Inside the Minds: Defense Strategies for Drug Crimes, 2012 ed.

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CHAPTER TITLE: Getting the Early Advantage for Clients Accused of Drug Crimes

Introduction

The new drug defense lawyer finds himself in a wilderness. Not only does he lack the confidence that comes from experience, but also, most of his law school training is theoretical and has ill-prepared him for the practical demands of defending against a drug prosecution. Exacerbating matters is the mostly canned advice he receives from fellow practitioners: "Be aggressive at a preliminary hearing" or "make your client look good at his bond hearing." Good advice, but, like telling someone to "buy low and sell high," it does little to show the new criminal defense lawyer *how* to "be aggressive at a preliminary hearing" or *how* to "make your client look good at a bond hearing."

Like a wilderness, however, there are helpful resources for those who know how and where to look. This chapter guides the new criminal defense lawyer through the early stages of a criminal drug prosecution from the investigatory stage to the bond hearing to the preliminary hearing, with an emphasis on best practices and practical tactics. The chapter concludes with suggestions for further reading and other useful resources.

Effective Advocacy Is a Continuing Process

Drug laws, and cases interpreting them, are constantly evolving. It is therefore crucial to have a system to not only keep abreast of new cases and laws, but that also organizes them for later reference.

In Illinois, for example, the Illinois State Bar Association has a free service for members that emails important new case opinions and new laws. Given the volume of the cases, you may not have time to read them all. At the least, however, you should read the cases finding that the lower court erred resulting in a favorable result for the accused as well as all of the new laws that could affect drug clients.

Making Use of a System

Once you have made reading these cases a part of your weekly routine, it is important to organize them in a way that makes it easy to use in the future. Though printing out a case for a first read may be useful, I strongly recommend a paperless system for long-term storage and outlining. I save a portable document format (PDF) of favorable drug cases to

an electronic folder titled with a short declarative sentence stating what the case stands for. Saving PDF files is superior to scanning a paper copy of the case because it is cleaner, takes up less space and time, and is less wasteful than printing and scanning a case.

Having this system in place is especially important for defending against drug crime accusations because most appellate court opinions affirm the lower court's usually negative rulings against the defendant. For example, the Illinois Appellate Court recently ruled that police who seize separate bags of suspected drugs cannot simply combine, test, and weigh the samples together, but rather, must test a representative sample of each bag to determine the weight of the alleged drugs and chemical composition of that sample. *Illinois v. Adair*, 406 Ill.App.3d 133 (1st Dist. 2010). Failure to do so resulted in the Appellate Court reversing *Adair's* convictions and reducing it to the lowest class of the charged offense. Id. Because of their rarity, it is important to be aware of cases favorable to the accused.

Email Groups

Another valuable resource is the email discussion group. Most states, again through their bar associations, have email discussion groups composed of criminal defense lawyers across the state posing questions to each other and discussing new issues. This is an especially valuable resource if you are a solo practitioner because it mimics the collaborative benefits of being part of a law firm or government office.

Finding a Mentor

Finally, good mentors are a source of counsel and new work; find at least one. Pick a mentor who has a surplus in areas in which you have a shortage. If you are a private criminal defense lawyer, seek out a public defender or former public defender. If you write well, find a mentor who does not write. If you are young, look for an attorney who has been practicing for many years.

Do not slavishly ape your mentor; rather, pick and choose from among the mentor's good and bad qualities, differentiating between the two by asking yourself whether adopting that quality increases or decreases your power. Remember that, as a new attorney, you bring a fresh perspective and an often greater enthusiasm to the table. Give your mentor at least as much as you receive and you will ensure his continued assistance.

The Early Stages of a Criminal Case: Investigation and Pre-charge

A smart client will contact a lawyer as soon as that person knows he is under investigation. Usually, this begins with an investigator calling the client and asking the him to come to the station to "answer a few questions."

Raising Suspicion

Whether police classify your client as a "suspect" "target" or a "witness" and whether or not your client is innocent or guilty, it is almost never a good idea for someone under investigation to speak with law enforcement. A witness can very quickly become a suspect based on their statements and an innocent person's words can be twisted to incriminate him. In fact, according to a recent study, "The Substance of False Confessions" by Brandon Garrett, out of two hundred and fifty (250) convicts exonerated by DNA evidence, forty (40) falsely confessed to rapes and murders.

The Right to Remain Silent

Instead, advise your client to assert his rights under the Fifth and Sixth Amendment to the United States Constitution to remain silent and rely on counsel's representation. Your client should be respectful and courteous, but firm, in declining to answer any questions posed by anyone, including, but not limited to, law enforcement, state's attorneys, and fellow inmates who are often government informants.

Affirmatively and unequivocally invoking the right to remain silent and counsel is more important than ever given the U.S. Supreme Court's recent opinion in *Berghuis v. Thompkins,* where the court held that the act of being silent in response to nearly three hours of police interrogation is insufficient to invoke the constitutional right to remain silent. 130 S.Ct. 2250. *See also, Davis v. United States,* 512 U.S. 452 (1994)("Maybe I should talk to a lawyer" insufficient to invoke the right to counsel). Sometimes clients, for reasons better known to them, will ignore this advice; reinforce, clarify and check for understanding by role-playing with you acting as law enforcement.

Sending Notice

Next, send the investigator notice that you represent the person they are trying to contact, that he is invoking his right to remain silent and that all future attempts to communicate with him should be through you. A notice letter sent via fax is a good first step because it is immediate and the fax receipt gives you tangible proof of delivery.

Follow up the notice of representation with a phone call to the investigator. Introduce yourself and reiterate the messages in your letter. Let the investigator know you represent the client, that the client is invoking his right to remain silent, and that all future communication should be through you.

Gathering Information

This is your opportunity to gather information. Do the police have a warrant to arrest your client or do they merely want to question him? What information are they looking for? Keep a document in the file documenting all correspondence and conversations with law enforcement as this may come in handy for any future motions to quash and suppress. If there is an arrest warrant, your client may want to voluntarily surrender himself to law enforcement. Accompany him to the police station and serve written

notice on law enforcement that your client is invoking his right to remain silent and to counsel.

Fighting the Clock

In most cases, you will not have the opportunity to advise your client before he gets arrested. In some cases, however, the family of the arrested may contact you at or near the time of the arrest. If so, you are in a race against time. If you can get to your client before he either makes a statement or a statement is forced upon him, he may be released without being charged, especially if there is little or no other evidence in the case. Hurry to the location where your client is held in custody, and demand to see him, noting the exact time as well as the names, ranks, and if possible, star numbers of the officers present.

Your Client's Miranda *Rights*

If police prevent you from seeing him, the law is divided as to the remedy. In *Moran v. Burbine,* the US Supreme Court held that "failure of police to inform defendant of efforts of attorney, who had been retained by defendant's sister without his knowledge, to reach him did not deprive defendant of his right to counsel or vitiate waiver of his *Miranda* rights." 475 U.S. 412 (1986).

Some states, however, have rejected *Burbine's* holding condoning police interference between an attorney and his client. See *People v. Griggs,* 152 Ill.2d 1 (IL. 1992)("[S]uspect's waiver of his right to counsel is invalid if police refuse or fail to inform a suspect who knows that an attorney has been retained for him of the efforts of the attorney, present at the place of interrogation, to render assistance to the suspect."); *see also, People v. McCauley,* 163 Ill.2d 414 (IL. 1994); *see also,* 725 ILCS 5/103-4.

Be careful what you bring to the jail and how you handle the requests of a client in custody. An attorney visiting a man who had just been arrested in connection with a double murder investigation was recently charged with one count of bringing contraband into a penal institution, a Class 1 felony, when she allegedly allowed the man to make calls on her cell phone from the holding cell. 730 ILCS 5/5-4.5-30; *Are cell phones "contraband"? And what's a "penal institution"?* Illinois Bar Journal, May 2011, Vol. 99.

Detaining a Foreign National

Finally, if your client is a foreign national, know that the United States has ratified the Vienna Convention. Article 36 of the Vienna Convention dictates that law enforcement must "without delay" inform the foreign national's consular post of the detention, permit free communication between the consular post and the foreign national, and inform the foreign national of his rights under the Convention. Vienna Convention, art. 36(1)(a)-(b).

The Sixth Amendment protects foreign nationals within the United States and its territories. *Wong Wing v. United States,* 163 U.S. 228 (1896). In *Osagiede v. U.S.*, the court held that counsel's failure to invoke the defendant's right to consular access and raise this issue with the presiding judge was deficient representation, and remanded the case. 543 F.3d 399, 406 (7th Cir. 2008).

Getting Your Client out on Bond

Obtaining a bond that the client or his family can afford is one of the most important services a criminal defense lawyer can provide. A client out on bond can more easily prepare a defense and consult with his lawyer, is looked at in higher esteem, perhaps subconsciously, by judges and prosecutors, and, perhaps most importantly for the client, can await the pendency of his case at home instead of in jail.

Before the Bond Hearing

Before you go to the bond hearing, you should at least know what the client is charged with and the maximum potential penalty. In addition, you should also research other potential sentencing and statutory issues relating to the charges, such as whether the defendant's history subjects him to possible extended sentencing and possible non-conviction or non-penitentiary sentences. As Abraham Lincoln said in his Notes for a Law Lecture, "[t]his course has a triple advantage; it avoids omissions and neglect, saves your labor when once done, performs the labor out of court when you have leisure, rather than in court when you have not."

Often, you will not have time to sit down with your client and comprehensively learn his background; rather, your initial interview may be hurried, possibly through the bars of a courtroom holding cell. It is therefore wise to have an intake sheet readily available to do a quick interview.

Guidelines for Bond Hearings

Like Illinois, most states have specific statutory guidelines delineating what factors a judge should consider in determining a bond amount. Because many lawyers do not know these factors, and because a bond judge almost certainly does, it is important to refer to and use them when arguing for a bond. Rules of evidence typically do not apply to a bond hearing and a lawyer is usually bound only by the prohibition against the irrelevant.

In states that do not have statutory guidelines, you can use the following factors found in the Illinois bond statute 725 ILCS 5/110-5 to the extent they apply to the facts of your client's case.

- Start by humanizing the defendant; note his age, education, whether he is working and if so where, as well as his financial ability and family background. If the accused's family and friends are in court, consider noting their presence to the judge.

- Establish roots in the community as evidenced by property ownership, family ties, or length of residence in the jurisdiction.
- Emphasize the nature and circumstances of the alleged offense if there is an absence of physical harm or threats of physical harm and no weapon was involved.
- Note the defendant's lack of allegiance to a gang and clean criminal background.
- Highlight the absence of a history of bond forfeiture or failures to appear.
- Call attention to the defendant's cooperation with law enforcement at the time of his arrest in readily identifying himself and submitting peacefully to fingerprinting while making no attempt to flee.
- Emphasize the small likelihood of conviction and the light weight of the evidence against the accused.
- Note the absence of motivation or ability to flee.
- Establish the defendant's good character and sound mental condition.
- Draw attention to the defendant's consent to periodic drug testing.

In addition, remember that the defendant is presumed innocent and that the purpose of bond is to reasonably assure the appearance of a defendant and the safety of the community, not punishment.

After the Bond Hearing

If you are disappointed at the results of your bond hearing do not despair. After the bond hearing, most jurisdictions will transfer the defendant to a permanent trial judge where you can, pursuant to statutory requirements, file a motion to reduce bail. *See e.g.,* 725 ILCS 5/110-6.

Most bond conditions restrict the defendant from leaving the state during the pendency of his case. If it is necessary for the defendant to leave the state, file a "Motion to Modify Conditions of Bond" requesting the Court's permission for the Defendant to leave the state for a brief period and attach an itinerary and a proposed order.

Lawfully Derived Source of Bail

Prosecutors are increasingly requesting a source of bail hearing in which the burden is on the defendant to prove that the funds he is posting are derived from a lawful source. Source of bail requests are more likely in drug cases than in violent crime or sexual misconduct accusations because of the revenue generating nature of drug trafficking. Being unprepared for the government's request for a source of bail could cause your client several extra days and possibly even weeks in jail as well as damage to the attorney-client relationship.

The first thing to know about source of bail requests is to learn to recognize when they are likely. In general, money provided to bail out a defendant charged with a drug crime usually attracts more scrutiny than money provided for violent crime or sexual misconduct accusations because of the monetary nature of the drug trade.

Specifically, though, the larger the street value of the alleged drugs, the more likely there will be a request for source of bail. Many times a phone call to the prosecutor will confirm whether or not there will be a request for a hearing on the source of bail. Take caution, however, in relying on a representation that there will be no request for a source of bail hearing; better to err on the side of caution and be prepared.

Preparing for a Source of Bail Hearing

If you suspect there may be a request for a source of bail hearing, prepare the defendant's family or friends beforehand. Let them know that even though they have the money for bond, they may not be able to bond out the accused right away. Sit down with them and prepare the supporting paperwork for the source of bond request in advance. These supporting documents are discussed in more detail below.

Reasonable Cause

The most important thing you can do to ready yourself for such requests is to read and know your source of bail statute. The Illinois source of bail statute, for example, says that the government must first demonstrate "reasonable cause" for the hearing. 725 ILCS 5/110-5. Therefore, if appropriate, your first line of defense is objecting based on a failure to show reasonable cause.

If your objection is overruled, the Illinois statute requires you to file a written request that the court conduct a source of bail hearing accompanied by affidavits explaining the lawful source of funds for bail.725 ILCS 5/110-5. This paperwork should be prepared beforehand and be ready for immediate filing.

Preparing Affidavits

Supporting affidavits should not only state where the money came from and the provider's history of employment, but should also provide supporting documentation in the form of pay receipts, tax returns, and proof of employment. Additionally, the affidavits should trace the money's path from legitimate employment to bank account to certified funds. The simpler this path the better, with the ideal being one provider of bond money and one check rather than multiple providers with multiple checks.

If you are prepared as you should be, ask that the hearing be set for the same day your objection based on no reasonable cause was overruled. While most motions require a three-day notice, many source of bail statutes, Illinois included, require only a "reasonable period" for the government to investigate any matter raised in the defendant's supporting affidavits. Id. If you are unable to get the hearing for the same day, ask that it be set for the next day, and the next day after that, and so on.

Witnesses' Testimony

At the hearing itself, your witnesses will testify under oath as to their background, reputation, relationship to the accused, and the source of the money provided for bail. 725 ILCS 5/110-5. The state also has an opportunity to cross-examine your witnesses and provide its own witnesses. *Id.*

As the old English proverb says, "there is many a slip between the cup and the lip"; similarly, much can go wrong on the way from a successful source of bail hearing to lockup. It is therefore wise to have an order prepared and ready for the judge's signature and the clerk's stamp that specifically identifies the funds authorized for bail with, for example, a check number and bank name.

The low burden on the state to obtain a source of bond hearing may lead to a situation where your presumably innocent client sits in jail even though he has family and friends with lawfully obtained money ready to bond him out. While the constitutionality of this burden-shifting is highly dubious, drug crime defendants are stuck with it until more progressive minds prevail. Until then, with release on bond being one of the most important services a criminal drug lawyer can provide for his client, it is necessary to be prepared and aggressive in proving that the money offered for bond is legally obtained.

Bond Violations Increase the Defendant's Problems Exponentially

No discussion of bail would be complete without at least a mention of the dire consequences of violating bond. A violation can be any behavior that contradicts the conditions of bond, so carefully read the bond slip and explain the same to the defendant. Examples of violations include committing new crimes, failing to appear to court, arriving late to court, fighting, drug use, and leaving the state without permission.

In Illinois, penalties for bond violations include bond revocation, new criminal charges, bond increase, and mandatory consecutive sentencing for a crime committed while on bond in addition to any sentence imposed for the original crime for which the defendant was out on bond in the first place. 720 ILCS 5/32-10,725 ILCS 5/110-6, *Illinois v. Aleman*, 355 Ill.App.3d 619 (2nd Dist. 2005).

Best Practices for Preliminary Hearings

Depending on your jurisdiction, whether the charge is a felony, and whether or not the government chooses to proceed by grand jury indictment or not, you may get a chance to cross-examine law enforcement at a preliminary hearing. As a general rule of thumb, the larger the street value of the alleged drugs, the more likely it is that the state will proceed by way of indictment in order to prevent the defendant from being able to cross examine officers or witnesses at a preliminary hearing.

In Illinois, the right to a prompt preliminary hearing in all felonies, unless indicted by a grand jury, is enshrined in the state constitution. Article I, Sec. 7.

General Principles of Preliminary Hearings

How to conduct a preliminary hearing is a source of great confusion for many new lawyers. For experienced practitioners, the preliminary examination is conducted by instinct. This is the ideal, and after several hearings you too should recognize the fluid nature of the preliminary hearing and act accordingly. Until then, this section should give you a practical guide for your first several preliminary examinations.

The purpose of a preliminary hearing is to determine whether there is probable cause to believe that a crime has been committed and that this defendant committed the crime. This is different from a Fourth Amendment motion to quash and suppress a search based on no probable cause to search and seize.

To illustrate, suppose that police pull over and search the defendant and his car for no reason and discover several ounces of cocaine in the defendant's pockets. While the unconstitutional nature of the stop and resultant search and seizure would be a prime target for a later motion to quash and suppress, there is still probable cause to believe that the defendant committed a crime regardless of the unconstitutional nature of the search and seizure.

Before the Hearing

Most states have deadlines within which to conduct a preliminary hearing. In Illinois, a defendant in custody must either be indicted or given a preliminary examination within thirty days; for defendants out of custody, the deadline is sixty days. 725 ILCS 5/109-3.1

The remedy for not providing a timely preliminary examination, however, is disputed. *Illinois v. Lirkley*, 60 Ill.App.746 (1976) (Reversing drug conviction for failure to provide timely preliminary hearing); but see *Illinois v. Bartee,* 177 Ill.App.937 (1988) (Government may dismiss case for failure to provide timely preliminary examination without prejudice) and 725 ILCS 5/114-1(e)(specifically stating that failure to comply with these time limits does not prevent the filing of a new charge or indictment.)

Practically speaking, if your client is accused of possessing or distributing a large amount of drugs, there is little chance a judge will dismiss for wont of probable cause, even if there clearly is no probable cause, preferring to leave that issue for the permanent judge to which the defendant is assigned. Even if the case is dismissed for lack of probable cause, there is nothing preventing the state from reprosecuting the case through grand jury indictment.

Read the statute and know the elements of the crime with which your client is charged.

Use of Subpoenas

Although the defense is generally not entitled to full discovery before a preliminary hearing, many jurisdictions grant the defendant subpoena power. The prudence of issuing

subpoenas returnable on the day of a preliminary hearing dovetails well with the urgency of finding and preserving ephemeral evidence that may be crucial to the defendant's case.

Audio recordings of 9-1-1 calls and car-to-dispatch communication, as well as video recordings both privately and publicly maintained, are examples of ephemeral evidence that, if not urgently preserved and produced, may be destroyed in the course of business. Counsel should not assume that he has thirty days to preserve such evidence.

In addition to issuing a subpoena as soon as possible for this evidence, counsel should also seek a court order to preserve such evidence at the earliest possible opportunity, which in many cases, is at the preliminary hearing. Have a prepared order identifying the evidence sought to be preserved ready for the judge's signature after your motion to preserve.

To illustrate, I once subpoenaed audio recordings of communication between the arresting officer's police car and dispatch from the time period just before the arrest. The audio recording revealed that police were approaching a car they thought to be illegally parked in what they reported to dispatch to be a "park district." The police arrested the driver and, after a search of the car revealed narcotics, charged him with drug possession and issued a ticket for illegal parking.

The statute against illegal parking, however, prohibited such parking in a "business district." The audio recordings of car-to-dispatch communication revealed that the car was parked in a park district and was therefore not violating any laws when police seized him for illegal parking, thereby giving me the proof I needed to successfully quash the arrest and suppress the evidence. Had the recordings not been promptly sought and preserved, they may have been destroyed as a matter of department policy.

Other targets of early efforts to preserve evidence include police reports, "hot line" logs and audio recordings, field contact cards, emails, text messages, mobile data terminal records, department standard operating procedures, and police officer disciplinary records.

Every jurisdiction has rules regarding subpoenas, and it is important to know them. Federal Rules of Criminal Procedure Rule 17(c), for example, provides that:

> c. Producing Documents and Objects.
>
> 1. In General. A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

2. Quashing or Modifying the Subpoena. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.
3. Subpoena for Personal or Confidential Information About a Victim. After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

At the Hearing

While it is impractical to provide a guide for every type of preliminary hearing, generally speaking, counsel should consider the hearing as an opportunity to not only obtain a dismissal for lack of probable cause, but also, as an opportunity to gain information about the government's case and lay the groundwork for a future motion to quash and suppress.

In addition, cross-examination of the government's witnesses at a preliminary hearing binds the witness to his testimony, which can be useful for future impeachment. Therefore, while it is normally foolish to ask open-ended questions on cross-examination, you should consider doing so at a preliminary hearing. Putting your client on to testify at a preliminary hearing is usually a bad idea for these same reasons.

Another way to achieve this advantage is through ancillary hearings. For example, many states will impound your client's car if he was arrested while driving and provide for a statutory right to contest the impound at a hearing. If so, these impound hearings can commit the arresting officer to testimony, thereby providing another useful tool for future impeachment.

Like bond hearings, relaxed rules of evidence usually apply at a preliminary hearing. You should still object, however, to the irrelevant and unreliable. Given the limited probable cause issue at a preliminary hearing, be prepared for the government's objections to your questions and be prepared to show how your questions relate to the probable cause issue, noting the liberal standard for relevance.

Specific questions to ask on cross-examination at a preliminary hearing should focus on issues such as what drew the officer's attention to the defendant in the first place. What did the officer see? Where was the defendant when the officer first saw him? Where was the officer? Who else was around? What were their names? If names are unknown, what did they look like? Which way was the defendant facing? How far away was the arresting officer? Where were the defendant's hands when the officer first saw him? Was he holding anything? Questions should also dissect conversations and alleged statements: What was the first thing the officer said to the defendant? Who else was there? Did the officer take notes? Did he record the conversations or statements on audio or video-tape?

Finally, make sure the officer answers your question. Often, counsel will ask a question on cross examination, the officer will answer it indirectly or talk about something irrelevant to the question, and counsel will move on to the next question. Do not be led astray by non-responsive answers. Repeat the question. If you get the same meandering response, ask the officer if he understood the question.

Key Takeaways

- Learn to organize your information. Though paper copies are fine, electronic records allow you the most flexibility in storing and organizing cases, notes, emails, and other materials.
- Recognize when a source of bail hearing is likely and be prepared for it. Have your paperwork documenting the bail sources completed before the hearing is called.
- Make use of subpoenas to preserve ephemeral evidence. A phone message or video recording can disappear before you can use it if you do not take care to protect it.
- Getting a bond for your client is one of your most important duties. Not only does it allow the client a degree of freedom, it can also show the court that the client is reliable and responsible.

Conclusion

One of the most rewarding aspects of life as a criminal defense lawyer is the ability to grow professionally; no matter how many years you practice, you will never know everything there is to know and you can always be better. Towards that end, here are some suggestions for further reading and resources:

- "Federal Convictions Reversed" published by the Federal Public Defender for the Northern District of New York compiles, as the name suggests, a list of federal convictions reversed, organized by category. It is free online at http://wvs.fd.org/FederalConvictionsReversed.pdf

- James McElhaney is the author of several excellent books on trial advocacy as well as author of an insightful column for the American Bar Association,

- Membership in the National Association of Criminal Defense Lawyers, including their seminars and their monthly magazine "The Champion" helps defense lawyers know and understand national trends and cutting edge defenses,
- *The Elements of Style* by William Strunk, Jr. is an excellent resource for sharpening your writing skills,

- *Making Your Case: The Art of Persuading Judges* by Antonin Scalia and Bryan Garner and

- Abraham Lincoln's *Notes for a Law Lecture*. From the man who said "right makes might", *Notes for a Law Lecture* encapsulates in a few paragraphs the foundation of practicing law with pride and honor.

Cases:

- Supreme Court Cases:
  - *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 60 (1986).

- U.S. Court of Appeals:
  - *United States v. MacDonald,* 531 F.2d 196, 199-200 (4th Cir. 1976), *cert. granted*, 432 U.S. 905 (1977), *rev'd*, 435 U.S. 850 (1978).

- State Court Cases (State Supreme Court of Ohio, for example):
  - *Herrick v. Lindley*, 391 N.E.2d 729, 731 (Ohio 1979).

- Cases Available on Electronic Media Only (Please use Westlaw rather than Lexis Nexis):
  - *Int'l Snowmobile Mfrs. Ass'n v. Norton*, No. 00-CV-229-B, 2004 WL 2337372, at *3 (D. Wyo. Oct. 14, 2004).