

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA : First Report of
Plaintiff, : Plaintiff's Expert Witness
:
v. :
:
:
LARRY M. WILLIAMS : Case No. 2:06CR00507 TS
Defendant. :
: Judge Ted Stewart
:

I, Wendell Michael Nope, have been retained as an expert witness for the Plaintiff in this action. After having reviewed certain materials, I submit this **First Report of Plaintiff's Expert Witness**, in connection with my involvement in the above-entitled matter.

I submit this report in the following order:

1. Statement of all opinions to be expressed and the basis and reasons therefor;
2. Data or other information considered in forming opinions;
3. Exhibits to be used as a summary of or support for opinions;
4. Qualifications, including a list of all publications authored within the ten preceding years;
5. Compensation to be paid for study and testimony;
6. List of cases testified at trial or deposition within the four preceding years.

STATEMENT OF OPINIONS

I have developed certain opinions after reviewing documents and video presented to me in this case and also after conducting personal observations. These opinions are offered with a high degree of professional certainty, based upon my knowledge, experience, and certification in this area of law enforcement. The opinions are categorized and listed below.

Utah Highway Patrol

1. The Utah Highway Patrol maintains a K-9 Unit which trains and deploys Narcotics Detector Dogs utilizing Utah-sanctioned, nationally-accepted, and internationally-accepted K-9 standards. Further, comprehensive written guidelines and constraints have been established by the Utah Highway Patrol, which govern the use of the K-9's within the agency. [Policy, Exhibit A]. These facts are clear evidence that the Utah Highway Patrol has the intent to employ a lawful, efficient, state-of-the-art K-9 Unit.

Utah Highway Patrol K-9 Unit

2. The Utah Highway Patrol K-9 Unit strives for and achieves a high level of professionalism, including training and certification by agency-created standards and also certification standards established by the State of Utah. The K-9 Unit is staffed by multiple K-9 Trainers certified by the State of Utah. The K-9 Unit has on its staff a POST certified and internationally-recognized Police Service Dog Judge, one of only a handful in the State of Utah. Considerable effort and expense has been put into

1 this program, including implementing modern training technology and
2 legal updates. The K-9 Unit acts under the guidelines of a
3 comprehensive K-9 Unit Policy/Procedure document that meets or
4 exceeds the typical document of this type. The K-9 Unit personnel
5 and dogs are trained and certified according to the K-9 standards
6 set forth by Utah Peace Officer Standards and Training (POST). The
7 POST K-9 standards are the official performance standards set forth
8 by Utah State government for Police Service Dogs. These facts
9 clearly suggest that the K-9 Unit has the intent to train and
10 deploy in a lawful, efficient, state-of-the-art manner.

11 **Trooper Lance Christenson**

12 3. Trooper Christenson is a well-trained K-9 Handler. He
13 has been certified as a Narcotics Detector Dog Handler by Utah
14 POST. His training is practically identical to the other 150+ K-9
15 Handlers in the State of Utah. His training exceeds that of the
16 typical Narcotics Detector Dog Handler in the United States of
17 America.

18 4. Trooper Christenson displays a high level of
19 professionalism in his training efforts. [Wendell Nope personal
20 observation]. An assessment of 55 pages of Narcotics Detector Dog
21 training sessions with K-9 Robbie reveals a pattern of consistent
22 and reliable performance. An assessment of an additional 55 pages
23 of Patrol Dog training sessions supports this same opinion. No
24 evidence of deficiency or impropriety is revealed.

25 5. Trooper Christenson displays a high level of

1 professionalism in his deployment efforts. Accordingly, he has
2 successfully interdicted numerous large and small quantities of
3 illegal narcotics, many by employing his K-9 Robbie to conduct
4 sniffs of vehicles and packages. No evidence of deficiency,
5 violation of department policy, or other impropriety is revealed in
6 Trooper Christenson's deployments. [Purdy Interview, Exhibit B].

7 **K-9 Robbie**

8 6. K-9 Robbie is a well-trained police K-9. He is certified
9 as a Narcotics Detector Dog by Utah POST. An assessment of 55
10 pages of Narcotics Detector Dog training sessions involving K-9
11 Robbie reveals a high level of trainability and also a high level
12 of achievement. An assessment of an additional 55 pages of Patrol
13 Dog training sessions supports this same opinion. K-9 Robbie is
14 the type of Police Service Dog that readily responds to training
15 efforts. K-9 Robbie is among the higher percentile of K-9's in the
16 area of "training retention." This means that not only does the
17 dog learn quickly but it also retains what it has learned more
18 completely than the average Police Service Dog. [Nope Personal
19 observation].

20 7. K-9 Robbie displays a high level of reliability during
21 deployment. The Dog has been credited for directly aiding in the
22 interdiction of numerous large and small quantities of illegal
23 narcotics, by sniffing vehicles and packages. No evidence of
24 deficiency, violation of department policy, or other impropriety is
25 revealed in K-9 Robbie's deployment performances.

K-9 Robbie Behavior During The Sniff Test

8. K-9 Robbie performed in a manner consistent with its training when it remained under control during the approach to the vehicle with Trooper Christenson. [Williams Video 9:21:08-9:21:10].

9. K-9 Robbie performed in a manner consistent with its training when it began to sniff the exterior of the vehicle immediately upon approaching it. K-9 Robbie began to sniff intensely and efficiently, beginning at the rear license plate and continuing to the driver side window. [Williams Video 9:21:10-9:21:14].

10. K-9 Robbie performed in a manner consistent with its training when it raised up on its hind legs to sniff the air in the proximity of the driver's door open window. Robbie did not slip or falter, but rather, willfully raised up for a cursory sniff. Then Robbie immediately raised up again for a more purposeful sniff. After making a second sniff test of the air, Robbie continued forward towards the front of the vehicle, as directed by Trooper Christenson. [Williams Video 9:21:14-9:21:16].

11. K-9 Robbie is partially obscured from view as it continues sniffing around the front portion of the vehicle. [Williams Video 9:21:16-9:21:20].

12. K-9 Robbie purposefully raised up on its hind legs to sniff the air in the proximity of the passenger door open window. This was not a cursory sniff, but a purposeful action, comparable

1 to the purposeful sniff performed at the driver's door open window.
2 [Williams Video 9:21:20-9:21:24]. This behavior is clearly visible
3 when the DVD is played at half-speed for segments 9:21:14-9:21:16
4 and then compared to 9:21:20-9:21:24.

5 13. K-9 Robbie purposefully sniffed the air in the proximity
6 of the passenger side door for approximately four seconds.
7 [Williams Video 9:21:20-9:21:24]. During this time, Robbie did not
8 appear to be influenced by the leash, actions exhibited by Trooper
9 Christenson, or any other distractions.

10 14. During the sniff test of the air in the proximity of the
11 passenger side door, K-9 Robbie was standing on its rear legs with
12 its front legs supported by the passenger side door frame.

13 15. At the Williams Video time-line of 9:21:24, K-9 Robbie
14 moved its front legs out of the door frame and repositioned itself
15 so as to be on all four legs. This is a common movement among
16 Narcotics Detector Dogs that have been standing on their back legs
17 with the front legs supported on a vehicle. This movement is often
18 associated with an intent to jump up into the vehicle. This same
19 "jump-preparation" behavior is clearly exhibited by K-9 Robbie when
20 the DVD is played at half-speed for segments 9:21:23-9:21:25.

21 16. Up to the Williams Video time-line of 9:21:22, K-9 Robbie
22 is wagging its tail at a moderate rate. At this point, it begins
23 to wag its tail in a more intense manner. This behavior is clearly
24 observed when the DVD is played at half-speed. This is indicative
25 that the dog has perceived something that has increased its

1 interest in the search. This behavior is very commonly observed
2 when a veteran Narcotics Detector Dog has perceived the target
3 odor. This behavior often alerts or signals to the Handler that
4 the dog has perceived a target odor.

5 17. K-9 Robbie jumped into the vehicle through the passenger
6 side open window on its own initiative. There is no indication
7 that it was commanded to jump, in fact, Trooper Christenson moves
8 further down the vehicle the entire time Robbie is sniffing and up
9 to the point Robbie jumps through the open window.

10 18. K-9 Robbie performed in a manner consistent with its
11 training when it jumped through the window to access the interior
12 of the vehicle. It acted as a properly trained Narcotics Detector
13 Dog.

14 19. A properly trained Narcotics Detector Dog will "follow
15 its nose" if it perceives a target odor. It will not deviate from
16 a vehicle exterior sniff and jump through a vehicle window just
17 because it is open. K-9 Robbie has sniffed hundreds of vehicle
18 exteriors and knows what behavior is expected. The expected
19 behavior is to follow the direction of the K-9 Handler around the
20 exterior of the vehicle unless it perceives a target odor. Upon
21 sniffing a target odor, it is to follow its nose to the source of
22 the odor.

23 20. At the point in the deployment where K-9 Robbie entered
24 the vehicle, its performance is obscured from view.

25 21. At the Williams Video time-line of 9:21:56, K-9 Robbie

1 exits the vehicle via the passenger side open door. Robbie appears
2 to be in good spirits as it accompanies Trooper Christenson back to
3 the patrol car. Robbie's tail is wagging and he even gives an
4 excited bark at 9:22:00.

5 **Trooper Christenson's Behavior During The Sniff Test**

6 22. Trooper Christenson performed in a manner consistent with
7 his training when he opted to approach the vehicle with K-9 Robbie
8 on-leash. The circumstances he faced included moderately heavy
9 traffic traveling at highway speeds. Approaching the vehicle with
10 the dog off-leash would certainly have been more risky for the dog
11 and also any on-coming traffic which might be started by the
12 appearance of an off-leash dog near the vehicles.

13 23. Trooper Christenson performed in a manner consistent with
14 his training when he opted to approach the vehicle at a brisk pace.
15 Doing so motivated the dog to start the sniff test with an
16 energetic demeanor.

17 24. Trooper Christenson handled K-9 Robbie during the sniff
18 test in a manner consistent with his training. The following are
19 elements of his actions which are notable:

20 a. He moved fluidly along, so as not to distract the
21 dog;

22 b. He moved at a brisk pace, so as to maintain an
23 energetic performance from the dog;

24 c. He kept the leash loose, so as not to distract the
25 dog;

1 d. He faced the dog at all times, so he could visually
2 focus on the dog's actions;

3 e. He used his free hand to present various portions of
4 the vehicle for the dog to sniff, so as to diminish the possibility
5 of the dog missing an important place to sniff;

6 f. He paid close attention as the dog raised up on its
7 hind legs purposefully to sniff in the driver side open window, he
8 actually paused momentarily to completely focus at this point;

9 g. He paid close attention as the dog raised up on its
10 hind legs purposefully to sniff in the passenger side open window,
11 he again paused to completely focus on the dog's actions;

12 h. He did not intervene when the dog chose to enter the
13 vehicle through the passenger side open window;

14 i. He repositioned himself as the dog entered the
15 vehicle through the passenger side open window and held the leash
16 such that the dog might search the interior with as little
17 hindrance as possible;

18 j. He paid close attention as the dog sniffed the
19 passenger compartment;

20 k. He opened the door to facilitate the dog's exit from
21 the vehicle.

22 l. He directed the dog back to his patrol car in an
23 energetic and brisk manner, maintaining an energetic attitude
24 within the dog, in case it might be called upon to sniff further in
25 the incident.

25. Trooper Christenson exhibited appropriate, professional behavior during the entire deployment of K-9 Robbie on the sniff test of the vehicle, no inappropriate, unprofessional, or deficient behavior was exhibited.

26. Trooper Christenson acted within accepted Utah, national, and international professional standards when he allowed K-9 Robbie to enter the vehicle on its own initiative. Trooper Christenson perceived that Robbie had possibly detected a drug odor and he permitted the dog to attempt to find the source of that odor. This is referred to as the "Plain Sniff" variant to the "Plain View" doctrine. The Plain Sniff variant states that a trained Narcotics Detector Dog that detects - by smell - a target odor may act upon its perception similarly as a human officer who detects - by sight - illegal contraband. This is a major issue which K-9 Handlers attending the Utah POST K-9 Program are trained to recognize in their K-9's.

Pertinent Narcotics Detector Dog Issues in this Incident

27. When an experienced and reliable Narcotics Detector Dog is deployed to sniff a vehicle stopped on the side of the road, especially where a breeze and other traffic is present, it is sometimes challenging for the dog. The breeze may swirl or even change directions. Traffic may surprise or even startle the dog. When a dog exhibits intense and focused sniffing behavior, in spite of these challenges, it is highly noteworthy. K-9 Robbie exhibited only intense and focused sniffing in the video segment, thus

1 validating an opinion that the dog acted in a reliable manner.

2 27. K-9 Robbie did not attempt to enter the driver side
3 window. Had he attempted, it appears obvious at this point that
4 Trooper Christenson would have allowed the dog to do so. The fact
5 that Robbie entered the passenger side window on its own initiative
6 is meaningful, especially in light of Trooper Christenson's
7 articulation in his police report, "The dog immediately went to the
8 back seat and sniffed the back seat rear floor very intently"
9 The intense sniffing observed on the exterior of the vehicle
10 continued until the dog arrived at the passenger side open window,
11 continued once the dog entered the vehicle, and ultimately focused
12 itself in the area of the back seat rear floor. The sniffing was
13 consistently intense from the start of the deployment to its
14 culmination in the rear floorboard area.

15 28. The reliability of the dog's performance is validated in
16 the subsequent performance audit. K-9 Robbie was presented the
17 opportunity to sniff a total of four open windows on two vehicles.
18 The dog sniffed and bypassed three windows and entered the fourth.
19 Upon entering through the window, K-9 Robbie immediately "followed
20 his nose" to the source of odor, even though it was an unmeasurable
21 quantity. [Exhibit C].

22 29. K-9 Robbie is a proven performer. There is no evidence
23 that the dog has failed in previous deployments and, in fact, has
24 been directly responsible for numerous successful interdictions of
25 smuggled narcotics in the State of Utah.

Review of Defense Expert Witness Report

30. The Incident Analysis Report prepared by [REDACTED] is divided into five sections:

- a. K-9 Behavior;
- b. Video Analysis;
- c. Police Report Analysis;
- d. Conclusion;
- e. Relevant Case Law.

31. The K-9 Behavior section of the Incident Analysis Report prepared by [REDACTED] is accurate, and articulate.

32. The Video Analysis section of the Incident Analysis Report prepared by [REDACTED] is not completely accurate, according to the training standards of the Utah POST K-9 Program. The following points are in error:

a. In paragraph #1, [REDACTED] states that exterior searches are subdivided into various areas of the vehicle - this is not an accurate statement - an individual officer may opt to subdivide the exterior of a vehicle into various areas in some circumstances, but it is his/her personal option, is not mandated by professional standards, and there is no expectation that each Handler will do so;

b. In paragraph #2, [REDACTED] states that the dog attempted to get its head into the car but its feet slid back to the ground - this is not an accurate statement - a half-speed review of the dog's performance at segments 9:21:14-9:21:16 will

1 reveal that the dog was under control of its body the entire time;

2 c. In paragraph #2, [REDACTED] uses the terminology
3 "negative" when referring to Narcotics Detector Dog sniffing
4 behavior - this is not a term of art in the Utah POST K-9 Program,
5 though it may be a personal choice by [REDACTED] himself as a term
6 to describe a canine behavior;

7 d. In paragraph #4, [REDACTED] states that exterior
8 searches typically take from three to five minutes to thoroughly
9 complete - this is not an accurate statement - a well-trained
10 Narcotics Detector Dog should be able to sniff the exterior of a
11 vehicle thoroughly in approximately one minute or less, this is the
12 standard that Narcotics Detector Dog professionals in Utah and
13 generally across the nation employ for a traffic stop sniff, in
14 fact, a Handler may indeed opt to take three minutes or longer to
15 conduct a vehicle exterior sniff, but s/he risks detaining a
16 vehicle longer than is deemed appropriate for the legal stop;

17 e. In paragraph #5, [REDACTED] states it is impossible
18 to say from the video alone whether it [the dog] showed any
19 positive alert behavior or whether it just decided to continue its
20 search inside the vehicle - this is not an accurate statement - the
21 dog spent only two seconds at the driver side window but it spent
22 four seconds at the passenger side window [Williams Video 9:21:14-
23 9:21:16 vs. 9:21:20-9:21:24], these two additional seconds and the
24 behavior exhibited during that time, although seemingly
25 insignificant to an untrained person, constitutes a major

1 consideration for a reasonable-thinking K-9 professional, further,
2 the plain fact is that the dog did not enter the driver side
3 window, lastly, [REDACTED]'s opinion is not validated when one
4 considers the results of the objective assessment contained in
5 Plaintiff's Expert Witness Exhibit C;

6 f. In paragraph #6, [REDACTED] states that interior
7 passenger car searches typically take from five to ten minutes or
8 longer to thoroughly complete - this is not an accurate statement -
9 a well-trained Narcotics Detector Dog should be able to sniff the
10 interior of a vehicle thoroughly in approximately one minute or
11 less, this is the standard that Narcotics Detector Dog
12 professionals in Utah and generally across the national employ for
13 a traffic stop sniff, in fact, a Handler who opts to take five
14 minutes or longer to conduct a vehicle interior sniff risks
15 detaining a vehicle longer than is deemed appropriate for the legal
16 stop;

17 g. In paragraph #6, [REDACTED] states that it is not
18 possible for a dog to thoroughly search the interior of a car in 30
19 seconds - this is not an accurate statement - it is only necessary
20 that the dog sniffs the vehicle interior to the point that it
21 locates the source of an odor or alerts the Handler to its
22 presence, at that time the Handler is justified in stopping the K-9
23 sniff and taking further investigative action him/herself, even so,
24 it is very common that an experienced and reliable Narcotics
25 Detector Dog does complete a thorough interior sniff of a vehicle

1 in one minute or less;

2 h. In paragraph #6, [REDACTED] states that if the
3 trooper thought the dog had pinpointed *residual* odor, he would have
4 had the dog continue the search until the entire vehicle had been
5 checked - this is not an accurate statement - it is not mandated by
6 any professional Narcotics Detector Dog standard that the Handler
7 act in this way, it may be a choice for [REDACTED] in his own
8 personal practices, but it is not a professional standard and
9 Trooper Christenson is not bound by [REDACTED]'s personal practice.

10 33. The Police Report Analysis section of the Incident
11 Analysis Report prepared by [REDACTED] is not accurate,
12 according to the training standards of the Utah POST K-9 Program.
13 The following point is in error:

14 a. In paragraph #1, [REDACTED] states that the trooper
15 did not articulate the "negative" or "head checks" relative to his
16 dog's performance - this is not an accurate statement - the
17 sequence of Trooper Christenson's description clearly states that
18 the K-9 Robbie was " ... working the odor of narcotics ... " and
19 this was his observation. This is a suitable clarification, for
20 professional purposes.

21 34. The Conclusion section of the Incident Analysis Report
22 prepared by [REDACTED] is a declaration of his own perceptions
23 and opinions. His summary does not comport with accepted
24 professional standards for the State of Utah, neither national nor
25 international standards, nonetheless, [REDACTED] is the Defense

Expert Witness and is wholly entitled to declare his opinions. The facts which [REDACTED] states, to support a contention that Trooper Christenson exhibited pretextual search behavior in this incident, do not comport with accepted professional standards for the State of Utah, neither national nor international standards

Subsequent Opinions

I may develop more opinions as I review more documents or my opinions may change as I continue to review the documents I have received or as I receive more documents related to this case.

DATA OR INFORMATION CONSIDERED

As of this date, I have reviewed certain data and information in the process of developing the above-listed opinions. I also have personal knowledge and experience relative to the elements of this case as a result of my official function in Utah State government. The data and information item(s) are listed below.

1. Utah Department of Public Safety Incident Report, Case # 070612151, dated 28 June 2006.

2. DVD entitled Larry Williams, produced by the United States Attorney's Office, labeled Original.

3. Videotaped oral interview, Sgt. Ken Purdy, Utah Highway Patrol, attached hereto as Exhibit B.

2. Videotaped audit of Trooper Lance Christenson and K-9 Robbie, attached hereto as Exhibit C.

3. Personal observation of Trooper Lance Christenson and K-9 Robbie.

1 4. Report to the Utah Federal Defender Office, prepared by
2 [REDACTED], dated 01 December 2006.

3 5. K-9 Training Records, Trooper Lance Christenson and K-9
4 Robbie, 55 pages, beginning date 16 June 2005 - ending date 14
5 November 2006.

EXHIBIT A

Utah Highway Patrol K-9 Unit Policy-Procedure

| | | |
|---|---------------------------------|---------------------------|
| Department of Public Safety Utah Highway Patrol Operating Policy | REF. Operating Policy 3-3-21 | PAGE 1 of 15 |
| | EFFECTIVE DATE 07-01-98 | REVISION DATE 09-25-06 |
| SUBJECT: Canine Program | | |

I. Purpose

To establish guidelines for members of the Department of Public Safety utilizing canines. To maintain DPS canine team proficiency in the areas of drug interdiction, suspect apprehensions, tactical operations, crowd control and handler defense.

II. Organization

- A. Canine handlers with their assigned dog (canine teams) will be strategically located throughout the state. The canine teams will be subject to call out to assist DPS members and other agencies in drug, patrol and tactical operations. Individual teams will be supervised by the appropriate in-line supervisors responsible for their area of assignment. Canine teams must adhere to this policy.
- B. A Canine Program Coordinator will be appointed and will be responsible for the overall consistency and integrity of the DPS Canine Program.

III. Handler Selection Criteria

- A. Handlers for the DPS Canine Program will be selected from DPS sworn officers. The candidate will be required to participate in an officer-spouse orientation.
- B. Candidates should possess exceptionally good work habits, resourcefulness, dependability, and patience.
- C. Candidates must be in good physical condition and maintain 60% of the POST Cooper Fitness Standard and will be tested twice per year.
- D. Candidates must maintain a suitable residence that accommodates a canine and kennel, without complaints from neighbors.
- E. Candidates must receive a favorable recommendation from their section commander. Additionally, they must endorse in writing, their support for the canine policy as part of the handler request application, and in order for the handler to be considered.
- F. The Canine Coordinator will make a recommendation to his chain of command for final approval from the Colonel of the Highway Patrol.
- G. The position of K-9 Handler is an exempt position, meaning it is exempt from the normal transfer policy.

Policy Number 3-3-21
Canine Program
Page 2 of 15

IV. Administration and Supervision

- A. Administration and supervision of the Canine Program shall be handled through the normal chain of command. In-line supervisors of canine teams should council with and rely on the Canine Coordinator as a resource in managing canine teams.
- B. Responsibilities of the Canine Program Coordinator.
 - 1. Manages the overall program operation.
 - 2. Is responsible for the weekly, monthly, quarterly and annual training and certifications of canine teams.
 - 3. Ensures that Department canines are properly cared for.
 - 4. Makes recommendations related to certification, decertification, and re-certification of canine teams.
 - 5. Trains and educates DPS personnel on protocol involving canine operations.
 - 6. Ensures that drug substances used for training are properly accounted for and replaced when needed.
 - 7. Develop the canine handler selection process.
 - 8. Insures that all canine teams are properly following the canine policy.
 - 9. Is responsible for the acquisition or replacement of DPS dogs pending approval from the superintendent.
 - 10. Is responsible for conducting K9 Physical Contact Reviews and submit them to the chain of command for review.

V. Responsibilities of the in-line supervisor

- A. Schedules handlers for routine patrol assignments with allowances made for care, maintenance, eight hours of training per week, canine certification, and special assignments.
- B. Coordinates the management of the canine team with the Canine Coordinator so that all managing parties are aware of any action taken with the canine team.
- C. Brings to the attention of the Canine Coordinator any canine issues that would be better handled by the Canine Coordinator.

Policy Number 3-3-21
Canine Program
Page 3 of 15

VI. Responsibilities of Canine Handler

- A. Maintains a reliable detection and patrol canine, through ongoing training.
- B. Ensures that the canine is kept in good physical condition.
- C. Provides training to co-workers regarding safe conduct around the canine, as well as appropriate operational uses of the canine.
- D. Maintains, and keeps in good condition, all canine related equipment, including the canine vehicle.
- E. Provide a copy of all incident reports to the Canine Coordinator which contain descriptions of the use of a department K9.
- F. Records all training and working activity of the canine through use of the canine statistics log.
- G. Reports any change or discrepancy in the performance of the canine to the Canine Program Coordinator.
- H. Maintains training aids.
- I. Attends re-certification training with the canine.
- J. Ensures all searches with the canine are in compliance with the law, policies and procedures.
- K. Maintains the canine first aid kit, including narcotic antidotes.
- L. Maintains an appropriate level of control of the canine at all times to eliminate the possibility of unjustified biting incidents or other inappropriate contact, such as jumping or sniffing.
- M. Cleans the kennel and vehicle regularly to ensure a sanitary living and working environment for the canine and handler.
- N. Maintains a stress free environment for the canine at home.
- O. Grooms the canine daily.
- Q. Ensures that the canine receives all required vaccinations and regular medical checkups.

VII. Canine Handler Schedules

- A. Routine scheduling will be done by the first-line supervisor of the canine handler.
- B. Due to the potentially high demand for the deployment of a canine team, supervisors should consider flexibility in shift hours and days off should be considered with respect to their drug interdiction efforts.

Policy Number 3-3-21
Canine Program
Page 4 of 15

VIII. Personnel Guidelines

- A. Department personnel shall not provoke, tease, harass, or abuse the canine.
- B. Department personnel shall not reach into a canine vehicle with the dog inside except in emergency situations.
- C. Department personnel shall not attempt to feed the dog or retrieve objects from the dog unless directed to do so by the canine handler.
- D. Department personnel, other than the canine handler, shall not give commands to the dog, except in emergency situations.
- E. Department personnel shall not engage in any activity which could be perceived by the dog as an assault upon the handler.
- F. Department personnel shall not approach or pet the dog without the consent of the handler and only when the handler is present.
- G. When the canine team is utilized in a specific tactical situation/search, department personnel shall heed the directions of the canine handler as it relates to the dog. In all but the most exigent of circumstances, the handler shall make the final decision regarding utilizing the canine based upon the safety of the dog and everyone involved. In exigent circumstances, a superior officer may direct use or non-use of the dog, after being informed by the handler of risks or limitations of canine use.

IX. Duty Status

- A. Canines will be securely kenneled or under the supervision of their handler at all times.
- B. Handlers are not to involve themselves in any off-duty activities which may bring discredit upon the Department or the Canine Program.

X. Home Kenneling

- A. The canine shall be housed at the home of the handler in a kennel that is approved by the Canine Coordinator.
- B. The canine shall not be allowed to roam at will.
- C. When the canine is kenneled, and the handler is not present, the kennel door shall be securely locked with a padlock or similar locking device.
- D. The handler will ensure a safe and restful environment for the canine, safe from attack from other animals, and devoid of distractions that interrupt rest.
- E. Conflicts with other family pets must be resolved in a reasonable period of time.

Policy Number 3-3-21
Canine Program
Page 5 of 15

- F. Unresolved conflicts or lack of a suitable living environment will be sufficient cause for removal of the canine.
- G. Periodic and unannounced inspections of the canine and the canine's living quarters will be conducted by the canine coordinator.
- I. Except for temporary and emergency kenneling addressed in this policy, no canine will be housed at another location, or under another condition, unless approved by the Canine Coordinator.

XI. Care of the canine in the handler's absence

- A. If the handler is absent from his/her home for less than 12 hours, the canine may be left unattended, but securely locked within its own kennel.
- B. If the handler is absent from his/her home for more than 12 hours, the canine may be left in the care of a responsible person at the handler's residence.
- C. The canine may be kenneled at an approved kennel, or placed in the responsibility of some responsible person who can check on the animal periodically.
- D. The kennel utilized should be approved by the Canine Coordinator, and should either be a kennel provided by a licensed veterinarian; or a private kennel which has been inspected and approved prior to placing the dog in the kennel (except in the case of an emergency).
- E. If at all possible, the kennel selected should provide for 24-hour access by the handler to the canine.
- F. The kennel utilized should provide a weather-protected area for the canine to be housed and the canine should be placed in a kennel separate and, if possible, away from other animals.
- G. The canine coordinator shall be notified of any kenneling different than the residence of the canine handler.

XII. Care and Maintenance

- A. It is the responsibility of the handler to keep his/her canine in such physical condition that the canine is able to perform the duties expected of a police service canine.
- B. Any indication of poor health or abnormal physical condition will be reported immediately to the Canine Coordinator.

Policy Number 3-3-21
Canine Program
Page 6 of 15

- C. The canine should be groomed daily by the handler. Upon completion of grooming, the canine will be thoroughly examined by the handler. The canine shall not be taken to a professional groomer unless approval is given by the Canine Coordinator.
- D. Breeding of Department canines is prohibited without approval of the Canine Coordinator.

XIII. Medical maintenance

- A. The selection of a well-trained and experienced veterinarian is critical to the well-being of the canine. Each handler should be selective as to whom he employs to care for the canine.
- B. A well-established veterinarian in the community, one who understands not only canines but law enforcement canines, should be employed.
- C. The veterinarian should be available 24 hours a day in case of an emergency, provide individual instruction to the handler on canine nutritional needs and disease recognition, and be willing to maintain separate medical records for the canine. Additionally, the veterinarian's place of business should be located within reasonable distance of the handler's residence.
- D. Upon taking possession of a canine, the canine handler will arrange to have the canine thoroughly examined by a veterinarian and any inoculations needed will be updated by the selected veterinarian. At this examination, the veterinarian should prescribe the monthly or daily medication needed to prevent heartworm and other common parasite infections. Any deviation from this policy will require justification from the attending veterinarian and approval of the Canine Coordinator. Any medical records and x- rays accompanying the canine should be turned over to the veterinarian and kept in the canine's medical file.
- E. After the initial visit with the veterinarian, it is anticipated that, except for any necessary emergency care, or change in the canines daily demeanor that the handler would recognize as the animal is unwell, the canine's veterinary needs will be limited to a fecal examination quarterly, a general checkup every six months, and a complete physical each year.
- F. During the six-month visit to the veterinarian, the canine should be examined to determine its general state of health.
- G. During the yearly visit to the veterinarian, the canine should be examined to determine: its general state of health, a teeth cleaning, a blood analysis to determine any evidence of disease and feces examination to determine parasite infestation should be conducted during the examination. Inoculation for Rabies, Distemper, Hepatitis, Leptospirosis, Para influenza, Parvo virus, Corona virus, Bordatello, and Lyme Disease shall all be kept current.

Policy Number 3-3-21
Canine Program
Page 7 of 15

- H. The canine handler will coordinate all veterinary care, not of an emergency nature. Veterinary care of an emergency nature may be performed by any available licensed veterinarian. The canine handler's Canine Coordinator will be notified as soon as practical of the emergency.
- I. At the first opportunity following the emergency, the handler will submit an incident report to the canine handler's immediate supervisor and Canine Coordinator describing the nature of the injury, how it occurred, diagnosis, and the treating veterinarian.
- J. Each handler will be furnished a supply of syringes and a supply of Narcan as prescribed by the veterinarian. The syringes and supply of Narcan should be checked periodically by the handler to ensure that they have not been damaged and that they are not beyond their expiration date.
- K. All veterinary care will be documented by the respective handlers Veterinarian and kept on file at the animal hospital. If the handler changes vet care, all documents regarding the DPS canine shall be acquired and transferred to the new veterinarian.
- L. Department canines will be licensed within the communities of residence, as required.
- M. All DPS canine handler's will be knowledgeable in the administration of canine first-aid. Annual refresher courses in canine first-aid will be conducted by the Canine Coordinator.
- N. Each DPS Canine Vehicle will be equipped with a canine first-aid supply kit. This kit will be maintained on a regular basis and will be checked and updated at the annual first-aid training.

XIV. Feeding

- A. In order to maintain good health, the daily diet of the canines must be strictly controlled. Each handler will consult their respective veterinarian as to what diet their canine should be fed. On occasion a special diet is prescribed by a veterinarian to meet the specific needs of a particular canine.
- B. If the veterinarian prescribes a special diet, the Canine Coordinator will be notified.
- C. Canine handlers are responsible for ensuring that an adequate supply of approved canine food is on hand at the kennel. The canine handler is also responsible to ensure that a food stock level rotation procedure is established that ensures the oldest food is fed first. All canine food will be stored in rodent-proof containers.

Policy Number 3-3-21
Canine Program
Page 8 of 15

- D. A canine should not be deployed for approximately two hours after the canine has been fed, as this may be fatal to the animal. The canine should not be fed for two hours after strenuous activity. As per this policy, Handlers will refuse any call outs for approximately two hours after feeding the canine. It is not recommended to purge the canines' stomach to accommodate a deployment, unless the handler feels that failure to deploy will mean serious injury or death to any person. If possible the handler will contact the Canine Coordinator for assistance with this decision. If the handler attempts this, they should receive instruction from their respective veterinarian on the proper procedure to purge the canine.

XV. Transportation of the Canine

- A. Anytime the canine is left unattended in the vehicle and out of the handler's immediate view, the following practices will take place.
1. The vehicle shall be secured.
 - a. The doors will be locked.
 - b. Anti-theft devices will be utilized if equipped.
 2. The handler will determine if current weather conditions warrant the use of the vehicles heater or the air conditioner. (If practical, the hood of the vehicle shall be lifted to provide more air-flow to the engine.)
 3. The temperature monitor must be activated.
 - a. The temperature monitor should be set at an appropriate temperature.
 - b. The temperature monitor will be checked regularly by the canine handler. If any malfunctions of the device are detected, the handler will make immediate arrangements to service the vehicle and/or the temperature monitor.
 - c. Fleet services will maintain the temperature monitor and certify it is functioning on an annual basis.
 4. Fresh water will be made available to the dog.
 5. At least one window with the protective cage should be opened four or more inches when practical to allow the flow of fresh air for the dog.
- B. The rear windows of canine vehicles shall be tinted to assist in maintaining a comfortable environment for the dog.

Policy Number 3-3-21
Canine Program
Page 9 of 15

XVI. Procedures for out of area travel

- A. Extended travel or special work projects outside of the handler's normal work area will be required on occasion. During such circumstances the following procedures will be adhered to.
1. Dogs will be boarded at local Kennels or hotel accommodations will be made that permit animals inside of the handler's room.
 2. Handler's will be roomed by them selves in order to minimize stress on the Police Service Dog.
 3. Portable kennels will be used to secure the Police Service Dog while in the room. Special care should be exercised to avoid negligent contact with hotel staff and other officers.
 4. The dog shall not be left in the room unattended for extended periods of time.
 5. If the handler leaves the hotel premises the dog will go with the handler.
 6. When travel is made outside of the handler's regular work area, the handler will gather the location and contact information for the nearest veterinarian and/or animal hospital.
 7. In case of any emergency involving a Police Service Dog, the Canine Coordinator shall be notified as soon as practical. In addition to contacting the Canine Coordinator the handler's immediate supervisor shall be notified. The Canine Coordinator will make further notification as required.
- B. A written operations order, addressing the information from Canine Policy 3-3-21 Section XVI.A.1-7, shall be prepared and submitted to the Canine Coordinator for approval prior to any such travel.

XVII. Canine bite and injury procedures

- A. Provide all necessary first aid and arrange for any necessary medical care for the victim.
- B. Contact the first-line supervisor immediately. The Canine Coordinator will conduct an investigation of the incident in cooperation with the handlers immediate supervisor. The Canine Coordinator will perform a canine bite review involving any suspect apprehension deployments.
- C. The handler will prepare a detailed incident report documenting and explaining what happened.

Policy Number 3-3-21
Canine Program
Page 10 of 15

- D. Written statements from the victim and any witnesses shall be obtained.
- E. If possible or practical, color photographs of the injured area, as well as full body photographs of the victim, are to be taken after the wound(s) is cleaned.
- F. Copies of victim's medical treatment records shall be obtained, if possible.
- G. The complete report package should be forwarded through the chain of command with a copy to the Canine Coordinator.
- H. If the victim is a Department employee, all necessary Workers' Compensation forms shall be completed.
- I. The handler and the Canine Coordinator will make notification to their chain of command of any substantial injury cause by or to the dog.

XVIII. Damage as a result of canine action

- A. Notify his/her immediate supervisor who shall investigate the incident.
- B. Photograph the damage and take statements from witnesses.
- C. Complete an incident report.
- D. The handlers immediate supervisor should consult the Canine Coordinator for assistance with the investigation.

XIX. Injury to the canine handler

Medical attention shall be requested immediately for a seriously injured canine handler.

- A. In instances where the canine is not secure, an untrained officer shall not approach the injured handler except:
 - 1. When given clearance to do so by the injured handler.
 - 2. When the canine can be called away from the injured handler and secured.
 - 3. When a delay is life threatening to the handler.
- B. On-scene officers shall attempt the following procedures to secure a canine from an injured handler by:
 - 1. Attempting to call the canine to a secure location, and detain the canine.
 - 2. If necessary, contact another handler to secure the canine.

Policy Number 3-3-21
Canine Program
Page 11 of 15

XX. Injury to the canine

- A. In the event that emergency medical services are required, first aid shall be applied and the canine shall be transported to the canine's normal veterinarian or, if unable to contact the canine's normal veterinarian, the canine may be taken to any licensed veterinarian.
- B. The in-line supervisor and the Canine Coordinator shall be notified as soon as possible after attending to the canine.
- C. In non-emergency medical situations, the handler shall advise the Canine Coordinator prior to transporting the dog to the veterinarian.
- D. No surgery except emergency surgery will be performed without prior notification of the Canine Coordinator.

XXI. Retirement and replacement of the canine

- A. The average working life of a law enforcement canine is six to eight years.
- B. Once the canine is no longer productive or health prevents the canine from performing its duties satisfactorily, the canine shall be retired.
- C. In the event that the handler does not wish to keep the canine, a determination shall be made by the Canine Coordinator as to the most humane disposition, which generally would mean retiring the canine to a good home, with an ownership liability transfer document, which consists of a letter from the Superintendent's Office and approval by State Surplus Property.
- D. The justification for retirement shall be documented on a memorandum from the canine handler to the Canine Coordinator. Approval to act on the retirement of a dog will be granted by the superintendent of the Utah Highway Patrol.
- E. The intended disposition of the canine shall be articulated in the memorandum.
- F. The canine may be awarded to the canine's handler if the handler wishes to keep the animal, with an ownership liability transfer document, approval by State Surplus Property and approval from the superintendent.
- G. Decisions regarding purchasing and replacement of canines will be approved by the superintendent of the Utah Highway Patrol.

Policy Number 3-3-21
Canine Program
Page 12 of 15

XXII. Patrol dog apprehension deployment policy

- A. A police service dog may be used to apprehend an individual if the canine handler reasonably believes that the individual has either committed or is about to commit any offense and if any of the following conditions exist:
1. There is a reasonable belief that the individual poses an immediate threat of violence of serious harm to any citizen, any officer, or the handler.
 2. The individual is physically resisting arrest or fleeing and the use of a police service dog is the lowest amount of force that is reasonable to make the apprehension, given the seriousness of the crime committed.
 3. The individual(s) is believed to be concealed in an area where entry by other than canine would pose a threat to the safety of officers or the public.
 4. It is recognized that situations may arise which do not fall within the provisions set forth in this policy. In any such case, a standard of reasonableness shall be used to review the decision to use a police service dog in view of the totality of the circumstances.
- **NOTE: Absent the presence of one or more of the above conditions, mere flight from pursuing officer(s) alone, shall not serve as good cause for a canine apprehension.**
- B. Prior to the use of a police service dog to search for or apprehend any individual, the canine handler or supervisor at the scene shall carefully consider all pertinent information reasonably available at the time. This information shall include, but is not limited to:
1. The individual's age or an estimate thereof,
 2. The nature of the suspected offense involved,
 3. Any potential danger to any other police officer who may attempt to intervene or assist with the apprehension,
 4. Any potential danger to the public which may result from the release of a police service dog.
- C. Unless it would otherwise increase the risk of injury or escape, a verbal warning followed by a reasonable period of compliance shall precede the release of any police service dog.
- D. The canine handlers supervisor and the Canine Coordinator shall be notified as soon as practicable following any police service dog apprehension.

Policy Number 3-3-21
Canine Program
Page 13 of 15

- E. After all reports and pertinent information is received, a panel of department representatives will conduct a bite review. The Canine Coordinator will administer the review unless his/her canine was the one involved in the apprehension.

XXIII. Narcotic detection dog deployment policy

- A. The drug detector canine may be used to:
1. Search vehicles, buildings, parcels, areas or other items deemed necessary;
 2. Obtain a search warrant by using the canine in support of probable cause;
 3. Assist in the search for narcotics during a search warrant service;
 4. Assist in drug education programs for the Department of Public Safety.
- B. The drug detector canine will not be used to search a person for drugs. If a canine alert causes the trooper to believe that a person may be in possession of narcotics, the trooper in charge of the investigation will determine how to proceed. Personal possession may be searched by the canine only if removed from the person.
- C. The decision to use the dog rests solely with the handler. The handler is responsible for the deployment of the dog as a method of investigation.

XXIV. In Service Training

- A. Maintaining the proficiency of a police service canine is the primary responsibility of the individual handler.
- B. In service training must be conducted consistent with the duties the basic service dog will be required to perform. Each exercise must be realistic and challenging to the canine.
- C. No DPS canine will be trained to detect any odor except those approved by the Canine Coordinator.
- D. Canine handlers are required to train four hours per week to maintain proficiency in drug detection and four hours per week for proficiency in patrol dog techniques.
- E. Once per month, a training day for the southern part of the state and a training day for the northern part of the state will be Planned and supervised by the Canine Coordinator. Quarterly, a training day for all Department canine teams will be planned and supervised by the Canine Coordinator.
- F. If a canine team is assigned to a special detail that team is required to train with the said detail above and beyond their required eight hours a week.

Policy Number 3-3-21
Canine Program
Page 14 of 15

XXIV. Annual certification

Every Department canine team will be required to certify in drug work and patrol work annually. The certification course and test must be approved by the Canine Coordinator.

XXV. Controlled substance training aids

- A. Handlers will not disclose the types of drugs their canines are trained to detect, unless requested by a judge or magistrate.
- B. The handlers will be issued training aids in the amounts approved by the Canine Program Coordinator.
- C. Canine handlers are responsible for keeping an audit log of the controlled substances issued to them. A canine training aid receipt for controlled substances will be used for this purpose. A copy of the receipt for controlled substance will, for audit purposes, be forwarded to the Canine Coordinator.
- D. When the controlled substance can no longer be utilized for training purposes due to deterioration, age, etc., the drugs will be destroyed in a manner set forth by Department policy.
- E. All narcotics used for training in the canine program, must be tested prior to use, to determine the validity of the substance.

XXVI. Storage

- A. All drugs except those in training-aid form will be secured in an approved storage unit. Those in training aid form, when not in use will be secured in a locked trunk of a patrol vehicle with prior written approval from the Canine Coordinator. Written approval will include the type and amount of drug, method of packaging, purpose of its use, and expiration of approval (not to exceed three months). The location or storage unit will be approved by the Canine Coordinator. The District Sergeant will be allowed into the controlled substance safes or approved area at anytime. Access to all controlled substance storage areas will be restricted. All drugs will be stored in separate containers.
- B. The Canine Coordinator is to be notified immediately of any changes in the storage area or security of storage area.

Policy Number 3-3-21
Canine Program
Page 15 of 15

XXVII. Training aids

- A. When any training aid is damaged, by whatever means, and any controlled substance is spilled from the aid, an attempt must be made to recover as much spillage as possible. Any substance that cannot be recovered must be destroyed or otherwise rendered unfit for use. The canine handler to whom it was issued will prepare an incident report and forward it to his/her chain of command and to the Canine Coordinator. The damaged aid and report will be turned over to the District Sergeant within 24 hours, the next duty day, or the first duty day upon return from field training. The canine handler, in the presence of the District Sergeant will place the damaged aid in a plastic bag and seal the bag. The immediate supervisor and the canine handler will then sign their names across the seal.
- B. Appropriate entries must be made in an incident report to indicate any loss and/or residue of controlled substances.
- C. In the event a controlled substance training aid is lost or cannot be accounted for, the canine handler will immediately notify the his/her immediate supervisor and the Canine Coordinator who will make notifications up the chain of command.
- D. All thefts of controlled substances and any unexplained loss of controlled substances are required to be reported by completing an incident report. An investigation will be conducted by the Canine Coordinator, immediate supervisor, the police agency having jurisdiction, and DPS Internal Affairs.

XXVIII. TRAINING AID ACCOUNTABILITY

- A. An accounting of all controlled substance training aids issued to canine handlers will be inventoried every year and a copy of the report will be sent to the Canine Coordinator.
- B. All training aid accountability reports will be kept for two years and then destroyed.
- C. At the time of inventory, all controlled substance training aids will be checked by number and quantity of aids in possession and logged on the appropriate accountability record.

EXHIBIT B

Incorporated within Exhibit B is a CD labeled as "Plaintiff's Expert Witness Exhibit B, Video Interview, UHP Sgt. Ken Purdy, 26 January 2007." This CD contains video/audio of an oral interview. Also incorporated within Exhibit B is the transcribed text of this interview, which is included below.

START OF ORAL INTERVIEW.

Ken Purdy: *I'm Sergeant Ken Purdy, Utah Highway Patrol. I'm the K-9 coordinator for an 11 dog K-9 team, dogs spread out throughout the State of Utah.*

Wendell Nope: *Sergeant Purdy, are you in the command structure for Trooper Lance Christenson?*

Ken Purdy: *Yes, I am. Trooper Christenson is a K-9 Handler in my command and is stationed out of - uh - Utah Highway Patrol Section 7 in Heber City, Utah.*

Wendell Nope: *Do you have occasion to conduct training - uh - for Trooper Christenson and to examine his performance for his street-worthiness?*

Ken Purdy: *Yes. We re-certify Trooper Christenson and his - uh - Police Service Dog Robbie - uh - annually - uh - however, I see his dog at least once a month and due to the proximity of - uh - Trooper Christenson's - uh - house and my house, we - we train probably more regular than that.*

Wendell Nope: *In your experience, the - the length of time that*

1 you have had to work with Trooper Christenson and
2 his K-9 Robbie, have you - uh - an opinion or a
3 synopsis that you could state for us concerning his
4 skill level and level of expertise as a K-9 Handler
5 and also as a dog.

6 Ken Purdy: Trooper Christenson is a member of the Utah Highway
7 Patrol Department of Public Safety Criminal
8 Interdiction Team. Uh - he is one of, at the time,
9 five members of that team, highly trained and
10 skilled in detecting criminal activity on the - uh -
11 on the interstates or through - through - uh - uh -
12 through conducting traffic stops. His police
13 service dog is of the highest quality, one of -
14 probably one of the best dogs in the unit. He has -
15 uh - he been a Handler for approximately about two
16 years and has - has several finds with the police
17 service dog - um - large quantities and small
18 quantities alike.

19 Wendell Nope: During this period of time that he has been in
20 service, has it been necessary for you to ever
21 conduct any remedial or rehabilitation or any kind
22 of corrective or disciplinary training on the dog or
23 on the Handler as the - uh - operator of the dog?

24 Ken Purdy: Uh - none whatsoever. Uh - both Trooper Christenson
25 and Police Service Dog Robbie are of high quality

1 *and professionalism. Never - never any issues*
2 *regarding that.*

3 Wendell Nope: *Thank you, Sergeant Purdy and what is the date*
4 *today?*

5 Ken Purdy: *It is - uh - January 26th, Friday, uh -*
6 *approximately 10:15 am.*

7 Wendell Nope: *Thank you, Sergeant Purdy.*

8 END OF ORAL INTERVIEW.

9 **EXHIBIT C**

10 Incorporated within Exhibit c is a CD labeled as "Plaintiff's
11 Expert Witness Exhibit C, Performance Assessment, K-9 Robbie & Trp.
12 Christenson, 26 January 2007." This CD contains video/audio
13 footage of an examination conducted by Wendell Nope of Trooper
14 Lance Christenson and K-9 Robbie as they participate in a canine
15 sniff test of two vehicles. The first vehicle has no drug odor
16 placed in it, while the second vehicle has a drug-odor-tainted
17 object hidden inside the passenger compartment. The object has
18 been saturated with the odor of marijuana and hidden out of view in
19 the passenger compartment. The drug-odor-tainted object is
20 currently in the possession of Wendell Nope.

21 **QUALIFICATIONS**

22 I have qualifications specific to the issues of this matter.
23 These qualifications are listed below.

24 1. Employment Experience

25 1. December 1989 - Present, as a member of the Peace

1 Officer Standards and Training Division (POST) of the Utah
2 Department of Public Safety, Utah, (a.k.a. Utah Police Academy) my
3 duties are as K-9 Training Supervisor over training, evaluating,
4 and certifying Service Dogs and Personnel on an international
5 scale, to date 1800+ officers and dogs have attended this facility
6 in 4-8 week courses;

7 2. April 1998 - Present, as a member of the Board of
8 Directors of the national Police Service Dog organization DOGS
9 AGAINST DRUGS / DOGS AGAINST CRIME (DAD/DAC), Anderson, Indiana, my
10 duties are as coordinator of education and curriculum development
11 for 1300+ police officers;

12 3. November 1984 - January 1990, as a member of the
13 Security Department of the Church of Jesus Christ of Latter-day
14 Saints, Salt Lake City, Utah, my duties were as Supervisor of the
15 Explosive Detector Dog Unit functioning on an international scale;

16 4. April 1984 - December 1986, as a member of the Lamar
17 County Sheriff Department, Vernon, Alabama, my duties were as K-9
18 Handler/Judge and Undercover Investigator (Leave of Absence from
19 November 1984 - December 1986);

20 5. January 1983 - November 1984, as Co-Director of PSP
21 America, Inc., Tuscaloosa, Alabama, my duties were training K-9's
22 and Personnel on a national scale;

23 6. July 1980 - January 1983, as a member of the
24 Calcasieu Parish Sheriff Department, Lake Charles, Louisiana, my
25 duties were as Supervisor of the K-9 Unit and Narcotics/Vice

1 Investigator;

2 7. August 1976 - July 1980, as a member of the Lake
3 Charles Police Department, Lake Charles, Louisiana, my duties were
4 Uniform Patrol and K-9 Patrol;

5 2. Certificates Held, listed by date

6 1. PUBLIC SAFETY MEDAL OF EXCELLENCE, awarded by the
7 Utah Department of Public Safety in 2006 for outstanding law
8 enforcement service rendered to the citizens of the State of Utah;

9 2. DEPARTMENT OF PUBLIC SAFETY UNIT CITATION, awarded
10 by the Utah Department of Public Safety in 2006 for meritorious
11 canine-related service rendered to the citizens of the State of
12 Utah;

13 3. CERTIFIED ASSAULT RIFLE MARKSMAN, awarded by the
14 Utah Department of Public Safety in 2005 (re-certification);

15 4. CERTIFICATE OF APPRECIATION, awarded by the United
16 States Secret Service in 2004 for service rendered to the K-9
17 Program in Washington, DC;

18 5. CERTIFICATE OF APPRECIATION awarded by the United
19 States Secret Service in 2003 for service rendered to the K-9
20 Program in Washington, DC;

21 6. INSTRUCTOR DEVELOPMENT CERTIFICATE awarded by the
22 Federal Bureau of Investigation in 2000;

23 7. CERTIFIED ASSAULT RIFLE MARKSMAN awarded by the Utah
24 Department of Public Safety in 2002 (re-certification);

25 8. CERTIFICATE OF EXCELLENCE awarded by the Utah

1 Department of Public Safety (UDPS) in 1998 for outstanding service
2 rendered to the Utah Highway Patrol;

3 9. CERTIFICATE OF APPRECIATION awarded by the Utah
4 Department of Corrections (UDOC) in 1997 for Distinguished Service
5 rendered to the UDOC K-9 Unit from 1990-96;

6 10. DISTINGUISHED SERVICE awarded by the Utah Department
7 of Public Safety (UDPS) in 1992 for outstanding service as an
8 employee rendered from 1990-92, specifically, for being chosen to
9 be the sole American representative on the International Congress
10 of Police Service Dogs, an international commission of standard-
11 setting Service Dog trainers and administrators;

12 11. CERTIFIED POLICE FIREARMS INSTRUCTOR awarded by the
13 Utah POST in 1992 with a special emphasis in Service Dog Handler
14 Firearms Instruction;

15 12. CERTIFIED PATROL DOG HANDLER awarded by the Utah
16 POST in 1991 (re-certification);

17 13. CERTIFIED TEACHING JUDGE OF SERVICE DOGS, HANDLERS,
18 INSTRUCTORS, AND JUDGES awarded by the State Police School for
19 Service Dog Handlers (Landespolizeischule fuer Diensthundfuehrer)
20 in Stukenbrock, West Germany in 1991 (re-certification);

21 14. CERTIFIED PEACE OFFICER awarded by the Utah POST in
22 1990;

23 15. CERTIFIED HANDLER OF EXPLOSIVE DETECTOR DOGS awarded
24 by the Security Department of the Church of Jesus Christ of Latter-
25 day Saints in 1989;

1 16. SUPERVISORY MANAGEMENT awarded by the Zenger-Miller
2 Management Training Institute in 1986;

3 17. CERTIFIED TEACHING JUDGE OF SERVICE DOGS, HANDLERS,
4 INSTRUCTORS, AND JUDGES awarded by the State Police School for
5 Service Dog Handlers (Landespolizeischule fuer Diensthundfuehrer)
6 in Stukenbrock, West Germany in 1986;

7 18. CERTIFIED JUDGE OF SERVICE DOGS, HANDLERS,
8 INSTRUCTORS, AND JUDGES awarded by the State Police School for
9 Service Dog Handlers (Landespolizeischule fuer Diensthundfuehrer)
10 in Stukenbrock, West Germany in 1984;

11 19. CERTIFIED INSTRUCTOR OF SERVICE DOGS AND HANDLERS
12 awarded by the State Police School for Service Dog Handlers
13 (Landespolizeischule fuer Diensthundfuehrer) in Stukenbrock, West
14 Germany in 1984;

15 20. CERTIFIED NARCOTICS SCREENING awarded by Becton
16 Dickinson Public Safety in 1982;

17 21. CERTIFIED UNDERCOVER NARCOTICS INVESTIGATOR awarded
18 by the Louisiana Sheriff's Association in 1982;

19 22. CERTIFIED PATROL DOG HANDLER awarded by the State
20 Police School for Service Dog Handlers (Landespolizeischule fuer
21 Diensthundfuehrer) in Stukenbrock, West Germany in 1981;

22 23. CERTIFIED RIFLE/PISTOL MARKSMAN awarded by the West
23 German Army in 1981;

24 24. CERTIFIED RIFLE/PISTOL MARKSMAN awarded by the
25 United States Army in 1981;

25. CERTIFIED HANDGUN MARKSMAN awarded by the National Rifle Association in 1981;

26. CERTIFIED PEACE OFFICER awarded by the Louisiana Council on Peace Officer Standards and Training (POST) in 1979;

3. Special Qualifications

1. United States Representative on the International Congress of Police Service Dogs;

2. First Certified Police Service Dog "Teaching Judge" in the United States;

3. First American police officer accepted in the Landespolizeischule fuer Diensthundfuehrer;

4. Recognized as an expert in Police Service Dog psychology;

5. Expert Witness: U.S. Federal Court, State Courts of California, Florida, Indiana, Kansas, Louisiana, Nebraska, New Mexico, Utah, and Washington;

6. Expert Witness: Patrol Dog in Homicide Investigation (Death Penalty, Louisiana), criminal court;

7. Expert Witness: Patrol Dog in Burglary Investigation (Death of Perpetrator, Florida), civil court;

8. Litigation Consultant to: Los Angeles P.D. (CA), Los Angeles S.O.(CA), Santa Monica P.D. (CA), West Palm Beach S.O. (FL), Evansville P.D. (IN), Leavenworth P.D. (KS), Albuquerque P.D. (NM), Blanchester P.D. (OH), Seattle P.D. (WA), Tacoma P.D. (WA), Grand Rapids P.D. (MI), State of Nebraska, Layton P.D. (UT), West

1 Jordan P.D. (UT);

2 9. Editor of national Police Service Dog professional
3 journal of 6000+ readers;

4 10. Police Service Dog Trial Judge:

5 1. 2003, United States National Police Dog
6 Championship, Atlanta, Georgia;

7 2. 1998, Ohio Law Enforcement K-9 Games
8 Competition, Tipp City, Ohio;

9 3. 1996, International Law Enforcement Games K-9
10 Competition, Salt Lake City, Utah,

11 4. 1996, United States National Police Dog
12 Championship, Charleston, West Virginia,

13 5. 1996, Las Vegas Invitational Police Dog Trial,
14 Nevada,

15 6. 1995, Heart of America Police Dog Association,
16 Great Bend, Kansas,

17 7. 1995/1993, Canadian National Police Dog
18 Championship, Vancouver/Calgary,

19 8. 1994, United States National Police Dog
20 Championship, Madison, Wisconsin,

21 9. 1993, California Law Enforcement Games, Los
22 Angeles,

23 10. 1993/1992, U.S. Federal Agency Regional K-9
24 Trials, Yuma, Arizona,

25 11. 1992, Bakersfield Invitational K-9 Trials,

1 California,

2 12. 1991, International Service Dog Championship,
3 Bayreuth, West Germany,

4 13. 1991/1989/1988, Utah Police K-9 Olympics, Salt
5 Lake City,

6 14. 1983, International Service Dog Championship,
7 Gutersloh, West Germany,

8 11. Police Service Dog Instructor

9 1. 1990-2006, over 1800 Dogs/Handlers from start
10 to finish during Utah POST 4-8 week courses,

11 2. 1995-2006, over 1000 Dogs/Handlers during
12 national seminars for DOGS AGAINST DRUGS - DOGS AGAINST CRIME,

13 3. 1997, over 100 Dogs/Handlers at national
14 seminar in Kentucky,

15 4. 1996, over 80 Dogs/Handlers at national seminar
16 in Florida,

17 5. 1995, over 100 Dogs/Handlers at national
18 seminar in Tennessee,

19 6. 1993, over 80 Dogs/Handlers at international
20 seminar in Nevada,

21 7. 1983, over 100 Dogs/Handlers at national
22 seminar in Massachusetts,

23 8. Extensive research concerning Police Service
24 Dog compliance to Constitutional law,

25 9. Pioneered "Detaining," "Verbal Release,"

"Tactical Release," "Emergency Release," and "Disengage" concepts for Patrol Dog training and deployment,

10. Established placement of Patrol Dogs in "Use of Force Continuum,"

11. Former Supervisor of elite Bomb Detector Squad of International Scale,

12. Police Academy Valedictorian, scholastics and firearms (Louisiana),

13. Fluent speaker of the German Language,

14. Translated numerous Service Dog training texts from German to English.

Publications Authored

I have authored certain publications specific to the issues of this matter. These publications are listed below:

1. Magazine Articles

1. *Slowing Down A Bomb Dog*, Police K-9 Magazine, Winter 2007 Issue;

2. *Training Patrol Dogs Around Handgun & Rifle Fire*, Police K-9 Magazine, Winter 2007 Issue;

3. *Maintaining The Verbal Release*, Police K-9 Magazine, Winter 2006 Issue;

4. *Police Dogs & Schutzhund Trials: Segment #3 Prey Drive vs. Fight Drive*, German Shepherd Dog Club of America Working Dog Association Magazine, May-June 2006 Issue;

5. *Police Dogs & Schutzhund Trials: Segment #2 Sleeve-*

1 *Fixated vs Sleeve-Sure, German Shepherd Dog Club of America Working*
2 *Dog Association Magazine, March-April 2006 Issue;*

3 6. *Reliable "Out" on Toys, Police K-9 Magazine, Spring*
4 *2006 Issue;*

5 7. *Police Dogs & Schutzhund Trials: Segment #2 Sleeve-*
6 *Fixated vs. Sleeve-Sure, German Shepherd Dog Club of America*
7 *Working Dog Association Magazine, March-April 2006 Issue;*

8 8. *Bomb Dogs & Car Batteries, Police K-9 Magazine,*
9 *Spring 2006 Issue;*

10 9. *Police Dogs & Schutzhund Trials: Segment #1 Where*
11 *Are They?, German Shepherd Dog Club of America Working Dog*
12 *Association Magazine, January-February 2006 Issue;*

13 10. *Maintaining the Verbal Release, Police K-9 Magazine,*
14 *Winter 2006 Issue;*

15 11. *Improving Narco Dog Indications, Police K-9*
16 *Magazine, Fall 2005 Issue;*

17 12. *When a Dog Won't Bark, Police K-9 Magazine, Summer*
18 *2005 Issue;*

19 13. *Dogs in Tight Spaces, Police K-9 Magazine, Summer*
20 *2005 Issue;*

21 14. *When Drug Smugglers Cry, DAD/DAC Magazine, official*
22 *publication of Dogs Against Drugs - Dogs Against Crime, Spring 2005*
23 *Issue;*

24 15. *The Evolution of Police Service Dogs Part II:*
25 *You've Come A Long Way Doggie!, Scutzhund USA, official publication*

1 of the United Schutzhund Clubs of America, Vol. 24 Issue 6
2 November/December 1999, approximately 3500 subscribers;

3 16. *The Evolution of Police Service Dogs Part I: The*
4 *Beginning, Scutzhund USA*, official publication of the United
5 Schutzhund Clubs of America, Vol. 24 Issue 5 September/October
6 1999, approximately 3500 subscribers;

7 17. *Be Advised: K-9 En Route, The Utah State Trooper*,
8 official publication of the Utah Highway Patrol Association, Vol. 6
9 Issue 2 Fall 1999, approximately 3000 subscribers;

10 18. *Tactical Deployment Dogs, Utah Peace Officers*
11 *Association Journal*, Vol. 73 Issue 2 Summer 1996, approximately
12 5000 subscribers;

13 19. "Clarification for POST Certified Instructors", Utah
14 POST Service Dog Program Newsletter, July 1996; approximately 4500
15 subscribers;

16 20. "Clarification for POST Certified Judges", Utah POST
17 Service Dog Program Newsletter, July 1996; approximately 4500
18 subscribers;

19 21. "Patrol Dog Handler Threat Level Elements", Utah
20 POST Service Dog Program Newsletter, July 1996; approximately 4500
21 subscribers;

22 22. "Legal Briefing: Nunley v. Los Angeles", UTAH POST
23 Service Dog Program Newsletter, July 1996; approximately 4500
24 subscribers;

25 23. "Legal Briefing: Balandran v. El Paso", Utah POST

1 Service Dog Program Newsletter, January 1996; approximately 4000
2 subscribers;

3 24. "ICPSD Condemns Abuse of PREY DRIVE Training", Utah
4 POST Service Dog Program Newsletter, October 1995; approximately
5 4000 subscribers;

6 25. "ICPSD Declares Acceptable DETAINING Distance", Utah
7 POST Service Dog Program Newsletter, October 1995; approximately
8 4000 subscribers;

9 26. "Transferring a Patrol Dog from Prey Drive to Fight
10 Drive" aka "Preying for Fight Drive", Utah POST Service Dog Program
11 Newsletter, October 1995; approximately 4000 subscribers;

12 27. "Legal Briefing: Chew v. Gates (It's finally
13 over!)", Utah POST Service Dog Program Newsletter, October 1995;
14 approximately 4000 subscribers;

15 28. "Letter To A Concerned Administrator", Utah POST
16 Service Dog Program Newsletter, July 1995; approximately 3000
17 subscribers;

18 29. "Baffled", Utah POST Service Dog program Newsletter,
19 July 1995; approximately 3000 subscribers;

20 30. "Legal Briefing: Reich v. New York City Transit
21 Authority", Utah POST Service Dog Program Newsletter, July 1995;
22 approximately 3000 subscribers;

23 31. "Dr. Jekyll - Mr. Hyde", Utah POST Service Dog
24 Program Newsletter, April 1995; approximately 3000 subscribers;

25 32. "Legal Briefing: Canton v. Harris", Utah POST

1 Service Dog Program Newsletter, April 1995; approximately 3000
2 subscribers;

3 33. "Desperately Looking For The One", Utah POST Service
4 Dog Program Newsletter, October 1994; approximately 1300
5 subscribers;

6 34. "He Lied To Me", Utah POST Service Dog Program
7 Newsletter, March 1994; approximately 1200 subscribers;

8 35. "Police Service Dog Killed In The Line Of Duty",
9 Utah POST Service Dog Program Newsletter, March 1994; approximately
10 1200 subscribers;

11 36. "Too Close For Comfort", Utah POST Service Dog
12 Program Newsletter, December 1993; approximately 1200 subscribers;

13 37. "Use Of Force Continuum", Utah POST Service Dog
14 Program Newsletter, September 1993; approximately 850 subscribers;

15 2. Books

16 1. Utah POST Patrol Dog Training Manual, official
17 publication of the Utah POST Service Dog Program;

18 2. Utah POST Narcotics Detector Dog Training Manual,
19 official publication of the Utah POST Service Dog Program;

20 3. Utah POST Explosive Detector Dog Training Manual,
21 official publication of the Utah POST Service Dog Program;

22 4. Utah POST Cadaver Detector Dog Training Manual,
23 official publication of the Utah POST Service Dog Program.

24 COMPENSATION

25 I am not being compensated to function as a Plaintiff's Expert

1 Witness in this case.

2 PRIOR EXPERT WITNESS TESTIMONY

3 I have testified at trial or by deposition in certain cases
4 prior to this action. These cases are listed below in order,
5 beginning with the most recent.

6 1. MILLER v. WEST JORDAN, United States District Court, Utah
7 District, Central Division, Case No. 2:02-CV-00590 (complaint of
8 excessive force), deposition and trial testimony;

9 2. SCHEPEN v. JACKSONVILLE, United States District Court,
10 Middle District of Jacksonville, Jacksonville Division, Case No.
11 3:03-cv-943-J-16TEM (complaint of excessive force), deposition
12 testimony;

13 3. BATTLE v. JACKSONVILLE, United States District Court,
14 Middle District of Jacksonville, Jacksonville Division, Case No.
15 3:03-cv-625-J-25TEM (complaint of excessive force), deposition
16 testimony;

17 4. IOWA v. COUGHLIN, District Court for the State of Iowa,
18 Cedar County, Case No. FECR017152 (suppression hearing), trial
19 testimony;

20 5. UNITED STATES v. TIMOTHY HEIR, United States District
21 Court, Western District of Nebraska (Lincoln), Case No. 4:99CR3026
22 (suppression hearing), trial testimony;

23 6. PAUL MYERS v. OFFICER CHARLES WARE AND OFFICER WILLIAM
24 KELLY, United States District Court, Western District of Michigan,
25 Case No. 1:00 cv 508 (complaint of excessive force), deposition

1 testimony;

2 7. HELMS v. NUSSMEIER, United States District Court,
3 Southern District of Indiana, Case No. EV 96-23-C R/H, Claim No.
4 328 L 87879 (complaint of excessive force), deposition testimony;

5 8. CORDERO v. REAVER, Superior Court of the State of
6 California for the County of Los Angeles, Case No. BC 050793
7 (complaint of negligent training), trial testimony;

8 9. MALICKY v. HEYEN, District Court for the State of
9 Nebraska, Seward County, 1993 Case No. 10039 (complaints of
10 negligent training and loss of consortium), deposition and trial
11 testimony;

12 10. MACLEOD v. WILLE, Fifteenth Judicial Circuit Court in and
13 for Palm Beach County, Florida, Case No. CL 91-670 AI (complaint of
14 excessive force), deposition testimony;

15 11. REYES v. COUNTY OF LOS ANGELES, United States District
16 Court, Central District of California, Case No. CV90-6341-DT
17 (complaint of excessive force), trial testimony;

18 12. ROGERS v. CITY OF LOS ANGELES, United States District
19 Court, Central District of California, Case No. CV 89 5799 TJH Bx
20 (complaint of excessive force), trial testimony;

21 13. NUNLEY v. CITY OF LOS ANGELES, United States District
22 Court, Central District of California, Case No. CV 89-3313 WJR Bx
23 (complaint of excessive force), trial testimony.

24

25

DECLARATION OF TRUTH

I declare, under penalty of perjury under the laws of the State of Utah, that the foregoing is true and correct, to the best of my knowledge.

Executed on this 31st day of January 2007, in Salt Lake City, Utah.

Wendell M. Nope