

FIRE INVESTIGATION 2A

Criminal and Legal Procedures Instructor Guide

accredited by



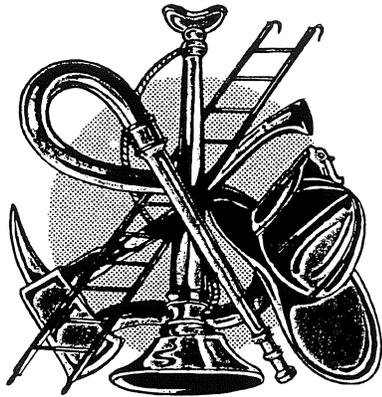
for the

**CALIFORNIA FIRE SERVICE
TRAINING AND EDUCATION SYSTEM**

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FIRE INVESTIGATION 2A

Criminal and Legal Procedures Instructor Guide



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CFSTES

The California Fire Service Training and Education System (CFSTES) was established to provide a single statewide focus for Fire Service Training in California. CFSTES is a composite of all the elements that contribute to the development, delivery and administration of training for the California Fire Service. The authority for the central coordination of this effort is vested in the Training Division of the State Fire Marshal's Office with oversight provided by the State Board of Fire Services.

The role of CFSTES is one of facilitating, coordinating and assisting in the development and implementation of standards and certification for the California Fire Service. CFSTES manages the California Fire Academy System by providing the following services: standardized curriculum and tests; accrediting courses leading to certification; approving standardized training programs for local and regional delivery; administering the certification system; publishing Career Development Guides, Instructor Guides, Student Manuals, and other related support materials.

This system is as successful and effective as the people involved in it. It is a fire service system developed by the fire service, for the fire service. . . and we believe it is the best one in the country!

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California State Fire Marshal

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INTRODUCTION

This publication is intended to serve as an Instructor's Guide. The Guide has been designed to include lesson plans, assignment sheets, and information sheets. Suggested application methods have been identified throughout each lesson for the instructor's use at appropriate times during their presentation.

The success of the students in this course depends greatly on the instructor's conformance to the student behavioral objective prescribed at the start of each lesson. The remaining portions of the lesson plan have been designed to serve only as a guide; and as such, should not preclude instructors from adapting their lesson plans to best meet the needs of the students.

Group activities and direct application of the skills addressed in this curriculum are essential to the success of this course. The various forms, guidelines, and procedures are examples only, and are included as a resource for use where appropriate.

Each page within the Instructor's Guide is identified in the upper left corner with either of two headings (Instructor Guide or Instructor Info) that denote the function of the material contained on the page.

INSTRUCTOR GUIDE

Material on these pages is intended to serve as an outline of instruction in lesson plan form. For each topic identified in the course outline, a lesson plan has been developed that contains; a level of instruction, time frames, student behavioral objective, references, materials needed, and lesson content.

- o LEVEL OF INSTRUCTION. Identifies the instructional level which the material was designed to fulfill. Obviously, the instructor has the latitude to increase the level, based on time available, local conditions and the student's apperceptive base.
- o TIME ALLOTMENT. The minimum, estimated duration required for "in class" presentation, based on a 36-40 hour, five day course.
- o BEHAVIORAL OBJECTIVES. The behavioral objectives are a statement of the student performance desired at the end of instruction. The instructor must make sure that enough information is given in the presentation to enable the student to perform according to the goal.
- o REFERENCES. These are the specific references that the instructor must study to teach the lesson - books, manuals, bulletins, scripts, visual aid utilization plans, and the like - including page numbers.

- o MATERIALS NEEDED. This should be a complete list of every thing the instructor will need to present the lesson, including handout materials, visual aids, quizzes, examinations, answer sheets, and so on. If the lesson requires the instructor to make any visual preparation, this should be stated.
- o LESSON CONTENT. Includes information utilized in the 4 step method of instruction. Two different terms are used to identify material that appears in the application column of the lesson plan.
 - Discuss or Review. Identifies potential questions or discussion items that the instructor may choose to utilize during the presentation of the lesson to gain feedback and monitor student progress. Although material is included here, instructors are encouraged to develop their own material.
 - Instructor Note. Alerts the instructor of a possible method of conducting instruction, points out items to be covered within discussion, identifies student exercises, and references pages in the student manual.

INSTRUCTOR INFO

Material on these pages is also found in the Student Manual. They contain information related to specific topics within the curriculum in the form of Information Sheets, Assignment Sheets, charts, and forms.

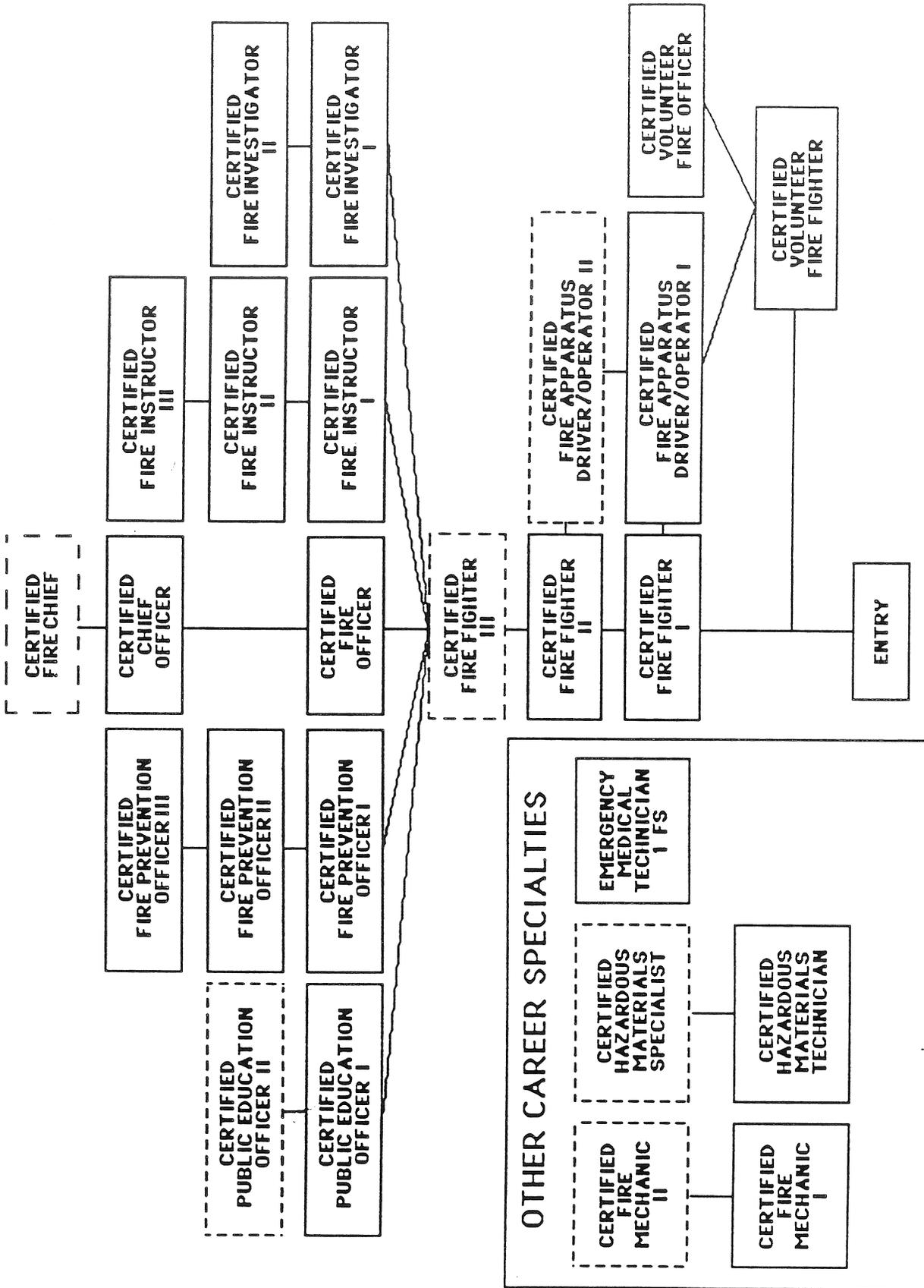
CONSIDERATIONS FOR LESSON DELIVERY

With the exception simulation equipment and materials, the information within the course is designed for presentation without the use of commercially or locally developed films, video tapes, and slides. This does not mean that the instructor is prohibited from employing audio visual aids during the course. The instructor is encouraged to utilize any A/V which will assist in the presentation of material and attainment of performance goals.

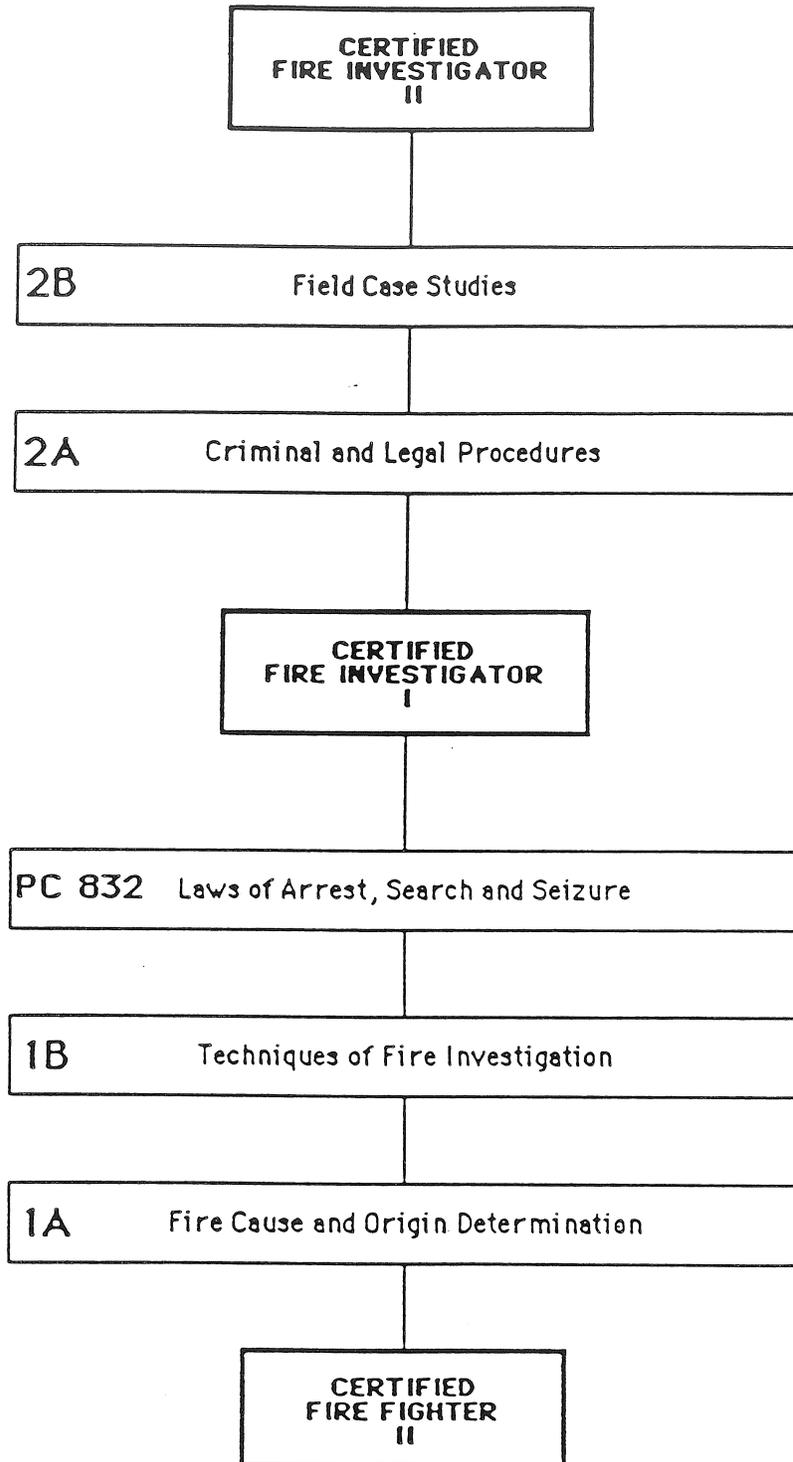
The students should be required to review the material previously covered and scan the material in upcoming class sessions. This will facilitate topic development and provide the instructor with a more receptive student base for class discussions.

Learning can be enhanced if the instructor divides the class into groups totalling 4-7 members. Student exercises can then be completed as group projects within the classroom. Placement into groups should occur within the first few hours of instruction.

The curriculum affords numerous opportunities for student exercises within their groups. Additional development of student exercises is encouraged by the instructor based upon time available and applicability to performance goals.



INVESTIGATOR



ADMINISTRATIVE NECESSITIES
AND INTRODUCTION

Each regional course should begin by taking care of the administrative necessities and discussing some of the parameters of the course. The instructor is provided a checklist, below, of the usual items that should be discussed at the beginning of each course.

- _____ Registration (College, Department)
- _____ Instructor Introduction
- _____ Student Introductions
- _____ Explanation of the Certification System
- _____ Explanation of the Fire Prevention Officer Series
- _____ Course Hours
- _____ Minimum Passing Score
- _____ Make-up Quizzes/Exams
- _____ Exam Retake
- _____ Homework
- _____ Breaks
- _____ Smoking
- _____ Tardiness
- _____ Absences

INVESTIGATION 2A



CALIFORNIA STATE FIRE MARSHAL

FIRE INVESTIGATION 2A

LESSON PLAN 1

TOPIC: Explosives

LEVEL: II

TIME: 4 hours

BEHAVIORAL OBJECTIVE:

Given: Without the aid of reference material and a written exam

Performance: The student will describe the types and classification of explosives, the effects of various explosives, how explosives are detonated, and the hazards associated with explosives

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Fire Investigation 1A, Student Manual, CFSTES, 1985 Victor U. Palumbo, "Fire Arson Investigation Training Program," Instructor's Manual, Introduction to Explosives, National Bomb Data Center, Federal Bureau of Investigation, December 1983

MATERIALS NEEDED: Chalkboard, A/V equipment and materials

PREPARATION: The investigator must have a basic knowledge of explosives as they may be required to participate in the investigation of an incident involving an explosive device. Knowledge of the basic types of explosives and the materials comprising them is of much value when sorting through the post explosion scene

PRESENTATION	APPLICATION
<p>I. Introduction</p> <p>A. Without very detailed training, the fire investigator is not qualified to dismantle or handle explosive material. However, the investigator must have a basic knowledge of the effects of various explosives</p> <p>II. Explosions Defined</p> <p>A. The sudden and rapid escape of gases from a confined space, accompanied by high temperatures, violent shock and loud noise</p> <p>III. Types Of Explosions</p> <p>A. Mechanical explosion/overpressure</p> <ol style="list-style-type: none"> 1. Boiler explosion/pipe bomb <p>B. Chemical explosion</p> <ol style="list-style-type: none"> 1. Conversion of a solid or liquid explosive compound into gases <ol style="list-style-type: none"> a) Gases so produced have a much higher volume than the original substance b) Very rapid conversion to gas c) Extreme temperatures (usually several thousand degrees) 2. Except for nuclear devices, most manufactured explosives are chemical 3. Chemical explosives are normally encountered by public safety personnel <p>C. Nuclear explosion</p>	

PRESENTATION	APPLICATION
<p>IV. Nature of Explosions</p> <p>A. Deflagration (explosion)</p> <ol style="list-style-type: none"> 1. Rapid Combustion 2. Chemical changes due to combustion or burning <ol style="list-style-type: none"> a) Combustion producing heat, light, and release of gases b) The rate of combustion is an important factor since burning combustion is much slower than detonation c) Burning from one grain to next <p>B. Detonation</p> <ol style="list-style-type: none"> 1. Instantaneous in nature 2. Detonation velocity of explosive <ol style="list-style-type: none"> a) Measured in burning rate (feet per second or F.P.S)/detonating rate b) F.P.S. may reach speeds of up to 32,000 F.P.S. c) The term brisance is used to describe the speed of burning or shattering effect of an explosive <p>V. Effects Of An Explosion</p> <p>A. Three primary effects</p> <ol style="list-style-type: none"> 1. Blast pressure effect <ol style="list-style-type: none"> a) Expanding gases are produced in approximately 1/10,000th second 	<p>Example:</p> <p>Internal combustion (explosion inside engine) are actually rapid combustion explosions)</p>

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> b) Gases produce pressure of up to 700 tons per square inch in atmosphere near the point of detonation c) Pressure travels outward at up to 13,000 mph <ul style="list-style-type: none"> 1) Compresses surrounding air 2) Expands outward similar to a wave at beach in circular pattern d) Pressure decreases in relation to distance from point of detonation e) Pressure effect called also "blast pressure wave" f) Blast pressure wave has two phases: <ul style="list-style-type: none"> 1) Positive pressure phase <ul style="list-style-type: none"> o May be visible as a white expanding circle called the shock front. This front is composed of a layer of compressed air only a fraction of an inch thick o The shock front applies sudden blow to objects in its path o Positive pressure wave lasts only a fraction of a second and is followed by positive pressure in the form of a strong wind 2) Negative pressure phase 	<p>Have students explain</p>

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> o Partial vacuum is produced at or near the point of detonation and this vacuum causes displaced air to reverse and flow back toward the point of detonation o Slower than positive pressure phase <ul style="list-style-type: none"> - May cause debris to be drawn in toward point of detonation (may lead investigator to believe bomb placed on other side) - Although slower it lasts three times as long as the positive pressure phase <p>2. Fragmentation effect</p> <ul style="list-style-type: none"> a) Materials used in construction of an explosive device and other nearby objects will usually be fragmented b) Explosive force will cause fragments to travel outward at velocities of a bullet c) Up to 1/2 of the explosive force may be used to produce fragmentation and propulsion of fragments in pipe bombs d) Fragments usually appear stretched, torn, and thinned e) Low explosives may produce larger fragments 	

PRESENTATION	APPLICATION
<p>3. Incendiary thermal effect</p> <ul style="list-style-type: none"> a) Produces flash effect b) Varies greatly with different explosives c) Low explosives produce long incendiary effects with low temperatures d) High explosives produce short incendiary effects with high temperatures e) May produce fire if explosion occurs near highly combustible materials f) Structural fires following explosions: <ul style="list-style-type: none"> 1) Usually result from broken, damaged, or short circuited electrical lines or from broken fuel or gas lines 2) Rarely occurs from high order explosive - C-4, TNT 	
<p>VI. Explosive Trains</p> <p>A. Explosive train defined:</p> <p>A series of explosions specifically arranged to produce the most effective detonation or explosion of a particular explosive</p> <p>B. Number of steps in explosive train vary from two to four or more steps</p>	<p>Example:</p> <p>Two step...electric blasting cap in dynamite</p> <p>Three step...safety fuse, non-electric blasting cap and dynamite</p> <p>Four step...safety fuse, non-electric blasting cap, dynamite and blasting agent (Anfo.)</p>

PRESENTATION	APPLICATION
<p>VIII. Common Explosives</p> <p>A. Low explosives</p> <ol style="list-style-type: none"> 1. Smokeless powder <ol style="list-style-type: none"> a) Shotgun shell filler b) Rifle/pistol propellant 2. Black powder <ol style="list-style-type: none"> a) The finer the grains, the more rapid the deflagration b) Black powder guns c) Pyrotechnics 3. Flash powder <ol style="list-style-type: none"> a) Powdered metal added to powder to increase burning rate and flash b) Fireworks/pyrotechnics <p>B. High explosives</p> <ol style="list-style-type: none"> 1. Dynamite <ol style="list-style-type: none"> a) Most widely used. Civilian explosive b) Nitroglycerin/nitro-starch. Nitro-Carbo-Nitrate 2. Blasting agents <ol style="list-style-type: none"> a) ANFO - AMON b) Slurries c) Gels 3. Detonating cord 	<p>Example:</p> <p>Aluminum Powder, Magn. Powder, Mag/Alum Powder, 50/50 Mixture</p>

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> a) Used to connect explosive charges or as a primary charge. Has a burning rate of 18,000 to 32,000 feet per second 4. Binary explosives <ul style="list-style-type: none"> a) Two part explosives <ul style="list-style-type: none"> 1) Blasting agent with sensitizer. Kept separate until ready to use C. Military explosives <ul style="list-style-type: none"> 1. T.N.T. <ul style="list-style-type: none"> a) Used as the comparative to all other explosives as to explosive power 2. C-4 <ul style="list-style-type: none"> a) C-2/C-3 3. Deta sheet/Flex X <ul style="list-style-type: none"> a) Letter bombs D. Initiators <ul style="list-style-type: none"> 1. Blasting caps <ul style="list-style-type: none"> a) Contains small amount of sensitive primary explosives used to initiate high explosive b) Two types of blasting cap: <ul style="list-style-type: none"> 1) Electric blasting caps <ul style="list-style-type: none"> o Small metal tube containing an ignition charge, intermediate charge, and a base charge 	

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> o Colored "leg" wires attached o Sizes range from one inch to several inches in length o Detonates when electric current flows through nickel chromium bridge wire <p>2) Non-electric blasting caps</p> <ul style="list-style-type: none"> o Crimped onto black powder safety fuse o Designed to detonate from "spit" or flame of a black powder safety fuse <p>2. Safety fuse; time fuse</p> <ul style="list-style-type: none"> a) Core of black powder b) Used to initiate explosives non-electrically c) Usually manufactured to burn at 40 seconds per foot but may vary with age and moisture absorption d) Fuse slightly less than 1/4" diameter e) Color coded in orange, white, or black (solid, banded, or striped) f) Dark green (O.D.) plastic cover with yellow bands manufactured for military use 	<p>Have students explain</p>

SUMMARY

The investigator must have a basic knowledge of explosives as he or she may be required to participate in the investigation of an incident involving an explosive device. Knowledge of the basic types of explosives and the materials comprising them is of much value when sorting through post explosion scene.

EVALUATION

The student will be evaluated by completing the written exam.

ASSIGNMENT

Student Manual, pages _____

FIRE INVESTIGATION 2A
EXPLOSIVE GLOSSARY AND TERMS

Actuator (Explosive) - A self-contained power transmitting device to convert chemical energy into mechanical force. Removers (retractors), thrusters, dimble motors, etc., fall into this category.

Air Blast - The violent effect produced in the vicinity of an explosion that consists of a wave of increased atmospheric pressure followed by a wave of decreased atmospheric pressure.

ANFO - A highly explosive mixture of ammonium nitrate and fuel oil. A commercial and clandestine explosive.

Anti-disturbance - A device placed into an explosive unit designed to detonate the mechanism by any attempt to jar, tilt, or move the unit.

Anti-Personnel - An explosive device designed for use against personnel rather than destruction of property.

Anti-Withdrawal - A part of an explosive device designed to cause detonation when removal of parts is attempted.

Armed - The condition of a device ready to function with all necessary components ready to work.

Arming Delay - An electric, chemical or mechanical function or action which provides a timed delay allowing a perpetrator a safety margin when setting or leaving a bomb or incendiary device in place.

Ballistics - The science of the study of projectiles and firearms.

Interior Ballistics - Within the bore of the weapon. Exterior ballistics: In flight.

Black Powder - A low explosive consisting of a mixture of potassium nitrate or sodium nitrate, sulfur and charcoal in various proportions.

Blasting - The use of explosives to shatter or destroy.

Blasting Agent - Any material or mixture consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive, and in which none of the ingredients are classified as an explosive, i.e., ANFO.

Blast Effect - Shock wave emitted from point of detonation; creates vacuum and pressure damage.

Blasting Gelatin - A type of dynamite containing some nitrocellulose or nitrocotton, in addition to nitroglycerin.

Blasting Machine - A device used by blasters capable of generating enough electricity to detonate specific types and numbers of blasting caps. Also referred to as a "hell box".

Blast Seat - The actual point of detonation of an explosive device at the scene. Also called seat of the explosion, or blast hole.

Brisance - The shattering effect of an explosion.

Burning - Applied in a broad sense to propellants and pyrotechnic mixture, though the correct term would be "reacting" since no external air is required to "burn" the material. Also referred to as the decomposition of material by the application of heat and oxidation.

Burning Rate - The rate at which a propellant or a chemical burns, or the rate at which other combustibles burn in known times.

Clandestine - In secrecy, such as of sabotage and espionage, for an evil or illicit purpose.

Contrived Explosive - An explosive which is improvised rather than one which is commercially available.

Deflagration - The chemical decomposition by burning of a material in which the reaction is less than sonic velocity, i.e., low explosives.

Delay (train) - "Delays" may be mechanical, chemical, or electronic.

Demolition - The act of demolishing as in destruction by explosives.

Densitizer - Any compound or solvent used to reduce the sensitivity of an explosive or incendiary device.

Detonating Cord - Flexible tube containing a core of high explosives also called primer cord.

Detonator - An explosive train component capable of initiating high order detonation in a subsequent high explosive component.

Detonation - An extreme rapid decomposition of a material in which the reaction is more than sonic velocity, i.e., high explosives.

Disarming - The act or process where explosive or incendiary devices are made safe and unable to fire.

Fragmentation, Primary - Actual parts or pieces of the bomb.

Fragmentation, Secondary - Parts or pieces of material other than the pieces of the bomb or device which are thrown or projected by the blast.

High Order - A successful and complete detonation of an explosive with the entire consumption or detonation at its maximum rate of the explosive being detonated.

Hygroscopic - The ability to readily absorb and retain moisture.

Hypergolic - A fuel and oxidizer system which will spontaneously ignite upon contact. Also, two compounds that will ignite on contact with each other.

Igniter - A pyrotechnic device specifically designed to initiate burning of a fuel mixture or propellant.

Implosion - Opposite of explosion, an inward burst.

Incendiary - A burning compound or a metal used to produce intense heat or flame, i.e., thermite bomb or Molotov Cocktail.

Jell - Something gelatinized, but spelled "jellied". Gasoline jellied or thickened as in Napalm.

Low Explosive - Explosives that deflagrate (burn).

Munroe Effect - The jetting effect of a shaped charge.

Napalm - Combustible liquids that have a jelling agent added.

Oxidizer - The portion of a chemical mixture or compound which furnishes oxygen for burning a fuel or propellant.

Plastic Explosive - A pliable, putty-like explosive which can be molded into various shapes. In military explosives, these are called the Composition Explosives, i.e., C-3, C-4.

Primer - A primary initiating device to produce a hot flame.

Primer-Detonator - A combination of a primer and a detonator.

Propellant - An explosive substance or mixture of substances which when burned produces gases to provide energy.

Pyrotechnic - A mixture of chemicals designed to produce heat, light, smoke, gas, or noise.

Shock Wave - The leading edge of the expanding air mass.

Squibb - Used as a general term to mean any of various small size pyrotechnic or explosive cartridges.

Thermite - An incendiary filler consisting of three parts iron oxide and two parts aluminum powder, that produces a very high temperature.

Viscosity - Descriptive of the thickness of a liquid.

FIRE INVESTIGATION 2A

LESSON PLAN 2

TOPIC: Surveillance

LEVEL: I

TIME: 40 minutes

BEHAVIORAL OBJECTIVE:

Given: Without the aid of reference material and a written exam

Performance: The student will define surveillance, list the basic types of surveillance, state the objectives for performing surveillance, and name the benefits to be gained

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Fire Investigation 1B, Student Manual, CFSTES

MATERIALS NEEDED: Chalkboard, A/V equipment and materials

PREPARATION: Surveillance can be a valuable tool for the arson investigator. If used properly, surveillance can provide information that is not available through any other means.

PRESENTATION	APPLICATION
<p>I. Definition</p> <p>A. Surveillance is the secretive and continuous watching of persons, vehicles, places or objects to obtain information concerning the activities and identifies of individuals</p> <p>II. Types</p> <p>A. Moving surveillance - The investigator follows the subject on foot or in a vehicle</p> <p>B. Stationary surveillance - The continuous watching of a place, object or person from a fixed point</p> <p>III. Objectives</p> <p>A. To obtain evidence of a crime</p> <p>B. To locate persons by watching their haunts and associates</p> <p>C. To obtain detailed information about a subject's activities</p> <p>D. To check on the reliability of informants</p> <p>E. To locate hidden property of contraband</p> <p>F. To obtain probable cause for obtaining search warrants</p> <p>G. To prevent the commission of an act or to apprehend a subject in the commission of an illegal act</p> <p>H. To obtain information for later use in interrogation</p> <p>I. To develop leads and information received from other sources</p>	<p>NOTE: It should be remembered that the admissibility of evidence gathered through the use of surveillance will be governed by the laws and rules of search and seizure. Cannot commit a trespass.</p> <p>Have students recite objectives prior to disseminating information</p>

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> J. To know at all times the whereabouts of an individual K. To obtain admissible evidence for use in court <p>IV. Reasons For Surveillance</p> <ul style="list-style-type: none"> A. Type, scope and extent of crimes known or suspected to be involved in the case B. Type of neighborhood <ul style="list-style-type: none"> 1. Type of inhabitants 2. Dress of inhabitants 3. Language and dialects C. Specific locations and places known or suspected to be involved in case <ul style="list-style-type: none"> 1. Meeting places and hangouts 2. Cache 3. Hideouts 4. Addresses frequented by subjects D. Vehicles involved in case <ul style="list-style-type: none"> 1. Descriptions and license numbers of vehicles 2. Subject's driving habits 3. Garage and repair facilities frequented 	

SUMMARY

Surveillance is often a great help to investigators. When appropriately used, surveillance can provide information not available through any other sources.

EVALUATION

The student will be evaluated by completing the written exam.

ASSIGNMENT

Student Manual, pages _____

FIRE INVESTIGATION 2A

LESSON PLAN 3

TOPIC: Surveillance Methods

LEVEL: II

TIME: 80 minutes

BEHAVIORAL OBJECTIVE:

Given: Without the aid of reference material and a written exam.

Performance: The student will describe the methods used for various types of surveillance, to include:

- A. Reconnaissance
- B. Foot Surveillance
- C. Automobile Surveillance
- D. Fixed Surveillance

Standard: With 70% accuracy achieved on the written exam.

REFERENCES: Fire Investigation 1B, Student Manual, CFSTES.

MATERIALS NEEDED: Chalkboard, A/V equipment and materials.

PREPARATION: Surveillance operations demand special skills and strategies. Methods used to gather information include reconnaissance, foot, automobile, and fixed surveillance.

PRESENTATION	APPLICATION
<p>I. General Surveillance Methods</p> <p>A. Orient all personnel with the entire background of the investigation and proposed surveillance</p> <ol style="list-style-type: none"> 1. Set hours of surveillance 2. Weekly meeting <p>B. Discreetly arrange for rooms or locations needed for observation or as listening posts</p> <p>C. If several officers are to engage in a surveillance, a system of tactics should be agreed upon to determine the duty of each officer</p> <p>D. If the surveillance is likely to be lengthy, arrangements should be made for suitable reliefs</p> <p>E. Prepare explanations for being at a particular place at a particular time, if accosted by the subject</p> <p>II. Reconnaissance (Should be used to supplement file information)</p> <p>A. Make a physical survey to determine:</p> <ol style="list-style-type: none"> 1. Geography 2. Background information on neighborhood and inhabitants not available in files 	<p>When more than one officer is engaged in a surveillance, one of the participants should be designated an "officer in charge"</p> <p>Signals suitable for communicating information between the surveillance officers should be devised and thoroughly understood by all participants</p> <p>A secure system of communicating with headquarters or superiors should be prearranged and a central coordination point should be established to enable officers to keep in touch with each other</p>

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> 3. Suitable vantage points 4. Traffic conditions 5. Become familiar with names and locations for streets in area, including locations of deadend streets, etc. <p>III. Funds</p> <ul style="list-style-type: none"> A. Always carry sufficient money to defray contemplated living, transportation, etc., expenses B. Maintain a standard of living in keeping with the area concerned C. Carry a reserve of funds for emergencies <p>IV. Surveillance Officers</p> <ul style="list-style-type: none"> A. Desirable qualities for surveillance officers <ul style="list-style-type: none"> 1. Ordinary appearance - Any outstanding physical characteristics may attract the subject's attention 2. Ability to act natural under all circumstances 3. Alertness 4. Resourcefulness 5. Good powers of observation and memory 6. Patience and endurance B. Appearance of surveillance officers <ul style="list-style-type: none"> 1. Must maintain dress and demeanor of local people. Appear natural at all times 	

PRESENTATION	APPLICATION
<ol style="list-style-type: none"> 2. Avoid a sleuthing manner grotesque disguises, jumping behind trees, quick movements in traffic while in sight of subject or peeking around corners. Don't get caught staring at the subject and avoid meeting his eyes 3. A slight change in surveillant's appearance from time to time may prevent recognition by the subject <ol style="list-style-type: none"> a) Changing headdress b) Glasses c) Jackets 4. Avoid conspicuous jewelry or other distinctive article 5. Beware a bulging of concealed weapons 	
<p>V. Surveillance Methods</p> <p>A. One-man foot surveillance</p> <ol style="list-style-type: none"> 1. Surveillance is extremely difficult for one man and should be avoided if possible 2. The subject must be kept in view at all times 3. One-man surveillance will usually be very close and somewhat dependent on pedestrian traffic and physical characteristics of the area 4. When walking on the opposite side of a street, the officer should keep almost abreast of the subject 	<p>It is necessary at all times to be close enough to immediately observe the subject if he enters building, turns corners, or makes sudden moves</p>

PRESENTATION	APPLICATION
<p>B. Two-man surveillance</p> <ol style="list-style-type: none"> 1. The use of two officers affords greater security against detection and reduces the risk of losing the subject 2. On streets crowded with pedestrian and vehicular traffic, both surveillants should normally remain on the same side of the street as the subject <ol style="list-style-type: none"> a) The first officer trailing the subject fairly closely b) The second officer trailing the first agent some distance behind 3. On less crowded streets, one officer should normally walk on the opposite side of the street nearly abreast of the subject 4. In order to avoid detection, the two officers should make periodic changes in their position relative to the subject <p>C. Three-man surveillance (ABC) method</p> <ol style="list-style-type: none"> 1. The use of three officers reduces the risk of losing the subject and under ordinary conditions affords greater security against detection 2. The three-man method permits a greater variation in the position of the officers and also permits an officer who suspects he has been spotted by the subject to drop out 3. Use of the ABC method under normal traffic conditions: <ol style="list-style-type: none"> a) The "A" officer keeps a reasonable distance behind the subject 	<p>NOTE: Diagram the ABC method on blackboard</p>

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> b) The "B" officer follows "A" and concentrates on keeping "A" in view c) The "C" officer walks on the opposite side of the street slightly behind the subject d) The "B" officer is also responsible for detecting any confederate of the subject being utilized to detect surveillance <p>D. Combined foot-auto surveillance</p> <ul style="list-style-type: none"> 1. This method involves surveillance on foot by one, two, or three officers and additional surveillance at the time by one or two officers in an automobile 	<p>Transportation will always be available. Several officers can be carried in the car, however, care must be exercised because a slow moving car may be conspicuous</p>
<p>VI. Foot Surveillance Problems</p> <p>A. Subject enters building</p> <ul style="list-style-type: none"> 1. Ordinarily at least one officer should follow the subject unless the building is of such type that entry would expose the officer (private home, small shop, etc.) 2. In the case of large public building with many exits, all officers should follow the subject into the building 3. In some buildings where the subject might be lost easily, it may be advisable for one officer to remain in the lobby or at a door to sport the subject as he leaves the building <p>B. Subject enters an elevator</p> <ul style="list-style-type: none"> 1. If the subject is the one passenger and has reason to suspect surveillance, it may be best not to accompany him into 	

PRESENTATION	APPLICATION
<p>the elevator, but rather watch the indicator for the floor stop and then proceed to that floor and attempt to pick up his trail</p> <ol style="list-style-type: none"> 2. In other cases, one or two officers may accompany the subject, wait for him to announce his floor and then ask for a higher or lower floor and use the stairs to get to the subjects floor and attempt to pick up his trail 3. At all times, one officer should be left in the lobby since the subject may be using the elevator in an attempt to elude surveillance <p>C. Subject enters a restaurant</p> <ol style="list-style-type: none"> 1. At least one officer should enter behind the subject, order approximately the same amount of food and be alert to note any contacts made by the subject 2. If possible, the officer should pay his check before the subject does so that he can be ready to leave with him 3. In some cases, it may be desirable for the officer to leave shortly before the subject and wait for him outside <p>D. Subject takes a taxicab</p> <ol style="list-style-type: none"> 1. If trailing by another taxi or by surveillance automobile is impossible or impractical, the officer should make note of the time, the place, the name of the cab company and the license number or cab number 2. The subject's destination can be determined later by checking with the driver of the company office 	<p>NOTE: The instructor should quickly review C, D, E, F, G, (the student can read each of these sections on his own</p>

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- E. Subject enters a telephone booth
 - 1. One officer should endeavor to overhear the conversation by pretending to make a call from an adjacent booth or by pretending to look up a number in the directory
- F. Subject takes a train, boat, plane or long distance bus
 - 1. Whether an officer will follow his subject on any trip usually depends upon the indicated length of the trip and the instructions he has received from his superior
 - 2. The subject's destination may be learned by listening while he is buying his ticket, by questioning the ticket agent or by contacting the conductor of the train
- G. Subject enters a theater, race track or amusement park
 - 1. All officers should normally follow the subject
 - 2. The regular admission charges should be paid and credentials should be used only as a last resort
 - 3. Officers must follow subject closely in order not to lose him on the road
 - 4. In darkened theaters, the subject must be watched closely and, if possible, one officer should sit directly behind the subject to avoid losing him. The exits should also be covered to avoid losing him

PRESENTATION	APPLICATION
<p>H. Subject meets contact</p> <ol style="list-style-type: none"> 1. A complete detailed description of the contact should be noted, together with time and place of meeting 2. If possible, the contact should be photographed 3. If practical, attempts should be made to overhear the conversation 4. The subject's attitude toward the contact should be noted <p>I. Subject registers at a motel</p> <ol style="list-style-type: none"> 1. The subject's room number may be obtained from the manager, house detective or room clerk 2. If the hotel management is cooperative, it may be possible to procure a room near the subject's which can be used as a base for technical surveillance 3. All outgoing telephone calls made by the subject will normally be recorded by the hotel's switchboard operator, and such records should be examined for leads 4. Trash should not be overlooked <p>J. Officers lose subject</p> <ol style="list-style-type: none"> 1. The officer in charge should be immediately notified <ol style="list-style-type: none"> a) Known hangouts or addresses frequented by the subject should be placed under observation immediately in an effort to find him 	<p>Ask students what they would consider to be their next plan of action after losing subject</p>

INSTRUCTOR GUIDE

SURVEILLANCE METHODS

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- b) It is generally advisable to station an officer in the area where the subject was last seen, as he may reappear there after a short time
- c) Phone calls may be made to home or places frequented by the subject under a pretext and will often yield information of the subject's whereabouts

K. Subject discovers officer

- 1. If an officer is recognized by the subject as a surveillance agent, he should normally drop out and be replaced by another officer

L. Traps

- 1. A subject may attempt to lure an officer into a trap. A thorough knowledge of the locality, coupled with good judgment and the alertness to realize when trailing becomes suspiciously easy, is a good defense against traps

VII. Detection Of Foot Surveillance

A. A subject who is suspicious of being under surveillance may resort to trickery in order to verify his suspicions. When a subject resorts to such trickery, it is good policy to change officers, for the subject may have spotted one or more of his followers

B. Common methods to test for trailing:

- 1. Stopping abruptly and looking at people in the rear

Instructor should ask students to recite common methods used by suspects to test for trailing

PRESENTATION	APPLICATION
<ol style="list-style-type: none"> 2. Casually looking around 3. Reversing course and retracing steps 4. Boarding buses and street cars and alighting just before they start 5. Riding short distances on buses and street cars 6. Circling the block in a taxi 7. Entering a building and leaving immediately via another exit 8. Stopping abruptly after turning a corner 9. Using convoys 10. Watching reflections in shop windows 11. Walking slowly and rapidly at alternate intervals 12. Dropping a piece of paper to see if anyone retrieves it 13. Stopping to tie shoestrings, meanwhile looking around for surveillance 14. Arranging with a friend in shop, tavern,, or other places to watch for surveillants 15. Observing from a window or roof across the street with spy-glasses to see if equipment or likely persons are visible in rooms adjacent to subject's room 16. In hotel lobbies and similar places watching for persons peeking over or around newspapers and watching in all mirrors to see who is unusually observant of persons coming and going through lobby 	

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17. Starting to leave a hotel lobby or similar place then suddenly turning around to see if anyone has suddenly jumped up without any apparent reason or objective
18. In hotel room where doors do not go all the way to the floor, looking for suspicious wires or equipment when passing rooms adjacent to his
19. The subject or an associate may attempt to be near enough to the hall doors adjacent to his room in order to get a quick look inside when someone happens to open the door
20. Subject may open and close his hotel room door to indicate that he has left the room, then wait inside the room with the door ajar. If anyone leaves, the subject then actually leaves his room in an ordinary manner and rides down the elevator with his neighbor while committing his appearance to memory
21. Subject may pretend to leave his hotel room, then remain quiet for a while to see if typewriting, talking or other noises begin to occur in an adjoining room and then suddenly disappear or change to whispers upon evidence that the subject is in room

VIII. Eluding Foot Surveillance

A. Common methods used by cunning subjects:

1. Jumping off a bus, streetcar or subway just as the doors are about to close
2. Leaving a building through the rear or side exit
3. Losing oneself in crowds

Instructor should ask class to recite common methods of eluding foot surveillance

PRESENTATION	APPLICATION
<ol style="list-style-type: none"> 4. Entering theaters and leaving immediately through an exit 5. Pointing out one's surveillance to a policeman, who will generally require the officer to explain his actions <ol style="list-style-type: none"> a) Using decoys b) Using traps c) Taking the last taxi at a stand d) Changing clothing 	
<p>IX. Methods of Automobile Surveillance</p> <p>A. One-car surveillance</p> <ol style="list-style-type: none"> 1. If only one car is available for surveillance, its position should be behind the subject's car, the distance varying with the amount of traffic in the area 2. In city traffic, not more than two vehicles should be permitted to come between the subject's car and the surveillance vehicle 3. The surveillance car should keep toward the right rear of the subject's car in order to minimize the chances of attracting the subject's attention 4. In rural areas, it is wise to give the subject a good lead and if intersections and road forks are few and far between, the lead can be extended to a point where the subject may even be lost from sight over hills or around curves. When practical, keep another car between officer's car and subject's car 	<p>Instructor should diagram one, two car surveillance on the blackboard</p>

PRESENTATION	APPLICATION
<ol style="list-style-type: none"> 5. At night, the surveillant's car should not ordinarily have its headlights on high beam, and all other unnecessary lights on the car should be extinguished <p>B. Two-car surveillance</p> <ol style="list-style-type: none"> 1. In city areas during daylight hours, both cars should ordinarily be behind the subject's car 2. Occasionally one car may operate on a known parallel route. Timing itself to arrive at intersections just before the subject in order to observe his route at the intersections 3. This method is recommended for use at night and in suburban areas <p>C. Considerations of moving surveillance</p> <ol style="list-style-type: none"> 1. Keep in constant radio communication with other surveillants. Officer with primary observation post should keep a steady stream of information on the air <ol style="list-style-type: none"> a) First car behind subject should not make any turns b) Second car has primary responsibility of maintaining observation c) Other cars may parallel or make turns behind subject d) Change first car often e) Surveillants change appearance after moving from primary position f) Do not pass subject 	

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> g) Drop out of surveillance temporarily if the subject makes direct visual contact 2. In lonely residential areas, a "bracketing" method should be used <ul style="list-style-type: none"> a) This consists of driving on intersecting streets without getting behind the subject D. Use of radio equipment in car surveillance <ul style="list-style-type: none"> 1. Two-way short wave radio communication between two surveillance cars affords an ideal means of conducting auto surveillance 2. It facilitates the use of parallel route by vehicles and the interchange of positions 3. Surveillance cars with radios should be equipped with antennas that appear to be standard commercial automobile radio antennas X. Detection Of Automobile Surveillance <ul style="list-style-type: none"> A. As in the case of foot surveillance, a subject who believes he is being followed may resort to trickery in order to verify his suspicions: <ul style="list-style-type: none"> 1. Alternate fast and slow driving 2. Committing flagrant traffic violations, such as making U-turns, driving against traffic on one-way streets and running through red lights 3. Frequent parking 	<p>Instructor should quickly review items 1 through 7</p>

PRESENTATION	APPLICATION
<ol style="list-style-type: none"> 4. Driving into deadend streets 5. Stopping suddenly around curves or corners 6. Pulling into driveways 7. Speeding up a hill, then coasting slowly down 	
<p>XI. Eluding Automobile Surveillance</p> <p>A. Common methods used by suspicious suspects:</p> <ol style="list-style-type: none"> 1. Committing traffic violations 2. Using double entrance to driveways, in one and out the other 3. Cutting through parking lots 4. Driving through congested areas 5. Using decoys and traps 6. Deserting the vehicle behind a blind curve or corner, but permitting the driver to drive on as a decoy 	<p>Instructor should quickly review common methods 1 through 6</p>
<p>XII. Fixed Surveillance</p> <p>A. During the observation from a "plant", surveillance agent must be extremely careful not to reveal their activity</p> <ol style="list-style-type: none"> 1. Observation through a window or other apertus should be conducted so as to be unnoticed from the outside 2. Venetian blinds afford the best coverage, but may appear to be out of place in some buildings 	

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> 3. An alternative is to lower the roller of draw shades another inch from the top of the window, thereby providing a small slit through which surveillants may observe without being noticed from the outside 4. Officers should not peer around curtains or shades B. Binoculars are generally essential equipment in the plant, as they facilitate positive identification of persons entering or leaving a place under observation C. A still or a video camera with a telephoto lens can also be used effectively D. A night viewing scope may be of use for important surveillance after dark E. Notes <ul style="list-style-type: none"> 1. Take careful notes of observations, including detailed descriptions of all individuals entering the target 2. A chronological log is usually the best method of recording pertinent occurrences 	<p>NOTE: Remember notes will be required to be kept as evidence</p>
<p>XIII. Surveillance Of Premises</p> <ul style="list-style-type: none"> A. A surveillance of a premise usually entails the use of a base of operation or "plant", such as a room, apartment, house or camouflaged outdoor fixture located near the base of operation B. A fixed "plant" should afford a maximum observation of all entrances and exits of the premises under the observations and should have an exit to permit officers to enter or leave without coming under observation from the observed premise 	<p>The "plant" should be so set up that other occupants of the same building are not aware of the use to which the "plant" is being put</p>

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- C. If a fixed "plant" cannot be set up, a camouflaged outdoor fixture, such as a vendor's stand may be set up, or officers with an appropriate "cover" may be sent into the area

SUMMARY

Surveillance methods demand special skills and strategies, methods include reconnaissance, foot surveillance, automobile surveillance, and fixed surveillance.

EVALUATION

The student will be evaluated by completing the written exam.

ASSIGNMENT

Student Manual, pages _____

FIRE INVESTIGATION 2A
LEGAL ASPECTS OF SURVEILLANCE

FORENSIC VIEWING

1. A search implies some exploratory investigation or an invasion and quest, a looking for or seeking out. A search implies a prying into hidden places of that which is concealed and that out of the way.
Bielicki vs. S. Ct., 57 Cal.2d 602.
2. The Fourth Amendment prohibits "unreasonable searches". There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances.
People vs. Berutko, 71 Cal.2d 84.
3. General exploratory searches have long been condemned. This means that the reasons the officers had for making that particular observations when they did is an important factor in determining reasonableness.
Bielicki vs. S.Ct., 57 Cal.2d 602.
4. The purpose of the Fourth Amendment is to protect people rather than places, and recent cases have stressed its function as protecting the personal right privacy against unlawful police action.
Katz vs. U.S., 389 U.S. 347.
5. Essential to the determination of reasonableness in cases wherein officers obtain probable cause for arrest through their own observations is a consideration of the degree of privacy which a defendant may reasonably expect in a given enclosure occupied by him, whether or not that enclosure be his residence.
Katz vs. U.S., 389 U.S. 347; Dillon vs. S.Ct., 7 Cal.3d 305.
6. An appropriate test is whether the person has exhibited a reasonable expectation of privacy, and, if so, whether that expectation has been violated by unreasonable governmental intrusion.
People vs. Krivda, 5 Cal.3d 357; Dillon vs S.Ct., 7 Cal.3d 305; People vs. Triggs, 8 Cal.3d 884.
7. A recent U.S. Supreme Court decision indicates that whether the observation of the evidence in question was planned or inadvertent may become an important factor suggesting that plain view may not justify a discovery which is anticipated.
Coolidge vs. N.H., 91 S.Ct. 2022. California, however, expressly rejected the Coolidge approach and refuses to follow it. People vs. McKinnon, 7 Cal.3d 899.

8. The existence of emergency circumstances which would make obtaining a search warrant impractical is important because the courts prefer that search warrants to be obtained whenever practical.

Chimel vs. Calif., 395 U.S. 752; People vs. Dumas, 9 Cal.3d 871.

9. The nature of the area viewed is an important factor. The Fourth Amendment specifically protects "persons, houses, papers and effects" so intrusions by police in these areas are more restricted than those in open fields. The private living quarters of a person is subject to greater protection than the open yard or his car. Like a man's home, a motel room is his castle.

Pate vs. Muni. Ct., 11 Cal.App.3d 721; People vs. Dumas, 9 Cal.3d 871.

10. Surveillance of a house to see who enters and leaves is something less than good manners would permit. But it is the duty of a policeman to investigate, and we cannot say that in striking a balance between the rights of the individual and the needs of law enforcement, the Fourth Amendment itself draws the blinds the occupant could have drawn but did not.

People vs. Berutko, 71 Cal.2d 84.

11. When a person by his own action or neglect allows visual access to his residence by providing an aperture adjacent to a common area, he may not complain that police officers who were lawfully present in that area have utilized that aperture to detect the commission of crime within.

People vs. Berutko, 71 Cal.2d 84.

12. If the aperture to the private enclosure is made by the officers or at their instigation, the observation made is usually unlawful.

People vs. Regaldo, 224 Cal.App.2d 586,

13. The vantage point of the officer is an important factor. The intrusion is more likely to be upheld if the officer is in a public place, a place of common use, or a place where he has a lawful right to be than if he is trespassing.

People vs. Berutko, 71 Cal.2d 84. If the observations are made for a place on the property to which the officer has not been invited, either by expressed or implied consent, and his entry is not otherwise authorized by law, the intrusion is illegal.

Lorenzana vs. S.Ct., 9 Cal.3d 626

14. The means used by officers to make the observations may well become an important factor. The restrictions placed on electronic listening devices may well foretell similar restrictions on sophisticated visual aids. One visual aid mentioned in the cases is the flashlight and its use has been approved.

People vs. Benedict, 2 Cal.App.3d 400.

15. The U.S. Supreme Court has stated that "the use of bifocals, field glasses or the telescope to magnify the object of a witness's vision is not a forbidden search or seizure, even if they focus without his knowledge or consent upon what one supposes to be private indiscretions. Lee vs. U.S., 343 U.S. 747. The California courts have implied, but not expressly, reached a similar result when the observations were made from a place where the officer had the right to be. Dean vs. S. Ct., 35 Cal.App.3d 112; People vs. S.Ct. (Stroud), 37 Cal.App.3d 836. The California Supreme Court recently ordered an opinion directly on point to be unpublished (Wilkerson).

16. When the observation point is an aircraft flying at legal and reasonable heights and objective facts dispel any reasonable expectation of privacy, the intrusion has been considered permissible.
Dean vs. S.Ct., 35 Cal.App.3d 112; People vs. Sneed, 32 Cal.App.3d 535.

17. Where the officer makes a lawful observation of a scene which is relevant evidence, a photograph which is a fair representation of that scene is admissible to explain the testimony of the witness.
Cooley vs State Bd., 141 Cal.App.2d 293.

18. The foundation necessary to admit a photograph is evidence that it is a fair representation of the subject as it appeared at a time when its appearance was relevant. It is not necessary that the photographer testify.
People vs. Cheary, 48 Cal.2d 201.

19. A court may exclude a photograph from evidence where its prejudicial effect outweighs its probative value.

20. In a "borderline" case, a majority of the California Supreme Court upheld a search where the officer from a place where he had the right to be saw what he suspected was a marijuana plant, walked across the yard to get a better look and verified that it was in fact marijuana.
People v. Bradley, 1 Cal.3d 80; see Lorenzana vs. S.Ct., 9 Cal.3d 626; People vs. Colum, 19 Cal.App.3d 14.

21. Officers may use subterfuge, such as a telephone the occupants of a house and warn them of a purportedly imminent police raid as means of getting the suspects to come out of the house.

FORENSIC LISTENING

22. Information obtained by an officer using his natural senses, when the officer has a right to be where he is, is admissible evidence.
United States vs. Perry, 399 F.Supp. 209; People vs. Colvin, 19 Cal.App.3d 14; People vs. Earle, 216 Cal.App.2d 607; People vs. Guerra, 21 Cal.App.3d 54 (placing ear against door).

23. In a federal case, it was found to be proper for officers to manipulate suspects to a place where they could be overheard.
U.S. vs. Perry, 399 F.Supp. 209.

24. As a general rule there is no right to privacy in a jail or custodial situation. However, if an officer uses deception, which deception leads a suspect to reasonably believe that his privacy was assured, then the right to privacy may bar the evidence.
North vs. Fonville, 35 Cal.App.3d 693.

25. The use of an electronic device requires careful evaluation of the right to privacy and of the applicable federal and state statutory provisions.
Cf; Alderman vs. U.S., 389 U.S. 347.

26. Bugging a public phone booth without a warrant violates the Fourth Amendment as an invasion of privacy, an unconstitutional search for conversations.
Katz vs. U.S., 389 U.S. 347

27. Bugging an informant with a Fargo to record conversations made to the undercover informant in confidence does not violate the Fourth Amendment.
U.S. vs White, 91 S.Ct. 1122; People vs. Murphy, 9 Cal3d 349.

28. The Federal Wiretap and Oral Communications law prohibits interception by electronic, mechanical or other device of telephone messages or oral communications without a court order authorizing the same based on a prescribed showing of probable cause. 18 U.S.C. 2511 (2) (d).

29. The Federal Wiretap and Oral Communications law does not apply to the interception of a telephone message or of an oral communication made with the prior consent of a party to the communication. 18 U.S.C. 2511 (2) (d).

30. The Federal Wiretap law authorizes wiretaps without consent of a party where authorized by court order pursuant to a state statute. California has no such statute. 18 U.S.C. 2516; People vs. Conklin, 12 Cal.3d 259, fn.10.

31. The Federal Wiretap law was not intended to occupy the entire field, thus, California may impose more stringent requirements or conditions.
People vs. Conklin, 12 Cal.3d 259.

32. The California Wiretap law prohibits interception by a private citizen of a telephone message by a means without the consent of all parties to the communication.
Pen. Code 631; People vs. Conklin, 12 Cal.3d 259.

33. The California Wiretap law prohibits a private citizen from eavesdropping or recording a confidential communication without the consent of all the parties to the communication. Pen. Code 632. The only exception is when the call relates to the commission of certain crimes by the other party. Pen. Code 632.5.

34. The California Wiretap law does not prohibit law enforcement officers from overhearing or recording any communication which they could lawfully overhear or record when the Act was passed in 1967.
Pen. Code 633; People vs. Conklin, 12 Cal.3d 295.

35. Law enforcement officers in California can lawfully record a telephone conversation with prior consent of one of the parties to the conversation.
People vs. Caravella, 5 Cal.App.3d 931.

36. When law enforcement officers intend to record a conversation with the consent of one of the parties to the communication, if the recording device does not require physical connection to the telephone line, then the consent of the phone subscriber or party to the communication should constitute sufficient authorization under the California statute. However, if physical connection must be made to the line, then the phone company and the subscriber have to grant permission.

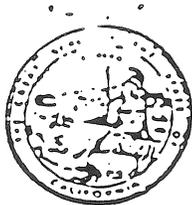
Penal Code Section 631; People vs. S.Ct., 13 Cal.App.3d 545; People vs. Jones, 30 Cal.App.3d 852.

37. Federal law prohibits any person who is not authorized by the sender from intercepting any wire or radio communication or divulging or publishing the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person.

47 U.S.C. 604; U.S. vs. Sugden, 226 F.2d 28a, affd. 351 U.S. 916.

Listening to a mobile radio telephone conversation over a F.M. radio receiver or another mobile radio telephone tuned to the same channel does not violate any right to the reasonable expectation of privacy.

U.S. vs. Hoffa, 436 Fed.2d 1243. However, the Hoffa case did not discuss or distinguish. 74 U.S.C. 604.



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BUREAU OF ORGANIZED CRIME AND CRIMINAL INTELLIGENCE

RESOURCE POOL

To assist law enforcement agencies in combating organized crime, a pool of specialized investigative equipment has been established in the Bureau of Organized Crime and Criminal Intelligence of the Department of Justice. The purpose of this pool is to loan law enforcement agencies surveillance equipment such as cameras, transmitters, receivers and night viewing devices. Before equipment may be loaned, the jurisdiction having cognizance over the borrowing agency must complete a standard agreement holding the State blameless from claims arising from the use of the equipment. A copy of the agreement is attached; additional copies may be obtained from the Bureau of Organized Crime and Criminal Intelligence. After the agreement has been signed by a person authorized by the jurisdiction to sign such agreements (agency head such as Chief of Police, Sheriff, District Attorney, etc.), the agency may request a loan of the equipment. The equipment must be used in accordance with applicable provisions of Federal and State laws.

Requests should be addressed to the Resource Pool, Bureau of Organized Crime and Criminal Intelligence, Department of Justice. Requests may be submitted either in writing or by telephone. Telephone requests should be directed to (916) 322-2440. Written requests should be addressed to P.O. Box 13357, Sacramento, California 95813.

Each request should indicate the urgency of need as well as the date (and hour if appropriate) of need. The Resource Pool will advise the requesting agency of its ability to fill the request together with the method of delivery to be used. Loans normally will be limited to a 15-day period.

The borrowing agency will assume responsibility for safekeeping of the borrowed equipment together with its return to the Equipment Pool at the end of the loan period.

A brief evaluation of the equipment and service received will be prepared on the form provided for that purpose and returned with the equipment. This report will provide the data needed to determine how the equipment and service may be improved.

All equipment loaned by the Pool will be delivered complete with film, tape, batteries, etc., as appropriate, so as to be capable of immediate use upon receipt. The borrowing agency will be responsible for providing consumables (film, recording tape, batteries, etc.) beyond those initially provided with the equipment.

Photo-Electronic Specialists have been assigned to the Resource Pool. These Specialists are prepared to provide instruction on equipment usage, installation of equipment, and general technical advice relating to surveillance equipment. The Specialists may be contacted by calling (916) 322-2440.



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BUREAU OF ORGANIZED CRIME AND CRIMINAL INTELLIGENCE

BULLETIN

Attached is information regarding the availability to law enforcement agencies, on a temporary loan basis, of special equipment which may be used as an aid in the investigation of organized crime type activity. Skilled technicians to advise and assist you in obtaining the maximum effectiveness from this equipment are also available for your use.

Your comment regarding the effectiveness of the equipment and the quality of the service you receive will be appreciated.

A handwritten signature in cursive script that reads "George Deukmejian".

GEORGE DEUKMEJIAN
Attorney General



State of California
Department of Justice
George Beukmejian
(PRONOUNCED OUEE-HAY-GINE)
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BUREAU OF ORGANIZED CRIME AND CRIMINAL INTELLIGENCE

EQUIPMENT POOL

STANDARD AGREEMENT

This is to certify that the below named jurisdiction holds the Department of Justice, State of California, blameless and saves it harmless from any claims and losses arising from the use of equipment on loan to this jurisdiction from the California Department of Justice, Bureau of Organized Crime and Criminal Intelligence Equipment Pool.

Name of Jurisdiction:

Signature and title of person authorized to sign agreement

Date and printed name

FIRE INVESTIGATION 2A

LESSON PLAN 4

TOPIC: Review - Search and Seizure

LEVEL: II

TIME: 2 hours

BEHAVIORAL OBJECTIVE:

Given: Without the aid of reference material and a written exam

Performance: The student will understand the legal requirements needed to search a fire scene and seize evidence

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Fire Investigation 1A, Student Manual, CFSTES
Fire Investigation 1B, Student Manual, CFSTES
Fire Investigation 2A, Student Manual, CFSTES

MATERIALS NEEDED: Chalkboard, A/V equipment and materials

PREPARATION: The student must understand the legal requirements for search and seizure, otherwise the evidence collected may be suppressed in court

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I. Review - Search and Seizure

A. The Fourth Amendment

1. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

a) U.S. Constitution prohibits unreasonable searches and seizures

b) The scale of justice:

1) More effective law enforcement
= less individual rights

2) More individual rights = less
effective law enforcement

B. The Exclusionary Rule

1. If there is an illegal search, the evidence will be excluded (suppressed) in court

C. Constitutional requirements as related to arrest, search and seizure

1. The Fourth Amendment directly applies to persons acting under state law. Persons acting under state law are also bound by its requirements because the "due process of law" language of the Fourteenth Amendment makes the Fourth applicable to states

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D. Reasonable expectation of privacy

1. U.S. And Calif. Constitution guarantees the right to be free from unreasonable governmental intrusion. This privacy can exist almost anytime and any place as long as:
 - a) indicated that he/she personally expects privacy;
 - b) the privacy is objectively reasonable under the circumstances; and
 - c) the expectation is one which society is prepared to recognize as legitimate.

E. General rule

1. It is illegal for you to physically enter into an area where a person has a "reasonable expectation of privacy" in order to conduct a search or for the purpose of seizing something unless:
 - a) you have a warrant; or
 - b) Exigent circumstances (an emergency) exists; or
 - c) you have obtained a valid consent.

F. Good faith exception

1. Historically, an officer's intent or state of mind has made no difference when it comes to applying the exclusionary rule. In other words, if the search or seizure was illegal, the evidence got excluded, even if the officer was acting in "good faith,"

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<p>i.e., even if he had a warrant or was otherwise trying to follow the rules and not <u>intentionally</u> violate the law</p> <ol style="list-style-type: none"> 2. In July 1984, however, the United States Supreme Court created a "good faith" exception to the exclusionary rule. So far, this exception is fairly narrow and applies only to police officers who conduct a search pursuant to a warrant (<u>Leon</u> (1984) 104 S.Ct. 3405) 3. Now that <u>Lance W.</u> has decided that California must follow the federal exclusionary rules, this "good faith" exception under <u>Leon</u> should apply in California as well (<u>MacAvoy</u> (1984) 162 Cal.App.3d 746; <u>Helmquist</u> (1984) 161 Cal.App.3d 609) 4. Note: It remains for another day to see if this "good faith" exception will be extended into the more common warrantless situation as well. (<u>Barbarick</u> (1985) 168 Cal.App.3d 731) <p>G. Proposition 8</p> <ol style="list-style-type: none"> 1. If the California constitution is violated (NOT the federal Constitution) when you obtain evidence. The evidence may still be admissible in court and may not subject to a suppression motion 2. BUT intentional violation of the State constitution would be unprofessional and could result in sanctions, such as a law suit for invasion of privacy or a civil rights violation 	

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<p>H. PC 1538.5 motion</p> <ol style="list-style-type: none"> 1. A mandate from the Penal Code which states that evidence must be excluded if incorrectly seized <p>I. Plain view doctrine</p> <ol style="list-style-type: none"> 1. Under the general rule, when you see something in "plain view" (or plain sight") from a place you have a right to be, no "search" has taken place in any constitutional sense, because the person has no reasonable expectation of privacy as to items which are in plain view. You may seize any object which is in plain view, as long as: <ol style="list-style-type: none"> a) you have a lawful right to be where the object is physically located; and b) there is probable cause to believe the object is crime related 2. Before you may seize an object in plain view, you must lawfully be where the object is located. In the case of buildings, this means you must already legally be inside, i.e., you must have made a "prior lawful intrusion" (<u>Coolidge</u> (1971) 403 U.S. 443) Typically, if you are already lawfully inside the premises conducting some type of search, it will be because: <ol style="list-style-type: none"> a) you have a search warrant or an arrest warrant (if you make the arrest, then you have the right to conduct a limited search "incident" to that arrest); or b) exigent circumstances exist; or c) you have consent 	

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<p>3. However, you must remember that no matter which of these justifications explains your presence in the building, the doctrine of "plain view" does not expand that justification (<u>Meyers</u> (1979) 25Cal.3d 67)</p> <p>J. The "Nexus" Rule</p> <p>1. The second requirement in order to lawfully seize an object in plain view is that you must be aware of some connection or "nexus" between the object and criminal behavior. In other words, you must never seize evidence in plain view unless you can specifically state why you have "probable cause to believe that the seized article will aid in a particular apprehension or conviction" (<u>Hayden</u> 91967) 387 U.S. 294)</p> <p>K. Consent</p> <p>1. May enter without a warrant or exigent circumstances if you have obtained <u>VALID</u> consent</p> <p>a) Must be voluntary</p> <p>b) Obtained from the person who has authority to give consent</p> <p>2. Preliminary considerations</p> <p>a) Always seek consent</p> <p>b) Do not seek consent <u>instead</u> of a search warrant</p> <p>c) Indications of consent</p> <p>1) Consent must be clear, specific and unequivocal</p>	

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<p style="margin-left: 40px;">2) Always best to get written consent</p> <p>L. Exigent circumstances</p> <ol style="list-style-type: none"> 1. Entry to prevent serious damage to property 2. Entry to save a life 3. Entry to prevent destruction of evidence 4. If there is a crime scene; enter <ol style="list-style-type: none"> a) Only if a true emergency exists b) If you are seeking clues WHICH might lead to the immediate apprehension of the suspect, a limited warrantless search might be proper 5. Clandestine drug labs <ol style="list-style-type: none"> a) Discovery of a clandestine drug lab justifies a warrantless entry, however, the emergency nature of each situation must be evaluated on its own facts b) The key for the officer's action is his motivation of preserving life or property <p>G. Arson/Fire Scenes</p> <ol style="list-style-type: none"> 1. May remain in scene for a "reasonable" amount of time to investigate the <u>origin and cause</u> <ol style="list-style-type: none"> a) Limited to the area of origin only b) A reentry may be made within a few hours if the interruption was necessitated by darkness, smoke, 	

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<p style="padding-left: 40px;">gases or some other condition which made immediate investigation impractical</p> <ol style="list-style-type: none"> 2. If a more substantial period of time goes by, and a reasonable expectation of privacy still exists in the fire damaged premises the original emergency will cease to exist. At that point you will need: <ol style="list-style-type: none"> a) Consent of the owner/occupant <ol style="list-style-type: none"> 1) Will be limited to area of consent b) Administrative warrant <ol style="list-style-type: none"> 1) Limited to area of origin only c) Criminal search warrant 3. It is "best" to get consent and a search warrant. If you are in the structure with consent and you discover reasonable cause to believe an arson has been committed, STOP and get a search warrant <ol style="list-style-type: none"> a) The person who gave you consent may be a suspect. Without a warrant you will have more to overcome in court 	

FIRE INVESTIGATION 2A

LESSON PLAN 5

TOPIC: Search Warrants

LEVEL: II

TIME: 8 hours

BEHAVIORAL OBJECTIVE:

Given: Without the aid of reference material and a written exam

Performance: The student will describe the procedures in the preparation of a valid search warrant. The student will prepare a valid search warrant using a set of circumstances provided

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Search Warrants, Fourth Edition, California District Attorney's Association
Legal Source Book, California Peace Officers, California Department of Justice

MATERIALS NEEDED: Chalkboard, A/V equipment and materials

PREPARATION: Knowledge of basic California criminal law is necessary in order to apply search warrants to fire investigations

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<p>I. Search Warrant And Affidavit</p> <p>A. Definitions</p> <p>1. Search Warrant Defined</p> <p>a) "A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate" (Penal Code Section 1523)</p> <p>2. Magistrate Defined</p> <p>a) Penal Code Section 808 designates as magistrates: judges of the justice courts, judges of the municipal courts, judges of the superior courts, judges of the courts of appeal, and judges of the Supreme Court. Any of these judges is empowered to act as a magistrate and issue a search warrant. A commissioner, a judge pro-tem, and a referee are not magistrates</p> <p>3. Affidavit Defined</p> <p>a) For search warrant purposes, an affidavit is a statement made under penalty of perjury before a magistrate</p> <p>"A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched." (Penal Code Section 1525) "The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist" (Penal Code Section 1527)</p>	

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Affidavits in support of search warrants are usually in writing but may be oral if recorded

B. Preference given to search warrants

1. Courts have consistently emphasized their preference for searches made pursuant to a search warrant. The following language has been repeatedly cited by appellate courts in ruling on the validity of search warrants:

a) If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants... must be tested and interpreted by magistrates and courts in a common sense and realistic fashion. They are normally drafted by non-lawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting

b) This is not to say that probable cause can be made out by affidavits which are purely conclusory, stating only the affiant's or an informer's belief that probable cause exists without detailing any of the 'underlying circumstances' upon which that belief is based. [Citation.] Recital of some of the underlying circumstances in the affidavit is essential if the magistrate is to

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perform his detached function and not serve merely as a rubber stamp for the police. However, where these circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a common sense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.

United States v. Ventresca (1965)
380 U.S. 102, 108-9

- C. Search warrants presumed valid; good faith exception to exclusionary rule even if invalid
1. A search warrant is presumed valid. The burden of establishing the invalidity of a search warrant is on the defendant. (Williams v. Justice Court (1964) 230 Cal.App.2d 87, 97; Theodor v. Superior Court (1972) 8 Cal.3d 77, 101; and People v. Kurland (1980) 28 Cal.3d 376) Moreover, the United States Supreme Court cases of United States v. Leon (1984) 82 L.Ed.2d 677, 468 U.S. 897, and Massachusetts v. Shepard (1984) 82 L.Ed.2d 737, 468 U.S. 981, hold that evidence seized pursuant to a search warrant will not be suppressed even if the warrant was defective so long as the officers acted in reasonable and

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<p>objective good faith in relying upon the warrant and serving it. That is known as the "good faith exception" to the exclusionary rule</p> <ol style="list-style-type: none"> 2. Naturally, every effort should be made to ensure that only valid and defect-free search warrants are presented to magistrates. It would not be in keeping with the high professional standards of California law enforcement agencies to write slipshod search warrants in hopes that the fruits of such warrants would be saved by the Leon and Shepard cases <p>D. Alternatives to a search warrant</p> <ol style="list-style-type: none"> 1. Generally, when there is time to seek a search warrant, one should be sought. However, sometimes there is insufficient probable cause for a search warrant or other reasons exist, making it impractical or impossible to obtain one. It may nonetheless be desirable for search to be conducted, and prosecutors and peace officers should be aware of alternatives. Some of the alternatives are: <ol style="list-style-type: none"> a) Probation Search b) Parole Search c) Consent d) Emergency e) Search of a Car f) Search Following Arrest g) Use of Search Warrant to Serve an Arrest Warrant 	

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<p>II. Describing The Places, Vehicles, And Persons To Be Searched</p> <p>A. Descriptions</p> <ol style="list-style-type: none"> 1. Both the affidavit and the search warrant must describe with "reasonable particularity" the places, vehicles, and persons to be searched (Penal Code Section 1529) 2. The general rule is that descriptions should be of sufficient particularity so that if an officer with no knowledge of the case were to serve the warrant, he would have no difficulty in locating the place, recognizing the vehicle, or identifying the person to be searched. Adherence to this general rule will satisfy the penal code requirement of reasonable particularity 3. It is important for descriptions to be accurate. An incorrect address or mistaken description may invalidate the search warrant. Thus, it is recommended that the affiant personally observe the place, vehicle, and person to be searched in order to ensure an accurate description or have another reliable person do so 4. Generally, the description of a dwelling should include the complete address and a brief description of its outer appearance. A vehicle description should include the color, year, make, model, and license number. The description of a person should include a name (if known), physical appearance, and distinguishing marks, if any. It is also good practice to give the probable location of a vehicle or person to be searched, especially if either cannot otherwise be fully described. This adds "particularity" to the description 	

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5. It is also desirable when describing structures such as houses, apartment units, stores, etc., to include a phrase which makes clear that the search is to encompass the entire structure, its surrounding grounds, and any associated structures. Thus in the most commonly encountered situation, the search of a house, the description might be as follows:

a) ...the premises at 11301 East Valley Boulevard, El Monte; further described as a single-story dwelling house with a tan stucco exterior, dark brown wood trim, and a red tile roof; and all rooms, attics, basements, and other parts therein and the surrounding grounds and any garages, storage areas, trash containers, and outbuildings of any kind located thereon

6. Also, if there are any places of special interest at the location to be searched such as a cave, safe, or wall compartment, that place should be specifically described, especially if it is believed that the items sought will be found within that particular place

B. Describing Places: Address Known:
Examples:

1. These examples are for guidance only and need not be followed exactly either as to form or content. They can and should be modified to fit the facts of a particular case. It is better to over-describe than to under-describe

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a) House

... the premises at 212 South Acacia Street, Long Beach; further described as a single-story dwelling house with a brown single roof and light green stucco exterior; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage areas, trash containers, and outbuildings of any kind located thereon

In giving a street address it is important to specify "North," "South," "East," or "West," if that is part of the address. Also, it is important to specify "Street", "Avenue," "Boulevard," "Way," etc. This avoids any ambiguity as to whether the address "212 Acacia" refers to 212 South Acacia Street or 212 East Acacia Circle, which may be nearby and have a similar appearance

b) Apartment

Be certain to limit the description to the apartment unit in question and not the entire apartment building, unless the affidavit justifies a search of the entire building. Thus, include the apartment number or its location within the building

... the premises at 1725 Main Street, Santa Monica, Apartment No. 228; further described as an apartment unit within a four-story multi-unit apartment house, dark green in color with light green trim and bearing the name, "La Mer Apartments"; and all rooms attics,

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and other parts within Apartment No.228 and all garages, trash containers, and storage areas designated for the use of Apartment No. 228

If the apartment unit is not clearly marked with a number or letter, its location within the building should be clearly stated

c) Store or Business

The name of the business, the address, and a brief description of its outer appearance should be stated

...the premises known as the "Katsiganis Coffee Shop" located at 415 West Ocean Boulevard, Long Beach. This location is a coffee shop on the first floor of a multi-story commercial building and the words, "Katsiganis Coffee Shop-Greek Dishes a Specialty," appear in gold letters on the front window - and all rooms, dining areas, service areas, kitchens, pantries, stoves, refrigerators, restrooms and other parts within the business including an office and a safe contained within the office located in the rear of the premises, and any storage rooms, storage areas, trash areas and trash containers, attached or unattached

The description makes it clear that the affiant is requesting and the magistrate is authorizing a thorough search of all parts of the business, including the safe

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d) Describing Places: Address Unknown; Examples

If the specific address is unknown or the location is not marked with an address, special particularity should be used in describing it

...a green stucco two-story dwelling house with a red roof and boarded up windows located on the north side of 91st Place, between Halldale Avenue and Normandie Avenue in Los Angeles. This house is the fourth structure west of the northwest corner of Normandie Avenue and 91st Place. It is extensively marked with graffiti and the words, "Little Chico," appear in large block letters on the front door-and all rooms, attics, basements, and other parts therein, including a compartment located within the west living room wall, and the surrounding grounds, and any garages, storage areas, trash containers, or outbuildings of any kind located thereon

The description is sufficiently detailed to avoid mistaking this house for other similar abandoned ones on the same block. Also, the specific reference to the wall compartment makes it unmistakable that the searching officers may go into the structure of the wall itself if necessary

...a large, dilapidated two-story barn, approximately one hundred feet on each side, faded red in color and located on the south side of Mulholland Highway approximately 2.8 miles west of Las Virgenes Road in the Los

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Angeles County area east of Malibu Lake. The roof of the barn bears faded white letters reading, "Chew Mail Pouch Tabacco." The structure is located approximately two hundred feet off the road and there are several old farm implements and two junked cars in front of the structure; one the cars appears to be a white, 1955 Chevrolet - and all rooms, attics, cellars, lofts, storage areas, and other parts therein, and the surrounding grounds and any storage areas or outbuildings of any kind located thereon, including the two junked cars and the farm implements

These descriptions are more detailed than those in which an address is known. This is because sufficient detail must be given to avoid any possibility that the description could apply to other nearby locations

- e) "Special" Hiding Places at or within a Location

If there is a known hiding place of special interest at the premises to be searched, a description of that hiding place should be specifically included within the description of the premises. This was done in two of the preceding examples: the safe in the coffee shop and the wall compartment in the house with no address. Failure to specifically mention an unusual hiding place does not necessarily mean it cannot be searched if discovered since the phrase, "and all other parts therein" is sufficiently

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<p>broad to encompass secret compartments and safes. However, the better practice is to specifically mention the special or unusual hiding place, if known. Note: in the body of the affidavit, the affiant must state how he knows about the special hiding place. See e.g., People vs. Miller (1978) 85 Cal.App.3d 194, 203, which involved illegal weapons stored in a secret compartment</p> <p>f) Describing Vehicles; Examples</p> <p>Generally the color, year, make, model, and license number of the vehicle to be searched will constitute an adequate description</p> <p>... a dark brown 1977 Oldsmobile Regency 98 four-door sedan bearing California license number 334RYO</p> <p>If the license number of the vehicle is unknown, other details of its appearance should be given to distinguish it from other similar vehicles. Also, in such a case, the probable location of the vehicle should be given</p> <p>1) ...an approximately 1968 Chrysler two-door hard-top, dark green vinyl top, white body, "mag" wheels, whitewalls, license number unknown, believed to be parked at or near 849 South Broadway, Los Angeles, 90014</p> <p>2) ...an older model Volkswagon van, light tan in color with collision damage to the front</p>	

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and rear, one whitewall tire on the left front wheel, license number unknown and believed to be parked at or near 171 North La Brea Avenue, Inglewood

The expression, "believed to be at or near," is preferable to a definite statement of the vehicle's location and allows a search of the vehicle even if it is not found where it was "believed to be" so long as it is otherwise recognizable

If the affiant has information that the item he is searching for could possibly be found secreted within an unusual hiding place in the car which may require partial disassembly of the car, it is better practice for this hiding place to be specifically mentioned in the description

...a black 1984 Continental Mark IV two-door hard-top bearing New York license plates FC4067 believed to be parked at or near the south side of Pier B, Long Beach Harbor - and all parts and compartments therein including the area within the passenger door

The body of the affidavit must contain information justifying the belief the contraband is within the passenger door (See Chapter IV)

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<p>It is also good practice to list the probable location of a car in any case in which the car is not being searched along with a nearby structure also listed in the warrant. Thus, a car alone parked at the docks and bearing out-of-state plates should be described as above</p> <p>Search Warrant For "Any Vehicle"</p> <p>If the affiant can establish that the suspect keeps contraband in whatever vehicle he happens to be using and that the suspect uses borrowed vehicles - the warrant may then be issued for "any vehicle under the control of or occupied by (suspect's name) a the time this warrant is served" (People vs. Sanchez (1981) 116 Cal.App.3d 720, 727-728)</p> <p>g) Describing Persons: Examples</p> <p>The description of a person should include the name, sex, race, age, height, weight, hair color, eye color and distinguishing marks to the extent they are known. Again, as with a vehicle, if only the person is to be searched (not in conjunction with a place) of it the description is incomplete or uncertain, then his or her probable location should be given</p> <p>1) ...the person known as "Stubbs", male/negro, approximately 25-30 years, 4'11", 140, black hair and eyes, with a mustache and goatee, and believed to be residing at 8640 California Avenue, South Gate</p>	

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<p>2) ...the person of James Williams, aka "JW," male/caucasian, approximately 27 years, 5'10", 180, brown hair, blue eyes, with a tattoo of a woman's hand on his left forearm</p> <p>If the search of the person is being conducted in conjunction with the search of his location or residence, he may be described at that location</p> <p>...the person of "Richard," a male/caucasian, approximately 47 years, 5'11", 195, brown hair and eyes, tip of middle finger on left hand missing, and believed to be within the above described premises</p> <p>It is often difficult to obtain a complete description of the person to be searched. However, even a partial description may satisfy the requirement of reasonable particularity, especially if a probable location is indicated and the person is later found and searched within that location. A bare minimum description should include sex, race, approximate age, and probable location</p> <p>...a male/caucasian, approximately 20-30 years, believed to be within the above described premises</p> <p>If additional distinguishing characteristics are known, they should be included. It is insufficient, however, merely to state "any persons within the above described premises" or "other unidentified persons" (People v. Tenney (1972) 25 Cal.App.3d 16)</p>	

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h) Crime scene searches

The case of *Mincey v. Arizona* (1978) 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290, and *Michigan v. Tyler* (1978) 436 U.S. 499, 98 S.Ct. 1942, 56 L.Ed.2d 486, require the use of search warrants to conduct a search at the scene of a crime unless consent or exigent circumstances can be shown. *Mincey* involved a homicide which was committed at the suspect's residence and *Tyler* involved the arson of the suspect's furniture store. The necessity for such warrants and their manner of preparation will be discussed further in Chapter IV, Section J. The description of the premises to be searched, however, follows the same principles set forth in this chapter

III. Describing The Property To Be Seized

A. "Reasonable Particularity"

1. The property to be seized must be described with "reasonable particularity." (Penal Code Section 1529). What is "reasonable particularity?" As a general rule, a good test of "reasonable particularity" is whether or not an officer with no knowledge of the facts underlying the warrant and looking only at the description of the property on the face of the warrant would be able to recognize and select the items described while conducting the search

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2. Descriptions should be as specific, complete and thorough as is possible. Model numbers and serial numbers should be included if known. Warrants which fail to describe property with reasonable particularity are considered "general exploratory warrants: and are forbidden by both the United States and California constitutions. General warrants are invalid and any items seized during their execution are subject to suppression. (Burrows v. Superior Court (1974) 13 Cal.3d 238, 249-250)
3. This warrant should also include the seizure of articles that tend to identify the persons in control of the places being searched

...and articles of personal property tending to establish the identify of persons in control of the premises, vehicles, and areas being searched, including utility company receipts, rent receipts, addressed envelopes, and keys

- B. Property used to commit a felony and property which tends to show a particular person has committed a felony
 1. In most cases, the description of items used by a person to commit a crime or items which may identify him or her as the perpetrator of a crime may not be exact since it is unlikely that victims and witnesses will have gotten more than a brief look at the items. Nevertheless, it may still be possible to describe the items sought with "reasonable particularity"
 2. Naturally, each case will depend upon its own facts. In some cases the items sought might not have been seen

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at all, but their existence can be inferred from the manner in which the crime was committed. For example, a garage burglar who is cutting padlocks in order to make entry can reasonably be inferred to have bolt cutters. And "bolt cutters" is probably a sufficient description of an item sought without specifying size, make or model

3. A typical description for items being sought at the residence of a person reasonably suspected of committing an armed robbery in which money only was taken and observations by witnesses and victims were sketchy might be as follows:

A handgun; handgun ammunition; handgun cleaning kit; containers and receipts for the aforementioned items; approximately \$200 United States currency consisting of approximately 5-\$20s, 5-\$10's and the remainder \$1 bills; a man's dark blue shirt and dark pants...

4. A typical description of items sought at the residence of a person reasonably suspected of stabbing and robbing his victim might be as follows:

Bloodstained clothing including but not limited to Levi pants and a man's green shirt; a knife with a white handle and approximate 6" blade; bloodstained knives; bloodstained towels, wash cloths, and papertowels; a man's brown wallet; papers, credit cards, driver's license and other personal papers bearing the name Frederick Cook; and....

Application: Have students cite examples

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5. It is proper to list and search for the clothing witnesses observed the suspect wearing at the time of the commission of a crime since such clothing, if later discovered on the suspect's person or within his residence, is evidence which tends to prove his identify as the perpetrator of the crime. Obviously if a suspect wearing a "Calgary Stampede-1982" t-shirt commits a robbery and that shirt is found two days later in a search of his house, such evidence will be valuable in court to prove his identity as the robber. Thus, such an item is seizable pursuant to Penal Code Section 1524 subd. (d)(4) as evidence which "tends to show that a particular person had committed a felony"

6. Similarly, "articles of personal property tending to establish the identify of the person in control of the premises, vehicles, and areas being searched" are lawfully seizable. This is because the probable cause to believe that the fruits, evidence and instrumentalities of a crime are within a particular premises implicitly means that whoever is in control of those premises has some knowledge of the items and was involved in the criminal activity which resulted in those items being at that location. Thus, if the "Calgary Stampede-1982" t-shirt is believed to be at a certain premises, whoever is in control of those premises is probably involved in the crime in which that t-shirt was observed on the perpetrator. This probability is even stronger if the criminal activity actually takes place on those premises such as narcotics sales, receiving stolen property, or bookmaking. In

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such cases, "utility company receipts, rent receipts, and address envelopes" bearing the name of a person will connect him or her with the items found at that location and the criminal activity thereon. Similarly, keys found in the pocket of a person named on a search warrant are important evidence if they fit the door lock or the house or apartment where heroin or other evidence of a crime is found

B. Bank records

1. The methods by which records can be seized or to otherwise obtained from financial institutions are set fourth, in detail, in the California Right to Financial Privacy Act, Governmental Code Sections 7460 through 7493
2. Basically, there are six methods by which financial records can be obtained
 - a) Customer authorization
 - b) Administrative subpoena or summons
 - c) Search warrant
 - d) Judicial subpoena or subpoena duce tecum
 - e) Police request
 - f) Bank is victim
3. Phone records
 - a) The California Supreme Court has held that a search warrant is necessary to obtain from the telephone company the name and address of the holder of an

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unlisted telephone number. See People v. Chapman (1984) 36 Cal.3d 98 (overruling People v. Elder (1976) 63 Cal.App.3d 731)

Similarly, People v. McKunes (1975) 51 Cal.App.3d 487 held that an individual's telephone company records relating to telephone calls made are protected by a reasonable expectation of privacy and cannot be obtained by police except by search warrant or other judicial order

4. "Good Faith" Exception - descriptions
 - a) Naturally, every effort should be made to insure that the list and description of items to be seized per a search warrant is correct in every respect and fully supported by probable cause as to each item listed. But if it is discovered after the search that the list or description of items was invalid or incorrect in some respect, the search and seizure of evidence should nevertheless be upheld according to the "good faith" exception as set forth in the case of Massachusetts v. Shepard (1984) 468 .S. 981, 82 L.Ed.2d 737
5. Checklist
 - a) Descriptions should be as specific as possible
 - b) Be thorough-include every item for which probable cause to search exists-but not items which only "might" be present
 - c) Proofread!! Avoid mistakes in serial numbers, model numbers, brand names, etc

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<p>IV. Statement Of Probable Cause</p> <p>A. A search warrant cannot be issued but upon probable cause, supported by affidavit..." (Penal Code Section 1525)</p> <ol style="list-style-type: none"> 1. Since the publication of Illinois v. Gates, several California Court of Appeal cases have held that the "totality of circumstances test" is not the standard by which to evaluate search warrants in California. These cases include People v. Love (1985) 168 Cal.App.3d 104, 111; People v. Aho (1985) 166 Cal.App.3d 984, 990; People v. Medina (1985) 165 Cal.App.3d 11, 17; and People v. Ramirez (1984) 162 Cal.App.d 70, 71-72 2. The statement of probable cause may call for a statement of opinion of a fire investigation expert, who may be the affiant, regarding certain items will be found on premises - or lack of certain items such as family photos, clothing items, insurance policy, valuables and etc. <p>V. Nighttime Searches</p> <p>A. Hours of service</p> <ol style="list-style-type: none"> 1. For search warrant purposes, nighttime is defined as those hours between 10:00 p.m. and 7:00 a.m. Before a warrant may be served at night it must contain a statement or "direction" that it can be served at night and its supporting affidavit must set forth facts and circumstances establishing good cause for a nighttime search <ol style="list-style-type: none"> a) This is set forth in Penal Code Section 1533 as follows: 	

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Upon a showing of good cause, the magistrate may, in his discretion, insert a direction in a search warrant that it may be served at any time of the day or night. In the absence of such a direction, the warrant shall be served only between the hours of 7:00 o'clock a.m. and 10:00 o'clock p.m.

If the affidavit does not contain an adequate showing of good cause for night service or if the warrant does not contain a direction authorizing a nighttime search then any evidence obtained by a nighttime search under the warrant may be suppressed. (Tuttle v. Superior Court (1981) 120 Cal.App.3d 220, 328.) Subsequent testimony by the affiant or the magistrate cannot cure these defects. (People v. Mills (1966) 251 Cal.App.2d 420; Call v. superior Court (1968) 266 Cal.App.2d 163; Powelson v. Superior Court (1979) 9 Cal.App.3d 357; and Rogers v. Superior Court (1973) 35 Cal.App.3d 716)

2. If nighttime service is desired, always double-check that the nighttime service direction is included clearly and unmistakably on the search warrant

3. Premises Unoccupied
 - a) If premises are known to be unoccupied a night search may be permitted. In Tidwell v. Superior Court (1971) 17 Cal.App.3d 780, the court approved the execution of a search warrant at night of

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any unoccupied apartment stating that Penal Code Section 1533 was designed to protect persons from the "peculiar abrasiveness: of night searches and that "the reason for it was wholly inapplicable to an unoccupied apartment." (17 Cal.App.3d at p.787.) In fact, in Tidwell the magistrate even neglected to insert the "nighttime direction" in the warrant. Nevertheless, the court upheld the search. See also People v. Flores (1979) 100 Cal.App.3d 221, 234

4. Items "Perishable"

- a) If the desired items are such that they will lose their evidentiary value with the passage of even a few hours, a night search may be sought. An example might be evidence of gasoline or other volatile liquids. Items that will become contaminated upon exposure to air might also justify a night search

Example:

Your affiant requests a night search based upon the facts set forth above the following: It appears the fire was started with gasoline which is highly volatile and will evaporate quickly. Traces of gasoline within the containers sought and on the clothes of the suspect and within his residence and car will evaporate and become undetectable if this warrant is not served at the earliest moment

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<p>5. Officer's Safety - Public Safety</p> <p>a) Effective January 1, 1987, Penal Code Section 1533 has been amended to permit a magistrate to consider officer safety as "good cause" for nighttime service. The amendment is as follows:</p> <p>1) When establishing "good cause" under this section, the magistrate shall consider the safety of the public as a valid basis for nighttime endorsements</p> <p>VI. Mechanics Of Preparation</p> <p>A. Preparing the search warrant and affidavit</p> <ol style="list-style-type: none"> 1. The deputy district attorney assisting of the preparation of the warrant should become thoroughly familiar with the case by reading all relevant reports and discussing the facts with the affiant 2. Obtain and examine copies of all police reports, arrest records, photographs and diagrams which may be attached as exhibits. Make certain that no pages are missing and all copies are legible. Illegible exhibits may result in the suppression of the warrant (Kaylor v. Superior court (1980) 108 Cal.App.3d 451) 3. Obtain from the affiant an accurate and verified description of the items sought and the premises, vehicle(s), and person(s) to be searched 4. Prepare the relevant forms, listing the name(s) of the affiant or 	

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<p>affiants, the statutory grounds, the premises, vehicle(s), and person(s) to be searched, and the items sought</p> <ol style="list-style-type: none"> 5. Prepare the Statement of Probable Cause. Include the affiant's background and expertise, the factual information gathered, information recieved from informants, facts indicating the reliability of informants (if applicable), corroboration, reasoning, conclusions and expert opinions of the affiant, and justification for nighttime service (if desired) 6. Attach all exhibits. Make certain they are clearly labeled and legible 7. Proofread!! In particular, look for missing or misnumbered pages, missing paragraphs or exhibits, incorrect or transposed numbers, illegible documents, etc. 8. If separate search warrant and affidavit forms are used, the original search warrant and the original should each be fastened to a separate blue back. Both are then presented to the magistrate. If a combined search warrant/affidavit form is used, it should be presented to the magistrate. Be certain the Statement of Probable Cause is attached <p>B. Presenting the search warrant and affidavit to magistrate</p> <ol style="list-style-type: none"> 1. The following procedures are recommended: <ol style="list-style-type: none"> a) The magistrate reads the affidavit and the warrant. If he or she feels that the affidavit establishes probable cause for the search he or she will swear the 	

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<p>affiant who then signs the affidavit. The suggested oath is - "Do you swear that everything in this affidavit is true to the best of your knowledge and belief?" If there is more than one affiant, the other affiants must also be sworn and sign their affidavits</p> <p>b) The judge will then date and sign the affidavit and the warrant. Make certain this is done. the warrant is now ready to be served</p> <p>C. Making copies before the affidavit and warrant are signed</p> <ol style="list-style-type: none"> 1. Many prosecutors and police officers prefer to make copies of the affidavit and warrant before they are signed. If it is known in advance that the court clerk will retain the original affidavit, then it is necessary that the desired number of copies be prepared before the affidavit is signed. Any changes made by the affiant or magistrate upon the original affidavit and warrant at the time of the signing should be made on all copies so that all copies will be the same as the original 2. If there is insufficient time or if it is impractical to make copies of the signed search warrant and affidavit prior to the execution of the warrant, copies should then be made at the time of the preparation of the Return to the Search Warrant <p>D. Sealing the Affidavit</p> <ol style="list-style-type: none"> 1. Pursuant to Penal Code Section 1534, all documents relating to a search warrant become open to the public as 	

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judicial records following execution and return of the warrant. However, the case of *People v. Sanchez* (1972) 24 Cal.App.3d 664, 678, does provide for the sealing of a search warrant and affidavit

E. Return of the warrant

1. The warrant must be executed and returned to the court where it was issued, or any other court in which the offense being investigated is triable, within 10 days of its issuance. If the tenth day is a holiday or weekend, the next court day is permitted (*People v. Stevenson* (1976) 62 Cal.App.3d 915)

2. A late return will not necessarily invalidate the warrant. A warrant which was not returned within ten days can be declared invalid only if the defendant can demonstrate prejudice as a result of the late return. (See *People v. Schroeder* (1979) 96 Cal.App.3d 730; *People v. Couch* (1979) 97 Cal.App.3d 377; and *People v. Kirk* (1979) 99 Cal.App.3d 89)

VII. Oral Affidavits And Telephonically Authorized Search Warrants

A. Oral Affidavits

1. In most instances search warrants and supporting affidavits are prepared in writing and are personally signed by the issuing magistrate and affiant in the manner indicated in the preceding chapters. However, the law also provides for the use of oral affidavits and telephonically authorized search warrants

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<ol style="list-style-type: none"> 2. An oral affidavit is one in which the affiant orally states to the issuing magistrate the probable cause for the warrant. If the magistrate is satisfied probable cause exists, he or she will sign the search warrant which can then be executed 3. Naturally, this can usually be done more quickly than writing out the affidavit. However, certain procedures must be followed. For example, the oral statement must be tape recorded or reported by a certified court reporter. Also, the warrant itself must still be in writing 4. A telephonically authorized search warrant is one in which the affiant calls the magistrate on the telephone, states the probable cause for a search warrant, and then obtains verbal authorization from the magistrate to sign his (the magistrate's) name to the warrant. Thus, the warrant can be issued simply as the result of a phone call to the magistrate 5. Again, certain specific procedures must be followed. For example, the entire phone call must be recorded, the warrant itself must still be in writing, and the exact time the magistrate authorizes the signing of his name must be noted 6. The statutory authority and procedure related to oral affidavits is set forth in Penal Code Section 1526 subdivision (b): <ol style="list-style-type: none"> (b) In lieu of the written affidavit required in subdivision (a), the magistrate may take an oral statement under oath which shall 	

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be recorded and transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative in such cases, the sworn oral statement shall be recorded by a certified court reporter and the transcript of the statement shall be certified by the reporter, after which the magistrate receiving it shall certify the transcript which shall be filed with the clerk of the court (emphasis added)

- 7. Section 1526 subdivision (b) provides only that the affidavit may be oral. The search warrant still must be in writing as required by Penal Code Section 1523. Failure to have a written search warrant may result in the warrant being declared invalid. (Bowyer v. Superior Court (1974) 37 Cal.App.3d 151, 164)

B. Telephonically authorized search warrants

- 1. Penal Code Section 1528 subdivision (b) permits a magistrate to orally authorize a peace officer to sign the magistrate's name on a "duplicate original search warrant." In effect, this section permits a search warrant to issue when the affiant's oral affidavit is not taken in the presence of the magistrate and when the only contact with the magistrate is over the telephone. The magistrate can give verbal authorization over the telephone to the peace officer/affiant to sign the magistrate's name on a "duplicate original warrant" Section 1528 subdivision (b) reads:

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(b) The magistrate may orally authorize a peace officer to sign the magistrate's name on a duplicate original warrant. A duplicate original warrant shall be deemed to be a search warrant for the purposes of this chapter, and it shall be returned to the magistrate as provided for in Section 1537. In such cases, the magistrate shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant and the duplicate original warrant with the clerk of the court as provided for in Section 1541 (emphasis added)

This section does not eliminate the requirement of a written search warrant. It merely creates a procedure for placing the magistrate's name on a written warrant when the magistrate is not physically present to sign the search warrant

C. Helpful hints

1. The oral affidavit procedure is relatively straightforward and can be mastered easily. It is basically a simple matter of the affiant taking a tape recorder (or court reporter, if available) to the magistrate's residence or chambers and orally stating the probable cause for the search warrant. If the magistrate is satisfied probable cause exists, he or she then signs the warrant. Since the warrant portion alone usually consists of only one or two pages - listing the places to be searched and items seized - it can usually be prepared quickly and easily and may even be handwritten if desired

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<ol style="list-style-type: none"> <li data-bbox="354 405 1024 785">2. But, just as in the case of a written affidavit, it is important that the probable cause be stated fully and clearly. The affiant may wish to use an outline or refer to notes in order to avoid inadvertently omitting an important point. It is also important that the tape recordings be audible and understandable and that each speaker is clearly identified so that the tape may be accurately transcribed <li data-bbox="354 821 1024 1329">3. It is recommended that the affiant not make any preliminary unrecorded and unsworn comments to the magistrate regarding what the case is about before making a formal statement of probable cause. Such comments can often cause confusion in the minds of the affiant and magistrate as to what facts were stated on the record or off the record. The best procedure is to turn on the recorder as soon as the affiant meets the magistrate. The magistrate should also be invited to ask questions of the affiant. This may prevent important facts from being omitted or stated unclearly <li data-bbox="354 1360 1024 1583">4. Telephonically authorized warrants can also be done easily once the principles are understood. Again, it is important that the recording be audible and intelligible and that each speaker's identify is clear. Probable cause must be set forth fully <li data-bbox="354 1617 1024 1839">5. Since telephonic and oral warrants are often prepared in an atmosphere of haste, care should be exercised not to lose or misplace documents. In People v. Sanchez (1982) 131 Cal.App.3d 323, the original search warrant was lost by the officers involved 	

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Fortunately, the Court of Appeal held that the return of the duplicate original - signed personally by the magistrate - was sufficient.

- 6. It is most important to remember that regardless of whether the magistrate personally signs the warrant or authorizes the affiant to do so, THE WARRANT MUST ALWAYS BE IN WRITING

VIII. Service Of The Search Warrant

A. Time limit for execution of search warrant

- 1. Penal Code Section 1534 subdivision (a) states in part that:

A search warrant shall be executed and returned within 10 days after date of issuance. A warrant executed within the 10-day period shall be deemed to have been timely executed and no further showing of timeliness need be made. After the expiration of 10 days, the warrant, unless executed, is void....

- a) Section 1534 subdivision (a) raises a presumption of timely service when the warrant is executed within ten days after issuance. The defendant may challenge the timeliness of service by showing a change of issuance of the search warrant and its execution. However, the burden is on the defendant to show such a change (People v. Hernandez (1974) 43 Cal.App.3d 581)

- b) If the warrant is not served during the ten day period, or if there is a change in the probable

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cause, either of the following procedures can be utilized to reissue or revalidate the warrant

- 1) A new search warrant and new affidavit can be submitted to the magistrate. The new affidavit should explain the reason for the non-service of the original warrant, mention any change in probable cause, and update any stale information. The new affidavit should also restate the information contained in the original affidavit, either in the body of the new affidavit or by attaching and incorporating the original affidavit; or

- 2) The original warrant and original affidavit can be resubmitted to the magistrate along with a supplemental affidavit explaining the reason for the delay, the change in the probable, and updating any stale information. The affiant should swear to and resign the original affidavit as well as swearing to and signing the supplemental affidavit. The supplemental affidavit should incorporate by reference the entire original affidavit. The magistrate can then reissue the warrant by writing the words "Reissued and revalidated" on the face of the original search warrant and resigning and redating it (People v. Brocard (9185) 170 Cal.App.3d 239, 243; People v. Sanchez (1972) 24 Cal.App.3d 564, 682)

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- B. Occupying premises before search
1. Under certain circumstances, officers can enter and secure premises prior to the issuance of a search warrant. For example, *People v. Superior Court (Irwin)* (1973) 33 Cal.App.3d 475, holds that if police validly arrest suspects within a location, the police can then remain within the location pending the arrival of a search warrant. Naturally, an arrest within a residence must conform to the principles set forth in *People v. Ramey* (1976) 16 Cal.3d 263, which restricts warrantless arrests in "the home" unless consent, exigent circumstances or other justification for the arrest can be shown. Such a situation was shown in the case of *People v. Daughhetee* (1985) 165
 2. It is also permissible for officers to enter and occupy a location if it appears that confederates of an arrestee will learn of his or her arrest and will then destroy or dispose of the items sought. In *Ferdin v. Superior Court* (1974) 36 Cal.App.3d 774, the court held such an entry and occupation of a residence was valid in view of a reasonable belief that the arrest of an associate or his failure to complete his intended delivery of contraband might come to the defendant's attention before a warrant could be obtained and cause him to destroy the contraband in the residence or make it ready for immediate destruction (*Ferdin v. Superior Court*, 36 Cal.App.3d at p. 781)
 3. Officers may also enter a location pursuant to the "emergency doctrine" (see Chapter I, Section G.4) and a

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warrant obtained later will not be affected. This occurred in the case of *People v. Superior Court (Hulbert)* (1977) 74 Cal.App.3d 407, in which officers entered the defendant's residence based upon a reasonable belief that the defendant's wife and children were within the residence and were in danger. After satisfying themselves that no one was in danger, the officers exited the residence and obtained a search warrant for it. The court held the initial entry was valid and did not affect the warrant

4. The emergency doctrine also justified a warrantless entry and securing of premises in the case of *People v. Stegman* (1985) 164 Cal.App.3d 936. In this case, officers made an emergency entry of a PCP lab based upon a strong odor of ether emanating from the premises. They then cleared and secured the location and waited the arrival of a search warrant. When the warrant arrived, the premises were thoroughly searched. The court of appeal held the emergency entry and occupation of the premises to be valid. See also, the more recent Supreme Court case of *People v. Duncan* (1986) 42 Cal.3d 91, which involves similar holding
5. As a general rule, officers should not enter premises while a search warrant is being prepared unless exigent circumstances can be shown, such as danger to the occupants or imminent danger of destruction or disposal of the items sought. Also, officers should not try for a consent search if probable cause exists for a search warrant since officers can take no action to forestall the destruction of evidence in the event consent is

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<p>refused - unless entry can be made on another basis. It is recommended that if probable cause for a warrant exists, a warrant should be obtained</p> <p>C. Approaching the premises</p> <ol style="list-style-type: none"> 1. The affiant should have available sufficient personnel to properly serve the warrant. If it is reasonably likely that a fingerprint expert will be needed, or a criminalist, or an animal handler, etc., then these people should be arranged for in advance. A camera should be taken since photos are often useful in court 2. The address and description of the premises should be verified. If incorrect, the warrant should not be served until corrected and resigned by all parties 3. Certain tactical considerations should be weighed. Are arrests contemplated? Will the presence or absence of certain persons in the premises affect the case? 4. The search team should watch all windows and exits in order to prevent the escape of suspects and to recover any items thrown from the premises. Necessary steps should also be taken to insure the security of the search team 5. It is not necessary that officers be in uniform (People v. Schad (1971) 21 Cal.App.3d 201), but it is recommended that a uniformed officer accompany the search team to the premises if this can be done without jeopardizing the investigation or endangering lives. Officers should be prepared to show identification at the door 	

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<p>D. Knock and notice requirements - Penal Code Section 1531</p> <ol style="list-style-type: none"> 1. The announcement requirements of Section 1531 are identical in principle to those of Penal Code Section 844. (Greven v. Superior Court (1969) 71 Cal.2d 287, 292, fn. 6; People v. Valdivia (1980) 113 Cal. App.3d 24, 27, fn.4.) A violation of Section 1531 may result in the suppression of all evidence recovered from within the location 2. Compliance with PC Section 1531 <ol style="list-style-type: none"> a) In the usual case, officers should simply go to the front door of the premises described on the warrant and knock on the door. If an occupant opens the door, or states "Who is it?", the officer should state, "Police Officers. We have a search warrant. Let us in" b) If the door has been opened and the occupant now attempts to close it, officers may then forcibly hold the door open and enter c) If it was merely a voice from within that asked, "Who is it?", officers must then allow a reasonable time for the occupant to open the door before forcing entry d) If it appears that the occupants are not going to answer the door or are arming themselves or are trying to destroy evidence, then entry can be made as soon as this becomes clear e) If officers knock and hear a voice from within say, "Come in," it is 	

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<p>permissible to immediately enter - providing the door is open or unlocked</p> <p>f) If officers knock and hear no response at all, they must announce in a clear and audible manner, "Police officers. We have a search warrant. Let us in." Again, officers must wait a reasonable time to allow any occupants within to come to the door before forcing entry. A 30-60 second wait is recommended in most situations</p> <p>E. Justification for non-compliance with PC Section 1531</p> <p>1. Cannot be excused in advance</p> <p>a) Non-compliance with Section 1531 cannot be judicially authorized in advance of the service of the search warrant. Some outdated forms contain and "excuse from compliance" provisions - it is invalid. A peace officer must wait until the execution of the warrant and determine whether the facts as they exist at the time justify noncompliance with Section 1531</p> <p>b) The officer-affiant should nonetheless consider putting in the affidavit grounds of which the affiant is aware for noncompliance with Section 1531. Otherwise the defendant may allege that the affiant's failure to include this information in the affidavit is evidence that the affiant is manufacturing grounds for noncompliance with Section 1531</p>	

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2. Safety of search team or others

- a) Officers need not comply with PC Section 1531 if they have a reasonable belief that the occupants are armed and dangerous and that they will resist. For example, in *People v. Amos* (1977) 70 Cal.App.3d 562, officers were told that the defendant had just committed a robbery, had a gun and was "crazy." The court held that the police need not knock and give notice since they reasonably believed the defendant would shoot them if they did so. (See also, *People v. DeLaPlane* (1979) 88 Cal.App.3d 223, 234-236; and *People v. Braun* (1973) 29 Cal.App.3d 949.) Note, however, that the mere fact a suspect has a gun will not excuse knock and notice unless there are specific grounds to believe the suspect will attempt to use it to resist entry (*People v. Volheim, Jr.* (1978) 87 Cal.App.3d 538, 541)

3. Vacant premises

- a) Premises need not be occupied for a warrant to be served. Compliance with knock and notice is recommended since it is easier to comply than to explain to a judge why you didn't - particularly if it turns out someone is inside

4. Stores

- a) Knock and notice does not apply to those portions of stores, businesses, and other premises that are open to the public. (*People v. Lovett* (1978) 82 Cal.App.3d 527.) Private areas, backrooms, offices, etc., require compliance with PC Section 1531

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<p>5. Inner Doors</p> <ul style="list-style-type: none"> a) Officers need not "knock and notice" inner doors which are open People v. Livermore (1973) 30 Cal.App.3d 1073, or if another occupant directs officers to that door, People v. Murray (1976) 64 Cal.App.3d 342, or if the officers are justified in believing no one was within the closed inner room due to a lack of response to the commotion of the initial entry, dog barking, etc., People v. Castaneda (1976) 58 Cal.App.3d 165 b) However, in Young v. Superior Court (1976) 57 Cal. App.3d 883, the court held that officers should have knocked and noticed a closed bathroom door when they had reason to believe persons were in the bathroom and were unaware officers had entered the dwelling c) As a general rule, knock and notice should be complied with to the fullest extent possible, giving due regard to the safety of the search team and the likelihood of destruction of evidence <p>6. Search of a person</p> <ul style="list-style-type: none"> a) A search warrant may authorize a search of a person is particularly described b) Persons who are found within premises being searched but who are not named or described in the warrant may not be searched merely because they are on the premises. However, if they are validly arrested at the premises, they may then be searched pursuant to that 	

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<p>arrest. Persons may also be patted down for weapons within the guidelines of Terry v. Ohio (9168) 392 U.S. 1</p> <p>c) Persons who are occupants of a premises at the time a warrant is served may be detained during the search. Michigan v. Summers (1981) 452 U.S. 692, 101 Sp.Ct. 2587, 69 L.Ed.2d 340, 251, states, "[W]e hold that a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of a premises while a proper search is conducted"</p> <p>d) A search warrant authorizing a search of a person does not permit a search for that person at a residence not described in the warrant, even when an officer has a reasonable basis to believe the person to be searched is within that residence (Lohman v. Superior Court (1977) 69 Cal.App.3d 894)</p> <p>7. Seizure of items not described in the warrant</p> <p>a) The general rule is that officers may search for and seize only the property described in the search warrant. (People v. Frank (1985) 38 Cal.3d 711; Skelton v. Superior Court (1969) 1 Cal.3d 144, 155; and People v. Hill (1974) 12 Cal.3d 731, 762)</p> <p>b) However it is permissible for searching officers to seize any items which are reasonably recognizable as "contraband,"</p>	

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(drugs, stolen property and other items illegal to possess) or "mere evidence" of crimes (People v. Easley (1983) 34 Cal.3d 858, 872)

1) Contraband - When officers, in the course of a bonafide effort to execute a valid search warrant, discover articles which, although not included in the warrant, are reasonably identifiable as contraband, they may seize them whether they are initially in plain sight or come into plain sight subsequently, as a result of the officers' efforts (Skelton v. Superior Court (1969) 1 Cal.3d 144, 157 (emphasis added))

c) It is important for officers who seize unlisted items on the grounds they appear to be stolen to testify clearly and state persuasively the reasons they believed the items to be stolen. If the prosecution cannot carry the burden of proving that at the time of the seizure the items were reasonably believed to be stolen (or contraband), then the items may be suppressed - even if it can later be proved the items are stolen or contraband (People v. Murray (1978) 77 Cal.App.3d 305 (cf. People v. Jackson (1970) 14 Cal.App.3d 57, 66-67))

8. Mere evidence

a) In the case of "mere evidence," there must be a nexus between the item to be seized and criminal

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<p>behavior. This "nexus test" requires that there be cause to believe that the evidence seized is related to criminal activity or the crime under investigation. (People v. Hill, Supra, 12 Cal.3d 731, 762.) Thus, in Hill, the seizure of cut-off panty hose was proper under a search warrant in a robbery-murder investigation since such items are not an uncommon means of forming a mask, but the seizure of four tape recordings was held to be improper since there was no knowledge of the contents of the recordings or how they might be related to the case under investigation (12 Cal.3d at p. 763)</p> <p>b) The "nexus test" was satisfied in the case of People v. Easley (1983) 34 Cal.3d 858, 872. In Easley, one item to be seized was "bailing wire." Searching officers saw and seized wire clippers which could be used to cut bailing wire. The court held this was sufficient nexus to justify the seizure of the clippers even though it was not contraband itself but was "mere evidence"</p> <p>9. Preparing a second warrant</p> <p>a) In People v. Superior Court (Moore) (1980) 104 Cal.App.3d 1001, civilians accompanying officers during service of a search warrant observed and pointed out several stolen items which had not been listed on the warrant. These items were set aside and a second warrant was obtained for these. The court of appeal held that this procedure was valid</p>	

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<p>10. Return to the Search Warrant</p> <ul style="list-style-type: none"> a) The Return to the Search Warrant consists of an inventory or list of all the property seized during service as the warrant - including unlisted items seized during the search. (People v. Guillebeau (1980) 107 Cal.App.3d 531.) Ordinarily, a copy of a recovered property report attached to the return forms is sufficient. See Penal Code Section 1537 b) The original warrant and affidavit, as well as the Return to the Search Warrant, should be delivered forthwith to the magistrate or to his court after the search has been conducted and not later than ten days after issuance of the warrant. Penal Code Section 1534 subdivision (a) and (c). When the tenth day falls on a weekend or court holiday, a return is timely if file on the next court business day (People v. Stevenson (1976) 62 Cal.App.3d 915) <p>11. Effect of late return - effect of deficient return</p> <ul style="list-style-type: none"> a) Case law holds that a late return does not necessarily invalidate a search warrant. In People v. Schroeder (1979) 96 Cal.App.3d 730, two search warrants were served upon a bank for certain records. The records were voluminous and the bank took several days to locate the records and turn them over to the police. An initial search warrant return was filed within 10 days listing the items recovered up to that 	

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<p>time. As other records were located and turned over to the police, supplemental returns were filed but these were filed more than 10 days after the warrant was issued. The Court of Appeal held that the returns filed after the 10-day limit were valid and that all evidence recovered was admissible</p> <p>12. Releasing property seized pursuant to a search warrant</p> <p>a) Penal Code Section 1536 provides that:</p> <p>[A]ll property or things taken on a warrant must be retained by the officer in his custody, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property or things taken is triable</p> <p>b) An officer should not release property seized pursuant to a search warrant unless a valid court order, either oral or written, authorizes him to do so</p> <p>c) There have been isolated instances of attorneys obtaining ex parte court orders for the return of property prior to the disposition of the case and without any legal authority to do so. If there is any doubt regarding the validity of such an order, particularly if the case has not yet been filed or is still pending, the property should not be returned until the legality of the court order is thoroughly reviewed. Such orders are usually not valid</p>	

PRESENTATION	APPLICATION
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- d) If property is returned to a victim during the pendency of the criminal case, photographs showing the victim and property together should be taken for possible use in court at a later time

13. Warrantless arrests while serving warrant

- a) The case of *People v. Ramey* (1976) 16 Cal.3d 263, 272, limited the right of officers to enter a home to make an arrest without an arrest warrant. However, the case of *People v. McCarter* (1981) 117 Cal.App.3d 894, 908, holds that since officers serving a search warrant are validly within the premises and their entry is judicially authorized, warrantless arrests within the premises while serving a search warrant are legal (*People v. McCarter* (1981) 117 Cal.App.3d 894, 908)

IX. Court Proceedings

A. Truth-In-Evidence

1. Proposition 8

- a) The passage of the "Truth-In-Evidence" provision of Proposition 8 by the voters in 1982 placed the following phrase in the California Constitution: "[R]elevant evidence shall not be excluded in any criminal proceeding, including pretrial and post-conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense..." (Article I, Section 28, Subd. (d)). The legal

PRESENTATION	APPLICATION
<p>effect of this language is to limit the application of the exclusionary rule as a remedy for illegal searches to just those situations set forth in decisions of the United States Supreme court in interpreting the Federal Constitution. In other words, the so-called "Independent State Grounds Doctrine," wherein evidence was excluded because it was purportedly seized in violation of the California Constitution, is no longer law in California (since June 9, 1982 - effective date of Proposition 8). Thus, the exclusionary rule will now be applied only in those situations in which evidence was obtained in a manner which is deemed a violation of the Federal Constitution, and in determining whether evidence was seized in a manner which violates the Federal Constitution, decisions of the United States Supreme Court supersede and are controlling over decisions of the California Supreme Court and all other California courts. This is important because for many years California Courts have excluded evidence as having been illegally seized in situations wherein the U.S. Supreme Court would not have excluded the evidence</p> <p>b) Even if a search warrant is shown to be invalid, the evidence seized pursuant to it shall not be suppressed so long as the officers acted in good faith. Further, good faith is presumed - though it may be rebutted</p>	

INSTRUCTOR GUIDE

SEARCH WARRANTS

PRESENTATION	APPLICATION
<p>X. Written Exercise</p> <p>A. Circumstances For Search Warrant</p> <ol style="list-style-type: none">1. Fire occurred at 1234 East Broadway Street in Glendale, California2. Have student describe his own house3. Fire occurred at 3 AM on (today's date)4. Fire suppression Captain Smith related the following information:<ol style="list-style-type: none">a) Time of fireb) He could smell flammable liquid, possibly gasoline, in two locations in the housec) In his opinion there is two separate fires at location (bedroom and living room)d) A flammable liquid can, gasoline, is present inside location sitting on kitchen sink countere) Owner, who does not live at location, showed up without being contacted by Fire Department fully dressed in street clothesf) The house is vacant with a "For Sale" sign posted in front yardg) Owner asked several times, "how the fire started"h) When the owner was advised the investigator was responding to the location, he stated, "I don't want anyone else in my house poking around"	

PRESENTATION	APPLICATION
<ul style="list-style-type: none">i) While extinguishing the fire he observed flashback in both roomsj) The house was secured upon arrival <p>B. Example of search warrant</p> <ul style="list-style-type: none">1. See enclosures for instructor reference	

SW No. _____

STATE OF CALIFORNIA - COUNTY OF LOS ANGELES

SEARCH WARRANT AND AFFIDAVIT

(FOR THE SEIZURE OF A PERSON FOR WHOM
WARRANT OF ARREST HAS BEEN ISSUED*)

(AFFIDAVIT)

_____, being sworn, says that on the basis of the information contained within this Search Warrant and Affidavit and the attached and incorporated **Statement of Probable Cause**, he/she has probable cause to believe and does believe that the person named and described below and sought pursuant to this Search Warrant is presently subject to arrest pursuant a lawfully issued Warrant of Arrest and is now located at the location(s) set forth below. Wherefore, affiant requests that this Search Warrant be issued.

(Name of Affiant)

_____, NIGHT SEARCH REQUESTED: YES [] NO []

(Signature of Affiant)

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY

OF LOS ANGELES: proof by affidavit having been made before me by _____

(Name of Affiant)

that there is probable cause to believe that the person named and described herein may be found at the location(s) set forth herein and that he/she is presently subject to seizure and arrest pursuant to a lawfully issued Warrant of Arrest:

YOU ARE THEREFORE COMMANDED TO SEARCH THE FOLLOWING LOCATION(S):

FOR THE FOLLOWING PERSON:

AND TO SEIZE AND ARREST HIM/HER, IF FOUND and bring him/her forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this _____ day of _____ 19 _____, at _____ A.M./P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

_____, NIGHT SEARCH APPROVED: YES [] NO []

(Signature of Magistrate)

Judge of the Superior/Municipal Court, _____ Judicial District

* See Steagald v. United States (1981) 451 U.S. 204, and People v. Case (1960) 105 C.A. 3d 826 re use of Search Warrant to enter residence of third party to serve an Arrest Warrant. A Search Warrant is not necessary for the entry into the residence of the person named in an Arrest Warrant. See Steagald, 451 U.S. at p. 214, fn. 7.

STATEMENT OF PROBABLE CAUSE

My name is _____ . I am currently employed as a peace officer for _____ and have been a peace officer for _____ years. My present assignment is _____ .

I request a search warrant to allow entry into premises in order to execute a warrant of arrest. The premises to be entered and searched do not belong to the person named in the warrant of arrest.

Name of person to be arrested: _____ .

Facts leading to reasonable belief a warrant of arrest is outstanding for such person (attach copy of warrant or teletype, if available): _____

Facts leading to reasonable belief person to be arrested is within the premises sought to be searched pursuant to the search warrant: _____

FIRE INVESTIGATION 2A

LESSON PLAN 6

TOPIC: Field Burn Exercise

LEVEL: II

TIME: 4 hours

BEHAVIORAL OBJECTIVE:

Given: Without aid of reference material and a written exam

Performance: The student will be able to describe the phases of fire, rates of spread, flashover, burn patterns and fire behavior after observing both a vehicle and a structure fire

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Fire Investigation 1A Student Manual
Fire Investigation 1B Student Manual
Fire investigation 2A Student Manual

MATERIALS NEEDED:

PREPARATION:

PRESENTATION	APPLICATION
<p>I. Introduction</p> <ul style="list-style-type: none"> A. The class will observe a live fire demonstration utilizing a structure and vehicle. B. Fires will be set in as many ways as building and vehicle will allow. C. At conclusion of live fire exercise class members will investigate the scenes. <p>II. Materials List</p> <ul style="list-style-type: none"> A. Building B. Vehicle C. 10 gals. gasoline D. 1 gal. paint thinner E. 1 gal. alcohol F. 1 gal. lacquer thinner G. Can of charcoal lighter fluid H. Can of Ronsonol lighter fluid I. Box of rags J. Roll of wax paper K. Qt. of motor oil L. Styrofoam cups M. Plastic cups N. 1 lb. sugar O. 1/2 lb. potassium permanganate P. Glycerine Q. Sterno 2 cans R. 4 votive candles S. Box of trash bags T. 8" of newspaper U. Bottles for Molotov Cocktails V. 25 lb. monofilament line W. Carpet for building X. Enough furniture to fill each room Y. Plastic jugs 1 gal. milk type Z. Fuzees AA. Black powder safety fuse BB. Kitchen matches CC. Masking tape, duct tape, scotch tape, black plastic tape DD. Cigarettes EE. Book matches 	

INSTRUCTOR GUIDE

FIELD BURN EXERCISE

PRESENTATION	APPLICATION
<ul style="list-style-type: none">FF. StringGG. Smokeless powderHH. Black powderII. Box of powdered soap (not detergent) <p>III. Equipment List</p> <ul style="list-style-type: none">A. Fire department engine and personnel to control firesB. Protective equipment for fire control personnelC. Clipboards for each teamD. Package of forms for each team<ul style="list-style-type: none">1. Crime report form2. Supplemental report forms3. Evidence/photographic log4. Evidence tags5. Consent to search forms6. Notebook paper7. Marking penE. HammerF. NailsG. Shovel - for each teamH. Broom - for each teamI. Various small hand toolsJ. Camera with flashK. 35 mm print film approximately 6 rollsL. Paint cans, enough for 5 per teamM. Small plastic envelopesN. Paper bags and envelopesO. Hydrocarbon detector	

PRESENTATION	APPLICATION
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IV. Burn Exercise Operation

- A. Have teams preselect from class members. Teams should be no larger than 3 for optimum performance. Each team will choose a team leader and assign functions to individual members
- B. Each team is assigned to a scene and are allowed to set up their scene. This includes placement of furniture, and how fire is to be set
- C. Once scenes are set up, the class observes each scene and discussion lead by instructor covers what will be expected at each fire. Video tape scene if possible
- D. The building will then be evacuated and secured from entry
- E. The instructor will make sure that the fire suppression crew is completely set up with hose streams, protective equipment prior to setting any fires
- F. The instructor should have a safety officer from the local fire agency to oversee all fireground activities
- G. Special Note to Instructors:

Do not use any flammable liquids that are splashed or poured. Use gasoline in containers such as plastic bags or jugs. Use alcohol or paint thinner ONLY as splashed or poured accelerants

Safety is foremost and any set that is unsafe or marginal should NOT be used

Discussion between the instructor and safety officer about each set is mandatory prior to ANY fires that are set

If ANY explosives including large firecrackers are used, a qualified explosives or bomb technician MUST be involved. WARNING - FRAGMENTATION

PRESENTATION	APPLICATION
<p>Exercise should start with a cigarette in a piece of furniture to illustrate the timing of a smoldering fire.</p>	
<p>V. Types Of Burn Exercises That Can Be Used</p> <ul style="list-style-type: none"> A. Alcohol poured throughout area and fuzee used as ignition source B. Gasoline in plastic milk jug with cigarette match device tied to side C. Pendulum of plastic bag with gasoline, monofilament line, over votive candles D. Use gasoline in plastic bags on floor to simulate trailer E. Newspaper trailer with and without accelerants such as paint thinner or charcoal lighter fluid F. Jug or bag of gasoline in a piece of furniture using cigarette match device or fuzee G. Fuzee under bed H. Fill room or area with crumpled newspaper I. Use wax paper and sterno as trailer and accelerant J. Molotov's Cocktails <ul style="list-style-type: none"> 1. Self-ignition 2. Wick 3. Filler for Molotov's <ul style="list-style-type: none"> a) Strategy gasoline b) Gasoline and oil c) Gasoline and soap d) Gasoline and styrofoam cups e) Gasoline with taped fuzee 	

INSTRUCTOR GUIDE

FIELD BURN EXERCISE

PRESENTATION

APPLICATION

- K. Smokeless powder trailer to accelerants in containers
- L. Explosives used in a variety of ways if scene allows
 - 1. Letter bomb
 - 2. Gasoline and dry cord
 - 3. Blasting cap in coffee can
 - 4. Blasting cap in styrofoam cup of black or smokeless powder that is sealed with tape
 - 5. Fireworks
 - 6. Pipe bomb in PVC pipe
- M. Other ways as safety allows

VI. Instructor Duties At Completion Of Burn Exercise

- A. Fires must be out prior to class contacts with burn sites
- B. Prior to entry to any burn scenes all personnel must have safety shoes, hard hats and gloves
- C. The area should be smoke free before entry to investigation teams
- D. If possible, video tape each scene before it is disturbed by investigation teams. Each "scene" should also be video taped at the completion of the investigation by the teams. This tape can be used as a training aid during the trial process

FIRE INVESTIGATION 2A

LESSON PLAN 7

TOPIC: Investigation Exercise

LEVEL: II

TIME: 4 hours

BEHAVIORAL OBJECTIVE:

Given: Without aid of reference material and a written exam

Performance: The student will be able to read the fire indicators and reach a conclusion as to the origin and cause of the fire. Student will be able to collect evidence and commit what he has found into the written word for presentation in court

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Fire Investigation 1A Student Manual
Fire Investigation 1B Student Manual
Fire investigation 2A Student Manual

MATERIALS NEEDED: See Lesson Plan

PREPARATION: See Lesson Plan

PRESENTATION

APPLICATION

- I. Introduction
 - A. The student will understand the fire scene indicators that will lead to a conclusion regarding the origin and cause of the fire
 - B. The student will collect evidence consistent with criminal investigations
 - C. The student will conduct the investigation for presentation in court
 - D. At the conclusion of the investigation the student will be able to prove the "corpus" of the fire

- II. Instructor Duties During The Fire Scene Investigation
 - A. Instructor should supervise and be available for questions
 - B. Assist the investigation teams as necessary
 - 1. Provide support
 - 2. Guide the teams in direction that will obtain results
 - 3. After the evidence is collected by the students the instructor should make sure that it has been collected correctly
 - a) Photographed
 - b) Diagrammed
 - c) Marked and tagged
 - d) Placed on the evidence report
 - 4. At the end of the exercise the instructor will evaluate the evidence collection and handling as the evidence is turned in

FIRE INVESTIGATION 2A

LESSON PLAN 8

TOPIC: Report Writing Exercise

LEVEL: II

TIME: 8 hours

BEHAVIORAL OBJECTIVE:

Given: Without aid of reference material and a written exam

Performance: The student will learn to write a clear, concise investigation report and will correctly document the fire scene investigation

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Fire Investigation 1A Student Manual
Fire Investigation 1B Student Manual
Fire Investigation 2A Student Manual

MATERIALS NEEDED: See Manual

PREPARATION: See Manual

PRESENTATION	APPLICATION
<p>I. Introduction</p> <ul style="list-style-type: none">A. The student will document information gained during the scene investigationB. The investigation report MUST contain all pertinent information, utilizing written information, sketches and photographs, to prove the corpus of the arsonC. The investigation report is the <u>SUM TOTAL</u> of the investigationD. Forms that the students were given at the beginning of the scene investigation<ul style="list-style-type: none">1. Crime report2. Supplemental report3. Evidence/photographic logs4. Evidence tags5. Consent to searchE. Pens and pencilsF. Photographs taken during the investigationG. Evidence collected during the investigationH. Notes and diagrams made during the investigationI. Search warrant obtained during the investigation <p>II. Report Writing Exercise Operation</p> <ul style="list-style-type: none">A. Have teams organize information for documentation	

PRESENTATION	APPLICATION
<ol style="list-style-type: none"> 1. Field notes 2. Evidence lists and photo logs 3. Evidence collected 4. Diagrams and sketches 5. Photographs <p>B. Teams will choose who will write the investigation report</p> <p>C. Other members of the team will process evidence/photo reports and diagrams</p> <p>D. As teams are writing their report the instructor should be available for questions and assistance as needed</p> <p>E. The instructor should encourage the students to write in a manner that will prove the corpus of arson in court</p> <ol style="list-style-type: none"> 1. Clear and concise 2. Not redundant 3. Proves the point 4. Flows in a logical manner 5. Has all the <u>needed</u> information <p>F. Encourage the students to "outline" the report before writing it. <u>See example below:</u></p> <ol style="list-style-type: none"> 1. Fire scene investigation <ol style="list-style-type: none"> a) Summary of case <ol style="list-style-type: none"> 1) Time and date of occurrence 2) Place and description 3) Time and date of investigation 4) Result of investigation 	

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> b) Information <ul style="list-style-type: none"> 1) From fire suppression personnel c) Weather conditions at time of fire d) Fire scene indicators <ul style="list-style-type: none"> 1) Conclusion - "arson based on the following facts and indicators:" <ul style="list-style-type: none"> o Burn patterns o flammable liquid patterns o flammable liquids found o ignition sources found o containers found o doors open/closed during fire o point of entry o ghost mark o etc. o etc. e) Evidence report f) Photographic report g) Search warrant attached to report <p>G. The exercise will take about 3 hours. The remainder of the time will be spent in the group's presenting their cases before the class. The instructor will act as moderator during the presentation. Cross examination by class members should be both encouraged and moderate</p> <p>III. Results At The End Of The Four Hour Block Are:</p> <ul style="list-style-type: none"> A. The evidence collected photographed, diagrammed, marked, tagged, and packaged in a manner that will be accepted in a court of law 	

PRESENTATION

APPLICATION

- B. Information recorded regarding the fire scene indicators
- C. A conclusion reached regarding the origin and cause of the fire
- D. The scene investigation photographed as it proceeded
- E. That the student be able to conduct a completed fire scene investigation

FIRE INVESTIGATION 2A

LESSON PLAN 9

TOPIC: Trial Process

LEVEL: II

TIME: 1 hour

BEHAVIORAL OBJECTIVE:

Given: Without the aid of reference material and a written exam

Performance: The student will describe the trial process from its inception, through verdict, and/or sentencing. This description will include jury selection, trial proceedings, jury deliberation, verdict, and sentencing (if appropriate)

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Tilton, Dennis TAKING THE STAND, a Firm Communicator's Publication, North Hollywood, CA 91601 (1981)
Fire Investigation 1B, Student Manual, CFSTES

MATERIALS NEEDED: Chalkboard, A/V equipment and materials

PREPARATION: The trial process is an extremely important component of the criminal justice system. Fire investigation personnel should be comfortable with the system, in order to maximize their contribution to the prosecution.

INSTRUCTOR GUIDE

TRIAL PROCESS

PRESENTATION	APPLICATION
<p>I. Trial Process</p> <ul style="list-style-type: none">A. Trial by judge or jury of 12 impartial jurors; or trial by judge only (when both sides, prosecution and defense, agree to do so)B. "Voir dire" prospective jurors. Prosecution and defense question prospective jurors, 12 are chosen who survive all challenges. (10 prospective jurors can be dismissed by prosecution and defense). The 12 jurors are sworn in and impaneled to try the caseC. If the jury does not come to a unanimous agreement on the verdict, the case is declared as a mistrial and a new trial is scheduled <p>II. Courtroom Proceedings</p> <ul style="list-style-type: none">A. Opening statements by prosecution, the defenseB. Prosecutor must prove beyond a reasonable doubt that the defendant is guiltyC. The prosecution presents its case first<ul style="list-style-type: none">1. "Direct examination," first witness is questioned by the lawyer who called the individual to the stand (prosecution)2. "Cross examination," the opposing attorney (defense) questions the witness3. Further exchanges are called "redirect" and recross examination"D. Upon completion of the prosecution's case he or she states "The State rests its case"	<p>What essential facts are necessary to establish the crime of arson and to establish that property was willfully and maliciously burned by the defendant?</p>

PRESENTATION	APPLICATION
<p>E. The defense attorney can then request:</p> <ol style="list-style-type: none"> 1. The case be dismissed for lack of proof that the crime of arson was committed 2. Defense may call their own expert witnesses to try to establish an alibi for the defendant 3. Defense may call their own expert witnesses to try to show the fire was set accidentally (additional evidence may be offered) <p>F. Defendant does not have to take the stand, but once he or she does, they are subject to cross examination</p> <p>G. Defense may present evidence for the defendant, but is subject to "rebuttal" by prosecution</p> <p>H. Final arguments are made</p> <p>I. Jurors are instructed by judge and then sent out to deliberate and consider the verdict or verdicts</p> <p>J. Jury foreman delivers signed and dated verdict or verdicts. The judge, court clerk or foreman reads the verdicts. After reading, the jurists may be orally polled one by one about each verdict</p>	<p>Discussion: Discuss the type of tactics that are often used by the "defense" (Examples: alibi defense - not present or capable of lighting a fire, accidental cause, "affirmative defense" present an expert's opinion part of the defense to refute the prosecutor's argument.)</p>
<p>III. Sentencing The Convicted Arsonist</p> <ol style="list-style-type: none"> A. Several weeks after the guilty plea the sentence is determined by the judge B. A motion to postpone sentencing may be made by defense <ol style="list-style-type: none"> 1. Appeal to higher court 2. Establish that prejudicial errors in original trial occurred 	<p>What are some of the sentencing options used by a judge? (jail, prison, fine, community service, probation, financial responsibility)</p>

SUMMARY

The trial process is an extremely important part of our criminal justice system. Fire investigators should work comfortably within the system in order to be of maximum assistance to the prosecution.

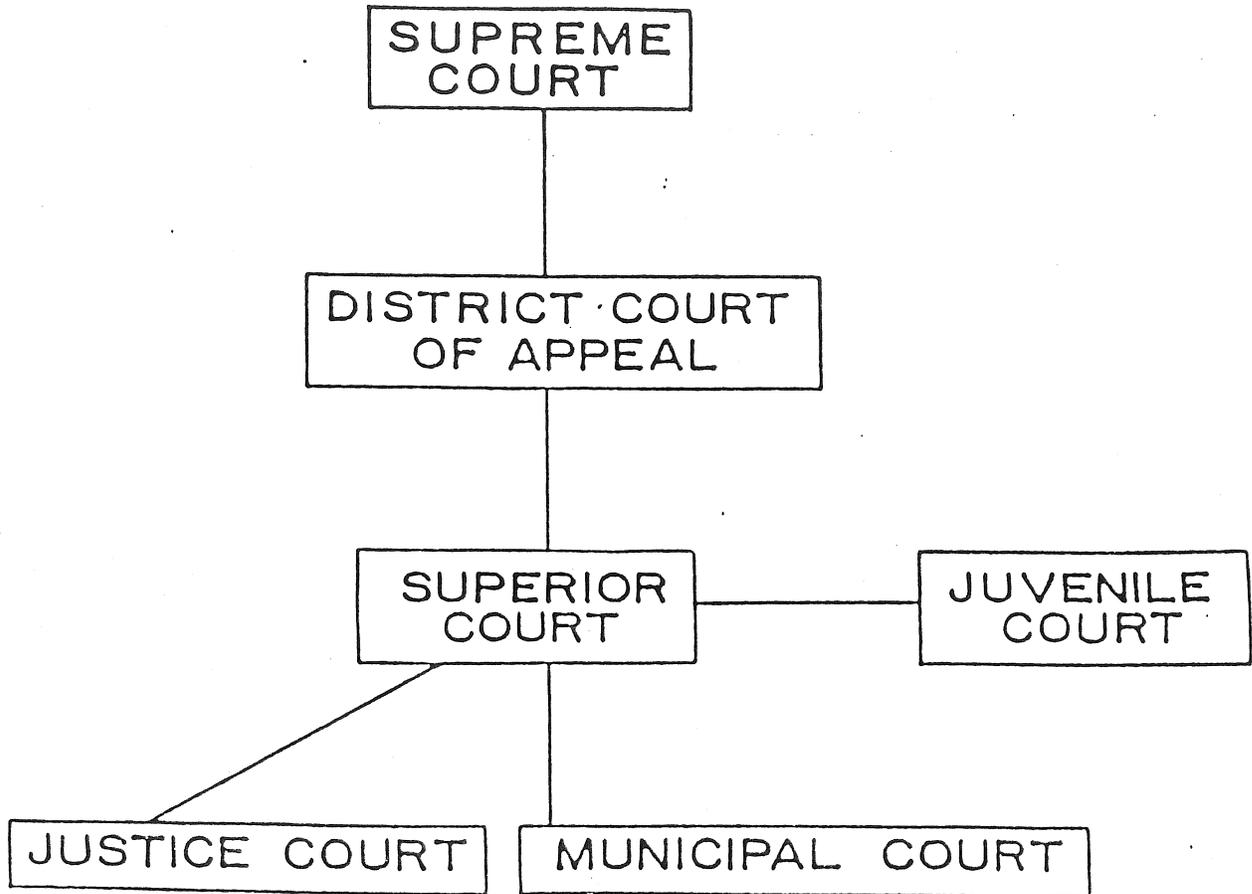
EVALUATION

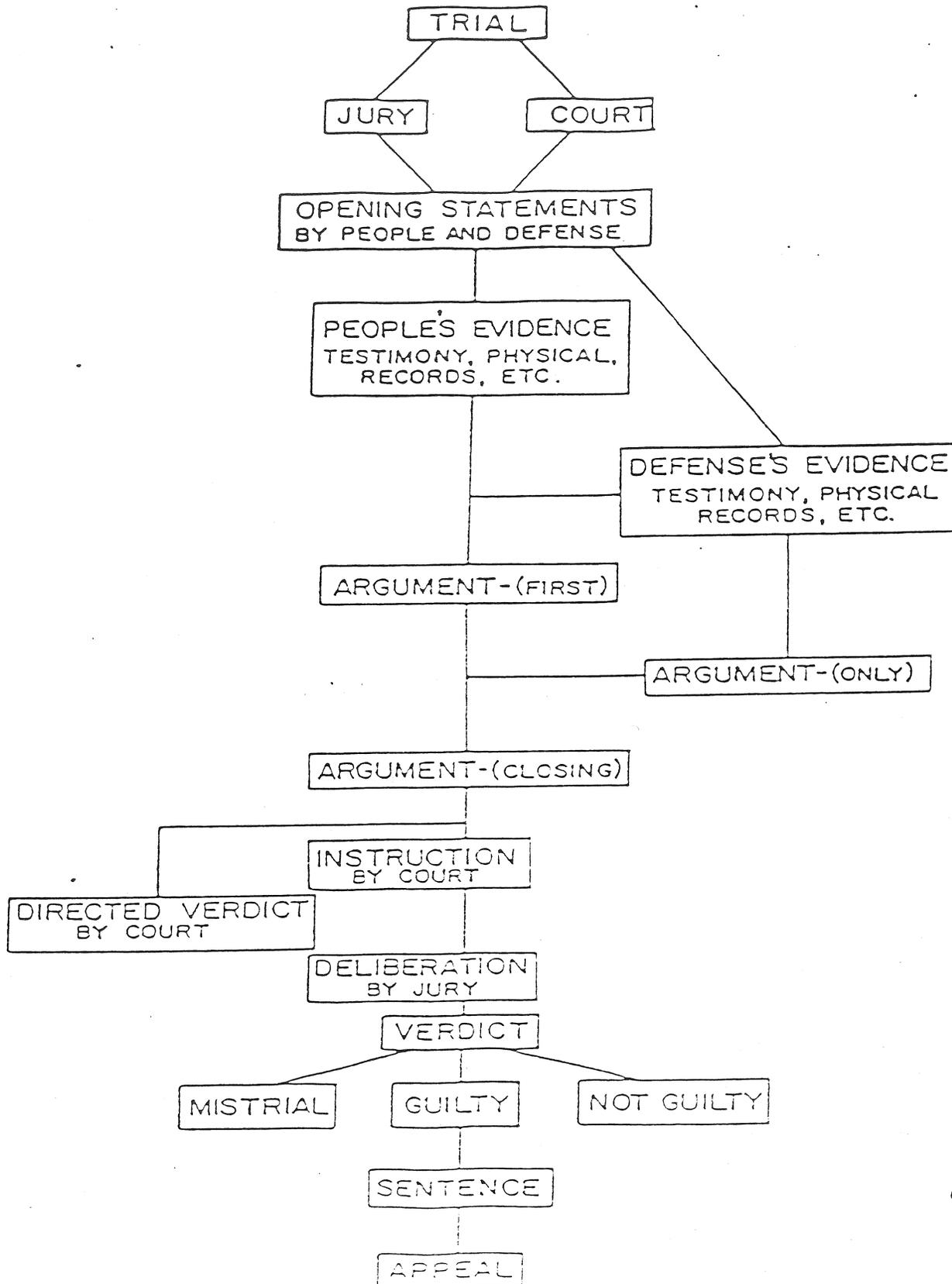
The student will be evaluated by completing the written exam.

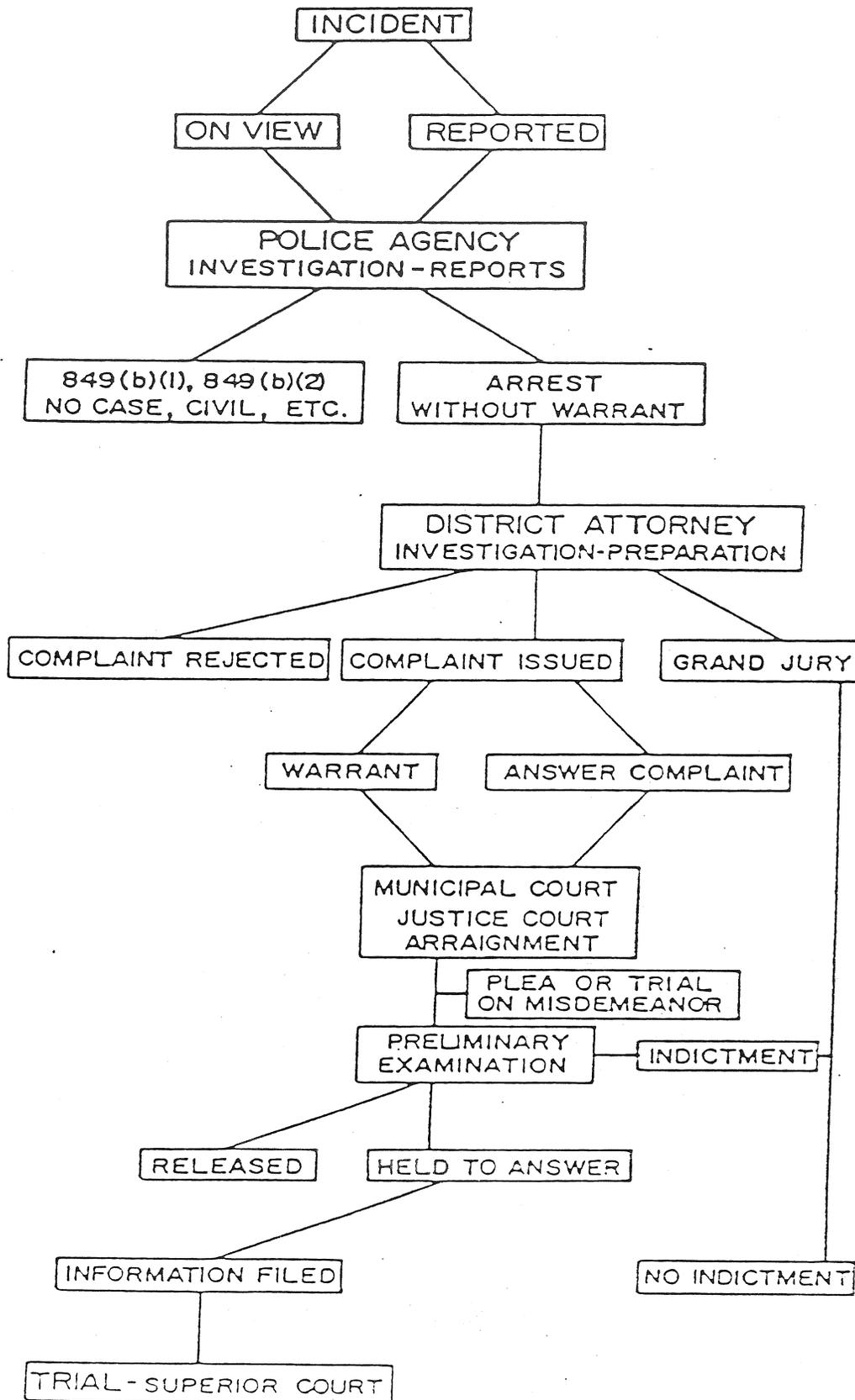
ASSIGNMENT

Student Manual, pages _____

CALIFORNIA COURT SYSTEM







FIRE INVESTIGATION 2A

LESSON PLAN 10

TOPIC: Courtroom Testimony

LEVEL: II

TIME: 1 hour

BEHAVIORAL OBJECTIVE:

Given: Without the aid of reference material and a written exam

Performance: The student will describe the guidelines for effective courtroom testimony, to include;

1. Personal preparation
2. Qualification for expert witness
3. Attendance
4. Impression of others
5. Precision and accuracy
6. Terminology
7. Cross examination

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Tilton, Dennis TAKING THE STAND, a Firm Communicator's Publication, North Hollywood, CA 91601 (1981)
Fire Investigation 1B, Student Manual, CFSTES

MATERIALS NEEDED: Chalkboard, A/V equipment and materials
Film - Fire Investigator on the Witness Stand

PREPARATION: Professional courtroom demeanor is essential for the investigator to effectively present testimony. Many fire investigators are considered to be expert witnesses, and, as such, must strive to present as credible an impression as possible.

INSTRUCTOR GUIDE

PRESENTATION	APPLICATION
<p>I. Witness Preparation For Testimony</p> <p>A. Meet with prosecutor prior to trial</p> <ol style="list-style-type: none"> 1. Discuss reports, notes, viewpoints 2. Check all documents to be submitted 3. Plan questions <p>II. Fire Service Arson Witnesses</p> <p>A. Eyewitnesses:</p> <p>B. Expert witness: Credible, qualified and valued opinion on expert subject</p> <ol style="list-style-type: none"> 1. Testifies in the form of an opinion that beyond common experience 2. States reasons for his or her opinion and matter on which it is based 3. Testifies about facts that nonexperts would be incapable of perceiving or describing <p>C. Qualification procedure for expert witness</p> <ol style="list-style-type: none"> 1. Judge makes determination if witness is qualified as an "expert witness" 2. Prosecutor introduces his witness that he would like to be qualified as an expert witness; he identifies special knowledge, skills, experiences, training and education (prosecutor should have a "Qualification Sheet" on the witness prior to court appearance) 	<p>Why are the pre-trial meetings with the prosecutor so important? (Develop the same perceptions of facts; recognize the strengths and weaknesses in your testimony; prepare to work together in the courtroom.)</p> <p>What should the witness do if the prosecutor fails to make arrangements for a meeting? (Arrange it yourself.)</p> <p>Ask how many class members have ever qualified as an "expert witness".</p> <p>Each student should develop "Qualification Sheet" to be available for the prosecutor to review should they be needed as an expert witness. This should include: current position; duties and responsibilities; fire service employment history (types of fires investigated and number of which were determined to be arson); education and training; memberships; court qualifying publication;</p>

PRESENTATION	APPLICATION
<p>3. The defense attorney can challenge a witnesses' qualification as an expert witness during Voir Dire examination</p> <p>a) Questions will be asked about the witnesses' qualifications and knowledge that would tend to disqualify him or her as an expert</p> <p>4. Should the defense attorney object to the witnesses' ability to serve as an "expert" witness, the judge will either overrule the objection or sustain it which will indirectly give his decision</p> <p>5. If the judge sustains the defense attorney's objection to allowing the expert witness testimony, the prosecutor must try again to prove his witnesses' capabilities or ask his witness to step down</p> <p>6. The voir dire examining process may resurface during cross examination of the declared witness</p> <p>a) Be prepared to persuade others to accept your opinion as valid</p> <p>b) Your testimony will usually establish the Corpus Delicti of arson</p> <p>c) Investigative oversights may provoke reasonable doubt in juror's mind</p>	<p>other investigative background information.</p> <p>See handout # , give examples of Voir dire questions (in depth review of your qualifications, specific questions on fire investigation and fire service; especially material related to the case.)</p> <p>Very rarely does a judge directly and openly give this opinion that a witness is qualified or an expert. Most decisions are performed indirectly through sustaining or over-ruling a defense attorney's legal motion</p> <p>What questions or areas of information should a would-be expert arson witness be prepared to answer? (explain field of arson and fire investigation; explain). particulars of how and where qualification listed came from; must know about fire and be able to decipher the remains of a fire scene)</p>

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> d) Expert opinions are worthless without sound reasons given to support them e) The arson expert should expect his or her findings and opinions to be challenged 	
<p>III. Witness Attendance</p> <ul style="list-style-type: none"> A. Make sure to be very punctual on your courtroom appearance B. Generally all witnesses, except designated investigative officer, must await their turn to testify outside of the courtroom C. When called by the bailiff, walk purposefully into courtroom, shoulders back, head erect, facial expression serious but not grim (no need to hurry nor any need to hurry back) face the court clerk before being seated receive the oath D. Court clerk administers oath <ul style="list-style-type: none"> 1. Respond to oath with a firm and distinguished "I Do" E. Leave stand only when allowed to do so by judge <ul style="list-style-type: none"> 1. The judge will release you when your testimony is complete 2. Gain his permission to leave the stand to use visual aids F. Upon completing your testimony and being released by the judge, walk immediately out of the courtroom and return to work (unless otherwise advised by the prosecutor) G. Be rested and prepared for giving testimony; never use alcohol or drugs to calm your nerves; the side effects can be noticed by the jury 	<p>What would being late for a courtroom appearance do to your ability to testify?</p> <p>Practice receiving the oath: arm erect, forearm turned up at 90 degrees elbow, fingers together, palm out, arm elevated to shoulder level</p> <p>Why would it be beneficial to leave the courtroom rather than stay and listen to proceedings? (Jury may get the impression that you are not neutral and have vested interest in the case)</p>

PRESENTATION	APPLICATION
<p>IV. Witness Dress and Hygiene</p> <ul style="list-style-type: none"> A. Clean, neat, uncontroversial B. A uniform can be worn, but symbols, fraternal pins, badges or other insignia should be inconspicuous C. Avoid any bulky items or item that would attract attention from your pockets, such as; cigars, paper, pens, cigarettes, keys, etc. 	<p>What type of clothing would you consider giving the least chance of visual bias by the jurors. (Conservatively designed suitcoat and tie; check with local D.A. regarding the nature of your dress)</p>
<p>V. Witness Behavior</p> <ul style="list-style-type: none"> A. Direct questioning <ul style="list-style-type: none"> 1. Listen carefully to all questions, ponder the question then answer carefully and accurately 2. Answer clear and precise, yet brief and to the point 3. Always be accurate, correct any errors in your statement as soon as possible 4. Never use notes, reports or other written aids unless the judge has given you permission to do so 5. Never try to memorize answers to questions you know the prosecutor is going to ask you 6. Should profanity have to be recited when recapping an event, the approval of the judge should be attained prior to reciting such 7. When questioned, look into the eyes of the questioners, when answering the question look at the jurors 	<p>Never use profanity as an expression of your own personal feelings during the courtroom proceedings</p>

PRESENTATION	APPLICATION
<ul style="list-style-type: none"> 8. Do not guess at an answer, state that you don't know the answer, don't remember the circumstances, or that you don't understand the question, rather than guess 9. Be familiar with proper courtroom terminology 10. Actual opinion should not be given until specifically demanded by the questioner <ul style="list-style-type: none"> a) Furnish reasons for opinions when asked - mention as many as exist b) A well supported opinion has the greatest likelihood of acceptance c) An expert should have data at hand to support opinion presented B. Courtroom procedure on the stand as an "expert witness" <ul style="list-style-type: none"> 1. Keep emotions in check, never argue, show anger, or try to match wits with the defense attorney 2. Be prepared for any testimony to be interrupted by the defense with an "objection" (usually motivated by a technicality); listen closely to the proceedings an answer the next question 3. Be aware of body language, avoid the following: <ul style="list-style-type: none"> a) Slouching in your seat b) Tapping fingers, chewing gum, shifting your eyes or any mannerisms that would show nervousness or tension 	<p>Give out handout # _____ and # _____, "Courtroom Demeanor Guidelines" by Dennis Telton and "Glossary of Terms"</p>

INSTRUCTOR GUIDE

COURTROOM TESTIMONY

PRESENTATION

APPLICATION

4. When addressing the judge, use his or her proper title "Your Honor"
 - a) When addressing an attorney, use Mr. or Mrs. followed by the last name
 - b) Use the proper title of any other professional described in conversation, i.e., Dr. _____, Chief _____, etc.
5. Wait on the question to be asked completely before answering. If you don't understand the question, ask for clarification
6. Do not purposefully relay a humorous event to liven up courtroom communications
7. When communicating your testimony, try to leave your hands in your lap when sitting or by your sides when standing

C. Cross Examination

1. Respect but never fear the cross examination
2. An investigation should not hastily admit to investigative oversights
3. Be careful of yes or no answers; many times falsehood is implanted amongst true statements, should you agree with such a statement, you could be trapped

Avoid using first names when addressing attorneys or any other member of the court. Friendly communications with any member of the court could cause the jury to draw conclusions about your interests or alliances

When the defense attorney asks you a question that would require a yes or no answer that needs to be qualified, you should qualify the answer first before stating yes or no. This would prevent you from being cut off after giving the yes or no answer

PRESENTATION	APPLICATION
<p>4. The answer to a hypothetical question hinges on the assumption supplied</p> <ul style="list-style-type: none"> a) If other facts are necessary before a hypothetical question can be answered, the victim should say so b) Example: If asked whether it is possible for a particular type of structure fire to be caused by electrical wiring, the arson expert would ask: <ul style="list-style-type: none"> 1) Was wiring in the conduit? 2) Was defective wiring near point of origin of fire? 3) If electrical power was on 4) If one or more uncommunicative points of origin were found 5) If all other possible causes were eliminated <p>5. Defense attorney tactics to destroy a witness' composure and concentration</p> <ul style="list-style-type: none"> a) Hurry your answers or pause between dramatic performances to work on your conscience 	<p>How would you answer the following questions?</p> <p>You dislike my client don't you?</p> <p>("No sir" or "not really, I'm not personally acquainted with him")</p> <p>"Well, you don't particularly like what arsonists do, do you?"</p>

PRESENTATION

APPLICATION

- b) Shuffling papers or make other distractions that would hinder your concentration
- c) Move from place to place in the courtroom attracting your attention away from the jury
- d) Move very close to you
- e) Speak in varying tones
- f) Use long, hard to understand wording

NOTE: A good judge will control a defense attorney's devious ways

6. Visual aids

- a) Approach visual aids only on request of an attorney with approval of the judge
- b) Face jury as much as possible
- c) Hold the pointer in position long enough for all to see
- d) Stand with hands by your sides in a neutral position when not using the visual aids

SUMMARY

Courtroom demeanor is essential for the investigator to effectively present testimony. For fire investigators to be credible witnesses they must present as professional an image as possible.

EVALUATION

The student will be evaluated by completing the written exam.

ASSIGNMENT

Student Manual, pages _____

FIRE INVESTIGATION 2A
COURTROOM DEMEANOR GUIDELINES

1. Be conscious of physical and exterior appearance.
2. Be conscious of mannerisms on witness stand.
3. Be conscious of manner of answering questions.
4. Be aware of impression being created on jury as answers come forth.
5. Strive for appearance of detached neutrality.
6. Answer questions directly, not evasively.
7. Readily admit mistakes.
8. Be courteous to all attorneys.
9. Remain alert at all times.
10. Admit failure of memory.
11. Estimate, but do not guess.
12. Bring written reports.
13. Prepare for witness appearance by reviewing written reports.
14. Do not acquiesce to questioner's mere suggestions.
15. Reflect upon question prior to answering.
16. Speak loudly, do not mumble.
17. Avoid all emotional involvement and emotional displays.
18. Avoid humor.
19. Give objective answers.
20. Conduct yourself in a dignified and formal, but not stiff manner.
21. Do not act familiar or unduly casual with attorneys, judge, or jury.
22. Do not answer beyond scope of question.
23. Do not spar or act clever with attorneys.
24. Bear yourself in a confident, not timid, manner; you don't act cocky.
25. Always answer questions truthfully.
26. Admit not knowing the answer to a question.
27. Employ good English usage; avoid slang, profanity, and vernacular expression.
28. Recite facts; offer opinions only when requested to do so.
29. Answer questions clearly and succinctly.

FIRE INVESTIGATOR 2A

LESSON PLAN 11

TOPIC: Presentation of Evidence in Court

LEVEL: II

TIME: 1 hour

BEHAVIORAL OBJECTIVE:

Given: Without the aid of reference material and a written exam

Performance: The student will describe the procedures for presenting confessions in court, including:

- A. Providing that confession was obtained legally
- B. Providing that confession was voluntary
- C. Providing that Miranda warning was administered
- D. Use of tape recordings

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Fire Investigation 1B, Student Manual, CFSTES

MATERIALS NEEDED: Chalkboard, A/V equipment and materials

PREPARATION: Physical evidence, when presented in court must satisfy certain legal requirements in order to be admissible. Among these are proof of an unbroken chain of custody, proper preservation techniques and accurate tagging.

INSTRUCTOR GUIDE

PRESENTATION OF EVIDENCE IN COURT

PRESENTATION	APPLICATION
<p>I. Presentation Of Evidence</p> <p>A. Prior to court</p> <ol style="list-style-type: none">1. Discuss with the District Attorney what will be used2. Obtain items from storage3. Organize evidence for courtroom presentation <p>B. In court</p> <ol style="list-style-type: none">1. Present evidence<ol style="list-style-type: none">a) D.A. and investigator2. Identify each item - explain significance3. Establish chain of evidence<ol style="list-style-type: none">a) Chain of custody must be maintained and proved to be accurateb) Judge will admit evidence into court use after finding the following:<ol style="list-style-type: none">1) Prove authentic (chain of evidence preserved)2) Untampered with (also not subject to tampering)3) Properly preserved (closely matches condition it was in) <p>C. When asked to examine evidence, reach to accept it, don't grab it; read the evidence tag and examine the evidence closely</p>	<p>What does the term "chain of custody" mean?</p> <p>Explain the importance of evidence security, labeling, preservation and relevance to the case prior to being admitted in court</p> <p>If you are asked in court to substantiate that a piece of evidence is legitimate, why should you examine closely if it looks to be obviously yours?</p>

SUMMARY

Presenting physical evidence in court requires several legal issues to be satisfied. The chain of custody must be proven, evidence must have been properly preserved and the identification must be accurate.

EVALUATION

The student will be evaluated by completing the written exam.

ASSIGNMENT

Student Manual, pages _____

FIRE INVESTIGATION 2A

LESSON PLAN 12

TOPIC: Presenting Confessions in Court

LEVEL: II

TIME: 1 hour

BEHAVIORAL OBJECTIVE:

Given: Without the aid of reference material and a written exam

Performance: The student will describe the procedures for presenting confessions in court, including:

- A. Providing that confession was obtained legally
- B. Providing that confession was voluntary
- C. Providing that Miranda warning was administered
- D. Use of tape recordings

Standard: With 70% accuracy achieved on the written exam

REFERENCES: Fire Investigation 1B, Student Manual, CFSTES

MATERIALS NEEDED: Chalkboard, A/V equipment and material

PREPARATION: Confessions can be a powerful prosecution tool if they are obtained properly. The prosecution must be capable of proving that the confession was obtained legally, and that the Miranda warning was given.

PRESENTATION	APPLICATION
<p>I. Confessions</p> <p>A. Confessions are useless if defused by the defense as being illegally obtained</p> <ol style="list-style-type: none"> 1. "Improper influences" exerted by a fire or law enforcement officer may cause confession to become "excluded" as evidence 2. Confessions must be made completely voluntarily without pressure to private parties as well as persons of authority 3. Confession must be proved reliable and trustworthy as evidence, attained with a spirit of fairness towards the accused (true for confessions to private parties as well as to police or fire authorities) <p>B. Confessions must be recorded accurately; make sure to record the circumstances which led to the confession:</p> <ol style="list-style-type: none"> 1. State if you gave Miranda rights in your report 2. If the statement was spontaneous; explain in your report how the conversation or circumstances led to the statement 3. Be accurate in your recording of the actual statements made 	<p>Explain the need for preserving a defendant's constitutional rights (Miranda) prior to receiving a confession</p> <p>A confession can be the prosecutor's most effective tool in convicting an arsonist if it was attained, recorded, and preserved properly</p> <p>Remember the courts tend to scrutinize statements and actions made by law enforcement officers more carefully than those made by private parties</p> <p>Confessions must be attained VOLUNTARILY!</p> <p>The suspect or person making the confession can add to the validity of the confession if it is signed. Words such as "True and Accurate" as written "above" may be used. Check with your local District Attorney regarding what is required for acceptance of the confession or admission by the court</p>

PRESENTATION	APPLICATION
<p>C. In admitting confessions as evidence, the court will review dates, times and places that the information was gathered; whether rights were given, understood or waived; and the demeanor of the defendant (robs, mentally influenced, pressured, etc.)</p>	<p>Discuss the value of tape recordings over written reports. Written reports are brief as compared to tape recordings. Tape recordings are accurate and show the verbal disposition of the defendant, which can be good or bad, but are lengthy and are harder to transcribe. See your local D.A. for details</p>

SUMMARY

Confessions, in order to be admissible in court, must be able to pass several legal tests. They must have been obtained legally, and the Miranda warning must have been administered.

EVALUATION

The student will be evaluated by completing the written exam.

ASSIGNMENT

Student Manual, pages _____