



Cite as: 2008 (5) AELE Mo. L. J. 501

ISSN 1935-0007

Special Articles Section - May 2008

Long v. Honolulu Police Sharpshooter Decision

Wahiawa is a picturesque community on the central plain of Oahu island, about 20 miles northwest of downtown Honolulu. Shortly after 2 A.M. on Sunday, June 3, 2001, trouble began at a late night graduation party. Twenty year-old Dustan Dominic Long responded to three party crashers by firing multiple shots at them from a .22 cal. rifle. Two youths were wounded and hospitalized.

Honolulu patrol officers responded, but were later replaced by SWAT team members from the HPD Specialized Services Division. They tried to contact Long on his home phone, but he did not answer. At various times he yelled threats at the officers.

The standoff continued for more than two hours. Shortly before 5 A.M. he shot off a round and officers took cover. A police marksman fired, wounding the youth. [1]

Not knowing whether others shooters might be present, officers requested an armored vehicle from the Hawaii National Guard. It did not arrive until 90 minutes after Long was shot. He was found dead in the back yard.

A federal civil rights lawsuit was filed by Long's mother, which also raised state claims. She alleged that:

1. Officers refused to allow a friend of Long's to negotiate his surrender.
2. Honolulu failed to properly train the SWAT officers on the use of deadly force.
3. Officers were consciously indifferent to her son's medical needs by waiting for an armored vehicle to arrive. He was allowed to "bleed to death" needlessly.
4. Superiors ratified the preventable shooting by failing to discipline the marksman.

The District Judge noted that:

1. Long shot at people (although he may not have known that he wounded two of them).
2. He was barricaded in his residence, surrounded by police.
3. He told police to turn off the lights shining on the house, or he would shoot. At one point he yelled at officers that they had 10 seconds “to get the f*** out of his yard.”

In dismissing all claims, the District Judge wrote that the marksman “had probable cause to believe that Long was an immediate threat of serious physical harm to other officers located on the perimeter ... [and it] was objectively reasonable under these undisputed facts for [him] to believe that a shot was needed.” *Long v. C&C of Honolulu*, 378 F.Supp.2d 1241 (D. Haw. 2005).

A three-judge panel affirmed on Dec. 21, 2007. They refused to second-guess the adequacy of HPD’s training program, the refusal of the incident commander to allow relatives to participate in negotiations, the marksman’s decision to shoot, or the judgment to delay entry until after an armored vehicle was on the scene. *Long v. C&C of Honolulu*, #05-16567, 511 F.3d 901 (9th Cir. 2007). Both the trial and appellate court opinions are online at www.aele.org/long-honolulu.html

The decision to wait for a light armored vehicle for safety reasons did not rise to the level of conscious indifference, even if the delay may have contributed to the death of the plaintiff’s son.

A judge who has taught at police liability seminars for more than 30 years commented, “Long is a classic ‘totality of the circumstances’ decision and an example of acting on what was known and heard at the time, as opposed to what was discovered after the fact.” –*Emory A. Plitt, Jr, Third Judicial Circuit Court of Maryland.*

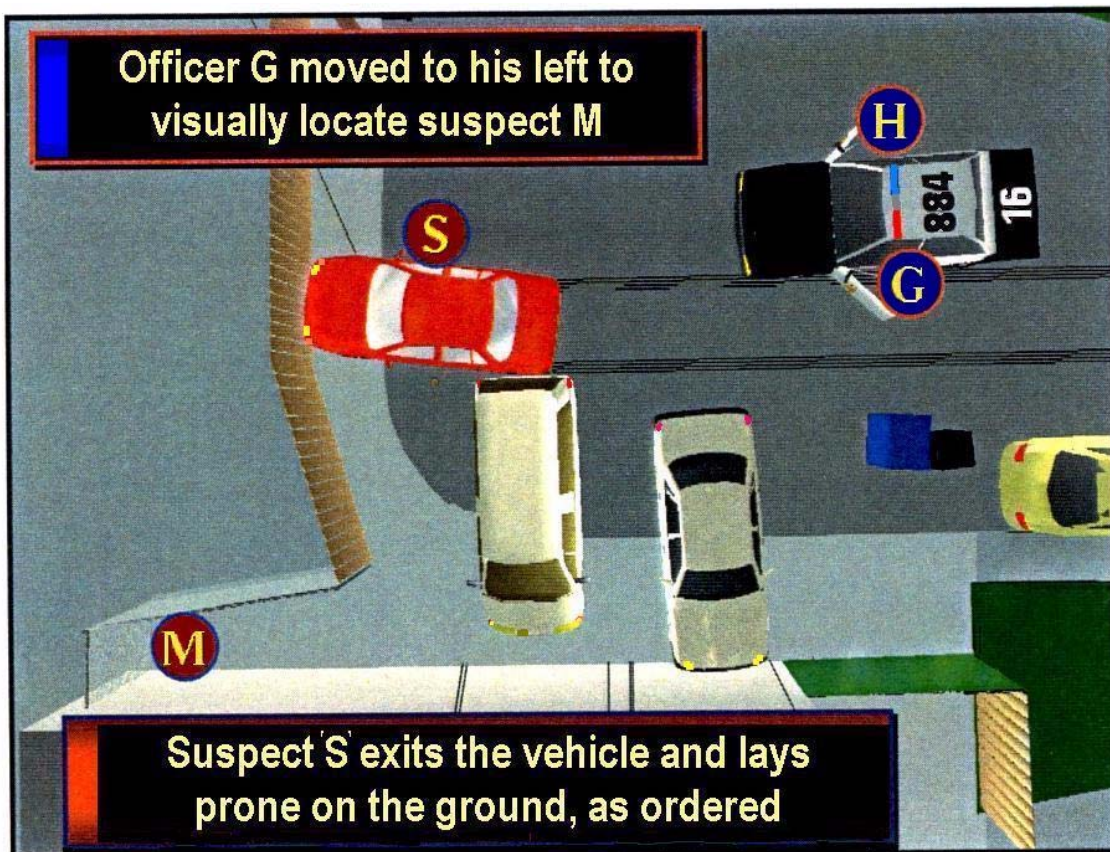
Although the lawsuit was won, the litigation raised many questions. What are the recognized best practices and how does your agency rate?

1. What is your agency’s negotiation plan for standoffs? Small agencies should have a procedure for summoning trained negotiators from other agencies.
2. What is your agency’s sniper/marksmen authority plan? Do marksmen need authorization from the incident commander before shooting? Under what circumstances can they act independently?
3. Is a tactical response/rescue vehicle summoned when an incident begins?

Smaller and remote agencies may have to improvise, such as using a street/highway department dump truck.

4. Are ambulances and fire-fighting vehicles stationed nearby?
5. Has the 911 center been notified to copy and preserve communication tapes? Are dispatchers asked to keep a written time log of all communications related to the incident? *Be sure to have all logs and tapes at the after-action debriefing session.*
6. How is the debriefing session structured? After many painful litigation experiences, LAPD creates PowerPoint® presentations that incorporate photographs, audio and video segments, diagrams, graphs, animations, simulations and panoramic views. [2]

• *Make copies of the presentation on CD-ROM or DVD disks!*



Above: PowerPoint® depiction of a shooting scene.

7. Are officers that are directly involved in a lethal force incident required to attend a retraining session (narrowly pertaining to the situation)? LAPD

requires the retraining 21 days after the incident. Imagine the consequences if an officer that used deadly force, when testifying at a deposition or in court, is unable to describe his or her training or to articulate agency policies.

If deadly force is used, a lawsuit follows almost inevitably. Plaintiff's counsel is likely to hire former officers as "experts" to critique the agency's emergency response plans and critical ops procedures -- along with the selection process and training of tactical officers.

It is wise to review your agency's tactical procedures and practices -- and to compare them with those discussed in various publications. Because there are no generally accepted *standards*, expert witnesses often cite research reports and the recommendations and cautions expressed by experienced authors in professional magazines and journals. [3] A few of these are:

A. AELE Law Enforcement Legal Center – www.aele.org/

- (1) Civil Liability for SWAT Operations, Jul. 2007
viewable at <http://aele.org/law/2007-07MLJ101.html>

B. California Attorney General

- (1) Cmsn. on SWAT Final Report, 2002 – <http://ag.ca.gov/publications/swat.pdf>

C. FBI Law Enforcement Bulletin – www.fbi.gov/publications/leb/leb.htm

- (1) Rethinking SWAT, Apr. 1993
- (2) Deadly Force in Defense of Life, Aug. 1993
- (3) Legal Issues in Crisis Management, Jun. 1994
- (4) Liability Implications of Departmental Policy Violations, Apr. 1997
- (5) Suicide by Cop, Aug. 1998
- (6) Negotiation Concepts for Commanders, Jan. 1999
- (7) Reluctance to Use Deadly Force, Oct. 1999
- (8) Hostage/Barricade Management, May 2002
- (9) Use-of-Force Policies and Training, Part One, Oct. 2002
- (10) Use-of-Force Policies and Training, Part Two, Nov. 2002
- (11) Crisis Negotiation Teams: Selection and Training, Nov. 2002
- (12) Suicide Risk & Hostage/Barricade Situations Involving Older Persons, Apr. 2003
- (13) Role-Playing: A Vital Tool in Crisis Negotiation Skills Training, Feb. 2004
- (14) Role-Play Training for Negotiators in Diverse Environments, Jun. 2004
- (15) Crisis Intervention for Law Enforcement Negotiators, Oct. 2004
- (16) After Firing the Shots, What Happens? Sep. 2005
- (17) Developing a Scenario-Based Training Program, Oct. 2005
- (18) Deaths During Police Intervention, Apr. 2006
- (19) Law Enforcement Response at a Crisis Scene, Apr. 2006
- (20) Documenting the Use of Force, Nov. 2007

D. Force Science Research Center, Minnesota State University –
www.forcescience.org/

- (1) FS News # 41-42, How to Assure Fair, Neutral & Fact-Finding O.I.S. Shooting Investigations, 2006
- (2) FS News # 61, New Findings About Simulation Training and Post-Shooting Interviews, 2006

E. International Association of Chiefs of Police – www.theiacp.org/

- (1) Model Policy, Post-Shooting Incident Procedure, 1990
- (2) Model Policy, Hostage/Barricaded Subject Incidents, 1991
- (3) Model Policy, Dealing with the Mentally Ill, 1997
- (4) Training Key # 515, Hostage and Barricaded Subjects, 1999
- (5) Deadly Force Encounters, by Elliot Spector, IACP 2000 conference presentation, viewable at <http://aele.org/losforce2000.html>
- (6) Critical Incident Liability, by Carl Milazzo, IACP 2001 conference presentation, viewable at <http://aele.org/critical-01.html>
- (7) Practical Pointers for Limiting Critical Incident Liability, by Claire McNaught, IACP 2001 conference presentation, viewable at <http://aele.org/practical-01.html>
- (8) Report, Police Use of Force in America, 2001, viewable at <http://theiacp.org/documents/pdfs/Publications/2001useofforce.pdf>
- (9) Psychological Services, Officer-Involved Shooting Guidelines, 2004, http://theiacp.org/div_sec_com/sections/OfficerInvolvedShooting.pdf
- (10) Model Policy, Use of Force, 2006
- (11) Model Policy, Barricaded Subjects, 2007

F. National Institute of Justice – www.nij.ncjrs.gov/publications/

- (1) Understanding the Use of Force By and Against the Police, 1996
- (2) Police Response to Emotionally Disturbed Persons, 1999

G. National Tactical Officers Association – www.ntoa.org/

- (1) Suggested Procedures for Resolving Barricaded Suspect/Hostage Situations

Finally, you need to ask:

- Who are the independent tactical experts that are likely to be consulted if you or your agency is sued for wrongful death?
- Have they reviewed your agency's tactical training and procedures?

Notes:

1. "Police defend firing fatal shot," *Honolulu Star-Bulletin*, Jun. 5, 2001, viewable at: <http://starbulletin.com/2001/06/05/news/story1.html>
2. "LAPD Use of Force Incidents: OIS Investigation" IACP annual conference presentation of LAPD Capt. Kris Pitcher, (New Orleans, La., Oct. 15, 2007); Rachel Fretz, "LAPD Lessons Learned: Use of Force Investigation Tips," *PoliceOne Member News* (Oct. 17, 2007), viewable at: <http://www.aele.org/law/p1on-lapd-ois.pdf>
3. Agency legal advisors should read Karan Singh's article, "Treading the Thin Blue Line: Military Special-Operations Trained Police SWAT Teams and the Constitution," 9 *Wm. & Mary Bill of Rts. J.* 673 (April, 2001), retrievable on Lexis or WestLaw at: <http://www.wm.edu/so/borj/volumes/9/vol9iss3.html>

AELE Monthly Law Journal

Wayne W. Schmidt
Special Article Editor
841 W. Touhy Ave.
Park Ridge IL 60068-3351 USA
E-mail: wws@aele.org
Tel. 1-800-763-2802

© 2008, by the AELE Law Enforcement Legal Center
Contents may be downloaded, stored, printed or copied,
but may not be republished for commercial purposes.

[AELE Home Page](#) --- [Publications Menu](#) --- [Seminar Information](#)