

- Handlers must be paid for reasonably necessary canine home care.
- Commuting time is generally not compensable time.
- Training time is compensable time, but driving to and from training is not.
- On-call time is generally not compensable time.

## Chapter 10

### DRUG DETECTOR AND PATROL DOG TESTIMONY

Every veteran officer can tell you about the time that he or she froze on the witness stand, or was ambushed by an off-the-wall, unexpected question. Even the most seasoned veteran occasionally is at a loss for words when testifying. This chapter presents some of the uncommon, as well as common, questions that a police service dog handler is likely to face on the witness stand.

#### § 10-1. Principles of Court Testimony

Much of the trial is controlled by others – the prosecutor, the judge, and the defense counsel. One matter firmly within the control of the handler is the first impression that the judge and jury see as the handler walks into the room. Salespersons and psychologists know that only a small portion, about seven percent, of any oral communication is transmitted by the words spoken. Voice intonation accounts for another thirty-five percent. The largest share, fifty-eight percent, is communicated through body language. As you walk into the room, show confidence and credibility through open body language, professional demeanor, a pleasant smile, and eye contact. Even before you walk into the courtroom, consider that potential jurors may be waiting in the hallway or in the lobby of the courthouse. Be careful about making inappropriate comments that might give a negative impression that will follow you into the courtroom.

The handler witness also controls the pace and intonation of his speech. Remember that we tend to speak more softly than necessary in court. Jurors must be able to clearly hear testimony in order for the testimony to have its full impact. It is not likely that a juror will interrupt a witness to ask the judge to direct the witness to speak up. Talk just a little louder – and a little slower – than you normally would speak. Slowing the pace just a little will improve the jurors' comprehension and help them concentrate on your testimony.

A criminal defense attorney has an ethical duty to zealously represent his client. That means fighting hard to protect the defendant's rights. It does not mean fighting unfairly. However, some defense attorneys believe that confusion in a juror's mind (it usually only takes one to acquit) is one of the defendant's best allies. Alan Dershowitz quipped, "the defendant in a criminal trial wants to hide the truth because he's generally guilty. The defense attorney's job is to make sure that the jury does not arrive at that truth." An officer may become an unwitting partner in hiding the truth if the officer is not prepared to answer the tough questions on the witness stand.

Winning in court begins with case preparation. Solving a crime is only the beginning; getting a conviction begins with writing a complete and accurate incident report. The defense attorney's opening salvo may go something like this:

This is an official report?

You completed it right after arresting my client?

You've received training in writing police reports?

You write complete, thorough, and accurate reports?

You put all of the important details of a case into your report?

Can you show me in your report the information that you just testified to?

But you never mentioned the cat food on the floor of the back seat that may have affected your dog's sniff, did you?

Any officer who has been through a cross-examination with questions like these leaves the courtroom committed to improving his or her report writing skills.

If you are on the witness stand and remember something that you left out, admit it. It may help to explain that you put in your report everything that you thought was important at the time you wrote it. You write reports to help you remember what happened and to give others a description of the events, but you don't claim to record every detail. An appellate court opinion asked rhetorically: "What trial court judge cannot attest that officers remember facts on the stand that they neglected to put in their police reports?" *People v. Wilson*, 182 Cal. App. 3d 742, 752 (1986). Recognize the difference between "I don't know" and "I don't recall." "I don't know" signals that you never knew, and obviously cannot remember it later and correct or supplement your testimony. "I don't recall" is an open door to ask to look at your notes, buy time, and alert the prosecutor that you may be in trouble. Recover by finding the answer in your report or notes and confidently telling it to the jury.

In civil lawsuits, a number of documents and answers to written interrogatories will usually have been provided to the plaintiff's lawyers. In lawsuits filed in federal court, as well as most states' courts, the handler will be deposed before the actual trial. The discovery process, which may include a deposition, usually precedes civil trial. In some states, depositions are also part of the criminal case discovery process. A deposition is an

examination under oath, but it does not take place in a courtroom before a judge. The attorneys have the right to ask the handler questions and have a court reporter record the answers as part of the discovery process. The deposition is often the only sworn testimony required of the handler; many cases settle before trial or are dismissed following a motion for summary judgment. Most use of force liability lawsuits include a claim of "failure to adequately or properly train." Thus, the handler's training records and the police service dog's training records are often a key subject area in a deposition.

The attorneys participating in a deposition are responsible to "protect the record." The court reporter will take down everything that is spoken verbally (that can be heard and understood), but cannot record head nods. Officers who speak clearly, spell difficult names or uncommon terms or police jargon, and who speak only after the attorney has finished the question will soon gain the appreciation of the court reporter. The court reporter, in turn, can make the officer's testimony look more professional as his spoken words are transcribed. Attorneys usually begin depositions with instructions like the following:

Good morning. I represent the plaintiff in this matter. Your sworn testimony today will be recorded by a court reporter. Every question that I ask and every answer that you give will be taken down verbatim. It is important for you to answer out loud and not nod your head like you might in casual conversation. If you don't understand a question, please tell me. I want to make sure that the answers that you give are responsive to the questions that I ask. The court reporter cannot write down everything that is said if two persons speak at the same time, so I will wait for you to complete an answer before I ask you another question. You should also wait for me to finish my question before you start to answer.

Police service dog handlers tend to be better-than-average court witnesses. They are usually veterans with a few years on the road. They often receive advanced search and seizure training and, perhaps, even advanced training in courtroom presentation. The following are seven commandments for police service dog handlers in the courtroom:

- ① *Never lie.* An officer loses credibility only once. It is tough, if not impossible, to recover from being caught in a lie given under an oath to tell the truth, the whole truth and nothing but the truth. The bandit will be caught again.
- ② *Never volunteer.* Volunteering in the community is good; volunteering on the witness stand is not. Do not give more information in your

response than is necessary to directly answer the question asked. Do not suggest that someone else might know the answers that you don't know. If you say that "Officer Jones might know that," you have just lengthened the trial, perhaps unnecessarily, and you have almost certainly paved the way for Officer Jones to be summoned to court. Of course, if you are directly asked whether someone else may know and you are certain that the other person does know the answer to a question, then respond truthfully.

- ⑤ *Treat all questions like railroad crossings.* A national railroad safety campaign encourages drivers to "stop, listen, and look" at train crossings. When on the witness stand, listen carefully to the question, stop or pause for a second or two to allow the jury to switch attention from the attorney asking the question to you, then look at the jury and answer the question.
- ⑥ *Say only what you know.* If you do not know the answer to a question, do not guess or speculate. Do not try to look smarter than the attorney. It usually backfires.
- ⑦ *Estimate when you don't know.* If you are not certain about time ranges and distances, say so. If necessary, respond with a range with which you are comfortable. If appropriate, estimate distances by making reference to visible objects in the courtroom.
- ⑧ *Be prepared!* Follow the Boy Scout motto.
- ⑨ *Listen to your lawyer.* If the lawyer screws up, grin and bear it. Listen, too, to the defense attorney. Treat the prosecutor and defense attorney the same in court. The jury will notice your sense of fairness and count it to your favor. On the same note, be dignified to the defendant, but call him "defendant" to remind the jury just who is on trial.

#### § 10-2. Foundation questions

- How long have you been in the K9 unit?
- How many dogs are in the unit?
- What are their various functions?
- What is your dog trained to do?
- How is a drug/bomb/etc. dog trained?

- What is the breed of your dog?
- How old is your dog?
- How long has your dog been working?
- Are you the dog's only handler?
- Did the dog have a previous handler?
- Why was this breed selected?
- How and when did your agency acquire this dog?
- Have you handled any other service dogs?
- How many? What type? What profiles?

#### § 10-3. Training Questions

- Are you a member of any K9 organizations?
- Which organization(s)?
- What are their functions?
- When did you receive your training as a K9 handler?
- Where was the training conducted?
- How long was the training?
- Did your training include a manual or written materials?
- Do you have them available?
- What sort of subjects were covered in your handler training?
- Did you receive a certification?
- How long is the certification valid?
- Do you certify your dog through any agency or organization?
- How frequently?

- Are there criteria for certifying the dog?
- Who administers the certification testing?
- Are scores or grades given?
- How well did your dog perform?
- What types of odors is your dog trained to locate?
- How was the dog trained to locate these odors?
- Is an "odor" the same thing as a "scent?"
- How does your dog communicate that he/she has located a drug odor?
- How did you build this indication into the dog's behavior?
- What is the smallest quantity of drugs that you have use to train your dog?
- What is the largest amount of drugs that you have used to train your dog?
- What is the reason for those limitations?
- Have you and your dog received additional training since the initial training?
- How much? Where?
- How often do you train with your dog?
- Under what conditions?
- Is your dog weak in particular areas and strong in others?
- What are your dog's weaknesses?
- Is your dog 100% successful?
- What is the distinction between a dog handler and a dog trainer?
- Would you be willing to bring your dog to court and demonstrate the dog's training to the jurors?

- Why not?
- Are distractions included in your dog training? Why?
- What type of distractions?
- Is your dog's indication a strong indication that someone other than you could discern?
- During the course of training, has your dog ever failed to find concealed drugs? Why?
- Is your philosophy of training superior to other agencies? Why don't you train like LAPD, or ICE, or the Air Force, etc.?
- Isn't it true that you believe that other agencies have inferior training approaches?
- Can your dog indicate on command?
- How do you reward your dog when it makes an indication?
- Have you ever rewarded your dog when it was wrong or performing improperly?

#### § 10-4. Drug Detector Dog Questions

- Is an "alert" the same thing as an "indication?"
- What is the difference?
- What is a "final response?"
- Is that the same as an "alert" or an "indication?"
- Have you formed an opinion about your dog's reliability in finding the odors of drugs?
- What is the basis for your opinion?
- What is your opinion?
- What is the largest amount of drugs that your dog has ever located?

- What is the smallest amount of drugs that your dog has ever located?
- How many times has your dog been used to search for drugs?
- Is your dog worked at any time other than searching for odors of drugs?
- For what purpose? How often?
- Are there any records kept of your dog's searches and/or training?
- Who keeps the records?
- How are they kept?
- Where could I inspect the records?
- Does your dog ever have a bad day?
- How does your dog behave on a bad day?
- What kind of searches are challenging for your dog?
- What kind of searches give your dog problems?
- How does your dog react to distractions?
- What odors mask the odors of drugs?
- What is a "false alert," "false indication" or "false positive?"
- Has your dog ever alerted in a location where no drugs were subsequently found?
- Wouldn't this call into question the ability of the dog?
- How would you explain this?
- What is residual odor?
- The actual scent molecule in heroin is acetic acid, isn't it?
- The actual scent molecule in cocaine is methyl benzoate, isn't it?
- Aren't these molecules found in other substances?

- How many times has your dog failed to find concealed drugs?
- Has your dog ever failed to alert in an area where drugs were found?
- How can you explain this?
- When your dog indicates, can you tell whether he/she has found marijuana, methamphetamine, or some other drug?
- How can you tell?
- Why don't you teach your dog to alert differently to different drugs?
- How sensitive is a dog's nose?
- How many more times sensitive than a human nose?
- What accounts for the difference?
- What is a "useable" amount of drugs?
- Has your dog ever failed to give a complete final response, such as only scratching and not biting, or only barking and not scratching?
- How do you explain that?
- Do you stimulate the dog prior to deploying for a search?
- How do you stimulate the dog?
- Didn't you contaminate the car/boat/object when you touched the toy to it during stimulation?
- Couldn't the odor from the toy still be in the air when you commanded the dog to sniff the car?
- Isn't that a form of residual odor?

#### § 10-5. Pseudo-Narcotic Questions

- Is pseudo-cocaine a controlled substance?
- Does your dog find pseudo-cocaine?

- What would happen if I placed some pseudo-cocaine in the search area?
- What is the difference between pseudo-cocaine and real cocaine?
- Are you a chemist?
- Do you have any training in chemistry?
- How many times has your dog alerted to a pseudo-drug or any other substance that was not actually a controlled substance?
- Can we hide some pseudo-cocaine to see if your dog would find it and alert or give a final response?
- Why do/don't you use pseudo-drugs to train your dog?
- Would you agree that the United States Bureau of Immigration and Customs Enforcement ("ICE") operates one of the nation's premier detector dog training programs?
- Are you aware that ICE uses pseudo-cocaine in their training program?

#### § 10-6. Incident Questions

- Is your dog currently in good health?
- Was he/she in good health on (date)?
- Directing your attention to (date), were you on duty?
- What were your work hours that day?
- Were you and your narcotic dog ever asked to respond to a specific location, and if so, by whom?
- At what time?
- Did any officers meet you at the scene and tell you about the situation?
- Could you describe the scene (the area to be searched)?
- What did you do?

- Where did you start the dog in his/her search?
- Did the dog have the idea that you wanted him/her to begin a search?
- Do you give him/her a command?
- Was there anyone around you when you were searching with the dog?
- During the course of the search, was the dog ever distracted from his/her search?
- While the dog was searching, did he/she at any time give you an indication of the presence of the odor of narcotics?
- What was his/her reaction or indication?
- At what specific location did the dog give you that indication?
- Did you or any of the other officers present, investigate that spot or location where the dog indicated?
- To your knowledge, what was the result or outcome of this indication and the subsequent investigation?
- There was property seized for forfeiture in this case, yet no drug were found. How can you explain that?

#### § 10-7. Currency Questions

- Before you had your dog sniff the currency, did you check the area for contamination?
- Is it possible that the currency became tainted with the odor of controlled substances after it was in the possession of the narcotic officers and before you conducted a sniff?
- When your dog indicated on that money, you had no idea of how much of it was tainted with drug odor, did you?
- If a single contaminated bill were placed in a stack of 100 bills would your dog indicate on the entire stack?
- On how many occasions has your dog not alerted to currency?

- Do your training records show how many times the dog has sniffed currency and how many times your dog has alerted to currency?
- How do you know that the dog did not indicate on the odor of currency?
- Isn't it true that a large portion of currency in circulation is tainted with the odors of drugs?
- Are you aware of published scientific studies showing that a majority of \$20.00 bills in California are tainted with drug residue?
- How many times has your dog indicated on currency that has no drug odor on it?
- Isn't it true that your dog could indicate on currency that became tainted weeks before the sniff?
- How is it that your dog alerted on this currency, yet you say that one gram is the threshold for an indication?
- Do you believe that every large quantity of currency is drug-tainted? Why or why not?
- Would you agree that it is best to conduct a sniff in the closest possible proximity to the seizure of currency or other items?
- Why was there a delay in this case?
- Prior to the sniff, was the money counted?
- Was a money-counting machine used?
- Could the money be contaminated while in police custody, prior to the sniff?
- If one of the officers had touched the drugs and then the money, wouldn't that invalidate the results of your dog's sniff?
- Do you have an opinion on how much time elapsed between when your dog sniffed the currency and alerted and when the currency was actually exposed, if ever, to controlled substances?

#### § 10-8. Patrol Service Dog (Use of Force Liability) Questions

- Did you review any documents prior to your deposition this morning?
  - What documents did you review?
  - What documents did you bring with you today? (Some deposition subpoenas are "subpoenas duces tecum" and require that the witness bring specified documents so that the attorney can ask questions about the documents)
  - Have you reviewed the police reports about the incident involved in this lawsuit before today?
  - How long has it been since you reviewed those police reports?
  - Did you review anything else in preparation for this deposition?
  - Did you review any audio or video recordings, any diagrams or photographs?
  - When did you begin work with the (name) police department?
  - Did you work at any other law enforcement jobs prior to that?
  - How long have you been a police service dog handler?
- See the Training Questions section above. Many of the training questions and questions relating to certification and professional associations apply to all service dog profiles.*
- Do you do any continuing education or training with your dog?
  - How often?
  - Who conducts the training?
  - Are there records of this training?
  - Did (dog's name) have a previous handler?
  - Why was this breed selected?
  - Prior to this incident, how many hours of training had (dog's name) completed?

- How and when did your agency acquire (dog's name)?
- How many dogs have you handled?
- Did you certify (dog's name) or any previous dog through any agency or organization?
- How frequently?
- Are there criteria for certifying a dog?
- Who administered the certification testing?
- Were scores or grades given?
- Do you know what scores your dog achieved?
- For those certifications, what criteria (rules and grading system for passing the test) are used, if you know?
- For those certifications, how many evaluators are used, if you know?
- How are the evaluators selected?
- What, if any, were the disqualifying behaviors or criteria in the various elements of certification?

*Use of force liability lawsuit depositions will each be highly fact specific. However, some of the following general questions are likely to arise, and handlers should prepare to answer these or similar questions. Almost every case will involve questions about the handler's and the dog's training, performance records, and the handler's deployment decision factors.*

- What were you told about the suspect in this case when you were called to respond with your police service dog?
- Tell me everything that you knew about the suspect before you decided to deploy your police service dog?
- What was the basis for your knowledge?
- What did you do to verify that information?

- What factors do you consider prior to deploying your police service dog to search for a suspect?
- Are you taught to give a verbal warning before releasing your dog to find or to apprehend a person?
- Are there any circumstances when you would not give a warning?
- Describe those circumstances.
- Did you give a warning in this case?
- How do you know whether your dog is tracking the correct person (suspect)?
- Was your dog on a leash at any point as you searched for the suspect in this case?
- Did you ever remove that leash from your dog?
- What does your dog do to communicate that the suspect is hiding in a particular place?
- Is your dog trained to bite individuals in some situations or is there any training on when your dog should or should not bite a suspect?
- Could you give me an example of situations in which the dog will, because of training, bite?
- In a situation like that, is the dog trained to first give some other signal, such as barking?
- What are the steps that you take if you believe that a suspect is hiding and the suspect refuses to come out from hiding?
- Do you have any guidelines or rules or regulations as to how you are supposed to proceed when you are with your canine partner searching, for example, a house?
- Do you have a procedure or protocol that includes steps you should take after someone has been bitten by a police service dog?
- What are those procedures?
- Have you ever been named as a defendant in any other lawsuit?



- Have you had any disciplinary complaints filed against you?
- What were the subjects of any prior disciplinary complaints against you?
- What use of force model or continuum does your agency follow?
- What is your understanding of where the use of a police service dog is placed on that continuum?
- Did you complete a training course or school to qualify you to handle a police service dog?
  - Where and when?
  - How long was the course?
  - Was there a test at the end of the course?
  - What did the test cover?
  - How well did you perform in the course?
  - How well did your dog perform in the course?
- Have you handled other police service dogs?

## Chapter 11

### APPENDICES

- Sample policy for drug detector dog deployment
- Sample policy for patrol dog deployment
- Glossary of detector dog terminology
- English and Spanish deployment warnings
- North American police service dog regional organizations and resources
- Sample search warrant affidavits based on drug detector dog evidence
- Bibliography of advanced readings

## § 11-1. Sample Policy for Drug Detector Police Service Dog Deployment

### County Sheriffs Office

Policy No. 1-XXX.xxx

Revised September 1, 2008

Next revision due September 1, 2009

#### I. PURPOSE

To establish the County Sheriff's Office policy regarding the management and tactical deployment of Sheriff's Office drug detector police service dogs for operational purposes.

#### II. POLICY

A. Because of their superior senses of smell and hearing and physical capabilities, the trained law enforcement drug detector police service dog is a valuable supplement to Office staff abilities. However, utilization of detector dogs requires adherence to procedures that properly control their use-of-force potential and that channel their specialized capabilities into legally acceptable crime prevention and control activities.

#### III. PROCEDURE

A. Drug Detector Police Service Dog Sniffs for Drugs. Without consent, detector dog sniffs for drugs are authorized only when there is no reasonable expectation of privacy in the item(s) to be searched, or as otherwise specified in this policy. If not specifically addressed in the following guidelines, deputies should use the foregoing principle and the direction of the detector dog team supervisor to determine the permissible scope of police service detector dog sniffs.

##### i. Public Facilities and Places

- (1) Sheriff's drug detector police service dogs should not be used to sniff luggage or related personal items in the physical possession of (i.e., control of or immediate proximity to) an individual in a public facility or place unless:

- (a) There is reasonable suspicion that the personal possession contains illegal drugs or evidence of a crime and;
  - (b) The time required to conduct the sniff is limited in duration.
- (2) Sheriff's drug detector police service dogs may be used to sniff luggage or other personal affects of an individual on either a random or selective basis if the items are not in the possession of the owner (for example, on conveyor belts, in the possession of baggage handlers, etc.).
  - (3) Whenever possible, exploratory sniffing in public facilities should be conducted with the advance knowledge of the facility manager. It should be conducted without interference or annoyance to the public or interruption of facility operations.
  - (4) Drug detector police service dogs should not generally be used to sniff persons. Detector dogs trained to provide a passive final response to the odors of controlled substances may be used to sniff persons who enter the controlled access area of the County Jail and who are separated from the dog by means of an approved expanded metal screen.
- ii. Drug detector dog drug sniffs of vehicles may be conducted when:
- (1) There is reasonable suspicion to believe that the operator or passengers are in possession of illegal narcotics, or
  - (2) The detector dog sniff is limited to the exterior of the vehicle and the vehicle is otherwise lawfully detained, or
  - (3) The detector dog has indicated the presence of the odors of illegal narcotics by giving the trained final response at the exterior of the vehicle, or
  - (4) Consent for a vehicle interior sniff is voluntarily provided by an authorized person.

## B. Team Qualifications and Training

- iii. Applicants for drug detector police service dog teams must have:
  - (1) A minimum of three years of uniform patrol experience with satisfactory work performance, disciplinary and medical leave records;
  - (2) A willingness to remain with the unit for an extended period of time as prescribed by the Sheriff;
  - (3) A willingness (together with other family members) to care for and house the police service dog at the deputy's residence with a secure outdoor area for the drug detector police service dog that conforms with Office requirements;
  - (4) A strong desire to work with police service dogs and a willingness to care for and train the animal; and
  - (5) The ability to pass designated physical fitness and agility tests related to the tasks of police service dog handling.
  - (6) A deputy's prior drug enforcement performance record may be considered in selection of a drug detector police service dog handler.
- iv. The Sheriff's police service dog team supervisor shall be responsible for selection of drug detector police service dog handlers in accordance with established office procedures and in consultation with the Sheriff.
- v. The police service dog team supervisor shall maintain records that document the use and the proficiency of individual police service dogs certified in drug detection. This documentation shall be readily available to drug detector police service dog handlers and others who may need it when seeking warrants.
- vi. All Sheriff's Office drug detector police service dogs must meet established POST Service Dog certification requirements for the particular detector dog duty assigned. Untrained detector dogs may not be used for police service dog duty.

- vii. New drug detector police service dog handlers must complete the prescribed detector dog training course and successfully meet all course requirements.
- viii. The police service dog supervisor shall ensure that basic and in-service training and certification is conducted on a regular basis.
- ix. Drug detector police service dog handlers are required to demonstrate acquired abilities to the police service dog supervisor on a periodic basis as prescribed in Office regulations.
- x. Failure to participate in or qualify under established training standards will result in de-certification of the team. The team may not be deployed until re-certified.

## § 11-2. Sample Policy for Patrol Dog Deployment

### County Sheriff's Office

Policy No. 1-XXX.xxx

Revised September 1, 2008

Next revision due September 1, 2009

#### I. PURPOSE

To establish the County Sheriff's Office policy regarding the management and tactical deployment of Sheriff's Office police service dogs for operational purposes.

#### II. POLICY

A. Because of their superior senses of smell and hearing and physical capabilities, the trained law enforcement police service dog is a valuable supplement to Office staff abilities. However, utilization of police service dogs requires adherence to procedures that properly control their use-of-force potential and that channel their specialized capabilities into legally acceptable crime prevention and control activities.

#### III. PROCEDURE

A. Police Service Dog Team Utilization for Location/Apprehension of Suspects.

1. The deployment of a police service dog to locate and apprehend a suspect is a use of force that must follow the Sheriff's Office principles of escalation and de-escalation of force.
2. Decisions to deploy a police service dog should be guided by consideration of the following factors:
  - A. The severity of the crime;
  - B. Whether the suspect poses an immediate threat to the safety of the deputies or others;
  - C. Whether the suspect is actively resisting arrest or attempting to evade arrest at the time;

3. Additional factors may be considered, depending on the circumstances of the deployment and environmental conditions. These factors include:
  - A. Whether there is a risk to deputies or to other persons if the police service dog is deployed;
  - B. The probability that the suspect will escape if a police service dog is not deployed;
  - C. The probability that deputies of other persons may be harmed or threatened with imminent harm if a police service dog is not deployed; and,
4. Police service dog teams are available on a 24-hour, on-call basis. Their uses include:
  - A. Conducting building searches for what are believed to be serious felony or violent misdemeanor suspects in hiding;
  - B. Assisting in the arrest or prevention of the escape of serious or violent offenders;
  - C. Protecting deputies or others from death or serious injury; and engaging in assignments not listed here with the approval of the police service dog team supervisor.

A police service dog team may be used to respond to minor complaint situations but the dog should not be deployed.
5. Police service dog team assistance may be requested from any deputy through a supervisor to Dispatch. Dispatch personnel should forward information concerning the incident to the police service dog team supervisor or an available handler.
6. Police service dog teams should not be used to apprehend anyone suspected to be under the influence of drugs or alcohol if no other crime is involved, nor to apprehend a mentally disturbed person if no other crime is involved.

7. Where a tactical deployment is justified by Office policy, the tactical measures used shall be at the discretion of the police service dog handler and must be objectively reasonable.
8. Sheriff's police service dogs should not normally be handled or given commands by anyone other than the assigned handler.

#### A. Team Qualifications and Training

1. Applicants for police service dog teams must have:
  - A. A minimum of three years of uniform patrol experience with satisfactory work performance, disciplinary and medical leave records;
  - B. A willingness to remain with the unit for an extended period of time as prescribed by the Sheriff;
  - C. A willingness (together with other family members) to care for and house the police service dog at the deputy's residence with a secure outdoor area for the dog that conforms with Office requirements;
  - D. A strong desire to work with police service dogs and a willingness to care for and train the police service dog; and
  - E. The ability to pass designated physical fitness and agility tests related to the tasks of police service dog handling.
2. The Sheriff's police service dog team supervisor shall be responsible for selection of dog handlers in accordance with established office procedures and in consultation with the Sheriff.
3. The police service dog team supervisor shall maintain records that document the use and the proficiency of individual police service dogs in locating and apprehending persons and locating evidence and other items.

4. All Sheriff's Office police service dogs must meet established POST Service Dog certification requirements for the particular police service dog duty assigned. Untrained dogs may not be used for police service dog duty.
  5. New police service dog handlers must complete the prescribed police service dog training course and successfully meet all course requirements.
  6. The police service dog team supervisor shall ensure that basic and in-service training and certification is conducted on a regular basis.
  7. Handlers are required to demonstrate acquired abilities to the supervisor on a periodic basis as prescribed in Office regulations.
  8. Failure to participate in or qualify under established training standards will result in de-certification of the team. The team may not be deployed until re-certified.
- B. Police Service Dog Bites and Injuries. Use of specially trained police service dogs for law enforcement responsibilities may constitute a real or implied use of force. When a Sheriff's Office police service dog is deployed in a situation where the use of force is probable, deputies may only use that degree of force that reasonably appears necessary to apprehend or secure a suspect as governed by the Sheriff's Office use-of-force policy.
1. Whenever a Sheriff's police service dog has bitten or scratched an individual or has alleged to have done so, whether or not in the line of duty; the handler should do the following:
    - A. If no arrest is made, an offer will be made to the individual to provide medical care and treatment by a qualified medical professional.
    - B. If an arrest is made, the individual will be provided with medical attention in accordance with agency policy on transporting and booking prisoners.

- C. The handler should take color photographs of the affected area if possible prior to and following medical treatment.
  - D. The handler should take color photographs of any area alleged to have been injured, even if there is no visible injury.
  - E. The handler shall prepare and submit a use-of-force report.
2. Whenever a police service dog is deployed or a person is injured, a written report shall be made detailing the circumstances surrounding the incident, the identity of the individual involved and any witnesses, whether the dog located the suspect, the extent of any injuries if known, and measures taken in response to the incident.
- C. Building Searches and Suspects in Hiding. A primary use of Sheriff's police service dogs is for locating suspects hiding in buildings or other structures. These searches should be governed by the following:
1. The building perimeter shall be secured by deputies and assisting police personnel.
  2. Whenever possible, the building's owner should be contacted to determine whether there may be tenants or others in the building and to ascertain the building layout.
  3. When a police service dog building search is anticipated, a preliminary search by officers should not be conducted because this will interfere with the dog's ability to discriminate scents.
  4. The on-scene supervisor should also take the following steps in preparation for the police service dog search:
    - A. Evacuate all tenants, workers or others from the facility.
    - B. Request that all air conditioning, heating or other air-blowing systems be shut off so that they will not interfere with the police service dog's scent discrimination abilities.

5. Upon entrance to the building, all exits should be secured, and communications limited to tactical communications.
6. The dog may be unleashed during a building search unless there is an imminent risk of injury to innocent persons within the facility.
  - A. Generally the dog should be released once a backup officer is available to work with the police service dog team.
  - B. Except in exigent circumstances or where there is an imminent danger of death or serious injury, the dog should be kept in visual contact by the police service dog handler.
7. The police service dog should not be used to search facilities that contain substances potentially harmful to the animal unless overriding risk to human life is present.
8. Before commencing the search, the handler or other appropriate personnel should make a loud announcement, repeated twice. The announcement should say that there are deputies on the premises and that a trained Sheriff's police service dog will be released and may bite any person in the building if he or she does not surrender immediately.
  - A. A reasonable amount of time should be allowed for the suspect to respond. If possible and tactically advisable, this warning should be repeated on each level of all multi-level structures.
  - B. Where there is a reasonable belief that the suspect speaks a language other than English, an officer or other individual fluent in that language should be summoned to the scene if reasonably available and the situation permits.
  - C. If circumstances dictate that a verbal warning would be tactically unsound, no warnings need be given. In such cases the handler shall document the reason(s) for omitting the police service dog warnings.

9. When apprehending suspects the police service dog shall be commanded to disengage as soon as the suspect is subdued or readily complies with the handler's direction.
10. Arrestees should not be transported in the same vehicle with a Sheriff's police service dog unless alternative transportation is not available and immediate transport is essential for safety or security reasons.

#### D. Crowd Control

1. Police service dog teams may respond as backup but may not deploy the dog for crowd control at peaceful demonstrations.
2. Police service dog teams may be used upon approval of the Sheriff or Incident Commander to protect life or property during a riot or other major unlawful assembly after an order to disperse has been made. In these situations, the dog should:
  - A. Be leashed at all times to protect individuals from serious injury, and
  - B. Not initiate any offensive action, unless to guard against imminent loss of life, serious bodily injury or substantial property damage.

E. Tracking. Where trained Sheriff's police service dogs are available for tracking, they may be used with supervisory approval to track missing persons or criminal suspects. They may also be used to locate evidence that may have been abandoned or hidden in a specified open area. Such searches are subject to the following conditions and limitations:

1. When deputies are pursuing a suspect and contact with the suspect is lost, the deputy, prior to summoning a police service dog team, should:
  - A. Stop and pinpoint the location where the suspect was last seen;
  - B. Shut off engines of vehicles in the area if possible; and

C. Avoid vehicle or foot movement in the area where the suspect or subject was last seen.

2. Police service dogs used for tracking persons should remain on a leash of sufficient length to provide a reasonable measure of safety to the subject of the search without compromising the dog's tracking abilities.
3. On-scene supervisory personnel should:
  - A. Secure the perimeter of the area to be searched;
  - B. Secure the integrity of the area to be searched by keeping all personnel out of the area; and
  - C. Protect all items of clothing that will be used for scent from being handled.

#### F. Police Service Dog Use and Care

1. Sheriff's police service dogs shall not be used for breeding, participation in shows, field trials, exhibitions, or other demonstrations, or for on-duty or off-duty employment unless authorized by the Sheriff.
2. Deputies shall maintain their police service dogs both on-duty and off-duty in a safe and controlled manner. Sheriff's police service dogs should not be allowed to run loose unless engaged in authorized training or exercise.
3. The Office shall provide police service dog officers with proper housing for police service dogs and will conduct periodic inspections to ensure that the housing is properly maintained.
4. Police service dog handlers are personally responsible for the daily care and feeding of their police service dogs to include:
  - A. Maintenance and cleaning of the kennel and yard area where the police service dog is housed;
  - B. Provision of food, water and general diet maintenance as prescribed by the Office's authorized veterinarian;

- C. Grooming on a daily basis or more often as required by weather, working conditions or other factors;
  - D. Daily exercise; and
  - E. General medical attention and maintenance of health care records.
5. Where the handler is unable to perform these and related duties due to illness, injury or leave another police service dog handler may be assigned to temporarily care for the dog; or the dog may be housed in a departmentally-approved kennel.
  6. Teasing, agitating or roughhousing with a Sheriff's police service dog is strictly prohibited unless performed as part of a training exercise.
  7. Handlers should not permit anyone to pet or hug their police service dog without their prior permission and immediate supervision. Should a civilian express a desire to do so, he or she should be informed that Sheriff's police service dogs are serious working dogs and that they can be dangerous if improperly approached.
  8. A police service dog handler may apply to take possession of his dog where the dog is retired from duty or relieved due to injury; or the handler is transferred or promoted or retires and a decision is made not to retrain the dog for another handler.

### § 11-3. Glossary of Detector Dog Terminology

Efforts to increase professionalism in the detector dog world, augmented by the work of the Scientific Working Group on Dog and Orthogonal Detector Guidelines (SWGDOG), illustrate the need to more precisely define the expected behaviors for detector dog performance and certification. A move from general terms to more specific terms will benefit all involved and result in less confusion and more precision in the development of detector dog law by the courts. Only those terms that are commonly used in legal discussion of detector dog evidence are included here. Most of these definitions are taken from SWGDOG Guidelines. For a more detailed and extensive lexicon of terms, including annotations, see <http://www.swgdog.org/>.

| Term                 | Meaning   |
|----------------------|---|
| Air scent dog        | A dog using air scenting techniques to detect a trained odor.   |
| Air scenting         | A technique used by a dog to locate a target odor. The dog searches for target odor on wind/air currents and attempts to identify/work on a scent cone to the source.   |
| Alert                | A characteristic change in ongoing behavior in response to a trained odor, as interpreted by the handler. The components of the alert may include: change of behavior, interest, and final response or indication.<br><br><i>Note:</i> It is the handler's responsibility to report when the dog has alerted or given an indication and identify what behavior the dog uses to do so (the response). The term "alert" is used to define the handler's interpretation of the dog's behavior. |
| Blank search         | A training or certification exercise in which the target odor is not present.   |
| Cadaver detector dog | A dog trained to detect and locate a dead human or the remains of a dead human. <i>See Human remains detector dog.</i>  |
| Certification        | A process that attests to the successful completion of an examination of relevant skills for the canine team.   |



| Term                                 | Meaning   |
|--------------------------------------|---|
| Change of behavior                   | A characteristic pattern of behaviors, as interpreted by the handler, that occurs when the dog detects a trained odor. This differs from other olfactory interest that otherwise are exhibited by the dog in response to the daily environment.<br><br><i>Note:</i> The initial change of behavior typically leads to following the odor to its source and then giving the trained response. The pattern of behavior may be unique to each dog. |
| Confirmed alert                      | An alert for which the presence of a trained odor can be verified or corroborated.<br><br><i>Note:</i> Also referred to as a "hit," "find," and/or "positive response."   |
| Deployment (Detector dog deployment) | After initial assessment of the search environment, the handler conducts an efficient, effective and thorough search.   |
| Detector dog                         | A dog trained to detect and alert/respond/indicate to the presence of certain scents/odors for which it has been trained.   |
| Dog handler                          | The trained person who works the dog.   |
| Evaluator                            | An individual with relevant training and experience in the discipline being evaluated, who assesses the performance of canine, handler, or team, while showing no bias or partiality. <i>See Certifying Official.</i>   |
| Evidence search dog                  | A dog trained to locate and indicate items in question by means of detecting human scent.   |
| False response                       | In a controlled environment, the dog responds as if a trained substance was present when it is known that it is not. This is false response and a false positive.   |

| Term                       | Meaning   |
|----------------------------|---|
| Final response             | A behavior that a dog has been trained to exhibit in the presence of a target odor source. This behavior may be either passive (sit, stare, down, point, etc.) or active (bite, bark, scratch, etc.).<br><br><i>Note:</i> An absence of a final response does not necessarily negate any behavioral responses given earlier in the alert sequence. Therefore, absence of a final response does not mean a target odor is not present. |
| Firearm detector dog       | A dog that is specifically trained to locate and respond to the presence of firearms by associated odor.  |
| Human detector dog         | A dog trained to detect and locate live human beings.   |
| Human remains detector dog | A dog trained to detect and locate human remains. <i>See Cadaver detector dog.</i>  |
| Indication                 | The dog's response to the odor in the manner in which it has been trained, independently, and without distraction.  |
| Interest                   | Any reaction to an odor which may include: A noticeable, readable, physical change in behavior in a detector dog during the search when the dog reacts to (i.e., is interested in) an odor, and/or pattern of behavior following the dog's initial reaction to a trained odor when the dog displays enthusiasm and desire to remain and trace the trained odor to its source. <i>See Alert.</i>                                       |
| Lingering odor             | Odor that lingers with no detectible residue or product present after the aids or targets have been removed. <i>See Residual odor.</i>  |
| Maintenance training       | Continuing training conducted beyond the initial training of a discipline, designed to maintain a level of proficiency by ensuring the team's capability to perform desired tasks.  |
| Miss                       | When the dog fails to alert in the known presence of the target odor; a situation in which the dog fails to exhibit the trained behaviors in the presence of the target odor on which he or she was trained.<br><br><i>Note:</i> Also referred to as a "false negative" or "non-alert."   |

| Term                | Meaning  |
|---------------------|--|
| Multi-purpose dog   | A dog trained in more than one discipline, i.e., patrol/narcotic or patrol/explosive.  |
| Non-indication      | <p>A "miss" by the dog in the known presence of the substance that is there; a situation in which the dog fails to exhibit the trained behaviors in the presence of the substance on which he or she was trained. A change of behavior followed by a positive indication which cannot be confirmed by the handler. This may be the result of residual odor that the dog can detect but which cannot be confirmed by technology or direct observation. A non-productive response may also be an error – a false positive – but these outcomes cannot be distinguished in an operational environment.</p> <p><i>Note:</i> In a certification procedure a handler will know whether there is an actual false positive. A handler cannot know whether or not there is false positive in most operational situations.</p> |
| Odor                | The chemical mixture of volatile compounds that stimulates the olfactory neurons.  |
| Passive response    | A type of response that the dog displays or indicates in a manner that does not disturb the environment (i.e., sit, stand, or lie quietly after the detector dog has detected a trained odor).   |
| Productive response | A change of behavior followed by a positive indication which can be confirmed by the handler.  |

| Term   | Meaning  |
|--|--|
| Reliability                                      | <p><i>Operational usage:</i> Low probability of alerting to anything other than a target odor and a high probability of alerting to a target odor.</p> <p><i>Legal usage:</i> Evidence that establishes a fair probability that a target odor is present.</p> <p><i>Scientific usage:</i> The extent to which a measurement is repeatable and consistent and free from random errors; all measurements have random components because of imperfections in the measurement process, and the fact that when one measures something it is usually slightly changed in the process. Reliability is determined by precision, sensitivity, resolution, and consistency. It is the extent to which similar results are obtained when measuring the same behavior on different occasions.</p> <p><i>Note:</i> This term is often used in science when assessing how well an observer has measured behaviors. There are two categories of observer reliability:</p> <ol style="list-style-type: none"> <li>1) intra-observer reliability (or observer consistency): how consistent the observer is at evaluating the same behavior at different times or in similar dogs.</li> <li>2) inter-observer reliability: how consistent different observers are when evaluating the same dog.</li> </ol> |
| Residual odor                                    | Odor that remains from training aids or actual objects of focus once the aids or objects have been removed.  |
| Rescue dog/<br>Search and<br>rescue (SAR)<br>dog | A dog trained to locate or indicate live victims of accidents or disasters.  |

| Term                 | Meaning   |
|----------------------|---|
| Response/ indication | <p>A behavior that a dog has been trained to exhibit upon locating the source of a target odor. This behavior may be either passive (sit, stare, down, point) or active (bite, bark, scratch).</p> <p><i>Note:</i> There are non-indications (where the dog does not give the trained response) and non-productive responses (where the dog gives the response but the presence of the material cannot be confirmed by man or machine).</p> |
| Scent article        | Also known as scent object or scent pad. The scent article refers to an object containing the odor to be detected.  |
| Scent association    | When a dog learns to identify a trained odor with a specific reward.  |
| Scent cone           | The path of dispersion that the odor follows in the given wind or air currents, and in a given thermal environment.   |
| Scent discrimination | A dog's olfactory ability to distinguish between various odors.   |
| Single blind testing | An evaluation of the dog/handler team's ability to complete an exercise where the evaluator knows the desired outcome and the handler does not.   |
| Target odors         | Odors which detector dogs are trained to detect.  |
| Threshold            | <p>The working threshold for a dog may be defined by its training history and this may include a minimum and maximum amount to which a dog may respond.</p> <p><i>Note:</i> In scientific usage, this term represents the lowest concentration of a chemical vapor that a dog can be trained to detect.</p>   |

| Term              | Meaning  |
|-------------------|--|
| Unconfirmed alert | <p>An alert for which the presence of a trained odor cannot be confirmed. This may be the result of residual or lingering odor that the dog can detect but which has not been confirmed by technology or direct observation.</p> <p><i>Note:</i> Also referred to as an "unconfirmed hit and/or unconfirmed find." In a certification procedure a handler should know whether or not there is false positive. A handler may not know whether or not there is false positive in most operational situations. An unconfirmed alert may also be an error – a false positive – but these outcomes cannot be distinguished in an operational environment. False positives can often be ruled out by interview or investigation.</p> |

### § 11-4. English and Spanish Deployment Warnings

No court has ever ruled that a police service dog deployment must be preceded by a warning in Spanish or any other foreign language. However, whether a warning was given or not given is a key element in a court's analysis of the reasonableness of force when a police service dog bites a suspect. *Szabla v. City of Brooklyn Park*, 486 F.3d 385, 397 (8<sup>th</sup> Cir. 2007). If there is reason to believe that the suspect understands only Spanish, giving a warning in Spanish will support a finding that the force was objectively reasonable.

The most essential element of speaking Spanish is the understanding that while the majority of the consonants are the same as in English the vowel sounds are unique and consistent.

#### Vowels

A - (AH) as in "haw" or "hot"

E - (EH) as in "hay"

I - (EE) as in "he"

O - (OH) as in "hoe"

U - (OO) as in "you"

Y - (EE) as in "he"

#### Particular Consonants

ll = y

z = s

j = h

ñ = ny

h is always silent

rr is a rolled "r"

### Patrol dog commands

- Stop or I will send the dog.  
Alto o mandaré al perro.  
*All-toe oh mahn-dah-ray ahl pay-roh.*
- Police, come out or I will send in the dog. You may be bitten.  
Policía, vengan afuera o mandaré al perro. El puede morderles.  
*Po-lees-ee-ah, vain-gan ah-fway-ra oh mahn-dah-ray ahl pay-roh.*  
*Ayl pway-they more-dare-lace.*
- Final warning, come out!  
Última advertencia, vengan afuera!  
*Oohl-tee-mah ad-ver-ten-see-ah, vein-gan ah-fway-ra.*
- Don't move and the dog will not bite you.  
No se mueve y el perro no le morderá.  
*No say mway-vay ee ayl pay-roh no lay more-dare-ah.*
- Stop fighting my dog.  
Deje de luchar con mi perro.  
*Day-hay day lew-char cohn mee pay-roh.*
- Stay away from my dog.  
No se acerque a mi perro.  
*No say a-sare-kay a mee pay-roh.*

### Drug detector dog commands

- Are there any drugs in the car?  
¿Hay drogas en el carro?  
*Ay drog-gahs ehn ayl car-oh?*
- Where are the drugs?  
¿Dónde están las drogas?  
*Dohn-day ays-tahn las droh-gahs?*
- My dog will scratch and bite where drugs are hidden.  
Mi perro rasguña y muerde dónde hay drogas.  
*Mee pay-roh rahs-goon-eyah ee mwayr-they dohn-day ay droh-gahs.*

- My dog will damage your car.  
Mi perro dañará a su carro.  
*Mee pay-roh dahm-yah-rah ah soo car-oh.*

#### Arrest and felony stop commands

- Don't move!  
¡No se mueva!  
*No say mway-va!*
- Throw the keys out the window.  
Tire las llaves por la ventana.  
*Tee-ray lahs ya-vays por la ven-tah-nah.*
- Put your hands against the windshield.  
Ponga sus manos sobre el parabrisas.  
*Pohn-ga soos mah-nose so-bray ayl pah-rah-bree-sahs.*
- You are under arrest!  
¡Está arrestado!  
*Ay-stah ah-re-stah-tho!*
- Reach your hand out the window and open the door from the outside.  
Saque su mano por la ventana y abra la puerta desde afuera.  
*Sah-kay soo mah-no por la ven-tah-na ee ah-bra la pwair-ta des-day ah-fway-ra.*
- Everybody out!  
¡Todos afuera!  
*Toe-dos ah-fway-ra!*
- Hands up!  
¡Manos arriba!  
*Mah-nose ah-ree-bah!*
- Put your hands behind your head!  
¡Ponga sus manos atrás de su cabeza!  
*Pohn-ga soos mah-nose ah-tras day soo cah-bay-sa!*

- Kneel!  
¡De rodillas!  
*Day roh-dee-ahs!*
- Lie flat on your front!  
¡Acuéstese boca abajo!  
*Ah-kway-stah-say bo-kah ah-ba-ho!.*
- Spread your legs.  
Extienda sus piernas.  
*Ex-tee-ayn-da soos pee-ayr-nahs.*
- Out!  
¡Salga! (or) ¡Fuera!  
*Sal-gah (or) ah-fway-rah!*
- Slowly!  
¡Despacito!  
*Day-spa-see-toe!*
- Now!  
¡Ahora!  
*Ah-O-rah!*
- Turn around!  
¡Vóltese!  
*Vol-tay-ay-say!*
- Walk backwards!  
¡Camine para atrás!  
*Cah-mee-nay pah-ra ah-tras!*
- Stop!  
¡Alto! (or) ¡Para!  
*All-toe or pah-ra!*
- Down!  
¡Abajo!  
*Ah-ba-ho!*

- Separate your feet!  
¡Separe los pies!  
*Say-pah-ray lohs pee-ays!*
- Don't talk!  
¡No hable!  
*No ah-blay!*
- Drop it!  
¡Déjela caer!  
*Day-hey-lah kai-ayr!*

#### § 11-5. North American Police National and Regional Service Dog Organizations and Training Resources

- American Working Dog Association, <http://www.americanworkingdog.com/>
- California Narcotic Canine Association, <http://www.californianarcoticcanineassociation.org/>
- Canadian Police Canine Association, <http://www.canadianpolicecanine.com/>
- Canine Accelerant Detection Association, <http://www.cadafiredogs.com/>
- Canine Legal Update and Opinions, <http://www.k9fleck.org/>
- Dogs Against Drugs, <http://www.daddac.com/>
- Eastern States Working Dog Association, <http://www.eswda.org/>
- Inland Empire Police K-9 Association, <http://www.policecanines.com/>
- International Explosive Detection Dog Association, <http://www.bombdog.org/>
- International Police Work Dog Association, <http://www.ipwda.org/>
- Law Enforcement Bloodhound Association, <http://www.leba98.com/>
- Military Working Dog Foundation, <http://www.militaryworkingdogs.com/>
- National Police Bloodhound Association, <http://www.npba.com/>
- National Police Canine Association, <http://www.npca.net/>
- National Narcotic Detector Dog Association, <http://www.nndda.org/>
- National Tactical Police Dog Association, <http://www.tacticalcanine.com/>
- North American Police Work Dog Association, <http://www.napwda.com/>
- Pacific Northwest Police Detection Dog Association, <http://www.pnwk9.org/index.htm>
- Royal Canadian Mounted Police, [http://www.rcmp-grc.gc.ca/pds/site\\_e.htm](http://www.rcmp-grc.gc.ca/pds/site_e.htm)
- Scientific Working Group on Dog and Orthogonal Detector Guidelines, <http://swgdog.org/>

Southern Tier Police Canine Association, <http://www.southerntierpolicek9.com/>

United Police & Correction K-9 Association, <http://www.upcka.com/>

United States Police Canine Association, <http://www.uspcak9.com/>

Western States Police Canine Association, <http://www.wspca.net/>

Manitoba Police Canine Association, <http://www.winnipeg.ca/police/canine/mpca.stm>

### § 11-6. Sample Search Warrant Affidavit Based on Drug Detector Dog Deployment

The Fourth Amendment requires that search warrants shall only issue on probable cause, supported by oath and affirmation, and particularly describing the place to be searched and the things to be seized. An officer must prepare a written (or otherwise recorded) statement that the officer swears to be true. The officer preparing the affidavit is known as an affiant. A sworn written statement is referred to as an affidavit. When an officer presents an affidavit for a search warrant to a judge, the judge reviews the affidavit and the accompanying search warrant. If the judge finds that the affidavit states sufficient probable cause to search, the judge will sign the warrant and it becomes a judicial order to conduct a search.

Formats for affidavits and search warrants vary from state to state. However, affidavits (sometimes called "probable cause statements"), generally must contain the following elements:

- Caption. The caption lists the name of the court authorized to issue the search warrant.
- Affiant resumé. Sometimes called a "hero statement," this section lists the affiant's training, experience, recognition, certifications and honors, particularly those relating to the types of investigations relevant to the object of the search warrant.
- Description of the place or object to be searched.
- Description of the person or things to be seized.
- Probable cause statement. This is the information that provides the court with a lawful basis to issue the search warrant. The probable cause statement is often based solely or primarily on the trained final response of a detector dog.
- Notice and time. A search warrant generally must be executed during the daytime and upon notice. However, in some circumstances the court may authorize "no-knock" and/or nighttime execution of a search warrant. Search warrants based on detector dog evidence usually will not involve the exigencies necessary to request no-knock or nighttime execution authority.

*Following are two sample search warrant affidavits. The first sample search warrant affidavit was provided by Detective Steve Sloan of the San Diego (California) Police Department. The second sample search warrant affidavit was provided by Officer Scott Cooper of the Aurora (Colorado)*

*Police Department. Both samples are used by permission. These sample affidavits will help a new detector dog handler prepare the portion of the affidavit that establishes the training, certification and reliability factors for the detector dog and dog handler that is necessary for a court to find probable cause to search. Even though one sample addresses a parcel interdicted in transit, and the other a safe seized by officers, the portions describing the qualifications of the of the detector dog and handler apply to any kind of search warrant affidavit based on detector dog evidence and they will guide other detector dog handlers in drafting solid affidavits. The suspects' names and addresses, as well as the supporting officers' names have been changed.*

**§ 11-6a. Sample Parcel Search Warrant Affidavit**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

STATE OF CALIFORNIA)

AFFIDAVIT FOR  
SEARCH WARRANT

COUNTY OF SAN DIEGO)

No. 27A1-666

I, Steve A. Sloan, do on oath make complaint, say and depose the following on this 24<sup>th</sup> day of October, 20XX: I have substantial probable cause to believe and I do believe I have cause to search the parcel currently located at the Narcotic Task Force office located at 123 Thornton Ave., City and County of San Diego: One cardboard box bearing FEDEX tracking # 333XXX555; for the following property, to wit: controlled substances including marijuana, heroin, cocaine, or methamphetamine, and compounds or derivatives of controlled substances; paraphernalia for the use, sale and transfer of controlled substances including baggies, tinfoil wrapping, bottles, cardboard boxes or other containers; packaging material such as Styrofoam packing peanuts, plastic bubble wrap and similar packaging material; fabric softener sheets, fresh coffee grounds, food condiments (mustard, ketchup, mayonnaise, barbecue sauce), automotive grease, vacuum sealing machines and other materials and devices intended to defeat detection by trained narcotic detector dogs; tape or other sealing material; evidence of the transfer of controlled substances including documentation reflecting the receipt or sales of controlled substances; evidence of previously shipped packages such as bills of lading and receipts from UPS, FEDEX, USPS and other commercial shippers; and papers, documents and effects tending to show dominion and control over said package, including fingerprints, handwriting, papers, or any document and effect bearing a form of identification such as a person's name, Social Security number or driver license number, and also any money or financial instruments related to narcotic trafficking.

I am currently a detective for the San Diego Police Department assigned to the San Diego Integrated Narcotic Task Force ("NTF"). I was detached to the San Diego International Airport/Harbor Narcotic Task Force from 1993 to 1996. I have observed many thousands of persons in the airport environment and I have developed an expertise in observing certain characteristics, of which one or more are commonly evident in the majority of narcotic smuggling cases. I have been a police officer for over



20 years and have worked as a narcotic detector dog handler since 1985. From 1988 to April 1993, I was the narcotic detector dog trainer for the SDPD and subsequently trained and certified 30 narcotic detector dogs. I am a certifying official for the California Narcotic Canine Association. I have participated in over 300 arrests of persons for violations of controlled substance laws. I was assigned to the NTF Commercial Interdiction Team on May 8, 1996. I have been involved in over 100 cases at this assignment, either as the case agent, canine handler or assisting detective. Additionally I have been involved in over 100 parcel cases where I have utilized surveillance techniques, profiles of persons and parcels and my narcotic detector canine.

I have been trained and instructed that the U.S. Supreme Court has held that drug courier profiles are clearly a lawful starting point for police investigations, including the detention of individuals. *United States v. Sokolow*, 490 U.S. 1 (1989); *Florida v. Royer*, 460 U.S. 491 (1983). If profiling of people has been approved by courts, it would seem profiling of packages is equally permissible and I have been instructed in my training that profiling of packages is a lawful method of beginning drug interdiction investigations. I have been instructed in my training that detaining an object so it can be exposed to a narcotic detection dog requires reasonable suspicion. However, as explained above, parcels falling within the drug trafficking profile provide the reasonable suspicion necessary to justify such detention.

I have observed several thousand parcels during the course of my duties. On selected parcels, I have observed certain characteristics that although not illegal, when taken in their totality, lead me to believe the parcel contains controlled substances. These include illegible or non-existent return addresses, misspelled street names, handwritten labels, taped in an unusual manner, strong masking odors emitting from the parcel and/or cash payment. Until recently, I have been able to routinely confirm my suspicion by utilizing a narcotic detection canine to alert and obtaining a search warrant. I have learned during recent inspections of parcels containing controlled substances discovered during routine audits by United Parcel Service Security Department that the drug smugglers are utilizing extreme measures to shield the odor of the controlled substance from the canine, such as extensive plastic packaging and the inclusion of pervasive food and other masking odors.

I have successfully completed in excess of 300 hours of formal training and extensive experience in controlled substances investigations, particularly involving marijuana, methamphetamine, heroin, and cocaine, including the 80-hour Drug Enforcement Agency narcotic investigator course. I am familiar with the manner in which illegal controlled substances are packaged, marketed and consumed. I have received formal training and

field experience in the identification of all types of controlled substances, particularly those mentioned above, by sight and odor.

On October 21, 20XX, NTF Team 4 agents and I were at the Federal Express Office located at 321 Anystreet, San Diego, California. With the permission of FEDEX Security, we were conducting a parcel interdiction operation evaluating parcels for possibly containing controlled substances. The parcel described in this affidavit was identified and presented to my drug detector dog, Angus, for evaluation. Angus alerted on the parcel, exhibiting the final response that he has been trained to give when he detects the odors of controlled substances. This alert consisted of a trained behavior given by Angus that indicated to me that the parcel contained the odor of a controlled substance to which Angus is trained to detect. I took custody of the parcel, gave Fedex a receipt and transported it to the NTF office to be held pending issuance of a search warrant for the package.

In February 2002, I was assigned to train Angus in the area of narcotic detection. Angus had received approximately 40 hours of training in the detection of marijuana, cocaine, heroin and methamphetamine prior to this under the direction of Mary Ann Bohnett of Far Fetched Retrievers kennels. Ms. Bohnett is a trainer and certifying official for the California Narcotic Canine Association. On April 2, 2002, after 40 hours of training in the detection of marijuana, heroin, methamphetamine and cocaine, Angus was certified as 100% proficient in the detection of the odors of these substances by SDPD Detective and narcotic detector dog handler W. Doe.

In October 2002, Sloan and Angus were re-certified by California Narcotic Canine Association Certifying official C. Roe. In July 2003, Sloan and Angus were re-certified by California Narcotic Canine Association certifying official T. Smith. Angus and I are currently certified by the California Narcotic Canine Association to work as a narcotic detector dog and dog handler. Angus is the fourth narcotic detection dog that I have handled since 1985.

Angus's alert behavior consists of perceptible physical reactions, which include a heightened emotional state, and coming to a complete "sit" when his physical position allows. Angus has completed a total of 187 hours of training. Subsequent to his certification, Angus has alerted 57 times and 35 search warrants have been obtained based on his alerts. Angus alerts on many occasions where the controlled substances are seized without a warrant because a warrant is not required, either because consent to search has already been obtained or consent is subsequently obtained.

Angus and I have been involved in training exercises where known controlled substances, containers, or paraphernalia were hidden. Because

of the absorption of the odor, and the narcotics detector dog's inherently keen sense of smell, the narcotic detector dog will continue to alert on the container or item depending on the length of exposure to the controlled substance, the specific controlled substance, and ventilation of the item or container.

A commonly-held misunderstanding is that all currency in circulation is contaminated with the residue of narcotics, causing drug detector dogs to alert to currency. I am aware of research conducted by Dr. Kenneth Furton of Florida International University and by other experts that has refuted the rumors of widespread currency drug contamination. It has been my experience as a narcotic detector canine expert, that a properly trained narcotic detector canine will not alert to all currency. I have personally witnessed numerous searches of parcels by trained narcotic detector canines where no alert was given. The parcels later were discovered to contain substantial sums of U.S. currency. It has been my experience that the training of the dog regarding threshold amounts of narcotic odors is the most relevant factor impacting alerts on currency. It has been my experience the training must include the establishment of a lower threshold of approximately one gram of odor or more to ensure the canine is alerting to more than the minuscule contamination that may be present on some currency. Some contamination of currency may occur through normal handling. The dog must also be "proofed" from numerous odors, including the odor of currency, on a regular basis to maintain consistency of performance. Other odors subject to proofing include the odor of food, plastic bags and wrap, tape, controlled substance adulterants and other items. "Proofing" is a method used in training to ensure the canine alerts only to the odors for which it is trained to alert. I am trained and experienced in the method of proofing.

Based on my training and experience, I know that persons who possess and transport illegal controlled substances will commonly leave their fingerprints on or within the item and will often have other described documentation or effects which will bear evidence of dominion and control. Such evidence will be material in proving the identity of the owner of the said contraband.

Based on the aforementioned information and investigation, I believe the above described property will be recovered when this warrant is served thus I believe the grounds for the issuance of a search warrant exist as set forth in California Penal Code Section 1524.

I, the affiant, hereby pray a search warrant be issued for the seizure of said property or any part thereof, from said parcel at any time of the day, and the same be brought before this magistrate or retained subject to the order of this court, or if a controlled delivery to the intended recipient would

facilitate the investigation, then a portion of each controlled substance will be retained for evidentiary purposes.

Given under my hand and dated this 24<sup>th</sup> day of October 20XX.

\_\_\_\_\_  
Steve A. Sloan

Subscribed and Sworn to before me this 24<sup>th</sup> day of October 20XX  
at \_\_\_\_\_ A.M./P.M.

\_\_\_\_\_  
Judge of the Superior Court

San Diego County

## § 11-6b. Sample Safe Search Warrant Affidavit

## AFFIDAVIT FOR SEARCH AND SEIZURE WARRANT

DISTRICT/COUNTY COURT, COUNTY OF ARAPAHOE,  
COLORADO

I, Investigator Scott Cooper, the Affiant herein, being of lawful age and having been first duly sworn upon oath, depose and state that I am a commissioned police officer with the Aurora Police Department and I have probable cause to believe that there is located in the item:

One (1) tan, 2'x2'x2'6" Diebold metal safe. A silver metal plate with serial number "07-001058-XXXXX-01" is affixed to the right side of the safe. An approximately six (6) inch money/mail slot is cut into the top of the safe. A black combination dial and a silver metal handle on the door secures the safe. This item is currently located at the Aurora Police Department Property Section.

The following property is illegal to possess and would be material evidence in a subsequent criminal prosecution:

Controlled substance namely marijuana; defined in C.R.S. section 18-18-406. This controlled substance with such vessels, implements, and furniture used in connection with the manufacture, production, storage, or dispensing of such drugs and articles of personal property tending to establish the identity of the person in control of contraband related paraphernalia consisting in part and including, but not limited to, rent receipts, mail envelopes, photographs, and keys, as well as any U.S. Currency, and/or paperwork associated with the sale or distribution of marijuana, located within the Diebold safe identified herein are the items sought in the search.

The facts which give rise to this belief and which establish probable cause to believe that grounds for the issuance of a search and seizure warrant exist are as the following:

## Qualifications for Investigator Scott Cooper and K-9 Zeke

Investigator Scott Cooper advises the Court that he has been employed as a Police Officer since 1996, and has been assigned to the Aurora Police Department, Investigations Bureau, Narcotics Section since August, 2000. Investigator Cooper has experience conducting drug-related as well as other types of criminal investigations. Investigator Cooper is also trained and certified by the Aurora Police Department in microchemical presumptive analyses of controlled substances. Investigator Cooper received 80 hours of narcotic investigations training from Rocky Mountain HIDTA (High Intensity Drug Trafficking Area) in February, 2001. Investigator Cooper received 40 hours of Clandestine Lab safety and operation from the Drug Enforcement Administration at Quantico, Virginia, where methamphetamine was produced, sampled for evidence, and cleaned up by Investigator Cooper in July, 2001. Additionally, Investigator Cooper has received investigative training from a number of local, state and federal agencies. Investigator Cooper is familiar with many commonly abused drugs, including cocaine, heroin, LSD, marijuana, ecstasy, GHB, PCP, and methamphetamine; their appearance, methods of use, manufacturing, distribution, packaging, and concealment; and slang terms frequently used to refer to these drugs and things closely related to their use and distribution.

K-9 Zeke is a Belgian Malinois dog trained to detect the odor of controlled substances. K-9 Zeke was obtained from the Blanding, Utah, Police Department on October 4, 2001.

From October 8, 2001, through December 17, 2001, K-9 Zeke received three hundred sixty hours (360) of Basic Drug Detection training from Investigator J. O. Roe, a commissioned Police Officer with the City of Aurora Police Department currently assigned to the Investigations Bureau, Narcotics Section, K-9 Enforcement. This training included more than five hundred (500) training searches on five (5) odors. K-9 Zeke was trained to detect the odors of marijuana, methamphetamine, heroin, cocaine, and "ecstasy."

On December 17, 2001, K-9 Zeke and Investigator Roe were tested and certified by Adams County Sheriff Department Deputy J. Smith in accordance with the performance requirements as set forth by the State of Utah Peace Officer Standards and Training, Service Dog Program, and the State School for Police Service Dog Handlers, in Stukenbrock, Germany. Deputy J. Smith is certified to train and certify dogs, handlers

and instructors by the State of Utah Peace Officer Standards and Training Service Dog Program.

From May 4, 1984, to the present, Investigator J. Roe has received more than two thousand three hundred (2,300) hours in the handling and training of police dogs, including patrol dogs, explosive detection dogs, and narcotic detection dogs.

From August 20, 2001, to September 28, 2001, Investigator Roe served as an Adjunct Instructor at the State of Utah, Department of Public Safety, Peace Officer and Standards and Training, Service Dog Program. On September 28, 2001, Investigator Roe was certified as an Adjunct Detector Dog Judge. Investigator Roe can train and certify service dog handlers, dogs, and instructors through the State of Utah Peace Officer Standards and Training Service Dog Program, and the School for Service Dog Handlers in Stukenbrock, West Germany.

From December 17, 2001, to February 6, 2002, Investigator S. Smith, a commissioned Police Officer with the City of Aurora Police Department, currently assigned to the Narcotics Section, and K-9 Zeke received two hundred eighty (280) hours of training from Investigator Roe. On February 26, 2002, Investigator Bell and K-9 Zeke were certified by Deputy Lukens and Investigator Roe in accordance with the performance requirements as set forth by the State of Utah Peace Officer and Standards and Training Service Dog Program, and the School Police Service Dog Handlers in Stukenbrock, Germany.

K-9 Zeke has assisted the Aurora Police Department, Metro Gang Task Force, Front Range Task Force, Denver Police Department, Department of Corrections, and the West Metro Drug Task Force with K-9 sniffs including, but not limited to, vehicle searches, locker searches, residential searches, and business searches. Illegal controlled substances have been recovered as a result of K-9 Zeke's alerts and indications. In some of these K-9 sniffs by K-9 Zeke, when K-9 Zeke did not alert or show any interest in items, the places were still searched by hand by officers and no controlled substances were found.

On September 15, 2003, Investigator Scott Cooper was assigned K-9 Zeke. From September 15, 2003, to November 19, 2003, Investigator Cooper and K-9 Zeke received two hundred seventy (270) hours of training from Investigator Roe. Investigator Cooper and K-9 Zeke conducted over four hundred (400) training exercises during this time period.

On November 19, 2003, Investigator Cooper and K-9 Zeke were certified by Deputy Smith, Investigator Roe, and Technician J. Meyer with the Denver Police Department (who is certified as an Detector Dog Judge

through the State of Utah Peace Officer Standards and Training Service Dog Program, and the School for Service Dog Handlers in Stukenbrock, West Germany) in accordance with the performance requirements as set forth by the State of Utah Peace Officer and Standards and Training Service Dog Program and the School Police Service Dog Handlers in Stukenbrock, Germany.

Investigator Cooper conducts the maintenance training for K-9 Zeke. Investigator Cooper maintains ongoing records of K-9 Zeke's training, activity, and medical logs.

On June 7, 20XX at approximately 2217 hours Aurora Police Officers responded to a shooting call at 321 South Rinty Street. 321 S. Rinty St. is located in the City of Aurora, County of Arapahoe, and State of Colorado. One of the officers that responded was Officer Jones, a commissioned Police Officer with the City of Aurora. Upon arrival Officer Jones and the other officers found a male, later identified as John DOE that had a grazing gunshot wound to the right, rear side of his head. It appeared as if the bullet did not penetrate Doe's skull but just lacerated the skin on his scalp. Doe was conscious and alert and told Officer Jones the following:

- That on June 7, 20XX he arrived at 321 S. Rinty St. where he lives in the basement of his mother's home.
- That as he was getting out of his car he was ambushed by two unknown black males.
- That one of the males had a handgun and forced him into the house and down into the basement.
- That the males were asking him where the guns and money were.
- That he showed them where an SKS style assault rifle was in the downstairs living room.
- That the males forced him into his bedroom in the basement.
- That the male with the handgun forced him onto the bed face down.
- That the other male searched the bedroom and found Doe's .40 caliber handgun that he keeps in the drawer of the night stand.
- That the male that was sitting on top of him and holding the handgun to the back of his head asked him where the safe was.

- That he told the males he did not have a safe until one of the males found the safe that was sitting on the floor in the walk-in closet.
- That the male on top of him hit him in the back of the head with the handgun and requested the combination.
- That he refused to give the combination to the males and a struggle occurred.
- That during the fight with the two males one of the males bit him on the back.
- That the male with the handgun pressed the gun to the back of his head and he was sure he was going to be shot.
- That he grabbed the gun, which deflected the barrel as a shot went off.
- That he felt the bullet graze the right side of his head.

Doe gave verbal consent to search the basement apartment. However, Doe refused to consent to a search of the safe that was in the closet. Other officers searched the basement part of the home and found drug paraphernalia. Officers became suspicious that drugs might have motivated this robbery.

Your Affiant was called to and responded to 321 S. Rinty St. with my assigned drug dog, K-9 Zeke. Your Affiant deployed K-9 Zeke in the basement area, basement bedroom and closet. K-9 Zeke alerted then indicated by scratching the front of the safe that was sitting on the floor of the basement closet, indicating that the odor of a controlled substance was present. Scratching and biting is the final response that K-9 is trained to give when he locates the odor of a controlled substance.

When Doe was told of K-9 Zeke's action, Doe stated he knew what that meant and admitted that there was 1½ pounds of marijuana in the safe and two thousand some dollars in U.S. currency in the safe. Doe provided the combination to the safe so we would not damage the safe if a search warrant was obtained. Doe still did not consent to a search of the safe, despite admitting that it contained illegal drugs and cash proceeds from the sale of illegal drugs.

The tan Diebold safe was seized and removed from 321 S. Rinty St. and transported to the Aurora Police Evidence room by Your Affiant. Your Affiant went to the hospital and contacted Doe in the emergency room. Your Affiant stated to Doe that I had reason to believe there were drugs

in the Diebold safe based on the K-9 alert. Your Affiant told Doe that he was not in custody, that he would not be arrested on this date and did not have to speak with Your Affiant. Doe stated he understood and then told me that there was 1½ to 2 pounds of "kind bud" and two thousand some dollars in the safe. Your Affiant knows "kind bud" is a common slang term for high quality marijuana that sells for approximately four hundred dollars (\$400.00) per ounce and up to four thousand, five hundred dollars (\$4,500.00) per pound. Your Affiant asked Doe if the safe was his and all the items inside and he replied "yes."

Your Affiant has personally observed the above-described safe at the Aurora Police Department Property Section. Based on the aforementioned facts and circumstances, your Affiant believes there is probable cause for the crime(s) of possession, sale, distribution, manufacturing, and delivery of Marijuana, contrary to C.R.S. 18-18-204 and 18-18-406.

Application is hereby made for issuance of a search warrant, directed to any officer authorized by law to execute warrants in the county wherein said property is located, commanding said officer to search forthwith the person or place named above for said property, and the said property and every part thereof, to take, remove, and seize using such force as may reasonably be required in the execution of the warrant, and directing that return thereof be made to the judge issuing the warrant.

The Affiant has read the above and foregoing application and affidavit, and the statements therein contained are true to the best of his/her knowledge, information, and belief.

\_\_\_\_\_  
Affiant

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20XX.

\_\_\_\_\_  
Judge

### § 11-7. Bibliography and Advanced Readings

The following readings were selected from a variety of sources, representing training disciplines, scientific research and legal reasoning. No effort has been made to select readings or resource material representing a particular viewpoint. Rather, readings were selected a broad scope and breadth of information pertaining detector dogs.

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 California v. Greenwood, 486 U.S. 35, 40-41 (1988) — §2-3  
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 Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523, 538 (1967) — §5-2  
 Cardona v. Connolly, 361 F.Supp.2d 25, 33 (D. Conn. 2005) — §2-5  
 Carroll v. United States, 267 U.S. 132, 156 (1925) — §2-4  
 Cassidy v. Chertoff, 471 F.3d 67, 82 (2nd Cir. 2006) — §6-5  
 Chandler v. Miller, 520 U.S. 305, 314 (1997) — §6-5  
 Chavez v. Illinois State Police, 251 F.3d 612, 615 (7th Cir. 2001) — §3-12  
 Chimel v. California, 395 U.S. 752, 762 (1969) — §2-4  
 Chrysler v. City of West Covina, 165 F.3d 915 (9th Cir. 1998) — §3-1  
 Citizens for Peace in Space v. City of Colorado Springs, 477 F.3d 1212, 1218 (10th Cir. 2007) — §6-3  
 City of Canton v. Harris, 489 U.S. 378, 385 (1989) — §3-12  
 City of Indianapolis v. Edmond, 531 U.S. 32, 41 (2000) — §8-1  
 City of Indianapolis v. Edmond, 531 U.S. 32 (2000) — §4-7  
 City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 267 (1981) — §9-5  
 Collins v. Harker Heights, 503 U.S. 115, 128 (1992) — §2-5  
 Colorado v. Bertine, 479 U.S. 367, 375-76 (1987) — §4-6  
 Colorado v. Bertine, 479 U.S. 367, 375 (1987) — §2-4  
 County of Sacramento v. Lewis, 523 U.S. 833, 840, 846 (1998) — §3-10  
 County of Sacramento v. Lewis, 523 U.S. 833 (1998) — §2-5  
 Daubert v. Merrell Dow Pharmaceuticals, Inc, 509 U.S. 579 (2003) — §5-3  
 Deorle v. Rutherford, 272 F.3d 1272, 1283 (9th Cir. 2001) — §3-6  
 Doe v. Renfrow, 631 F.2d 91, 92 (7th Cir. 1980), cert. denied, 451 U.S. 1022 (1981) — §4-11  
 Dunigan v. Noble, 390 F.3d 486 (6th Cir.2004) §3-1  
 Fikes v. Cleghorn, 47 F.3d 1011 (9th Cir. 1995) — §3-1  
 Fikes v. Cleghorn, 47 F.3d 1011, 1014 (9th Cir. 1995) — §3-7  
 Florida v. Riley, 488 U.S. 445, 451 (1989) — §2-3  
 Florida v. Wells, 495 U.S. 1 (1990) — §2-4  
 Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) — §9



Georgia v. Randolph, 547 U.S. 103, 114 (2006) — §2-4  
 Gilliam v. County of Los Angeles, 37 F.3d 1505 (9th Cir. 1994) — §3-1  
 Graham v. Connor, 490 U.S. 386, 396 (1989) — §§2-5, 3-3  
 Graham v. Connor, 490 U.S. at 396-97 — §2-5  
 Gregory-Bey v. Hanks, 332 F.3d 1036, 1045 (7th Cir.), cert. denied, 540 U.S. 1052 (2003) — §7-5  
 Grey v. City of Oak Grove, 396 F.3d 1031, 1032 (8th Cir. 2005) — §9-1  
 Griffin v. Wisconsin, 483 U.S. 868, 877 (1987) — §5-2  
 Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) — §3  
 Hester v. United States, 265 U.S. 57, 59 (1924) — §7-6  
 Holzapfel v. Town of Newburgh, 145 F.3d 516, 528 (2nd Cir.), cert. denied, 525 U.S. 1055 (1998) — §9-2  
 Horton v. California, 496 U.S. 128, 137 (1990) — §2-3  
 Horton v. Goose Creek Independent School District, 690 F.2d 470, 475 (5th Cir. 1982), cert. denied, 463 U.S. 1207 (1983) — §§4-4, 4-11  
 Horton v. Goose Creek Independent School District, 690 F.2d 470, 479 (5th Cir. 1982) — §4-11  
 Hudson v. McMillian, 503 U.S. 1, 7 (1992) — §2-5  
 Hudson v. McMillian, 503 U.S. 1, 8-9 (1992) — §§3-8, 3-10  
 Hudson v. McMillian, 503 U.S. at 10, 11 — §2-5  
 Illinois v. Caballes, 543 U.S. 405, 409 (2005) — §§4-1, 4-3, 4-5  
 Illinois v. Caballes, 543 U.S. 405 (2005) — §4-15  
 Illinois v. Caballes, 543 U.S. at 407 — §4-5  
 Illinois v. Gates, 462 U.S. 213, 231 (1983) — §2-2  
 Illinois v. Gates, 462 U.S. 213, 232 (1983) — §2-2  
 Illinois v. Gates, 462 U.S. 213, 238 (1983) — §4-3  
 Illinois v. Gates, 462 U.S. 213, 243 (1983) — §4-5  
 Illinois v. Rodriguez, 497 U.S. 177, 187 (1990) — §2-4  
 Illinois v. Wardlow, 528 U.S. 119, 123 (2000) — §3-4  
 Indianapolis v. Edmond, 531 U.S. 32, 44 (2000) — §6-5  
 Jarrett v. Town of Yarmouth, 331 F.3d 140 (1st Cir.), cert. denied, 540 U.S. 1017 (2003) — §3-1  
 Joiner v. City of Macon, 814 F.2d 1537, 1539 (11th Cir. 1987) — §9-5  
 Kaniff v. United States, 351 F.3d 780, 782 (7th Cir. 2003) — §4-4  
 Katz v. United States, 389 U.S. 347, 356-57 (1967) — §2-1  
 Kerr v. City of West Palm Beach, 875 F.2d 1546, 1551 (11th Cir. 1989) — §3-2  
 Knowles v. Iowa, 525 U.S. 113, 114 (1998) — §2-4  
 Kuha v. City of Minnetonka, 365 F.3d 590 (8th Cir. 2003) — §3-1  
 Kuha v. City of Minnetonka, 365 F.3d 590, 598 (8th Cir. 2003), overruled on other grounds, Szabla v. City of Brooklyn Park, 486 F.3d 385 (8th Cir. 2007) — §3-6  
 Kuha v. City of Minnetonka, 365 F.3d 590, 600 (8th Cir. 2003) — §3-2  
 Kuha v. City of Minnetonka, 365 F.3d at 599 — §3-6  
 Kylo v. United States, 533 U.S. 27, 29 (2001) — §4-15  
 Kylo v. United States, 533 U.S. 27, 34-35 (2001) — §2-3

Lafavors v. Jenne, 2006 WL 249544 (11th Cir. 2006) — §3-4  
 Lamon v. City of Shawnee, 972 F.2d 1145, 1151 (10th Cir. 1992) — §9-1  
 Lee v. City of New Orleans, 156 Fed.Appx. 618 (5th Cir. 2005) — §9-1  
 Leever v. Carson City, 360 F.3d 1014, 1018 (9th Cir. 2004) — §9-6  
 MacWade v. Kelly, 460 F.3d 260, 266, 271 (2nd Cir. 2006) — §6-5  
 Marquez v. Andrade, 79 F.3d 1153 (9th Cir. 1996) — §3-11  
 Marquez v. City of Albuquerque, 399 F.3d 1216 (10th Cir. 2005) — §3-1  
 Marshall v. Barlow's, Inc., 436 U.S. 307, 320 (1978) — §5-2  
 Martineau v. City of Cypress, 95 F.3d 1158 (9th Cir. 1996) — §3-7  
 Martineau v. City of Cypress, 95 F.3d 1158 (9th Cir. 1996), cert. denied, 520 U.S. 1128 (1997) — §3-1  
 Maryland v. Buie, 494 U.S. 325, 334 (1990) — §2-4  
 Maryland v. Dyson, 527 U.S. 465, 467 (1999) — §2-4  
 Maryland v. Wilson, 519 U.S. 408, 415 (1997) — §2-4  
 Matthews v. Jones, 35 F.3d 1046 (6th Cir. 1994) — §3-1  
 Matthews v. Jones, 35 F.3d 1046, 1047 (6th Cir. 1994) — §3-5  
 Matthews v. Jones, 35 F.3d 1046, 1051 (6th Cir. 1994) — §3-6  
 McLaughlin v. Richland Shoe Co., 486 U.S. 128, 133 (1988) — §9-1  
 Mendoza v. Block, 27 F.3d 1357, 1358 (9th Cir. 1994) — §3-6  
 Mendoza v. Block, 27 F.3d 1357, 1362-63 (9th Cir. 1994) — §3-4  
 Merrett v. Moore, 58 F.3d 1547, 1550-51 (11th Cir. 1995), cert. denied, 519 U.S. 812 (1996) — §4-7  
 Michigan v. Clifford, 464 U.S. 287, 292 (1984) — §5-1  
 Michigan v. Long, 463 U.S. 1032, 1049 (1983) — §2-4  
 Michigan v. Tyler, 436 U.S. 499, 511 (1978) — §5-1  
 Mickle v. Ahmed, 444 F.Supp.2d 601, 611 (D.S.C. 2006) — §3-1  
 Miller v. Clark County, 340 F.3d 959 (9th Cir. 2003) — §§3-1, 3-7  
 Miller v. Clark County, 340 F.3d 959, 961 (9th Cir. 2003) — §3-6  
 Miller v. Clark County, 340 F.3d 959, 963 (9th Cir. 2003) — §3-1  
 Miller v. Clark County, 340 F.3d 959, 965-66 (9th Cir. 2003) — §3-4  
 Miller v. Clark County, 340 F.3d 959, 968 (9th Cir. 2003) — §3-2  
 Miller v. Clark County, 340 F.3d at 967 — §3-7  
 Minnesota v. Carter, 525 U.S. 83, 88 (1998) — §2-1  
 Minnesota v. Dickerson, 508 U.S. 366, 375 (1993) — §§2-3, 2-4  
 Monell v. Department of Social Services, 436 U.S. 658, 690-91 (1978) — §3-10  
 Monell v. Department of Social Services, 436 U.S. 658, 694 n. 58 (1978) — §3-12  
 Monroe v. Pape, 365 U.S. 167, 180 (1961) — §3-10  
 Moore v. Vangelo, 222 Fed.Appx. 167, 169 n. 2 (3rd Cir. 2007) — §3-6  
 Morgan v. United States, 166 Fed.Appx. 292, 295 (9th Cir. 2006) — §6-3  
 National League of Cities v. Usery, 426 U.S. 833 (1976) — §9  
 National Treasury Employees Union v. Van Raab, 489 U.S. 656, 706 (1989) — §6-5  
 Neil v. Biggers, 409 U.S. 188, 198 (1972) — §7-5  
 New York v. Belton, 453 U.S. 454, 460-61 (1981) — §2-4

Oliver v. United States, 466 U.S. 170, 179 (1984) — §2-3  
 Oliver v. United States, 466 U.S. 170, 180 (1984) — §7-6  
 Ornelas v. United States, 517 U.S. 690, 695 (1996) — §2-2  
 Parra v. City of Chino, 141 F.3d 1178 (9th Cir. 1998) — §§3-1, 3-7  
 Payne v. Pauley, 337 F.3d 767, 778 (7th Cir. 2003) — §2-5  
 Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) — §2-4  
 Quintanilla v. City of Downey, 84 F.3d 353 (9th Cir. 1996) — §§3-1, 3-7  
 Rakas v. Illinois, 439 U.S. 128, 148 (1978) — §2-4  
 Reich v. New York City Transit Authority, 45 F.3d 646 (2nd Cir. 1995) — §§9-2, 9-3  
 Renfro v. City of Emporia, 948 F.2d 1528, 1537 (10th Cir. 1991), cert. dismissed, 503 U.S. 915 (1992) — §9-4  
 Rizzo v. Goode, 423 U.S. 362, 371 (1976) — §3-12  
 Roberts v. City of Shreveport, 397 F.3d 287, 294 (5th Cir. 2005) — §3-12  
 Robinette v. Barnes, 854 F.2d 909 (6th Cir. 1988) — §3-1  
 Rogers v. City of Kennewick, 206 Fed.Appx. 657 (9th Cir. 2006), cert. denied, \_\_\_ U.S. \_\_\_, 127 S.Ct. 1126 (2007) — §3-6  
 Romo v. Champion, 46 F.3d 1013, 1018 (10th Cir.), cert. denied, 516 U.S. 947 (1995) — §§4-4, 4-5  
 Rumpf v. United States, 445 F.2d 134 (7th Cir. 1971) — §7-1  
 Sacramento v. Lewis, 523 U.S. at 851 — §2-5  
 Samson v. California, 547 U.S. 843, 857 (2006) — §2-4  
 Saucier v. Katz, 533 U.S. 194, 202 (2001) — §3  
 Scott v. Harris, \_\_\_ U.S. \_\_\_, 127 S.Ct. 1769, 1774 (2007) — §3  
 Sebelsky v. City of Riverside, 46 F.3d 1145 (9th Cir.), cert. denied, 516 U.S. 944 (1995) — §3-2  
 Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996) — §9-1  
 Shannon v. City of Costa Mesa, 46 F.3d 1145 (9th Cir.), cert. denied, 516 U.S. 822 (1995) — §3-5  
 Smith v. City of Hemet, 394 F.3d 689 (9th Cir.), cert. denied, 545 U.S. 1128, (2005) — §3-1  
 Smith v. City of Hemet, 394 F.3d at 705, 707 — §3-1  
 Smoak v. Hall, 460 F.3d 768, 783 (6th Cir. 2006) — §3-3  
 Sorchini v. City of Covina, 8 Fed.Appx. 806 (9th Cir. 2001) — §3-6  
 South Dakota v. Opperman, 428 U.S. 364, 368 (1976) — §§2-4, 4-6  
 Starkes v. United States, 427 A.2d 437 (D.C. App. 1981) — §7-1  
 States v. Rivas, 157 F.3d 364, 368 (5th Cir. 1998) — §4-2  
 State v. DeMarco, 952 P.2d 1276, 1286 (Kan. 1998) — §4-5  
 State v. Pellicci, 580 A.2d 710, 715-17 (1990) — §4-5  
 Steiner v. Mitchell, 350 U.S. 247, 253 (1956) — §9-3  
 Stovall v. Denno, 388 U.S. 293 (1967) — §7-5  
 Szabla v. City of Brooklyn Park, 486 F.3d at 397 — §3-6  
 Tanberg v. Sholtis, 401 F.3d 1151, 1164-65 (10th Cir. 2005) — §3-10  
 Tapley v. Collins, 211 F.3d 1210, 1214 (11th Cir. 2000) — §3  
 Tennessee v. Garner, 471 U.S. 1 (1985) — §§2-5, 3-1  
 Terry v. Ohio, 392 U.S. 1, 27 (1968) §2-2

Terry v. Ohio, 392 U.S. 1, 30 (1968) — §2-4  
 Texas v. Brown, 460 U.S. 730, 741 (1983) — §2-2  
 Thornton v. United States, 541 U.S. 615, 620 (2004) — §2-4  
 Traver v. Meshiry, 627 F.2d 934, 938 (9th Cir. 1980) — §3-10  
 Travis v. Gary Community Mental Health Center, Inc., 921 F.2d 108 (7th Cir. 1990), cert. denied, 502 U.S. 812 (1991) — §9-5  
 United States v. \$22,474.00, 246 F.3d 1212 (9th Cir. 2001) — §4-14  
 United States v. \$30,670.00, 403 F.3d 448, 459 (7th Cir. 2005) — §4-14  
 United States v. \$242,484.00, 389 F.3d 1149, 1165 n. 9 (11th Cir. 2004) — §4-14  
 United States v. \$404,905.00 U.S. Currency, 182 F.3d 643, 647 (8th Cir. 1999), cert. denied sub nom Alexander v. United States, 528 U.S. 1161 (2000) — §4-5  
 United States v. Abbouchi, 502 F.3d 850, 855-56 (9th Cir. 2007) — §6-2  
 United States v. Alexander, 448 F.3d 1014, 1017 (8th Cir. 2006) — §4-5  
 United States v. Alfonso, 759 F.2d 728, 734 (9th Cir. 1985) — §6-2  
 United States v. Alfonso, 759 F.2d 728, 738 (9th Cir. 1985) — §4-10  
 United States v. Banks, 3 F.3d 399, 402 (11th Cir. 1993), cert. denied, 510 U.S. 1129 (1994) — §4-12  
 United States v. Barragan, 379 F.3d 524, 529 (8th Cir. 2004) — §4-5  
 United States v. Bloomfield, 40 F.3d 910, 917 (8th Cir. 1994) — §4-5  
 United States v. Borys, 766 F.2d 304, 313 (7th Cir.) — §4-5  
 United States v. Boxley, 373 F.3d 759, 761 (6th Cir.), cert. denied, 543 U.S. 972 (2004) — §§4-3, 4-16  
 United States v. Brown, 500 F.3d 48, 57 n. 3 (1st Cir. 2007) — §4-3  
 United States v. Bulacan, 156 F.3d 963, 966-67 (9th Cir. 1998) — §6-3  
 United States v. Cardona, 769 F.2d 625, 629 (9th Cir. 1985) — §6-2  
 United States v. Carroll, 710 F.2d 164 (4th Cir. 1983) — §7-1  
 United States v. Castro, 166 F.3d 728, 734 (5th Cir.), cert. denied, 528 U.S. 887 (1999) — §4-6  
 United States v. Cedano-Arellano, 332 F.3d 568, 571 (9th Cir. 2003), cert. denied, 540 U.S. 1137 (2004) — §§4-2, 4-3, 4-16  
 United States v. Cofield, 254 Fed.Appx. 971 (4th Cir. 2007) — §7-1  
 United States v. Corona-Ramirez, 125 Fed.Appx. 78, 80 (8th Cir. 2005) — §4-5  
 United States v. Currency, U.S. \$42,500.00, 283 F.3d 977, 982 (9th Cir. 2002)§— §4-14  
 United States v. Daniel, 982 F.2d 146, 150 n. 5 (5th Cir. 1993) — §4-12  
 United States v. Demoss, 279 F.3d 632, 646-37 (8th Cir. 2002) — §4-12, 68  
 United States v. Dennis, 115 F.3d 524, 527 (7th Cir. 1997) — §4-12  
 United States v. Dennis, 115 F.3d at 533 — §4-12  
 United States v. Diaz, 25 F.3d 392, 394 (6th Cir. 1994) — §4-3, 4-8, 4-16  
 United States v. Donnelly, 475 F.3d 946, 951, 954 (8th Cir. 2007) — §4-5  
 United States v. Donnelly, 475 F.3d 946, 955 (8th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 127 S.Ct. 2954 (2007) — §4-3  
 United States v. Douglas, 195 Fed.Appx. 780, 781 (10th Cir. 2006) — §4-5

- United States v. Drayton, 536 U.S. 194, 206-07 (2002) — §2-4  
 United States v. Duncan, 693 F.2d 971, 977 (9th Cir. 1982) — §6-2  
 United States v. Dunkel, 900 F.2d 105, 107 (7th Cir.1990), vacated on other grounds, 498 U.S. 1043 (1991) — §4-8  
 United States v. Dunn, 480 U.S. 294, 301 (1987) — §7-6  
 United States v. Edwards, 415 U.S. 800, 808 (1974) — §2-4  
 United States v. Fernandez, 772 F.2d 495, 496 (9th Cir. 1985) — §4-2  
 United States v. Flores-Montano, 541 U.S. 149, 152-53 (2004) — §6-2  
 United States v. Flynn, 309 F.3d 736, 739 (10th Cir. 2002) — §4-7  
 United States v. Friend, 50 F.3d 548 (8th Cir. 1995), vacated in part, 517 U.S. 1152 (1996) — §4-8  
 United States v. Ganser, 315 F. 3d 839, 844 (7th Cir.), cert. denied, 538 U.S. 939 (2003) — §4-12  
 United States v. Gant, 112 F.3d 239, 240, 242 (6th Cir. 1997) — §4-9  
 United States v. Garcia, 42 F.3d 604, 605 (10th Cir. 1994), cert. denied, 514 U.S. 1073 (1995) — §4-9  
 United States v. Garcia-Garcia, 319 F.3d 726, 798-99 (5th Cir.), cert. denied, 539 U.S. 910 (1993) — §4-4  
 United States v. Garzon, 119 F.3d 1446, 1450-51 (10th Cir. 1997) — §4-9  
 United States v. Gates, 680 F.2d 1117 (6th Cir. 1982), cert. denied, 465 U.S. 1069 (1984) — §§7-1, 7-2, 7-4, 7-5  
 United States v. Gaviria, 805 F.2d 1108, 1112 (2nd Cir.1986) — §8-2  
 United States v. Goldstein, 635 F.2d 356, 361-362 (5th Cir. 1981) — §4-9  
 United States v. Gonzalez-Acosta, 989 F.2d 384, 388-89 (10th Cir. 1993) — §4-3, 4-16  
 United States v. Griffin, 493 F.3d 856, 866 (7th Cir. 2007) — §7-5  
 United States v. Guzman, 75 F.3d 1090, 1092 (6th Cir. 1996) — §4-9  
 United States v. Gwinn, 191 F.3d 874, 879 (8th Cir. 1999) — §4-9  
 United States v. Harvey, 961 F.2d 1361, 1363-64 (8th Cir. 1992) — §4-9  
 United States v. Hildenbrandt, 207 Fed.Appx. 50, 51 (2nd Cir. 2006) — §5-3  
 United States v. Hill, 195 F.3d 258, 273 (6th Cir. 1999), cert. denied, 528 U.S. 1176 (2000) — §4-16  
 United States v. Hornbeck, 63 Fed.Appx. 340 (9th Cir. 2003) — §7-1  
 United States v. Hudspeth, 518 F.3d 954, 960 (8th Cir. 2008) — §2-4  
 United States v. Huguenin, 154 F.3d 547, 556 (6th Cir. 1998) — §4-7  
 United States v. Irick, 2008 WL 3864119 (11th Cir. 2008) — §4-5  
 United States v. Irving, 452 F.3d 110, 123 (2nd Cir. 2006) — §8-2  
 United States v. Ivy, 973 F.2d 1184, 1187 (5th Cir. 1992), cert. denied, 507 U.S. 1022 (1993) — §2-4  
 United States v. Jackson, 390 F. 3d 393, 398 (5th Cir. 2004), judgment vacated on other grounds, 544 U.S. 917 (2005) — §4-4  
 United States v. Jacobs, 986 F.2d 1231, 1234 (8th Cir. 1993) — §4-2  
 United States v. Jacobsen, 466 U.S. 109, 121-22 (1984) — §4-1  
 United States v. Jenkins, 986 F.2d 76, 79 (4th Cir. 1993) — §6-3  
 United States v. Johns, 469 U.S. 478, 487 (1985) — §2-4  
 United States v. Johnson, 171 F.3d 601, 603 (8th Cir. 1999) — §4-12  
 United States v. Joyner, 492 F.2d 650 (D.C. Cir. 1974) — §7-1  
 United States v. Kelly, 302 F.3d 291, 293 n. 1 (5th Cir. 2002) — §4-4  
 United States v. Kelly, 302 F.3d 291, 295 (5th Cir. 2002) — §8-2  
 United States v. Kennedy, 131 F.3d 1371, 1371 (10th Cir. 1997) — §4-3  
 United States v. Klein, 626 F.2d 22, 27 (7th Cir. 1980) — §4-3  
 United States v. Klinginsmith, 25 F.3d 1507, 1510 (10th Cir.), cert. denied, 513 U.S. 1059 (1994) — §4-7  
 United States v. Knights, 534 U.S. 112, 118-119 (2001) — §2-1  
 United States v. Knights, 534 U.S. 112, 120 (2001) — §2-4  
 United States v. Lakoskey, 462 F.3d 965, 976 (8th Cir. 2006) — §4-5  
 United States v. Lavado, 750 F.2d 1527 (11th Cir. 1985), cert. denied, 474 U.S. 1054 (1986) — §7-1  
 United States v. Lawshea, 461 F.3d 857, 858 (7th Cir. 2006) — §3-4  
 United States v. Lender, 985 F.2d 151, 154 (4th Cir. 1993) — §4-5  
 United States v. Lingenfelter, 997 F.2d 632, 638-39 (9th Cir. 1993) — §4-13  
 United States v. Lopez-Moreno, 420 F.3d 420, 430 (5th Cir. 2005) — §2-2  
 United States v. Lovell, 849 F.2d 910, 915 (5th Cir. 1988) — §4-9  
 United States v. Ludwig, 10 F.3d 1523, 1527 (10th Cir. 1993) — §§4-3, 4-8  
 United States v. Lugo, 170 F.3d 996, 1003 (10th Cir. 1999) — §2-4  
 United States v. Lux, 905 F.2d 1379, 1380 n. 1 (10th Cir. 1990) — §4-12  
 United States v. Lyons, 486 F.3d 367, 372 (8th Cir. 2007) — §4-5  
 United States v. Maltais, 403 F.3d 550, 557-58 (8th Cir. 2005) — §4-5  
 United States v. Martinez-Fuerte, 428 U.S. 543, 556 (1976) — §6-2  
 United States v. Massie, 65 F.3d 843, 847 (10th Cir. 1995) — §6-2  
 United States v. Mayo, 394 F.3d 1271, 1277 (9th Cir. 2004) — §2-4  
 United States v. McCranie, 703 F.2d 1213, 1218 (10th Cir.1983) — §6-6  
 United States v. McRae, 81 F.3d 1528, 1537 (10th Cir. 1996) — §2-4  
 United States v. Mendenhall, 446 U.S. 544, 553 (1980) — §2-5  
 United States v. Morales-Zamora, 914 F.2d 200, 203 (10th Cir. 1990) — §6-2  
 United States v. Morales-Zamora, 914 F.2d 200, 203-204 (10th Cir. 1990) — §4-7  
 United States v. Moreno-Vargas, 315 F.3d 489, 491 (5th Cir. 2002) — §4-7  
 United States v. Morgan, 270 F.3d 625, 631 (8th Cir. 2001) — §4-5  
 United States v. Murphy, 516 F.3d 1117, 1124 (9th Cir. 2008) — §2-4  
 United States v. Mounts, 248 F.3d 712, 715 (7th Cir. 2001) — §4-3  
 United States v. Najar, 451 F.3d 710, 718 (10th Cir. 2006) — §§2-4, 7-6  
 United States v. Olivares-Campos, 276 Fed.Appx. 816, 822 (10th Cir. 2008) — §4-5  
 United States v. Olivera-Mendez, 484 F.3d 505, 512 (8th Cir. 2007) — §§4-3, 4-5  
 United States v. Orsolini, 300 F.3d 724, 728 (6th Cir. 2002) — §4-5  
 United States v. Perez, 440 F.3d 363, 375 (6th Cir. 2006) — §4-8  
 United States v. Pinter, 984 F.2d 376, 379 (10th Cir. 1993) — §2-3  
 United States v. Place, 462 U.S. 696, 707 (1983) — §4-1  
 United States v. Place, 462 U.S. 696, 707 (1983) — §4-8  
 United States v. Place, 462 U.S. at 707 — §4-1

United States v. Quoc Viet Hoang, 486 F.3d 1156, 1160 n. 1 (9th Cir. 2007), cert. denied, \_\_\_ U.S. \_\_\_ 128 S.Ct. 1064 (2008) — §4-12

United States v. Ramsey, 431 U.S. 606, 616 (1977) — §§4-10, 8-2

United States v. Reed, 141 F.3d 644, 649 (6th Cir. 1998) — §4-15

United States v. Reed, 733 F.2d 492, 501 (8th Cir. 1984) — §4-8

United States v. Reid, 226 F.3d 1020, 1027 (9th Cir. 2000) — §2-4

United States v. Reyes, 349 F.3d 219, 224 (5th Cir. 2003), cert. denied, 540 U.S. 1228 (2004) — §4-4

United States v. Robinson, 390 F.3d 853, 870 (6th Cir. 2004) — §4-12

United States v. Robinson, 414 U.S. 218, 236 (1973) — §2-4

United States v. Roby, 122 F.3d 1120, 1125 (8th Cir. 1997) — §4-15

United States v. Rodriguez-Morales, 929 F.2d 780, 787 (1st Cir. 1991), cert. denied, 502 U.S. 1030 (1992) — §4-6

United States v. Rojas-Millan, 234 F.3d 464, 470 (9th Cir. 2000) — §4-5

United States v. Rosborough, 366 F.3d 1145, 1152 (10th Cir. 2004) — §6-1

United States v. Ross, 456 U.S. 798, 820-21 (1982) — §2-4

United States v. Ross, 456 U.S. 798, 825 (1982) — §4-5

United States v. Sanders, 937 F.2d 1495, 1499 (10th Cir. 1991) — §6-2

United States v. Santos, 403 F.3d 1120, 1132 (10th Cir. 2005) — §4-5

United States v. Smith, 389 F.3d 944, 953 (9th Cir. 2004) — §2-4

United States v. Sokolow, 490 U.S. 1, 7 (1989) — §2-2

United States v. Stephens, 206 F.3d 914, 917 (9th Cir. 2000) — §2-3

United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989) — §4-5

United States v. Sundby, 186 F.3d 873, 874 (8th Cir. 1999) — §§4-3, 4-16

United States v. Thomas, 757 F.2d 1359 (2nd Cir. 1985), cert. denied, 479 U.S. 818 (1986) — §4-15

United States v. Thompson, 29 F.3d 62, 65 (2nd Cir. 1994) — §2-4

United States v. Torres-Ramos, 536 F.3d 542, 554 (6th Cir. 2008) — §4-1

United States v. Trayer, 898 F.2d at 807 — §4-9

United States v. U.S. Currency, \$30,060.00, 39 F.3d 1039, 1043 (9th Cir. 1994) — §4-14

United States v. Va Lerie, 424 F.3d 694, 706 (8th Cir. 2005), cert. denied, 548 U.S. 903 (2006) — §4-9

United States v. Vasquez, 909 F.2d 235 (7th Cir. 1990), cert. denied, 501 U.S. 1217 (1991) — §4-15

United States v. Vega-Barvo, 729 F.2d 1341, 1345 (11th Cir. 1984) — §8-2

United States v. Venema, 563 F.2d 1003, 1005 (10th Cir. 1977) — §4-13

United States v. Ward, 144 F.3d 1024, 1032 (7th Cir. 1998) — §4-9

United States v. Watkins, 741 F. 2d 692 (5th Cir. 1984) — §7-1

United States v. West, 219 F.3d 1171, 1178-79 (10th Cir. 2000). — §4-5

United States v. White, 42 F.3d 457, 460 (8th Cir. 1994) — §4-5

United States v. Whitted, 541 F.3d 480, 486 (3rd Cir. 2008) — §4-10

United States v. Williams, 271 F.3d 1261, 1269 (10th Cir. 2001) — §4-5

United States v. Williams, 419 F.3d 1029, 1032 (9th Cir. 2005) — §4-5

United States v. Williams, 726 F.2d 661 (10th Cir.), cert. denied, 467 U.S. 1245 (1984) — §4-2

United States v. Windrix, 405 F.3d 1146, 1153 (10th Cir. 2005) — §4-5

United States v. Winningham, 140 F.3d 1328, 1329 (10th Cir. 1998) — §4-5

United States v. Wood, 106 F.3d 942, 946-47 (10th Cir. 1997) — §4-5

United States v. Wright, 512 F.3d 466, 471 (8th Cir. 2008) — §4-7

United States v. Zucco, 71 F.3d 188, 191-92 (5th Cir. 1995), cert. denied, 519 U.S. 827 (1996) — §2-4

Vathekan v. Prince George's County, 154 F.3d 173, 179 (4th Cir. 1998) — §§3-6, 3-11

Vera Cruz v. City of Escondido, 139 F.3d 659 (9th Cir. 1998) — §§3-1, 3-6

Vernonia School District 47J v. Acton, 515 U.S. 646, 648 (1995) — §4-11

Walter v. United States, 447 U.S. 649, 657 (1980) — §2-1

Warren v. City of Lincoln, 864 F. 2d 1436, 1441 (8th Cir. 1987), cert. denied, 490 U.S. 1091 (1989) — §7-3

Warren v. City of Lincoln, Nebraska, 864 F. 2d 1436 (8th Cir. 1989) — §7-1

Watkins v. City of Oakland, 145 F.3d 1087, 1090 (9th Cir. 1998) — §3-6

Watkins v. City of Oakland, 145 F.3d 1087, 1094 (9th Cir. 1998) — §3-10

Welsh v. Wisconsin, 466 U.S. 740, 749-750 (1984) — §2-4

Whitley v. Albers, 475 U.S. 312, 327 (1986) — §2-5

Yang v. Hardin, 37 F.3d 282, 285 (7th Cir. 1994) — §3-12

Ybarra v. Illinois, 444 U.S. 85, 91 (1979) — §§2-2, 4-4

Yell v. Kentucky, \_\_\_ U.S. \_\_\_ 128 S.Ct. 2068 (2008) — §5-3

York v. City of Las Cruces, 523 F.3d 1205, 1209 (10th Cir. 2008) — §2-5

Zivojinovich v. Barner, 525 F.3d 1059, 1072 (11th Cir. 2008) — §3-3

### Florida

Flowers v. State, 755 So.2d 708, 709 (Fla. App. 4th Dist. 1999) — §4-8

Fones v. State, 765 So.2d 849, 850 (Fla. App. 4th Dist. 2000) — §5-3

McCray v. State, 915 So.2d 239, 240 (Fla. App. 3rd Dist. 2005) — §7-2

McCray v. State, 915 So. 2d 239 (Fla. App. 3rd Dist. 2005) — §7-1

Ramos v. State, 496 So.2d 121, 123 (Fla. 1986) — §7-5

Samarco v. Neumann, 44 F.Supp.2d 1276, 1285 (S.D. Fla. 1999) — §3

State v. Griffin, 949 So.2d 309, 311 (Fla. App.) — §4-5

State v. Rabb, 920 So.2d 1175 (Fla. App.), cert. denied, \_\_\_ U.S. \_\_\_, 127 S.Ct. 665 (2006) — §4-15

State v. Riggs, 918 So.2d 274, 276-77 (Fla. 2005) — §7-6

United States v. Brown, 298 F.Supp.2d 1317, 1319 (S.D. Fla. 2004) — §4-10

United States v. Veltmann, 869 F.Supp. 929, 933 (M.D. Fla. 1994), aff'd, 87 F.3d 1329 (11th Cir. 1996) — §5-2

### Georgia

Carr v. State, 482 S.E.2d 314, 317 (Ga. 1997) — §5-3

Ingram v. State, 441 S.E.2d 74 (Ga. App. 1994) — §7-1

McCray v. State, 601 S.E.2d 452, 455-56 (Ga. App. 2004) — §4-7

### Hawaii

State v. Keaweehu, 129 P.3d 1157, 1165 (Hawai'i App. 2006) — §4-14

United States v. Matau, 191 F.Supp.2d 1173, 1182 (D. Hawai'i 2002) — §4-9

### Idaho

Idaho Department of Law Enforcement v. \$34,000 U.S. Currency, 824 P.2d 142, 136 (Idaho App. 1991) — §4-6  
 State v. Streeper, 747 P.2d 71 (Idaho 1987) — §7-1  
 State v. Thurman, 996 P.2d 309 (Idaho App. 1999) — §8-1  
 United States v. Esparza, 2007 WL 2684836 (D. Idaho 2007) — §6-4

### Illinois

Graham v. City of Chicago, 828 F. Supp. 576, 582 (N.D. Ill. 1993) — §9-3  
 People v. Acri, 662 N.E.2d 115, 117 (Ill. App. 1996) — §5-3  
 People v. Bartelt, — N.E.2d —, 2008 WL 4182445 (Ill. App. 4th Dist. 2008) — §4-5  
 People v. McDonald, 749 N.E.2d 1066 (Ill. App. 2001) — §7-1

### Indiana

Brafford v. State, 516 N.E.2d 45 (Ind. 1987) — §7-1  
 Doe v. Renfrow, 475 F.Supp. 1012, 1017 n. 5 (D.C. Ind. 1979), aff'd in part, remanded in part, 631 F.2d 91 (7th Cir. 1980) — §4-2  
 Mason v. Hamilton County, 13 F.Supp.2d 829, 833 (S.D. Ind. 1998) — §3-4  
 Myers v. State, 839 N.E.2d 1154 (Ind. 2005), cert. denied, 547 U.S. 1148 (2006) — §4-11  
 Roddy v. Canine Officer, 293 F.Supp.2d 906, 910 (S.D. Ind. 2003) — §3-7

### Iowa

State v. Buller, 517 N.W.2d 711, 712-14 (Iowa 1994) — §§5-3, 7-1

### Kansas

State v. Wainwright, 856 P.2d 163 (Kan. App. 1993) — §§7-1, 7-3

### Kentucky

Yell v. Commonwealth, 242 S.W.3d 331 (Ky. 2007) — §5-3, 7-1

### Louisiana

State v. Green, 26 So. 2d 487 (La. 1946) — §7-1  
 State v. Knowles, 917 So.2d 1262, 1271 (La. App. 1994) — §8-1  
 State v. Logo, 798 So.2d 1182, 1183 (La. App. 4th Cir. 2001) — §4-10  
 United States v. Cunningham, 1996 WL 665747 (E.D. La. 1996) — §4-10

### Maine

Luce v. Hayden, 598 F.Supp. 1101, 1103 (D.C. Me. 1984) — §3-12  
 State v. Sherburne, 571 A.2d 1181 (Me. 1990) — §8-1

### Maryland

Clark v. State, 781 A.2d 913, 935-36 (Md. Ct. Spec. App. 2001) — §7-8  
 Fitzgerald v. State, 864 A.2d 1006, 1017-18 (Md. 2004) — §4-15  
 Roberts v. State, 469 A.2d 442 (Md. 1983) — §§7-1, 7-4, 7-5  
 United States v. Burrow, 396 F.Supp. 890 (D. Md. 1975) — §6-3

### Massachusetts

Andrews v. Dubois, 888 F. Supp. 213 (D. Mass. 1995) — §9-3  
 Commonwealth v. Crouse, 855 N.E.2d 391, 402 (Mass. 2006) — §5-3  
 Commonwealth v. Hill, 751 N.E.2d 446 (Mass. App. 2001) — §7-1  
 United States v. \$14,665.00, 33 F.Supp.2d 47, 58 n. 9 (D. Mass. 1998) — §4-14

### Michigan

People v. Jackson, 2008 WL 2037805 (Mich. App. 2008) — §5-3  
 People v. Jones, 755 N.W.2d 224, 226 (Mich. App. 2008) — §4-15  
 People v. Jones, 755 N.W.2d 224, 228 (Mich. App. 2008) — §4  
 People v. Lewis, 649 N.W.2d 792, 800 (Mich. App.), cert. denied, 653 N.W.2d 411 (Mich. 2002) — §4-5  
 People v. Stone, 491 N.W.2d 628 (Mich. 1992) — §7-1

### Minnesota

McDuffie v. State, 482 N.W.2d 234 (Minn. App. 1992) — §7-1  
 State v. Carter, 697 N.W.2d 199, 202 (Minn. 2005) — §4-13  
 State v. Kolb, 674 N.W.2d 238, 239 (Minn. App. 2004) — §4-6  
 State v. Voss, 683 N.W.2d 846, 851 (Minn. App. 2004) — §5-2

### Mississippi

Drane v. State, 493 So.2d 294 (Miss. 1986) — §8-1  
 Hudson v. State, 977 So. 2d 344 (Miss. App. 2007), cert. denied, (Miss. Mar. 20, 2008) — §7-1  
 L.T. ex rel. Hollins v. City of Jackson, 145 F.Supp.2d 750, 760 (S.D. Miss. 2000) — §3-13

### Missouri

Burden v. Hornsby, 50 Mo. 238 (1872) — Chapter 1  
 State v. Thomas, 536 S.W.2d 529 (Mo. App. 1976) — §7-1  
 United States v. Mohamed, 2007 WL 3352491 (W.D. Mo. 2007) — §4-5

### Montana

State v. Storm, 238 P.2d 1161 (Mont. 1951) — §7-1

**Nebraska**

Brott v. State, 97 N.W. 593 (Neb. 1903) — §7-1  
 State v. Lancelotti, 595 N.W.2d 558, 560 (Neb. App. 1999) — §4-9  
 State v. Louthan, 744 N.W.2d 454, 462 (Neb. 2008) — §4-5  
 State v. Silvers, 587 N.W.2d 325, 333 (Neb. 1998) — §5-2  
 United States v. Crick, 2007 WL 2306921 (D. Neb. 2007) — §4-5

**Nevada**

United States v. Hernandez-Torres, 2006 WL 696184 (D. Nev. 2006), aff'd,  
 234 Fed.Appx. 752 (9th Cir. 2007) — §4-5

**New Hampshire**

State v. Taylor, 395 A.2d 505 (N.H. 1978) — §7-1

**New Jersey**

State v. Parton, 597 A.2d 1088 (N.J. Super. App. Div. 1991), cert. denied, 606  
 A.2d 371 (N.J. 1992) — §7-1  
 State v. Sharp, 928 A.2d 165, 169 (N.J. Super. 2006) — §5-3

**New Mexico**

United States v. Florez, 871 F.Supp. 1411, 1420 (D.N.M. 1994) — §§4-3, 4-16  
 United States v. Morales, 489 F.Supp.2d 1250, 1250 (D.N.M. 2007) — §4-16

**New York**

People v. Dunn, 564 N.E.2d 1054, 1056 (1990), cert. denied, 501 U.S. 1219  
 (1991) — §4-15  
 People v. Muggelberg, 518 N.Y.S.2d 285 (A.D. 4th Dep't 1987) — §7-1  
 Reich v. New York City Transit Authority, 839 F. Supp. 171, 181-82 (E.D.N.Y.  
 1993) — §9-3  
 United States v. McNiece, 558 F.Supp. 612, 617 (D.C.N.Y. 1983) — §7-4

**North Carolina**

Rice v. Smith, 2007 WL 5379871 (M.D.N.C. 2007) — §§2-5, 3-8  
 State v. Brimmer, 653 S.E.2d 196, 199 (N.C. App. 2007) — §4-5  
 State v. Green, 334 S.E.2d 263, 265-66 (N.C. App. 1985) — §7-2  
 State v. Styles, 379 S.E.2d 255 (N.C. App. 1989) — §7-1

**North Dakota**

State v. Albaugh, 571 N.W.2d 345 (N.D. 1997) — §8-1  
 State v. Iverson, 187 N.W.2d 1 (N.D.), cert denied, 404 U.S. 956 (1971) —  
 §7-1

**Ohio**

Blue Ash v. Kavanagh, 862 N.E.2d 810, 813 (Ohio 2007) — §4-6  
 State v. Bridge, 573 N.E.2d 762, 764 (Ohio App. 6th Dist. 1989), jurisdictional  
 motion overruled, 551 N.E.2d 1304 (Ohio 1990) — §7-3  
 State v. Dewitt, 2007 WL 1934335 (Ohio App. 2nd Dist. 2007) — §7-3  
 State v. Mullins, 2006 WL 438662 (Ohio App. 5th Dist. 2006) — §4-5  
 State v. Neeley, 758 N.E.2d 745 (Ohio App. 1st Dist. Hamilton County 2001),  
 dismissed, appeal not allowed, 755 N.E.2d 351 (Ohio 2001) — §7-1  
 United States v. Barrett, 976 F.Supp. 1105, 1109 (N.D. Ohio 1997) — §4-9

**Oklahoma**

Buck v. State, 138 P.2d 115 (Okla. Crim.1943) — Chapter 1, §7-1

**Oregon**

State v. Harris, 547 P.2d 1394 (Or. App. 1976), overruled on other grounds by  
 State v. Plankinton, 661 P.2d 1387 (Or. App. 1983) — §7-1  
 State v. Slowikowski, 761 P.2d 1315, 1320 (Or. 1988) — §4-13  
 State v. Tourtillott, 618 P.2d 423 (Or. 1980), cert. denied, 451 U.S. 972 (1981)  
 — §8-1

**Pennsylvania**

Carita v. Kandianis, 1994 WL 583213 (E.D. Pa. 1994), aff'd, 65 F.3d 161 (3rd  
 Cir. 1995) — §3-7  
 Commonwealth v. Gwynn, 723 A.2d 143, 152 (Pa. 1999) — §5-3  
 Commonwealth v. Johnston, 530 A.2d 74, 79 (Pa. 1987) — §4-13  
 Commonwealth v. Patterson, 572 A.2d 1258 (Pa. Super. 1990) — §7-1  
 Marley v. City of Allentown, 774 F.Supp. 343, 345 (E.D. Pa. 1991), aff'd, 961  
 F.2d 1567 (3rd Cir. 1992) — §3-5

**Rhode Island**

State v. Webber, 716 A.2d 738, 741 (R.I. 1998) — §5-3

**South Carolina**

State v. White, 642 S.E.2d 607 (S.C. App. 2007) — §7-1

**South Dakota**

State v. Halverson, 277 N.W.2d 723 (S.D. 1979) — §8-1  
 State v. Lockstedt, 695 N.W.2d 718, 728 (S.D. 2005) — §4-2  
 State v. Nguyen, 726 N.W.2d 871, 878 n. 4 (S.D. 2007) — §4-16  
 United States v. Hernandez-Mendoza, 2008 WL 3200748 (D. S.D. 2008) —  
 §4-5

**Tennessee**

- Hugueley v. Dresden Police Department, 469 F.Supp.2d 507, 513 (W.D. Tenn. 2007) — §4-5
- State v. Brewer, 875 S.W.2d 298, 301 (Tenn. Crim. App. 1993) — §7-2
- State v. Jones, 735 S.W.2d 803 (Tenn. Crim. App. 1987) — §7-2
- State v. Shepherd, 902 S.W.2d 895 (Tenn. 1995) — §7-1
- Thompson v. State Farm Fire and Casualty Co., 548 F.Supp.2d 588, 592 (W.D. Tenn. 2008) — §5-3
- United States v. Howard, 448 F.Supp.2d 889, 898 (E.D. Tenn. 2006) — §4-16
- United States v. Page, 154 F.Supp.2d 1320, 1325 n. 1 (M.D. Tenn. 2001) — §4-16

**Texas**

- City of Garland v. Rivera, 146 S.W.3d 334 (Tex. App. Dallas 2004) — §3-1
- Johnson v. State, 673 S.W.2d 203 (Tex. App. 1983) — §7-1
- Kesler v. King, 29 F.Supp.2d 356, 372 (S.D. Tex. 1998) — §3-8
- Martinez v. State, 2006 WL 3720136 (Tex. App. 2006) — §7-2
- Risher v. State, 227 S.W.3d 133, 137 (Tex. App. Houston 1st Dist. 2006) — §7-5
- Smith v. State, 2004 WL 213395 (Tex. App. 1st Dist. 2004), cert. denied, 544 U.S. 961 (2005) — §4-15
- Trejos v. State, 243 S.W.3d 30, 53 (Tex. App. Houston 1st Dist. 2007) — §7-8
- United States v. Tarazon-Silva, 960 F. Supp. 1152, 1163 (W.D. Tex. 1997), aff'd, 166 F.3d 341 (5th Cir. 1998) — §4-15
- Winston v. State, 78 S.W.3d 522, 526 (Tex. App. 2002) — §7-2

**Utah**

- State v. Schultz, 58 P.3d 879, 885 (Utah App. 2002) — §5-3
- State v. Sims, 808 P.2d 141 (Utah App. 1991) — §8-1

**Vermont**

- State v. Bourassa, 399 A.2d 507 (Vt. 1979) — §7-1

**Virginia**

- Pelletier v. Commonwealth, 592 S.E.2d 382 (Va. App. 2004), cert. denied sub nom. Pelletier v. Watson, \_\_\_ U.S. \_\_\_, 128 S.Ct. 2913 (2008) — §§7-1, 7-2
- Truslow v. Spotsylvania County Sheriff, 783 F. Supp. 274, 279 (E.D. Va. 1992), aff'd, 993 F.2d 1539 (4th Cir. 1993) — §9-4

**Washington**

- Dickinson v. City of Kent, 2007 WL 1830744 (W.D. Wash. 2007) — §3-6
- Schlegel v. State Department of Licensing, 153 P.3d 244 (Wash. App. 2007) — §8-1
- State v. Loucks, 656 P.2d 480, 482 (Wash. 1983) — §7-3

- State v. Nicholas, 663 P.2d 1356 (Wash. App. 1983) — §7-1
- State v. Wieting, 85 Wash. App. 1011 (1997) — §7-2

**West Virginia**

- State v. Broughton, 470 S.E.2d 413 (W. Va. 1996) — §7-1

**Wisconsin**

- State v. Arias, 752 N.W.2d 748, 756 (Wis. 2008) — §4-5
- State v. Larsen, 736 N.W.2d 211, 216-17 (Wis. App.), review denied, 741 N.W.2d 241 (Wis. 2007) — §7-6