

From: [REDACTED]
To: [sb882](#)
Subject: Defense Summary Judgment – Wrongful Death, Assault and Battery – Verdicts & Settlements, San Francisco Daily Journal, Friday, October 18, 2024
Date: Sunday, April 13, 2025 11:13:23 PM

Hi SB881 Public Advisory Council, Your potential interest in how much of a civilian law enforcement officer's pre-shooting tactical conduct and decisions, as part of the totality of the circumstances, is relevant when determining whether the subsequent use of deadly force was reasonable. *Hayes v. County of San Diego* 57 Cal.4th 622 (2013) came to mind after I reviewed your website and was unable to identify any hint that veterans present unique challenges to civilian law enforcement officers responding to a veteran in crisis.

I became interested in the unique challenges to civilian law enforcement officers after returning to the United States from a tour of duty as the Heavy Weapons Platoon leader of the 2nd Infantry Division's 32nd Infantry Regiment and being reassigned as the Headquarters Command's Courts and Boards Officer at Fort Ord, California which included responsibility for AWOL and deserter apprehension in the Western United States as the Viet Nam war was drawing to a close. The civilian law enforcement officers who apprehended most AWOLs and deserters learned to adjust their apprehension tactics for military service complications like what we now call PTSD.

Please consider partnering the local California Highway Patrol, County Sheriff's Office, and city Police Chiefs with the Department of Veterans Affairs Health Care System in their area.

-----Forwarded Message-----

Verdicts & Settlements, San Francisco Daily Journal, Friday, October 18, 2024, Page 4

CIVIL RIGHTS

WRONGFUL DEATH
Assault and Battery

Summary Judgment: Defense

CASE/NUMBER: Ann McMurtry, individually and as the successor-in-interest to Charley C. McMurtry, deceased; and J.B., a Minor, by and through his Guardian Ad Litem, Ann McMurtry v. California Highway Patrol, and Does 1 through 100, inclusive / CIVSB2121497

COURT/DATE: San Bernardino Superior / Aug. 14, 2024

JUDGE: Gilbert G. Ochoa

ATTORNEYS:

Plaintiff – John E. Sweeney (The Sweeney Firm); Steven C. Glickman (Glickman & Glickman)

Defendant –Nathan G. Guttman (California Dept. of Justice)

FACTS: On July 23, 2021, Ann McMurtry and others sued the California Highway Patrol in San Bernardino Superior for wrongful death, violation of civil rights, assault, battery, violation of the Unruh Act, negligence, and false arrest/imprisonment in regard to an incident occurring on February 5, 2021.

PLAINTIFF'S CONTENTIONS: Plaintiff asserted that she was driving on the 10 Freeway through Upland, when her husband, decedent Charley McMurtry, experienced a mental health crisis, and started to cut himself with a knife. Decedent, who was a retired Marine veteran, suffered from post-traumatic stress disorder. Plaintiff pulled over to the side of the freeway, and decedent jumped out of the car. Defendant patrol officer responded by shooting decedent multiple times. According to plaintiff, defendant CHP officer had no reasonable grounds to shoot decedent, and defendant state was responsible for the officer's action that violated policies and training, especially for those dealing with mental health crisis.

Finally, she contended that the CHP Officer made several pre-shooting tactical errors which created the necessity to use deadly force.

DEFENDANTS' CONTENTIONS: Defendants contended that they were called to respond to a call regarding a male who had just been released from a 5150 hold, had sliced his throat and been stabbing himself. According to the dispatcher, the individual was last reported in and out of the center divider, in the traffic lanes, causing accidents and attempting to open car doors. When defendant Officer Farner, who was by himself, located decedent, decedent was standing near the center median of the freeway, Officer Farner had his police uniform on, and driving a marked police unit with the lights flashing. The traffic on the freeway was stopped, and though Officer Farner was aware that other officers would arrive or were behind him, he did not know how far away they were. While holding the knife, decedent walked across the lanes toward Officer Farner who had his gun pointed towards decedent. Decedent ran along the rear bumper toward Officer Farner holding the knife and waving it. Though Officer Farner initially side-stepped away from decedent, running backward while keeping his gun pointed a decedent, when decedent, holding up the knife, ran toward Officer Farner for the second time, Officer Farner shot decedent.

RESULT: The court granted defendant's motion for summary judgment.

OTHER INFORMATION: Plaintiff believes that "Hayes vs. San Diego" is controlling that Defendant's motion should not have been granted. Plaintiff will pursue reversal in

the Court of Appeals.

From: [REDACTED]
To: [sb882](#)
Subject: Veterans Justice Commission calls for reform to help veterans in the criminal justice system - Daily Journal Online, Tuesday, April 8, 2025
Date: Sunday, April 13, 2025 11:27:34 PM

Hello SB882 Public Advisory Council, The author of the article attached below **Justice Eileen Moore** in a former life, served as a combat nurse in Vietnam in the Army Nurse Corps. She was awarded the Vietnam Service Medal, the National Defense Service Medal and the **Cross of Gallantry with Palm**. She is a member of Vietnam Veterans of America. Since 2008, she has chaired the Judicial Council' Veterans and Military Families Subcommittee. She is a member of the Council on Criminal Justice, the Veterans Justice Commission, an advisor to the American Bar Association's Standing Committee on Armed Forces Law, an advisor to the California Lawyers Association's Military and Veterans Committee and the Orange County Veterans & Military Committee as well as a founding member of USVets' Women's Advisory Committee. She is the author of two award-winning books, Race Results and Gender Results.

-----Forwarded Message-----

From: "[REDACTED]" <[REDACTED]>

To: "[REDACTED]" <[REDACTED]>

Cc: "[REDACTED]" <[REDACTED]>, [REDACTED]

[REDACTED]

Subject: Veterans Justice Commission calls for reform to help veterans in the criminal justice system - Daily Journal Online, Tuesday, April 8, 2025

Date: Tuesday, April 8, 2025 09:30 PM

Hi Supervisor [REDACTED], Please ask San Mateo County's federal and

California legislators to support legislation that provides opportunities for military service veterans who need support to negotiate the criminal justice system when transitioning to civilian life. Returning to the United States after a tour of duty as the Heavy Weapons Platoon leader of the 2nd Infantry Division's 32nd Infantry Regiment to being reassigned as the Headquarters Command's Courts and Boards Officer at Fort Ord, California, which included responsibility for AWOL and deserter apprehension in the Western United States as the Viet Nam war was drawing to a close, came to mind when I read the article attached below.

-----Forwarded Message-----

Veterans Justice Commission calls for reform to help veterans in the criminal justice system

The Veterans Justice Commission, launched in 2022, found that insufficient support during veterans' transition to civilian life leads to high rates of PTSD, TBI, and incarceration, urging reform in identification, healthcare, and support to reduce criminal justice involvement.

Eileen C. Moore, Daily Journal Online, Wednesday, April 9, 2025

The Veterans Justice Commission was launched in 2022 as part of the Council on Criminal Justice. The Commission has 15 members nationwide, chaired by former Defense Secretary and U.S. Senator, Chuck Hagel, and including former Defense Secretary and White House Chief of Staff, Leon Panetta. Thirteen other top military leaders, veterans, and criminal justice front runners serve on the Commission.

The Commission found that recent veterans underwent historically high rates of multiple deployments and combat exposure. Both of these experiences are linked to post-traumatic stress disorder (PTSD), and traumatic brain injury (TBI).

Roughly 245,000 service members transition from the military each

year. A last count estimate is that more than 181,500 veterans were incarcerated in state and federal facilities, and 33% of veterans report having been arrested at least once. The Commission concluded it's unconscionable that so many veterans land in our criminal justice system, in large part because susceptible transitioning veterans need help to manage the legacy of their deployments.

This sad situation primarily results from the Department of Defense (DoD) not prioritizing the transition from the military back into civilian life. The DoD is not identifying and adequately supporting vulnerable service members as they transition leaving many with untreated conditions that increase their risk of criminal behavior and other negative outcomes. But responsibility also lies with the Department of Veterans affairs (VA). Some of the VA's policies and regulations cause a lot of harm to veterans. Congress, of course, oversees both departments and bears ultimate accountability.

This article will discuss some of the foremost issues that lead to veterans getting involved with the criminal justice system. It will also set forth the major recommendations the Commission is making to Congress to address those issues.

Issues within the DoD

Identification of veterans:

There are no reliable estimates of how many veterans are incarcerated, or have come in contact with the justice system because there is no reliable list of veterans. There are some data-based tools in existence, but they are notoriously unreliable and rarely used. Thus, when veterans come in contact with law enforcement or courts, their veteran status is often overlooked.

The Commission recommends improvement in the identification of veterans involved in the criminal justice system.

Definition of veteran

There is no standardized definition of who is a veteran. The definition found in 38 U.S.C. §101 lacks clarity: "The term 'veteran' means a

person who served in the active military, naval, air or space service and who was discharged or released therefrom under conditions other than dishonorable.” In addition to this confusing federal definition, each state has various definitions of “veteran.” Take California as an example of where there are many different statutory definitions of the word “veteran.” A few are in these statutes, but there are many more: Gov’t Code §§ 1940 et seq.; Mil. & Vet. Code §980; Penal Code §§ 858, 1001, 80, 1170.9, 1170.91.

To highlight why there’s confusion, let’s look at a hypothetical veteran who served in California’s National Guard for five months. He was deployed by the Governor to quell a riot and was also sent for training in Central America by the President. Is that person a veteran? It would take too long to adequately respond to this hypothetical. Instead, note that some statutes set a time limit on who is a veteran. Others differentiate training from other deployments. Still others distinguish state service from federal service. It can get very complicated.

The Commission recommends the following uniform definition of veteran in order to know how many come in contact with the criminal justice system: “A veteran is defined as a person who swore an oath and entered any branch of the Armed Forces, including the National Guard or Reserve, and is either (1) currently serving in such branch and has not been discharged, or (2) was discharged or released from such service under any characterization except for those receiving a dishonorable discharge, unless the individual receiving the dishonorable discharge has been diagnosed with substance use disorder (SUD), military sexual trauma (MST), traumatic brain injury (TBI), PTSD, or a mental health condition.

Depriving service members of their future veteran benefits

Congress established a standard for eligibility for veteran benefits in 1944 when it enacted the GI Bill of Rights in 38 U.S.C. § 101(2). It excluded the right to benefits only to those service members who were discharged or released “under conditions other than dishonorable.”

Over and over, the military damages a soon-to-be veteran’s benefits in the discharge process, especially when mental wounds are involved.

Some active-duty service members act aggressively and have difficulty concentrating, the opposite of what is needed for good order and readiness. And sometimes they end up in the military justice system. And when they are discharged for the good of the military due to conduct resulting from their mental wounds, they often end up ineligible for many veteran benefits, including mental health treatment.

The military's approach to performance issues stands in stark contrast to best practices in the civilian criminal justice field. The military stresses punishment. In the civilian world, emphasis is placed on providing evidence-based rehabilitative services to individuals with the highest risk and need.

Advances in medicine have generated sophisticated treatments that are uniquely designed to help service members and veterans, such as dialectical behavior therapy. Systematic reviews consistently show the benefit of these treatments.

The Commission recommends the military integrate evidence-based practices into military justice cases.

Issues within the VA

Treating incarcerated veterans:

Many veterans end up incarcerated because they commit crimes due to some condition they suffered as a result of their military service, and the VA is the best at treating these conditions. For almost 100 years, the VA went into jails and prisons and delivered health care to veterans.

Certainly not the only reason, but part of the reason Congress passed a law in 1986 was Son of Sam. When the public realized serial killer David Berkowitz was receiving Social Security benefits while incarcerated, it was outraged. The statute that was enacted, 38 U.S.C. § 1710 (h), states that the VA is not obligated to provide health care to veterans who are under the supervision of another government agency that has a duty to furnish health care to their inmates.

Note that the 1986 statute did not function as a prohibition on providing healthcare to incarcerated veterans. Rather, it said the VA did not have

an obligation to provide it. Nonetheless, in 1999, the VA created 38 C.F.R. § 1738 (c)(5). It states that medical benefits do not include “Hospital and outpatient care for a veteran who is either a patient or an inmate in an institution of another government agency if that agency has a duty to give the care or services.”

In his research project, Dr. Evan Seamone, a former Army Major and an advisor to the Commission until he died in July 2023, wrote that the regulation was housed within a massive rulemaking petition. He said it created through the VA rulemaking process rather than through a more visible congressional mandate. The final regulation was issued without supportive analysis or input from incarcerated veterans, congressional representatives, or veteran organizations.

Ramifications resulting from the regulation were immediately evident. Incarcerated veterans were denied the ongoing treatment they had been receiving as well as their much-needed medications. Many public entities could not afford to furnish the treatment veterans needed.

The VA’s regulation might seem reasonable if the care of an inmate involves a bone fracture or an emergency appendectomy. But when the prisoner has PTSD following combat or after being raped, or TBI resulting from an explosion, how is the typical prison doctor or nurse capable of appropriately responding? Ask the same question about small-town jail and the whole notion is preposterous.

The Commission recommends providing VA healthcare to incarcerated veterans. It notes that veterans who do not receive VA health care experience poorer health outcomes, particularly those with PTSD and TBI. Such conditions, if untreated, have been linked to a greater propensity for criminal behavior.

Denying benefits for reasons not established by Congress:

When the veteran shows up at the VA and asks for benefits, the VA conducts its own Character of Discharge determination. Under 38 C.F.R. 3.12, the VA permits itself to interpret Congress’s words “under conditions other than dishonorable” to include a lot more reasons than provided under federal statutes. According to authors Kuzma, Montalto,

Gwin and Nagin in their book “Military Discharge Upgrade,” the VA decides if the discharge was dishonorable for VA purposes by setting up its own regulatory bars to receiving veteran benefits. The book points to a study that revealed 29% of veteran benefit denials were based on statutory bars, while 71% were based on the VA’s internal regulatory bars. Thus, the VA has twisted Congress’s mandate to deny benefits only to those who did not serve “under conditions other than dishonorable” to include many more circumstances. And the VA has the court’s approval of its regulatory bars to veteran benefits. In *Camarena v. Brown* (1994) 6 Vet. App. 565, the Court of Veterans Appeals held that 38 C.F.R. is a valid regulation and consistent with 38 U.S.C. §101(2).

The Commission recommends that veteran benefit eligibility be expanded as directed by Congress in 1944 in the GI Bill of Rights.

Issues within Congress’s bailiwick

Transition from the military to civilian life:

As set forth above, the DoD is not identifying and adequately supporting vulnerable service members as they transition from military to civilian life. Many are left with untreated conditions that increase their risk of criminal behavior and other negative outcomes.

The Commission recommends the DoD make transition a core mission. It is only Congress that can impose statutory requirements on the DoD to compel it to make the transition a core mission.

Alternatives to prosecution:

Veterans Treatment Courts (VTCs), and diversion of veterans’ programs have sprung up all over the country. But many exclude the veterans who need the most help by making those accused of committing a felony ineligible for VTC admittance. Other VTCs refuse admittance to veterans with “bad paper,” meaning those who have anything other than an honorable discharge.

The Commission created a model policy framework designed to augment VTCs and diversion programs. It calls for the creation of a

Veteran Sentencing Option where adjudication of a criminal case against a veteran is postponed pending completion of a case plan that may consist of diversion/probation and treatment. Veterans who successfully complete their case plan are able to avoid a term of incarceration and have a presumption in favor of either having their case dismissed and their conviction not recorded, or having their felony conviction converted to a misdemeanor. While Congress cannot compel state courts to adopt any of these recommendations, it can compel federal courts to do so. Congress can also offer incentives to states to adopt them.

Note that as of Jan. 1, 2025, California offers veterans everything the Commission recommends regarding alternatives to prosecution for veterans, and more. Beginning at the time of arraignment, every defendant in California is informed of the benefits available to veterans. Veterans who committed an offense as a result of sexual trauma, TBI, PTSD, substance abuse, or mental health problems stemming from service in the United States military are eligible to enter VTSs and diversion programs. Even if they do not enter a program, if the crime they committed is probation-eligible, the sentencing court “shall” consider the veteran’s statutory condition in favor of granting probation. And whether or not the crime committed is probation-eligible, the sentencing court “shall” consider the condition as a factor in mitigation when imposing a sentence. Penal Code §§ 858, 1001.80, 1170.9, 1170.91.

Housing for veterans:

Conflicting legal definitions and requirement in federal statutes create barriers for veterans trying to secure housing. Many veterans have no family support structure and some get involved in the criminal justice system because they have no place to live. There are organizations trying to help them but complicated bureaucratic statutory and regulatory language hampers everyone involved.

An example of this problem was highlighted in an article in the Los Angeles Times last August about homeless disabled veterans. The U.S. Department of Housing and Urban Development (HUD), had a rule that counted a veteran’s disability compensation as income. That

compensation can raise a veteran's income above the maximum allowed for housing that is restricted to low-income residents. HUD attorneys insisted the requirement could not be changed. After years of pressure from public interest lawyers, however, HUD announced that most disabled veterans will no longer be excluded from subsidized housing.

The Commission recommends the elimination of barriers to housing eligibility. It is Congress that oversees federal agencies. Only Congress can corral them and make them standardize their rules and regulations in an equitable and less bureaucratic way so veterans have access to housing.

Employment of veterans:

There is no large-scale collaboration among industry and government leaders focused on hiring people with criminal convictions who served in our nation's military.

The Commission recommends to Congress that it prioritize the recruiting and hiring of justice-involved veterans.

Conclusion

The coup de grace of the Commission's recommendations is that Congress should establish a National Center on Veterans Justice to improve justice-involved veterans programs through research and coordination. There are estimates of over 60,000 veteran organizations nationwide, all trying mightily to assist veterans. A national center would be the place for all of these groups to avoid duplication of efforts and see what works the best for veterans.

Support for the Veterans Justice Commission comes from The Arthur M. Blank Family foundation, the Just Trust, LinkedIn, the National Football League, Craig Newmark Philanthropies, T. Denny Sanford, Southern Company Foundation, and the Wilf Family Foundations as well as the John D. and Catherine T. MacArthur Foundation and other CCJ general operating contributors.

From: [REDACTED]
To: [sb882](#)
Subject: Officer cleared in fatal 2019 shooting – The Mercury News, April 15
Date: Wednesday, April 16, 2025 12:16:43 AM

Hi Hello SB882 Public Advisory Council, Your interest in the natural and probable consequences of failing to seek repeal of one of the nation's worst mental health treatment laws, California's intellectually and morally bankrupt Lanterman-Petris-Short Act, and replacing it with a treatment law like the State of Minnesota's came to mind when I read the article attached below.

-----Forwarded Message-----

THE MERCURY NEWS, TUESDAY, APRIL 12, 2025

Local News

SAN JOSE POLICE

Officer cleared in fatal 2019 shooting

Jury sides with argument that Edward Carboni reasonably thought the victim was a threat

Robert Salonga, Section B, Page B1

San Jose – A federal civil jury has cleared a SanJose police officer of excessive force in the fatal 2019 shooting of a man experiencing a psychiatric crisis and who was walking toward a school on Halloween with what turned out to be a replica gun.

Jurors issued their verdict Friday following a weeklong trial overseen by Judge Nathanael Cousins at the federal district courthouse in San Jose. Officer Edward Carboni was found not liable for all four claims filed on behalf of the mother of Francis Calonge, encompassing allegations of excessive force, civil rights violations, wrongful death and battery.

The city of San Jose, which represented Carboni at trial, had argued he acted within his duties in light of his believe that Calonge was armed, ignored police orders to stop and continues to walk toward Independence High School around the time school was letting out. City Attorney Nora Frimann acknowledged that Calonge was likely suffering form a psychiatric episode during the encounter on Oct. 31. 2019.

“This certainly was a tragic incident, and we understand the family experienced a painful loss. There remains a need for more effective and available mental health services in our community to help support individuals and families in crisis,” Frimann said. “The San Jose Police Department and the city appreciate the jury’s confirmation that our officer acted as out community expects when they call police to address a dangerous situation. Francis Calonge’s unfortunate actions . . . made it reasonable for our officer to believe lethal force was necessary to protect the public and officers, as the jury found.”

The federal lawsuit filed by Calonge’s mother, Rosalina, was initially dismissed by Cousins in 2022 when he decided Carboni was entitled to qualified immunity, a legal protection shielding government officials from litigation over their work actions absent a constitutional violation. That ruling was overturned by the 9th U.S. Circuit Court of Appeals, which found that the facts of the case warranted a jury’s evaluation of whether Carboni and the city were liable for the plaintiff claims.

James McManis, one of the plaintiff attorneys, and his legal team had argued Carboni and his fellow officers had other ways to intervene and that the public was not facing an imminent threat because Calonge had the dun in his waistband. The family’s lawyers cited conflicting orders and accounts – which were also referenced by the appellate court in approving the case for trial – about whether he was reaching for the weapon.

McManis said the verdict was a troubling endorsement of Calonge being shot in the back from more than 100 feet, without any sign Calonge understood what was happening. A postmortem analysis found that Calonge was under the influence of methamphetamine that compounded his chronic mental illness.

“A guy who clearly had something wrong with him, walking along, with no evidence he ever shot anybody, he just kept going after they told him to stop. Then this cop shoots him in the back, without a warning,” McManis said after the verdict. “To me, the most disheartening aspect of this is that eight jurors in our community thought there was no problem with that.”

McManis also alluded to his dissatisfaction with how the district court handled the case, starting with its initial dismissal that was reversed by the higher court.

“I have a lot of thoughts about the conduct of this trial, but I will save those for later,” he said.

Carboni, who joined SJPd in 2014, has the distinction of being involved in four fatal police shootings in his time with the police department. The Santa Clara County District Attorney’s Office has cleared him of criminal liability in all four cases. He remains on the SJPd.

On the afternoon of the shooting, Calonge was seen in front of a gym at Jackson Avenue and McKee Road holding what a 911 caller said was a pistol. Carboni and several other officers responded to the area and tried to contact Calonge.

Authorities contend Calonge was walking erratically through the gym’s parking lot and that officers gave repeated commands to Calonge to stop. He instead briefly looked at them, tucked a gun into his waistband and walked away, authorities said.

Calonge was walking on the west side of North Jackson Avenue toward Independence High School, and Carboni was about 120 feet southeast of Calonge, standing in the center median, when he shot Calonge once with a police-issued rifle. Calonge died at a hospital soon after. Police would later determine his weapon was a Powerline BB gun made to resemble a Beretta handgun.

On his own body-camera footage, Carboni could be heard telling the other officers, “Hey watch out, I’m going to shoot him,” and he did not give Calonge a warning prior to opening fire.

Frimann said the situation was “complicated by concern for students leaving a nearby high school,” and that the matter should conclude given how thoroughly the case has been evaluated by the federal courts.

“This action has been litigated for a long time, and we hope the jury verdict can be accepted,” she said.

<https://www.mercurynews.com/2025/04/14/san-jose-jury-clears-officer-in-fatal-2019-police-shooting-of-man-with-replica-gun/>

From: [REDACTED]
To: [sb882](#)
Subject: \$30.5M Verdict – Civil Rights, Excessive Force, Wrongful Death – Verdicts & Settlements, San Francisco Daily Journal, Friday, April 18, 2025
Date: Monday, April 21, 2025 5:58:31 PM

Hi Hello SB882 Public Advisory Council, Your interest in the natural and probable consequences of failing to seek repeal of one of the nation's worst mental health treatment laws, California's intellectually and morally bankrupt Lanterman-Petris-Short Act, and replacing it with a treatment law like the State of Minnesota's came to mind when I read the verdict report attached below.

-----Forwarded Message-----

Verdicts & Settlements, San Francisco Daily Journal, Friday, Friday, April 18, 2025, Page 4

CIVIL RIGHTS

EXCESSIVE FORCE

Verdict: \$30,500,000

CASE/NUMBER: R.I., M.L., and H.L., minors, by and through guardian ad litem Roberta Haro; A.W., a minor; by and through guardian ad litem Alisha White; Mickel Lewis Jr.; Orion Lewis; and Briona Lewis, in each case individually and as successor in interest to Mickel Lewis, Sr. v. County of Kern and Jason Ayala / 2:22-cv-07534-FLA-MAA

COURT/DATE: USDC Eastern / Mar. 19, 2025

JUDGE: Kirk E. Sherriff

ATTORNEYS:

Plaintiff – Dale K. Galipo (Law Offices of Dale K. Galipo); Toni J. Jaramilla (Tonj Jaramilla, APLC); J. Bernard Alexander III (Alexander, Morrison & Fehr LLP)

Defendant – James D. Weakley, Brande L. Gustafson (Weakley & Arendt PC)

EXPERTS:

Plaintiff – John Gardiner Ph.D. (accident reconstruction); Scott A. Defoe (police practices and procedures)

FACTS: On October 2, 2020, at approximately 9:00 pm in the City of Mojave, Kern County Sheriff's Deputy Jason Ayala initiated a traffic stop on Mr. Lewis. Deputy Ayala allegedly had information from an informant that Mr. Lewis was in possession of a firearm. However, Deputy Ayala never saw Mr. Lewis with a firearm at any point. During the traffic stop, Mr. Lewis and Deputy Ayala engaged in a conversation. Mr. Lewis then moved away from where he was standing near his vehicle with Deputy Ayala, and then returned to his vehicle as if he intended to drive away. While Mr. Lewis was standing in the open car door of his vehicle, Deputy Ayala issued a command that Mr. Lewis turn and walk toward the rear of Mr. Lewis's vehicle where Deputy Ayala was standing. Deputy Ayala fired five lethal rounds at Mickel Lewis, Sr. without first issuing a verbal warning that he was prepared to use deadly force, killing him. Two of the shots struck Mr. Lewis in the back.

DEFENDANT’S CONTENTIONS: Defendants denied plaintiff’s allegations in their entirety. Defendants argued at trial that Mr. Lewis reached under the seat of his vehicle for a gun, threatened to kill Deputy Ayala, concealed his right hand behind his back, and was facing Deputy Ayala during all of the shots. However, Deputy Ayala’s account of the incident was contradicted by witness testimony and the physical and forensic evidence, including the trajectory of the gun shots. A backseat passenger in Mr. Lewis’s vehicle at the time of the shooting testified that Mr. Lewis never reached under the seat and never verbally threatened Deputy Ayala. Two other percipient witnesses testified that they observed Mr. Lewis moving toward Deputy Ayala with both hands outstretched toward Deputy Ayala.

INJURIES: As a result of the shooting, Mr. Lewis endured pain and suffering and lost his life. Also as a result of the shooting, Mr. Lewis’s seven children suffered wrongful death damages, including loss of Mr. Lewis’s love, affection, and support.

RESULT: The jury returned a verdict of \$30.5 million, including \$5 million for Mr. Lewis’s loss of life, \$1 million for Mr. Lewis’s pre-death pain and suffering, and \$24.5 million in wrongful death damages.

FILING DATE: Sep. 9, 2021

From: [REDACTED]
To: [sb882](#)
Subject: Fw: NEWS: Local Behavioral Health Crisis Support Expands with Mobile Response Team
Date: Thursday, April 24, 2025 4:43:49 PM

Hi SB882 Public Advisory Council, Your interest in improving interactions between people with intellectual and developmental disabilities and law enforcement came to mind when I read the email attached below.

San Mateo County's way of improving those kinds of interactions appears to suggest that the best way to improve interactions between people with intellectual and developmental disabilities and law enforcement is to set up a separate "behavioral health crisis" response organization without involving any type of law enforcement agency. However "The San Mateo County Crisis Line does not replace other forms of support. Residents should call 911 for an immediate police, fire or medical response for a life-threatening emergency." <https://www.smcgov.org/ceo/news/local-behavioral-health-crisis-support-expands-mobile-response-team>

----- Forwarded Message -----

From: [REDACTED] <[REDACTED]>
To:
Subject: NEWS: Local Behavioral Health Crisis Support Expands with Mobile Response Team
Date: Thu, 24 Apr 2025 20:55:42 +000

April 24, 2025**For Immediate Release**

Local Behavioral Health Crisis Support Expands with Mobile Response Team

Redwood City – San Mateo County residents experiencing a mental health or substance use crisis can now call for 24/7 in-person support from a mobile response team of mental health clinicians able to connect them to appropriate services. Callers to the San Mateo County Crisis Line at 650-579-0350 can request help for a family member, friend or anyone (including themselves) experiencing or at risk of a behavioral health crisis. Once calls are screened, the hotline will dispatch behavioral health care professionals trained in crisis assessment, de-escalation and intervention.

They will arrive in nondescript vehicles – no lights and sirens – around-the-clock, any day of the year with the goal of stabilizing situations and, if necessary, taking individuals or arranging transportation to the appropriate level of care. Follow-up support is provided within 24 hours of the initial response, facilitating connections to short- and long-term treatment options and assisting in the development of a safety plan to prevent future crises.

From: [REDACTED]
To: [sb882](#)
Subject: \$975,000 Settlement – Civil Rights, Excessive Force, Medical Care Denial – Verdicts & Settlements, San Francisco Daily Journal, Friday, May 9, 2025 and Mixed jury verdict approved, Alves v. County of Riverside, 9th U.S. Circuit Court of Appeals, Dai...
Date: Saturday, May 10, 2025 10:12:09 PM

To: Advisory Council on Improving Interactions between People with Intellectual and Developmental Disabilities and Law Enforcement,

Your potential interest in the similarities and differences between federal and state law enforcement conduct standards came to mind when I read both the federal district court settlement report and federal appellate court decision summary attached below.

-----Forwarded Message-----

Verdicts & Settlements, San Francisco Daily Journal, Friday, Friday, May 9, 2025, Page 4

CIVIL RIGHTS

EXCESSIVE FORCE

Denial of Medical Care

Settlement: \$975,000

CASE/NUMBER: A.H., a minor individually and as successor in interest to decedent, Richard Hayes, by and through his guardian ad Litem, Tiffany Hayes; Sophia Hayes, individually and as successor in interest to decedent, Richard Hayes, Tiffany Hayes; and Tiffany Hayes, individually and a successor in interest to decedent, Richard Hayes v. County of Los Angeles and Does 1-10 inclusive / 2:22-cv-03671-WLH-AS

COURT/DATE: USDC Central / Feb. 18, 2025

JUDGE: Wesley L. Hsu

ATTORNEYS:

Plaintiff – Dale K. Galipo (Law Offices of Dale K. Galipo)

Defendant – Jill Williams, Kimberly C. Sarmiento (Carpenter, Rothans & Dumont)

FACTS: On March 21, 2021, three Los Angeles Sheriff's Deputies responded to a mental health call for service. They arrived at the home of Richard Hayes. After a confrontation between Hayes and the deputies, Hayes was dead.

On May 27, 2022, Tiffany Hayes, Richard's wife, filed suit for herself and their minor children, A.H. and S.H., against the County of Los Angeles, its former sheriff, and the deputies.

PLAINTIFF'S CONTENTIONS: Hayes survivors contended that the police arrived at their home in response to a call; that they were informed he had previously been diagnosed with a psychiatric disorder; and the even though Hayes had no weapon, had committed no crime, and had not injured or threatened anyone, deputies failed to deescalate the situation. Instead, they contended, the deputies escalated the situation, eventually placing their body weight on Hayes, tasing him, and handcuffing him while he was chest down for an extended period of time. The plaintiffs further contended that the force used by deputies was excessive, and that, as a result of this use of force, Hayes died. Specifically, they contended the deputies' actions resulted in a loss of consciousness, and the deputies failed to provide timely medical assistance. They asserted claims for various Fourth Amendment violations, de process violations, municipal liability, battery, negligence, negligent infliction of emotional distress, and violations of the Americans with Disabilities Act. They also asserted that they were Hayes's successors in interest and were entitled to bring the action.

DEFENDANT'S CONTENTIONS: Defendants denied any wrongdoing or liability and all the plaintiffs' material allegations. The defendants further contended they were shielded from liability by qualified immunity.

RESULT: The parties reached an agreement wherein the County

admitted no liability or wrongdoing but agreed to pay \$975,000 to settle plaintiffs' claims

FILING DATE: May 27, 2022

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Alves v. County of Riverside, 9th U.S. Circuit Court of Appeals
Case No. 23-55532, Daily Journal, Daily Appellate Report, page 3466.
April 30, 2024

Because California's law enforcement standards call for officers to act reasonably when using deadly force and federal law enforcement standards call for moving a restrained arrestee to a recovery position as soon as possible after handcuffing a mixed jury verdict may be affirmed because different aspects of the totality of the circumstances are tested.

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CIVIL RIGHTS

Mixed jury verdict on Fourth Amendment excessive force and state negligence claims was reasonable because the federal and state standards focus on different aspects of the totality of the circumstances.

Alves v. County of Riverside, 9th U.S. Circuit Court of Appeals, No. 23-55532, Filed Apr. 28. 2025

Kevin Niedzialek was killed by two Riverside County Sheriff's Deputies. After tasing Niedzialek twice, the deputies restrained him face down while they handcuffed him. After Niedzialek was handcuffed, the deputies continued to hold him face down on the ground. Niedzialek's successor-in-interest filed suit for excessive force in violation of the Fourth Amendment and also brought state law negligence claims. A jury trial was held, during which an expert testified that the national standard of care in policing requires moving an arrestee to a recovery position as soon as possible after handcuffing them. The jury was given instructions and a special verdict form, which distinguished between the standards

and factors to consider for the federal and state claims. The jury was given instructions and a special verdict form, which distinguished between the standards and factors to consider for the federal and state claims. The jury returned a mixed verdict, finding the deputies did not violate the Fourth Amendment but finding for Alves on the state negligence claim. The County appealed.

Affirmed. When faced with seemingly inconsistent verdicts, appellate courts must search for a reasonable interpretation that expresses a coherent view of the case, and a jury's verdict may only be disregarded after attempts to do so have been exhausted. If the verdicts may be reconciled on *any* reasonable theory consistent with the evidence, the judgment must be upheld. Under the Fourth Amendment, evaluating reasonableness of a use of force requires examining the totality of the circumstances to determine whether the officers' actions were objectively reasonable considering the facts and circumstances without regard to underlying intent. Under California negligence law, however, law enforcement officers have a legal duty to act reasonably when using deadly force against a suspect. Importantly, this negligence standard is broader than the federal Fourth Amendment standard, which typically focuses on the moment when deadly force is used. Here, the jury was presented with instructions and verdict forms reflecting the distinctions between these standards, permitting the jury to focus on different aspects of the "totality of the circumstances" for each claim. Accordingly, the jury could have reasonably determined the deputies owed Niedzialek a duty of care after restraining him which was breached by not placing him in a recovery position while also determining that the pressure applied to his back and legs was not excessive.

Opinion by Gabriel P. Sanchez

Opinion URL:

<https://cdn.ca9.uscourts.gov/datastore/opinions/2025/04/29/23-55532.pdf>