

Sentinel

NEWS FROM THE COURTHOUSE

SENTENCING GUIDELINES TRAINING

Basic Guidelines Application
U.S. Sentencing Commission Trainers

WHEN: WEDNESDAY, MARCH 12, 2003
8:30 AM TO 4:30 PM

WHERE: BIRMINGHAM BAR ASSOCIATION
2021 2ND AVENUE NORTH
BIRMINGHAM, AL 35203

WHO: ATTORNEYS PRACTICING
CRIMINAL DEFENSE IN FEDERAL
COURT, NORTHERN DISTRICT OF
ALABAMA

CLE: 6.5 HOURS

COST: \$31 TO COVER COST OF
SENTENCING GUIDELINES
MANUAL
(coffee and light breakfast provided)

REGISTRATION: BASIC GUIDELINES
APPLICATION

NAME _____

EMAIL _____

PHONE _____

Return to Deputy Chief U.S. Probation Officer
Cynthia McGough, Room 200, Hugo Black
Federal Courthouse, 1729 5th Avenue North,
Birmingham, AL 35203, with your \$31 check
payable to Clerk, U.S. District Court. Your
cancelled check will be proof of registration.

DEADLINE FOR REGISTRATION IS
FEBRUARY 21, 2003.

THE OFFICIAL NEWSLETTER OF THE GREATER BIRMINGHAM CRIMINAL DEFENSE LAWYERS' ASSOCIATION

In Memory of David Cromwell Johnson

The legal community has lost a great attorney. I had the honor of attending the funeral of David Cromwell Johnson on January 6, 2003. David Cromwell Johnson died suddenly of an apparent heart attack on January 2, 2003. He was sixty (60) years old. As one would expect, there was a huge showing of love, loss and concern for such a flamboyant attorney. David Cromwell Johnson was known for his trial expertise and his colorful antics in the courtroom. He was a member of this organization and an asset to the defense bar. Tommy Spina, recent past president, was one of the distinguished speakers at David's funeral. His words were thought provoking and sincere. For those individuals who had an opportunity to attend, it was a memorable experience. David Cromwell Johnson will be remembered and missed for a long time.

VIRGINIA MEIGS, PRESIDENT

NEWS FROM THE PRESIDENT

Happy New Year!

There have been no Judges' Meetings for the past few months.

Congratulations to Laura Petro for her appointment to the Circuit Bench! I know she will do a great job.

Thanks to all the participants who helped with the CLE on Criminal Defense in November. Bill Cole, Richard Thigpen, and John Robbins did a great job. The Christmas Social presented by the Greater Birmingham Criminal Defense Lawyers and the Birmingham District Attorney's office was great. Thanks to John Robbins for his help in getting things done.

Please consider going to the CLE put on by the Alabama Criminal Defense Lawyers Association on Friday, January 31, 2003, and Saturday, February 1, 2003, at Embassy Suites Hotel, in Birmingham, AL. It is "Loosening the Death Belt VII - Tightening the Defense-One Life at a Time." For those of you who do Capital Murder, this is an invaluable seminar and will provide 12 MCLE Credit Hours.

CERTIFICATES

If you are a new member and have not received a certificate from the GBCDLA, please contact me at (205) 930-9800 and leave your name. I will try to get you a certificate in the next few months.

GBCDLA BOARD MEMBERS

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RECENT FAMILY COURT RULING ON TERMINATION OF PARENTAL RIGHTS (Submitted by Mark Pratt, Esq.)

The Alabama Court of Civil Appeals recently clarified the use of hearsay in termination of parental rights cases. D.H.R. may no longer introduce hearsay statements by including them in progress reports. In Y.M. vs Jefferson County Department of Human Resources, the Court held that hearsay statements in D.H.R. reports and materials are not subject to the dispositional hearing exception to hearsay in Family Court. In other words, D.H.R. may not introduce hearsay statements in a termination to parental rights case unless some specific exception applies. It is improper for the Trial Court to consider this information as grounds for reversal. The basis for this ruling is that a T.P.R. trial is not dispositional, but rather an adjudication. In order for the hearsay to be introduced, D.H.R. must now produce the party making the statements and subject them to cross-examination.

The logical question posed by this ruling is now whether T.P.R. trials must be bifurcated from the dispositional hearing and in front of a different trier of fact. Otherwise, the trier of fact will be aware of the hearsay from the reviews prior to the dispositional hearing and its exclusion will be meaningless.

SEARCH & SEIZURE - FEDERAL UPDATE - 2002:

The following are summaries of all significant Federal Search and Seizure cases handed down from all US Circuit Courts of Appeal and/or the US Supreme Court during the entire year of 2002, including links to each case. Bill C. Messick, Mobile, Alabama. Email: messick9@bellsouth.net

A. U.S. SUPREME COURT

1. **NEAR THE BORDER, US v. Arvizu**, No. 00-1519 (U.S.S.C. January 15, 2002) United States v. Arvizu, 122 S.Ct. 744 (2002). Under the totality of the circumstances test for investigatory stops, an officer may rely on combination of otherwise innocent observations to briefly pull over a suspect vehicle.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/us/000/00-1519.html>

2. **BUS SEARCH VOLUNTARY, US v. Drayton** (U.S.S.C. June 17, 2002. (No. 01-631). The Fourth Amendment does not require police officers to advise bus passengers of their right not to cooperate and to refuse consent to searches.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/us/000/01631.html> OR
<http://supct.law.cornell.edu/supct/html/01-631.ZS.html>

3. STUDENTS HAVE NO RIGHTS. Board of Education v. Earls. No. 01-332 (June 27, 2002): A school district policy which requires all middle and high school students to consent to urinalysis testing for drugs in order to participate in any extracurricular activity was a reasonable means of furthering the district's important interest in preventing and deterring drug use, and did not violate the Fourth Amendment.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/us/000/01332.html>

<http://www.ussscplplus.com/current/cases/PDF/9920080.pdf> OR

<http://supct.law.cornell.edu/supct/html/01-332.ZS.html>

4. WARRANTLESS HOME ENTRY WITHOUT EXIGENT CIRCUMSTANCES VIOLATES 4th AMENDMENT. Kirk v. Louisiana. USSC - Washington (June 24, 2002 - 01-8419). Based upon an anonymous citizen complaint that drug sales were occurring at D's apartment, Louisiana police officers kept D's apartment under surveillance, observing what the police suspected were several drug purchases. After allowing several suspected drug buyers to leave, the officers stopped one of the individuals leaving D's apartment and then, without a warrant, entered D's apartment, arrested D, and found contraband in plain view. The trial court denied D's suppression motion and a state appellate court affirmed. Held: Reversed. The arresting officers testified at the suppression hearing that they feared that the evidence would be destroyed if they waited to obtain a warrant. However, the Louisiana appellate court did not determine that such exigent circumstances were present, but rather, held that "the defendant's argument that there were no exigent circumstances to justify the warrantless entry of the apartment was irrelevant." As **Payton v. New York**, 445 US 573, 590 stated, "absent exigent circumstances," "the entrance to the house ... may not reasonably be crossed without a warrant." The ruling of the Court of Appeals to the contrary and consequent failure to ascertain whether there were exigent circumstances, violated Payton.

To read the full text of this opinion, go to:

<http://supct.law.cornell.edu/supct/html/01-8419.ZPC.html>

B. 1st CIRCUIT.

1. HOW MANY COPS DOES IT TAKE TO CREATE REASONABLE SUSPICION? US v. Cook (01/28/02 - No. 01-1405): Even if the police officer who initially stopped the defendant did not personally witness any behavior which suggested the defendant had recently participated in an attempted drug deal, given the collective knowledge of all of the officers who participated in the stop, there were ample grounds to briefly question the defendant about an attempted drug transaction.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/1st/01-1405.html>

2. MIRANDA & DERIVATIVE EVIDENCE. US v. FAULKINGHAM (07/09/02 - No. 01-2276) While inculpatory statements made to drug enforcement agents, without prior Miranda warnings, should be suppressed, derivative evidence (testimony by a co-conspirator and the drugs themselves) obtained via those statements need not be suppressed under the circumstances

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/1st/012276.html>

3. WIRETAP - NECESSITY SHOWN. US v. LOPEZ (08/20/02 - No. 01-1390) Incriminating communications intercepted by the government were properly admitted where the government's wiretap application satisfied the "necessity requirement," and failure to disclose use of civilian monitors did not provide a valid basis for suppression.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/1st/011390.html>

4. MOM CONSENTS TO A SEARCH OF SON'S BEDROOM. US v. MELENDEZ (08/23/02 - No. 01-1733) An objectively reasonable person would believe that defendant's mother consented to a search of his bedroom, and that a search of a stereo speaker was within the scope of that consent.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/1st/011733.html>

C. 2nd CIRCUIT

1. WHOSE SUITCASE IS IT ANYWAY? US v. Haqq (01/17/02 - No. 01-1029) A suspect does not have a reasonable expectation of privacy in a suitcase that belongs to another person in a home that he shares with the other person.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/2nd/011029.html>

2. PROBATIONERS HAVE NO RIGHTS. US v. REYES (03/08/02 - No. 01-1099, 01-1110) A US probation officer conducting a court-imposed home visit of a convicted person serving a term of federal supervised release is not subject to the probable cause requirements of the Fourth Amendment that would ordinarily apply to a law enforcement officer executing a search warrant for an individual's home, or subject to the reasonable suspicion standard applicable to probation searches.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/2nd/01-1099.html>

3. BRIEFCASE SEIZED AT AIRPORT. US v. \$557,933.89 (03/27/02 - No. 00-6261): Where initial search of claimant's briefcase by airport security personnel comported with the Fourth Amendment, and detention of claimant's briefcase could be justified by reasonable suspicion alone, money orders found in plain view inside briefcase, and other evidence derived from seizure of the briefcase, properly admitted; with no basis for suppression, the evidence demonstrated probable cause for forfeiture and supported jury verdict.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/2nd/006261.html>

4. KEEP YOUR HANDS OUTTA MY POCKET. US v. CASADO (09/12/02 - No. 01-1488) A police officer's reach into defendant's pocket, and removal of its contents, was excessive in scope under *Terry v. Ohio*, 392 U.S. 1, and was an unreasonable weapons search, when a less intrusive pat down search would have sufficed.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/2nd/011488.html>

D. 3rd CIRCUIT

1. INFORMANT GIVES BASIS FOR TERRY STOP. US v. NELSON (03/26/02 - No. 01-1177). Where initial tip regarding crime came from informant who had a prior relationship with the police and indicated specific "inside" knowledge, the officer who received tip was "entitled to make an assessment of the situation in light of his specialized training and familiarity" with drug trafficking and recent activity in the area, and officers who received the information and observed a vehicle matching description, were reasonable in making *Terry* stop.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/3rd/011177.html>

2. UNLUCKY DAY. US v. BURTON (04/29/02 - No. 00-2789): Defendant's arrest was justified by probable cause, and even if it was not, the subsequent warrantless search of his vehicle was independently justified under either the automobile exception or the Place exception to the warrant requirement.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/3rd/002789.html>

3. US v. COWARD (07/03/02 - No. 01-2547): Where the government failed to present essential evidence of reasonable suspicion to justify the stop of defendant's vehicle, and the burden of proof was improperly shifted to the defendant, the district court must weigh the government's arguments and evidence in favor of re-opening a suppression hearing. (*Cop got a radio call to stop a green Subaru - w/o explanation as to why*).

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/3rd/012547p.pdf>

4. IMMIGRATION CHECKPOINT PATDOWN IS OK. BRADLEY v. US (07/25/02 - No. 01-4103). A pat down at an airport immigration checkpoint was a "routine" border search requiring no level of suspicion whatsoever under the Fourth Amendment, and no discriminatory effect was shown to support an equal protection claim.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/3rd/014103p.pdf>

5. HOUSE SEARCH ILLEGAL. US v. MYERS (10/11/02 - 3rd Circuit - No. 01-3016) District court erred in denying a motion to suppress physical evidence where, though a police officer's initial entry into a residence was lawful, he had no probable cause to arrest defendant, and an ensuing search was not shown to be incident to any lawful arrest.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/3rd/013016p.pdf>

E. 4th CIRCUIT

1. CAR SEARCHED IN YARD OK DURING SEARCH OF HOUSE. US v. PATTERSON (01/22/02 - No. 00-4872): Officers who searched a car parked on a gravel pad in front of a house for which they had a warrant have a good faith excuse to search the car when they previously observed only cars belonging to the owners of the house parked on the gravel.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/4th/004872p.html>

2. CONSENSUAL DETENTION. US v. WEAVER (02/28/02 - No. 00-4754): Encounter where the defendant, an interstate traveler, accompanied a uniformed and armed police officer, who had retained his driver's license, into a police cruiser, was consensual and therefore did not constitute a "seizure" within the meaning of the Fourth Amendment; thus, recovered evidence that flowed from the encounter was not illegally obtained.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/4th/004754.html>

3. DICKERSON CLARIFIED. US v. STERLING (03/08/02 - No. 01-4264) Clarifying that the case *US v. Dickerson*, 530 U.S. 428 (2000), does not overrule *Michigan v. Tucker*, 417 U.S. 433 (1974), or *Oregon v. Elstad*, 470 U.S. 298 (1985), and that the holding in *US v. Elie*, 111 F.3d 1135 (4th Cir. 1997), based on those two cases, survives, the court upheld the admission of a shotgun found in a truck despite argument that gun was the fruit of a poisonous tree as the result of a Miranda violation.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/4th/014264.html>

4. ROADBLOCK AVOIDANCE - EDMOND DISTINGUISHED. US v. SCHEETZ (06/06/02 - No. 01-4177, 01-4183, 01-4243): In multiple appeals from drug convictions and sentences, the vehicle stop and search were valid, where defendant was not "seized" because of a checkpoint, but because of a traffic infraction committed during flight from that checkpoint. (*Distinguishes City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000)). Good discussing of "stop" cases.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/4th/014177p.html>

5. GOOD FAITH & LEON. US v. BYNUM (06/14/02 - No. 00-4773). Evidence obtained during a search was admissible under the good faith exception adopted by the Supreme Court in *United States v. Leon*, 468 U.S. 897, because a supporting affidavit contained sufficient indicia of probable cause, so that reliance on it was not unreasonable.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/4th/004773p.html>

6. NO NEED TO KNOCK WHEN D IS OUTSIDE AND SEES COPS. US v. DUNNOCK (07/08/02 - No. 01-4549) A motion to suppress evidence was properly denied where defendant, standing outside his home in the presence of police, as they were about to execute a valid search warrant, had all the benefits of the protections afforded by the "knock and announce" rule.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/4th/014549p.html>

7. TIPSTER - TOTALITY - FURTIVE BEHAVIOR. US v. SIMS (07/12/02 - No. 01-4809) A police officer had reasonable suspicion to stop and frisk defendant under the totality of the circumstances, based on his furtive and evasive behavior, and the fact that he matched a tipster's description.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/4th/014809p.html>

8. DRUG TESTS ON PREGNANT WOMEN IS UNCONSTITUTIONAL. FERGUSON v. CITY OF CHARLESTON (10/17/02 - No. 97-2512) In an action alleging that a hospital and law enforcement policy of drug testing pregnant women's urine constituted an unreasonable search under the Fourth Amendment, no rational jury could find that patients gave their informed and voluntary consent to testing. (*See Supreme Court decision involving these same parties* - No. 99-936, March 21, 2001).

To read the full text of this opinion, go to:

<http://laws.findlaw.com/4th/972512ap.html>

9. AERIAL SURVEILLANCE IS OK. US v. BREZA (10/28/02 - No. 01-4722) Neither the aerial surveillance of defendant's property nor the warrantless entry into his vegetable garden and seizure of marijuana plants infringed upon defendant's Fourth Amendment rights.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/4th/014722p.html>

F. 5th CIRCUIT

1. LUGGAGE SEARCH IMPROPER. US v. Hernandez, No. 00-20582 (5th Cir. January 11, 2002). Defendant's consent to the search of her luggage, after officer had improperly searched it by manipulating it, does not break the casual connection to the unlawful search. (*NOTE: Excellent discussion of Consent as an "Independent Act of Free Will"*)

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/5th/0020682cr0.htm>

2. CONTAINER SEARCH ILLEGAL AFTER "PRIVATE" SEARCH. US v. Runyan, No. 00-10821 (5th Cir. December 10, 2001). Police exceed the scope of a prior private search when they examine a closed container that was not opened by private searchers, unless the police are already substantially certain of what is inside that container.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/5th/0010821cr0.htm>

3. HALFWAY-HOUSE SNITCH GIVES BASIS FOR TERRY STOP. US v. HOPES (03/25/02 - No. 01-50334). Where the operator of a half-way house was well known to police, and gave officers tip that defendant, who was in the half-way house, had a gun, the totality of the circumstances established a sufficient basis for a Terry stop and frisk, and the denial of defendant's motion to suppress the gun was proper.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/5th/0150334cr0.html>

4. ARMY ROADBLOCK. US v. GREEN, No. 01-50536 (5th Cir. June 11, 2002). The narrow purpose of a roadblock checkpoint on a U.S. Army base is to protect a military post, and security of the installation and its personnel is a substantial government interest served by such a checkpoint, thus drug evidence found in a vehicle after a stop at such a checkpoint will not be suppressed. (*Revised opinion*)

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/5th/0150536cr0.htm>

5. DOG SNIFF ON BORDER BRIDGE IS OK. US v. KELLY, No. 01-40467 (5th Cir. August 09, 2002). A canine sniff of defendant's person, on the pedestrian walkway of a bridge connecting Texas and Mexico, was a routine border search and did not require reasonable suspicion.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/5th/0140467cr0.htm>

6a. OUT-OF-STATE LICENSE PLATE DOES NOT JUSTIFY STOP. US v. GRANADO, No. 01-51007 (5th Cir. August 14, 2002). A vehicle stop violated the Fourth Amendment where defendant's license plate did not violate a Texas statute, and drugs and statements are suppressed where the government failed to show that they were not the product of that Fourth Amendment violation. (KEY: tag, no front plate).

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/5th/0151007cr0.htm>

6b. US v. GRANADO, No. 01-51007 (5th Cir. August 14, 2002). A vehicle stop violated the Fourth Amendment where defendant's license plate did not violate a Texas statute, and drugs and statements are suppressed where the government failed to show that they were not the product of that Fourth Amendment violation. (KEY: tag, no front plate). (*Revised opinion*)

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/5th/0151007p.pdf>

7. GENERAL SECURITY CHECK EXCEPTION TO THE WARRANT REQUIREMENT. US v. WILSON, No. 01-21060 (5th Cir. September 11, 2002). This Court stretched the term "exigent circumstances" to its limit to justify police officers' warrantless

entry into defendant's apartment for the purpose of 1) conducting a protective sweep, and 2) obtaining clothing for him. (KEY: clothes, exigent

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/5th/0121060p.pdf>

8. CONSENT TO SEARCH VITIATED BY UNREASONABLE DETENTION. US v. SANTIAGO (10/17/02 - No. 01-31338) A vehicle stop was based on reasonable suspicion of violation of a statute prohibiting flashing lights in non-emergency vehicles, but detention after a records check was completed was unreasonable, and consent to search was a product of that unlawful detention.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/5th/0131338p.pdf>

9. BUS SEARCH ILLEGAL. US v. PORTILLO-AGUIRRE (11/01/02 - No. 01-50476) Where an immigration checkpoint stop of a commercial passenger bus exceeded its permissible duration in violation of the Fourth Amendment; defendant's conviction of possession with intent to distribute cocaine is reversed.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/5th/0150476cr0.pdf>

10. NRA Sticker Does Not Justify Vehicle Search. Estep v. Dallas County, Texas (5th Circuit No. 01-10967, October 18, 2002). In the 5th Circuit case, the defendant was pulled over for going 47 mph in a 35 mph zone. He got out of the car to give the officer his identification. Noting that the defendant had mace on his key chain and the vehicle contained camouflage gear and had an NRA sticker, and suspicious of the defendant's manner in answering questions about whether he had any weapons, the officer decided to search the car despite the defendant's protests. He found a pistol in the back seat.

The state claimed the search was justified by the officer's concerns about his safety. But the court disagreed.

"[A]s far as we know, there is no law which prevents a citizen from carrying a camouflage jacket, carrying a key chain with mace, or displaying an NRA sticker in his vehicle. Indeed, if the presence of an NRA sticker and camouflage gear in a vehicle could be used by an officer to conclude that he was in danger, half the pickups in the state of Texas would be subject to a vehicle search... [Further, the defendant's] decision to get out of his vehicle to greet [the officer] and hand [him] his identification does not create the type of individualized suspicion needed for an officer to conclude he is in danger..."

"We cannot rubber-stamp a search of a vehicle based on an officer's mere inchoate and unparticularized 'hunch' that a citizen poses an immediate threat of danger."

To read the full text of this opinion, go to:

11. DRUG INTERDICTION IS O.K. AT IMMIGRATION CHECKPOINT. US v. MORENO-VARGAS (12/18/02 - No. 02-40688) Detention at an immigration checkpoint was valid because the checkpoint has as its primary programmatic purpose the

enforcement of immigration laws, regardless of whether or not it could also have a secondary purpose of drug interdiction.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/5th/0240688p.pdf>

G. 6th CIRCUIT

1. FLEEING = REASONABLE SUSPICION. US v. Matthews (01/10/02 - No. 00-5528). Suspect who fled, after officer asked him to stop, and committed trespass while attempting to flee, may not suppress evidence found after the trespass, even if the officer lacked reasonable suspicion to detain him in the first place.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0010p.html>

2. WAITING FOR A WHORE IS SUSPICIOUS. US v. MARTIN (05/06/02 - No. 00-6266). A handgun seized during a car stop was properly admitted into evidence where police officers had reasonable suspicion that defendant was loitering for prostitution to justify the stop, and the gun was discovered in a search incident to arrest upon valid probable cause.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0156p.html>

3. ANTICIPATORY WARRANT / APARTMENT SEARCH. US v. MIGGINS (08/16/02 - No. 00-6708/09, 01-5198). In challenges to drug trafficking convictions and sentences, 1) probable cause supported an apartment search, and 2) the triggering event of an anticipatory search warrant was met.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0278p.html>

4. MOONBEAMS IN A JAR. (Trying to get the truth out of a cop is like trying to catch moonbeams in a jar). **US v. HAYNES** (08/16/02 - No. 00-5079) Exigent circumstances did not support a first vehicle search, and any alleged oral consent to a second vehicle search was not an act of free will sufficient to purge the taint of the first illegal search.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0279p.html>

5. COP'S EXPERIENCE = REASONABLE SUSPICION. US v. ORSOLINI (08/20/02 - No. 01-5508) An examination of the combined impact of all relevant circumstances, including factual inferences drawn by police officers, supported a finding of reasonable suspicion of criminal activity.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0280p.html>

6. PARKING ILLEGALLY JUSTIFIES "TERRY" STOP. US v. COPELAND (09/10/02 - No. 01-1005/1016) Apprehension of defendants after they had parked illegally was a reasonable stop under *Whren v. United States*, 517 U.S. 806.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0311p.html>

7. UNREASONABLE DETENTION - WAITING FOR DRUG DOG.

US v. TOWNSEND (09/27/02 - No. 00-4608) Police officers lacked reasonable suspicion to detain defendants until a canine unit arrived, based on a combination of factors before the officers, thus counterfeit bills seized in the officers' search of defendants' trunk were properly suppressed.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0335p.html>

8. 1st, 2nd and 3rd SEARCH LEADS TO INEVITABLE

DISCOVERY. US v. KESZTHELYI (10/17/02 - No. 00-6630) Although a second search of a residence was not a reasonable continuation of a prior search, where contraband inevitably would have been discovered during a third search, such evidence should not be suppressed.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0362p.html>

9. IS THAT A SHOTGUN UNDER YOUR BED - OR, ARE YOU JUST HAPPY TO SEE ME? **US v. BASS**

(10/28/02 - No. 01-5534) The district court did not err in denying defendant's motion to suppress a shotgun found by police under a bed's box spring mattress during a protective sweep of apartment following report of gunshots.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0372p.html>

10. TAPES SEIZED ILLEGALLY FROM GIRLFRIEND. **US v. CARNES**

(10/29/02 - No. 00-2103) The government's warrantless seizure of audio tapes from defendant's girlfriend's home violated the Fourth Amendment and, because the district court erred in denying defendant's motion to suppress the tapes, resulting in a conviction for illegal interception of a wire communication, the conviction is reversed.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0375p.html>

11. PLAIN VIEW PARAPHERNALIA. **US v. MCLEVIN**

(11/12/02 - No. 01-5151) Under the "plain view" doctrine, evidence at issue (a twist tie, a cigarette filter, a spoon with residue, and a bottle) should have been suppressed because it was not intrinsically incriminating, and it was not immediately apparent that the evidence provided probable cause that it was contraband.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/6th/02a0390p.html>

H. 7th CIRCUIT

1. WHATEVER HAPPENED TO MIRANDA? **US v. Childs**

(01/18/02 - No. 00-3111): Questioning during the course of lawful custody need not be related to the reason for that custody if they

do not otherwise make the custody itself unreasonable or substantially extend the length of the custody.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/7th/003111.html>

2. TOO MANY COPS IS NOT ENOUGH TO VIOLATE THE 4th.

McNair v. Coffey (01/29/02 - No. 00-1139): Where a seizure was supported by probable cause and was otherwise reasonable, the presence of an excessive number of squad cars and drawn guns, triggered by a police officer's call for backup, cannot be said to have violated the Fourth Amendment by giving fright or offense.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/7th/00-1139.html>

3. HERE, LET ME HELP YOU SEARCH MY COMPUTER. **US v. LEMMONS**

(02/27/02 - No. 00-3809) Defendant's motion to suppress child pornography contained on his computer was denied because his affirmative steps to aid officers engaged in a consensual search for videotapes were sufficient to support the expanded scope of his initial consent.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/7th/003809.html>

4. U.P.S. SEARCH IS NOT IMPUTED TO POLICE. **US v. CROWLEY**

(03/29/02 - No. 00-3423, 00-3549, 00-3694). Although police notified delivery services to watch for suspicious packages and contact authorities if they came across any, because there was no evidence that the police controlled, directed, condoned, or acquiesced in UPS driver's independent decision to open package sent to defendants, her actions could not be imputed to the police; thus, motion to suppress was properly denied.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/7th/003423.html>

5. EXTENDED BORDER SEARCH DOCTRINE. **US v. YANG**

(04/04/02 - No. 01-2422): Under the extended border search doctrine, where customs officers had a reasonable certainty that defendant had crossed the border and that his luggage had not changed in condition, and they had a reasonable suspicion that criminal activity was occurring, search of defendant who had passed through customs without incident and left international terminal to catch a connecting flight, was reasonable under the Fourth Amendment.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/7th/012422.html>

6. CURTILAGE. **US v. FRENCH**

(05/28/02 - No. 01-3612) A gravel walkway, from which an officer made incriminating observations of drug activity, was not within the "curtilage" of a residence, so that no Fourth Amendment violation occurred.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/7th/013612.html>

7. WIRETAP - NECESSITY. **US v. DUMES**

(11/15/02 - No. 00-1482/2560/29573058/3371) Evidence obtained from wiretaps was

correctly allowed where the government made an adequate showing of necessity, and the government's minimization efforts were not unreasonable. No-knock search warrant authorizations were reasonable under the circumstances.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/7th/001482p.pdf>

6. EVIDENCE IS ADMISSIBLE ALTHOUGH THERE WAS INSUFFICIENT AFFIDAVIT AND AN UNRELIABLE INFORMANT. US v. KOERTH (12/05/02 - No. 01-3767) Though an affidavit was insufficient to establish probable cause for issuance of a search warrant, based on statements from an informant of unknown reliability, evidence seized was admissible under the good-faith exception to the exclusionary rule.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/7th/013767p.pdf>

I. 8th CIRCUIT

1. INTIMIDATION NOT ENOUGH TO INVALIDATE SEARCH (The more you consent, the more legal it is). US v. Moreno (01/29/02 - No. 01-1612): An initial statement made by officer to defendant that he must either consent to a search of his car or incriminate himself by refusing, was not enough to establish an invalid search, because defendant subsequently and voluntarily consented to a second search of his car which produced the illegal drugs.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/011612P.pdf>

2. PATDOWN JUSTIFIED. US v. Roggeman (02/01/02 - No. 01-1738): Pat-down search of defendant's trousers was justified by a reasonable suspicion that defendant was armed and dangerous, and the district court erred in suppressing the evidence.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/011738p.pdf>

3. YOU TALK TOO MUCH, YOU WORRY ME TO DEATH. US v. HERNANDEZ (02/26/02 - No. 01-1824): Because *Miranda* warnings were sufficient to inform defendant of his rights in a post-indictment interview, refusing to suppress his statements and crediting officers' statements over defendant's was not error.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/011824p.pdf>

4. NO IT TAINT! US v. VILLA-VELAZQUEZ (03/06/02 - No. 01-2784) Where officer had probable cause to arrest, the identity information obtained post-arrest was not tainted by an earlier unlawful entry into the defendant's residence.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/012784p.pdf>

5. SMOKEY AND THE BANDIT. US v. JOHNSON (03/27/02 - No. 01-3010). Suspicious entries in truck logbook, confusion as to final destination, incomplete address on bill of lading, strange route, unusual locks, and strange behavior created a reasonable suspicion of criminal activity to justify continued detention of defendant; no Fourth Amendment violation. [key word: *Regulatory Search*]

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/013010p.pdf>

6. NOSEY COP MEETS BAD LIARS. US v. LINKOUS (04/05/02 - No. 01-3286): Following valid traffic stop, officer had reasonable suspicion to extend the stop and detain defendant for a dog sniff of his vehicle, which uncovered drugs because: (1) D1 was palpably nervous, made no eye contact, and kept his arms crossed; (2) D1's explanation for his trip differed from the account that D2 had given, and the two men had driver licenses from different states; and, (3) Both D's claimed to have towed truck to Texas or California and were on return trip BUT their van had neither a towing apparatus nor a place for a trailer hitch. Under the circumstances, length of detention, nineteen minutes, was not unreasonable.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/013286p.pdf>

7. COP HAD GOOD INTENTIONS. US v. BROOKS (04/16/02 - No. 01-2788): Motion to suppress properly denied, where evidence was sufficient to support finding that officer intended to be under oath when signing warrant application and supporting affidavit, even if he did not orally take the oath when documents were notarized.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/012788p.pdf>

8. DON'T STOP 'TIL YOU GET ENOUGH. US v. PENNINGTON (04/26/02 - No. 01-2881): In challenges to multiple drug-related searches, an affidavit established probable cause for search warrant where officers corroborated an informant's information by arranging a controlled purchase, and the resulting warrant was sufficiently specific as to areas to be searched; voluntary consent of a person with apparent authority to consent justified search of bag.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/012881p.pdf>

9. ILLEGAL REGULATORY SEARCH AT TRUCK STOP. US v. BELCHER (05/01/02 - No. 01-3259, 01-3524): Under Arkansas law, a state trooper did not have a basis for asking for defendant's bills of lading absent reasonable belief that his truck was not in compliance with state regulations; subsequent search was illegal, and drugs seized from truck must be suppressed. [key word: *Regulatory Search*]

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/013259p.pdf>

10. INTERVIEW IN HOME IS NOT "CUSTODY". US v. AXSOM (05/06/02 - No. 01-2848): Where defendant was not "in custody" during an interview in his home, based on the presence of mitigating factors and absence of aggravating factors, *Miranda* warnings were not required, and granting of motion to suppress inculpatory statements made by appellant is reversed.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/012848p.pdf>

11. FOLLOWING TOO CLOSELY JUSTIFIES "TERRY" STOP. US v. GREGORY (09/09/02 - No. 01-3613) Officer had probable cause to effect a traffic stop after he observed defendant following too closely. Defendant's and passenger's behavior after stop provided reasonable suspicion to expand the detention, and a positive drug dog sniff provided basis for search of vehicle.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/013613.pdf>

12. REGULATORY SEARCH OF BRIEFCASE GOES TOO FAR. US v. KNIGHT (10/01/02 - No. 02-1169) State trooper conducting a North American Standard Level III inspection of defendant's truck exceeded the scope of a regulatory search when he searched defendant's briefcase. [key word: Regulatory Search]

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/021169p.pdf>

13. CONSENT AT DRUG CHECKPOINT / ROADBLOCK IS TAINTED. US v. YOUSIF (10/07/02 - No. 01-2288) Defendant's consent to a vehicle search at a drug interdiction checkpoint was not sufficiently an act of free will to be deemed voluntary, and defendant's consent did not purge the primary taint of the illegal stop.

The police placed signs along the highway indicating to drivers that they were approaching a drug checkpoint, yet the checkpoint was actually located at the top of an exit ramp a short distance from the signs. The defendant exited the highway at this "ruse checkpoint."

The officer there noticed a "strong berry-like odor" emanating from the defendant's vehicle, and his hands seemed shaky and nervous as he handed over his license. He consented to a search of the vehicle that yielded six large suitcases full of marijuana.

The defendant argued that the checkpoint violated the Fourth Amendment. The court agreed. It cited a 2000 U.S. Supreme Court case holding that a checkpoint set up to catch drug offenders was unconstitutional. (*City of Indianapolis v. Edmond*, 531 U.S. 32.)

The 8th Circuit said that the checkpoint in this case "violated the Fourth Amendment because 'it [was] operated for the purpose of uncovering evidence of ordinary criminal wrongdoing...without individualized reasonable suspicion...[i]ts primary purpose was the interdiction of drug trafficking...and the officers operating [it] were under instructions to stop every vehicle that took the...exit...'

"[T]he mere fact that some vehicles took the exit... does not, in our opinion, create individualized reasonable suspicion of illegal activity as to every one of them. Indeed, as the government's evidence indicated, while some drivers may have wanted to avoid being

caught for drug trafficking, many more took the exit for wholly innocent reasons - such as wanting to avoid the inconvenience and delay of being stopped or because it was part of their intended route."

Further, said the court, the defendant's consent to the search was not voluntary and therefore the marijuana found in the car must be suppressed.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/012288p.pdf>

14. DETENTION OUTSIDE STORAGE UNIT IS LEGAL. US v. MONTANO-GUDINO (10/28/02 - No. 01-3760) Defendant's detention outside storage unit where officers had seized a large quantity of methamphetamine was based on reasonable suspicion of criminal activity, and did not exceed the scope of a permissible investigatory stop.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/013760p.pdf>

15. YAHOO - YOU'VE GOT EMAIL. US v. BACH (11/18/02 - No. 02-1238) District court erred in suppressing e-mails seized by Yahoo! technicians from the company's California-based servers, pursuant to a Minnesota state court warrant. Search was reasonable though no police officers were present when technicians executed the faxed warrant.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/021238p.pdf>

16. BOOTSTRAPPING TO REASONABLE SUSPICION. US v. GOMEZ (12/11/02 - No. 01-3694) The lifting of a package from a mail conveyor belt and moving it to a drug interdiction command center to check its exterior characteristics was not a seizure. An inspector who then examined the package had reasonable suspicion to seize it, and acted expeditiously to establish facts to support a lawful drug dog sniff and apply for a warrant. (KEY: dog, mail, conveyor)

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/013694p.pdf>

17. COPS DID NOT EXCEED SCOPE OF CONSENT. US v. TIRADO (12/17/02 - No. 02-1496) Officers did not exceed scope of defendant's consent to a search of his bedroom by searching a bag hanging in the bedroom closet.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/021496p.pdf>

18. CONSENT TO SEARCH WAS VOLUNTARY. US v. SANTOS-GARCIA (12/27/02 - No. 01-3941, 02-1583) Under the circumstances, consent to search of a vehicle following a traffic stop was voluntary, and the district court did not err in denying a motion to suppress evidence and statements. Evidence was sufficient to support drug convictions, and there was no error in imposing an obstruction-of-justice enhancement.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/8th/013941p.pdf>

J. 9th CIRCUIT

1. **BAD STOP VITIATES CONSENT. US v. Patzer** (01/14/02 - No. 00-30360): When an individual gives consent to search after an arrest made without probable cause, that consent to search, like a confession, may be tainted by the illegal arrest and so invalid and suppressible. (8) Consent may be tainted even though it is "voluntary" within the meaning of the Fifth Amendment. (9) The relevant factors in determining whether a consent to search is tainted are: "(1) whether Miranda warnings were administered prior to the consent; (2) the temporal proximity of the arrest to the [consent]; (3) the presence of intervening circumstances, and (4) the purpose and flagrancy of the official misconduct." (10) The government bears the burden of showing admissibility. (11)

(8) *United States v. Taheri*, 648 F.2d 598, 601 (9th Cir. 1981).

(9) See *Anderson v. Calderon*, 232 F.3d 1053, 1072 (9th Cir. 2000)

(explaining in context of confessions that "voluntariness" is an independent consideration).

(10) *United States v. Delgadillo-Velasquez*, 856 F.2d 1292, 1299 (9th Cir.

1988) (citing *Brown v. Illinois*, 422 U.S. 590 (1975)).

(11) *Id.* at 1300.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0030360p.pdf>

2. **IS THAT A PICKLE IN YOUR POCKET? US v. Miles** (04/26/01 - No. 00-30035): A police officer may not move or shake a small box found in a pat down weapons search during an investigatory stop.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0030035p.pdf>

3. **WIRETAP IN THE PROJECTS. US v. Blackmon** (12/12/01 - No. 99-50534): Under 18 USC 2518(1)(c), police may not justify a wiretap of a defendant in a housing project by using the same allegations of necessity for a different suspect in the same housing project.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/9950534p.pdf>

4. **GAS TANK BLUES. US v. Molina-Tarazon** (01/29/02 - No. 00-50171) Although the removal and dismantling of defendant's gas tank, which revealed marijuana, was not a routine part of a border search, the irregularity of mud patterns around the tank gave customs agents reasonable suspicion to conduct the extensive search.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0050171p.pdf>

5. **DUMB SAILOR. US v. THOMPSON** (03/04/02 - No. 00-30382) Because the defendant could neither produce vessel registration nor identify the owner of the boat he was sailing, officers had a reasonable suspicion, following a safety check, to run a warrants check lasting 15-20 minutes, which led to a seizure of marijuana.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0030382p.pdf>

6. **I HEAR YOU KNOCKING. US v. BANKS** (03/05/02 - No. 00-10439) The delay of 15-20 seconds after a single knock and announcement before police forced entry was, without an affirmative denial of admission or other exigent circumstances, sufficient in duration to satisfy the constitutional safeguards of the Fourth Amendment.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0010439p.pdf>

7. **CAN'T GO ON WITH SUSPICIOUS MINDS. US v. MARISCAL** (04/01/02 - No. 01-10326): Where objective facts in the record demonstrate that no officer could have a reasonable suspicion that the driver of a vehicle had violated a traffic law, the traffic stop, which led to discovery of a firearm, was a violation of the Fourth Amendment; thus, conviction for being an illegal alien in possession of a firearm was reversed.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0110326p.pdf>

8. **SUITCASE SURGERY ON THE BORDER. US v. OKAFOR** (04/04/02 - No. 01-50004): During a border search of defendant's luggage, where defendant displayed suspicious behavior, the non-routine incision and probe search into his suitcase, which revealed cocaine, was understandable, reasonable and wholly lawful.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0150004p.pdf>

9. **PROBATIONER'S HAVE NO RIGHTS. US v. STOKES** (04/15/02 - No. 01-30170): The search of a probationer's car as part of a criminal investigation based on only reasonable suspicion does not violate the Fourth Amendment; procedural distinctions between the Armed Career Criminals Act (ACCA) and federal three strikes law do not deprive an individual sentenced under the ACCA of equal protection or due process.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0130170p.pdf>

10. **O'CONNOR EXCEPTION TO WARRANT REQUIREMENT. US v. JONES** (04/18/02 - No. 01-10352): Government efforts to ensure compliance with a forthwith records subpoena, and to ensure that records were not being shredded, did not fall under the O'Connor exception to the warrant requirement, and instead gave rise to an illegal search of a city office by agents; illegal entry into employee's office tainted her consent given later.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0110352p.pdf>

11. **MIRANDA REQUIRED BEFORE INTERROGATION. US v. KIM** (06/06/02 - No. 01-30166): Incriminating statements made by defendant during the execution of a search warrant at her store were properly suppressed, where a reasonable person would not have felt free to walk away from the police interrogation; defendant was "in custody" and entitled to *Miranda* warnings. (Great discussion of what constitutes "custody" and cases citing *Miranda*).

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0130166p.pdf>

12. **BRIEF BORDER DETENTION IN CUFFS IS OK. US v. ZARAGOZA** (07/08/02 - No. 0150320) A border detention of an individual was not an arrest or unreasonable detention for Fourth Amendment purposes, based on the brevity of time spent in handcuffs, and verbal assurances from a customs inspector.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0150320p.pdf>

13. **TOOLBOX BUSTED DURING BORDER SEARCH IS OK. US v. BRAVO** (07/08/02 - No. 01-50159) A border search of a toolbox in the bed of a truck was likely routine under the Fourth Amendment, despite the use of force in gaining access and resulting damage, and was nonetheless supported by reasonable suspicion; a detention did not become an arrest when a customs officer briefly handcuffed the truck's driver.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0150159p.pdf>

14. **COME ON DOWN TO MY BOAT. US v. TODHUNTER** (07/18/02 - No. 01-10374) A sailboat was lawfully boarded by three different agencies, based on reasonable suspicion, and a lawful threat to employ a "canine sniff" did not render consent to search the vessel involuntary.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0110374p.pdf>

15. **KYLLO LIMITED. US v. HUGGINS** (08/06/02 - No. 01-30065/30110/11/12). The Fourth Amendment does not compel the suppression of a series of searches set in motion by an application to scan a private residence and its outbuildings with a thermal imaging device.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0130065p.pdf>

16. **AIRPORT CHECKPOINT SEARCH IS OK. TORBET v. UNITED AIRLINES, INC.** (08/07/02 - No. 01-55319). A random search at an airport security checkpoint, of a carry-on bag that has passed through an x-ray scan without arousing suspicion that the bag contains weapons or explosives, is permitted under the Fourth Amendment.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0155319p.pdf>

17. **NEAR-BORDER STOP IS O.K. US v. DIAZ-JUAREZ** (08/15/02 - No. 01-50263) An investigatory stop of a vehicle near a border was supported by reasonable suspicion based on a totality of factors under the circumstances.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0150263p.pdf>

18. **RANDOM SEARCH IS O.K. ON MILITARY BASE. US v. GONZALES** (08/15/02 - No. 01-30059) A random search of a government employee's backpack, as he left a U.S. Air Force base exchange, was reasonable based on the employee's expectation of privacy, justification, and scope.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0130059p.pdf>

19. **CONSTANT SURVEILLANCE MEANS DEFENDANT WAS NOT FREE FROM RESTRAINT. US v. GONZALEZ-TORRES** (10/28/02 - No. 00-50543) Where defendant was never "free from restraint," due to his constant surveillance prior to and upon entering the U.S., his convictions for entering and being a deported alien found in the U.S., under 8 U.S.C. sections 1325 and 1326, are reversed.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0050543p.pdf>

20. **ONE HOUR DETENTION IS O.K. GALLEGOS v. CITY OF LOS ANGELES** (10/11/02 - No. 01-56021) Under the circumstances of a search for a burglary suspect, detention of an individual for up to an hour in order to ascertain whether he was the suspect being sought fell within the bounds of a permissible investigatory stop, and did not violate the Fourth Amendment.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0156021p.pdf>

21. **DETENTION OF MAIL PACKAGE WAS O.K. US v. HERNANDEZ** (12/23/02 - No. 01-10557) Because the initial detention of an express mail package was based on reasonable suspicion under the totality of the circumstances, and detention of the package was not unreasonably prolonged, denial of a motion to suppress evidence is affirmed.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0110557p.pdf>

22. **BAD MIRANDA NIXES CONFESSION. US v. SAN JUAN-CRUZ** (12/23/02 - No. 02-50138) Conflicting sets of warnings resulted in an unclear instruction on defendant's Miranda rights, and where those rights were not clarified prior to defendant's incriminating statements, the error was not harmless and denial of a motion to suppress is reversed.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/circs/9th/0250138p.pdf>

K. 10th CIRCUIT.

1. ILLEGAL ALIEN CAN BE SEARCHED W/O PROBABLE CAUSE. US v. TRETO-HARO (04/24/02 - No. 01-1146):

Surveillance by agents and information from an informant, among other facts, provided sufficient justification for stop of defendant prior to his drug arrest; suppression of evidence obtained from pat-down search was improper where defendant's admission to illegal alien status prior to the search gave rise to probable cause to arrest.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/10th/011146.html>

2. RESISTANCE IS NOT FUTILE. US v. DAVIS (05/16/02 - No. 01-3291). Where the manifestation of resistance displayed by defendant was his insistence upon keeping the officers outside, and even the suspected victim of a disturbance was trying to prevent the officers from entering the residence, no exigent circumstances existed to justify a warrantless search of a home.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/10th/013291.html>

3. WIRETAP NECESSITY. US v. RAMIREZ-ENCARNACION (05/29/02 - No. 01-1030) The government demonstrated necessity for a wiretap where the rural nature of the area made concealing surveillance vehicles almost impossible, the tight-knit nature of the conspiracy made undercover infiltration impossible, and early plans for a wiretap did not prevent the DEA from diligently pursuing the investigation prior to the wiretap.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/10th/011030.html>

4. LUGGAGE SNIFFERS. US v. VALLES (06/03/02 - No. 01-2265). Police had reasonable suspicion to stop appellant for a drug sniff of his luggage as he exited a train, based on details concerning the purchase of the ticket, fact that appellant was traveling under an alias, and observations of his behavior. (Key Words: Totality of Circumstances / Arvizu).

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/10th/012265.html>

5. GUN MUST BE SUPPRESSED B/C OF MIRANDA VIOLATION. US v. PATANE (09/18/02 - No. 01-1503). Defendant's arrest was supported by probable cause to believe that he violated a domestic violence restraining order, but an ensuing *Miranda* violation requires that a gun be suppressed as the physical fruit of that violation.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/10th/011503.html>

6. FAILURE TO HAVE BOTH OUT-OF-STATE PLATES JUSTIFIES STOP. US v. RAMSTAD (10/24/02 - No. 00-3407) Kansas law empowered state trooper to stop defendant for driving his California-licensed vehicle in Kansas without two license plates, thus, the stop for failure to display a front plate was objectively reasonable and the stop was therefore legal.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/10th/003407.html>

7. O.K. TO USE DRUG CHECKPOINT AS A RUSE TO CAUSE DEFENDANT TO ABANDON DRUGS. US v. FLYNN (10/25/02 - No. 01-7055) Motion to suppress evidence properly denied, where a legal police ruse – the staging of a drug checkpoint – caused defendant to voluntarily abandon drugs, which were then seized by authorities.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/10th/017055.html>

8. BUS SEARCH WAS PROPER. US v. TAPIA (11/08/02 - No. 02-1028) Interaction with and initial detention of defendant on a passenger bus was constitutional, and proper consent was obtained for seizure of contraband from the baggage compartment of the bus, thus evidence and statements were incorrectly suppressed by the district court.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/10th/021028.html>

9. COPS MUST KNOCK AND ANNOUNCE. US v. GALLEGOS (12/11/02 - No. 02-4012) Police officers executing a warrant failed to comply with requirements of the "knock and announce" rule under 18 U.S.C. section 3109 where, under the circumstances, no objectively reasonable officer would believe that defendant refused admittance within five to ten seconds.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/10th/024012.html>

L. 11th CIRCUIT

1. NO PRIVACY IN COMMON AREAS. US v. Miravalles, No. 01-13027 (11th Cir. 01/29/02): Tenants of a large, multi-unit apartment building do not have a reasonable expectation of privacy in the common areas of the building where the lock on the door of the building is not functioning and anyone may enter.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/11th/0113027opn.html>

2. PAWN BROKER ILLEGALLY SEARCHED. Quik Cash Pawn & Jewelry, Inc. v. Sheriff Of Broward County, No. 01-10879, 01-10880 (11th Cir. 01/30/02): Although the sheriff's search and seizure of pawnbrokers' un-tagged merchandise was entirely unauthorized by the Florida Pawnbroking Act, the seizure violated the Pawnbrokers' due process right to predeprivation notice and a hearing, under the Due Process Clause of the Fourteenth Amendment of the US Constitution.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/11th/0110879opn.html>

3. MOTEL ROOM & CAR SEARCH COMBO. US v. RHIND (04/23/02 - No. 01-14168, 01-14169, 01-14170): Denial of motions to suppress evidence from a motel room was proper, where other evidence seized from vehicle alone would have supported convictions for counterfeiting and firearms violations; and, where enough evidence existed to justify finding that defendants

possessed firearms "in connection with" underlying felony, imposition of a corresponding four-level enhancement was proper.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/11th/0114168opn.html>

4. "YIELDING" TO COPS ENTRY INTO HOME IS NOT "OVERWHELMING" SHOW OF AUTHORITY. US v. RAMIREZ-CHILEL, No. 00-16686 (11th Cir. April 26, 2002): Court's witness credibility determinations were proper and did not favor police officers' testimony because of their status; appellant demonstrated consent to entry of home by yielding "right-of-way" to officers, and he was not overwhelmed by a show of official authority.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/11th/0016686opn.html>

5. PARKED, MOVING OR STOPPED? US v. BAKER, No. 01-16585 (11th Cir. May 08, 2002): Interaction between police and individuals who just left bus station in a car that was neither parked nor moving, but was stopped due to traffic, was a consensual encounter under the Fourth Amendment and did not amount to a "seizure."

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/11th/0116585opn.html>

6. 911 CALL JUSTIFIES SEARCH. US v. HOLLOWAY (05/10/02 - No. 01-13607): Law enforcement officials may conduct a limited, warrantless search of a private residence in response to an emergency situation reported by an anonymous 911 caller, where exigent circumstances (*particularly danger to human life*) demand an immediate response; any evidence in plain view is properly seized.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/11th/0113607opn.html>

7. GO DOWN GAMBLING. US v. HUNTER, No. 01-16759 (11th Cir. May 21, 2002): A police officer had reasonable suspicion that defendant was engaged in illegal gambling activity and was carrying a concealed weapon, to justify a *Terry* stop, and observation of a bulge under defendant's shirt at the waist warranted a pat-down for weapons.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/11th/0116759opn.html>

8. SEARCH AFFIDAVIT SUPPORTING FACTS. US v. MARTIN (07/19/02 - No. 01-15691) A reviewing court may look outside the four corners of an affidavit, and consider facts known to the affiant, in determining whether an officer acted in good faith when relying upon an invalid warrant.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/11th/0115691opn.html>

9. SEARCH INCIDENT TO ARREST IS O.K. US v. GODDARD, No. 02-10962 (11th Cir. November 29, 2002) There was probable cause to search defendant's person incident to a lawful, warrantless arrest made in a public place, thus there is no need to

examine whether exigent circumstances justified the warrantless search.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/11th/0210962opn.html>

D.C. CIRCUIT

1. VIOLATING RESTRAINING ORDER JUSTIFIES CAR SEARCH. US v. WESLEY (06/21/02 - No. 01-3107): The search of a car without a warrant, was a permissible search incident to arrest where 1) police had probable cause to believe defendant was violating a stay-away order, based on defendant's location, and 2) because defendant was in his car at the time of arrest, search of the passenger compartment was lawful in scope.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/dc/013107.html>

NOTE: The following are summaries of all Federal criminal cases handed down from all US Circuit Courts of Appeal and/or the US Supreme Court during this past week; including links to each case. **Bill C. Messick**, Mobile, Alabama. Email: messick9@bellsouth.net

U.S. 1st Circuit Court of Appeals

US v. MILLS (12/31/02 - No. 01-2702)
Defendant was not misled at a plea hearing, as he could not reasonably have understood the court to have promised to consider murder-related evidence only for purposes of deciding how far to depart downward. There was no error in the court's refusal to depart based on the nature of self-incriminating evidence proffered by the defendant.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/1st/012702.html>

U.S. 2nd Circuit Court of Appeals

US v. MENDEZ (12/30/02 - No. 02-1100)
Evidence was properly admitted under the "inevitable discovery" exception to the exclusionary rule, where it would have been discovered in a valid inventory search.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/2nd/021100.html>

KRUELSKI v. STATE OF CONNECTICUT SUPERIOR COURT FOR THE JUDICIAL DIST. OF DANBURY (01/03/03 - No. 01-2394)
The Double Jeopardy Clause of the Fifth Amendment did not foreclose defendant's continued prosecution after a Connecticut trial court, at the close of evidence, acquitted him based on an erroneous interpretation of the applicable statute of limitations.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/2nd/012394.html>

U.S. 3rd Circuit Court of Appeals

JOHNSON v. HENDRICKS (12/30/02 - No. 00-3633)
 Equitable tolling will not apply to the statute of limitations for a 28 U.S.C. Section 2244(d)(1) habeas petition, where a prisoner relies on the erroneous advice of counsel as to when his petition is due.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/3rd/003633p.pdf>

US v. THOMAS (12/31/02 - No. 01-4283)
 Insufficient evidence supported a bank fraud conviction under 18 U.S.C. section 1344, where no proof existed that defendant intended to victimize banks or that the banks suffered a loss.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/3rd/014283p.pdf>

US v. GAMBONE (01/03/03 - No. 01-4424)
 Defendants' convictions for aiding and assisting their employees in preparing false income tax returns, under Internal Revenue Code section 7206(2), were supported by sufficient evidence. Prosecutor's improper remarks during rebuttal amounted to harmless error.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/3rd/014424p.pdf>

U.S. 5th Circuit Court of Appeals

US v. RIGGS (12/30/02 - No. 02-30396)
 The district court abused its discretion in equitably tolling the statute of limitations for an untimely 28 U.S.C. section 2255 motion, because mere attorney error or neglect cannot be an extraordinary circumstance.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/5th/0230396p.pdf>

US v. MESSERVEY (12/30/02 - No. 01-50803)
 A trial judge did not abuse his discretion in 1) denying defendant's attorneys a fifth trial continuance for additional preparation time, or 2) failing to order a sua sponte mental competency exam. Sentence is vacated where upward departure was based on previously weighed factors.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/5th/0150803p.pdf>

U.S. 6th Circuit Court of Appeals

US v. WIAIT (01/02/03 - No. 01-3443)
 A mail and bank fraud defendant was properly given sentence enhancements for misrepresenting that he was acting on behalf of a charitable organization, and for affecting a financial institution.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/6th/03a0001p.html>

U.S. 7th Circuit Court of Appeals

US v. LANGFORD (12/31/02 - No. 02-1167)
 Though the basis of a warrant to search a residence for evidence of drug dealing was thin, police were not acting in bad faith in executing the warrant. Violation of the knock-and-announce rule did not authorize exclusion of evidence seized pursuant to the ensuing search.

To read the full text of this opinion, go to: [PDF File]

<http://caselaw.lp.findlaw.com/data2/circs/7th/021167p.pdf>

US v. ROBINSON (01/03/03 - No. 02-2003)
 The district court's credibility findings, in determining that an arresting officer had probable cause to stop the car in which defendant was traveling after the officer observed a traffic violation, will not be disturbed on appeal.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/7th/022003p.pdf>

US v. KELLY (01/03/03 - No. 02-2064)
 The U.S. Supreme Court's ruling on "virtual" child pornography in *Ashcroft v. Free Speech Coalition*, 122 S.Ct. 1389 (2002), did not render unconstitutional the regulation of actual, traditional child pornography.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/7th/022064p.pdf>

U.S. 8th Circuit Court of Appeals

US v. JAUREGUI (01/03/03 - No. 02-1430)
 Waiver of the administrative deportation proceeding due a resident alien is a sufficient basis for a downward departure even if the government does not join in the motion. District court did not abuse its discretion in granting a four-level departure based on the waiver.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/8th/021430p.pdf>

U.S. 9th Circuit Court of Appeals

US v. HERNANDEZ (12/30/02 - No. 02-50155)
 Defendant's presence in the rear seat of a van carrying drugs across the border, along with his suspicious behavior and other factors, gave border agents probable cause to arrest him.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/9th/0250155p.pdf>

To read the full text of this opinion, go to:
<http://caselaw.lp.findlaw.com/data2/circs/9th/0130362p.pdf>

US v. GORMAN (12/31/02 - No. 02-50053)
 Denial of a motion to suppress evidence seized by police officers, upon entering a third-party residence pursuant to an arrest warrant for defendant, is reversed where the district court failed to equate the "reason to believe" standard with the "probable cause" standard.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/9th/0250053p.pdf>

US v. COLIN (12/31/02 - No. 01-50140/52)
 A police officer had no reasonable suspicion to stop a vehicle based on purported Vehicle Code violations ("lane-straddling" and driving under the influence), thus evidence discovered after the vehicle stop should have been suppressed.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/9th/0150140p.pdf>

ZEGARRA-GOMEZ v. IMMIGRATION & NATURALIZATION SERV. (01/02/03 - No. 01-57021)

Where an alien habeas petitioner is deported after he files his petition, the fact of his deportation does not render the habeas petition moot where there are collateral consequences arising from the deportation that create concrete legal disadvantages.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/9th/0157021p.pdf>

U.S. 10th Circuit Court of Appeals

US v. ZAMUDIO (12/31/02 - No. 02-4006)

A plea in abeyance fully qualified as a conviction for an aggravated felony under 8 U.S.C. section 1326(b)(2) and U.S.S.G. section 2L1.2(b)(1)(A), thus the district court erred by not subjecting an illegal re-entry sentence to a sixteen-level enhancement.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/10th/024006.html>

BROWN v. WARDEN (01/02/03 - No. 02-3210)

A prisoner who has completely served his state sentence is not entitled to habeas relief under 28 U.S.C. section 2254, even if the state sentence affected the calculation of his federal sentence.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/10th/023210.html>

US v. FREDETTE (01/02/03 - No. 01-8090)

In wire fraud, mail fraud, and conspiracy convictions, 1) the district court did not abuse its discretion in finding that a marketing expert's testimony was unreliable and should be excluded, 2) instructions as to material misrepresentations were adequate, and 3) a decision not to tender a specific unanimity instruction was not plainly erroneous.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/10th/018090.html>

YORK v. GALETKA (01/02/03 - No. 01-4214)

Equitable tolling should have been applied to the time for filing a 28 U.S.C. Section 2254 habeas corpus petition, because strict application of Duncan v. Walker, 533 U.S. 167 (2001), would be inequitable under the circumstances.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/10th/014214.html>

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U.S. 1st Circuit Court of Appeals

US v. HORNBECKER (01/10/03 - No. 01-1969)

A police officer's insincere friendliness, which successfully induced defendant to willingly answer questions and/or consent to a search did not, without more, raise a question whether the suspect's response was voluntary, and defendant's Fourth Amendment rights were not violated in connection with a vehicle search.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/1st/011969.html>

U.S. 2nd Circuit Court of Appeals

JOCKS v. TAVERNIER (01/08/03 - No. 00-7943/7965/7735/7737/7743)

In a false arrest claim, summary judgment was proper for an officer who observed conduct that amounted to an assault and established probable cause for an arrest. In a malicious prosecution claim, the court should not have instructed the jury on an emergency measures defense.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/2nd/007943.html>

US v. THORN (01/09/03 - No. 01-1669, 02-1046)

The district court erred in finding insufficient evidence that a Clean Air Act defendant's conduct did not result in a substantial likelihood that his former employees would develop life-threatening, asbestos-related diseases, under U.S.S.G. section 2Q1.2(b)(2). A "heartland" downward departure for money laundering was erroneous.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/2nd/011669.html>

U.S. 3rd Circuit Court of Appeals

US v. FREEMAN (01/06/03 - No. 01-3475)

After defendant pled guilty to receipt and possession of child pornography, the district court erred in 1) awarding a two-level upward departure without considering the propriety of a one-level departure, and 2) failing to state reasons for a special condition of supervised release, prohibiting use or possession of a computer.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/3rd/013475p.pdf>

US v. LEE (01/07/03 - No. 01-4485/4496)

A condition of supervised release requiring appellant to submit to random polygraph examinations at a probation officer's discretion did not violate appellant's Fifth Amendment rights, was neither unnecessary nor burdensome, and was not an abuse of discretion.

To read the full text of this opinion, go to: [PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/3rd/014485p.pdf>

U.S. 4th Circuit Court of Appeals

DEBLASIO v. GILMORE (01/07/03 - No. 01-7025)

The Prison Litigation Reform Act's filing fee requirements are not applicable to a released prisoner, and his obligation to pay filing fees is determined by evaluating whether he qualifies under the general in forma pauperis provision of 28 U.S.C. section 1915(a)(1).

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/4th/017025p.html>

ROUSE v. LEE (01/07/03 - No. 01-12)

Although a death row prisoner filed his habeas petition one day late, his claims of a juror's racial and personal bias justify equitable tolling.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/4th/0112p.html>

DANIELS v. LEE (01/10/03 - No. 02-9)

A habeas petitioner convicted of capital murder and related crimes failed to make a substantial showing of the denial of any of his constitutionally protected rights.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/4th/029p.html>

U.S. 5th Circuit Court of Appeals

US v. SOTO-MARTINEZ (01/06/03 - No. 02-20384)

Defendant's statement "I have a gun," during a bank robbery was sufficient to constitute a threat of death, warranting a sentence increase under U.S.S.G. section 2B3.1(b)(2)(F).

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/5th/0220384p.pdf>

KEKO v. HINGLE (01/08/03 - No. 01-30622)

Absolute immunity did not shield an expert witness whose tainted testimony led to the overturning of a murder conviction, in a subsequent 42 U.S.C. section 1983 action.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/5th/0130622p.pdf>

U.S. 6th Circuit Court of Appeals

*** The **HELTON** case is an **EXCELLENT** discussion of C.I.'s, Anonymous Tipsters, Probable Cause For Warrants AND the **Leon** "good faith" rule. ***

US v. **HELTON** (01/06/03 - No. 00-2381)

An affidavit, which relied heavily on a confidential informant's information, did not establish probable cause to search a residence for contraband, and the Leon good faith rule did not apply under the circumstances.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/6th/03a0003p.html>

THOMPSON v. BELL (01/09/03 - No. 00-5516)

Petitioner failed to show that he was denied effective assistance of counsel in his capital trial by his attorneys' failure to present evidence as to his mental illness and social history, because petitioner presented no evidence that he was mentally ill at the time of the crime or at trial.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/6th/03a0006p.html>

US v. GILLIAM (01/10/03 - No. 00-6365)

The district court's enhancement of a sentence by two levels for abuse of a position of trust is affirmed, where defendant worked as a drug counselor for an employer that was under contract with the U.S. Probation Office.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/6th/03a0008p.html>

U.S. 7th Circuit Court of Appeals

US v. GRAHAM (01/09/03 - No. 01-4349)

Prosecutor's statements during closing arguments did not deprive defendant of a fair trial, as one statement was a proper reasonable

inference from evidence, and another did not improperly portray the burden of proof. Consideration of a prior conviction for sentencing purposes was not erroneous.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/7th/014349p.pdf>

US v. ANGLE (01/10/03 - No. 01-3670)

Re-sentencing of a defendant convicted of child pornography charges is necessary where the district court did not make sufficient reliability findings, and did not explain why defendant was more comparable to a career criminal than any other criminal.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/7th/013670p.pdf>

U.S. 8th Circuit Court of Appeals

LINEHAN v. MILCZARK (01/08/03 - No. 01-3637)

The Minnesota Supreme Court reasonably applied the clearly established federal law when it reconsidered the standard for civil commitment under the Minnesota Sexually Dangerous Person Act, and sufficient evidence supported a prisoner's continued confinement under the Act.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/8th/013637p.pdf>

US v. YOUNG (01/08/03 - No. 01-3647)

District court did not err in assessing a two-level increase for obstruction of justice, or in denying reductions or downward departures for acceptance of responsibility, pre-sentence confinement, defendant's health and age, or ineffective assistance of counsel.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/8th/013647p.pdf>

US v. STAPLETON (01/09/03 - No. 02-1729)

District court clearly erred in assessing criminal history points based on assault charges that were uncounseled. Enhancement for obstruction of justice when, at resentencing defendant stared at probation officer in a hostile manner was within the scope of remand.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/8th/021729p.pdf>

US v. ESPINO (01/09/03 - No. 02-1966)

Admissible witness testimony supported presence of a conspiracy to distribute methamphetamine. The marital confidential communications privilege was properly protected in testimony of defendant's spouse, as spouse testified only to defendant's conduct or to communications in the presence of third parties.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/8th/021966p.pdf>

US v. BROWN (01/09/03 - No. 02-2007)

In convictions for possession of counterfeit currency, hearsay statements from a secret service agent, about presence of bills bearing the same serial numbers in various locations based on information obtained from a computerized database, were properly admitted.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/8th/022007p.pdf>

US v. ROSE (01/10/03 - No. 02-1293)

In sentencing defendant for interstate stalking and threatening communications, the district court did not abuse its discretion in 1) imposing an enhancement after finding that defendant intended to carry out threats to murder the victim's children, and 2) departing upwards based on its findings that defendant's conduct was extreme.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/8th/021293p.pdf>

US v. SHRANKLEN (01/10/03 - No. 02-1540)

District court erred in suppressing the search of a pouch found in defendant's vehicle where defendant asked a police officer if he could retrieve the pouch, justifying a protective search for the officer's safety.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/8th/021540p.pdf>

US v. WILSON (01/10/03 - No. 02-2265)

A statute prohibiting a felon from possessing a firearm (18 U.S.C. section 922) does not violate the Second Amendment.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/8th/022265p.pdf>

U.S. 9th Circuit Court of Appeals

PARRISH v. SMALL (01/07/03 - No. 01-56239)

An evidentiary hearing is necessary to determine the extent to which the shackling of defendant during trial became visible to the jurors, and whether the shackling was prejudicial, thus denial of a habeas petition is vacated.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/9th/0156239p.pdf>

US v. PENA (01/09/03 - No. 01-10069)

A plea proceeding failed to comply with Federal Rule of Criminal Procedure 11 where the court never explained to defendant the nature of the charges against him.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/9th/0110069p.pdf>

US v. RAMIREZ-LOPEZ (01/10/03 - No. 01-50164)

An alien smuggling defendant's due process rights were not violated when the government removed witnesses from the U.S., and any cumulative error at trial was harmless at best and did not warrant reversal of alien smuggling convictions.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/9th/0150164p.pdf>

US v. MANCHESTER FARMING P'SHIP (01/10/03 - No. 01-30414, 01-30415, 01-30416)

Denial of a Hyde Amendment request for attorneys' fees and costs is affirmed, where appellants failed to show that the government pursued a frivolous case alleging receipt of unlawful farm program payments, or that its approach rose to the level of bad faith.

To read the full text of this opinion, go to:[PDF File]
<http://caselaw.lp.findlaw.com/data2/circs/9th/0130414p.pdf>

U.S. District of Columbia Circuit Court of Appeals

US v. GALE (01/07/03 - No. 01-3011)

No Brady violation occurred through the prosecutor's offering perjured testimony by an expert witness for the government on narcotics, or failing to disclose his past perjuries.

To read the full text of this opinion, go to:
<http://laws.lp.findlaw.com/dc/013011.html>

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