

Qualifying Your Witnesses

The Aguilar-Spinelli 2-Prong Test

All persons providing information for a search warrant need to be “qualified” in your affidavit. Qualifying them means showing they are both **Reliable** and **Credible**.

This is called the Aguilar-Spinelli 2-Prong Test, based on two court cases:

Aguilar v. Texas, and Spinelli v. U.S.

Both prongs of the test **must** be satisfied to establish probable cause. Your affidavit must contain enough information to allow the judge to draw an independent conclusion about the witness and his/her information.

If a witness' information fails under either prong, the warrant fails.

However, you can conduct your own investigation to corroborate the information to fulfill the missing prong of the test.

(It is a good idea to do this no matter how reliable and credible your witness seems to be)

It is generally easier to corroborate reliability than credibility.

Reliability – Basis of Information

The key question to Reliability is, “How does the witness know what they know?”

If they say they saw a marijuana grow, how do they **know** it's marijuana and not marigolds?

The main factors that will help satisfy the reliability prong are:

- 1) **Personal Knowledge –**
Did the witness see, hear, smell it himself, or is the information hearsay?
Be wary of hearsay unless it can be corroborated.
Your witness generally needs to understand the significance of what they are reporting.
- 2) **Timeliness –**
How recently did the reported activity occur? The more recent, the better.
- 3) **Sufficiently Detailed –**
Can they answer the who, what, where, when?

Credibility – Truthfulness of the Witness

The key question here is, “Why should we believe what the witness has to say?”

The main factors that will help satisfy the credibility prong are:

- 1) **Citizen Status –**
Are they an upstanding citizen with no criminal record, or a criminal with an agenda?
- 2) **History of Providing Information –**
Do they have a verifiable track record of providing accurate information?
- 3) **Named Witness –**
Named witnesses are generally presumed to be credible, and definitely preferred.
- 4) **Corroboration of Information –**
Being able to corroborate some of the information a witness of unknown credibility has given you will lend them credibility, with respect to the remainder.
- 5) **Statements Against Self-Interest –**
A witness giving information that could land them in jail is generally presumed credible.

Credibility – Witness Types

Witnesses generally fall into the below six categories.
They are listed in order of their presumed degree of credibility.

- 1) Law Enforcement Officers
- 2) Citizen Witness – Named in the warrant
 - a. Concerned Citizen
 - b. Victim of a crime
 - c. Eyewitness to a crime
- 3) Citizen Witness – Unnamed
- 4) Criminal Informant – Named in the warrant
- 5) Criminal Informant – Unnamed Confidential Informant
- 6) Anonymous Caller / Witness

Each has a different set of criteria for establishing credibility.

With all witnesses, tell the good and the bad.

The bad will only hurt you if it is left out and later discovered, which will make it appear that you are covering something up.

1) **Law Enforcement Officers**

Law Enforcement Officers are presumed to be credible.

Attach a background statement for each officer providing information for the affidavit.

Carry a background statement in your patrol bag! (paper, not on disk)

2) **Citizen Witness – Named in the warrant**

Citizen witnesses who are named in the affidavit are generally presumed to be credible.

Be wary of motivation if they know the person(s) they are providing information against.

They can be qualified generally by verifying their address, the fact that they are employed, and citing their (lack of) criminal record.

a. **Concerned Citizen**

This is the ordinary citizen who reports crime and suspicious activity out of civic duty.

They generally have nothing to gain from providing the information.

b. **Victim of a crime**

Victims often know the person(s) they are providing information against, and **may** have something to gain by falsifying or embellishing what they tell you.

c. **Eyewitness to a crime**

(same as victims above)

3) **Citizen Witness – Unnamed**

An Unnamed Citizen Witness is a bit harder to qualify than a named one.

They are usually unnamed because they fear retaliation.

If possible, state in your affidavit **why** they legitimately are afraid.

Disclosing their name to the judge without putting it in the affidavit may help.

Avoid the tag "citizen informant", as "informant" has a negative connotation

Assistant Attorney General John Wasberg (the LED Editor) outlined an excellent checklist in the March 2000 LED for qualifying an unnamed citizen witness.

Include as many of the following in your affidavit as you can:

- a) that the witness has identified him/herself to the affiant,
- b) that the police have checked and found no criminal record and have no basis for believing the witness was/is involved in any criminal activity,
- c) that the witness has given his/her address and telephone number to the affiant,
- d) that the witness is personally known to the affiant and/or has a reputation for trustworthiness in the community,
- e) that the witness is a public-spirited citizen whose interest in this matter is in assisting law enforcement and who has no apparent motive to make a false report,
- f) that that witness has requested confidentiality because he/she fears physical, social, and/or emotional retribution if his/her identity is revealed,
- g) that in the affiant's experience and training, revealing the identities of witnesses discourages other citizens from providing information to law enforcement officers,
- h) that the witness did not request monetary compensation in return.

4) **Criminal Informant – Named in the warrant**

Criminal Informants that are named, get limited credibility by being named.

They often are giving statements against self-interest, lending further credibility.

Criminal Informants **always** have a motivation for giving information. Be **very** wary.

Corroborate as much as possible.

5) **Criminal Informant - Unnamed Confidential Informant**

CIs have no presumed credibility.

Generally only way to establish a CIs credibility is History of Providing Information.

They must have a **verifiable** track record of providing **accurate** information.

The longer they have been your CI and the more successful deals, the better.

(ask ISU if you want to know how this is done)

CIs always have a motivation for giving information. Tell what it is in the affidavit.

(money, working off charges, etc.)

Be wary. Corroborate as much as possible.

6) **Anonymous Caller / Witness**

A truly anonymous caller, one who the police do not know, is not considered credible.

All information **must** be corroborated.

If you can corroborate all information a known witness gives you, you can treat them as an anonymous source and leave their name out of the affidavit.