



# Resolution of Barricaded Suspects

*NATIONAL TACTICAL OFFICERS ASSOCIATION*

*800-927-9127*

*WWW.NTOA.ORG*

# Prerequisites

- Definition
- Pre-requisites
- Suicidal vs. Criminal



# Barricaded Situations

- Planning contemporaneous with incident
- All personnel seldom thoroughly briefed prior to deployment



# Barricaded Situations

- Containment is gradual and often lengthy
- Preparation lies with suspect



# Flexibility

- Flexibility is key
- Understanding the threat
- Being open minded



# Decision Making

- Suspect driven
- Good time vs. bad time
- Time
  - Is it on our side?
  - Pros and Cons



**“Lost time is never  
found again.”**

**- Benjamin Franklin**



# Ask yourself. . .

- Why now?
- What has changed?
- Has risk been mitigated?





# Ask yourself. . .

- Who benefits the most or suffers the most right now by the action we are contemplating?
- What if it was your family member?
- What is the risk/benefit of what we are contemplating?



# Commander's Role

- Stay out of the way
- Control the tempo
- Ensure perimeters and evacuations
- PIO/Media Staging



# Commander's Role

- TEMS
- All equipment and resources available
- Eventual scout
- Tactical pauses and radio briefing



# Staging Area

- Staging Officer
  - Briefed by Patrol
  - Track personnel, take notes, routing
  - Deploy initial resources



# Primary Concern

- ***True*** containment of the situation
- Secondary concern is apprehension

# Containment Team

- Deploy containment team ASAP
- Initially, staging officer's job
- **What are some containment team tasks or considerations?**



# Containment Team

- Tasks/Considerations
  - Obtain 360° coverage to engage suspect(s)
  - Teams size can vary
  - Vehicles immobilized



# Containment Team

- Tasks/Considerations
  - Help with evacuations
  - Dangerous time of the call. . .





# Containment Team

- Augment with more bodies
- Advise CP when containment achieved so patrol can be removed



# Containment Team

- Team may be forced to take action if suspect comes out
  - Team leader assigned
  - Immediate action drills (IAD)



# Containment Team

- Consider Equipment that may be needed
- May be absorbed into arrest team later



# Long Rifle Teams

- Primary responsibility is intel and over-watch for the team
- 360° coverage, if possible
- Two per team



# Arrest Teams

- Team size varies
- Purposes
  - Take suspect into custody
  - Emergency reaction team
  - Emergency entry



# Arrest Teams

- Team Leader must ensure immediate action drills are covered
- Should be working on entry plan



# Entry Teams

- Planned entry teams
  - May be combined with arrest teams
  - Be cautious of overtasking and splitting them



# Scout

- Done after other priorities (tasks) are completed
- Role and goals of the scout?





# Floor Plans

- Are they reliable? What's the source?
- Team movement should be based on geography of target and stimulus encountered

# Utilities

- Leveraging to your advantage!
  - Introducing chemical agents
  - Alter their environment
  - Natural/propane gas considerations



# Medics

- Multiple options for medical support
- At CP or in the hot zone?  
Armored vehicle?
- Medics should be staged nearby (*at a minimum*)



# Medic Roles

- Involvement in mission planning
- Triage locations
- Medical screening of all involved
- Monitor operators
- Medical resource management



# Medic Roles

- Medical immediate action drills
- Assist commander in medical decisions
- Assist CNT



# CNT

- Roles during a barricaded suspect situation
- Are we negotiating or communicating?



# CNT

- Can be used as diversions
- Be aware of time delays
- Assist entry in surrender and apprehension



# Common Errors (Barricade and HRT)

By Incident Commanders

- Lack of crisis management training by commanders
- Fear of loss of control to negotiator or tactical team
- Direct involvement in negotiations





# Common Errors (Barricade and HRT)

By Incident Commanders

- Inappropriate constraints on negotiator by commander
- Commander lacks trust in negotiator and tactical team



# Demands

- Determine CNT/SWAT parameters of authority in advance:
  - Give each demand due consideration
  - Accurately record each demand



# Demands

- Consider tactical feasibility of demands, consult with tactical element
- Formulate delay strategies for each demand



# Demands

- Tactical and CNT command coordination



# Armored Vehicles

- What can it do for the team?
- Who operates?



# Bomb Squad

- Becoming common to deploy to all barricades
- Operate majority of robots
- Can prep explosive charges or serve as explosive breachers



# Canine

- Patrol K9 vs. Tactical K9
- Considerations
- Tactical uses



# Air Support

- Purpose
- Capabilities
- Considerations





# Chemical Agents

- When to introduce?
- Where to introduce?
- What type to be used?
  - Cold, Hot, OC, CS



# Chemical Agents

- Damage, contamination, cleanup
- Equip personnel properly
- Consult with CNT



# Chemical Agents

- Regular commands during and after
- Documentation



# Considerations

- Communications hampered with gas masks
- Visibility cut down
- Entry more difficult



# Considerations

- Does it limit future options?
- Contamination of neighborhood
- Decontamination



# Electronic Surveillance

- Intelligence Gathering

- Location of suspect, weapons, booby traps, intentions, obstacles
- Injury/casualty assessment
- Layout
- Night vision capabilities



# Electronic Surveillance

- Reduces Risk
  - Less exposure for team
  - Great for attics

**Suspect located with under door video surveillance equipment after killing self in hotel room.**



# Robotics

- Can perform initial search of location
- Video/audio capability
- Provides distance for team
- Various uses for robots





# Robotics in Use



# Robotics Challenges

- Obstacles, can get stuck
- Team must still make entry and clear



# Unconventional Tools

- Lighting
- “SWAT Rock”
- LL Impact Projectiles
- Noise / Diversions



# Ideal Situation

- CNT quickly talks suspect out and he complies with all commands *(peaceful resolution)*



# Ideal Situation

- If so. . .
  - One operator issues commands
  - All threats covered
  - Suspect comes to operators who are behind cover
  - In custody
  - Location cleared



# Reality

- It rarely works out that smoothly
- When do we go in on a barricaded suspect?

WELCOME TO  
REALITY

# Entry Goal

- Goal is to bring suspect out to police, whenever possible
- Enter only when other alternatives have failed or are unviable



# Entry Goal

- Do so only after having seriously diminished the suspect's ability to engage team members
- Let the situation dictate the tactics!





# The Breach

- Surreptitious breaching
  - Secretive, stealthy, covert
  - Try not to compromise the location of the team
  - Don't forget to try the doorknob
  - ***Keys may be an option***



# Manual Breach

- Manual
  - Ram / Haligan
  - Door / Bar Pulls



# Mechanical Breach

- Mechanical
  - Saw
  - Torch
  - Mechanical Pry Tools



# Shotgun Breach

- When used?
- Concerns



# Explosive Breach

- Must be highly trained
- Very effective and efficient when done properly
- Often convinces suspect to come out



# Entry and Clearing

- On a barricaded suspect, the safety of the operators outweighs that of the suspect.
- **Considerations?**



# Entry and Clearing

- Consider multiple options before sending team in:
  - Video technology / cameras
  - Robot (pros/cons)
  - Canine (pros/cons)
  - Window ports

**Can it be used safely?**

# Entry and Clearing

- Rely on operators and supervisors on scene to determine safety of options
  - You can always ask for ideas or concerns
  - Do radio briefings every so often
    - Keeps personnel interested
    - They realize you are doing something and have not forgotten them





# Covert Entry

- Goal is to locate the suspect, not necessarily engage or confront
- We want to confront on our terms from behind cover



# Covert Entry

- Several options for tools
- Team must listen for movement
- Look for debris, footprints, dust, shadows, moved furniture



# Covert Entry

- Constant threat assessments prior to movement
- Use cleared rooms as cover, continue taking ground



# Covert Entry

- Clear as much of room as possible prior to going in
- Do not rush, plenty of time



# Limited Penetration

- Gets you in the building
- Allows gathering intelligence
- Reduces decision making and response time



# Limited Penetration

- Limits suspect movement, minimizes geography



# Contingencies

- Immediate action drills (contingencies)
  - **What are some possible IAD's to be prepared for?**



# Contingencies

- Officer down
- Suspect comes out unarmed
- Suspect comes out pointing gun at self
- Suspect comes out pointing gun at ground
- Suspect tried to get to car





# Contingencies

- Suspect tries to drive car out of garage
- Suspect comes out on roof
- Suspect sends dog out at team
- Suspect fires from inside the structure
- Single shot fired from inside the structure
- Other?



# Lubbock (TX) Incident



# Officer Down

- Return fire if possible, deal with threat
- Cover and evacuate downed officer
- Assume cover positions
- Roll call
- Staffing is now an issue



# SWAT Officer Shot

- If one of your SWAT officers is shot and suspect remains barricaded, what do you do?
  - Stay on scene?
  - Turn over to another team?



# SWAT Officer Shot

- Will your operators be able to continue with the mission? Mentally?  
Future accusations?



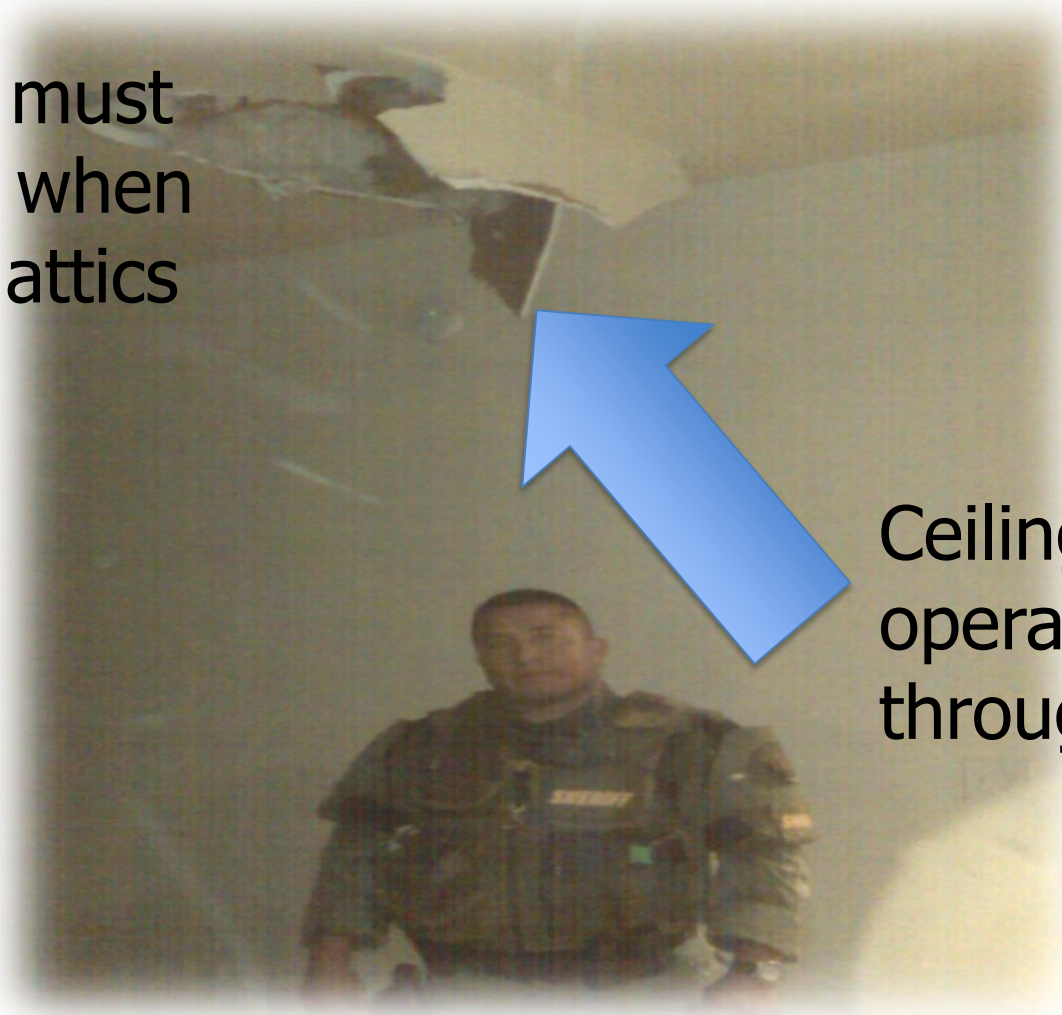
# Attics / Crawl Spaces

- Never miss them!
- Technology considerations
- Surveillance cameras may compromise the team
- Other safety considerations?



# Attics / Crawl Spaces

Personnel must be careful when searching attics and crawl spaces.



Ceiling after operator fell through it.

# Decision Making

- Remember the “7-Step” decision making process
- SWAT Commander is in charge of the SWAT call
- Rely on your people and make decisions
- Take responsibility and give credit





“Risk comes from not knowing what you’re doing.”

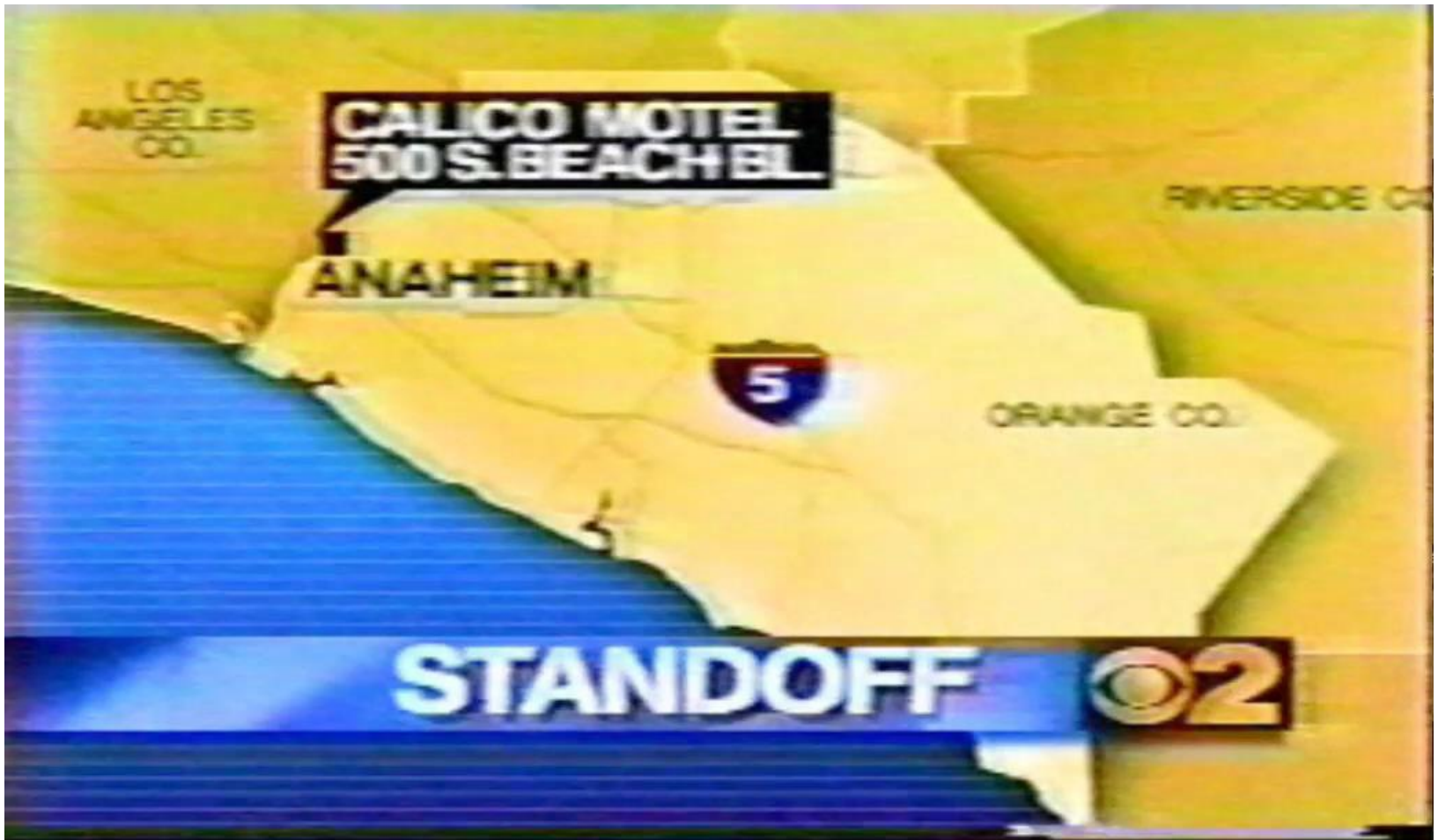
- Warren Buffet

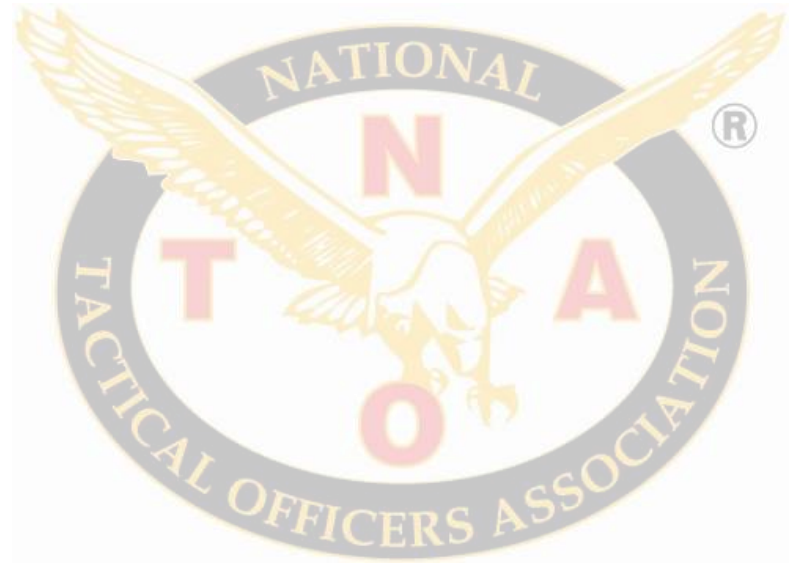
# Miscellaneous

- Demobilization plan
  - Who are we turning scene over to?
  - Walk thru
  - Debrief location
  - Don't leave your resources at the scene



# Anaheim Motel Incident





# Legal

# **CASE LAW FOR REFERENCE**





**Fisher v.  
City of San Jose  
558 F. 3d 1069 (9<sup>th</sup> Cir.)**

# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- The court addresses Fourth Amendment's **exigent circumstances doctrine** in the context of armed standoffs
- Steven Fisher triggered a standoff with San Jose police after he pointed a rifle at a private security guard who was investigating loud noises in Fisher's apartment complex



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- When the police arrived at his apartment, a noticeably intoxicated Fisher pointed one of his eighteen rifles at the officers and threatened to shoot them
- Fisher then retreated inside his residence
- Supervisor on scene called for additional personnel (approximately 60 responded)



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- Additional resources was due to Fisher's level of intoxication, behavior and the fact that he was armed and had made threats
- The ensuing stand off lasted more than 12 hours during which is was observed loading weapons, placing weapons throughout the residence and continuing to make numerous threats towards police





# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- The court addresses Fourth Amendment's **exigent circumstances doctrine** in the context of armed standoffs
- Steven Fisher triggered a standoff with San Jose police after he pointed a rifle at a private security guard who was investigating loud noises in Fisher's apartment complex. When the police arrived at his apartment, a noticeably intoxicated Fisher pointed one of his eighteen rifles at the officers and threatened to shoot them.
- The ensuing standoff lasted more than twelve hours and ended peacefully when Fisher finally emerged and allowed himself to be taken into custody.



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- 12-hour standoff
- No arrest warrant
- Submitted to arrest
- 42 US § 1983 – No warrant or attempt to obtain warrant



# Fisher v. City of San Jose

## 558 F.3d 1069 (9<sup>th</sup> Cir.)

- October 23, 1999
- Purchased two 12-packs of beer
- Observed with WWII firearms (18)
- Talked to passerby about 2<sup>nd</sup> Amendment
- Wife exited apartment
- FSDD / CS



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- Fisher and his wife sued under 42 U.S.C. § 1983 alleging the police violated Fisher's 4<sup>th</sup> Amendment right to be free from unreasonable seizure by arresting him in his home without a warrant



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- Fisher and his wife sued under 42 U.S.C. § 1983 alleging the police violated Fisher's 4<sup>th</sup> Amendment right to be free from unreasonable seizure by arresting him in his home without a warrant
- The use of the SAGE gun was unreasonable
- The use of CS was unreasonable
- The use of FSDD was unreasonable and constituted a battery



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- “. . .well over 60 officers [were] present at Fisher’s apartment complex, not one of them was able to seek a telephone warrant before Fisher submitted to arrest.”
- The court awarded one dollar in nominal damages
- City ordered to train officers on what is required under the 4<sup>th</sup> Amendment and the case law interpreting it lawfully to arrest a suspect in his/her home



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- The original jury actually found for all of the defendants
- Fisher filed an appeal under Federal Rule of Civil Procedure 50(b)
- The court denied the motion on most counts, but granted it as to the warrantless arrest claim against the City
- The decision was made by a 2-1 vote



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- Evidence heard en banc with 11 judges
- They rejected the decision of the 3 judge panel and reversed 6-5
- They decided the exigency that existed at the start of the activation continued throughout
- Remember, this was a close decision and the opinion affects only the Ninth Circuit





# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- Safest way to proceed:
  - Have someone start on a warrant
  - If the warrant is not completed when the scenario concludes, print a copy of the warrant/affidavit and place in your case file (*demonstrating you were in the process of doing so*)



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- Safest way to proceed (cont.):
  - If you are safely able to wait for the warrant to be issued, wait



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- **List the factors**
  - That a grave offense is involved
  - That the suspect is reasonably believed to be armed
  - That there exists a clear showing of probable cause
  - That there is strong reason to believe the suspect is in the premises



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- **List the factors**

- That there is a possibility the suspect will escape
- That a peaceable entry is made onto the premises
- Declare what the emergency was that you acted upon



# Fisher v. City of San Jose

**558 F.3d 1069 (9<sup>th</sup> Cir.)**

- **List the factors**

- If time and circumstances allow, obtain a warrant or at a minimum, have someone start on a warrant
- If time and circumstances do not allow for a warrant, memorialize why not
- Chronicle the event: time considerations may become important, as well as suspect/subject actions, location, environment, lighting, weapons, etc.





# **Payton v. New York 445 U.S. 573**



# Payton v. New York

**445 U.S. 573**

- “. . .at the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and be free from government intrusion.”



# Payton v. New York

**445 U.S. 573**

- “The home is perhaps the most sacrosanct domain and. . .there, the Fourth Amendment interests are at their strongest” to protect this right to privacy in the home, the decision as to whether sufficient probable cause exists to arrest someone at home cannot be left to police officers.





# Payton v. New York

**445 U.S. 573**

- When the right of privacy must reasonably yield. . . is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent
- Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant



# Payton v. New York

**445 U.S. 573**

- When the right of privacy must reasonably yield. . . is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent
- Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant



# Payton v. New York?

**445 U.S. 573**

- “. . .the Payton warrant requirement does not evaporate the moment officers surround a home with weapons and begin to take measures to induce an individual to leave his home. Rather, officers must obtain a warrant before any additional intrusions into the home if the initial exigency dissipates sufficiently to allow the police to obtain a warrant.”



# Payton v. New York?

**445 U.S. 573**

- “. . .the court’s analysis indicates that even if the initial surrounding of a house without a warrant is justified by exigent circumstances, the warrant requirement does not evaporate once police surround the home, and the police remain obligated to obtain a warrant once the danger has lessened or resources have become available such that a warrant could be safely obtained.”





**Sharrar v.  
Felsing  
128 F. 3d 810, 819 (3<sup>rd</sup> Cir.)**



# Sharrar v. Felsing

**128 F. 3d 810, 819 (3<sup>rd</sup> Cir.)**

- **Seizure in the Home**
- “When a SWAT team surrounds a residence with machine guns pointed at windows and the persons inside are ordered to leave the house backwards with their hands raised, an arrest had undoubtedly occurred.”





**U.S. v.  
Maez  
872 F. 2d 1444**



# U.S. v. Maez

**872 F. 2d 1444**

- **Seizure in the Home**
- “. . .holding that defendant was arrested in his home when a SWAT team holding rifles surrounded his trailer and asked him to leave his home by means of a loudspeaker.”





# U.S. v. Maez

**872 F. 2d 1444**

- “. . .concluding defendant ‘was placed under arrest, without the issuance of a warrant, at the moment the police encircled [his] residence.’”





# **Mincey v. Arizona 437 U.S. 385**



# Mincey v. Arizona

**437 U.S. 385**

- **Exigency**
- “. . .the Supreme Court made clear that a warrantless search must be ‘strictly circumscribed by the exigencies which justify the initiation.’”





# **Ryburn v. Huff**

**132 S. Ct. 987**



# Ryburn v. Huff

**132 S. Ct. 987**

- **Exigency**
- An exigent entry may be justified under the 4<sup>th</sup> Amendment if there was an objectively reasonable basis for fearing that violence was imminent





# **Escobedo v. Bender**

**600 F. 3d 770 (7<sup>th</sup> Circuit)**



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Escobedo called 911 to make suicidal threats, informed he was armed, high on cocaine and wanted to shoot himself (*approx. 4:24am*)
- Informed dispatcher to contact a psychologist and provided the phone number



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Escobedo expressed repeatedly he was seeking help and had no intention of harming anyone else
- Sergeant Taylor is first person officer to talk to Escobedo, Escobedo repeats the same statements for approx. 25 minutes





# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Sergeant Taylor decides to contact CRT and ERT
- Call transferred to CRT who take over negotiations with Escobedo, Escobedo repeats same statements
- CNT begin using direct link system



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- When transfer to CNT was made, Escobedo isn't informed of new phone number
- Later, when tear gas was introduced Escobedo even called Sergeant Taylor's cell phone because he didn't know about new number



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- CNT Commander relied upon officers near the direct link system for updates instead of directly monitoring (*normal protocol*)
- CNT Commander missed important information that in turn wasn't able to be relayed to ERT Commander



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Escobedo had removed from in front of his apartment door, which was missed by CNT Commander, which would have suggested progress with negotiations
- CNT does reach psychologist, but doesn't invite to the scene



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Discussions about introducing tear gas occur between 6:45am-8:00am
- Deputy Chief Bender (overall incident commander) later testifies that the key factor in decision to use tear gas was *"it was our belief that the negotiations were not going anywhere"*



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- ERT Commander testified that purpose of forcing Escobedo from his apartment with tear gas was to take into custody for 24-hour emergency detention (not to arrest)
- ERT Commander has suggested introducing tear gas as *"standard procedure"* and *"the next logical step"*



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Other justifications for tear gas:
  - Believed to be barricading door  
*(actually was removing items)*
  - Pedestrian and vehicle traffic increasing  
*(most already at work by then)*
  - He was armed and threatening suicide  
*(no threats towards police)*



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Escobedo tells negotiators he will come out (before gas is introduced), not relayed to command
- Negotiators told to end call before gas introduced (not normal protocol)
- Gas is introduced





# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- ERT Commander orders an “incapacitating concentration” for Escobedo’s apartment, which included:
  - Six 37mm liquid munitions
  - Six 37mm SAGE powder munitions
  - Five or ten 12-gauge munitions



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Concentration was so strong, it forced CNT members off the 7<sup>th</sup> floor of the apartment building where they were negotiating (no gas masks) without their equipment, CNT was unusually close to the subject
- Communications with Escobedo was cut off, Escobedo called previous number



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Police then breached the door to Escobedo's apartment and introduced additional tear gas ("clear out" canisters)
- After hearing no response, ERT deploys a flash bang, starts a fire and they extinguish the fire
- Escobedo determined to be in bedroom



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- ERT forces bedroom door open, Escobedo yells at officers that he has a gun and points gun to his head
- ERT deploys another flash bang, room is "pitch black",
- Escobedo is located on floor of closet with gun to his head



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Escobedo begins to lower the gun and ERT officer shoots Escobedo, fearing for his life
- District court granted summary judgment for officers on scene, but NOT those using force



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Found use of tear gas, flash-bang grenades and ultimately lethal force was excessive based upon threat level
- *Court held that ERT Commander was making decisions without knowing all of the relevant and critical information regarding negotiations*



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- District Court denied summary judgment for other officers
- Appellate Court upheld lower court's decision to deny summary judgment



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

- Key points in court ruling:
  - Escobedo not posing a threat, not resisting arrest or fleeing or holding hostages, not warrants for his arrest, no crime, threats only to self
  - Only 3 hours into incident
  - **Decision makers lacked critical information**





# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

“Therefore, taking the facts in the light most favorable to the Estate, Defendant Officers would have known that Escobedo was incapacitated inside the apartment and decided to use more tear gas and flash bang grenades subsequent to the initial gas. The similarity of the facts on the *Marasco (Estate of Smith v. Marasco)* case and of Escobedo's situation placed the Officers on notice that their entry was possibly unconstitutional.”



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

“ . . . the clearly established law as of July 19, 2005, established that the use of tear gas is unreasonable when: (1) attempting to subdue individuals as opposed to mass crowds; (2) when the individual does not pose an actual threat; (3) when the individual is not holding hostages; . . . ”



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

“. . . (4) when the individual has not committed a crime and the officers are not in the process of attempting to make an arrest; (5) when the individual is armed but merely suicidal as opposed to homicidal; (6) when the individual is not attempting to evade arrest or flee from the police; and (7) when the individual is incapacitated in some form.”



# Escobedo v. Bender

**600 F.3d 770 (7<sup>th</sup> Cir.)**

“. . .twelve times the incapacitating level of tear gas necessary, the use of flash bang devices within the tear-gas-filled room, and the throwing of the flash bang device into a darkened room with no knowledge of the location of the individual inside that room could possibly create a violation that is so patent that no violator has even attempted to obtain an appellate ruling on it.”





**Morais v.**  
**City of Philadelphia**  
**Civil Action No. 06-582**  
**US District Court for the Eastern District of PA**



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Morais, 58, chronic paranoid schizophrenic, lived alone
- Acting inappropriately, banging on the floor, exposing himself thru window, throwing things from window (February 19, 2004)



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Case manager, Boyd, went to apartment with civil commitment order, obtained February 4
- Police called for assistance with transportation, Morais refused to answer the door



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Morais barricaded the door, ran a knife along narrow opening of door
- Officers requested backup and supervisor (11:47am)
- Morais yelled obscenities and threatened to shoot if an officer entered





# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Lieutenant McAndrews arrived approx 13 minutes later and requested SWAT
- Social worker spoke to Morais at the window, but was direct away by police
- Defendant Banach ordered an entry after being on scene 5-10 minutes at approximately 2:00pm



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Banach was afraid Morais would harm himself or a negotiator
- Approximately 2:00pm OC was introduced
- Morais could be seen as soon as entry initiated and was approximately 40 feet away



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Defendant McFadden advanced and sustained a serious laceration from a knife
- TASER deployed, negative results
- Attempt to take knives from Morais, Morais fatally shot in the head



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Suit filed
  - Claim of 4<sup>th</sup> Amendment violation for unreasonable force and unreasonable seizure
    - Launching a SWAT assault on Morais's apartment
    - Using deadly force to subdue Morais



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Suit filed
  - Claim against City of Philadelphia for failure to train, supervise, investigate and discipline when dealing with mentally ill



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Court considered 8 factors:
  1. Severity of the crime at issue
  2. Whether the suspect poses an immediate threat
  3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Court considered 8 factors:
  4. The possibility the person is violent or dangerous
  5. The duration of the action
  6. Whether the action takes place in the context of effective an arrest
  7. The number of persons with who the police must contend at one time



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- “Decedent did not pose an immediate threat to the safety of the officers or others.”
- Department policies hurt defendants case:
  - “time is of no importance when handling SMDP” and “time is of no importance in removing barricaded persons”





# Morais v. City of Philadelphia

## Civil Action No. 06-582

- “Decedent did not pose an immediate threat to the safety of the officers or others.”



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Department policies hurt defendants case:
  - “time is of no importance when handling SMDP” and “time is of no importance in removing barricaded persons”
  - Part of the defense was that exigencies existed and he needed to be removed ASAP



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- “The law was clear on Feb. 19, 2004, that it would be a constitutionally unreasonable use of force for a SWAT Team to storm the home of a mentally-ill suspect, in the absence of an immediate threat of harm.”



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- “An individual is liable under 1983 only if he personally `participated in violating rights or, . . . directed others to violate them, or, . . . had knowledge of and acquiesced in his subordinate violations.””



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- “Only those defendants who made, or contributed to, the decision to use the SWAT Team to storm the apt. or who participated in the breach are potentially responsible for the alleged constitutional violation.”



# Morais v. City of Philadelphia

## Civil Action No. 06-582

- Inadequate training, policy issues, wrongful arrest, some ADA claims dismissed in Summary Judgment
- Several claims not dismissed and sent back to trial court





**Federman v.  
County of Kern  
61 Fed. Appx. 438 (9<sup>th</sup> Circuit)**



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- Neighbors of Federman had complained about his odd behavior
- Sergeant Adam (Kern County SO) concluded, after a brief interaction with Federman in his home, that he should be taken into custody for an involuntary psych evaluation





# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- Sergeant Adam didn't advise Federman of his decision and planned the involuntary evaluation w/o a warrant
- Sergeant Adam requested SWAT to assist with detaining Federman



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- A 4-hour standoff ensues with law enforcement surrounding Federman's residence
- Federman was lured to an open window was OC sprayed
- Five officers make entry into the residence



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- Federman responded by firing two rounds from a rifle out of a window
- SWAT officers retreat and three rounds of tear gas were launched into the residence
- A diversionary device was introduced and SWAT officers reenter the residence



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- Federman dropped his guns, drew a knife and began walking towards the officers (*plaintiff claimed this was final act of surrender*)
- Federman continued to walk toward officers, Officer Dahl fired four less lethal munitions (wooden baton rounds)



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- Three officers open fire on Federman with standard/lethal ammunition in the middle of Dahl's less lethal rounds (total of 18 rounds fired)
- Federman fatally wounded



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- “First, plaintiffs have alleged constitutional violations. . .the Sheriff’s Department alleged reckless entry of Federman’s home with a SWAT Team, constitutes excessive force under the Fourth Amendment. . .”  
.



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- “. . .this aggressive entry without warning or a warrant, to detain Federman for psychiatric examination due to his odd but relatively trivial, non-criminal behavior, provoked Federman to resist and turned a relatively minor situation into a fatal shooting. . .No reasonable police officer could have believed that he was entitled to make such an entry.”



# Federman v. County of Kern

## 61 Fed. Appx. 438 (9<sup>th</sup> Cir.)

- Plaintiff's stated constitutional claim of excessive force for the fatal shooting of Federman





# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- “The law on excessive force was clearly established by April 21, 1998, the day Federman was shot and killed. At that time, the cases supporting plaintiff’s claims of constitutional violations (citations omitted) were clearly settled law.”

- 9<sup>th</sup> Circuit Court of Appeals



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- “Finally, resolving all factual disputes for plaintiff’s, a reasonable officer should have known that shooting Federman when he was “surrendering” violated his rights. . . . Deadly force was used against him following a surprise siege of his home by a SWAT team. . . . There was no immediate need to subdue him.”

- 9<sup>th</sup> Circuit Court of Appeals



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- “In short. . .the SWAT team entry into Federman’s home and the officer’s shooting of Federman were unreasonable. Qualified immunity was, thus properly denied the individual defendants on the excessive force claim.”

- 9<sup>th</sup> Circuit Court of Appeals



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- “The judgment denying immunity to the individual defendants on the excessive force claims is **AFFIRMED.**”

- 9<sup>th</sup> Circuit Court of Appeals



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- “The judgment denying immunity to the individual defendants on the excessive force claims is **AFFIRMED.**”

- 9<sup>th</sup> Circuit Court of Appeals



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- **Command Questions**

- Could video/audio assisted in determining if Federman was surrendering or aggressing the officers?
- What was the main issue of “material fact” in this case?
- Does your team determine articulable facts justifying the necessity for making an entry?



# Federman v. County of Kern

## 61 Fed. Appx. 438 (9<sup>th</sup> Cir.)

- **Command Questions**

- Do you ascertain if articulable facts exist prior to any escalation?
- What is your policy on chemical agents/OC as it relates to EDP's?



# Federman v. County of Kern

**61 Fed. Appx. 438 (9<sup>th</sup> Cir.)**

- Government has no obligation to stop a person (not in custody) from committing private violence





# *Questions?*



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