San Diego District Attorney

D.A. LIAISON LEGAL UPDATE

(COPY - - DISTRIBUTE - - POST)

Vol. 11 May 11, 2006 No. 6
Subscribers: 2,087 www.sdsheriff.net/legalupdates/

Remember 9/11/01; Support our Troops

Robert C. Phillips
Deputy District Attorney
Law Enforcement Liaison Deputy

(W) (858) 974-2421
(C) (858) 395-0302
(E) Robert.Phillips@SDSheriff.org
(E) RCPhill808@AOL.com

THIS EDITION'S WORDS OF WISDOM:

"*No arsenal, no weapon in the arsenals of the world, is so formidable as the will and moral courage of free men and women.*" (Ronald Reagan)

IN THIS ISSUE: Page:

ADMINISTRATIVE NOTES:

***Being Prepared to Testify*:** I've been asked to remind all officers that when you come to court, it's *your* obligation to come prepared. Being prepared includes (but is not certainly limited to) having already obtained all the relevant reports from your own records section, bringing them to court with you, and reviewing them *prior to* being interviewed by the deputy district attorney handling your case. Typically, the assigned DDA, with a tight time schedule imposed by an

unforgiving court and a multitude of other witnesses to interview, doesn't have time to be doing what you should have already done; i.e., copying your reports for you and then waiting while you finally take the time to read them over as you're walking to the courtroom. Violate these very basic rules and you'll find yourself testifying in the blind, damaging your case, and irreparably embarrassing yourself in front of the court, your defendant, your peers, and the rest of the world.

CASE LAW:

***Search Warrants; Sealing the Affidavit*:**

United States v. Napier **(9th Cir. Feb. 7, 2006) 436 F.3rd 1133**

Rule: Warrant affidavits may be sealed when necessary to protect an informant's safety and ongoing investigations.

Facts: California law enforcement officers sought and obtained a search warrant for defendant, his cars, and his residence. Attachment A to the warrant affidavit described two police-supervised and surveilled drug purchases from defendant, using a confidential informant. Citing defendant's criminal history for drug-trafficking and violence, the officers asked that Attachment A be sealed in order to protect the informant's safety and to protect his/her identity in other, ongoing investigations. Determining that the details of the two controlled purchases would make it possible for defendant to ascertain the identity of the informant, the magistrate sealed Attachment A. The search warrant was executed on defendant and one of his vehicles when he was stopped driving away from his residence. Small amounts of cocaine powder and cocaine base were recovered. The warrant was then executed at defendant's residence, resulting in the recovery of 450 grams of cocaine powder and over 28 grams of rock cocaine, along with some drug paraphernalia. Defendant was charged in federal court with the possession of the cocaine discovered during the execution of the search warrant. He later filed a motion to unseal the warrant affidavit. Upon the trial court's order, the Government submitted a redacted version of the affidavit, deleting any references to the details, times, or locations of the drug purchases. Defendant continued to complain, however, that the resulting information still fell short of what he needed to challenge the warrant. An evidentiary hearing was held at which the affiant/police detective testified, confirming the continuing need to keep his informant's identity confidential. The trial court denied defendant's motion, keeping Attachment A concealed. In a later motion to suppress, defendant continued to complain about his inability to make a particularized argument as to the legality of the warrant, and requested the trial court to conduct its own review of the warrant affidavit pursuant to *Franks v. Delaware* (1978) 438 U.S. 154. The trial court denied defendant's motion. Defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. In *Franks v. Delaware*, the U.S. Supreme Court held that a defendant is entitled to challenge the validity of a search warrant affidavit if he can make a "*substantial preliminary showing*" that the affiant knowingly and intentionally, or with reckless disregard for the truth, made a false

statement in the affidavit. Defendant's complaint here was that without being allowed access to Attachment A, he was prevented from making such a "*substantial showing*." The Court disagreed with defendant's argument that *Franks* is an absolute right. To the contrary; a defendant's right to the information he needs to attack a search warrant affidavit must be balanced with the government's interest in maintaining the integrity of other ongoing investigations and ensuring the safety of an informant. While a criminal defendant's due process rights (to be treated fairly) at trial are substantial, they "are less elaborate and demanding" in a motion to suppress. The purpose of a trial is to find the truth. The purpose of a suppression motion is "to avoid the truth." "The very purpose of a motion to suppress is to escape the inculpatory thrust of evidence in hand, ..." (*McCray v. Illinois* (1967) 386 U.S. 300, 307.) As such, a defendant's right to discover information in the possession of law enforcement is less demanding at a motion to suppress than it is at trial. In this case, defendant was given a redacted version of the Attachment. He was also allowed to proceed with an evidentiary hearing where the affiant testified to his reasons for keeping Attachment A sealed. He was even offered the opportunity to have the judge, in chambers, question the informant on the issue of the truthfulness of the Attachment, but declined. The trial court having done just about everything it could do while still protecting the Government's interest in keeping the informant's identity confidential, defendant's due process rights were not violated.

Note: California's authority for sealing search warrant affidavits is *People v. Hobbs* (1994) 7 Cal.4th 948. While not without its critics, sealing warrant affidavits has become pretty commonplace. However, it must be remembered that sealing a warrant affidavit is the *exception* to the usual rule of full disclosure. Therefore, it needs to be limited to those situations where sealing is necessary to protect some important governmental interest; e.g., a confidential informant's identity when safety is an issue and/or a continuing investigation. And then, only those portions of an affidavit that must be sealed to accomplish this goal should be sealed. Truly, this is one pro-law enforcement evidentiary advantage that demands we remember the rule: *If we abuse it, we'll eventually lose it*.

***Sex Registration and Equal Protection*:**

People v. Hofsheier **(Mar. 6, 2006) 37 Cal.4th 1185**

Rule: The mandatory sex offender registration requirements for a person convicted of orally copulating a minor under 18 years of age (P.C. § 288a(b)(1)) constitutes an "Equal Protection" violation because similarly situated defendants convicted of unlawful intercourse with a minor (P.C. § 261.5(a)) are not subject to mandatory registration.

Facts: Defendant, a 22-year-old male, pled guilty to having committed a consensual act of oral copulation with a 16-year-old female in violation of P.C. § 288a(b)(1). Because conviction for this offense required the defendant to register for life as a sex offender, per P.C. § 290(a)(2)(A), the trial court ordered defendant to register accordingly. Defendant appealed, arguing that to require him to register as a sex offender when a person who is convicted of having had sexual intercourse with a minor, per P.C. § 261.5 (unlawful intercourse) is *not* required to register, is a violation of the "*Equal Protection*" guarantees

of the Fourteenth Amendment to the United States Constitution (and Article I, § 7, of the California Constitution). The Sixth District Court of Appeal agreed and ordered the trial court to delete the registration requirement. Because this was in conflict with the prior case of *People v. Jones* (2002) 101 Cal.App.4th 220, the California Supreme Court granted the People's petition for review in order to resolve this split of authority.

Held: The California Supreme Court, in a split, 6-to-1 decision, affirmed the Court of Appeal's decision. After reviewing the history of section 288a(b)(1), consensual oral copulation with a minor, while referencing its similarities to the offense of "*unlawful intercourse*" per P.C. § 261.5(a), the Court noted that the potential penalty for an adult orally copulating a 16-year-old victim (§ 288a(b)(1)) and for having consensual sexual intercourse with that victim (§ 265.1(c)) is the same; one year in county jail or 16 months, 2 or 3 years in prison. However, the sex registration statute—P.C. § 290—mandates that a person who violates the former must register as a sex offender for the rest of his life (P.C. § 290(a)(2)(A)). Unlawful intercourse, however, is not listed among the sections requiring mandatory registration. At most, committing an offense of unlawful intercourse provides a sentencing court with the discretion to order the defendant to register. (P.C. § 290(a)(2)(E)) The exercise of such discretion requires the court to find that the offense was committed as a result of sexual compulsion or for purposes of sexual gratification. This disparity in treatment raises a constitutional equal protection issue. To be an equal protection violation, it must be found that two similarly situated groups are being treated in an unequal manner. Oral copulation on a 16-year-old minor is "*sufficiently similar*" to sexual intercourse with a 16-year-old minor so as to require that violators be treated in the same manner. Although there are several different tests used for determining whether such a disparity violates the Constitution, most legislation, such as the statutes in issue here, will be upheld so long as there is at least a "*rational basis*" for the difference. In this particular case, "there must be some plausible reason based on reasonably conceivable facts, why judicial discretion is a sufficient safeguard to protect against repeat offenders who engage in sexual intercourse but not with offenders who engage in oral copulation." The Court could think of no such "plausible reason." Therefore, the mandatory registration provisions for illegal oral copulation with a minor cannot be enforced and must be brought into line with the discretionary registration requirements as they apply to unlawful intercourse with a minor. The Court remanded the case back to the trial court to exercise its discretion accordingly and redetermine whether defendant must register.

Note: The Court does note that this decision does not preclude the Legislature from amending P.C. § 190(a)(2)(A) to add unlawful intercourse to those violations requiring mandatory registration, thus eliminating the difference between the two violations. Also of interest is the sole dissenting opinion (Baxter, J.), which makes the argument that oral copulation is indeed a whole separate physical act than sexual intercourse, with potentially different consequences, and that the Legislature, therefore, was not required to treat them the same. More interestingly, however, the dissent describes the details behind defendant's encounter with his 16-year-old victim; i.e., becoming acquainted with her on the Internet, arranging to meet her, purposely getting her drunk, and then telling her that she "owes" him, convincing her to orally copulate him. Under these circumstances, it

seems to me that the trial court, in exercising its discretion on remand, will have some difficulty in justifying anything other than a lifetime registration requirement, applying the standards as described above. Its hard to imagine that purposely getting a female minor drunk and having her orally copulate you, particularly when she is six years your junior, could be described as anything other than an act committed "as a result of a sexual compulsion or for purposes of sexual gratification." ("*Gee, no, judge. It was merely a sociological experiment on the effects of alcohol on the sexual inhibitions of a 16-year-old female child who was a stranger to me, a 22-year-old testosterone-burdened adult male, until I conned her over the Internet into meeting with me*.")

***Child Pornography*: *Probable Cause Justifying the Search of a Computer*:**

United States v. Gourde **(9th Cir. Mar. 9, 2006) 410 F.3rd 1065**

Rule: Purposely subscribing to a website which openly advertises child pornography, even though mixed with other legal materials, constitutes sufficient probable cause to justify a search warrant for the subscriber's computer.

Facts: In August, 2001, an FBI agent and computer expert discovered a website called "*Lolitagurls.com*." The opening page of the website contained some images of nude and partially dressed girls, some prepubescent. Text on the first page touted "*hard to find pics*!" of "*young girls*," which was claimed to be updated weekly. The user was directed to a second page with more images of nude girls, again some prepubescent, including three pictures of the genital areas of minors and a caption announcing "*Lolitas age 12-17*." This second page encouraged the user to join for a mere $19.95 a month, deducted automatically from the user's credit card, promising over one thousand pictures of naked girls, ages 12 to 17, updated weekly. It was determined that a company called "Lancelot Security" managed the credit card transactions. Joining the website entitled the user to download the images. The FBI was able to download hundreds of images that included adult (lawful) and child (unlawful) pornography, and "child erotica" (lawful images that are not themselves child pornography but still fuel their sexual fantasies involving children). In January, 2002, the owner and operator of the website was identified and arrested. He admitted that the Lolitagurls.com website contained child pornography and was operated as a source of income. Through a follow-up investigation, Lancelot Security provided subscriber information to the FBI. Among the subscribers, defendant was identified as having subscribed to the website between the months of November, 2001, and January, 2002, when the website was shut down, never canceling his membership. A search warrant was prepared for defendant's house seeking his computer and any child pornography it might contain. The affidavit to the search warrant contained extensive background information on computers and the characteristics of child pornography collectors. One section set out legal and computer terms relevant to understanding how downloading and possessing child pornography violated Title 18 U.S.C. § 2252. Citing FBI computer experts, the affidavit explained that downloaded illegal images would remain on a computer for an extended period; how even "recycling" and deleting the files would not actually erase them, retaining them in the computer's "slack space" until randomly overwritten. The affidavit also described the use of

computers for child pornography activities. Based on the experience of the FBI experts, "[p]aid subscription websites are a forum through which persons with similar interests can view and download images in relative privacy." It was described how collectors and distributors of child pornography use the free email and online storage services of Internet portals such as Yahoo! and Hotmail, among others, to operate anonymously because these websites require little identifying information. Communications through these portals result in both the intentional and unintentional storage of digital information, and a "user's Internet activities generally leave traces or 'footprints' in the web cache . . . ." Drawing on the expertise of the FBI Behavioral Analysis Unit, the affidavit listed certain "traits and characteristics—generally found to exist and be true in—individuals who collect child pornography." According to the affidavit, the majority of collectors are sexually attracted to children, "collect sexually explicit materials" including digital images for their own sexual gratification, also collect child erotica, "rarely, if ever, dispose of their sexually explicit materials," and "seek out like-minded individuals, either in person or on the Internet." The affidavit concluded by identifying facts about defendant that made it fairly probable that he was a child pornography collector and maintained a collection of child pornography and related evidence: (1) Defendant "took steps to affirmatively join" the website; (2) the website "advertised pictures of young girls"; (3) the website offered images of young girls engaged in sexually explicit conduct; (4) defendant remained a member for over two months, although he could have cancelled at any time; (5) defendant had access to hundreds of images, including historical postings to the website; and (6) any time defendant visited the website, he had to have seen images of "naked prepubescent females with a caption that described them as twelve to seventeen-year-old girls." A federal magistrate judge approved a search warrant for defendant's home based upon the above. Execution of the warrant four months after the site was shut down resulted in the seizure of defendant's computer. In the computer was found over 100 images of child pornography and erotica. With federal charges involving the possession of child pornography filed on him, defendant's motion to suppress the contents of his computer was denied. He subsequently pled guilty and appealed.

Held: An "en banc" panel of the Ninth Circuit Court of Appeal, in a split, 9-to-2 decision (reversing its earlier decision to the contrary; see 382 F.3rd 1003), affirmed defendant's conviction. The task for an appellate court is to determine whether the magistrate who approved the warrant "had a substantial basis for concluding there was a fair probability that evidence would be found" at the place described in the warrant. The Court is not to take a "grudging or hypertechnical" approach. "Probable cause means 'fair probability,' not certainty or even a preponderance of the evidence." (Citing *Illinois v. Gates* (1983) 462 U.S. 213.) In this case, there was no issue that the "*Lolitagurls.com*" website contained child pornography. And where the owner of the website admits that his materials constitute child pornography, as was indicated in the affidavit in this case, it is not necessary that the affiant otherwise describe the website's contents. It was also not an issue that defendant purposefully obtained access to the website, being a paying member for over two months until the website was shut down by the FBI. Given the tendency of a computer to retain downloaded files for extended periods of time even if the owner of a computer attempts to delete the files, it was reasonable to assume that any

downloaded pornographic images would still be on defendant's computer when this warrant was executed, even though some four months after the site was shut down. The only issue was whether defendant had actually received and downloaded child pornography onto his computer. The Court here found that the conclusion that he had done so "easily meets the 'fair probability' test." In viewing the "totality of the circumstances," the Court ruled that "someone who paid for access for two months to a website that actually purveyed child pornography probably had viewed or downloaded such images onto his computer." Based upon this analysis, there was sufficient probable cause to justify the issuance of the warrant.

Note: Sorry about the length of this brief, but the point is (as illustrated by all the detail) that when you're trying to establish an element of your probable cause circumstantially, you may need everything, including the kitchen sink, in the affidavit to make it fly. But it can fly, if you do it right. One of the two dissenting opinions objected to the conclusion that just because a person subscribes to a pornographic website, at least when that website contains a mixture of legal (adult) and illegal (child) material, that that fact alone is sufficient to constitute probable cause. The majority ruled, however, that this argument loses sight of how little it really takes to constitute a "*fair probability*." The other dissent focuses on the fact that having the website owner's computer, the FBI could have determined through that computer whether or not defendant had in fact downloaded any child pornography. I don't know enough about computers to say whether that is, or is not, a true statement. But either way, the majority didn't put a lot of stock in that argument, relegating their response to a mere footnote: "(T)he benchmark is not what the FBI 'could have' done. An affidavit may support probable cause even if the government fails to obtain potentially dispositive information. [Citations.]" (fn. 5.)

***Airport Searches; Secondary Screening*:**

United States v. Aukai **(9th Cir. Mar. 17, 2006) 440 F.3rd 1168**

Rule: Secondary Screening of a prospective airline passenger who does not have any identification is lawful, so long as selected objectively. The passenger looses his right to revoke his implied consent to being searched upon passing through the initial screening.

Facts: Defendant went to the Honolulu International Airport intending to board a flight for another one of the islands. Checking in at the ticket counter, defendant told the ticket agent that he did not have any identification. He was given a boarding pass, but only after the ticket agent wrote on the pass, "*No I.D.*." Proceeding to the security checkpoint, he passed the posted signs announcing that prospective passengers and their carryon baggage were subject to search. Putting his shoes and a few other personal items in a plastic bin, defendant voluntarily walked through the metal detector, or "magnetometer." Neither he nor his personal belongings triggered any alarms nor raised any suspicions. However, when it was noted that "*No I.D.*" was written on his boarding pass, he was directed by a Transportation Security Administration ("TSA") officer to a roped-off secondary screening area. Per TSA procedures, passengers without identification were automatically subjected to a secondary screening with a metal-detecting wand even

though no alarms had been triggered by going through the magnetometer. Although defendant initially complied, he complained that he was about to miss his flight (which was indeed scheduled to depart in 5 minutes). Without waiting to be searched, defendant left the secondary screening area and proceeded to collect his personal belonging from the plastic bin. He was stopped and directed back to the roped-off area again. While still complaining about being late for his flight, a TSA agent "wanded" him, sounding an alarm at his right front pants pocket. This happened several times despite defendant's denials that he had anything in his pocket. A bulge in this pocket could be seen. At this point, defendant announced that he wanted to leave the airport. Ignoring this request, the TSA officer felt the bulge in defendant's pocket and detected an unknown object. After several requests, defendant eventually retrieved from his pocket a glass methamphetamine pipe wrapped in tissue paper. Searched incident to arrest, several bags of methamphetamine were recovered from his person. Defendant pled guilty in federal court after his motion to suppress was denied, and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. Defendant did not contest his "implied consent" to the initial search (i.e., based upon walking past the signs saying that everyone beyond that point would be subject to search). He also did not contest the legality of a secondary screening. Defendant's argument on appeal was that he had revoked his implied consent before discovery of the meth pipe when he told the TSA officers that he wished to leave the airport. The issue on appeal, therefore, was whether defendant's attempt to revoke his implied consent precluded the TSA from continuing with their search. The courts have held that airport searches are reasonable when; (1) they are no more extensive or intensive than necessary, in light of current technology, to detect weapons or explosives; (2) they are confined in good faith to that purpose; *and* (3) passengers are given the opportunity to avoid the search by electing not to fly. In reviewing the case law on this topic, the Court noted that older cases tended to hint that a person could effectively revoke his implied consent to being searched at an airport at any time prior to actually boarding the plane, even after having submitted to an initial search. Later cases held that the right to revoke an implied consent to search was lost if the results of the initial search were "*inconclusive*." The initial search is deemed "*inconclusive*," however, any time "*it doesn't affirmatively reveal anything suspicious*," or when it *fails to* "*rule out every possibility of dangerous contents*." This standard applies to both the use of x-ray scans (for luggage) and magnetometers (for people). Defendant in this case walked through the magnetometer without setting off any alarms. Even so, this result is inconclusive in that small amounts of metal may have either been missed, or were below the threshold at which the magnetometer alarms. Balancing the objective criteria used for targeting defendant for the secondary screening (i.e., anyone without valid identification), the minimal intrusion of using a wand on the defendant, and the important governmental interest in preventing bombs and weapons onto airlines, the search of defendant's person was lawful. And once defendant had passed through the initial screening, he lost any right to revoke his implied consent to being searched.

Note: Given the importance of protecting commercial airlines from terrorists and other hijackers, this case is extremely timely. The key to the legality of this search is the objectiveness involved; i.e., anyone who attempts to board a commercial airliner without

a valid form of government issued, picture identification, and voluntarily passes through the initial screening, even when this first "search" fails to show anything suspicious, will be subjected to a secondary screening. The Court also cites *Torbet v. United Airlines, Inc.* (9th Cir. 2002) 298 F.3rd 1087, for authority applying the same standard to a person's carryon luggage, and based upon the objective standard of "randomness" (instead of persons without ID). Good case. Good work, TSA.

***Search Warrants*: *The Anticipatory Search Warrant*:**

United States v. Grubbs **(Mar. 21, 2006) 547 U.S. ___ [126 S.Ct. 1494]**

Rule: (1) Anticipatory search warrants are constitutional. (2) Failing to describe the triggering event in an anticipatory search warrant on the face of the warrant, or in a document incorporated into the warrant, is not a constitutional violation. (3) Failing to provide the property owner with a copy of a warrant prior to searching is not a constitutional violation.

Facts: Defendant ordered and paid for a videotape over the Internet; the tape being advertised as depicting child pornography. The order, however, was intercepted by U.S. Postal Inspectors. Based upon the order, Postal Inspectors sought and obtained an "*anticipatory search warrant*" from a federal magistrate specifying, in the warrant affidavit, that the warrant was not valid until the videotape was delivered to defendant's house. However, there was nothing about the "*triggering event*" (i.e., delivery of the videotape) on the face of the warrant, and the warrant affidavit (in which the triggering event was described) was not specifically incorporated into the warrant. The 25-page affidavit had two attachments of its own; "A" being a description of the premises to be searched (i.e., defendant's home), and "B," the property to be seized (i.e., the videotape and other related items). Both of these attachments were incorporated into the warrant even thought the affidavit was not. The videotape was delivered to the house by an agent posing as a mail carrier. Ten officers and inspectors then descended upon defendant's home and searched it pursuant to the warrant. A copy of the search warrant and the attachments "A" and "B" were given to defendant. However, he was never given, or even shown, a copy of the affidavit where the triggering event was described. The videotape along with some other child pornography was seized. Defendant also made some admissions. He was arrested. After denial of his motion to suppress the evidence, defendant pled guilty and appealed. The Ninth Circuit Court of Appeal reversed, finding that failure to provide a suspect with notice of the "triggering event" in an anticipatory search warrant was a Fourth Amendment violation. (See *Legal Update*, Vol. 9, No. 15, Oct. 7, 2004, 377 F.3rd 1072 [as amended at 389 F.3rd 1306].) The Government petitioned to the U.S. Supreme Court.

Held: The United States Supreme Court reversed the Ninth Circuit, reinstating defendant's conviction. The Court first ruled that anticipatory search warrants are lawful. The Fourth Amendment does not require that there be probable cause to believe seizeable evidence is present at a particular location at the time a warrant is *issued*, but rather at the time the warrant is *executed*. To be constitutional under the Fourth Amendment's

requirement that there be "*probable cause*," it is only necessary to prove the existence of *two* prerequisites of probability: (1) That there is probable cause (i.e., a "*fair probability*") that contraband or evidence of a crime will be found in a particular place; *and* (2) that there is probable cause to believe the triggering condition (e.g., the delivery of the contraband or evidence to the place to be searched) will in fact occur. In this case, it was known that the child pornography was to be delivered to defendant's house. The possibility that defendant might refuse such delivery did not detract from the probability that he would not, having ordered it himself. An anticipatory search warrant in these circumstances is lawful. Where the Ninth Circuit was mistaken was in their belief that the Fourth Amendment's "*particularity requirement*" includes the description of the triggering event in an anticipatory search warrant. *It does not*. Under the terms of the Fourth Amendment, only two matters must be "*particularly described*" in the warrant: (1) The place to be searched and (2) the persons or things to be seized. It is not a constitutional requirement that the triggering event be described in the warrant itself (either on its face or as included in an affidavit and incorporated into the warrant). Secondly, the Ninth Circuit's argument that the description of the triggering event must be provided to the person whose property is being searched assumes that the executing officer must present the property-owner with a copy of the warrant before conducting his search. *He does not*. "The Constitution protects property owners not by giving them license to engage the police in a debate over the basis for the warrant, but by interposing, *ex ante* (i.e., before) the 'deliberate, impartial judgment of a judicial officer . . . between the citizen and the police,' and by providing, *ex post* (after) a right to suppress evidence improperly obtained and a cause of action for damages." The person whose property is being searched, therefore, is not entitled to any pre-search notice of the triggering conditions in an anticipatory search warrant.

Note: The concurring opinion joined in by three Justices points out that despite the ruling in this case, failing to specify the details of the triggering event in the warrant itself can still result in an illegal search. This is because it leaves the searching officers without any direction as to when the warrant is valid and should be executed. Also, not listing the triggering event in the warrant fails to address the property-owner's interest in an accurate statement of the government's authority to search. Noting that it has not yet been decided whether a home owner has a right to see the search warrant should he make a demand to see it, should it someday be ruled that he does have such a right, failing to describe the condition precedent to a lawful search in the warrant itself may have constitutional significance. So, that having been said, it is my recommendation that we continue doing what (at least I hope) you have been doing all along; Typing in a description of the triggering event in an anticipatory search warrant somewhere on the face of the warrant itself. Also of momentous importance is the Court's shooting down of the long-held Ninth Circuit's opinion that failure to provide a copy of the warrant to the property owner *before* beginning the search is a constitutional violation. That's never been the California rule. But those of you who execute federal warrants have been haunted by this problem for some time. Federal rules (Fed. Rules of Crim. Proc., Rule 41(d)) still require that a copy of the warrant be provided to the occupant at some point, and it's just a good practice to do that anyway. But nothing says that this has to occur *before* initiation of the search.