27 F.3d 1432 (1994)
Thane Carl CHEW, Plaintiff-Appellant,
v.
Daryl GATES, individually and as Chief of the Los Angeles Police Department; City of Los Angeles, a Municipal Corporation and Public Entity of the State of California; and Daniel Bunch; Donald Yarnall; Mark Mooring; Patrick McKinley; and Does 1 through 10, 14, 16 through 20, inclusive, each individually and as a Los Angeles Police Officer, Defendants-Appellees.

No. 91-55718.
United States Court of Appeals, Ninth Circuit.

Argued and Submitted August 18, 1992.
Decided June 27, 1994.
1433*1433 1434*1434 1435*1435 George V. Denny, III, Los Angeles, CA, and Ralph Leardo, Law Offices of Nancy Ann Fellom, San Francisco, CA, (argued) for plaintiff-appellant.

Richard M. Helgeson, Asst. City Atty., Los Angeles, CA, for defendants-appellees.

Before: NORRIS, REINHARDT, and TROTT, Circuit Judges.

Opinion by Judge REINHARDT; Partial Concurrences and Partial Dissents by Judges NORRIS and TROTT.

REINHARDT, Circuit Judge:

On appeal, Thane Carl Chew seeks the right to pursue his claims for damages resulting from dog bites inflicted on him by a police dog the Los Angeles Police Department uses to capture suspected criminals. Chew brought his action in federal district court pursuant to 42 U.S.C. section 1983. He sued the City of Los Angeles, Police Chief Daryl Gates, and various other members of the police department for violations of his Fourth and Fourteenth Amendment rights. The district court granted summary judgment to all of the defendants except Officer Daniel Bunch. When Bunch's case went to trial, Chew introduced evidence that the officer both turned the police dog loose on him and assaulted him directly. The jury returned a general verdict in the amount of $13,000 against Bunch. This appeal involves only the district court's grant of summary judgment in favor of the other defendants, including the city. We have jurisdiction under 28 U.S.C. § 1291.

Although there are a number of important issues raised by this case, the two most fundamental are whether the Los Angeles Police Department's policy governing the use of dogs to seize fleeing or hiding suspects is unconstitutional and whether, if so, the officers who are responsible for promulgating that policy enjoy qualified immunity. The latter question, while important, is more of theoretical than practical import in this case because if the policy is unconstitutional the city will be liable for whatever damages result in any event.

With respect to the first question, a majority concludes that the district court erred in holding the police department's policy governing the use of dogs constitutional. We do so for somewhat different reasons. Judge Norris prefers to concentrate on the issue of whether the force involved — the use of police dogs to seize and bite people — is deadly, while I would approach the issue more broadly: by examining the question whether the force is excessive — deadly or not. Nevertheless, our conclusions are similar and both issues must be considered by the factfinder upon remand. Accordingly, we reverse the district court's judgment in favor of the city. Because the matter is here on summary judgment, we do not now hold the city's policy unconstitutional but merely remand for a trial by jury of the substantial Fourth Amendment issues that exist.

1436*1436 With respect to the question of qualified immunity, a different majority, Judge Trott and the author, agree that the individual policymakers may not be held liable. We conclude that the law with respect to the use of police dogs to seize and bite concealed suspects was not sufficiently established that a reasonable officer would have known that the Los Angeles Police Department's policy was unconstitutional.

I. Facts and Proceedings

At about 2 p.m. on September 4, 1988, an officer of the Los Angeles Police Department stopped plaintiff Thane Carl Chew for a traffic violation in a part of the City of Los Angeles known as Pacoima. Chew subsequently fled from the officer on foot and hid in a scrapyard. The officer had not searched him for weapons. Upon discovering that there were three outstanding warrants for his arrest, the officer radioed for assistance. A police perimeter was set up around the scrapyard, and a helicopter and canine units were called in to search for Chew.

Officer Bunch and his charge, police dog Volker, were among those dispatched to assist in the search of the scrapyard. Bunch unleashed Volker and, approximately two hours after Chew had fled to the yard, Volker found him crouching between two metal bins. According to Chew, as soon as he became aware of Volker's presence, he attempted to surrender and yelled to the police to call off the dog. Both sides agree that at this point Officer Bunch was not within sight of Volker. The parties further agree that Officer Bunch did not immediately accede to Chew's request, that Volker bit Chew several times and then seized him, and that Chew sustained severe lacerations to his left side and left forearm. Chew asserts that he did not offer resistance at any time after he spotted the dog and repeatedly begged the officers to restrain his dog, but that Bunch instead ordered Volker to attack. Bunch, on the other hand, vigorously denies that he ordered an attack and maintains that when he first saw Chew, the suspect was hitting the dog with a pipe. Bunch admits kicking at Chew in an attempt to disarm him and to protect Volker, and acknowledges that he may have kicked Chew in the head, face, or body.

Chew subsequently brought this action in federal district court, alleging violations of his Fourth and Fourteenth Amendment rights. The first claim of Chew's amended complaint named Officer Bunch, Sergeants Donald Yarnall and Mark Mooring (who trained the L.A.P.D. canines), and Captain Patrick McKinley (who had overall supervisory responsibility for the K-9 unit) as defendants in their individual capacities. In his second claim, Chew sued the City of Los Angeles under Monell v. New York City Dep't of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), for injuries allegedly resulting from the city's policy regarding the use of canine force. In the latter claim he also named Police Chief Daryl Gates in both his individual and official capacities as an employee with policymaking authority.[1]

The district court granted summary judgment in favor of the individual defendants other than Bunch on the ground of qualified immunity, and in favor of the City of Los Angeles on the ground that Chew had failed to demonstrate that a city policy unlawfully caused his injuries. The case proceeded to trial against Officer Bunch, and the jury rendered a $13,000 general verdict in Chew's favor. Pursuant to California Government Code §§ 815.2 and 825, the city has paid the judgment and attendant fees and costs on Bunch's behalf.

II. Article III Jurisdiction

The city and the other remaining defendants contend that Chew has been fully compensated by the $13,000 verdict against Bunch, and that in view of the city's decision to assume "full responsibility" for all damages, no real case or controversy with Chew remains. According to the defendants, allowing Chew to pursue the instant action any further would result in an "advisory opinion" that would at most identify different causal agents for an injury that has already been fully redressed. Therefore, the defendants 1437*1437 argue, we lack Article III jurisdiction over the present appeal.

Defendants did not raise this contention in the district court, perhaps in part because the judgment against Bunch was obtained after the court granted summary judgment for the remaining defendants. In any event, there was no reason for either party to have raised the question below. The issue relates solely to the effect of an unchallenged judgment obtained against one defendant upon the plaintiff's right to appeal judgments in favor of other defendants. As such, it may be raised for the first time on appeal.[2]

Under Article III, federal appellate courts may adjudicate only actual, ongoing controversies between the litigants. Deakins v. Monaghan, 484 U.S. 193, 199, 108 S.Ct. 523, 527, 98 L.Ed.2d 529 (1988). If there is no longer a live dispute between the parties or a possibility that a plaintiff can obtain further relief, a case is moot. See Sea-land Service, Inc. v. International Longshoremen's & Warehousemen's Union, 939 F.2d 866, 870 (9th Cir.1991) (case is moot if none of the issues within it is viable). Here, the defendants' position appears to be that the city's assumption of Bunch's liability to Chew precludes further litigation of his claims for additional relief, thus rendering the instant appeal moot. See 13A Charles Alan Wright et al., Federal Practice and Procedure, § 3533.2 at 151 (Supp.1993) (noting that mootness and claim preclusion are closely related doctrines).

Chew's claims against the defendants are not moot for two reasons. With respect to the first, we must start with the fact, ignored by the defendants, that the three constitutional violations alleged against Officer Bunch are different from the constitutional wrongs that they allegedly committed. Chew asserted that Bunch violated his constitutional rights first by improperly releasing Volker, a dangerous animal trained to bite and maul suspects, next by ordering the dog to attack him after he attempted to surrender, and finally by kicking him in the head and body. Chew charges that the other defendants violated his rights by adopting and implementing a policy of training and using police dogs in an unreasonable manner. The allegations against the remaining defendants, if true, constitute wrongs distinct from any committed by Bunch, regardless of the fact that the dog bites are alleged to have resulted from the actions of all the defendants.

Notwithstanding Chew's articulation of separate constitutional wrongs against the remaining defendants, those claims would be moot unless Chew could obtain some type of relief for them. See Sea-land, 939 F.2d at 870. The defendants assert that Chew is barred from seeking damages against them because the injury Chew incurred was fully compensated by the jury verdict and the subsequent payment of damages by the city on Bunch's behalf. They are wrong. For the reasons set forth in the next section, Chew can recover actual damages from the remaining defendants. Moreover, it is well settled that a plaintiff may recover nominal damages for a "separate and distinct [constitutional] wrong" whether or not he is permitted to recover actual or punitive damages for that wrong. Larez v. City of Los Angeles, 946 F.2d 630, 640 (9th Cir.1991). Thus, Chew would in any event be free to pursue his claims against the remaining defendants for nominal damages.

Chew's claims are not moot, and we have Article III jurisdiction over this appeal.

III. Issue Preclusion

The defendants' next contention, alluded to briefly above, is that the jury verdict and its subsequent satisfaction by the city serves to bar Chew from obtaining any actual damages against them. Whether they are correct depends upon the basis for the verdict. If it was based wholly or partly on the injuries inflicted by Volker after his release 1438*1438 by the officer, the $13,000 damage award would necessarily represent a factual determination of the damages that Chew suffered on account of the dog bites. In that case both Chew and the defendants would be collaterally estopped from relitigating the issue of the dog bite damages. See RESTATEMENT (SECOND) OF JUDGMENTS § 50(2) and comment d (1982); FSLIC v. Reeves, 816 F.2d 130, 135 (4th Cir.1987); Gill & Duffus Services, Inc. v. A.M. Nural Islam, 675 F.2d 404, 407 (D.C.Cir.1982). Moreover, in that event, because the judgment obtained as compensation for the dog bite injuries would already have been paid in full, the so-called one-satisfaction rule would preclude Chew from seeking a further monetary award from the remaining defendants for those injuries. See id.

The initial question, therefore, is whether the jury's verdict against Bunch was based, even in part, on the dog-bite injuries. The party asserting preclusion has the burden of showing that the issue as to which estoppel is claimed was actually adjudicated in a prior proceeding. See Hernandez v. City of Los Angeles, 624 F.2d 935, 937 (9th Cir.1980). Necessary inferences from the judgment, pleadings, and evidence will be given preclusive effect, but if there is doubt as to the scope of the prior judgment, collateral estoppel will not be applied. See Davis & Cox v. Summa Corp., 751 F.2d 1507, 1518 (9th Cir.1985) citing Harris v. Jacobs, 621 F.2d 341, 343 (9th Cir.1980). Where the prior judgment was based on a general verdict, the inquiry is whether rational jurors must necessarily have determined the issue as to which estoppel is sought. See id. at 1519; see also United States v. Seley, 957 F.2d 717, 721, 722 n. 3 (9th Cir.1992) (applying collateral estoppel where reasonable jurors could have reached only one of two conceivable results).

While, on the basis of the record before us, it appears that the jury may have compensated Chew for Volker's bites, we cannot say with any assurance that it did so. We simply have no way of knowing. It would not have been irrational or even unreasonable for the jury to have compensated Chew for Bunch's kicks and not for the dog's bites, or, to put it in more legalistic terms, for Bunch's direct rather than indirect assault. We can only speculate as to which injury or injuries underlay the verdict, and speculation will not support the application of collateral estoppel. See Davis, 751 F.2d at 1519; see also Board of County Sup'rs v. Scottish & York Insurance, 763 F.2d 176 (4th Cir.1985) ("We cannot distill special findings from a general verdict and to do so would intrude on the independent role of a jury as much as would a court's unilateral amendment of its verdict."). Consequently, we must presume, for collateral estoppel purposes, that the verdict compensated Chew for Bunch's kicks and not for Volker's bites.

This determination does not, however, conclude the issue preclusion inquiry. Specifically, Chew is left with the challenge of demonstrating that it is legally possible to assume that the jury found Officer Bunch not liable for the dog bites and at the same time to hold the remaining defendants liable for them. That challenge is easily met. A judgment that Bunch is not liable for releasing Volker, given all of the circumstances, would not preclude a judgment that by implementing a policy of training and using the police dogs to attack unarmed, non-resisting suspects, including Chew, the remaining defendants caused a violation of Chew's constitutional rights. Supervisorial liability may be imposed under section 1983 notwithstanding the exoneration of the officer whose actions are the immediate or precipitating cause of the constitutional injury. See Hopkins v. Andaya, 958 F.2d 881, 888 (9th Cir.1992) (noting that "the police chief and city might be held liable for improper training or improper procedure even if [defendant police officer] is exonerated").

The jury in this case could have concluded that it was reasonable for Bunch to release Volker — even knowing what he was likely to do to Chew — given the fact that the procedures adopted by the city left him with no other means of apprehending the suspect that involved less risk of bodily injury to himself or the suspect. Because it is not clear that such a conclusion would be contrary to law or that rational jurors could not have reached that result, the doctrine of 1439*1439 collateral estoppel does not preclude further litigation of Chew's claims against the remaining defendants for actual damages on the basis an unconstitutional policy or the failure to supervise or train properly.

There is an additional reason why the verdict against Bunch does not bar Chew from seeking a remand for a further trial — a reason that applies only to the City of Los Angeles. The jury might have excused Bunch from liability for the dog bites on the ground of qualified immunity. The district court instructed the jury that a public official is immune from liability "as long as his conduct does not violate clearly established constitutional or statutory requirements of which a reasonable person would have known." The city is not entitled to a similar defense. See, e.g., Brandon v. Holt, 469 U.S. 464, 473, 105 S.Ct. 873, 878-79, 83 L.Ed.2d 878 (1985). Because there is a possibility that the jury accepted Bunch's defense of qualified immunity and declined to award damages for the dog bites on that ground, the issue of the city's liability has not been actually and necessarily decided. See Barber v. City of Salem, Ohio, 953 F.2d 232, 237-38 & n. 1 (6th Cir.1992) (explaining that verdict for defendant police officers entitled to qualified immunity did not preclude recovery against city).

For these reasons, the satisfaction of the judgment against Bunch does not bar Chew from pursuing his claims for actual damages for his dog-bite injuries against the remaining defendants. Moreover, because it is not clear that Chew has received any compensation at all for Volker's bites, the $13,000 judgment may not be subtracted from any future recovery he obtains for those injuries. Thus, whether they are labelled as arguments relying on mootness, claim preclusion, issue preclusion or the one satisfaction rule, the jurisdictional or procedural obstacles urged by the defendants present no barrier to any further proceedings in this case. We must therefore turn to the merits of the district court's grant of summary judgment in favor of all defendants other than Bunch.

IV. Merits

The district court granted summary judgment in favor of the remaining defendants on the ground that the use of Volker for the purpose of apprehending Chew was an objectively reasonable act. Chew v. Gates, 744 F.Supp. 952, 956 (C.D.Cal.1990).[3] We must determine, viewing the evidence in the light most favorable to Chew, whether there are any genuine issues of material fact and whether the district court correctly applied the substantive law. Tzung v. State Farm Fire and Casualty Co., 873 F.2d 1338, 1339-1340 (9th Cir.1989).

A. The City of Los Angeles

In order to succeed on his section 1983 claim against the city, Chew must demonstrate first that his seizure by Volker was unconstitutional and second that the city was responsible for that constitutional wrong. Monell, 436 U.S. at 690-94, 98 S.Ct. at 2035-38. Chew advances two distinct theories of Monell liability. First, he contends that Officer Bunch violated his Fourth Amendment right not to be subjected to excessive force by unreasonably releasing Volker and that Bunch's action was caused by a city policy, custom, or usage. Second, he argues that, regardless of the reasonableness of Officer Bunch's action in releasing the dog (given the alternatives then available to him), the city's policy of training police dogs such as Volker to apprehend unarmed and non-resistant suspects by biting, mauling, and seizing them was itself unreasonable and unconstitutional.

The district court held that the city was not liable under either theory for the bites inflicted by Volker because "the manner in which the police dog was used to apprehend Chew did not, under the circumstances, infringe on his constitutional rights." 744 1440*1440 F.Supp. at 956.[4] Initially, we must determine whether the district court correctly concluded that Chew suffered no constitutional injury. Under Chew's first theory of municipal liability, whether a constitutional wrong was committed depends upon an assessment of the objective facts and circumstances bearing on the reasonableness of Officer Bunch's decision to release Volker. The existence of a constitutional injury under Chew's second theory is not dependent on the lawfulness of Officer Bunch's conduct, but instead turns on the reasonableness of the city's general policy of training dogs to bite and seize all suspects.

For the reasons that follow, the district judge erred in finding as a matter of law that Officer's Bunch's decision to release Volker was reasonable. While the district court never reached them, there are also genuine issues of material fact with respect to whether Bunch's decision was made pursuant to city policy. Thus we are required to remand for trial on Chew's first theory of municipal liability. It is therefore unnecessary to determine whether the record requires reversal on Chew's alternative Monell theory as well. Specifically, it is not necessary to decide here whether the city's policy of training its police dogs to bite and seize is unconstitutional. However, on remand, Chew is entitled to pursue that question fully, as well as any other theory of municipal liability as to which he can obtain probative evidence.

1. Bunch's Decision to Release Volker

With respect to Chew's first theory — that a triable issue of fact exists as to whether Bunch's release of Volker constituted the use of unreasonable force — we start from the fundamental premise that the use of force to effect an arrest is subject to the Fourth Amendment's prohibition on unreasonable seizures. See Graham v. Connor, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). There is, of course, no mechanical test for determining whether a particular application of force was unreasonable; the reasonableness of a seizure must instead be assessed by carefully considering the objective facts and circumstances that confronted the arresting officer or officers. See id. at 396, 109 S.Ct. at 1871-72.

In determining reasonableness, "the nature and quality of the intrusion on the individual's Fourth Amendment interests" must be balanced against the "countervailing government interests at stake." Id. (internal quotations omitted). To assess the gravity of a particular intrusion on Fourth Amendment rights, the factfinder must evaluate the type and amount of force inflicted. In weighing the governmental interests involved the following should be taken into account: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. Id.[5] The relevant inquiry is, moreover, an objective one — good intentions will not redeem an otherwise unreasonable use of force, nor will evil intentions transform an objectively reasonable use of force into a constitutional violation. Id. at 397, 109 S.Ct. at 1872. Because questions of reasonableness are not well-suited to precise legal determination, the propriety of a particular use of force is generally an issue for the jury. See Barlow v. Ground, 943 F.2d 1132, 1135 (9th Cir.1991), cert. denied, ___ U.S. ___, 112 S.Ct. 2995, 120 L.Ed.2d 872 (1992); 1441*1441 White by White v. Pierce County, 797 F.2d 812, 816 (9th Cir.1986).

Here, the district court itself applied the "objective reasonableness" test. The court reasoned that all three of the factors articulated in Graham v. Connor supported the decision to use canine force to arrest Chew, and on that basis held that Bunch's release of Volker was reasonable as a matter of law. When all disputes of fact are resolved in Chew's favor, as they must be for purposes of summary judgment, it is apparent that application of the Graham factors would not have required a rational jury to decide that using Volker to apprehend him was reasonable. Moreover, the district court's decision to take the excessive force question away from the jury conflicts with circuit law.

First, it is necessary to assess the quantum of force used to arrest Chew. The three factors articulated in Graham, and other factors bearing on the reasonableness of a particular application of force, are not to be considered in a vacuum but only in relation to the amount of force used to effect a particular seizure — an analysis the district court never explicitly undertook.[6]

By all accounts, the force used to arrest Chew was severe. Chew was apprehended by a German Shepherd taught to seize suspects by biting hard and holding. According to the defendants, Volker had to bite the suspect three times before he could achieve an effective hold. Chew adds that, gripping his left side and then his left arm with his jaws, the dog dragged him between four and ten feet from his hiding place. Chew asserts that his arm was nearly severed. Officer Bunch acknowledged that the injuries to Chew's side and arm were "pretty severe," and that "[t]here was some serious lacerations."[7]

Bunch had good reason to expect that Chew might sustain exactly this type of mauling when he released Volker. All of the K-9 officers testified that the police dogs were trained to bite suspects unless a countermanding order was given by the handler. Here, because Volker was sent to locate a concealed suspect, the dog would almost necessarily be out of sight of its handler, and hence beyond the reach of a countermanding order, if and when he came upon Chew.[8] Further, the deposition of Sergeant Mooring established that if a suspect attempted to elude the dog's bite instead of passively allowing the animal to maintain its hold, the dog would repeatedly bite the suspect in an effort to obtain a sustained grip with its jaws. Chief Gates' deposition disclosed that he was "very much" aware that such bites could be fatal, and Officer Bunch echoed this awareness. Cf. Robinette v. Barnes, 854 F.2d 909 (6th Cir.1988) (burglary suspect died of wounds inflicted when a police dog seized him by the throat).

Second, it is necessary to turn to the district court's application of the Graham criteria, beginning with the most important single element of the three specified factors: whether the suspect poses an immediate threat to the safety of the officers or others. The record does not reveal an articulable basis for believing that Chew was armed or that he posed an immediate threat to anyone's safety. Cf. Tennessee v. Garner, 471 U.S. 1, 11, 105 S.Ct. 1694, 1701, 85 L.Ed.2d 1 1442*1442 (1985) (holding that fourth amendment permits use of deadly force to apprehend a fleeing felon where there is "probable cause to believe the suspect poses a threat of serious physical harm"). Chew was initially stopped for a traffic violation. Before he fled, he was asked for his driver's license, and produced it. He also retrieved cigarettes and a lighter from his car, lit a cigarette, and engaged in a certain amount of conversation with the officer before his flight. Apparently, nothing about Chew's appearance or demeanor gave the officer reason to believe he should search the suspect. It appears from the record that after fleeing Chew hid in the scrapyard for an hour and a half before Bunch released Volker in an effort to capture him. The defendants do not suggest that Chew engaged in any threatening behavior during this time, or that he did anything other than hide quietly. In light of these facts, a rational jury could easily find that Chew posed no immediate safety threat to anyone.

The existence of a factual question as to whether Chew posed a safety threat would in itself be enough to preclude summary judgment in favor of the defendants if we were to determine that seizing a suspect by means of a German Shepherd trained to bite hard then hold constitutes deadly force, see Garner, 471 U.S. at 11, 105 S.Ct. at 1701 (holding that fourth amendment does not permit use of deadly force to apprehend suspect who poses no immediate threat to the officer and no threat to others). Indeed, Judge Norris's separate opinion rests on the conclusion that Chew has presented a genuine issue of material fact with respect to whether the Los Angeles Police Department's use of dogs constitutes "deadly force." He may well be right. However, it is not necessary to decide here whether the record sufficiently raises that question, for the grant of summary judgment must be reversed whether or not Chew adduced adequate evidence tending to show that the considerable force used here was "deadly." Of course, as stated earlier, Chew is free on remand to pursue the deadly force issue fully.

The other two specified Graham factors cut in favor of the defendants, but only slightly. With respect to whether Chew was "actively resisting arrest," it is undisputed that he fled and then hid from the police. He did not, however, resist arrest to the point of offering any physical resistance to the arresting officers, nor, at the time the officers released the dogs, did they have any particular reason to believe that he would do so. With respect to whether he was attempting to evade arrest by flight when Volker was released, the answer is yes and no. In a general sense he was, but in more precise terms his flight had terminated, at least temporarily, in the scrapyard. Still, a slight edge goes to the government on this score.

Turning to the severity of the crime for which Chew was arrested, although he was initially stopped for a traffic violation, the traffic officer later discovered the existence of three outstanding felony warrants for his arrest. The district court correctly pointed out that outstanding felony warrants are not to be taken lightly. However, in view of the fact that the record does not reveal the type of felony for which Chew was wanted, the existence of the warrants is of limited significance. A wide variety of crimes, many of them nonviolent, are classified as felonies. The Supreme Court has observed that "while in earlier times the gulf between felonies and the minor offences [sic] was broad and deep, today, the distinction is minor and often arbitrary." Garner, 471 U.S. at 14, 105 S.Ct. at 1703 (internal quotation omitted). It added: "the assumption that a felon is more dangerous than a misdemeanant [is] untenable." Id. The existence of three warrants for undetermined crimes — for which Chew had not been tried or convicted — is thus not strong justification for the use of dangerous force.[9] 1443*1443 The significance of the warrants is further diminished by the facts that Chew was completely surrounded by the police, and that the prospects for his imminent capture were far greater than are those of the many fleeing suspects who are fleeter than the police officers chasing them.

This was not an occasion on which the police were forced to make "split-second judgments" in circumstances that were "rapidly evolving." Graham, 490 U.S. at 397, 109 S.Ct. at 1872. Chew was trapped in the scrapyard for two uneventful hours before Volker bit and mauled him. There was time for deliberation and consultation with superiors. There was even time for the police to summon a helicopter to the scene, an airborne vehicle which apparently aided the dogs in their search. What other tactics if any were available — given the absence of urgency — is, again, a question to be explored upon remand.

Under all of the circumstances, the question of the reasonableness of the decision to use the force involved, whether or not "deadly," to seize Chew must be submitted to a jury. When the record is viewed in the light most favorable to the nonmoving party, the Graham factors do not all support either side. However, the most important factor — the absence of an immediate safety threat — cuts strongly in Chew's favor, while the other two tilt only slightly in favor of the defendants. Such a record does not render reasonable as a matter of law the considered judgment to unleash a German Shepherd trained to seize suspects by "biting hard and holding," by mauling and sometimes seriously injuring them. Moreover, while no circuit precedent is precisely on point, Reed v. Hoy, 909 F.2d 324 (9th Cir.1989), cert. denied, 501 U.S. 1250, 111 S.Ct. 2887, 115 L.Ed.2d 1053 (1991) appears to establish the existence of a jury issue a fortiori. [10] Reed demonstrates that whether a particular use of force was reasonable is rarely determinable as a matter of law. That decision controls the outcome of the excessive force question in this case. If Deputy Hoy's split-second decision to use deadly force in response to an impending threat to his own safety was not reasonable as a matter of law, we cannot say that in this case the use of force that at the very least approaches deadly proportions meets that standard. See Garner, 471 U.S. at 11, 105 S.Ct. at 1701 (threat to officer and public must be immediate to justify application of deadly force).

In conclusion, the question whether it was reasonable under the Fourth Amendment for Bunch to release Volker was for the jury.[11]

1444*1444 2. Municipal Liability

Although the district court ended its inquiry with the question whether Chew's constitutional rights were violated by the release of Volker (and the dog's subsequent conduct), we cannot. Because a genuine dispute of material fact exists as to the constitutional violation, we must consider whether the district court's grant of summary judgment for the city may be affirmed on the ground that Chew's injury did not result from the application or enforcement of an official city policy. See Jackson v. Southern California Gas Co., 881 F.2d 638, 643 (9th Cir.1989) (summary judgment may be upheld based upon any ground supported by the record).

Under the Monell doctrine, Chew may recover from the city if his injury was inflicted pursuant to city policy, regulation, custom, or usage. See Monell v. Dept. of Soc. Serv. of City of N.Y., 436 U.S. 658, 690-91, 98 S.Ct. 2018, 2035-36, 56 L.Ed.2d 611 (1978). City policy "need only cause [the] constitutional violation; it need not be unconstitutional per se." Jackson v. Gates, 975 F.2d 648, 654 (9th Cir.1992); see also Collins v. City of Harker Heights, Tex., ___ U.S. ___, ___, 112 S.Ct. 1061, 1067, 117 L.Ed.2d 261 (1992).[12] City policy "causes" an injury where it is "the moving force" behind the constitutional violation, Monell, 436 U.S. at 694, 98 S.Ct. at 2037-38, or where "the city itself is the wrongdoer." Collins, ___ U.S. at ___, 112 S.Ct. at 1067.

There is little doubt that a trier of fact could find that Chew's injury was caused by city policy. In the district court, the city conceded, for purposes of summary judgment, the truth of Chew's contention that departmental policy authorized seizure of all concealed suspects — resistant or nonresistant, armed or unarmed, violent or nonviolent — by dogs trained to bite hard and hold.[13] Construing city policy as the appellee concedes we must, it doubtless could be found to 1445*1445 be the "moving force" behind Chew's injury. Bunch released Volker because his superiors instructed him that he was authorized to do so under the circumstances of Chew's case. The instructions were based on what we assume to be city policy. Accordingly, we must reverse the district court's grant of summary judgment in favor of the City of Los Angeles.

In its brief on appeal, the city ignores the concessions it made in the district court and attempts to argue that even if the department's policy was to use dogs to apprehend concealed suspects by biting and mauling them, this policy was attributable only to the officers responsible for training the canine units, and not to the police chief or the police commission — the two entities vested with the authority to make municipal policy. The city is bound by the concession it made in the district court. However, even if it were not, summary judgment for the city would be inappropriate on this record.

A city cannot escape liability for the consequences of established and ongoing departmental policy regarding the use of force simply by permitting such basic policy decisions to be made by lower level officials who are not ordinarily considered policymakers. Los Angeles could not, for example, distance itself from policy regarding the use of firearms by de facto delegating the formulation of firearms policy to the commander of the police academy. So too here: if the city in fact permitted departmental policy regarding the use of canine force to be designed and implemented at lower levels of the department, a jury could, and should, nevertheless find that the policy constituted an established municipal "custom or usage" regarding the use of police dogs for which the city is responsible. See City of St. Louis v. Praprotnik, 485 U.S. 112, 127, 108 S.Ct. 915, 926, 99 L.Ed.2d 107 (1988).

Further, even if we were to accept the city's argument that no jury could find that departmental canine policy was officially sanctioned, municipal liability could be found under the "deliberate indifference" formulation of Monell liability. See City of Canton, Ohio v. Harris, 489 U.S. 378, 388, 109 S.Ct. 1197, 1204, 103 L.Ed.2d 412 (1989). In order to accept the city's contention that departmental canine policy was not officially sanctioned, we would have to find that the city itself had no policy regarding the proper use of canine force, or, at best, a policy of vesting complete discretion regarding the use of the canines in the dogs' handlers. The record contains evidence that the dogs bit suspects in over 40% of the instances in which they were used. Where the city equips its police officers with potentially dangerous animals, and evidence is adduced that those animals inflict injury in a significant percentage of the cases in which they are used, a failure to adopt a departmental policy governing their use, or to implement rules or regulations regarding the constitutional limits of that use, evidences a "deliberate indifference" to constitutional rights. Under such circumstances, a jury could, and should, find that Chew's injury was caused by the city's failure to engage in any oversight whatsoever of an important departmental practice involving the use of force.

Finally, as noted earlier, on remand Chew is not limited to pursuing any single theory underlying our decision that summary judgment was improper. The district court's grant of summary judgment for the city was based on the conclusion that Officer Bunch's decision to release Volker was reasonable. However, municipal liability need not be predicated on an "unreasonable" action on Officer Bunch's part. A jury could conceivably decide, for example, that although the officer's on-the-scene decision to use canine force was reasonable under the circumstances, the city was nevertheless at fault for providing its officers with dogs trained to bite and seize all concealed suspects regardless of their efforts to surrender. If the plaintiff could prove at trial that training in less dangerous means of detection and apprehension was both feasible and effective from a law enforcement standpoint (and the city's recent adoption of a "find and bark" policy suggests that it may well have been[14]), then 1446*1446 the city's failure so to train its dogs may well have constituted an unreasonable municipal action regarding the use of force.

Judge Norris has written separately in order to discuss fully the critical issue of whether the city's policy regarding the use of police dogs violates the Garner deadly force rules. The matters set forth in his opinion are certainly appropriate for Chew to pursue and develop by means of a proper evidentiary showing on remand. Essentially, Judge Norris suggests that using police dogs trained to "bite and seize" suspects to locate and hold concealed individuals who are not reasonably believed to be dangerous may violate the Fourth Amendment. He may well be correct. It is also possible, however, that siccing dogs trained in such a manner on any suspects would be found to violate that Amendment, if the method of training is found to be unreasonable in light of available alternatives. Both of these issues are deserving of full exploration upon remand.

B. The Individual Defendants

1. Prima Facie Liability

Chew sues Gates, Mooring, McKinley, and Yarnall in their individual capacities.[15] Although these defendants did not personally participate in the infliction of Chew's injury, they may be held individually liable if they "cause[d]" him to be subjected to a constitutional deprivation. Bergquist v. County of Cochise, 806 F.2d 1364, 1369 (9th Cir.1986), disapproved on other grounds, Canton v. Harris, 489 U.S. 378, 388, 109 S.Ct. 1197, 1205, 103 L.Ed.2d 412 (1989). The existence of the requisite causal connection is implicit in the earlier conclusion that liability on the part of both Officer Bunch and the city could flow from Bunch's decision to use canine force against Chew. The remaining individual defendants all served as links connecting the officer and the city in this respect. Mooring and Yarnall designed and implemented departmental policy governing the use of canine force, McKinley had overall supervisory responsibility for the K-9 unit, and Chief Gates was not only responsible for the operations of the department as a whole, but was familiar with the canine incidents that occurred and regularly reported to the police commission

on the performance of the K-9 unit. Viewed in the light most favorable to Chew, this evidence presents a genuine issue of material fact as to whether each of these defendants authorized, approved, or acquiesced in the canine force policy — a policy which may following trial be determined to constitute a cause of Chew's injuries. See Los Angeles Protective League v. Gates, 907 F.2d 879, 894 (9th Cir.1990); McRorie v. Shimoda, 795 F.2d 780, 783-84 (9th Cir. 1986), citing Heller v. Bushey, 759 F.2d 1371, 1375 (9th Cir.1985), rev'd and remanded on other grounds sub nom., City of Los Angeles v. Heller, 475 U.S. 796, 106 S.Ct. 1571, 89 L.Ed.2d 806 (1986).

2. Qualified Immunity[*]

We conclude, however, that the district court's grant of summary judgment in favor of the individual defendants other than Bunch on the ground of qualified immunity was proper. For the purposes of this section, we continue to assume that departmental policy authorized the use against all concealed suspects of dogs trained to search for and apprehend persons by biting and seizing them. 744 F.Supp. at 954. Whether the defendants are entitled to qualified immunity for their actions in formulating or implementing such a policy "turns on the objective legal reasonableness of the action assessed in light of the legal rules that were clearly established at the time it was taken." Anderson v. Creighton, 483 U.S. 635, 639, 107 S.Ct. 1447*1447 3034, 3038-39, 97 L.Ed.2d 523 (1987) (internal cites and quotation marks omitted). Specific precedent is not required in order to overcome a qualified immunity defense, but the law in question must be sufficiently clear that the unlawfulness of the action would have been apparent to a reasonable official. Id. at 640, 107 S.Ct. at 3039. Here, a reasonable law enforcement official might well have failed to recognize that authorizing or implementing the policy at issue would result in the violation of the constitutional rights of persons seized by the police dogs.

When the incident that led to the filing of this lawsuit occurred, the use of police dogs to search for and apprehend fleeing or concealed suspects constituted neither a new nor a unique policy. The practice was longstanding, widespread, and well-known. No decision of which we are aware intimated that a policy of using dogs to apprehend concealed suspects, even by biting and seizing them, was unlawful. At the time of the incident in question, the only reported case which had considered the constitutionality of such a policy had upheld that practice. See Robinette v. Barnes, 854 F.2d 909 (6th Cir. 1988) (holding that use of police dog trained to bite a suspect's arm or other available limb to apprehend a burglary suspect hiding in a darkened building was constitutional). We are certain that Robinette is not consistent with the law of this circuit today, see supra note 10, and seriously doubt whether we would ever have reached a similar result. Nevertheless, at the time of Chew's arrest, Robinette was the only appellate decision in the general area.[16] Because of the then current widespread acceptance of the practice of using police dogs to make arrests, and the absence of any contrary authority, we conclude that at the time of Volker's assault there was no clearly established law prohibiting the use of dogs in the manner permitted by the Los Angeles Police Department's policy.

Chew contends that it was apparent from several district court decisions discussing the use of police dogs that the department's canine force policy was unlawful. See Luce v. Hayden, 598 F.Supp. 1101 (D.Me.1984); Soto v. City of Sacramento, 567 F.Supp. 662 (E.D.Cal.1983); Starstead v. City of Superior, 533 F.Supp. 1365 (W.D.Wis.1982). The facts in all of these cases differ dramatically from the circumstances in which the use of dogs was authorized under the L.A.P.D. policy. In Luce, the plaintiff claimed that state troopers "sicced" a dog on him while he was lying prone and handcuffed. Similarly, in Soto, the plaintiff alleged that he had surrendered, was lying on the ground, and had spread his hands pursuant to police instructions when the police released the dog that bit him. Finally, Starstead dealt with a number of completely gratuitous uses of canine force, including the use of biting dogs against 1448*1448 handcuffed suspects and against a defendant stopped for a traffic violation. The circumstances in these cases are too far removed from the policy involved here to be of any aid to Chew.

Marley v. City of Allentown, 774 F.Supp. 343, 345-46 (E.D.Pa.1991), aff'd mem., 961 F.2d 1567 (3d Cir.1992), does not support Chew's claim, either. Marley was decided after the incident in this case, and it involved an episode which took place after Chew's apprehension. Accordingly, at best the decision is of limited use in determining whether the policy at issue here was clearly unlawful at the time the defendants formulated and implemented it. Marley also involved a very different set of circumstances from this case. The district court in Marley distinguished Robinette on two grounds: (1) that the suspect in Robinette was a suspected felon, while the suspect in Marley was a suspected misdemeanant; and (2) that the suspect in Marley was "either fleeing or stopping," while the suspect in Robinette was hiding. Id. at 345. On both grounds, Chew's case is much closer to Robinette than to Marley.[17]

We conclude that as of the time Chew was bitten by Volker the Los Angeles Police Department's longstanding policy regarding the training and use of police dogs did not contravene clearly established law. We recently explained in Mendoza v. Block, 27 F.3d 1357 (9th Cir.1994), that "[w]e do not believe that a more particularized expression of the law is necessary for law enforcement officials using police dogs to understand that under some circumstances the use of such a `weapon' might become unlawful." Mendoza, 27 F.3d at 1362 (emphasis added). While our statement was quite simple, if not self-evident, and was limited to the proposition that some uses of dogs will in particular instances violate clearly established law, in his dissent Judge Norris transmutes that modest statement into an all-encompassing and pervasive pronouncement governing all uses of force. He claims that Mendoza stands for the proposition that "the law governing all excessive force cases, regardless of the instrument used to apply the force, is `clearly established.'" Opinion of Judge Norris at 1460 (emphasis in original). Remarkably, he argues that, Mendoza establishes the rule that "the generic principles established in Garner" render the law clearly established in all excessive force cases. Opinion of Judge Norris at 1460. It is difficult to recognize in Judge Norris's description of the case what Mendoza actually says, and we must respectfully decline to read Mendoza as establishing so broad and unprecedented a rule as Judge Norris urges.[18]

We read our decision in Mendoza as meaning exactly what it said: it is clearly established that under some circumstances the use of police dogs is unlawful. However, that conclusion clearly does not advance Chew's cause. The Mendoza court gave the following example of the type of conduct that it considered prohibited by clearly established law: "[N]o particularized case law is necessary 1449*1449 for a deputy to know that excessive force has been used when a deputy sics a canine on a handcuffed arrestee who has fully surrendered and is completely under control." Id. at 1362. While this statement of the law is indisputable, the policy at issue here is far different from the siccing of dogs on handcuffed arrestees. See supra p. 1447-1448. Here, we must determine whether it was clearly established that it was unlawful to use police dogs to search for and apprehend concealed suspects by biting and seizing them. At the time the individual defendants implemented the Los Angeles Police Department's policy, the answer was, without question, "No."[19] Indeed, the Mendoza opinion itself makes this clear, in a direct and unambiguous manner. In surveying the established law regarding "the appropriate use of police dogs," Mendoza, at 1361, the Mendoza court quoted the following statement from the district court opinion in the instant case: "Neither federal law nor California law clearly prohibits the training and/or use of police dogs to find, seize, and hold suspects, by biting if necessary." Chew v. Gates, 744 F.Supp. 952, 954 (C.D.Calif.1990), quoted in Mendoza, at 1361. Here, we simply reaffirm the statement we endorsed in Mendoza: when the defendants implemented the policy at issue in this case, it was not clearly established either that police dogs constituted deadly force, or that the use of dogs to find, bite, and hold concealed suspects was unreasonable.[20]

Although the decision in Robinette bolsters our conclusion that the officers are entitled to qualified immunity here, we rely principally on the fact that the policy employed by the Los Angeles Police Department was a longstanding official policy, which was well-known and similar to the policies employed in many police departments throughout the nation, none of which had been judicially questioned. Pace Judge Norris, we do not "regard Robinette as an automatic guarantee of qualified immunity to officers in

... dog bite cases." Opinion of Judge Norris at 1459. Moreover, we do not mean to suggest by our decision that officers will be entitled to qualified immunity if they authorize the use of a new weapon or tactic which violates constitutional norms, simply because there is no case stating that the specific weapon or tactic involved violates the Constitution. To the contrary, if new weapons or tactics are sufficiently similar in design, purpose, effect, or otherwise to weapons or procedures that have been held unconstitutional, so that a reasonable officer would have known that a court's holding of unconstitutionality would be extended to the new weapon or tactic, then qualified immunity will not apply. Similarly, even if a policy is longstanding and no case has declared it unconstitutional, officers authorizing its continued use will not be entitled to qualified immunity after a case has authoritatively declared unlawful other procedures that are not "meaningfully distinguishable." Wood v. Ostrander, 879 F.2d 583, 592 (9th Cir.1989), cert. 1450*1450 denied, 498 U.S. 938, 111 S.Ct. 341, 112 L.Ed.2d 305 (1990). Finally, we do not mean to suggest that all actions taken pursuant to a longstanding policy are necessarily immunized. An officer who unlawfully implements an official policy or ordinance in an egregious manner or in a manner which clearly exceeds the reasonable bounds of the policy is not entitled to qualified immunity, whether or not there is a case on point declaring such actions unconstitutional. In other words, even in the absence of relevant case law, if the manner of implementation of an otherwise constitutional policy is not only unconstitutional but patently so, the officer will be deemed to have violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). Moreover, the existence of an unofficial or unacknowledged policy or practice is not sufficient to immunize an officer from liability. The clandestine nature of such a policy may suffice to put a reasonable officer on notice that it violates established legal norms. Here, we simply do not believe that, given the historical facts and circumstances, the use of police dogs in the manner prescribed in the Los Angeles Police Department's policy is sufficiently similar to other uses of force held to be unconstitutional by the courts to put reasonable law enforcement officials on notice that the department's policy violated the Fourth Amendment; nor do we believe that the individuals here seeking qualified immunity were otherwise put on notice by the nature of the conduct itself.

Because at the time of Chew's arrest the Los Angeles Police Department's longstanding, well-known practice of using police dogs to make arrests by biting and seizing was similar to that employed by other police departments across the country, because no court had ever questioned such a practice, and because the practice is "meaningfully distinguishable" from other police conduct previously held unconstitutional, we conclude that the doctrine of qualified immunity is applicable. Accordingly, we affirm the district court's grant of summary judgment to all of the individual appellees, specifically, defendants Gates, McKinley, Mooring, and Yarnall.

V. The Dissent from the Reversal of the Judgment in Favor of the City of Los Angeles

When public concern rises dramatically over an issue like crime, and politicians in the highest offices throughout the land rush to abandon any pretense of a commitment to fundamental constitutional principles, it is essential that judges keep their cool — that we, at least, remain determined to fulfill our role as the objective, steadfast guardians of individual liberty. First and foremost, it is our obligation to resist all temptations to succumb to hysteria, all inclinations to ignore our responsibilities and simply to join the pack.

Regrettably, it is necessary to add here that Judge Trott well knows that the reference to "the pack" is not to "decent people genuinely worried about the world in which they and their children live." Opinion of Judge Trott at 1463. Rather, the term obviously refers to those who in making or enforcing our laws knowingly and hypocritically disregard the Constitution and instead do what is most expedient or serves their own self-interest. Judge Trott's maudlin attempt to portray himself as the defender of "the People" provides a fortuitous if most unfortunate example of that form of conduct.

Judges are not correspondents for Newsweek. We do not campaign for office in large, crime-ridden metropolitan areas. Nor, ordinarily, do we try to make the public believe that we are doing something about a problem when in truth we are not. Judges are supposed to be calm, dispassionate, and committed to the principles of law. We have a particular responsibility to the Constitution, including the Fourth Amendment.

Judge Trott makes clear his distaste for the rules of law enunciated in Graham v. Connor and Tennessee v. Garner. It is unfortunate he feels that way — although that is his privilege. However, to call Chew a murderer and a rattlesnake is not. To accuse us of sending police officers to "the jaws of danger," Opinion of Judge Trott at 1472, demeans him and us. We are all experienced in the ways of law enforcement and of 1451*1451 the Los Angeles Police Department. To talk of "judges tucked away behind magnetometers," Opinion of Judge Trott at 1463, is nonsensical.

There are serious legal issues involved in this case that warrant informed discussion. Here, as with so many important issues, by exchanging reasoned views we could increase each other's understanding, and the public's as well. Rational, enlightened debate in this case could advance the interests of justice and the welfare of society. Judge Trott has the knowledge and experience to make a significant contribution to our efforts to balance societal interests and individual rights. Perhaps next time he will do so.

As for this case, we are not free to abandon our responsibilities as Judge Trott suggests. We are not permitted by our oaths of office to leave the protection of constitutional rights to the unreviewed discretion of "a police chief, an elected mayor, a police commission, and an elected city council." Opinion of Judge Trott at 1475. Today we do, however, leave the final answer as to the reasonableness of the city's policy and conduct to a jury, as the Constitution and our laws command.

Judge Trott grossly mischaracterizes today's holdings with respect to the use of excessive force. We do not send police dogs to the sidelines. We reverse a summary judgment order, so that there may be a full and fair factual trial before a jury of "the People" regarding the practices followed by the Los Angeles Police Department. No one should fear or condemn such a trial, least of all a judge experienced in the law and in the legal process. The truth cannot be harmful in this case. The public has a right to know how the Los Angeles Police Department is training and using dogs that are capable of killing or maiming human beings — to know whether the City is acting within the law. In addition, the appellant, who was seriously injured, has a right to compensation if the police department has acted in an unconstitutional manner. To say, as does Judge Trott, that there is simply no legal question here is to denigrate the Constitution. It is to say that the police, unlike all others, are above the law — that their decisions as to how and when deadly force shall be used are immune from judicial review. That way lies the beginning of the police state and the end of freedom.

VI. Conclusion

The judgment of the district court is AFFIRMED IN PART and REVERSED IN PART, and the case is REMANDED for further proceedings against the City of Los Angeles only.

WILLIAM A. NORRIS, Circuit Judge, concurring in part and dissenting in part.

Thane Carl Chew was stopped by a Los Angeles Police Department ("LAPD") officer for a traffic violation and identified himself by presenting his driver's license. When the officer returned to his car to check Chew's record, Chew ran away. The officer pursued Chew, who scaled several fences during the chase before ultimately hiding in a scrapyard. During the subsequent search, which involved a number of officers and several K-9 units, Officer Bunch unleashed a police dog named Volker to find Chew. Defendants stipulated for summary judgment purposes that Chew "tried to surrender peacefully once he realized

he had been found" by Volker. Defendants' Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment at 2 [hereinafter "Defendants' Reply"]. Nevertheless, Volker seized Chew by biting him hard and holding on to him. Volker was out of Officer Bunch's sight when he located Chew and initiated his attack. Volker's attack left Chew with severe bite injuries on his arm and torso. At the time Officer Bunch released Volker, Bunch knew only that there were three outstanding warrants for Chew's arrest on unspecified felony charges. Officer Bunch had no reason to believe Chew was armed.

The City of Los Angeles and the four individual officers charged with the policy-making responsibility for the LAPD canine policy (then-Chief Daryl Gates, Captain Patrick McKinley, and Sergeants Donn Yarnall and Mark Mooring),[1] moved for summary 1452*1452 judgment on the ground that the LAPD canine policy was constitutional. In their summary judgment papers, they made no reference to the facts of Chew's seizure by Volker. They merely submitted the LAPD's written canine policy and asked the court to declare it constitutional as a matter of law.[2] The individual policymaking defendants also argued that they were entitled to summary judgment on the ground of qualified immunity. The district court awarded these defendants summary judgment, which Chew appealed after the jury rendered a verdict in his favor against Officer Bunch.