

# THE -QUARTERLY REVIEW-

LEGAL RESOURCE AND COMMENTARY FOR FEDERAL LAW ENFORCEMENT OFFICERS

Welcome to the fourth installment of Volume 7 of *The Quarterly Review (QR)*. 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 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 QR* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The QR* can be directed to Robert Cauthen at (912) 267-2179 or [robert.cauthen@dhs.gov](mailto:robert.cauthen@dhs.gov). You can join *The QR* Mailing List, have *The QR* delivered directly to you via e-mail, and view copies of the current and past articles in *The QR* by visiting the Legal Division web page at: <http://www.fletc.gov/legal>.

This volume of *The QR* may be cited as “7 QUART. REV. ed. (2006)”.

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## New Legal Division Web Site Format

The format of our web site has changed. Please bear with us as we work out the kinks. We value and sincerely solicit your comments and suggestions. E-mail them to [robert.cauthen@dhs.gov](mailto:robert.cauthen@dhs.gov)

## New QR Format

Please look at the new format making THE QR shorter and more efficient for readers. We deleted the case-name table of contents. We will continue to “brief” Supreme Court cases, but have reduced the Circuit Court cases to a summary along with a link to full case briefs on our web site. E-mail your comments to [robert.cauthen@dhs.gov](mailto:robert.cauthen@dhs.gov)

Click [HERE](#) for CIRCUIT Case Summaries.

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## **Tracking the Bad Guys: Legal Considerations in Using GPS**

*Senior Instructor Keith Hodges<sup>1</sup>  
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### **I. Introduction**

The ready availability and affordability of Global Positioning System (GPS) devices allows law enforcement to efficiently, accurately, and safely track the movement of vehicles. The results of GPS tracking will create a permanent and credible record of precisely where the tracked vehicle was and the time it was there. To use this technology, officers must be able to lawfully get to the target vehicle and install certain devices.

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This article surveys some fundamental legal considerations for federal officers and agents in placing and using GPS devices to track vehicles. Because many states have separate statutory schemes, only brief mention will be made of state law in Section VIII.

Click [HERE](#) for the full article with attachments.

(<http://www.fletc.gov/training/programs/legal-division/resources/tracking-the-bad-guys-legal-considerations-in-using-gps-july-21-2006.pdf/view>)

### **Topic outline from the full article.**

### **II. The Law That Applies**

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<sup>1</sup> The author wishes to thank and commend Senior Instructor Jenna Solari for her invaluable editing skills.

III. The Upcoming Rules of Federal Criminal Procedure and Tracking Devices

IV. The Big Picture – All About REP

V. REP Places

VI. Tracking Issues: Location of the Vehicle During Tracking

VII. Preserving the Data

VIII. State Law

IX. Recommendations

**Attachments:**

**Federal Rule of Criminal Procedure Rule 41. Search and Seizure.** (Effective December 1, 2006, unless Congress provides otherwise.)

- “Red line” version showing changes.
- “Clean Version”

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## **CIRCUIT COURTS OF APPEALS CASE SUMMARIES**

Click [HERE](#) for the full briefs with links to the courts’ opinions.

### **1<sup>st</sup> CIRCUIT**

*McConkie v. Nichols*, 446 F.3d 258, May 15, 2006

Abuse of power violates the Fifth Amendment Due Process Clause when it is so extreme and egregious as to “shock the conscience.” The conduct must be truly outrageous, uncivilized, and intolerable; it must be stunning, evidencing more than humdrum legal error. Telling someone that his statement would remain confidential and thereby knowingly misrepresenting the nature of his Fifth Amendment right against self-incrimination is not so egregious that it shocks the conscience.

\* \* \* \*

### **5<sup>th</sup> CIRCUIT**

*U.S. v. Pope*, 2006 U.S. App. LEXIS 13928, *June 6, 2006*

An officer’s subjective motive to search does matter. When applying for a search warrant, the stated purpose of the warrant must match the officer’s actual motivation for the search.

*U.S. v. Alvarez*, 451 F.3d 320, June 1, 2006

**For purposes of 21 U.S.C. § 860(e)(1), Distribution of Controlled Substances Within 1000 Feet of a Playground, the government must prove that the controlled substance offense took place within 1000 feet of an outdoor facility intended for recreation that is open to the public and that includes three or more separate apparatus intended for the recreation of children.**

\* \* \* \*

### **7<sup>th</sup> CIRCUIT**

*U.S. v. Miller*, 450 F.3d 270, June 7, 2006

**A factually accurate statement that the police will act on probable cause to arrest a third party unless the suspect cooperates is not coercion. An objectively unwarranted threat to arrest or hold a suspect's paramour, spouse, or relative without probable cause could be the sort of overbearing conduct that amounts to coercion.**

\* \* \* \*

*U.S. v. Goodwin*, 449 F.3d 766, May 24, 2006

**Fitting a drug courier profile based on a last minute cash purchase of a train ticket, combined with a response to questioning that appears to be a fabrication, amounts to reasonable suspicion.**

**More than reasonable suspicion may be required when the stop is more oppressive than a typical *Terry* stop.**

\* \* \* \*

*Shell v. U.S.*, 448 F.3d 951, May 23, 2006

**It is permissible to plant a listening device on an unwitting person pursuant to a Title III intercept order without that person's consent.**

\* \* \* \*

### **9<sup>th</sup> CIRCUIT**

*U.S. v. Rios*, 449 F.3d 1009, June 2, 2006

**To convict someone of possession of a firearm in furtherance of a drug trafficking crime (18 U.S.C. § 924(c)(1)(a)), the government must prove something more than that the drug dealer happened to have a gun in his house. Neither a weapon's fitness for crime, nor expert testimony that drug dealers habitually possess weapons to protect their assets and intimidate competitors, is sufficient to establish possession in furtherance of drug trafficking.**

*U.S. v. Thomas*, 2006 U.S. App. LEXIS 12178, May 18, 2006

**The driver of a rental car, who is not listed on the rental agreement but who has the permission of the authorized renter to drive the car, has standing to challenge a search of the vehicle.**

\* \* \* \*

**D.C. CIRCUIT**

*U.S. v. Powell*, 2006 U.S. App. LEXIS 15763, June 23, 2006

**A search of the passenger compartment of a car incident to a lawful arrest must occur *after* the arrest has taken place and not before.**