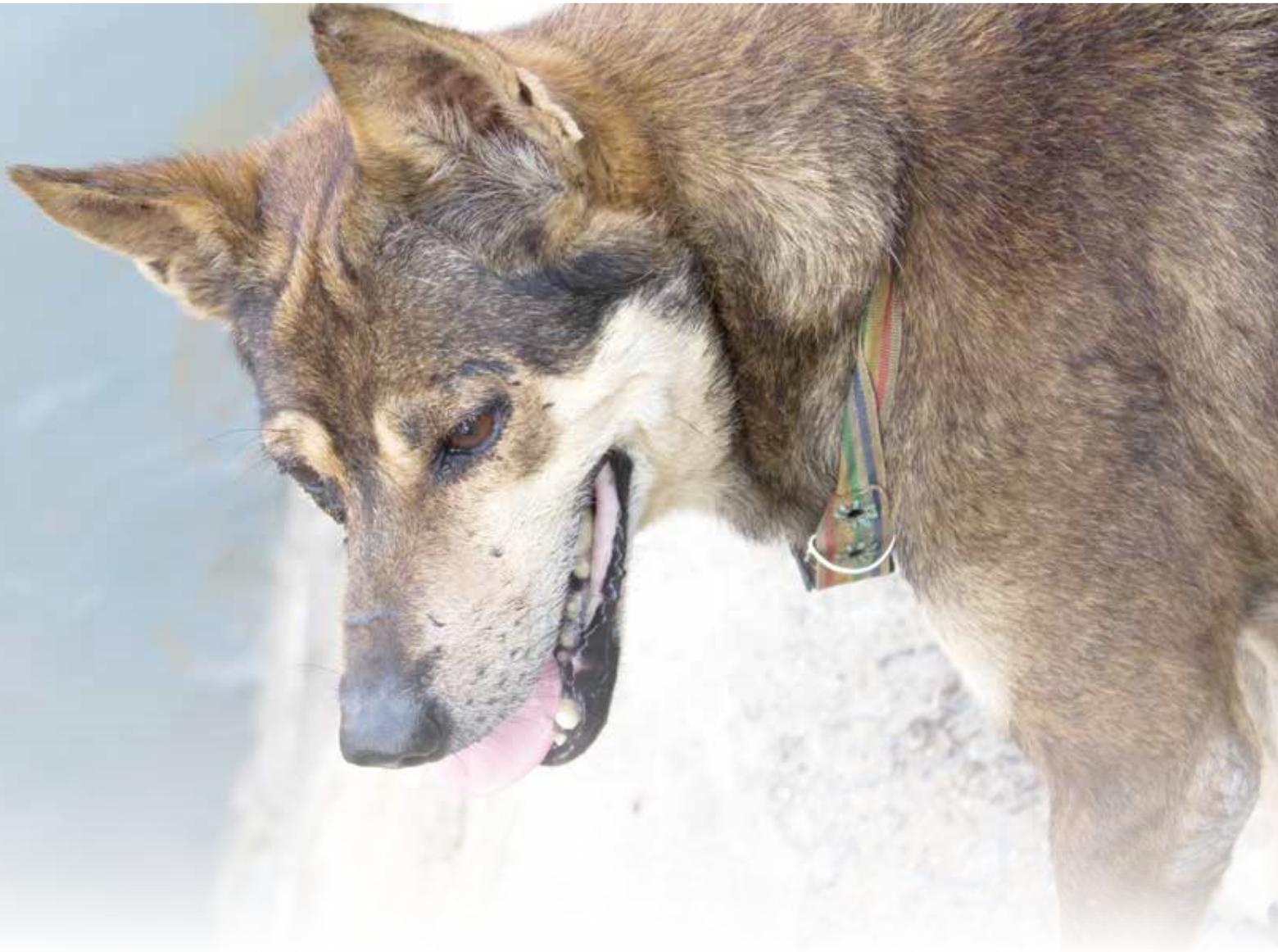


# Shooting Straight: Preventing Unnecessary Dog Shootings

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It is quite common for law enforcement officers to interact with dogs in the performance of their duties, especially since, according to various estimates, between a third to more than a half of all households have a dog. However, sometimes these encounters turn out to be deadly for the dogs involved. Dog shootings often result in heartbreak for the family, generate bad publicity for the department, and can result in serious liability concerns for the officer, the department and municipality. As a result of an increased number of dog shootings by police,

some states have enacted or are considering legislation to provide training to officers to prevent these deadly results. Even without a state law requiring mandatory training, it behooves all officers to be educated on techniques to prevent unnecessary dog shootings.

Most officers are well trained on search and seizure laws and they understand the importance of complying with proper techniques, policies and procedures. However, many officers may not be aware that shooting someone's dog has been considered by multiple circuit courts that have reviewed this issue, to be a

“seizure” within the meaning of the Fourth Amendment. See *Altman v. City of High Point*, 330 F.3d 194, 204—05 (4<sup>th</sup> Cir. N.C. 2003); *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 209-11 (3d Cir. Pa. 2001); *Lesher v. Reed*, 12 F.3d 148, 150 (8<sup>th</sup> Cir. Ark. 1994); *Fuller v. Vines*, 36 F.3d 65, 68, (9<sup>th</sup> Cir. Cal. 1994), *overruled on other grounds – Robinson v. Solano County*, 278 F.3d 1007, 1013 (9<sup>th</sup> Cir. Cal. 2002). Although police officers are provided with qualified immunity when acting within the scope of their duties, courts have consistently applied a *reasonableness* standard when reviewing these kinds of cases. Accordingly, officer dog shootings will only be constitutional if the shooting was reasonable under the totality of the circumstances. In other words, the court will look to the facts and evidence presented to the court in determining if the shooting was in violation of the Fourth Amendment. In any event, the potential for lawsuits can be high.

In the Fuller case, the court noted that the dog, Champ, was “property,” which could be seized and that killing him was a seizure under the Fourth Amendment. On remand, the jury found that in shooting Champ, the officer violated the plaintiff’s constitutional rights causing damages totaling \$143,000, plus \$10,000 in punitive damages. *B. Wagman, S. Waisman, & P.Frasch, Animal Law: Cases and Materials 209*, (4<sup>th</sup> ed. 2010). Courts addressing this issue have noted the need for police to develop a plan or strategy for dealing with dogs in non-lethal ways.

In one high profile case, *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, (9<sup>th</sup> Cir. Cal. 2005), the Ninth Circuit Court affirmed the denial of qualified immunity to police officers involved in the shooting of three dogs at the residence and found the shooting of the dogs to be unreasonable. “A seizure becomes unlawful when it is ‘more intrusive than necessary.’” *Ganwich*, 319 F.3d at 1122 (quoting *Florida v. Royer*, 460 U.S. 491, 504, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)) (*San Jose Charter* at 975). The court went on to explain:

To determine whether the shooting of the dogs was reasonable, we balance “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989) (*citation and internal quotation marks omitted*).

Here, the intrusion was severe. The officers shot and killed one of Souza’s dogs, and two of the Vieiras’ dogs. We have recognized that dogs are more than just a personal effect. See *Miller v. Clark County*, 340 F.3d 959, 968 n. 13 (9<sup>th</sup> Cir.2003).

The court also discussed other cases that have noted the need for police to develop a plan or strategy to prevent dogs from being killed. “These cases should have alerted any reasonable officer that the Fourth Amendment forbids the killing of a person’s dog, or the destruction of a person’s property, when that destruction is unnecessary— i.e., when less intrusive, or less destructive, alternatives exist. A reasonable officer should have known that to create a plan to enter the perimeter of a person’s property, knowing all the while about the presence of dogs on the property, without considering a method for subduing the dogs besides killing them, would violate the Fourth Amendment.” *Id.* at 977-78.

The continued shooting of a dog attempting to flee has also been considered by a court in concluding that the offi-

cer’s action was not reasonable. “Despite the police testimony, at least seven witnesses testified that Bubba wasn’t interfering with the officers when he was shot for the third or fourth time. Rather, according to the witnesses, he was attempting to limp back to his owner.” *Viilo v. Eyre*, 547 F.3d 707, 710 (7<sup>th</sup> Cir. Wis. 2008).

Cases of police shooting dogs have risen dramatically in recent years. Most dog shootings can be prevented and accordingly the risk of high damages eliminated. In the *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose* case, the court reportedly awarded the plaintiffs close to a million dollars in damages. See: [http://seattletimes.com/html/localnews/2019777053\\_rosie28m.html](http://seattletimes.com/html/localnews/2019777053_rosie28m.html), last checked Aug. 15, 2014. Developing a plan is therefore essential to protect your department and city from these large awards.

It is not only dog shootings that result from a legal entry into a residence that are at issue. Lawsuits have been successfully brought in cases where officers were called to deal with an animal running at large. Recently in Missouri, a settlement of \$50,000 was reached in a case where an officer shot and killed a dog running at large. The call came in to respond to a dog running at large, who had reportedly growled at a neighbor’s daughter. The officer responded and ultimately shot and killed the dog. The case was filed in January 2012 in federal court in St. Louis. Not only was the police department sued in the lawsuit, but also the city for failing to train the officer on how to safely secure a dog without the use of lethal force. These cases are proving to be an important lesson to officers who respond in these situations as well as city governments who do not train their officers on non-lethal methods (see: <http://www.examiner.com/article/failure-to-properly-train-police-officers-to-safely-capture-dogs-may-cost-cities>, last visited August 21, 2014. See also: [http://www.stltoday.com/news/local/crime-and-courts/case-involving-police-officer-who-shot-killed-man-s-dog/article\\_9d52f191-c718-5633-a285-00ada171bc16.html](http://www.stltoday.com/news/local/crime-and-courts/case-involving-police-officer-who-shot-killed-man-s-dog/article_9d52f191-c718-5633-a285-00ada171bc16.html), last visited Aug. 21, 2014). These lawsuits are becoming more common and are sometimes handled by specialized attorneys who focus on animal law cases. Accordingly, it is important for officers to be educated on techniques to prevent dog shootings.

An important resource published by the United States Department of Justice, Community Oriented Policing Services (COPS) is *The Problem of Dog Related Incidents and Encounters* was released in 2011 and is available free to police departments and local governments interested in training their officers on these issues. It can be obtained as a downloadable PDF as well as a booklet that can be ordered and supplied to officers. To access this publication you can go to <http://ric-zai-inc.com/ric.php?page=detail&id=COPS-P206>.

More recently, and as a result of the popularity of the COPS booklet, the National Canine Research Council and Safe Humane Chicago, in partnership with the COPS Office, launched a video training series for law enforcement agencies called *Police & Dog Encounters: Tactical Strategies and Effective Tools to Keep Our Communities Safe and Humane*. These short videos give police tools on what to do when they encounter a dog. See: [http://www.cops.usdoj.gov/html/dispatch/12-2013/police\\_and\\_dog\\_encounters.asp](http://www.cops.usdoj.gov/html/dispatch/12-2013/police_and_dog_encounters.asp)

The videos feature dog behavior expert Brian Kilcommons demonstrating real-life scenarios as a learning tool for law enforcement. So far the series is made up of five videos, each 10 minutes in length:

- Video 1, An Overview: Assessing the Situation
- Video 2, Communicating with Dogs: Police and Dog Body Language
- Video 3, Tactical Considerations
- Video 4, Use of Force Considerations
- Video 5, Legal Considerations: Liability, Reporting, and Documentation

These videos are the first law enforcement training resources of their kind on these issues. The videos are available at no cost through the COPS Office Community Policing Learning Portal: <http://cops.igpa.uillinois.edu/resources/police-dog-encounters>

Given the consequences for failing to provide officers with this kind of training, city governments and law enforcement should take advantage of these resources to prevent these unnecessary shootings and the potential lawsuits that may result. 🌟

#### About the Author

*Sherry is a licensed attorney in NY and NJ. She is employed by the Humane Society of the United States as Director of Animal Cruelty Prosecutions, where she focuses on training law enforcement, prosecutors and judges on animal cruelty and fighting cases and working with prosecutors from around the country on effective cruelty prosecutions. Sherry previously worked as an Assistant Prosecutor in NJ and in private practice where she focused on animal law. She has written numerous articles on prosecuting animal cruelty for legal and judicial publications. Sherry is also an adjunct professor teaching Animal Law at New York Law School. Her website can be found at [www.humanesociety.org/justice](http://www.humanesociety.org/justice)*



## Sheriff Layton Named “2014 Indiana Sheriff of the Year”

The Marion County Sheriff's Office is proud to announce that Marion County Sheriff John Layton has been named the “2014 Indiana Sheriff of the Year” by the Indiana Sheriffs' Association. Layton was selected for this honor by his peers, the Sheriffs of Indiana's 91 other counties, at the Indiana Sheriffs' Association Summer Conference on Saturday, July 19th, 2014. Sheriff Layton is the first Marion County Sheriff to receive this honor.

Accomplishments of the Marion County Sheriff's Office, under Sheriff Layton's leadership, that helped lead to his selection include: National accreditations of the Marion County Sheriff's Office by the American Correctional Association, the Commission on Accreditation for Law Enforcement Agencies, and the National Commission on Correctional Health Care; the opening of Hope Hall, a facility for medium-security female inmates, saving taxpayers \$2 million dollars a year; reducing inmate health care costs by millions of dollars; and improvements to the Sex Offender Registry to keep an even closer watch on sex offenders residing in Marion County.

Indiana Sheriffs' Association Executive Director Steve Luce said: “Sheriff Layton is a leader among Sheriffs in Indiana, and throughout America. He is always working to find ways to keep Marion County residents safer, with innovative and efficient approaches to managing the Sex Offender registry and the Jail among other important aspects of public safety.”

Sheriff Layton said: “It is an incredible honor to be named the ‘Indiana Sheriff of the Year’. Sheriffs are able to learn so much from each other, and their respect means the world to me. I look forward to continuing to work with our incredible public safety partners here in Marion County, and around the state.”

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