Probable Cause: Reliability of Information

Any rookie officer knows that uncorroborated, unknown tipsters cannot provide probable cause for an arrest or search warrant.[1]

Probable cause is necessarily built on information. But not just any information: There must be reason to believe it is reliable. The same is true of reasonable suspicion to detain or pat search but, as discussed in the previous article, the required degree of reliability is less.[2]

This means that whenever officers detain or arrest a suspect, conduct most types of warrantless searches, or apply for search or arrest warrants, they must be able to prove—whether in an affidavit or in testimony at a suppression hearing—that their information was "reasonably trustworthy."[3] As the Supreme Court explained, probable cause and reasonable suspicion are "dependent upon both the content of information possessed by police and its degree of reliability. Both factors—quality and quantity—are considered in the totality of circumstances."[4]

In most cases, however, officers will not have direct evidence of reliability (unless they are the source), which means they must ordinarily rely on circumstantial evidence. But how much is required? And what circumstances are relevant? The answer to both questions depends on the nature of the source.

At one extreme are untested police informants and other "denizens of the underworld"[5] who are viewed as so untrustworthy that only some substantial circumstantial evidence of reliability will suffice. Also lurking at this extreme are "tested" police informants who, although also of dubious character, are considered fairly reliable because they have an established track record for providing accurate information.

At the other extreme are officers and "citizen informants" who are viewed as so inherently dependable that their information is usually regarded as presumptively reliable. Between these extremes are 9-1-1 callers who are considered only semi-reliable, which means that the value of their information will depend on whether there is some additional circumstantial evidence of reliability or, in some cases, necessity.

Because a source's reliability depends on how the courts classify him, we will begin by explaining the criteria they use in making this determination. Then, in the remainder of the article, we will cover the wide range of circumstantial evidence that is relevant in establishing the reliability of untested informants and enhancing the reliability of other sources.

Sources of Information

Anyone can be a source of information. As the Supreme Court put it, "Informants' tips doubtless come in many shapes and sizes from many different types of persons."[6] But because "information is only as good as its source,"[7] the first step in determining the reliability of a tip is to figure out where the source fits in the hierarchy of reliable sources.

Law enforcement officers

At the top of the hierarchy are law enforcement officers who, because of their objectivity and professionalism, will be deemed presumptively reliable if their information was based on their personal knowledge.[8] As the Court of Appeal explained, "A police officer is presumptively reliable in the official communication of matters within his direct knowledge."[9]

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[1] *Higgason v. Superior Court* (1985) 170 Cal.App.3d 929, 952 (conc. opn. of Crosby, J.).
[2] See *Alabama v. White* (1990) 496 U.S. 325, 330.
[3] *Beck v. Ohio* (1964) 379 U.S. 89, 91.
[4] *Alabama* v. White (1990) 496 U.S. 325, 330.
[5] See *On Lee v. United States* (1952) 343 U.S. 747, 756.
[6] *Illinois v. Gates* (1983) 462 U.S. 213, 232.
[7] See *U.S. v. Hauk* (10th Cir. 2005) 412 F.3d 1179, 1188.
[8] See *United States v. Ventresca* (1965) 380 U.S. 102, 111; *People v. Hill* (1974) 12 Cal.3d 731, 761.
[9] *People v. Superior Court (Brown)* (1975) 49 Cal.App.3d 160, 167.

Law enforcement officers are also presumptively reliable *transmitters* of information. As the court explained in *Mueller v. D.M.V.,* "[O]ne police officer who has received a report from a citizen-informant of a crime's commission, and who has passed the information on to a brother officer in the crime's investigation, will be deemed to have reliably done so."[10]

Although police dogs are perhaps the most virtuous of all sources, they are not presumptively reliable in detecting drugs, explosives, or other items they are trained to find. But this only means that prosecutors may later be required to present testimony in court as to the dog's training and performance.[11]

Official and business records

The presumption of reliability also covers information that is routinely gathered and maintained by law enforcement agencies, other governmental agencies, and many businesses. The most common examples are rap sheets, parole and probation records, DMV records, fingerprint records, DNA reports, employment records, internet and telephone provider records, and public utility customer data.[12]

"Citizen informants"

If a source qualifies as a "citizen informant" his information will be considered presumptively accurate.[13] In the words of the Court of Appeal, "[C]itizen informants, in contrast to criminal informants, are assumed to supply reliable information."[14]

Although there are technically no circumstances that are mandatory for a person to be deemed a citizen informant, in most cases the following are required: (1) the person was a victim or witness to the crime, (2) officers knew or could have obtained the person's identity, and (3) there was no objective reason to disbelieve the person. Before we discuss these subjects in detail, it should be noted that a person will not qualify as a "citizen informant" merely because an officer labeled him as one in a search warrant affidavit or while testifying in court. As the California Supreme Court explained, "The designation 'citizen informant' is just as conclusionary as the designation 'reliable informant.' In either case the conclusion must be supported by facts."[15]

(1) **VICTIM OR WITNESS**: Most citizen informants are crime victims or eyewitnesses who simply reported their observations to officers.[16] "The prototypical citizen informant," said the Court of Appeal, "is a victim reporting a crime that happened to him or a witness who personally observed the crime."[17] The following are examples of eyewitnesses to crimes who were deemed citizen informants:

- A robbery or rape victim provided information about the crime to officers.[18]
- A witness to a shooting reported that the perpetrators had just fled in a certain direction.[19]
- A man drove up to a patrol car and notified officers that he had just seen an occupant of a certain vehicle point a gun at other cars.[20]

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[10] (1985) 163 Cal.App.3d 681, 686. Also see *Cantrell v. Zolin* (1994) 23 Cal.App.4th 128, 133.
[11] See *Florida v. Harris* (2013) __ U.S. __ [133 S.Ct. 1050, 1056-57].
[12] See, for example, *People v. Reserva* (1969) 2 Cal.App.3d 151, 156-57 [fingerprint records]; *People v. Aho* (1985) 166 Cal.App.3d 984, 992 [rap sheet]; *People v. Cleland* (1990) 225 Cal.App.3d 388, 390-91 [PG&E records]; *People v. Rooney* (1985) 175 Cal.App.3d 634, 648 [phone records]; *People v. Andrino* (1989) 210 Cal.App.3d 1395, 1400 [phone trap data]; *People v. Hill* (1970) 3 Cal.App.3d 294, 298 [military records]; *U.S. v. McDonald* (5th Cir. 1979) 606 F.2d 552, 554 [NCIC printouts]. Also see Ev. Code §§ 1270 *et seq*.
[13] See *People v. Kershaw* (1983) 147 Cal.App.3d 750, 754; *Gillian v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1045 ["Information provided by a crime victim or chance witness alone can establish probable cause if the information is sufficiently specific"].
[14] *People v. Kershaw* (1983) 147 Cal.App.3d 750, 754. Also see *People v. Lombera* (1989) 210 Cal.App.3d 29, 32 [a citizen informant "is presumptively reliable even though reliability has not previously been tested"].
[15] *People v. Smith* (1976) 17 Cal.3d 845, 851. Edited.
[16] See *People v. Herdan* (1974) 42 Cal.App.3d 300, 305 [citizen informants are "usually, but not always" people who "unexpectedly" witnessed a crime or were the victim]; *Mueller v. DMV* (1985) 163 Cal.App.3d 681, 685 ["A report to a police officer, by a citizen-informant who has witnessed a crime's commission, will ordinarily be supportive of probable cause for an arrest."].
[17] *People v. Kershaw* (1983) 147 Cal.App.3d 750, 754.
[18] *People v. Rigsby* (1971) 18 Cal.App.3d 38 42 [rape]; *People v. McCluskey* (1981) 125 Cal.App.3d 220, 226-28 [robbery].
[19] *People v. Rico* (1979) 97 Cal.App.3d 124, 131.
[20] *People v. (Superior Court) (Meyer)* (1981) 118 Cal.App.3d 579, 584. ALSO SEE *U.S. v. Sanchez* (10th Cir. 2008) 519 F.3d 1208 [a woman flagged down a patrol car and reported that a man was beating a woman nearby].

- The manager of a bowling alley told officers that he saw a gun in the defendant's locker.[21]
- A student told the school principal that another student had given him illegal drugs.[22]
- A telephone company installer reported seeing drugs inside the defendant's home.[23]
- A person reported seeing drug activity in his neighborhood.[24]
- An employee of a company notified officers of illegal practices at the firm.[25]
- A man told officers that his roommate was planning to bomb a police station.[26]

A person who was not a victim or eyewitness may also qualify as a citizen informant if it appeared he furnished the information to assist officers or otherwise provide a public service. Some examples:

- An employee of a rent-a-car company said the defendant's accomplice had rented a vehicle that was overdue.[27]
- An insurance company investigator explained some of the things he had learned in the course of an arson investigation.[28]
- A civil engineer said that he had worked on a machine after the defendant claimed it had been destroyed in a fire.[29]
- A store security officer furnished employment information about a suspect.[30]
- A high school football coach reported that he had learned from his aunt that the defendant was carrying a gun on the school grounds and was planning to shoot someone.[31]
- A co-worker of a murder suspect said the suspect came to work "dressed as a ninja, carrying a sword, a long knife and a gun" and that he said he had "recently stabbed someone."[32]

(2) **IDENTITY KNOWN OR AT RISK**: A person may qualify as a citizen informant only if he identified himself to officers or at least risked having his identity revealed.[33] There are two reasons for this. First, such a person "exposes himself or herself to potential liability for malicious prosecution or false reporting."[34] As the Court of Appeal observed, "[T]he mere fact that [citizen informants] make their identity known to the police is, itself, some indication of their honesty."[35] Second, an officer who speaks directly with a person should be able to make "at least a very rough assessment of her reliability."[36]

The most common situation in which a person risks revealing his identity to the authorities occurs when he flags down an officer and reports a crime that had just occurred; and then the officer, instead of waiting to confirm the person's identity, starts searching for—and eventually apprehends—the perpetrator. Thus, in such a case, *People v. Superior Court (Meyer),* the Court of Appeal said, "When the informant approached the officer, he had no way of knowing that the officer would elect to begin the pursuit without waiting to record the identity of the informant."[37] Under similar facts, the Tenth Circuit said in *U.S. v. Sanchez*, "That the police understandably did not take the time to obtain [the citizen's] personal information does not mean she was anonymous."[38]

(3) **INFORMATION APPEARS RELIABLE**: The last requirement is that officers must have had no reason to doubt the source's reliability or the accuracy of his information.[39] However, in the absence of some affirmative indications to the contrary, the courts will ordinarily presume that information from a victim or witness appeared reliable. "The veracity of

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[21] *People v. Baker* (1970) 12 Cal.App.3d 826, 841. [22] *Safford Unified School District v. Redding* (2009) 557 U.S. 364, 372. Also see *New Jersey v. T.L.O.* (1985) 469 U.S. 325, 345 [teacher reported that a student was smoking in the lavatory]. [23] *People v. Paris* (1975) 48 Cal.App.3d 766, 773-74. [24] *People v. Terrones* (1989) 212 Cal.App.3d 139, 147-49. [25] *U.S. v. Greenburg* (1st Cir. 2005) 410 F.3d 63, 67. [26] *U.S. v. Croto* (1st Cir. 2009) 570 F.3d 11, 14.
[27] *U.S. v. Dorais* (9th Cir. 2001) 241 F.3d 1124, 1130. [28] *People v. Superior Court (Bingham)* (1979) 91 Cal.App.3d 463, 472. [29] *People v. Superior Court (Bingham)* (1979) 91 Cal.App.3d 463, 472.[30] *People v. Jordan* (1984) 155 Cal.App.3d 769, 779-80. [31] *People v. Turner* (2013) 219 Cal.App.4th 151, 167. [32] *People v. Scott* (2012) 52 Cal.4th 452, 483-84.
[33] See *Florida v. J.L.* (2000) 529 U.S. 266, 270; *Illinois v. Gates* (1983) 462 U.S. 213, 227.
[34] *People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1504-5. Also see *Florida v. J.L.* (2000) 529 U.S. 266, 269-70.
[35] *People v. Kershaw* (1983) 147 Cal.App.3d 750, 756.
[36] *Illinois v. McArthur* (2001) 531 U.S. 326, 332.
[37] (1981) 118 Cal.App.3d 579, 584.
[38] (10th Cir. 2008) 519 F.3d 1208, 1214.
[39] See *People v. Terrones* (1989) 212 Cal.App.3d 139, 148.

identified private citizen informants," said the Second Circuit, "is generally presumed in the absence of special circumstances suggesting that they should not be trusted."[40]

What circumstances suggest untruthfulness? The following are examples:

INCONSISTENCIES: In most cases, a person will not qualify as a citizen informant if, in making his report, he made inconsistent statements about material issues. For example, in *Gillian v. City of San Marino*[41] officers arrested a high school basketball coach based solely on an allegation by a former student that he had sexually harassed her. Although the student might ordinarily have been viewed as a citizen informant, the court ruled she did not qualify because, among other things, some of her allegations "were inconsistent in the details provided." On the other hand, the fact that the person furnished inconsistent or conflicting information pertaining to an incidental issue does not necessarily mean that his information pertaining to material issues was unreliable.[42] Still, officers should usually inquire about it.

DUBIOUS MOTIVATION: A person will seldom be deemed a citizen informant if it appeared that one of his reasons for assisting officers was to obtain some personal benefit, such a reduced sentence or revenge. As the Court of Appeal explained, "If a narcotics trafficker is in custody at the time he gives information implicating others his statement cannot form the basis for an arrest because his obvious motivation is to ingratiate himself with the police for purely selfish reasons."[43]

INVOLVEMENT IN THE CRIME UNDER INVESTIGATION: Despite his motivation, a person who provides information about a crime will ordinarily not be deemed a citizen informant if officers reasonably believed he was implicated in *that* crime.[44] For example, in *People v. Smith*[45] a 17-year old was present in an apartment while the occupants smoked marijuana and packaged it for sale. After about 12 hours, the boy was accused by the occupants of stealing money, so he left and notified police of what he had seen. This led to a search warrant for the apartment. But the California Supreme Court ruled the warrant lacked probable cause because the boy did not qualify as a citizen informant and, thus, his information was not sufficiently reliable. Said the court, "Nothing appears which would establish him as, on the one hand, a participant in the illegal activities or as, on the other hand, an observer whose presence there was innocent of the illegal activity."

9-1-1 callers

Because of the popularity of cell phones, a lot of information that leads to detentions and sometimes arrests now comes from people who phone 9-1-1. Although these calls are automatically traced and recorded, the callers are essentially anonymous voices on the phone. So, the question arises: Is this information sufficiently reliable to justify a detention or even an arrest?

We may have a better answer to that question shortly when the United States Supreme Court announces its decision in *Navarette v. California*. The issue in *Navarette* is whether an officer could make a traffic stop on a car based on an unidentified 9-1-1 caller's report that a certain vehicle had just run him off the road.

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[40] *U.S. v. Elmore* (2nd Cir. 2007) 482 F.3d 172, 180.

[41] (2007) 147 Cal.App.4th 1033.

[42] See *Peng v. Hu* (9th Cir. 2003) 335 F.3d 970, 979 ["[I]nconsistencies in incidental facts [are] to be expected where different people are called upon to remember startling events."]; *U.S. v. Pontoo* (1st Cir. 2011) 666 F.3d 20, 27 ["But a witness's statement need not be a letter-perfect replica of an earlier statement in order to be given credence."]; *U.S. v. Greenburg* (1st Cir. 2005) 410 F.3d 63, 68 [the inconsistency was "not sufficiently compelling"].

[43] *Ming v. Superior Court* (1970) 13 Cal.App.3d 206, 213.

[44] See *People v. Ramey* (1976) 16 Cal.3d 263, 269 [citizen informants are "innocent of criminal involvement"]; *People v. Schulle* (1975) 51 Cal.App.3d 809, 814-15 ["[E]xperienced stool pigeons or persons criminally involved or disposed are not regarded as citizen-informants because they are generally motivated by something other than good citizenship."]. Compare *People v. Hill* (1974) 12 Cal.3d 731, 761 [witness was a citizen informant in a murder case even though he accompanied the victim to the murder scene to buy drugs]; *People v. Gray* (1976) 63 Cal.App.3d 282, 287-88 [court notes "the absence of anything in the affidavit which tends to connect [the informant] with the illegal narcotics activity going on in Gray's apartment."].

[45] (1976) 17 Cal.3d 845.

But, as things stand now, 9-1-1 callers are viewed as having some built-in reliability because, although technically anonymous, they knowingly exposed themselves to identification (at least to some extent) even if they gave a false name or refused to identify themselves.[46] This is because, as the California Supreme Court explained, "[M]erely calling 911 and having a recorded telephone conversation risks the possibility that the police could trace the call or identify the caller by his voice."[47] Or, as the court noted in *U.S. v. Copening*, "[T]hough the caller declined to provide his name, he called 911 from an unblocked telephone number. The caller should have expected that 911 dispatch tracks incoming calls and that the originating phone number could be used to investigate the caller's identity."[48]

Unlike citizen informants, however, 9-1-1 callers are not inherently reliable because they are semi-anonymous. Still, it appears their information will suffice for detaining a suspect if either of the following circumstances existed: (1) the caller had reported an imminent threat to people or property, and the detention was reasonably necessary to investigate the threat; or (2) there was some additional circumstantial evidence of the caller's reliability.

IMMINENT THREAT: If the caller reported that a person's actions constituted an imminent threat to life or property, and if they reasonably belived that they had located the right person, they may detain him so long as there was no reason to believe the call was a hoax. What constitutes an imminent threat? Not surprisingly (because of the many "CALL 9-1-1" signs on the freeways) the most common is unsafe driving. As the California Supreme Court said:

> [A] citizen's tip may itself create a reasonable suspicion sufficient to justify a temporary vehicle stop or detention, especially if the circumstances are deemed exigent by reason of possible reckless driving or similar threats to public safety.[49]

Other such threats include driving while intoxicated and brandishing a firearm but, according to the United States Supreme Court, they do not include mere possession of a concealed firearm.[50]

CIRCUMSTANTIAL EVIDENCE OF RELIABILITY: If the caller was reporting a crime or condition that did not constitute an imminent threat to life or property, the caller's reliability will depend on the same test that is used for most sources; i.e., whether there was sufficient circumstantial evidence that the caller or his information was reliable.[51] Most of the circumstances that are relevant in making this determination are covered later in the section entitled "Corroboration." However, the following circumstances are especially relevant when the source was a 9-1-1 caller:

> CALLER IDENTIFIED HIMSELF: Although the caller's identity could not be confirmed, he voluntarily gave his name or phone number.[52] Note that a caller's refusal to identify himself will not necessarily render him unreliable.[53]

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[46] See *People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1398; *Lowry v. Gutierrez* (2005) 129 Cal.App.4th 926, 941; *U.S. v. Ruidiaz* (1st Cir. 2008) 529 F.3d 25, 31. Also see *U.S. v. Hicks* (7th Cir. 2008) 531 F.3d 555, 561 ["any body of law requiring 911 operators to carefully make credibility determinations would unacceptably delay the necessary responses to all emergency calls, including genuine ones"].

[47] *People v. Dolly* (2007) 40 Cal.4th 458, 467.

[48] (10th Cir. 2007) 506 F.3d 1241, 1247.

[49] *People v. Wells* (2006) 38 Cal.4th 1078, 1083.

[50] *Florida v. J.L.* (2000) 529 U.S. 266, 271. Also see *People v. Jordan* (2004) 121 Cal.App.4th 544, 563 [concealed firearm not an imminent threat]. Compare *People v. Dolly* (2007) 40 Cal.4th 458, 465 [brandishing a firearm]; *People v. Turner* (2013) 219 Cal.App.4th 151, 169 [murder threat]; *P v. Lindsey* (2007) 148 CA4 1390, 1397 [shots fired]; *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1176 [threat with a firearm]; *U.S. v. Williams* (7th Cir. 2013) 731 F.3d 678, 684 [people with "guns out"].

[51] See *Florida v. J.L.* (2000) 529 U.S. 266, 271; *U.S. v. Ruidiaz* (1st Cir. 2008) 529 F.3d 25, 31.

[52] See *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1174 ; *U.S. v. Ruidiaz* (1st Cir. 2008) 529 F.3d 25, 31; *U.S. v. Johnson* (3rd Cir. 2010) 592 F.3d 442, 449; *U.S. v. Elmore* (2nd Cir. 2007) 482 F.3d 172, 181; *U.S. v. Gomez* (5th Cir. 2010) 623 F.3d 265, 279; *U.S. v. Conner* (10th Cir. 2012) 699 F.3d 1225, 1229 ["Here, the caller did not disclose his name but provided enough information to render himself readily identifiable—he gave the operator his phone number and address."].

[53] See *People v. Dolly* (2007) 40 Cal.4th 458, 464 ["residents, also fearful of the consequences, may not always wish to identify themselves"]; *U.S. v. Holloway* (11th Cir. 2002) 290 F.3d 1331, 1339 ["[S]ome callers, particularly neighbors, may be understandably reticent to give identifying information for fear of retaliation or danger."]; *U.S. v. Colon* (2nd Cir. 2001) 250 F.3d 130, 132 ["If I leave you my name, and they start saying my name over there. I don't wanna be, you know, I don't want no problems because I have three children."].

CALLER GAVE HIS WHEREABOUTS: The caller disclosed his whereabouts or furnished information from which his whereabouts might have been determined; e.g., the caller said he was currently following the suspect on a certain street.[54]

DETAILED INFORMATION: The caller provided details of what he had seen or heard.[55] Also see "Corroboration" (Detailed information), below.

DEMEANOR: The caller's manner of speaking—his "tone, demeanor, or actual words"[56]—was consistent with his tip; e.g., a caller who reported an emergency sounded upset.[57]

TIME LAPSE: The caller was reporting something that was now happening or had just occurred, and officers promptly responded to the call.[58]

MULTIPLE CALLERS: Other 9-1-1 callers reported the same or similar information.[59] Also see "Corroboration" (Multiple independent tips), below.

9-1-1 OPERATOR TRAINING: Because 9-1-1 operators are usually the only people who can gauge a caller's reliability, they must have some way of notifying the responding officers of their conclusion, especially if the caller's information may be used to detain someone. This means that 9-1-1 operators must understand the relevant circumstances discussed above and in the "Corroboration" section. Thus, in addressing a failure to implement such procedures, the Second Circuit observed in *U.S. v. Colon* that "the record here contains no evidence of whether or how 911 operator training is directed in any way to developing that ability, and thus contains nothing from which to conclude that the operator taking the call was capable of determining whether reasonable suspicion for the stop and frisk existed."[60]

"Police informants"

A "police informant" is defined as a person who furnished information for a reason "other than good citizenship,"[61] usually a disreputable purpose such as serving a lighter sentence for his own crimes, immunity, revenge, or eliminating competition.[62] "It is a fact of life," said the Court of Appeal, "that the quality of veracity and honor among thieves and murderers leaves something to be desired."[63] Or, as the Seventh Circuit put it, "[I]nformants are often an unsavory lot."[64] Thus, information from such people is "suspect on its face,"[65] which essentially means it is presumptively unreliable.

Still, the criminal justice system desperately needs police informants because, without them, many more crimes would go unsolved, and it would be much more difficult "to penetrate and destroy organized crime syndicates, drug trafficking cartels, bank frauds, telephone solicitation scams, public corruption, terrorist gangs, money launderers, espionage rings, and the likes."[66]

Consequently, information from police informants may, in and of itself, establish reasonable suspicion or probable cause—but only if officers can prove there was sufficient reason to believe it was accurate.[67] How can they accomplish this? It depends on whether the informant was "tested" or "untested."

TESTED POLICE INFORMANTS: A "tested" informant (also known as a "confidential reliable informant" or "CRI") is a person who has a history or "track record" of providing accurate information to officers. For this reason, an informant who qualifies as "tested" will be presumed reliable unless there was reason to believe otherwise.[68]

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[54] See *U.S. v. Conner* (10th Cir. 2012) 600 F.3d 1225, 1229; *U.S. v. Chavez* (10th Cir. 2011) 660 F.3d 1215, 1222.
[55] See *People v. Wells* (2006) 38 Cal.4th 1078, 1088 [a "relatively precise and accurate description" of the vehicle and its location].
[56] *People v. Dolly* (2007) 40 Cal.4th 458, 467, fn.2.
[57] See *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1176 [the caller was "laboring under the stress of recent excitement"].
[58] See *People v. Jordan* (2004) 121 Cal.App.4th 544, 557; *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1177.
[59] See *U.S. v. Hampton* (7th Cir. 2009) 585 F.3d 1033, 1039; *U.S. v. Copening* (10th Cir. 2007) 506 F.3d 1241, 1246.
[60] (2nd Cir. 2001) 250 F.3d 130, 138. Also see *U.S. v. Cutchin* (D.C. Cir. 1992) 956 F.2d 1216, 1217 [if the 911 caller appears to be reliable, "a dispatcher may alert other officers by radio, who may then rely on the report"].
[61] *People v. Mason* (1982) 132 Cal.App.3d 594, 597.
[62] *People v. Kershaw* (1983) 147 Cal.App.3d 750, 755.
[63] *People v. Brunner* (1973) 32 Cal.App.3d 908, 913.
[64] *U.S. v. Feekes* (7th Cir. 1989) 879 F.2d 1562, 1564.
[65] *People v. Lopez* (1985) 173 Cal.App.3d 125, 134.
[66] *U.S. v. Bernal-Obeso* (9th Cir. 1993) 989 F.2d 331, 335. Also see *On Lee v. United States* (1952) 343 U.S. 747, 756.
[67] See *U.S. v. Brown* (1st Cir. 2007) 500 F.3d 48, 56.
[68] See *Adams v. Williams* (1972) 407 U.S. 143, 146-47; *U.S. v. Jones* (1st Cir. 2012) 700 F.3d 615, 621-22.

If it becomes necessary to prove that an informant was "tested," officers must do two things. First, they must state in their affidavits or suppression hearing testimony the exact or approximate number of times he furnished accurate information to officers in the past.[69] There is, however, no minimum number. In fact, a court *might* find that an informant was tested if he furnished accurate information just once and had never furnished false information.[70] As the court explained in *People v. Gray*, "While one past incident showing reliability is not sufficient to *compel* a magistrate to accept the reported observations of an informant as true, he does not abuse his discretion if he arrives at that conclusion."[71]

Second, officers must state *why* they believed the informant's past information was accurate.[72] This is usually accomplished by explaining that the informant's information led to arrests, holding orders, indictments, or convictions; or that his information resulted in the issuance of a search warrant which, in turn, resulted in the discovery of evidence that the informant said would be there.[73] Thus, in *People v. Mayer* the court ruled that "[t]he assertion that the informant had given information to the affiant in excess of ten times over the last two years resulting in the issuance of search warrants, the seizure of controlled substances and the arrest of numerous suspects, establishes the reliability of the informant."[74] In contrast, a track record will not be established by an officer's assertion that the informant's tips led to "many ongoing investigations" or resulted in some other ambiguous achievement because this does not demonstrate that his information was accurate.[75]

The question sometimes arises whether an informant will be deemed tested if he participated in a controlled buy of drugs or other contraband. The answer appears to be no if the informant was merely carrying out instructions from officers. As the court observed in *People v. Mason*, "On its face, the statement that McNeil 'made controlled buys of controlled substances under the direction and supervision of law enforcement officers' does not indicate McNeil provided any information to the police."[76] But a successful (or even unsuccessful[77]) controlled buy may suffice if the informant was the person who initiated the investigation into the seller.[78]

Two other things should be noted. First, an informant will not be deemed "tested" merely because an officer described him as "tested," "credible," or "trustworthy" in an affidavit or in testimony at a suppression hearing.[79] For example, in *People v. French* the court noted that "CRI-1 is described as a 'confidential reliable informant,' but that simple assertion is inadequate to establish reliability because the affidavit contains no facts in support."[80] Indeed, when officers neglect to provide such facts, judges often assume they do not understand the basics of probable cause. This occurred in a search warrant case in which the Court of Appeal commented, "The entire affidavit is infected [with conclusions] beginning with its bald description of the informant as a 'confidential reliable informant.'"[81]

Second, although tested informants may be deemed reliable, officers should, if possible, include in their affidavits and testimony any corroborative evidence that tends to bolster their reliability.[82] We will discuss the subject of corroboration shortly.

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[69] See *People v. Superior Court (Johnson)* (1972) 6 Cal.3d 704, 714; *People v. Hansborough* (1988) 199 Cal.App.3d 579, 584; *People v. Dumas* (1973) 9 Cal.3d 871, 876; *People v. Mayer* (1987) 188 Cal.App.3d 1101, 1117.
[70] *People v. Berkoff* (1985) 174 Cal.App.3d 305, 309; *People v. Barger* (1974) 40 Cal.App.3d 662, 667-68.
[71] (1976) 63 Cal.App.3d 282, 288.
[72] See *People v. Dumas* (1973) 9 Cal.3d 871, 876; *People v. French* (2011) 201 Cal.App.4th 1307, 1317.
[73] See *Adams v. Williams* (1972) 407 U.S. 143, 146; *People v. Neusom* (1977) 76 Cal.App.3d 534, 537; *People v. Dumas* (1973) 9 Cal.3d 871, 876; *U.S. v. Elliott* (9th Cir. 2003) 322 F.3d 710, 716.
[74] (1987) 188 Cal.App.3d 1101, 1117.
[75] See *People v. McFadin* (1982) 127 Cal.App.3d 751, 764.
[76] (1982) 132 Cal.App.3d 594, 599.
[77] See *U.S. v. Jennen* (9th Cir. 2009) 596 F.3d 594, 599-600.
[78] See *People v. Cedeno* (1963) 218 Cal.App.2d 213, 222; *People v. Love* (1985) 168 Cal.App.3d 104, 106-7, 110.
[79] See *Illinois v. Gates* (1983) 462 U.S. 213, 239; *U.S. v. Dismuke* (7th Cir. 2010) 593 F.3d 582, 587.
[80] (2011) 201 Cal.App.4th 1307, 1317.
[81] *People v. Superior Court (McCaffrey)* (1979) 94 Cal.App.3d 367, 374. Edited.
[82] See *People v. McFadin* (1982) 127 Cal.App.3d 751, 767.

UNTESTED POLICE INFORMANTS: Like all police informants, "untested" informants have credibility problems—except much worse. Not only are they in a shady business, they cannot even claim to be good at it. As Justice Crosby wrote in *Higgason v. Superior Court*, "There are few principles of human affairs more self-evident than this: The unverified story of an untested informer is of no more moment than a fairy tale on the lips of a child."[83]

And yet, it turns out that information from untested informants is often accurate. Moreover, in many cases a tip from an untested informant is the only information that officers can get. Consequently, the courts have ruled that, despite its sordid lineage, such information can generate probable cause or reasonable suspicion if it is corroborated. What is "corroboration"? That is the subject of the remainder of this article.

Corroboration

"Corroboration" is essentially any circumstantial evidence of the source's reliability or the accuracy of his information. "Corroboration is not limited to a given form," said the California Court of Appeal, "but includes within its ambit any facts, sources, and circumstances which reasonably tend to offer independent support for information claimed to be true."[84]

As discussed earlier, corroboration is an absolute requirement when a source was an untested police informant. But it may also be necessary, or at least useful, when the source was a citizen informant, a tested informant, a 9-1-1 caller, or anyone else. That is because informants "do not all fall into neat categories"[85] and a court may disagree with an officer's conclusion that a source fell into a category that was presumptively reliable. Accordingly, regardless of the nature of the source, officers should be sure to include in their affidavits or suppression hearing testimony any corroborative information they were able to obtain.

It should also be noted that, while trying to obtain corroboration, officers will sometimes acquire information that constitutes direct evidence of the suspect's guilt (e.g., an incriminating statement, a successful controlled buy). When this happens the officer may become the primary source for probable cause, and the informant's tip may become secondary or even superfluous. Thus, in such a case, *People v. Kershaw*, the court said "it may be more accurate to say that the informer's statement corroborated the police investigation rather than the other way around."[86]

In most cases, corroboration consists of proof that *some* information furnished by the source was accurate. "Because an informant is right about some things," said the U.S. Supreme Court, "he is more probably right about other facts."[87] But demonstrating that a source was right about "some things" does not necessarily prove he was right about the important things. Instead, as we will now discuss, what matters most is that the corroborated information was such that it would ordinarily be known or predicted by someone with special knowledge about the suspect or his criminal activities.

Corroborating "inside" information

A police informant is likely to be deemed reliable if officers confirmed that he possessed "inside" information about the crime under investigation or the suspect's criminal operations.[88] The theory here is that the only people with access to such information would ordinarily be trusted associates or people with a "special familiarity" with the suspect.[89]

For example, in *Massachusetts v. Upton*[90] an unidentified woman telephoned police and reported the following: (1) Upton lives in a motor home at a certain location; (2) the motor home is "full of stolen stuff"; (3) the stolen stuff includes jewelry, silver, and gold; (4) Upton bought the stolen property from a man named Ricky Kelleher; and (5) Upton was getting nervous because he learned that the police had just "raided" Kelleher's motel room.

[83] (1985) 170 Cal.App.3d 929, 946 (conc. opn. of Crosby, J.).
[84] *People v. Levine* (1984) 152 Cal.App.3d 1058, 1065; *People v. Aho* (1985) 166 Cal.App.3d 984, 992.
[85] *U.S. v. Elmore* (2nd Cir. 2007) 482 F.3d 172, 181.
[86] (1983) 147 Cal.App.3d 750, 759.
[87] *Illinois v. Gates* (1983) 462 U.S. 213, 244.
[88] See *U.S. v. Zamora-Lopez* (8th Cir. 2012) 685 F.3d 787, 790.
[89] See *Alabama v. White* (1990) 496 U.S. 325, 332.
[90] (1984) 466 U.S. 727.

Officers then confirmed the following: Upton lived in a motor home at the location described by the caller; the caller's description of the stolen property "tallied" with the items taken in recent burglaries; and officers had recently executed a search warrant on Kelleher's motel room. Based on this information, officers obtained a warrant to search Upton's motor home and found stolen property. In ruling that the officers' corroboration of the tip was sufficient, the Supreme Court said, "The informant's story and the surrounding [corroborated] facts possessed an internal coherence that gave weight to the whole."

Similarly, in *People v. Rosales*[91] an anonymous caller phoned police in South Gate and said she had witnessed a murder that had occurred one day earlier when a man in a pickup truck opened fire on a house. The woman said she was inside the house at the time, that she saw the shooter, he was known as "Big Tudy," the shooting was gang-related, Big Tudy was a member of the Elm Street Gang, and he was getting ready to flee to Texas. Officers then determined that Rosales was known as Big Tudy, that he was a member of the Elm Street Gang, and that he had fled to Texas several years earlier when he was wanted for robbery. So they arrested him and, as the result, obtained evidence of his guilt.

On appeal, the court ruled the caller's tip was sufficiently corroborated mainly because she "possessed a wealth of specific information about the shooting. She knew the identity of the respective gangs involved and of their enmity, how the shooting occurred, and when it occurred [and] she knew that Rosales was planning to flee to Texas."

The following are some other examples of corroborated "inside" information that sufficed to justify a detention, arrest, or search:

- The informant knew the routine that a suspected drug dealer would follow in retrieving drugs.[92]
- The informant knew that a drug trafficker would be staying at a certain hotel and would use a certain false name when he registered.[93]
- The informant knew about "a crime detail" that had not been released to the news media.[94]
- The informant knew how the suspect had committed two burglaries and how he had bypassed the alarm system.[95]
- The informant knew the approximate time that a murder victim had been shot.[96]
- The informant knew where the body of a murder victim had been dumped.[97]
- The informant said the suspect possessed certain railroad bonds, and officers confirmed that such bonds had been stolen.[98]
- The informant knew the suspect was a parole violator and was wanted on warrants.[99]

Note that, by definition, the term "inside" information does not cover any type of information that could have been obtained without much difficulty or was commonly known, such as the suspect's address and his physical description.[100] As the court observed in *Higgason v. Superior Court*, "The courts take a dim view of the significance of such pedestrian facts."[101] Or, as the Supreme Court put it, "An accurate description of a subject's readily observable location and appearance . . . does not show that the tipster has knowledge of concealed criminal activity."[102]

Corroborating predictions

For the same reason that corroboration of "inside" information is a good indication of an informant's reliability, it is significant that the informant told officers that the suspect would take some action in

[91] (1987) 192 Cal.App.3d 759.
[92] *People v. Aston* (1985) 39 Cal.3d 481, 496; *U.S. v. Stearn* (3rd Cir. 2010) 597 F.3d 540, 557.
[93] *U.S. v. Brown* (1st Cir. 2007) 500 F.3d 48, 56.
[94] *People v. McCarter* (1981) 117 Cal.App.3d 894, 902. Also see *U.S. v. Elmore* (2nd Cir. 2007) 482 F.3d 172, 182.
[95] *People v. Costello* (1988) 204 Cal.App.3d 431. Also see *People v. Stewart* (1983) 140 Cal.App.3d 11,15.
[96] *People v. Lara* (1967) 67 Cal.2d 365.
[97] *People v. Cooks* (1983) 141 Cal.App.3d 224.
[98] *People v. Dumas* (1973) 9 Cal.3d 871, 876. Also see *People v. Superior Court (Williams)* (1978) 77 Cal.App.3d 69, 75.
[99] *U.S. v. Hauk* (10th Cir. 2005) 412 F.3d 1179, 1191.
[100] See *Alabama v. White* (1990) 496 U.S. 325, 332; *People v. French* (2011) 201 Cal.App.4th 1307, 1320.
[101] (1985) 170 Cal.App.3d 929, 940.
[102] *Florida v. J.L.* (2000) 529 U.S. 266, 272.

the future pertaining to his crimes, and officers saw him do it.[103] "The ability to predict an individual's future actions," said the Court of Appeal, "indicates the informant has some familiarity with that individual's affairs."[104]

For example, in *Alabama v. White*[105] an informant called an officer and said that, at a certain time, Vanessa White would drive a brown Plymouth station wagon from the Lynwood Apartments to Dobey's Motel, and she would be carrying an ounce of cocaine. Everything checked out. So surveillance officers stopped the car, obtained White's consent to search it, and found cocaine in her purse. In ruling that the officers had sufficient reason to credit the informant, the Supreme Court said, "What was important was the caller's ability to predict [White's] *future behavior*, because it demonstrated inside information—a special familiarity with [her] affairs."

In applying this logic, other courts have upheld detentions based on the following:

- An informant said the suspect planned to shoot someone at a certain time and place; when he arrived on schedule, officers detained him.[106]
- ICS agents confirmed a tip from an arrested drug smuggler that his associates would enter California from Mexico at about the same time, driving a Toyota Tacoma and a PT Cruiser.[107]
- Officers confirmed an informant's tip that the suspect would be making a delivery of drugs to Midland, Texas and that he would be driving a certain type of car.[108]
- Officers confirmed a 9-1-1- report from an identified caller that a car that had been used in a shooting would soon be heading southbound on a certain street.[109]

Observing suspicious activity

Probably the most common type of corroboration results from surveillance during which officers see the suspect do something that, although not illegal, was consistent with the informant's tip about the suspect's criminal activities.[110] Said the Court of Appeal, "Even observations of seemingly innocent activity suffice alone, as corroboration, if the anonymous tip casts the activity in a suspicious light."[111] Here are some examples of corroborative suspicious activity that warranted a detention:

- When officers arrived in response to a report of an impending shooting, the suspect "broke away" from a group of men and started walking away.[112]
- As officers in a patrol car approached a house in which the occupants were reportedly selling drugs, they saw four or five men outside "scattered around" a wall; apparently in response to seeing the patrol car, one of the men "quickly walked behind the wall."[113]
- The suspect matched the source's description of a man who had just fired a gun; and he "was holding what appeared to be something heavy in his pocket or waistline, in an unusual manner, where a gun was ultimately found."[114]
- Having stopped a car that reportedly belonged to a drug dealer who was sometimes armed, officers saw the suspect reach "in and out of his jacket pocket," a movement that, according to the court, "could be interpreted by an officer as a retrieval of a weapon."[115]
- Responding to a tip that the a man in a parked car was carrying a gun, officers saw the man make a "furtive" gesture as if he was putting something under the seat.[116]

[103] See *Illinois v. Gates* (1983) 462 U.S. 213, 245, fn.13; *U.S. v. Brack* (7th Cir. 1999) 188 F.3d 748, 756.
[104] *People v. Jordan* (2004) 121 Cal.App.4th 544, 559.
[105] (1990) 496 U.S. 325.
[106] *People v. Turner* (2013) 219 Cal.App.4th 151, 168.
[107] *U.S. v. Villasenor* (9th Cir. 2010) 608 F.3d 467, 473-74.
[108] *U.S. v. Powell* (5th Cir. 2013) 732 F.3d 361, 371.
[109] *U.S. v. Johnson* (3rd Cir. 2010) 592 F.3d 442, 450.
[110] See *People v. Jordan* (2004) 121 Cal.App.4th 544, 558; *U.S. v. Greenburg* (1st Cir. 2005) 410 F.3d 63, 69.
[111] *People v. Costello* (1988) 204 Cal.App.3d 431, 446.
[112] *People v. Turner* (2013) 219 Cal.App.4th 151, 168.
[113] *U.S. v. Soto-Cervantes* (10th Cir. 1998) 138 F.3d 1319, 1323. Also see *U.S. v. Thompson* (D.C.Cir. 2000) 234 F.3d 725, 727.
[114] *People v. Lindsey* (2007) 148 Cal.App.4th 1390.
[115] *U.S. v. Thomas* (7th Cir. 2008) 512 F.3d 383, 388. Also see *U.S. v. Simmons* (2nd Cir. 2009) 560 F.3d 98, 108.
[116] *U.S. v. Graham* (6th Cir. 2007) 483 F.3d 431, 439. Also see *Adams v. Williams* (1972) 407 U.S. 143, 146-47 [driver was asked to open the door, but he rolled down the window instead].

- After receiving a tip that a certain man was selling heroin, officers saw him meet with another man and exchange money for two balloons containing a tan powder.[117]
- When officers arrived at a motel in which a man was reportedly pointing a gun at a woman, they saw a man and a woman in a car; the man was "waiving his arms" at the woman and there was a dark object (like a gun) in his lap.[118]
- After an informant said the suspect was selling meth from his motel room, officers knocked and "heard considerable movement, opening and closing of doors, and a toilet flushing."[119]
- Responding to a report that a man was selling drugs in the dark hallway of an apartment building, officers saw a man there "strangely crouched over in a corner, peering down at them."[120]
- Checking out a report of a drug house, officers found balloon fragments nearby, "many of which were knotted in the end"; they also saw "numerous people going in and out of the house," one of whom was detained and determined to be under the influence of heroin.[121]

Other relevant corroboration

In addition to the above, the following circumstances are often noted by the courts and may help bolster the reliability of an informant or his tip:

INFORMANT FURNISHED DETAILED INFORMATION: The courts often note whether the informant provided officers with detailed information, as opposed to vague or generalized assertions.[122] "[E]ven if we entertain some doubt as to an informant's motives," said the Supreme Court, "his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed first-hand, entitles his tip to greater weight than might otherwise be the case."[123] The theory here, or so it appears, is that informants are seldom so imaginative and crafty that they can invent a false story that is both plausible and full of particulars. Still, details alone will not always render a tip reliable. As one court put it, "The quantification of the information does not necessarily improve its quality; the information does not rise above its doubtful source because there is more of it."[124]

SUSPECT'S CRIMINAL HISTORY: It is relevant that officers determined that the suspect had been previously arrested or convicted of crimes similar to the one reported by the informant.[125] As the Supreme Court stated in *United States v. Harris*:

> [A] policeman's knowledge of a suspect's reputation [is] a practical consideration of everyday life upon which an officer (or a magistrate) may properly rely in assessing the reliability of an informant's tip.[126]

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[117] *People v. Medina* (1985) 165 Cal.App.3d 11, 18-19. Also see *Illinois v. Gates* (1983) 462 U.S. 213, 243. fn.13.
[118] *U.S. v. Sandoval* (9th Cir. 2004) 390 F.3d 1077.
[119] *U.S. v. Hendrix* (10th Cir. 2011) 664 F.3d 1334, 1339.
[120] *People v. Johnson* (1991) 231 Cal.App.3d 1, 11.
[121] *People v. Sotelo* (1971) 18 Cal.App.3d 9.
[122] See *People v. Kershaw* (1983) 147 Cal.App.3d 750, 758 ["What [the informant] supplied was more akin to a full scenario naming the cast of characters, the castle at Elsinore and the modus operandi of the crimes."]; *United States v. Hensley* (1985) 469 U.S. 221, 234; *People v. Wells* (2006) 38 Cal.4th 1078, 1088; *People v. Dolly* (2007) 40 Cal.4th 458, 468; *People v. Rosales* (1987) 192 Cal.App.3d 759, 768; *Lowry v. Gutierrez* (2005) 129 Cal.App.4th 926, 941; *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1258; *U.S. v. Jennen* (9th Cir. 2010) 596 F.3d 594, 598 ["a range of details"]; *U.S. v. Conner* (10th Cir. 2012) 699 F.3d 1225, 1230; *U.S. v. Chavez* (10th Cir. 2011) 660 F.3d 1215, 1222 [the caller "provided the dispatchers with detailed information about the events he witnessed, including the model of each vehicle involved in the disturbance and each vehicle's license plate number"]; *U.S. v. Carson* (7th Cir. 2009) 582 F.3d 827, 832; *U.S. v. Torres* (3rd Cir. 2008) 534 F.3d 207, 213 [the caller "provided a detailed account of the crime he had witnessed"].
[123] *Illinois v. Gates* (1983) 462 U.S. 213, 234.
[124] *Orvalle v. Superior Court* (1962) 202 Cal.App.3d 760, 763.
[125] See *People v Rooney* (1985) 175 Cal.App.3d 634, 648 [bookmaking prior]; *People v. Murphy* (1974) 42 Cal.App.3d 81, 87 [drug prior]; *People v. Kershaw* (1983) 147 Cal.App.3d 750, 760 [drug prior]; *People v. Hill* (1970) 3 Cal.App.3d 294, 299 [drug prior]; *U.S. v. Taylor* (1st Cir. 1993) 985 F.2d 3, 6 [marijuana growing prior]; *U.S. v. Ayers* (9th Cir. 1990) 924 F.2d 1468, 1478 [drug prior]; *U.S. v. Morrison* (8th Cir. 2010) 594 F.3d 626, 632 [previous arrest for possession of pseudoephedrine with intent to manufacture, "a charge implicating the same conduct that the informant alleged"]; *U.S. v. Jones* (1st Cir. 2012) 700 F.3d 615, 623.
[126] (1971) 403 U.S. 573, 583.

MULTIPLE INDEPENDENT TIPS: A tip that a suspect was engaging in certain criminal activities may be deemed corroborated if one or more other untested informants provided officers with the same or substantially the same information. As the Court of Appeal put it, "If the smoke is heavy enough, the deduction of a fire becomes reasonable."[127] But such a deduction necessarily requires proof that the informants were not cohorts and that each provided their information independently of the other. Thus, in *People v. Balassy* the court explained that "one 'unreliable' informer's statements may be corroborated by those of another, if they were interviewed independently, at a different time and place."[128]

STATEMENTS AGAINST PENAL INTEREST: Information from an informant that implicates the suspect in a crime may be deemed reliable if both of the following circumstances existed: (1) the information also implicated the informant, and (2) the informant knew he was making the statement to an officer or to someone who might disclose it to officers.[129] Note that an informant's statement is not "against penal interest" if, although it incriminated the informant, it placed most of the responsibility for the crime on someone else.[130]

UTILIZING INTERVIEWING TECHNIQUES: It is relevant that officers attempted to test the informant's reliability by carefully observing his conduct or mannerisms, and utilizing interview techniques which contributed to their determination that he appeared to be reliable. For example, in *John v. City of El Monte*,[131] where a ten year old girl accused her teacher of sexually molesting her, the Ninth Circuit noted that the officer tested the girl's reliability by, for example, inserting false or exaggerated facts into her descriptions of the incident; and each time "she would correct [him] and would stay consistent with her original description."

SWORN TESTIMONY BY INFORMANT (*Skelton* hearings): If officers are seeking a search or arrest warrant, the accuracy of the informant's tip may be established, or at least bolstered, by having the informant appear before the issuing judge in chambers, swear to the truthfulness of his information, and submit to questioning by the judge, prosecutor, or investigating officer.[132] The theory here is that, because judges routinely determine the credibility of witnesses in court, they may do the same with informants in chambers.

EMERGENCIES: An informant does not become reliable merely because he was reporting an emergency. But it is a factor that the courts have taken into account in determining whether the officer's response to the tip was reasonable. "[W]hen an emergency is reported by an anonymous caller," said the court in *U.S. v. Holloway*, "the need for immediate action may outweigh the need to verify the reliability of the caller."[133] Note that, as discussed earlier, the U.S. Supreme Court is expected to address this issue in the pending case of *Navarette v. California*. POV

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[127] *People v. Hirsch* (1977) 71 Cal.App.3d 987, 991, fn.1.

[128] (1973) 30 Cal.App.3d 614, 621. Also see *People v. Green* (1981) 117 Cal.App.3d 199, 205 ["[C]orroboration of an unreliable informant's statements may be met by those of another, if they were interviewed independently"]; *People v. Coulombe* (2000) 86 Cal.App.4th 52, 58; *People v. Amos* (1977) 70 Cal.App.3d 562, 567; *People v. Camarella* (1991) 54 Cal.3d 592, 606; *People v. Terrones* (1989) 212 Cal.App.3d 139, 149.

[129] See *United States v. Harris* (1971) 403 U.S. 573, 583; Evid. Code § 1230; *In re Christopher R.* (1989) 216 Cal.App.3d 901, 904; *People v. Cooks* (1983) 141 Cal.App.3d 224, 295; *People v. Greenberger* (1997) 58 Cal.App.4th 298, 335; *People v. Mardian* (1975) 47 Cal.App.3d 16, 31; *People v. Bryden* (1998) 63 Cal.App.4th 159, 175; *People v. Frierson* (1991) 53 Cal.3d 730, 745; *People v. Gordon* (1990) 50 Cal.3d 1223, 1251; *People v. Terrones* (1989) 212 Cal.App.3d 139; *People v. Hall* (1974) 42 Cal.App.3d 817, 823; *U.S. v. Villasenor* (9th Cir. 2010) 608 F.3d 467, 474.

[130] See *People v. Campa* (1984) 36 Cal.3d 870, 882; *In re Larry C.* (1982) 134 Cal.App.3d 62, 69; *People v. Greenberger* (1997) 58 Cal.App.4th 298, 327-42 ["Clearly the least reliable circumstance is one in which the declarant has been arrested and attempts to improve his situation with the police by deflecting criminal responsibility onto others."].

[131] (9th Cir. 2007) 505 F.3d 907.

[132] See Pen. Code §§ 1526(a), 1526(b)(1), 1528(a), 1529, 1534, 1537; *Skelton v. Superior Court* (1969) 1 Cal.3d 144, 153; *People v. Goldberg* (1984) 161 Cal.App.3d 170, 183; *People v. Peck* (1974) 38 Cal.App.3d 993, 999; *People v. Campa* (1984) 36 Cal.3d 870, 884: *People v. Bestelmeyer* (1985) 166 Cal.App.3d 520, 526 [one advantage of having a judge hear the witness's own words is that the judge will hear "all the inflections, intonations and pauses that add meaning to bare words."].

[133] (11th Cir. 2002) 290 F.3d 1331, 1339. Also see *People v. Profit* (1986) 183 Cal.App.3d 849, 883 ["Nor can we ignore the seriousness of the offense involved, which is a highly determinative factor in any evaluation of police conduct."].