

The Press Democrat: Print a Story

© The Press Democrat. For copyright information visit our User Agreement page at <http://www.pressdemocrat.com/services/agreement.html>

3 YEARS AFTER POLICE SHOOTING, SUIT HINGES ON HOW KAO, OFFICER SEEN

Published on April 23, 2000

© 2000- The Press Democrat

BYLINE: JAMES W. SWEENEY
Staff Writer

PAGE: A1

Moments **after** stepping from his patrol car to confront a man stripped to the waist and rapidly twirling a wooden staff, Rohnert Park **police Officer** Jack Shields fired a single shot from his .40-caliber revolver.

The bullet struck Kuan **Kao**, who died in the street outside his home on April 29, 1997.

Kao's agitated behavior and Shields' decision to respond with deadly force set off a chain of events that is still unfolding three **years** later.

The **shooting** galvanized the Asian community throughout the Bay Area and became a symbol for groups claiming local **police** are too quick on the trigger.

It produced four separate criminal investigations, each of them clearing Shields of wrongdoing.

But in a report made public last week, members of a U.S. Civil Rights Commission panel that reviewed the **Kao** case and nine others said they were ``appalled" by the frequency of **police shootings** in Sonoma County.

In the meantime, **Kao's** wife and three children are pursuing a \$50 million wrongful death **suit**.

Contrasting pictures

A trial was scheduled to begin Tuesday in U.S. District Court in San Francisco. It was postponed last week **after** Rohnert Park's attorneys appealed a key pretrial ruling against the city.

The case has generated several thousand pages of **police** reports, photos, witness statements and other records reconstructing events leading to the 2:15 a.m. **shooting** on Maria Place, a narrow street of tract homes south of Sonoma State University.

Court papers also offer contrasting portraits of the central figures in the wrongful death **suit**, Shields and **Kao**.

The outcome of the **suit** probably will be determined by the portrayals accepted by an appeals court, and, if the case goes to trial, a jury.

There is little dispute about what happened in the 8 1/2 hours before the **shooting**.

Kao, a 33-year-old Taiwanese native, spent the late afternoon and evening of April 28 drinking wine, first at the Cotati Yacht Club and later at Red's Recovery Room.

After returning to the Yacht Club, he fought with several other bar patrons, apparently enraged by the use of a racial slur.

His blood-alcohol content when he died was .23, almost triple the legal limit for drivers in California.

Cotati **police** were called to the Yacht Club at 1:30 a.m. on April 29.

Two **officers** began to arrest **Kao**, but agreed to send him home in a cab **after** the bartender interceded and offered to pay the fare.

He arrived home at about 2 a.m. Although he had a key in his pocket, he knocked on the door.

Before his wife answered the front door, **Kao** was in the street shouting, at one point laying down and writhing on the ground.

Eleven neighbors called 911 over a span of about five minutes, one warning that he might

have a gun.

Kao didn't have a gun.

But before **police** arrived, he went into a motor home in his driveway and retrieved a Bo staff -- a 6-foot rod used in Kobudo, a traditional Okinawan martial art.

Although he was badly intoxicated, **Kao** spun it fast enough that it blurred like a fan blade and made a whistling sound.

When the first **police** car arrived, he poked the stick through the grill, striking the radiator hard enough to bend a metal pipe.

Officer Michael Lynch backed off and stayed in his car, using his radio to tell Shields to do the same and wait for more help.

But Shields got out of his car, twice ordered **Kao** to drop the stick and fired when he didn't comply.

'About Shields'

At issue in the lawsuit is whether Shields could have defused the situation without firing.

It was filed in 1998 **after** the city rejected a damage claim from **Kao's** widow, Ayling Wu. Her attorneys include John C. Burris, a former prosecutor who specializes in **police** brutality cases.

Burris was co-counsel to Rodney King in a civil action against the Los Angeles **police** and co-author of a book on conflicts between **police** and minorities.

"This case, in our view, is about Shields," he said.

Relying on expert testimony from a retired **police officer** and a Florida **police** academy instructor, lawyers for **Kao's** family say Shields came out **shooting** because he was unprepared for a physical confrontation.

"We don't think Jack Shields should have been on the streets," said Andrew Schwartz, another attorney representing **Kao's** family.

Shields, a 25-year veteran of the department at the time of the **shooting**, struggled with his weight and suffered from a herniated disc in his back, according to court records.

Fourteen months before the **shooting**, he was convicted of falsifying time sheets to hide staffing shortages at Rohnert Park fire stations and was sentenced to two **years'** probation.

As a further punitive measure, Rohnert Park public safety officials returned Shields to patrol duty **after 10 years** as a supervisor -- part of that time in the fire division of Rohnert Park's combined **police** and fire department.

But when he was demoted from fire commander to graveyard shift patrol **officer**, Shields wasn't trained in the use of pepper spray or nightsticks, according to court records.

Was he prepared?

Two expert witnesses for **Kao** are prepared to testify that he could have been subdued without firing by using either of those tools. One of the experts, an attorney and former Concord **police officer** named William Clough, said Shields was "not in adequate physical condition to properly engage in physical confrontation."

Witnesses say Shields didn't have his nightstick when he got out of the car.

Shields says he did, but in an interview with detectives investigating the **shooting**, he conceded that he was more "comfortable" with his Glock handgun than either pepper spray or a nightstick.

He said he drew his gun in the hope of intimidating **Kao**.

"It was a defensive action," he said. "As most of us do when you first pull the weapon, you're hoping it's threat enough to stop an individual and that's, you know, I'm sure that's what I was thinking at that time too."

Lynch told the same detectives that he didn't feel threatened because he stayed in his car.

"I could put it in reverse and bail if I had to ... I don't know what was going on in **Officer** Shield's mind, but that's why I didn't."

Shields was transferred to the detective division sometime **after the shooting** and is scheduled to retire in June.

He declined to be interviewed, citing the lawsuit.

Wu sold the family's Rohnert Park home and moved to Southern California. She couldn't be reached for comment. Her attorneys declined to make her available for an interview.

Fitness called irrelevant

In court, attorneys for the city say Shields' physical fitness is irrelevant and have asked the judge to prohibit **Kao**'s family from presenting the jury records of his back injury or performance evaluations calling him overweight.

The city wants to present testimony over objections from the plaintiffs that **Kao** claimed expertise in the use of a Bo staff, occasionally giving demonstrations at a Graton martial arts studio operated by a friend.

In addition, they say the cab driver will testify that **Kao** threatened to "get even" with **police** during the ride home from the Cotati Yacht Club.

Finally, they say eight neighbors are prepared to confirm Shields' account that **Kao** was approaching him with the staff when he fired.

Some of the same neighbors put up American flags in an apparent show of defiance when **Kao** supporters held a memorial service outside his home on the first anniversary of the **shooting**, which family attorneys say may be evidence of bias against **Kao**.

Nevertheless, attorneys for the city argue that Shields had reason to fear for his safety and therefore had a right to shoot **Kao**.

In a motion to dismiss the **suit**, they said his actions "must be judged from the perspective of the **officer** on the scene, rather than the 20/20 vision of hindsight."

U.S. District Judge Thelton Henderson rejected the city's motion to dismiss the **suit**. He also ruled that a jury should decide whether Shields had legal immunity as a **police officer** who feared for his safety, which would protect him from the wrongful death **suit** and any other civil liability.

Challenge to ruling

The city is challenging the immunity ruling in the 9th U.S. Circuit Court of Appeals. If it

succeeds, Shields' actions won't be subject to review by the jury, and Burris concedes that could be fatal to his case.

In his written ruling, Henderson said there was no evidence of a felony, a fleeing suspect or danger to innocent bystanders, calling it a situation where "actual deliberation would not only have been prudent but also practical."

Henderson's decision is similar to comments by federal prosecutors, who emphasized the heavy burden of proof in a criminal trial when they opted against filing any charges against Shields.

"We were looking at whether criminal charges should be brought, not whether the **officer** acted in conformance to **police** procedures or if there was some alternative he should have taken," assistant U.S. attorney Bert Glenn said during a January 1998 news conference.

In a civil trial, the jury must determine which side's case is favored by the preponderance of evidence.

A criminal conviction requires prosecutors to prove their case beyond a reasonable doubt.

"There's a lower standard and we're not saying that he committed a crime," Schwartz said. "We're saying that he violated the decedent's constitutional rights."

Question of force

Steve Mitchell, an attorney for the city, says Shields was within his rights when he shot **Kao**.

"We feel that his perception that he was under attack and faced with the threat of great bodily harm or death was corroborated by eight other witnesses," Mitchell said. "He was entitled to use deadly force."

Both sides have spent large sums preparing for trial, and attorneys for **Kao's** survivors say they are eager to get into court.

They accuse the city of manufacturing delays.

"In my opinion," Schwartz said, "they don't want all of the facts to come to light about what happened here and they are looking for a legal justification for Shields' behavior. We think there is none and the jury will determine what the facts are."

Mitchell, on the other hand, says the immunity question is the most important issue in the case and deserves a hearing in the 9th U.S. Circuit Court of Appeals.

"All of the other elements of the case are dependent upon a finding of liability as to Jack Shields," he said. "If we win this, there's nothing left of their case."

PHOTO: color by Mary Gardella/Press Democrat

b&w by Clay McLachlan/Press Democrat

MAP: b&w by Press Democrat Graphic: Site of **police shooting** of Kuan Chung **Kao**

1: A picture of Kuan Chung **Kao** hangs on the wall during a press conference in April 1998, one year **after** the Rohnert Park resident was shot and killed by a **police officer**. A \$50 million wrongful death **suit** against the city has been delayed.

2: Ayling Wu, center, whose husband Kuan Chung **Kao**, was killed in a **police shooting** in Rohnert Park, attends a February 1998 hearing with her attorney Victor Hwang and Nancy Wang, president of the Redwood Empire Chinese Association.

Keywords: POLICE SHOOTING DEATH INVESTIGATION LAWSUIT

[Go back](#)