
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 HFLETC-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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(The first number is the month and the last number is the year.)

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ANNOUNCING

The first
Legal Training Division

Webinar

“Supreme Court Wrap Up and Look Ahead”

A discussion of the significant law enforcement cases decided during the October 2007 Term and those already accepted by the Court for its October 2008 Term

September 10, 2008

2:00 pm

Details on how to sign up coming soon.

Export Advance Federal Legal Training

Continuing Legal Education Training Program (CLETP)

The CLETP provides refresher training to field agents and officers in legal subject areas covering the 4th, 5th, and 6th Amendments, use of force, use of race, electronic law and evidence, civil liability, and recent statutes and rules changes. All instruction is updated by a review of the most recent court decisions and legislative changes to the laws that are applicable to federal law enforcement agents and officers. The CLETP is three instructional days (Tuesday – Thursday) and consists of nineteen (19) course hours.

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!

Costs are the travel and per diem for the instructor(s) plus training materials. The full materials package is approximately \$30.00 per student.

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

FLETC-LegalTrainingDivision@dhs.gov

PodCasts



4th Amendment Roadmap

Hot Issues

4th AMENDMENT ROADMAP

A step by step guide to searches

Posted Now

- 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

Posted Now

- Consent Searches – *GA v. Randolph*
- Anticipatory Warrants – *US v. Grubbs*
- GPS Tracking
- Covert Entry Search Warrants
- Use of Force – *Scott v. Harris*
- Passengers and Traffic Stops – *Brendlin v. California*
- FISA Parts 1 and 2 – An Overview for Officers and Agents
- Use of Force Continuum
- Interviewing Government Employees

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

Just Added

- Interviewing Government Employees
- **Use of Force – Myths and Realities Part 1**

MILITARY INTERROGATIONS

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

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

Coming Soon

- Vehicle Searches
- Use of Force Legal Aspects (Graham, Scott, and Garner)
- The Federal Court System: Structure and Function
- Chain of Custody and Evidentiary Foundations
- Intercepting Wire, Oral, and Electronic Communications

Click [HERE](#) to download or listen

Transcripts of each podcast are also available here

The
Department of Homeland Security
Federal Law Enforcement Training Center

Legal Training Division
and

Department of Justice

DEA Academy
Legal Instruction Section
and

FBI Academy
Legal Instruction Unit

present the second

Federal Law Enforcement Legal Advisors Conference
FLELAC II

“Information Law”

Tentative topics include
Fusion Centers, Privacy issues and Privacy Assessments, Civil Rights, E-Discovery and
FEDWG, Searching and Seizing Electronic Devices, Surveillance Law, Terrorist Screening
Center, Emergency Legal Authority

September 3-4, 2008
Bolger Center
Potomac, MD

This conference is designed for Federal Government attorneys who provide legal
advice and support to Federal law enforcement agencies and departments.

*** Only a limited number of seats are still available ***

Visit our [FLELAC Website](#) for additional
conference information and registration form.

CASE SUMMARIES

CIRCUIT COURTS OF APPEALS

1st CIRCUIT

U.S. v. Godin, 2008 U.S. App. LEXIS 15301, July 18, 2008

To obtain a conviction under 18 U.S.C. § 1028A(a)(1), the aggravated identity theft statute, the government must prove that the defendant knew that the means of identification transferred, possessed, or used during the commission of an enumerated felony belonged to another person.

The D.C. Circuit agrees (cite omitted).

The 4th, 8th, and 11th circuits disagree (cites omitted).

The 9th Circuit also now agrees with the 1st and D.C. circuits - see *U.S. v. Miranda-Lopez* (9th Cir.) below.

Click [HERE](#) for the court's opinion.

5th CIRCUIT

US v. Ramos, 2008 U.S. App. LEXIS 15961, July 28, 2008

Failing to report the discharge of their weapons is not obstruction of an “official proceeding” in violation of 18 U.S.C. § 1512. Internal investigations into agency employee conduct are not “official proceedings” under § 1512. An “official proceeding” involves some formal convocation of the agency in which parties are directed to appear, instead of an informal investigation conducted by any member of the agency. “Official proceeding” is consistently used throughout § 1512 in a manner that contemplates a formal environment in which persons are called to appear or produce documents.

Click [HERE](#) for the court's opinion.

U.S. v. Valle, No. 07-50869, July 30, 2008

Title 18 U.S.C. § 201 does not require that the public official actually commit the violation of his official duty. It only requires that he demand or agree to accept something of value in return for “being induced” to commit the violation. The statute clearly requires that the

official's demand be "corrupt." The public official acts "corruptly" when he knows that the purpose behind the payment that he has received, or agreed to receive, is to induce or influence him in an official act, even if he has no intention of actually fulfilling his end of the bargain

The 2nd Circuit agrees (cite omitted).

Click [HERE](#) for the court's opinion.

7th CIRCUIT

U.S. v. Hicks, 2008 U.S. App. LEXIS 14529, July 09, 2008

Anonymous tips about an ongoing emergency are treated differently than those regarding general criminality. Because of the special reliability inherent in reports of ongoing emergencies, such 911 calls are subject to less testing in court than other out-of-court statements. When an officer relies on an emergency report in making a stop, a lower level of corroboration is required.

The 2nd, 3rd, 4th, 7th, 9th, 10th, and 11th circuits agree (cites omitted).

No circuits disagree.

Click [HERE](#) for the court's opinion.

8th CIRCUIT

The Court has vacated the panel decision as summarized below in the November 07 issue of *The Informer* (11 *Informer* 07). The *en banc* decision has not yet been published. 519 F.3d 730.

U.S. v. Kattaria, 503 F.3d 703, October 05, 2007

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

The same Fourth Amendment reasonable suspicion standard that applies to *Terry* investigative stops applies to the issuance of a purely investigative warrant to conduct a limited thermal imaging search from well outside the home. The traditional requirement of probable cause is relaxed by the well-established Fourth Amendment principle that the police may reasonably make a brief and minimally intrusive investigative stop if they have

reasonable suspicion that criminal activity may be afoot. Factors justifying application of this standard, rather than probable cause, are “the importance of the governmental interest at stake, the minimal intrusion of a brief stop, and the absence of practical alternatives.” The “practical alternatives” factor provides good reason to shift the analysis when the issue is the quantum of evidence required to obtain a warrant *solely for the purpose of conducting investigative thermal imaging*. Thermal imaging information provides important corroboration that criminal activity is likely being conducted in a home *before the homeowner is subjected to a full physical search*. If the same probable cause is required to obtain both kinds of warrants, law enforcement will have little incentive to incur the expense of a minimally intrusive thermal imaging search before conducting a highly intrusive physical search.

The 9th Circuit disagrees and requires probable cause for a thermal imaging warrant (cite omitted).

Click [HERE](#) for the court’s opinion.

* * * *

9th CIRCUIT

U.S. v. Miranda-Lopez, 2008 U.S. App. LEXIS 15200, July 17, 2008

The crime of aggravated identity theft, 18 U.S.C. § 1028A(a)(1), requires proof that the defendant knew that the means of identification belonged to another person. It is not enough to prove only that the defendant knew he was using a false document.

The D.C. Circuit agrees (cite omitted).

See *U.S. v. Godin* (1st Cir.) above.

Click [HERE](#) for the court’s opinion.

U.S. v. Caseres, 2008 U.S. App. LEXIS 15575, July 21, 2008

A person who had parked the car, gotten out and was quickly walking away, who was in a yard two houses away from the car when first approached by the police, who then ran from police and was 1 ½ blocks away from the car when seized and arrested was not a “recent occupant” of the car authorizing a search of the car incident to the arrest. He was handcuffed and taken into custody a full 1 ½ blocks away from his car. Several armed police officers were present. Under the circumstances, there was no danger that he could have used any weapons in the car or could have destroyed any evidence inside the car, unless he “possessed of the skill of Houdini and the strength of Hercules.” He is not being rewarded for fleeing from police by having the evidence recovered from his car deemed

inadmissible as a result because he was already a substantial distance from his car when he fled.

(Editor's note: The Supreme Court recently granted certiorari to address the question of whether law enforcement officers must demonstrate a need to preserve evidence related to the crime of conviction to justify a warrantless vehicular search incident to arrest. *See Arizona v. Gant*, Sup. Ct. No.07-542; *see also Arizona v. Gant*, 162 P.3d 640 (Ariz. 2007).)

Click [HERE](#) for the court's opinion.

10th CIRCUIT

U.S. v. Chavez, 2008 U.S. App. LEXIS 16558, July 29, 2008

Under the “collective knowledge” doctrine, absent any traffic violation, a police officer may rely on the instructions of another law enforcement agency or officer to initiate a traffic stop and then conduct a search pursuant to the automobile exception.

“Horizontal” collective knowledge

When individual law enforcement officers have pieces of the probable cause puzzle, but no single officer possesses information sufficient for probable cause, the officers can communicate the information they possess individually and, thereby, pool their collective knowledge to meet the probable cause threshold.

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

“Vertical” collective knowledge

In stopping and searching a car, a police officer may rely on the instructions of another law enforcement officer or agency with knowledge of the probable cause facts even if that officer himself is not privy to all the facts.

The 3rd, 5th, 7th, 8th, and 9th circuits agree (cites omitted).

Click [HERE](#) for the court's opinion.