scribed object could be expected to be found.[128] The purpose of the particularity requirement extends beyond prevention of general searches; it also assures the person whose property is being searched of the lawful authority of the executing officer and of the limits of his power to search. It follows, therefore, that the warrant itself must describe with particularity the items to be seized, or that such itemization must appear in documents incorporated by reference in the warrant and actually shown to the person whose property is to be searched.[129]

First Amendment Bearing on Probable Cause and Particularity.—Where the warrant process is used to authorize seizure of books and other items that may be protected by the First Amendment, the Court has required government to observe more exacting standards than in other cases.[130] Seizure of materials arguably protected by the First Amendment is a form of prior restraint that requires strict observance of the Fourth Amendment. At a minimum, a warrant is required, and additional safeguards may be required for large-scale seizures. Thus, in *Marcus v. Search Warrant*,[131] the seizure of 11,000 copies of 280 publications pursuant to warrant issued *ex parte* by a magistrate who had not examined any of the publications but who had relied on the conclusory affidavit of a policeman was voided. Failure to scrutinize the materials and to particularize the items to be seized was deemed inadequate, and it was

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[128] In Terry v. Ohio, 392 U.S. 1, 17–19, (1968), the Court wrote: "This Court has held in the past that a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. Kremen v. United States, 353 U.S. 346 (1957); Go-Bart Importing Co. v. United States, 282 U.S. 344, 356–58 (1931); see United States v. Di Re, 332 U.S. 581, 586–87 (1948). The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible. Warden v. Hayden, 387 U.S. 294, 310 (1967) (Justice Fortas concurring); see, *e.g.*, Preston v. United States, 376 U.S. 364, 367–368 (1964); Agnello v. United States, 296 U.S. 20, 30–31 (1925)." *See also* Andresen v. Maryland, 427 U.S. 463, 470–82 (1976), and id. at 484, 492–93 (Justice Brennan dissenting). In Stanley v. Georgia, 394 U.S. 557, 569 (1969), Justices Stewart, Brennan, and White would have based the decision on the principle that a valid warrant for gambling paraphernalia did not authorize police upon discovering motion picture films in the course of the search to project the films to learn their contents.

[129] Groh v. Ramirez, 540 U.S. 551 (2004) (a search based on a warrant that did not describe the items to be seized was "plainly invalid"; particularity contained in supporting documents not cross-referenced by the warrant and not accompanying the warrant is insufficient); United States v. Grubbs, 547 U.S. 90, 97, 99 (2006) (because the language of the Fourth Amendment "specifies only two matters that must be 'particularly describ[ed]' in the warrant: 'the place to be searched' and 'the persons or things to be seized[,]' . . . the Fourth Amendment does not require that the triggering condition for an anticipatory warrant be set forth in the warrant itself."

[130] Marcus v. Search Warrant, 367 U.S. 717, 730–31 (1961); Stanford v. Texas, 379 U.S. 476, 485 (1965). For First Amendment implications of seizures under the Federal Racketeer Influenced and Corrupt Organizations Act (RICO), see First Amendment: Obscenity and Prior Restraint.

[131] 367 U.S. 717 (1961). *See* Kingsley Books v. Brown, 354 U.S. 436 (1957).