

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>.

This edition of *The Informer* may be cited as "1 INFORMER 09".
(The first number is the month and the last number is the year.)

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(CLETP)

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(LU)

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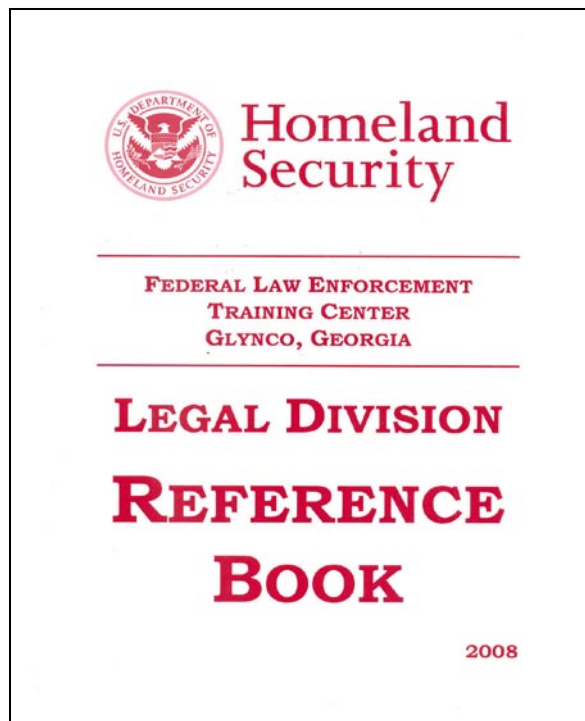
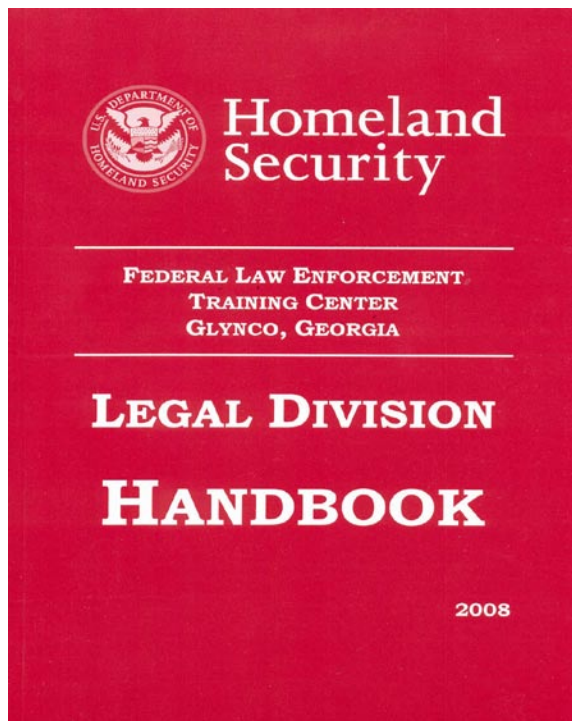


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Additional Supreme Court Law Enforcement Cases To Be Decided in the October 2008 Term

FEDERAL CRIMINAL STATUTES

Abuelhawa v. United States
523 F.3d 415 (4th Cir. 2008)

Does the use of a telephone to buy drugs for personal use “facilitate” the commission of a drug “felony,” in violation of 21 U.S.C. § 843(b), on the theory that the crime facilitated by the buyer is not his purchase of drugs for personal use (a misdemeanor), but is the seller’s distribution of the drugs to him (a felony)?

Dean v. United States
517 F. 3d 1224 (11th Cir. 2008)

Does 18 U.S.C. § 924(c)(I)(A)(iii), which establishes a ten-year mandatory minimum sentence for a defendant who “discharge[s]” a firearm during a crime of violence, require proof that the discharge was volitional, and not merely accidental, unintentional, or involuntary?

CASE SUMMARIES

SUPREME COURT

Herring v. United States, 2009 U.S. LEXIS 581, January 14, 2009

Based upon erroneous information provided by another law enforcement agency about the existence of an active arrest warrant, defendant was arrested, searched, and evidence was seized. There was, in fact, no active arrest warrant, making the arrest and the search incident to it unlawful.

The exclusionary rule does not apply when police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search, rather than systemic error

or reckless disregard of constitutional requirements. To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. The pertinent analysis is objective, not an inquiry into the arresting officers' subjective awareness.

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

CIRCUIT COURTS OF APPEALS

2nd CIRCUIT

U.S. v. Hayes, 2008 U.S. App. LEXIS 26087, December 24, 2008

There is no legitimate expectation of privacy in the front yard of a home clearly within plain view of the public road and adjoining properties insofar as the presence of the scent of narcotics in the air is capable of being sniffed by a police narcotics dog.

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

4th CIRCUIT

U.S. v. Williams, 548 F.3d 311, December 03, 2008

Warrants to search a suspect's residence are valid when based on (1) evidence of the suspect's involvement in drug trafficking combined with (2) the reasonable suspicion (whether explicitly articulated by the applying officer or implicitly arrived at by the magistrate judge) that drug traffickers store drug-related evidence in their homes.

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

U.S. v. Whorley, 2008 U.S. App. LEXIS 25438, December 18, 2008

Under 18 U.S.C. § 1462, it is a crime to "bring[s] into the United States . . . or knowingly use[s] any express company or other common carrier or interactive computer service... for carriage in interstate or foreign commerce —

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character;....”

Japanese anime-style cartoons of children engaged in explicit sexual conduct with adults qualify as “obscene” even though real children are not depicted.

Text e-mails describing sexually explicit conduct involving children, including incest and molestation by doctors qualify as “obscene” even though they do not include any obscene visual depictions and are not accompanied by attachments containing obscene material.

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

7th CIRCUIT

U.S. v. Morris, 549 F.3d 548, December 05, 2008

Stings are schemes for getting a person who is predisposed to criminal activity to commit a crime at a time or place in which he can be immediately apprehended. They are an essential tool of law enforcement against crimes that have no complaining victim. Private sting operations may become even more common now that there are organizations like “Perverved Justice,” which trains adult volunteers to pose as children in chat rooms and unmask sexual predators, and TV shows like Dateline NBC’s “To Catch a Predator” which popularizes sexual-predation stings. Just as there is no defense of private entrapment, so there is no exclusionary rule applicable to evidence obtained improperly by private persons.

A private stinger can find himself accused of committing a crime in his attempt to catch others. The “private sting operation” defense requires the defendant’s reasonable belief that he committed the charged conduct while acting as an agent for law enforcement authority.

Entrapment refers to the use of inducements that cause a normally law-abiding person to commit a crime, and is a defense when the entrapment is conducted by law enforcement officers or their agents. There is no defense of private entrapment. Individuals tempted, induced or set up by anyone besides a state agent cannot raise an entrapment defense to criminal charges.

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

U.S. v. Colon, 549 F.3d 565, December 08, 2008

A sale, by definition, requires two parties; their combination for that limited purpose does not increase the likelihood that the sale will take place, so conspiracy liability would be

inappropriate. “Regular” purchases on “standard” terms cannot transform a customer into a co-conspirator. Agreement – the crime of conspiracy – cannot be equated with repeated transactions.

A wholesale customer of a drug conspiracy – one who buys for resale rather than for his personal consumption – is not a coconspirator per se. Large quantities of controlled substances, without more, cannot sustain a conspiracy conviction. The joint objective of distributing drugs is missing where the conspiracy is based simply on an agreement between a buyer and a seller for the sale of drugs.

An aider and abettor is conventionally defined as one who knowingly assists an illegal activity, wanting it to succeed. Even though the buyer of drugs assists an illegal activity, which he doubtless wants to be successful, it is not enough to establish aiding and abetting. Otherwise, every buyer from a drug conspiracy is an aider and abettor of a conspiracy and is therefore to be treated by the law exactly as a member of the conspiracy would be treated.

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

8th CIRCUIT

U.S. v. Oliver, 2008 U.S. App. LEXIS 26394, December 23, 2008

During a traffic stop, when the risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation, passengers may be frisked during a traffic stop based upon reasonable suspicion they may be armed and dangerous. See *Knowles v. Iowa*, 525 U.S. 113 (1998). No reasonable suspicion of criminal activity unrelated to the traffic stop is required to justify the pat-down search.

EDITOR’S NOTE: The Supreme Court will decide this issue this term in the case of *Arizona v. Johnson*.

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