

Savage Training Group
Response to the Non-Criminal Barricade
1345- 23047

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Statement of Purpose: The purpose of this course is to equip students with the knowledge and skills needed to avoid unnecessary violent confrontations with persons with mental illness who are armed, barricaded and in crisis. Particular emphasis is placed on students developing an understanding of the public duty doctrine and the fact that, absent a special relationship, police officers do not have a legal duty to protect others, nor do they have a legal duty to protect suicidal subjects from harming themselves. By developing the student's familiarity with liability laws and modern disengagement tactics, students will be able to make better on-scene decisions without suffering from the false constraints of a vague notion of assumed liability.

Course Objectives:

- 1) Discuss the prevalence of law enforcement's interaction with those suffering mental illness and the legal and ethical challenges associated with trying to compel care on someone who does not want it.
- 2) Contrast the governmental interest in protecting third parties and preventing future harm with an individual's right to privacy and to be left alone.
- 3) Analyze how the dramatic changes to PC 835(a) and PC 196 that occurred in 2020 should alter how law enforcement officers' approach to non-criminal barricades.
- 4) Students will be able to describe the tenets of the public duty and special relationships doctrine.
- 5) Students will apply a decision-making cycle to a given non-criminal barricade scenario and decide whether to engage or disengage with the suspect/subject.
- 6) Students will be supplied with model policies for their use in crafting policies and procedures of their own.

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1. The Public Duty Doctrine and Special Relationships¹

a. The Public Duty Doctrine

- i. **Learning activity: Students will be divided into small groups and asked to discuss the questions, “Do police officers have a legal obligation to protect third parties? If so, provide your source.” The groups will present their findings to the class and the instructor will facilitate a discussion and provide feedback.**
- ii. “a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen. The duty to provide public services is owed to the public at large, and, absent a special relationship between the police and an individual, no specific legal duty exists. A person does not, by becoming a police officer, insulate himself from any of the basic duties which everyone owes to other people, but neither does he assume any greater obligation to others individually. The only additional duty undertaken by accepting employment as a police officer is the duty owed to the public at large.”²
- iii. The origin of the public duty doctrine can be traced to [*South v. Maryland*, 59 U.S. \(18 How.\) 396, 15 L.Ed. 433 \(1855\)](#). In *South*, the plaintiff alleged that he was kidnapped and held for a period of four days and released only when he secured the ransom money demanded by his kidnappers. He also asserted that the local sheriff knew that he had been unlawfully detained yet did nothing to obtain his release. The plaintiff sued the sheriff for refusing to enforce the laws of the state and for failing to protect the plaintiff. The circuit court awarded plaintiff a substantial judgment. The Supreme Court reversed and declared that a sheriff’s duty to keep the peace was “a public duty, the neglect of which he is amenable to the public, and punishable by indictment only.”
- iv. A duty to all, a duty to none.

¹ Law Enforcement Liability and the Special Relationship Doctrine, Hg.org Legal Resources, <https://www.hg.org/legal-articles/law-enforcement-liability-and-the-special-relationship-doctrine-38303>, accessed 8/19/19

² Warren v. District of Columbia, 444 A.2d 1, 8 (D.C. 1981)

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- v. While the general rule is that law enforcement officers are not legally liable for failing to protect a citizen, there are exceptions to this rule. One such exception is the special relationship doctrine.
- b. In some cases, law enforcement has an affirmative duty to protect a specific person, such as when law enforcement has a “special relationship” with the person. Once this relationship exists, law enforcement has the legal duty to take reasonable steps to ensure the safety and care of the individual and to safeguard the individual from foreseeable risks.
- c. A special relationship between a law enforcement officer and a member of the public can be formed in two narrow circumstances. First, a special relationship is created where the officer makes a representation (express or implied) that is detrimentally relied upon and causes foreseeable harm. For example, in *Morgan v. County of Yuba*, the county was held liable where no warning was given after a deputy sheriff promised to warn decedent if a prisoner, who had threatened her life, was released and did not. Second, a special relationship is created where the officer engages in an affirmative act that increases the foreseeable risk of harm to the individual. For example, in *McCorkle v. City of Los Angeles*, an officer investigating accident directed plaintiff to follow him to the middle of the intersection where plaintiff was hit by a car.³
- d. **Learning activity: Students will be divided into small groups and asked to analyze the case of former Broward County SO Deputy Scott Petersen and how the civil and criminal cases against him transpired. The groups will present their findings to the class and the instructor will facilitate a discussion and provide feedback.**

2. Responding to subjects in crisis

- a. Negotiation
- b. Time and distance as a tactic

³ Creating a “Special Relationship” Can Create Liability, CPOA, <https://cpoa.org/creating-special-relationship-can-create-liability/>. Accessed 8/19/19

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- i. Maintaining distance from the suspect allows:
 - 1. an officer more time to assess, plan and react.
 - 2. decreases the effectiveness of a suspect's attack and the suspect's weapon.
 - ii. Time may defuse the intensity of a situation
 - iii. Try to maintain distance to exploit time.
- c. Threat Analysis
- i. In gathering intelligence on the subject in question, we are trying to judge the level of threat the suspect poses to us. Of concern is what the subject's reaction will be to law enforcement and if the subject will try to commit "suicide by
- d. Portland Police Bureau's R.O.A.D.M.A.P.
- i. ROADMAP-In response to Settlement Section 67, Portland PD created "ROADMAP". It is a mnemonic device used to recall tactics appropriate for barricade situations and those in mental health crisis. ROADMAP encompasses several tactics for responding the mentally ill in crisis:
 - a. **R – Request specialized resources**⁴⁵
 - i. Evaluate the need for assistance from individuals with additional training in persuading suspects to surrender peacefully and in working with mental health crisis situations (e.g., Crisis Negotiation Team, Psychological Emergency Response Team, County Mental Health)
 - ii. Evaluate the need for possible consultation with a mental health provider such as the involved person's mental health providers, facility staff, etc.
 - b. **O - Observe and monitor the subject or situation.**

⁴ Portland Police Bureau Policy 0850.20- Police Response to Mental Health Crisis, <https://www.portlandoregon.gov/police/article/534089>, Accessed 6/8/18

⁵ The ROADMAP mnemonic was bolstered with additional information from the author to further explain each point.

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- i. Consider having officer use surveillance from a concealed position to “get eyes on” and report the subject’s actions.
- ii. Use the information to decide if there is a need for action and if so if there is an urgency to act.
- c. **A – Area Containment**
 - i. Seek containment early
 - ii. Contain the problem and keep it from getting any bigger.
 - iii. A subject in a room is easier to contain than in a house, and a subject in a house is easier to contain than a subject running down the street.
 - iv. Deny entry and prevent escape
- d. **D – Disengage with a plan to resolve later,**
 - i. Disengagement is a tactic to be considered to reduce undue safety risk to officers, the subject, and others.
 - ii. Prior to disengagement reasonable efforts should be made to gather relevant information about the person in crisis.
 - iii. The decision to disengage should be made by a supervisor.
 - iv. **The tactic of disengagement should include a plan for re-engagement.**
 - v. Portland PD mandates the investigating officer to complete a report.
 - vi. Solicit assistance from other appropriate parties as the situation allows in order to create a re-engagement plan. (mental health professionals, subject’s therapist, subject’s family, and friends)
 - vii. Be cautious about what you tell the neighbors. Consider “detrimental reliance.”
 - viii. Officers should not disengage where an individual presents an immediate danger to a third party.

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- ix. Prior to disengagement officers should assess whether they could reasonably remain at the scene and use other tactics to diminish the risk of harm to the individual without increasing the risk of harm to the member or third parties.
- x. A perception of risk based on mere suspicion would not constitute 'immediate danger.'
- e. **M** – More resources and reinforcements
 - i. Consider what assets would provide you a tactical advantage over the subject and increase the chances of a successful outcome
 - ii. Additional officers
 - iii. More experienced supervisory personnel
 - iv. K9, Air support, SWAT, HNT/CNT, OES, Fire
 - v. Third Party Intermediaries
- f. **A** – Arrest Delayed
 - i. Consider getting a warrant or trying the apprehension at a different time/place
 - ii. If possible, reconfigure the circumstances to those that are more favorable to you.
- g. **P** – Patience.
 - i. Use time and communication to attempt to de-escalate the subject.
 - ii. If the subject is in crisis or intoxicated, consider if allowing time to pass or waiting until the subject is sober would defuse the crisis.
 - iii. Is there a need to act right now?
 - iv. How long is reasonable? How long is too long to wait?

3. Barricaded & Isolated Suspects

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- a. Definition ⁶

An incident where a person maintains a position of cover or concealment and ignores or resists law enforcement personnel, and it is reasonable to believe the subject is armed with a dangerous or deadly weapon.
- b. Isolated
 - i. Much of what applies to a barricaded suspect also applies to a suspect who may not be barricaded but is otherwise contained.
- c. Containment
 - i. “The enforcement of boundaries that define the acceptable area of noncompliance. A suspect who is not bound by moral restraint (he stops simply because you told him to stop) or physical boundaries, including the boundary created by an officer’s actual or threatened use of force—is not contained! Distance and cover may mitigate threats against officers and help avoid the escalation that can result from close confrontation. But officers who maintain distance and cover, may sacrifice containment and control.” – Force Science Institute ⁷
- d. Criminal vs. Non-criminal
 - i. Criminal barricade involves a crime
 - 1. Give it **C.P.R.**
 - a. Basic response to barricaded or otherwise contained suspects
 - b. **C – Contain** – Set up a perimeter. Deny access, prevent escape
 - c. **P – Point** – An officer assumes the role of “Point” and positions themselves in a location to observe the suspect, structure, or objective. They broadcast their observations to the rest of

⁶ Palo Alto Police Department’s Lexipol Policy #414 Hostage and Barricaded Suspects, 9/4/13

⁷ Containment and De-Escalation: The Honest Debate Continues, Force Science institute, 2019

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the responding officers. They control the radio so that other officers do not broadcast at the very moment the point officer needs to broadcast an urgent message concerning the suspect's actions.

- d. **R- React Team** – Officers positioned and equipped to rapidly arrest a surrendering suspect, make entry, etc.
2. Attempt to “contain and call out”
 3. Attempt negotiations for a reasonable time
 4. Consider options such as K9, robots, gas, SWAT, CNT/HNT
 5. Make entry if risk is acceptable
 6. Give it **C.P.R.**
 - a. Basic response to barricaded or otherwise contained suspects
 - b. **C – Contain** – Set up a perimeter. Deny access, prevent escape
 - c. **P – Point** – An officer assumes the role of “Point” and positions themselves in a location to observe the suspect, structure, or objective. They broadcast their observations to the rest of the responding officers. They control the radio so that other officers do not broadcast at the very moment the point officer needs to broadcast an urgent message concerning the suspect's actions.
 - d. **R- React Team** – Officers positioned and equipped to rapidly arrest a surrendering suspect, make entry, etc.
 7. Attempt “contain and call out”
 8. Attempt negotiations for a reasonable time

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9. Consider if other tactical options are appropriate
 10. If the suspect is armed and not an imminent threat to another consider disengagement if making entry presents an unacceptable risk.
- e. **Learning activity: Students will be shown a video depicting a non-criminal barricade and asked to discuss the officer's decision making at particular parts of the incident. The instructor will facilitate the discussion and remind students to consider the relevant laws and regulations.**

4. Disengagement

- a. Most progressive law enforcement agencies have adopted disengagement as a viable option when certain criteria are met:
 - i. The dangerous suspect is barricaded, generally alone in their own home.
 - ii. The suspect refuses to surrender.
 - iii. The “want” is only related to needing to take the suspect into custody for a mental health evaluation or if there is a crime it is minor.
 - iv. The suspect does not present an immediate and credible threat to anyone but himself/ anyone who can rescue themselves.
- b. Disengagement is sometimes known as a “tactical withdrawal” and involves law enforcement leaving as opposed to engaging with the suspect in a way that may provoke a violent confrontation (e.g., making entry into a structure.)
- c. Some agencies leave behind officers in unmarked cars to monitor the suspect and coordinate a safe arrest, perhaps in a car stop vs. making entry into the suspect's home.
- d. Disengagement Decision Making Cycle Protocol⁸
 - i. No Criminal Want or Minor Criminal Want? If yes, proceed to next step.
 - ii. Reasonable Amounts of negotiation Have Failed and Risk of Making Entry or Other Tactical Resolutions Are Unacceptable? If yes, proceed to next step.

⁸ Handout for students

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- iii. Risk Others is None or Acceptable? If yes, proceed to next step.
- iv. Disengage.

5. Re-engagement

- a. Some progressive police agencies have moved beyond simply disengaging and have adopted plans to re-engage with the suspect.
- b. They solicit the assistance and participation of others such as family, friends, social workers, and mental health professionals.
- c. An example of a disengagement plan would be officers meeting with the family of the mentally ill party to learn what their expectations are. Perhaps the family feels comfortable calling the subject once every few hours has gone by and seeing how he is doing. The officers can pass along the information to on coming shifts and have them follow up with the family in a few hours.
- d. Re-Engagement Plan
 - i. Before disengagement, gather all relevant information useful in resolving a crisis whether that crisis is soon or in the future (information about the subject, family members, doctors, location intelligence, etc.)
- e. Decide on re-engagement plan per department policy:
 - i. Examples:
 - 1. Family members have decided to call and check on subject in 4 hours and contact the police if needed.
 - 2. The on-coming shift will be briefed and Ofc. Smith will call the subject by phone in several hours to determine if there is a need for police services.
 - 3. Ofc. Jones will call the subject's employer tomorrow and if the subject is at work and sober, Ofc. Jones will make contact and determine if he is a danger to self or others.
 - 4. The subject's neighbors will be briefed and told to call the police should they see the subject in crisis.
 - 5. The designated mental health professional has agreed to check on the subject tomorrow.
- f. Brief other pertinent law enforcement officials (on-coming shift, mental health unit). Communicate the plan to pertinent involved parties (reporting party, loved ones, neighbors, etc.) and solicit their

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voluntary cooperation. Avoid creating a “special relationship/detrimental reliance.”

- g. Document the initial steps taken to aid the subject, the risk/benefit decision to disengage and the re-engagement plan.

6. Policies and Procedures

- a. Santa Cruz Police (CA) Policy 408- DRAFT- Hostage and Barricade Incidents

- i. Distinction between armed barricaded suspect wanted for a crime and barricade subject who has only expressed a desire to commit suicide.
- ii. Suicidal or mentally ill persons are afforded the same legal protections as everyone else.
- iii. When dealing with involved family members, officers should avoid making promises to family or loved ones that would suggest a special relationship has been created. Officers should attempt to establish the concerned party’s expectation of on-scene law enforcement personnel.
- iv. Options to Strategically Disengage – The actions of first responders will be weighed against the information known, governmental interests, subject’s actions and attempts to deescalate the situation. First responders may choose to strategically disengage to avoid resorting to force when it is determined the primary concern is self-harm, and he/she has not committed a serious or violent crime. The decision to disengage should be in consideration of the totality of the circumstances including supervisory approval and, if available, in consultation with the County Mental Health Liaison. In incidents where the decision is made to strategically disengage, the County Mental Health Liaison or County Behavioral Health Services shall be notified when time allows. This notification provides the Mental Health Liaison information for possible contact later and when the suspect may be more receptive to intervention.

- b. Los Angeles Police Barricaded Suspects Training Bulletin (Volume XLV Issue 4 - 2016)

- i. Note: It is extremely important to understand that not all suicidal subjects are considered barricaded or require a

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SWAT/CNT response or immediate police action. There is a distinction between an armed barricaded SUSPECT wanted for a crime, and a barricaded SUBJECT who has not committed a crime but has only expressed the desire to commit suicide. It is not a criminal act to express the desire or even attempt to commit suicide, and suicidal subjects or mentally ill persons are afforded the same level of legal protection as everyone else.

- ii. The actions of first responders will be weighed against the information known, governmental interest, subject's actions, and efforts to de-escalate the situation. First responders may choose to strategically disengage to avoid resorting to force when the danger to the subject by self-harm is no longer imminent, and he/she has not committed a serious or violent crime. The decision to disengage should be in consideration of the totality of the circumstances and include supervisory approval and be in concurrence with Mental Evaluation Unit (MEU) personnel who may revisit the subject later and time when the subject may be more receptive to receiving assistance.
 - iii. First responders should avoid making any promises to family members or loved ones that would suggest a special relationship has been created and attempt to establish the concerned parties' expectations of on-scene law enforcement personnel beforehand.
- c. Los Angeles Sheriff's Department Newsletter Volume 16, Number 12 (2016)
- i. Disengagement is the tactical decision to leave, delay contact, delay custody, or plan to make contact at a different time and under different circumstances. This tactic should be considered when continued contact may result in an undue safety risk to the mentally ill person, the public, and/or Department members. The decision to exercise this option can be initiated by the field unit but requires consultation with the field sergeant on scene and shall have the concurrence of the watch commander.

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d. Plumas County Sheriff's Office – LA Times Article⁹

7. Learning activity

a. The Armed Suicidal Barricade – A Case Study¹⁰

- i. The students will listen to the actual recording of three separate 911 calls involving a mentally disturbed subject in the San Francisco Bay Area, CA in 2017. After each, the facilitator will lead the students in a discussion of their appraisal of the incident and how they would respond.
- ii. The first call is from the subject's wife who expresses concern over the subject's behavior after he took a new medication for his anxiety. The subject also speaks with the dispatcher and both parties agree that the subject does not need an ambulance and will instead try to sleep off the medication.
- iii. The second call comes 5 hours later and is from the subject's wife. She is screaming for help and describes the fact the subject now has a gun. She is instructed to try to go outside and get away which she does. The subject's wife states that she now has the gun away from the subject but then suddenly there are sounds of a struggle between the couple and they both go back in the house. The phone is dropped but the line remains open. It is at this point in the actual incident that officers responded to the home and surrounded it. The facilitator of this training will then lead the students in a discussion about how they would respond to this incident, what their appraisal of it is (criminal barricade, hostage taking, etc.) and how they would proceed.
- iv. The actual response will then be explained. That response was a coordinated disengagement from the scene after the wife walked out of the house and desired no prosecution, and the suspect refused to exit despite thorough negotiation from a trained negotiator.

⁹ <https://www.latimes.com/california/story/2019-08-09/suicide-calls-california-cops-stopped-responding>

¹⁰ Authors personal knowledge, an interview with the responding officers and supervisor, and a review of incident radio traffic and 911 calls.

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- v. The third and final call from the suspect's family will be played and in it the students will hear how the suspect ultimately did harm himself but how the decision to disengage was sound and defensible regardless as there was no other viable safe option.

- b. Hayes v. County of San Diego
 - i. The instructor will describe the factors of the case and facilitate a discussion of the following:
 - 1. Officers pre-shooting conduct is relevant to the decision as to reasonableness - "(A)n officer's pre-shooting conduct is properly 'included in the totality of circumstances surrounding [his] use of deadly force, and therefore the officer's duty to act reasonably when using deadly force extends to pre-shooting conduct"
 - 2. "Hayes reiterates what has been California law for over forty (40) years - "law enforcement personnel's tactical conduct and decisions preceding the use of deadly force are relevant considerations *under California law* in determining whether the use of deadly force gives rise to negligence liability. Such liability can arise, for example, if the tactical conduct and decisions show, as *part of the totality of circumstances*, that the use of deadly force was unreasonable."¹¹
 - ii. State Created Jeopardy / State Created Danger.
 - 1. The court may rule an officer is not entitled to qualified immunity if they can be shown to have created "state created jeopardy".

- c. Fremont v. Adams¹²
 - i. The facilitator will issue a short-written report of the incident to the students. The students will be broken into small groups to discuss various parts of the incident and then will present the materials and their comments to the rest of the students.

¹¹ Jones and Mayer Client Alert Memorandum, Volume 28, Number 20 (2013)

¹² <http://caselaw.findlaw.com/ca-court-of-appeal/1288866.html>

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- ii. Adams was a suicidal man who shot himself while also being shot by the police in Fremont, CA in 1993. The case has several important learning lessons for law enforcement that still ring true today. It is also worthwhile to learn about the process about what happens when law enforcement officers are sued after a shooting. It shows how law enforcement experts on both sides of the case view the actions of officers and supervisors.
- iii. Initial incident- Patrick Adams was a nurse at Washington Hospital in Fremont, CA. On the evening of April 19th, 1993, Patrick had been drinking and got into an argument with his wife over his drinking. His wife and he pushed each other prompting her and their daughter to leave the house. When they returned a short while later, Patrick had armed himself with one of his guns. When his daughter confronted him, he fired one shot in an unknown direction. The family left the house and called the police.
- iv. The police response- Officers arrived at 2301 hours. The scene supervisor was an experienced SWAT sergeant who called a trained negotiator to the scene. The officers learned that Patrick had access to a shotgun and a 9mm handgun. The sergeant decided to make entry into the house approximately 15 minutes after his arrival citing these three reasons:
 - 1. Patrick might be wounded and in need of medical care.
 - 2. if Patrick was not wounded, to determine his location and the location of the gun Patrick had previously fired in the house.
 - 3. and to disarm Patrick.
- v. Entry- The sergeant and three other officers made entry and located Patrick in the backyard secreted behind a bush. For five minutes an officer who was not a trained negotiator called out to Patrick but did not get a response. The sergeant directed one of the officers to retrieve his police K9 from his car. The K9 officer encountered the negotiator outside. She was gathering information from the family. The negotiator asked the officer if she was needed in the backyard and the officer replied "No" or "Not yet."

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- vi. The confrontation- After giving Patrick several warnings the K9 handler gave his K9 a search command. The K9 team located Patrick sitting on the ground with a gun pointed at his own chest. Patrick told the officers to “Get the fucking dog away from me,” and asked, “What are you going to do, fucking shoot me?” The officers retreated to cover. At 0007 hours, an hour after the police arrived, the negotiator was brought to the backyard to attempt to negotiate. Patrick became upset at the female negotiator, at first believing the negotiator was his family member. The negotiator then decided to negotiate through one of the male officers on scene to not upset Patrick any further.
- vii. The shooting- At 0010 hours there were 7-8 armed officers in Patrick’s backyard or in the house facing Patrick. Patrick told the officers that he could make them leave and then fired a shot. Believing he was shooting at them, the officers fired at Patrick. He was later pronounced dead from multiple gunshot wounds including a self-inflicted gunshot wound to the heart.
- viii. The trials- Patrick’s estate sued the City of Fremont, and the sergeant personally. The estate sued for wrongful death claiming the police were negligent in their handling of the incident and for infliction of emotional distress on the family.
- ix. The family’s law enforcement expert testimony- At trial, Peter Reedy, a retired Sacramento Police Sergeant, was called in as an expert testifying for the family. Reedy had 25 years on the job including teaching crisis management and supervising the hostage negotiation team. Reedy described six “important factors for the successful handling of a critical incident of a crisis situation,” which he referred to as the “6 C’s.”
 - 1. Containment- Setting up a perimeter on the incident
 - 2. Control- of people interfering with the scene and of officers themselves.
 - 3. Confirmation- of the facts
 - 4. Calm- Maintaining distance and composure
 - 5. Communication- Two-way communication, including negotiators.
 - 6. Command- by an experienced, educated, trained commander who does not become directly involved in the incident

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7. Reedy's additional testimony against the officers
- x. The City's law enforcement expert testimony- Joseph Callahan, described as a law enforcement consultant and trainer, testified that the conduct of the responding officers did not fall below the standard of care. In Callahan's opinion, the officers' top priority was to "isolate and contain" Patrick by entering the backyard and closing distance with him. Callahan said the officers' proximity to Patrick offered strategic advantages because if Patrick dropped the gun the officers would have been able to move in quickly. Callahan also opined that sending the K9 to contact Patrick was appropriate as a non-lethal probe of Patrick to check his condition.
 - xi. The initial judgment was ruled against Fremont: 4 million dollars
 - xii. Jury believed the officers were negligent in 13 ways:
 - 1. "Supervisors lacked control of the officers".
 - 2. "Insufficient communications".
 - 3. "Lack of information".
 - 4. "Did not respond to suicide call as such. It was an assault response rather than assist".
 - 5. "Did not follow Fremont Police Department procedures for dealing with a critical incident".
 - 6. "Delayed calling in medical help".
 - 7. "Decision to use dog prior to using a negotiator".
 - 8. "Allowed untrained officer to attempt negotiation".
 - 9. "Did not evacuate all the neighbors".
 - 10. "Did not maintain the psychological sanctity of the family members at the scene".
 - 11. "The use of [seven] armed officers left no option but force".
 - 12. "Once location of Patrick was known, did not back down to allow calming of situation"; and
 - 13. "Yelling and shouting at Patrick did not allow for calm."

d. Doe vs. City of Modesto ¹³

¹³ Doe v. City of Modesto CA5, F071675 (Cal. Ct. App. 2016)

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- i. The instructor will present the facts concerning the case of Amanda Pennaluna in Modesto, CA and then the students will be tested orally as to how the pertinent CA laws apply to the situation. The instructor will provide feedback as needed.
- ii. On June 1st, 2013, at 2240 hours, Amanda Pennaluna called 911. Seemingly delusional, she told the dispatchers she believed the police were outside her home and that she had been trying to give the police her child.
- iii. At 2320 hours, officers arrived and found Amanda's four-year-old daughter wandering the street outside their home. The child said she had been locked out and that her mother was sick inside.
- iv. Officers approached the home and saw vomit outside the front door which seemed to suggest Amanda was indeed inside the home and ill. They called out to Amanda who in reply moaned and called back to them. The officers entered to check on her welfare and found Amanda sitting in the bathroom holding a knife. Amanda refused to drop the knife, so the officers called for more assistance.
- v. 10 officers including a sergeant responded to the scene. The sergeant took over trying to negotiate with Amanda. The sergeant spent "several minutes" talking to Amanda. Several were defined in the court proceedings as more than 1 or two minutes but not a lot. The officers took the child into protective custody and left the scene leaving Amanda in the house.
- vi. Less than an hour after the officers left, Amanda apparently set fire to her home. Firefighters pulled Amanda from the home, but she died of smoke inhalation.
- vii. Amanda's estate sued the officers alleging they had formed a "special relationship" with Amanda and therefore had a duty to provide her care and were negligent in leaving her. Their argument was that the situation triggered one of the ways officers can create special relationships which is when the officers themselves *increased risk* to a person. In this case, the estate argued that when they took Amanda's daughter

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away it aggravated Amanda which increased her mental imbalance.

- viii. They then argued the officers breached their “duty to provide care” to that person with whom they had formed a special relationship by failed to follow police procedures in responding to a Amanda’s 911 call for help, failed to take reasonable steps to protect a delusional person from harming herself and failed to warn family members that the police were abandoning Amanda, which placed her in a position of foreseeable danger; and (4) failed to place Amanda in the care of a crisis intervention counselor.
- ix. The court ruled that generally, law enforcement officers do not have a duty of care to protect members of the general public. Therefore, law enforcement officers have no duty to come to the aid of another unless the officers have created a peril, or a special relationship exists. In other words, a special relationship can be the source of a duty.
- x. A special relationship between a law enforcement officer and a member of the public can be formed in two narrow circumstances. First, a special relationship is created where the officer makes a representation (express or implied) that is detrimentally relied upon and causes foreseeable harm. For example, in *Morgan v. County of Yuba*, the county was held liable where no warning was given after a deputy sheriff promised to warn decedent if a prisoner, who had threatened her life, was released and did not. Second, a special relationship is created where the officer engages in an affirmative act that increases the foreseeable risk of harm to the individual. For example, in *McCorkle v. City of Los Angeles*, an officer investigating accident directed plaintiff to follow him to the middle of the intersection where plaintiff was hit by a car.
- xi. Amanda’s estate then argued that in general, the family was never warned that the police were abandoning Amanda and therefore they were effectively precluded from trying to rescue her themselves. The court, however, ruled that the estate could not prove a particular officer made an implied or expressed representation to a particular family member.

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- xii. The estate argued that the four-year-old had a claim of detrimental reliance against the officers because they had formed a special relationship with her when they took her into protective custody. The estate argued that the four-year-old relied on the officers to rescue her mother. The court ruled that allegation of reliance lacked the requisite particularity because the estate could not state what the four-year-old did or did not do as a result of her reliance on the officers and how those acts or omissions by Sheila would have avoided the detriment of her mother's death.
- xiii. After those allegations of a special relationship were not successful, the estate argued that Amanda's sister Nicole had detrimentally relied upon the statement of a particular officer (Heilman) who allegedly instructed Nicole not to go talk Amanda down and assured her that they would take Amanda into custody, despite Nicole telling him about Amanda's struggle with bipolar disorder, which she treated with Prozac. Nicole was summoned to the police station by CPS who instructed her to go the station to pick up the four-year-old. While at the station, Nicole asked Ofc. Heilman if she should go to Amanda's home to talk her down. Officer Heilman instructed her not to go and assured her that Modesto police officers would either take Amanda to a behavioral health facility or to jail. He never told her that they would leave or had left.
- xiv. The estate argued that although Amanda had never made any specific threat to herself, based on that fact she initially called 911 for help, and was mentally ill and holding a knife, it was foreseeable that she was in peril and by precluding the family from intervening the family relied upon the officer to their detriment. The court agreed, stating that a reasonable inference could be drawn that it was foreseeable that Amanda was a threat to herself because the police were aware Amanda was mentally ill and taking Prozac, she had made a call for help and was ill (vomiting) it, the officer told Nicole they were going to take her into custody and Nicole had asked about going to the house to talk her down,
- xv. The court ruled that 1) it was foreseeable that Amanda posed a peril to herself, 2) Officer Heilman expressly represented to

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Nicole that the police would take Amanda to behavioral health or to jail, 3) Nicole relied on this representation by for going an attempt to go to the aid of Amanda, and 4) Nicole's reliance was detrimental in that the death of Amanda would have been prevented if Nicole had gone to her aid. The court ruled that a special relationship did exist, and the officer breached their duty of care.

8. Table-Top Exercises

- i. The following exercises will be conducted as large or small group exercises as time allows. Each is designed to reinforce a learning objective, so only those which are deemed to be necessary to achieve that goal will be used. What follows are a variety of scenarios the instructor can use. Either through an instructor led discussion, radio traffic, video or other medium, the instructor will articulate a situation that depicts the following situations.
- ii. Unarmed Suicidal Subject Barricaded and Alone in Their Own Home
- iii. Armed Suicidal Subject Barricaded and Alone in Their Own Home
- iv. Armed Suicidal Subject Barricaded and Alone in a Hotel Room
- v. Armed Suicidal Subject Barricaded and Not Alone in Their Own Home
- vi. Armed Suicidal Subject with a Hostage in their Own Home

9. Course Review