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Re: USPCA Article: *Canton v. Harris* – A Retrospective on Constitutionally Adequate Police Training

By: Lynn Carpenter, Esq. & Eugene P. Ramirez, Esq.

In this era of increased scrutiny of law enforcement with calls for defunding the police, the issue of training has become even more important to survive the inevitable lawsuit. Defunding the police, as has been demonstrated, has resulted in the loss of officers and a corresponding decline in patrol operations. The effect of defunding the police may also result in a reduction in a department's training budget. Yet, training is something that should not be defunded. Canine units, in particular, need to maintain their training budget in order to prevent accidents and minimize liability. To do otherwise, could have disastrous results.

In 1989, the Supreme Court addressed the issue of failure to train within the context of the appropriate time for an officer to summon medical aid for a detainee. In *Canton v. Harris*, the Court examined an underlying scenario where Canton Police Officers arrested Geraldine Harris and transported her to the police station in a patrol vehicle. When officers arrived at the station, they found Ms. Harris sitting on the floor of the car. Officers inquired whether she needed medical attention, but her response was incoherent. When they brought her into the station, she slumped to the floor two times, causing the officers to leave her on the floor to prevent her from falling. Notably, officers never requested medical care for detainee Harris. When Harris was later released from custody, she was transported by ambulance to the hospital, where she was treated for emotional ailments.

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Under applicable Canton Police Department's training regulations, shift commanders were authorized to determine whether a detainee required medical attention within their sole discretion in spite of the fact that they were not provided sufficient medical training to enable them to make such decisions

In analyzing the subject incident, the Court looked to *Monell v. New York City Dept. of Soc. Servs.* and determined that a City could be held liable for the inadequacy of its training program under 42 U.S.C. § 1983 "only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." The Court explained the standard of deliberate indifference as when "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the City can be reasonably said to have been deliberately indifferent to the need."

By way of example, the Court explained that deliberate indifference occurs when the City's policymakers are aware that their armed police officers will be required to arrest fleeing suspects, yet fail to train their officers on the constitutional limits of use of deadly force, or when officers develop a pattern of constitutional violations of sufficient frequency that the need for retraining must have been "plainly obvious" to the policymakers who failed to change course. "That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from factors other than a faulty training program."<sup>1</sup> The Court further held that in order for liability to attach, there must be a causal connection between the alleged training deficiency and the actual injury.

In the years that followed the Supreme Court's *Harris* opinion, constitutional failure to train has been examined in a variety of law enforcement contexts. In *Connick v. Thompson*, the Supreme Court analyzed the underlying lack of training related to the failure to turn over exculpatory evidence by the Orleans Parish District Attorney's Office. During the prosecution of Thompson for armed robbery, Orleans Parish District Attorneys failed to turn over to the defense a swatch of fabric stained with the robber's blood. The prosecution completed the entire trial without mention of the swatch or lab reports regarding the swatch. When Thompson was later tried for murder, he was convicted and sentenced to death. Fourteen years later, a private investigator discovered the withheld crime lab report regarding the swatch. Thompson was then tested and found to have a different blood type than the blood type found on the swatch. The Louisiana Court of Appeal reversed Thompson's murder conviction, and he was retried and ultimately acquitted of the murder charges.

Though Thompson did not establish a pattern of similar *Brady* violations, he contended that during the ten years preceding his armed robbery trial, Louisiana courts had overturned four convictions because of *Brady* violations by prosecutors in the same office.

In analyzing his claim under the deliberate indifference standard, the Court first looked to whether Thompson was able to establish a pattern of similar constitutional violations by untrained employees. Thompson cited to four reversals on appeal for *Brady* violations by prosecutors in the same office, but none of them involved the failure to disclose blood evidence, a lab report, or comparable forensic evidence. Thus, the Court found that the four reversals for factually dissimilar *Brady* violations were insufficient to put the policymaker on notice that the office's training program was inadequate.

The Court then looked to whether Thompson's theory of single-incident liability was sufficient to demonstrate that the violation of rights was an "obvious" consequence of the failure to train. The Court compared the incident facts to the hypothetical posed in *Canton v. Harris*, and determined that the specific legal training necessitated by a police officer's need to make split-second decisions in the field was not of the same type required to function as a prosecutor by virtue of the legal education, substantive examination, licensing and ethical obligations attorneys receive, and the on the job training that is typical in a prosecutor's office. "A licensed attorney making legal judgments, in his capacity at a prosecutor, about *Brady* material simply does not present the same 'highly predictable' constitutional danger as *Canton's* untrained officer." The Court ultimately reversed the District Court's denial of the motion for judgment as a matter of law on the failure to train claim.

In *Robinson v. Shasta*, the District Court analyzed the sufficiency of the Redding Police Department's training program for contact with emotionally disturbed or mentally ill persons. There, Redding Police Officers had responded to a distress call from a medical transport driver who was attempting to transport a mentally disabled patient to a lockdown facility in Redding on a WIC § 5150 hold. When the driver tried to transfer the patient to the lockdown facility, the patient became agitated and violent and fashioned a potentially dangerous weapon out of a plastic light. The facility refused to accept the patient until he calmed down, so the driver called for police assistance so he could be transported to a hospital.

When Officers arrived, they extracted the patient from the vehicle, tackled him to the ground, struck him in the face approximately five times with a pepper spray canister, and placed a spit hood over the patient's head. Eventually, the patient stopped breathing, prompting an officer to administer CPR until emergency medical services arrived at the scene. The patient suffered two fractured ribs among other injuries, and ultimately died in the hospital eight days; the cause of death was disputed.

Plaintiffs attempted to base their failure to train claim on the single episode at issue in the lawsuit, rather than a constitutionally inadequate overall training program. The Court determined that the isolated incident was insufficient to establish deliberate indifference, and granted summary judgment to the City.

In *Estate of Mendez v. Ceres*, the District Court reviewed a case involving the Ceres Police Department's training policy with regard to the use of force. The case involved a vehicle pursuit, where the unarmed driver attempted to abscond on foot after the vehicle stopped. As he was running away, at least one Ceres Police Officer shot the driver in the back, and he later died from his injuries. The plaintiff attempted to establish failure to train liability by providing the Court with a list of the City's prior settlements, and another list containing prior incidents, citizen complaints, and pending litigation. However, the Court noted that the cited cases were remote in time from the pending litigation, and that some of the cases were factually different from the instant matter.

In analyzing whether the cited cases were sufficient to meet the *Canton* deliberate indifference standard, the Court noted the time gaps between prior cases, the dissimilarity of some of those cases, and the plaintiffs' failure to make any factual showing that the City's police department failed to take subsequent action following excessive force incidents. Ultimately, the Court held "[p]laintiffs have not alleged sufficiently a pattern of prior, similar constitutional

violations that plausibly demonstrate deliberate indifference in training or supervision, such that the pattern permits inference of policy or lack of policy on excessive force," and dismissed the *Monell* claims against the City.

These case decisions show that it is far easier for plaintiffs to allege a failure to train cause of action, than to meet the stringent pleading and proof requirements established by *Canton*. Practically speaking, what do these cases mean for police canine handlers and the City's that employ them?

In *Holiday v. City of Kalamazoo*, the District Court reviewed the sufficiency of the City's police canine training program under a 42 U.S.C. § 1983 failure to train claim. Plaintiff Holiday alleged that the City failed to train its Kalamazoo Department of Public Safety ("KDPS") Officers on the proper procedure for apprehending a subject with a police canine when the handler is not present. The case involved the arrest of suspect Holiday on several outstanding warrants, including a warrant for felony domestic violence. The handler gave Holiday several canine warnings, and Holiday ignored the warnings, choosing instead to flee on foot. During the pursuit, the handler tripped in the snow, lost hold of the canine's leash, and gave the canine "Billy" a verbal command to apprehend Holiday. When officers caught up to Holiday and attempted to take him into custody, he failed to comply with repeated commands to get on the ground, and the canine bit him on his rib cage and left arm before the handler was able to catch up to the group.

In analyzing the City's canine training program under the deliberate indifference standard, the Court noted that all KDPS officers received 4 hours of canine training during their time at the City's police academy. It was undisputed that KDPS provided "extensive and ongoing" police dog training to its handlers. Furthermore, even though plaintiff alleged that KDPS failed to provide its officers training on the unlikely scenario where the handler became incapacitated and was not present during the apprehension (as happened in the incident), it was insufficient to diminish the adequacy of the entire training program or to establish deliberate indifference liability. Citing *Canton*, the Court noted that the City was only required to train its officers "to respond properly to the usual and recurring situations which they must deal." These words strike at the heart of what is required for a canine training program to pass constitutional muster.

In *Kerr v. West Palm Beach*, the United States Court of Appeals for the Eleventh Circuit reversed the District Court's entry of judgment notwithstanding the verdict on behalf of the City on 42 U.S.C. § 1983 claims for inadequate training and supervision, and encouraging an "atmosphere of lawlessness." On review, the Appellate Court noted that the City utilized a 12 week training program for its canines and handlers involving 480 hours of instruction on basic obedience and police work, implemented policies and operational guidelines for when force could be used by a police canine, and had established uniform procedures for how to properly investigate and document a canine use of force.

However, testimony showed that the department's policy did not require a handler to have probable cause to believe that a suspect had committed a felony before deploying a canine, but held that reasonable suspicion was sufficient. The department had an oral policy that allowed apprehension of fleeing and concealed suspects for "serious misdemeanors" but left the interpretation of that term to officer discretion. The Court cited to the department's use of the bite and hold method of training as being particularly aggressive in that unless a handler gave the canine

a release command, the canine would continue to hold the suspect - increasing the likelihood of prolonged or multiple bites, and making serious injury inevitable. Finally, the Court noted the canine unit's high overall bite ratio of about fifty percent, the department's lack of formal procedures for monitoring the performance of the unit (the department prepared informal force reports that were not preserved, but typically discarded after 30 days), and three prior canine apprehensions that had resulted in lawsuits and a jury finding of excessive force.

The Court analyzed the evidence according to the *Canton* deliberate indifference standard and determined that the City and its former police chief failed to establish an adequate training program. The Court held that the evidence showed 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." The evidence also established that the officers in the City's canine unit resorted to using force more frequently than other municipalities, as indicated by the high bite ratio, and used excessive force to apprehend subjects suspected of only minor misdemeanor offenses. The Court determined that the confluence of evidence, when weighed in the balance according to the applicable legal standard, was enough to show a constitutionally inadequate training program.

In analyzing whether the inadequate training program represented City policy, the Court looked to the high incidence of injuries caused by the apprehension of suspects by the City's canine unit. The Court noted the fact that when apprehension resulted in a bite, force reports were prepared and reviewed by supervisors, including the former chief of police, who in turn failed to implement any corrective action where the "unconstitutional character of many of the canine unit's apprehensions was plainly obvious." Finally, the Court explained that direct evidence of the City's awareness and inaction with regard to the canine program deficiencies had been presented to the jury through testimony of the former chief. The Court ultimately determined that there was sufficient evidence to support liability and reinstated the jury's verdict against the City.

It is clear from the Court's analysis in *Holiday* that the constitutional sufficiency of an overall training program can involve many facets: implementing a rigorous, ongoing training program; utilizing best practices and techniques to minimize injury as much as possible; using a formal tracking mechanism in the department to monitor canine performance and injuries; setting mandatory policies that govern deployments and minimize the incidence of injuries; and debriefing critical incidents for lessons learned and taking corrective action when necessary are key.

Conversely, a "[s]ingle incident cannot establish a municipal policy or custom," with regard to canine training. Thus, the law seems to account for the rapidly-evolving situations and unpredictable factors encountered by officers in the field, and the occasional instance of human error.

In light of the recent media attention on cities such as Salt Lake City and Indianapolis, the issue of training is more important than ever. Canine units must be able to demonstrate that their canine/handler teams are well-trained and that the training is well-documented. Canine handlers must not only be able to defend themselves in a court of law, they must also be able to defend themselves in the court of public opinion. Contemporary and documented training is a way to win in both courts.



**Eugene P. Ramirez**, worked as a Deputy District Attorney for the Los Angeles County District Attorney's Office, where he conducted numerous misdemeanor and felony jury trials, including murder trials. He has also worked as a reserve police officer for the Whittier Police Department and the Monterey Park Police Department. He serves as an advisor to several public entities on the issues of use of force, canine and SWAT issues and policies and procedures. He is the General Counsel for the California Association of Tactical Officers (CATO) and he is the General Counsel for the United States Police Canine Association (USPCA). He is currently an Adjunct Faculty Member at the Rio Hondo College Police Academy teaching at the Basic Recruit Academy; the Field Training Officer School; and the New Supervisor School.



**Lynn Carpenter** has worked closely with law enforcement through the course of her legal career, first as a prosecutor and advocate for victims of violent crime, and now as a defender of officers and deputies in civil rights cases. In her time as a litigation defense attorney, she has handled numerous wrongful death - excessive force cases, and has defended every manner of use of force, including, use of firearm, TASER, K-9 deployment, O.C. spray, control holds, manual and baton strikes, as well as SWAT/ SRT tactical operations all within the context of claims made under the civil rights statute. Through this important work, she has gained extensive knowledge of police use of force and tactical training and understands the enormity of the responsibility placed on officers with regard to proper use of force in often heated and exigent situations.

Ms. Carpenter has tried a number of criminal and civil trials to successful verdict and has negotiated settlements in very challenging cases where the initial hope for resolution was very dim. Through this experience, she has learned that most important battles are won (or lost) in advance, through careful planning and preparation.

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