Department of Homeland Security
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Legal 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 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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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**

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SELF INCRIMINATION ROADMAP

A step by step guide to

The 5th Amendment – *Miranda* – the 6th Amendment

HOT ISSUES

Supreme Court cases and emergent issues

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- **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**

NEW

- **Passengers and Traffic Stops – *Brendlin v. California***

Coming Soon

- **FISA – An Overview for Officers and Agents**

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Tracking Bad Guys
Legal Considerations in Using GPS

Keith Hodges, Senior Legal Instructor here at FLETC, wrote this article that appears in the July Issue of the *FBI Law Enforcement Bulletin*.

Click HERE for the article on the LGD website.

Click HERE for the article in the FBI Bulletin.

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UNITED STATES SUPREME COURT
CASE SUMMARY

Brendlin v. California, 127 S. Ct. 2400, June 18, 2007

When police stop a vehicle, the driver and passengers are effectively seized, giving the passenger a right to challenge the legality of the stop and the admissibility of evidence discovered as "fruit of the poisonous tree." No passenger in such a situation would feel free to leave, even after the vehicle came to a full stop. For safety reasons alone, officers would be unlikely to allow the passenger just to walk away even if the offense was a mere traffic violation.

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

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CIRCUIT COURTS OF APPEALS
CASE SUMMARIES

3rd CIRCUIT

U.S. v. Vitillo, 2007 U.S. App. LEXIS 15098, June 25, 2007

An independent contractor with managerial responsibilities may be an "agent" under 18 U.S.C. § 666. Section 666 prohibits "an agent" of a local government agency that receives more than $10,000 in federal funds from stealing from that agency property valued at more than $5,000. The term "agent" is defined as "a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative." An "agent" does not have to necessarily controls federal funds. An individual can affect agency funds despite a lack of power to authorize their direct disbursement. An "agent" is merely a person with authority to act on behalf of the organization receiving federal funds, and can include an "employee," "officer," "manager" or "representative" of that entity. Section 666(d)(1) does not by definition exclude an independent contractor who acts on behalf of a § 666(b) entity as a manager or representative of that entity.

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

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6th CIRCUIT

Warshak v. U.S., 2007 U.S. App. LEXIS 14297, June 18, 2007

As 18 USC § 2703(d) specifically permits, officers obtained a court order to obtain a target's emails that had been in storage with the Internet Service provider for more than 180 days. The court order also excused, pursuant to 18 USC § 2705, having to give the target prior notice before seizing the emails. Though the statute required only a showing that the emails were "relevant and material to an ongoing criminal investigation," the 6th Circuit upheld a District Court injunction preventing agents from viewing the emails because there was no showing of probable cause or prior notice giving the target an opportunity to challenge the order.

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

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9th CIRCUIT

U.S. v. Diaz, 2007 U.S. App. LEXIS 14837 , June 22, 2007

An arrest warrant gives government agents limited authority to enter a suspect's home to arrest him if they have "reason to believe" he is inside. The phrase "reason to believe" is interchangeable with and conceptually identical to the phrases "reasonable belief" and "reasonable grounds for believing." Use the same standard of reasonableness inherent in probable cause to decide whether there is reason to believe a suspect is at a particular place. Probable cause means a "fair probability" based on the totality of circumstances. A common-sense analysis of the "totality of the circumstances" is therefore crucial in deciding whether an officer has a reason to believe a suspect is home.

Reasonable belief can exist even when police have no specific evidence that the suspect is present at that particular time. Direct evidence is not necessary. People draw "reasonable" conclusions all the time without direct evidence. Likewise, a probable cause determination can be supported entirely by circumstantial evidence. If juries can find someone guilty beyond a reasonable doubt without direct evidence, and magistrates can issue search warrants without direct evidence, police surely can reasonably believe someone is home without direct evidence.

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

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11th CIRCUIT

U.S. v. Virden, 2007 U.S. App. LEXIS 13706, June 12, 2007

The factors used to determine whether a *Terry* stop has matured into an arrest are also useful in evaluating whether a seizure of property required probable cause. The non-exclusive factors are: [1] the law enforcement purposes served by the detention, [2] the diligence with which the police pursue the investigation, [3] the scope and intrusiveness of the detention, and [4] the duration of the detention. Moving a vehicle to a new location for the purposes of investigation constitutes a seizure for which probable cause was required.

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

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DC CIRCUIT

U.S. v. Proctor, 2007 U.S. App. LEXIS 14359, June 19, 2007

Vehicle impoundment conducted without a search warrant is *per se* unreasonable under the Fourth Amendment subject only to a few specifically established and well delineated

exceptions. One exception is the "community caretaking" exception. The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.

If a standard impoundment procedure exists, a police officer's failure to adhere to it is unreasonable and violates the Fourth Amendment. The Fourth Amendment requires that an inventory search be reasonable and, if a standard procedure for conducting an inventory search is in effect, it must be followed. If the seizure of the car was unconstitutional, the materials later recovered during the inventory search are excluded.

The Supreme Court has only suggested that a reasonable, standard police procedure must govern the decision to impound. The 7th and 8th Circuits have held that the decision to impound must be made pursuant to a standard procedure. The 1st Circuit does not require that an impoundment be governed by standard police procedure.

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

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