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## **COURT URGED TO UPHOLD VOLUNTARY POLICE SEARCHES ON BUSES** *(United States v. Drayton, No. 01-631)*

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to uphold the power of police officers to question and search bus passengers who voluntarily consent to be searched.

In a brief filed in *United States v. Drayton*, WLF argued that consensual questioning of citizens by police is an important law enforcement tool and should not be deemed to violate the Fourth Amendment's ban on unreasonable searches and seizures simply because some bus passengers might feel uncomfortable in refusing a police request to search baggage.

"Particularly in this age of terrorism, it is important that police have all the tools necessary to ensure that public transportation systems remain safe," said WLF Chief Counsel Richard A. Samp after filing WLF's brief. "The lower court decision, which overturned the conviction of two drug dealers who consented to being searched, would put a real crimp in law enforcement efforts if allowed to stand," Samp said.

The case involves three police officers who boarded a Greyhound bus in Tallahassee, Florida. While one officer remained at the front of bus, the other two proceeded to ask various of the seated passengers their travel plans and requested to inspect their luggage. Two of the passengers, Christopher Drayton and Christopher Brown, consented to a "pat down" of their clothing. The pat downs revealed that Drayton and Brown were carrying nearly a kilogram of cocaine. They were arrested and later convicted of possession of cocaine with intent to distribute.

The U.S. Court of Appeals for the Eleventh Circuit in Atlanta reversed the convictions on the ground that the police search had violated the Fourth Amendment. Citing the Supreme

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Court's decision in *Florida v. Bostick*, the Eleventh Circuit said that the test of whether a search should be deemed "consensual" is whether a reasonable person would feel free to decline a police officer's request. In *Bostick*, the Supreme Court had held that there is nothing inherently coercive about police questioning of passengers on a bus, and directed courts to examine all relevant factors in determining the consent issue. The Eleventh Circuit, however, has established a nearly *per se* rule that a bus search is never consensual unless police first warn passengers that they have a constitutional right to refuse to cooperate with police.

In its brief, WLF argued that no such *Miranda*-like warning is required by the Fourth Amendment. WLF argued that unless police make some display of force or issue verbal threats, any cooperation by passengers on buses or other modes of public transportation should be deemed voluntary.

WLF also argued that the rule as currently framed by *Bostick* has sowed confusion in the lower courts. WLF argued that Fourth Amendment "voluntariness" questions have always focused on whether the police conduct would overbear a reasonable person's will and critically impair that person's capacity for self-determination. WLF argued that if the *Bostick* test were reformulated in that manner, lower courts would understand that a search should not be deemed involuntary simply because a reasonable person might feel uncomfortable and discourteous if he declined a police officer's overture, or might feel a need to respond to incriminating questions.

WLF also noted the great importance of public transportation in the functioning of a free society and argued that the continued safety of public transportation requires that police be permitted to continue to employ a broad array of law enforcement techniques in that setting -- including consensual questioning.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to promoting public safety and protecting the rights of crime victims. WLF filed its brief in this case on behalf of itself and the Allied Educational Foundation, and with the *pro bono* assistance of Sean P. Gates, a lawyer in the Los Angeles office of Munger, Tolles & Olson LLP.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302.