

NOVEMBER 1975

C8685
3, P55
1975/11
Copy 1

POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

PART XVIII

S. C. STATE LIBRARY

NOV 23 2004

STATE DOCUMENTS

IMPOUNDED VEHICLES...

WARRANTLESS SEARCH WITHOUT PROBABLE CAUSE

(US V. ZAICEK, 519 F2d 412)

SEARCH WARRANTS...

DEMAND FOR ADMITTANCE AND REFUSAL

(US V. SMITH, 520 F2d 74)

UN-RELIABLE INFORMERS...

INFORMATION AS BASIS FOR AFFIDAVIT

(US V. CANESTRI, 518 2d 269)

FLEMING'S NOTEBOOK...Chapter 118:

Wharton's Basic Rules
on Search of Vehicles

Prepared under the direction of E. Fleming Mason
Producer of Crime-to-Court ETV Law Enforcement
Informational Programs, in cooperation with South
Carolina Educational Television Network with funds
provided through the South Carolina Criminal
Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

POLICE OFFICER'S HANDBOOK

IMPOUNDED VEHICLES...
WARRANTLESS SEARCH WITHOUT PROBABLE CAUSE
(US V. ZAICEK, 519 F2d 412)

SEARCH WARRANTS...
DEMAND FOR ADMITTANCE AND REFUSAL
(US V. SMITH, 520 F2d 74)

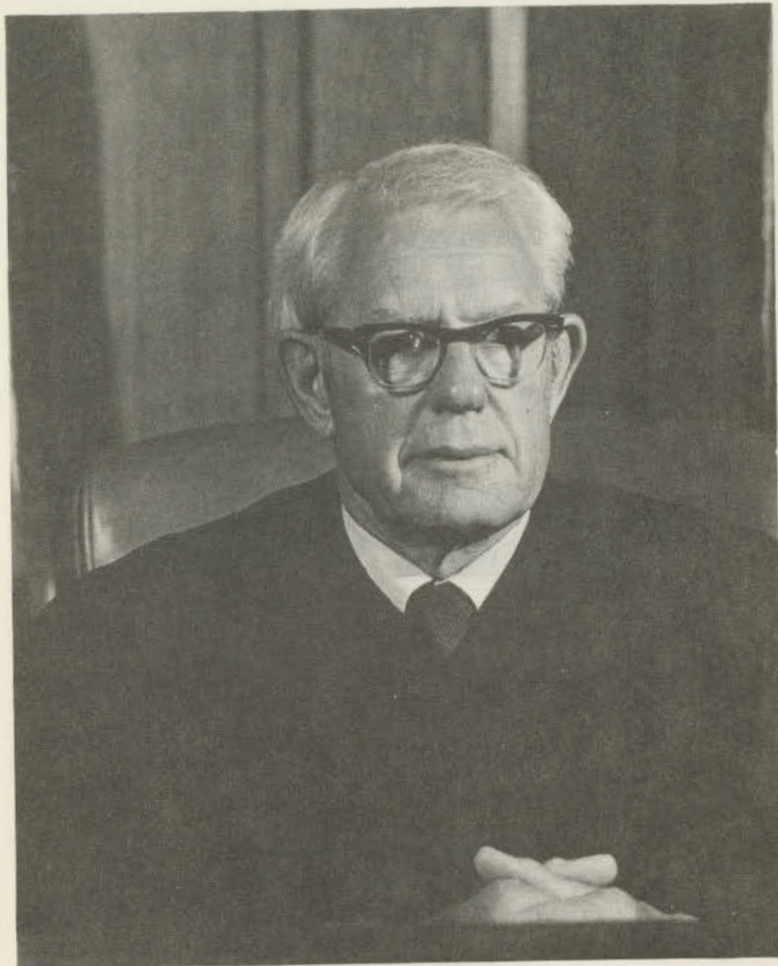
UN-RELIABLE INFORMERS...
INFORMATION AS BASIS FOR AFFIDAVIT
(US V. CANESTRI, 518 2d 269)

By

Joseph C. Coleman
Deputy Attorney General
State of South Carolina

Endorsed by

South Carolina Governor, James B. Edwards
South Carolina Law Enforcement Division
South Carolina Sheriffs' Association
South Carolina Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina FBI National Academy Associates
South Carolina Southern Police Institute Associates



Hon. Clyde A. Eltzroth
Circuit Judge
State of South Carolina

"With respect to vehicles that have been lawfully impounded because the occupants had no right to possession...such as in the case of a stolen car...law enforcement officers are authorized by the common law to make a thorough search even though they have neither search warrant nor probable cause to believe contraband or stolen goods are present."

Clyde A. Eltzroth
Circuit Judge
State of South Carolina

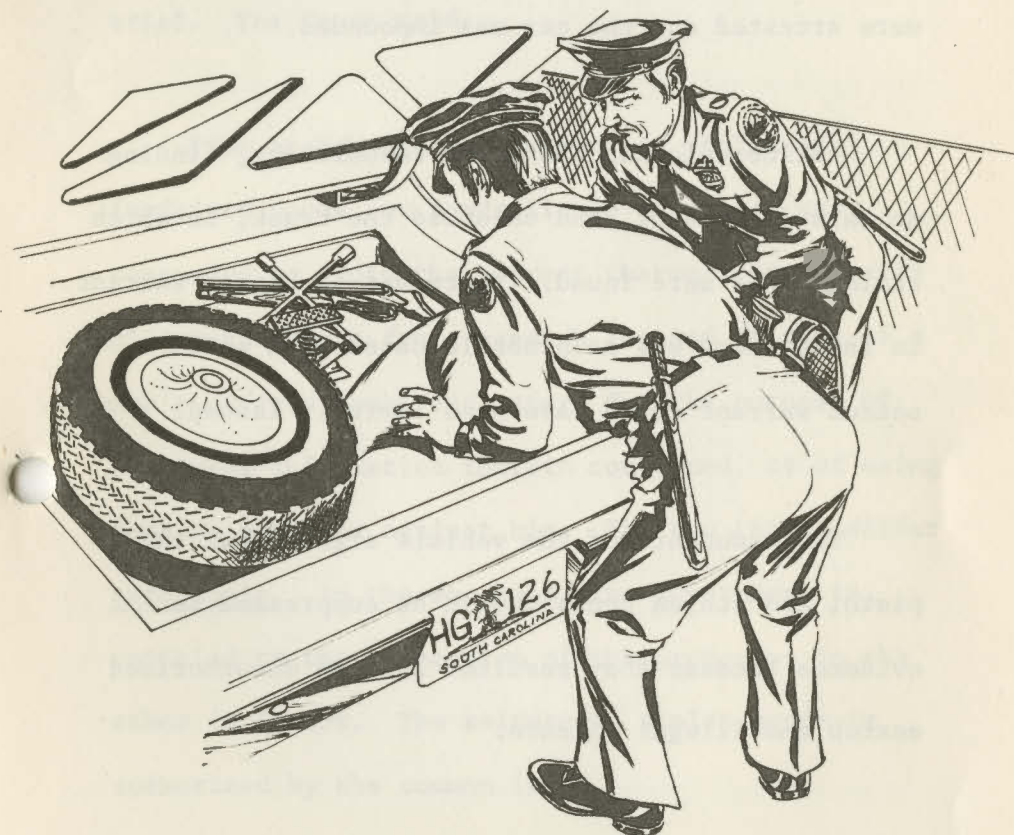
CONTENTS

	Page
Foreword by Hon. Clyde A. Eltzroth.....	2
Impounded Vehicles	
Search Without Warrant or Probable Cause.....	5
<u>Zaicek, US v.</u> , 519 F2d 412.....	5
Search Warrants	
Execution, Demand for Admittance and Refusal...	9
<u>Smith, US v.</u> , 520 F2d 74.....	9
Search Warrants	
Use of Un-Reliable Informer.....	14
Informers	
Use of Information Given by Un-Reliable or Previously Unknown Informer.....	14
<u>Canestri, US v.</u> , 518 F2d 269.....	14
FLEMING'S NOTEBOOK, Chapter 118.....	19
Wharton's Rules on Vehicle Searches.....	20

IMPOUNDED VEHICLES

SEARCH WITHOUT WARRANT OR PROBABLE CAUSE

(US V. ZAICEK, 519 F2d 412)



IMPOUNDED VEHICLES...

WARRANTLESS SEARCH

WITHOUT PROBABLE CAUSE

A car reported to have been stolen was spotted by local officers in New York State. The occupants were arrested and the car was impounded.

Police unlocked the glove compartment, finding an unlawful pistol, and unlocked the trunk, in which stolen bonds were found. There was no search warrant. In fact, there was no probable cause upon which a search warrant could have been lawfully issued.

The occupants of the vehicle argued that the pistol and stolen bonds should be suppressed as evidence because they resulted from an unauthorized search and illegal seizure.

A Federal Court of Appeals held that since the car was stolen, the occupants had no right to its possession and, having no right to possession, they could not claim the constitutional right of protection against unreasonable searches and seizures. Both the pistol and the bond evidence were ruled admissible at trial. The Court said:

"The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ toto coelo. In the one case, the government is entitled to the possession of the property; in the other it is not. The seizure of stolen goods is authorized by the common law."

Although New York State law specifically authorized police seizure of stolen vehicles, the absence of such a State statute would make no difference, since the common law also authorized such seizure.

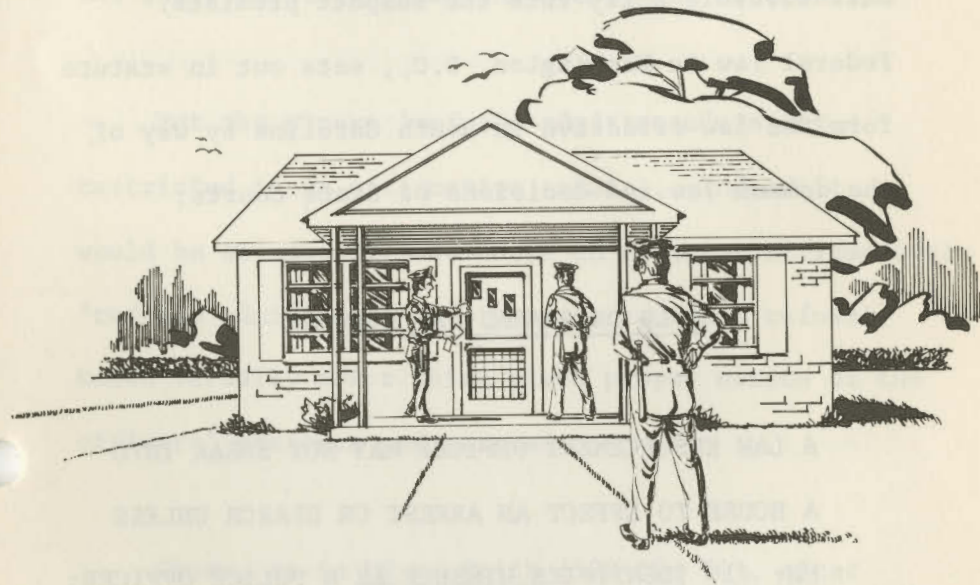
"(There is) a distinction between cases where the police have seized a car pursuant to statute (law) and where they simply assumed custody of a car when they arrested the driver for an unrelated crime. In the latter case they are only providing a parking space for the car until the owner can make other arrangements to store it; in the former case, they have a (lawfully) based possessory interest in the car which is superior to that of the person from whom they seized it.

"(The rule is) that when the police have properly seized a car (impounded it), they are authorized to treat the car in their custody as if it were their own and the search (is) sustainable as an integral part of their right to retention."

SEARCH WARRANTS

DEMAND FOR ADMITTANCE AND REFUSAL

(US V. SMITH, 520 F2d 74)



EXECUTION OF SEARCH WARRANT

DEMAND FOR ADMITTANCE

General law requires that law enforcement officers make their presence and intent known and be refused admittance before they are authorized to make forcible entry into the suspect premises.

Federal law in Washington, D.C., sets out in statute form the law effective in South Carolina by way of the common law and decisions of State courts:

RULE ON DEMAND AND REFUSAL

A LAW ENFORCEMENT OFFICER MAY NOT BREAK INTO A HOUSE TO EFFECT AN ARREST OR SEARCH UNLESS HE: (1) IDENTIFIES HIMSELF AS A POLICE OFFICER; (2) STATES HIS PURPOSE; AND (3) IS REFUSED ADMITTANCE.

REFERENCE: United States v. Smith, 520 F2d 74.

WHAT IS MEANT BY 'REFUSAL'?

The purpose of the rule on 'demand and refusal', among other things, is to allow the occupant to open the door to admit officers who are legally authorized to enter so that they may execute their duties with the least possible inconvenience to the occupant.

But the phrase 'refused admittance' is not restricted to an affirmative refusal. Indeed it would be an unusual case where an occupant affirmatively 'refused admittance' or otherwise made his refusal known verbally after being given proper notice of the officers' presence and purpose.

Where, as in US v. Smith (520 F2d 74), after giving the required notice the officers hear sounds which indicate to them that the evidence sought may be in process of destruction, execution of the warrant need not be delayed long enough to allow permit of such destruction.

FORCIBLE ENTRY WHEN NO
DEMAND FOR ADMITTANCE MADE

Forcible entry may be made without demand and notice when the officers in good faith believe that they or someone within the suspect premises are in peril of bodily harm, or that the person(s) within who is wanted by police is fleeing or attempting to destroy evidence. See People v. Maddox, 294 P2d 6.

FACTS OF US V. SMITH

Officers with a search warrant knocked on the door of the suspect premises, calling:

"Police officers! We have a search warrant."

Scuffling and other similar noises were heard inside and, after waiting for ten seconds, the officers made forcible entry with a sledge hammer. Unlawful drugs were found inside and on the sidewalk immediately outside the kitchen window.

On appeal from conviction, the defendant argued 'illegal search' because the officers had not 'demand entry', but had stated only that they were police officers and had a search warrant. They did not demand that they be admitted.

The Federal Court refused to hold that the search was unlawful, stating that the language used was sufficient to constitute demand for entry; but the Court suggested that raiding officers should leave no doubt of their intent by using language such as:

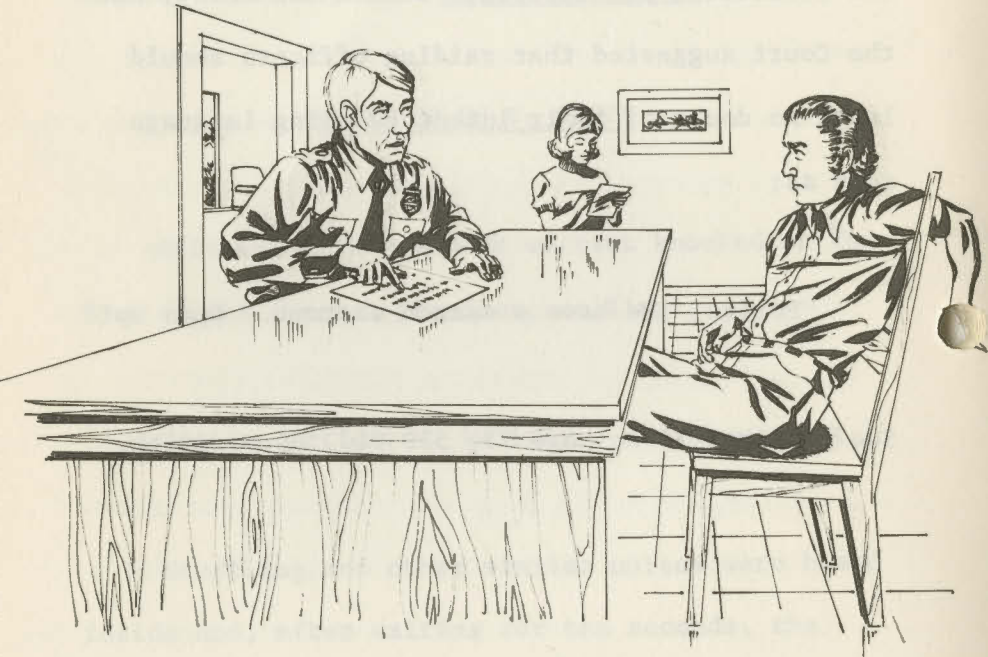
"Police! We have a search warrant. Open up!"

See footnote 1. on page 77, 520 F2d, US v. Smith.

USE OF UN-RELIABLE INFORMER

TO OBTAIN SEARCH WARRANT

US V. CANESTRI, 518 2d 269



UN-RELIABLE INFORMER

So much has been written and said about the 'reliable informer' in connection with search warrants that it is often overlooked that information from an informer who is not known to police may in some circumstances be a good basis for the issuance of a search warrant.

On October 16, 1972, Anthony Mezzonotte of Orange, Connecticut, reported to the police that his home had been burglarized and that 18 valuable antique guns had been taken. Three days later the Orange police department sought a warrant to search the home of Joseph Canestri, the teenage brother of the defendant in this case. In the affidavit presented to the magistrate to justify the issuance of the search warrant, two officers of the Orange police department recited (1) that the robbery described above had occurred, and that certain guns, which they described, had been taken; (2) that an

informant known to one of the officers had seen antique handguns on the Canestri premises (four of which were described and noted as fitting the descriptions of four of the stolen guns); (3) that a fellow officer had advised the two affiants that Joseph Canestri had been found to be in possession of stolen property on an earlier occasion that year; (4) that a reliable informant, who had furnished information leading to convictions in the past, had seen three handguns similar to those taken from the Mezzonotte home in the possession of Kenneth Davis; and (5) that Kenneth Davis and Joseph Canestri were known to be friends and associates. On the basis of this affidavit a judge of the Connecticut Circuit Court issued search warrants authorizing the search of both the Canestri and Davis homes.

When the police officers arrived at the Canestri home, they were admitted by Mrs. Canestri, the mother of the defendant and Joseph Canestri. In the course of their search the officers found narcotics

paraphernalia in Joseph's room. In the basement the officers encountered a locked room. After breaking into the room they found some seventy guns including the three guns that were seized as contraband and that were the subject of the motion to suppress. In addition to those three guns, the officers seized one knife and five guns that had been listed by the National Crime Information Computer Center as having been stolen and one other gun that they thought was contraband.

On appeal it was argued for the defendant that the search warrant was invalid because it had been based on information from an informer whose reliability was not established.

The Court of Appeals (2nd Circuit, Conn.) upheld the warrant for two reasons:

1. Although the informer's reliability was not known to police, information furnished by the informer was corroborated by information already in the hands of the police. Descriptions of the stolen guns had been given to police by the victim. The informer related that he had seen guns on the suspect premises. He described them. His descriptions agreed with the descriptions furnished by the victim.

2. Police knew the suspect individual to be a 'fence'.

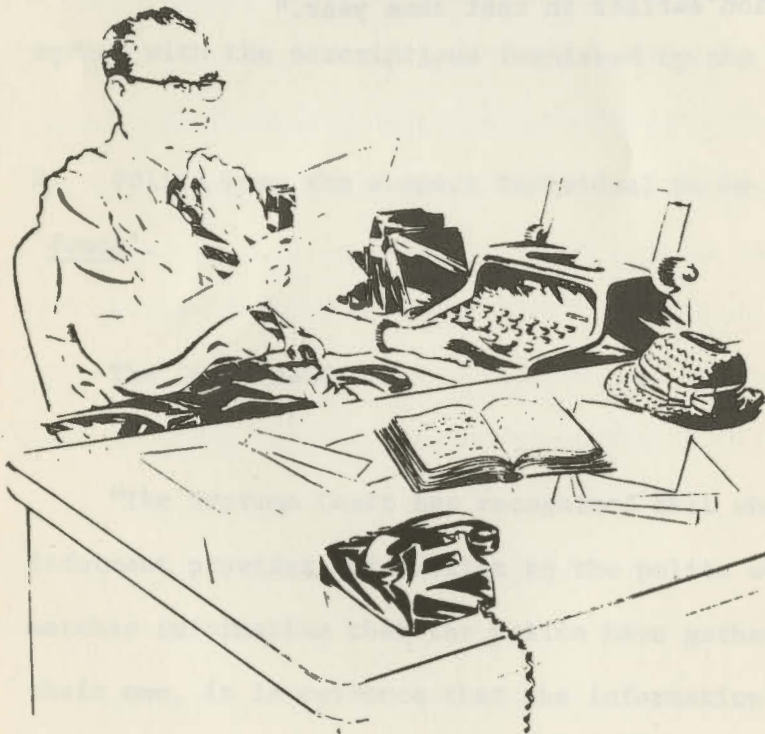
The Court said:

"The Supreme Court has recognized that when an informant provides information to the police which matches information that the police have gathered on their own, it is evidence that the information is reliable. Spinelli v. United States, 393 US at 417-18."

And as a second reason for upholding the warrant:

"Secondly, in this case the affidavit revealed that the officers had been informed by a fellow officer that Joseph Canestri (defendant) had been found in possession of stolen property on an earlier occasion earlier in that same year."

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 118:

SEARCH OF VEHICLES ON THE ROAD

NOTES FROM WHARTON'S CRIMINAL LAW

ANDERSON, LAWYERS COOP.PUB.CO.

SEARCHES OF VEHICLES AND OTHER MEANS OF TRANSPORTATION. The guaranty of freedom from unreasonable searches and seizures is construed as recognizing a necessary difference between a search of a dwelling house or other structure in respect of which a search warrant may readily be obtained and a search of a ship, motorboat, wagon, or automobile for contraband goods, when it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. However, those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless is known to an officer authorized to search that there

is probable cause for believing that the vehicles are carrying contraband or illegal merchandise. The measure of the legality of such a seizure is, therefore, that the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes contains contraband goods which are being illegally transported. In cases where the security of a warrant before seizure of property being transported on a highway is reasonably practicable, it must be secured, and when properly supported by affidavits and issued after judicial approval, it protects the seizing officer against a suit for damages. When seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.

It appears to have been clearly determined that the powers of the federal government do not include the right to search the occupant of an automobile without a warrant, at least in cases not arising

under the National Prohibition Act, either before his arrest or after his arrest if such arrest was not justified. In applying the former National Prohibition Act, the United States Supreme Court declared the rule to be that if a search and seizure without warrant are made upon probable cause, that is, upon the belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which, by law, is subject to seizure and destruction, the search and seizure are valid. State courts have announced a similar rule, however, not all states have accepted it. In several cases in state courts which have involved searches made in connection with the alleged violation of state statutes relating to the transportation or sale of intoxicating liquors, the search of an occupant of a motor vehicle before arrest has been held not to be justified, whether or not a search of the car was permissible on the ground of the existence of a reasonable belief that it contained intoxicating liquor in violation of a

statute, but search of the occupant made after his lawful arrest has been held justifiable.

An arrest need not precede the search, nor does the right to search depend upon the right to arrest the one in charge of the vehicle. While the search of an automobile standing in a highway and the seizure of liquor found therein without warrant for either the search or the arrest of the owner of the car have been held to violate the constitutional guaranty against unlawful searches and seizures, circumstances may justify an officer in stopping automobiles upon the public highway and searching them for intoxicating liquors without a warrant. It is not necessary that the officer know beyond a doubt or beyond necessity for any identification that the vehicle is the property of any given person or that it in fact contains intoxicating liquor, although mere suspicion of violation of the liquor laws may not be enough to warrant the search without a warrant. The substance of all definitions

of probable cause has been said to be a reasonable ground for belief in guilt.

A vessel moored at a wharf is a "place" to be searched for liquor, within the meaning of a statute authorizing the search of any store, shop, warehouse, or other building or place. It has been held that under a statute authorizing officers of the Coast Guard to seize on the high seas, beyond the 12-mile limit, American vessels subject to forfeiture for violation of any law respecting the revenue, such officers may proceed to search and seize vessels when there is probable cause to believe them to be subject to seizure for violation of revenue laws, and to arrest persons there engaged in such violation.

A distinction should be noted between vehicles already in the country and those crossing international boundary lines. Travelers crossing an international boundary may be stopped and their vehicle searched without warrant, because of national

self-protection reasonably requiring one entering a country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in.

STATEWIDE LAW ENFORCEMENT TRAINING
THROUGH TELEVISION

S.C. Law Enforcement Training
Council Members

J.P. Strom - Chairman	P.F. Thompson
Charles Dawley	Dr. James A. Timmerman, Jr.
L.E. Simmons	William D. Leeke
James Metts	Robert W. Foster
Joseph Loeffler	James L. Anderson
Daniel R. McLeod	James P. Ashmore

Clifford A. Moyer - Executive Director
S.C. Criminal Justice Academy

ETV Guide
P.O. Drawer L
Columbia, S.C. 29250

Nonprofit Organization
U.S. Postage
PAID
Columbia, S.C.
Permit No. 1061