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PERSPECTIVE

Court should affirm 9th Circuit on crisis intervention policing

By Michael W. Bien and Lisa Ells

In the coming weeks, the U.S. Supreme Court will decide whether to review the 9th U.S. Circuit Court of Appeals' Feb. 21 decision in *Sheehan v. City and County of San Francisco*, 743 F.3d 1211 (9th Cir. 2014), which, in relevant part, followed three other circuits in holding that police must take reasonable steps under the Americans with Disabilities Act to accommodate people with disabilities, including mental illness, when effectuating arrests.

At first blush, law enforcement might decide they want the Supreme Court to grant the petition and reverse — freeing already overburdened police officers from any extra obligations. But law enforcement should welcome the Sheehan decision because it points the way to safer policing of individuals in mental health crisis.

The case arose when Teresa Sheehan's social worker called the police to Sheehan's residence at a group home for people with mental illness. The social worker was concerned because Sheehan's mental state had deteriorated to where she had stopped taking her medications, had stopped eating and changing clothes, and had even threatened the social worker with a knife. He asked the police to help him exercise his authority to get Sheehan into temporary inpatient treatment by taking her into custody and transporting her to a mental health facility for a 72-hour commitment under California Welfare and Institutions Code Section 5150.

When the officers arrived, they entered Sheehan's room without a warrant, and she responded violently, threatening them with a knife. The officers retreated back into the hallway, outside of Sheehan's closed door, and called for backup. The 9th Circuit held that the officers were justified in entering Sheehan's room based on the information they received from the social worker.

The problem is what happened after the officers exited Sheehan's room. The officers knew that Sheehan was the only person in the building, and that her only tenable means of escape from the room she was in was through the door they were blocking. Neither Sheehan's clinical social worker nor the officers believed her to be at risk of harming herself. But the officers decided not to wait for backup to arrive, nor to speak with Sheehan through the door, nor to simply give her some time to calm down. Instead, the officers used considerable force to reenter Sheehan's room with their weapons drawn — again, under the auspices of trying to help Sheehan get treatment for her mental illness she almost certainly really needed. When she again brandished her knife at them, the officers shot Sheehan five or six times at close range. Sheehan survived, amazingly enough.

It was the officers' decision to forcibly enter Sheehan's room the second time sparked the violent confrontation that put both her and the officers at needless risk. That unnecessary risk resulted directly from the officers' choice to ignore commonly accepted principles about how to defuse such situations — the exact same tactics the San Francisco Police Department trains their officers, including the officers here, to employ. As the former deputy chief of the Los Angeles Police Department testified, SFPD's own training materials are in line with general police "best practices" that teach officers to take time to assess the situation and wait for backup, to calm the situation down, to communicate with the emotionally disturbed person in a quiet, nonthreatening manner, and to allow the person time to calm down.

These common-sense tactics recognize the reality that persons suffering from mental illness often have great difficulty responding promptly and appropriately to police instructions and conforming their behavior in response. Studies show that when officers are trained properly to look for signs of mental illness and make appropriate adjustments to regular police practices, injuries to both officers and community members with mental illness drop precipitously.

The universal need for law enforcement's adoption of similar de-escalation techniques is becoming increasingly urgent as communities across the country continue to underfund mental health services, forcing inevitable confrontations with the police. In San Francisco, the police department shot and killed 19 civilians from 2005 to 2013. Eleven of the 19 (almost 60 percent) suffered from a mental illness — a rate far disproportionate to the estimated 17 percent of American adults living with a serious mental illness.

The gravamen of Sheehan's ADA claim is that the officers — agents of a public entity unquestionably covered by Title II, 42 U.S.C. Section 12132 — knew she was mentally ill, but nonetheless failed to accommodate her disability because they did not consider reasonable alternatives to immediately forcing their way back into her room, which sparked an unnecessary (but entirely foreseeable) violent confrontation that led to the shooting. All of this was under the auspices of "helping" Sheehan get treatment for her mental illness, not because she was at immediate risk of harming someone or escaping.

Of course, as the 9th Circuit recognized in its decision, officers are sometimes faced with emergency situations that require immediate action to prevent imminent harm; in those situations, "exigent circumstances inform the reasonableness analysis under the ADA" — meaning that the officers would not be required to employ the full battery of de-escalation tactics due to the urgency of the danger.

Drawing the line between these two circumstances — those where police are required under the ADA to take reasonable measures to accommodate an individual's mental illness to avoid unnecessary harm, and those emergent situations requiring immediate police action — is unquestionably difficult. But it is worth doing to protect officers, persons with mental illness, and the public.

It is important to be specific about what the 9th Circuit did not do in Sheehan: It did not rule that the ADA requires police officers to act in ways that increase the danger that an officer will be killed or wounded; it did not rule that the officers who shot Sheehan violated the ADA. It merely ruled that, on these narrow facts, where a legitimate factual dispute exists as to whether officer or public safety considerations necessitated the second entry, it should be up to a jury, not a judge, to decide whether the officers violated the ADA by failing to consider alternatives in light of Sheehan's disability. Where officer or public safety demands such an immediate entry into private property, or even use of deadly force, nothing in the ADA as read by Sheehan restricts officer conduct.

It is critical for law enforcement agencies and police officers to be prepared to avail themselves of opportunities to avoid violent and deadly confrontations. The officers in Sheehan failed to do that.

The 9th Circuit got it right in Sheehan. Those in law enforcement are pained when any officer faces trial and liability in a civil rights case — even when the municipal employer pays for defense and indemnifies liability. The Sheehan decision, however, deserves the support of the law enforcement community. It sends a clear message that departments must get smart about dealing with mental health crises in ways that do not endanger their officers. Even an enlightened department like San Francisco's, with good written de-escalation policies, needs the sharp message of litigation to make sure those policies get priority in training, implementation, and enforcement. Reversing Sheehan would be a setback for the safety of police and the public.

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