CIT CASE LAW UPDATE

CRITICAL ANALYSIS OF FORCE

Sergeant Dan Nelson
Seattle Police Department
Sergeant Tony Lockhart
King County Sheriff's Office
THIS IS NOT LEGAL ADVICE
I AM NOT A LAWYER
THESE ARE FORCE CONSIDERATIONS BASED ON CASE LAW

Follow your department policies, procedures and legal advice

SERGEANT TONY LOCKHART
KING COUNTY SHERIFF’S OFFICE
REGIONAL CIT COORDINATOR
FORCE SCIENCE CERTIFIED ANALYST
How do we know if our actions are reasonable?

- Law
- Policy
- Training
Evaluating Force

Legal authority/Lawful purpose

De-escalation

Objectively reasonable

- Law
- Policy
- Training
Necessary:
No reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended. (Washington RCW 9a.16.010)

De-escalation defines “Necessary”!
GRAHAM V. CONNOR

“...[D]etermining whether the force used to effect a particular seizure is ‘reasonable’ under the Forth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Forth Amendment interest against the countervailing governmental interests at stake.”
GRAHAM V. CONNOR

- **Graham Factors:**
  - What was the severity of the crime that the officer believed the suspect to have committed or be committing?
  - Did the suspect present an immediate threat to the safety of officers or the public?
  - Was the suspect actively resisting arrest or attempting to escape?
CIT RELATED CASE LAW REVIEW

The United States Appellate Courts have continued to weigh in on law enforcement interactions involving police encounters with persons suffering from a mental health crisis or behavioral problems.

These Court rulings have inevitably been driven from use of force encounters.

The Courts unquestioningly are advising law enforcement to review and revise use of force policy specific to these types of encounters. The 4th, 5th, 9th, and 10th Circuit Courts have all made rulings in recent years finding that law enforcement essentially needs to slow down, take into consideration a person’s mental state, and attempt to de-escalate situations before “forcing” an encounter.

Sheehan v. City & Cnty. of San Francisco, 743 F.3d 1211 (9th Cir. 2014); Deorle v. Rutherford, 272 F.3d 1272 (2001).
The 9th Circuit Court has found that a Law Enforcement Officer may be held liable for "intentionally or recklessly provoke[ing] a violent confrontation" despite otherwise defensive use of deadly force.

Glenn v. Washington County, 673 F3d 864 (9th Cir. 2011)

Provocation was overturned in Los Angeles v. Mendez in 2017. Remanded back to 9th Circuit.

The 9th Circuit tried again and found deputies liable for 4 million dollars.

March 4th 2019, SCOTUS chose not to review the case essentially approving of the finding.

SCOTUS still uses proximate cause (but for rule, negligent Act)
HILL V. MIRACLE
6th Circuit, 2017

- Non-criminal contact
- Diabetic episode
- Blood sugar at 38
- Pulled out IV
- Tased drive stun
- Compliance gained
HILL V. MIRACLE

(1) **Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?**

(2) **Was some degree of force reasonably necessary to ameliorate the immediate threat?**

(3) **Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?**
ARMSTRONG V. PINEHURST
4th Circuit South Carolina, 1/2016

• Ronald Armstrong: Bipolar and Schizophrenia
• Officers Detained Armstrong for ITA
• Armstrong secured Self to Sign Post
• Tasered 5X after 30 Seconds
• Pried off post, handcuffed, stopped breathing
• Medic Response, pronounced DOA at Hospital
THE GOVERNMENT HAS LITTLE INTEREST IN USING FORCE TO EFFECT THAT SEIZURE."

"USING FORCE LIKELY TO HARM THE SUBJECT IS MANIFESTLY CONTRARY TO THE GOVERNMENT'S INTEREST IN INITIATING THAT SEIZURE."

"IMMEDIATELY TASING A NON-CRIMINAL, MENTALLY ILL INDIVIDUAL, WHO SECONDS BEFORE HAD BEEN CONVERSATIONAL, WAS NOT PROPORTIONAL RESPONSE...OFFICERS AND OTHERS TRAINED IN THE ART OF COUNSELING IS ORDINARILY ADVISABLE, WHERE FEASIBLE, AND MAY PROVIDE THE BEST MEANS OF ENDING A CRISIS."

"LAW ENFORCEMENT OFFICERS SHOULD NOW BE ON NOTICE THAT SUCH TASER USE VIOLATES THE FOURTH AMENDMENT."

"LAW ENFORCEMENT WILL LEARN SOON ENOUGH THAT SINS OF OMISSION ARE GENERALLY NOT ACTIONABLE."

- Judge Wilkinson U.S. Court of Appeals
NO LEGAL DUTY TO PREVENT SELF-HARM MORAL DUTY?

• Police officers responding to a crisis involving a person threatening suicide with a loaded firearm have no legal duty under tort law that would expose them to liability if their conduct fails to prevent the threatened suicide from being carried out. (Adams v. Fremont, 1998)

• Officers could be held liable for allegedly precipitating the circumstance that caused the deputies to shoot. Thus, in a situation where doing nothing would almost certainly have meant no liability. Officers now face legal exposure for their tactics in trying to prevent Hayes’ suicide (Hayes v. County of San Diego, 2013) Entered home of suicidal male who had knife and raised it to shoulder height.
PRIORITY OF LIFE

- Priority of life involves determining who is at risk and who is causing the risk

*Lexipol*
# Priority of Life

Person suspected of having suicidal thoughts; is speaking with officers; no weapons

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<tr>
<th>Who</th>
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<th>At Risk</th>
<th>Tactic</th>
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## PRIORITY OF LIFE

**PERSON IN CRISIS ACTIVELY AND PHYSICALLY THREATENING NEIGHBORS WITH A KNIFE** *(KISELA V. HUGHES, SCOTUS 2018)*

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<td>Yes</td>
<td>Yes</td>
<td>Officer should intervene</td>
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## PRIORITY OF LIFE
PERSON THREATENING SUICIDE WITH A KNIFE INSIDE OWN APARTMENT (ALONE)

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PRIORITY OF LIFE TAKEAWAYS

• **Isolate or possibly consider disengagement unless intervention is perceived necessary**

• **Avoid placing yourself or others at risk—can trigger “state-created danger” or state tort liability**

• **No legal duty to prevent a person from harming him/herself**
Sheehan v. City & County of San Francisco
9th Circuit, May 2015

- Sheehan lived in group home for individuals with mental illness
- Began acting erratically and threatened to kill social worker
- OFCs responded to facilitate ITA process
- Upon entry, Sheehan armed herself with knife and threatened to kill OFCs
- OFCs retreat to hallway and close the door & called for additional resources
- OFCs became concerned that Sheehan would "gather more weapons" or "flee out of the back window"
- OFCs re-entered the home, prior to the arrival of the requested resources, and attempted to pepper spray Sheehan, which was ineffective
- OFCs shot Sheehan
PRIOR TO THE OFFICER’S SECURING THE SCENE AND ENSURING THAT THERE IS NOT THREAT TO HUMAN LIFE.

ARGUMENT: Title II of the ADA commands that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

RESPONSE: Title II does not apply to an officer’s on-the-street responses to reported disturbances or other similar incidents, whether or not those calls involve subjects with mental disabilities, prior to the officer’s securing the scene and ensuring that there is not threat to human life.

What does this mean for us, during non-emergent responses?

9th Circuit: An officer cannot “forcibly enter the home of an armed, mentally ill subject who had been acting irrationally and had threatened anyone who entered when there was no objective need for immediate entry.”
Hayes v County of San Diego
9th Circuit, 2013

- DV Call, Girlfriend came out and said Hayes was suicidal
- Entered house to check welfare
- Observed Hayes approx. 8 feet away in dimly lit kitchen area
- Ordered to show his hands
- Hayes took 1-2 steps towards deputy raised both hands to shoulder level. Revealed large knife with tip pointed down
- Deputies both drew and fired at Hayes
- 4 seconds between call for hands to shots fired
- No qualified immunity
Hayes v County of San Diego (9th Cir. 2013)

- Officers could be held liable for allegedly precipitating the circumstance that caused the deputies to shoot.
- Thus, in a situation where doing nothing would almost certainly have meant no liability. Officers now face legal exposure for their tactics in trying to prevent Hayes’ suicide.
- 4 Seconds was enough time to give a warning about deadly force.
- “The mere fact that a suspect possesses a weapon does not justify deadly force”
Weinmann v. McClone (7th Cir. 2015)

- Wife calls 911 and reports Weinmann is in garage with a shotgun, threatening suicide
- Weinmann talks with dispatch, tells officer to leave and then hangs up on dispatch
- Deputy knocks no response; does not try to talk through door
- Deputy forces entry 3 minutes after arrival
- Weinmann is sitting with shotgun
- Shotgun not pointed at officer but in general direction
- Deputy Shoots and permanently injures Weinmann
- No qualified immunity
- Tried fatal funnel reasoning and courts struck it down
Weinmann v. McClone (7th Cir. 2015)  
Court Finding

“a person has a right not to be seized through the use of deadly force unless he puts another person (including a police officer) in imminent danger or he is actively resisting arrest and the circumstances warrant that degree of force”

These facts fall short of suggesting anything more than that Jerome was putting himself in imminent danger
Hastings v. Barnes (10th Circuit Oct 2007)

- Hastings calls counselor threatening suicide (running hose from exhaust to house)
- When officers come to house Hastings tries to shut door, retreats to bedroom: deputies follow in
- Hastings goes to room, picks up a long sword holds to self, then advances toward deputies
- Deputies fatally shoot him
- Denied qualified immunity
Los Angeles v. Mendez (9th Cir. 2017)

the U.S. Supreme Court recently rejected the 9th Circuit’s similar “provocation rule” in Los Angeles v. Mendez (137 S.Ct. 1539 (2017)) by recognizing that bad tactics cannot negate an otherwise reasonable use of force.

Remanded and retried finding deputies liable for $4 million. Proximate cause from negligent act 2018
Searching property for subject with warrant, entered shed (was told people stayed in a building on property), subject inside Mendez rose from bed holding bb gun. He and his wife were shot multiple times. Did not knock and announce, did not have warrant.
Takeaways

• Use of force reports today should be your most detailed reports
• Document the “Why”
• Think about what is the legal drive for moving forward
• Consider Priority of Life decisions
Ceballos v. Husk
10th Circuit, March 2019

Wife calls 911 because husband is acting “crazy”, has two baseball bats and that she was afraid (she has daughter with her) and that Ceballos was drunk and probably on drugs.

Officers were 100 yards away and saw Ceballos was “pacing in the driveway, swinging a baseball bat, yelling and throwing his arms in the air”

Officers “did not see any other neighbors or members of the public” in the area.

Gave commands for Ceballos to drop the bat, also stated that he would be shot.

Officers did not retreat and Ceballos walked towards officers with bat, Officer shot Ceballos at approximately 12-20 feet apart.

Accepted as true: Husk approached Ceballos quickly, screaming at Ceballos to drop the bat and refusing to give ground as Ceballos approached the officers.
Ceballos v. Husk
10th Circuit, March 2019

• The excessive force inquiry includes not only the officers’ actions at the moment that the threat was presented, but also may include their actions in the moments leading up to the suspect’s threat of force.

• To be clearly established, ordinarily there must be prior Supreme Court or Tenth Circuit precedent, “or the weight of authority from other circuits,” that would have put an objective officer in Husk’s position on notice that he was violating Ceballos’s Fourth Amendment rights.
Evaluating Force

- Legal authority/Lawful purpose
- De-escalation
- Objectively reasonable

- Law
- Policy
- Training
Questions?

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