Department of Homeland Security
Federal Law Enforcement Training Center
Legal Training Division

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The Federal Law Enforcement –Informer–

MONTHLY LEGAL RESOURCE AND COMMENTARY FOR FEDERAL LAW ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer).* The Legal Training Division of the Federal Law Enforcement Training Center is dedicated to providing federal law enforcement officers with quality, useful and timely Supreme Court and Circuit Court reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Center. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at (912) 267-2179 or FLETC-LegalTrainingDivision@dhs.gov. You can join *The Informer* Mailing List, have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting the Legal Division web page at: http://www.fletc.gov/legal.

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(CLETP)

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Legal Updates
(LU)

Legal Updates last 4-12 hours over a 1 to 2 day period. These updates can be tailored to your urgent and/or specific agency subjects and issues and include the most recent court decisions and legislative changes to the laws that are applicable to those subjects.

WE CAN BRING THIS TRAINING TO YOU!

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We are now developing our FY 09 export training calendar

If your agency is interested in sponsoring or hosting this advance training, contact the Legal Training Division at

912-267-2179

or

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PodCasts

4th Amendment Roadmap

Hot Issues

Just Added

- **Laying Foundations for Evidence**
- **Officer Liability – State Law Torts and the FTCA**

Coming Soon

- **Vehicle Searches**
- **The Federal Court System: Structure and Function**

4th AMENDMENT ROADMAP

A step by step guide to searches

- **Introduction to 4th Amendment Searches**
- **Who is a Government Agent?**
- **Reasonable Expectation of Privacy 1 and 2**
- **Probable Cause 1 and 2**
- **What is a Search Warrant?**
- **Search Warrant Service 1 and 2**
- ***Terry* Stop and Frisk**
- **Protective Sweeps**
- **Search Incident to Arrest**
- **Consent**
- **Mobile Conveyances**
- **Exigent Circumstances**
- **Plain View**
- **Exclusionary Rule 1 and 2**
- **Inspections**
- **Inventories**

HOT ISSUES

Supreme Court cases and emergent issues

Supreme Court Cases

- **Consent Searches – *GA v. Randolph***
- **Anticipatory Warrants – *US v. Grubbs***
- **Passengers and Traffic Stops – *Brendlin v. California***
- **Use of Force – *Scott v. Harris***

Use of Force

- **Use of Force Continuum**
- **Use of Force – Myths and Realities Part 1**
- **Covert Entry Search Warrants**
- **ICE Administrative Removal Warrants**
- **FISA Parts 1 and 2 – An Overview for Officers and Agents**
- **Intercepting Wire, Oral, and Electronic Communications**
- **GPS Tracking**
- **Territorial Jurisdiction on Federal Property**

SELF-INCRIMINATION ROADMAP

A step by step guide to Lawful Interviews

- ***Miranda* and the 5th Amendment**
- ***Miranda* Waivers and Invocations**
- **6th Amendment Right to Counsel**
- **Comparing the 5th and 6th Amendment Rights to Counsel**
- **Interviewing Government Employees**

MILITARY INTERROGATIONS

The 5th Amendment, *Miranda*, and Article 31

- **Article 31(b), UCMJ**
- **Military Interrogations – The Fifth Amendment and *Miranda***

Click **HERE** to download or listen.

Transcripts of each podcast are also available here.

CASE SUMMARIES

CIRCUIT COURTS OF APPEALS

2nd CIRCUIT

U.S. v. Lopez, 2008 U.S. App. LEXIS 23392, November 10, 2008

A separate itemization of each object found, regardless of its value, is not required for an inventory search to be reasonable under the Fourth Amendment. Such an obligation would interfere severely with the enforcement of the criminal laws by requiring irrational, unjustified suppression of evidence of crime where officers, conducting a *bona fide* search of an impounded vehicle, found evidence of serious crime but, in making their inventory, failed to distinguish between the maps of Connecticut and New York, or failed to list separately the soiled baby blanket or a pack of gum.

When officers, following standardized inventory procedures, seize, impound, and search a car in circumstances that suggest a probability of discovering criminal evidence, the officers will inevitably be motivated in part by criminal investigative objectives. Such motivation, however, cannot reasonably disqualify an inventory search that is performed under standardized procedures for legitimate custodial purposes.

Click **HERE** for the court's opinion.

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U.S. v. Lopez, 2008 U.S. App. LEXIS 23303, November 13, 2008

The voluntary consent of a co-tenant is valid absent the affirmative objection by the defendant who is present. Law enforcement has no duty to ask the defendant whether he consents to the search, no matter how easy or convenient it might be to do so. Rather, the onus is on the defendant to object to the search.

Click **HERE** for the court's opinion.

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6th CIRCUIT

Vance v. Wade, 2008 U.S. App. LEXIS 23952, November 17, 2008

For an excessive-force-in-handcuffing claim, a plaintiff must show

(1) that officers handcuffed the plaintiff excessively and unnecessarily tightly, and
(2) that officers ignored the plaintiff's pleas that the handcuffs were too tight.

Click **HERE** for the court's opinion.

Thompkins v. Berghuis, 2008 U.S. App. LEXIS 23950, November 19, 2008

A heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. A valid waiver will not be presumed simply from the silence of the accused after warnings are given or from the fact that a confession was in fact eventually obtained. The courts must presume that a defendant did not waive his rights.

During a three hour interrogation, a suspect who "consistently exercised his right to remain substantively silent for at least two hours and forty-five (45) minutes," who is described as "so uncommunicative" and "not verbally communicative," who "largely …remained silent," and who "shared very limited verbal responses with us," consisting of "yeah," or a "no," or "I don't know", who only "sporadically" made eye contact or nodded his head, and who, after being advised under *Miranda*, orally confirmed understanding of those rights but refused to sign the printed form, has not affirmatively waived his right to remain silent.

Click **HERE** for the court's opinion.

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9th CIRCUIT

U.S. v. Youssef, 2008 U.S. App. LEXIS 23285, November 05, 2008

Looking at this issue for the first time, the Court decides:

Title 18 U.S.C. § 1015(a), making a false statement in an immigration document, does not require the false statement to be "material" as an element of the offense.

The 4th Circuit agrees (cite omitted).

Click **HERE** for the court's opinion

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U.S. v. Nevils, 2008 U.S. App. LEXIS 23858, November 20, 2008

Simply finding a firearm resting on the stomach of and another resting against the leg of a sleeping (passed out) defendant does not establish either actual or constructive custody of the weapons. Possession—whether actual or constructive—requires a showing that the defendant had knowledge of the firearms and the ability and intention to control them. When the evidence establishes that the defendant was asleep or passed out, the fact that the firearms were physically touching him is not sufficient to show that he was conscious of their presence. That the weapons were touching defendant is a factor tending to make

knowing possession more likely, but it is not enough without evidence that the defendant was aware of their presence.

Click **HERE** for the court's opinion.

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U.S. v. Blixt, 2008 U.S. App. LEXIS 24247, November 26, 2008

Looking at this issue for the first time, the court decides:

Forging another's signature on a check in furtherance of mail fraud constitutes the use of that person's name and thus qualifies as a "means of identification" under 18 U.S.C. § 1028A. Title 18 U.S.C. § 1028(d) provides that "in this section and section 1028A . . . (7) the term 'means of identification' means *any name* or number that may be used, *alone or in conjunction with any other information, to identify a specific individual,* including any — (A) *name*…." There is nothing in the language of the statute that suggests the use of another's name in the form of a signature is somehow excluded from the definition of "means of identification."

(Editor's note: The court could find no other decision of any circuit court addressing this issue.)

Click **HERE** for the court's opinion.

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U.S. v. Weyhrauch, 2008 U.S. App. LEXIS 24248, November 26, 2008

Looking at this issue for the first time, the court decides:

Failure to disclose a conflict of interest, even when not required by state law, can be the basis of an honest services fraud conviction under 18 U.S.C. § 1341. The government is not required to prove that the fraud violated an independent state law.

The 1st, 4th, 7th, and 11th circuits agree (cites omitted).
The 3rd and 5th circuits disagree (cites omitted).

Click **HERE** for the court's opinion.

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