**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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## and new Podcasts

**Arizona v. Gant**
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**Right to Remain Silent and Miranda**
**Courtroom Testimony Skills**
**Warrantless Searches of Cell Phones**

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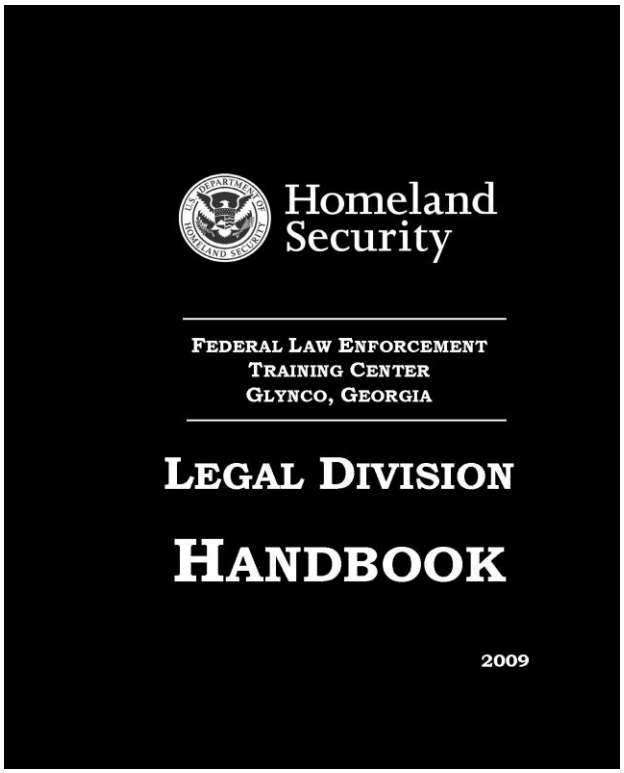
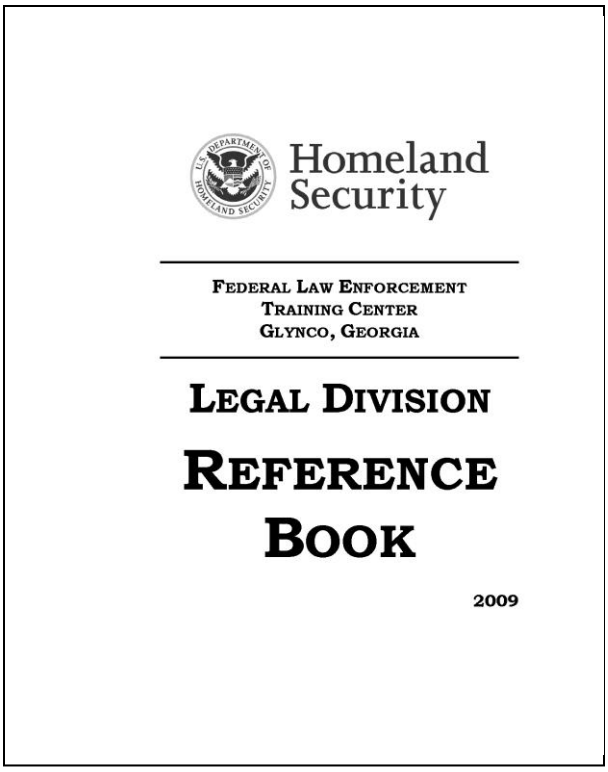
## Annual Supreme Court Preview
## in the November issue.

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# CASE SUMMARIES

## CIRCUIT COURTS OF APPEALS

### 1st CIRCUIT

***U.S. v. Bucci,*** 2009 U.S. App. LEXIS 20338, September 11, 2009

**Law enforcement authorities installed a video camera on a utility pole across the street from Bucci's home and conducted surveillance of the front of his house for eight months. The camera was placed in a fixed location that enabled agents to monitor activity on the driveway and afforded agents a view of the garage door and inside the garage when the door was open. The video camera had no remote capabilities that allowed agents to either change the view or magnification of the camera without being physically at the scene. There are no fences, gates or shrubbery located in front of Bucci's residence that obstruct the view of the driveway or the garage from the street. Both were plainly visible.**

**An individual does not have an expectation of privacy in items or places he exposes to the public. Therefore, the use of the video surveillance did not violate the Fourth Amendment.**

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

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***U.S. v. Troy,*** 2009 U.S. App. LEXIS 21186, September 25, 2009

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

**Whether a federal officer is "engaged in . . . the performance of official duties" in 18 U.S.C. § 111(a) does not turn on whether the law being enforced is constitutional or applicable to the defendant, or whether the levy order being enforced was validly obtained; rather it turns on whether the federal officer is acting within the scope of what [he] is employed to do . . . or is engaging in a personal frolic of his own.**

**CBP officers are expected to determine whether people and conveyances entering the country are allowed to enter and are properly documented. The officers are also responsible for ensuring the security of the inspection building and the area around it, a duty that includes inquiring about the activities of people walking near the border.**

**Defendant's claim that the officer's decision to stop him from exiting the inspection building was an unconstitutional seizure in derogation of the Fourth Amendment is beside the point, for the inquiry into whether the officer was engaged in the performance of her official duties does not turn on the precise limits of her authority, but rather on the proper characterization of her conduct as official or personal.**

**The 2nd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, and D.C. Circuits agree** (cites omitted).

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

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## 6th CIRCUIT

***U.S. v. Burchard,*** 2009 U.S. App. LEXIS 19796, September 02, 2009

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

**The term "unlawful user of a controlled substance" contemplates the regular and repeated use of a controlled substance in a manner other than as prescribed by a licensed physician. The one time or infrequent use of a controlled substance is not sufficient to establish the defendant as an "unlawful user." Rather, the defendant must have been engaged in use that was sufficiently consistent and prolonged as to constitute a pattern of regular and repeated use of a controlled substance. The government need not show that defendant used a controlled substance at the precise time he possessed a firearm. It must, however, establish that he was engaged in a pattern of regular and repeated use of a controlled substance during a period that reasonably covers the time a firearm was possessed.**

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

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***U.S. v. Evans,*** 2009 U.S. App. LEXIS 20891, September 22, 2009

**FPS officers reasonably exercised their investigative and protective authority pursuant to 40 U.S.C. § 1315 when they left federal property to surveil defendant's vehicle. Defendant's conduct, specifically, her tailgating of the FPS officers' marked police vehicle and her visible hand gestures, which simulated the firing of a gun, provided the FPS officers with probable cause to arrest her for a violation of 18 U.S.C. § 115, regardless of her presence on non-federal property.**

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

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## 7th CIRCUIT

***U.S. v. Edwards,*** 2009 U.S. App. LEXIS 20371, September 14, 2009

**When there has been a lapse of time between warnings/waiver/questioning and a subsequent questioning, the practical question is not whether Miranda warnings given to a defendant became "stale," or, though the courts love the phrase, whether the "totality of the circumstances" indicates that the inculpatory statement was made knowingly. It is**

**whether the defendant when he gave the statement did not realize he had a right to remain silent. The Miranda form told him he had that right, and the presumption should be that he would remember this even if some time (15-25 minutes) had elapsed between his receiving the warnings and undergoing the questioning that elicited the inculpatory statement. The presumption can be rebutted.**

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

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## 9th CIRCUIT

***U.S. v. Inzunza,*** 2009 U.S. App. LEXIS 20825, September 01, 2009

**The *quid pro quo* required for bribery is a payment made in return for an explicit promise or undertaking by the official to perform or not to perform an official act. Similarly, when the government seeks to prove honest services fraud in the form of bribery, it must prove a *quid pro quo*. The *quid pro quo* must be clear and unambiguous, leaving no uncertainty about the terms of the bargain.**

**Private gain is not an "implied" or "necessary" element of honest services fraud. The intent to defraud does not depend on the intent to gain, but rather the intent to deprive.**

**The 10th Circuit agrees** (cite omitted).

**The 3rd Circuit agrees because requiring private gain would merely substitute one ambiguous standard for another** (cite omitted).

**The 5th Circuit agrees because it has adopted a state-law-violation requirement instead** (cite omitted).

**The 7th Circuit disagrees, requiring proof of private gain** (cite omitted).

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

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