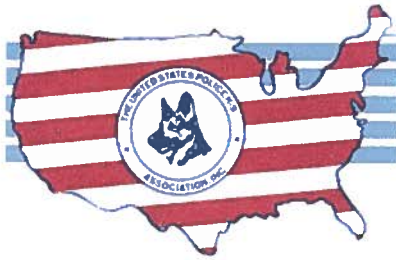


United States Police Canine Association

[Home](#)[Forum](#)[Events](#)[Certification](#)[USPCA Foundation](#)[ADVERTISERS](#)[ARTICLES](#)[BY LAWS – 2013](#)[BOOK SHELF](#)[CASE LAW](#)[DIRECTOR'S MESSAGE](#)[DOWNLOADS](#)[HISTORY](#)[NATIONAL TRIAL RESULTS](#)[NATIONAL INFORMATION](#)[PHOTO GALLERY](#)[REGIONAL INFORMATION](#)[RESOURCES](#)[SUPPORTERS](#)[CONTACT US](#)

Find us on Facebook



**United States Police
Canine Association,
Inc.**

Like 4,429

P.O. Box 80
Springboro, OH 45066
(937) 751-6469

Patrol Case Law

[Part 2](#)[Part 3](#)[Part 4](#)[Part 5](#)[Part 6](#)

The police dog as an instrumentality of force

A police dog used to apprehend is best understood as an instrumentality of force, like a baton, to be judged according to the rules that apply to police use of force generally. Substantial force inflicting serious injury may be reasonable and necessary according to the circumstances confronting officers. The issue will be reasonable necessity: was the force used proportionate to the apparent need to prevent escape or protect persons.

As applied to police dogs, the reasonable necessity standard means a dog bite is justifiable and lawful force if and only if the threat to officers or the public is serious - the need for force must be sufficient to justify the injury of a dog bite. A dog bite is not different from a laceration inflicted by a lawful baton stroke. The need for force, not the injury inflicted, makes force lawful or unlawful.

To summarize the reasonable conclusions drawn by these case decisions, seven key guidelines governing the use of Police Service Dogs are presented in brief:

Use of Police Service Dogs is governed by the U.S. Supreme Court decision in *Graham v Connor*. Taking into consideration the totality of the circumstances, a three part test should be used to satisfy and justify a canine deployment:

1. The severity of the crime at issue;
2. Whether the suspect poses an immediate threat to the safety of law enforcement officers or others;
3. And whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Four cases, two from the United States Court of Appeals Sixth Circuit, *Robinette v Barnes and Matthews v Jones*, and two from the Ninth Circuit, *Fikes v Cleghorn* and *Quintanilla v City of Downey* all specifically state that...

"...Police Service Dogs are not deadly force..."

"...Police Service Dogs can often help prevent officers from having to resort to, or be subjected to, deadly force..."

Regarding the issue of "bite ratio" as discussed in two cases, Ninth Circuit's *Chew v Gates* (L.A.P.D.) and Eleventh Circuit's *Kerr v City of West Palm Beach*, their conclusions were non-directional.

Kerr: A high ratio of bites to apprehensions may strongly indicate a misbehaving dog or a misbehaving handler. On an average, less than 30% of apprehensions should result in a bite; the average bite ratio in the West Palm Beach department was 50%. Thus, canine units with an average bite ratio of 20% or higher should be reviewed.

Chew: The City of Los Angeles Police Canine Unit had a bite ratio average of 40%. Since this case has been resolved by an out-of-court settlement, this case offers little guidance.

And, although the issue of "bark and hold" versus "bite and hold" was also discussed in both *Kerr* and *Chew* respectively, the court conclusions were:

Kerr: The department had a "bite and hold" policy; the court ruled that in the bite and hold method of training, the handler must have complete control over the actions of the dog. With such control the handler can recall and restrain the dog before a bite occurs. Alternately, the handler can quickly remove the dog from the apprehended suspect. There was no discussion of a "bark and hold" method.

Chew: This department also had a "bite and hold" policy. Since this case has been resolved by an out-of-court settlement, this case offers little guidance. L.A.P.D. has returned to a "find and bark" policy.

Join the USPCA

Online Store

Advertise

USPCA Yahoo E-Group
Active USPCA Members Only

Email :

Name:

Apply

*To unsubscribe, please visit the
USPCA Yahoo E-Group.*

[Technical Support](#) — Forum • Web
Site

To summarily debate the "bark and hold" versus "bite and hold" issue is irrelevant. Court decisions dictate that in any type of search condition the handler must have complete control over the actions of his dog, regardless. Handler control dictates to the dog what type of response is appropriate for the situation. The handler makes the decision to escalate or de-escalate the dog's level of response, not the dog. In *Fikes v Cleghorn* and *Quintanilla v City Of Downey* the courts emphasized control by stating that the police dog was trained to release arrestees on command, as it did in this case(s).

Deployment of canines against felony versus misdemeanor suspects is addressed in several circuit courts. Under the Supreme Court case *Graham v Connor*, the objective reasonableness test analyzing the totality of circumstances, is addressed as follows:

1. The Third Circuit Court held in *Marley v City of Allentown* that using a dog against a suspected misdemeanant, who posed no threat to the officer, was unreasonable.
2. The Eleventh Circuit Court held in *Kerr v City of West Palm Beach* that using a dog in a minor misdemeanor offense was unreasonable.
3. The Sixth Circuit Court held in *Matthews v Jones* and the Ninth Circuit Court held in *Fikes v Cleghorn* that using a dog against a misdemeanant who posed a threat to the officer was reasonable.
4. The Ninth Circuit Court held in *Mendoza v Block* that using a police dog to find Mendoza, an armed, fleeing, hiding felony suspect, and to secure him until he stopped struggling and was handcuffed, was objectively reasonable under these circumstances.
5. The Sixth Circuit Court held in *Robinette v Barnes* that using a dog to find a hidden, unsearched, felony suspect was reasonable.
6. The Ninth Circuit Court held in *Quintanilla v City of Downey* that using a dog to find a fleeing, hidden, unsearched felony suspect and to secure him until he stopped struggling and was handcuffed, was objectively reasonable.

As indicated in the section concerning "Police Service Dogs and Use of Force Continuum", a written policy should exist in all canine units, specifying departmental policies regulating the control of canine units, consistent with case law, for canine usage and deployment in felony and misdemeanor actions.

Training was strongly addressed in the Eleventh Circuit Court case, *Kerr V City of West Palm Beach*. The court stated: Police Dogs must be subject to continual, rigorous training in law enforcement techniques. Such training ensures that the dogs will continue to respond with alacrity to the commands of their handlers; without such training, the dogs' responsiveness to their handlers' commands will deteriorate, resulting in more frequent and more serious injuries to apprehended suspects than might otherwise occur.

National Law Enforcement Animal Memorial

Since 911 the loss of K9 Sirius has developed a high citizen awareness about the jobs emergency service personnel perform day in and day out. **Please take a moment to nominate** an outstanding animal.