



## Law Enforcement Canine Use-of-Force Research

### I. Canine - Law Enforcement Use-of-Force Cases:

#### A. Federal Circuit Cases:

1. Fikes v. Cleghorn, 47 F.3d 1011 (9th Cir. 1995) (Decided Feb. 17, 1995) - The Court stated that the use of the dog was appropriate and was not the use of deadly force. However, the dog was not the use of deadly force because of a lack of plaintiff's evidence and the fact that the officer's had the dog under tight control.
2. Sebulsky v. City of Riverside, 46 F.3d 1145 (9th Cir. 1995) [**UNPUBLISHED DECISION**] 1995 WL 45663 (9th Cir. (Cal.) Feb. 3, 1995) (No. 93-56542) - Court granted qualified immunity in the use of law enforcement canine because the law was not clearly established at the time the canine was used.
3. Shannon v. City of Costa Mesa, 46 F.3d 1145 (9th Cir. 1995) [**UNPUBLISHED DECISION**] 1995 WL 45723 (9th Cir. (Cal.) Feb. 3, 1995)(No. 93-56542).
4. Duvall v. City of Santa Monica, 42 F.3d 1399 [**UNPUBLISHED DECISION**] 1994 wl 684501 (9th Cir. (Cal.) Dec. 7, 1994)(No. 93-56548) - In a case where officers were bringing a man into custody for mental reasons - in that the man had threatened to kill others and himself. The officers had a canine enter a darkened room where the officers knew the man was hiding with a gun. The court held that even if the use of the dog was deadly force (the court did not say that it was), that the use of the dog was Constitutionally permissible (objectively reasonable) **AS A MATTER OF LAW**.
5. Matthews v. Jones, 35 F.3d 1046 (6th Cir. (Ky.) Sept. 20, 1994) (No. 93-5249). Matthews followed the holding in Robinette in that the use of the canine was appropriate and was not the use of deadly force.
6. Chew v. Gates, 27 F.3d 1432 (9th Cir. (Cal.) June 27, 1994)
  - a) Probably the most important aspect of Chew is its detailed analysis, and narrowing, of Graham. Chew restricts the Graham factors on several important issues.
  - b) "Where the city equips its police officers with potentially dangerous animals, and evidence is adduced that those animals inflict injury in a significant percentage of the cases in which they are used, a failure to adopt a departmental policy governing their use, or to implement rules or regulations regarding the constitutional limits of that use, evidences a "deliberate indifference" to constitutional rights. Under such circumstances, a jury could, and should, find that Chew's injury was caused by the city's failure to engage in any oversight whatsoever of an important departmental practice involving the use of force." Chew, at 1445.
  - c) "[W]e continue to assume that departmental policy authorized the use against all concealed suspects of dogs trained to search for and apprehend persons by biting and seizing them." Chew, at 1446.
  - d) "When the incident that led to the filing of this lawsuit occurred, the use of police dogs to search for and apprehend fleeing or concealed suspects constituted neither a new nor a unique policy. The practice was long-standing, widespread, and well-known. No decision of which we are aware intimated that a policy of using dogs to

apprehend concealed suspects, even by biting and seizing them, was unlawful." Chew, at 1447.

- e) "See Robinette v. Barnes, 854 F.2d 909 (6th Cir.1988) (holding that use of police dog trained to bite a suspect's arm or other available limb to apprehend a burglary suspect hiding in a darkened building was constitutional). We are certain that Robinette is not consistent with the law of this circuit today, see *supra* note 10, and seriously doubt whether we would ever have reached a similar result." Chew, at 1447.
  - f) "We conclude that as of the time Chew was bitten by Volker the Los Angeles Police Department's longstanding policy regarding the training and use of police dogs did not contravene clearly established law." Chew, at 1448.
  - g) "[W]e conclude that it was not clearly established that the use of dogs to search for, bite, and seize hiding suspects was either deadly force or unreasonable force. Thus we need proceed no further." Chew, at 1449.
  - h) "The public has a right to know how the Los Angeles Police Department is training and using dogs that are capable of killing or maiming human beings--to know whether the City is acting within the law. In addition, the appellant, who was seriously injured, has a right to compensation if the police department has acted in an unconstitutional manner." Chew, at 1451.
7. Mendoza v. Block, 27 F.3d 1357 (9th Cir. (Cal.) May 31, 1994). The use of a police dog to find, bite, and hold a bank robbery suspect who was believed to be armed was objectively reasonable.
  8. Burrows v. City of Tulsa, (Unpublished Opinion) 25 F.3d 1055, 1994 WL 232169 (10 Cir. June 1, 1994). The question before the court was whether the biting of a suspect by a police dog after the suspect was handcuffed was a Fourth Amendment or a Fourteenth Amendment issue? The Court found that it was a Fourth Amendment issue. The dog bit a hiding suspect on the buttocks, then in the head, and then on the arm.
    - a) "Plaintiff's expert, a dog trainer who had once trained police dogs for the City, testified that under the circumstances, it was improper for Officer Calhoun to put Schafer over the fence and let him go without first warning plaintiff and giving him an opportunity to surrender." Burrows.
  9. Mellen v. County of Los Angeles, (Unpublished Opinion) 19 F.3d 28, 1994 WL 68251 (9th Cir. (Cal.) March 3, 1994). Reversal of a discovery sanction against plaintiff's attorneys (Robert Mann and Donald Cook) in a dog bite case.
  10. Clark v. County of Los Angeles, (Unpublished Opinion) 19 F.2d 26, 1994 WL 68252 (9th Cir. (Cal.) March 3, 1994). Reversal of a discovery sanction against plaintiff's attorneys (Robert Mann and Donald Cook) in a dog bite case.
  11. Grant v. City of Los Angeles, (Unpublished Opinion) 19 F.3d 27, 1994 WL 46313 (9th Cir. (Cal.) February 15, 1993).
    - a) "The lower court concluded "that the dog bites did not constitute unconstitutionally excessive force in light of the circumstances, namely, the apprehension of a suspect in a violent felony involving a deadly weapon, who had just led the police on a dangerous high-speed chase and who resisted arrest by attempting to flee into a residential neighborhood."
    - b) If a person has suffered no constitutional injury at the hands of the individual officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point. The Court agreed that "absent any constitutional violations there can be no Monell liability."
  12. West v. Robert Raimond, (Unpublished Opinion) 8 F.3d 823, 1993 WL 415171 (4th Cir. (Md.) October 19, 1993). A jury found for the police officer in a case where a police dog

was used to apprehend a fleeing motorcyclist (from a speeding violation). After the motorcycle ran into a squad car, the man tried to flee. A dog was used to apprehend the man. The Court of Appeals affirmed.

13. Kopf v. Skyrn, 993 F.2d 374 (4th Cir. May 7, 1993). The lower court excluded testimony of plaintiff's canine use of force expert in a 42 U.S.C. §1983 case. The Circuit Court said that the lower court "abused its discretion" by excluding the canine expert. The Circuit Court said "A dog is a more specialized tool than a gun or slapjack. How to train a poodle to sit or roll over is not everyday knowledge and could be explained by an expert in a case where it was relevant. How to train and use a police dog are even more obscure skills." Kopf, at 379.
14. Marley v. City of Allentown, 774 F.Supp. 343 (E.D.Pa. 1991), *aff'd*, 961 F.2d 1567 (3d Cir. 1992):
  - a) Facts - Upon seeing improper license plate, Officer signalled Driver to pull vehicle over to side of road. Instead of stopping, Driver sped away. Eventually Driver got out of his car and fled on foot. Officer arrived at abandoned car, and ordered his police dog to pursue the Driver. The dog stopped the Driver by biting him on his right thigh and calf.
  - b) The Officer "should have been aware of the constitutional constraints enunciated in *Garner*, and it was not objectively reasonable for him to think that unleashing a trained attack dog to apprehend a fleeing misdemeanant comported with those constraints. Therefore, he is not entitled to qualified immunity." *Marley v. City of Allentown*, 774 F.Supp. 343, 345-6 (E.D.Pa. 1991).
  - c) Held - That it was not objectively reasonable for officer to think that using trained attack dog to apprehend fleeing misdemeanant comported with constitutional constraints on use of deadly force (*Garner*), and officer was not entitled to qualified immunity.
  - d) Headnotes:
    - 1) Civil Rights 214(6) - Police officer did not have qualified immunity from liability for ordering police dog to pursue suspected misdemeanant who was seriously injured by the dog; it was not objectively reasonable for officer to think that unleashing trained attack dog to apprehend fleeing misdemeanant comported with constitutional constraints on use of deadly force.
    - 2) Civil Rights 244 - In action against police officer who used trained attack dog to apprehend fleeing misdemeanant, it was proper for jury to determine whether force officer used was "deadly."
    - 3) Civil Rights 242(5) - Evidence in action against police officer for violation of arrestee's Fourth Amendment rights by effecting seizure of arrestee's person by using trained attack dog supported finding that officer's actions were objectively unreasonable.
  - e) Attorneys:
    - 1) Plaintiff - Richard J. Orloski, Orloski & Hinga, Allentown, Pa - Phone - (215) 433-2363
    - 2) Defendant - Edward C. McCardle, Kathryn Wohlsen Mayer, City of Allentown, Solicitor's office, Allentown, Pa
15. Kopf v. Wing, 924 F.2d 265 (4th Cir. 1991). The case involved the following issues:
  - a) whether a warning was given
  - b) whether the two bitten suspects were given an opportunity to surrender
  - c) is the use of a dog that is allowed to bite an unresisting and unarmed suspect multiple times the use of unnecessary force
  - d) did the law enforcement agency condone excessive force by canines

- e) did the agency fail to do a meaningful I.A. investigation
  - f) the agency had a policy that prevented the taking of pictures of canine bites
16. Gibson v. City of Oakland, California, 902 F.2d 39 (9th Cir. (Cal.) May 7, 1990).
- a) "The complaint alleged that Oakland police officers chased Gibson, and eventually cornered him 'in a dug-out underground area ...' underneath a house. Officer Dutra allegedly directed his police dog to attack Gibson. Gibson claims that 'he was mauled by the dog, suffering severe injuries on his legs, shoulders, hands, arms, and groin area.' In addition, it is alleged that 'after attempting to apply a chokehold on plaintiff, Defendant Dutra then shot Plaintiff in the abdomen with his 357 magnum revolver, causing obvious severe injury.'" Gibson at 39.
17. Kinan v. City of Brockton, 876 F.2d 1029, 28 Fed.R.Evid.Serv. 327 (1st Cir. July 12, 1989). Plaintiff brought lawsuit (for among other things) an officer's failure to honor the plaintiff's request for medical care for police canine bite. The Court said that the failure to provide medical care was not so "extreme and outrageous" as to give rise to intentional infliction of emotional distress.
18. Kerr v. West Palm Beach, 875 F.2d 1546, 13 FR Serv 3d 1235 (11th Cir. 1989) - Appellate court upheld a jury verdict against canine officers, city, and police chief for excessive use of force, inadequate training, and inadequate supervision (under Canton)
- a) Headnote - Civil Rights 13.14 - Whether city and its former police chief failed adequately to train municipality's canine unit in constitutional use of force, and whether city and former police chief failed to adequately supervise performance of members of canine unit to ensure that both misbehaving dogs and officers exhibiting bad judgment in use of canine force received corrective training, were questions for jury in action brought against police chief and city by suspects injured during course of apprehension by canine unit.
  - b) Case Problems:
    - 1) Use of canines on serious misdemeanants
    - 2) Lack of adequate training in the constitutional use of canine force
    - 3) Failed to adequately supervise the performance of canine unit members to ensure that both misbehaving dogs and officers exhibiting bad judgement in the use of canine force received corrective training
    - 4) Court mentioned yellow stickers on side of squad cars signifying canine apprehensions - also had bigger yellow stickers indicating 50 canine apprehensions
19. Robinette v. Barnes, 854 F.2d 909, 102 ALR Fed. 605 (6th Cir. 1988) - "The use of a properly trained police dog to seize a felony suspect does not constitute deadly force. We also hold that even if the use of a police dog could constitute deadly force, the circumstances of the suspect's apprehension justified the use of such force in this case." Robinette, at 910.
20. U.S. v. Sadosky, 732 F.2d 1388 (1984) - under Terry, stops - "investigative seizures may withstand 4th Amendment scrutiny when they are based upon reasonable articulable suspicion that a person has committed or is about to commit a crime.
21. Peraza v. Delameter, 722 F.2d 1455 (9th Cir. 1984) - the case stated that a department's canine policy is admissible at jury trial.

## **B. Federal District Court Cases:**

22. Carita v. Kandianis, (NOT REPORTED) 1994 WL 583213 (E.D.Pa., Oct. 20, 1994)(No. CIV.A. 93- 2850). "Aron" the canine was ordered to "tackle" a fleeing handcuffed suspect. Aron tackled the man and did not bite him. The court found that Aron acted exactly as he

had been trained and that a fleeing person should expect to be tackled - even if the tackling causes severe injuries.

23. Wickliffe, v. Sharrand, (Not Reported in F.Supp.) Cite as 1994 WL 242739 (D.Kan. May 31, 1994). A canine was used to apprehend a misdemeanor. The only reason the police won (probably) was because the plaintiff did not litigate his case well.
24. White v. City of Taylor, 849 F.Supp. 1186 (E.D. Mich, S.D. April 14, 1994). Officers arrested and handcuffed a suspect. After the suspect was handcuffed and under control, a police dog bit the suspect on the elbow. The officer had received no training and had only received - to read - a few policies on police dogs.
25. Andrade v. City of Burlingame, 847 F.Supp. 760 (N.D. California March 23, 1994).
  - a) Headnote "[1] Arrest 35k68(2) - Police officer did not intend to seize suspects with his police dog and, thus, dog's attack of suspects did not violate their Fourth Amendment rights; officer had already stopped suspects when dog escaped police car and bit two suspects without having been ordered to do so by police officers"
  - b) Headnote "[4] Civil RIghts 78k132.1 - Suspects bitten by police dog failed to establish violation of their civil rights from police officer's failure to control dog, absent proof that officer acted with deliberate indifference to their safety; officer did not intend for dog to leave police car, dog had never previously left police car without being ordered to do so, and dog had history of nonaggression.
  - c) Headnote - [6] Civil Rights 78k206(3) - Fact that police dogs were trained to act on their own initiative under certain circumstances, such as danger to police officer, did not alone establish municipal policy or custom that violated suspects' Fourteenth Amendment rights for purposes of §1983 claims against city and police chief concerning police dog attack of suspects.
26. Rose v. City of Los Angeles, 814 F.Supp. 878 (C.D. California January 22, 1993). Civil excessive force case against officers. The police dog allegedly mauled Rose, severing his femoral artery. The police claimed that Rose had a 9mm pistol, which he pointed at the officer while he (Rose) was on the ground being attacked by the dog. The officer states that he had no other choice but to shoot Rose in self-defense.
27. Navratil v. Parker, 726 F.Supp. 800 (D. Colo. 1989) - mere presence of law enforcement canine, while intimidating, is not excessive force; nor does mere presence give rise to common law assault.
28. Banks v. Goines (Not Reported in F.Supp.) Cite as 1989 WL 1838 (E.D.La. 1989). 42 U.S.C. § 1983 claim of excessive force. Allegedly the man was bitten by a New Orleans police dog and suffered severe injuries. Also, the plaintiff claimed that the City was negligent and violated his Constitutional rights by failing to have any guidelines or standards governing the use of canines during search and arrest operations and by failing to provide safeguards against the exertion of excessive force by officers.
29. Luce v. Hayden, 598 F.Supp. 1101 (D.C.Me. 1984) - An arrestee's claims that a state trooper, after arresting and handcuffing him, intentionally unleashed state police dog upon him, inflicting injury, and that other trooper stood by and permitted such action, stated 42 U.S.C. §1983 cause of action against the troopers sufficient to withstand motion to dismiss.
30. Soto v. City of Sacramento, 567 F.Supp. 662 (E.D. Cal. 1983): A canine bit a suspect during the course of an arrest. The police version of the facts and the suspect's version of the facts differ greatly.
  - a) The judge concluded "that the reasonableness of the use of police dogs is to be evaluated in light of all the circumstances surrounding plaintiff's arrest." The judge refused to rule that the use of police dogs is unreasonable per se, that is that any use of a police dog in effectuating an arrest is constitutionally unsound.



- b) The case also touched on allegations of negligent training and supervision when it came to the use of police dogs - to bite.
31. Starstead v. Superior, 533 F.Supp. 1365 (W.D. Wis. 1982) - a case involving multiple dog bites on multiple persons. The questions involved motions to dismiss. The motions to dismiss were denied in regards to the reasonableness of the use of the dogs and to policy and customs claims.
32. Ruiz v. Estelle, 503 F.Supp. 1265 (S.D. Tex. 1980) - use of canine in a jail/prison setting. The case only uses a canine example to illustrate the level of brutality occurring between guards and prisoners.
- a) "Similar abuses have occurred when inmates attempted to escape. Not content with re-capture, TDC [Texas Department of Corrections] officers inflicted their own brand of punishment on these inmates. Several witnesses testified to an incident involving an inmate who was shot and slightly wounded as he attempted to break loose from the Eastham Unit. To avoid the dogs who were tracking him, the inmate climbed a tree. When the pursuing officers and dogs caught up with him, the inmate was ordered to climb down and fight the dogs. The 'fight' continued for several minutes before the dogs were restrained. Afterwards, the inmate was beaten with the dog sergeant's bullwhip. A TDC physician who subsequently treated the inmate testified that his various lacerations were characteristic of dog bites and bullwhip welts." Ruiz, at 1302.

## **II. State Court Canine Use-of-Force Cases:**

- A. People v. Rodrigues, 8 Cal.4th 1060, 9 Cal.4th 579A, 885 P.2d 1, 36 Cal.Rptr.2d 235 (Cal. Dec. 1, 1994)(No. S007779).
- B. Butcher v. Gay, 29 Cal.App.4th 388, 34 Cal.Rptr.2d 771 (Cal.App. 5 Dist., Oct. 18, 1994)(No. F020062).
- C. Mahl v. Himel, 93-856 (La.App. 5 Cir. 9/14/94), 1994 WL 498666 - While canine searching a building the canine bit the female owner of the building. The jury believed the plaintiff that she did not hear a warning and the dog bit her without provocation. The jury awarded her \$170,989.97. This award was upheld on appeal.
- D. State v. Powell, 336 N.C. 762, 446 S.E.2d (N.C., Jul. 29, 1994)(No. 129A93)

## **III. Miscellaneous Canine Cases -Cases Where Canine Bit, But Are NOT Use-of-Force (Per Se) Cases:**

- A. Weekly v. City of Mesa, Arizona, (Slip Opinion) 888 P.2d 1346, 1994 WL 412048 (Ariz.App.Div. 1 August 9, 1994). This case deals with the issue of having a state statute that makes a dog bite strict liability. Even though Arizona passed a law exempting police dogs from the strict liability statute, the new exception statute was passed AFTER the dog bit the person. The Court ruled that the NEW statute only applied to dog bites occurring AFTER the new statute took effect.
- B. Chancellor v. United States, 1 F.3d 438 (6th Cir. August 2, 1993). Suit was brought on behalf of young child under Federal Tort Claims Act (FTCA) to recover for injuries suffered when the boy was bitten by serviceman's dog on military base. The Court ruled that there was not liability on the part of the federal government.
- C. People v. Black, (Ordered Not Published) 28 Cal.Rptr.2d 546 (Cal.Ct.App. 2d District June 30, 1994). Man who injured police dog was found guilty (by lower court) of inflicting injury on a police dog. The dog suffered a broken left front tooth from being hit with a large stick but did not require dental treatment. The Court of Appeals REVERSED the conviction because the jury had not been properly instructed by the judge on the term of "legal justification."

- D. Murray v. Leyshock, 915 F.2d 1196 (8th Cir (Missouri) October 3, 1990). The court held that the officer's decision to fire his gun at a guard dog who lunged at him during a drug raid was a discretionary decision, and therefore, the officer was entitled to official immunity from liability under Missouri law.
- E. State (of Ohio) v. Thomas, (Not Reported in N.E.2d) Cite as 1990 WL 37787 (Ohio App. Hamilton County - April 4, 1990) - Arrestee was cornered by police dog. When he attempted to run, he was bitten on his hands and face. The officers took a statement from the suspect at the hospital while he was being treated for the dog bites. The suspect wanted to suppress the statements. The Court refused to allow the suppression of the statements.
- F. People v. Rivera, 10 Cal.Rptr.2d 785, 8 Cal.Rptr.4th 1000 (Cal. Court of Appeals - First District November 12, 1992). The suspect's detention by a police dog was NOT an arrest - it was a lawful Terry detention. The force applied by the dog to detain the suspect, involving dog's biting and locking his jaws across the top of the suspect's scalp and holding onto the suspect for about 15 seconds, did not transfer lawful detention into arrest requiring probable cause, in view of the officer's reasonable articulable suspicion that the suspect was armed.
- G. Cowles Publishing Company v. City of Spokane (WA), 849 P.2d 1271, 21 Media L. Rep. 1539, 69 Wash.App. 678 (Wash. Court of Appeals, Division 3, Panel Four - May 4, 1993). The Court held that police dog contact reports were available to the media.
- H. People v. Gittens, 196 A.D.2d 795, 602 N.Y.S.2d 595 (N.Y. Supreme Court, Appellate Division, First Department, September 30, 1993). In criminal defense case of suspect, the use of the police dog must be taken into consideration in determining the suspect's right to use self defense.

#### **IV. Canines Used in Robberies and/or Assaults - Canine Construed as "deadly weapon" or "dangerous instrumentality":**

##### **A. Canine Used to Commit Armed Robbery:**

- 1. First degree robbery (equivalent to aggravated robbery) - the defendant used a German Shepherd in the course of a robbery. The dog was found to be a "dangerous instrument", but not a "deadly weapon". The dog was not held to be a "deadly weapon" because under New York statutes a "deadly weapon" is basically defined as a firearm only. People v. Torrez, 86 Misc2d 369, 382 N.Y.2d 233 (1976).
- 2. Armed robbery with a canine - the appellate court ruled that there was sufficient evidence for the jury to find the dog was a "dangerous weapon" within the armed robbery statute. The court stated a four (4) part test to determine whether an instrument, which is not designed to produce death or serious bodily injury, is a dangerous weapon: (1) whether the instrument under the control of the accused had apparent ability to inflict harm, (2) whether the victim reasonably perceives it as having that capability, (3) whether the instrument reasonably appears capable of inflicting bodily harm, and (4) whether the accused intended, by using the instrument, to elicit fear to further the robbery. Commonwealth v. Tarrant, 367 Mass. 411, 326 N.E.2d 710 (Mass. 1975).

##### **B. Canine Used to Commit Assault/Battery:**

- 1. *Assault & Battery of a Police Officer:*
  - a. State (of Kansas) v. Bowers, 721 P.2d 268 (Kan. 1986) - A person used two Dobermans to attack a police officer. Under Kansas statutes the use of the canines was the use of a "dangerous instrumentality."
    - 1) "It may be said a Doberman pinscher is not a deadly weapon per se, but an ordinary object used in a deadly manner is a deadly weapon within the meaning of K.S.A. 21-3414(c). The evidence discloses the Dobermans were used in a manner where by great bodily harm could be inflicted. This was a

fact question which the trial court properly submitted to the jury." Bowers, page 274.

2. *Assault & Battery - Not of a Police Officer:*

- a. Aggravated battery with a canine - see 7 A.L.R.4th 607, 608
- b. Assault with a dangerous weapon - (German Shepherd) - the appellate court ruled a dog may be a dangerous weapon within the Michigan aggravated assault statute, stating the statute defining "dangerous weapon," is broad and includes any object which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury. People v. Kay, 121 Mich.App. 438, 328 N.W.2d 424 (Mich.App. 1982).
- c. Aggravated assault with a canine when the canine did NOT bite - "Whether or not the Doberman pinscher actually bit Mr. Carlisle, the evidence in this case is sufficient to authorize the trial judge to find that, as used, appellant's hands and feet and his use of the dog were deadly weapons." Michael v. State, 160 Ga. App. 48, 286 S.E.2d 314 (1981).
- d. Assault with an offensive weapon - New Jersey appellate court ruled that under the facts of the case the defendant's dog was a deadly weapon. Interest of J.R., 165 N.J.Super. 346, 398 A.2d 150 (N.J.Super. 1979).

## V. Wisconsin Statutes - Canine Related:

A. Wisconsin Statute §174.02 Owner's liability for damage caused by dog; penalties; court order to kill dog

**1. Liability for injury.**

- a. *Without notice.* Subject to §895.045 [Contributory negligence], the owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, livestock, or property.
- b. *After notice.* Subject to §895.045 [Contributory negligence], the owner of a dog is liable for 2 times the full amount of damages caused by the dog injuring or causing injury to a person, livestock, or property if the owner was notified or knew that the dog previously injured or caused injury to a person, livestock, or property.

## VI. Wisconsin P.O.S.T. Guidance:

The State of Wisconsin Department of Justice has established the following definition of "deadly force" as it pertains to a law enforcement officer. See letter to Chiefs, Sheriffs and Police Administrators dated November 24, 1992, signed by Pierce T. Purcell, Assistant Attorney General.

"... Our position is that the definition of deadly force in Wisconsin, in a police setting, is the use of any means or instrumentality intended to or likely to cause death.

Our definition of when an officer may use deadly force is that deadly force may be used when the officer reasonably believes it is necessary to prevent death or great bodily harm to himself or to others." ...

## VII. Canine - Treatises Research:

A. General Canine Information:

1. *Dogs*, "Law Enforcement Legal Defense Manual", pages 28 - 33, Brief 79-5
2. Knowledge of animal's vicious propensities, 13 Am Jur Proof of Facts 2d 473



3. Aggravated battery with a canine - see 7 A.L.R.4th 607, 608
4. Marnier, Lynn, "Comment:: The New Breed of Municipal Dog Control Laws: Are They Constitutional?", 53 University of Cincinnati Law Review 1067 (Westlaw 53 UCINLR 1067), 1984.
5. Sullivan, Sallyanne K., "Special Section: Vicious-Dog Legislation -- Controlling the 'Pit Bull' Banning the Pit Bull: Why Breed--Specific Legislation is Constitutional," 13 University of Dayton Law Review 279 (Westlaw 13 UDTNLR 279), Winter 1988.
6. Thorne, Julie A., "Note: If Spot Bites the Neighbor, Should Dick and Jane Go To Jail?", 39 Syracuse Law Review 1445 (Westlaw 39 SYRLR 1445), 1988.

**B. Canine - Use of Force:**

1. Dell, Louis P., Comment, "Police Attack Dogs: A Dogmatic Approach to Crime Control", 13 Whittier Law Review 515 (Westlaw 13 WTLR 515), (1992).
2. Liability, under 42 USCS section 1983, for injury inflicted by dogs under control or direction of police, 102 ALR Fed. 616.
3. Modern status of rule of absolute or strict liability for dog bite. 51 ALR4th 446.
4. Liability of owner of dog known by him to be vicious for injuries to trespasser. 64 ALR3d 1039.

**C. Canine - Narcotics Detection:**

1. Use of trained dog to detect narcotics or drugs as unreasonable search in violation of Fourth Amendment, 31 ALR Fed. 931.

**D. Dog Scent Lineups:**

1. Taslitz, Andrew E., "A Practitioner's Guide to Dog Scent Lineups", Criminal Law Bulletin, pages 218-255.
2. Taslitz, Andrew E., "Does the Cold Nose Know? The Unscientific Myth of the Dog Scent Lineup," 42 Hastings Law Review 15 (Westlaw 42 HSTLJ 15), November 1990.
3. Annot., "Dog Scent Discrimination Lineups", 63 A.L.R.4th 143 (1988 & 1990)

**E. Miscellaneous Canine Related Research:**

1. Pozner, Larry S., "Preparing for the Narc or Try Cops ... Not Clients.