

THE FEDERAL LAW ENFORCEMENT – INFORMER –

A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR 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 Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals 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 Centers. *The Informer* is researched and written by members of the Legal Division. You can join *The Informer* Mailing List, and have *The Informer* delivered directly to you via e-mail by clicking on the link below.

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The Informer – June 2025

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FLETC Informer Webinar Schedule: July - August 2025

1. Officer Liability: Supervisor's Edition (Episode 6, Important Free Speech Considerations) (1-hour)

Presented by Mary Mara and Samuel A. Lochridge, Attorney Advisors / Senior Instructors, Federal Law Enforcement Training Centers, Glynco, Georgia.

In the final part of this six-part series covering the liability of supervision, we will explore how the First Amendment can affect the ability to exercise free speech in the workplace. Please join Attorney Advisors Sam Lochridge and Mary Mara as they continue this journey in Episode 6: Important Free Speech Considerations.

Tuesday, July 1, 2025: 3:00 p.m. Eastern / 2:00 p.m. Central / 1:00 p.m. Mountain / 12:00 p.m. Pacific

To join: [Officer Liability: Supervisor's Edition \(Episode 6, Important Free Speech Considerations\)](#)



2. Indian Country Criminal Jurisdiction (1-hour)

Presented by Robert Duncan, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

There are three sovereign entities in the United States – federal, state, and tribal. Tribal governments are unique among the three, as they possess a separate sovereignty that has never been formally incorporated into the American constitutional framework. The discussion of “Indian” and “non-Indian” concepts, as matters of political recognition, is distinguishable from racial, genetic, cultural, or ethnic identity and are especially important in light of public interest, as well as recent Supreme Court cases involving Indian Country Criminal Jurisdiction. This webinar will discuss the history behind the recognition through political status – especially in criminal jurisdiction – and why concepts unique to Indian law exist in a historical context.

Thursday, July 3, 2025: 5:30 p.m. Eastern / 4:30 p.m. Central / 3:30 p.m. Mountain / 2:30 p.m. Pacific

To join: [Indian Country Criminal Jurisdiction](#)



3. Make it Stick: DWI Vehicle Searches (1-hour)

Presented by Rachel Smith, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

Successful DWI cases are often supported by lawful vehicle searches during the DWI investigation. Learn the constitutional ins and outs of vehicle searches during a DWI case and how to successfully articulate facts supporting the search. This knowledge will inoculate you against defenses and put your case on the road to success.

Wednesday, July 9, 2025: 12:00 p.m. Eastern / 11:00 a.m. Central / 10:00 a.m. Mountain / 9:00 a.m. Pacific

To join: [Make it Stick: DWI Vehicle Searches](#)



4. Garrity - Kalkines (1-hour)

Presented by James Stack, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Charleston, South Carolina.

We will present a refresher on the requirement to protect a government employee's Fifth Amendment rights during questioning by law enforcement officers or other government actors. The webinar will review the purpose of *Miranda* and then compare the options of *Kalkines* with those of *Garrity* to achieve the same end. While applicable in many government situations, it is of particular importance in supervisor and OIG investigations.

Thursday, July 10, 2025: 2:30 p.m. Eastern / 1:30 p.m. Central / 12:30 p.m. Mountain / 11:30 a.m. Pacific

To join: [Garrity - Kalkines](#)



5. Alcohol Plus Anything Equals Everything: Unraveling the Complexity of Combination Cases (1-hour)

Presented by Rachel Smith, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico, and Dr. Joseph Jones, North Louisiana Criminalistics Laboratory, Shreveport, Louisiana.

Alcohol is one of the most widely used—and frequently misunderstood—substances, particularly when it comes to impairment and its interactions with other drugs. This presentation takes a deep dive into the complexities of alcohol's effects on the body and brain, exploring its role as a sedative-hypnotic and the exponential impact it has when combined with other substances. Through compelling case studies, scientific insights, and courtroom applications, this session highlights the challenges of interpreting alcohol-combination impairment.

Wednesday, July 16, 2025: 12:00 p.m. Eastern / 11:00 a.m. Central / 10:00 a.m. Mountain / 9:00 a.m. Pacific

To join: [Alcohol Plus Anything Equals Everything: Unraveling the Complexity of Combination Cases](#)



6. The Four Biggest Myths in Drug-Impaired Driving (1-hour)

Presented by Rachel Smith, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico, and Dr. Joseph Jones, North Louisiana Criminalistics Laboratory, Shreveport, Louisiana.

This session will dispel the four most common myths about impaired driving, addressing crucial topics such as crystal meth use, cannabis impairment while driving, the importance of toxicologist testimony, and the complexities of poly-drug use.

Wednesday, July 30, 2025: 12:00 p.m. Eastern / 11:00 a.m. Central / 10:00 a.m. Mountain / 9:00 a.m. Pacific

To join: [The Four Biggest Myths in Drug-Impaired Driving](#)



7. SFSTs, Driving and the Law – How to Effectively Tie them Together (1-hour)

Presented by Rachel Smith, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico, and Ashley Schluck, Wyoming Traffic Safety Resource Prosecutor, Laramie, Wyoming.

DUI cases are challenged by painting the SFSTs as confusing and by diminishing or excusing what the officer is observing as not related to driving. To counter this, it is essential to effectively explain to the jury the purpose of these tests and most importantly how they relate to driving skills. The presenters will break down the various components of the SFSTs into simple terms and real-world analogies that are applicable to driving, and most importantly how to testify in a way that will allow the jury to make the most out of the officer's observations. The speakers will also share how to effectively incorporate the law during testimony on SFSTs in an easy to understand manner to help the jury understand the association between SFSTs and an individual's ability to drive safely.

Wednesday, August 13, 2025: 12:00 p.m. Eastern / 11:00 a.m. Central / 10:00 a.m. Mountain / 9:00 a.m. Pacific

To join: [SFSTs, Driving and the Law – How to Effectively Tie them Together](#)



8. Fifth Amendment Considerations in a DWI Case (1-hour)

Presented by Rachel Smith, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

Learn the constitutional parameters for Fifth Amendment rights, when a suspect needs to be Mirandized, and how these principles apply in common impaired-driving scenarios.

Wednesday, August 20, 2025: 12:00 p.m. Eastern / 11:00 a.m. Central / 10:00 a.m. Mountain / 9:00 a.m. Pacific

To join: [Fifth Amendment Considerations in a DWI Case](#)



CASE SUMMARIES

Circuit Courts of Appeals

Second Circuit

United States v. Concepcion, No. 23-6337 (2nd Cir. 2025)

Martin Concepcion met Camilla Rodriguez in October 2019 in the Bronx. Camilla was a sixteen-year-old runaway but, originally, she told Concepcion she was eighteen. Concepcion invited Camilla to join him and his two roommates at a liquor store and then go back to their apartment. When at the apartment, Concepcion and one of the roommates served the young girl drug-laced alcohol, brought her into the bathroom, and then filmed themselves having sex with her. Concepcion then told Camilla she was “part of the group now.”

Concepcion and his roommates then decided that Camilla was a way for the men to make money. That same night, the men set out to prostitute Camilla by posting an advertisement, with explicit photos, to a website called CityXGuide.com and included prices that were drafted by Concepcion. Interested parties messaged the men directly and four clients were lined up by the next night.

For three weeks, Camilla was prostituted nightly. The men dressed her in lingerie, taught her to screen for police, and took cash from her after each session. In total, more than a thousand clients were solicited. Additionally, the men waited in the apartment with a gun while Camilla was in the bedroom with clients. The men threatened Camilla, and Concepcion would strike Camilla in the face if she gave him “attitude.” Camilla was prostituted with another female who told the men that Camilla “looked young.” Concepcion and one of the roommates asked Camilla again about her age and Camilla then admitted she was only sixteen. The sex-trafficking operation continued. On October 21, 2019, Concepcion and one of the roommates filmed a live Instagram video to flaunt the cash earned in the operation. Then, while playing with a firearm, the roommate accidentally shot Concepcion in the hand. Concepcion left the apartment and never returned, seemingly ending his formal involvement in the operation. However, the roommates continued the operation and still had some contact with Concepcion.

Camilla attempted to escape in November of 2019, but was located by one of the roommates, forced back to the apartment, beaten, and threatened to be shot. For several days, she was locked in the roommate’s bedroom and forced to urinate in cups. Then, on November 7, 2019, law enforcement agents located Camilla swollen and bruised. The next day, the roommate messaged Concepcion to “lay low” because “feds ran up in my crib[.]...for that lil bitch.” On November 9, 2019, the roommates were arrested, but Concepcion remained a fugitive for eleven months until he was arrested in October 2020.

Concepcion was subsequently charged with sex-trafficking conspiracy (18 U.S.C. § 1594(c)), sex-trafficking a minor (18 U.S.C. § 1591), and conspiracy to use interstate commerce to promote unlawful activity (18 U.S.C. § 371). At the charge conference, Concepcion objected to the language in Count Two stating that the knowledge element of 18 U.S.C. § 1591(c) could be satisfied by actual knowledge that the victim was underage, “reckless disregard” of that fact, or a

“reasonable opportunity to observe” the victim. He argued that the phrase “reasonable opportunity to observe” was unconstitutionally vague because “...it’s left to a multitude of interpretations that really affect . . . due process rights.” Concepcion’s objection was overruled.

In August 2022, a jury convicted Concepcion of all three offenses and, on appeal, Concepcion raised two arguments: 1) 18 U.S.C. § 1591(c) is unconstitutionally vague; and 2) the jury should have received a special verdict form.

First, the court looked to the statutory framework of the Trafficking Victims Protection Act of 2000 and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. This review went straight to the reasons behind the changes in the knowledge element of the statute, which was to “enhance measures to combat trafficking in persons.” The court relied on Circuit precedent, citing [United States v. Robinson](#), which provided that “proof that the defendant had a reasonable opportunity to observe the victim may substitute for proof that the defendant knew the victim’s underage status.”

Using this reasoning, the court went through the contact between Camilla and Concepcion described above and found that the contact supplied a more than reasonable opportunity to observe Camilla and satisfy the element. The court found Concepcion’s second claim meritless, finding that the district court did not err in its use of a general verdict form. As such, the Court of Appeals rejected both arguments and affirmed the judgment of the district court.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca2/23-6337/23-6337-2025-06-04.pdf>

Third Circuit

United States v. Williams, No. 23-1494 (3rd Cir. 2025)

A police officer observed a motor vehicle operated by Edwin Williams traveling on the roadway with excessive window tint. This police officer had previously encountered Williams, knew his license to be suspended, and had been involved in a dangerous vehicle pursuit with him. The officer was also aware that Williams had a history of weapons and drug offenses.

Armed with this information, the officer conducted a traffic stop on Williams’ vehicle. During the officer’s approach of the passenger side, it was observed that Williams put what appeared to be a clear plastic bag with a white powder-like substance into his right pants pocket. The officer also testified that he had observed Williams reaching down towards the driver’s side door. Despite orders from the officer to keep his hands on the steering wheel, Williams continued to defy those orders, leading the officer to believe he was attempting to conceal or reach for a weapon.

Once backup officers arrived, Williams was removed from the vehicle and placed in handcuffs to be frisked for weapons, based upon the officer’s knowledge of past criminal history and his conduct following the stop. It was noted that during this handcuffing process that Williams continued to reach towards his waistband area, though he was foiled by the officers.

During the frisk, the officer detected an object in the left pants pocket which he determined was not a weapon. As he frisked the front right pants area, he felt a small amount of a powder-like substance, which the officer associated with narcotics, in the small pocket (often called the “change pocket”) located above the front right pocket. The officer removed the bag and continued the frisk, during which time he also located a bag of marijuana in the front right pants pocket. A search incident to arrest recovered heroin from Williams’s crotch area and a large amount of cash. He subsequently pleaded guilty but appealed the denial of the motion to suppress the evidence recovered from him.

The Third Circuit Court of Appeals examined the case through the lens of [Terry v. Ohio](#) when determining the validity of the frisk. It was undisputed that the officer had probable cause to stop the vehicle, and further undisputed that there were facts sufficient to suspect Williams was presently armed and dangerous. Williams did, however, contest that the frisk of his change pocket exceeded the scope of the frisk.

The court reiterated that the officer testified a small knife could be hidden in that change pocket. The court found that this pocket was within the scope and that based upon the officer’s substantial experience, taken together with the other facts known to the officer that it was reasonable for him to believe it was cocaine. The court cited to [Minnesota v. Dickerson](#), in support of this finding, holding that an officer may seize evidence in the course of frisk where there is probable cause to believe the item is contraband, and where the officer is within the scope of a normal frisk. Where it is readily apparent by an object’s contour or mass that the item is contraband, it is subject to seizure under the “plain-feel doctrine” and, as a result, the officer validly seized the drugs in the defendant’s pants pocket in this case.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca3/23-1494/23-1494-2025-04-23.pdf>

Fourth Circuit

Balogh v. Virginia, No. 23-1581 (4th Cir. 2024)

In June 2017, the City of Charlottesville granted Kessler a permit to hold a rally in Emancipation Park. The rally attracted counter-protesters, many of whom were affiliated with Antifa (which had “violently clashed” at earlier protests). Local law enforcement received reports around the preparatory efforts by the protesters and counter-protesters to engage in and/or repel violence by bringing actual and makeshift weapons. Because of these threats of violence, Charlottesville revoked Kessler’s permit days before the scheduled rally. Kessler sued the city, seeking to enjoin its cancellation of his permit. The district court granted an injunction, allowing the planned rally at Emancipation Park to proceed.

As expected, the gathering sparked violence. Counter-protesters blocked the protesters from entering the park, which prompted the protesters to push back with shields. Brawls broke out. Both protesters and counter-protesters pleaded with law enforcement to protect them. The police

chief declared an unlawful assembly and ordered everyone to disperse. The violence continued, leading to Balogh's alleged assault by counter-protesters and law enforcement.

Balogh sued under 42 U.S.C. § 1983, broadly alleging that the City of Charlottesville (and other law enforcement personnel who were, ultimately, dismissed from the suit) violated Balogh's First (and Fourteenth) Amendment rights by declaring the assembly to be unlawful and then failing to intervene.

According to the court, the First Amendment merely guarantees that the state will not suppress one's speech. It does not guarantee that the state will protect individuals when private parties seek to suppress it. The court further dismissed the argument that the state's actions amounted to an impermissible "heckler's veto" (i.e., when the state, in fear of retaliatory protests, denies the speaker's right to expression) by noting this "veto" is an affront to a "peaceful" speaker when the state cuts off only one party. Conversely, in this case, the court did not find the protesters to be "peaceful" nor the dispersal order to be one-sided.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca4/23-1581/23-1581-2024-10-23.pdf>

United States v. Ray, No. 24-4024 (4th Cir. 2025)

Joshua Lee Ray served in the United States Navy. The Naval Criminal Investigative Service (NCIS) opened an investigation on Ray after receiving information that he had sexually assaulted an eleven-year-old autistic boy. After interviewing the boy, an NCIS special agent prepared a command authorization for a search and seizure (CASS), the military equivalent to a search warrant. The CASS only authorized NCIS to search Ray's person and to seize his cell phone. The agent also drafted an affidavit in support of the CASS, which included a narrative document outlining the factual basis for probable cause (Attachment A). Although Attachment A requested permission to search Ray's cell phone, the CASS itself did not authorize a search of the phone, nor did it incorporate Attachment A by reference.

After Ray's commanding officer signed the CASS, the agent searched Ray and seized his cell phone. Afterward, the agent sent the phone to a Naval facility for processing and ordered a digital forensic examination of the phone. The government found evidence of child sexual abuse material on the phone and charged Ray with several criminal offenses.

Ray filed a motion to suppress all evidence seized from the search of his cell phone pursuant to the CASS. Ray argued that the plain language in the CASS did not authorize NCIS to search his phone. The district court agreed with Ray and granted the motion. The government appealed.

On appeal, the government conceded the CASS did not authorize NCIS to search Ray's phone, the CASS did not properly incorporate the agent's affidavit, and Ray's commanding officer did not verbally authorize a search of Ray's phone. Instead, the government argued that the good faith exception to the exclusionary rule applied in this instance.

The Fourth Amendment exclusionary rule provides that evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the person who was the subject of the illegal search and seizure. However, the good faith exception to the exclusionary

rule allows courts to admit evidence obtained in violation of the Fourth Amendment when officers reasonably rely on a defective search warrant.

The Fourth Circuit Court of Appeals noted that the CASS was unambiguous in its scope, as it plainly authorized the search of Ray, the seizure of his phone, and nothing more. In addition, the CASS did not incorporate the affidavit that requested authorization to search Ray's phone, nor had the agent received verbal authorization from the commanding officer to search Ray's phone.

Under these circumstances, the court concluded that the good faith exception did not apply because the CASS was not deficient but, instead, law enforcement was. The court added that it was not reasonable for NCIS to search Ray's phone in violation of the express terms of the CASS, especially when the agent requesting the search of Ray's phone was the one who drafted the CASS. The court added that "a lack of competence in this instance cannot be converted into good faith;" therefore, the good faith exception did not apply.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca4/24-4024/24-4024-2025-06-03.pdf>

Eighth Circuit

United States v. McGhee, No. 23-3674 (8th Cir. 2025)

Police officers responded to Jaylyn McGhee's house in response to shots-fired 911 calls. When officers arrived, they saw eight shell casings, a bag of suspected narcotics, which was later identified as heroin and fentanyl, and a loose \$5 and \$1 bill on the street outside McGhee's house.

As some of the officers walked up to the front door of McGhee's house, another officer stood in the front yard outside a chain link fence separating the front and side yards and watched the side door for perimeter security. Just below the side door were three steps that led down to an elevated wooden deck, which was a step off of ground level. The fence gate had been left open and the side yard, deck, stairs, and side door were all visible through and over the fence.

From his position, the officer saw several spots of blood spatter and an unknown white or brown powdery substance on the deck that led to the side door. The officer walked through the gate and saw the blood spatter extended up the stairs, onto the door and its handle, and along the side of the house. In addition, the officer saw a powdery substance that appeared to be consistent with illegal narcotics and was like the substance found earlier in the street. The officer also learned that another officer entered the side yard after he had been in there, had looked through a window, and saw a large amount of blood spatter in the kitchen.

A short time later, the officer spoke to a detective, who was at the hospital with McGhee. According to McGhee, he was at the hospital with his son, who had been shot outside the house and then rushed to the hospital. McGhee denied going inside his house after the shooting.

The officer then sought a warrant to search McGhee's home. In the warrant, the officer described the blood spatter and powdery substance he had seen on the deck, along with the blood spatter on the door, the door handle, and side of the house, as well as the blood observed inside the house that was visible through a window. A judge issued the search warrant and, upon its execution, the

officers found cocaine, heroin, fentanyl, and two firearms. The government charged McGhee with drug and firearms offenses.

McGhee filed a motion to suppress the evidence seized from his house. McGhee argued that the search warrant application was based on information that the officers saw after they trespassed onto the curtilage of his home and looked through a window in violation of the Fourth Amendment. The district court disagreed. Upon conviction, McGhee appealed.

Determining whether an area is part of the curtilage of an individual's residence requires consideration of factors that influence whether a person can reasonably expect that the area should be treated as part of the home. Those factors include: 1) the proximity of the area claimed to be curtilage and the home; 2) whether the area is included within an enclosure surrounding the home; 3) the nature of the uses to which the area is put; and 4) the steps taken by the resident to protect that area from observation by people passing by.

First, although the front yard was close in proximity to the home, it was not protected by a fence or any other enclosure. In addition, no efforts were taken to shield the yard from public observation or entry, unlike other parts of McGhee's yard. Furthermore, there was a worn path through the grass from the front door to the chain-link fence separating the front yard from the side yard. Based on these factors, the court concluded that the front yard was not within the curtilage of McGhee's home. As a result, the officer's entry into the front yard did not violate the Fourth Amendment.

Next, the court held that McGhee's side yard was part of the home's curtilage. This area was directly adjacent to McGhee's home, was enclosed by a fence, contained items like a grill that suggested it was for family use, and was partially obstructed from further view by trees and a back fence. Although the blood spatter and powdery substance were in the side yard, which is curtilage, the officer first saw it when he was standing in the front yard, which was not part of the home's curtilage. Even within the curtilage of a home, there is no reasonable expectation of privacy with respect to police observation of what is plainly visible from a vantage point where an officer has a right to be. As such, the court found that the officer's observations from the front yard did not violate the Fourth Amendment.

Finally, the court held that the officers' entry into the side yard following the observation of the blood spatter and powdery substance was then justified by the exigent circumstances exception to the Fourth Amendment's warrant requirement. When officers arrived on scene in response to a shots-fired call and found eight shell casings at the front of the house, they had reason to believe there was at least one victim. In addition, the officer testified that the "ultimate reason" that they followed the blood trail was to see if there were any victims who could have run into the house or the backyard. Under these circumstances, the court concluded it was reasonable for the officers to believe that a person was in need of immediate aid, therefore triggering the exigent circumstances exception to the Fourth Amendment.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/23-3674/23-3674-2025-02-28.pdf>
