

## Arrests and the Police: Does the ADA apply?

Jeffrey S. Janofsky MD



In *Sheehan v. City & Cnty. of San Francisco*<sup>1</sup> the United States Court of Appeals for The Ninth Circuit in a case of first impression for

the Circuit, held that Title II of the Americans with Disabilities Act applied to arrests. In November 2014 the US Supreme Court granted cert. APA, through its Committee on Judicial Action, drafted an amicus brief. The AAPL Council reviewed the proposed amicus brief<sup>2</sup> but chose not to sign on.

Sheehan was a resident of a group home in San Francisco that provided housing for persons with mental illness. She had been diagnosed with schizoaffective disorder and had been prescribed psychotropic medications. She had cut off contact with her psychiatrist and had not taken her prescribed medications for many months. Other residents in the home noted that she was behaving erratically, had not changed her cloths for weeks, and had stopped attending community meetings.

Sheehan had also become verbally hostile towards her case manager. Sheehan's group home supervisor attempted to perform a welfare check on Sheehan in her room at the group home. The group home supervisor knew of Sheehan's prior history of violent threats and aggressive behavior.

The supervisor knocked on Sheehan's door. There was no answer. The supervisor then used a key a let herself in. Sheehan was lying on her bed and did not at first answer. Sheehan then jumped out of bed and threatened, "I have a knife, and I'll kill you if I have to!" The supervisor left the room before seeing a knife. He filled out a 5150 form indicating the Sheehan was both a "threat to others" and "gravely disabled." The 5150 form

authorized police to detain Sheehan and take her to a psychiatric facility for a 72 hour hold. The supervisor called police. Responding officers talked to the supervisor and all went to Sheehan's room. Police officers attempted to speak to Sheehan through her door. Sheehan did not answer and police officers used the supervisor's key to enter.

Sheehan was lying in bed but immediately grabbed an 11 inch knife with a 6 inch blade. She came at the officers with the knife, threatening to kill them. Officers asked Sheehan to drop the knife but she instead came towards the officers at the door with the knife in hand. Police officers

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backed out and Sheehan closed the door.

One of the police officers attempted to talk with Sheehan through the door, "telling her we're the police department, we're here to help her, we need to talk to her, put the knife down."<sup>3</sup> The police officer "had hoped that I could verbally communicate with her. Once the door was closed, that took it to a completely different level because she had just tried to stab us."<sup>4</sup> There is a conflict in the factual record before the Court on whether or not police officers knew whether there was another exit to Sheehan's apartment.

Police officers called for back up

but they were late arriving. The officer made the decision that they needed to force their way back into Sheehan's room. They planned to open the door, use pepper spray and take her into custody.

When the apartment door was forced open Sheehan came at the officers with her knife yelling that she was going to kill them. The officers used pepper spray but it had no apparent affect. Sheehan continued to come at the officers with her knife, who then shot her several times. Sheehan survived. She was tried criminally. The jury hung on felony assault charges and acquitted Sheehan for her threats against the police officers.

Sheehan then sued the police officer and the City of San Francisco. She alleged violations of the Fourth Amendment under 42 U.S.C. § 1983 and violations of the reasonable accommodation requirement of Title II of the Americans with Disabilities Act.

As part of her claim Sheehan submitted a declaration regarding police tactics from a former deputy police chief who opined that after, "Sheehan forced the officers out of her room, the officers should have backed up, formed a perimeter to confine Sheehan in her residence and waited for backup,"<sup>5</sup> and that "the officers should have respected Sheehan's comfort zone, engaged in nonthreatening communications and used the passage of time to defuse the situation rather than precipitating a deadly confrontation."<sup>6</sup>

After discovery the defendants moved for summary judgment on all claims, which the District Court granted. As to the ADA claim the trial court held that, "it would be unreasonable to ask officers, in such a situation, to first determine whether their actions would comply with the ADA before protecting themselves and others."<sup>7</sup> The trial court also held that none of the officers' conduct violated the fourth amendment.

Sheehan appealed. A panel of the Ninth Circuit Court of Appeals remanded Sheehan's ADA claim for

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trial. The Court held that "Title II of the Americans with Disabilities Act applies to arrests and on the facts presented in this case, there was a triable issue whether the officers failed to reasonably accommodate plaintiff's disability when they forced their way back into her room without taking her mental illness into account or employing generally accepted police practices for peaceably resolving a confrontation with a person with mental illness."<sup>8</sup>

The Appellate Court also found that while the initial actions of the police officers were valid under the fourth amendment, the validity of the police officers' second warrantless entry into the room was a triable issue for a jury to decide.

In San Francisco's Petitioner's brief to the USSC, Petitioners argued that Sheehan was not entitled to accommodation under the ADA because she posed a threat to the safety of others. Petitioners argued that "given these risks, the officers made a reasonable judgment, as the ADA permits, that Sheehan posed a significant risk to safety – and that delaying her arrest was an unacceptable option because it would not eliminate the significant risk she posed."<sup>9</sup>

Petitioners argue that "reasonable judgment" about safety means different things in different situations<sup>10</sup> and point out "when a police officer in the field is confronted with an armed and violent individual, what is a "reasonable" judgment is considered from the officer's standpoint."<sup>11</sup>

The APA's brief focused exclusively on the ADA issue. It argued that the ADA requires reasonable accommodation for mental disorders at the time of arrest, and that such accommodation is practicable. It emphasized that many police encounters with the mentally ill, like this matter, start with the person's need for treatment.

The brief also argues that the ADA provides an incentive for police officers, "to mitigate risks to individuals with mental illnesses and law enforce-

ment personnel during arrests."<sup>12</sup> The brief then goes on to describe the lack of adequate training police have in dealing with mentally ill individuals, and that traditional police tactics may make interactions with the mentally ill worse. The brief described methods for educating the police on how best to deal with the mentally ill, and how to team with mental health professionals to minimize bad outcomes.

The APA brief also addressed petitioners' argument that Sheehan was not a qualified individual under the ADA because she came at police officers with a knife. The brief argued that "the reasonable-accommodation inquiry should examine the entire course of the encounter between law enforcement and the individual with a disability,"<sup>13</sup> not just the purported incident of violence. The brief essentially argued that poor police procedures under the facts in this case facts, as seen in the light most favorable to the respondent, led to the Sheehan's threatening behaviors, at least when police officers re-entered Sheehan's apartment a second time.

The USSC heard oral arguments in this case on March 23, 2015; decision was pending at the time this article was published. ☞

### REFERENCES:

1. Sheehan v. City and County of San Francisco, 743 F.3d 1211 (9th Cir. 2014), <http://cdn.ca9.uscourts.gov/datastore/opinions/2014/02/21/11-16401.pdf>
2. Brief of the American Psychiatric Association, et al, as amici curiae: [http://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/Briefs/V5/13-1412\\_amicus\\_resp\\_apa.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/Briefs/V5/13-1412_amicus_resp_apa.authcheckdam.pdf)
3. Petitioner's brief, <http://sblog.s3.amazonaws.com/wp-content/uploads/2015/01/13-1412-ts-3.pdf>, Page 6
4. Ibid.
5. Petitioner's brief, page 12
6. Ibid.
7. Sheehan v. City and County of San Francisco, page 3
8. Ibid.
9. Petitioners brief page 20
10. Petitioner's brief, page 23
11. Petitioner's brief, page 24
12. APA amicus brief, page 3
13. APA amicus brief, page 26

## Looking Backward

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on to a special school and eventually graduated from college.

The man with the Biblical name died in prison. The girl reconnected with her father and realized he had never abused her. It was a gratifying ending – and beginning.

Reviewing your forensic cases is a good way to appreciate the winners and the losers. They don't always turn out the way you like. They may be terrifying: there was Eric, who, at age 15, executed his grandmother after he lay in wait at her house with an arsenal of weapons and ammunition; Casey, who was in the midst of a custody battle and shot to death the mother and caseworker; And Johnny, who, while in prison for a previous crime, threatened the life of the judge who had put him away for life. Johnny was a dead ringer for Charles Manson. He was so dangerous he was cuffed and in leg irons with the Correctional Officer standing right next to him. After the interview he said he wanted to kill me.

This work is not easy. It's sometimes all consuming, complicated and even frightening. But for me, there's nothing I'd rather be doing.

And what of the future? At this writing the Supreme Court has agreed to hear the matter of same-sex marriage. My guess, on this snowy New England day, is they will vote for it. Reading Miranda Warnings to 14-year-olds? Will that be deemed useless and developmentally unsound? The death penalty? Will we ever leave the exclusive club we share with China, Syria, Saudi Arabia and other countries? Will we learn about why seemingly "normal" kids end up fighting for ISIS? And what about suicides prompted by Facebook entries or Twitter conversations. School shootings?

For me, forensic child psychiatry is the most fascinating area within the field of forensics. Rounding 70, true, but no time and no yearning to retire. There's still too much to do. ☞