

Protective Sweeps

*Protective sweeps are a necessary fact of life in the violent society in which our law enforcement officers must perform the duties of their office.*¹

While homes are places in which people ordinarily feel safe, they can be dangerous places for officers who have entered to make an arrest. “[A]n in-home arrest,” said the Supreme Court, “puts the officer at the disadvantage of being on his adversary’s ‘turf.’ An ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings.”² For this reason, the Court ruled that officers who have entered a residence may, under certain circumstances, conduct a type of search commonly known as a “protective sweep” or “walk through.”

It should be noted that protective sweeps are only one of five types of protective searches that officers may be permitted to conduct in the course of detaining or arresting suspects. The other four are:

- **Pat searches:** Outside-the-clothing searches to locate weapons in the possession of a suspect who is believed to be armed or dangerous.
- **Protective vehicle searches:** Searches of a detainee’s vehicle when officers have reason to believe there is a weapon inside.
- **Chimel searches:** Searches of a residence incident to the arrest of an occupant. (This subject is covered in the article on searches incident to arrest beginning on page one.)
- **Vicinity sweeps:** A search of areas in a home that are “immediately adjoining” the place in which an arrest occurred. (This subject is also covered in the article on searches incident to arrest.)

There is one other type of sweep that should be noted. Officers who have lawfully entered a home to arrest an occupant may, if necessary, search the premises for the arrestee.³ While these searches are not “protective” in nature (because their objective is apprehension, not protection), they constitute “sweeps” because they are limited to a cursory inspection of places in which the arrestee might be hiding. Consequently, they must be conducted in accordance with the scope and intensity rules applicable to protective sweeps.

One other thing: The United States Supreme Court’s decision in *Arizona v. Gant*, which we discussed in the previous article, will not result in additional limitations on protective sweeps. That is because the restrictions on protective searches imposed by *Gant* were intended to limit them to situations in which there existed a demonstrable threat. But, as we will discuss in this article, protective sweeps are already subject to this restriction.⁴

Requirements

The following are the requirements for conducting a protective sweep of a residence, business, or other structure:

- (1) **Lawful entry:** Officers must have had a legal right to enter; e.g., arrest warrant, consent, hot or fresh pursuit.
- (2) **Person on premises:** Officers must have had reason to believe there was a person on the premises (other than the arrestee) who was hiding or had otherwise not made himself known.
- (3) **Danger:** Officers must have had reason to believe that that person posed a threat to them.

¹ *U.S. v. Burrows* (7th Cir. 1995) 48 F.3d 1011, 1017.

² *Maryland v. Buie* (1990) 494 U.S. 325, 333. ALSO SEE *State v. Murdock* (Wisc. 1990) 455 N.W.2d 618, 624 [“[T]he danger to police may be heightened when the arrest is made in the arrestee’s home because the police officer will rarely be familiar with the home he or she is entering. The arrestee, however, knows where items such as weapons and evidence are secreted.”].

³ See *Maryland v. Buie* (1990) 494 U.S. 325, 330 [“[U]ntil the point of Buie’s arrest the police had the right, based on the authority of the arrest warrant, to search anywhere in the house that Buie might have been found”]; *U.S. v. Harper* (9th Cir. 1991) 928 F.2d 894, 897 [“Once the police possessed an arrest warrant and probable cause to believe David was in his home, the officers were entitled to search anywhere in the house in which he might be found.”].

⁴ See *Maryland v. Buie* (1990) 494 U.S. 325, 336 [“[T]he justification for the search incident to arrest considered in *Chimel* was the threat posed by the arrestee, not the safety threat posed by the house, or more properly by unseen third parties in the house.”]

Proof requirements

Because suppression motions pertaining to sweeps are often lost because officers or prosecutors failed to satisfy the various proof requirements, we will begin by discussing this subject.

LEVEL OF PROOF: The United States Supreme Court has ruled that officers who have lawfully entered a residence to make an arrest must have reasonable suspicion to believe that a dangerous person is on the premises.⁵ “In order to justify the protective sweep,” said the Sixth Circuit, “the government bore the burden of providing sufficient facts to support a reasonable belief that a third party was present who posed a danger to those on the arrest scene.”⁶

SPECIFIC FACTS: While reasonable suspicion is a lower level of proof than probable cause, it can exist only if officers were able to articulate one or more circumstances that reasonably indicated there was, in fact, someone on the premises who posed a threat.⁷ Thus, in *U.S. v. Moran Vargas* the Second Circuit ruled that a sweep of a bathroom was unlawful because “the DEA agents’ testimony did not provide sufficient articulable facts that would warrant a reasonably prudent officer to believe that an individual posing a danger to the agents was hiding [there].”⁸ Similarly, a sweep will not be upheld merely because a threat was theoretically possible,⁹ although it may be based on an officer’s reasonable inferences from the surrounding circumstances.¹⁰

SWEEP BASED ON NO INFORMATION: A sweep cannot be justified on grounds that officers did not know whether a threat existed and, therefore, could not rule out the possibility.¹¹ As the California Supreme Court pointed out, while “[t]here is always the possibility that some additional person may be found,” such a “mere possibility” is “not enough.”¹² For example, in *U.S. v. Ford* the court ruled that a sweep was unlawful because its only justification was the fol-

lowing testimony from an officer: “I did not know if there was anybody back there. I wanted to make sure there was no one there to harm us.”¹³

“ROUTINE” SWEEPS: Because articulable facts are required, a sweep will not be upheld on grounds that it was conducted as a matter of routine or departmental policy. For example, in *U.S. v. Hawk* the following occurred during cross-examination of a police detective in Kansas City, Kansas:

DEFENSE ATTORNEY: So I take it then it is just a matter of routine when you are executing arrest warrants at a particular residence, that a protective sweep then is done, because in your experience there is at least some likelihood that some other person might be present, correct?

DETECTIVE: Absolutely.

The court responded by pointing out that “[t]he Fourth Amendment does not sanction automatic searches of an arrestee’s home, nor does the fact-intensive question of reasonable suspicion accommodate a policy of automatic protective sweeps.”¹⁴

In another case in which an officer testified that sweeps are “standard procedure,” the Ninth Circuit reminded readers that “the fourth amendment was adopted for the very purpose of protecting us from ‘routine’ intrusions by governmental agents into the privacy of our homes.” The court added, “It is dismaying that any trained police officer in the United States would believe otherwise.”¹⁵

Lawful entry

Having covered the proof requirements imposed on officers and prosecutors, we will now examine the prerequisites for conducting protective sweeps, the first of which is that the officers must have had a legal right to enter the premises. Although this requirement is typically satisfied when the entry was based on a valid search or arrest warrant, as mentioned

⁵ *Maryland v. Buie* (1990) 494 U.S. 325, 327, 334. ALSO SEE *People v. Celis* (2004) 33 Cal.4th 667, 678.

⁶ *U.S. v. Archibald* (6th Cir. 2009) 589 F.3d 289, 299. Edited.

⁷ See *People v. Celis* (2004) 33 Cal.4th 667, 678 [“mere inchoate and unparticularized suspicion or hunch” is insufficient].

⁸ (2nd Cir. 2004) 376 F.3d 112, 116.

⁹ See *People v. Ledesma* (2003) 106 Cal.App.4th 857, 866 [“mere abstract theoretical possibility” of danger is insufficient].

¹⁰ See *People v. Ledesma* (2003) 106 Cal.App.4th 857, 863; *U.S. v. Hawk* (10th Cir. 2005) 412 F.3d 1179, 1187-88.

¹¹ See *U.S. v. Archibald* (6th Cir. 2009) 589 F.3d 289, 300; *U.S. v. Moran Vargas* (2nd Cir. 2004) 376 F.3d 112, 117”].

¹² *Dillon v. Superior Court* (1972) 7 Cal.3d 305, 314. Edited.

¹³ (D.C. Cir. 1995) 56 F.3d 265, 270, fn.7.

¹⁴ (10th Cir. 2005) 412 F.3d 1179, 1186.

¹⁵ *U.S. v. Castillo* (9th Cir. 1988) 866 F.2d 1071, 1079.

earlier it may also be based on an exception to the warrant requirement, such as hot pursuit.⁶

CONSENSUAL ENTRIES: Officers may conduct a sweep if the threat materialized after they had made a consensual entry. But problems may arise if they knew of the threat before they entered, and if they intended to conduct a sweep if consent was granted. In such a situation a court might rule that the consent was not “knowing and intelligent” if the officers did not inform the consenting person that his consent to enter would automatically result in a sweep.¹⁷

THREAT DEVELOPS WHILE OFFICERS WERE OUTSIDE: While most protective sweeps occur when the threat developed after officers had entered, sweeps are also permitted if the officers were outside the premises and suddenly became aware that a person in the residence constituted an immediate threat to them.¹⁸ In such cases, however, the entry will be deemed lawful only if officers had *probable cause* to believe that such a threat existed.¹⁹

Person on premises

The second requirement is that officers must have had reasonable suspicion to believe there was someone on the premises who had not made himself known.²⁰ In some cases, this requirement may be established through direct evidence, as when officers see someone inside;²¹ or when they hear a voice;²² or when an accomplice, neighbor, or other person says there is someone inside.²³

This requirement may also be met by means of reasonable inference, which is typically based on one or more of the following circumstances:

WARNING TO OTHERS: A person who was contacted or detained suddenly shouted a warning apparently to unseen occupants of the premises.²⁴

SOUNDS: Officers heard a sound that could have been made by a person; e.g., “scuffling noises from inside,”²⁵ “footsteps.”²⁶

MOVEMENT: Officers saw something move (e.g., a curtain or door) if the cause was not reasonably attributable to other factors, such as wind.²⁷

CAR PARKED IN DRIVEWAY: Officers saw a car in the driveway, and they knew it belonged to someone who was unaccounted for; e.g., “[t]hree vehicles, not one, were parked in the driveway”;²⁸ a “red Camaro pulled into [the suspect’s] driveway. The driver disappeared, perhaps into the house.”²⁹

CAR PARKED NEARBY: A car parked nearby may also help create suspicion; e.g., officer saw “two cars parked sufficiently close to the residence to create a reasonable possibility that former occupants of the vehicles might be inside.”³⁰

MULTIPLE OCCUPANTS: Officers had reason to believe that two or more people were in or about the premises when they arrived; and although some of these people had been contacted or detained, others were unaccounted for.³¹ In determining whether these circumstances justified a sweep, the courts have noted the following:

¹⁶ See *People v. Ledesma* (2003) 106 Cal.App.4th 857, 864 [probation search]; *U.S. v. Gandia* (2nd Cir. 2005) 424 F.3d 255, 262.

¹⁷ See *U.S. v. Gandia* (2nd Cir. 2005) 424 F.3d 255, 262; *U.S. v. Gould* (5th Cir. 2004) 364 F.3d 578, 589.

¹⁸ See *People v. Maier* (1991) 226 CA3 1670, 1675; *U.S. v. Paopao* (9th Cir. 2006) 469 F.3d 760, 766.

¹⁹ See *Maryland v. Buie* (1990) 494 U.S. 325, 334, fn.1; *People v. Celis* (2004) 33 C.4th 667, 680.

²⁰ See *Maryland v. Buie* (1990) 494 U.S. 325, 327.

²¹ See *People v. Dyke* (1990) 224 Cal.App.3d 648, 659; *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 312.

²² See *People v. Mack* (1980) 27 Cal.3d 145, 149 [“multiple voices”]; *U.S. v. Taylor* (6th Cir. 2001) 248 F.3d 506, 514.

²³ See *Guevara v. Superior Court* (1970) 7 Cal.App.3d 531, 535; *Guidi v. Superior Court* (1973) 10 Cal.3d 1, 5.

²⁴ See *People v. Dyke* (1990) 224 Cal.App.3d 648 [“It’s the fucking pigs”]; *U.S. v. Junkman* (8th Cir. 1998) 160 F.3d 1191 [“Cops!”].

²⁵ *U.S. v. Taylor* (6th Cir. 2001) 248 F.3d 506, 514. ALSO SEE *Guidi v. Superior Court* (1973) 10 Cal.3d 1, 9.

²⁶ *U.S. v. Lopez* (1st Cir. 1993) 989 F.2d 24, 26, fn.1.

²⁷ *U.S. v. Burrows* (7th Cir. 1995) 48 F.3d 1011, 1013. ALSO SEE *People v. Schmel* (1975) 54 Cal.App.3d 46, 49.

²⁸ *U.S. v. Whitten* (9th Cir. 1983) 706 F.2d 1000, 1014. ALSO SEE *U.S. v. Hoyos* (9th Cir. 1989) 892 F.2d 1387, 1396; *U.S. v. Tapia* (7C 2010) 610 F.3d 505, 511 [car belonging to possible gang associate parked outside].

²⁹ *U.S. v. Hauk* (10th Cir. 2005) 412 F.3d 1179, 1191.

³⁰ *People v. Ledesma* (2003) 106 Cal.App.4th 857, 866.

³¹ See *People v. Baldwin* (1976) 62 Cal.App.3d 727, 743 [officers discovered unexpected occupant]; *U.S. v. Hoyos* (9th Cir. 1989) 892 F.2d 1387, 1396 [“there were at least five men including Hoyos who were not in custody”]; *U.S. v. James* (7th Cir. 1994) 40 F.3d 850, 863 [the officer “did not know if all of the suspects in the duplex had been subdued”]; *U.S. v. Mendoza-Burciaga* (5th Cir. 1992) 981 F.2d 192, 197 [“the officers did not know whether other suspects were in the house”].

- “[N]umerous cars and individuals entered and exited, which meant that at any given time the officers might have lacked an accurate count of suspects present.”³²
- Officers saw an “undetermined number of participants” in a pot party in a residence.³³
- Officers “did not know whether the five men who had come out of the garage included all five of the accused burglars.”³⁴
- Officers saw “additional occupants in the darkened living room” and “a person other than [the suspect] exiting and reentering the apartment.”³⁵
- Because five suspects entered and four exited, the officers had “very good reason” to believe that “at least one” suspect was hiding in the warehouse.³⁶

MULTIPLE PERPETRATORS: The arrestee was wanted for a crime committed by two or more people, some of whom had not yet been apprehended. As the Third Circuit observed in *Sharrar v. Felsing*, “The reasonable possibility that an associate of the arrestees remains at large” is a “salient” concern “for which a warrantless protective sweep is justified.”³⁷ For example, the following circumstances were deemed relevant:

- The officers “had yet to encounter Paopao’s suspected confederate.”³⁸
- “Prior to the entry, the officers reasonably believed that at least six men were involved in distribution of cocaine.”³⁹

- The officers knew that the occupants “served as enforcers for the drug trafficking operation.”⁴⁰
- “[T]he officers knew that the day prior [to his arrest], Richards had been seen with Moore, a suspect in the murder investigation. When Richards met them at the door, the officers did not know whether Moore was inside.”⁴¹
- The suspect “habitually pursued his criminal activities with accomplices.”⁴²

SITE OF CRIMINAL ACTIVITY: It is relevant that the house was the center of operations for a criminal conspiracy or other ongoing criminal enterprise (such as buying or selling stolen property, organized crime, terrorism) and that officers conducting surveillance had previously seen people entering and exiting; e.g., “the residence was the site of ongoing narcotics activity,”⁴³ “the house was sometimes used as a place for gang members to gather and conduct illegal activities,”⁴⁴ “over the years, [the officer] had routinely observed individuals coming and going from the house,”⁴⁵ other people were commonly present when the arrestees sold drugs to undercover officers in their homes.⁴⁶

EVASIVE ARRESTEE: Finally, it is highly suspicious that officers had contacted or detained a person who, when asked if anyone else was on the premises, did not respond or was evasive.⁴⁷ Although officers must take into account the arrestee’s assertion that no one else was on the premises, they are not required to believe him.⁴⁸

³² *U.S. v. Mata* (5th Cir. 2008) 517 F.3d 279, 289.

³³ *People v. Block* (1971) 6 Cal.3d 239, 245.

³⁴ *People v. Mack* (1980) 27 Cal.3d 145, 151.

³⁵ *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 312.

³⁶ *U.S. v. Delgado* (11th Cir. 1990) 903 F.2d 1495, 1502.

³⁷ (3d Cir. 1997) 128 F.3d 810, 824.

³⁸ *U.S. v. Paopao* (9th Cir. 2006) 469 F.3d 760, 767.

³⁹ *U.S. v. Hoyos* (9th Cir. 1989) 892 F.2d 1387, 1396.

⁴⁰ *U.S. v. Cisneros-Gutierrez* (8th Cir. 2010) 598 F.3d 997, 1007.

⁴¹ *U.S. v. Richards* (7th Cir. 1991) 937 F.2d 1287, 1291.

⁴² *People v. Maier* (1991) 226 Cal.App.3d 1670, 1675.

⁴³ *People v. Ledesma* (2003) 106 Cal.App.3d 857, 865.

⁴⁴ *U.S. v. Tapia* (7th Cir. 2010) 610 F.3d 505, 511.

⁴⁵ *U.S. v. Lawlor* (1st Cir. 2005) 406 F.3d 37, 42.

⁴⁶ *U.S. v. Barker* (7th Cir. 1994) 27 F.3d 1287, 1291.

⁴⁷ See *U.S. v. Richards* (7th Cir. 1991) 937 F.2d 1287, 1291 [“Richards twice failed to answer [the officer’s] question about whether anyone else was in the house”].

⁴⁸ See *U.S. v. Gandia* (2nd Cir. 2005) 424 F.3d 255, 264 [“Of course, the police officers were not required to take Gandia at his word when he told them that he lived alone”]; *U.S. v. Henry* (D.C. Cir. 1995) 48 F.3d 1282, 1284 [“The police had no way of knowing whether she was telling the truth”].

A threat

In addition to having reasonable suspicion that an unaccounted for person was on the premises, officers must have had reason to believe that that person posed a threat to them. In the words of the Supreme Court, officers must be aware of “articulable facts” which “would warrant a reasonably prudent officer” in believing that the person posed “a danger to those on the arrest scene.”⁴⁹

The existence of such a threat may be based on direct or circumstantial evidence. A common example of direct evidence is a tip from a reliable informant who had reason to believe the occupants were armed or that they would resist arrest.⁵⁰

As for circumstantial evidence, it appears to be sufficient that (1) the officers had identified themselves in such a manner that anyone on the premises would have known who they were, and (2) they reasonably believed that one or more of the people on the premises were involved in crimes involving weapons or violence.⁵¹ Other circumstances that are often noted include the following:

- FIREARM ON PREMISES: Officers saw a firearm or ammunition inside the house.⁵²
- EVASIVE ANSWER ABOUT WEAPONS: An occupant gave an evasive answer when asked if there were any weapons on the premises.⁵³
- DANGEROUS ASSOCIATES: The arrestee associated with people who were known to be armed or dangerous; e.g., drug dealers, gang members.⁵⁴
- REFUSAL TO ADMIT: The occupants refused to admit the officers.⁵⁵

Sweep Procedure

Because the only lawful objective of a sweep is to locate and secure “unseen third parties who may be lurking on the premises,”⁵⁶ officers must limit their search to a “quick” and “cursory” inspection of places in which a person might be hiding.⁵⁷ Said the Fifth Circuit, “The protective sweep must cover no more than those spaces where police reasonably suspect a person posing danger could be found, and must last no longer than the police are otherwise constitutionally justified in remaining on the premises.”⁵⁸

⁴⁹ *Maryland v. Buie* (1990) 494 U.S. 325, 334.

⁵⁰ See *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 312; *U.S. v. Henry* (D.C. Cir. 1995) 48 F.3d 1282, 1284.

⁵¹ See *People v. Maier* (1991) 226 Cal.App.3d 1670, 1675 [“Mr. Maier habitually pursued his criminal activities with accomplices in a most dangerous manner.”]; *People v. Ledesma* (2003) 106 Cal.App.4th 857, 865-67 [officer reasonably believed that “drug users and those who associate with them are apt to have weapons in the house”]; *People v. Mack* (1980) 27 Cal.3d 145, 151 [“robbery in which shots had been fired”]; *U.S. v. Taylor* (6th Cir. 2001) 248 F.3d 506, 514 [drugs and murder]; *U.S. v. Castillo* (9th Cir. 1988) 866 F.2d 1071, 1081 [drug conspiracy]; *U.S. v. Hoyos* (9th Cir. 1989) 892 F.2d 1387, 1396 [drug sales; “any person hidden within could have heard Deputy Love’s shouted commands”]; *U.S. v. Burrows* (7th Cir. 1995) 48 F.3d 1011, 1017 [“Mr. Burrows and Mr. Lin were suspected of committing a violent crime involving a firearm”]; *U.S. v. Lawlor* (1st Cir. 2005) 406 F.3d 37, 42 [drug sales]; *U.S. v. Gould* (5th Cir. 2004) 364 F.3d 578, 591 [plot to kill judges]; *U.S. v. Henry* (D.C. Cir. 1995) 48 F.3d 1282, 1284 [“the fact that the door was open could cause the officer to believe that anyone inside would be aware that Henry had been taken into custody”].

⁵² See *People v. Dyke* (1990) 224 Cal.App.3d 648, 654 [officers saw “a large caliber handgun within arm’s reach of Dyke that appeared to be loaded”]; *U.S. v. Lawlor* (1st Cir. 2005) 406 F.3d 37, 42 [spent shotgun shells outside]; *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 309 [officer “could see a pistol magazine and several loose rounds of ammunition in plain view”]; *U.S. v. Richards* (7th Cir. 1991) 937 F.2d 1287, 1291 [“Richards opened the door with a gun”]; *U.S. v. Miller* (2nd Cir. 2005) 430 F.3d 93, 102 [officer “caught sight of a firearm in plain view”]; *U.S. v. Atchley* (6th Cir. 2007) 474 F.3d 840, 850 [officers saw a handgun lying on the bed].

⁵³ See *U.S. v. Lawlor* (1st Cir. 2005) 406 F.3d 37, 42 [occupant “shrugged his shoulders” when asked about the location of a weapon].

⁵⁴ See *People v. Maier* (1991) 226 Cal.App.3d 1670, 1675 [“the police knew that Mr. Maier habitually pursued his criminal activities with accomplices in a most dangerous manner”]; *People v. Ledesma* (2003) 106 Cal.App.4th 857, 865 [“the residence was the site of ongoing narcotics activity. Firearms are, of course, one of the tools of the trade of the narcotics business.”]; *Guidi v. Superior Court* (1973) 10 Cal.3d 1, 9 [“The value of the contraband reasonably believed present by [the arresting officer] was surely not so de minimis as to make remote the possibility of violent and desperate efforts to resist the arrests and defend the contraband.”]; *People v. Mack* (1980) 27 Cal.3d 145, 151 [officers knew that one of the occupants “had been arrested for an armed robbery in which shots had been fired,” and that weapons taken in a recent burglary might be inside]; *U.S. v. Castillo* (9th Cir. 1989) 866 F.2d 1071, 1081 [“one of De La Renta’s co-conspirators had hired an assassin to kill a DEA Agent”].

⁵⁵ See *U.S. v. Burrows* (7th Cir. 1995) 48 F.3d 1011, 1017 [“[A]lthough the officers repeatedly announced their presence, those in the apartment had refused them entry, yet could be heard moving about inside.”].

⁵⁶ *U.S. v. Nascimento* (1st Cir. 2007) 491 F.3d 25, 49.

⁵⁷ *Maryland v. Buie* (1990) 494 US 325, 327.

⁵⁸ *U.S. v. Scroggins* (5th Cir. 2010) 599 F.3d 433, 441.

For example, while officers may look inside closets, behind large furniture, under beds, and under piles of clothing, they may not look under rugs, inside desk drawers or in small cabinets.⁵⁹ Thus, in *U.S. v. Ford*⁶⁰ the court ruled that a sweep conducted by an FBI agent was excessive because he had lifted a mattress (finding cocaine) and had looked behind a window shade (finding a gun). In contrast, the court in *U.S. v. Arch* ruled the sweep was sufficiently limited because “[t]he evidence indicates that the officers did not dawdle in each room looking for clues, but proceeded quickly through the motel room and adjoining bathroom, leaving once they had determined that no one was present.”⁶¹

PLAIN VIEW SEIZURES: If officers see evidence in plain view while conducting the sweep, they may seize it if they have probable cause to believe it is, in fact, evidence of a crime.⁶² They may also temporarily seize any weapons in plain view.⁶³

MULTIPLE SWEEPS: Officers may sometimes need to make more than one pass through the premises. For example, they might initially look only in obvious places, such as closets, under beds, and behind doors. If no one is found, they might conduct a second pass, looking in less obvious places; e.g., behind furniture, behind curtains, in crawl spaces.

The courts have permitted multiple sweeps, but only when officers were able to explain why more than one pass was necessary. For example, in *U.S. v. Paradis* officers discovered a gun after they had arrested the suspect and after they had thoroughly swept the premises twice. In ruling that the third pass was unnecessary, the court said:

There was no reason to think that there was another person besides Paradis in the small apartment. At the time the gun was found, the police had already been through the entire apartment. They had been through the living room at least twice (and one or two officers remained there doing paperwork). And they had been through the only bedroom of the unit twice, finding Paradis on the second hunt. Furthermore, by their own testimony the police established that the only logical place someone could hide in the bedroom was under the bed, where they had found Paradis.⁶⁴

On the other hand, the court in *United States v. Boyd* upheld a second sweep based largely on testimony from a U.S. Marshal who said that he thought that a second sweep was necessary because, during the first one, his “primary attention was divided between keeping an eye on the two individuals downstairs on the floor and covering [another marshal].”⁶⁵

NO “LEAST INTRUSIVE MEANS” REQUIREMENT: A protective sweep will not be invalidated on grounds that officers might have been able to eliminate the threat by some less intrusive means, such as quickly leaving the premises after making the arrest, or guarding the door to a room in which a person was reasonably believed to be hiding.⁶⁶ Nor will a sweep be deemed unlawful on grounds that officers could have avoided the necessity of a search by waiting to make the arrest outside the premises.⁶⁷

TERMINATING THE SWEEP: Officers must terminate the sweep after checking all the places in which a person might reasonably be found.⁶⁸

POV

⁵⁹ See *People v. Maier* (1991) 226 Cal.App.3d 1670 [under pile of clothing]; *U.S. v. Nascimento* (1st Cir. 2007) 491 F.3d 25, 51 [inside a closet]; *U.S. v. Lauter* (2nd Cir. 1995) 57 F.3d 212, 217 [the “space between the bed and the wall”]; *U.S. v. Paopao* (9th Cir. 2006) 469 F.3d 760, 767 [behind sofa]; *U.S. v. Pruneda* (8th Cir. 2008) 518 F.3d 597, 603 [“the officer did not move any objects”].

⁶⁰ (D.C. Cir. 1995) 56 F.3d 265, 270.

⁶¹ (7th Cir. 1995) 7 F.3d 1300, 1304.

⁶² See *Arizona v. Hicks* (1987) 480 U.S. 321, 326; *Warden v. Hayden* (1967) 387 U.S. 294, 299.

⁶³ See *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 314.

⁶⁴ (1st Cir. 2003) 351 F.3d 32. Edited. ALSO SEE *U.S. v. Oguns* (2nd Cir. 1990) 921 F.2d 442, 447 [“The agents no longer had authority to remain in Oguns’ apartment after they determined that no one else was there.”].

⁶⁵ (8th Cir. 1999) 180 F.3d 967, 975. ALSO SEE *U.S. v. Paopao* (9th Cir. 2006) 469 F.3d 760, 767 [second sweep permitted when, after the first sweep, the officer “was not secure in the notion that no one was left in the apartment”].

⁶⁶ See *U.S. v. Tapia* (7th Cir. 2010) 610 F.3d 505, 511; *U.S. v. Henry* (D.C. Cir. 1995) 48 F.3d 1282, 1285 [officers are not required to flee the premises once the arrest is made].

⁶⁷ See *U.S. v. Gould* (5th Cir. 2004) 364 F.3d 578, 590.

⁶⁸ See *U.S. v. Oguns* (2nd Cir. 1990) 921 F.2d 442, 447 [“The agents no longer had authority to remain in Oguns’ apartment after they determined that no one else was there.”]; *Sharrar v. Felsing* (3^d Cir. 1997) 128 F.3d 810, 825 [“Once all four men were out of the house and in custody, the arresting officers had no basis to conclude that others remained inside.”].