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## **Suicide By Cop**

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#### **1. Introduction.**

The "Suicide By Cop" referred to and discussed in this article is not the suicide of police officers themselves. (See the references at the end for a link to a prior Monthly Law Journal article which did discuss such suicides). Rather, it is instances in which offenders and/or mentally disturbed persons may intentionally or recklessly provoke situations in which they seek to compel police officers to use deadly force against them. In other words, committing or attempting to commit suicide by having police kill them.

The term has become popularized in recent years, and indeed, in at least one case discussed below, the decedent reportedly yelled "Suicide by cop!" while throwing a knife at officers before they shot and killed him.

The phenomenon is troubling in a variety of ways, and officers involved in such shootings have often found it emotionally disturbing and traumatic to themselves. The estates of persons shot and killed in such incidents have filed both federal civil rights and state law negligence lawsuits in a number of instances, contending either that the use of deadly force was not actually justified under the circumstances, or that other tactics or more adequate training on dealing with suicidal or disturbed individuals may have resulted in a less violent result. In the following article, we will examine some of these cases.

The usual rules concerning the use of deadly force do apply---that is, the courts have upheld the right of police officers to use such force to respond to what they reasonably believe is an imminent threat of death or serious bodily injury

posed by individuals despite the fact that the motivation of such persons may be suicidal. The ultimate question, however, may be what steps law enforcement agencies may take, in the areas of training and policy, to prepare personnel to best grapple with the problem posed by confrontations with suicidal individuals, and thereby lessen the number of resulting deaths.

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## **2. Suicide By Cop.**

While it may not be an everyday occurrence, "suicide by cop" is not an extremely rare phenomenon which can be dismissed as insignificant. A 1998 report, for instance, sought to examine all shootings involving deputies of the Los Angeles County, California Sheriff's Department, and concluded that incidents that could be classified as "suicide-by-cop" amounted to approximately 11% of all deputy-involved shootings, and 13% of all deputy-involved justifiable homicides.

It defined suicide by cop as "an incident where a suicidal individual intentionally engages in life-threatening and criminal behavior with a lethal weapon or what appears to be a lethal weapon toward law enforcement officers or civilians specifically to provoke officers to shoot the suicidal individual in self-defense or to protect civilians." H. Range Huston, M.D., Diedre Anglin, M.D., et al, American College of Emergency Physicians, "Suicide By Cop," *Annals of Emergency Medicine* 32, no. 6 (December 1998).

That such shootings may result in substantial liability is clearly illustrated by one Florida case. In [Runnels v. City of Miami](#), U.S. Dist. Ct. No. 00-2930 (S.D. Fla. 2002), the family of a man shot dead after he threw a knife at officers and screamed, "Suicide by cop!" received a \$1.25 million settlement in a lawsuit against the city in which it was alleged that a plastic gun was "planted at the scene of the shooting to justify it.

In this case, a Miami, Florida SWAT officer shot and killed a man after officers were summoned because of a call from neighbors reporting that he was screaming. The 25-year-old man was allegedly drunk and suicidal at the time following an argument with his girlfriend.

The man allegedly threw a knife at the officers and screamed "Suicide by cop!" When the officer shot and killed him shortly after that, he claimed that he observed a gun in the man's possession. During a subsequent investigation of the incident, a plastic gun was recovered, and pointed to as justification for the shooting.

The surviving family of the decedent filed a federal civil rights lawsuit against

the city, and it was alleged that the plastic gun was "planted" at the scene. The shooting officer was subsequently indicted on criminal charges of shooting an unarmed man, and had previously been indicted on a similar charge.

If the decedent was intending to provoke his shooting by the officers when he threw the knife, the gist of the argument behind the lawsuit was whether he still posed a viable threat to the officers or others after he threw the knife, and before he was shot.

In [Murphy v. Bitsoih](#), 320 F.Supp.2d 1174 (D.N.M. 2004), a federal trial court ruled that officers who shot and killed a man who "demanded " that they kill him were not entitled to summary judgment on his estate's federal civil rights claim for excessive force. There was, the court reasoned, a factual dispute over whether he was armed with a knife at the time of the shooting, and whether he posed an immediate threat to them.

In this case, police received a 911 call from a man's girlfriend informing them that he was threatening suicide. Three officers were dispatched to the couple's home, along with a sergeant. They were informed over the radio that the man was armed with a knife and wanted to "commit suicide by cop."

The officers were armed with beanbag guns, and mace, as well as other weapons. When they walked towards the residence, they heard the man shouting statements such as, "Kill me, shoot me, I don't care." They saw him standing near his apartment behind a retaining wall, and he complied with their instructions to step out from behind the wall. Officers stated that they noticed that he was holding a 12-inch long butcher's knife in his right hand.

The officers claimed that the man, in response to commands that he put down the knife, did not comply, but rather demanded that they shoot him. Two of the officers claimed that the man began walking in an aggressive manner towards them, "flailing his arms" and holding the knife out at his side. The sergeant, however, characterized the man only as "taking steps" toward the officers, and did not indicate that he felt threatened by or scared of the man. The officers did not retreat or take cover.

According to the officers, one of them fired a beanbag round, which hit the man in the stomach, causing him to bend down "just a little bit." He then stood up again and continued toward the officers. A second beanbag round which struck the man on the chest had no effect. One of the officers, allegedly waiting to see the man take one more step after being shot with the second beanbag round, then fired at the man with his assault rifle. This officer fired two or three shots, and another officer fired three shots. Neither of them gave any warning prior to firing. After

the man fell to the ground, an officer removed the knife the man allegedly was still holding, and another officer placed him in handcuffs. The man subsequently died.

In a federal civil rights lawsuit, the plaintiffs claimed that the decedent did not have a knife five minutes before the officers' arrival, and that the knife was planted by the police after they shot him. The man's girlfriend suggested that one of the officers entered her home to obtain a knife to plant on the decedent. The plaintiffs also claimed that, if the decedent were holding a knife, he was doing so in a non-threatening manner with the blade facing down, not aiming it at anyone.

The trial court noted that evidence regarding police training guidelines produced on a motion for summary judgment indicated that police officers generally cannot justify the use of lethal force on an unarmed suspect approaching them.

The court ruled that the plaintiffs had no standing to assert federal civil rights claims for loss of familial association, in the absence any evidence that the officers, in their actions, intended to interfere with the personal relationship between the decedent and themselves.

Summary judgment was therefore granted on federal constitutional claims for loss of familial association. The court also ruled that only the estate of the decedent had standing to assert constitutional claims on his behalf, and therefore granted summary judgment in the defendants' favor on the federal civil rights claims brought by the plaintiffs individually, leaving only those asserted by his estate. A similar ruling was made concerning the state law wrongful death claims.

The court denied qualified immunity to the two officers who shot the decedent, ruling that if the facts were as the estate asserted them, i.e., either that the decedent was not armed with a knife, or was not posing an immediate threat to them at the time, they could not use deadly force against him. The court pointed to prior case law suggesting that the mere fact that the decedent was in possession of a knife was not enough.

[In cases where the] courts found the use of deadly force objectively reasonable, the suspects were either immediately upon, or one to two feet from, the officers, and the suspects actively lunged toward, swung at, or struck the officers. [...] Even absent the allegations that decedent Murphy was unarmed, no reasonable officer could have believed that the use of deadly force was lawful under the circumstances alleged by the Estate. [...] On the facts viewed in a favorable light to the Estate, the decedent did not exhibit aggressive or threatening conduct.

The estate also claimed that the officers knew that the decedent was

"attempting to commit suicide by cop and that he was not threatening anyone else." If this were true, the court found, the use of deadly force would violate clearly established law. The court therefore allowed the federal civil rights claims against the officer to go forward, along with state law battery and wrongful death claims.

The court dismissed claims against police chief in his individual capacity for allegedly maintaining an unwritten custom or police of permitting or condoning the use of excessive force, and for inadequate supervision, hiring, and training, as well as claims against the city and the police chief in his official capacity, except for the inadequate training claim.

The court noted that "inadequacy of police training may serve as a basis for Section 1983 liability only when the failure to train reflects a municipality's deliberate indifference to the rights of people with whom the police come into contact." The court found that the record contained few "specific facts showing that there is a genuine issue for trial" on the inadequate training claims, but declined to dismiss that claim because the defendants, while seeking summary judgment on all claims, did not address the inadequate training claims in their supporting memoranda.

In [City of Simi Valley v. Superior Court \(Bayer\)](#), No. B166917, 4 Cal. Rptr. 3d 468 (Cal App. 2003), the court ruled that the family of a mentally disturbed man who allegedly committed "suicide by cop" could not pursue California state law negligence lawsuit for wrongful death against the city and officers following summary judgment for the defendants in their prior federal civil rights lawsuit. The appeals court also found no violation of California state constitutional rights.

The prior federal civil rights lawsuit against a California city and its police department officials argued that officers used excessive force in violation of the [Fourth Amendment](#) when they fired tear gas into a man's car, allegedly provoking "a confrontation with a mentally disturbed man that they should have known would lead to his inevitable death." A confrontation following the use of the tear gas did, indeed, result in his fatal shooting. Upholding summary judgment in favor of the defendants, a federal appeals court found the officers' actions to be a reasonable use of non-lethal force under the circumstances. [Bayer v. City of Simi Valley](#), No. 01-55736, 43 Fed. Appx. 36 (9th Cir. 2002).

The decedent led the officers on a three-hour chase, disobeyed orders to desist, and shot at the officers, and was threatening to do so again at the time the tear gas was used. "It is reasonable for police, following four hours of armed standoff and failed negotiations, to use non-lethal force to extricate a subject who has shot at police and refuses to surrender."

The surviving family then filed a state law negligence wrongful death complaint in California state court. They argued that the officers basically allowed the decedent to commit "suicide by cop," putting himself in a position that led to his death.

A California intermediate appeals court held that the determination by the federal court, as a factual matter, that the officers acted in an objectively reasonable manner, barred the plaintiffs from pursuing their state law negligence claim for wrongful death.

The appeals court also found that there is no available claim for damages to remedy an alleged violation of the due process clause of the California state constitution, [Art. 1, Sec. 7\(a\)](#).

Given that the federal court previously found that the officers' refusal to allow family members to speak with the decedent was not a violation of their federal constitutional rights, and that the state appeals court found no viable claim for violation of the state constitution, it also concluded that there could be no recovery under a California statute providing for damages when constitutional rights are violated. [Cal. Civ. Code Sec. 52.1](#).

In contrast, in a New Mexico case, while federal civil rights claims arising out of a shooting of a suicidal individual were rejected, state law negligence liability was found. In that case, [Quezada v. Co. of Bernalillo](#), #90-2014, 944 F.2d 710 (10th Cir. 1991), a federal appeals court overturned a \$1.24 million award against a deputy for violating the decedent's federal civil rights in the shooting death of a suicidal woman. The appeals court found that the trial court failed to assess the possible objective reasonableness of the deputy's action in firing when he believed that the woman may have been pointing her weapon at him. The court did uphold, however, the county's liability under state law for negligent failure to train or supervise deputies on how to deal with potential suicides, and an award against the deputy for acting negligently under the circumstances.

The woman was the sole occupant of a car parked in a lot behind a building at night. A deputy noticed the vehicle in the lot and investigated after radioing dispatch. The woman was initially unresponsive, then reluctantly rolled down her window, while refusing to produce a driver's license. Other deputies arrived on the scene. They saw the woman pick up a pistol and load it with a magazine containing bullets.

In response, all three deputies then on the scene drew their weapons, and two of them took cover, while one of them moved only a few feet away, staying close and ordering the woman to put her gun down. She responded by saying, "Leave me alone, I want to kill myself." She then placed the muzzle of the gun to her right

temple, followed by waving the weapon from the point of her right temple to her mouth, and also inserted the muzzle of the weapon inside her mouth.

All of the deputies then realized that the woman was suicidal, and also knew that she was drinking. The closest deputy saw her lower her gun to take a drink of beer, and a smell of alcohol came from the open window of the vehicle.

She did not cooperate with orders to lower her weapon, or come out of the vehicle, and she put her car in gear and tried to slowly maneuver around the police cars and drive away. One of the deputies moved his car to block the exit of the parking lot. The closest deputy subsequently claimed that she pointed her gun at him once before she tried to drive away. He described her movements as "lackadaisical" and "aimless," and said she only pointed the gun in his "general direction."

He positioned himself about five feet from the car door after she stopped the car, standing where he thought she could not see him. Lights from the police vehicles were trained on her. The deputy claimed that at one point she turned abruptly and aimed the weapon at him, lowered her head, and sighted, causing him to believe that his life was in jeopardy, in response to which he shot three times, striking her twice and fatally wounding her.

In overturning the federal civil rights award based on the deputy's actions, the appeals court found that the trial court had failed to assess whether the deputy acted in an objectively reasonable manner in shooting the woman, based on a reasonable belief that she then posed a threat by pointing her weapon at him. If this was, in fact, the case, he could not be held liable for shooting and killing her under these circumstances.

The appeals court upheld, however, a finding that the sheriff and county were negligent in training deputies and failing to institute policies and procedures to deal with potential suicides, while rejecting an argument that this negligence in training constituted "deliberate indifference" to a known serious risk of harm for purposes of a federal civil rights inadequate training claim.

The deputy was found to have placed himself in a position of "great jeopardy" by standing in the open and close to the car, disregarding his own safety by standing where he did, leaving no room for error, and "forcing the deadly confrontation" because, given his vulnerable location, his only available option was deadly force. But for this negligence, the trial court had reasoned, deadly force would not have been required.

On this negligence claim, the appeals court found that this was a permissible

decision in light of the evidence.

While the shooting deputy testified that he was not aware of any department policy on how to handle a suicidal person with a deadly weapon, one of the other deputies testified that when dealing with a potential suicide, the proper procedure is to secure the scene and then try and talk to the individual.

A training officer for the county testified that in certain situations, it is not sound to approach a suicidal person, although the cases must be handled on an individual basis, with one proper tactical approach for dealing with a suicidal person in a vehicle being to use any available cover and attempt to establish verbal communication before approaching.

The appeals court ordered further proceedings on the proper amount of damages to be awarded on the state law negligence claims, since it could not determine how much of the award was for the federal civil rights claims set aside and how much was for the state law negligence claims.

Other cases of interest, involving the shooting of suicidal individuals include:

\* [Bennett v. Murphy](#), #00-2667, 274 F.3d 133 (3<sup>rd</sup> Cir. 2001), in which the court found that the shooting and killing of a suicidal individual armed with a shotgun who had only pointed his weapon at himself would have been unreasonable if he stopped advancing on officers at the time he was shot, but the trial court was still required to determine whether the law on the subject was clearly established at the time of the incident in order to rule on the shooting officer's defense of qualified immunity.

\* [Ford v. Moore](#), No. 99-9303, 237 F.3d 156 (2<sup>nd</sup> Cir. 2001), in which the court ruled that a police supervisor who dispatched officers to a field where a youth was threatening to kill himself had no liability for the youth's subsequent death based on his failure to issue detailed commands via radio to those on the scene. Further, no "cover up" was shown simply based on his instructions to two officers to prepare a joint report rather than writing individual accounts, when he had no reason to think that any crime had occurred.

\* [Campbell v. City of Leavenworth](#), No. 83,833, 13 P.3d 917 (Kan. App. 2000), which ruled that an officer acted reasonably in shooting and killing a man who, having stated that he would kill officers if he was not killed himself, charged at the officer with a metal object held in a threatening position.

\* [Woods v. City of Lakeland, Fl.](#) #98-3171, 203 F.3d 1288 (11<sup>th</sup> Cir. 2000), in which the court concluded that a police officer acted reasonably in shooting and

killing a man, armed with a knife, who had threatened suicide and had already injured himself. The officer could reasonably have believed that the man, who refused several orders to drop the knife, was coming towards the officers, and might injure or kill one of them.

\* [Yellowback v. City of Sioux Falls](#), #20719, 600 N.W.2d 554 (S.D. 1999), in which the court found that an officer was legally justified in shooting and killing a man advancing towards two officers with a knife held to his own throat who had previously stabbed his brother. The fact that he then posed a threat to the officers, the court reasoned, rendered irrelevant any evidence of possible alternate strategies officers might have used prior to that point, or evidence concerning the officer's past disciplinary records or city use of force policy.

\* [Henderson v. Munic. of Cool Valley](#), 17 F. Supp. 2d 1044 (E.D. Mo. 1998), finding that the city could not be liable for alleged failure to adequately train, supervise, and discipline an officer who shot an arrestee when the officer's actions in shooting the man, who had come towards him brandishing a screwdriver, were objectively reasonable. Municipal liability, the court noted, must be based on policy causing a violation of plaintiff's rights.

\* [Sova v. City of Mt. Pleasant](#), #96-2480, 142 F.3d 898 (6<sup>th</sup> Cir. 1998), ruling that police officers who shot and killed a suicidal man were improperly granted qualified immunity when factual issues concerning whether man had threatened to get a gun or was coming at the officers holding knives were unresolved.

\* [Russo v. City of Cincinnati](#), #90-3432, 953 F.2d 1036 (6<sup>th</sup> Cir. 1997), finding that a police officers' shooting of a paranoid schizophrenic man twenty-two times presented a jury question on excessive use of force. The decedent, while armed with knives, may not have posed a serious threat of harm following a first or second round of shots. The plaintiffs also stated a claim against the city for inadequate training on use of force on disturbed persons.

\* [Martinez v. County of Los Angeles](#), 47 Cal. App. 4<sup>th</sup> 334, 54 Cal. Rptr. 2d 772 (1996), finding that sheriff's deputies acted reasonably in shooting and killing a man intoxicated with PCP and armed with a knife who slowly advanced towards them and announced his intention of killing them if they did not shoot him.

\* [Waybenais v. U.S.](#), 769 F. Supp. 306 (D. Minn. 1991), ruling that a Bureau of Indian Affairs officer properly shot an intoxicated man running at officers with a rifle pointed at them. The fact that the rifle was later found to be unloaded was irrelevant to the officer's decision to use deadly force at the time, since the issue was what he reasonably believed at the time.

In an article on the subject of "Suicide By Cop," which appeared in the August

1998 FBI Law Enforcement Bulletin (cited later in this publication), the authors concluded that:

"Further research into this topic could have a significant impact on police-community relations by illustrating the role of many shooting suspects in causing their own deaths."

"Police officers themselves could better adjust to the trauma of shootings by gaining an appreciation of the suicidal nature of many subjects. The ability to curb litigation also would occur as juries more appropriately assess the culpability of all parties to a shooting. Finally, management could adjust police training and tactical operations to more appropriately respond to the phenomenon of suicide by cop."

"In an ideal world, no police officer would ever have to shoot a suspect; peaceful resolution would occur. Yet, every day, officers become involved in dangerous situations where this does not hold true. Properly trained officers who understand the motivations of subjects with suicidal impulses and know how to deal with them will be better prepared to avert these tragedies."

Those conclusions remain compelling today.

### **3. Some Relevant References & Resources.**

#### **Articles:**

\* Suicide by Cop: Reducing Personal and Organizational Liability Through Investigation, Audrey L. Honig, Ph.D., Journal of California Law Enforcement (Apr. 2006).

\* "Suicide by Cop," by Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, 74 FBI Law Enforcement Bulletin, No. 2, pgs. 8-21. (February 2005). [[PDF](#)] [[HTML](#)] "The adoption of a national definition of suicide by cop, criteria to determine what constitutes such acts, and a reporting mechanism to record them must occur to effectively address the devastation brought about by this phenomenon."

\* "Suicide Risk and Hostage/Barricade Situations Involving Older Persons," by Arthur A. Slatkin, Ed.D., 72 FBI Law Enforcement Bulletin No. 4, pgs. 26-33 (April 2003). [[PDF](#)] [[HTML](#)]

\* Suicide-By-Cop: Liability, Training, and Municipal Concerns, John Peters, Police and Security News (Jan-Feb. 2003).

\* Journal of the Academy of Psychiatry and the Law, R. D. Miller, M.D., Ph.D., 29 (3) Suicide by Cop and Criminal Responsibility (Sep. 2001).

- \* [Suicide by Cop - The Ultimate Trap](#), Louise Pyers, M.S, FBI National Academy Magazine ( Jul-Aug 2001).
- \* Clinical and forensic indicators of "suicide by cop," Mohandie and Meloy, 45 (2) Journal of Forensic Sciences (March 2000).
- \* Suicide by Cop, Hutson, et al., 32 (6) Annals of Emergency Medicine 665-669 (Dec. 1998).
- \* "Suicide by Cop," by Daniel B. Kennedy, Robert J. Homant, and R. Thomas Hupp, 67 [FBI Law Enforcement Bulletin](#) No. 8, pgs. 21-27 (August 1998). [[PDF](#)] "Law enforcement agencies must learn more about the motivations of suicidal subjects and how to approach them."
- \* Suicide by Cop, Clinton R. Van Zandt, 60 (7) The Police Chief (IACP) 24-30 (July, 1993).

**Websites:**

- \* American Association of Suicidology: <http://www.suicidology.org/>
- \* American Foundation for Suicide Prevention: <http://www.afsp.org/>
- \* National Institute of Mental Health: Suicide Statistics and Prevention: <http://www.nimh.nih.gov/publicat/harmsway.cfm/>

**Past Monthly Law Journal Articles of related interest:**

- \* [Civil Liability for Prisoner Suicide](#), 2007 (2) AELE Mo. L.J. 301 (Feb. 2007).
- \* [Suicide and Public Safety Officers: Disciplinary, Medical and Compensation Issues](#), 2007 (5) AELE Mo. L. J. 201 (May 2007).

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