

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 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 "9 INFORMER 07".
(The first number is the month and the last number is the year.)

Join THE INFORMER E-mail Subscription List

It's easy! Click [HERE](#) to subscribe.

THIS IS A SECURE SERVICE. No one but the FLETC Legal Division will have access to your address, and you will receive mailings from no one except the FLETC Legal Division.

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*
- Interviewing Represented Military Suspects – Article 31(b), UCMJ
- Passengers and Traffic Stops – *Brendlin v. California*

Coming Soon

- FISA – An Overview for Officers and Agents
- Use of Force Continuum

SELF INCRIMINATION ROADMAP

A step by step guide to Lawful Interviews

- Self Incrimination: *Miranda* and the 5th Amendment
- *Miranda* Waivers and Invocations

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

New on the LGD Web Site

Ten Years of Case Law in a Snap
Significant Supreme Court decisions 1997-2007

Click [HERE](#)

Coming in October
The New Article 120, UCMJ

Coming in November
The Supreme Court Preview

In This Issue

CIRCUIT COURTS OF APPEALS
CASE SUMMARIES

Click [HERE](#)

CIRCUIT COURTS OF APPEALS CASE SUMMARIES

7th CIRCUIT

Campbell v. Miller, 2007 U.S. App. LEXIS 20547, August 28, 2007

To be reasonable as part of a search incident to arrest, strip and visual body cavity searches must be justified by at least a reasonable suspicion that the arrestee is concealing contraband or weapons. The manner of the search, including the place in which it is conducted, must also be reasonable. Absent the most compelling circumstances, such as those that pose potentially serious risks to the arresting officer or others in the vicinity, it is unreasonable to conduct a strip search in an area exposed to the general view of persons known to be in the vicinity whether or not any actually viewed the search.

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

* * * *

U.S. v. Ellis, 2007 U.S. App. LEXIS 20448, August 27, 2007

Under the “collective knowledge doctrine,” the knowledge of one police officer is imputed to other officers when they are in communication regarding a suspect. This doctrine permits arresting officers to rely on the knowledge of other officers, but not necessarily the conclusions, such as whether probable cause exists. An officer need not be personally aware of all of the specific facts supporting probable case, so long as an officer who is aware of such facts relays them to the other officer.

During a “knock and talk” investigation of drug activity, the perception of movement within the house by police, without more, does not create exigent circumstances. To support an exigent circumstance allowing entry without a warrant, police must differentiate the perceived movement from the reasonable type of movement that would be found in any home where there was a knock on the door.

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

* * * *

U.S. v. Jumper, 2007 U.S. App. LEXIS 19142, August 13, 2007

EDITOR'S NOTE: These issues were raised in the context of a videotaped interview played in its entirety to the jury.

The right to remain silent, in a custodial interrogation, attaches to a defendant's refusal to

answer specific or selective questions.

The 1st, 4th, and 6th Circuits agree (cites omitted).

In order for a defendant to have a right to remain silent as to a specific or selective question (and the corresponding right that the prosecution will not comment on this silence), the defendant must indicate in some manner that he is invoking that right. Silence itself may not be enough to invoke this right to silence.

At trial the government may not comment on the defendant's refusal to answer a specific question. Therefore, playing portions of the videotape that included the defendant's clear refusal to answer certain questions violated the defendant's right to remain silent.

An officer's opinion regarding the guilt or innocence of the defendant cannot be admitted because these comments affect the trial's fundamental fairness and invade the province of the jury. Although the question of truthfulness may go to the ultimate question of guilt or innocence, these issues are not the same. Telling the defendant that he had not been truthful earlier in the interview was not a direct comment on the defendant's guilt.

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

* * * *

9th CIRCUIT

Rodis v. City & County of San Francisco, 2007 U.S. App. LEXIS 20689, August 28, 2007

To support a conviction for possession of counterfeit currency with intent to defraud under 18 U.S.C. § 472, the government must prove three elements: (1) possession of counterfeit money; (2) knowledge, at the time of possession, that the money is counterfeit; and (3) intent to defraud. The mere passing of a counterfeit bill is not a criminal offense. The defendant must not only possess or pass counterfeit money, but he must know the money is counterfeit *and* he must intend to use the money to defraud another. To act with the "intent to defraud" means to act willfully, and with the *specific intent* to deceive or cheat for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself. For specific intent crimes, evidence of intent is required to establish probable cause. Without at least some evidence regarding the knowledge or intent elements of this crime, probable cause is necessarily lacking.

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

* * * *

U.S. v. Grigg, 2007 U.S. App. LEXIS 19922, August 22, 2007

Deciding this issue for the first time:

There is no *per se* rule that police may not conduct a *Terry* stop to investigate a person in connection with a past, completed misdemeanor simply because it was a misdemeanor. The

reasonableness of a *Terry* stop regarding a completed misdemeanor depends upon the nature of the misdemeanor offense, with particular attention to the potential for ongoing or repeated danger (e.g., drunken and/or reckless driving), and any risk of escalation (e.g., disorderly conduct, assault, domestic violence). A *Terry* stop based on a completed misdemeanor is unreasonable when, within the totality of the circumstances, there is no public safety risk, and when alternative means to identify the suspect or achieve the investigative purpose of the stop are possible.

The 6th Circuit, the only other circuit to have ruled on this issue, prohibits *Terry* stops based upon completed misdemeanors (cite omitted).

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

* * * *

U.S. v. Aukai, 2007 U.S. App. LEXIS 18995, August 10, 2007

The constitutionality of an airport screening search does not depend on either ongoing consent or irrevocable implied consent. Allowing a potential passenger to revoke consent to an ongoing airport security search makes little sense in a post-9/11 world. Such a rule would afford terrorists multiple opportunities to attempt to penetrate airport security by “electing not to fly” on the cusp of detection until a vulnerable portal is found. This rule would also allow terrorists a low-cost method of detecting systematic vulnerabilities in airport security, knowledge that could be extremely valuable in planning future attacks. Where an airport screening search is otherwise reasonable and conducted pursuant to statutory authority, 49 U.S.C. § 44901, all that is required is the passenger's election to attempt entry into the secured area of an airport.

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

* * * *

DC CIRCUIT

U.S. v. Booker, 2007 U.S. App. LEXIS 18989, August 10, 2007

Traffic stops premised on mistakes of fact are constitutional so long as the mistake is objectively reasonable. Stops premised on a mistake of law, even a reasonable, good-faith mistake, are generally held to be unconstitutional. Even when the articulated basis for the stop is a mistake of law, the stop is lawful if an objectively valid basis for the stop nonetheless exists. The officer's “subjective reason for making the arrest” need not be the criminal offense as to which the known facts provide probable cause.

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

* * * *