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Remember 9/11/01; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*When choosing between two evils, I always like to try the one I've never tried before*." (Mae West)

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***ADMINISTRATIVE NOTES*:**

Searching a Vehicle's "Black Box":" V.C. § 9951 provides a few rules restricting the retrieval of the information contained in a motor vehicle's "black box;" more correctly known as an "event data recorder" or "sensing and diagnostic module." Particularly in the science of accident reconstruction, the contents of this recording device can be extremely important in determining how and why a

traffic collision happened. However, some officers are apparently of the opinion that the information contained in this black box is there for the taking. I am of the opinion that it's not nearly so simple. Subd. (c) provides a list of the legal ways to get the information from that box. Consent from the registered owner (Subd. (c)(1)) or a court order (Subd. (c)(2)) are the only two ways the statute allows for law enforcement to get to the contents of a black box. An argument can be made that one or more of the recognized exceptions to the search warrant requirement for searching vehicles trump these statutory restrictions, but I disagree. Just because the Fourth Amendment warrant requirement allows for some exceptions when searching a motor vehicle does not mean we can ignore statutory restrictions that might also apply. So while taking the information from a black box without a warrant or consent "*might not*" ("*might*" being the operative word), in certain circumstances, be a violation of the Fourth Amendment, it is still a violation of the restrictions contained in V.C. § 9951. And although the resulting evidence "*may not*" ("*may*" being the operative word) be suppressed, there (arguably) being no Fourth Amendment violation, you will still be subject to cross-examination in court as to why you thought it was professionally appropriate to purposely violate a legislative mandate. *So do it right*. *Get consent or a search warrant*.

***P.C. § 602 Trespass Cases*:** I am consistently asked why an officer shouldn't arrest a subject for "trespass" upon the complaint of a property owner that someone is on his property (whether residential or commercial) without permission. The answer I have to give is because chances are good that what the trespasser is doing is not illegal. Merely being on another's property, while maybe a "civil" trespass, is not necessarily a violation of any criminal trespass statute. It is not a crime to trespass on someone's property unless you can find a specific criminal statute that fits your situation. Should I, for instance—looking as I might on a Sunday morning after a hard-fought Saturday night of serious drinking and carousing—plop my disgustingly unwashed (although clothed) body down on the front, unfenced lawn of the Church Of The Socially Elite, and proceed to sun myself as church-goers and their innocent children are forced to walk by (or even around) me in disapproving distain, can you arrest me for trespass? How about if I'm told to leave but refuse to go? The answer is a simple, yet adamant "*no*." I may be committing a civil trespass. But I'm not in violation of P.C. § 602 or any other trespass-type criminal statute. Yet I see too many police officers attempt to arrest for trespass without verifying which subdivision of P.C. § 602 fits the elements of their situation. More often than not, there is no such subdivision that applies. And also should you be confronted with the situation where the trespasser is there for some political or similar First Amendment, "*Freedom of Expression*" purpose, such as collecting signatures or distributing political or social-issue leaflets, it will be even harder to justify an arrest. For an in-depth analysis of this later issue, and how to handle it without getting yourself sued, I can send you, upon request, an article I wrote on the topic.

CASE LAW:

***High Speed Vehicle Chases and the Use of Force*:**

***Scott v. Harris* (Apr. 30, 2007) __ U.S. __ [127 S.Ct. 1169]**

Rule: Ending a dangerous high speed vehicle chase by pushing the suspect's vehicle off the road, severely injuring him, is reasonable force under the circumstances of this case.

Facts: Plaintiff Victor Harris in this civil suit was clocked by a Georgia "county deputy" at 73 miles per hour in a 55 mph zone, at night. Turning on his blue flashing emergency lights only caused Harris to drive faster, resulting in an all-to-typical "high speed chase." Harris drove at speeds exceeding 85 miles per hour on what was, for the most part, a two-lane highway. Deputy Timothy Scott (defendant in the civil suit) joined the chase. Harris was eventually boxed in between police cars in a shopping center parking lot, but, by executing a few quick turns and while bumping Scott's patrol car, managed to escape. After some six minutes and 10 miles of this chase, Scott, who had taken over as the lead patrol car, radioed supervisors for permission to perform a "PIT" ("*Precision Intervention Technique*") maneuver. Scott was advised to "(g)o ahead and take him out." However, due to the excessive speeds, Deputy Scott determined that the PIT maneuver wasn't safe. So he simply "applied his push bumper to the rear of (Harris's) vehicle." This caused Harris to lose control, drive off an embankment, overturn, and crash. Harris was seriously injured as a result, rendering him a quadriplegic. He later sued in federal court alleging that by bumping and forcing him off the road, Deputy Scott used excessive force in "seizing" him; a Fourth Amendment violation. The federal district court judge denied Scott's motion for summary judgment (i.e., dismissal). The Eleventh Circuit Court of Appeal affirmed, noting that if Harris was able to prove what he alleged, a jury could find that Scott had used excessive force in seizing him and that Harris's Fourth Amendment rights had been violated. Scott petitioned to the United States Supreme Court.

Held: The United States Supreme Court, in an 8-to-1 decision, reversed. Normally, without any trial testimony to draw from (a "summary judgment" motion being a pre-trial remedy), an appellate court must assume the truth of the responding party's (i.e., Harris) version of the facts. The issue at this point, therefore, was whether, as alleged by Harris, there are facts that would support a jury's finding that Scott used excessive force. In this case, however, as noted by the Supreme Court, there is an "added wrinkle." That "wrinkle" is a videotape of the chase itself as recorded by a camera in one of the pursuing patrol cars and submitted as evidence at the summary judgment motion. (See the tape at http://www.supremecourtus.gov/opinions/video/scott_v_harris.rmvb.) This tape tells a whole different story than as alleged by Harris. "Indeed, reading the lower court's opinion, one gets the impression that (Harris), rather than fleeing from police, was attempting to pass his driving test." The videotape shows a chase at "shockingly fast" speeds, swerving around more than a dozen other cars, crossing the double-yellow line numerous times while forcing cars traveling in both directions off the highway. Harris is also seen running multiple red lights and traveling for "considerable periods of time" inside the painted center divider and through left and right turn lanes. "Far from being

the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serous injury." Taking into account the videotape, the Court found Harris's "version of events . . . so utterly discredited by the record that no reasonable jury could have believed him." The issue is whether, in bumping Harris's car and running him off the road as a means of ending the chase, Deputy Scott used excessive force under the Fourth Amendment. The Court first ruled that it is irrelevant whether Deputy Scott's actions constituted "deadly force." "(A)ll that matters is whether Scott's actions were reasonable." Reasonableness is determined by balancing "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." The actions of both Harris and Scott exposed others to a serious risk of harm. The difference, however, is that Harris's actions endangered any number of innocent people. Deputy Scott, on the other hand, sought merely to end Harris's unlawful and dangerous acts by exposing Harris alone to the risk of death or serious injury. Balancing these interests, Deputy Scott's actions were clearly reasonable. Lastly, the Court declined to rule that it would have been wiser for Deputy Scott to simply break off the chase and let Harris go. First, breaking off the chase wouldn't have necessarily guaranteed that Harris would discontinue his reckless driving. Rather, he might have merely concluded that the police were devising some other plan for his capture. Secondly, breaking off the chase would cause others to assume that all they need to do to escape from the police is to initiate a high speed chase. Because Deputy Scott acted reasonably in continuing the chase and forcing Harris off the road, summary judgment for the civil defendant (i.e., Deputy Scott) should have been granted.

Note: We've been waiting for this case to come down for some time. And what a breath of fresh air it is. At last there is good Supreme Court authority for holding someone like Victor Harris accountable for the dangerous situation he intentionally created and, instead of jumping down some good cop's throat, giving the officer kudos for his efforts to take positive law enforcement action in attempting to stop him. Of particular importance is the Court's conclusion that in such a circumstance, breaking off the chase is not necessarily an option. While there may still be circumstances where letting the crook go is advisable (e.g., through a school zone during school hours), more often the not, continuing the chase until force is used to end it now has the Supreme Court's blessing.

***Detention of Passengers During a Traffic Stop*:**

Brendlin v. California **(Jun. 18, 2007) ___ U.S. ___ [127 S.Ct. 2400]**

Rule: A passenger in a private motor vehicle is "*detained*" by virtue of being in the vehicle when the driver is stopped by police, thus giving the passenger standing to challenge the legality of the stop.

Facts: On November 27, 2001, Deputy Sheriffs observed a vehicle without license plates, noting that a red, temporary operating permit in the window of the vehicle had a visible number "11" on it. This indicated to the officers that the car's temporary

registration was due to expire in 3 more days; i.e., at the end of November. And, in fact, an earlier radio check of that same car had resulted in information to the effect that a renewal of registration was being processed. The officers, however, decided to stop the car for the purpose of checking the validity of the temporary red sticker. While contacting the driver, the officer recognized the passenger (i.e., defendant) as a person who had an outstanding no-bail parole warrant. Defendant's arrest on the warrant resulted in recovery of evidence indicating that defendant was involved in the manufacturing of methamphetamine. Charged in state court, defendant's motion to suppress this evidence as the product of an illegal traffic stop was denied, the trial court ruling that defendant, as the passenger of the car, was not detained until that point where he was recognized as a parole violator. Defendant pled guilty and appealed. The appellate court disagreed and reversed. The California Supreme Court, however, ruled in a 4-to-3 decision that the trial court was right and reinstated defendant's conviction. Defendant appealed to the United States Supreme Court.

Held: The United States Supreme Court unanimously reversed, holding that defendant, by virtue of being a passenger in a stopped motor vehicle, had been detained. If the traffic stop of the vehicle was illegal, then defendant's detention would also be illegal and the resulting narcotics evidence would have to be suppressed. In evaluating the legality of a detention, the test is whether, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Or, in a case where the person has no desire to leave, "whether 'a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.'" In the case of a passenger in a private motor vehicle, the Court was of the opinion that no "reasonable person in Brendlin's position when the car was stopped would have believed himself free to 'terminate the encounter' between the police and himself." A "sensible person," as a passenger in a stopped vehicle, would not expect the police to allow passengers to come and go freely. If the driver is stopped for a traffic-related offense, a "passenger will expect to be subject to some scrutiny, and his attempt to leave the scene would be so obviously likely to prompt an objection from the officer that no passenger would feel free to leave in the first place." If the driver is stopped for something unrelated to his driving, a "passenger will reasonably feel subject to suspicion owing to close association" with the driver. The officer's subjective intentions are irrelevant unless and until those intentions are in some way communicated to the passenger. Therefore, defendant has standing to challenge the legality of the traffic stop. Because he has such standing, the case must be remanded back to the trial court for further hearings on whether there are any lawful grounds justifying the stop of the vehicle itself.

Note: Not a surprise, California being on the wrong side of a lopsided minority on this issue. But note that the Supreme Court further held that when you stop a taxi or a bus, the passengers in these types of vehicles would not likely be held to have been detained in that a passenger in a "common carrier" does not have the same relationship to the driver as does a passenger in a private motor vehicle. That's an important distinction to make should this issue ever come up. Also, having been remanded back to the trial court, this case is now ripe for a decision on whether it is lawful to stop a vehicle for the sole purpose of checking the temporary vehicle operating permit to see if it is valid. A lot of

cops tell me that because these red stickers are easily altered or moved from car to car, traffic stops are routinely made for the sole purpose of checking them out. Other authority, however, has held this practice to be illegal (See *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1.), although the issue is presently pending before the California Supreme Court in *People v. Hernandez* (2006) 146 Cal.App.4th 773 (Review granted). I tend to agree with *Nabong* and predict that *Hernandez* will be decided accordingly.

***Anonymous Information and Reasonable Suspicion*:**

***People v. Lindsey* (Mar. 27, 2007) 148 Cal.App.4th 1390**

Rule: Anonymous information reporting a contemporaneously occurring dangerous incident involving a gun, with an accurate, quickly verified description of the suspect and his location, constitutes sufficient reasonable suspicion to stop, detain, and pat the suspect down for weapons.

Facts: Pittsburg, California, police received a 9-1-1 hang-up call that they traced to a particular residential address. Minutes later, a second call from that same address was received. This time the caller told the dispatcher that she did not want to be contacted or identified because she was afraid of retaliation, but that someone had just fired a gun outside her house. The caller described the suspect as a Black male with small pony tails, but said she did not actually see the suspect fire or hold the gun. Officer Charles Blazer, who had investigated prior murders and shootings in the area and knew it to be one of "high levels of drug and gang activity," arrived five minutes after receiving the call. The officer observed defendant—a Black male with small ponytails—walking with two other men. Defendant was wearing a jacket that hung down over the waistline of his sweatpants. He appeared to have something heavy in his pocket or waistband, having to hold his pants up at the waist. After watching the three men walk about a block and a half, during which defendant never removed his hand from his waistband, the officer made contact and asked them if he could speak with them. Defendant ignored the officer at first while he kept walking despite the fact that his two companions had stopped. Defendant soon also stopped. When told by the officer that he was investigating a call about shots being fired, defendant denied having a gun. Officer Blazer, not about to take defendant's word for it, told him that he was going to pat him down. Defendant started to submit, holding his left arm out at a 90-degree angle, but still held his right hand at his waistband. As Officer Blazer began to conduct the patdown, defendant suddenly turned and tried to run. He was tackled, however, and handcuffed. A quick search resulted in the recovery of a sock tucked into his waistband and which contained a fully loaded revolver with one empty shell casing. The gun smelled as if it had recently been fired. Another officer attempted to make contact with the person who had originally called 9-1-1. However, she refused to open the door, was adamant that she be left alone, and "didn't want much to do with the entire incident." Defendant was charged with being a felon in possession of a firearm, with seven (yes; count them, *SEVEN*!!!) prior strikes under the three-strikes law (P.C. §§ 667(b)-(i); 1170.12). His motion to suppress the gun was denied. He then pled guilty (getting 5 years in a gift of a plea bargain) and appealed.

Held: The First District Court of Appeal (Div. 4) affirmed. Defendant argued on appeal that because the information leading to the contact was nothing more than an anonymous tip, the officer did not have sufficient cause to detain and/or pat him down for firearms. All parties agreed that defendant was detained at that point when the officer attempted to initiate a patdown. The question here, therefore is whether there was sufficient reasonable suspicion to detain and pat defendant down at that point in time. Citing U.S. Supreme Court authority (*Florida v. J.L.* (2000) 529 U.S. 266.), the Court noted that it is a rule of law that a detention and a pat down for weapons—both of which require that the officer have a "*reasonable suspicion*" that the person detained be involved in criminal activity and, to justify a patdown, that he be armed—cannot be based upon anonymous information alone. There has to be some other independent information corroborating the anonymous informant. The California Supreme Court, however, has differentiated *J.L.* from a situation such as in the present case. (See *People v. Dolly* (2007) 40 Cal.4th 458.) First, the anonymous informant is calling about a situation involving a firearm that "pos(es) 'a grave and immediate risk' to the caller and to anyone nearby." Second; an anonymous call about a "contemporaneous threat" is not likely to be a hoax. Third; a firsthand contemporaneous description of the crime as well as an accurate and complete description of the perpetrator and his location, the details of which are confirmed within minutes by the police, lends some reliability to the information. And fourth; the caller provides a reasonable explanation for why he or she wants to remain anonymous. To one degree or another, all of these factors applied to this case. The net effect is to provide the responding officer with sufficient reasonable suspicion to detain defendant and, upon observing him holding his waistline in such a suspicious manner, pat him down for a firearm.

Note: The Courts don't like *Florida v. J.L.* and have worked hard to find exceptions to the rule expressed in that case. This case follows suit. Strictly adhering to the rule of *J.L.* puts an officer in the unenviable, dangerous situation of being face to face with someone reported to be armed, but not being able to do what is necessary to protect oneself from that danger. And whether you agree or not, I am of the opinion that the courts really don't want you to get shot. Cases like this require me to remind you to do what you think you need to do to protect yourself, while using a little common sense and doing what's reasonable under the circumstances, and let us later litigate the possibility that you have an exception to *J.L.*. At least you'll be around to find out the results of that litigation, whether we're successful or not. Note also, by the way, that this is *not* truly an uncorroborated "*anonymous tip*" case. The 9-1-1 caller was in fact identified, despite her best efforts to the contrary. Secondly, defendant's actions upon the officer's arrival to the scene (i.e., holding his waistband in a suspicious manner and being reluctant to stop) tend to corroborate the caller's information. But these issues were not discussed.

***Computers and Child Pornography; Probable Cause*:**

***United States v. Kelley* (9th Cir. Apr. 9, 2007) 482 F.3rd 1047**

Rule: Probable cause supporting the issuance of a search warrant may be based entirely upon circumstantial evidence together with reasonable inferences there from. Receipt of

child pornography in nine e-mails from two separate sources sent to two of a person's separate screen names supports an inference of knowing possession of that pornography.

Facts: An investigation by German police led to evidence that a German citizen, in Germany, was trafficking in child pornography. The investigation revealed that this person had e-mailed child pornography on four occasions to a person with a screen name of "Gay1dude." This name was tracked to defendant's California AOL e-mail account. A search warrant obtained for defendant's AOL account information resulted in discovery of some 500 images of child pornography that defendant had either sent or received. However, defendant's subsequent motion to suppress the results of this search warrant, in a separate case, was granted in a ruling that was not contested. A separate child pornography trafficking investigation in Wichita, Kansas, turned up evidence that this defendant, while using the screen name of "K Michael Kelley," and another person who was the target of the Wichita investigation, had each been sent five e-mails containing 38 attachments, each attachment depicting child pornography in different computerized forms. Using the information from these two investigations (including the suppressed results of the search on defendant's AOL account), a second search warrant was sought and obtained for defendant's residence and his home computer. Upon execution of this search warrant, "numerous" images of child pornography were recovered. Charged in federal court with possession of the child pornography found on his computer, defendant filed a motion to suppress the results of this search. The trial court, after first having to redact the previously suppressed AOL account information from the search warrant affidavit, noted that the probable cause for this warrant was based upon no more than the fact that defendant had been the recipient of nine e-mails (four from Germany and five from Wichita) containing child pornography. The court therefore quashed this search warrant and suppressed the results of the search, ruling that without any explanation as to how the pornography had ended up on defendant's computer or that defendant had personally solicited the pornography, there was insufficient probable cause to show that he knowingly possessed the pornography. Specifically, the court held that: "(S)omething more than proof of receipt or opening an email is required to establish probable cause that the recipient is in actual (i.e., knowing) possession of contraband contained in an email attachment." The Government appealed.

Held: The Ninth Circuit Court of Appeal, in a 2-to-1 split decision, reversed. The Court first noted that the trial court judge was left with a seriously purged affidavit, being forced to redact from the affidavit references to the 500 child porn photos found in defendant's e-mail upon execution of the first (and later quashed) search warrant. The question is, however, whether as redacted, did what was left of this affidavit still reflect sufficient probable cause to uphold the warrant. The U.S. Supreme Court has dictated that in evaluating a search warrant, the standard is whether, based upon a "*totality of the circumstances*" including any "*reasonable inferences*," the affidavit establishes at the very least a "*fair probability*" that the items being sought would be found in the place to be searched. In considering this question, "resolution of doubtful or marginal cases . . . should largely be determined by the preference to be accorded to warrants." In other words, courts should not get overly picky in evaluating the validity of a search warrant. In this case, there was no direct evidence cited in the warrant affidavit (after it was

redacted) that defendant did anything to affirmatively solicit the child pornography sent to his computer. The question is whether such direct evidence is necessary in order for a court to find sufficient probable cause to uphold the warrant. In this case, the redacted affidavit alleged the following: (1) Defendant had been sent multiple e-mails (nine) with multiple attachments, each with sexually explicit images of children. (2) All the images were of the same type of pornography, and not the kind of material likely to be received by unwitting recipients. (3) The material came from at least two separate sources, both being apparent traffickers in child pornography. (4) Defendant received these images at two different screen names. From this, the inference can be made that defendant was a part of a network of persons interested in child pornography primarily involving young boys. This, the Court ruled, in its totality, establishes a "*fair probability*" that defendant actively solicited this material. The fact that these e-mails *could* have been unsolicited spam does not detract from the determination that the warrant was supported by probable cause. The trial court, therefore, should not have suppressed the evidence.

Note: It's always been my belief that in evaluating the existence of "*probable cause*," it is not necessary that we are right; only that we are "*probably right*." But even this is an over-statement of our burden of proof in that it is only required that there be a "*fair probability*" that we are right, suggesting a standard of something less than "*more likely than not*." This is why I always encourage the use of a search warrant even when it might not be legally necessary. It's hard to lose a suppression motion when the search is based upon a warrant. The challenged affidavit, by the way, also contained the opinions of an expert on pornography (an ICE Special Agent) to the effect that "persons whose sexual objects are minors collect sexually explicit material for their own sexual gratification and fantasy; that they tend to possess and trade this material in a clandestine manner; and . . . that such persons almost always maintain their material at home or some other secure location where it is readily available, and rarely, if ever, dispose of the collections." It was also noted that in the expert's opinion, the "computer has become one of the preferred methods of distribution of pornographic materials." This type of expert opinion is very important in establishing probable cause while at the same time explaining to a judge how pedophiles, for instance, think and operate. The importance of this type of discussion in your search warrant affidavit cannot be over-emphasized.

***Consent to Search*:**

People v. Cantor **(Apr. 13, 2007) 149 Cal.App.4th 961**

Rule: The duration and extent of a consent search is limited to what is reasonably understood to be the scope of that consent when given.

Facts: Officers observed defendant commit some traffic violations (tailgating, changing lanes without signaling, and speeding) and attempted to make a traffic stop. Defendant failed to yield, ignoring their red and blue lights, and then their siren. Eventually, however, he pulled over and stopped. As he did so, he furtively reached towards the floorboards. Asked to step out of his car, defendant smelled of marijuana. He denied smoking any "weed," however, or having recent contact with anyone who did.

Defendant appeared nervous. His hands were shaking and he avoided eye contact. Defendant denied hiding anything when asked why he had reached towards the floor. The officer then asked him: "*Nothing illegal in the car or anything like that*? *Mind if I check real quick and get you on your way*?" Defendant indicated that he didn't mind. Other than a stronger odor of marijuana, a search of the passenger area of the car failed to turn up anything. The officer took the car keys from the ignition and opened the trunk. Defendant did not object, but also did not do or say anything to assist or otherwise signal his approval of this part of the search. Finding nothing of interest there, the officer shut the trunk lid and proceeded to check under the vehicle's hood. He then rechecked the passenger compartment several more times. Still finding nothing after about 15 minutes of looking, the officer finally told defendant that he was going to have to bring in a police dog to sniff the car. Defendant, who was very cooperative and not objecting to how long this was taking, said okay. While waiting for the dog, the officer went back to the trunk again and began removing anything that could pose a hazard to the dog. In so doing, he found a wooden box. Defendant told the officer that the box contained cleaning materials for vinyl records. The officer could feel something inside shift as he handled it and observed a paper bag through a mesh screen on the side of the box. Using a screwdriver to remove some screws, the officer took off the back panel to the box and, inspecting the bag's contents, found 201 grams of cocaine. Defendant's later motion to suppress this contraband was denied. He appealed.

Held: The Fourth District Court of Appeal (Div. 3) reversed. The prosecution bears the burden of proof on the issue of a warrantless search and whether the duration and extent of the search was within the scope of the consent given. The test is one of "*objective reasonableness;*" i.e., what would one reasonably understand the search to involve under the circumstances of the consent given. Defendant here agreed to a "*real quick*" check of his car. By fifteen minutes into the search without having found anything, the officer's search went beyond being what could be understood as "*real quick*." Certainly, it did not include the dismantling of a piece of equipment found in the trunk by unscrewing its back panel. Having gone well beyond what a reasonable person would have believed defendant consented to, the search of the box was beyond the scope of the consent given. Defendant's suppression motion should have been granted.

Note: What can I say? I've seen similar circumstances before where an officer will kind of play down the potential scope or intrusiveness of a proposed search when requesting consent, and then take the consent thus obtained as carte blanche authority to dismantle whatever it is that's being searched while taking most of the day to do it. This case draws a line on that type of tactic that needs to be considered. Unfortunately, the line is one of "*reasonableness*," which means different things to different people. But a little common sense will help you in determining where this line is when you're in that position. I can't say (assuming the facts in this case are reported accurately) that I disagree with the Court's conclusion that the line was crossed here. Perhaps the defendant's suspicious actions and the odor of marijuana, establishing probable cause to be looking for the source of that odor, might have been a stronger argument justifying the continuing search. But other than citing these factors as reasons for the officer's curiosity as to what the defendant might have been hiding in his car, this issue was not discussed.