

Community Caretaking Searches and the restructuring of “exigent circumstances”

“Many of us do not know the names of our next-door neighbors. Because of this, tasks that neighbors, friends or relatives may have performed in the past now fall to the police.”¹

When officers conduct a search their motive is usually to obtain evidence leading to the apprehension and conviction of a suspect. But over the years the role of law enforcement officers in the community has expanded. It now includes an “infinite variety of services”² that are, in the words of the U.S. Supreme Court, “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.”³ These include “check the welfare” calls, 911 hang-ups, assisting sick or injured people, conducting inventory searches of abandoned and disabled cars, noise complaints, checking on open doors, keep-the-peace calls, and looking for lost children.⁴ As the U.S. Court of Appeals observed, “In addition to being an enforcer of the criminal law, a police officer is a jack-of-all-emergencies.”⁵

Officers who are carrying out these types of duties sometimes find it necessary to enter or otherwise search a car, home, or other place. By necessity, these types of searches are almost always conducted without a warrant. And although some are consensual, many are not. The question is: Are they legal?

In the past, the courts would devise ways of avoiding the question when the search was technically unlawful but plainly justifiable. Sometimes they would rule the legality did not affect the admissibility of the evidence because it would have been admissible under the “inevitable discovery” rule, or its admission was “harmless error.”⁶ But mostly they would rule the search was lawful because of “exigent circumstances,” even if the circumstances were obviously not “exigent” as the term is commonly used.⁷

¹ *People v. Ray* (1999) 21 Cal.4th 464, 472 [quoting from *State v. Bridewell* (1988) 759 P.2d 1054, 1069]. NOTE: *Ray*, which is cited frequently in this article, was a plurality opinion. A plurality opinion is not binding authority. See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 829.

² See *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 784-5.

³ *Cady v. Dombrowski* (1973) 413 US 433, 441.

⁴ See *People v. Ray* (1999) 21 Cal.4th 464, 467 [“community caretaking functions” include “helping stranded motorists, returning lost children to anxious parents, assisting and protecting citizens in need”].

⁵ *U.S. v. Erickson* (9th Cir. 1993) 991 F.2d 529, 531. ALSO SEE *U.S. v. Dunavan* (6th Cir. 1973) 485 F.2d 201, 204 [“(P)articularly in big city life, the Good Samaritan of today is more likely to wear a blue coat than any other.”]; *U.S. v. Finsel* (7th Cir. 2003) 326 F.3d 903, 907 [“But in addition to chasing criminals, law enforcement officers have another role in our society, a community caretaking function.”]; *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 784-5 [“(A police officer) is expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety.”]; *New York v. Molnar* (2002) 774 N.W.2d 738, 740 [“Police are required to serve the community in innumerable ways, from pursuing criminals to rescuing treed cats.”].

⁶ See *People v. Foster* (1980) 102 Cal.App.3d 882 [the court relied on the inevitable discovery rule to cover an officer’s entry of a house to confirm there was a dead body inside]; *People v. Macioce* (1987) 197 Cal.App.3d 262 [although the entry into the defendant’s apartment was objectively reasonable, the court felt compelled to uphold it on grounds the victim’s body would have been discovered inevitably, plus the evidence inside the apartment was “not particularly incriminating.”].

⁷ See *People v. Ramey* (1976) 16 Cal.3d 276, 276 [court defines exigent circumstances as “an emergency situation requiring swift action to prevent imminent danger to life or serious damage

As the result, the term “exigent circumstances” became a bloated abstraction, covering a wide variety of situations from burning buildings in which the occupants were trapped, to buildings in which the occupants were playing their CD’s too loudly. “Exigent circumstances,” said the Ninth Circuit, had become “more of a residual group of factual situations that do not fit into other established exceptions.”⁸

Within the past few years, however, more and more courts have opted to confront the issue head-on. They seemed to be saying that when an entry or search is reasonably necessary, the courts should not be forced to invent excuses for upholding it, or have to resort to meaningless catchall exceptions.

This led to two developments in the law. First, the courts began to recognize a new category of warrantless search known as a “community caretaking” search.⁹ Second, many courts started using the more descriptive term “emergency aid search” (instead of “exigent circumstance search”) when the search was conducted because of an imminent and serious threat to life or property.

As the result, many courts now use the term “exigent circumstances” to cover only police-related emergencies; i.e., “hot” and “fresh” pursuits, evidence destruction. This causes confusion because some courts still employ the term in the broad sense. As discussed later, this could be corrected if police-related emergencies were given a separate designation; e.g., “investigative emergencies.”

It is important to understand that these are not mere cosmetic changes in terminology. On the contrary, they reflect important differences in the purposes and requirements of these distinct types of searches.¹⁰ For example, investigative emergency searches require probable cause; emergency aid searches require reasonable belief; and community caretaking searches require a balancing of interests. In addition, with investigative emergencies the officers’ motive for taking action is irrelevant; in the other two it’s crucial. More on this later.

THE ORIGIN OF “COMMUNITY CARETAKING”

to property,” or where immediate action is necessary to “forestall the imminent escape of a suspect or destruction of evidence.”]; *Illinois v. McArthur* (2001) 531 US 326, 331 [exigent circumstances is a “specially pressing or urgent law enforcement need,” or a “compelling need for official action and no time to secure a warrant.”].

⁸ *Murdock v. Stout* (9th Cir. 1995) 54 F.3d 1437, 1440.

⁹ See *Cady v. Dombrowski* (1973) 413 US 433, 441 [Court notes that officers must “engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.”]; *U.S. v. King* (10th Cir. 1993) 990 F.2d 1552, 1560 [“Indeed, police officers are not only permitted, but expected to exercise what the Supreme Court has termed ‘community caretaking functions’”]; 1 ABA Standards for Criminal Justice (2nd ed. 1986) § 1-1.1(c) at 18 [“those aspects of police function that relate to minimizing the likelihood of disorder . . . are equal in their importance to the police function in identifying and punishing wrongdoers.”]; *Henderson v. Simi Valley* (9th Cir. 2002) 305 F.3d 1052, 1057 [“special needs” searches serve an interest “beyond the normal need for law enforcement.”].

¹⁰ See *Michigan v. Davis* (1993) 497 N.W.2d 910, 921 [“(I)t does not follow that all searches resulting from [community caretaking and emergency aid concerns] should be judged by the same standard.”]; *Iowa v. Carlson* (1996) 548 N.W.2d 138, 141, fn.3 [“Though the emergency-aid exception is one of many community caretaking functions of the police, it must be assessed separately and by a distinct test, as all such functions are not judged by the same standard.”]; *Laney v. Texas* (2003) 117 S.W.3d 854, 860 [“The problem with the terminology is that various titles [specifically, ‘community caretaking,’ the ‘emergency doctrine,’ and ‘exigent circumstances’] describe the different doctrines setting forth exceptions to the warrant requirements of the Fourth Amendment, resulting in confusion over the proper application of the correct doctrine.”].

As noted, when the courts determined that a warrantless entry or search was reasonably necessary but did not fit within any of the usual exceptions to the warrant requirement, they would often rule it was lawful because of “exigent circumstances”—even if there was plainly no true “emergency.” They were essentially forced to do this because there were no other legal theories for upholding entries and searches that were reasonably necessary but not urgent.

Eventually, the courts started looking for a better—more straightforward—way of resolving these situations. They found it in a 1973 case from the U.S. Supreme Court: *Cady v. Dombrowski*.¹¹ In *Cady*, the Court used the term “community caretaking” for the first time,¹² ruling that the warrantless search of the trunk of an impounded car was lawful because the officers’ purpose was to remove a gun that was, in effect, creating a public nuisance.

It is not clear whether the Court in *Cady* intended to announce a new exception to the warrant requirement. But over the years many lower courts were drawn to the term “community caretaking” because it captured the nature of the non-emergency service calls they were being forced to classify as “exigent circumstances.”¹³

There were two other reasons many courts liked the designation “community caretaking.” First, by recognizing these actions as a distinct and legitimate function of law enforcement under certain circumstances, they were reducing the chances that officers would delay taking action (or take no action) because they did not know what the courts wanted them to do.¹⁴ This was important because, as Justice Brown observed in *People v. Ray*:

An officer less willing to discharge community caretaking functions implicates seriously undesirable consequences for society at large: In that event we might reasonably anticipate the assistance role of law enforcement in this society will go downhill. The police cannot obtain a warrant for entry. Without a warrant the police are powerless. In the future police will tell concerned citizens, “Sorry. We can’t help you. We need a warrant and can’t get one.”¹⁵

Second, by recognizing “community caretaking” searches, the courts could tailor requirements for them that were more appropriate to situations that were pressing but

¹¹ (1973) 413 US 433. NOTE: More recently the Court pointed out, “[W]e have upheld certain regimes of suspicionless searches where the program was designed to serve ‘special needs,’ beyond the normal need for law enforcement.” *Indianapolis v. Edmond* (2000) 531 US 32, 37 [citing *Veronica School Dist. v. Acton* (1995) 515 US 646 [random drug testing of student-athletes]; *Treasury Employees v. Von Raab* (1989) 489 US 656 [drug tests for U.S. Customs Service employees seeking transfer or promotion]; *Skinner v. Railway Labor Executives’ Assn.* (1989) 489 US 602 [drug and alcohol tests for railway employees involved in train accidents].

¹² See *Laney v. Texas* (2003) 117 S.W.3d 854, 858 [“The term ‘community caretaking function’ was first used by the Supreme Court in *Cady v. Dombrowski*.”].

¹³ See *Washington v. Acrey* (2003) 64 P.3d 594, 599 [“Community caretaking is based on a service notion that police serve to ensure the safety and welfare of the citizenry at large.” Quoting from John F. Decker, *Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions* (1999) 89 J.Crim. L. & Criminology 433, 445-6].

¹⁴ See *U.S. v. King* (10th Cir. 1993) 990 F.2d 1552, 1560 [“Indeed, police officers are not only permitted, but expected to exercise what the Supreme Court has termed ‘community caretaking functions’”]; 1 ABA Standards for Criminal Justice (2nd ed. 1986) § 1-1.1(c) at p. 18 [“those aspects of police function that relate to minimizing the likelihood of disorder . . . are equal in their importance to the police function in identifying and punishing wrongdoers.”]; *U.S. v. Rohrig* (6th Cir. 1996) 98 F.3d 1506, 1519 [“(W)e must be mindful of the needs of the community and society’s expectation of the legitimate role of police.”].

¹⁵ (1999) 21 Cal.4th 464, 480 [plur. opn. of Brown, J.].

not urgent. In other words, the courts would no longer be required to impose emergency requirements for non-emergency situations.¹⁶

One more thing should be noted. While the community caretaking exception was coming of age, a related development was underway in the field of detentions. Specifically, the courts were allowing so-called “special needs” detentions which are detentions for a legitimate reason *other than* the need to investigate criminal activity; e.g., DUI checkpoints, detentions of potential witnesses.¹⁷ Although there are differences between special needs detentions and community caretaking searches, they are both based on the same rationale, as summarized by the U.S. Supreme Court in *Illinois v. McArthur*: “When faced with special law enforcement needs . . . the Court has found that certain general, or individual circumstances may render warrantless search or seizure reasonable.”¹⁸

The question, then, is what are the requirements for conducting community caretaking searches? As we will now discuss, there are three: (1) the need for the search must outweigh its intrusiveness, (2) the officers’ primary motivation must be to resolve the pressing situation, and (3) the officers must do only those things that were reasonably necessary.

Balancing test

A search will fall within the community caretaking exception only if a reasonable officer in the same situation “would have perceived a need to act in the proper discharge of his or her community caretaking functions.”¹⁹ As in many other situations, the courts determine what a “reasonable officer” would do by balancing the need for the search against its intrusiveness. If need outweighs intrusiveness, it’s lawful. Otherwise, it’s not.²⁰ In the words of the Ninth Circuit:

¹⁶ See *People v. Ray* (1999) 21 Cal.4th 464, 472 [(I)t does not follow that all searches resulting from [community caretaking and emergency aid activities] should be judged by the same standard. [These] activities are varied and are performed for different reasons. Each variant must be assessed according to its own rationale on a case-by-case basis. Although the underlying command of the fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which the search takes place.”]; *Iowa v. Carlson* (1996) 548 S.W.2d 138, 142 [“We see no reason to require the standard for criminal investigatory searches to govern an emergency doctrine exception that derives, not from the investigatory function, but from the function designed to save human life.”].

¹⁷ See *Michigan v. Summers* (1981) 452 US 692, 700 [“limited intrusions” not supported by probable cause “may be justified by special law enforcement interests”]; *Illinois v. Lidster* (2004) 540 US ___ ; *People v. Matelski* (2000) 82 Cal.App.4th 837; *Michigan State Police v. Sitz* (1990) 496 US 444; *Indianapolis v. Edmond* (2000) 531 US 32; *People v. Glaser* (1995) 11 Cal.4th 354; *People v. Samples* (1996) 48 Cal.App.4th 1197, 1206; *People v. Hannah* (1996) 51 Cal.App.4th 1335, 1342; *People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1001-2; *People v. Dominguez* (1987) 194 Cal.App.3d 1315, 1317; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1458; *Ganwich v. Knapp* (9th Cir. 2003) 319 F.3d 1115; *U.S. v. King* (10th Cir. 1993) 990 F.2d 1552, 1560 [“In the course of exercising this noninvestigatory function, a police officer may have occasion to seize a person . . . in order to ensure the safety of the public and/or the individual, regardless of any suspected criminal activity.”].

¹⁸ (2001) 531 US 326, 330.

¹⁹ See *People v. Ray* (1999) 21 Cal.4th 464, 477; *People v. Morton* (2003) 114 Cal.App.4th 1039, 1047. ALSO SEE *Laney v. Texas* (2003) 117 S.W.3d 854, 861 [community caretaking exception is “based on an officer’s reasonable belief in the need to act pursuant to his or her ‘community caretaking functions’”].

²⁰ See *Illinois v. Lidster* (2004) 540 US ___ [a special-needs detention case in which the Court said, “[I]n judging reasonableness, we look to the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.”]; *Maryland v. Buie* (1990) 494 US 325, 331 [“Our cases

In determining whether a [community caretaking] search is reasonable within the meaning of the Fourth Amendment, the government interest motivating the search must be balanced against the intrusion on the individual's Fourth Amendment interests.²¹

DEMONSTRATING THE NEED FOR THE SEARCH: The following circumstances are especially relevant in establishing a strong need for the search.

SERIOUSNESS OF THE SITUATION: The greater the potential danger, the stronger the need.²¹ But, as the New York Court of Appeals noted, the converse is also true, “[W]e neither want nor authorize police to seize people or premises to remedy what might be characterized as minor irritants. People sometimes create cooking odors or make noise to the point where neighbors complain. But as we live in a free society, we do not expect the police to react to such relatively minor complaints by breaking down the door.”²²

But remember that community caretaking situations are, by definition, always less serious and less urgent than those that trigger the emergency aid and investigative emergency exceptions. For example, in discussing an outrageously loud disturbance late at night, the U.S. Court of Appeal observed: “[I]f we insist on holding to the warrant requirement under these circumstances, we in effect tell Defendant’s neighbors that ‘mere’ loud and disruptive noise in the middle of the night does not pose ‘enough’ of an emergency to warrant an immediate response, perhaps because such a situation ‘only’ threatens the neighbors’ tranquility rather than their lives or property. We doubt that this result would comport with the neighbors’ understanding of ‘reasonableness.’”²³

RELIABILITY OF INFORMATION: Was the need for the entry or search based on reliable information?²⁴

show that in determining reasonableness, we have balanced the intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.”]; *Cady v. Dombrowski* (1973) 413 US 433 [the Court, in effect, applied the balancing test when it examined both the need for the search and its intrusiveness, especially in light of the reduced privacy expectations in vehicles]; *Henderson v. Simi Valley* (9th Cir. 2002) 305 F.3d 1052, 1059 [“(W)e must now assess the constitutionality of the [‘special needs’] search by balancing the need to search against the intrusiveness of the search.”]; *U.S. v. Rabenberg* (8th Cir. 1985) 766 F.2d 355, 357 [“we must weigh the governmental interests advanced by an inventory search against the privacy interests invaded”]; *Washington v. Acrey* (2003) 64 P.3d 594, 599 [lawful community caretaking actions depend “not on the presence of probable cause or reasonable suspicion, but rather on a balancing of the competing interests involved in light of all the surrounding facts and circumstances.”]; *U.S. v. King* (10th Cir. 1993) 990 F.2d 1552, 1559 [“(N)either can we accept the district court’s application of the reasonable suspicion of criminal activity standard to the facts of this [community caretaking] case. The reasonable suspicion of criminal activity standard presupposes an investigative purpose by the detaining officer.”]; *Iowa v. Crawford* (2003) 659 N.W.2d 537, 542 [“In a community caretaker case, a court determines reasonableness by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen.”].

²¹ *U.S. v. Erickson* (9th Cir. 1993) 991 F.2d 529, 531.

²² *New York v. Holnar* (2002) 774 N.W.2d 738, 741. ALSO SEE *People v. Higgins* (1994) 26 Cal.App.4th 247, 252 [“If the suspected offense is extremely minor, a warrantless home entry will almost inevitably be unreasonable under the Fourth Amendment.”]; *Welsh v. Wisconsin* (1984) 466 US 740, 750 [Court notes the crime at issue was “relatively minor”].

²³ *U.S. v. Rohrig* (6th Cir. 1996) 98 F.3d 1506, 1521.

²⁴ See *Illinois v. Gates* (1983) 462 US 213, 238-9; *Kerman v. City of New York* (2nd Cir. 2001) 261 F.3d 229, 236 [uncorroborated and anonymous 911 call was insufficient to justify a warrantless entry into a building].

LIKELIHOOD OF OCCURRENCE: Did it appear the threat was real, or was it merely “within the realm of possibilities.”²⁵

ATTEMPT TO UTILIZE LESS INTRUSIVE MEANS: The need for an entry or search would be greater if officers attempted, but were unable, to resolve the situation by less intrusive means, such as knocking on the door?²⁶ As one court pointed out, there are usually a “continuum of intermediate responses” which are often available to officers and which are “characteristic of the reasonableness to which the Fourth Amendment makes reference.”²⁷ For example, in upholding a warrantless entry based on the emergency aid exception, the court in *People v. Hill* noted, “There was no response when the officers knocked and announced themselves, and entering the premises was the only practical means of determining whether there was anyone inside in need of assistance.”²⁸

NO BASIS FOR WARRANT: In many community caretaking situations, a judge could not issue a warrant to enter or search the premises because the situation did not fit within the statutory requirements for the issuance of a warrant; e.g., search for evidence that tends to show a felony has been committed, or that a particular person committed a felony.²⁹ This is a relevant circumstance in establishing the need for a warrantless entry or search because it may be the only alternative when a warrant cannot be issued and when officers have attempted unsuccessfully to resolve the matter by less intrusive means.

²⁵ See *Colorado v. Hebert* (2002) 46 P.3d 473, 481; *People v. Parra* (1973) 30 Cal.App.3d 729, 734 [“(T)he officers’ reaction in entering the shop was not predicated upon abstractions or speculation but upon the observed fact of an unlocked door to a retail establishment after business hours, leading to the logical conclusion that the circumstance was a threat both to the private and public interests involved.”]; *U.S. v. Meixner* (2001) 128 F.Supp.2d 1070, 1072 [“There is no suggestion in this record of a need to make a warrantless entry into the house in order for the officer to responsibly discharge his duties in this case.”].

²⁶ See *U.S. v. Bradley* (9th Cir. 2003) 321 F.3d 1212, 1215 [“(B)efore the officers entered the house, they took several other steps. They knocked on the front door first, asked Williams again where Christopher was, and went across the street to wake up a neighbor and ask him about the boy.”]; *People v. Ammons* (1980) 103 Cal.App.3d 20, 24; *Iowa v. Carlson* (1996) 548 N.W.2d 138, 139-40 [“The officers knocked on the various doors of the house repeatedly and also had the police dispatcher telephone the residence numerous times, but there was no response.”]; *U.S. v. Rohrig* (6th Cir. 1996) 98 F.3d 1506, 1524 [“(T)he officers attempted to abate the nuisance through various measures short of entering defendant’s home, including repeated banging on Defendant’s front door and tapping on his windows.”]; *People v. Parra* (1973) 30 Cal.App.3d 729, 734 [“Having exhausted the first obvious sources of information, they looked . . . in the next logical place”]; *U.S. v. Haley* (8th Cir. 1978) 581 F.2d 723, 726 [before searching the defendant’s car for ID or a medic alert card, the officer first searched the defendant’s person]; *U.S. v. Bute* (10th Cir. 1994) 43 F.3d 531, 539 [“(The officer) did not knock on the walk-up door to see if anyone would answer, nor did he attempt to reach any possible occupants of the building by telephone (as was departmental practice with ‘open door’ inquiries.”)]; *Murdock v. Stout* (9th Cir. 1995) 54 F.3d 1437, 1442 [“Officer Jacobson shouted twice, but received no answer, nor did any resident answer the telephone.”].

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

²⁸ (1974) 12 Cal.3d 731, 755

²⁹ See Penal Code § 1524; *U.S. v. Rohrig* (6th Cir. 1996) 98 F.3d 1506, 1523 [“If a warrant cannot be obtained under these circumstances, we can only conclude that the warrant mechanism is unsuited to the type of situation presented in this case.”]. ALSO SEE *New York v. Holnar* (2002) 774 N.W.2d 738, 742 [“(T)he defense has not told us what such a warrant would entail, and when asked, could offer no suggestion as to naming the crime involved or, as required by the Fourth Amendment, the things to be seized. . . . Before entering the apartment, the police encountered no evidence of any crime, and the circumstances did not lend themselves to criminal process.”].

A good example of how these circumstances might come together to justify a community caretaking search is found in *U.S. v. Rohrig*.³⁰ Here, officers were dispatched at about 1:30 A.M. to a complaint of “loud music” coming from Rohrig’s house. The music was so loud the officers could hear it when they were about a block away. When they arrived, between “four and eight pajama-clad neighbors emerged from their homes to complain about the noise.” Officers knocked on Rohrig’s door and “hollered to announce their presence” but no one responded. Having no apparent alternatives, they then entered the house through an unlocked door. In plain view, they saw “wall to wall marijuana plants.”

Rohrig argued the entry was unlawful because a judge could not have issued a search warrant to turn down a stereo. That might be true, said the United States Court of Appeals, but if so it works against you because it demonstrates a strong need for the officers’ entry:

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

ESTABLISHING THE INTRUSIVENESS OF THE ACTION: After determining the nature and strength of the need for the search, the courts will ascertain its intrusiveness or invasiveness.³¹ The following circumstances are particularly important: whether the officers just entered the structure or whether they also searched it, the length and intensity of the search, the amount of time the officers were inside the premises, the time or day or night in which the search occurred, whether the officers caused any damage and, most importantly, the privacy expectations of the place or thing that was searched.

For example, to enter or search a home, only a very strong need will do.³² A somewhat lesser need may suffice to enter a business;³² lesser still if it’s a car, boat, or other type of motor vehicle.³³

³⁰ (6th Cir. 1996) 98 F.3d 1506.

³¹ See *Illinois v. Lidster* (2004) 540 US ___ [a special-needs detention case in which the Court noted, “[I]nformation-seeking highway stops are less likely to provoke anxiety or to prove intrusive. The stops are likely brief. The police are not likely to ask questions designed to elicit self-incriminating information.”].

³² See *Welsh v. Wisconsin* (1984) 466 US 740, 750; *Laney v. Texas* (2003) 117 S.W.3d 854, 859; *Wright v. Texas* (1999) 7 S.W.3d 148, 152 [“Only in the most unusual circumstances will warrantless searches of private, fixed property, or stops of persons located thereon, be justified under the community caretaking function, given the greater expectation of privacy inherent with respect to residences and other private real property.”]; *Kerman v. City of New York* (2nd Cir. 2001) 261 F.3d 229, 236 [“(T)he privacy interest at issue here is much greater than in [a detention case, *Florida v. J.L.*]. [The officers] here relied on the anonymous 911 call to justify an invasion of the sanctity of a private dwelling”]. COMPARE *Henderson v. Simi Valley* (9th Cir. 2002) 305 F.3d 1052, 1059 [privacy interest in home diminished as the result of a court order that property in the home must be given to her daughter]. NOTE: In *U.S. v. Erickson* (9th Cir. 1993) 991 F.2d 529, *U.S. v. Pichany* (7th Cir. 1982) 687 F.2d 204, 208, and *U.S. v. Bute* (10th Cir. 1994) 43 F.3d 531, 535 the courts seemed to announce a per se rule that officers could never enter a residence pursuant to the community caretaking exception. None of the courts cited any direct authority for such a rule, nor did they attempt to reconcile their position with the balancing requirement (which would necessarily take into account the greater intrusiveness of a residential entry).

³³ See *Cady v. Dombrowski* (1973) 413 US 433 [car]; *South Dakota v. Opperman* (1976) 428 US 364, 367 [car]; *U.S. v. Miller* (1st Cir. 1978) 589 F.2d 1117, 1125 [“A boat, like an automobile, carries with it a lesser expectation of privacy than a home or an office.”].

The motivation test

Even if an entry or search passes the balancing test, it will be declared unlawful if the officers' primary motive was to further a law enforcement objective, as opposed to a community caretaking objective.³⁴ The purpose of this requirement is to help prevent pretext searches in which the officers' true motivation is to look for evidence of a

³⁴ See *Indianapolis v. Edmond* (2000) 531 US 32, 48; *Cady v. Dombrowski* (1973) 413 US 433, 443 [Court notes that the search was "standard procedure in that police department, to protect the public . . ."]; *People v. Cain* (1989) 216 Cal.App.3d 366, 371 ["This court must first determine if there was substantial evidence to support the trial court's finding that the officers were motivated by a desire to save lives and/or property."]; *U.S. v. Cervantes* (9th Cir. 2000) 219 F.3d 882, 890 ["We believe that, absent probable cause, examining a government actor's motivation for conducting an emergency search provides a necessary safeguard against pretextual reliance on community caretaking interests to serve criminal investigation and law enforcement functions. We thus agree with [*People v. Mitchell* (19796) 347 NE2d 607] that, under the emergency doctrine a search must not be primarily motivated by intent to arrest and seize evidence."]; *Laney v. Texas* (2003) 117 S.W.3d 854, 861 ["The common thread in [the emergency aid and community caretaking] exceptions to the warrant and probable cause requirements is the officer's purpose."]; *Washington v. Acrey* (2003) 64 P.3d 594, 602 ["The police officers were acting in their 'community caretaking function' and not in their law enforcement capacity . . ."]; *U.S. v. Rabenberg* (8th Cir. 1985) 766 F.2d 355, 357 ["There is no reason to believe [the officer's] actions were anything other than a routine performance of his community caretaking duties."]; *Vermont v. Mountford* (2000) 769 A.2d 639, 645 ["(M)ost jurisdictions have adopted the three-part *Mitchell* test [*People v. Mitchell* (19796) 347 NE2d 607] requiring courts to find that the primary subjective motivation behind [community caretaking and emergency assistance] searches was to provide emergency aid."]. NOTE: Although *Edmond* was not a community caretaking case, the Court carefully distinguished between investigative or "crime control" searches, and searches conducted for non-criminal purposes (at pp. 41-8), which we are calling "community caretaking" and "emergency aid" searches. In determining how a certain search should be classified, the Court employed a "primary purpose" test. At one point in *Edmond*, the Court said, "[W]e caution that the purpose inquiry in this context is to be conducting only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene." At p. 48. This does not undermine the "primary motivation" test because, in the context of roadblocks, the decision to act is made at the programmatic level; i.e., the officers are carrying out orders as to how the roadblock and any resulting searches must be conducted. NOTE: It has been said that the officers' motive for conducting the search must have been "totally divorced from" or "totally unrelated to" the investigation of a crime. See *Cady v. Dombrowski* (1973) 413 US 433, 441; *People v. Ray* (1999) 21 Cal.4th 464, 471; *People v. Morton* (2003) 114 Cal.App.4th 1039, 1047 ["In extending the benefit of the community caretaking exception the [trial] court inferentially found that the detectives' belief in the need to enter defendants' property was *totally unrelated* to any criminal investigation" Emphasis added.]. Taken literally, this language would invalidate virtually all community caretaking searches because officers will almost always have mixed motivations. As the California Supreme Court observed, "It is unreasonable to expect an officer to be unconcerned with the collection of evidence and the capture of criminals. *People v. Duncan* (1986) 42 Cal.3d 91, 104. ALSO SEE *People v. Snead* (1991) 1 Cal.App.4th 380, 386. For example, with "check-the-welfare" calls, officers are always aware of the possibility of foul play. Thus, any resulting community caretaking search would automatically be unlawful because it would never be "totally unrelated" to a criminal investigation. Another example: Officers, having determined that a very strong odor of ether was coming from a certain home, entered for the purpose of rescuing the occupants as the odor indicated a dangerously high concentration of ether. But the officers were aware that ether is commonly used to manufacture PCP. Thus their entry was not "totally divorced" from the investigation of crime. ALSO SEE *New Hampshire v. D'Amour* (2003) 834 A.2d 214, 217 ["While the 'divorce' between the community caretaking function and the role of the police in the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute must be total, we conclude that the absolute separation need only relate to a sound and independent basis for each role, and not to any requirement to exclusivity in terms of time or space."].

crime.³⁵ As noted in *People v. Ray*, “[C]ourts must be especially vigilant in guarding against subterfuge, that is, false reliance upon the personal safety or property protection rationale when the real purpose was to seek out evidence of crime.”³⁶

In determining the officers’ primary objective, the courts will, of course, consider the officers’ testimony on the issue. But actions speak louder than words, so they also look to see if the officers’ actions were consistent with the purpose of resolving a community caretaking problem. For example, in *U.S. v. Moss*³⁷ an officer entered a cabin ostensibly because he feared the occupants, whose car was parked nearby, were missing under suspicious circumstances. The court, however, detected a pretextual motive. After pointing out that the officer had already identified the occupants, the court said that if he was really concerned for the occupants’ safety, he probably would have gone out looking for them.

This does not mean that officers must act with haste to avoid suspicion that they were not “properly” motivated. Responding to such an argument, the New York Court of Appeals explained, “The appropriately measured response of the police should not be declared illegal merely because they thoughtfully delayed entry for a relatively brief time.”³⁸

THE EMERGENCE OF “EMERGENCY AID”

The other major development in the field of exigent circumstances is the courts’ use of the term “emergency aid” to denote those situations—formerly classified as “exigent circumstances”—in which there is an imminent threat to life or property. For example, in discussing an officer’s entry into the backyard of a house in response to a report that a car was about to slide over an embankment, the Supreme Court of New Hampshire pointed out, “Although the trial court found that the ‘exigent circumstances’ exception applied to this case, we conclude that the ‘emergency aid’ exception is a better fit.”³⁹ Or, as the Colorado Supreme Court put it, “[T]he use of the word ‘exigent’ as a term of art to describe the emergency exception is misleading.”⁴⁰

³⁵ See *U.S. v. Gwinn* (4th Cir. 2000) 219 F.3d 326, 335 [“We must reiterate than an essential premise for our application of the [community caretaking] exception here is the fact that nothing in the record suggests that Trooper Thomas’ reason for the reentry was pretextual or that he acted in bad faith.”]; *New Jersey v. Diloreto* (2003) 829 A.2d 1123, 1133 [“A finding that the officers acted in good faith is implicit in the trial judge’s finding.”]; *U.S. v. Dunavan* (6th Cir. 1973) 485 F.2d 201, 204 [“We are aware that there may be cases where police assertions of Good Samaritan motives might (as charged here) be pretextual rather than real.”].

³⁶ (1999) 21 Cal.4th 464, 477.

³⁷ (4th Cir. 1992) 963 F.2d 673, 679. ALSO SEE *U.S. v. Bute* (10th Cir. 1994) 43 F.3d 531, 539 [“Whatever suspicion [the officer] had regarding the security of the building, it was not so great as to distract him from taking Cannon home.”]; *Colorado v. Hebert* (2002) 46 P.3d 473, 480 [noting that the officers conducted surveillance on the house for 60-90 minutes before entering, the court pointed out, “This significant lag time indicates that there was no immediate crisis justifying the warrantless entry.”]. COMPARE *U.S. v. Cervantes* (9th Cir. 2000) 219 F.3d 882, 891.

³⁸ *New York v. Holnar* (2002) 774 N.W.2d 738, 742.

³⁹ *New Hampshire v. Macelman* (2003) 834 A.2d 322, 326. ALSO SEE *Iowa v. Carlson* (1996) 548 N.W.2d 138, 141, fn.3 [“The emergency-aid exception must also be distinguished from the exigent-circumstances exception, because the emergency-aid exception is invoked only when police are not involved in crime-investigatory activities. The exceptions are therefore based on related yet distinct rationales.”]; *Murdock v. Stout* (9th Cir. 1995) 54 F.3d 1437, 1441, fn.3 [“Some courts have recognized an exception, distinct from exigent circumstances, where there is an emergency involving imminent danger to life or property.”]

⁴⁰ *Colorado v. Hebert* (2002) 46 P.3d 473, 479. NOTE: The term “emergency aid” is especially appropriate because, in common usage, the word “emergency” is “far stronger in its suggestion of

WHAT'S AN "EMERGENCY?" The "emergency aid" exception applies whenever there is a serious and imminent threat to life or property. The following are some of the more common situations in which an entry or search of a home is permitted under this exception:

CHILDREN IN DANGER: Officers had probable cause to believe that two kidnapped girls were inside a mobile home.⁴¹

SICK OR INJURED PERSON: Officers "heard several moans or groans" coming from within an apartment; they had been told that one of the occupants of the apartment "had not worked often and was sickly."⁴²

ASSIST PARAMEDICS: Officers entered a hotel room to assist paramedics who were treating a man who had accidentally cut his foot.⁴³

POSSIBLE HEROIN OVERDOSE: An officer who was walking down the hallway of a hotel noticed the door to one of the rooms was open. Looking inside, he saw a man, asleep or unconscious, "seated on the bed with his face lying on a dresser at the foot of the bed." He also saw what appeared to be heroin.⁴⁴

BURGLARY JUST OCCURRED: Officers reasonably believed that a burglar had just fled a house, and that the occupants might have been at home when he entered. They knocked on the door and phoned the house, but received no response.⁴⁵

SEARCH FOR ADDITIONAL VICTIMS: A shooting victim was taken to a hospital by friends. Officers immediately went to the house where the shooting occurred to see if anyone else had been shot. Looking through a window, they saw blood on the floor. No one answered the door.⁴⁶

DOMESTIC VIOLENCE: Although a reliable report of domestic violence in progress will not automatically justify a warrantless entry, the courts are aware of the "combustible nature of domestic disputes." Consequently, in determining whether an emergency existed, they may give officers the benefit of the doubt, especially when

extreme difficulty" than the word "exigency." ALSO SEE Merriam-Webster's *Dictionary of Synonyms* (1984 edition) p. 632 ["'Exigent' implies less a demand for immediate attention than one for action (as by way of giving assistance or settling problems); nevertheless the term comes very close to urgent or pressing in its emphasis on the exacting or the imperative nature of that demand."]. ALSO SEE *Washington v. Acrey* (2003) 64 P.3d 594, 600, fn.39 ["The emergency aid function, as contrasted to routine checks on health and safety, involves circumstances of greater urgency and searches resulting in greater intrusion."].

⁴¹ *People v. Coddington* (2000) 23 Cal.4th 529, 577.

⁴² *People v. Roberts* (1956) 47 Cal.2d 374 [

⁴³ *People v. Snead* (1991) 1 Cal.App.4th 380, 386 ["Where a police officer responds to a call for emergency help after an accidental stabbing, we hold that the officer may, without a warrant, lawfully enter private premises along with those providing medical aid for the limited purpose of ensuring the safety of those present."]. ALSO SEE *U.S. v. Collins* (8th Cir. 2003) 321 F.3d 691 ["shots fired" call near a certain intersection; arriving officers found a car in the area, two men in the front seat were "slumped over"]; *People v. Soldoff* (1980) 112 Cal.App.3d 1.

⁴⁴ *People v. Zabelle* (1996) 50 Cal.App.4th 1282, 1287 ["Where police officers have reason to believe a person has overdosed on heroin, the possible overdose constitutes an exigent circumstance that justifies a warrantless entry to investigate."]. ALSO SEE *People v. Gallegos* (1970) 13 Cal.App.3d 239, 243.

⁴⁵ *Murdock v. Stout* (9th Cir. 1995) 54 F.3d 1437, 1442. ALSO SEE *U.S. v. Tibolt* (1st Cir. 1995) 72 F.3d 965, 970 [silent burglary alarm at residence in mid-morning; door unlocked; occupants did not respond]; *Bryant v. Indiana* (1996) 660 NE2d 290, 301 ["Numerous state and federal courts agree that [burglaries in progress or just occurred] are exigent circumstances excusing warrantless entry."]. COMPARE *Horack v. Superior Court* (1970) 3 Cal.3d 720, 726 [no indication the house had been burglarized].

⁴⁶ *People v. Hill* (1974) 12 Cal.3d 731, 755 ["(I)t was reasonable for the officers to believe that the shooting may have resulted in other casualties"].

the officers had “substantial reason to believe that one of the parties to the dispute was in danger.”⁴⁷

REQUIREMENTS: An “emergency aid” entry or search is permitted only if two requirements are met. First, the officers must have reasonably believed the entry or search was necessary because of a threat to life or property that was both serious and imminent.⁴⁸ In making this determination, the courts do not apply a balancing test as they do in community caretaking cases. This is because the existence of an imminent and serious threat to life or property will always justify any reasonable efforts to defuse it.

Second, the officers’ primary motivation must have been to defuse the emergency situation.⁴⁹ For example, an officer’s failure to take immediate and decisive action may

⁴⁷ *Tierney v. Davidson* (2nd Cir. 1998) 133 F.3d 189, 197. ALSO SEE *U.S. v. Brooks* (9th Cir. 2004) ___ F.3d ___ [entry justified when 911 caller heard sounds indicating a woman in the next motel room was being beaten; a man opened the door; officers could hear a woman crying in the bathroom; the motel room was in “total disarray.”]; *U.S. v. Richardson* (7th Cir. 2000) 208 F.3d 626, 630; *U.S. v. Cunningham* (8th Cir. 1998) 133 F.3d 1070, 1072-3.

⁴⁸ See *Mincey v. Arizona* (1978) 437 US 385, 392 [“Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.”]; *People v. Roberts* (1956) 47 Cal.2d 374, 377 [the officer’s action must “reasonably appear to the [officer] to be necessary for that purpose.”]; *People v. Wharton* (1991) 53 Cal.3d 522, 577; *People v. Soldoff* (1980) 112 Cal.App.3d 1, 6 [“Another recognized exception to the warrant requirement is also a ‘necessity’ situation—a motive to enter and search premises to preserve the life of a person thought to be in the premises and in imminent danger.”]; *People v. Ray* (1999) 21 Cal.4th 464, 470 [“Under the emergency aid exception, police officers may enter a dwelling without a warrant to render aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance.”]; *People v. Superior Court (Peebles)* (1970) 6 Cal.App.3d 379, 382 [“One way of testing the reasonableness of [an emergency aid] search is to ask ourselves what the situation would have looked like had another bomb exploded, killing a number of people while officers were explaining the matter to a magistrate.” Edited.]; *U.S. v. Moss* (4th Cir. 1992) 963 F.2d 673, 678 [“To invoke this so-called ‘emergency doctrine,’ the person making entry must have had an objectively reasonable belief that an emergency existed that required immediate entry to render assistance or prevent harm to persons or property within.”]; *New Hampshire v. Macelmann* (2003) 834 A.2d 322, 326 [“(T)he police [must] have objectively reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property”]; *Washington v. Acrey* (2003) 64 P.3d 594, 600, fn.39 [officer must reasonably believe “that someone likely needed assistance for health or safety reasons.”]; *New York v. Molnar* (2002) 774 N.W.2d 738, 740. [“(T)he police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.”]. RE PROBABLE CAUSE NOT REQUIRED: See *Iowa v. Carlson* (1996) 548 N.W.2d 138, 141 [“(A)n objective determination of reasonableness, as opposed to a formal inquiry regarding probable cause, is a sufficient protection of individual privacy under the [emergency aid exception].”]; *Duquette v. Godbout* (1984) 471 A.2d 1359, 1362 [“We see no reason to require [probable cause] to govern an emergency doctrine exception that derives, not from the investigatory function, but from the function designed to save human life.”]; *Connecticut v. Blades* (1993) 626 A.2d 273, 280 [“We see no reason to require the standard for criminal investigatory searches [i.e., probable cause] to govern an emergency doctrine exception that derives, not from the investigatory function, but from the function designed to save human life.”]. ALSO SEE *Colorado v. Hebert* (2002) 46 P.3d 473, 478 [“In cases which involve a police response to a fire or other similar emergency, it is easy to understand why a police officer is not required to have probable cause to justify a search: police officers typically respond to many kinds of crises without believing that a crime has occurred.”]

⁴⁹ See *U.S. v. Cervantes* (9th Cir. 2000) 219 F.3d 882, 889-90 [In *Whren v. United States* (1996) 517 US 806] the U.S. Supreme Court suggested “that the officer’s motivation for conducting the search is still relevant where no probable cause exists, as is true in emergency doctrine cases.”]; *New Hampshire v. Macelmann* (2003) 834 A.2d 322, 326 [“(T)he search [must not have been]

indicate to a court that his primary motive was to conduct an investigation, not render emergency aid.⁵⁰

“INVESTIGATIVE EMERGENCIES”

There is a third category of urgent or pressing situation that is designated an “exigent circumstance.” It is a situation in which there exists an immediate and serious threat to a legitimate law enforcement interest, as opposed to a threat to a person or property.

There are three types of situations that fall into this category. They are:

HOT PURSUITS: In the context of searches and seizures, the term “hot” pursuit means a situation in which officers attempt to arrest a suspect in a public place but he runs into a house or other private place.⁵¹

FRESH PURSUITS: A “fresh” pursuit occurs when there is circumstantial evidence that a person who is wanted for a serious felony is inside a home or other private place and is about to flee.⁵² Two examples:

- Officers learned that a murder suspect was staying at a motel, and that money would soon be delivered to him so he could flee to Texas.⁵³
- An officer saw a fresh trail of blood leading from a murder scene to the suspect’s house.⁵⁴

DESTRUCTION OF EVIDENCE: This exigent circumstance occurs when officers reasonably believe that evidence inside a home or other place would be destroyed if they waited outside until a warrant was issued.⁵⁵

primarily motivated by intent to arrest and seize evidence.”]; *Washington v. Angelos* (1997) 936 P.2d 52, 54 [“The search must not be primarily motivated by intent to arrest and seize evidence.”]. ALSO SEE *Indianapolis v. Edmond* (2000) 531 US 32, 45-6 [“*Whren* therefore reinforces the principle that, while subjective intentions play no role in ordinary probable-cause Fourth Amendment analysis, programmatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion.”]; *Murdock v. Stout* (9th Cir. 1995) 54 F.3d 1437, 1441, fn.3; *People v. Zabelle* (1996) 50 Cal.App.4th 1282, 1287 [dual motive ok: assist apparent victim of heroin overdose and seize heroin]; *People v. Roberts* (1956) 47 Cal.2d 374, 377 [the officer’s actions must have been “prompted by the motive of preserving life or property”].

⁵⁰ See *People v. Baird* (1985) 168 Cal.App.3d 237, 245.

⁵¹ See *United States v. Santana* (1976) 427 US 38; *People v. Superior Court (Quinn)* (1978) 83 Cal.App.3d 609, 616; *People v. Mendoza* (1986) 176 Cal.App.3d 1127, 1130-1; *People v. Lloyd* (1989) 216 Cal.App.3d 1425; *In re Lavoyne M.* (1990) 221 Cal.App.3d 154; *People v. White* (1986) 183 Cal.App.3d 1199, 1203-4. NOTE: A person standing at the threshold of his home is in a “public place.” See *Illinois v. McArthur* (2001) 531 US 326, 335 [“This Court has held that a person standing in the doorway of a house is in a ‘public place’ . . . ”]. NOTE: If the suspect runs into somebody else’s house, he will probably not have standing to challenge the officers’ warrantless entry and search. See *Rakas v. Illinois* (1978) 439 US 128, 148; *Hudson v. Palmer* (1984) 468 US 517, 525 [“The applicability of the Fourth Amendment turns on whether the person invoking its protection can claim a justifiable, a reasonable, or a legitimate expectation of privacy that has been invaded by governmental action.”].

⁵² *People v. Lopez* (1979) 99 Cal.App.3d 754, 766 [officers learned that a murder suspect was staying at a motel, and that money would soon be delivered to him so he could flee to Texas]; *People v. McDowell* (1988) 46 Cal.3d 551 [an officer saw a fresh trail of blood leading from a murder scene to the suspect’s house]; *People v. Manderscheid* (2002) 99 Cal.App.4th 355, 362 [a violent parolee-at-large was trying to avoid arrest by staying at different homes]; *People v. Bacigalupo* (1991) 1 Cal.4th 103, 123 [officers reasonably believed a man who had just shot and killed two men would be inside the apartment].

⁵³ *People v. Lopez* (1979) 99 Cal.App.3d 754, 766.

⁵⁴ *People v. McDowell* (1988) 46 Cal.3d 551.

⁵⁵ NOTE: This subject is discussed in detail in the Winter 2002 *Point of View* (“Exigent Circumstances”).

In each of these situations, officers are ordinarily permitted to enter the house to apprehend the suspect or prevent the destruction of evidence.

Although most courts continue to refer to these situations as “exigent circumstances,” it causes confusion because, as noted earlier, the term “exigent circumstances” has been used to cover such a wide variety of dissimilar situations that is has become vague, ambiguous. Consequently, a more descriptive name is needed. For now, we will call them “investigative emergencies.”

The requirements for conducting searches based on an investigative emergency are substantially different than those based on community caretaking and emergency aid. This is because officers who are dealing with an investigative emergency are acting in their “crime fighting role.”⁵⁶ For this reason, an entry or search based on an investigative emergency requires *probable cause*.

To be more specific, a “hot” or “fresh” pursuit requires, among other things, probable cause to arrest the suspect. Similarly, one of the requirements for entering a house or other structure to prevent the imminent destruction of evidence is that officers had *probable cause* to believe that destructible evidence, such as drugs, was on the premises.⁵⁷

Another big difference is that, unlike community caretaking and emergency aid searches, the legality of an investigative emergency entry or search does not depend on whether the officers were “properly” motivated. As the U.S. Supreme Court pointed out, an officer’s “ulterior motive” cannot invalidate “police conduct that is justifiable on the basis of probable cause.”⁵⁸

WHAT OFFICERS MAY DO

If officers are justified in taking action under the community caretaking, emergency aid, or investigative emergency exceptions, what action can they take? The answer is this: they may do only those things that are reasonably necessary.⁵⁹ As noted in *People v. Ray*, “The officer’s post-entry conduct must be carefully limited to achieving the objective which justified the entry—the officer may do no more than is reasonably necessary to

⁵⁶ See *Laney v. Texas* (2003) 117 S.W.3d 854, 861.

⁵⁷ NOTE: The subject of investigative emergencies was covered in detail in the Winter 2002 *Point of View* in the article entitled “Exigent Circumstances,” pp. 9-16. This article has been posted on Point of View Online, www.acgov.org/da (click on 2002 articles).

⁵⁸ See *Whren v. United States* (1996) 517 US 806, 811.

⁵⁹ See *Mincey v. Arizona* (1978) 437 US 385, 393 [“(A) warrantless search must be strictly circumscribed by the exigencies which justify its initiation.”]; *Warden v. Hayden* (1967) 387 US 294, 298-9; *People v. Roberts* (1956) 47 Cal.2d 374, 378-9 [“(The officers) could properly make only that kind of search reasonably necessary to determine whether a person was actually in distress somewhere in the apartment.”]; *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1261, fn.2 [“The nature of the exigency defines the scope of the search . . .”]; *Arizona v. Hicks* (1987) 480 US 321, 325; *Iowa v. Carlson* (1996) 548 N.W.2d 138, 143 [“(A)n officer can do no more than is reasonably necessary to ascertain whether someone is in need of assistance (and, if so, to provide that assistance).”]; *People v. Hill* (1974) 12 Cal.3d 731, 755 [“The privilege to enter to render aid does not justify a search of the premises for other purposes. To the contrary, a warrantless search of a dwelling must be suitably circumscribed to serve the exigency which prompted it.”]; *New Jersey v. Diloreto* (2003) 829 A.2d 1123, 1134 [“(W)e cannot conclude that the officers were unreasonable in asking a suspected ‘endangered missing person’ to exit his vehicle and wait in the patrol car while they ascertained the basis of the report. Nor were the police unreasonable in patting down the reportedly ‘endangered missing person’ before they put him in their vehicle until they learned why he was reported missing and the facts [upon which the report was based].”].

ascertain whether someone is in need of assistance or property is at risk and to provide that assistance or to protect that property.”⁶⁰

Although the circumstances will sometimes require a search, in most cases the problem can be resolved by less intrusive means, such as entering the premises and speaking with the occupants, maybe conducting a quick walk-through or protective sweep.⁶¹

Still, because these situations are always precarious and sometimes hazardous, it can be difficult for officers to determine exactly what they are permitted to do. As the United States Supreme Court observed:

[T]he police on an occasion calling for fast action have obligations that tend to tug against each other. Their duty is to restore and maintain lawful order, while not exacerbating disorder more than necessary to do their jobs. They are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made in haste, under pressure, and frequently without the luxury of a second chance.”

Consequently, officers are not required to somehow discern *the* best possible response to the situation. The law demands reasonableness and common sense, not infallibility. Still, it is worth repeating that the existence of a situation that falls within the community caretaking, emergency aid, or investigative emergency exceptions does not constitute a judicial “green light” to do whatever comes to mind. The response must be measured and appropriate to the circumstances.

For example, in *People v. Lanthier*⁶² an official at Stanford University opened a student’s locker in the library building because there appeared to be something inside that was causing a noxious odor. Inside the locker, the official found a briefcase. He opened it and discovered packets of marijuana. (The odor was caused by a preservative that had been added to the marijuana.)

The student argued that the official should not have opened the briefcase, that he should have moved it to another location. The California Supreme Court disagreed, noting, “Having assumed control of the briefcase under the emergency doctrine, it was equally reasonable for the university officials to open it and determine the precise cause of the smell so as to permit a proper disposition of the offending object.”

Although officers are not required to utilize the least intrusive means of solving the problem,⁶³ they should—if time permits⁶⁴—explore less intrusive options.⁶⁵ When officers

⁶⁰ (1999) 21 Cal.4th 464, 477 [quoting from 3 LaFave, *Search and Seizure* (3d ed. 1996) § 6.6(b) p. 401]. ALSO SEE *Henderson v. Simi Valley* (9th Cir. 2002) 305 F.3d 1052, 1060 [“The officers’ intrusion into the house was limited to those particular areas where entry was required to retrieve [the owner’s daughter’s] property. The officers played no active role in [the] court-ordered foray. They merely stood by to prevent a breach of the peace while the court’s order was implemented.”]; *New York v. Holnar* (2002) 774 N.W.2d 738, 741 [“(R)reasonableness requires police to tailor responses (and their levels of intrusiveness) to the nature of the emergency.”].

⁶¹ See *U.S. v. Selberg* (8th Cir. 1980) 630 F.2d 1292, 1296 [“A cursory look at the living room and kitchen could have satisfied the officer that there was no sign of disturbance and eliminated any fear there was an emergency threat to Selberg’s property.”].

⁶² (1971) 5 Cal.3d 751.

⁶³ See *Illinois v. Lafayette* (1983) 462 US 640, 647 [Court noted that in *South Dakota v. Opperman* (1976) 428 US 364 it “found no need to consider the existence of less intrusive means of protecting the police and the property in their custody—such as locking the car and impounding it in safe storage under guard.”]; *People v. Ray* (1999) 21 Cal.4th 464, 478 [“The fact officers could have done something more before entering is not dispositive; their failure to take additional action must be viewed in the totality of the circumstances to determine the ultimate reasonableness of their intrusion.”]; *U.S. v. Miller* (1st Cir. 1978) 589 F.2d 1117, 1126 [“We cannot agree that where there is an emergency need to obtain information in a non-criminal investigation the authorities are limited to pursuing one clue.”].

failed to do this in *U.S. v. Meixner*, the court responded, “On the continuum of responses, the government has identified the poles, and ignores those intermediate responses which define measured behavior and are characteristic of the reasonableness to which the Fourth Amendment makes reference.”⁶⁶

APPENDIX

The following are examples of circumstances in which a warrantless entry and, in most cases, a brief walk-through were expressly or impliedly upheld on grounds of “community caretaking.”

- WELFARE CHECK: Friends of Mr. and Mrs. Macioce gave officers the following information: Although the Macioces attended church every Sunday, they had missed the previous service. The friends had “made numerous attempts” to contact the Macioces by telephone and by knocking on the door but received no response. Mr. Macioce was scheduled for knee surgery yesterday but did not show up. The Macioces’ car was in the carport and mail had accumulated in the mailbox. The Macioces were not likely to be out of town because they were poor. The friends knocked on the door just 20 minutes earlier but, as before, received no response. Using a key from the apartment manager, the officers entered and discovered the body of Mr. Macioce (who, as it turned out, had been murdered by Mrs. Macioce).⁶⁷
- WELFARE CHECK: Napa police went to the home of Ammons after his employer reported he was concerned about Ammons’ welfare because he was several hours late for work, even though Ammons was “a very punctual and conscientious employee who usually called in when he expected to be late and was rarely absent.” No one answered the door. Ammons’ car was in the garage. A neighbor said she had not seen Mr. or Mrs. Ammons for two days, and that Mrs. Ammons usually told her if she was going to be away, but she had not done so recently. She also said Mrs. Ammons “had a heart condition for which she took medication.” The officers entered through an unlocked window.⁶⁸
- POSSIBLE DEAD BODY: Responding to a complaint from neighbors, officers detected an “unbearably putrid” odor coming from an apartment. Although the officers could not be certain, the smell “suggested” it was caused by a “rotting body.” After several unsuccessful attempts at making a non-forcible entry, they pried open a door.⁶⁹
NOTE RE DEAD BODY REPORTS: Officers who are responding to a report of a “dead” person in a residence need not assume that the reporting party was able to determine the person was, in fact, dead. Thus, an entry may be justified on grounds of emergency aid.⁷⁰

⁶⁴ See *U.S. v. Williams* (6th Cir. 2003) 354 F.3d 497, 505 [“(I)t is clear that securing a warrant in this case would not have presented any significant problem.”].

⁶⁵ See *People v. Parra* (1973) 30 Cal.App.3d 729, 734 [“Having exhausted the first obvious sources of information, they looked for identification of the proprietor in the next logical place”]; *U.S. v. Rohrig* (6th Cir. 1996) 98 F.3d 1506, 1524 [“In our view, the officers properly escalated their efforts as each preceding measure failed to abate the noise.”].

⁶⁶ (2001) 128 F.Supp.2d 1070, 1072.

⁶⁷ *People v. Macioce* (1987) 197 Cal.App.3d 262. ALSO SEE *Vitek v. Indiana* (2001) 750 NE2d 346, 349 [“(T)here can be reasonable belief that a person may be in need of aid with a premises when the occupant has been missing. Most cases upholding this exception have found that a person’s absence, combined with other circumstances, have created the exigent circumstances necessary for a warrantless search.”].

⁶⁸ *People v. Ammons* (1980) 103 Cal.App.3d 20.

⁶⁹ *New York v. Holnar* (2002) 774 NW2d 738, 743 [“Defendant would have us approve the warrantless entry by public health officials, but not by police. Under the circumstances, there is no basis in law for such a distinction.”].

⁷⁰ See *U.S. v. Richardson* (7th Cir. 2000) 208 F.3d 626 [officers testified that “in their experience, laypersons without medical knowledge are not in a position to determine whether a person is dead or alive”]; *People v. Klushman* (1999) 980 P.2d 529 [man said he had killed two people in his home]; *Hodge v. Arkansas* (1998) 965 SW2d 766; *Wofford v. Arkansas* (1997) 952 SW2d 646; *Alward v. Nevada* (1996) 912 P.2d 243.

- WELFARE CHECK: At about 11 P.M. officers responded to an anonymous report of a domestic disturbance in which a man was “shoving a woman around.” From outside the house, the officers saw a man inside and heard him shouting. When the woman opened the door, the officers noticed she was “breathing heavily and appeared extremely frightened, afraid, very fidgety, and very nervous.” She had a “little red mark” under one eye and “slight darkness” under both eyes. The woman denied there was any problem, and gave poor excuses for her injuries. She claimed she was alone in the house. Because the officers knew she was lying about that, and because they knew that “battered women commonly deny being abused,” they entered to “make sure everything was all right.”⁷¹
- WELFARE CHECK PLUS SUSPICIOUS CIRCUMSTANCES: Neighbors of a woman were concerned that they hadn’t seen her in two weeks. Officers had recently been called to the house to quell a domestic disturbance. When they arrived to check on the woman’s welfare, no one answered the door and there was mail in the mailbox, so they did not attempt to enter. That night, a neighbor called police and reported hearing “someone banging” on the woman’s front door. Finding the door unlocked, an officer entered and discovered the woman’s body.⁷²

COMPARE: Shortly after arriving at a house from which a 911 hang-up call had been made, the officer had reason to believe “there may have been [a domestic assault] but not enough probable cause to make an arrest.” When the man who lived in the house walked outside, the officer entered the house to “offer immediate assistance to the female,” even though there was “no evidence from which an inference could reasonably be drawn that there were other people in the home who required aid.” Insufficient grounds for entry.⁷³
- CHILDREN IN DANGER: While investigating a malicious mischief report, officers saw two young boys walk out of the suspect’s trailer home. The suspect said the boys were not his children. When the boys saw the officers, they walked back inside. When asked if he’d ever been arrested, the suspect said yes—for “indecent with a child.” The officers entered the trailer to “get the children out of the trailer and find out who their parents were.”⁷⁴
- CHILDREN IN DANGER: Responding to a 911 call that a woman had overdosed on drugs, officers entered to assist paramedics. One of the woman’s three children told them she thought her mother had a “prescription drug problem.” The officer asked her to “look and see if any drugs had been left around.” The girl then took the officer into the bathroom where he saw a line of cocaine beside the sink.⁷⁵

COMPARE: At about 4 P.M. a woman reported that a 6 year old girl who lived in her apartment building was on the apartment steps crying. The girl told the officer she “had hurt her knee while dancing,” that she had been alone in her apartment but did not want to stay there because she was “lonely.” Using a passkey, the officer entered the girl’s apartment. Insufficient grounds for entry.⁷⁶
- WELFARE CHECK: At about 1 A.M., officers stopped a car occupied by a man, a woman, and the woman’s two-year old daughter. When officers discovered meth inside the car, the man and woman were arrested, and the child was taken into protective custody. One of the officers was aware that the couple also had a nine-year old son. The officer asked where the boy was located, she said he was “at home with a friend.” Officers went there to check on the boy but no one answered the door. The woman then said the boy was “across the street with a neighbor.” The

⁷¹ *People v. Higgins* (1994) 26 Cal.App.4th 247.

⁷² *People v. Wharton* (1991) 53 Cal.3d 522, 577.

⁷³ *U.S. v. Meixner* (2001) 128 F.Supp.2d 1070. ALSO SEE *People v. Morton* (2003) 114 Cal.App.4th 1039.

⁷⁴ *Laney v. Texas* (2003) 117 SW3d 854, 864 [“Although there was no immediate threat to the child’s safety or well-being, had the boy been left alone in the trailer while deputies took appellant away, there would have been a substantial risk of harm to the child.”].

⁷⁵ *Washington v. Angelos* (1997) 936 P.2d 52.

⁷⁶ *People v. Smith* (1972) 7 Cal.3d 282, 285-6 [“The solicitude of the police for the girl’s safety and welfare was of course commendable. But the police must also be concerned with the interest of her parent in the security and privacy of her home”].

neighbor said he did not have the boy. The officers then went back to the woman's home, and when no one responded to their knocking, they entered.⁷⁷

- WELFARE CHECK: At 4 a.m., officers responded to an attempted rape in an apartment. While there, officers heard music and a television in the next door apartment. The lights in the apartment were also on. Figuring that the neighbor might have heard or seen something relevant, they knocked on the door twice but no one answered. One officer testified he thought it was "unusual that no one came to the door," and that "perhaps there was another victim inside." When the officers discovered the door was unlocked, they entered.⁷⁸
- WELFARE CHECK PLUS SUSPICIOUS CIRCUMSTANCES: Police received a call from a woman who reported her mother was missing under suspicious circumstances. Among other things, she said the man her mother was living with [the defendant] had previously been abusive; defendant had "offered conflicting stories about [the mother's] whereabouts; two days earlier, when the defendant permitted the mother to speak with her sister on the phone, the conversation was "brief" and "awkward" and then "the line was cut off." When officers arrived at the house, they could see someone watching TV upstairs, but no one responded to the knocking. They also had their dispatcher phone the residence "numerous times" but, again, no response. Officers forcibly entered.⁷⁹
- LOUD MUSIC, NEIGHBORS COMPLAINED: At about 1:30 A.M., officers were dispatched to a complaint of "loud music" coming from a residence. The music was so loud the officers could hear it when they about a block away. When they arrived, between "four and eight pajama-clad neighbors emerged from their homes to complain about the noise." The officers knocked on the door and "hollered to announce their presence" but no one responded. They entered through an unlocked door.⁸⁰

COMPARE: Officer on patrol heard loud music coming from a house at 10:45 P.M. Nobody in the neighborhood had complained about it. The officer knocked on the door but no one responded. The officer entered through an unlocked door. Insufficient grounds for entry.⁸¹

COMPARE: Upon arriving at the defendant's residence at 11 p.m. in response to a complaint of a "loud party disturbance" officers heard nothing. "Without bothering to knock on defendant's front door, they proceeded directly into his darkened side yard." Insufficient grounds for trespass.⁸²
- WOMAN IN DANGER: Responding to a report of a domestic dispute at about midnight, officers found the victim outside her home. Her face and nose were red, she was "very upset" and "crying uncontrollably." She said her husband, who was inside the house, "had hit her a few times in the face." The husband opened the door when the officers knocked, but he then "attempted to close the door." The officers entered.⁸³

⁷⁷ *U.S. v. Bradley* (9th Cir. 2003) 321 F.3d 1212, 1215 ["The possibility of a nine-year old child in a house in the middle of the night without supervision of any responsible adult is a situation requiring immediate police assistance."].

⁷⁸ *People v. Cain* (1989) 216 Cal.App.3d 366, 376 ["(I)t was in the early-morning hours when most people are asleep, the officers were aware of a recent brutal attack on a defenseless elderly woman next door, the search was close in time to the attack, and [the officers] relied on their substantial experience in finding the situation unusual. They were acting for a benevolent purpose, and in light of the brutal attack a delay may have resulted in the unnecessary loss of life."].

⁷⁹ *Iowa v. Carlson* (1996) 548 NW2d 138. ALSO SEE *Washington v. Gocken* (1993) 857 P.2d 1074, 1080 ["When an officer believes in good faith that someone's health or safety may be endangered, particularly if that person is known to have physical or mental problems, public policy does not demand that the officer delay any attempt to determine if assistance is needed and offer that assistance while a warrant is obtained."].

⁸⁰ *U.S. v. Rohrig* (6th Cir. 1996) 98 F.3d 1506.

⁸¹ *Ohio v. Price* (1999) 731 NE2d 280.

⁸² *People v. Camacho* (2000) 23 Cal.4th 824, 836. NOTE: Although *Camacho* was not technically a community caretaking case (see fn.4), as a practical matter its analysis directed at precisely the issues involved in any classic community caretaking case].

⁸³ *People v. Wilkins* (1993) 14 Cal.App.4th 761, 772 ["The victim was outside the house and obviously in need of shelter. It was reasonable for the officers to conclude her reentry into the home or even her continuing presence on the premises outside the home would spark further

- POSSIBLE 5150: Officers received a report of a “possibly intoxicated” man in a car on a dead-end street. The man told officers he was waiting for a push-start. When an officer asked him for ID, the man “raised the car window, locked the door and stated that he wished to be left alone.” Officers said the man was “highly agitated,” “extremely hyper,” and was moving “wildly” in the car. Officers forcibly entered the car.⁸⁴
- VEHICLE INVENTORY SEARCH: Officers searched a vehicle because it was going to be impounded and departmental policy required or permitted inventory searches under those circumstances.⁸⁵
- OPEN DOOR: BUSINESS: On a Sunday evening, an officer discovered that the door to a flower shop was ajar. The shop was closed. No emergency phone number was posted outside. The police department did not have an emergency phone number on file. The officer entered to try to locate the owner’s phone number so he could determine if the shop had been burglarized. While searching a desk drawer for a business card, he found heroin.⁸⁶
- OPEN DOOR: RESIDENCE: Concerned neighbors notified police that the door to a nearby home “has been open all day and it’s all a shambles inside.” Looking through the open door, officers saw that the front room “appeared to be ransacked.” Although there were no signs of forced entry, no one responded to the officers’ knocking. “Increasingly concerned, they entered to conduct a security check ‘to see if anyone inside might be injured, disabled, or unable to obtain help’ and to determine whether a burglary had been committed or was in progress.”⁸⁷
 COMPARE: An officer entered a garage because the door was open at 11 P.M. No sign of forced entry. Insufficient grounds for entry.⁸⁸
- BURGLAR ALARM: At mid-morning, a silent burglary alarm was activated in the residence. An employee of the alarm company phoned the occupants but received no response. Officers found no signs of forced entry but one of the doors was unlocked. He opened it and yelled but no one responded. He then entered.⁸⁹

violence by defendant. ¶ The officers could not abandon the matter and expose the victim to further harm simply because defendant refused them admittance.”]. ALSO SEE *Arizona v. Greene* (1989) 784 P.2d 257, 259 [(Domestic violence) calls commonly involve dangerous situations in which the possibility for physical harm or damage escalates rapidly.”]; *Washington v. Raines* (1989) 778 P.2d 538, 542 [chronic domestic abuse call: “Here, [the officers] had a duty to assure the safety of [the defendant’s girlfriend and her child] by ensuring that Raines posed no continuing threat to them.”]; *Iowa v. Carlson* (1996) 548 NW2d 138, 142-3 [“Carlson’s past history of domestic violence significantly heightened Rhonda’s concerns for her mother’s welfare.”].

⁸⁴ *Winters v. Adams* (8th Cir. 2001) 254 F.3d 758.

⁸⁵ See *South Dakota v. Opperman* (1976) 428 US 364, 372; *People v. Steeley* (1989) 210 Cal.App.3d 887, 891 [“It is well settled that inventories of impounded vehicles are reasonable where the process is aimed at securing or protecting the car and its contents. Such searches are unreasonable and therefore violative of the Fourth Amendment when used as a ruse to conduct an investigatory search.”].

⁸⁶ *People v. Parra* (1973) 30 Cal.App.3d 729, 733 [(T)he officers entered the Alpar Florist Shop to protect the shop and its contents. Their presence in the shop was privileged. . . . Having exhausted the first obvious of sources of information (the door and front window), they looked for identification of the proprietor in the next logical place, namely, the top drawer of the desk.”]. ALSO SEE *Alaska v. Myers* (1979) 601 P.2d 239, 244 [(L)aw enforcement personnel may enter commercial premises without a warrant only when, pursuant to a routine after-hours security check undertaken to protect the interests of the property owner, it is discovered that the security of the premises is in jeopardy, and only when there is no reason to believe that the owner would not consent to such an entry.”].

⁸⁷ *People v. Ray* (1999) 21 Cal.4th 464, 468. ALSO SEE *People v. Parra* (1973) 30 Cal.App.3d 729, 734.

⁸⁸ *U.S. v. Bute* (10th Cir. 1994) 43 F.3d 531. ALSO SEE *U.S. v. Selberg* (8th Cir. 1980) 630 F.2d 1292, 1296 [“No one had since reported any suspicious activity, and the trailer showed no signs of any criminal activity.”].

⁸⁹ *U.S. v. Tibolt* (1st Cir. 1995) 72 F.3d 965.

- INDICATIONS OF BURGLARY: At 2:20 p.m., a neighbor reported seeing people crawling through the window of a nearby home. Officers discovered a broken kitchen window. No one answered the officers' knocking. A woman was observed inside; she said she lived there but she didn't have a key to the door. She said she and a man were the only people inside. Officers saw other women inside. After detaining the man and woman, officers entered "to make sure no one else was inside."⁹⁰
 - COMPARE: A person who saw two men dragging a large bag from a neighbor's house, called police and expressed concern the men might have been burglars. When officers arrived, they saw no sign of forced entry, and the house appeared secure. The officers entered the house without knocking or otherwise attempting to speak with the occupants. Insufficient grounds for entry.⁹¹
 - COMPARE: An officer entered a cabin because he believed the owner of an illegally-parked car might have been inside, and because he thought the cabin might have been burglarized because it was unlocked. Insufficient grounds for entry.⁹²
- GUN IN CAR: After impounding a car, officers learned that there might have been a gun locked in the trunk. Officers entered the trunk to seize the gun because of "concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle."⁹³
- GUN IN SUITCASE: An officer was dispatched to a call that a 14-year old boy had found a gun in a suitcase he had mistakenly picked up at an airport. The officer opened the suitcase "looking for other dangerous instrumentalities, and for indications of the identity of the case's owner." He was also conducting an inventory search per department regulations. During the search the officer found drugs.⁹⁴
- UNCONSCIOUS MAN, NEED TO ID: An officer spotted a man lying unconscious in the street at about 9 A.M. A car parked nearby was damaged. Eventually, the officer was able to rouse the man who said he wasn't hurt, but he then "slumped to the ground." There was no smell of alcohol on the man. The officer attempted to find some ID in the man's pockets. Finding none, he looked into the car, saw a briefcase, opened it, and discovered a gun.⁹⁵
- KEEP THE PEACE: A man and his three children had been living with the defendant. One night, the defendant came home drunk and threatened the man and his children. They left the house but the man phoned the sheriff's department and asked that deputies stand by while he removed his belongings from the house. When they arrived at the house, the defendant was asleep, so the deputies stood just inside the front door while the man removed his belongings. The defendant woke up and became belligerent, saying he was going back to his room to phone his attorney. A deputy followed him and saw a sawed-off shotgun in plain view.⁹⁶
- KEEP THE PEACE: Officers entered the defendant's residence at the request of her minor daughter for the purpose of retrieving property that, per court order, belonged to the child.⁹⁷
- WATER LEAK: An officer entered the defendant's apartment because he reasonably believed that a water leak that had damaged lower apartments was originating in the defendant's apartment.⁹⁸

⁹⁰ *U.S. v. Johnson* (6th Cir. 1994) 9 F.3d 506, 509 ["Upon arrival at defendant's residence, [the officers] discovered a broken window and two individuals inside. One of these individuals was unable to satisfy the officers that she lived there. . . . This same individual lied to the officers regarding the number of people inside the residence."]

⁹¹ *U.S. v. Erickson* (9th Cir. 1993) 991 F.2d 529.

⁹² *U.S. v. Moss* (4th Cir. 1992) 963 F.2d 673, 679 ["To the extent the entry was for the purpose of verifying a break-in, it is hard to see how more than a look from the doorway was needed."].

⁹³ *Cady v. Dombrowski* (1973) 413 US 433, 447. ALSO SEE *U.S. v. Bishop* (6th Cir. 2003) 338 F.3d 623.

⁹⁴ *U.S. v. Rabenberg* (8th Cir. 1985) 766 F.2d 355.

⁹⁵ *U.S. v. Haley* (8th Cir. 1978) 581 F.2d 723. ALSO SEE *People v. Gonzales* (1960) 182 Cal.App.2d 276, 279 ["The first step in the inquiry would be to clearly identify the victim. A failure to do so would subject the officer to severe censure."].

⁹⁶ *U.S. v. York* (5th Cir. 1990) 895 F.2d 1026.

⁹⁷ *Henderson v. Simi Valley* (9th Cir. 2002) 305 F.3d 1052, 1058-60.

COMPARE: A motel manager complained to a sheriff's deputy that one of the guests parked his truck in such a manner that it blocked access to another room, although that room was unoccupied. The manager said the guest refused to move his truck unless he received a refund. The deputy went to the room knocked but the guest did not respond. The manager told the deputy to kick in the door, which he did. Said the court, "[The guest] was not doing anything to disturb the public order. He was breaking no laws. And it was [the deputy's] actions which were far from peaceful. Surely a reasonable officer should know there are limits to what he can do in the name of caretaking. Caretaking cannot reasonably be seen as license to take outrageous steps to get a truck moved. Calling a tow truck would have been a more reasonable way to solve the problem." Insufficient grounds for entry.⁹⁹

⁹⁸ *U.S. v. Boyd* (1976) 407 F.Supp. 693. ALSO SEE *Maine v. Dube* (1995) 655 A.2d 338. COMPARE *U.S. v. Williams* (6th Cir. 2003) 354 F.2d 497, 508 [insufficient indication of water leak].

⁹⁹ *Finsel v. Cruppenink* (7th Cir. 2003_ 326 F.3d 903, 908.