

TRAINING, CERTIFICATION and RELIABILITY of POLICE SERVICE DOGS

By Terry Fleck

I repeatedly get questions from canine handlers, supervisors and administrators regarding three issues with police service dogs: their training, certification and reliability.

Since approximately 70% to 80% of our canine industry is a cross trained dog, a patrol dog cross trained to detect contraband, I will analyze this question as it pertains to both patrol and contraband detector dogs.

TRAINING:

The United States canine industry standard for canine maintenance training is a **minimum** of sixteen hours per month (four hours per week), on average. This standard applies to each canine team (handler and dog), not per canine discipline. This standard was developed and is currently endorsed by the three largest United States police canine associations: USPCA (United States Police Canine Association), NAPWDA (North American Police Work Dog Association) and NPCA (National Police Canine Association).

The recommended minimum applies to each K-9 **team**, not per K-9 discipline. In other words, the minimum standard applies to a sole purpose dog and/or a cross trained, multi-discipline dog. Common sense would dictate that it will take longer to maintain a cross trained, multi-discipline dog. Remember, this is a **MINIMUM** standard.

If an agency elected to be below this minimum U.S. canine industry standard, and thus in violation with this standard, there is probable liability in two areas:

1. Vicarious liability for failure to train and failure to supervise;
2. Liability for being "deliberately indifferent" to the training needs of a specialized police unit, canine.

I have polled about 17,000 police dog handlers, supervisors and administrators throughout the U.S. since 1995. Almost 100% of our police canine industry is in compliance with the minimum U.S. standard for police canine maintenance training. That is significant, since it not only corroborates the standard, but also shows our industry follows it.

As far as case law to support this minimum standard, there is no case that specifically states the number of hours for police canine maintenance training.

There are cases addressing vicarious liability for failure to train and failure to supervise and for being deliberately indifferent to training:

KERR V CITY OF WEST PALM BEACH

875 F. 2d 1546 (1989) U.S. Court of Appeals Eleventh Circuit

Several parties filed a class action suit against the City of West Palm Beach for suffering injuries as a result of apprehension by dogs in the city's canine unit.

The court threw out the class action suit, stating that the court must assess the reasonableness of the officers' actions in light of the essentially unique factual circumstances. The remaining two issues in question were:

- Did the department fail to adequately train the canine unit? (Negligent training)
- Did the department fail to adequately supervise the canine unit to ensure that both the misbehaved canines, and handlers who had exhibited poor judgment using canine force against minor misdemeanor suspects, all received corrective training? (Negligent supervision)

The common element in both issues was **failure to train**. **The court concluded that 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.**

CITY OF CANTON, OHIO V HARRIS

489 US 378 (1989) U.S. Supreme Court

A municipality may be held liable for violation of rights, which violations result from a municipality's failure to adequately train its employees, only if that failure reflects a "**deliberate indifference**" on the part of the municipal policy.

The "**deliberate indifference**" standard:

Failure to train may be fairly said to represent a policy for which the municipality is responsible, and for which it may be held liable where injury results, if, in the light of the duties assigned to specific officers, the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that municipal policymakers can reasonably be said to have been deliberately indifferent. (i.e. canine or any other specialty unit/individual.)

As an analogy, take your SWAT team. The United States SWAT industry standard is a minimum of sixteen hours per month of SWAT operator training.

This standard was developed and is currently endorsed by the most recognized United States SWAT association, NTOA (National Tactical Officers Association). An agency would be very unwise to violate this national standard.

CERTIFICATION:

The United States canine industry standard for certification is **yearly** certification. This standard applies to each canine team (handler and dog). This standard was developed and is currently endorsed by the three largest United States police canine associations: USPCA (United States Police Canine Association), NAPWDA (North American Police Work Dog Association) and NPCA (National Police Canine Association). This standard is also endorsed by the largest United States police canine contraband detector dog association, NNDDA (National Narcotic Detector Dog Association).

Federal case law dictates that a police dog **must** be trained, certified and reliable. Since the U.S. canine industry standard is yearly certification, if your agency is not certifying yearly, they would be negligent and out of compliance with the canine industry standard. There are legal ramifications for both a patrol and a contraband detector dog, if they are not within the canine industry standard, yearly certification.

I have polled about 17,000 police dog handlers, supervisors and administrators throughout the U.S. since 1995. About 95% of our police canine industry is in compliance with the minimum U.S. standard for police canine certification. That is significant, since it not only corroborates the standard, but also shows our industry follows it.

One Federal case stated the **minimum** requirements of patrol dog certification:

KERR V CITY OF WEST PALM BEACH

875 F. 2d 1546 (1989) U.S. Court of Appeals Eleventh Circuit

The handler must have complete control over the actions of his 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 an apprehended suspect.

Therefore, patrol dogs' yearly certification should show a successful "verbal recall" and "verbal out".

There are numerous Federal cases that state the dog **must** be certified. Here is one example:

UNITED STATES v CEDANO-ARELLANO

(332 F. 3d 568 (2003) U.S. Court of Appeals Ninth Circuit

A drug detection dog's **training** and **certification** records are discoverable by the defense. These materials at issue are crucial to defendant's ability to assess dog's **reliability**, a very important issue in his defense, and to conduct effective cross-examination of dog's handler.

RELIABILITY:

This is the most recent area where our industry is being challenged in court. The U.S. Supreme Court touched on this issue in their recent decision regarding the use of contraband detector dogs:

ILLINOIS v CABALLES

125 S. Ct. 834 (2005) U.S. Supreme Court

Use of a well trained narcotics detection dog, one that does not expose noncontraband items that otherwise would remain hidden from public view, during lawful traffic stop does not violate the Fourth Amendment.

As far as other case law to support this reliability issue, there are numerous Federal cases that state the dog must be trained, certified and reliable.

SUMMARY:

As of today, there is no national or Federal standard addressing these three issues: training, certification and reliability. There is one national group that is currently working on national "best practice" guidelines on training, certification and reliability. That group is SWGDOG (the **S**cientific **W**orking **G**roup on **D**og and **O**rthogonal detector **G**uidelines).

Until that national best practice guideline is developed, we as an industry rely upon existing national canine associations and Federal case law for guidance. In addition, several states have developed their own state guidelines. Those states that do not have guidelines should be in compliance with a national canine association, a regional canine association or another existing state guideline.

More information on this topic, including the cases to support these issues, may be obtained at my **Canine Legal Update and Opinions** website at www.k9fleck.org.