Chapter 1
Principles of Probable Cause
(Including Reasonable Suspicion)

Generally

Chapter structure

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Probable cause to search Chapter 4 PROBABLE CAUSE TO SEARCH

Definitions

Probable cause to search: Probable cause to search a place or thing exists if there is a "fair probability" or "substantial chance" that evidence of a crime is now located there. See “The Required Probability” (Probable cause), below; and Chapter 4 PROBABLE CAUSE TO SEARCH (Definition).

Probable cause to arrest: Probable cause to arrest a suspect exists if there is a “fair probability” or “substantial chance” that he has committed a crime for which he has not yet been arrested. See “The Required Probability” (Probable cause), below; and Chapter 3 PROBABLE CAUSE TO ARREST.

Reasonable suspicion to detain: Reasonable suspicion to detain a suspect exists if officers were aware of facts that reasonably indicated he was committing a crime, had committed a crime for which he had not yet been arrested, or was about to commit a crime. See “The Required Probability” (Reasonable suspicion), below; and Chapter 3 PROBABLE CAUSE TO ARREST.

Probable Cause vs. Reasonable Suspicion: Probable cause and reasonable suspicion are both judgments as to the existence and significance of incriminating evidence. The main difference between them is the required level of proof. Specifically, probable cause requires information of higher quality and quantity than reasonable suspicion because it permits officers to take actions that are more intrusive than reasonable suspicion.1
The Required Probability

**Probable cause:** It is often assumed that probable cause requires about a 51% probability because anything less would not be statistically “probable.” Although the Supreme Court has refused to assign a probability percentage (because it views probable cause as a non-technical standard based on common sense, not mathematical precision2), it has indicated that probable cause requires less than a 50% chance. Specifically, it has ruled that probable cause requires neither a preponderance of the evidence nor “any showing that such belief be correct or more likely true than false,”3 and that it requires only a “fair” probability or “substantial chance.”4 Although no court has tried to guess how much less than 50% would suffice, it is probably not much lower than 50%.

**Reasonable suspicion:** Reasonable suspicion requires only a “moderate chance,”5 which is unhelpfully defined as something “considerably less” than a 50% chance.6 It has also been said that reasonable suspicion to detain exists if the circumstances were merely consistent with criminal activity,7 and that the facts need not rise to the level that they rule out the possibility of innocent conduct.8

Basic Principles

**Here is a good summary of the process:** “As information is accumulated in the process of an investigation, the police must make not a single evaluation but a series of judgments. Inevitably this is something of a balance sheet process. Some of the information, and some of the factors which they observe, will add up in support of probable cause; some, on the other hand, may undermine that support. Finally, at some point the officer must make a decision, culled from a balance of these negatives and positives, and then act on his decision.”9

**Specific facts:** Neither probable cause nor reasonable suspicion can exist in the absence of specific facts.10 This demand for specificity is so important that the Supreme Court described it as “the central teaching of this Court’s Fourth Amendment jurisprudence.”11

**Reliable information:** Information is virtually useless unless there is reason to believe it was accurate. See Chapter 2 PROBABLE CAUSE: RELIABILITY OF INFORMATION.

**Totality of circumstances:** Probable cause and reasonable suspicion are based on an assessment of the overall force of all the relevant circumstances.12

**Common sense:** Judges must not isolate each fact, belittle its importance or explain it away, and then conclude that probable cause or reasonable suspicion did not exist because none of the individual facts were very incriminating.13

**Hunches and unsupported conclusions:** Hunches often play an important role in law enforcement.14 But hunches and other unsupported conclusions are irrelevant in determining the existence of probable cause and reasonable suspicion.15

**Circumstantial evidence:** Probable cause may be based partly or entirely on circumstantial evidence.16

**Training and experience:** The courts will consider an officer’s opinion as to the meaning or significance of facts if the opinion appeared to be reasonable.17 An officer’s opinion may be considered even if he had not qualified as an expert witness in court.18

**Legal opinions:** An officer’s legal opinions are irrelevant; e.g., “I have probable cause,” or “My informant is reliable.”19 These are legal determinations to be made by a judge.

**DA won’t charge:** If probable cause existed, the arrest or search is lawful even if prosecutors decided not to charge the suspect or if he was acquitted by a judge or jury.20
Is further investigation needed? Although officers who have probable cause to arrest or search are not required to go out and look for exculpatory evidence, they should ordinarily do so if the existence of probable cause is thin.

No case on point? Because probable cause and reasonable suspicion are usually based on a variety of circumstances, officers and prosecutors are not required to find a published case exactly on point.

The “Official Channels” Rule

Information from officers: An officer may detain or arrest a suspect based solely or in part on information transmitted from other officers through official channels (e.g., departmental briefing, BOLO), or from an arrest warrant database. For example, an officer may arrest a suspect based solely on information from another officer who said he had probable cause even though the arresting officer was unaware of factual basis for it.

Related subject: See Chapter 2 PROBABLE CAUSE: RELIABILITY OF INFORMATION (Law Enforcement Officers).

Harvey-Madden: If a defendant files a motion to suppress evidence that was discovered as the result of an “official channels” transmission, prosecutors may be required to provide some proof that the source did, in fact, furnish the information. See Chapter 68 HARVEY-MADDEN MOTIONS.

Information from dispatchers: When a police dispatcher notifies officers of some details about a crime in progress, it is ordinarily reasonable for the officers to conclude that the dispatcher had sufficient reason to believe the call was not a hoax.

Harvey-Madden: See Chapter 68 HARVEY-MADDEN MOTIONS.

No post-arrest “pooling”: In the absence of a communication to an officer through official channels, a detention or arrest that was made by an officer cannot be validated after the fact by showing that it would have been justified if he had somehow been aware of what the other officers had known.

Information Inadmissible In Court

Hearsay: May be considered, but its value depends on whether there was reason to believe it was accurate or that its source was reliable.

Privileged information: May be considered.

Information obtained illegally: Will not be considered if obtained in violation of a suspect’s constitutional rights, as opposed to a violation of a state statute. Also see Appendix B CITATION GUIDE (Proposition 8).

Mistakes of Fact and Law

Mistakes of fact: If probable cause or reasonable suspicion were based in whole or in part on information that was subsequently determined to be false, the information may nevertheless have value if the officers reasonably believed it was true.

Arrest of wrong person: If officers had probable cause to arrest a suspect but arrested another person by mistake, the arrest is lawful if they reasonably believed the arrestee was the suspect.

Mistakes by automated license plate readers: Because automated license plate readers may misread license plate numbers, it may be unreasonable for officers to rely solely on an alert by the device; i.e., officers may be required to visually confirm that the license plate numbers on the car in view are the same as the numbers on the wanted car.
Mistakes of law

Mistake as to Fourth Amendment: If a court finds that an officer’s search or seizure was in violation of the Fourth Amendment, it is immaterial that the officer had reason to believe it was lawful.33

Mistake as to statute: An officer’s mistake as to the existence or meaning of a statute will not invalidate a search or seizure if the mistake was objectively reasonable.34

Arrest for wrong crime: See Chapter 9 ARRESTS (Generally, Arrest for wrong crime)