JAY-Z'S *99 PROBLEMS*, VERSE 2: A CLOSE READING WITH FOURTH AMENDMENT GUIDANCE FOR COPS AND PERPS

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ABSTRACT

This is a line-by-line analysis of the second verse of *99 Problems* by Jay-Z, from the perspective of a criminal procedure professor. It's intended as a resource for law students and teachers, and for anyone who's interested in what pop culture gets right about criminal justice, and what it gets wrong.

INTRODUCTION

99 Problems is a song by Jay-Z.[1] It's a good song. It was a big hit in 2004.[2] I'm writing about it now because it's time we added it to the canon of criminal procedure pedagogy. In one compact, teachable verse (Verse 2), the song forces us to think about traffic stops, vehicle searches, drug smuggling, probable cause, and racial profiling, and it beautifully tees up my favorite pedagogical heuristic: life lessons for cops and robbers. And as it turns out, I'm not late to the game after all: Jay-Z recently published a well-received volume of criticism and commentary that includes his own marginal notes on Verse 2 of *99 Problems*.[3]

When I teach the Fourth Amendment, I ask my students what the doctrines tell us about, on the one hand, how to catch bad guys and not risk suppression, and on the other, how to avoid capture or at least beat the rap if not the ride.[4] I'm always happy to tell my own stories, but the song struck me as the perfect

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1. JAY-Z, THE BLACK ALBUM (Roc-A-Fella Records 2003).

2. *100 Best Songs of the Aughts*, ROLLING STONE, http://www.rollingstone.com/music/lists/100-best-songs-of-the-aughts-20110617/jay-z-99-problems-19691231 (last visited Jan. 7, 2011).

3. JAY-Z, DECODED 60–61 (2010).

4. Professor Kerr, my generation's Wayne LaFave, has just completed his first attempt at a grand theory of the Fourth Amendment, in which he argues that a lot of the doctrine can be explained as the courts' attempt to maintain some equilibrium between the two sides in this cat-and-mouse game. *See* Orin Kerr, *An Equilibrium-Adjustment Theory of the Fourth Amendmen*t, 125 HARV. L. REV. 476 (2011).

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teaching tool. All the students know it, and importantly for pedagogical purposes, it gets some things right—and some things very wrong.

It turns out that, while some other law professors have noticed *99 Problems*, no one has yet provided a detailed, accurate analysis of the Fourth Amendment issues Verse 2 raises.[5] In this Essay, I remedy that deficiency in the literature. This is, after all, one of the most popular songs of the last decade,[6] and we should seize the opportunity to use it in our teaching. My audience, accordingly, is primarily teachers and students of criminal procedure, but I hope that my comments may be of some interest to cops and perps as well.

I. LYRICS, VERSE 2[7]

1. The year is '94 and in my trunk is raw
2. In my rearview mirror is the motherfucking law
3. I got two choices y'all, pull over the car or
4. Bounce on the double put the pedal to the floor
5. Now I ain't trying to see no highway chase with jake
6. Plus I got a few dollars I can fight the case
7. So I . . . pull over to the side of the road
8. And I Heard "Son do you know what I'm stopping you for?"
9. "Cause I'm young and I'm black and my hat's real low?
10. Do I look like a mind reader sir, I don't know
11. Am I under arrest or should I guess some mo?"
12. "Well you was doing fifty-five in a fifty-four
13. License and registration and step out of the car
14. Are you carrying a weapon on you, I know a lot of you are"
15. "I ain't stepping out of shit all my papers legit"
16. "Do you mind if I look around the car a little bit?"
17. "Well, my glove compartment is locked, so is the trunk and the back,
18. And I know my rights so you go'n need a warrant for that"
19. "Aren't you sharp as a tack, some type of lawyer or something
20. Or somebody important or something?"
21. "Nah I ain't pass the bar but I know a little bit
22. Enough that you won't illegally search my shit"

5. A Westlaw search reveals twelve articles mentioning the song. Of those, seven cite it for Verse 2, and those simply mention it as a pop-culture illustration of racial profiling and leave it at that. Other articles discuss its use of sampling as a copyright/fair use issue, and two mention the video as an example of pop-culture glorification of dog fighting.

6. It was ranked number two in Rolling Stone's 100 Best Songs of the '00s. *100 Best Songs of the Aughts*, *supra* note 2, second only to Gnarls Barkley's *Crazy*. Time will tell which has more staying power.

7. I've taken the transcription provided by Jay-Z himself. JAY-Z, *supra* note 3, at 60.

23. "We'll see how smart you are when the K-9s come"
24. I got 99 problems but a bitch ain't one

II. ANALYSIS

A. Line 1

The year is '94, and in my trunk is raw . . . Jay-Z was transporting drugs in his car, like many of the protagonists who populate the core cases of Fourth Amendment law.[8] Unlike most of them, he gets away with it. Jay-Z says that the story in *99 Problems* describes a real incident. In 1994, Jay-Z was dealing crack in New York City and was expanding to other markets.[9] As he puts it, "New York guys had better connects and opened up drug markets down the I-95 corridor."[10] Drug prices increase with distance from importation zones, and New York was a key transshipment hub, so presumably he was able to offer better product and prices to smaller regional markets.[11]

For several reasons, the transportation of illegal drugs has produced a veritable cornucopia of Fourth Amendment case law.[12] Retail sales are often conducted either inside, or via drop points, making them—if done competently—relatively difficult to police. And even if you do a buy-and-bust with an undercover wearing a wire, retail transactions are still small potatoes. Sentences increase with quantity; retail-sale busts don't get you promotions and press conferences. Wholesale loads in transit, on the other hand, are pure

8. *See, e.g.*, Maryland v. Pringle, 540 U.S. 366, 367–68 (2003) (car); Whren v. United States, 517 U.S. 806, 808–09 (1996) (car); California v. Acevedo, 500 U.S. 565, 566 (1991) (car); Alabama v. White, 496 U.S. 325, 326 (1990) (car); Colorado v. Bertine, 479 U.S. 367, 368–69 (1987) (car); California v. Carney, 471 U.S. 386, 387–88 (1985) (RV); United States v. Sharpe, 470 U.S. 675, 679 (1985) (car); South Dakota v. Opperman, 428 U.S. 364, 365 (1976) (car). Other transport modalities are also represented. *See, e.g.*, California v. Hodari D., 499 U.S. 621, 623 (1991) (pedestrian); Florida v. Bostick, 501 U.S. 429, 431 (1991) (bus); United States v. Mendenhall, 446 U.S. 544, 547–49 (1980) (plane).

9. JAY-Z, *supra* note 3, at 61.

10. *Id.*

11. *See, e.g.*, Jonathan P. Caulkins & Peter Reuter, *What Price Data Tell Us About Drug Markets*, 28 J. DRUG ISSUES 593, 599 (1998) (describing spatial variation in drug prices correlating with distance from points of import). Because the market is illegal, ordinary commercial transportation networks are not available to smooth regional price differences. In 1994, powder cocaine was primarily imported from Colombia through Miami and then to large eastern seaboard cities, starting with New York. The once-dominant Caribbean/Miami corridor for cocaine has since been eclipsed by the eastern and western Mexican corridors. *See* OFFICE OF NAT'L DRUG CONTROL POLICY, COCAINE SMUGGLING IN 2007 (2008). But those drugs still get to the Northeast from the South, so there is still plenty of drug traffic up I-95.

12. Pick your chestnuts: Arizona v. Gant, 129 S. Ct. 1710, 1714 (2009); California v. Brendlin, 551 U.S. 249, 251, 252 (2007); *Whren*, 517 U.S. at 808–09; *Acevedo*, 500 U.S. at 566–67; *Bertine*, 479 U.S. at 369; Arkansas v. Sanders, 442 U.S. 753, 754, 755 (1979); United States v. Chadwick, 433 U.S. 1, 3–4 (1977).

gold, both for the dealer and for the cops and prosecutors who want to bust him. At one hundred milligrams of cocaine per street dose of crack, a twenty-kilo wholesale load of powder cocaine[13] is 200,000 potential street sales of crack.[14] That'll get you your Lambo, or your press conference, respectively.

Most importantly, it has to be transported, on public roads, in a vehicle. And vehicles, as it happens, present far more opportunities for searching—as a matter of law and practice—than houses or people.[15] So it's no wonder that the recent history of Fourth Amendment law is so full of cases about stopping cars and searching them for drugs. As the joke goes, "you look for your keys where the light is."[16] There's a lot of Fourth Amendment law packed into the simple question: When can you use a traffic stop to search for drugs?

13. Cooking it into crack is the last stage before retail distribution. At the wholesale level, it's always powder. Twenty kilos is about right for three briefcases, such as depicted in the video. It's a little much for a sunroof compartment in a Maxima, but you never know—there are a lot of ingenious and well-built compartments out there (I've prosecuted a lot of smugglers). Jay-Z says that in the actual incident, he had crack, not powder, in the sunroof compartment. So he probably only had a couple of kilos and was en route either to conduct retail sales or to turn over the product to retail-level dealers. *See* JAY-Z, *supra* note 3, at 61.

14. At 100 milligrams a dose, that's ten doses per gram, 10,000 doses per kilo, and 200,000 doses out of twenty kilos. *See* Jonathan P. Caulkins, *Is Crack Cheaper Than (Powder) Cocaine?*, 92 ADDICTION 1437, 1441 (1997) (noting that crack is often sold in fifty to 100 milligram doses). Street crack is usually highly adulterated, with pure coke percentages as low as five percent. *See* Hill v. State, No. 03-00-00777-CR, 2001 WL 1627598, at *2–3 (Tex. App. Dec. 20, 2001) (relating expert testimony from undercover officer about crack production and dosage). Crack rocks vary somewhat in weight, but a tenth of a gram is a good rule of thumb. And the rocks are not pure cocaine: you add an adulterant like baking soda when cooking the powder cocaine, so you should get substantially more (on the order of two to one) total weight of crack than you started with of powder. Of course, the process is less than perfectly efficient, so there's some loss. But without a doubt, a suitcase full of reasonably pure raw powder will get you thousands of street sales. And according to government estimates, around 800 metric tons of pure cocaine are produced each year in Bolivia, Colombia, and Peru. NAT'L DRUG INTELLIGENCE CTR., U.S. DEP'T OF JUSTICE, NATIONAL DRUG THREAT ASSESSMENT 2009, at 3 tbl.1 (2009). Of that, perhaps 350 metric tons makes it into the United States. *See* David Bjerk & Caleb Mason, The Market for Mules: Risk and Compensation of Cross-Border Drug Couriers 15–16 (July 7, 2011) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1881212. Americans do a lot of cocaine.

15. *See, e.g.*, California v. Carney, 471 U.S. 386, 390 (1985); South Dakota v. Opperman, 428 U.S. 364, 367–68 (1976); United States v. Martinez-Fuerte, 428 U.S. 543, 557–58, 561 (1976); United States v. Mosley, 454 F.3d 249, 259–60 (3d Cir. 2006) (noting that "the Fourth Amendment has been repeatedly characterized by the Supreme Court as affording enhanced protection to the home, and diminished protection to vehicles," and collecting cases).

16. A drunk drops his keys in the bushes but searches for them under a streetlight because the light's better there.

Jay-Z says that, in the actual incident, the drugs were concealed in a hidden compartment built into the sunroof of the car.[17] In the video, the drugs are in three briefcases in the trunk, and the stop occurs on a surface street in Bedford-Stuyvesant, in Brooklyn.[18] As he suggests both in the book and in the song, he was probably targeted by the New Jersey police for fitting a drug courier profile.[19] Law students have to learn the hard lesson that racial profiling does not give rise to a Fourth Amendment suppression claim if there was objective probable cause for the stop.[20] For example, suppose a police department systematically pulled over every black driver who exceeded the speed limit, while letting all the white speeders go. If contraband was legitimately found in a black driver's car during the stop, he would not have a suppression claim based on the fact that the department systematically targeted black drivers. Those claims do have remedies—Fourteenth Amendment remedies—and most importantly, political remedies. They don't, however, have Fourth Amendment remedies, which means there won't be any suppression. The U.S. Supreme Court made this explicit in *Whren v. United States* back in 1996: if there is objective probable cause for a stop, the courts may not inquire into the officer's subjective motivation as a basis for a Fourth Amendment suppression claim.[21]

17. JAY-Z, *supra* note 3, at 61. And the actual car, he says, was probably a Nissan Maxima, replaced in the video, as devoted bloggers quickly noted, by a "first-generation" 1993 Lexus GS 300. *See* 1loudlex, Posting to *Jay Z's 99 Problems Video... Him driving a 93 Gs300!!*, CLUB LEXUS (Apr. 29, 2004, 1:22 AM), http://www.clublexus.com/forums/the-clubhouse/118494-jay-zs-99-problems-video-him-driving-a-93-gs300.html.

18. For the video, see bronxbigmike, *99 Problems*, YOUTUBE (Oct. 8, 2006), http://www.youtube.com/watch?v=WwoM5fLITfk (last visited Jan 7, 2011). For an interview with the video's director, see *Director Mark Romanek, Jay Z's "99 Problems" Music Video*, MUSIC VIDEO WIRE (Sept. 14, 2004), http://www.mvwire.com/2004/09/14/director-mark-romanek-jay-z%E2%80%99s-99-problems-music-video/.

19. JAY-Z, *supra* note 3, at 61. *See, e.g.*, PETER VERNIERO & PAUL H. ZOUBEK, INTERIM REPORT OF THE STATE POLICE REVIEW TEAM REGARDING ALLEGATIONS OF RACIAL PROFILING (1999), *available at* http://www.state.nj.us/lps/intm_419.pdf (survey of allegations and available data on profiling); Application for Consent Decree, United States v. New Jersey, No. 99-5970 (MLC) (D.N.J. Dec. 30, 1999), *available at* http://www.state.nj.us/oag/jointapp.htm (describing history of profiling and agreement to remedy it).

20. *See* Whren v. United States, 517 U.S. 806, 810, 812, 813 (1996).

21. *Id.* at 813 ("We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.").

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B. Lines 3–4

In my rearview mirror . . . I got two choices . . . The calculation Jay-Z has to make is whether, knowing that the car contains concealed contraband, he's better off trying to flee or hoping that the police won't find the drugs during the stop. This may be the hardest choice perps face (until they have to decide whether or not to cooperate), but there's only one answer: you are always better off having drugs found on you in a potentially illegal search than you are fleeing from a potentially illegal search and getting caught. The flight will provide an independent basis for chasing and arresting you, and the inadequacy of the quantum of suspicion supporting the initial attempted seizure will not taint the contraband discovered if there is an intervening flight.[22] Law students: practice explaining the preceding sentence to a layperson. Smugglers, repeat after me: you have to eat the bust, and fight it in court.

C. Line 5

I ain't trying to see no highway chase with jake . . . "Jake" is the cops,[23] and Jay-Z's narrator is making a prudential business decision here. High-speed chases are almost always bad for the perp. If you're caught after a high-speed chase, you can be certain that the police will impound the car, run a dog over it, and search it thoroughly. So if you're going to run, you'd better either get away or ditch your load mid-chase. But the latter is dicey, because your load will likely be found,[24] and you'll have no suppression remedy because you abandoned it before you were technically seized.[25] And it's not an option

22. *See, e.g.*, United States v. Garcia, 516 F.2d 318, 319 (9th Cir. 1975) (holding suppression not warranted when suspect flees illegitimate traffic stop, unless the police conduct was "designed to lure suspected criminals into flight from law enforcement officers" and that no such design was present where stop merely lacked probable cause or reasonable suspicion); United States v. Roberts, 470 F.2d 858, 859 (9th Cir. 1972) ("[W]hen Roberts drove away at high speed, he thereby supplied probable cause to believe that there was someone or something in the car of an incriminating character."); United States v. Gross, 624 F.3d 309, 319 n.3 (6th Cir. 2010) (stating that "if a suspect's response to an illegal stop is a new and distinct crime, such as flight, any evidence recovered incident to the arrest for that crime is not tainted by the unlawfulness of the initial detention"); *accord, e.g.*, United States v. Gonzalez, 71 F.3d 819, 826–27 (11th Cir. 1996) *abrogated on other grounds by* Arizona v. Gant, 129 S. Ct. 1710, 1714 (2009).

23. JAY-Z, *supra* note 3, at 61 ("Jake is one of a million words for the boys in blue, but it's particularly dismissive and used mostly in New York . . . .").

24. Indeed, you might be unlucky enough to have it land on the hood of the pursuing police car. *See NY Man's Tossed Pot Lands on Police Cruiser*, CHARLESTON GAZETTE (June 22, 2011), http://wvgazette.com/News/weirdnews/201106220421 (reporting this occurrence).

25. California v. Hodari D., 499 U.S. 621, 629 (1991) (holding that evidence abandoned during flight from attempted seizure is not suppressible even if the officer lacked reasonable suspicion for the attempted seizure); *see also* Hester v. United States, 265 U.S. 57, 58–59 (1924) (prohibition-era version of *Hodari D.* with moonshine whiskey rather than crack but the same result: ditch the evidence, lose the suppression claim).

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at all if the load is in the trunk or a concealed compartment where you can't get at it.

You're also not likely to get away. The Supreme Court recently held that the Fourth Amendment permits the use of deadly force to terminate high-speed chases.[26] In that case, the suspect fled from an ordinary traffic stop, the police chased him, and when he still didn't stop, the police rammed him from behind at over eighty-five miles an hour, sending his car spinning off the road and into a tree, killing him.[27] The Court watched the dashboard camera video and pronounced the response reasonable.[28]

Here you have to know the local rules, because some jurisdictions have banned high-speed chases as a matter of policy. Washington, D.C., for example, did so after two children were killed by a driver being chased by police.[29] In those jurisdictions, the cops will take your plates and come find you later.[30] They'll still find you, of course, but you'd probably have time to get the contraband out of the car and hide or discard it. Then you'd avoid the trafficking bust, and you would just have to eat a reckless endangerment charge for the flight itself. And even better for the perp, if the car or the plates are stolen, you might get clean away.

But Jay-Z didn't have a stolen car or plates ("*all my papers legit*"), the New Jersey State Police are not a no-chase department, and he was on an interstate.[31] They would have chased him, and even if he had been able to open the sunroof compartment and throw the load out, it would likely have been found. The better business decision was to stay cool.

D. Line 6

I got a few dollars I can fight the case . . . Staying cool is easier to do, of course, if you have a few dollars to hire a good attorney. If you're going to get an overworked public defender or a bottom-feeding court lurker who'll just try to get you to take a quick plea, then bouncing on the double starts to look more attractive, even given the considerations discussed above. Jay-Z had money, he could get a good lawyer, he made the right choice.

26. Scott v. Harris, 550 U.S. 372, 386 (2007).

27. *Id.* at 374–75. The video is available on the Court's website at *Video Resources*, SUPREME COURT OF THE UNITED STATES, http://www.supremecourt.gov/media/media.aspx. And obviously, it's all over YouTube. *See, e.g.*, Pattericothemovieguy, *Scott v. Harris (Car 1)*, YOUTUBE (Apr. 30, 2007), http://www.youtube.com/watch?v=auw_VAczrTw.

28. *Scott*, 550 U.S. at 378–81.

29. James Dao, *Washington Auto Thefts Cause Concern*, N.Y. TIMES, July 20, 2004, at A15 (describing policy).

30. *Id.*

31. For the New Jersey State Police pursuit guidelines, see New Jersey Task Force on Police Vehicular Pursuit Policy, New Jersey Police Vehicular Pursuit Policy (Sept. 17, 2009), *available at* http://www.state.nj.us/lps/dcj/agguide/vehpurs_2009.pdf.

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Jay-Z is also betting that there's no dog on scene. He can perhaps see in his rearview mirror that the cruiser behind him is not a canine unit, and he knows that dog units are few and far between in any event. And he knows that, without a dog sniff, there will be no probable cause for a search. To search a vehicle, an officer must have probable cause to believe that the vehicle contains contraband or evidence of a crime.[32] At this point, the only probable cause the officer has is the speeding offense. The compartment is concealed, and there's nothing in plain view, so no search is going to permissibly occur, unless the officer arrests Jay-Z for the traffic offense and impounds the car.[33] Jay-Z is assuming the officer won't do that, because it's a big hassle and an embarrassment if the car turns up clean.[34]

If there's no dog on scene, the law here is clear: prolongation of the stop to wait for a dog unit to arrive will trigger suppression.[35]

E. Line 7

So I pull over . . . At this point, Jay-Z has been seized, for purposes of Fourth Amendment analysis, because he has submitted to a show of police authority.[36] He has thus preserved his Fourth Amendment claims. If you are stopped illegally and want to fight it later, you have to submit to the show of authority.[37] In this case, if the police find the contraband, he'll be able to challenge it in court. Smart decision here by Jay-Z.

F. Line 8

Do you know what I'm stopping you for? This is an important part of any traffic-stop colloquy that should be memorialized by the prudent driver, ideally on a cell phone, unless you are (unluckily) in one of the thirteen states that require two-party consent for audio recording.[38] Neither New York nor New

32. California v. Acevedo, 500 U.S. 565, 580 (1991) ("The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.").

33. Atwater v. City of Lago Vista, 532 U.S. 318, 323 (2001) (holding that warrantless arrests for minor traffic offenses are permissible under the Fourth Amendment).

34. Of course, the officer could always arrest Jay-Z and impound the car. Arrest is permissible for any offense, even minor ones, and cars impounded for any reason may be subjected to an inventory search. *Id.*

35. *See, e.g.*, United States v. Jones, 269 F.3d 919, 926, 929–30 (8th Cir. 2001) (suppressing drugs found in car because traffic stop was unreasonably prolonged to await K-9 unit).

36. Delaware v. Prouse, 440 U.S. 648, 653 (1979). Rick Rubin is not left hanging either: passengers are also seized, for Fourth Amendment purposes, during traffic stops, and thus also have standing to raise Fourth Amendment claims based on the illegality of the stop. Brendlin v. California, 551 U.S. 249, 251 (2007).

37. *Brendlin*, 551 U.S. at 253, 254.

38. They are: California, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Montana, New Hampshire, Oklahoma, Oregon, Pennsylvania, and Washington. *See* Diane

Jersey is on the list, so Jay-Z could record the stop, both the real one and the one in the video. His West Coast rivals are not so lucky, however: California is a two-party consent state.[39] Memorialization of the stated basis for the stop is important because the government must be able to show that the stop was based on probable cause, and you'll be able to put the cop on the stand. So if you later develop evidence that you were not in fact doing what the officer said you were at the time, the officer will either have to fight the evidence, or else come up with a different basis for the stop, in which case he'll have to contradict his contemporaneous explanation. This can happen, and judges find it most displeasing.[40]

G. Lines 9–10

Cause I'm young and I'm black and my hat's real low? At the time the song takes place, the New Jersey State Police had an active "drug courier profiling" program[41] that would absolutely have included the observable facts here: Jay-Z was: (1) young, (2) male, (3) black, (4) wearing attire favored by drug dealers (the hat way down low), (5) driving an expensive car (in the video), (6) traveling on I-95 (the primary route for bringing drugs into and out of the city).[42] Such profiles are of questionable validity as the sole basis for a stop,[43] but there is no constitutional reason why they cannot inform an officer's subjective determination to stop someone if there is objective probable cause for the stop (for example, speeding). The Supreme Court has answered this

Leenheer Zimmerman, *I Spy: The Newsgatherer Under Cover*, 33 U. RICH. L. REV. 1185, 1216 n.139 (2000) (listing statutory provisions).

39. CAL. PENAL CODE § 631 (West 2006).

40. *See* United States v. Prokupek, 632 F.3d 460, 461, 463 (8th Cir. 2011) (reversing conviction because cop in "fake drug checkpoint" operation testified at suppression hearing that defendant had failed to signal when making turn onto surface street after exiting highway and admitted that he had not been able to see defendant actually exit the highway, but was recorded on his dashboard camera telling defendant, "You signaled your turn, but you didn't signal . . . when you were getting on the exit.").

41. *See supra* note 19.

42. *See, e.g.*, Charles L. Becton, *The Drug Courier Profile*, 65 N.C. L. REV. 417 (1987) (providing a comprehensive critique of various drug courier profiles used by government agents in testimony and in practice).

43. But unless profiles are explicitly race-based, they are both legal and widespread, and the Supreme Court has explicitly blessed their use as part of the reasonable suspicion determination. *See, e.g.*, United States v. Sokolow, 490 U.S. 1, 10 (1989) ("A court sitting to determine the existence of reasonable suspicion must require the agent to articulate the factors leading to that conclusion, but the fact that these factors may be set forth in a 'profile' does not somehow detract from their evidentiary significance as seen by a trained agent."). For a comprehensive history of profiling, see, for example, Kevin R. Johnson, *How Racial Profiling in America Became the Law of the Land:* United States v. Brignoni-Ponce *and* Whren v. United States *and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005 (2010).

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question definitively: pretext is not a basis for Fourth Amendment suppression if there is objective probable cause.[44]

I don't know . . . Smart response for two reasons. First, it allows you to make a record of the officer's asserted basis for the stop. Second, it doesn't admit any misconduct. There's no need whatsoever to blurt out, "Sorry, officer, I know I was speeding!"

H. Line 11

Am I under arrest . . . ? A great question, and an important one for any future suppression claim. As new lawyers learn (to their dismay), there is no constitutional problem with arresting someone for a traffic violation, no matter how minor.[45] And if you are arrested for a traffic violation, your car can be impounded and then searched to inventory its contents, without a warrant and without any level of suspicion that the car contains contraband.[46] Your person, clothing, and bags can also be searched with no required quantum of suspicion.[47] On the other hand, if you are not under arrest, the police need probable cause to search the car. So if the cop tells you you're not under arrest, and then proceeds to search the car, you will be able to suppress any contraband if you can show that there was no probable cause for the search. Here again, documentation will be important.[48]

I. Line 12

You was doing fifty-five in a fifty-four . . . All drivers—not just those smuggling drugs—have reason to complain about what they see as arbitrary speed enforcement. Drive down a highway with a marked limit of sixty-five, and you'll see that virtually every car is speeding. The cultural norm we learn as drivers is that anything within ten miles per hour of the posted limit is okay.[49] But as a matter of law—which is what matters for the suppression issue—if you're even one mile per hour over, that's sufficient to pull you over, write you a ticket, and, if the officer chooses, to arrest you.[50] Neither arbitrariness nor pretextual motive is relevant to the validity of the stop if it is

44. Whren v. United States, 517 U.S. 806, 813 (1996).

45. Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001) (holding that the Fourth Amendment permits full custodial arrests even for misdemeanors not punishable by jail time).

46. Colorado v. Bertine, 479 U.S. 367, 370–71 (1987).

47. United States v. Robinson, 414 U.S. 218, 235–36 (1973).

48. Also, if you're arrested, your *Miranda* rights kick in—but there are no *Miranda* rights during a traffic stop. Berkemer v. McCarty, 468 U.S. 420, 440 (1984). Not that Jay-Z is worried about accidentally blurting out something incriminating. But many, many suspects do.

49. *See, e.g.*, TOM VANDERBILT, TRAFFIC: WHY WE DRIVE THE WAY WE DO 229 (2008) (discussing cultural norms and the speed limit).

50. *Atwater*, 532 U.S. at 354.

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based on probable cause that you were in fact violating the traffic law.[51] Jay-Z explains the line as "another way of saying that we're being pulled over for no good reason."[52] As numerous commentators have observed, the number and scope of traffic regulations is so extensive that the police can in practice find a perfectly legitimate traffic-law basis for stopping any car they choose, just by following it for a few blocks.[53]

J. Lines 13–15

Step out of the car . . . We now turn to the suspect's interaction with the officer during a traffic stop. In the song, Jay-Z's protagonist refuses the cop's order to get out: "*I ain't stepping out of shit . . .*" In the video, he remains in the car and the cop backs off. Well, this is a basic question, the sort a criminal lawyer can answer: Does a driver actually have the right to refuse an order to exit the vehicle during an ordinary traffic stop? Unfortunately for drivers, the answer here is an unequivocal "no," straight from the Supreme Court: "[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures."[54]

So the order to step out of the car is per se lawful; the lack of suspicion of anything beyond the traffic offense is irrelevant. Indeed, in *Mimms*, the case just quoted, the government conceded that there was no suspicion of any kind other than the traffic violation, and that it was simply the officer's "practice" to order the driver out of the car whenever he made a traffic stop.[55]

Are you carrying a weapon . . . ? Here, things get even worse for the drug smuggler. *Terry v. Ohio*[56] allows for a weapons patdown any time legitimate police activity puts an officer in close proximity to someone, if the officer has "reasonable suspicion" that the person may be armed and dangerous.[57] Reasonable suspicion is less than probable cause, and courts tend to allow the usual "training and experience" boilerplate, so long as there are specific,

51. That's *Whren*—again! Whren v. United States, 517 U.S. 806, 813 (1996).

52. JAY-Z, *supra* note 3, at 61.

53. *See, e.g.*, Paul Butler, *The White Fourth Amendment*, 43 TEX. TECH L. REV. 245, 252 (2010) ("On a ride-along with an officer of the District of Columbia Metropolitan Police Department, I play a game that my cop friend invented called "Stop that Car!" I select a car—any car—and the officer finds a legal reason to stop it. It never takes longer than three or four blocks of following the car. There are so many regulations that it is virtually impossible for a driver not to commit an infraction.").

54. Pennsylvania v. Mimms, 434 U.S. 106, 111 n.6 (1977).

55. *Id.* at 109–10.

56. 392 U.S. 1 (1968).

57. *Id.* at 30.

articulable facts that give rise to the suspicion.[58] A later case, *Michigan v. Long*,[59] extended the *Terry* rationale to vehicle stops, allowing for a "frisk" of the *car itself*—that is, a search of the car for readily available weapons. The rationale there is that if the person is a criminal, he might well grab a gun and shoot you when you let him back into his vehicle after patting him down.[60]

I know a lot of you are . . . Jay-Z comments that this "is another statement with racial overtones that he [the cop] and I are both aware of."[61] Yes, indeed: race is always lurking in the background of the reasonable suspicion determination. You're not going to put it right in your report, but it's always there. On the facts of this song, I would say that most courts would find reasonable suspicion, primarily based on the suspect's age, his gender, his attire, his vehicle, and the location: all the officer would have to say is: "I had reasonable suspicion that the suspect could be involved in drug trafficking, and based on my training and experience, I know that drug traffickers habitually carry weapons."[62] Here's an illustration I show my students, from a law-enforcement message board. It's one cop's analysis of a situation very much like the one shown in the video.

> When you want to get into a car, how often do you use "Terry" as justification for a search of "weapons"? I was on a stop not too long ago, that went something like this. . . Me and my partner are situated in a high crime/drug area when we see a white male, who fits the profile of a tweaker, and two black males sitting in a car (that fits the profile of a tweaker car) at a gas station known for drug activity. We just sit there and think, tweaker. They pull off towards a street that's known for selling tweak and we follow. They suddenly make a U-turn when they spot us and then run a red light, which we then pull them over. Driver is nervous and he doesn't really know his

58. The *ne plus ultra* here is *Illinois v. Wardlow*, 528 U.S. 119, 121–22 (2000), in which the Court upheld a *Terry* stop where the only articulated facts were that the suspect was in a "high-crime" area, was carrying a bag, and ran away when police cars drove past the building where he was standing. The lesson Jay-Z accurately imparts in the song is: a young black man driving an expensive car in Bed-Stuy is, as far as the law is concerned, per se an object of reasonable suspicion. The courts have consistently declined to impose much supervision on stop-and-frisk policies under *Terry*. Columbia Law School Professor Jeffrey Fagan recently completed a comprehensive survey of NYPD stop-and-frisk reports for the Center for Constitutional Rights and found that of 2.8 million reports, nearly 700,000 did not include specific observations to support the stop. Declaration of Jeffrey Fagan at 2, 9 tbl.2, Floyd v. City of New York, No. 08-cv-01034 (SAS) (Nov. 7, 2011); *See* CTR. FOR CONSTITUTIONAL RIGHTS, RACIAL DISPARITY IN NYPD STOPS-AND-FRISKS: THE CENTER FOR CONSTITUTIONAL RIGHTS PRELIMINARY REPORT ON UF-250 DATA FROM 2005 THROUGH JUNE 2008 (2009), *available at* http://ccrjustice.org/files/Report_CCR_NYPD_Stop_and_Frisk_1.pdf.

59. 463 U.S. 1032 (1983).

60. *Id.* at 1049.

61. JAY-Z, *supra* note 3, at 61.

62. Query whether the presence of Rick Rubin in the passenger seat—in the video—is a plus or a minus on the reasonable suspicion scorecard.

> passengers, conflicting statements abound, pull them out of the car and then I ask the driver, "Is it ok to check the vehicle." He says no, you can't search my vehicle. I say ok, and tell my partner to start checking the vehicle for "weapons."[63]

Does this narrative describe sufficient reasonable suspicion to justify a *Terry* stop? As you can see, a lot of work is being done by the hearsay assertions: "high crime/drug area," "profile of a tweaker," "profile of a tweaker car," "gas station known for drug activity," and "street known for selling tweak." This sort of "training and experience" boilerplate is notoriously hard to refute, and its acceptance by the courts serves as an almost-per se invitation to search people who live in actual high-crime neighborhoods.[64] So, in the video—which is set in Bed-Stuy—the officer could, per *Mimms*, definitely order Jay-Z (and Rick Rubin, the passenger) out of the car, and thus arrest him if he fails to comply. He could *likely* then legitimately pat Jay-Z (and Rubin) down for weapons, per *Terry*, and search the inside of the car for weapons, per *Long*. That "likely" depends on whether he can make specific, articulable observations about their demeanor, appearance, and behavior.

Two caveats tip the scales a little bit back toward Jay-Z, however: First, the "car frisk" would not include the trunk, nor would it include drilling into the ceiling in search of a concealed compartment: it's a search for readily available weapons—not a search for contraband. Second, it will not be as easy to justify the *Terry* or *Long* frisks out on the shoulder of the New Jersey Turnpike, because the "high-crime neighborhood" boilerplate won't be available.[65]

63. MPD4Me, Posting to *How Often to* [sic] *You Use "Terry" to Justify a Vehicle Search*, OFFICER.COM (Jan. 23, 2010, 2:01 PM), http://forums.officer.com/forums/showthread.php?139087-How-often-to-you-use-quot-Terry-quot-to-justify-a-vehicle-search. The full comment thread is fascinating, as officers from various departments weigh in on the validity of the search. Most of the commenters opine that without more specific observations, the *Long* search of the vehicle is invalid.

64. *See, e.g.*, United States v. Arvizu, 534 U.S. 266, 276 (2002) (holding that border patrol agent was entitled to rely on his training and experience to determine whether there was reasonable suspicion); United States v. Terry, 392 U.S. 1, 27 (1968) (ruling that "due weight must be given . . . to the specific reasonable inferences which [the police officer] is entitled to draw from the facts in light of his experience"); United States v. Colon, 654 F. Supp. 2d 326, 332 (E.D. Pa. 2009) ("Furthermore, reasonable suspicion may fairly be premised on officers training and experience."); United States v. Thomas, 363 F. Supp. 2d 84, 93 (D. Conn. 2005) ("Viewed with a modicum of common sense and through the lens of a trained police officer, the facts presented justified the Officers' concern that Mr. Thomas might be armed and dangerous . . . .").

65. Query whether a court would buy "known drug transportation corridor" as applied to the whole Turnpike.

K. Line 16

Do you mind if I look around . . . ? Cops are trained to ask for consent, and almost everyone gives it.[66] Consent is useful for them because voluntary consent renders moot any other problems that might arise with the search (for example, a later determination that the officer lacked probable cause).[67] Furthermore, awareness of the right to refuse is not a prerequisite to a voluntary consent to search.[68] A suspect who thinks he has no choice can nonetheless give voluntary consent as a matter of law.[69]

Searches, in this respect, are unlike statements. Under *Miranda*, a statement made during custodial interrogation will be presumed involuntary (and thus suppressed)[70] if not preceded by the required warning, which includes telling the suspect that he has the right to remain silent.[71] But seven years after *Miranda*, the Court considered adopting such a warning regime for consent searches and declined to do so.[72] The Court said that street encounters with the police are inherently less coercive than jailhouse interrogation.[73] I find the Court's reasoning unpersuasive: for a lot of people, street encounters and traffic stops are still pretty coercive. But who cares what I think: that's the law. The burden is on the public to be aware of its rights—in this case, the right to decline consent. As a rule of thumb, think of it this way: if the police have the authority to search, they'll just search. If they have to get your consent, it's because they don't have the authority to search unless you

66. *See, e.g.*, Eamon Kelly, *Race, Cars and Consent: Reevaluating No-Suspicion Consent Searches*, 2 DEPAUL J. SOC. JUST. 253, 269 (2009) (reporting studies showing that ninety percent of drivers consented to searches when requested).

67. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973).

68. *Id.* at 231.

69. *Id.* at 224.

70. But just the statements, and just for the case-in-chief. *See, e.g.*, United States v. Patane, 542 U.S. 630, 640 (2004) (holding that "nontestimonial fruit of a voluntary statement" taken in violation of *Miranda* is inadmissible); Harris v. New York, 401 U.S. 222, 226 (1971) (holding that statements that would be excluded from the case in chief due to *Miranda* violation may be used for impeachment purposes).

71. *See* Oregon v. Elstad, 470 U.S. 298, 307 (1985).

72. *Schneckloth*, 412 U.S. at 231 ("One alternative that would go far toward proving that the subject of a search did know he had a right to refuse consent would be to advise him of that right before eliciting his consent. That, however, is a suggestion that has been almost universally repudiated by both federal and state courts, and, we think, rightly so." (footnotes omitted)).

73. *Id.* at 247 ("In *Miranda* the Court found that the techniques of police questioning and the nature of custodial surroundings produce an inherently coercive situation. . . . In this case, there is no evidence of any inherently coercive tactics—either from the nature of the police questioning or the environment in which it took place. Indeed, since consent searches will normally occur on a person's own familiar territory, the specter of incommunicado police interrogation in some remote station house is simply inapposite.").

consent.[74] So a good response to memorize is: "I do not consent." If the cop asks to search without threatening you, and you give consent, you are flat out of luck even if you had no idea that you had the right to refuse.

L. Lines 17–22

And I know my rights, so you go'n need a warrant for that . . . If this Essay serves no other purpose, I hope it serves to debunk, for any readers who persist in believing it, the myth that locking your trunk will keep the cops from searching it. Based on the number of my students who arrived at law school believing that if you lock your trunk and glove compartment, the police will need a warrant to search them, I surmise that it's even more widespread among the lay public. But it's completely, 100% wrong.

There is no warrant requirement for car searches. The Supreme Court has declared unequivocally that because cars are inherently mobile (and are pervasively regulated, and operated in public spaces), it is reasonable under the Fourth Amendment for the police to search the car—the whole car, and everything in the car, including containers—whenever they have probable cause to believe that the car contains evidence of crime.[75] You don't have to arrest the person, or impound the vehicle. You just need probable cause to believe that the car contains evidence of crime. So, in any vehicle stop, the officers may search the entire car, without consent, if they develop probable cause to believe that car contains, say, drugs.

All the action, in short, is about probable cause. Warrants never come into the picture. The fact that the trunk and glove compartments are locked is completely irrelevant. Now, Jay-Z may have just altered the lyrics for dramatic effect, but that would be unfortunate insofar as the song is going to reach many more people than any criminal procedure lecture, and everyone should really know the outline of the law in this area.[76] What the line should say is: "You'll need some p.c. for that." Given that we've established (it appears) that Jay-Z is not under arrest, and given that the *Terry* frisk of the car is limited to accessible places a weapon could be hidden, the trunk is definitely off limits at this point. What that means is that if the officer opened the trunk

74. *Id.* at 219. To be sure, many officers use a belt-and-suspenders approach, requesting consent even where they have probable cause. This is efficient, because it saves the government the burden of litigating probable cause. *See, e.g.*, United States v. Alexander, 573 F.3d 465, 477 (7th Cir. 2009).

75. California v. Acevedo, 500 U.S. 565, 580 (1991) ("The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.").

76. It works just as well rhythmically, and has the added salutary benefits that (a) it might prompt confused listeners to Google "p.c." and learn about the concept of probable cause, and (b) if you quoted it at a traffic stop, you'd be correct.

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by force, without developing articulable probable cause, the contraband found inside would be suppressed. That is the point of the next line.

M. Line 23

We'll see how smart you are when the K-9s come . . . A sniff by a drug-sniffing dog is not a "search," for purposes of the Fourth Amendment.[77] Dog sniffs are "*sui generis*," the Court has held—they're unique in that they don't reveal any information about the contents of the object sniffed except the presence of contraband, as to which you have no privacy right.[78] Thus, if the police have a dog ready to sniff your car when they pull you over for a traffic violation, you have no basis for objecting to the sniff. And, of course, if the dog does alert to the car, that is probable cause, so the police can then search the whole car.[79] That's what the officer wanted to do with Jay-Z, but the K-9 unit wasn't there when he was pulled over, and was late arriving. And this brings us to the final legal issue implicated by the song: excessive prolongation of a traffic stop.

A traffic stop is a legitimate seizure of the person, for purposes of investigating the violation of the traffic law and writing up the citation.[80] But it cannot be prolonged for longer than reasonably necessary to complete that legitimate activity.[81] If in fact the patrol car's computer is slow, so you have to sit there for ten minutes while the cop runs your license, that's one thing. But increasingly, given dashboard cameras and records of department computer activity, that sort of "delay" is getting harder to fudge.[82] And the Fourth Amendment rule is very clear: if the police detain you after they've finished processing the ticket—or if they simply dawdle over the ticket processing for an unreasonable length of time—in order to get a K-9 team there, then the eventual dog sniff will be the fruit of an illegal detention, and any evidence

77. Illinois v. Caballes, 543 U.S. 405, 408–09 (2005).

78. *Caballes*, 543 U.S. at 408 (explaining that dog sniffs are not searches because the "interest in possessing contraband cannot be deemed 'legitimate,' and thus, governmental conduct that *only* reveals the possession of contraband compromises no legitimate privacy interest" (internal quotation marks omitted)); United States v. Place, 462 U.S. 696, 707 (1983) (discussing the *sui generis* nature of dog sniffs). Dog sniffs are thus unlike, say, thermal imaging scanners, which can detect grow lights, but might also reveal "at what hour each night the lady of the house takes her daily sauna." Kyllo v. United States, 533 U.S. 27, 38 (2001). But see Jardines v. State, 73 So. 3d 34, 49 (Fla. 2011) (holding that a dog sniff *is* a search when conducted at the front door of a residence, as opposed to a car).

79. *See Caballes*, 543 U.S. at 409.

80. Whren v. United States, 517 U.S. 806, 809–10 (1996).

81. *Caballes*, 543 U.S. at 407.

82. *See, e.g.*, David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance By Police*, 43 TEX. TECH L. REV. 357, 360 (2010) (discussing the increase in the number of camera systems installed in police cruisers).

found will be suppressed.[83] The officer in Jay-Z's case apparently knew this, and so released Jay-Z after the stop when the K-9 unit he'd called was late in arriving.[84]

Of course, if, during the traffic stop, you provide the officer with reasonable suspicion that you're smuggling, then the traffic stop becomes a *Terry* stop for the purpose of investigating the suspected smuggling.[85] And then it can be extended—not indefinitely, but for a few minutes, anyway, depending on the circuit.[86] Courts will uphold reasonable suspicion for all the usual reasons—but there still has to be something beyond the traffic stop itself. This is a crucial distinction that all cops and perps need to be aware of, and be prepared to litigate.[87]

The best practice for law enforcement, if you're planning to use traffic stops to make drug busts, is to have the dog unit there when you make the initial stop. But drug dogs and their handlers are valuable commodities—the dogs take a long time to train, are expensive to house, and typically work only with a designated officer.[88] So there aren't as many K-9 units available as there are potential pretext traffic busts to make in a given night. The cops in Jay-Z's case could have rolled the dice on holding him there until the unit arrived. But this is always a cost-benefit game: what are the chances that I'll actually find something, and what are the chances it'll be suppressed if I do find it?

And also: what are the chances that if I intentionally violate someone's rights, I'll get in trouble? On the last question, the prevalence of cell-phone

83. Of course, as always, you'd better clearly assert your rights and document that your continued detention is non-consensual—and it helps not to be in the Fourth Circuit. *See* United States v. Lattimore, 87 F.3d 647, 649, 652 (4th Cir. 1996) (en banc) (upholding search as consensual despite the following pre-consent exchange: "Lattimore: Yeah, and I seen where [sic] they pulled a guy over, and they, you know, asked him the same thing you're asking me—whether they could search his car or not. And, um, what's the difference? If you do or you don't, it's gonna happen anyway, right? Trooper: Not really. If you don't, I feel you're hiding something. Therefore, I'll call a drug dog right up the road to come down here and let him search your car. Lattimore: That's what I'm saying. It don't really make no difference.").

84. *See* JAY-Z, *supra* note 3, at 61. Jay-Z says he actually saw the K-9 unit racing down the highway in the other direction as he pulled away. *Id.*

85. United States v. Flores, 359 F. Supp. 2d 871, 875 (D. Ariz. 2005).

86. *See, e.g.*, United States v. Hardy, 855 F.2d 753, 761 (11th Cir. 1988) (upholding *Terry* detention to await drug dog for fifty minutes when officer developed reasonable suspicion during stop based on passengers' responses to questions about their identity and destination).

87. *See, e.g.*, Kelly, *supra* note 66, at 269 (noting that "[m]any reported cases reveal an admitted police practice of extending stops involuntarily after a refusal" and citing examples).

88. My ballpark, for what it's worth, is: up to ten grand to buy the dog, which will have a working life of probably five years, ten at the outside, but limited hours (half a shift), plus training for the handler, and taking the handler off regular duty and/or hiring a replacement. For a similar estimate, see Mark Weintraub, *A Pack of Wild Dogs?* Chew v. Gates *and Police Canine Excessive Force*, 34 LOY. L.A. L. REV. 937, 969 n.195 (2001).

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cameras, video-sharing sites, and departmental policies on dashboard cameras and body recorders for officers have worked a huge cultural shift in most departments.[89] And you're not going to have qualified immunity for intentionally prolonging a traffic stop to allow the dog to arrive. The law's much too clear for that.[90]

N. Line 24

I got 99 problems but a bitch ain't one . . . Jay-Z says that the "bitch" in this line, which recurs in the chorus, refers to the late-arriving drug dog, not to a woman.[91]

III. CONCLUDING ADVICE

The lesson for cops is that if you want to use traffic laws as a pretext for catching drug smugglers, you can. Absolutely, no problem. But you have to do it right, and doing it right can be labor-intensive. If you're out to get some smuggling busts, have the dog unit ready. If you don't have a dog on scene, and the suspect doesn't give you consent (which if they're any good, they won't), then make as specific a record as you can of anything suspicious. If you don't have anything (which again, if they're any good, you won't), it's still not game over: just arrest for the traffic violation and impound the vehicle, and run a dog on it in the lot.[92] This means time off the street, paperwork, and potentially getting chewed out by your boss if you don't turn up contraband—

89. *See* Harris, *supra* note 82, at 360 (noting that video cameras in police cruisers tend to increase officer compliance with department policies).

90. Officers have qualified immunity from damages suits if they violate a person's rights, so long as they did not violate "clearly established" law. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Prolongation is a no-brainer as to the law, so the dispute will be factual, and you'll at least get your jury trial. As one recent case put it, in denying the officer's motion for summary judgment in a prolongation case:

> Here, the Court finds that it was clearly established that reasonable suspicion must exist in order for an officer to prolong a traffic stop to conduct a field sobriety test. Here, there is a question of fact as to what Breshears knew and how he chose to justify his decision to detain Plaintiff.

Thompsen v. Breshears, No. CV-08-230-RHW, 2009 WL 2581556, at *11 (E.D. Wash. Aug. 14, 2009).

91. JAY-Z, *supra* note 3, at 61 ("In this verse, the bitch is a female dog, the K-9 cop coming to sniff the ride."); *Id.* at 56 ("At no point in the song am I talking about a girl.").

92. *See, e.g.*, South Dakota v. Opperman, 428 U.S. 364, 368–69 (1976). But remember: If the dog alerts but you didn't see anything when you inventoried the car, get a warrant: the inventory search rule does not cover dismantling the car in search of a concealed compartment. *See, e.g.*, United States v. Bowhay, 992 F.2d 229, 230 (9th Cir. 1993) ("To be valid, an inventory search must conform to a standardized and established local procedure, and must be motivated by a concern to inventory [the items] rather than to search for other incriminating evidence." (internal quotation makes omitted)).

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but it also means your bust will stick if the car was loaded. This is almost always good advice; I've heard it from my bosses, and I've given it myself: when in doubt, arrest, call it in, and let the lawyers deal with it.

The lesson for perps is threefold: (1) don't consent, (2) know the reasonable suspicion boilerplate and don't provide it, and (3) make a record of the encounter any way you can, including your behavior, appearance, and demeanor before and during the stop, the officer's stated motive for the stop, all of your responses to questioning, whether or not you were placed under arrest, and the exact amount of time you were held on the side of the road.

And finally, most importantly, for both sides—when in doubt, talk to a lawyer. My door's always open to players on both sides of this game. Call me.[93]

93. (213) 738-6752

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