

BENCHMEMO: UNITED STATES v. LEWIS, CR 86-00035-R  
Motion hearing Friday, Feb. 13, 1987 at 2:00 p.m.

ATTORNEYS: United States -- Roger Frydrychowski

Defendant -- Andrew Wood

Judge, this is a motion to suppress a weapon recovered from defendant on February 8, 1986. Defendant, a convicted felon, is charged with receipt of and possession of a firearm. If the evidence shows what the government says it will show, the motion should be DENIED.

#### FACTS

Defendant says he was accosted by several police in a beer joint in South Richmond, and that the police had ~~not~~ cause to seize his person or to take the weapon from his clothing.

The United States says that on the night of February 8, 1986, Police Officer John Vickery responded to a disturbance call at Alma's Bar and Restaurant. This was the second call for police assistance at the restaurant that night. As he entered the restaurant, Vickery was told that a man wearing a brown jacket in the kitchen had a gun. The owner pointed him toward the kitchen. Defendant was there arguing with a woman; he was wearing a brown jacket and was the only man in the kitchen. Vickery told defendant that he was going to and did conduct a pat-down frisk for a weapon. He recovered a .22 caliber revolver from defendant's jacket. Defendant was then placed under arrest for possession of a concealed weapon.

#### AUTHORITY

Defendant seems to argue that he was illegally arrested -- without a warrant and without probable cause -- prior to his being searched. However, although a frisk based upon reasonable grounds is a seizure of the person, it is not an arrest. Officer Vickery was faced with circumstances that made the pat-down not only reasonable but essential for his own safety and the safety of others. The officer took the minimum steps necessary to protect himself based, at the least, on the location of the encounter, a bar late at night where there had been a disturbance earlier that night, and after another person had told him that someone in the kitchen answering defendant's general description did have a gun.

A police officer with reasonable grounds to suspect that a person may be armed and dangerous to the officer or others may conduct a pat-down frisk for weapons. Terry v. Ohio, 392 U.S. 1, 24 (1968). Information volunteered by an anonymous informant or by a citizen informant who is a witness to a crime can provide a reasonable basis for a frisk. See Adams v. Williams, 407 U.S. 143, 147 (1972); United States v. Rueda, 549 F.2d 865 (2d Cir. 1977).

Obviously, your decision on this motion will depend upon the evidence adduced at the hearing. But, if Vickery had reasonable grounds to suspect that Lewis might have been armed and dangerous, he had every right to frisk him for a weapon, and the weapon should not be suppressed.