

“But we can’t just leave!”: How LAPD SWAT implemented a strategic disengagement policy

By Lieutenant Ruben Lopez Police1

Incidents involving law enforcement and persons suffering from mental illness or suicidal subjects within their own home have sparked criticism from the community, as well as negative decisions in the courts resulting in adverse monetary judgments against many police departments along with calls for reform.

Ironically, the courts have also recognized the unique challenges associated with responding to people in the midst of a mental health crisis or expressing thoughts of suicide. The courts have repeatedly acknowledged that law enforcement personnel will undoubtedly encounter these individuals due to deficiencies within the current mental healthcare infrastructure resulting in local police departments usually being the default source for assistance.

However, there have been significant changes in both the law and public opinion that pertain to how law enforcement should deal with persons suffering from mental illness or potentially suicidal subjects within their own home. A recent [\\$85M verdict in San Diego County](#) is the latest wake-up call that law enforcement must adapt.

Unfortunately, well-intended actions by law enforcement have occasionally worsened some situations when rushed and the threat of suicide was not truly imminent or had been mitigated to a certain degree. These types of high-risk incidents present officer-safety concerns to law enforcement personnel, the mentally ill or suicidal subject, as well as concerned loved ones, but boil down to nothing more than a welfare check with limitations on how much force would be deemed reasonable to effect the detention for a mental evaluation if warranted.

THE LAPD MENTAL HEALTH EVALUATION UNIT

The Los Angeles Police Department adopted a collaborative approach several decades ago with the creation of the Mental Evaluation Unit (MEU). Law enforcement personnel are partnered with a licensed clinician or psychiatrist from the Los Angeles County Department of Mental Health to respond to these types of calls. The officers are armed, but they are dressed in plain clothes and drive unmarked vehicles to remove the stigma of having done something wrong or unlawful.

They have been extremely successful in resolving countless incidents peacefully when the subject needed to be placed on an involuntary hold due to being dangerous to self or others. They have also been instrumental in educating patrol officers, as well as family members on the limitations when dealing with these types of calls for service.

Although the Department's Mental Evaluation Unit serves as a model for other agencies, there are occasions when that approach has been ineffective, or the subject has been armed. If the subject is armed, crisis negotiators from Special Weapons and Tactics will be called in. The Crisis Negotiations Team is comprised of a primary and secondary negotiator, licensed clinician from our Behavioral Science Services, and a SWAT supervisor.

FOURTH AMENDMENT SAFEGUARDS

Any law enforcement seizure of a person automatically triggers Fourth Amendment safeguards for all including the mentally ill and persons expressing thoughts of suicide. It is also important to realize that being mentally ill, refusing to take prescribed psychotropic medication, or expressing thoughts of suicide are not criminal acts in California.

Although section 5150 of the California Welfare and Institutions Code permits the involuntarily, temporary detention of a person based on probable cause, any force used by law enforcement will be weighed against the underlying objective and it must be reasonable. When police intervention requires force that results in death or serious bodily injury and there was no underlying crime involved, the actions of law enforcement will be scrutinized through that lens.

Additionally, factors leading up to the force used by officers will be considered as the courts did in [Hayes v. San Diego County](#). Various courts throughout the nation share this same concept.

Consider the example of [Hastings v. Barnes](#) where law enforcement attempted to intervene after Todd Hastings expressed thoughts of harming himself to a counselor who then called police (Hastings had advised the counselor that he was going to run a hose from his truck to the house).

When the officers contacted Mr. Hastings at the front door and asked him to step out, he attempted to close the door on them after claiming he needed to grab his shoes. One officer blocked the door with his foot causing Mr. Hastings to retreat into a bedroom. The officers then entered the residence and followed Mr. Hastings in an attempt to detain him. Upon entering the bedroom, Mr. Hastings grabbed a samurai sword resulting in an officer-involved shooting with deadly consequences. His brother subsequently filed a federal civil rights violation case. There are much more details, but in summary, the officers were denied qualified immunity.

The court ruled:

The officers were not responding to a crime or attempting to effectuate an arrest. Rather, they were responding to an individual who was contemplating suicide and seeking help. Therefore, Hastings alleges both officers knew they were dealing with an individual who was potentially mentally ill or emotionally disturbed. Under such circumstances, Hastings contends the officers' training required them to de-escalate the situation. Rather than de-escalate the situation, however, they escalated it by entering the home, confronting Todd in his bedroom doorway, and pepper-spraying him, to the point deadly force was required. To the extent Todd was not complying with the officers' demands to drop the sword, Hastings argues there was evidence that Todd perceived the officers as aggressors and was attempting to defend himself. Indeed, according to one officer, Todd's stance was defensive, not aggressive, until he was pepper-sprayed."

“DUTY OF CARE” MYTH

The “duty of care” myth repeatedly comes up during these types of calls for service. Many officers perceive that their public-duty obligations will transcend to individuals suffering from mental illness or expressing thoughts of suicide. But the courts have repeatedly reaffirmed that the government and its officials owe a legal duty to the public at large, but not to any individual citizen.

In [Adams v. Freemont](#), the court stated that in a suicide situation, peace officers are appropriately concerned primarily with the public's safety and their own safety, and secondarily with the person threatening suicide. Decisions on when and how to intervene cannot be based on moral or religious obligations either.

In 2012, the Civil Rights Division of the United States Department of Justice (DOJ) published a comprehensive report on another law enforcement agency, which found “reasonable cause to believe that a pattern or practice of unnecessary or unreasonable force existed when dealing with people who have or are perceived to have mental illness.”

LAPD STRATEGIC DISENGAGEMENT POLICY

To further employ de-escalation techniques, the Los Angeles Police Department adopted a strategic disengagement policy as a best practice in 2019. This concept was recommended for American law enforcement in the previously mentioned DOJ report. A Tactical Disengagement Training Bulletin was published in July 2019 after thoroughly researching risk management issues surrounding this topic.

The effort was spearheaded by the LAPD SWAT team with support from the Mental Evaluation Unit to provide officers another option to de-escalate volatile situations and better safeguard lives. Due to an ever-changing environment, SWAT also modified its

response package when dealing with persons suffering from mental illness or suicidal subject calls for service that meet SWAT criteria (armed and refusing to submit to arrest). A modified Crisis Negotiations Team (CNT) package now responds instead of a full contingent of SWAT personnel with automatic weapons, chemical agents, and armored vehicles. Despite the presence of a weapon, the use of chemical agents or deadly force will be deemed excessive if the person was only threatening to harm themselves (see [Escobedo v. Bender](#), 2010).

Although CNT personnel will make every attempt to resolve the situation peacefully, strategically disengaging from these volatile scenes will occasionally be the preferred option in furtherance of de-escalation efforts for department personnel, the subject and concerned loved ones. Particularly when no criminal act has been committed, the subject is not a prohibited possessor or simply refuses treatment, and the exigency has been abated to a certain degree.

Forcing entry into a residence or insisting on immediately taking the person into custody by force could place department personnel in a predicament because the concerned subject qualifies for an involuntary hold pursuant to section 5150 of the California Welfare and Institutions Code, but their efforts could require the application of force; possibly with serious or lethal consequences. It is important to understand the differences when dealing with these individuals in their own home or when in public settings.

A PARADIGM SHIFT

This is understandably a paradigm shift in the way law enforcement has dealt with these types of calls for service but many communities, as well as legislative bodies, now demand that we do better. There have been criminal filings across the nation of law enforcement personnel who killed someone in the process of preventing a suicide attempt or merely contemplating.

The conviction and 10-year prison sentence of an [Oklahoma City Police Department sergeant in 2019](#) for using lethal force on a suicidal subject who was only armed with a lighter and flammable liquid is yet another example of how tragic these incidents can end. There was much emotion tied to this subject when it was first introduced but educating our patrol officers and person(s) reporting on the limitations placed on law enforcement has diffused much of it.

The “what if” has been replaced with “I understand.” It is hoped that by becoming familiar with disengagement protocols, law enforcement personnel will now be provided with yet another de-escalation option when dealing with these complex, volatile situations. Understandably, this paradigm shift requires education and training, but the decision to strategically disengage should be based on the totality of the circumstances at hand; not the infinite number of “what if” scenarios or fear of future liability. Moreover, the decision to disengage should be in collaboration with mental health professionals, family members or

loved ones, and first responders to formulate a follow-up plan of action. Never jeopardize officer safety or proven tactics should you decide to intervene or strategically disengage.

It has been several years since this policy was adopted and the dire predictions of increased liability or public harm resulting from not taking a suicidal person into immediate custody have not come true. Instead, there have been fewer fatal encounters, as well as uses of force on people suffering from a mental health crisis, which helps restore public trust and confidence.

For more information on the LAPD policy, email Lt. Lopez at 25900@lapd.online.