only describe the place to be searched with sufficient particularity to direct the searches, to confine his examination to the place described, and to advise those being searched of his authority.³⁶

SINGLE-FAMILY RESIDENCES: A street address is usually sufficient if the place to be searched is a single-family house, duplex, condominium or apartment.³⁷ There are, however, two situations in which something more than a street address is required.

First, if street signs or house numbers are lacking or are obscured, the warrant must include a physical description of the premises or some other information that will direct officers to the right place, such as a photo, diagram, or map.³⁸

Second, if there are two or more buildings on the property, the warrant must be clear as to which buildings may be searched.³⁹ There are two ways to accomplish this. One method is to describe each building to be searched; e.g., “. . . the house at 123 Main St.,

³³ *Maryland v. Garrison* (1987) 480 US 79, 84. ALSO SEE *People v. Amador* (2000) 24 Cal.4th 387, 392.

³⁴ See *People v. Amador* (2000) 24 Cal.4th 387, 392 [“It is enough if the description is such that the officer with a search warrant can with reasonable effort ascertain and identify the place intended.” Quoting from *Steele v. United States* (1925) 267 US 498, 503]; *People v. Dumas* (1973) 9 Cal.3d 871, 880; *People v. Estrada* (1965) 234 Cal.App.2d 136, 145-6; *People v. Grossman* (1971) 19 Cal.App.3d 8, 11; *People v. Superior Court (Fish)* (1980) 101 Cal.App.3d 218, 222; *U.S. v. Johnson* (8th Cir. 1976) 541 F.2d 1311, 1313.

³⁵ See *People v. Minder* (1996) 46 Cal.App.4th 1784, 1788 [“Technical requirements of elaborate specificity have no proper place in this area.”]; *People v. Smith* (1994) 21 Cal.App.4th 942, 949; *People v. Amador* (2000) 24 Cal.4th 387, 392; *U.S. v. Gendron* (1st Cir. 1994) 18 F.3d 955, 966]; *U.S. v. Johnson* (8th Cir. 1976) 541 F.2d 1311, 1313-4 [“The standard to be used in this determination is one of practical accuracy rather than technical nicety.”].

³⁶ *U.S. v. Haydel* (5th Cir. 1981) 649 F.2d 1152, 1157.

³⁷ See *People v. McNabb* (1991) 228 Cal.App.3d 462, 469 [“As the search warrant included the street address of the premises, the premises were adequately identified . . .”]; *People v. Superior Court (Fish)* (1980) 101 Cal.App.3d 218, 225 [“the more conventional method of identifying a particular residence [is] by street number.”]; *People v. Garnett* (1970) 6 Cal.App.3d 280, 285; *People v. Govea* (1965) 235 Cal.App.2d 285, 300; *People v. Peck* (1974) 38 Cal.App.3d 993, 1000; *People v. Estrada* (1965) 234 Cal.App.2d 136, 149; *Mena v. Simi Valley* (9th Cir. 2000) 226 F.3d 1031, 1036.

³⁸ See *People v. Superior Court (Fish)* (1980) 101 Cal.App.3d 218, 225 [“The residences in the subdivision in which Fish’s house was located did not have house numbers, nor were the streets described by signs. Thus the more conventional method of identifying a particular residence by street number was not available to the officers.”]; *People v. Sheehan* (1972) 28 Cal.App.3d 21, 24 [grant deed attached]; *People v. Joubert* (1983) 140 Cal.App.3d 946 [assessor’s lot map attached].

³⁹ See *People v. Smith* (1994) 21 Cal.App.4th 942, 949.

Oakland, CA, and the silver house trailer parked approximately 100 feet directly behind the house, and the storage shed located about ten feet due west of the trailer.”⁴⁰

The other method is to insert the word “premises” in the description of the place to be searched; e.g., “The premises at 123 Main St., Oakland.” This effectively extends the scope of the warrant to all outbuildings that are ancillary to the main house, such as detached garages, carports, and storage sheds.⁴¹ As the California Supreme Court explained, “[A] warrant to search ‘premises’ located at a particular address is sufficient to support the search of outbuildings and appurtenances in addition to a main building when the various places searched are part of a single integral unit.”⁴²

MULTIPLE-OCCUPANT BUILDINGS: If the building to be searched is a multiple-occupant structure, a simple street address will suffice in those rare cases in which there is probable cause to search the entire structure.⁴³ But if probable cause is limited to a certain room or area, the warrant must restrict the search by describing that room or area.⁴⁴ As the Court of Appeal explained, “[W]hen a warrant directs a search of a multiple occupancy apartment house or building, absent a showing of probable cause for searching each unit or for believing that the entire building is a single living unit, the warrant is void.”⁴⁵

⁴⁰ See *People v. Amador* (2000) 24 Cal.4th 387, 394-5 [“Nothing in the record suggests, and defendant has not claimed, that any other house existed matching the warrant’s description so closely that there was a reasonable probability it would be mistakenly searched.”]; *People v. Mack* (1977) 66 Cal.App.3d 839, 859 [warrant authorized a search of a residence “with a detached garage”]; *People v. McNabb* (1991) 228 Cal.App.3d 462, 469 [detached garage listed]; *People v. Smith* (1994) 21 Cal.App.4th 942, 949.

⁴¹ See *People v. Mack* (1977) 66 Cal.App.3d 839, 859 [“The word ‘premises’ as used in the warrant embraces both the house and garage.”]; *People v. McNabb* (1992) 228 Cal.App.3d 462, 469; *People v. Weagley* (1990) 218 Cal.App.3d 569, 573 [warrant authorizing the search of certain “premises” authorized a search of a mailbox]; *People v. Grossman* (1971) 19 Cal.App.3d 8, 12 [warrant authorizing the search of certain “premises” authorized a search of a cabinet in an adjacent carport]; *People v. Smith* (1994) 21 Cal.App.4th 942, 950; *People v. Elliott* (1978) 77 Cal.App.3d 673, 689.

⁴² *People v. Dumas* (1973) 9 Cal.3d 871, 881, fn.5; *People v. Minder* (1996) 46 Cal.App.4th 1784, 1788.

⁴³ See *People v. Garnett* (1970) 6 Cal.App.3d 280, 286-9 [“several persons occupying the building in question were possessing and using narcotics on at least three separate floors of the building.”]; *People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 79 [warrant authorized a search of a communal residence “[i]n light of the type and quantity of items stolen from the victims”]; *People v. Coulon* (1969) 273 Cal.App.2d 148, 152 [commune was deemed a single living unit].

⁴⁴ See *People v. Estrada* (1965) 234 Cal.App.2d 136, 148 [court indicates a warrant for multi-occupant premises will be valid “[i]f the description in the warrant limits the search to a particular part of the premises either by a designation of the area or other physical characteristics of such part or by a designation of its occupants, the business conducted there, or otherwise . . .”]; *People v. MacAvoy* (1984) 162 Cal.App.3d 746, 754.

⁴⁵ *People v. Estrada* (1965) 234 Cal.App.2d 136, 146. ALSO SEE *People v. Govea* (1965) 235 Cal.App.2d 285, 300; *U.S. v. Hinton* (7th Cir. 1955) 219 F.2d 324, 326 [“Federal courts have consistently held that the Fourth Amendment’s requirement that a specific ‘place’ be described when applied to dwellings refers to a single living unit (the residence of one person or family.) Thus, a warrant which describes an entire building when cause is shown for searching only one apartment is void.”]; *Hemler v. Superior Court* (1975) 44 Cal.App.3d 430, 433 [“The rule that a search warrant for one living unit cannot be used to justify a search of other units within a multiple dwelling area does not apply where all of the rooms in a residence constitute one living unit.”].

What is a multiple-occupant building? It is essentially a structure that reasonably appears to have been divided into two or more separate and identifiable compartments, each under the exclusive control of different occupants.⁴⁶

An example would be an apartment building or, as in *People v. MacAvoy*,⁴⁷ a fraternity house. In *MacAvoy* a controlled delivery of drugs was made to a student who lived in the fraternity house at 375 Campus Drive, Stanford, CA. Although officers were aware that the student lived in room 112, and although probable cause was limited to the student's room, the warrant described the premises to be searched as "375 Campus Drive"; i.e., the entire building. This rendered the warrant defective because, as the court noted, it "would allow the officers to search every part of the fraternity house."

In contrast, an individual apartment, duplex, or single-family residence will, in the absence of unusual circumstances, be considered a single living unit even if it is occupied by two or more families or unrelated people.⁴⁸ Accordingly, the warrant need not limit the search to the particular room or rooms under the sole or joint control of the suspect.

For example, in *People v. Gorg*⁴⁹ police developed probable cause to believe that Fontaine was selling marijuana out of a three-bedroom flat in Berkeley he shared with Gorg and another man. A warrant to search the flat authorized a search of, among other things, "all rooms and buildings used in connection with the premises and adjoining same." While searching Gorg's room, officers found marijuana. In ruling the warrant authorized a search of the flat because it was a single-living unit, the court observed, "[T]hree people lived in this flat, sharing the living room, kitchen, bath and halls. The three bedrooms opened on these rooms and were not locked. All of the rooms constituted one living unit."

In contrast, in *Mena v. Simi Valley*⁵⁰ a single-family house that was occupied by several unrelated people was deemed a multiple-occupant residence because all the bedroom doors were padlocked from the outside and the bedrooms were "set up as studio apartment type units, with their own refrigerators, cooking supplies, food, televisions, and stereos."

BUSINESSES: If a business occupies an entire structure with a visible street address, the address is all that is necessary if there is probable cause to search the whole building.

⁴⁶ See *People v. MacAvoy* (1984) 162 Cal.App.3d 746, 753 ["the fraternity house is essentially a multiunit structure with certain common areas shared by all residents."]; *People v. Govea* (1965) 235 Cal.App.2d 285, 300 [court indicates that a house does not become a multi-occupant building merely because the owner has permitted a family to temporarily occupy a separate bedroom]; *U.S. v. Hinton* (7th Cir. 1955) 219 F.2d 324, 325-6 ["(S)earching two or more apartments in the same building is no different than searching two or more completely separate houses. Probable cause must be shown for [each]."]. ALSO SEE *People v. Joubert* (1983) 140 Cal.App.3d 946, 949-52 [warrant authorizing search of several buildings on a 28-acre parcel was overbroad because, among other things, "[t]he existence of multiple roads going to and from each of the residences and the existence of multiple dwellings" indicated there were several separate parcels]; *People v. Sheehan* (1972) 28 Cal.App.3d 21, 24.

⁴⁷ (1984) 162 Cal.App.3d 746.

⁴⁸ See *People v. Govea* (1965) 235 Cal.App.2d 285, 300; *Mena v. Simi Valley* (9th Cir. 2000) 226 F.3d 1031, 1037 ["The fact that Anthony Romero told the officers that his brother lived in a 'residence with a large number of subjects residing in a residence designed for one family' does not suggest that the officers knew or should have known that the house was a multi-unit dwelling."]

⁴⁹ (1958) 157 Cal.App.2d 515. ALSO SEE *Hemler v. Superior Court* (1975) 44 Cal.App.3d 430, 433.

⁵⁰ (9th Cir. 2000) 226 F.3d 1031, 1038

A more detailed and limiting description would, however, be required if probable cause is limited to a certain area, office, or building.⁵¹

PEOPLE: A warrant to search a person must identify the person by name, physical description, or both.⁵² In addition, a photograph of the person (e.g., DMV or booking photo) may be attached to the warrant as an additional method of identifying him.⁵³ If officers know where the person will be when they execute the warrant, this information may be included in the description.⁵⁴

A warrant may also authorize a search of “all residents” of the premises or “all persons on the premises,” without identifying any individual. But this can be done only in those rare cases where the affidavit establishes probable cause to believe that at least some of the listed evidence will be found on *every* resident or occupant.⁵⁵

CARS: In most cases, it is sufficient to identify a vehicle by its license plate number and a brief description. If the license is unknown or if there are no plates on the vehicle, there may be other ways to describe it such as by VIN number, a detailed description (e.g., body customizing, damage to a certain part of the car, paint transfer, unusual bumper sticker), or by its location (“1964 Ford Mustang, green in color, located in the driveway of 123 Main St., Oakland, CA.”).⁵⁶ As the California Supreme Court explained:

While it is not necessary that a search warrant state the name of the owner or a correct license number of the automobile to be searched, we conclude that a warrant supporting the search of a motor vehicle must, at the very least, include some explicit description of a particular vehicle or of a place where a vehicle is later found.⁵⁷

A warrant may also authorize a search of *all* vehicles on the premises or all vehicles under the suspect’s control, but only if there is a fair probability that at least some of the evidence will be found in *each* vehicle. For example, in *People v. Sanchez*⁵⁸ officers had probable cause to believe that Gonzalez would be delivering heroin to Anaya, and that “he would be transporting [it] either in one of his own vehicles, or in one he had borrowed.” Officers then obtained a warrant authorizing a search of “any vehicle under Gonzalez’ control or occupied by him at the time the warrant was served.” The court ruled this description was proper under the circumstances.

⁵¹ See, for example, *Dalia v. United States* (1979) 441 US 238, 242, fn.4 [warrant authorized a search of “the business office of Larry Dalia, consisting of an enclosed room, approximately 15 by 18 feet in dimension, and situated in the northwesterly corner of a one-story building housing Warp-O-Matic Machinery Company, Ltd., and Precise Packaging, and located at 1105 West St. George Avenue, Linden, New Jersey . . .”].

⁵² See Penal Code § 1525 [affidavit must contain name or description of the person]; *People v. Tenney* (1972) 25 Cal.App.3d 16, 22; *Lohman v. Superior Court* (1977) 69 Cal.App.3d 894, 900; *People v. McLean* (1961) 56 Cal.2d 660, 663.

⁵³ See *People v. Superior Court (Fish)* (1980) 101 Cal.App.3d 218, 220 [“a copy of Fish’s driver’s license, including his description and photograph, accompanied that warrant.”].

⁵⁴ See *In re Search Warrant Dated July 4, 1977* (D.C. Cir. 1978) 572 F.2d 321, 324; *U.S. v. Kow* (9th Cir. 1995) 58 F.3d 423, 427; *U.S. v. Stubbs* (9th Cir. 1989) 873 F.2d 210, 211.

⁵⁵ See *Ybarra v. Illinois* (1979) 444 US 85, 91; *People v. Tenney* (1972) 25 Cal.App.3d 16, 22-3.

⁵⁶ See *People v. McNabb* (1991) 228 Cal.App.3d 462, 469 [warrant sufficient when it described the car as a gold Cadillac with a black landau top and no license plates, parked in certain driveway].

⁵⁷ *People v. Dumas* (1973) 9 Cal.3d 871, 881.

⁵⁸ (1981) 116 Cal.App.3d 720, 727-8. ALSO SEE *U.S. v. Hillyard* (9th Cir. 1982) 677 F.2d 1336, 1341.

Note that a warrant is not ordinarily necessary to search a vehicle if there is probable cause to believe it contains contraband or other evidence of a crime and it is parked on the street or in some other public place.⁵⁹

COMPUTERS: If there is probable cause to search a home or business for information or data, it is usually reasonable to believe that some or all of it is stored in a computer.⁶⁰ But in most cases, officers won't know what type of computer the suspect is using or how the information is stored (e.g., on a hard drive, CD, Zip disk). Consequently, a description of computer hardware will ordinarily be sufficient if it included as much information about it as was reasonably possible.⁶¹ In other words, the degree of specificity required will depend on how much information officers possessed about the equipment and how much information they could have obtained with reasonable effort.⁶²

If, as is usually the case, officers have no way of obtaining information about the hardware, they should insert a fairly detailed description of the *data* to be seized, then add some language authorizing a search for the data in any hardware that is capable of storing it; e.g., “[Describe documents to be seized] *whether stored on paper or on electronic or magnetic media such as internal or external hard drives, diskettes, backup tapes, cassette tapes, compact disks (CD’s), digital video disks (DVD’s), optical discs, electronic notebooks, video tape, or audio tape.*”

THE WARRANT (3)

Describing the evidence

Finally, the warrant must contain a meaningful description of the evidence to be seized—its “distinguishing characteristics.”⁶³ But how much detail is required? As we will

⁵⁹ See *United States v. Ross* (1982) 456 US 798, 800, 809, 825; *United States v. Johns* (1985) 469 US 478, 483-4; *Pennsylvania v. Labron* (1996) 518 US 938; *California v. Carney* (1985) 471 US 386; *People v. Carpenter* (1997) 15 Cal.4th 312, 365; *People v. Chestnut* (1983) 151 Cal.App.3d 721, 725-6; *People v. Black* (1985) 173 Cal.App.3d 506, 509-10; *U.S. v. Albers* (9th Cir. 1998) 136 Fed.3d 670 [houseboat treated like motor home]; *People v. Allen* (2000) 78 Cal.App.4th 445 [bicycle]; *People v. Nonnette* (1990) 221 Cal.App.3d 659, 665, fn.2.

⁶⁰ See *U.S. v. Hunter* (1998) 13 F.Supp.2d 574, 583 [“With their unparalleled ability to store and process information, computers are increasingly relied upon by individuals in their work and personal lives.”].

⁶¹ See *U.S. v. Hay* (9th Cir. 2000) 231 F.3d 630, 637 [“The government knew that Evans had sent 19 images directly to Hay’s computer, but had no way of knowing where the images were stored.”]; *U.S. v. Hunter* (1998) 13 F.Supp.2d 574, 584; *Maine v. Lehman* (1999) 736 A.2d 256.

⁶² See *U.S. v. Santarelli* (11th Cir. 1985) 778 F.2d 609, 614-6 [“There are circumstances in which the law enforcement officer applying for a warrant cannot give an exact description of the materials to be seized even though he has probable cause to believe that such materials exist and that they are being used in the commission of a crime. In these situations we have upheld warrants when the description is as specific as the circumstances and the nature of the activity under investigation permit.”]; *U.S. v. Lacy* (9th Cir. 1997) 119 F.3d 742; *Davis v. Gracey* (10th Cir. 1997) 111 F.3d 1472.

⁶³ See *U.S. v. Leary* (10th Cir. 1988) 846 F.2d 592, 600; U.S. Const., 4th Amend.; Cal. Const., art. I, § 13; Penal Code §§ 1525 and 1529; *People v. Bradford* (1997) 15 Cal.4th 1229, 1296; *People v. Rogers* (1986) 187 Cal.App.3d 1001, 1007. **NOTE:** The requirement for a particular description stems from the use of “general warrants” and “writs of assistance” in Colonial America. See *Steagald v. United States* (1981) 451 US 204, 220 [“The general warrant specified only an offense—typically seditious libel—and left to the discretion of the executing officials the decision as to which persons should be arrested and which places should be searched. . . . Similarly, the writs of assistance used in the Colonies noted only the object of the search—any uncustomed goods—and thus left customs officials completely free to search any place where they believed such goods might be.”]; *Stanford v. Texas* (1965) 379 US 476, 378 [“Vivid in the memory of the

now discuss, the description must include all details that are both, reasonably available and reasonably necessary to identify the evidence.⁶⁴

General principles

In determining whether a description is sufficiently detailed, the courts apply the following general principles.

REASONABLY AVAILABLE INFORMATION: As noted, the description must contain only those material details that, with reasonable effort, could have been obtained by officers. In other words, if officers can provide a detailed description, they must do so—although, as noted, they need not furnish details that are unnecessary.⁶⁵

On the other hand, if officers have little or virtually no descriptive information about an item, they need only provide what they can.⁶⁶ This is important because officers

newly independent Americans were those general warrants [which gave] customs officials blanket authority to search where they pleased for goods imported in violation of the British tax laws”].

⁶⁴ *U.S. v. Leary* (10th Cir. 1988) 846 F.2d 592, 600, fn.12 [“The common theme of all descriptions of the particularity standard is that the warrant must allow the executing officer to distinguish between items that may and may not be seized.”]. **NOTE:** In *Marron v. United States* (1927) 275 US 192, 196 the U.S. Supreme Court seemed to set an almost impossibly high standard for search warrant descriptions. The Court said, “As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.” Over the years, however, most courts have interpreted this language in a “practical” manner. See *People v. Rogers* (1986) 187 Cal.App.3d 1001, 1007 [“. . . but few warrants could pass [the *Marron* test] and thus it is more accurate to say that the warrant must be sufficiently definite so that the officer executing it can identify the property sought with reasonable certainty.”]; *U.S. v. Wuagneux* (11th Cir. 1982) 683 F.2d 1343, 1349, fn.4 [“Appellant places considerable emphasis on [the *Marron* language]. As this court and others have observed, however, if this statement were construed as a literal command, no search would be possible.”]; *U.S. v. Leary* (10th Cir. 1988) 846 F.2d 592, 600, fn.12 [the *Marron* language “has been interpreted in a variety of ‘practical’ ways.”]; *U.S. v. Riley* (2nd Cir. 1990) 906 F.2d 841, 844-5 [court notes prohibiting officer-discretion is sometimes impractical].

⁶⁵ See *U.S. v. Kimbrough* (5th Cir. 1995) 69 F.3d 723, 727 [“In circumstances where detailed particularity is impossible, generic language is permissible if it particularizes the *types* of items to be seized.”]; *U.S. v. Klein* (1st Cir. 1977) 565 F.2d 183, 188 [officers knew how to identify pirated 8-track tapes but their warrant broadly authorized a search of “pirated” tapes].

⁶⁶ See *People v. Lowery* (1983) 145 Cal.App.3d 902, 907; *U.S. v. Hillyard* (9th Cir. 1982) 677 F.2d 1336, 1339-40 [“The particularity guarantee does not preclude use of generic language. In many cases officers are unable to specify in advance all seizable evidence on the premises to be searched.”]; *U.S. v. Pilotro* (9th Cir. 1986) 800 F.2d 959, 963 [“The specificity required in a warrant varies depending on the circumstances of the case and the type of items involved.

Warrants which describe generic categories of items are not necessarily invalid if a more precise description of the items subject to seizure is not possible.”]; *U.S. v. Wuagneux* (11th Cir. 1982) 683 F.2d 1343, 1349 [“It is universally recognized that the particularity requirement must be applied with a practical margin of flexibility, depending on the type of property to be seized, and that a description of property will be acceptable if it is as specific as the circumstances and nature of activity under investigation permit.”]; *U.S. v. Johnson* (8th Cir. 1976) 541 F.2d 1311, 1314 [“Where the precise identity of goods cannot be ascertained at the time the warrant is issued, naming only the generic class of items will suffice because less particularity can be reasonably expected than for goods (such as those stolen) whose identity is already known at the time of issuance.”]; *U.S. v. Leary* (10th Cir. 1988) 846 F.2d 592, 600 [“Even a warrant that describes the items to be seized in broad or generic terms may be valid when the description is as specific as the circumstances and the nature of the activity under investigation permit.”]; *U.S. v. Hay* (9th Cir. 2000) 231 F.3d 630, 637; *U.S. v. Young* (2nd Cir. 1984) 745 F.2d 733, 759 [“Courts tend to tolerate a greater degree of ambiguity [in the warrant’s description] where law enforcement agents have done the best that could reasonably be expected under the circumstances, have acquired all the descriptive facts

frequently have probable cause to seize an item but not much information about its form or appearance.⁶⁷ As the Court of Appeal explained:

[T]he requirement of reasonable particularity is a flexible concept, reflecting the degree of detail known by the affiant and presented to the magistrate. While a general description may be sufficient where probable cause is shown and a more specific identification is impossible, greater specificity is required in a case where the identity of the objects is known.⁶⁸

KEEP IT SIMPLE: Even if officers can provide a very detailed description, they need not do so. Instead, they should provide only those details that are reasonably necessary to identify the item. Although some courts in the past required technical precision and “elaborate specificity”⁶⁹ (which resulted in some ridiculously cumbersome warrants), the courts today don’t want a detailed word picture of each item to be seized. As the U.S. Court of Appeal put it:

Specificity does not lie in writing words that deny all unintended logical possibilities. Rather, it lies in a combination of language and context, which together permit the communication of clear, simple direction. Any effort to negate all unintended logical possibilities through the written word alone would produce linguistic complication and confusion to the point where a warrant, in practice, would fail to give the clear direction that is its very point.⁷⁰

which a reasonable investigation could be expected to cover, and have insured that all those facts were included in the warrant.”].

⁶⁷ See *People v. Carpenter* (1999) 21 Cal.4th 1016, 1043 [“In a complex case resting upon the piecing together of many bits of evidence, the warrant properly may be more generalized than would be the case in a more simplified case resting upon more direct evidence.”]; *In re Kitty’s East* (10th Cir. 1990) 905 F.2d 1367, 1374 [“(T)here is a practical margin of flexibility permitted by the constitutional requirement for particularity in the description of items to be seized.”]; *People v. Hepner* (1994) 21 Cal.App.4th 761, 774; *People v. Smith* (1986) 180 Cal.App.3d 72, 89; *U.S. v. Santarelli* (11th Cir. 1985) 778 F.2d 609, 614 [“There are circumstances in which the law enforcement officer applying for a warrant cannot give an exact description of the materials to be seized even though he has probable cause to believe that such materials exist and that they are being used in the commission of a crime. In this situations we have upheld warrant when the description is as specific as the circumstances and the nature of the activity under investigation permit.”]; *U.S. v. Bentley* (7th Cir. 1987) 825 F.2d 1104, 1110 [“The description must be as particular as the circumstances reasonably permit.”]; *U.S. v. Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 654 [“A general description may be acceptable in a warrant if a more precise description is not possible.”].

⁶⁸ *People v. Smith* (1986) 180 Cal.App.3d 72, 89. ALSO SEE *People v. Schilling* (1987) 188 Cal.App.3d 1021, 1031.

⁶⁹ See *People v. Minder* (1996) 46 Cal.App.4th 1784, 1788 [“Technical requirements of elaborate specificity have no proper place in this area.”]. COMPARE *People v. Frank* (1985) 38 Cal.3d 711, 726 [court ruled the following were “impermissibly general categories: “credit card receipts,” “records of toll calls,” and “cancelled checks”]; *Aday v. Superior Court* (1961) 55 Cal.2d 789, 793-6 [not sufficiently specific: “checks, check stubs and bank statements and any and all other records and paraphernalia connected with the business of [the suspect]”]; *Griffin v. Superior Court* (1972) 26 Cal.App.3d 672, 692, 696 [not sufficiently specific: “Evidence of indebtedness by said Griffin to other persons, including but not limited to such items as bills, contracts, check stubs, checks, bankbooks . . .”].

⁷⁰ *U.S. v. Gendron* (1st Cir. 1994) 18 F.3d 955, 966. ALSO SEE *U.S. v. Johnson* (8th Cir. 1976) 541 F.2d 1311, 1313 [“The standard to be used in this determination is one of practical accuracy rather than technical nicety.”].

COMMON-SENSE INTERPRETATION: In interpreting the descriptive language, the courts apply common sense—not hypertechnical analysis.⁷¹

CONSIDER THE WHOLE DESCRIPTION: The descriptive language is considered as a whole. In other words, the courts must not focus on descriptive language in the abstract, ignoring language appearing before and after it that may give it meaning.⁷²

BOILERPLATE: In the context of search warrants, the term “boilerplate” is commonly used to describe a lengthy list of evidence and descriptions of evidence, usually taken verbatim from other warrants.⁷³ Because boilerplate can be stored easily in computer files, officers can, with a few keystrokes, instantly provide literally *pages* of boilerplated descriptions of evidence—much of it meaningless.

The reason it’s meaningless is that there may be nothing in the affidavit to establish a fair probability that items of such a description are on the premises. For example, in *People v. Holmsen*⁷⁴ a boilerplated description included “personal phone books to identify co-conspirators.” The problem was there was nothing in the affidavit to support the belief that a conspiracy existed.

Accordingly, officers who use boilerplate language should, at the very least, read it over carefully and delete those items not supported by probable cause.

“INCLUDING, BUT NOT LIMITED TO . . .”: Warrants sometimes contain a fairly detailed description of evidence to be seized along with some general language indicating that officers may also seize things that are not specifically listed; e.g., “including, *but not limited to*,” “shall seize, *among other things* . . .” Although such language might seem very general in the abstract, most courts interpret it, and the list of items appearing before or after it, as comprising a single category of evidence that may be seized. As such, the list of items is deemed to illustrate the *types* of items that fall into that category.⁷⁵ As

⁷¹ See *Illinois v. Gates* (1983) 462 US 213, 235 [“Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area.” Quoting *United States v. Ventresca* (1965) 380 US 102, 108]; *People v. Kraft* (2000) 23 Cal.4th 978, 1049 [“(S)earching officers would have entertained no uncertainty as to whether a ‘blue plaid long sleeved flannel shirt’ was encompassed within the warrant, even if more than one shirt fitting that description might be found on the premises.”]; *U.S. v. Conley* (3rd Cir. 1993) 4 F.3d 1200, 1208 [“(N)o tenet of the Fourth Amendment prohibits a search merely because it cannot be performed with surgical precision.”]; *U.S. v. Gendron* (1st Cir. 1994) 18 F.3d 955, 966 [“(W)e must avoid reading a warrant’s language ‘hypertechnically.’”].

⁷² See *Andresen v. Maryland* (1976) 427 US 463, 479-80; *People v. Schilling* (1987) 188 Cal.App.3d 1021, 1031 [“(T)he language which defendant challenges on appeal cannot be assessed, as he would have us do, in a vacuum. It must be read in conjunction with the language which immediately follows . . .”]; *People v. Rogers* (1986) 187 Cal.App.3d 1001, 1008 [“The federal courts have concluded that whether a warrant fails the particularity requirement cannot be decided in a vacuum. The court will base its determination on such factors as the purpose for which the warrant was issued, the nature of the items to which it is directed, and the total circumstances surrounding the case.”]; *In re Search Warrant dated July 4, 1977* (D.C. Cir. 1978) 572 F.2d 321, 324; *U.S. v. Gendron* (1st Cir. 1994) 18 F.3d 955, 966 [“(S)pecificity lies in a combination of language and context, which together permit the communication of clear, simple direction.”]; *U.S. v. Gawrysiak* (1977) 972 F.Supp. 853, 860 [“The terms of a search warrant must be read in context and not in isolation, in order to determine whether the warrant is sufficiently specific.”]; *U.S. v. Riley* (2nd Cir. 1990) 906 F.2d 841, 844; *U.S. v. Johnson* (3rd Cir. 1982) 690 F.2d 60, 60-6.

⁷³ See *People v. Frank* (1985) 38 Cal.3d 711, 728.

⁷⁴ (1985) 173 Cal.App.3d 1045, 1048.

⁷⁵ See *Andresen v. Maryland* (1976) 427 US 463, 479-80 [Warrant: “[list of documents pertaining to Lot 13T] together with other fruits, instrumentalities and evidence of crime at this time unknown.” Court: “[T]he challenged phrase must be read as authorizing only the search for and

the U.S. Court of Appeals explained, “In upholding broadly worded categories of items available for seizure, we have noted that the language of a warrant is to be construed in light of an illustrative list of seizable items.”⁷⁶

Consequently, a description containing such language is not objectionable so long as the list of items sufficiently identifies the types of things that may be seized.

For example, in *Toubus v. Superior Court*⁷⁷ a warrant authorized a search for “any papers or writings, records that evidence dealings in controlled substances including, but not limited to address books, ledgers, lists, notebooks, etc.” In ruling this language was not overbroad, the court noted that it permitted a seizure of only those things pertaining to “dealings in controlled substances.”

Similarly, in *People v. Schilling*⁷⁸ a warrant authorized a search for “scientific evidence, including but not limited to fingerprints, powder burns, blood, blood spatters, photographs, measurements, bullet holes, hair, fibers.” The court ruled this language was sufficiently specific, noting, “The inclusive generic language ‘scientific evidence, including but not limited to’ simply authorized seizure of additional scientific evidence that [the affiant] was unable to detail.”

USING ATTACHMENTS: There is seldom enough space on pre-printed search warrant forms to provide a meaningful description of the evidence to be seized. Even if the affiant is writing the warrant on a word processor and can enlarge the space in which to describe evidence, this often results in an unwieldy and cumbersome document.

For this reason, affiants commonly write the description on a separate sheet which they incorporate into the warrant.⁷⁹ Or, if the description was already contained in a separate document, that document may be incorporated. For example, in warrants to search for property taken in burglaries, affiants will commonly incorporate a crime report that contains a description of the stolen property.⁸⁰

The procedure for incorporating documents for this purpose is quite simple. First, the affiant must insert some language in the warrant giving notice that the separate document is to be considered part of the warrant;⁸¹ e.g., “PROPERTY TO BE SEIZED: Described in Exhibit 1B, attached hereto and incorporated by reference.”

seizure of evidence relating to ‘the crime of false pretenses with respect to Lot 13T.]. BUT ALSO SEE *Center Art Galleries v. U.S.* (9th Cir. 1989) 875 F.2d 747, 749-50.

⁷⁶ *U.S. v. Riley* (2nd Cir. 1990) 906 F.2d 841, 844. ALSO SEE *U.S. v. Washington* (9th Cir. 1986) 797 F.2d 1461, 1472; *U.S. v. Honore* (9th Cir. 1972) 450 F.2d 31, 33; *U.S. v. Abrams* (1st Cir. 1980) 615 F.2d 541, 547 [“the general ‘tail’ of the search warrant will be construed so as not to defeat the ‘particularity’ of the main body of the warrant.”].

⁷⁷ (1981) 114 Cal.App.3d 378, 386.

⁷⁸ (1987) 188 Cal.App.3d 1021, 1031.

⁷⁹ See *State v. Wade* (1989) 544 So.2d 1028 1030 [“As a practical matter, when the information in support of a search warrant is quite lengthy, as in this case, there is no way that a printed form of search warrant can be used without attaching an exhibit and incorporating it by reference.

Incorporation by reference is a recognized method of making one document of any kind become a part of another separate document without actually copying it at length in the other.”]; *In re Search Warrant Dated July 4, 1977* (D.C. Cir. 1978) 572 F.2d 321, 323.

⁸⁰ **NOTE:** Affiants may also incorporate their affidavit into the warrant if the affidavit contains a description of the evidence. See *Bay v. Superior Court* (1992) 7 Cal.App.4th 1022, 1027; *U.S. v. Hillyard* (9th Cir. 1982) 677 F.2d 1336, 1340; *U.S. v. Leary* (10th Cir. 1988) 846 F.2d 592, 603 [“It is true that the particularity of an affidavit may cure an overbroad warrant, but only where the affidavit and the search warrant can be reasonably said to constitute one document.”]; *Center Art Galleries v. U.S.* (9th Cir. 1989) 875 F.2d 747, 750; *U.S. v. Klein* (1st Cir. 1977) 565 F.2d 183, 186, fn.3.

⁸¹ See *U.S. v. Towne* (9th Cir. 1993) 997 F.2d 537, 547 [“All of our cases say that a separate document must be expressly incorporated by reference in the search warrant before it will be

Second, the attachment must be stapled or otherwise fastened to the warrant.⁸² This is necessary to make sure the attachment is available to the members of the search team who will need it to determine what evidence may be searched for and seized.⁸³

THE SEVERANCE DOCTRINE: If a warrant fails to describe some, but not all,⁸⁴ items with sufficient particularity, courts will ordinarily suppress only those items that were not sufficiently described.⁸⁵ For example, if items A and B were adequately described but item C was not, item C would be suppressed but items A and B would be admissible.

PLAIN VIEW: If officers seize evidence that was not particularly described, or if they seize evidence that was not described at all, the evidence may, nevertheless, be admissible under the plain view rule. Under plain view, officers who are executing a warrant may seize unlisted property if, (1) they observed it while conducting a lawful search for described evidence, and (2) when they seized it, they had probable cause to believe it was evidence of a crime.⁸⁶

construed as part of it.”]; *People v. Egan* (1983) 141 Cal.App.3d 798, 803 [“Incorporation by reference occurs when one complete document expressly refers to and embodies another document. It is necessary that the incorporated document be clearly identified and in existence at the time of incorporation.”].

⁸² See *People v. MacAvoy* (1984) 162 Cal.App.3d 746, 755 [“The requirement that the affidavit be incorporated into and attached to the warrant insures that both the searches and those threatened with search are informed of the scope of the searcher’s authority.”]; *People v. Tockgo* (1983) 145 Cal.App.3d 635, 643 [“Absent such physical and textual incorporation, the affidavit may not be used to narrow and sustain the terms of the warrant.”]; *U.S. v. Stubbs* (9th Cir. 1989) 873 F.2d 210, 212 [“We will not, however, rely on an affidavit to cure the generality of a warrant where the affidavit is not attached to and incorporated by reference in the warrant.”]; *U.S. v. Spilotro* (9th Cir. 1986) 800 F.2d 959, 967 [“We are unable to rely on the affidavit to cure the generality of the warrants, however, since it was not attached to and incorporated by reference in the warrants as required by this court’s decision in [*U.S. v. Hillyard* (9th Cir. 1982) 677 F.2d 1336, 1340.”].

NOTE: There is sound authority for the position that the warrant need not be physically attached but must, instead, “accompany” the warrant when it is served. See *U.S. v. Towne* (9th Cir. 1993) 997 F.2d 537, 548 [“(I)f an affidavit or other document is expressly incorporated by reference in the warrant, then there is no reason to expect that the magistrate, the officer, and the person searched will fail to be guided by its contents, so long as it is actually at hand when the search is authorized and executed.”]; *U.S. v. Wuagneux* (11th Cir. 1982) 683 F.2d 1343, 1350, fn.6 [“(T)he searchers were adequately informed of the limitations on the search given their instruction by Agent O’Dea, their opportunity to read the affidavit, and its presence at the search site.”]. Still, it is probably best to avoid this issue altogether by physically attaching all ancillary documents.

⁸³ See *Thompson v. Superior Court* (1977) 70 Cal.App.3d 101, 109. COMPARE *U.S. v. Van Damme* (9th Cir. 1995) 48 F.3d 461, 466 [“. . . there was no evidence that the officers took the attachment along on the search.”].

⁸⁴ See *U.S. v. Kow* (9th Cir. 1995) 58 F.3d 423, 428 [“(I)f no portion of the warrant is sufficiently particularized to pass constitutional muster, then total suppression is required.”]; *U.S. v. Spilotro* (9th Cir. 1986) 800 F.2d 959, 967 [severance doctrine “requires that identifiable portions of the warrant be sufficiently specific and particular to support severance.”].

⁸⁵ See *Aday v. Superior Court* (1961) 55 Cal.2d 789, 797; *People v. Smith* (1986) 180 Cal.App.3d 72, 89; *People v. Holmsen* (1985) 173 Cal.App.3d 1045, 1048; *People v. Joubert* (1983) 140 Cal.App.3d 946, 952; *People v. Superior Court (Macil)* (1972) 27 Cal.App.3d 404, 415; *U.S. v. Brown* (10th Cir. 1993) 984 F.2d 1074, 1077; *U.S. v. Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 654; *U.S. v. Stubbs* (9th Cir. (1989) 873 F.2d 210, 212.

⁸⁶ See *People v. Bradford* (1997) 15 Cal.4th 1229, 1295-6; *Arizona v. Hicks* (1987) 480 US 321, 326-8; *Horton v. California* (1990) 496 US 128, 136; *Minnesota v. Dickerson* (1993) 508 US 366, 375; *Washington v. Chrisman* (1982) 455 US 1, 5-6 [“The ‘plain view’ exception to the Fourth Amendment warrant requirement permits a law enforcement officer to seize what clearly is incriminating evidence or contraband when it is discovered in a place where the officer has a right to be.”]; *People v. Camacho* (2000) 23 Cal.4th 824, 832.

Ways of narrowing a description

Even if there is not much descriptive information available, there may still be ways to narrow the description.

BE PRECISE: If possible, avoid generic words; e.g., “heroin,” not “illegal drugs” or “dangerous” drugs; “all Sony DVD players,” not “all DVD players.”⁸⁷

DESCRIBE BY LOCATION: If officers know where on the premises the evidence is located, this information may be included to help identify it; e.g., evidence is in a certain file, box, cabinet, or room.⁸⁸

INSTRUCTIONS ON HOW TO LOCATE: If there is a specific procedure that will enable officers to identify the items to be seized, the warrant can describe this procedure; e.g., seize all cars with VIN numbers matching the VIN numbers on a list of stolen cars.⁸⁹

INFER DESCRIPTION BY TYPE OF CRIME: Officers will sometimes have probable cause to believe that a certain type of criminal activity is occurring inside the place to be searched; e.g., a chop shop, storage of illegal weapons, crack house. But because no officer or informant has been inside or has seen the evidence, the affiant cannot describe it. In these situations, a description of the evidence will ordinarily be sufficient if it describes the types of evidence that are commonly associated with such a crime.⁹⁰

When using this method of describing evidence, affiants should do three things. First, they should summarize their training and experience as it pertains to the type of crime under investigation. Second, they should state an opinion—based on their training and experience—as to the types of items that are commonly found in places

⁸⁷ See *People v. Superior Court (Marcil)* (1972) 27 Cal.App.3d 404, *People v. Walker* (1967) 250 Cal.App.2d 214, 216, fn.1, 220.

⁸⁸ See *In re Search Warrant Dated July 4, 1977* (D.C. Cir. 1978) 572 F.2d 321, 324; *U.S. v. Kow* (9th Cir. 1995) 58 F.3d 423, 427 [“(A)lthough [the affidavit] summarized in detail the various locations within HY Video where officers could find relevant documents, this information was excluded from the warrant.”]; *U.S. v. Stubbs* (9th Cir. 1989) 873 F.2d 210, 211 [“The IRS knew both what the seizable documents looked like and where to find them, but this information was not contained in the warrant.”].

⁸⁹ See *U.S. v. Hillyard* (9th Cir. 1982) 677 F.2d 1336.

⁹⁰ See *Andresen v. Maryland* (1976) 427 US 463, 480, fn.10; *Bay v. Superior Court* (1992) 7 Cal.App.4th 1022, 1027 [“(Stating the nature of the crime under investigation) would have provided the executing officer with meaningful limits on the nature of the items to be seized . . . ”]; *People v. Barnum* (1980) 113 Cal.App.3d 340, 347; *U.S. v. Spilotro* (9th Cir. 1986) 800 F.2d 959, 964 [“(T)he government could have narrowed most of the descriptions in the warrant either by describing in greater detail the items one commonly expects to find on premises used for the criminal activities in question . . . ”]; *U.S. v. Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 654 [“Since the DEA sought articles it claims are typically found in the possession of narcotics traffickers, the warrant could have named or described those particular articles.”]; *U.S. v. Kow* (9th Cir. 1995) 58 F.3d 423, 427; *U.S. v. Hillyard* (9th Cir. 1982) 677 F.2d 1336, 1340; *U.S. v. Federbush* (9th Cir. 1980) 625 F.2d 246, 251; *U.S. v. Scharfman* (2nd Cir. 1971) 448 F.2d 1352, 1355. **NOTE:** Support for inferring a description may be found in those cases in which the existence of fruits and instrumentalities of a crime was inferred based on the nature of the crime. See, for example, *People v. Carpenter* (1999) 21 Cal. 4th 1016, 1043; *People v. Senkir* (1972) 26 Cal.App.3d 411, 420-1; *People v. Superior Court (Marcil)* (1972) 27 Cal.App.3d 404, 413; *People v. Brevet* (1980) 112 Cal.App.3d 65, 70; *People v. Johnson* (1971) 21 Cal.App.3d 235, 243; *Segura v. United States* (1984) 468 US 796, 810-1; *People v. Vermouth* (1974) 42 Cal.App.3d 353, 362; *Hart v. Superior Court* (1971) 21 Cal.App.3d 496, 499; *People v. Tuadles* (1992) 7 Cal.App.4th 1777, 1782, 1785; *People v. Sloss* (1973) 34 Cal.App.3d 74, 82-3); *People v. McNabb* (1991) 228 Cal.App.3d 462, 469; *People v. McEwen* (1966) 244 Cal.App.2d 534, 536; *People v. Holmsen* (1985) 173 Cal.App.3d 1045, 1048; *People v. Decker* (1986) 176 Cal.App.3d 1247, 1250; *U.S. v. Riley* (2nd Cir. 1990) 906 F.2d 841, 844.

where such crimes are committed or in places controlled by the perpetrators of such crimes.⁹¹

Third, they should describe these types of items as best they can.⁹² If necessary, this may be done by reference to the statute violated or the crime under investigation;⁹³ e.g., “Computer equipment pertaining to the distribution or display or pornographic material in violation of state obscenity laws set forth in . . .”⁹⁴; “Title notes, title abstracts, contracts of sale, correspondence and memoranda to and from trustees of deeds of trust together with other fruits and instrumentalities and evidence of the crime of false pretenses pertaining to Lot 13T.”⁹⁵

For example, in *U.S. v. Santarelli*⁹⁶ FBI agents developed probable cause to believe that Santarelli was a loan shark who worked out of his home. Although they knew that loan sharks ordinarily keep business records of loans outstanding, interest due, and payments received, the agents had no specific information as to what kinds of records Santarelli was keeping. So, in a warrant to search Santarelli’s house, they described the evidence to be seized as “all property constituting evidence of the crimes of making and conspiring to make extortionate extensions of credit, financing extortionate extensions of credit, and collections of and conspiracy to collect extortionate extensions of credit. . . .” This description, said the court, was sufficient under the circumstances because “[p]rior to entering Santarelli’s residence, the agents could not have known that Santarelli’s loansharking records would have consisted of notations on index cards, calendars, and slips of paper scattered about his bedroom.”

Mere reference to a statute may not, however, be sufficient if the statute covers a wide variety of conduct and, as such, gives officers too much discretion as to what

⁹¹ See *U.S. v. Klein* (1st Cir. 1977) 565 F.2d 183, 186 [affiant failed to show how his training and experience related to his conclusion that 8-track tapes appeared to be pirated]; *U.S. v. Scharfman* (2nd Cir. 1971) 448 F.2d 1352, 1354 [reasonable to believe that “books and records would be utilized as instrumentalities in connection with the crime of disposing of hundreds of fur garments through a façade of legitimacy.”].

⁹² See *U.S. v. Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 654; *U.S. v. Riley* (2nd Cir. 1990) 906 F.2d 841, 844, fn.1 [“(E)vidence of the offense of conspiracy to distribute controlled substances, namely . . . records of the distribution of cocaine including records of the investment of proceeds of drug trafficking in tangible or intangible objects and things.”]; *U.S. v. Washington* (9th Cir. 1986) 782 F.2d 807, 818 [items evidencing “involvement and control of prostitution activity”]; *People v. Superior Court (Marcil)* (1972) 27 Cal.App.3d 404, 415 [“Correspondence relating to the smuggling of hashish and marijuana.”]; *People v. Barnum* (1980) 113 Cal.App.3d 340, 347 [“Typewriters, tools, wires, shotgun shells, explosive materials and devices, correspondence, address books, and other documents which are the instrumentalities and evidence of crimes in violation of 18 U.S.C.A. §§ 876 and 1716.”].

⁹³ See *Bay v. Superior Court* (1992) 7 Cal.App.4th 1022, 1027 [reference to a certain crime “would have provided the executing officer with meaningful limits on the nature of the items to be seized in order to ensure there was probable cause for all the items seized.”]; *U.S. v. Spilotro* (9th Cir. 1986) 800 F.2d 959, 964 [court indicates the following description would be sufficient: “Records relating to loan sharking and gambling, including pay and collection sheets, lists of loan customers, loan accounts and telephone numbers, line sheets, bet slips, tally sheets, and bottom sheets.”].

⁹⁴ See *Davis v. Gracey* (10th Cir. 1997) 111 F.3d 1472, 1479 [“(T)he criminal activity referenced in the warrant was very narrow, providing a ready guide to determine if a given item was one that might be an instrument or evidence of the criminal activity.”]. ALSO SEE *U.S. v. Conley* (3rd Cir. 1993) 4 F.3d 1200, 1208 [records pertaining to an illegal gambling operation].

⁹⁵ See *Andresen v. Maryland* (1976) 427 US 463, 479-82. ALSO SEE *U.S. v. Federbush* (9th Cir. 1980) 625 F.2d 246, 251-2 [“documents . . . pertaining to the Windward International Bank . . . [which are] being held in violation of U.S.C., Title 18, Section 2314.”].

⁹⁶ (11th Cir. 1985) 778 F.2d 609.

evidence relates to the statute.⁹⁷ As the U.S. Court of Appeals observed, “An unadorned reference to a broad federal statute does not sufficiently limit the scope of a search warrant.”⁹⁸ This was not a problem in the first example because it limited the description by reference to “pornography,” nor in the second example in which the evidence was described by reference to both the nature of the crime (false pretenses) and the subject matter of the crime (Lot 13T).

It did, however, become a problem in *U.S. v. Spilotro* where a description was limited only by reference to thirteen statutes, some very broad. As the court noted, “The statutes in question likely would encompass several hundred criminal acts This effort to limit discretion solely by reference to criminal statutes was inadequate to meet the standards for specificity in a warrant.”⁹⁹

Note that when describing *types* of evidence, it may be appropriate to use boilerplate. Although, as noted earlier, boilerplate should be used sparingly to describe individual items of evidence, it is properly used to describe types or categories of evidence when the affiant is unable to provide a more particular description.

Common descriptions

With these principles in mind, we will look at some of the words and phrases that are commonly used in search warrant descriptions.

PARAPHERNALIA: Warrants commonly authorize a search for “paraphernalia.” Although the word is broad and ambiguous in the abstract, in the context of search warrants it is a “standard vocabulary word”¹⁰⁰ used to describe items that are commonly used to carry out routine tasks pertaining to certain crimes, such as drug sales, bookmaking, and gambling. For example, in the context of drug sales, “paraphernalia” typically includes documents identifying sellers and buyers, and items that are used to weigh and package drugs.

If officers know precisely what type of paraphernalia is on the premises, they should, of course, describe it. But in most cases, the existence of paraphernalia is based on reasonable inference; namely, because there is probable cause to believe a person on the premises is engaged in a certain type of criminal activity, it is reasonable to believe that items commonly used in connection with such activity are also on the premises.¹⁰¹

⁹⁷ See, for example, *Voss v. Bergsgaard* (10th Cir. 1985) 774 F.2d 402, 405 [warrant for documents that are evidence of the federal conspiracy statute (18 U.S.C. 371); *U.S. v. Cardwell* (9th Cir. 1982) 680 F.2d 75, 78 [“books and records . . . which are the fruits and instrumentalities of violations of 26 U.S.C. § 7201.”]; *U.S. v. Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 653-4 [“papers, including currency, evidencing failures to file currency transactions reports as required by Title 31 U.S.C.”]; *U.S. v. Spilotro* (9th Cir. 1986) 800 F.2d 959, 961 [“notebooks, documents and other records that constitutes evidence of the commission of a criminal offense.”]; *U.S. v. Klein* (1st Cir. 1977) 565 F.2d 183, 187, fn.6 [“materials relating to evidence of a commission of a criminal offense in violation of 17 U.S.C. § 104”]; *U.S. v. Leary* (10th Cir. 1988) 846 F.2d 592, 600-1 [documents relating to “the purchase, sale and illegal exportation of materials in violation of the” federal export laws]; *U.S. v. Washington* (9th Cir. 1986) 797 F.2d 1461, 1472 [documents “indicating Ralph Washington’s involvement and control of prostitution activity . . . ”].

⁹⁸ *U.S. v. Leary* (10th Cir. 1988) 846 F.2d 592, 602.

⁹⁹ (9th Cir. 1986) 800 F.2d 959, 965. ALSO SEE *People v. Mayen* (1922) 188 Cal. 237, 241-2 [Insufficient: “Certain personal property used as a means of committing grand theft.”].

¹⁰⁰ See *U.S. v. Johnson* (8th Cir. 1976) 541 F.2d 1311, 1314-5.

¹⁰¹ See *U.S. v. Johnson* (8th Cir. 1976) 541 F.2d 1311, 1314 [“Because the officers in this case had only observed probable drug commerce from outside the building, it would be unreasonable to expect them to describe what objects inside might have been used for packaging or administering the controlled substance.”]; *People v. Senkir* (1972) 26 Cal.App.3d 411, 420-1; *People v. Superior Court (Marcil)* (1972) 27 Cal.App.3d 404, 413; *People v. Brevet* (1980) 112 Cal.App.3d 65, 70;

In such cases, use of the word “paraphernalia” is not objectionable if the nature of the paraphernalia is reasonably apparent. For example, the term may be preceded by a limiting adjective, such as “*drug* paraphernalia” or, better yet, reference to a particular drug, such as “*heroin* paraphernalia.”¹⁰²

SCIENTIFIC EVIDENCE: With certain types of crimes, scientific or trace evidence is commonly left at the scene. But because officers seldom know exactly what types of evidence a scientific examination will reveal, it is sufficient to describe it in terms of what evidence, based on their training and experience, is commonly found.

For example, in *People v. Schilling*,¹⁰³ Los Angeles sheriff’s investigators developed probable cause to believe that the defendant shot and killed a woman in his home, then dumped the body in the Angeles National Forest. Because they didn’t know precisely what evidence they would find inside the house, they wrote a warrant authorizing a search for “scientific evidence, including but not limited to fingerprints, powder burns, blood, blood spatters, photographs, measurements, bullet holes, hairs, fibers.” In ruling this language was sufficiently particular, the court noted the description “was clearly a particularized specification of the scientific evidence that could reasonably be obtained in defendant’s residence in light of the facts set forth in [the] affidavit.”

CHILD PORNOGRAPHY: Although the term “pornography” is rather general, the term “child pornography” is sufficiently specific. As one court put it, “[The] courts have acknowledged that such generalized descriptions as ‘child pornography’ are adequate to convey to the officer executing the search warrant the nature of the material sought.”¹⁰⁴

STOLEN PROPERTY: A warrant authorizing a search for “stolen property” is unacceptable because the description provides no criteria for determining what property may be seized, and because officers will almost always have *some* descriptive information about the property they are seeking.¹⁰⁵

For example, in *People v. Tockgo*¹⁰⁶ a warrant to search a liquor store for boxes of stolen cigarettes described the evidence very generally as “cigarettes, cellophane wrappers, cigarette cartons.” This description, said the court, was inadequate because the officers had much more information about the evidence they were seeking; e.g., certain invoice numbers were stamped on each box, the cigarette cartons were sealed with a unique colored glue, and a tax stamp appeared on each of the stolen cigarette packages.

People v. Johnson (1971) 21 Cal.App.3d 235, 243; *Segura v. United States* (1984) 468 US 796, 810-1.

¹⁰² See *U.S. v. Johnson* (8th Cir. 1976) 541 F.2d 1311, 1314 [“Thus grounding their decisions in practicality and reasonableness, courts have found no impermissible vagueness in descriptions specifying merely ‘bookmaking paraphernalia,’ ‘gambling paraphernalia,’ and like paraphernalia.”].

¹⁰³ (1987) 188 Cal.App.3d 1021.

¹⁰⁴ *U.S. v. Simpson* (10th Cir. 1998) 152 F.3d 1241, 1247. ALSO SEE *U.S. v. Upham* (1st Cir. 1999) 168 F.3d 532, 536, fn.1; *U.S. v. Hay* (9th Cir. 2000) 231 F.3d 630, 637; *U.S. v. Kimbrough* (5th Cir. 1995) 69 F.3d 723, 727-8 [“Identification of visual depictions of minors engaging in sexually explicit conduct is a factual determination that leaves little latitude to the officers.”].

¹⁰⁵ See *Lockridge v. Superior Court* (1969) 275 Cal.App.2d 612, 625; *Thompson v. Superior Court* (1977) 70 Cal.App.3d 101, 108; *People v. Superior Court (Williams)* (1978) 77 Cal.App.3d 69, 77 [“Without a specific means of identification, the police had no means of distinguishing legitimate goods from stolen goods.”]; *U.S. v. Brown* (10th Cir. 1993) 984 F.2d 1074, 1077; *U.S. v. Johnson* (8th Cir. 1976) 541 F.2d 1311, 1314 [the “exact identity [of stolen goods] is already known at the time of issuance.”].

¹⁰⁶ (1983) 145 Cal.App.3d 635. ALSO SEE *U.S. v. Stubbs* (9th Cir. 1989) 873 F.2d 210, 211 [“The IRS knew both what the seizable documents looked like and where to find them, but this information was not contained in the warrant.”].

Similarly, in *Lockridge v. Superior Court*¹⁰⁷ officers developed probable cause that Lockridge burglarized two jewelry stores. Although the officers had, or could have obtained, a detailed description of the stolen property, the warrant merely incorporated the burglary report which described the jewelry only by reference to its value; i.e. \$150,000 in stolen jewelry. Consequently, the warrant was overbroad.

Still, there are cases in which officers are simply unable to particularly describe stolen property. For example, they may have probable cause to believe that a garage is being used as a chop shop, or that a warehouse is being used to store stolen furs. But they cannot describe any particular stolen items. When this happens, there are at least two options available.

WARRANT TO SEIZE A "CLASS" OF PROPERTY: The first option is available if officers can prove that an identifiable class or type of property on the premises is stolen. If so, they can seek a warrant to seize all property of that class. As the U.S. Court of Appeals explained, "When there is probable cause to believe that premises to be searched contains a class of generic items or goods, a portion of which are stolen or contraband, a search warrant may direct inspection of the entire class of all of the goods if there are objective, articulated standards for the executing officers to distinguish between property legally possessed and that which is not."¹⁰⁸ For example, if there is probable cause to believe that many stolen watch bands are on the premises, but the only identifying feature is that they are Speidel watch bands, the description "Speidel watch bands" would be sufficient.¹⁰⁹ This option was utilized in *U.S. v. Hillyard*¹¹⁰ where FBI agents developed probable cause to believe that stolen vehicles were being stored in a certain wrecking yard and at Hillyard's garage. Although the agents were able to describe some of the stolen vehicles, they knew there were others on the premises. So they obtained a warrant authorizing the seizure of the particularly described vehicles plus any others on the premises which "possess altered or defaced identification numbers or which are otherwise determined to be stolen." In upholding the warrant, the court pointed out, "[The] affidavit explained that vehicle alterations could be discovered by comparing secret identification numbers with those openly displayed, that true numbers could be checked with law enforcement computerized lists . . ."

PLAIN VIEW SEIZURE: If officers can describe one or more items and, thereby, obtain a warrant to enter and search for those items, they may seize property not described in the warrant if, at the time they seized it, (1) they were conducting a lawful search for evidence listed in the warrant, and (2) they had probable cause to believe the property was stolen.¹¹¹ For example, such probable cause might exist if officers saw property with obliterated serial numbers, clipped wires, pry marks or other signs of forced removal, the presence of store tags or anti-shoplifting devices that are usually

¹⁰⁷ (1969) 275 Cal.App.2d 612.

¹⁰⁸ *U.S. v. Hillyard* (9th Cir. 1982) 677 F.2d 1336, 1340. COMPARE *U.S. v. Klein* (1st Cir. 1977) 565 F.2d 183, 188 ["(T)he affidavit and the warrant failed to provide any before the fact guidance to the executing officers as to which tapes were pirate reproductions."].

¹⁰⁹ See *U.S. v. Vitali* (1st Cir. 1967) 383 F.2d 121, 122 ["Where goods are of a common nature and not unique there is no obligation to show that the ones sought (here a substantial quantity of watch bands) necessarily are the ones stolen, but only to show circumstances indicating this to be likely."]; *U.S. v. Scharfman* (2nd Cir. 1971) 448 F.2d 1352, 1354 ["furs, stoles, jackets and other finished fur products."]. ALSO SEE *Hanger v. U.S.* (8th Cir. 1968) 398 F.2d 91, 98 ["We know of no rule of law that does not allow police officers and Government agents to search for 'loot' from a bank robbery under a valid search warrant based on probable cause."].

¹¹⁰ (9th Cir. 1982) 677 F.2d 1336.

¹¹¹ See *Arizona v. Hicks* (1987) 480 US 321, 326.

removed when goods are sold.¹¹² Or, probable cause might exist if the owner of the property accompanied officers while they executed the warrant and positively identified the property as his.¹¹³ An alternative to seizing property in plain view is to freeze the scene and seek a second warrant based on information developed while officers were lawfully executing the first warrant.

INDICIA: Warrants commonly authorize a search for “indicia,” a word used to describe documents and other things that tend to establish the identity of the people in control of the premises to be searched. Although it is usually reasonable for officers to believe that indicia will be found on the premises,¹¹⁴ it is usually not possible to specify exactly what kinds of indicia will be found. Accordingly, the courts permit a rather general description of indicia, provided it is not so broad as to permit the seizure of documents that do not establish ownership or control.¹¹⁵

For example, in *People v. Rogers*¹¹⁶ officers obtained a warrant to search a house for, among other things, marijuana and “articles of personal property tending to establish the identity of the person or persons in control of the premises . . . including, but not limited to, utility company receipts, rent receipts, cancelled mail, envelopes, and keys.” The court ruled this language was sufficient, noting, “[W]e think it is obvious that the officers could not be expected to divine in advance of their entry the precise nature of such evidence—whether mail, bills, checks, invoices, other documents, or keys. Nor could the officers be expected to know the precise location where such evidence would be located.”

Other descriptions of indicia that have been upheld are as follows:

- Letters, papers, bills tending to show the occupants of 2335 Erickson St., #1.¹¹⁷
- [A]rticles and personal property tending to establish the identity of the persons in control of the premises, storage areas or containers where the above-listed property is located, consisting in part of and including but not limited to utility company receipts, rent receipts, cancelled mail envelopes, and keys.¹¹⁸

¹¹² See *People v. Gorak* (1987) 196 Cal.App.3d 1032, 1039; *In re Curtis T.* (1989) 214 Cal.App.3d 1391, 1398; *People v. Sedillo* (1982) 135 Cal.App.3d 616, 623; *People v. Williams* (1988) 198 Cal.App.3d 873, 890; *People v. McGraw* (1981) 119 Cal.App.3d 582, 603; *In re Donald L.* (1978) 81 Cal.App.3d 770, 775 [assortment of jewelry, including women’s jewelry, in possession of man]; *People v. Baker* (1968) 267 Cal.App.2d 916, 919-920; *People v. Atkins* (1982) 128 Cal.App.3d 564, 570; *People v. Garcia* (1981) 121 Cal.App.3d 239, 246; *People v. Superior Court (Thomas)* (1970) 9 Cal.App.3d 203, 210; *People v. Jennings* (1965) 231 Cal.App.2d 744.

¹¹³ See *Wilson v. Layne* (1999) 526 US 603, 611-2 [“Where the police enter a home under the authority of a warrant to search for stolen property, the presence of third parties for the purpose of identifying the stolen property has long been approved by the Court and our common-law tradition.”]; Penal Code § 1530; *People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 76, fn.9; *People v. Tockgo* (1983) 145 Cal.App.3d 635, 645; *People v. Carpenter* (1997) 15 Cal.4th 312, 364.

¹¹⁴ See *People v. Rogers* (1986) 187 Cal.App.3d 1001, 1009 [“(C)ommon experience tells us that houses and vehicles ordinarily contain evidence establishing the identities of those occupying or using them.”].

¹¹⁵ See *People v. Rogers* (1986) 187 Cal.App.3d 1001, 1009 [“We cannot believe the Fourth Amendment prohibits officers with ample probable cause to believe those in a residence have committed a felony from searching the residence to discover ordinary indicia of the identities of the perpetrators.”]; *People v. Rushing* (1989) 209 Cal.App.3d 618, 622; *People v. Williams* (1992) 3 Cal.App.4th 1535, 1542 [“even if the [utility] bill bore only a person’s name, without any address whatsoever, it would still be circumstantial evidence that the person resided in the apartment where the bill was found.”]; *People v. Smith* (1986) 180 Cal.App.3d 72, 89-90.

¹¹⁶ (1986) 187 Cal.App.3d 1001.

¹¹⁷ *People v. Nicolaus* (1991) 54 Cal.3d 551, 574-5 [this language “was sufficiently particularized . . . Similar dominion-and-control clauses in warrants have been upheld by the courts.”].

¹¹⁸ *U.S. v. Honore* (9th Cir. 1972) 450 F.2d 31, 32-3.

HANDWRITING SAMPLES: In order to conduct handwriting analysis, warrants will sometimes seek any documents written by a suspect. Like indicia, it is usually impossible to describe these documents with any particularity. Accordingly, a description such as the following has been deemed sufficient: “Representative original samples of handwriting including writings in the Spanish language.”¹¹⁹

DOCUMENTS: The rule that warrants must describe the items to be seized with reasonable particularity seems to be enforced more strictly when the items to be seized are documents (other than indicia, discussed above, and businesses “permeated with fraud,” discussed below). This is because a search for documents is necessarily a very intrusive search, usually mandating a search of every room and container on the premises and requiring that officers read every document they find—often very private documents—in order to determine whether it is covered under the warrant.¹²⁰

Nevertheless, the courts understand that it is sometimes impossible to provide a detailed description of documents. As the court noted in *U.S. v. Gawrysiak*,¹²¹ “The Fourth Amendment has never demanded that all details of the crime be known, and the crime solved, before the search warrant’s probable cause requirement is met. It follows that the particularity requirement likewise cannot mean that all the documents likely to be evidence of that crime be specified beforehand.”

Still, even if a detailed description is impossible, an open-ended search for “documents” will seldom be upheld; e.g., “any and all records of [the suspect].”¹²² This is because officers will usually have *some* information about the documents they are

¹¹⁹ See *U.S. v. Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 653 [“Only an overly-technical reading could render [this description] insufficiently particular. ‘Representative,’ although indicating no precise number, connotes a limited number of papers. . . . Furthermore, since the samples were sought for the limited purpose of handwriting comparison, a magistrate could not be expected to describe any more particularly the specific papers to be seized.”].

¹²⁰ See *U.S. v. Leary* (10th Cir. 1988) 846 F.2d 592, 603, fn.18 [“Search warrants for documents are generally deserving of somewhat closer scrutiny with respect to the particularity requirement because of the potential they carry for a very serious intrusion into personal privacy.” Quoting 2 LaFave § 4.6.(d), at 249-50]; *U.S. v. Hunter* (1998) 13 F.Supp.2d 574, 582 [“Records searches are vexing in their scope because invariably some irrelevant records will be scanned in locating the desired documents.”]; *U.S. v. Riley* (2nd Cir. 1990) 906 F.2d 841, 845 [concerning the need to read all documents to determine if they are covered under the warrant, the court noted, “[F]ew people keep documents of their criminal transactions in a folder marked ‘drug records.’”]. **NOTE:** A search for documents may also implicate sensitive First Amendment concerns if the documents are sought for the ideas or literary content they communicated. If so, the “particularity” requirement will be enforced more strictly. See *Stanford v. Texas* (1965) 379 US 476, 485 [“(T)he constitutional requirement that warrants must particularly describe the ‘things to be seized’ is to be accorded the most scrupulous exactitude when the ‘things’ are books, and the basis for their seizure is the ideas which they contain.”]; *Zurcher v. Stanford Daily* (1978) 436 US 547, 563-4; *People v. Remiro* (1979) 89 Cal.App.3d 809, 832; *Voss v. Bergsgaard* (10th Cir. 1985) 774 F.2d 402, 405; *U.S. v. Torch* (1979) 609 F.2d 1088, 1089 [“(T)he particularity requirement is even more stringent where the things to be seized have the presumptive protection of the First Amendment.”]; *U.S. v. Hall* (7th Cir. 1998) 142 F.3d 988, 996 [“(W)here law enforcement’s purpose is to seize material presumptively protected by the First Amendment, the items to be seized must be described in the warrant with increased particularity.”].

¹²¹ (1997) 972 F.Supp. 853, 861.

¹²² See *Aday v. Superior Court* (1961) 55 Cal.2d 789, 796; *U.S. v. Washington* (9th Cir. 1986) 797 F.2d 1461, 1473 [warrant authorized a search of documents showing an association between the suspect and any other person].

seeking or some way of limiting the documents to a certain category.¹²³ If so, the description must be so limited.

In addition to limiting the description of documents by the nature of the crime and location, the description may be limited as follows:

BY SUBJECT MATTER: The description of documents may be narrowed by summarizing the subject matter of the documents.¹²⁴ For example in *U.S. v. Wuagneux*¹²⁵ a warrant to search for, among other things, “kickback funds” was ruled sufficiently particular because the affidavit provided details as to how the scheme worked, thus providing sufficient information to satisfy the particularity requirement.

BY TIME PERIOD: The description of documents may be narrowed by reference to a time frame. For example, in an insurance fraud investigation, a warrant for financial documents might describe the evidence as, “*Balance sheets, income statements, and other financial statements dated from* [the date on which the scheme went into operation].¹²⁶

BY SENDER OR RECEIVER: The description may also be narrowed by limiting the documents to those to or from a certain person or business.¹²⁷

THE “PERMEATED WITH FRAUD” RULE: An exception to the specificity requirement for business records is made when the warrant establishes probable cause to believe the business is so corrupt—so “permeated with fraud”—that all, or substantially all, of its records are likely to constitute evidence.¹²⁸ As the U.S. Court of Appeal put it, “[W]hen there is probable cause to seize every business paper on the premises, a warrant saying ‘seize every business paper’ particularly describes the things to be searched for and seized.”¹²⁹

¹²³ See *U.S. v. Spilotro* (9th Cir. 1986) 800 F.2d 959, 963 [“Warrants which describe generic categories of items are not necessarily invalid if a more precise description of the items subject to seizure is not possible.”].

¹²⁴ See *In re Search Warrant Dated July 4, 1977* (D.C. Cir. 1978) 572 F.2d 321, 325; *U.S. v. Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 653 [documents “indicating true place of residence and citizenship of (suspect)”].

¹²⁵ (11th Cir. 1982) 683 F.2d 1343.

¹²⁶ See *U.S. v. Kow* (9th Cir. 1995) 58 F.3d 423, 427 [“The government did not limit the scope of the seizure to a time frame within which the suspected criminal activity took place, even though [the affidavit] indicates that the alleged criminal activity began relatively late in HK Video’s existence.”]; *In re Search Warrant Dated July 4, 1977* (D.C. Cir. 1978) 572 F.2d 321, 324-5; *U.S. v. Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 653. ALSO SEE *U.S. v. Spilotro* (9th Cir. 1986) 800 F.2d 959, 965 [“In [*U.S. v. Cardwell* (9th Cir. 1982) 680 F.2d 75] the government’s investigation centered upon specific business records, enabling it to refine the scope of the warrant by reference to particular criminal episodes, time periods, and subject matter. Because the government knew exactly what it needed and wanted, we held there was no need for so broad a warrant.”].

¹²⁷ See *U.S. v. Wuagneux* (11th Cir. 1982) 683 F.2d 1343, 1350; *U.S. v. Federbush* (9th Cir. 1980) 625 F.2d 246, 251 [“documents . . . pertaining to the Windward International Bank . . . [that] are being held in violation of 18 U.S.C. 2314.”].

¹²⁸ See *U.S. v. Oloyede* (4th Cir. 1992) 982 F.2d 133, 140 [“It is not necessary that the affidavit supporting the search warrant set forth specific factual evidence demonstrating that every part of the enterprise in question is engaged in fraud. Rather, the affidavit need contain only sufficient factual evidence of fraudulent activity from which a magistrate could infer that those activities are ‘just the tip of the iceberg.’”]; *In re Grand Jury Investigation Concerning Solid State Devices, Inc.* (9th Cir. 1997) 130 F.3d 853, 856; *U.S. v. Bentley* (7th Cir. 1987) 825 F.2d 1104, 1110 [“This is the rare case in which even a warrant stating ‘Take every piece of paper related to the business’ would have been sufficient. Universal was fraudulent through and through.”]; *U.S. v. Sawyer* (11th Cir. 1986) 799 F.2d 1494, 1508; *U.S. Postal Service v. C.E.C. Services* (2nd Cir. 1989) 869 F.2d 184, 186.

¹²⁹ *U.S. v. Bentley* (7th Cir. 1987) 825 F.2d 1104, 1110.

For example, in *People v. Hepner*¹³⁰ the court upheld a warrant that authorized a search of all patient files of a physician because there was probable cause to believe he was engaged in insurance fraud involving about 90% of his patients. The court pointed out that the “reasonable particularity” requirement “must be applied with a practical margin of flexibility, taking into account the nature of the items to be seized and the complexity of the case under investigation.” Said the court, “[A] complex criminal investigation may require piecing together like a jigsaw puzzle a number of items of evidence that may not appear incriminating when taken alone. Moreover, in cases involving a pervasive scheme to defraud, all the business records of the enterprise may properly be seized.”

A warrant authorizing a search of a business permeated with fraud must not, however, authorize a search for *all* documents if it is reasonably possible to isolate the documents which constitute evidence of the crime. For example, if the fraud occurred only during a certain period of time, the warrant should authorize a search of only those documents covering that period unless, of course, other documents would also be relevant.¹³¹

The “permeated with fraud” doctrine may also be applied to a search of a residence in which the fraudulent activities are centered, but only if there is a greater showing that the rule applies.¹³²

¹³⁰ (1994) 21 Cal.App.4th 761, 776-7. ALSO SEE *U.S. v. Sawyer* (11th Cir. 1986) 799 F.2d 1494, 1508 [telephone sales “boiler room” permeated with fraud]; *U.S. v. Oloyede* (4th Cir. 1992) 982 F.2d 133, 139 [virtually all files in an immigration lawyer’s office were evidence of immigration fraud].

¹³¹ See *U.S. v. Bentley* (7th Cir. 1987) 825 F.2d 1104, 1110 [(I)f the fraud infects only one part of the business, the warrant must be so limited—but within that portion of the business ‘all records’ may be the most accurate and detailed description possible.”]; *In re Kitty’s East* (10th Cir. 1990) 905 F.2d 1367, 1375; *U.S. v. Oloyede* (4th Cir. 1992) 982 F.2d 133, 141 [“Severability of legitimate documents from suspected fraudulent documents remains a pertinent question, even where a broad seizure is permitted.”]; *U.S. v. Stubbs* (9th Cir. 1989) 873 F.2d 210, 211; *U.S. v. Hunter* (1998) 13 F.Supp.2d 574, 581 [“all documents” search limited to “specific entities and properties”]; *Center Art Galleries v. U.S.* (9th Cir. 1989) 875 F.2d 747, 750-1 [“The Government failed to limit the warrants to items pertaining to the sale of Dali artwork despite the total absence of any evidence of criminal activity unrelated to Dali.”].

¹³² See *U.S. v. Falon* (1st Cir. 1992) 959 F.2d 1143; *U.S. v. Humphrey* (5th Cir. 1997) 104 F.3d 65, 69, fn.2 [“only in extreme cases” will an “all documents” search of a residence be upheld].