January 31, 1991

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
WILBERT A. KELLEY, JR. VS. CITY OF SAN DIEGO, ET AL.
SAN DIEGO SUPERIOR COURT CASE NO. 574475

Plaintiff Wilbert Kelley was badly bitten by a police dog in the course of a burglary arrest, and sued the City and three individual police officers for negligence, battery, and punitive damages. The case was tried by jury, with verdicts returned against plaintiff and in favor of defendants on all causes of action.

FACTS

On January 3, 1986 at approximately 10:00 p.m., two San Diego Police Department Officers were patrolling an alley near the 2200 block of El Cajon Blvd. when they heard glass being broken. Upon approaching a car lot in the area, they observed plaintiff Kelley reaching inside the broken window of a car, after which he ran into a nearby building. The two officers stationed themselves outside the building, and were unable to verbally coax the plaintiff out. They thereupon called a canine unit to the scene.

A canine officer and his police dog arrived and announced their presence. There being no response, the three officers and the dog searched the building. They eventually contacted the plaintiff, who made a series of sudden movements at close quarters during the course of the arrest. The dog inflicted deep puncture wounds, as well as a number of scratches, on plaintiff as he was taken into custody.

Mr. Kelley brought suit against the City of San Diego and three individual officers, alleging battery, mayhem, negligence, negligent hiring, intentional and negligent infliction of emotional distress, and conspiracy, and in addition requested punitive damages. He based those allegations on claims that the officers maliciously and needlessly ordered the dog to bite him repeatedly.

LITIGATION

Plaintiff testified that his movements were reflexive and not an attempt to resist arrest. He further testified that the officers laughed and taunted him, while goading the dog into numerous attacks. Evidence of deep scarring was presented, and damages were requested for pain and disfigurement. A

psychologist testified as to plaintiff's emotional trauma. A dog training expert testified that the multiple bites were unnecessary, and that the dog, given certain circumstances, should have been called off in order to let the officers themselves cover the arrest.

The officers testified as to the events leading up to the arrest, and the sudden movements made to resist the arrest, in spite of repeated warnings to the plaintiff. A defense expert opined that the dog and handler had performed properly according to accepted standards in the industry.

The three day trial was by jury before the Honorable Michael I. Greer. Plaintiff's counsel asked the jury to award plaintiff $250,000.00 in damages. Defense counsel asked for a defense verdict, or in the alternative minimal damages. On September 20, 1990, the jury returned a verdict in favor of the officers on both the negligence and battery counts. The third officer had verdicts directed in his favor by the judge.

Deputy City Attorney Steven R. Gustavson tried the case on behalf of the City and the individual officers.

Respectfully submitted,
JOHN W. WITT
City Attorney

SRG:nn:Lit
RC-91-2