



March 1987

# FBI

## Law Enforcement Bulletin



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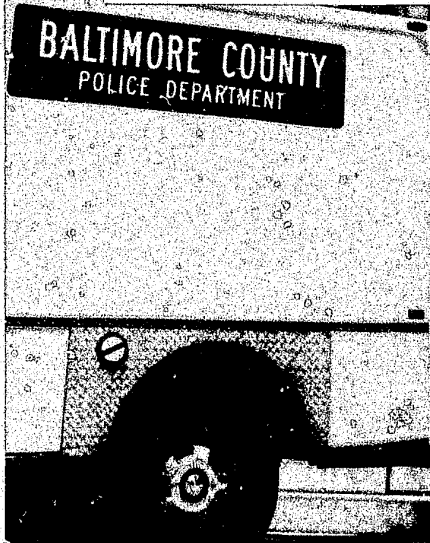
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### REPEAT OFFENDERS DATA BASE COPY

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# FBI

## Law Enforcement Bulletin

United States Department of Justice  
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Washington, DC 20535

William H. Webster, Director

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### The Cover:

The Baltimore County Repeat Offender Program is a united effort of all elements of the criminal justice system to neutralize the repeat offender. See article p. 1. (Cover by Dave Knoerlein)

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# Emergency Searches of Premises

## (Part I)

By  
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A bank robbery by two men armed with handguns is reported to the police. Within minutes, the first patrolmen on the scene have obtained descriptions of the robbers and caused this information to be broadcast to fellow officers. A suspect matching the description of one of the robbers is detained<sup>1</sup> on a sidewalk at the door to a residence less than a mile from the bank. The detainee is frisked, but no weapons are located. Suspecting that the second robber is inside the residence, officers kick open the door and search the house for additional suspects. The bank robbery loot is found stacked on a table in the living room.

A police officer, in the excitement of a fast-breaking investigation, has made a quick decision to perform a search. Since the money taken from the bank was found, other events will logically follow. The detainee will be arrested and a prosecution will begin, during which the government will seek to prove that this man was one of the robbers. Also as part of the judicial process, a hearing where the legality of the officer's search is challenged will be held to determine the admissibility of the money. Because the search was performed without a warrant, the burden of establishing its legality will fall upon the government.

The officers who searched the house know why they entered without waiting for a warrant. They needed to determine whether an armed bank robber was inside, and in the absence of any reasonable alternative, common

sense commanded an immediate search. The officers are not so sure, however, that the court will allow the use of the evidence they have found.

What emergency circumstances justify an officer searching premises, without a warrant, based on his own evaluation of the facts at hand? This article seeks to answer that crucial question through an exploration of the "emergency" or "exigent circumstances" exception to the fourth amendment warrant requirement. What constitutes a sufficient emergency to justify a warrantless search or seizure is a judicial determination based upon the facts of a particular case. The U.S. Circuit Court of Appeals for the D.C. Circuit has described the process for evaluating "exigent circumstances searches." They note that "[t]he term 'exigent' has become the legal designation for a set of emergency law enforcement situations excepted from the warrant requirement. These situations, in turn, are generally analyzed in terms of the various component circumstances which contribute to the need for emergency action."<sup>2</sup>

Courts commonly recognize three threats as providing justification for emergency warrantless action—danger to life, danger of escape, and danger of destruction or removal of evidence. Presence of any one of these threats may provide justification for a warrantless search of premises. Because there

*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 questionable legality under State law or are not permitted at all.*



Special Agent Sauls

is one legal standard for emergency action based upon danger to life and a different one where the threat is risk of escape or destruction of evidence, awareness of the threat present in a particular situation is the key to correct on-the-spot decisions that avoid violations of citizens' fourth amendment rights and result in the judicial admissibility of evidence located.

Part one of this article will examine U.S. Supreme Court and lower court decisions considering the legality of warrantless searches of premises based upon perceived threats to life. It will set forth the legal standard for such emergency searches and seizures and examine application of the standard by courts. In doing so, it will focus on the circumstances courts commonly deem sufficient for establishing a threat to life and the allowable scope of action for dealing with the threat. Part two will similarly examine warrantless searches of premises based upon perceived emergency threats of escape and destruction of evidence.

#### **THE EMERGENCY EXCEPTION TO THE WARRANT REQUIREMENT**

The fourth amendment protects persons in the United States from "unreasonable" intrusions by government into their privacy and property.<sup>3</sup> The U.S. Supreme Court, in determining what government intrusions are reasonable under the fourth amendment, has expressed an emphatic preference for searches and seizures made pursuant to a judicially issued search warrant.<sup>4</sup> As the Court has stated, the "Constitution requires that the deliberate, impartial judgment of a judicial of-

ficer be interposed between the citizen and the police ... [and] searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject to a few specifically established and well-delineated exceptions."<sup>5</sup>

In most situations then, a "reasonable" search is one performed with a valid search warrant. Consequently, for fourth amendment purposes, "reasonable" is a legal term with a meaning different from that attached to the word as it is commonly used. Thus, even though the fourth amendment prohibits only "unreasonable" searches, the Court has stated "[t]he mere reasonableness of a search, assessed in the light of the surrounding circumstances, is not a substitute for the judicial warrant required under the Fourth Amendment."<sup>6</sup> There are exceptions to the warrant requirement, "reasonable" warrantless searches, but these exceptions are created not by what a police officer might believe to be reasonable but by a court's assessment of necessity. The "exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption [from the warrant requirement] ... that the exigencies of the situation made that course imperative'" [citations omitted].<sup>7</sup> The Court has recognized the need to provide for emergency situations "... where the societal costs of obtaining a warrant, such as danger to law officers or the risk of loss or destruction of evidence, outweigh the reasons for prior recourse to a neutral magistrate,"<sup>8</sup> but the government bears the burden of showing necessity.<sup>9</sup>

#### **DANGER TO LIFE EMERGENCY**

The fourth amendment gives substantial protection to persons in this country against government intrusion into the privacy of their homes and

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**"Courts commonly recognize three threats as providing justification for emergency warrantless action—danger to life, danger of escape, and danger of destruction or removal of evidence."**

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other premises.<sup>10</sup> The U.S. Supreme Court has stated that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."<sup>11</sup> Nonetheless, courts have approved warrantless entries into and searches of premises where the government was able to show that such action was necessary to neutralize a perceived threat to life and that the action taken was no more extensive than what was necessary to eliminate the threat to life.

Because of the high value our society places on life, a circumstance that has a profound impact on the reasonableness of a warrantless search is whether such action was taken to neutralize a suspected threat to human life. The U.S. Supreme Court has stated that "[t]he Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others."<sup>12</sup> The Court has approved warrantless searches of premises where there was a showing that such actions were taken to protect the lives of police officers or others. In fact, the Court has approved a lowered standard of proof—reasonable suspicion—for justifying warrantless searches based upon a perceived danger to life, so long as the action taken is no greater than necessary to eliminate the danger. Thus, "...where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous ... he is entitled for the protection of himself and others in the area to conduct a carefully

limited search ... of such persons in an attempt to discover weapons which might be used to assault him" [emphasis added].<sup>13</sup> Therefore, where a warrantless search or seizure is made in response to a perceived threat to life, the government must be prepared to show that at the time of the action: (1) Facts were known that would cause a reasonable person to suspect that quick action was necessary to protect human life, and (2) that the action taken was no greater than was necessary to eliminate the suspected threat.<sup>14</sup>

#### **Suspected Presence of Armed and Dangerous Persons**

Not unexpectedly, many warrantless searches and seizures of premises based upon perceived danger to life involve the suspected presence of armed and dangerous persons. The universe of facts that would cause a reasonable officer to suspect the presence of armed and dangerous persons defies easy categorization. Common elements, however, are serious crimes and facts suggesting the presence of deadly weapons. For example, in *Warden v. Hayden*,<sup>15</sup> the U.S. Supreme Court approved a warrantless search of a residence based upon reports of an armed robber recently having fled into a house. Not knowing whether the house was that of the robber or an innocent citizen who might be in danger, officers entered the house and searched for the robber and his weapons. In approving these warrantless actions, the Court noted that "[s]peed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to effect an escape."<sup>16</sup> In describing the allowable scope of such a search, the Court noted

that it should "at the least, be as broad as may reasonably be necessary to prevent the dangers that the suspect at large in the house may resist or escape."<sup>17</sup>

Subsequent decisions have more precisely limited the scope of such emergency searches.<sup>18</sup> In *Mincey v. Arizona*,<sup>19</sup> the Court stated, "[w]e do not question the right of the police to respond to emergency situations. ..."<sup>20</sup> In *Mincey*, officers entered an apartment where they had reason to believe a fellow officer, who was working undercover in a narcotics investigation, was in danger as a result of his true identity having been discovered. After a shootout that was contemporaneous with the entry, the officers performed a search to determine whether additional dangerous or wounded persons were present. Since it was a "prompt ... search of the area to see if there ... [were] other victims or ... a killer ... still on the premises,"<sup>21</sup> this limited sweep search for persons was approved,<sup>22</sup> even though a later much more intensive search for evidence was invalidated.<sup>23</sup> Once all persons present were located and controlled, the threat to life was at an end, and before additional searches and seizures could be reasonably performed, a search warrant was required.<sup>24</sup>

Lower courts have also examined the necessary justification for and the allowable scope of a search of premises based upon suspected danger to life. In *United States v. Tabor*,<sup>25</sup> the U.S. Court of Appeals for the 10th Circuit stated that a sweep search could be justified by a danger to an officer's life or the lives of those around him, but

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***"Officers acting without a warrant to neutralize a suspected threat to human life must limit that action to what is necessary to eliminate the danger."***

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required that "the suspicion of danger must be clear and reasonable in light of all surrounding circumstances."<sup>26</sup> The court cautioned that police "are not given free reign to conduct sweep searches on the pretense that a dangerous situation might be imminent."<sup>27</sup>

In *Tabor*, a search warrant authorizing the search of Tabor's residence for evidence of illegal gambling activity was executed. At the outset of the search, Tabor told the agents performing the search that there were no other persons or weapons in the house. Upon discovery of four guns in the house, three agents began a security sweep of the area and buildings surrounding the house. Upon hearing a noise in a nearby barn, the loft area was checked and 150 pounds of marijuana were discovered. In approving the sweep of the barn loft, the court noted that the barn was not covered by the warrant but that the officers had reasonable suspicion that they were in danger "based on the following factors: (1) the confidential informant [who had supplied facts supporting issuance of the search warrant] had allegedly provided information which led the agents to believe [Tabor] was frequently in possession of a .357 Magnum revolver. A box of .357 Magnum ammunition was found on the premises lending support to this allegation, but no weapon of that type was found; (2) vehicles were present in the area which were not identified as belonging to [Tabor]; (3) [Tabor's] dog was behaving in an agitated manner; and (4) [Tabor] had lied about the existence of other weapons on the premises and had at the same time told the agents that no other persons were on the premises."<sup>28</sup>

Those factors, "together with the experience and training of the agents"<sup>29</sup> and the noise in the barn, justified the entry.<sup>30</sup>

The government also successfully established facts amounting to a suspected danger to life in *United States v. Dowell*.<sup>31</sup> In *Dowell*, an informant was in the process of making a controlled purchase of cocaine in a hotel room. In accord with his instructions, the informant went to the drug dealer's room, saw the cocaine, and left on a pretense of having to consult with his own buyer. Contrary to instructions, he sampled the product before leaving. While consulting with agents in the lobby, he was observed to be agitated and fearful and expressed his concern that further absence would be interpreted by the drug dealers as betrayal. The informant was instructed to return to the room and immediately telephone the agents for further instruction. After waiting 15 to 20 minutes for this call, the DEA agents entered the hotel room where they arrested Dowell and his accomplice.

The Court of Appeals for the Seventh Circuit cited the following facts in approving the emergency entry: "First, Platts' role as undercover informant was potentially subject to exposure. Second, Platts failed to follow his instruction to telephone immediately after returning to room 248. Third, Platts was under the influence of cocaine. Fourth, it was likely that there were guns in the room."<sup>32</sup> The court stated "the first three facts taken alone would lead a man of reasonable caution to conclude that entry without delay was essential. This was a drug deal involving several hundred grams of cocaine and tens of thousands of dollars. The results of betrayal were severe and the consequences of Platt's exposure potentially gruesome. The position of Platts was inherently dangerous, and his

failure to telephone [the agents] together with his state of impaired mental agility gave [the agents] sufficient reason to fear for Platts' immediate safety."<sup>33</sup>

The government must bring all relevant facts creating suspicion of danger to life to the court's attention. In *United States v. Spetz*,<sup>34</sup> the U.S. Court of Appeals for the Ninth Circuit found the factual justification for a protective sweep of the home of a person arrested for a drug violation inadequate. There the Court observed, "The DEA Agents made arrests outside the residence. There were no known confederates of the individuals arrested. Before they entered the residence, the agents were able to observe that all of the doors were open and presumably could keep the means of egress under surveillance. Most significantly, the agents knew of no weapons connected with any of the individuals arrested or the residence, nor had they any other articulable basis for a conclusion that a potential for violence existed."<sup>35</sup> The court emphasized the burden the government bears in bringing out the facts supporting warrantless action and noted "[t]he government does not satisfy [its] burden by leading a court to speculate about what 'may' or 'might' have been the circumstances surrounding the warrantless search."<sup>36</sup>

Officers acting without a warrant to neutralize a suspected threat to human life must limit that action to what is necessary to eliminate the danger. With facts suggesting armed and dangerous persons may be present, "a very quick and limited pass through the premises to check for ... persons who may ... pose a threat to the officers"<sup>37</sup> is reasonable, since "the intrusion on ... privacy is slight; the search is cursory in



nature and is intended to uncover only 'persons, not things.'"<sup>38</sup> Once the dangerous persons have been located and controlled or their absence determined, "no further search—be it extended or limited—is permitted until a warrant is obtained."<sup>39</sup>

An example of a court imposing this limitation is found in *United States v. Irizarry*.<sup>40</sup> In *Irizarry*, officers seeking to execute an arrest warrant for narcotics violations learned that the person named in the warrant was in a motel room. They knocked on the door, identified themselves, and looking through a window, saw an occupant of the room pull a revolver from a handbag. Taking cover, the officers demanded that the occupants come out and surrender. After a few minutes, three persons emerged and were placed in custody. One officer then quickly examined the room and adjoining bathroom to make sure no other persons were present and discovered a small quantity of marijuana in plain view during this process. A second agent followed and saw a ceiling panel ajar in the bath. This agent "looked into the space in the ceiling and saw an object. He reached into the ceiling and removed the object, which turned out to be a package of marijuana and a gun. He then asked for a flashlight, looked in again, and found four packages: two more guns, a package of cocaine, and a second package of marijuana."<sup>41</sup>

The U.S. Court of Appeals for the First Circuit held that the government had produced sufficient facts to justify the initial protective sweep, stating "we believe that [the agent's] search was not motivated by mere curiosity, but rather by a legitimate concern for the safety of his fellow officers. It was late at night. They had come to the hotel to

arrest one person. Three people had emerged from the room after a five-to-seven minute delay. Most significantly, one of the three had produced a gun inside the room. [The agent] was entirely reasonable in suspecting that a fourth person, also armed, remained within [citation omitted]. His entry was necessary to ensure that the potential fourth person did not attempt to surprise the agents in the hallway and thereby secure the escape of the other three."<sup>42</sup> The government failed to factually establish, however, that the search of the bathroom ceiling was in response to a suspected danger to life. No facts were produced to indicate a dangerous person might be hiding there, and even if such evidence had been produced, the scope of the search performed was greater than necessary to eliminate that possibility. As a result, the evidence found in the ceiling was suppressed, since at the time the search was performed, there was no emergency present to excuse not obtaining a search warrant.<sup>43</sup>

A somewhat similar fact situation was present in *United States v. Young*.<sup>44</sup> In that case, police were investigating an armed robbery of a bank by at least three persons. Officers went to the residence of one suspect where a gun battle ensued. The suspect eventually came out of the house and surrendered, after which officers demanded that any other occupants surrender. Receiving no response, the officers fired tear gas into the house, entered, and searched for other persons. They found no one, but saw large quantities of money in plain view. A thorough warrantless search followed which located more money in a hole in a bedroom wall, as well as other evidence. The U.S. Court of Appeals for the Eighth Circuit held the "original warrantless entry by police to search for

other occupants and weapons was proper under the exigent circumstances present at that time."<sup>45</sup> The money found in plain view during that search was admissible. The money in the bedroom wall should have been excluded from evidence though, since it was located "at a time when the house had already been secured and after [the robber] had been arrested. A search warrant should have been obtained before proceeding further."<sup>46</sup> Once the suspected danger to life is controlled, officers must stop their search until a warrant is obtained (unless some other exception to the warrant requirement justifies continuing the search<sup>47</sup>).

In summary, officers having facts that cause them to reasonably suspect that persons are present in premises and that those persons are armed and presently presenting a danger to the lives of the officers or others may enter the premises and locate and control those persons. Their search, however, should be no more intrusive than necessary to locate the persons present. Search of areas where a person could not be concealed will require a search warrant or the factual establishment of the applicability of some other exception to the warrant requirement.

### **Suspected Need to Rescue**

The presence of armed and dangerous persons is not the only circumstance that will justify an emergency search or seizure based upon a threat to human life. Suspicion that a life-threatening emergency is present in premises will also legally support warrantless entry and search. For example, in *Thompson v. Louisiana*,<sup>48</sup> the U.S. Supreme Court approved a limited "vic-

tim or suspect" search in a house where a homicide and attempted suicide had been reported. Similarly, as the Court noted in *Michigan v. Tyler*,<sup>49</sup> "[a] burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.'"<sup>50</sup> In *Tyler*, the Court stated, "[o]ur decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant [citation omitted]. Similarly, in the regulatory field, our cases have recognized the importance of 'prompt inspections, even without a warrant ... in emergency situations.'"<sup>51</sup> The presence of explosives in a home in a crowded residential area is also a sufficient danger to life to justify a warrantless search and seizure.<sup>52</sup> Other situations involving threats to public safety, such as a search in response to a bomb threat, fall within the bounds of this warrant requirement exception.

Even where officers are responding to emergencies where no criminal conduct is suspected, they must limit their actions to resolving the emergency. For example, in *United States v. Parr*,<sup>53</sup> firefighters went to Parr's home to extinguish a fire in his laundry room. After the fire was extinguished and since no persons were present in the home, the firemen searched the house to determine the identity of the owner and to salvage valuables. During the course of this search, 16 counterfeit \$10 bills were located in a sugar bowl stored on a shelf above the sink in the kitchen. Because the search of the sugar bowl was not necessary to put out the fire or determine its origin, Parr's conviction for possession of the counterfeit bills was reversed.<sup>54</sup>

### **Suspected Presence of Information Crucial to Preserving Life**

Under certain circumstances, officers may find it necessary to search one place so that a rescue may be performed elsewhere. For example, in *Chaney v. State*,<sup>55</sup> officers investigating a kidnapping, in which the abductor had threatened to kill the two victims unless \$500,000 in ransom was paid, searched the home of the suspect after his arrest for the victims (who were found dead elsewhere at a later time) or for clues to the victims' whereabouts. During the search, a paper linking the defendant to the crime was found in a wastebasket. In evaluating the legality of the warrantless search of the residence, the Court of Criminal Appeals of Oklahoma noted that where "the time required to secure a warrant could result in the loss of evidence, the escape of the suspect, or above all the death of a victim, then law enforcement officers may act without a warrant..."<sup>56</sup> The Oklahoma court, lumping together danger to evidence, danger of escape, and danger to human life, imposed a requirement of probable cause to search as a prerequisite to the warrantless search.<sup>57</sup> There were few if any facts present, however, indicating that it was *probable* that the victims were at the suspect's residence or that clues to their location would be found there. The simple reality is that police officers are not going to ignore suspected sources of information that will save a fellow human from grave peril because the facts known to them do not amount to probable cause. Where the life of an innocent victim hangs in the balance, courts are

likely to impose a reasonable factual standard. There is judicial support for the reasonable suspicion standard of justification for even a highly intrusive search of a residence for information where that information is necessary to allow the police to preserve human life.<sup>58</sup> As with other emergency searches, the intrusion must be limited by its justification and can be no greater than necessary to obtain the needed information.

### **During Search Warrant Execution**

The U.S. Supreme Court has held that certain other law enforcement situations embody sufficient dangers to life to justify limited intrusions into premises. In *Michigan v. Summers*,<sup>59</sup> the Court approved the detention of the occupant of a residence while it was being searched pursuant to a valid search warrant authorizing the seizure of narcotics. In discussing warrant execution circumstances, the Court noted "the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation."<sup>60</sup> This exercise of command presumably includes a sweep of the premises to be searched for persons at the commencement of the warrant execution. Officers following this procedure should use caution not to perform actions that the warrant does not authorize unless separate factual justification for those actions is present (for example, persons detained during the execution of a search warrant authorizing the search of premises may be frisked for weapons only if facts are present supporting reasonable suspicion that they are armed and dangerous).<sup>61</sup>



**“...it is not ‘unreasonable’ under the Fourth Amendment for a police officer, as a matter of routine, to monitor the movements of an arrested person, as his judgment dictates, following the arrest.”**

### Monitoring Arrestees

Another special situation sufficiently dangerous to life to justify a limited intrusion into premises is monitoring the activities of a person under arrest. In *Washington v. Chrisman*,<sup>62</sup> the Court stated that “[e]very arrest must be presumed to present a risk of danger to the arresting officer [citation omitted]. There is no way for an officer to predict reliably how a particular subject will react to arrest or the degree of potential danger.”<sup>63</sup> In *Chrisman*, a college student was arrested for illegal possession of an alcoholic beverage. The arresting officer accompanied the student to his dorm room so he could get items of identification, and while supervising his actions therein, observed a marijuana pipe and seeds in the room. The student, as well as his roommate, Chrisman, were charged with possession of marijuana. In evaluating the actions of the officer, the Court held “that it is not ‘unreasonable’ under the Fourth Amendment for a police officer, as a matter of routine, to monitor the movements of an arrested person, as his judgment dictates, following the arrest. The officer’s need to ensure his own safety—as well as the integrity of the arrest—is compelling.”<sup>64</sup>

### Suspected Threat to Nonhuman Life

Finally, danger to nonhuman life may justify warrantless searches of premises. In *Tuck v. United States*,<sup>65</sup> the District of Columbia Court of Appeals approved the warrantless seizure of a rabbit from an unventilated pet store window based upon the danger that the animal would expire as a result of the extreme summer heat before a

warrant could be obtained. Again, the action must be limited to that necessary to resolve the emergency. The court in *Tuck* noted that the “scope of the entry was carefully limited to that which was necessary to render assistance to the suffering animals.”<sup>66</sup>

### SUMMARY

Having considered a variety of circumstances justifying a warrantless search of premises in response to a perceived threat to life, a return to the opening hypothetical is in order. Officers have detained one of two suspected armed bank robbers on the doorstep of a residence. They suspect his accomplice is in the house and immediately search it, locating the bank loot in the process. For the search to be a legal one, the officers must show that at the time of their search: (1) Facts were known that would cause a reasonable person to suspect that quick action was necessary to protect human life, and (2) the action taken was no greater than necessary to eliminate the suspected threat.

In order to prevail, the officers must show that when they searched, they knew facts that caused them to reasonably suspect that the second robber (or another person presenting a danger to the arrest team) was inside. The fact that they are investigating an armed bank robbery, a crime of violence, is of assistance. Robbers who threatened victims with handguns are likely to use those same guns against police seeking to effect arrest. The fact that it is a short time after the robbery makes it likely that the robbers still have their guns in possession. The only fact, however, suggesting that the robber sought is inside the house is that his accomplice is outside its door. Unless other facts exist suggesting the presence of someone inside (a witness’

statement saying a man went inside just before the police arrived, a sound from within, suspicious conduct by the detainee regarding the house, etc.), the officers’ suspicions are likely not objectively reasonable. It does not appear that facts were known causing reasonable suspicion that an immediate search of the house was necessary to protect the officers’ lives.

It is possible that the warrantless search of the residence was necessary to neutralize a threat of escape or destruction or removal of evidence. The legal requirements of a proper warrantless search in response to these threats will be considered in part two.

FBI

### Footnotes

<sup>1</sup>For an excellent discussion of investigative detention, see John C. Hall, “Investigative Detention: An Intermediate Response,” *FBI Law Enforcement Bulletin*, vol. 54, No. 11, Part I, November 1985, pp. 25-31; No. 12, Part II, December 1985, pp. 18-23; vol. 55, No. 1, Conclusion, January 1986, pp. 23-29.

<sup>2</sup>*United States v. Robinson*, 533 F.2d 578, 580 (D.C. Cir. 1976), cert. denied, 96 S.Ct. 432 (1976).

<sup>3</sup>See *Katz v. United States*, 389 U.S. 347 (1967).

<sup>4</sup>*Id.*

<sup>5</sup>*Id.* at 357.

<sup>6</sup>*Arkansas v. Sanders*, 442 U.S. 753, 758 (1979).

<sup>7</sup>*Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971).

<sup>8</sup>*Supra* note 6, at 759.

<sup>9</sup>*McDonald v. United States*, 335 U.S. 451 (1948).

<sup>10</sup>See *Michigan v. Tyler*, 436 U.S. 499 (1978).

<sup>11</sup>*United States v. United States District Court*, 407 U.S. 297, 313 (1972).

<sup>12</sup>*Warden v. Hayden*, 387 U.S. 294, 298-299 (1967).

<sup>13</sup>*Terry v. Ohio*, 392 U.S. 1, 30-31 (1968).

<sup>14</sup>*Id.* See also, *Warden v. Hayden*, *supra* note 12, *Mincey v. Arizona*, 437 U.S. 385 (1978). The U.S. Supreme Court has yet to decide whether reasonable suspicion that an entry into premises is necessary to eliminate a threat to life is a sufficient justification to make that entry reasonable under the fourth amendment. The Court has stated, however, that probable cause is not always the standard by which the legality of a search should be measured, even where the search constitutes a substantial intrusion into a person’s privacy. “Ordinarily, a search—even one that may permissibly be carried out without a warrant—must be based upon ‘probable cause’ to believe that a violation of the law has occurred. See, e.g. *Almeida-Sanchez v. United States*, 413 U.S. 266, 273 (1973); *Sibron v. New York*, 392 U.S. 40, 62-66 (1968). However, ‘probable cause’ is not an irreducible requirement of a valid search. The fundamental command of the Fourth Amendment is that searches and seizures be reasonable, and although ‘both the concept of probable cause and the requirement of a warrant bear on the reasonableness of a search, ... in certain limited circum-

stances neither is required.<sup>15</sup> *Almeida-Sanchez v. United States*, *supra*, at 277 (Powell, J., concurring). Thus, we have in a number of cases recognized the legality of searches and seizures based on suspicions that, although 'reasonable,' do not rise to the level of probable cause. See, e.g., *Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975); *Delaware v. Prouse*, 440 U.S. 648, 654-665 (1979); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); cf. *Camara v. Municipal Court*, *supra* [387 U.S.] at 534-539. Where a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard that stops short of probable cause, we have not hesitated to adopt such a standard.<sup>16</sup> *New Jersey v. T.L.O.*, 469 U.S. 325, at 340-341 (1984).

Numerous lower courts have determined that reasonable suspicion is the standard by which searches of premises in response to a threat to life should be measured. For example, a security search is allowed where police possess "reasonable apprehension" of violence from within a dwelling as they execute an arrest outside. See *United States v. Baker*, 577 F.2d 1147 (4th Cir. 1978), *cert. denied sub nom. Weinstein v. United States*, 439 U.S. 850 (1978); *United States v. Bowdach*, 561 F.2d 1160 (5th Cir. 1977); *Hopkins v. Alabama*, 524 F.2d 473 (5th Cir. 1975).

Other courts have approved as reasonable entries based upon less than probable cause that persons within the premises were endangered. See, e.g., *Duquette v. Godbout*, 471 A.2d 1359 (R.I. 1984); *State v. Boggess*, 340 N.W.2d 516 (WI 1983); *State v. Beede*, 406 A.2d 125 (N.H. 1979), *cert. denied*, 445 U.S. 967 (1980), *reh. denied*, 446 U.S. 993 (1980).

<sup>15</sup>*Supra* note 12.

<sup>16</sup>*Id.* at 299.

<sup>17</sup>*Id.*

<sup>18</sup>See *Thompson v. Louisiana*, 469 U.S. 17 (1984).

<sup>19</sup>437 U.S. 385 (1978).

<sup>20</sup>*Id.* at 392.

<sup>21</sup>*Id.*

<sup>22</sup>*Id.* at 393.

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

<sup>25</sup>722 F.2d 596 (10th Cir. 1983).

<sup>26</sup>*Id.* at 598.

<sup>27</sup>*Id.*

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

<sup>30</sup>*Id.*

<sup>31</sup>724 F.2d 599 (7th Cir. 1984), *cert. denied*, 104 S.Ct. 1683 (1984).

<sup>32</sup>*Id.* at 602.

<sup>33</sup>*Id.*

<sup>34</sup>721 F.2d 1457 (9th Cir. 1983).

<sup>35</sup>*Id.* at 1467.

<sup>36</sup>*Id.* at 1466, quoting *United States v. Hoffman*, 607 F.2d 280, 284 (9th Cir. 1979).

<sup>37</sup>*United States v. Agapito*, 620 F.2d 324, 335 (2d Cir. 1980), *cert. denied*, 449 U.S. 834 (1980).

<sup>38</sup>*Id.* at 336.

<sup>39</sup>*Id.*

<sup>40</sup>673 F.2d 554 (1st Cir. 1982).

<sup>41</sup>*Id.* at 556.

<sup>42</sup>*Id.* at 558.

<sup>43</sup>*Id.* at 559.

<sup>44</sup>553 F.2d 1132 (8th Cir. 1977), *cert. denied*, 431 U.S. 959 (1977).

<sup>45</sup>*Id.* at 1134.

<sup>46</sup>*Id.*

<sup>47</sup>Allowable actions to prevent escape or the destruction or removal of evidence are presented in part two.

<sup>48</sup>*Supra* note 18.

<sup>49</sup>*Supra* note 10.

<sup>50</sup>*Id.* at 509.

<sup>51</sup>*Id.*

<sup>52</sup>See *United States v. Urban*, 710 F.2d 276 (6th Cir. 1983).

<sup>53</sup>716 F.2d 796 (11th Cir. 1983).

<sup>54</sup>*Id.* at 817.

<sup>55</sup>612 P.2d 269 (Okla. Cr. 1980), *cert. denied*, 450 U.S. 1025 (1981), *modified on other grounds, sub nom.*

*Chaney v. Brown*, 730 F.2d 1334 (10th Cir. 1984), *cert. denied*, 83 L.Ed.2d 710 (1984).

<sup>56</sup>*Id.* at 277.

<sup>57</sup>*Id.*

<sup>58</sup>See *People v. Sirhan*, 497 P.2d 1121 (Calif. 1972), *cert. denied*, 410 U.S. 947 (1973).

<sup>59</sup>452 U.S. 692 (1981).

<sup>60</sup>*Id.* at 702, 703.

<sup>61</sup>See, e.g., *Ybarra v. Illinois*, 444 U.S. 85 (1979).

<sup>62</sup>455 U.S. 1 (1982).

<sup>63</sup>*Id.* at 7.

<sup>64</sup>*Id.*

<sup>65</sup>77 A.2d 1119 (D.C. App. 1984).

<sup>66</sup>*Id.* at 1121. (Despite the best efforts of the police and the Humane Society, the hapless animal met an untimely end. In the cooler confines of the animal shelter, it was attacked by a larger rabbit and sustained injuries so serious that its destruction was required.)

## Lip-Stick

The arrest and subsequent search of a suspect by the Camillus, NY, Police Department revealed a weapon with which law enforcement personnel should be familiar. The weapon, a 1-inch knife, is contained within what looks like an ordinary tube of women's lipstick. The base of the tube is twisted, as in a regular lipstick, to produce a blade.

