ing on the second test, the Court has been essentially pragmatic in assessing whether the issuing party possesses the capacity to determine probable cause.[110]

Probable Cause.—The concept of "probable cause" is central to the meaning of the warrant clause. Neither the Fourth Amendment nor the federal statutory provisions relevant to the area define "probable cause"; the definition is entirely a judicial construct. An applicant for a warrant must present to the magistrate facts sufficient to enable the officer himself to make a determination of probable cause. "In determining what is probable cause . . . [w]e are concerned only with the question whether the affiant had reasonable grounds at the time of his affidavit . . . for the belief that the law was being violated on the premises to be searched; and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant."[111] Probable cause is to be determined according to "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."[112] Warrants are favored in the law and their use will not be thwarted by a hypertechnical reading of the supporting affidavit and supporting testimony.[113] For the same reason, reviewing courts will accept evidence of a less "judicially competent or persuasive character than would have justified an officer in acting on his

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[110] 407 U.S. at 350–54 (placing on defendant the burden of demonstrating that the issuing official lacks capacity to determine probable cause). *See also* Connally v. Georgia, 429 U.S. 245 (1977) (unsalaried justice of the peace who receives a sum of money for each warrant issued but nothing for reviewing and denying a warrant is not sufficiently detached).

[111] Dumbra v. United States, 268 U.S. 435, 439, 441 (1925). "[T]he term 'probable cause' . . . means less than evidence which would justify condemnation." Lock v. United States, 11 U.S. (7 Cr.) 339, 348 (1813). *See* Steele v. United States, 267 U.S. 498, 504–05 (1925). It may rest upon evidence that is not legally competent in a criminal trial, Draper v. United States, 358 U.S. 307, 311 (1959), and it need not be sufficient to prove guilt in a criminal trial. Brinegar v. United States, 338 U.S. 160, 173 (1949). *See* United States v. Ventresca, 380 U.S. 102, 107–08 (1965). An "anticipatory" warrant does not violate the Fourth Amendment as long as there is probable cause to believe that the condition precedent to execution of the search warrant will occur and that, once it has occurred, "there is a fair probability that contraband or evidence of a crime will be found in a specified place." United States v. Grubbs, 547 U.S. 90, 95 (2006), quoting Illinois v. Gates, 462 U.S. 213, 238 (1983). "An anticipatory warrant is 'a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of a crime will be located at a specified place.'" 547 U.S. at 94.

[112] Brinegar v. United States, 338 U.S. 160, 175 (1949).

[113] United States v. Ventresca, 380 U.S. 102, 108–09 (1965).