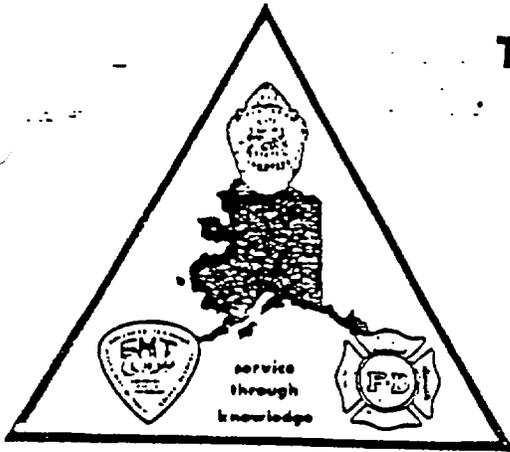# DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 93
May 1, 1985

SEARCH FOR IDENTIFICATION
AS INCIDENT TO ARREST

Reference: Joseph L. STEPHENS   Alaska Court of Appeals
                          v.   Opinion No. 459
              State of Alaska   678   P.2d 664
                                             April 19, 1985

FACTS:

STEPHENS was arrested for two counts of assault in the third degree. When
brought to the police station, STEPHENS refused to orally answer questions
concerning his identity, residence or other routine matters. A police
officer checked STEPHENS' pockets in an attempt to locate identification.
Upon removing items from his pockets, two packages containing cocaine were
seized.   STEPHENS was charged with possession of the cocaine and he appealed
alleging an illegal search.

ISSUE:

Was the search of his person for identification illegal since it was not a
search for evidence of the assault?

HELD: No.

REASONING:

1. STEPHENS was given the opportunity to identify himself and refused to do
so.

2. STEPHENS could have prevented the search by identifying himself or per-
haps providing identification.

3. The possibility that the search was not a legitimate search for identifi
cation, but done as a mere pretext, had been eliminated.

NOTES:

The court is aware that searches such as these (for identification) must be
closely scrutinized. The court did not decide this case on the Fourth Amend
ment to the U.S.Constitution, but relied instead on the Alaska Constitution,
Article I, Section 14 (our equivalent to the Fourth Amendment) and Section
22 (right to privacy).

The court said, "We are concerned that allowing a search for identification
could provide a vehicle for greatly expanding the scope of those searches
permitted incident to an arrest." This should put us on notice that we

cannot use this as a pretext to conduct a search of a person nor a guise to look for identification, unless we can justify such a search.

Remember--this case surrounds a search conducted as incident to a lawful arrest and should not be confused with "stop and frisk" situations.