



# Halt or I'll Shoot!!!

(The Duty to Warn Before Using Force)

LIABILITY UPDATE

by Mike Rainwater on 05/10/05

**“[T]he phrase ‘Halt or I’ll shoot!’ has long been a part of our national culture, and it is familiar to most youngsters whether they grow up reading books, watching television, or both. The commonly acknowledged and well-known practice of warning suspects, whenever feasible, before subjecting them to force that may cause serious injury ... [is a] ... constitutional [duty].”** *DeBoer v. Pennington*, 206 F.3d 857, 864-865 (9th Cir.2000).

**Duty to Warn:** *DeBoer* is a Ninth Circuit Court of Appeals case. The Eight Circuit court of Appeals is the one that has jurisdiction over Arkansas. In *Kuha v. City of Minnetonka*, 365 F.3d 590, 607 (8<sup>th</sup> Cir. 2003), the Eighth Circuit Court of Appeals said: “[A] jury could properly find that the failure to give a verbal warning before using [force] is objectively unreasonable” and therefore in violation of the Fourth Amendment. Arkansas law enforcement officers have a duty to warn, if possible, before using force that may cause injury.

**The Facts:** After fleeing a routine traffic stop, Kuha, was tracked to a grassy field by two police officers and a police dog. The dog, trained to bite and hold until commanded to release, bit Kuha near his groin, severing his femoral artery. Kuha claimed that the police officers failed to give a verbal warning prior to using a police dog trained to bite and hold is sufficient to state a Fourth Amendment claim.” *Id.* at 597.

**Warning Required Where Reasonable Time Permits:** The Eight Circuit Court of Appeals said: “The relevant inquiry is whether [the Plaintiff] presented enough proof in support of his claim that a jury could properly find that the degree of force used against him was not ‘objectively reasonable.’ We conclude that ... a jury could properly find it objectively unreasonable to use a police dog trained in the bite and hold method without first giving the suspect a warning and opportunity for peaceful surrender.” *Id.* at 598.

**Duty to Warn Not Limited to Deadly Force:** The Court did not limit its ruling to the use of deadly force. The Court said the duty to warn applied even though “[n]o federal appeals court has held that a properly trained police dog is an instrument of deadly force, and several have expressly concluded otherwise. *Id.* at 597-8; *Vera Cruz v. City of Escondido*, 139 F.3d 659, 663 (9th Cir.1998) (defining ‘deadly force’ as ‘that force which is reasonably likely to cause death’” and finding the possibility of death from a properly trained police dog too remote to constitute deadly force); and *Robinette v. Barnes*, 854 F.2d 909, 912 (6th Cir.1988) (holding that the use of a properly trained police dog to apprehend a felony suspect does not carry with it a ‘substantial risk of causing death or serious bodily harm.’).”

**No Qualified Immunity:** The duty to warn is “clearly established” law. *DeBoer v. Pennington*, 206 F.3d 857, 864-865 (9th Cir.2000). Where the law is clearly established, there is a duty to obey and no qualified immunity is available to protect an officer from individual liability. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).