

- **General warrants:** fails to specify person or place to be searched or property or person to be seized
- **Search Warrant:** court order to look, seize, and return
- Issuing magistrate for search warrant must be **neutral and detached**, and capable of determining whether probable cause exists for a warrant.
 - Not all people called judge are magistrates
 - Person issuing warrant can NOT be receiving \$ or bounty
- Magistrate must establish probable cause, officer must swear (to hold them accountable), affidavit must be complete, there can be multiple affidavits, there must be fair probability that contraband will be found in particular place.
- Time is very important factor in determining probable cause to search. If info. becomes **stale**, there may no longer be good reason to believe property is still in same location.
- Evidence that can be seized: contraband, fruits of crime, other items illegally possessed, and instrumentalities of crime.
- Affidavit must contain description of the premises to be searched that is **particular** and points directly to a definitely ascertainable place to exclude all others and particular description of items to be seized.
- Anticipatory warrant: based on affidavit showing probable cause that evidence will be located at specific place in the **future**.
 - There must be triggering condition that occurs (normally arrival at place)
 - Normally an informant is involved
- If officer knowingly misrepresents/omits info. in request for warrant, then warrant may not be lawfully issued.
 - If issued then defendant can challenge its legality in a Franks Hearing

- **Franks hearing:** defendant bears burden of proof, if successful affidavit voided and officer subject to civil liability, but if there is still enough probable cause then warrant is upheld.
 - is an application of the Exclusionary rule
- **Severance:** invalidates portions of warrant that are constitutionally insufficient for lack of probable cause/particularity, and preserves portions that satisfy the 4th amendment.
 - Also known as redaction
- Only named officer or class of officers may execute warrant.
 - Private person may enlisted as long as they serve purpose within authorized scope of intrusion.
- In general search warrants executed in daytime within reasonable time of being issued warrant.
 - Delay and staleness concerns, fixed time limits, Forthwith requirement
 - Duration of search: until you find what you're looking for (must be reasonable)
- If there is probable cause to believe evidence of crime is in dwelling, temporary securing of dwelling to prevent removal/destruction of evidence while warrant is being sought is NOT unreasonable
- Officer must **knock-and-announce** their presence, demand admittance, have admittance be refused/ignored for reasonable period of time before they can force their way in.
 - There is an exception if exigent circumstances exist (flight, ongoing emergency, possibility of flushing items down toilet, or blowing the place up)
 - Remedy for knock-and-announce violation is the exclusionary rule; the case of Hudson added civil liability to officers.
- **Rule 41:** officers executing warrant must leave **copy of warrant and receipt of items taken** if person who own premises is not present.
 - Exception if authorized to use a covert entry also known as **sneak-and-peek** warrant

- Sneak-and-peek allows search without notice, of unoccupied premise, to search but NOT seize
- Search warrant of premise does NOT give officer right to search a person not named in warrant who merely happen to be there, a **third party**.
 - Officers permitted to conduct a limited pat down for weapons of any person at the search scene who officer reasonably suspects is armed/dangerous.
 - Physical possession test and actual or constructive knowledge used to search third party.
- Warrant authorizing search of particularly described premise will include search of curtilage and all things **appurtenant**.
 - Justifies search of described land, and all things attached or annexed to land.
 - Allows opening of drawers, chests, closets, and containers in which object may be found
- Officer can seize items not particularly described if it is in plain view or some other valid exception for warrantless seizures
 - If those exceptions aren't met, officer must get another search warrant.
 - If violated, evidence may be inadmissible
- Officers may use reasonable force in conducting search, but not excessive
- Once items specified in warrant have been found during search and are seized, legal justification for officers intrusion comes to an end.
 - Unless using a sneak-and-peek or **sneak-and-steal** (allowed under USA PATRIOT Act; can seize property during sneak-and-peek) officer must inventory all property seized and leave copy of warrant and inventory with occupants or on the premises if no occupant.
 - Officers must always return warrant with copy of inventory to judicial officer designated in warrant