own without a warrant."[114] Courts will sustain the determination of probable cause so long as "there was substantial basis for [the magistrate] to conclude that" there was probable cause.[115]

Much litigation has concerned the sufficiency of the complaint to establish probable cause. Mere conclusory assertions are not enough.[116] In *United States v. Ventresca*,[117] however, an affidavit by a law enforcement officer asserting his belief that an illegal distillery was being operated in a certain place, explaining that the belief was based upon his own observations and upon those of fellow investigators, and detailing a substantial amount of these personal observations clearly supporting the stated belief, was held to be sufficient to constitute probable cause. "Recital of some of the underlying circumstances in the affidavit is essential," the Court said, observing that "where these circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause," the reliance on the warrant process should not be deterred by insistence on too stringent a showing.[118]

Requirements for establishing probable cause through reliance on information received from an informant has divided the Court in several cases. Although involving a warrantless arrest, *Draper v. United States*[119] may be said to have begun the line of cases. A previously reliable, named informant reported to an officer that the defendant would arrive with narcotics on a particular train, and

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[114] Jones v. United States, 362 U.S. 257, 270–71 (1960). Similarly, the preference for proceeding by warrant leads to a stricter rule for appellate review of trial court decisions on warrantless stops and searches than is employed to review probable cause to issue a warrant. Ornelas v. United States, 517 U.S. 690 (1996) (determinations of reasonable suspicion to stop and probable cause to search without a warrant should be subjected to *de novo* appellate review).

[115] Aguilar v. Texas, 378 U.S. 108, 111 (1964). It must be emphasized that the issuing party "must judge for himself the persuasiveness of the facts relied on by a [complainant] to show probable cause." Giordenello v. United States, 357 U.S. 480, 486 (1958). An insufficient affidavit cannot be rehabilitated by testimony after issuance concerning information possessed by the affiant but not disclosed to the magistrate. Whiteley v. Warden, 401 U.S. 560 (1971).

[116] Byars v. United States, 273 U.S. 28 (1927) (affiant stated he "has good reason to believe and does believe" that defendant has contraband materials in his possession); Giordenello v. United States, 357 U.S. 480 (1958) (complainant merely stated his conclusion that defendant had committed a crime). *See also* Nathanson v. United States, 290 U.S. 41 (1933).

[117] 380 U.S. 102 (1965).

[118] 380 U.S. at 109.

[119] 358 U.S. 307 (1959). For another case applying essentially the same probable cause standard to warrantless arrests as govern arrests by warrant, *see* McCray v. Illinois, 386 U.S. 300 (1967) (informant's statement to arresting officers met *Aguilar* probable cause standard). *See also* Whitely v. Warden, 401 U.S. 560, 566 (1971) (standards must be "at least as stringent" for warrantless arrest as for obtaining warrant).