CHIEF OF LAW ENFORCEMENT

Edward P. Ackley

SARATOGA COUNTY S.P.C.A. POLICE

Society for the Prevention of Cruelty to Animals

HQ: 518-922-5025 - Cell: (518) 409-6703 - 1590 NY-146, Rexford, NY 12148PO Box 64
http://saratogacountyspca.org

EMPATHY FAIRNESS INTEGRITY PROFESSIONALISM RESPECT RESPONSIBILTY TRUSTWORTHINESS

Date: January 10, 2024

To: All Members of the SPCA Law Enforcement Incorporation
From: Chief Ed Ackley

Subj: Field Training Program

Reference:

(1) New York Laws, AGM - Agriculture and Markets, Article 26
(2) Environmental Conservation Law, 11-0512
(3) NYS Manual for Police
(4) NYS Penal Law
(5) NYS Criminal Procedure Law
(6) NYS Animal Cruelty Laws and Best Practices
(7) NYS Animal Cruelty Investigation Manual
(8) NYS DCJS Field Training Officer Manual

Recommended Readings:

(1) People v. DeBour, Street Encounters by Patrick L. McCloskey
(2) Animal Cruelty Investigations: A Collaborative Approach by Chris Ottemen
(3) NYS Search and Seizure, Street Encounters by Retired Chief Mike Ranalli
(4) Civil Liability of NY Law Enforcement Officers by Retired Chief Mike Ranalli

Appendix:

(1) Considerations in Policing

1. Effective immediately, SCPA will conduct field training for all newly hired police and peace officers. Field Training will be the most important objective in a law enforcement career. Field training sets the tone of operations in a law enforcement agency. A certified Field Training Officer (FTO) will be assigned to one newly hired police officer or peace officer.

2. Expectations of a newly hired police or peace officer: Follow all policies and procedures. Conduct oneself in a professional manner on duty and off duty. A professional appearance

always, our uniform represents the mission. Be prepared to fail many times but be humble toward growth. Keep alert and be determined to observe everything within sight and sound. Don't be afraid to act and step in. Be a Cop… Be a partner… Be a Team Player… ASK QUESTIONS… Be willing to continue when critiques are rough. Again, Field Training is the most important part of a law enforcement officer's career.

5. What we will cover, but not limited to:

A. Uniform Readiness

- Having a spare uniform available
- Ensure all battery related tools are charged
- Keep weapon clean
- Lube the handcuffs from time to time
- Always have body substance isolation protection (Gloves) in your pockets
- Glass Breaking Devise

B. Administration Readiness, Policies, Regulations, and Rules

- Required paperwork in go-bag
- Review of current policies, regulations, and rules
- Continued Education, 24 Hours Annually minimum
- Utilizing resources to aid in case work, i.e., check sheets and case submission forms, fellow investigators

C. Vehicle Inspections

- Ensure vehicle is fueled
- Conduct Inspections prior to and after all duty related matters
- Report any damage to the Chief per policy
- Once in-awhile please check fluids
- Ensure electronics work

D. County Orientation

- Drive as many roads as possible
- Road Test
- Key Locations in the County
- Determine normal activity
- Knowing client locations and supporters

E. Traffic Stops (Per Policy)

- Conduct Basic Stops, pertaining case work
- Importance of approach and position, blind spots, and dangers
- Discuss Investigative Stops and High-Risk Stops
- Importance of Probable Cause

F. Field Interviews during AGM Investigations (Per Policy)

- Purpose of a Field Interview
- Importance of gathering information
- Collection of Information
- Reading of Body Language
- Respecting surroundings
- Be NICE.

G. Subject Contact

- Triangular Theory

H. Physical Security Checks (As Directed)

- Clients Property
- Business Checks of 24 hour or care facilities
- And any property requested or required due to current or past cases

I. Proactive v. Reactive (As Directed)

- Continuous Mobile Patrolling
- Anti-Crime patrols
- Surveillance Patrolling: Stationary or Blackout
- Reporting Activities to Authorities Prior to Action

J. Community Policing Discussion: The relationship between police and communities can be tense. We are expected to resolve, mitigate, and understand with a focus on racial profiling, anti-bias, the LGBTQ community, and cultural awareness. It is difficult due to schedule needs to fulfill training opportunities developing oneself in community policing skills. Officers must want to improve the relations between law enforcement and the community. It is recommended that officers take the time to study Anti-Bias's, Autism Awareness, Communication Skills, Community Policing Strategies, Constitutional and Community Policing, Crisis Management, Cultural Awareness, Hate Crimes, Implicit Bias, Missing Persons with Alzheimer's, Problem Orientation, and Racial Profiling.

6. Here are the discussing points for Community Policing:

A. Police officers need to know that their role in the community is to work in partnership with community members to resolve or reduce problems for the benefit of those who live and work there.

B. Communities are best served when police officers and other community member's work together to identify, prioritize, and address issues that will improve the community quality of life.

C. What is community policing? Community policing is both an organizational and a personal philosophy that promotes police/community partnerships and proactive problem-solving to address the cause of crime, address the fear or perception of crime, and improve the overall quality of life in the community.

D. Essential components: Community policing is an acknowledgment that police officers need the community's help to solve community problems. Essential components of community policing are problem solving, addressing quality-of-life issues, partnerships with community and other law enforcement agencies, internal and external resources.

E. It is the goal of Law Enforcement to reduce and prevent crime, work on reducing the fear of crime, improve quality of life, develop and or increase community awareness, encourage and or increase community involvement, and increased community ownership.

F. The attitude we portray as law enforcement professionals sets the foundation for the opinions to grow positively or negatively among the community. Having an attitude of us versus them is counterproductive in all aspects of investigations and protecting the community we serve. Policing today has evolved from several organizational models developed over the years to improve law-enforcement professionalism.

G. In 1829 Sir Robert Peel developed a modern policing model that still works effectively today. His model, still relevant, states, "Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police. The police being the only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interest of community welfare and existence," (from Field training manual 2010 San Bernadino Sheriff's Department).

H. Traditionally and even now, policing is incident-driven, reaction-based, and enforcement-focused with limited community interaction.

I. Professional policing incorporates traditional policing components and emphasizes officer education and training. In addition, it forces officers to respect policies and procedures while developing themselves to be professionals for the community. This professionalism is a platform of standards toward behavior, which is recognized by the community as command and control.

J. Community policing combines elements of traditional and professional policing with an emphasis on community partnership. This type of effort leads to prevention and collaborative problem-solving to reduce crime, fear of crime, and improves quality life.

K. Responsibilities of a police officer in community policing is as follows: You will serve your community on many levels through enforcement, education and problem solving. You will carry out the philosophies and strategies of community partnership. You will maintain your law enforcement ethics as it was introduced to you during your basic police officer's standards training course and any additional professional development training you have received or seek in continued education programs. Here are good, continued law enforcement education programs to consider:
    1) Policeone, Online Training
    2) Law Enforcement E-Learning, Online Training
    3) U.S. Department of Justice (COPS) Online Training
    4) NYS DCJS Training Portal

L. It is your own individual responsibility to maintain good order and discipline, enforce the law, prevent crime, deliver service, educate, and learn from the community, work with the community to solve problems.

M. Key advice to all law enforcement regarding community policing, carry out your responsibilities as a law enforcement officer with the mindset of a generalist rather than a specialist. It is your duty and obligation to be proactive. This proactive approach means anticipating problems and acting in advance to addressing local concerns. Adopting a proactive approach as an individual law enforcement professional within this incorporation will illuminate or minimize crime related problems. This proactive approach will also prevent problems from becoming worse by preventing or reducing criminal opportunity, deterring potential offenders, and developing crime prevention strategies. There are times for reactive approach to all our duties as law-enforcement professionals. This means responding to criminal activity and problems after they have taken place. It is essential for the law enforcement professionals to handle each call or incident as a separate unique occurrence.

N. The community expects law enforcement to address violations of applicable laws and regulations. Objective enforcement by officers demonstrates the equal and unbiased application of the law.

7. The field training program will aid every member in surpassing requirements and expectations of SPCA. It is the intention of policy, professionalism, and dedication that all members of the SPCA are well verse in law enforcement.

E. P. ACKLEY
Chief, Instructor, FTO
CPOST # 2330-31725-10002

Considerations:

1. Driving Skill: Task Evaluation for Emergency Call driving skills

Are the driving behaviors safe and prudent for the situation?
Maintains control of the vehicle. Evaluates driving situations and reacts properly, i.e., proper speed for conditions. Appropriate use of emergency equipment.
Exercises appropriate responsibility to other traffic and traffic control devices.
Use and monitoring of radio while driving, appropriate decision to activate emergency lights/sirens, are BOTH activated at intersections, passing other motorists correctly, etc.
Vehicle checked for proper equipment (lights/siren working) prior to start or shift, back seats checked for contraband, review bi-weekly maintenance sheets.

2. Street Orientation:

Aware of location while on patrol. Properly uses the street guide or map. Can relate location to destination. Arrives within reasonable amount of time. Can provide others, directions to his location. Provides needed directions under stress conditions. Knows patrol jurisdiction.
Stop on any random street during patrol activities, does the Officer know location?
Verbalize a perimeter at a location.
Points of Interest: All school buildings and facilities, Parks, Village DPW's, Water Department's, Railyard's, and Electrical Substations.

3. Vehicle/Pedestrian Stops: Tactics/Techniques

Contact with subjects does probationary officer use necessary skills as instructed
Uses Officer Safety techniques
Observed proper probable cause for the stops
Determine appropriate charges
Chooses the proper location for the contact
Notifies dispatch of the location, license/pedestrian in question, i.e., DOB CID
Records information on UTT
Use position of advantage behind the vehicle/pedestrian
Uses all lighting to his/her advantage
Maintains visual contact
Uses proper approach

4. Radio: Transmission/Reception/Procedure

Radio procedures (phonetic alphabet, etc)
Radio transmissions clear and understandable
Listen to and comprehend radio transmissions
Mobile Data Terminal/ Mobile Data Computer (MDT)
Utilize the additional frequencies and when to use them
Uses short concise transmissions (proper voice control)
Aware of traffic in adjoining jurisdictions

Rarely requires the dispatcher to repeat radio information
Uses proper radio
Visit Saratoga County Department of Public Safety
Review different files that may be mentioned over the radio (file 1, 5, 6, 25, etc).

5. Suspect/Prisoner Control or Investigative Detention: Verbal/Physical/Search

Employ the principles and techniques of Officer Safety during encounters
Displays an awareness of potential danger from prisoners, suspicious persons, suspects, etc.
Follows accepted safety principles.
Maintains a position of advantage/stance.
Conducts visual and physical searches.
Proper handcuffing is used.
Uses proper transportation for suspect and citizens.

6. Self-Initiated Field Activity

Initiate field activity
When it is apparent that some action must be taken, does the probationary officer delay in initiating this problem-solving action for no apparent reason
Recognizes, initiates, and investigates suspicious activities and law violations.
Develops cases from routine activity.
Is Independently Motivated.
Has initiated activities during all available time.
Stays up-dated on current criminal information, such as wants, and warrants lists or vehicle theft hot sheets.

7. Arrest: Laws/P.C./Explanation/Dispositions

Apply the laws, or probable cause for arrest to the situation
Locate (common drive) and complete appropriate paperwork (appearance ticket, arrest report, etc)
Write thorough and informative reports
Put together a proper discovery packet
Understand use of appearance tickets and arraignment criteria (mandatory arraignments)

8. Interview/Communication Skills

Obtain the necessary information at the time of the initial contact
Able to ask pertinent questions relating to the contact
Questioning follows a logical plan, ask appropriate investigative questions
Adequately relay why he is engaging in a specific activity to people he is speaking with (vehicle stop, neighborhood canvass, field stop, etc)
Provide adequate advice to people
Recognizes and investigates the incident by obtaining a complete understanding of the facts
Separates facts from opinions
Maintains control of the proceeding, calm, and controlled attitude
Demonstrates good crime scene protection skills
Connects evidence with suspect when apparent
Elicits most available information and records same

9. Knowledge of Department Policies and Procedures

Acceptable level of knowledge of Policy and Procedures
Familiar with most applied policies and procedures and complies with them
Willing and able to look up unknown subjects or material
Knowledge (especially on high liability orders such as DV, UOF, Pursuit, Search and Seizure, etc)

10. Traffic Accidents

Ability to conduct a basic accident investigation
Complete the necessary paperwork
Capable of completing the investigation in a timely manner
Assess the situation accordingly
Utilizes patrol car or other means to properly protect the scene
Obtains the necessary information for completing the investigation
Properly explains process to individuals and provides them with necessary paperwork

11. Domestic Violence (CPL 140.10 Section)

Responding to domestic violence cases in a safe manner (arriving at scene, contact with partner is maintained, etc)
Eliciting the proper information from victims, witnesses, and suspects
Understand how to utilize a 710.30
Is evidence properly documented
Is the DIR correctly filled out?
Does the Officer understand mandatory arrest?
Does the Officer understand mandatory arraignments?
Considers issues like medical releases, child abuse hotline, submitting DIR to probation and parole, etc.
Review the repository and OOP verifications.
Review Victims' Rights Info for DV, Crime Victims, Sexual Assault Bill of Rights
Document in RMS Report that a DIR was completed, victim rights provided, OOP requested or violated, if DIR required a copy to probation/parole
Understanding of Mandatory Arrest (By Penelope D. Clute, Former Clinton County District Attorney):

- New York law dramatically changed when the legislature amended the Criminal Procedure Law to require the police to make arrests in domestic violence cases when there was probable cause to do so, regardless of the wishes of the victim. Where the evidence establishes probable cause to believe that a misdemeanor or felony was committed, the police are prohibited from even asking the victim about whether to arrest.

- Since passage of this "mandatory arrest" law, the emphasis has been on police training, to change past practice of putting the arrest decision in the hands of the victim. The effectiveness of this law, and the efforts to stop domestic violence, can be greatly enhanced by thoughtful use of the Penal Law.

- To simply say that we now have a "mandatory arrest" law begs that question of "arresting for what?" What is the appropriate charge to

file? Police and prosecutors are used to struggling with the definition of "physical injury" required for assault and concluding that the violent attack can only be charged as "Harassment," since the injuries do not meet the Penal Law definition.

- Are there other answers? Yes. For example, what looks like Harassment (Penal Law 240.26, subd.1) can be charged as Attempted Assault (Penal Law 110.00 and 120.00). Where there is the intent to injure and conduct trying to do so, but fortunately the victim is not injured sufficiently to fit the Penal Law definition in section 10.00, then the crime is Attempted Assault 3rd. When charging the B Misdemeanor of Attempted Assaulted 3rd, the police have the power to make the arrest, and are not dependent upon the victim's willingness, as is the case for a Violation that is not committed in the presence of the police. If the defendant tried very hard to cause injury, or used a dangerous instrument or weapon, it may be the Felony of Attempted Assault 2nd.

- If the defendant used an object to threaten the victim (Menacing – Penal Law 120.14, subd. 1), that object probably qualifies as a "dangerous instrument" under Penal Law 10.00. If so, the defendant can be charged with Criminal Possession of a Weapon 4th (Penal Law 265.01, subd. 2). If the defendant has a prior conviction for any crime, even DWI, then the weapons charge is elevated to the Class D Felony of Criminal Possession of a Weapon 3rd (Penal Law 265.,02, subd. 1). Thus, a misdemeanor Attempted Assault or Menacing, or perhaps even an Harassment, can be coupled with a felony weapons charge. If the defendant's prior crime is a felony, now he is a second felony offender facing mandatory state prison.

- Another felony which may be present in what at first looks like an Harassment, Attempted Assault or Criminal Mischief situation is Burglary 2nd (Penal Law 140.25. subd. 2). This Class C Violent Felony can be charged when the defendant unlawfully entered the victim's home with the intent to threaten or assault her or to damage her property. Furthermore, the entry is unlawful if it is in violation of a "stay away" Order of Protection. If the defendant also causes physical injury or threatens the use of a dangerous instrument, while he is unlawfully in the dwelling, then it is Burglary 1st (Penal Law 140.30, subds. 2 or 3), a Class B Violent Felony. Criminal Contempt 2nd, 1st or Aggravated Criminal Contempt (Penal Law sections 215.50, 215.51, and 215.52) may be chargeable, as well.

- Since domestic violence is most often a "continuing offense," not simply the single instance which you are now charging, ask the victim what led up to this particular violence and whether anything like this happened before. The more you learn about the relationship between the victim and the defendant, the more crimes you are likely to find.

- Menacing 2nd (Penal Law 120.14 subd. 2) is one of the few crimes defined as a "continuing offense" allowing a single charge to

encompass numerous acts committed by the defendant over a period of time. Endangering the Welfare of a Child (Penal Law 260.10) is also a continuing offense. Although these crimes are only misdemeanors, charging them will allow the victim to testify about the nature of the relationship, including non-criminal bad acts, so the jury will better understand why she stayed, complied with his demands, etc. It also avoids the uncertainty of trying to admit evidence of uncharged crimes through the Molineux Rule.

- A rarely used but very appropriate crime in many domestic violence cases is Coercion (Penal Law 135.60 and 135.65). Coercion should be charged when the defendant gets the victim to do what he wants, like staying with him, having sex with him or keeps her from doing what he doesn't want, like calling the police – by instilling in her a fear of physical injury or damage to property if she does not comply.As you listen to victims talk about what has gone on, keep this crime in mind and you will realize that it very accurately reflects what happens in many domestic violence cases. Police and prosecutors are used to dealing with specific instances at a particular date and time. Yet, since the dynamics of domestic violence are those of exercising power over another, the particular incident may appear not to fit traditional criminal definitions – until you look at Coercion. As an added attraction, Coercion is unique in the New York Penal Law in that the felony definition (135.65, subd. 1) is identical to the misdemeanor (135.60 subd. 1 and 2) when fear of physical injury or property damage is instilled.

New York State has "mandatory arrest" for domestic violence cases. This means that in an intimate partner relationship the police must make an arrest when:

- A felony is committed
- A person disobeys an order of protection by making contact when there is a stay away order
- A person disobeys an order of protection by committing a family offense crime (see Domestic Violence Acts)

In mandatory arrest cases, even if victim ask the police not to make an arrest, they must do so. But, the police don't have to make an arrest when you don't want them to if:

- There is no order of protection, and
- The abuser commits a misdemeanor crime.

The police are not allowed to ask victim if they want the abuser arrested or if victim want to "press charges." But the police can make an arrest if they think that is the best course of action.

A mandatory arrest does not always happen right away. It means that the police must make an arrest even if the abuser leaves before the police arrive.

Whenever the police investigate domestic violence, they must give the victims written notice of their legal rights. See Information for Victims of Domestic Violence. CPL 140.10(4)

12. Driving while Intoxicated Investigations (VTL 1192 Sections)

Know how to investigate a DWI Case

Conduct proper SFST's
Properly conduct all three phases of a DWI Stop (vehicle in motion, operator observation, pre-arrest tests)
Review blook kit contents/how to complete
Review DWI Warnings and Field Note Card
Discuss Felony DWI
Leandra's Law (Child Under 16 y/o): Leandra's Law (Child Passenger Protection Act) is a New York State law making it an automatic felony on the first offense to drive drunk with a person aged 15 or younger inside the vehicle, and setting the blood alcohol content, or BAC, at 0.08.
Leandra's Law was named in honor of Leandra Rosado, an 11-year-old girl who was killed while she rode in a car with the intoxicated mother of one of her friends. In response to this tragedy, the NYS Legislature made several changes to the Vehicle and Traffic Law (VTL):
First time offenders driving while intoxicated (.08 Blood Alcohol Content [BAC] or more) or impaired by drugs, with a 15-year-old or younger child passenger can be charged with a class E felony punishable by up to 4 years in prison.
People charged with driving with a blood alcohol level of .08 or greater with a 15-year-old or younger child passenger automatically have their license suspended during the criminal case.
Drivers who drive while intoxicated or impaired by drugs and cause the death of a 15-year-old or younger child passenger may be charged with a Class B felony, punishable by up to 25 years in State prison.
Drivers who drive while intoxicated or impaired by drugs and cause serious physical injury to a 15-year-old or younger child passenger may be charged with the Class C felony, punishable by up to 15 years in State prison. Even if no child is in the vehicle, anyone convicted of any felony or misdemeanor drunk driving offense is sentenced - in addition to any fine, jail or prison sentence – to a period of probation or conditional discharge. During that period, the driver is required to install and maintain an Ignition Interlock Device, for at least 12 months, in any motor vehicle he or she owns or operates. The driver also has an ignition interlock restriction added to his or her driver's license.
A parent, guardian, custodian, or anyone legally responsible for a child who is charged with driving while impaired by alcohol or drugs while that child is a passenger in the car is reported to the Statewide Central Register of Child Abuse and Maltreatment by the arresting agency.

13. Report Writing: Accuracy/location of forms/proper content

Prepare written/computerized reports/forms accurately and completely
Acceptable, appropriate amount of time in completing necessary forms / reports
English usage, clearly communicate in writing the events
Grammar acceptable
Completed forms neat and legible
Organize his/her reports
Obtain details necessary to complete a proper report
Facts from the scene and persons on scene and document them correctly
Appropriate amount of detail (who, what, where, when, how)
Working knowledge of RMS, TRACS, Evidence, Livescan, Scan Folder, File Cabinet
Complete the applicable forms in each system without assistance

14. Constitutional Issues:

Knowledge of the criminal procedure law
Knowledge of basic sections and their elements
Relate elements to observed activity
Knowledge regarding search and seizure, Miranda rights, execution of warrants (when to enter residence), warrantless arrests, etc.
Possess an acceptable level of knowledge of the Penal Law and Local Ordinances
Apply elements of the CPL for commonly encountered situations
Knows where to find information in the CPL

15. Processing Defendants

Livescan system to fingerprint and photograph suspects
Understand how to check and make sure DCJS received the prints (ETFS events, EJustice, 24-hr number)
Understand how to obtain and enter the RICI number?

16. Jail Transports

Check Vehicle prior to and after transport
Transport inmates to local jails in a safe manner
Restraints
Proper paperwork
Properly following jail procedures

17. CAP Arraignments/local arraignments

Understand how to do in-person arraignments,
Bring the proper paperwork to the court, Copies, NOT originals
Properly notify the jail of arraignment (CAP judge),
Understand mandatory arraignments (DV arrest, certain Felonies).
Know what paperwork goes to Court and where the court box is located

18. Officer Safety: calls for service

Demonstrates Officer safety on calls
Utilize proper contact and cover options, fatal funnel, park and approach safely, safe distance between self and others, hands out of pocket
Know the difference between contact officer and cover officer
Observe area and determine means of tactical advantages

19. Evidence handling on scene and proper logging/packaging of evidence.

Recognize potential evidence on a scene
Take adequate protective measure with the evidence
Evidence packaged properly
Chain of Custody documented and maintained properly
The item(s) entered RMS properly
Item(s) packaged properly for the evidence room
Understanding of what temporary locker to use (refrigerated or not, etc.)
Are firearms checked in eJustice?
Hypodermics in sharps container,
Long Guns in large locker
Small guns in bags

Money separated by bill amount and counted separately
Drugs secured on scene and processed at station
Difference between SAFEKEEPING and EVIDENCE
Explain use of small evidence box in cabinet located in evidence room

20. Equipment/Task Proficiency Test

Must know how to locate and use the following equipment safely and preform the associated tasks on the list effectively.

Demonstrate how to use Narcan
Demonstrate how to use a Blood Kit (verbal review)
Demonstrate how to use the Tint Meter
Demonstrate how to use the Water Rescue Equipment
Demonstrate how to use the AED (verbal review)
Demonstrate how to use the stop sticks
Demonstrate how to use the lock out kit (emergency situations)
Demonstrate how to use the jump pack/cables (verbal review)
Demonstrate how to use the PBT

21. Death Investigations (Adult, Child, Infant)

Notify Chain of Command
Use investigative packet
Introduce self and role to people/family on scene
Exercise scene safety (have people/family outside or in other room)
Secure Area the Decedent is
Have EMS confirm/pronounce death if necessary/Printout
Notify Coroner
Walk-through and observe
Collect, Inventory, Safeguard Property and Evidence
Interview witness(es) at the scene
Photographs of area and decedent
Establish Decedent Identification
Document the discovery history as you found or advised
Determine Terminal Episode/Illness History, i.e., DNR
Determine Medical History, i.e., illness/medications/other
Determine Mental Health History
Document any Social History, electronic or friends
Document Postmortem Changes identified by Coroner
Determine notification procedures of next of kin or other
Ensure Security of Remains
Perform proper exit procedures and advise dispatch of removal

22. Missing Person

Conduct initial interview with caller
Use a File 6 Missing Report sheet when conducting interview
You have at minimum of 2 hours to broadcast a File 6
Age and disabilities MUST be considered
Attempt a current picture
Attempt ping if person has a cell phone
Determine if person is suicidal, get proof

Is person a risk to others?
Collect any associations and locations
Once File 6 is entered via dispatch or self, conduct an ATL
Preserve scene or track for K-9
Constantly seek current information
Pass to next shift and ensure effort continues
Use social media to your advantage
Consider Amber Alert

23. First Aid

Review content in first aid kit
Become familiar with AED
Discuss or performed CPR
Discuss or demonstrate stop the bleeding
What is shock and how to prevent
Diabetic emergencies
Knowledge of medical alert tags and locations
Severe head injuries
Chest and abdominal injuries
Breaks and fractures, stabilize
Burns and treatment
Strokes, identifying and treatment
Unconscious person, steps to determine cause
Intoxicated persons and determine if EMS or LE will handle

24. Stolen Vehicle (PL 165 Sections)

Conducting an interview that captures elements sufficient to investigate
Receive proof of ownership, i.e., title, registration, insurance
Complete report
Issue a File 1 via dispatch or eJustice
Be cautious of fraud or inaccurate complaint
Does subject have weapons
Does subject have a criminal history
Is there a possible destination or known location
Attempt to locate, use resources available
If you come in contact with a stolen vehicle:

- Proceed with caution
- Unknown if subject is violent, or even knows vehicle is stolen
- Call for an additional unit
- If File 1 is confirmed, detain subject(s)
- Advise all parties in vehicle that vehicle is listed stolen
- Investigate culpability to ensure a crime is knowingly completed
- Tow vehicle
- Take plates and place in evidence
- Take photos prior to tow, capture VIN, inside/outside of vehicle
- Photos show how vehicle was found by officers
- Notify reporting agency/Owner/Release Vehicle
- Cancel File 1

25. Assault and Related Offenses (PL 120 Sections)

Like Domestics, observe what is happening as you approach
Interview all people involved from: witnesses, caller, victim, subjects, suspect
Children, Juveniles, Adults maybe be victims of a crime
Determine if weapons, deadly weapons, or dangerous instruments used
If weapons were used, think about charging menacing
There are cases that vehicles are used as weapons
Determine if case is gang, hate crime or non-bias related
Determine if the case is or is not hazing related
Determine if case is or is not a kidnapping, sex offense or unlawful imprisonment
There are times that assaults are retaliation from stalking
Determine if there was criminal obstruction of breathing
Have all injuries evaluated by EMS
Capture statements
Capture photo's
Collect video surveillance of crime
Charge attempted assault for intended failed attempt to injure victim(s)
Charge endangering if act was reckless, potential of serious injury or death

26. Trespass and Burglary Offenses (PL 140.00 Sections)

Is this in progress (Priority 1), or prior (Not Priority)
In progress incidents, shut lights and siren down blocks away from occurrence
Approach with caution and ensure additional units are en-route
Wait for backup
Clear premises by isolate, locating, and detaining
Interview complainant
Capture statement(s)
Take photo's
If property is vacant, determine rights of person(s)
Determine if act is violation of criminal
Collect evidence

27. Control Substances (PL 220 Sections)

Health and safety are a priority
Ensure you use mask and rubber gloves when in contact
Determine if there is criminal or EMS related
Plain view, consent, or probable cause to believe led you to findings
Prescription, depressant, dangerous depressant, or hallucinogenic
On school grounds or other locations, i.e., vehicle, field interview, businesses
Determine if it will be evidence or safe keeping due to public health and safety

28. Criminal Mischief (PL 145.00 Sections)

Was act witnessed or not
Determine extent of damage
Private property, public property, businesses, government
Capture statements
Is subject known or not
Be prepared to put together a photo array, like assault cases
Have an open mind to complainant being a suspect

29. Criminal Possession of Stolen Property (PL 165.40 Section)

Determine if stolen property was in a house, vehicle, on person
710.30's is your friend during these investigations
Check for files on eJustice
if this is reported from another agency, they take the larceny and you charge for possession, primary agency can take subject, you can charge later
Determine how subject came in contact with stolen property after Miranda's
Can't stress it enough, photos and statements

30. Fraud (PL 190.00 Section)

This is a broad arena from, welfare to insurance
Most common here is unlawful collection and false statement of credit terms
Remember that fraud is a scheme in efforts to obtain property
Collect proof of fraud
Capture statement
Determine the source of fraud initiated
Advise complainant to look into ID Check platforms like Life Lock

31. Larceny (PL 155.00 Section)

Determine if criminal act was observed or not observed
Ensure reporting person is victim
Description of person who committed the crime
Get value of item stolen
Capture a larceny statement
Canvas area and conduct additional interviews, witnesses
Check for video from homes and businesses
If victim is aware of the person, ATL for subject

32. Disorderly Conduct (PL 240 Section)

Did crime take place in your presence?
Receive statements from victim(s)
Photos of injury(s)
Generate charging document for victims' signature
Issue Appearance Ticket
Miranda Warnings are not required for Violation's

33. Harassment 2nd (PL 240 Section)

Did crime take place in your presence?
Receive statements from victim(s)
Photos of injury(s)
Generate charging document for victims' signature
Issue Appearance Ticket
Miranda Warnings are not required for Violation's

34. Suicide

Unattended, follow the death investigation guideline
In progress, you must render aid and save life once scene is safe
EMS is notified for life saving measure once scene is secured

Have all person exit area or premises for additional officers to interview
Investigate the probability of this incident being promoted by another person
Seek permission from victim during interview to get messages, voice or text
Console with victim as victim is being evaluated by EMS
Victim cannot RMA, must go to hospital as 9.41 under MHL
Get medical release form signed
Request medical documents
Interview any contact on phone to determine if this was self-initiated or promoted
If promoted, interview possible suspect(s) at PD
Consider charging promoting a suicide attempt, a class E felony. A person is guilty of promoting a suicide attempt when he/she intentionally causes or aids another person to attempt suicide.
If victim succumbs to injuries, consider charging manslaughter 2nd and murder 2nd

35. Mental Health, 9.41 and 22.09

Determine if incident or act is active or passive
Who is the caller, relationship? It might be the subject calling…
If the caller is not the subject, receive as much information possible to establish
- Probable Cause of Arrest
- Requesting a pick-up order

Is there a history of mental Health related incidents?
Consider location of the subject
Consider weapon accessibility
Advise immediate family to request pick-up order if conditions allow the time
If subject makes suicidal comments in your presence, you can detain and transport
Officer Safety

36. Misapplication of Property PL 165.00

Determine if this is in relation to larceny or possession of stolen property
Prove that subject did not have the permission by the owner to encumber item
Prove that subject did not have permission to unlawfully dispose of item
Must receive statement that an agreement that item will be returned to the owner
Prove that subject intentionally refuses to return personal property valued more than one hundred dollars

37. Child Abuse

Review content of complaint
Is there question of concern for life, health, safety
Advise supervisor of nature of complaint
Investigate complaint and observe:
- Physical condition
- Sleeping and eating area's
- Interaction among family or caregiver/guardian
- Observe family/caregiver/guardian's behavior and actions

Obtain family history and previous residences
File report immediately to NYS Child Abuse and Maltreatment Registry
Take photos of child and home if required
Complete RMS report and request **Care Center** interview

38. Kidnapping and Abductions (PL 135.00 Section)

Rare, but one has taken place in Hudson Falls when 15-year-old was found in NYC
Chargeable offenses, PL 135 sections
Investigation tips:

- Notify Supervisor or Chief
- Interview complainant and determine what act took place that interfered with victim's freedom of movement
- What was the daily routine of family prior to kidnapping?
- Get a recent photo of victim
- If photo is not available, get a detailed description
- Consider getting County, State, and Federal (FBI) involved immediately
- Receive written authorization from victim's guardian/family/complainant to intercept mail addressed to them from kidnapper
- Consult with phone company to tap lines for tracing
- Amber Alert for 17 y/o and younger
- Transmit a File 6
- Get copies from Amber Alert of "Authorization to Publicize"
- Throughout investigation and as information is received, determine if this incident involving victim was "Restrain" or "Abduction", Restrain will be unlawful imprisonment and Abduction will be kidnapping.

39. Structure Fires

Park patrol unit away from scene
Take notice of hydrants near area
Confirm conditions by conducting a 360 size-up
Stand immediately near building to guide first arriving FD Apparatus
Keep non-essential people away from Fire Crew
As soon as FD initiate offensive/defensive fire attack, conduct interviews
Observe people watching
Look for suspicious or curious individuals
Take photos of operations and conditions
Provide input and photos to Fire Coordinators
If there's death, complete a investigative packet

40. CASE LAW Review and Understanding

Terry v. Ohio -- Terry v. Ohio, 391 U.S. 1 (1968), the Supreme Court ruled that an officer may conduct a frisk when two conditions are present. First, the investigatory stop must be lawful, based on reasonable suspicion that the person detained is committing, is about to commit, or has committed, a crime. Second, to progress from a stop to a frisk, the officer must reasonably suspect that the person stopped is armed and dangerous. Two years ago, in Brendlin v. California, 551 U.S. 249 (2007), the Supreme Court held that a traffic stop constitutes a seizure of a vehicle's passengers as well as the driver. The temporary seizure of the vehicle occupants normally remains reasonable for the duration of the stop. The Court held that Johnson remained lawfully seized for the duration of the traffic stop. Thus, the first requirement of the Terry v. Ohio frisk rule was satisfied. Because there was also reasonable suspicion that Johnson was armed, the frisk was proper.

Graham v. Connor – 4th Amendment -- On November 12, 1984, Dethorne Graham, a diabetic, had an insulin reaction while doing auto work at his home. He asked a

friend, William Berry, to drive him to a convenience store in order to purchase some orange juice to counter his reaction. When they arrived at the store, Graham rapidly left the car. He entered the store and saw a line of four or five persons at the counter; not wanting to wait in line, he quickly left the store and returned to Berry's car. Officer M.S. Connor, a Charlotte police officer, observed Graham entering and exiting the store unusually quickly. He followed the car and pulled it over about a half mile away. Graham, still suffering from an insulin reaction, exited the car and ran around it twice. Berry and Officer Connor stopped Graham, and he sat down on the curb. He soon passed out; when he revived, he was handcuffed and lying face down on the sidewalk. Several more police officers were present by this time. The officers picked up Graham, still handcuffed, and placed him over the hood of Berry's car. Graham attempted to reach for his wallet to show his diabetic identification, and an officer shoved his head down into the hood and told him to shut up. The police then struggled to place Graham in the squad car over Graham's vigorous resistance. Officer Connor soon determined, however, that Graham had not committed a crime at the convenience store and returned him to his home. Graham sustained multiple injuries, including a broken foot, because of the incident. Graham filed § 1983 charges against Connor, other officers, and the City of Charlotte, alleging a violation of his rights by the excessive use of force by the police officers, unlawful assault, unlawful restraint constituting false imprisonment, and that the City of Charlotte improperly trained its officers in violation of the Rehabilitation Act of 1973. The City of Charlotte filed for a directed verdict, which the district court granted. Graham appealed the ruling on the use of excessive force, contending that the district court incorrectly applied a four-part substantive due process test from Johnson v. Glick that considers officers' "good faith" efforts and whether they acted "maliciously or sadistically". He instead argued for a standard of "objective reasonableness" under the Fourth Amendment. The United States Court of Appeals, Fourth Circuit, rejected this argument, reasoning those concepts such as "good faith" are relevant to determining the degree of force used. It affirmed the directed verdict, holding that a reasonable jury could not have found in Graham's favor.

Minnesota v. Dickerson -- A police officer lawfully pats down a suspect's outer clothing and feels an object whose contour and mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons. However, the continued exploration of the item after concluding the item is not a weapon exceeds the scope of lawful authority. May officers seize nonthreatening contraband found on a person during the course of a frisk, Yes.

Florida v. J.L. -- The court affirmed a judgment holding that a Terry "stop and frisk" search of respondent based only on an anonymous tip was invalid under U.S. Const. amend. IV. Respondent was searched after an anonymous caller reported to the police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. The court held that an anonymous tip that a person was carrying a gun was, without more, insufficient to justify a police officer's stop and frisk of that person. The tip pointing to respondent lacked the moderate indicia of reliability necessary because the call provided no predictive information to enable the police to test the informant's knowledge or credibility. Further, the accurate description of respondent's appearance was not enough since the reasonable suspicion at issue required that the tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. Finally, the court declined to

modify the Terry standard to license a "firearm exception" since it roved too far from the court's established reliability analysis.

Pennsylvania v. Mimms -- Pennsylvania v. Mimms, Traffic stops are something most officers do daily. More frequently we are being recorded by the occupants, as they try to assert their rights, whether existent or fiction. Can you force a driver to roll down their window? What about turn off their radio? Rather than trying to control everything within the car, how about just removing the driver from the car? Pennsylvania v. Mimms grants officers the ability to order the driver out of the car. If there's more than one person in the car, Maryland v. Wilson allows us to remove them as well. These are good cases to keep fresh in your mind when you encounter an argumentative driver.

Garrity v. New Jersey -- Police officers in certain New Jersey boroughs, were questioned during the course of a state investigation concerning alleged traffic ticket "fixing." Each officer was first warned that: anything he said might be used against him in a state criminal proceeding; he could refuse to answer if the disclosure would tend to incriminate him; if he refused to answer, he would be subject to removal from office. The officers' answers to the questions were used over their objections in subsequent prosecutions, which resulted in their convictions. The State Supreme Court, on appeal, upheld the convictions despite the claim that the statements of the officers were coerced by reason of the fact that, if they refused to answer, they could, under the New Jersey forfeiture of office statute, lose their positions. That statute provides that a public employee shall be removed from office if he refuses to testify or answer any material question before any commission or body which has the right to inquire about matters relating to his office or employment on the ground that his answer may incriminate him. On the grounds that the only real issue in the case was the voluntariness of the statements, the State Supreme Court declined to pass upon the constitutionality of the statute, though the statute was considered relevant for the bearing it had on the voluntary character of the statements used to convict the officers. The officers appealed to this Court under 28 U.S.C. § 1257(2), and the question of jurisdiction was postponed to a hearing on the merits.

Chimel v. California -- Chimel v. California, 395 U. S. 752 (1969), the Supreme Court approved a search incident to arrest of the "lunge area" on two theories. First, the suspect could reach a weapon and endanger the officer. Second, the suspect could grab and destroy evidence. Once the suspect is handcuffed and moved away from the vehicle, the suspect's ability to reach evidence or a weapon is eliminated, or at least significantly reduced. Thus, no search incident to arrest is permissible under the rationale that the suspect can destroy evidence or reach a weapon. One of the practical dangers of the decision in Arizona v. Gant is that some officers may conclude that there is a practical balancing act, a tactical trade off. Leave the suspect unsecured, unhandcuffed, and near the car, and there remains the possibility that that suspect would lunge toward a weapon and thus, the legal justification for the search remains. The legal justification may come at the cost of a significant risk to the officers' safety.

Illinois v. Wardlow -- Illinois v. Wardlow, In Terry, above, we discuss various conditions that lead to reasonable suspicion. Wardlow tells us that unprovoked

flight or evasive behavior, as well as being in a high-crime area, are in fact relevant issues in determining reasonable suspicion for a Terry stop and frisk. This case discussed common inferences on human behavior, which allows officers to use their experience and knowledge to make assumptions such as determining that eye contact followed by turning and running, is as we say “a clue.” Make sure that you and your trainee understand the additional factors in this case, such as the bag the suspect was holding, and the area in which he was first observed. Justice John Paul Stevens, who both concurred and dissented, was clear to state that unprovoked flight alone, in his opinion, was not enough. Seeing an officer pull up in front of a convenience store and stepping inside, for instance, would surely not suffice for a Terry Frisk.

Florida v. Bostick -- Florida v. Bostick, Bostick was on a charter bus that was soon to depart. Officers stepped aboard and confirmed his identity compared to his ticket. They asked to search his luggage, having no reason to suspect him of any crime. He consented and cocaine was located. Bostick then argued before the court that he didn’t feel free to leave or decline the request, and thus his rights were violated. You really should read this case. Both the majority justices and the dissent make excellent arguments, and you can see how this case could change based on who is serving on SCOTUS at the time. The majority held that “simply because a police officer approaches an individual and asks a few questions” does not mean they are being “detained, as long as the police do not convey a message that compliance with their requests is required.” One of the key points was the question of whether Bostick, being in the tight confines of a bus, could have felt free to leave or decline. The majority made an interesting argument. The bus was leaving soon, so Bostick didn’t feel free to leave his seat, by his own choosing. The officers didn’t keep him there. Rather, his decision to take the bus kept him there. The question was, really, would a reasonable person feel free to decline a warrantless search? The majority said yes, the dissent clearly said no.

Miranda v. Arizona -- 384 U.S. 436 (1966)-The Miranda case is a very important case to law enforcement. The United States Supreme Court established an irrebuttable presumption that a statement is involuntary if made during a custodial interrogation without the "Miranda Warnings" given. The warning requirements only apply when a person is in custody and interrogated. In this case, "custody" is an arrest or when freedom is significantly deprived to be equivalent to an arrest. "Interrogation" is the use of words or actions to elicit an incriminating response from an average person.

Maryland v. Wilson -- An officer making a traffic stop may order passengers to get out of the car pending completion of the stop. Statements by the Court in Michigan v. Long, 463 U. S. 1032, 1047-1048 (Mimms "held that police may order persons out of an automobile during a [traffic] stop" (emphasis added)), and by Justice Powell in Rakas v. Illinois, 439 U. S. 128, 155, n. 4 (Mimms held "that passengers ... have no Fourth Amendment right not to be ordered from their vehicle, once a proper stop is made" (emphasis added)), do not constitute binding precedent, since the former statement was dictum, and the latter was contained in a concurrence. Nevertheless, the Mimms rule applies to passengers as well as to drivers. The Court therein explained that the touchstone of Fourth Amendment analysis is the reasonableness of the particular governmental invasion of a citizen's personal security, 434 U. S., at 108-109, and that reasonableness depends on a balance between the public interest

and the individual's right to personal security free from arbitrary interference by officers, id., at 109. On the public interest side, the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver, as in Mimms, see id., at 109-110, or a passenger, as here. Indeed, the danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. On the personal liberty side, the case for passengers is stronger than that for the driver in the sense that there is probable cause to believe that the driver has committed a minor vehicular offense, see id., at 110, but there is no such reason to stop or detain passengers. But as a practical matter, passengers are already stopped by virtue of the stop of the vehicle, so that the additional intrusion upon them is minimal.

Zuress v. Newark, No. 19-3945 (6th Cir. 2020)-Zuress was actively resisting arrest and was bitten by a police dog. The dog continued to bite for 24 seconds after she was subdued. She sued claiming excessive use of force. The Court held that the deployment of the dog was justified and that the continued bite for 24 seconds was not an excessive use of force. The fact of the case was that for the 24 seconds the officer was trying to get the dog to release the bite. While the officer was working to get the dog to release his bite, the continued bite was not a "means intentionally applied." Therefore, the continued bite was not a Fourth Amendment violation.

Lange v. California, No. 20-18 (SCOTUS 2021)-A California Highway Patrol Officer tried to stop Lange on traffic using emergency lights for playing loud music and honking his horn. Lange did not stop. He drove to his home and pulled into his garage. The officer followed Lange into his garage. He saw signs of intoxication and arrested him. Lange moved to suppress evidence after the officer entered the garage. The lower court denied the request. Lange appealed to the California Court of Appeal. This court held that Lange could not defeat an arrest begun in a public place by retreating into his home. The pursuit of a suspected misdemeanant, the court held, is always permissible under the exigent-circumstances exception to the warrant requirement. SCOTUS refused to create a categorical rule allowing the warrantless home entry when a suspected misdemeanant flees the police. The flight of a suspected misdemeanant does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter—to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanant fled. SCOTUS held in the case **US v. Santana** in 1976 that we can pursue a felon into a home without a warrant, but it never established a ruling on pursuing misdemeanants, until now.

Cunningham v. Shelby County Tennessee, No. 20-5375 (6th Cir. 2021)-Deputies responded to a of a suicidal person. The woman told dispatch that she had a .45 cal. gun and would kill anyone that came to her residence. Deputies arrived. The woman walked into the driveway carrying the gun. She raised it up and a deputy shot her. She continued to raise the gun and walk forward. Another deputy fired. 10 shots were fired and 8 struck the woman. She died at the scene. The gun she had was a BB gun. The incident was recorded on a deputy's dashcam. The deputies were sued for excessive force. The district court judge denied the deputies' motion for summary judgment on claims of qualified immunity. The judge analyzed the shooting by reviewing the shooting video frame by frame. The Circuit Court held that the

deputies' actions were supported by the circumstances and their actions were reasonable. The Court further stated that the district court's actions of reviewing the video frame by frame violated Graham v. Connor my judging the reasonableness of the use of force based on 20/20 hindsight. The frame-by-frame analysis did not tell the full story considering how quickly the incident occurred. The deputies' perspective did not include the stop-action viewing of the incident when determining the use of force. The case was reversed, and the district court was ordered to grant summary judgment to the deputies.

US v. Cooley, No. 19-1414 (SCOTUS 2021)-Held: A tribal police officer has authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law.

Torres v. Madrid, No. 19-292 (SCOTUS 2021)-Police went to an apartment complex to arrest a woman (not Torres) on a warrant. Police saw Torres and tried to talk with her. She was high on methamphetamines and fled in a vehicle. Police shot Torres, but she escaped. She was caught and arrested the next day at a hospital. She sued for excessive use of force. The district and 10th Circuit courts held that since the officers use of force did not lead to an actual seizure of her, she could not sue. She appealed to SCOTUS. SCOTUS held: The application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued.

Arizona v. Johnson, 129 S.Ct. 781 (2009) Johnson was the backseat passenger in a car stopped for a traffic violation. Johnson's behavior and clothing prompted questioning. The officer learned that Johnson was from a town with a Crips gang and that he'd served prison time. The officer asked Johnson to get out of the car to question him further about his gang affiliation. The officer suspected that Johnson was armed and frisked him, feeling a gun. A further search revealed that he was holding marijuana. Johnson began to struggle, and the officer handcuffed him. Johnson was charged with possession of drugs and possession of a weapon by felon. The Arizona Court of Appeals held that Johnson was lawfully seized during the encounter by virtue of being a passenger in a car that was lawfully stopped for an insurance violation. The Arizona court also held that the initial encounter between the officer and Johnson was voluntary. However, the court stated that once the officer began to question Johnson on a matter unrelated to the traffic stop, the frisk authority ceased, unless there was independent reasonable suspicion that Johnson had committed a crime

Muehler v. Mena, 544 U.S. 93 (2005), the Supreme Court held that mere police questioning on a topic unrelated to the initial reason for an otherwise lawful investigatory detention does not create a further seizure requiring a further legal basis. Muehler was a case of a detention during a search warrant execution at a home. Many courts subsequently applied its reasoning to questioning at traffic stops. Some ruled that an officer's questioning must be strictly limited to the purpose of the traffic stop; others disagreed. A unanimous Supreme Court has now resolved this important question. The Court held: "An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop."

Arizona v. Gant, 129 S.Ct. 1710 (2009) The United States Supreme Court restricted the search incident to arrest doctrine, rejecting a broad reading of New York v. Belton, 453 U.S. 454 (1981). In Arizona v. Gant, the Court overturned the search incident to arrest of Rodney Gant's car after Gant was arrested for driving with a suspended license, handcuffed, and secured in the back of a patrol car with several officers at the scene. Officers found cocaine in Gant's car during the search incident to the driver license arrest. The Court held that a search of the passenger compartment of a vehicle following an arrest is allowed "only if [1] the arrestee is within reaching distance of the passenger compartment at the time of the search or [2] it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies."

Thornton v. United States, 541 U. S. 615 (2004), the Court recognized that a search of a vehicle incident to the arrest of a recent occupant may be also justified "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." The Gant decision also leaves this holding intact. Because Gant and the other two suspects were in custody, handcuffed and secured in separate police cars, the Court refused to apply the Chimel lunge or reaching justification to the case. And because Gant was arrested for a driver license violation, the Thornton evidentiary search holding would not apply. It was not reasonable to believe that the vehicle held evidence of Gant's suspended driver license status. Gant holds that once the arrestee is secured, a search incident to arrest of the vehicle is lawful only when there is reason to believe that the vehicle holds evidence of the underlying crime on which the arrest is based. Gant does not foreclose other search doctrines that may apply to particular cases. Fourth Amendment warrant clause exceptions of consent, probation/parole search, exigent circumstances, vehicle "frisk" for weapons upon appropriate reasonable suspicion, inventory, and community caretaking, continue to potentially apply.

Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009) This case offers substantial protection to officers and supervisors facing claims of discriminatory law enforcement. In the months following the September 11, 2009, the FBI and other law enforcement agencies received over 90,000 tips regarding the September 11 terrorist attacks. The usual — and some of the not-so-usual — suspects were rounded up. One such suspect was Javaid Iqbal, a New York cable television installer. Iqbal was incarcerated in the Metropolitan Detention Center in Brooklyn, New York, in the Administrative Maximum Special Housing Unit. Iqbal claimed that he was beaten and called names. He was convicted of fraudulently using another person's Social Security card and number and was deported to Pakistan. He sued several law enforcement officials, including FBI Director Robert Mueller and former United States Attorney General John Ashcroft. He claimed that Mueller and Ashcroft personally condoned his incarceration and incarceration of others based on their religious affiliation and ethnic origin. A slender 5-4 majority held that the complaint failed to plead sufficient facts to state a claim for purposeful and unlawful discrimination. The Court has previously ruled that the theories of respondent superior and vicarious liability cannot be employed to impose liability under Section 1983 or a Bivens action on a command or policy level official for the acts of their subordinates. Ashcroft v. Iqbal extends protection to law enforcement supervisors

accused of acquiescing in discriminatory conduct by requiring plaintiffs to show the supervisors' discriminatory purpose, and in use of force cases by requiring plaintiffs to show that the supervisors knew of and acquiesced in the use of force and had a sadistic purpose in their actions.

Herring v. United States, 129 S.Ct. 695 (2009) Herring went to the Coffee County Sheriff's impound yard to check on one of his vehicles that had been impounded. As he was leaving, a deputy saw Herring, recognized him, and checked for an arrest warrant. When the deputy found no warrant in Coffee County, he asked a clerk to telephone the neighboring Dale County Sheriff and check for warrants. The Dale County Sheriff's clerk stated that there was an arrest warrant for Herring. The deputy stopped Herring, arrested him, searched him, and found a handgun and some methamphetamine. However, within 10 to 15 minutes of the call to the Dale County Sheriff, the clerk called back and said that the warrant had been recalled and was not valid. Due to negligent record-keeping by the court clerk, the warrant was "active" in the computer database. Herring asked to have the gun and drug evidence suppressed. The Court of Appeals refused, holding that the good faith exception to the Fourth Amendment exclusionary rule should apply. Herring appealed to the United States Supreme Court, which upheld the court of appeals' decision. For the first time ever, the Supreme Court extended the good faith exception to the exclusionary rule for constitutional violations arising from an officer's error and not merely a court worker's mistake. This decision follows on the 2006 ruling in Hudson v. Michigan, 547 U.S. 586 (2006), in which the Supreme Court refused to apply the exclusionary rule as a sanction for a violation of the knock and announce rule in search warrant execution. The Court noted, exclusion "has always been our last resort, not our first impulse." The Court focused on the flagrancy of the error, whether suppression was likely to determine future errors of a similar nature, and whether exclusion of the evidence outweighs the harm to justice incurred when a guilty person goes free. In applying the good faith exception to Herring's situation, the Court emphasized that it "did not find the record-keeping error to be reckless or deliberate." Though the Court also left open the possibility that not all police record keeping errors are covered by the good faith exception to the exclusionary rule, it directed lower courts to consider whether such errors are systemic, or whether police have recklessly or intentionally entered false information into a database. The Court was sharply divided, with four justices agreeing that exclusion of evidence is the proper remedy for negligent errors in police record-keeping. The decision seems to signal that the Court wants to see the Exclusionary Rule applied for its original purpose: to deter police misconduct.

Kansas v. Ventris, 129 S.Ct. 1841 (2009) Donnie Ray Ventris and his girlfriend confronted Hicks at Hicks's home. Polite conversation went downhill, and Hicks was shot and killed. Ventris and the girlfriend took a bunch of his stuff. When arrested, Ventris and his girlfriend each claimed that the other did the shooting. One has to wonder whether the relationship lasted! While in prison awaiting trial, Ventris shared a cell with Doser, a probation violator who had been specifically recruited by the police to listen for any incriminating information from Ventris. In exchange for this information, the prosecution offered to release Doser from probation and spare him the possibility of serving additional prison time. Doser subsequently told police that Ventris privately admitted to being the one who shot Hicks and took his possessions. At trial, Ventris took the stand and testified that it was his girlfriend who drew the gun and shot Hicks. The prosecution called Doser to testify about

Ventris's alleged jailhouse confession. Ventris objected to this testimony on the ground that the police had violated his Sixth Amendment rights because Doser, acting as an undercover informant, had effectively interrogated him in the absence of his counsel and without a knowing and voluntary waiver of his Sixth Amendment rights. The prosecution conceded that Ventris's Sixth Amendment rights had been violated, but it argued that the testimony should nonetheless be admissible for purposes of impeachment that is, to contradict Ventris's own testimony and thereby call his truthfulness into question. Ventris was ultimately convicted of aggravated robbery and aggravated battery. The Court held that any benefits from exclusion in these circumstances are greatly outweighed by its costs. The costs of exclusion are substantial, as it would offer a shield to defendants who take the stand at trial and then commit perjury. The marginal deterrence achieved through exclusion, on the other hand, would be small, since the prosecution is already significantly deterred when these uncounseled statements are barred from its case in chief.

Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009) This case may well have the biggest financial impact in many years on the cost of policing and prosecution. Boston police officers arrested Luis Melendez-Diaz as he sold cocaine sale in a K-Mart parking lot. One wonders whether the police considered the case to be a blue light special. At trial, bags of the cocaine allegedly sold by Melendez-Diaz were introduced into evidence along with the drug analysis certificates from a state lab technician who analyzed the drugs and identified them as cocaine. The jury convicted Melendez-Diaz of distributing cocaine. Melendez-Diaz argued on appeal that the prosecution's introduction of the drug analysis certificates violated his Sixth Amendment confrontation right under Crawford v. Washington. After Crawford, a defendant has the right to demand that either a hearsay declarant testify or that the prosecution show that the declarant is unavailable, and that the defendant had a prior opportunity for cross examination. Prior to the Court's decision in this case, 44 states and the District of Columbia allowed the prosecution to introduce laboratory technicians' certificates to identify illicit drugs. In the first few years after Crawford v. Washington, the Court denied certiorari in cases seeking to challenge the admission of such certificates as "testimonial." Dozens of states, and many national organizations, filed amicus briefs supporting the State of Massachusetts. Massachusetts argued that the Confrontation Clause was traditionally applied to statements made to police by eyewitnesses to a crime, and not peripheral witnesses such as forensic technicians. The state urged the Court to examine the character of lab reports at being consistent with the sort of public records that fit an accepted exception to the hearsay prohibition. Melendez-Diaz countered that the reports are prepared expressly for the purpose of aiding a criminal prosecution, and therefore lack the objective character of other public records. The Court held that the lab technicians' affidavits are testimonial and are subject to the Court's holding in Crawford v. Washington. Massachusetts had also argued that the defense was free to call the lab technician and the Court rejected that claim. Only four days after issuing the opinion in Melendez-Diaz, the Court granted certiorari in Commonwealth v. Magruder, 657 S.E.2d 113, cert. granted sub nom Briscoe v. Virginia, No. 07 1191 (June 29, 2009) and will squarely address the question of "If a State allows a prosecutor to introduce a certificate of forensic laboratory analysis, without presenting the testimony of the analyst who prepared the certificate, does the State avoid violating the Confrontation Clause of the Sixth Amendment by providing that the accused has a right to call the analyst as his own witness?" The Court stated that "the sky will not fall" after its ruling. Perhaps not, but the day-to-day business of

prosecuting alcohol and drug offenses will become far more complicated. Though this decision significantly impacts the prosecution burden, it may well be that a middle ground will be found in most cases. An effective defense attorney recognizes the value in stipulating to chemical testing when there is no advantage to be gained. Most technicians are excellent witnesses, and their testimony generally scores points only for the prosecution. Defense attorneys may also exercise caution in irritating judges, juries and even prosecutors with unnecessary demands that the laboratory staff testify. On the other hand, there are often advantages in cross examining even the best witness in a close case. Some states already have notice statutes applying to laboratory tests. The Court observed that these "notice-and-demand statutes require the prosecution to provide notice to the defendant of its intent to use an analyst's report as evidence at trial, after which the defendant is given a period of time in which he may object to the admission of the evidence absent the analyst's appearance live at trial." Because these statutes do not shift the burden, they are constitutional. Melendez-Diaz is certain to generate legislative action and additional litigation. One immediate question is whether the calibration affidavits used to certify breath alcohol testing devices and the calibration affidavits for other laboratory equipment will fall under the shadow of Crawford and Melendez-Diaz.

Pearson v. Callahan, 129 S.Ct. 808 (2009) Though not a widely heralded case from this year, this case is a great win for attorneys who defend police officers in civil rights lawsuits. A confidential informant told officers that he could buy methamphetamine from Afton Callahan. The CI went to Callahan's home and Callahan invited him into the home. After seeing methamphetamine, the CI gave a pre-arranged signal and officers entered the home. They had neither an arrest warrant nor a search warrant. During the entry, an officer saw Callahan drop what was later identified as a bag of methamphetamine. During the criminal appeal, the prosecution conceded the lack of warrant and the lack of exigent circumstances for the entry. Callahan prevailed and the Utah Court of Appeals reversed his conviction. Callahan then sued for damages in federal court. The Court of Appeals for the Tenth Circuit found that the "consent once removed" doctrine was not applicable when the person entering by consent is not a police officer. The Court of Appeals ruled that the officers violated Callahan's civil rights, and that they were not entitled to qualified immunity because they should have known that they were violating Callahan's rights. The Supreme Court reversed the Court of Appeals and held that the officers were entitled to qualified immunity from suit. However, the critical holding in the Supreme Court decision does not resolve the issue of "consent once removed." Though the officers are victorious in the litigation, the real value of this case is that the Court took the opportunity to revise the rule of Saucier v. Katz, 533 U.S. 194 (2001). Saucier imposed an analytical model that required a court deciding the issue of qualified immunity for officers to first decide whether the facts alleged by a plaintiff actually rose to the level of a constitutional violation, and then decide whether the constitutional right allegedly violated was "clearly established" at the time of the violation. Many lower courts had criticized the rigid analytical approach, arguing that some cases could be resolved by more expedient means. The true benefit of this decision is to allow federal courts more flexibility in dealing with civil rights cases and ultimately to save litigation costs and headaches.

Carr v. United States, No. 08-1301 Thomas Carr plead guilty to sexual abuse in 2004. Two years later, Congress passed the Sex Offender Notification Act, requiring

all states to provide a public web site with photographs and information about registered sex offenders. Upon Carr's release from prison, he was required to register as a sex offender. He moved from Alabama to Indiana and was arrested in 2007. Carr was charged with failing to register as a sex offender upon his move to Indiana, in violation of the 2006 federal law. He claimed that the ex post facto doctrine prohibited his prosecution on a law that did not exist when he was originally convicted as a sex offender. The Court of Appeals for the Seventh Circuit rejected Carr's claim. Other federal appellate courts have reached differing results on the application of the sex offender registration statute to persons convicted of sex crimes prior to its passage. The high court will also consider another sex offender appeal in United States v. Comstock, in which the Court will determine the constitutionality of keeping a dangerous sex offender incarcerated after the completion of a prison sentence for the underlying crimes.

Berghuis v. Smith, No. 08-1402 This case will revisit the concept of racial proportionality in the jury pool. Diapolis Smith was convicted of murder by an all-white jury. He claimed that the jury pool in Michigan had too few blacks. Black prospective jurors were often excused for work, transportation, and childcare issues. The Sixth Circuit Court of Appeals held in Smith's favor, ruling that the statistical analysis showed systemic exclusion of blacks in the jury pool. The Supreme Court will decide whether Smith's conviction should be tossed on those grounds.

Berghuis v. Thompkins, No. 08 1470 Van Chester Thompkins was convicted of a 2001 murder. Shortly after his arrest, officers provided a Miranda warning. Thompkins said that he understood his rights. However, he did not offer an explicit waiver of his rights. During the interrogation, Thompkins occasionally nodded his head, made eye contact with the officers and answered some questions verbally. An officer asked him if he "prayed for forgiveness for shooting that boy down" and Thompkins clearly said "yes." Thompkins claimed that his less-than-open communications with the officers should have led them to understand that he did not wish to waive his Miranda rights. The Sixth Circuit Court of Appeals tossed out his confession. The Michigan Attorney General argues that "Neither Miranda or its progeny prohibit interaction between an officer and a defendant after warnings have been given and acknowledged but before the invocation of rights."

Florida v. Powell, No. 08-1175 Kevin Powell was arrested and taken to the police station for interrogation. The officers told him that he had a right to consult an attorney before questioning. However, the form of the Miranda warning given did not include a statement that he had the right to have an attorney present during questioning. The trial court found that was not a sufficient breach of the Miranda rule to trigger exclusion of his admissions. The Florida Court of Appeals and Florida Supreme Court disagreed, reversing his conviction. The United State Supreme Court will now decide whether the flawed warning was fatal to a valid interrogation.

McDonald v. Chicago, No. 08-1521 Nearly two centuries passed before the Supreme Court decided a landmark case under the Second Amendment. Following on the heels of District of Columbia v. Heller, which held that the right to bear arms is a personal right, this appeal asks the Supreme Court to determine that the City of Chicago's ban on handguns, as well as certain other restrictions on long guns, are

unconstitutional. The theory relied upon by the plaintiff is that the Selective Incorporation doctrine of the Fourteenth Amendment's Due Process Clause forces the City of Chicago to recognize that personal handgun ownership is an individual constitutional right. The case is certain to generate substantial interest among law professors and constitutional scholars because the petition also asks the Supreme Court to entirely overrule the Slaughter-House Cases. These were a series of three cases decided just after the Civil War that the Fourteenth Amendment did not requirer application of fundamental civil rights to the various states' (and local) governments. If the Slaughter-House Cases are overturned, it likely means that the right to a jury in a civil case and the right to a grand jury in a criminal case will automatically be binding upon state governments. Thus, the irony of the case is that conservative gun rights advocates are pressing an issue that stands to advance a cause promoted for many years by civil libertarians often associated with more liberal causes.

Tennessee v. Garner, 71 U.S. 1 (1985)- **4th Amendment --** The use of deadly force to stop a fleeing felon is not justified unless it is necessary to prevent the escape, and it complies with the following requirements. The officer has to have probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

Carroll v. U.S., 267 U.S. 132 (1925)-Police may conduct a warrantless search of a vehicle stopped on traffic if there is probable cause to believe that the vehicle contains contraband or evidence.

Mapp v. Ohio, 367 U.S. 643 (1961)-The US Supreme Court applied the "exclusionary rule" to the states. Any evidence illegally obtained by the government cannot be used in court against the accused.

Gideon v. Wainwright, 372 U.S. 335 (1963)-Florida law only provided counsel for indigent defendants in capital cases. The USSC ruled that an indigent defendant has a right to court appointed counsel in non-capital cases as well as capital cases.

Whren v. U.S., 517 US 806 (1996)-Through the late 1980's and into the 1990's courts were embracing the idea that an officer's subjective reasons for making a traffic stop should be considered when ruling on the validity of seizures. If the court finds that an officer's subjective reasons for making the stop was for anything other than the initial traffic offense, and that reason lacks probable cause or reasonable suspicion, the court would dismiss the charges. The U.S. Supreme Court finally addressed these types of rulings in the Whren case. The court ruled that the objective not subjective reasons for making traffic stops should be considered. An officer's intent or motivation to make a traffic stop is not relevant to the Fourth Amendment standard of "reasonableness".

US v. Arvizu, 534 U.S. 266 (2002)-Reasonable Suspicion-The courts should not examine each factor adding up to reasonable suspicion individually, but that they evaluate how convincingly the factors fit together into a cohesive, convincing picture of illegal conduct. In Arvizu, the Court rejected what it called a "divide-and-conquer analysis," noting that reasonable suspicion may exist even if "each observation" is "susceptible to an innocent explanation."

Florida v. Jardines – was heard on October 31, 2012. The Court unanimously held that if a bona fide organization has certified a dog after testing his reliability in a controlled setting, or if the dog has recently and successfully completed a training program that evaluated his proficiency, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search, using a "totality-of-the-circumstances" approach.

United States v. Race, 529 F.2d 12 (5th Cir. 1976)-The indication of drugs after a sniff from a well-trained drug detection police dog is sufficient to establish probable cause.

United States v. Place, 462 US 696 (1983)-The court determined that the sniffing of personal items of a person in a public place by a dog for the purpose of finding contraband was not a "search" under the Fourth Amendment.

United States v. Thomas, 757 F.2d 1359 (2nd Cir 1985)-The use of a canine to detect odors emanating from an apartment while at a lawful place outside the apartment is still a search requiring probable cause and a warrant. The court emphasized that a person has a higher expectation of privacy in his dwelling than in objects transported through public places (vehicles, baggage, boxes, etc).

State v. Boyce, 723 P.2d 28 (Wash. App. 1986)-The use of a canine to sniff a person or the objects carried by that person is, "...offensive at best and harrowing at worst to the innocent sniffee," and requires a reasonable suspicion.

Robinette v. Barnes, 854 F.2d 909, 912 (6th Cir. 1988)-Held: The use of a properly trained police dog to apprehend a felony suspect does not carry with it a 'substantial risk of causing death or serious bodily harm'.

United States v. Lovell, 849 F.2d. 910 (5 Cir.)(1988)-Lovell's luggage was entrusted to a third-party common carrier. The luggage was momentarily removed from the conveyer belt to be sniffed by a drug dog. The court ruled that the removal of the bags from the conveyer belt was "insufficient to constitute a meaningful interference" with Lovell's possessory interest in his bags. The court also stated that Lovell's expectation of privacy did not extend to the airspace surrounding his luggage. The sniffing of the air by a drug dog was not a search.

Matthews v. Jones, 35 F.3d 1046, 1051 (6th Cir. 1994)-The court found that there was no excessive force where the record was clear that the officer warned plaintiff, a fleeing misdemeanant, several times before releasing the police dog to apprehend him.

Merrett v. Moore, 58 F.3d 1547 (11 Cir. 1995)-Canines can be used to sniff vehicles at a license and registration check roadblock as long as their use does not unreasonably delay the motorists.

United States v Guzman, 75 F. 3d 1090 (6th Cir. 1996)-If a dog shows only interest, but does not alert, this does not constitute probable cause. The handler's awareness

in the interest can be used in conjunction with the totality of other facts to establish probable cause.

United States v Kennedy, 131 F. 3d 1371 (10th Cir. 1997)-A warrant is not rendered invalid because the dog handler did not keep accurate training records or train the dog on a regular basis. The dog was certified in detecting drugs and had a reliability rate of 70-80%. This was sufficient to establish probable cause.

U.S. v. Anchondo, 156 F.3d. 1043 (10th Cir. 1998)-A search incident to arrest can occur before the actual arrest takes place. The search and the arrest must be contemporaneous to each other. The court further stated that an officer can search a person if a canine alerts on the vehicle the person occupied, but no drugs were found in the vehicle. If the probability of drugs deminishes in the vehicle, then it increases for drugs being on the person.

Vathekan v. Prince George's County, 154 F.3d 173 (4th Cir. 1998), the Fourth Circuit reversed a summary judgment ruling in favor of a police officer who deployed a police dog without a verbal warning.

Vera Cruz v. City of Escondido, 139 F.3d 659, 663 (9th Cir. 1998)-The use of a trained police dog in biting a suspect to assist in arrest is not deadly force as applied under Tennessee v. Garner. The use of the dog is not limited to circumstances where the suspect has to be an imminent life threat to others.

United States v Owens, 167 F. 3d 739 (1st Cir. 1999)-Even if a dog failed to pass two previous certifications, it was certified at the time of the sniff and the handler and training supervisor testified to its reliability. The dog was sufficiently reliable to support a finding of probable cause.

City of Indianapolis v. Edmond, 531 US 32 (2000)-It is unconstitutional to set up a checkpoint to detect evidence of ordinary criminal wrongdoing. In this case, the officers were looking for drugs. The officers used canines to sniff vehicles stopped at the roadblock.

Kuha v. City of Minnetonka, 328 F.3d 427 (8th Circuit 2003)-The court held that releasing the dog without warning the man was objectively unreasonable. Warning him would not have put the officers at any increased risk. The court indicated that giving the warning is a constitutional requirement and only under unusual circumstances the officer can forego the warning.

Miller v. Clark County (9th Cir. Aug. 21, 2003)-The Ninth Circuit Court of Appeal held that the use of a police dog to bite and hold a potentially dangerous fleeing felon for up to a minute, until the situation is insured to be safe, does not violate the Fourth Amendment. In this case, the suspect was hiding in a wooded area. The officer announced that the dog would be released if he did not reveal himself. The dog was released, found the suspect, and bit and held him. It took the officer approx. one minute to get to the suspect and call the dog off.

US v. Mohr, 318 F.3d 613 (4th Cir, 2003)-Stephanie Mohr, a Prince George's County, Maryland police officer, assisted in the capture of possible burglars. Her assistance

was requested by Sgt Bonn of the Takoma Park, Maryland Police Department. The burglars were caught on the roof of a business. They were contacted and ordered to climb down. They were surrounded by several officers. The suspects fully cooperated with the police and had their hands in the air. Ofc Anthony Delozier was with Ofc Mohr. He asked Sgt Bonn, "Sarge, can the dog get a bite?" He said, "yes". Mohr then released the dog to bite one of the suspects while he was standing with his hands in the air. The suspects made no movement to justify the attack. Mohr was tried and convicted in federal court for acting under the color of law to willfully deprive suspect Mendez of his right to be free from the use of unreasonable force. She was sentenced to 10 years in prison.

US v. Outlaw, 319 F. 3d 701 (5th Cir. 2003)-"It is undisputed that this drug-detecting team successfully completed all standard training procedures for border patrol drug-detecting teams and that this canine was certified to detect a variety of narcotics, including marijuana and its derivatives, cocaine and its derivatives, heroin and its derivatives and methamphetamine. That the suitcase the canine alerted to later turned out to contain PCP, a drug the dog was not trained to detect, simply does not vitiate the agent's reasonable suspicion under these facts."

United States v. Ramirez, 342 F. 3d 1210 (10th Cir. 2003)-An investigation into the contents of a package does not have to cease just because a K-9 failed to alert on it.

US v. Jackson, 390 F.3d 393 (5th Cir. 2004)-Narcotics officers boarded a bus after it stopped at the terminal. The officers obtained a consent to search from the driver. They then informed the passengers that a police dog will be searching the bus. The passengers were informed that they could either remain on the bus or depart. All the passengers exited the bus. The dog hit on a seat indicating that a passenger was carrying the drugs. They saw Jackson as he exited the bus. He acted very suspicious. They located Jackson after the dog sniffed the bus for drugs and they started a consentual encounter with him. They developed reasonable suspicion and pat searched Jackson. They found a belt around his waist full of cocaine. The court held: "As we have said, at its inception, [officer] Dunn's encounter with Jackson was justified because it was consensual. Indeed, even absent Jackson's consent, the fact that Dunn was aware of the dog alert and that one of the passengers was likely carrying drugs on his person, coupled with Jackson's nervous and erratic behavior (including what Dunn regarded as his unusually erect posture), would be sufficient to premise a reasonable and particularized suspicion that Jackson was the drug courier."

Illinois v. Caballes, 000 U.S. 03-923 (2005)-A drug dog can be used to sniff a vehicle for contraband on any traffic stop, if: The vehicle is lawfully stopped. The sniff occurs within the duration of time necessary to reasonably conduct the stop. (If the K9 officer makes the stop and conducts the sniff, the extra time will probably violate this requirement.) The officer is not required to have any facts of a drug violation prior to the sniff occurring.

United States v Sanchez, 417 F. 3d 971 (8th Cir. 2005)-The police were justified in delaying a traffic stop for 45 minutes to run computer checks after it was suspected the passenger gave a fake ID. The officers acted diligently to minimize the detention

period by employing the least intrusive means of detention and investigation. A drug dog alerted to the trunk and a large quantity of marijuana was found.

US v. Mendoza, 05-4299 (10th Cir. 2006)-Trooper Bowles observed two vehicles traveling on a Utah highway. He observed that one of the vehicles had a Minnesota tag and the other one an Arizona tag. Both vehicles appeared to be traveling together. Suspecting that the vehicles might be involved in auto theft or drug trafficking the trooper turned around and followed the vehicles. The trooper stopped Mendoza on traffic after he failed to stop for a stop sign. The trooper smelled air freshener coming from the vehicle. Mendoza also gave inconsistent stories about where was traveling to and the route he was taking, who owned the vehicle, and when it was actually purchased. The trooper observed that Mendoza was very nervous. The trooper believed he had reasonable suspicion to detain Mendoza . The trooper called for a drug dog to come to the scene to check the vehicle for drugs. The drug dog arrived approx. 40 minutes later and searched the vehicle. The dog alerted on the gas tank. The gas tank was packed with methamphetamine. The court ruled that Trooper Bowles had reasonable suspicion to detain Mendoza. The court also ruled that waiting 40 minutes for the drug dog to arrive was reasonable.

US v. Suitt, 08-2688 (8th Cir. 2009)-The officer issued Suitt a warning on a traffic stop and released him. He then continued to ask Suitt questions about his travel. The questions were evasive and incomplete. He was acting nervous. The officer had his canine sniff the exterior of Suitt's vehicle and found 32 bales of marijuana. The sniff occurred 3 minutes after the end of the traffic stop. The questions were not drug interdiction related, but traffic related. The officer had reasonable suspicion. The extension was de minimis (minimal) and did not violate the 4th Amendment.

US v. Whitaker, Nos. 14-3290 and 14-3506 (7th Cir. 2016)-The officer went to an apartment complex where the apartments share a locked common hallway. The officer obtained consent to search the hallway with a drug dog. The dog alerted on Whitaker's apartment door. The officer obtained a search warrant and found drugs and a gun in the apartment. Whitaker was arrested. The Court held: The use of a dog was the same as using a super-sensitive instrument described in Kyllo v. US. The use of the dog was a search of not just the hall, but of Whitaker's apartment. The Supreme Court held in the Florida v. Jardines case that an officer could not enter the curtilage of a home to perform a dog sniff of the front door. The apartment hallway is not curtilage, but a person still has an expectation of privacy from warrantless dog sniffs at his apartment door. The sniff was an unreasonable search in violation of the Fourth Amendment.

Brown v. Battle Creek Police Department, No. 16-1575 (6th Cir. 2016)-The court held: A police officer's use of deadly force against a dog while executing a warrant to search a home for illegal drug activity is reasonable under the Fourth Amendment when, given the totality of the circumstances and viewed from the perspective of an objectively reasonable officer, the dog poses an imminent threat to the officer's safety.

US v. Berry, No. 15-30196 (5th Cir. 2016)-The DEA investigated Berry for heroin trafficking. Berry drove to Houston, picked up a load of heroin and was driving back

to New Orleans. The DEA briefed the Louisiana State Police troopers on Berry. The troopers set up and waited for him. He was stopped by Trooper St. Romain, who also had a drug dog. The trooper completed the traffic stop and asked for consent to search Berry's vehicle but was refused. Trooper St. Romain used his dog to sniff Berry's vehicle. The dog alerted on several locations on the vehicle and the vehicle was searched. The truck bed was searched for about 45 minutes. No drugs were found. The dog was deployed to sniff the interior of the vehicle. The dog alerted on a speaker box. 2.5 pounds of heroin was found inside. Berry tried to get the evidence suppressed. He claimed that the stop was impermissibly extended to conduct the sniff. He also claimed that the 45-minute fruitless search of the truck bed caused the probable cause for the search to dissipate. The court held that Berry gave information to the Trooper that was inconsistent with the information given during the DEA briefing. Berry was nervous, his hands were shaking, and would not make eye contact. There was sufficient information to establish reasonable suspicion to extend the traffic stop. The court further held that probable cause does not dissipate with time. The redeployment of the dog was also permissible.

Colorado v. McKnight, 16CA0050 (Colorado Court of Appeals 2017)-When a dog is trained to only detect contraband, which is unlawful to possess, a sniff of a car is not a search. When a dog is trained to detect both a legal substance under Colorado law (marijuana) and contraband, the sniff becomes a search because a person has a legitimate expectation of privacy in the possession of marijuana. The Court held that reasonable suspicion of criminal activity is required before a dog trained to detect marijuana can be used to sniff a vehicle.

Montanez v. Parker, 15-15211 (11th Cir. 2017)-Montanez was riding his bicycle at night without lights in Orlando, Fl. Ofc Parker, a K-9 officer, was with another officer. They were in uniform. As Montanez approached. Parker ordered him to stop. Montanez did not comply and tried to ride around the officers. Parker grabbed Montanez and pulled him off the bicycle. Parker was holding his dog by the harness at the time. Parker fell on top of Montanez. The dog perceived that Parker was being attacked and bit Montanez. Montanez was arrested. He later sued for false arrest, unreasonable seizure, and excessive force under the Fourth Amendment, as well as deprivation of liberty without due process under the Fifth Amendment. The court held that the stop and arrest were lawful. The use of force to remove Montanez from the bicycle was reasonable. Finally, the dog bite was not due to an intentional act by Parker so the excessive force claim was denied.

Escobar v. Montee, 895 F. 3d 387 (5th Cir. 2018)-Escobar assaulted his wife. He later fled into his neighborhood to avoid police at his house. The police were told that Escobar was armed with a knife. His mother told the police that they would have to kill Escobar because he will not go done without a fight. A K-9 was used to track Escobar down. He was located. The K-9 officer decided not to give Escobar a warning before throwing the K-9 over the fence. The K-9 officer followed the K-9 over the fence. Escober had a knife. The K-9 bit him. Escober dropped the knife in surrender, but the knife was within a couple of feet of him. The K-9 continued to bite Escobar for about a minute before the officers fully subdued and handcuffed him. Escobar sued under a 1983 action claiming his rights were violated. He was not given a warning before the K-9 bit him and the K-9 officer allowed the K-9 to continue biting after Escober surrendered and was not resisting. The lower court dismissed the initial bite claim but denied the K-9 officer qualified immunity for the

continued bite. The case was appealed to the 5th Circuit Court. The Court held that with the information provided to the officer, it was reasonable to believe that Escobar's surrender was not genuine. The officer's actions were proper, and he was entitled to qualified immunity.

Zuress v. Newark, No. 19-3945 (6th Cir. 2020)-Zuress was actively resisting arrest and was bitten by a police dog. The dog continued to bite for 24 seconds after she was subdued. She sued claiming excessive use of force. The Court held that the deployment of the dog was justified and that the continued bite for 24 seconds was not an excessive use of force. The fact of the case was that for the 24 seconds the officer was trying to get the dog to release the bite. While the officer was working to get the dog to release his bite, the continued bite was not a "means intentionally applied." Therefore, the continued bite was not a Fourth Amendment violation.

US v. Ludwig, No. 10-8009 (10th Cir, 2011)-The certification of a police canine is sufficient to establish reliability for a canine to sniff for drugs. Ludwig argued that the canine had 58% reliability in finding drugs. The Court would not quantify probable cause. The dog's credentials provide a bright-line rule for the officer to rely on.

US v. Kitchell, No. 09-6206 (10th Cir. 2011)-Potential currency contamination does not undermine the significance of a positive dog alert in indicating a fair probability of the presence of contraband, and thus probable cause to search.

US v. Sharp, 10-6127 (6th Cir. 2012)-A canine sniff of the exterior of a vehicle is not a search under the Fourth Amendment, but if the canine enters the vehicle to sniff, it is a search. In this case, the canine was sniffing the exterior of the vehicle. Without prompting from the handler, the canine jumped into the vehicle through an open window. It alerted on a shaving kit where methamphetamine and marijuana were found. Sharp tried to get the evidence suppressed because the canine entered and search his vehicle unlawfully. Held: "The canine's jump and subsequent sniff inside the vehicle was not a search in violation of the Fourth Amendment because the jump was instinctive and not the product of police encouragement."

Florida v. Harris, No. 11-817, 568 US (2013)- **4th Amendment --** Officer Wheetley had his drug detection dog sniff Harris's truck. The dog alerted and ingredients for making methamphetamine were found. Harris was arrested. Harris appealed. The Florida State Supreme Court held that, "The State must in every case present an exhaustive set of records, including a log of the dog's performance in the field, to establish the dog's reliability." The State "must have comprehensive documentation of the dog's prior hits and misses in the field and holding that absent field records will preclude a finding of probable cause no matter how much other proof the State offers." The US Supreme Court reversed the Florida Court. It held that: The Florida Court erred in requiring the use of the dog's field performance records. These records are unreliable because the records will not show failures to alert when drugs are present and show alerts as false alerts when drugs are not found but were recently in the area sniffed. The training and certification setting is the more reliable way to determine the dog's reliability. The standard for determining probable cause is to use a practical and common-sense standard of considering the totality of the circumstances, not the use of rigid rules, bright-line tests, and mechanistic inquiries.

Florida v. Jardines, No. 11–564 (2013)-The Court held that taking a K-9 onto the porch of the defendant's home to sniff for drugs inside is a search and requires consent or a search warrant. The officer entered the curtilage for evidence gathering purposes in violation of the defendant's Constitutionally protected 4th Amendment rights. See US v. Thomas.

US v. Salgado, NO. 13-2480 (8th Cir. 2014)-A Trooper stopped to assist Salgado whose vehicle was broken down on the side of the road. The Trooper developed reasonable suspicion to detain Salgado and call for a drug dog. The Trooper tried to find a close K-9 but could not. He called out another Trooper with a K-9, but he was 45 miles away. It took an hour for him to arrive. The court said the wait was reasonable under the circumstances.

Rodriguez v. US, 13-9972 (SCOTUS 2015)-The Court ruled that a traffic stop, absent reasonable suspicion or consent, cannot be extended even for a few minutes after the conclusion of a traffic stop in order to conduct a K-9 sniff of the vehicle. In this case the driver was stopped and issued a warning. He was then asked for permission to remain so the officer can conduct a K-9 sniff. The driver refused. The officer detained the driver anyway until another officer arrived. The officer conducted the K-9 sniff approx. 8 minutes after the stop was concluded. Drugs were found in the vehicle after the K-9 alerted. The driver was arrested. The Court held that the detention beyond the length of the traffic stop was an unreasonable seizure in violation of the Constitution.

US v. Pina, No. 15-13542 (11th Cir. 2016)-A trooper contacted a passenger bus driver at a truck stop and asked permission to do a drug dog sniff of his bus. He got the permission and his dog alerted to drugs being on board. He removed the baggage and ran the dog around it. The dog alerted on Pina's baggage. The trooper searches it and found two large sealed metal cans of peppers. He opened one and found cocaine in it. Pina was arrested. The court held that the search of the bus and all the baggage falls under the automobile search warrant exception. The search of Pina's baggage and opening the can without a warrant was lawful.

** If you truly read this packet, you will have a promising career **

End of Appendix (1)