

# **POLICE DOG BITE CASES AND EXPERT WITNESSES**

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## **I. WHY YOU NEED A POLICE DOG EXPERT IN POLICE DOG BITE CASES.**

Victims of police dog attacks are usually unsympathetic. Generally, they are persons of color, guilty of some offense, and suffer from disabilities including illiteracy, mental illness or drug or alcohol dependency. Most police dog bite victims are suspects in property crimes such as auto theft or burglary who try to hide or escape from the police, so the police perceive the victims as having defied official authority by attempting to avoid police contact. Furthermore, juries (and judges) are easy prey for the police-inspired myth that letting a police dog attack reduces the probability of injury to the officer or innocent persons while supposedly enabling the police to capture suspects who might have escaped but for the dog attack. The police are also very careful to obscure the reality of dog attacks by such euphemistic and misleading terms as the dog “apprehended the suspect” or “placed a bite-hold.” Thus, given our long history of vigilante justice, juries are susceptible to the claim that the victim “got what he deserved.” Jerome H. Skolnick, James J. Fyfe, *Above the Law, Police and the Excessive Use of Force* 24-29 (1993).

Overcoming these obstacles is not easy. Through a good expert, you can demonstrate the violence of a dog attack, expose the fallacy that police dog attacks promote officer safety, educate uninformed lay people on the reality of police work and the ease with which the police, when they do not use dogs to attack, arrest suspects without significant risk of injury to officers or others.

While a police practices expert competent in police use of force principles and tactics may suffice in some cases, usually it is best if your expert is a former police dog handler and/or trainer.

## **II. WHAT YOUR EXPERT SHOULD COVER.**

Your expert should address the following:

A. *Police standards on the use of force and their application to police dogs.* A clear

understanding of these rules will assist you in convincing the court to let you cover Issues II(B) through (D) while demonstrating that the defendant and his department fail to abide by the most basic rules applicable to all police officers. Reference materials that your expert can safely rely upon for accepted standards for police use of force are:

(1) Kevin Parsons, Ph.D, *Decision to Use Force: The Confrontational Continuum*<sup>1</sup>;

(2) Joseph Callanan, *Use of Force After The Rodney King Incident*<sup>2</sup>;

(Dr. Parsons and Mr. Callanan are well-known *defense* experts)

(3) California's Commission on Peace Officer Standards and Training ("POST"), Unit Guide No. 26, *Legal Aspects of Force*, Handout #5, pp. 1, 5, 7.<sup>3</sup>

B. *The selection and training of police dogs to bite and how the dogs attack and bite.* The dogs are large dogs, selected for their aggressiveness and willingness to attack and bite. The objective is an aggressive dog that will attack and bite with a full mouth bite, to rebite should the person free him- or herself from the bite, and to attack and bite as hard and as long as the dog can bite, anywhere on the body, including vital areas.

(1) Police videotapes that depict police dog training and bite work should be used. Police officers are taught to and rely upon sanitized and grossly misleading terms to describe attacks by their dogs. A videotape is, in the words of one defense expert, worth a million words. A good tape to use is *Police Dogs, Canine Aggression & Basics of Bite Work* by Canine Training Systems (Action Video Editing, Inc., P.O. Box 12125, Seattle, Washington 98102, 206-720-6160). Watching the dogs attack

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<sup>1</sup> Reprinted in 8 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK 115-29 (1992). See Appendix A.

<sup>2</sup> THE TACTICAL EDGE 17 (Fall 1992). See Appendix B.

<sup>3</sup> See Appendix C. The full unit guide is available free of charge from the Commission.

the agitators and decoys reveals the violence behind the police dog that “grabbed ahold” of your client.

*C. Injuries police dogs inflict.* As Parsons and Callanan explain, force options are justified and classified based upon the *probable injuries* one can expect. Police dogs inflict far more serious injuries than comparable dogs. With the exception of the firearm, police dogs are more likely to cause serious injury than any other police weapon. Your expert should describe the injuries to be expected (deep puncture wounds, lacerations, missing flesh and muscle tissue, disfiguring scars, mutilations, etc.). The expert should also be prepared with the relevant statistics reflecting the severity of injuries inflicted by police dogs.

(1) Hospitalization rates. Conventional dogs cause in-patient hospitalization in 2% or less of all persons bitten.<sup>4</sup> Police dogs result in persons being hospitalized at rates of 15 to 50% of all persons bitten.<sup>5</sup>

(a) If you can obtain the bite reports of the handler or department you client has sued, your expert may be able to determine the hospitalization rate for your particular dog handler or department.

(2) Comparative injuries sustained by persons injured by police dogs versus baton strikes. Police agencies and their apologists justify police dogs attacks by claiming that a police dog is less likely to cause injury, including serious injury, than police baton strikes. There is no support for this proposition and all evidence is to the

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<sup>4</sup> See K. Snyder & M. Pentecost, *Clinical and Angiographic Findings in Extremity Arterial Injuries Secondary to Dog Bites*, ANNALS EMERGENCY MED., Sept. 1990, at 983. See Appendix D.

<sup>5</sup> The hospitalization rates for dog handlers is based upon deposition testimony of various police dog handlers and trainers, including Inglewood Sgt. John Bell, the expert most frequently used by police agencies.

contrary.

(a) Persons struck by police baton strikes require hospitalization in no more than 5.8% of all persons struck. G. Meyer, *Nonlethal Weapons versus Conventional Police Tactics: The Los Angeles Police Department Experience* (March 1991)<sup>6</sup>;

(b) Persons struck by batons rarely sustain permanent injuries -- there is no scarring, disfigurement or mutilation from baton strikes;

(c) Officers are trained to deliver baton strikes so as to minimize the risk of injury by avoiding vital areas (head, neck, across the spine, groin, etc.) and directing blows to distal portions of extremities, thereby reducing probability of fractures or significant tissue damage.

(3) Police officers consider a dog a deadly weapon if used to attack an officer. As Sheriff Block recently testified:

Q: . . . If someone ordered a dog, a large dog, a dog that's trained to bite hard, to attack you as you were engaged in your lawful duties, would you believe that you had probable cause to arrest that person for assault with a deadly weapon on a police officer?

. . .

The witness: If a person ordered a dog to attack, I would -- I would say yes. If -- you know -- unless you

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<sup>6</sup> Lieutenant Meyer conducted the study using LAPD data in support of his Masters thesis. Copies of the study are available at some college bookstores and from Greg Meyer, P.O. Box 8110, Bellflower, California 90706 (800-453-5518).

had a chihuahua or something.

(8/6/93 Deposition of Sherman Block, 71:21-25, 72:8-

10)

D. *Officer safety and police dogs.* Contrary to what juries and judges want to believe, letting a dog attack a suspect does NOT enhance officer safety; instead, such a tactic increases the probability that an officer or civilian will be needlessly injured.

(1) Dogs are not human nor are they Rin-Tin-Tin. Dogs cannot recognize weapons nor do they know how or when to take cover. Dogs are easy victims for any person with a knife or a gun.

(2) If a person is armed, letting the dog attack the person increases the likelihood that the person will use the weapon if only to defend himself from the dog. This places the dog handler, who is usually a few feet away and without cover, in a “shoot/don't shoot” situation -- exactly the opposite of what good police tactics teaches. If the person is unarmed (as is almost always the case), the attack serves only to injure, disfigure and mutilate the victim without serving any legitimate police objective.

(3) When the dogs attack people, most persons try to defend themselves. Oftentimes, this draws the handler into a confrontation with the suspect who is beating on or kicking the dog that is attacking him.

(4) There are no studies to support the claim that police dogs, when allowed to attack and bite, reduce the probability of injury to officers or others. Available statistics suggest just the opposite:

(a) When dogs are not used, it is rare for suspects to injure police officers.

For example, in 1991, LAPD officers, while making 8,665 burglary arrests,

were assaulted seven times, once with a firearm.<sup>7</sup> Even the 8,681 arrests for robbery -- a "crime of violence" -- resulted in only 18 assaults, 9 with firearms.<sup>8</sup>

(b) When dogs are used, the frequency of injuries to officers goes up. John Bell, the most frequently used defense expert in police dog bite cases, was injured at a rate *at least twelve times* more frequent (because his dog attacked and bit him instead of the suspect) than LAPD officers who made felony arrests without the assistance of any dog.

(5) It is not uncommon for dogs to "miss their mark," *i.e.*, miss the suspect and attack some civilian or police officer. West Covina police officer Gary Christensen and Santa Ana police officer Dianna Lee are two classic examples. Officer Christensen had his patrol career ended by a police dog attack whereas Officer Lee was on off duty on injured status for over two years because of a police dog attack.

(6) Although they promote the myth before judges and juries that dogs are effective against armed suspects, police dog handlers universally subscribe to the rule that you do NOT send a dog in to bite an armed suspect because "if we let the dog go in to make the apprehension [of an armed suspect], the likelihood of a dog getting hurt is very great; the likelihood of an officer getting hurt is also very great . . ." (Lt. Gary Nessin, supervisor, Riverside P.D. canine unit, 6/30/92 Deposition). As

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<sup>7</sup> LAPD Statistical Digest 2.18 (1991) (LAPD Law Enforcement Officers Killed or Assaulted).

<sup>8</sup> *See* note 7 *supra*. Only a small number of assaults result in actual injury to an officer. For example, of the 150 assaults on LAPD officers with firearms in 1991, 6 resulted in personal injuries. LAPD Statistical Digest at 2.18 (1991). Of the 1056 total assaults, 148 resulted in injuries to officers. *Id.* In other words, out of 232,256 arrests by LAPD officers in 1991, at least 99.94% of the arrests are accomplished without any injury to officers.

acknowledged by one local police dog handler: “I had no intentions on just turning my dog loose to search and locate Mr. D, since he was armed. That would have been a waste of the dog.” (3/2/92 Deposition of Santa Monica dog handler Jeff Baker).

E. *Nearly all suspects surrender when given the chance.* Police dog handlers justify the attack as if the suspect would not have surrendered had the dog not been used. Any police officer with decent street experience knows that in nearly all instances, suspects surrender when they know they police have found them and escape is no longer feasible. The expert should rely upon the statistical fact that 99% of all suspects surrender when given the chance without requiring any significant use of physical force. REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT, at 36 (1991) ("Christopher Commission Report").<sup>9</sup>

### III. CASE LAW BOTH YOU AND YOUR EXPERT SHOULD BE FAMILIAR WITH:

*Tennessee v. Garner*, 471 U.S. 1, 85 L.Ed. 2d 1, 105 S.Ct. 1694 (1985): The Supreme Court enunciated the constitutional rule for police use of deadly force: Only where the officer has probable cause that the suspect poses an immediate threat of death or serious bodily injury may an officer resort to deadly force. Moreover, warnings, if feasible, should be given before resorting to deadly force.

*Kopf v. Wing*, 942 F.2d 265 (4th Cir. 1991): In reversing the district court's granting of summary

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<sup>9</sup> These statistics are directly admissible. Rule 803(8), Federal Rules of Evidence; *Montiel v. City of Los Angeles*, 2 F.3d 335, 341-42 (9th Cir. 1993) (Ninth Circuit holds that the Christopher Commission Report is presumptively trustworthy under F.R.E. Rule 803(8)); see Cal. Evid. Code § 1280, the state law counterpart to Rule 803(8). The statistics should also be admissible as a basis for the expert's opinion that most suspects surrender when given the opportunity. Rule 703, Federal Rules of Evidence; Cal. Evid. Code §§ 801(b), 802.

judgment in favor of the dog handler, the Fourth Circuit observed that a “jury could find it objectively unreasonable to require someone to put his hands up and calmly surrender while a police dog bites his scrotum.” (*Id.*, at 268.)

*Kerr v. City of West Palm Beach*, 875 F.2d 1546 (11th Cir. 1989): The Eleventh Circuit reinstated the jury's verdict finding that the City of West Palm Beach maintained an unconstitutional policy in its use of police dogs to attack and bite. The court also observed that persons attacked by the dogs often suffered serious injuries because of the “bite and hold” training and natural tendency of persons to defend themselves from dog attacks. (*Id.*, at 1550, 1556-57.)

*Robinette v. Barnes*, 854 F.2d 909 (6th Cir. 1988): The Sixth Circuit held that under the facts of the case before it, the police dog, even though it killed the burglary suspect it attacked and bit, did not constitute deadly force. Police departments recklessly rely upon this case to support their use of dogs to attack and bite. In fact, the case hurts them because (1) the court of appeal held that the probable injuries to be expected from police dogs must be considered in deciding if the dog was deadly force (the Sixth Circuit relied upon the *absence* of any such evidence in the record before it in holding that the dog attack was not likely to cause serious injury or death), and (2) a police dog that creates a substantial risk of causing death or serious injury will be considered deadly force. (*Id.*, at 912-13.)

*Marley v. City of Allentown*, 774 F. Supp. 343 (E.D. Penn. 1991), *aff'd without opn.*, 961 F.2d 1567 (3rd Cir. 1992): The jury found that the officer used excessive force in letting his dog attack the plaintiff. In denying the officer's JNOV motion the district court upheld the application of the *Garner* rule to a police dog. (774 F. Supp. at 346.)



*Chew v. Gates*, 744 F. Supp. 952 (C.D. Cal. 1990), *appeal pending*, Ninth Circuit No. 91-55718. Judge Gadbois of the Central District held the City of Los Angeles canine policy constitutional and dismissed individual supervisor defendants on summary judgment. The opinion is wrong in more ways than space permits addressing; however, the case relies principally upon *Robinette*, a case that actually cuts in plaintiffs' favor. One of Judge Gadbois' most glaring failures was his omission of any discussion of the probability of police dogs causing serious injury. Interestingly, the dog handler in *Chew* was held liable for damages following a jury trial. *Chew* was argued in the Ninth Circuit in August, 1992 (Judges Norris, Trott, and Reinhardt) and a decision is expected any day.

*People v. Nealis*, 232 Cal. App. 3d Supp. 1, 283 Cal. Rptr. 376 (1991): Appellate Department, Los Angeles Superior Court, affirmed defendant's conviction for assault with a deadly weapon when she ordered her doberman pincher to attack. "A dog may be a deadly weapon if the person uses the dog to attack or threaten a human, and the dog is trained to respond to the person and is capable of inflicting serious injury." (232 Cal. App. 3d Supp. at 3, 283 Cal. Rptr. at 378.)

THE MEDICAL STUDY EVERY ONE SHOULD READ: K. Snyder & M. Pentecost, *Clinical and Angiographic Findings in Extremity Arterial Injuries Secondary to Dog Bites*, ANNALS EMERGENCY MED., Sept. 1990, at 983 (Appendix D). Beneath the technical title is the remarkable study performed by physicians at Los Angeles County-USC Medical Center in Los Angeles. The authors, prompted by a startling increase in admissions of persons seriously injured by dogs, discovered that the increase was due entirely to police dog attacks. The doctors found (1) "Dog-bite injuries are unique in that there are both penetrating and blunt components"; and (2) The frequency of arterial injury to extremities inflicted by police dog bites is comparable to the frequency of arterial injury to

extremities inflicted by gunshot or knife. The doctors concluded that police dogs were more likely to cause serious injury than comparable dogs lacking police dog training and warned their colleagues of the danger of the “significant arterial damage that may require surgical repair.” Snyder & Pentecost, *supra*, at 985, 986. So much for the Sixth Circuit's conclusion (in *Robinette*) that a police dog bite to the extremity does not create a substantial risk of serious injury.