

K-9 Handlers as the K-9 Expert of Their Dog

By Terry Fleck

A K-9 handler is the world's leading expert of their dog. No one knows as much about the dog than the handler. No third party, such as a supervisor, attorney, "expert witness", etc., knows more about the dog than the handler. As such, agencies should ensure the handler is the one ultimately responsible for issues related to their dog.

K-9 RELATED ISSUES:

Deployment of the K-9:

Progressive agencies realize that the handler is the world's leading expert of their dog. As such, these agencies address deployment of these dogs by written K-9 policy. As an example, this is from a model K-9 policy written by Bruce Praet, a respected K-9 attorney from California:

"A Police Service Dog handler shall have the ultimate authority not to deploy the dog. The handler will evaluate each situation and determine if the use of a Police Service Dog is technically feasible. Generally the decision to deploy the dog shall remain with the handler; however, a supervisor sufficiently apprised of the situation may decide not to deploy the dog."

The authority to deploy a dog must be addressed by written agency policy. Failure to do so has historically resulted in patrol K-9's being injured or killed and bad case law for both patrol and contraband dogs.

As many agencies also want to control their K-9 team, the last sentence in this model policy, "Generally the decision to deploy the dog shall remain with the handler; however, a supervisor sufficiently apprised of the situation may decide not to deploy the dog", allows agency control as well.

Some agencies are concerned about giving this ultimate authority to a misbehaving handler who is not deploying his dog due to the handler's laziness, etc. I do not believe this issue is a policy issue, it is a discipline issue. This discipline issue with a misbehaving handler is handled by progressive discipline, up to removal of the handler from the K-9 unit. Discipline should not be confused with policy. In other words, policy should not be molded around a misbehaving handler. A misbehaving handler is clearly a discipline issue.

Patrol K-9's Being Injured or Killed:

There have been dozens of patrol K-9 deployments in the United States where the dog has been injured or killed. These deployments usually happened when we exceeded the capability of the dog. Historically, these patrol dogs have been injured or killed when they were used as a use of force, in armed, barricaded suspect situations.

A K-9's primary purpose is that of a locating tool. Upon location of the suspect with a patrol dog, the secondary purpose of that dog is a use of force. When the dog locates an armed, barricaded suspect, the K-9 call ends and the SWAT call begins.

Historically, if the K-9 handler does not have the ultimate authority not to deploy the dog and a supervisor is allowed to over-rule the handler and deploy the dog, this has resulted in dozens of dogs being injured or killed.

ACTUAL SITUATION, PATROL K-9:

As an example, there is a video currently circulating on the Internet. The video clearly shows an armed, barricaded suspect being confronted by law enforcement. The K-9 handler on-scene decided not to deploy the dog against an armed, barricaded suspect. The handler knew that historically, the dog would probably be injured or killed. The handler made the correct decision to end the K-9 call and begin the SWAT call.

Unfortunately, a supervisor over-ruled the K-9 handler and the handler was ordered to deploy his dog as a use of force. The result was the dog being shot and killed. The agency lost a \$20,000 tool, the dog, and the handler lost his partner.

Poor Case Law with both Patrol and Contraband K-9's:

There also have been dozens of K-9 deployments in the United States where a K-9 handler's decision not to deploy the dog was over-ruled by either a Federal or State prosecuting attorney. Historically, this has occurred with contraband detection dogs, primarily with narcotics dogs and explosive dogs.

Typically, both Federal and State prosecuting attorneys receive no training on K-9 search and seizure. Most of these prosecuting attorneys receive their K-9 search and seizure training from the world's leading expert of the dog, the handler.

I de-briefed a situation with an agency where a K-9 handler's decision not to deploy the dog was over-ruled by a prosecuting attorney.

ACTUAL SITUATION, EXPLOSIVES K-9:

An explosives K-9 handler was requested to conduct an explosives K-9 sniff of a vehicle stopped on a traffic / investigative stop. The K-9 handler, based upon his K-9 legality training, refused to deploy the dog, as the deployment was not

consistent with Federal case law. The handler was correct. The handler's decision not to deploy was over-ruled by a prosecuting attorney over a cell phone. The handler was forced to deploy his dog by the prosecuting attorney.

The result was bad case law. The Court sided with the handler's decision not to deploy the dog and ruled the explosives K-9 deployment violated the suspect's Fourth Amendment rights.

I also debriefed a situation with an agency where the K-9 handler deployed the dog correctly, however when the case went to court, the handler's advice, regarding the K-9 testimony, to the prosecuting attorney was over-ruled by that attorney.

ACTUAL SITUATION, NARCOTICS K-9:

A narcotics K-9 handler made an appropriate decision to deploy his narcotics dog during a lawful traffic stop. Upon a Motion to Suppress the evidence in court, the handler, based upon his K-9 legality training, made a recommendation to the prosecuting attorney to have a third-party expert witness in the case for the prosecution. The prosecuting attorney over-ruled the handler's recommendation.

In this case, the defense brought in a third-party ex-K-9 handler / trainer as an expert witness in court. This is an alarming trend growing nationwide. Defense attorneys are now hiring ex-K-9 handlers / trainers to testify against the law enforcement K-9 team involved in these cases. These defense third-party ex-K-9 handlers / trainers claim to be the expert of the dog. That is not true, as the handler is the world's leading expert of the dog, not anyone else.

The handler correctly advised the prosecuting attorney that if the defense had a third-party K-9 expert, the prosecution needed a third-party K-9 expert to rebut him. The prosecuting attorney over-ruled the handler and did not bring in a third-party K-9 expert. The Judge had no choice but to believe the defense third-party K-9 expert; as the prosecution presented no third-party K-9 expert to rebut him. The result was the Motion to Suppress the evidence was granted by the court and bad case law resulted. This case law will probably affect our K-9 industry nationwide.

It should be noted that a third-party K-9 expert is not necessary a person from "out-of-town". In this case, the agency had a third-party K-9 expert witness, a K-9 Sergeant, within their own agency. This Sergeant, based upon his K-9 training, education and experience, would have made an excellent third-party K-9 expert for the prosecution. There is no doubt in my mind that this Sergeant could have easily rebutted the testimony given by the defense third-party K-9 expert.

Summary:

We as a K-9 industry need to learn from our mistakes. We cannot be slow to do so. The mistake of not allowing a K-9 handler to make the ultimate decision to deploy the dog has resulted in K-9's being killed or injured and bad case law.

With a patrol dog, we cannot afford the loss of a \$20,000 law enforcement tool, the dog. We cannot afford K-9 handlers being retired on a stress retirement as a result of losing that tool, the handler's partner. Historically, both of these situations have occurred.

With both patrol and contraband dogs, we also cannot afford bad case law, as that has a ripple effect on the rest of the K-9 industry. This ripple affects every K-9 team in the United States. K-9 handlers cannot be over-ruled by uneducated prosecuting attorneys. These prosecuting attorneys are not necessarily at fault, as they normally do not receive any K-9 case law training in their initial education and continuing education.

I realize that K-9 handlers do make mistakes. I also realize that there are misbehaving K-9 handlers as well. In my national experience, these two handler situations are far less common than the situations where the handler is over-ruled incorrectly by a supervisor or prosecuting attorney.

I strongly advise that agency supervisors and prosecuting attorneys listen to the world's leading expert of the dog, the handler. I also strongly advise that this issue must be addressed by agency policy. Listening to the world's leading expert of the dog, the handler is normally correct.