

In the dream I am screaming at a client. "What the hell were you thinking of!?!? You put it out there for cops and snoops to see, or worse yet, it was hidden and you allowed a law enforcement officer to see it without a warrant or a broken door!" But it's just a dream. Too many clients make the same mistake. I'd have no voice left, and besides, it's just too cruel. By the time they get to my office they've usually been terrorized by some officer whose duty it was to protect my clients and the rest of us from the giggles and the munchies. They don't need to be screamed at.

But just what will work? Why don't citizens assert their rights? Warrantless searches are what happens when someone makes a mistake that places the police in a position where they may seize and/or search without prior judicial approval. Why do they make these mistakes? Let's look at a few examples.

One client arrived at her boyfriend's house with a bag of buds sitting in plain view on the console of her car. The police were already at her boyfriend's house, busting him for the pot she was bringing. When she drove by they flagged her down, walked over and looked in. The sight of the buds gave the officer lawful authority to arrest her. The arrest inside the car gave the police lawful authority to search the car. That search revealed a firearm, which, unfortunately adds a couple of years to her sentence.

Too bad, since the initial act of flagging her down may well have been an unlawful seizure. But the gamble wasn't worth it. Instead we had to settle for a felony with no jail time. If we'd chosen to fight the stop on constitutional grounds, the state would have raised the stakes by adding the firearm enhancement.

However, had that pot been hidden, or better yet, in a Mason jar inside a locked briefcase in the locked trunk of her car, she might well have escaped any trouble. A simple mistake escalated into a nightmare.

I wanted to ask her what the hell she was thinking of. But that's the way it is with folks who aren't professional outlaws. It seems silly to go to all that trouble just to drive across town with a little bud. View it as insurance against those two awful events: getting busted and needing to hire a criminal defense attorney. Take the time to be tidy.

Another mistake often made by folks in cars is to let the officer extend the detention after s/he has lawfully stopped you for some traffic violation. Of course, if you were obeying the One Law at a Time Rule, you probably wouldn't have been stopped. But if you don't screw up, you might be ok. Your car doesn't smell like drugs. There's no paraphernalia sitting around in your car. Any contraband is well concealed. When the officer finishes his or her business—the initial reason for the stop, you must be released. If they start to strike up a conversation or ask more questions during the stop or after the purpose of the traffic stop has been completed, don't be intimidated. Ask: "Am I free to go?" You'd be amazed how well that works.

And, remember, if you don't take my advice, I double the price.

Next month: A search warrant or a broken door.