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THE CITIZEN INFORMANT DOCTRINE

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There is, perhaps, no language in the Constitution that has given the courts more difficulty than the fourth amendment's command that "no warrant shall issue, but upon probable cause." The pages of precedent are literally covered with judicial attempts to interpret this phrase so as to strike a balance between the legitimate needs of law enforcement and the right of the citizenry to be free from unreasonable interferences with privacy and unfounded charges of crime. However, since the Supreme Court first held that warrants may not issue upon mere suspicion but must be supported by facts amounting to probable cause,[1] there has been continuous debate over the degree of specificity necessary to secure a search warrant. One school of thought suggests that the Supreme Court has gone too far in creating a rigid, academic formula that is not only incomprehensible to police officers, but too technical for judges to apply with any degree of consistency.[2] On the other hand, there are those who maintain that a citizen is not secure from unjustified intrusions upon privacy unless the police comply with exacting standards of factual specificity before obtaining a search warrant.[3]

A focal point of confrontation between these divergent viewpoints concerns the extent to which an application for a search warrant based on hearsay information must demonstrate the reliability of the individual providing the information. Concededly, many warrant applications are based on information provided by sources whose character and motives dictate a valid judicial concern for an informant's reliability. However, in light of this concern, the courts may well have overreacted by developing an inflexible rule structure for the quantum of information about the informant's reliability that should be contained in an application for a search warrant. As a surface matter, the rigidity of existing rules would seem to require that all information provided the police be tested by the same reliability standards. But it is anomalous that similar reliability considerations should exist when a warrant is sought on the basis of information provided by a citizen who is the victim of, or witness to, a crime, as when, for example, the classic "stool pigeon" provides information. To the extent that law enforcement officers must meticulously demonstrate the reliability of the citizen informant and the "stool pigeon" in the same technical way, time and effort are needlessly expended and, where technical requirements are not met, reliable evidence is needlessly excluded.

This article will focus on a concept in the embryonic stages of development—the citizen informant doctrine—which has been accepted in varying degrees in some jurisdictions and represents a solution to the problem suggested above. Briefly stated, this doctrine permits the issuance of a search warrant on the basis of information supplied by an ordinary citizen who observes the commission of a crime without regard to particularized considerations of reliability. Before attempting to articulate and crystallize the doctrine, it is necessary to place it in the historical context of the fourth amendemnt cases.

The decisions of the Supreme Court in fourth amendment cases "point in differing directions and differ in emphasis. No trick of logic will make them all perfectly consistent."[4] However, the Court has consistently emphasized that, wherever possible, searches should be conducted pursuant to a warrant so that a neutral and detached judicial officer is

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The views expressed herein are the authors' own and do not necessarily reflect those of the United States Department of Justice.

[1] *See* Nathanson v. United States, 290 U.S. 41 (1933).

[2] *See generally* Carrington, *Speaking for the Police*, 61 J. CRIM. L.C. & P.S. 244 (1970); T. TAYLOR, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION 23–24 (1969).

[3] *See generally* Comment, *Search and Seizure in the Supreme Court: Shadows of the Fourth Amendment*, 28 U. CHI. L. REV. 664, 687 (1961). *Cf.* W. SCHAEFFER, THE SUSPECT AND SOCIETY (1966).

[4] Coolidge v. New Hampshire, 403 U.S. 443, 483 (1971). *See* La Fave, *Search and Seizure, "The Course of True Law... Has Not... Run Smooth"*, 1966 U. ILL. L.F. 255.

interposed between the officer and his suspect.[5] In addition to its preference for the use of search warrants, the Court has attempted to insure that the magistrate's function is more than that of a "rubber stamp" for the law enforcement officer.[6] The issuing officer is compelled to make an independent evaluation of the reliability of the facts put forth by the complaining officer. Under no circumstances can he rely upon "a mere affirmation of suspicion and belief without any statement of adequate supporting facts."[7]

The function of the magistrate became more delicate with the abolition of the requirement, imposed by some courts,[8] that the complaining officer possess personal knowledge of facts amounting to a criminal offense. The demise of that doctrine with respect to warrantless arrests[9] opened the way for the Court to hold that warrants could issue upon hearsay information,[10] which, in turn, created the need for criteria by which a magistrate could test the reliability of the hearsay information. Thus arose the Court's controversial decision in *Aguilar* v. *Texas*.[11]

In *Aguilar* two Houston police officers applied for a warrant to search a home for narcotics on the basis of "reliable information from a credible person." Finding the exposition far too conclusory to warrant a magistrate's finding of probable cause, Mr. Justice Goldberg's opinion articulated the now famous two-pronged test to be used by magistrates in assessing the sufficiency of information intended to produce a warrant. As a constitutional yardstick for evaluating hearsay in a warrant application, the magistrate, said the Court, had to be informed of (1) some of the underlying circumstances relied upon by the person providing the affiant with information and (2) some of the circumstances indicating that the person supplying the information to the affiant was credible or his information reliable.[12]

After observing the reaction to its decision in *Aguilar*,[13] the Court, counseled by experience, accepted review of the Eighth Circuit's divided *en banc* determination in *United States v. Spinelli*.[14] The affadavit in question asserted that the F.B.I. had observed Spinelli going to an apartment containing two telephones and that an informer had said that Spinelli was conducting a gambling operation using two telephones with certain numbers, which matched the numbers of the phones in the apartment Spinelli had visited. The Supreme Court, in *Spinelli v. United States*,[15] reversed the Eighth Circuit's conclusion that the affadavit was sufficient to establish probable cause.

[5] *See, e.g.*, Coolidge v. New Hampshire, 403 U.S. 443, 449–51 (1971); Katz v. United States, 389 U.S. 347, 357 (1967); Johnson v. United States, 333 U.S. 10 (1948).

[6] *But compare* W. LA FAVE, ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY 502–03 (1965):

> The assumption apparently is that greater protection for the individual is afforded by the warrant procedure, since an arrest will be made only if an impartial judicial officer, upon careful evaluation of the evidence presented to him, determines that adequate grounds for an arrest exist. But, at least in [some states] it is clear that the warrant process does not serve this function. Rather, the decision is made in the office of the prosecutor and the judge routinely signs the arrest warrant without any independent inquiry into the facts and circumstances of the individual case.

See also Miller & Tiffany, *Prosecutor Dominance of the Warrant Decision: A Study of Current Practices*, 1964 WASH. U.L.Q. 1, 17.

[7] Nathanson v. United States, 290 U.S. 41, 46 (1933). The standards used to test for probable cause are the same whether a search warrant, as in *Nathanson*, or an arrest warrant is being sought. *See, e.g.*, Giordenello v. United States, 357 U.S. 480, 485 (1958); United States v. Roth, 391 F.2d 507, 509 n.2 (7th Cir. 1967). *Cf.* Spinelli v. United States, 393 U.S. 410, 417 n.5 (1969); Beck v. Ohio, 379 U.S. 89, 91 (1964) (standard of probable cause necessary to arrest without a warrant is essentially the same). Because of this identity, authorities involving all of these factual situations will be used interchangeably when reference is made to their common legal principles.

[8] *See, e.g.*, Simmons v. United States, 18 F.2d 85, 88 (8th Cir. 1927); Wagner v. United States, 8 F.2d 581 (8th Cir. 1925); Giles v. United States, 284 F.208 (1st Cir. 1922); United States v. Novero, 58 F. Supp. 275, 279 (E.D. Mo. 1944); Reeve v. Howe, 33 F. Supp. 619, 622 (E.D. Pa. 1940). *Compare* Mueller v. Powell, 203 F.2d 797 (8th Cir. 1953); United States v. Bianco, 189 F.2d 716 (3rd Cir. 1951); United States v. Heitner, 149 F.2d 105 (2d Cir. 1945); Wisniewski v. United States, 47 F.2d 825 (6th Cir. 1931).

[9] Draper v. United States, 358 U.S. 307, 312 n.4 (1959), vesting police officers with power to arrest upon probable cause generated by hearsay information, was presaged by Brinegar v. United States, 338 U.S. 160, 172–74 (1949). *See also* McCray v. Illinois, 386 U.S. 300 (1967).

[10] *See* Jones v. United States, 362 U.S. 257, 270–71 (1960).

[11] 373 U.S. 108 (1964).

[12] *Id.* at 114.

[13] *See, e.g.*, United States v. Pinkerman, 374 F.2d 988 (4th Cir. 1967); United States v. Freeman, 358 F.2d 459 (2d Cir. 1966); Smith v. United States, 358 F.2d 833 (D.C. Cir. 1966); Commonwealth v. Brown, 354 Mass. 337, 237 N.E.2d 53 (1968); Ludwig v. State, 215 So. 2d 898 (Fla. App. 1968); Comment, *Informers Word as Basis for Probable Cause in the Federal Courts*, 53 CALIF. L. REV. 840 (1965).

[14] 382 F.2d 871 (8th Cir. 1967) (en banc). Mr. Justice Blackmun, a member of the Eighth Circuit majority which upheld the warrant in *Spinelli*, remains firm in his belief that the circuit court's opinion was correct and that the Supreme Court erred in reversing. *See* Harris v. United States, 403 U.S. 573, 585–86 (1971) (Blackmun, J., concurring).

[15] 393 U.S. 410 (1969). Mr. Justice Harlan wrote the plurality opinion in which three of his brethren joined. Justices Black, Fortas and Stewart issued separate

Rather than clarify the law in this area, the Court's splintered decision in *Spinelli* only served to complicate and confuse the situation. While it is difficult to extract any clearly focused principles of law from the opinion, the decision, on its facts, seemed to elevate the evidentiary standards necessary to satisfy *Aguilar's* dual criteria. The plurality opinion found the detail set forth in the affidavit, even though partially corroborated, insufficient under *Aguilar* because the information disclosed no more than a series of innocent acts coupled with a naked conclusion of criminal activity. However, since *Draper* v. *United States*[16] had previously upheld a warrantless arrest based upon an informant's tip which, while disclosing nothing particularly sinister, was so detailed as to be self-verifying, the Court went to great lengths to distinguish *Draper* in terms of the amount of detail provided by the informant. Consequently, the evidentiary detail which, pursuant to *Spinelli*, must be provided the magistrate before he could constitutionally discharge his function, according to Mr. Justice Black, "expands *Aguilar* to almost unbelievable proportions."[17]

The antimony presented by the self-verifying information notions of *Draper* and the elaborate specificity required under *Spinelli's* evidentiary expansion of the *Aguilar* doctrine made it "perhaps not the easiest task for a lower court to walk the logical tightrope of *Draper-Aguilar-Spinelli*".[18] In this context of judicial confusion, an individual named Roosevelt Harris was convicted for possessing non-taxpaid liquor. The verdict was primarily secured by evidence obtained pursuant to a search warrant and, therefore, his appeal to the Sixth Circuit concerned only the sufficiency of the affadavit upon which the warrant was predicated.

In a per curiam opinion, the Sixth Circuit, relying on the *Aguilar–Spinelli* analysis, reversed the conviction.[19] That court found that the first prong of *Aguilar* was satisfied because the hearsay declarant visually observed the facts asserted.[20] However, the second requirement of *Aguilar*—a basis for confirming the out-of-court declarant's credibility—was held to be lacking. The issue came to the Supreme Court in this posture.

With Chief Justice Burger writing the plurality opinion, the Supreme Court reversed the Sixth Circuit[21] and indicated a willingness to take into account the totality of the circumstances under which the warrant was issued.[22] This willingness was manifested by a resurrection of the "substantial basis" test enuciated by Mr. Justice Frankfurter in *Jones* v. *United States*.[23] Thus, under *Harris*, the affidavit must be considered as a whole to determine whether the informant's report,

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dissents. Justice Marshall did not participate. The pivotal vote was Justice White's concurrence which was premised upon a somewhat dubious foundation:

> Pending full-scale reconsideration of [*Draper*], on the one hand, or of the *Nathanson-Aguilar* cases on the other, I join the opinion of the Court and the judgment of reversal, especially since a vote to affirm would produce an equally divided Court.

Id. at 429.

[16] 358 U.S. 307 (1959).

[17] Spinelli v. United States, 393 U.S. 410, 429 (1969) (Black, J., dissenting).

[18] United States v. Mitchell, 425 F.2d 1353, 1360 (8th Cir. 1970) (Blackmun, J.). In *Mitchell*, Justice Blackmun, then Circuit Judge, first expressed disenchantment with the Supreme Court's disposition of *Spinelli* and, by relying upon *Draper*, saw a means of avoiding *Spinelli's* rigors. As to the tension between *Draper* and *Aguilar-Spinelli*, see Note, *The Informer's Tip as Probable Cause for Search or Arrest*, 54 CORNELL L. REV. 958 (1969).

[19] United States v. Harris, 412 F.2d 796 (6th Cir. 1969).

[20] Generally, where personal observation of a crime occurs, the first prong of the *Aguilar* test is satisfied and the question is reduced to whether the informant is credible or his information reliable. *See, e.g.*, United States v. Suarez, 380 F.2d 713 (2d Cir. 1967); Coyne v. Watson, 282 F. Supp. 235 (S.D. Ohio 1967); State v. Snyder, 12 Ariz. App. 142, 468 P.2d 593 (1970); People v. Scoma, 78 Cal. Rptr. 491, 455 P.2d 419 (1969); Sturgeon v. State, 483 P.2d 335 (Okla. Crim. App. 1971); Manley v. Commonwealth, 211 Va. 146, 176 S.E.2d 309 (1970).

[21] 403 U.S. 573 (1971). The Chief Justice's opinion was divided into three parts, holding that: (1) a factual basis for deeming the informant reliable existed; (2) *Spinelli* was wrong in failing to take into account the affiant's knowledge of a suspect's reputation; and (3) declarations against penal interest by an informant are indicia of reliability. Justice Black, who would have overruled *Aguilar* and *Spinelli*, and Justice Blackmun, who would have overruled *Spinelli*, concurred in all three parts of the opinion. Justice Stewart concurred in Part I and Justice White, the pivotal vote in *Spinelli*, concurred in Part III. Justice Harlan, who authored *Spinelli*, wrote for the four dissenters.

[22] Mr. Justice Harlan's statement in *Spinelli* that "the 'totality of the circumstances' approach . . . paints with too broad a brush," 393 U.S. at 415, was, thereby, implicitly rejected.

[23] 362 U.S. 257, 271–72 (1960):

> We conclude therefore that hearsay may be the basis for a warrant. We cannot say that there was so little basis for accepting the hearsay here that the Commissioner acted improperly. The Commissioner need not have been convinced of the presence of narcotics in the apartment. He might have found the affidavit insufficient and withheld his warrant. But there was substantial basis for him to conclude that narcotics were probably present in the apartment, and that is sufficient.
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> * * *
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> We have decided that, as hearsay alone does not render an affidavit insufficient, the Commissioner need not have required the informants or their affidavits to be produced . . . so long as there was a substantial basis for crediting the hearsay.

coupled with the corroborating information, provides a "substantial basis" upon which to determine the existence of probable cause.[24]

While some commentators have interpreted *Harris*' "substantial basis" approach to have undermined the mechanical tests of *Aguilar* or, at least, to have obfuscated the line between its prongs,[25] it is doubtful that the Court went so far. Rather, since there was no dispute that the detailed personal observation provided by the *Harris* informant was sufficient to satisfy the first *Aguilar* test,[26] the issue was reduced to the quantum of information necessary to establish the informant's credibility. Although *Aguilar* was not abandoned, the Court apparently reduced the burden for satisfying the second prong of the test to a standard less exacting than that envisioned by *Spinelli*. The Chief Justice, relying heavily upon a number of pre-*Spinelli* decisions, suggested a more flexible approach to examining probable cause affidavits which would avoid "hypertechnicality" and rely upon "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."[27]

Because the affadavit held valid in *Harris* would probably have been rejected under a literal reading of *Spinelli*,[28] it is not unreasonable to assume that the thrust of *Harris* was to relax the elaborate specificity required by *Spinelli* to satisfy the second prong of the *Aguilar* test. One court has clearly stated that "while adhering in general to the *Aguilar* decision, the Supreme Court clearly indicated the burden for satisfying the so-called second prong of *Aguilar* was not as stringent as *Spinelli* had indicated."[29] Upon this thesis, the courts, both state[30] and federal,[31] have given credence to the teachings of *Harris* insofar as it concerns the quantum of information necessary to satisfy the reliability of the informant prong of *Aguilar*.[32]

While *Harris* concededly did not depart from the long line of cases voiding warrants procured on the basis of mere suspicions,[33] it did signal an abandonment of the rigidity of technical nicety in the review of affadavits for warrants. Therefore, contemporary warrant applications must be tested upon pre-*Spinelli* common sense considerations of practical accuracy. Concluding the *Harris* opinion, Chief Justice Burger stated that "[i]t will not do to say that warrants may not issue on uncorroborated hearsay. This only avoids the issues of whether there is reason for crediting the out-of-court statement."[34] By holding that reason for crediting the hearsay statements of informers could exist without the elaborate specificity deemed necessary under *Spinelli*, the *Harris* decision paved the road toward total acceptance of the innovative citizen-informant concept that has been discussed and applied in some jurisdictions, but never fully articulated and accepted on a national scale.

At the outset, it must be recognized that the question of whether citizen informants must be shown to be reliable in the same way and to the same extent as a police informant is of more than academic significance. One of the prime methods used to demonstrate reliability of an informant is to show that the informant has furnished accurate

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[24] 403 U.S. at 581.

[25] *See, e.g.*, Note, 40 FORDHAM L.REV. 687, 696 n.61 (1972); Note, 47 NOTRE DAME LAWYER 632, 638 (1972).

[26] *Compare* 403 U.S. at 578–79 *with* 403 U.S. at 589 (Harlan, J., dissenting). Although Justice Harlan found the information sufficient to satisfy the first test, he specifically rejected the notion that it was so detailed as to be self-verifying. *Id.* at 593.

[27] 403 U.S. at 583. In reaching this conclusion the Chief Justice relied upon and quoted Brinegar v. United States, 338 U.S. 160, 175 (1949) and United States v. Ventresca, 380 U.S. 102, 108 (1965). Moreover, he expressly adopted the language of Mr. Justice Fortas' dissent in *Spinelli*, 393 U.S. at 438, to the extent that it indicates that "[a] policeman's affidavit should not be judged as an entry in an essay contest." 403 U.S. at 579.

[28] *See The Supreme Court 1970 Term*, 85 HARV. L. REV. 3, 56 (1971).

[29] United States v. Unger, 469 F.2d 1283, 1286 (7th Cir. 1972), *petition for cert. docketed*, 41 U.S.L.W. 3575 (U.S. April 3, 1973). *See also* United States v. McNally, __F.2d__(1st Cir. 1973); United States v. Sequella-Avendo, 447 F.2d 575, 579 n.18 (5th Cir.), *cert. denied*, 404 U.S. 985 (1971). That the effect of *Harris* upon the *Aguilar-Spinelli* doctrine is by no means clear is evidenced by the three separate opinions in United States v. Marihart, 472 F.2d 809, (8th Cir. 1972) (en banc).

[30] *See, e.g.*, State v. Perry, 59 N.J. 383, 390, 283 A.2d 330, 334 n.3 (1971); State v. Flowers, 12 N.C. App. 487, 492, 183 S.E.2d 820, 822–23 (1971); Pierce v. State, 491 P.2d 335, 336 (Okla. Crim. App. 1971); State v. Curtis, 489 P.2d 962 (Ore. App. 1971).

[31] *See, e.g.*, United States v. Guinn, 454 F.2d 29, 33–35 (5th Cir. 1972); United States v. Roman, 451 F.2d 579, 581 (4th Cir. 1971); United States *ex rel.* Di Rienzo v. Yeager, 443 F.2d 228, 230 (3rd Cir. 1971).

[32] A review of the *Harris* decision, indicating that the "Supreme Court dealt harshly with the standard of proof that had evolved under *Aguilar* and *Spinelli*, seemingly altering its content," is set forth in an analogous context in Comment, *Controverting Probable Cause In Facially Sufficient Affidavits*, 63 J.CRIM.L.C. & P.S. 41, 43–44 (1972).

[33] *See, e.g.*, Whitley v. Warden, 401 U.S. 560 (1971); Aguilar v. Texas, 378 U.S. 108 (1964); Nathanson v. United States, 290 U.S. 41 (1933). *Cf.* Giordenello v. United States, 357 U.S. 480 (1958).

[34] 403 U.S. at 584.

information in the past. However, the citizen informant

> usually would not have more than one opportunity to supply information to the police, thereby precluding proof of his reliability by pointing to previous accurate information which he has supplied.[35]

Thus, if the same rules which apply to proving the reliability of police informants apply to citizen informants, the affiant is faced with the difficult task of demonstrating reliability in other ways.[36]

The citizen-informant doctrine, which would avoid this anomaly, is predicated upon the fact that very different credibility considerations exist when warrants are issued upon information supplied by an ordinary citizen as opposed to an anonymous police informant. Police informants, for the most part, receive something in exchange for the information they supply, be it money or favorable consideration in connection with a charge pending against them. Since the police informant's information is self-serving, it must be considered suspect; and, therefore, before a search warrant can be issued upon such information, the judicial officer must be advised of some of the underlying reasons from which the affiant concluded that the informant was reliable. However, where an ordinary citizen supplies the information, there is no reason for deeming the information self-serving or suspect and, therefore, a substantial basis for crediting the out-of-court statement exists by the mere fact that the information is furnished by a citizen.

This distinction was clearly articulated by the Supreme Court of Wisconsin in *State* v. *Paszek*.

> [A]n ordinary citizen who reports a crime which has been committed in his presence, or that a crime is being or will be commited, stands on much different ground than a police informer. He is a witness to criminal activity who acts with an intent to aid the police in law enforcement because of his concern for society or for his own safety. He does not expect any gain or concession in exchange for his information.[37]

Thus, a citizen who acts openly in aid of law enforcement when he reports crimes to the police either automatically satisfies the reliability of the informant prong of *Aguilar* or, as expressed in a similar manner by the Illinois supreme court in *People* v. *Hoffman*,[38] renders prior reliability unnecessary.[39]

In *Hoffman* an unidentified citizen told police officers that she had seen a man with a vulgarism written on his forehead go into a restaurant. The policemen went into the restaurant and were met with resistance in attempting to make an arrest. On appeal from a conviction for resisting arrest, defendant's contention that no probable cause existed to arrest him was rejected. The police officers were justified in relying on the information received from the woman because the standard "requirement of prior reliability which must be met when police act upon 'tips' from professional informers does not apply to information supplied by ordinary citizens."[40]

Perhaps the best rationale for considering citizen-eyewitness information to be inherently reliable can be derived from the law of evidence. The hearsay rule requires certain evidence to be excluded at trial because it is thought to be unreliable; but, by the same token, numerous exceptions to the rule have been developed because certain kinds of hearsay evidence are inherently reliable.[41] Citizen-eyewitness information generally takes a form similar to declarations that fall within certain exceptions to the hearsay rule and should, therefore, be accorded the same respect in terms of reliability. Moreover, since it is axiomatic that probable cause can be predicated upon evidence that would not necessarily be admissible at trial,[42] it seems clear that extra-

[35] State v. Paszek, 50 Wis. 2d 619, 630–31, 184 N.W.2d 836, 843 (1971).

[36] Adair v. State, 482 S.W.2d 247 (Tex. Crim. App. 1972) illustrates the practical difficulty created for both law enforcement officers and reviewing courts if prior reliability cannot be used to show an informant's reliability.

[37] 50 Wis. 2d 619, 630, 184 N.W.2d 836, 843 (1971).

[38] 45 Ill. 2d 221, 258 N.E.2d 326 (1970).

[39] Whether a citizen informer is automatically deemed to satisfy the reliability prong of *Aguilar* or to render the prong inapplicable is a distinction without a substantive difference. While the former supports strict adherence to the mechanical tests of *Aguilar*, the latter seems less fictive. *See* United States v. Unger, 469 F.2d 1283, 1287 n.4 (7th Cir. 1972).

[40] 45 Ill. 2d at 226, 258 N.E.2d at 328. *Accord*, People v. Lewis, 240 Cal. App. 2d 546, 49 Cal. Rptr. 579 (1966); People v. Hester, 39 Ill. 2d 489, 237 N.E.2d 446 (1968), *cert. dismissed as improvidently granted*, 397 U.S. 660 (1970).

[41] 5 J. WIGMORE, EVIDENCE §1422, at 204 (3rd ed. 1940).

[42] "There is a large difference between the two things to be proved . . . as well as between the tribunals which determine them, and therefore a like difference in the *quanta* and modes of proof required to establish them." Draper v. United States, 358 U.S. 307, 312 (1959). *See also* United States v. Harris, 403 U.S. 573, 582 (1971); Brinegar v. United States, 338 U.S. 160, 174 (1949).

judicial statements bearing attributes similar to recognized hearsay exceptions are sufficiently reliable for purposes of probable cause.

The Chief Justice employed this rationale in *Harris* to reach the conclusion that admissions against penal interest, although perhaps not sufficiently reliable to constitute evidence at trial, "carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search."[43] Since statements in the form of marginal hearsay exceptions are sufficient to generate probable cause, the reliability of information supplied to police can be determined, as an analytical matter, by resort to the rules of evidence. As the Chief Justice emphasized in *Harris*, the statements need not fall directly within a hearsay exception so as to be competent trial evidence; but a statement that carries its own "indicia of credibility" will suffice.

A recognized exception to the hearsay rule exists where a statement is uttered under the stress of an exciting event which suspends the powers of reflection and fabrication and, thereby, renders the statement reliable.[44] Three basic requirements must be fulfilled, under Professor Wigmore's analysis, before the "spontaneous exclamation" or, as sometimes termed, "excited utterance" hearsay exception becomes viable: (1) a startling event must occur which shocks the declarant into a state of nervous excitement and causes him to (2) make a statement while under the stress of the event which (3) relates to the circumstances of the event.[45] While most information supplied to the police by ordinary citizens falls within this strict definition, a more precise study of the spontaneous exclamation exception reveals that the doctrine is not so stringent as the requirements appear. Thus, a brief examination of each separate element of the exception, as interpreted by the courts, demonstrates that a broad range of information provided police officers comes within the perimeters of the analogy.

The initial requirement under the excited utterance exception requires the perception of an event which "might so excite and control the mind of the speaker that his statements are natural and spontaneous and therefore, sincere and trustworthy".[46] Neither Wigmore nor the case law limits the kind of act or event capable of causing excitement to a particularized situation. Since a variety of events which would be considered nonstartling in contrast to the observation of a crime in progress have been found sufficient to trigger the exception,[47] it is unnecessary for present purposes to review the amorphous mass of case law involving events which the courts considered startling.

The second element necessary to satisfy the excited utterance exception involves the time of the declaration. "The utterance must have been *before there has been time to contrive and misrepresent.*"[48] However, it is clear that the statements "*need not be strictly contemporaneous* with the existing cause; they may be subsequent to it, provided that there has not been time for the exciting influence to lose its sway and be dissipated."[49] While the cases on the permissible time lag between the event and the declaration are disparate,[50] it is clear that "there can be *no definite and fixed limit* of time .... Thus, the application of the principle thus depends entirely on the circumstances of each case".[51]

Finally, Wigmore required the declaration to relate to the circumstances of the occurrence causing it in order to be admissible as an excited utterance. Although some cases have written this requirement away in the ordinary hearsay exception situa-

[43] 403 U.S. at 583. *See also* United States *ex rel.* Di Rienzo v. Yeager, 443 F.2d 228, 230 (3rd Cir. 1971); People v. Saiken, 49 Ill. 2d 504, 512, 275 N.E.2d 381, 386–87 (1971). The Chief Justice's use of declarations against penal interest as an element of reliability was foreshadowed by Justice White's comment that if "the informer's hearsay comes from one of the actors in the crime in the nature of admission against interest, the affidavit giving this information should be held sufficient." Spinelli v. United States, 393 U.S. 410, 425 (1969) (White, J., concurring).

[44] *See* C. McCormick, Evidence §272, at 578–84 (1954); Hutchins & Slesinger, *Spontaneous Exclamations*, 28 Colum. L. Rev. 432 (1928).

[45] 6 J. Wigmore, *supra* note 41, at §1750. *See also* United States v. Bell, 351 F.2d 868, 872 (6th Cir. 1965); Murphy Auto Parts Co. v. Ball, 249 F.2d 508 (D.C. Cir. 1957) (Burger, J.).

[46] McWilliams, *The Admissibility of Spontaneous Declarations*, 21 Calif. L. Rev. 460, 464 (1933).

[47] *See generally* Comment, *Spontaneous Exclamations in the Absence of a Startling Event*, 46 Colum. L. Rev. 430 (1946).

[48] 6 J. Wigmore, *supra* note 41, §1750, at 142 (emphasis in original).

[49] *Id.* (emphasis in original). *See also* Morgan, *The Law of Evidence, 1941–45*, 59 Harv. L. Rev. 481, 574–76 (1946); Vicksburg & M.R. Co. v. O'Brien, 119 U.S. 99 (1886).

[50] *See, e.g.*, United States v. McIntire, 461 F.2d 1092 (5th Cir. 1972) (about an hour); Wheeler v. United States, 211 F.2d 19 (D.C. Cir. 1954) (within an hour); Guthrie v. United States, 207 F.2d 19 (D.C. Cir. 1953) (11 hours); Standard Accident Ins. Co. v. Heatfield, 141 F.2d 648 (9th Cir. 1944) (1 hour and ½ hour respectively for two statements); Bennett v. Bennett, 92 N.H. 379, 31 A.2d 374 (1943) (4 hours); State v. Smith, 200 S.C. 188, 20 S.E.2d 726 (1942) (30 minutes to 1½ hours).

[51] 6 J. Wigmore, *supra* note 41, §1750, at 143–44 (emphasis in original).

tion,[52] it would be an essentiality in considering the reliability of information supplied by a citizen. Since the event that raises the excitement should be the subject of the ensuing warrant application, it is necessary that the statement of the citizen to police officials directly relate to what he observed. But, it should be noted that the spontaneous exclamation exception has been applied to statements made in response to interrogation where the sway of the exciting event has not dissipated.[53] Thus, the reliability of information given in response to police investigative work occurring immediately after a crime has been committed should likewise be considered reliable for warrant purposes if, in response to a question, a citizen-eyewitness provides information relating to the offense under investigation.

Of course, it is difficult to compare the essential features of a given hearsay exception to a citizen-informant situation without assessing the particular facts and circumstances under which the citizen supplies information to the police. However, as a theoretical matter, the analogy appears sound. Moreover, as the law of evidence with respect to the admissibility of hearsay at trial becomes increasingly liberalized[54]—apparently reflecting a consensus that more kinds of hearsay evidence are reliable—it does not seem unreasonable to broaden the scope of information that will constitutionally authorize the issuance of a warrant. Consistent with the theory underlying exceptions to the hearsay rule, information given to the police by those who observe the commission of a crime, whether victim or bystander, should be deemed sufficient to generate probable cause to arrest and search. The credence given such information rests in part upon the common sense notion that a responsible citizen, as opposed to a paid informant, will not disregard the consequences of supplying inaccurate information to police.[55]

While the citizen—informant doctrine has not been widely adopted, there appear to be no overwhelming barriers to its judicial acceptance. Although the cases do not generally articulate the foregoing rationale, they do uniformly conclude that, in situations involving on-the-scene apprehension of suspects, information supplied by citizen-observers is sufficiently reliable to establish probable cause. For example, in *Chambers v. Maroney*[56] a gas station attendant gave the police a description of the men who robbed him and two teenagers identified an auto that they had seen speeding away from a parking lot near the scene of the crime. The Supreme Court concluded that "[h]aving talked to the teenage observers and to the victim" the police had "ample cause" to stop the auto and arrest its occupants.[57] *Chambers'* probable cause pronouncement was followed in *United States v. Trotter*,[58] where a bartender who had cashed what he believed to be a counterfeit bill alerted the police and described the auto in which the defendants were riding. The ensuing arrest and search were found proper.

This line of cases is best exemplified by Chief Justice Burger's opinion, when Circuit Judge, in *Brown* v. *United States*.[59] There, the police received information from an unknown victim of a crime which was radioed to other officers who, thereafter, apprehended the defendant. To the defendant's claim that the information was insufficient to establish probable cause, the Chief Justice forcefully responded:

> Although the police could not here judge the reliability of the information on the basis of past experience with the informant, the victim's report has the virtue of being based on personal observation . . . and is less likely to be colored by self-interest than is that of an informant. Admittedly a crime victim's observation may be faulty in some

[52] *See, e.g.*, Murphy Auto Parts Co. v. Ball, 249 F.2d 508 (D.C. Cir. 1957); Tenzeno v. State, 484 S.W.2d 374 (Tex. Crim. App. 1972).

[53] *See, e.g.*, Commonwealth v. Rummage, 359 Pa. 483, 486, 59 A.2d 65, 67 (1948); General Schuyler Ins. Co. v. Shustick, 35 Ohio L. Abs. 205, 207, 40 N.E.2d 485, 487 (Ohio App. 1941) (dictum).

[54] FED. R. EV., 804(b)(2) (1971 Revised Draft) exempts from the operation of the hearsay rule any statement, not in response to the instigation of a person engaged in investigating, litigating, or settling a claim, which narrates, describes, or explains an event or condition recently perceived by the declarant, made in good faith, not in contemplation of pending or anticipated litigation in which he was interested, and while his recollection was clear.

This rule represents a crystallization and extension of the efforts of Wigmore and Morgan to create an orderly analytic basis upon which to apply the chaotic—and now outmoded—concept of *res gestae*. Since the predetermined reliability of evidence of this nature saves it from a confrontation clause violation, *cf. Dutton* v. *Evans*, 400 U.S. 74 (1970), information provided the police, falling within the contours of the rule, should certainly pass the reliability test of *Aguilar* in the probable cause setting. However, by its own terms, it would not apply to information elicited by police questioning.

[55] *See* text accompanying notes 75–77 *infra*.

[56] 399 U.S. 42 (1970).

[57] *Id.* at 46.

[58] 433 F.2d 133 (7th Cir. 1970), *cert. denied*, 401 U.S. 942 (1971).

[59] 365 F.2d 976 (D.C. Cir. 1966).

> respects, as it may have been here; however, the mistakes are irrelevant if there is sufficient particularized information to constitute probable cause. Except in those few cases where cameras are part of a burglar alarm system, most reports are likely to be less than perfect.[60]

Although the courts have not grounded their decisions upon reliability of information expressed in terms of hearsay exceptions such as spontaneous exclamations, it is clear from the foregoing examples that information supplied by a citizen-eyewitness is entitled to great weight in determining probable cause.[61] An ever-increasing number of jurisdictions have therefore cast aside the customary analytical tools for determining probable cause and have squarely embraced the citizen-informant concept. In these jurisdictions, the reliability of the individual supplying information to the police need not be buttressed by supporting facts where it appears that he is a citizen outside the criminal environment.

The leading case on the subject appears to be *People* v. *Lewis*,[62] where a Mr. Owens witnessed a burglary and identified a man on the street nearby as the perpetrator of the offense. Holding the arrest and search of the person so identified to be proper, the California Court of Appeals reasoned that the only alternatives available to the police officer at the moment were to place credence in the citizen's information or allow the suspect to flee. Since the latter alternative was highly undesirable if any credence could be given to the citizen's information, the court analyzed the various differences between "stool pigeons" and citizens in terms of measuring the reliability of their information. It concluded by upholding the arrest and search on the ground that the tests of reliability which must be applied to ordinary police informants "are not necessarily applicable to every citizen who assists the police."[63] Since *Lewis*, the California courts have articulated the citizen-informant concept as black letter law: "A citizen who purports to be a victim of or to have witnessed a crime is a reliable informant even though his reliability has not theretofore been proved or tested.[64]

A great number of other jurisdictions have followed California's lead in holding that information supplied by a citizen is automatically reliable. These cases are generally predicated upon the ground that a citizen who supplies such information has nothing to gain—and perhaps something to lose—by so acting, that his personal observations can be trusted because of the absence of a motive to falsify, that ordinary citizens generally have no previous transactions with the police disclosing prior reliability, and that activity in the aid of law enforcement should be encouraged. Consequently, where an ordinary citizen offers information about criminal activity, a warrant may issue or an arrest ensue without a factual basis for deeming the informant reliable.[65]

The federal courts, while recognizing the states' increasing acceptance of the citizen-informant doctrine,[66] have proceeded somewhat differently. The federal cases have distinguished the classical police informant from the ordinary eyewitness for purposes of the reliability criterion of *Aguilar* and *Spinelli*, and have placed emphasis upon the automatic reliability of an eyewitness, whether victim, bystander or accomplice, with only passing regard for the underlying factors which the states find to enhance the ordinary citizen's reliability. *United States v. Bell*[67] specifically distinguished the eyewitness situation from that of the police in-

[60] *Id.* at 979.

[61] *See also* Warden v. Hayden, 387 U.S. 294, 298–99 (1967) (cab drivers who responded to shouts of "hold-up" notified police); Keeny v. Swanson, 458 F.2d 680, 683 (8th Cir. 1972) (gas station attendant gave police description of auto); Coleman v. United States, 420 F.2d 616 (D.C. Cir. 1969) (bank employee gave description of bank robbers' get-away car); Lewis v. United States, 417 F.2d 755, 758 (D.C. Cir. 1969) (gas station attendant who observed robbery of liquor store notified police); Daniels v. United States, 393 F.2d 359 (D.C. Cir. 1968) (victim of purse snatcher gave assailant's description); Dailey v. United States, 365 F.2d 640 (10th Cir. 1966) (shop owner who received counterfeit bill saw defendant later in the evening and notified police); United States v. Jones, 340 F.2d 913, 914 (7th Cir. 1964) (citizen halted police and told them that two men seated in a parked car were waiting to kill him).

[62] 240 Cal. App. 2d 546, 49 Cal. Rptr. 579 (1966).

[63] *Id.* at 550, 49 Cal. Rptr. at 582.

[64] People v. Bevins, 6 Cal. App. 3d 421, 425, 85 Cal. Rptr. 876, 879 (1970). *See also* People v. Hogan, 71 Cal. 2d 888, 80 Cal. Rptr. 28, 457 P.2d 868 (1969); People v. Gardner, 252 Cal. App. 2d 320, 60 Cal. Rptr. 321 (1967); People v. Griffin, 250 Cal. App. 2d 545, 58 Cal. Rptr. 707 (1967).

[65] *See, e.g.*, People v. Glubman, 485 P.2d 711 (Colo. 1971); State v. Mazzadora, 28 Conn. Supp. 252, 258 A.2d 310, 315 (1969); Walker v. State, 196 So. 2d 8 (Fla. App. 1967); People v. Hoffman, 45 Ill. 2d 221, 258 N.E.2d 446 (1968), People v. Hester, 39 Ill. 2d 489, 237 N.E.2d 446 (1968), *cert. dismissed as improvidently granted*, 397 U.S. 660 (1970); Yantis v. State, 476 S.W.2d 24, 27 (Tex. Crim. App. 1972); Brown v. Commonwealth, 212 Va. 672, 187 S.E.2d 160 (1972); Guzewicz v. Commonwealth, 212 Va. 730, 187 S.E.2d 144 (1972); State v. Paszek, 50 Wis. 2d 619, 184 N.W.2d 836 (1971).

[66] *See* Pendleton v. Nelson, 404 F.2d 1074, 1075 (9th Cir. 1968).

[67] 457 F.2d 1231 (5th Cir. 1972).

formant with respect to credibility questions upon which a magistrate issuing a warrant must pass. The court recognized that the rationale behind the reliability of the informant prong of *Aguilar* was to insure that search warrants are not issued on the basis of idle rumor or irresponsible conjecture which, passing through the criminal community, is seized upon by an informant to ingratiate himself to the police. But, because eyewitnesses by definition are not passing along idle rumor, since they either have been the victims of the crime or have otherwise seen some portion of it, the rationale behind the reliability requirement of *Aguilar* has no application. "A 'neutral and detached magistrate' could adequately assess the probative value of an eye-witness's information because, if it is reasonable and accepted as true, the magistrate must believe that it is based upon first-hand knowledge."[68] If any rule of general applicability can be discerned from the federal cases, it is not that a citizen who supplies information is automatically reliable regardless of the qualitative value of the information he supplies, but rather that, where the information provided appears reasonably true, "[a]n informant who alleges he is an 'eye-witness' to an actual crime perpetrated demonstrates sufficient 'reliability' of the person."[69]

None of the above should be taken to suggest that there are no dangers involved in complete, blind acceptance of the citizen-informant doctrine. Courts must be on guard to protect the fourth amendment rights of individuals against one who would, under the guise of being a responsible citizen who had witnessed a crime, supply false information to the police to fulfill a personal vendetta. To protect against fourth amendment infringements resulting from such purposefully false information, the details supplied by the asserted responsible citizen should be, to a certain extent, so complete as to be self-verifying. This is not to say that the information should be sufficient to generate self-verification under *Spinelli's* assessment of *Draper*,[70] for such a demand would, by definition, render reliability considerations unnecessary. However, the fact that information is offered by an ordinary citizen, coupled with a tender of information in sufficient detail so as to reasonably avoid the appearance of fabrication, is enough to create probable cause. "In sum, the internal content of the affidavit intriniscally proves the truth of the 'responsible' citizen's word."[71]

A suitable benchmark for determining the circumstances in which the citizen's word should be taken as true is found in *United States* v. *Unger*.[72] The defendant was found guilty of possessing unregistered firearms which were seized pursuant to a warrant obtained by the Chicago police.[73] The warrant application stated that an unnamed citizen, while working in the basement of an apartment building, had occasion to observe a cache of weapons through an opening in an enclosed locker. Because of his military experience, he was able to identify the weapons for the police. He also pointed out the building in question for the police and drew a diagram of the basement location of the locker.

Upholding the trial judge's denial of a motion to suppress, the Court of Appeals for the Seventh Circuit analyzed the impact of *Harris* upon the law governing search warrants and concluded by finding that, in the context of a citizen-informant situation, the information in the complaint was sufficiently self-verifying to attest to the citizen's reliability. Judge Duffy's opinion announced that, although a police officer's opinion of the reliability of a citizen-informant was alone insufficient to show probable cause, when coupled with information in a complaint which attested to its own integrity by the specificity with which it was stated and some degree of corroboration, a warrant could properly issue.[74]

[68] *Id.* at 1238–39.

[69] McCreary v. Sigler, 406 F.2d 1264, 1269 (8th Cir. 1969). *See also* United States v. Roman, 451 F.2d 579, 581 (4th Cir. 1971) (eyewitness); United States v. Mahler, 442 F.2d 1172, 1174–75 (9th Cir. 1971) (victim); United States v. Wilcox, 437 F.2d 52, 54–55 (5th Cir. 1971) (eyewitness); Schnepp v. Hocker, 429 F.2d 1096, 1100 (9th Cir. 1970) (victim); Trimble v. United States, 369 F.2d 950, 951 (D.C. Cir. 1966) (victim); Coyne v. Watson, 282 F. Supp. 235, 237 (S.D. Ohio 1967), *aff'd mem.*, 392 F.2d 585 (6th Cir. 1968) (unidentified eyewitness).

[70] *See* text accompanying note 16 *supra*.

[71] United States v. Roman, 451 F.2d 579, 581 (4th Cir. 1971). *See also* United States v. Unger, 469 F.2d 1283, 1286 (7th Cir. 1972); United States v. Evans, 447 F.2d 129, 132 (8th Cir. 1971).

[72] 469 F.2d 1283 (7th Cir. 1972).

[73] As often occurs in cases of this nature, *Unger* evolved from an investigation conducted by local police who, upon discovering a federal violation, referred their findings to the Bureau of Alcohol, Tobacco and Firearms. Because referrals of this nature generally take place after the contraband is seized, the federal government is unable to supervise the warrant procedure and must take the warrant as it finds it.

[74] 469 F.2d at 1287. That some degree of corroboration is necessary for a citizen's tip to generate probable cause, even in the jurisdiction in which the citizen-in-

While courts should demand an acceptable level of detail in the information supplied, there are several other factors effectuating the design of the fourth amendment in the citizen—informant context. These factors are manifested in a number of considerations militating against the knowing transmission of false information to the police. Because a citizen who supplies false information about a crime subjects himself to potential criminal and civil penalties, a variety of sanctions exists to deter a vindictive tender of misinformation.

False information given to a federal agent for purposes of initiating a criminal investigation may subject the supplier to criminal prosecution.[75] Moreover, some states, by a number of differently labeled statutes, make the false report of criminal activity punishable as a misdemeanor.[76] Therefore, criminal penalties await one who would purposefully give false information of illegal conduct. Similarly, a tender of false information may subject the supplier to pecuniary liability. While false information given to police officers may be insufficient to support a civil cause of action for false imprisonment if the ensuing arrest based on the information proves improper, it may create a litigious issue under state law.[77] Thus, the expense of potential litigation, like possible criminal punishment, stands as a deterrent to false reports of crime.

In light of the inherent reliability of citizen information and the safeguards against its abuse, sound policy reasons dictate total acceptance of the citizen-informant doctrine. The interest that the fourth amendment is designed to protect is, according to Justice Cardozo, "the social need that law shall not be flouted by the insolence of office."[78] Permitting a police officer to act upon information supplied by a responsible citizen, whether victim or bystander, will surely not result in his flouting the law by the insolence of office.

The United States Supreme Court has recognized the "obligation of all citizens to aid in enforcing the criminal laws."[79] And Mr. Justice White has warned that "[n]either the ordinary citizen nor the confessed criminal should be discouraged from reporting what he knows to the authorities and from lending his aid to secure evidence of crime."[80] In this regard, courts have countenanced and encouraged the use of paid informants and undercover agents since time immemorial.[81] The responsible citizen who presents

formant doctrine was founded, is made apparent by People v. Zimnicki, 29 Cal. App. 3d 577, 105 Cal. Rptr. 614 (1972).

[75] There is a conflict in the circuits as to whether supplying false information to the F.B.I. is cognizable under the federal false statements statute, 18 U.S.C. §1001 (1970). *Compare* United States v. Adler, 380 F.2d 917 (2d Cir.), *cert. denied*, 389 U.S. 1006 (1967) (finding offense) *with* Friedman v. United States, 374 F.2d 363 (8th Cir. 1967). Significantly, both courts were particularly concerned with whether the prosecution of false information of this nature would inhibit citizens from supplying information to the police and, thereby, stultify the desirable resulting effects. Different conclusions on this subject were in no small part responsible for the conflicting results. *But see* Note, 5 HOUSTON L. REV. 548, 553 (1968) ("The affirmative giving of false information, initiated knowingly and willfully, clearly falls within the prohibition of Section 1001.") *Cf.* Bryson v. United States, 396 U.S. 64, 71 & n.4 (1969) (approving *Adler* analysis and leaving open question of whether *Friedman* is good law).

[76] *E.g.*, ILL. REV. STAT, Ch. 38, §26-1 (1972), provides in pertinent part:

> (a) A person commits disorderly conduct when he knowingly:
>
> * * *
>
> (5) Transmits in any manner to any peace officer, public officer or public employee a report to the effect that an offense has been committed, knowing at the time of such transmission that there is no reasonable ground for believing that such an offense has been committed.

See also ARIZ. REV. STAT. ANN. §13-962 (1956) (malicious procurement of warrant for arrest without probable cause); MD. ANN. CODE, art. 27 §150 (1957) (false statements, etc., to peace or police officers); WASH. REV. CODE ANN. §9.62.010 (1961) (malicious prosecution—abuse of process).

[77] *See* Odorizzi v. A.O. Smith Corp., 452 F.2d 229, 231–32 (7th Cir. 1971); Green v. No. 35 Check Exchange, Inc., 77 Ill. App. 2d 25, 222 N.E.2d 133 (1966); Shelton v. Barry, 328 Ill. App. 497, 66 N.E.2d 697 (1946). Another possible basis for imposing liability is malicious prosecution. *See, e.g.*, Sears Roebuck Co. v. Alexander, 252 Ala. 122, 39 So. 2d 570 (1949); Humbert v. Knutson, 224 Ore. 133, 354 P.2d 826 (1960); Peoples Protective Life Ins. Co. v. Newhoff, 56 Tenn. App. 346, 407 S.W.2d 190 (1966).

[78] People v. De Fore, 242 N.Y. 13, 17, 150 N.E. 585, 589, *cert. denied*, 270 U.S. 657 (1926).

[79] Miranda v. Arizona, 384 U.S. 436, 481 (1966). The Court long ago recognized that the citizen has a protected right to supply information to police officials. *See In re* Quarles, 158 U.S. 532, 535 (1895):

> It is the duty and the right, not only of every peace officer of the United States, but of every citizen, to assist in prosecuting, and in securing the punishment of, any breach of the peace of the United States. It is the right, as well as the duty, of every citizen, when called upon by the proper officer, to act as part of the *posse comitatus* in upholding the laws of his country. It is likewise his right and his duty to communicate to the executive officers any information which he has of the commission of an offense against those laws.

See generally Branzburg v. Hayes, 408 U.S. 665, 695 (1972).

[80] Massiah v. United States, 377 U.S. 201, 212 (1964) (White, J., dissenting).

[81] *See* McCray v. Illinois, 386 U.S. 300, 308–09 (1967);

the police with evidence of a crime should be no less encouraged, for "it is no part of the policy underlying the Fourth and Fourteenth Amendments to discourage citizens from aiding to the utmost of their ability in the apprehension of criminals."[82]

Unfortunately, contemporary disillusionment rides rampant over the apathy of the citizenry toward becoming "involved" by reporting a crime to the police. If law enforcement officials are unnecessarily prevented from effectively responding to the pleas of citizens, apathy will grow and the duty of the citizen to aid in law enforcement will remain a paper obligation. Therefore, it is time to lay to rest any misconception concerning the reliability of an eyewitness to, or victim of, a crime for purposes of generating probable cause to search. This would not make the term "citizen" a magic word to be mechanically inserted in all warrant applications, but would insure judicial cognizance of practical considerations and modern realities in the administration of criminal justice.

United States v. Dennis, 183 F.2d 201, 224 (2d Cir. 1950), *aff'd*, 341 U.S. 494 (1951). *Cf.* White v. United States, 401 U.S. 745 (1971); Bush v. United States, 375 F.2d 602, 604-05 (D.C. Cir. 1967) (Burger, J.).

[82] Coolidge v. New Hampshire, 403 U.S. 443, 488 (1971).