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U.S. CLERK OF COURT
WESTERN DISTRICT OF MICH
BY *mw*

UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN

IN THE MATTER OF:

ADMINISTRATIVE
ORDER No. 94-067

RULES OF THE COURT

_____ /

The rules of this Court are supplemented by adding the following:

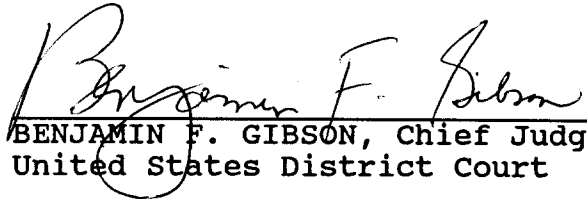
FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE IN
RE VIOLATIONS OF REGULATIONS PERTAINING TO THE
UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF
LAND MANAGEMENT IN THE WESTERN DISTRICT OF
MICHIGAN.

1. A person charged with a petty offense as defined in Title 18, United States Code, Section 1(3), may, in lieu of appearance, post collateral in the amount indicated for the offense, waive appearance before a United States Magistrate, and consent to the forfeiture of collateral. A list of such violations is attached hereto and made a part hereof.

2. If a person charged with one or more of the above mentioned offenses fails to post and forfeit collateral, any punishment, including fine, imprisonment, or probation, may be imposed within the limits established by law upon conviction by plea or after trial.

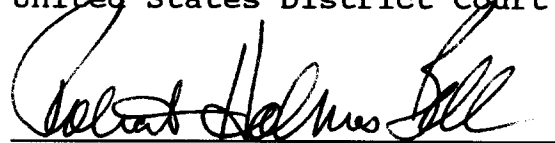
3. Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and

forfeited, and requiring the person charged to appear before a United States Magistrate, or, upon arrest, taking him immediately before a United States Magistrate.

Date: October 21, 1994

BENJAMIN F. GIBSON, Chief Judge
United States District Court

Date: October 25, 1994

RICHARD A. ENSLEN, Judge
United States District Court

Date: October 21, 1994

ROBERT HOLMES BELL, Judge
United States District Court

Date: October 21, 1994

DAVID W. MCKEAGUE, Judge
United States District Court

Date: 10-24-94

GORDON J. QUIS, Judge
United States District Court

cc: 94-067
All Judges & Mag.
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BUREAU OF LAND MANAGEMENT

VIOLATIONS OF UNITED STATES CODE:

<u>TITLE/SECTION</u>		<u>Collateral fine</u>
16/433	American Antiquities	\$100.00
18/1361	Vandalism	\$ 50.00
18/1852	Timber removed or transported	Mandatory Appearance
18/1853	Trees cut or injured	Mandatory Appearance
18/1856	Fires left unattended	\$ 50.00
18/1857	Fences destroyed; livestock entering	\$ 50.00
18/1858	Survey marks destroyed or removed	Mandatory Appearance
43/1061	Unlawful enclosure	Mandatory Appearance
43/1063	Obstruction of transit over Public Lands	\$100.00

VIOLATIONS OCCURRING WITHIN LANDS ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT CHARGED UNDER CITED SECTIONS OF TITLE 43, CODE OF FEDERAL REGULATIONS.

4140.1(b)(1)(i)	Allowing livestock on Public Land without permit or lease.	\$ 50.00
4140.1(b)(2)	Disturbing or installing range improvements	\$ 50.00
4140.1(b)(3)	Cutting, burning, spraying, destroying or removing vegetation	\$ 50.00
4140.1(b)(4)	Damaging or removing U.S. Property	\$ 50.00
4140.1(b)(5)	Molesting livestock	\$ 10.00
4140.1(b)(6)	Littering	\$ 50.00
4140.1(b)(7)	Interfering with lawful uses or users	\$ 50.00
4140.1(b)(8)	False statements	\$100.00
4770.1(g)	Violating term or condition of private maintenance and care agreement	\$ 50.00
4770.1(h)	Branding a Wild Horse or Burro	\$ 50.00
4770.1(j)	Violating an order, term, or condition established by the Authorized Officer under this part.	\$100.00
8365.1-4(a)(2)	Creating a hazard or nuisance	\$ 50.00
8365.1-4(a)(3)	Refusing to disperse	\$ 50.00
8365.1-4(a)(4)	Resisting arrest, citation; interfering with officer	Mandatory Appearance
8365.1-4(a)(5)	Assault or battery on BLM Employee	Mandatory Appearance
8365.1-4(a)(6)	False emergency or crime report	\$100.00
9264.7(a)(2)	Converts Wild Horse or Burro to private use	\$ 50.00
9264.7(a)(3)	Causing death or harassment of Wild Horse or Burro	\$100.00
9264.7(a)(4)	Processes Wild Horse or Burro into Commercial products	\$100.00
9264.7(a)(5)	Selling Wild Horse or Burro	\$100.00
9264.7(a)(6)	Uses Wild Horse or Burro for Commercial exploitation	Mandatory Appearance
9264.7(a)(7)	Inhumane treatment of Wild Horse or Burro	\$100.00
9264.7(a)(8)	Use of Wild Horse or Burro for Bucking stock	\$ 50.00
9264.7(a)(9)	Fails to produce Wild Horse or Burro for inspection	\$100.00
9264.7(a)(10)	Failure to notify of death of Wild Horse or Burro	\$ 50.00
9264.7(a)(11)	Removal or alteration of official mark	Mandatory Appearance

9264.7(a)(12)	Abandoning Wild Horse or Burro	\$100.00
9264.7(a)(13)	Failure to attempt to capture Wild Horse or Burro	\$ 50.00
9264.7(a)(14)	Accepting Wild Horse or Burro for slaughter or destruction	Mandatory Appearance
9264.7(a)(15)	Failure to retain Wild Horse or Burro certification	\$100.00

GUIDELINES FOR THE PREPARATION OF THE PROBABLE CAUSE STATEMENT

I. INTRODUCTION

Whenever any law enforcement action is taken of such a nature as to deny a person his freedom or impose a punitive action--whether it be an arrest, search of his property or the issuance of a citation, facts concerning the offense must be set forth in writing in such a manner as to convince a judge or magistrate that (1) the offense was, in fact committed, and (2) that the suspect committed it. In order to establish these two crucial elements to his/her satisfaction, the judge or magistrate will determine whether there is (or was) probable cause to issue an arrest or search warrant or, in our case, uphold the charges on a citation.

Because probable cause is such an important concept and integral part of all proceedings relative to the issuance of citations, the following guidelines presented to assist field personnel in determining if the issuance of a citation is warranted and ingrafting accurate probable cause statements containing the necessary facts or information to establish that a violation has been committed and linking a suspect to that particular violation. This statement is then attached to the magistrate's copy of the citation.

II. DEFINITION

Probable cause, although incapable of precise definition, is best described as follows:

Probable cause exists where the facts and circumstances within a persons knowledge and of which he/she has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution and prudence in the belief that an offense has been or is being committed.

Basically, this means something less than certainty but more than mere suspicion, speculation or possibility. Further, the Probable Cause Statement as used in this discussion simply means the written report or declaration of facts and information serving to establish probable cause.

III. ELEMENTS OF THE PROBABLE CAUSE STATEMENT

In reporting the circumstances surrounding any violation, the main concern is always with the nature, quality and amount of information necessary to establish probable cause, i.e., the facts and circumstances which an employee must have within his knowledge before a citation can be issued.

Attachment

It is impossible to say exactly what combination of facts will provide probable cause in any given situation because every situation is different in some way. Nevertheless, an attempt will be made to indicate the types of information a magistrate will consider in deciding whether probable cause exists.

Information about criminal activity can come to a person in two possible ways:

- (1) The person may him/herself perceive the activity;
- (2) Someone else may perceive the activity and relay the information to the person writing the probable cause statement.

These two types of information sources are treated differently by the courts and will therefore be discussed separately.

(1) Information Obtained Through Your Own Senses

This includes not only what you might have seen, but also what you might have heard, smelled, touched, or tasted. Furthermore, your perception may be given additional weight because of your experience or expertise in a particular area, i.e., a forester establishing Probable Cause on a timber theft. When criminal activity is committed in your presence and is perceived by you through one or more of your senses, these perceptions are clearly information which would be sufficient for Probable Cause to support the issuance of a citation. (See Attachment 1).

Most information which will come to your attention however is seldom as clear-cut as personal observation. Usually, you will have to develop Probable Cause from a series of facts which do not add up to a crime being committed in your presence. The following is a list of the types of facts and circumstances which may be used in developing Probable Cause along with a discussion of the relative importance each is likely to be given by a magistrate.

A) Flight

The flight of a suspect when approached is one factor among others to be considered in determining whether Probable Cause exists. Although flight by itself would not establish Probable Cause, when combined with other indications of criminal activity, it may prove to be a significant element.

Consider a situation where you are notified by BLM radio that two males have been observed kneeling beside their sedan in a remote grassland area. As you approach their location in your marked BLM pickup, the two men immediately enter their vehicle and speed away. At this time you are able to physically identify the

driver and obtain the vehicle license number. The U.S. Supreme Court has held that flight by itself does not provide a justification for a citation without further information. A contrary decision would mean that a vague suspicion could be transformed into Probable Cause for ambiguous conduct which you, by approaching the suspects, have provoked.

B) Real or Physical Evidence

Another way to establish Probable Cause is by the observation and evaluation of real or physical evidence. In the previous example under "Flight", assume that as you inspected the site where the two men had been kneeling, you observed a small 12 inch square charred area and a road flare on the edge of the road where the car had been parked. Although we not have both flight and physical evidence (the charred area and the flare), and we are passing through the area of vague suspicion, we may still have difficulty in convincing a magistrate that enough evidence exists to establish Probable Cause.

C) Furtive Conduct

It is not uncommon to be confronted with suspicious circumstances, secretive movements or other furtive conduct, which gives reason to believe that criminal activity is afoot or that a person or persons are attempting to hide contraband, instrumentalities or other evidence of crime. As with the above examples; however, furtive conduct by itself will usually not be enough to establish Probable Cause. The reason for this is that a person may be making a totally incorrect gesture or reacting in fear to an authority's approach. Such actions may be mistaken for guilty behavior.

If, in the example for "flight", you had observed one of the suspects stuffing a long red cylindrical object into his pocket as he ran from the burned area to the vehicle, and, as in the example for "physical evidence", you subsequently discovered a road flare on the edge of the road, you have probably established sufficient Probable Cause for issuance of a citation (or an arrest warrant), i.e., you have added a furtive gesture to other highly suspicious circumstances.

D) High Crime Area

Another crime which may contribute to Probable Cause is a suspect's unusual behavior in or near a high "crime" area. Again returning to the above fire scene example, assume that the burned spot you observed was located in an area where numerous, man-caused, or "suspicious origin" fires had occurred during the previous two or three months.

This fact would certainly contribute to the establishment or Probable Cause when combined with the other circumstances.

E) Presence at the Scene

Closely related to the observation of the two suspects in an area of high-fire incidence is the observation of a suspect(s) at an "unusual" location. Again, this standing alone will not support Probable Cause for a citation, but combined with other factors, it may be significant. In the example, the site of the observation was a remote grassland pasture, not normally considered a day use, scenic or picnic area, and the suspects did not appear to be hunting. Additionally, the suspects were driving a sedan while most people doing business in the area such as farmers and ranchers traveled in pickup trucks.

F) Unusual Hour

The time of day can also be a factor in determining probable cause. Of course the suspects above would not be cited merely because they happened to be in a remote area during a very early or late hour. If other factors are present, however, such as the furtive conduct, physical evidence, etc., as described above, the hour of the day may be a relevant factor.

G) Admissions

Although unusual, a suspect's admission of criminal conduct can often provide Probable Cause for issuance of a citation. If fact, this is often all that is needed because an admission provides such direct evidence of guilt that you need look no further for additional probable cause.

H) Failure to Explain or Evasiveness

When a suspect, confronted by authority, fails to explain or provides unsatisfactory explanations for his suspicious conduct or presence near the scene of a violation, his behavior may contribute to Probable Cause for issuance of a citation. Common examples of this type of behavior are failing to produce identification or giving false identification or information. Usually, failure to explain or evasiveness standing alone will not be enough to provide Probable Cause. However, if you are, during conversation, given an obvious lie, i.e., one which you can easily disprove, and you have other elements of Probable Cause, lying or evasiveness may strengthen your statement of Probable Cause.

Several additional elements may be useful in establishing Probable Cause. Although generally encountered during the investigative phase (if any) of the citation process, the following are listed for your information and to further your understanding of the Probable Cause concept:

I) Reputation of Premises

The mere fact that a person is on premises where there is reason to believe criminal activity is occurring (or has occurred) will not alone establish Probable Cause, but may be considered with others in assessing Probable Cause for issuance of a citation.

J) Association with Other Known Violators

Again, not sufficient in itself to provide Probable Cause, but may be a factor.

K) Past Criminal Conduct

The prior criminal activity of a suspect is a factor to be considered, although the mere fact that a suspect has a known criminal record does not alone provide Probable Cause for issuance of a citation.

L) Suspect Resembles Description

If a physical description or photograph of a suspect is reviewed and someone is subsequently sighted who closely resembles such a description, a citation issued to that person will be valid as based on Probable Cause. In fact, it has been held that an arrest would be justified even if the person arrested was the wrong person.

M) Facts Arising During Investigation or Conversation

It is very important to recognize that Probable Cause to issue a citation may arise during investigation or interviewing. In these situations the investigations may initially only be seeking information or merely looking into suspicious circumstances. Yet during questioning other facts may come to the investigators attention either from the words or actions of the detailed person or from other sources. For example, the person may give evasive answers, attempt to flee, act in a furtive manner or any of the other indications of criminal activity discussed above. If these facts and circumstances are sufficient to establish Probable Cause, a citation may be issued at that time.

In summary, the BLM field employee contemplating the issuance of a citation should look for the types of information discussed above, especially A through G, and should have an idea of what relative importance a magistrate is likely to place on each type of information in determining whether there is probable cause. Most importantly, however, the employee should make sure that he/she has sufficient information before citation process is initiated. Of course, because Probable Cause is such an indefinite concept and because some magistrates have stricter standards than others, the court may still find a lack of Probable Cause despite the employee (or investigators) painstaking efforts. Nevertheless, a careful systematic approach is likely to result in more solidly based citations, less waste of time and effort and fewer violations of individuals rights.

(2) Information Obtained through Informants

While your perceptions are an important source of information for Probable Cause, the vast majority of violations will occur out of your presence. However, there is still an obvious need to gather information and issue citations in these situations. More importantly, citations issued in connection with violations committed out of your presence must conform to the same constitutional standards as those made in connection with observed violations.

In most cases, information coming from third persons, or informants will be investigated and processed by the State Office Special Agent. However, in certain circumstances, it may be necessary for you to obtain and document such information. For this reason, the following short discussion is presented to assist you in convincing a magistrate that the information supplied by an informant is reliable and worthy of being acted upon.

For purposes of discussion, we will concentrate on the situation in which the BLM field employee is intimating a citation based on information from third person. The term "informant" will be used to refer to any third person supplying information on criminal activity.

The method of establishing Probable Cause through the use of an informants' information, is sometimes referred to as the hearsay method, as opposed to the direct observation method. In recent years, decisions of the U.S. Supreme Court have set out definite requirements in preparing Probable Cause Statements based on information received from informants.

The purpose of these requirements is to ensure that there is a substantial basis for the magistrate to credit the hearsay information.

A leading case in establishing these standards was previously *Agilas v. Texas*. Although this case has recently been superseded by *Illinois v. Gates*, the *Aguilar* case is still a very useful two-prong test in determining Probable Cause when the information in the Probable Cause Statement is either entirely or partially obtained from an informant:

- a) The Probable Cause statement must describe the circumstances from which a magistrate may determine that the informant is reliable, and
- b) The Probable Cause Statement must describe the circumstances from which the magistrate may determine that the informant's information is itself reliable and not the result of mere rumor or suspicion.

Both prongs of the *Aguilar* Test must be satisfied in order to establish Probable Cause.

Prong 1: Reliability of the Informant

Whether or not the informant's identity is disclosed is an important consideration in establishing reliability of the informant. If the informant is identified by name, a magistrate is more likely to credit the reliability of the informant because he can have the disclosed informant appear before him if he feels further facts are necessary. When the informant's identity is undisclosed, the magistrate will require detailed factual information on the informant's reliability. To aid in determining reliability, the courts make a further distinction between the Ordinary Citizen Informant and the Criminal Informant. Because criminal informants require special procedures, all interviews and processing will be done by the State Office Special Agent.

Fortunately, the criterion for utilizing the Ordinary Citizen Informant are much less stringent and within the capabilities of the field employee. Some courts have said that an undisclosed Ordinary Citizen Informant is presumed reliable and no further evidence of his reliability need be stated in the Probable Cause statement, especially if he/she is steadily employed, is a registered voter, and enjoys a good reputation in his/her neighborhood. Further, the ordinary citizen who is either the victim of a crime, of eyewitness to a violation is considered to be a reliable informant, even though his reliability has not been previously tested. Similarly, fellow employees are considered to be reliable informants without having their reliability

established. Information passing through too many employees mouths, however, will lose its reliable character.

Prong 2: Reliability of the Informant's Information

In addition to demonstrating the reliability of the informant to the magistrate, you must also demonstrate, in the Probable Cause Statement, circumstances as to the reliability of the informant's information. This is usually done by showing how the informant knows the information he has furnished. To satisfy this requirement, the Probable Cause Statement must show either:

- 1) That this informant has seen or perceived first hand the fact(s) asserted.
- 2) That this informant's information is hearsay but there is good reason to believe it.

Regarding No. 1, if the informant came upon his information by personal observation, you should have few problems in satisfying the second prong of the Aguilar test. It is only necessary to state, in the Probable Cause Statement, how, when, and where the informant perceived the information he has furnished. (It is very important to note in the Probable Cause Statement the time when the informant obtained his information).

When the informants' information is hearsay, the second prong of Aguilar becomes more complicated. Now, the informant's information must also be proven reliable under Prong 2. Although this can be done by any of the usual methods of establishing reliability cited above, you should contact the State Office Special Agent before proceeding further. Generally, if the informants' informant saw the violation being committed, this should satisfactorily establish that the informants' informant obtained the information in a reliable manner.

There is one other method of satisfying the second prong of Aguilar besides stating how, when, and where the informant came by his/her information, and that is the use of sufficient detail to infer that the informant had gained his information in a reliable way.

As an example, consider a situation where your informant does not tell you how he/she obtained his/her information, but does report that the violator had traveled to Grandmother Mountain the day before and would return to St. Maries by blue Chevrolet 4x4 truck with approximately one cord of illegally harvested cedar bolts on one of two specified mornings. In addition, the informant goes on to describe in detail the clothes that the violator will be wearing and make of the chain saw he would be carrying.

In this instance the magistrate, when confronted with such detail, could reasonably infer that the informant had obtained his information in a reliable way.

This concludes our brief discussion of the two-pronged Aguilar test for establishing Probable Cause. If you can satisfy both prongs of the test, the magistrate will likely uphold Probable Cause for issuance of a citation. If you are unable to satisfy both prongs of the test, there is still the possibility that the information may be corroborated by additional investigation. Again, in this case, contact the State Office Investigator for assistance. One final, important element of the Probable Cause Statement is the inclusion of the six question words:

1. When - did the violation, observation/perception, etc., occur
2. Where - did the violation, observation/perception, etc., occur (Legal description if appropriate)
3. Who - is the violator, witness, informant, victim (include physical description, if appropriate)
4. What - is the violation; was used to facilitate the violation
5. Why - was the violation committed (nature), was the informant/witness present
6. How - the information on the violation was obtained; the violation was facilitated or committed.

Conclusion

The purpose of the Probable Cause Statement is to convince an impartial magistrate that a violation has occurred and that a particular person(s) committed that violation. Probable Cause can be established either through personal perception, information supplied by an informant(s), or investigation. Indications of criminal activity which you yourself may perceive and which may contribute to probable cause include:

- 1) Flight
- 2) Real or physical evidence
- 3) Furtive conduct
- 4) Admissions
- 5) Failure to explain or evasiveness
- 6) High incidence area
- 7) Presence at the scene
- 8) Association with other violators
- 9) Unusual hour

- 10) Past conduct
- 11) Suspect resembles description
- 12) Facts arising from investigation

When Probable Cause is to be established from information supplied by a third party, two criteria must be met (Aguilar Test).

- 1) The informant must be reliable.
- 2) The informant's information must be reliable.

In the absence of one or both of the above criterion, detail and/or corroboration may be sufficient.

Admittedly, the above discussion is somewhat lengthy and cumbersome; however, an understanding of the Probable Cause concept will be of value in determining if sufficient information exists for the issuance of a citation, and, as such, may save valuable time and effort in initiating a citation for which no Probable Cause exists.

Example of Probable Cause Statement for Offense Committed in
Presence of Employee

Statement of Probable Cause

On October 10, 1984, while exercising my duties as a(n) Area Forester, at or near Grandmother Mt., Shoshone County, T 43 N, R 3 E, Sec 22, at approximately 2:30 p.m., I heard a chain saw operating in an area containing numerous Western Red Cedar Trees. Recognizing this as an area administered by BLM for which no authorization or permits for the cutting of timber had been issued, I walked toward the chain saw sound and observed two adult males. One, described as approximately 35 years old, 6'2", 190 lbs., blond hair and blue eyes, was in the process of cutting down a large cedar tree. The other, approximately 60 years old, 5'5", 200 lbs., grey hair, was cutting a second, felled cedar tree into approximately 4' bolts and loading the sections into a blue 1974 Chevy 4x4, bearing Shoshone County license plate 414 TK. I also observed 2 rifles inside the pickup.

I am aware, through my job as BLM Area Forester that Cedar bolts are currently in high demand and are easily sold to area saw mills for shake and shingle manufacture.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____ 19____.

(Signature)

(Print Name & Title)

Example of Probable Cause Statement for a Violation not Committed in Employee's presence - Derived from Series of Facts and Circumstances.

Statement of Probable Cause

On July 10, 1983, while exercising my duties as a(n) BLM Range Conservationist, at or near Grasmere, Idaho, Owyhee Co., T 5 E, R 12 S, Sec. 2, at approximately 3:45 p.m., I was advised by BLM radio of two males kneeling in the grass beside their sedan in a remote grassland area. As I approached their location in my assigned BLM pickup truck, I observed two males stand up in a grassy area adjacent to the Buzzard Gulch roadway, run toward and enter their vehicle and speed off in a southerly direction. I also observed one of the males, approximately 35 years old, 6'2", 190 lbs., blond hair, attempting to put a red cylindrical object approximately 12" long into his pants pocket.

I immediately inspected the area and observed a charred or burned area approximately 12 inches square where the two males had previously been kneeling. I also observed a red road flare on the edge of the road where the sedan, a blue Chevrolet Citation, bearing Ada County License No. D 2999, had been parked.

I am aware, through my job as Area Range Conservationist, that the above area had experienced numerous man-caused fires over the past 90 days. I am also aware that none of the area residents normally drive a blue Citation automobile.

I declare (or certify, verify, or state) under penalty of perjury, that the foregoing is true and correct. Executed this _____ day of _____ 19____.

(Signature)

(Print Name & Title)

Example of Probable Cause Statement Based on Information Received
from an (Ordinary Citizen) Informant

Statement of Probable Cause

On June 8, 1984, while exercising my duties as a(n) BLM Recreation Specialist at on near Malaria Sump Campground, Owyhee Co., at approximately 6:00 a.m., I was approached by an informant who wishes to remain anonymous. At that time the informant stated that two hours prior (at 4:00 a.m. while camping), he had observed four males who appeared to be intoxicated, destroy with an ax, eight BLM picnic tables at the Malaria Sump Camp Ground. The informant further observed the four males leave the picnic area at approximately 4:15 a.m. in a 1984 dark blue Ford 4x4 1/2 ton pickup truck bearing Owyhee County license plate 4010, and driven by one of the four subjects described as approximately 20 years old, 6'2", 190 lbs., brown hair and wearing blue jeans, a white t-shirt, and straw cowboy hat.

I subsequently verified that the informant is steadily employed, is a registered voter and has a good reputation in his neighborhood.

I also verified that the above-described vehicle is registered to a Duane M. Jones, Box 2040, Bruneau, Idaho, whose description closely resembles the description furnished by the above informant.

I declare (or certify, verify or state) under penalty of perjury, that the foregoing is true and correct. Executed this _____ day of _____ 19 ____.

(Signature)

(Print Name & Title)