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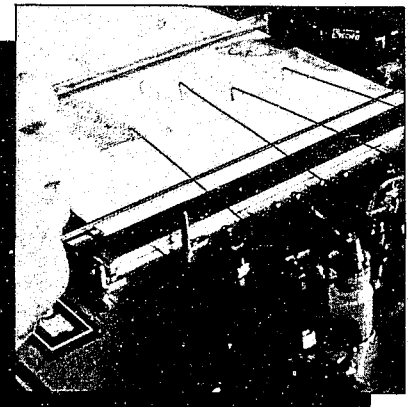
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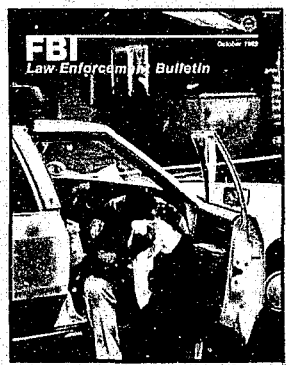


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The Cover: An Orlando, FL, police officer weeps after telling a mother that her child has died in a house fire. Photo courtesy of Bobby Coker/The Orlando Sentinel.

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## Traffic Stops

### Police Powers Under The Fourth Amendment

By

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**T**raffic stops take place thousands of times each day in the United States. Such stops frequently lead to the discovery of criminal conduct considerably more serious than traffic violations. As was discussed in the first part of this article, officers stopping a car have authorization to take certain investigative and protective steps without having to show any facts other than that the initial stop of the car was lawful. The taking of additional steps such

as search or arrest of the occupants of a stopped car or a search of the car itself require specific factual justification in order to comply with constitutional requirements. Consequently, it is essential for the officer making a traffic stop to know which investigative actions require a factual predicate if constitutional compliance is to be achieved, and what specific types of facts must be present in order to justify such actions.

#### APPLICATION OF THE FOURTH AMENDMENT

As was noted in the first part of this article, the fourth amendment to the U.S. Constitution limits the powers of the police to perform searches and seizures, requiring that any such search or seizure performed be "reasonable."<sup>36</sup> Generally, satisfaction of this "reasonableness" requirement necessitates that police officers obtain prior judicial approval in the form of an arrest or search



Special Agent Sauls

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warrant before a search or seizure is performed.<sup>37</sup> Particularly where vehicles are concerned, the U.S. Supreme Court has recognized a number of exceptions to the warrant requirement that allow under certain circumstances searches and seizures to be reasonably performed without prior judicial approval.<sup>38</sup>

Each of these recognized exceptions has its own set of requirements, necessary factual predicates that must be present before the exception applies, and specific limits on the scope of action allowed where no warrant is obtained.<sup>39</sup> Because where officers act without a warrant the government bears the burden of proving that an exception to the warrant requirement justified their action,<sup>40</sup> it is especially important that officers know the standards for these exceptions. The officer who has stopped a car and is contemplating taking actions beyond those discussed in part one of this article should consider a series of questions to insure his actions do not stray beyond constitutional limits. First, he should decide whether the contemplated action

constitutes a search or seizure for fourth amendment purposes. All of the actions that are the subject of subsequent discussion in this article constitute searches or seizures. Second, the officer needs to decide whether one of the exceptions to the warrant requirement potentially applies in his situation. Third, where a recognized exception potentially applies, the officer must determine whether the required factual predicates are present. Finally, he must determine whether the contemplated action is within the scope allowed under the particular exception that is being applied.

#### Pat-Down Searches of Detained Suspects

In *Pennsylvania v. Mimms*,<sup>41</sup> officers of the Philadelphia Police Department stopped a car because the license plate displayed on it had expired. The officers ordered the driver from the car and noticed a bulge under his sport coat when he emerged. One of the officers immediately patted the outside of the man's coat with his hand, felt what he believed to be a revolver, and reached under the coat to

remove it. The object the officer had felt was a .38 caliber revolver. This type of pat-down or frisk search was first approved by the U.S. Supreme Court in the case *Terry v. Ohio*.<sup>42</sup> In order for such a search to be lawfully performed, the officer making the search must know facts that would cause a reasonable person to suspect that the person to be searched is armed and consequently posing a threat to the officer or others.<sup>43</sup>

In *Mimms* the peculiar appearance of the driver's outer clothing provided the factual justification for a pat-down search. Other facts that might cause an officer to reasonably suspect that a person he has stopped is armed are almost too numerous to catalog. Officers should weigh the facts in a specific instance and make a quick common sense determination of the legality of a pat-down.<sup>44</sup> They should be prepared at a later time to recount the specific facts that caused them to suspect that the person searched was armed.

It is important also that officers performing a pat-down search restrict their actions to those allowed by this exception to the warrant requirement. The search begins with a pat-down of the person's outer clothing.<sup>45</sup> It may proceed to an entry into the clothing or removal of the clothing only where the pat-down reveals some item reasonably suspected to be a deadly weapon, or where outer clothing is of a thickness or nature that a pat-down cannot determine whether a weapon may be present.<sup>46</sup> The entry into the clothing can be no more extensive than necessary to locate and remove the suspected weapon for

examination.<sup>47</sup> As will be discussed in detail hereafter, an officer who has developed probable cause to arrest a person has much greater latitude in performing a lawful search of that person.

### The Vehicular Pat-Down

In *Michigan v. Long*,<sup>48</sup> two officers patrolling a country road in a squad car late at night saw a car being operated at an excessive speed and in an erratic manner. Before they could stop the car it turned off the road onto a side road and swerved into a ditch. Long, the sole occupant of the car, met the officers at its rear. The driver's door remained open. Long, after two requests, produced his driver's license, and after a second request for the vehicle registration, started walking toward the open driver's door. The officers went along with him and before Long could enter the car they saw a large hunting knife on the vehicle's floorboard. They halted Long's motion, and suspecting that he might also have a weapon on his person, performed a pat-down search. They found no weapons. Suspecting that there might be other weapons in the car, one officer shined his flashlight into the interior, saw a pouch protruding from beneath the car's center armrest, and entered the car and raised the armrest to examine it. The pouch was open and was found to contain marijuana. This discovery prompted Long's arrest.

In assessing the reasonableness of this warrantless entry and the limited search of Long's car, the Supreme Court approved the officers' actions by noting both the factual justification for suspecting the presence of weapons and the circumscribed nature of their

search of the car's interior.<sup>49</sup> The Court held that where officers reasonably suspect the presence of readily accessible deadly weapons in a lawfully stopped vehicle, they may make a limited search of the vehicle's interior for the purpose of locating and controlling the weapons.<sup>50</sup> In performing such a search, an officer must restrict his examination to those places where readily accessible weapons might be concealed.<sup>51</sup> This authorization presumably would not allow an examination of portions of the car beyond the passenger compartment.

### Extending the Duration of the Stop

An investigative detention is different from an arrest in numerous ways, including the permissible duration of the seizure. Since the investigative detention is supported by a factual justification less than probable cause, it must be temporary in nature.<sup>52</sup> For example, suppose an officer holds

be expected to be accomplished without substantial additional delay.<sup>53</sup> As the Supreme Court has stated, "In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the [suspect]."<sup>54</sup> Clearly this statement sets no specific time limit on temporary detentions. It does, however, emphasize the burden on the officer to demonstrate with facts the reasonableness of his actions.

### Arrest of Occupants

Where persons who have been detained are in fact engaged in criminal behavior, the goal of the detention is to gather sufficient facts to justify an arrest. Presuming that the officer has statutory authority to arrest, a legal arrest requires that the officer possess

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a car and its occupants in an investigative detention for a period extending beyond a few minutes and has not yet gathered facts amounting to probable cause to arrest or search; the officer must be prepared to show that the extension of time was necessary for legitimate safety reasons or for the completion of logical investigative steps that could reasonably

facts at the time of the arrest that would cause a reasonable person to conclude that a crime probably has been committed and that the person arrested probably committed that crime.<sup>55</sup> Once an officer has acquired probable cause to arrest, he may lawfully exercise much greater dominion over the person he has detained.<sup>56</sup> The time limitation associated with investigative detention is no

longer applicable so that the officer may hold the person a substantial period of time without concern for constitutional limitations.<sup>57</sup> The officer may also use restraining devices, such as handcuffs, without a need for a specific showing of necessity, and may also relocate the arrestee with no particular showing of need.<sup>58</sup> A full search of the arrestee's person is also authorized.<sup>59</sup> These expanded powers are available to an officer at the commencement of a stop in the circumstances where an officer already has probable cause to arrest. As a result, a stop for the purpose of making an arrest can be very different at the outset than one that is performed to effect merely an investigative detention. Obviously, it is beneficial for an officer to know at the outset the purpose and justification for a particular stop.

#### Search Incident to Arrest

In addition to searching the person of an arrestee, officers may perform a search of the passenger compartment of the car as an incident to the arrest of an occupant so long as certain conditions are satisfied.<sup>60</sup> First, the occupant's arrest must be a lawful, custodial arrest.<sup>61</sup> Second, the search must be contemporaneous with the arrest, commencing no later than the time the arrestee has been placed safely under control.<sup>62</sup> Third, the search must be conducted before the car is moved.<sup>63</sup> Finally, the search must not exceed the scope allowed under this exception to the warrant requirement.<sup>64</sup>

The U.S. Supreme Court marked the boundaries of such a search in *New York v. Belton*.<sup>65</sup> In *Belton*, an officer stopped a car

because it was being operated in excess of the speed limit. The car was occupied by four men, including Belton. The officer asked the driver for his driver's license and the car's registration, and through questioning, learned that none of the occupants were the owner or were related to the owner of the car. During this time the officer smelled the odor of burning marijuana and saw on the floorboard of the car an envelope marked "Supergold," a term he associated with marijuana. He arrested all four men at this point for possession of marijuana and removed them from the car. He then removed the envelope from the floor of the car and found that it indeed contained marijuana. At this point he searched each of the men he had arrested, and then

“**Officers should weigh the facts ... and make a quick common sense determination of the legality of a pat-down.**”

searched the passenger compartment of the car where he found a black leather jacket on the rear seat. In the pocket of the jacket he found cocaine.

In passing on the reasonableness of this search, the Court denoted a "bright line" rule regarding the permissible scope of a search incident to arrest under these circumstances; the Court ruled that officers are constitutionally authorized to perform a full search of the car's passenger compartment, including a search of any containers found therein

whether they are open or closed.<sup>66</sup> Searches of areas beyond the passenger compartment, such as the trunk,<sup>67</sup> and perhaps searches of locked containers located in the passenger compartment require some other justification if the search is to be lawful.<sup>68</sup>

This search authorization is a powerful tool for law enforcement. Its requirements are rigid, however, and delay of the search so that it is not contemporaneous with the arrest, or relocation of the car before the search is performed, will prevent its valid application.<sup>69</sup>

#### Vehicle Exception Search

Under certain circumstances, officers may make an extensive search of a vehicle located in a public place without a search warrant.<sup>70</sup> The first requirement for making such a search is that the officer possess facts that would cause a reasonable person to conclude that evidence of a crime or contraband is probably concealed in a vehicle.<sup>71</sup> Second, the vehicle must be located in a place to which the officers have lawful access.<sup>72</sup> Finally, the search must be restricted in scope to places where the evidence sought might be concealed (for example, an officer would not be justified in searching a small jewelry box where the item being sought is a shotgun).<sup>73</sup>

An example of such a vehicle exception search is found in *United States v. Ross*,<sup>74</sup> where officers developed information from a reliable informant that a person named Bandit was selling narcotics kept in the trunk of a car parked at a specific address. The source stated that Bandit had just completed a sale out of the car and had told the source that he had

additional narcotics in the trunk. The car was described as a "purplish maroon" Chevrolet Malibu with District of Columbia license plates. Officers immediately drove to the address they had been given, saw a Malibu that matched the description they had been given, but saw no one nearby. To avoid alerting persons on the street, the officers then left the area. Five minutes later they returned and saw the Malibu being driven on the street, saw that the driver matched the description they had been given of Bandit, and stopped the car. The driver was ordered from the car and searched (incident to his arrest), and the interior of the car was searched resulting in the discovery of a pistol in the glove compartment. At this point the trunk of the car was opened, one of the officers located a paper bag, opened it and discovered glassine envelopes containing white powder. The bag was left in the trunk which was then closed, and the car was driven to the police station. There the car was thoroughly searched, and \$3200 in cash was located in a zippered leather case. The search of the trunk of the car, the paper bag and the leather case were approved by the Supreme Court as components of a valid vehicle exception search.<sup>75</sup> The search of the bag and pouch were proper because they were both items that could contain narcotics.<sup>76</sup>

Two other aspects of the *Ross* facts are noteworthy. First, because the officers had probable cause to arrest the driver of the car before the stop began, they had immediate authorization to lawfully take full control of the man

from the outset, and to conduct the contemporaneous full search of the passenger compartment incident to the man's arrest. Second, because the officers had probable cause to believe evidence of a crime was present in the car before the stop commenced, they also had immediate authority to search any place in the car where the evidence

interests of the owner of a car, it is necessary for an officer to impound a car he has stopped. For example, where the car is stopped so that it is obstructing traffic or stopped in a place where it may not be safely parked and the driver has been arrested, the officer must take custody of the vehicle.<sup>78</sup> Under such circumstances, an

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**... officers performing a pat-down [should] restrict their actions to those allowed by this exception to the warrant requirement.**

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sought might be concealed. This search authority is not circumscribed by the rigid contemporaneousness requirement of the search incident to arrest exception so that under the vehicle exception a later search of the passenger compartment (as well as other places where the evidence might be concealed) conducted at a place other than where the stop occurred is still lawful.<sup>77</sup>

Officers are cautioned, however, that possession of probable cause to arrest is no guarantee of probable cause to search. Not infrequently an officer will possess probable cause to arrest an occupant of a car without having any facts indicating that there is evidence of a crime in the car. Under these circumstances, the officer's search authority will be limited to the contemporaneous search of the passenger compartment incident to the arrest, unless facts amounting to probable cause to search later come to light.

#### **Impoundment Inventory**

Frequently, for reasons of public safety and to protect the

officer may legally examine the car and its contents so long as certain requirements are satisfied.<sup>79</sup> The justifications for this examination include the need to protect the owner's property as well as the officer's interest in locating hazardous items, and also his need to verify what items are present so as to avoid later false claims.<sup>80</sup>

A lawful impoundment inventory requires first that the officer lawfully acquire custody of the vehicle. Consequently, both the legality of the stop and the necessity of taking control of the vehicle must be shown.<sup>81</sup> Second, the officer must show that the inventory was conducted pursuant to a standard, uniformly applied inventory policy.<sup>82</sup> Finally, the officer must show that his examination was within the scope of search allowed, that he restricted his examination to places where valuables or hazardous items might likely be concealed.<sup>83</sup> This logically includes the passenger compartment, glove compartment, trunk, and the contents of any containers found therein.<sup>84</sup>

# Wanted by the FBI

## Plain View Seizures

If during the scope of a lawful search of the types previously discussed an officer comes upon items that he has probable cause to believe are evidence, he may seize these items without a warrant.<sup>85</sup> The officer must be prepared to show that when the item was observed, the officer was lawfully present in a place where he could make the seizure, and that upon observing the item, he had probable cause to believe that the item was subject to seizure.<sup>86</sup>

## CONCLUSION

Officers making traffic stops are confronted with substantial challenges and also with substantial opportunities to lawfully further investigative objectives. To meet these challenges and benefit from the opportunities, officers must have the necessary knowledge to keep their actions within constitutional limits. Such informed restraint will insure the admissibility of any evidence acquired, as well as protect citizens' legitimate privacy interests.

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### Footnotes

- <sup>86</sup>U.S. Const. amend. IV.  
<sup>87</sup>See *Katz v. United States*, 389 U.S. 347 (1967).  
<sup>88</sup>See *Carroll v. United States*, 267 U.S. 132 (1925); *South Dakota v. Opperman*, 428 U.S. 364 (1976); *California v. Carney*, 471 U.S. 386 (1985); *New York v. Belton*, 453 U.S. 454 (1981).  
<sup>89</sup>*Id.*  
<sup>90</sup>See *Katz v. United States*, 389 U.S. 347 (1967).  
<sup>91</sup>434 U.S. 106 (1977).  
<sup>92</sup>392 U.S. 1 (1968).  
<sup>93</sup>*Id.*  
<sup>94</sup>*Id.* See also *United States v. Sokolow*, 195 S. Ct. 1581 (1989).  
<sup>95</sup>*Supra* note 42.  
<sup>96</sup>*Id.*  
<sup>97</sup>*Id.*  
<sup>98</sup>463 U.S. 1032 (1983).  
<sup>99</sup>*Id.* at 1051.  
<sup>100</sup>*Id.*

- <sup>51</sup>*Id.*  
<sup>52</sup>See *United States v. Sharpe*, 470 U.S. 675 (1985).  
<sup>53</sup>*Id.*  
<sup>54</sup>*Id.* at 686.  
<sup>55</sup>*Draper v. United States*, 358 U.S. 307 (1959).  
<sup>56</sup>See *Washington v. Chrisman*, 455 U.S. 1 (1982).  
<sup>57</sup>*Id.* See also *Dunaway v. New York*, 442 U.S. 200 (1979).  
<sup>58</sup>*Id.*  
<sup>59</sup>*United States v. Robinson*, 414 U.S. 218 (1973).  
<sup>60</sup>*New York v. Belton*, *supra* note 38.  
<sup>61</sup>*Id.*  
<sup>62</sup>*Id.*  
<sup>63</sup>*Id.* See also *Preston v. United States*, 376 U.S. 364 (1964).  
<sup>64</sup>*Id.*  
<sup>65</sup>*Supra* note 38.  
<sup>66</sup>*Id.*  
<sup>67</sup>*Id.*  
<sup>68</sup>But see *United States v. McCrady*, 774 F.2d 868 (8th Cir. 1985).  
<sup>69</sup>See, e.g., *State v. Badgett*, 512 A.2d 160 (Conn. 1986).  
<sup>70</sup>*Carroll v. United States*, *supra* note 38;  
*United States v. Ross*, 456 U.S. 798 (1982);  
*California v. Carney*, *supra* note 38.  
<sup>71</sup>*Chambers v. Maroney*, 399 U.S. 42 (1970).  
<sup>72</sup>*Cardwell v. Lewis*, 417 U.S. 583 (1974); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *California v. Carney*, *supra* note 38.  
<sup>73</sup>*United States v. Ross*, *supra* note 70.  
<sup>74</sup>456 U.S. 798 (1982).  
<sup>75</sup>*Id.*  
<sup>76</sup>*Id.* at 821.  
<sup>77</sup>See *Chambers v. Maroney*, *supra* note 71.  
<sup>78</sup>See *Michigan v. Thomas*, 458 U.S. 259 (1982).  
<sup>79</sup>*South Dakota v. Opperman*, *supra* note 38.  
<sup>80</sup>*Id.*  
<sup>81</sup>*Supra* note 78.  
<sup>82</sup>*Supra* note 79.  
<sup>83</sup>*Id.*  
<sup>84</sup>*Colorado v. Bertine*, 107 S.Ct. 738 (1987).  
<sup>85</sup>*Coolidge v. New Hampshire*, *supra* note 72; *Texas v. Brown*, 460 U.S. 730 (1983).  
<sup>86</sup>*Id.*

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.



Retouched photographs taken 1986

### Phung Vuong,

also known as Phung Young. W; born 3-16-63 (not supported by birth records); Saigon, Vietnam; 5'5"; 130 lbs; slender bld; blk hair; brn eyes; med comp; occ-fisherman, machine operator, beef processor, sheet metal worker; remarks: Vuong may be traveling with Hung Huu Nguyen, FBI Identification Order 5974, who is also wanted by law enforcement authorities.

Wanted by FBI for INTERSTATE FLIGHT-MURDER; AGGRAVATED ROBBERY; AGGRAVATED BATTERY; AGGRAVATED BURGLARY

NCIC Classification:

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Fingerprint Classification:

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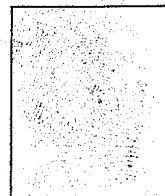
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Social Security Number Used: 550-59-4002

FBI No. 348.000 FA5

### Caution

Vuong is being sought in connection with the shooting murder of two male victims and the robbery of others during a robbery/burglary of a residence. Consider armed and dangerous.



Right ring fingerprint