Pursuits
Liability in Law Enforcement Operations
Presented By Public Agency Training Council
“Perhaps the most compelling, ongoing, and logical reason for law enforcement’s continued interest in high-speed vehicle pursuits has been its concern in balancing the values of crime control and offender apprehension with ensuring the safety of all parties who potentially might be involved – police officers, suspects, victims, bystanders, and the community.” This balancing test has formed the cornerstone of pursuit policies, training, and practice for the past several decades.
Police Pursuits

Police Pursuits provide some frightening statistics:

- The majority of police pursuits involve a stop for a traffic violation
- On average one person dies every day as a result of a police pursuit
- Innocent third parties, constituted 42% of persons killed or injured in police pursuits
- 1 out of every 100 high-speed pursuits = fatality
Officer Goals

- To apprehend and arrest the suspect
- When Officer initiates an enforcement stop, the suspect if he flees, initiates a pursuit
- Officer must now respond with a balanced and reasonable approach, while the suspect has no rules
- Officer must take into account personal capabilities, environmental conditions,
- risks created by suspects driving/ bystanders
Risk/ Benefit Analysis

Ultimately the Officer must balance the goals of law enforcement (Necessity of continuing the pursuit, capturing the suspect) with the public’s overall safety
Officer Response to Suspect’s Refusal to Stop

The need “To Win” via making the arrest can be influenced by the adrenaline rush – which may negatively impact an officer’s vision, hearing, motor skills, and decision making.

Officer’s must recognize that fleeing suspects may be experiencing the same effects!!!
Police Pursuits

Clearly, a police pursuit is an exciting event, (invoking almost primal responses)

involving one person fleeing to escape;
and another chasing to catch!
Dynamics of a Pursuit

Most pursuits include the fleeing suspect raising the risks to the welfare of the Officer, the public, and him/herself by not stopping and continuing to drive recklessly. The suspect is attempting to escape the consequences of his actions and avoid being taken into custody.
Dynamics of Pursuits

Most pursuits are for minor offenses,
It is pure speculation whether those fleeing suspects have committed a serious crime.
Some research has indicated that if the police refrain from chasing all offenders, or terminate their pursuits, no significant increase in the number of suspects who flee would occur.

Policing: Continuity and Change (Orlando PD 2006) G. Allpert, R. Dunham, etc
Continue / Terminate?

What are the consequences of continuing or terminating the pursuit?

Most policies include the balanced reasonable approach and require officers to terminate, when the risks created by the chase outweigh the need to immediately apprehend.
Progressive Policies

Progressive policies instruct officers who terminate a chase to:

1) stop
2) pull over
3) radio their position
4) and drive away from the area

- To signal to the suspect that the pursuit has been terminated
Recent Legal Developments

“A critical component of making the decision to pursue is that there is little time for an officer to deliberate over the decision and pursuits can create a dangerous circumstance quickly”
According to a 1995 study 3 common themes emerged:

1) the initiating crime and crime charged were not the same

2) the risk of death or injury to civilians was low (but not non-existent)

3) the cost of abandoning pursuits is high – 66 murderers would go free, 190 robbers, and over 4000 felons would escape.
Alpert Study (1998)

50% of all pursuit collisions occur within the first 2 minutes of the pursuit.

And

More than 70% of all collisions occur within 6 minutes of the pursuit.
Civil Litigation

Beyond the physical risks, are the increased exposure to tort liability (Kappeler, Kappeler, and del Carmen 2001) reported that in published s.1983 cases, police prevailed in approximately 69% of cases. When P’s prevailed however, on average the P’ was awarded approximately 1.3 million, excluding attorney’s fees.
42 USC s. 1983

Thus to successfully litigate a s. 1983 claim Plaintiff – must allege

1) A constitutional violation 4\textsuperscript{th}, 5\textsuperscript{th}, 6\textsuperscript{th}, 8\textsuperscript{th}, 14\textsuperscript{th} Amd (or violation of Federal right)

2) And – prove the law was clearly est as to put a reasonable LEO on notice that such conduct was unconstitutional
Illinois v Wardlow (2000)

In a landmark case the S.Ct. indicated that the ability to pursue a fleeing suspect is an essential aspect of effective law enforcement. The S.Ct. further remarked that “headlong flight, wherever it occurs, is the consummate act of evasion: while not indicative of wrongdoing but it is certainly suggestive of such”
Recent Supreme Court Cases

The S.Ct. has taken up several police pursuit cases within the last several years. An analysis of these cases gives law enforcement insight as to how high-speed police pursuits are viewed by the high Court.

Recent Legal Developments, Scott v. Harris: Seeing is Believing, Darrell L. Ross Criminal Justice Review 2008 33:41
3 Major Cases – S.Ct.

Brower v Inyo County (1989)

County of Sacramento v Lewis (1998)

Scott v. Harris (2007)

Note: *Brower* and *County of Sacramento* serve as a backdrop for *Scott v. Harris*
2 Types of Seizures under 4th Amd

1) Physical Seizure – termination of the freedom of movement through a means intentionally applied

2) Show of Authority Seizure – a show of authority to which a subject submits

* If no submission – No Stop in the constitutional sense
4th Amd Seizure


A physical seizure occurs only when physical force to stop a person is used through a means intentionally applied.

[Tractor-Trailer Road Block]

- Force that is accidentally applied to innocent third parties is not a seizure or use of force under the 4th Amendment.

- Force intentionally applied to an innocent third party due to a mistaken belief that the third party is a suspect does constitute a 4th Amendment seizure

In order to establish officer liability for a violation of rights where the officer did not use force to cause the crash, an injured person must show that the officer’s actions were “shocking to the conscience.”

- Shocks Conscience-Officer must have had an intent and purpose to cause harm unrelated to the legitimate object of arrest. This standard is much higher than gross negligence and deliberate indifference, thus, it is difficult for a plaintiff to meet.

- This same standard for police conduct has been applied to non-pursuit cases where persons make due process claims against officers where the person has suffered some injury as the result of officer conduct in an “emergency” situation. See, Radecki v. Barella, 146 F.3d 1227 (10th Cir. 1998).

[High Speed MX Pursuit-passenger run over/killed]
Sacramento v. Lewis

S.Ct. found motorcycle’s outrageous conduct was to blame. The impact of this case is profound, before liability will attach

1) The std for police pursuits “shocks the conscience”, must prove off intentionally caused harm unrelated to the legitimate object of arrest

2) Court declined to second guess an Off’s decision whether to pursue

3) Court refused to make a ruling that would replace state tort law

• Case is an example of a Due Process liability claim
• Observed speeding motorcycle
• 75 second chase through residential area
• 1.3 miles reaching speeds of 100 MPH
• Police car 100 feet behind motorcycle
• Motorcycle tipped over leaving passenger, 16 year old Phillip Lewis in the path of the cruiser.
• Cruiser propelled Lewis 70 feet to his death
Language from court

• No Due Process Liability.

“Accordingly, we hold that high speed chases with no intent to harm suspects physically or worsen their legal plight do not give rise to liability under the Fourteenth Amendment, redressible by an action under §1983.”
“A violation of due process occurs only when the police officer has a “purpose to cause harm unrelated to the legitimate object of arrest.” It must be this type of purposeful harm in order to shock the conscience.”
5th /14th Amd Due Process

Why?

B/C Plaintiff’s can not make out a claim under the 4th Amd

No seizure in the Constitutional sense

Thus Attempt to make a 5th/14th Amd claim ie., denial of life, liberty, property
Sacramento v. Lewis

Because of the stringent standard established in Lewis, it is extremely difficult to successfully litigate these claims in Federal court.
Caution

• A claim may lie under a State wrongful death statute

A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

Here S.Ct. – indicates even though there is physical force through a means intentionally applied and thus a 4Th Amd seizure, THE SEIZURE WAS REASONABLE
Takeaway *Scott & Sacramento*

*Scott v. Harris* coupled with *Sacramento v. Lewis*, make it extremely difficult for P’s to bring a claim in Federal Court based upon a Constitutional violation in relation to injuries suffered during a high-speed pursuit.

However – Officers should recognize that a lawsuit based upon State law claims may still be viable.
Use of Force

All Uses of Force must be Objectively Reasonable
Use of Force

• The touchstone of use of force analysis is “objective reasonableness”; all uses of force against free citizens are judged using the 4th amendment standard of reasonableness.

• The foundation case- *Graham v. Connor*, 490 U.S. 386 (1989).- The Facts...
The Analysis

- Reasonableness is judged under the “totality of circumstances” in which the officer finds themselves.
- No 20/20 hindsight; step into the shoes of the officer
- Consider: Graham’s Three Prong Test!
  - Severity of the suspected criminal activity?
  - Did suspect pose immediate threat to officers or others?
  - Is suspect actively resisting or attempting to evade arrest by flight?
The 4th Amendment Claim
Scott v. Harris

• Scott v. Harris-decided 4/30/07-The government’s interest in protecting pedestrians, motorists, and the involved officers outweighed the risk of injury to Victor Harris.
Language from the Court

• By way of example only, Garner hypothesized that deadly force may be used “if necessary to prevent escape” when the suspect is known to have “committed a crime involving the infliction or threatened infliction of serious physical harm,” ibid., so that his mere being at large poses an inherent danger to society.

• What exactly was Scott doing that prompted police response?
“Instead, we lay down a more sensible rule: A police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death”
Although [plaintiffs] attempt to craft an easy-to-apply legal test in the Fourth Amendment context is admirable, in the end we must still slosh our way through the fact bound morass of "reasonableness." Whether or not Scott's actions constituted application of "deadly force," all that matters is whether Scott's actions were reasonable.
Tire Deflation

• Tire Deflation (supervisory authorization)
  – Not to be used on vehicles known to be carrying hazardous materials
  – Buses etc. carrying passengers
  – Consider geographic issues that add to danger (pick your spot)

• Be Careful
Bublitz v. Marion County Indiana et al., No. 02-3400 (7th Cir. 2003).

Where officer’s use of stop stick causes suspect to crash into unintended third party, no 4th Amendment seizure has occurred re: third party

- Physical force must be intentionally applied for 4th Amendment seizure.
- Where crash victim is unintended consequence of the use of force; force has not been intentionally applied to third party crash victim.
- Force has been intentionally applied to suspect, thus suspect may challenge action on 4th Amendment grounds.
Vehicle Pursuit


Fleeing from law enforcement in a vehicle qualifies as a violent felony under federal sentencing requirements if the state where the flight occurred has a felony fleeing statute and the subject being sentenced has been found or pled guilty to it.
Walker v. Davis, 649 F.3d 502 (6th Cir. 2011)

- Speeding violation 70 in a 55
- Deputy tries to block road motorcycle avoids
- Motorcycle chase five minutes
- Never over 60 mph
- Ramming occurs in muddy field
- Not Hollywood style chase of Scott v. Harris
Here, Germany posed no immediate threat to anyone as he rode his motorcycle across an empty field in the middle of the night in rural Kentucky. That fact, among others, renders this case patently distinguishable from *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007), in which Harris had led the police on a "Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury." *Id.* at 380. The chase here was a sleeper by comparison.
Precision Immobilization Technique

• Under many matrixes must be authorized by supervisor
• Not used on buses or vehicles transporting hazardous materials
• Considered deadly force under some circumstances
PIT (Continued)

• Consider geographic issues
• Other motorists-open area-road signs
• Other tactics lower on continuum should be tried first
• High Risk stop at end
What are the liabilities of law enforcement operations?
The possibilities...

- State Court - Criminal and Civil Liability
- Federal Court - 18 USC 242 and 42 USC 1983
- Administrative Liability - Loss of Employment
- The Court of Public Opinion
  - Loss of Social Capital
State Tort Law- Intentional Torts

• Assault/Battery
• False Arrest
• Trespass
• Malicious Prosecution
• Wrongful Death
State Tort Law- Intentional Torts

- Malicious damage
- Emotional Distress
Negligence in Tort - 4 Elements

• A duty owed to prevent unreasonable risks of harm
• Breach of the duty
• Causation (i.e. breach of the duty caused plaintiff’s injury)
• Damages
• BUT SEE State EVOC Statute...
Civil-Federal
42 U.S.C.A. § 1983

• Person (Municipalities may be people for purposes of a Section 1983 action; how so?)
• Acting Under Color of Law
• Violates Federally Protected Right Causing Damage
• Monetary Damage or Injunctive Relief
Varying Duties

- **Negligence** - Reasonable care
- **Gross Negligence** - wanton and reckless disregard
- **Shocks Conscience**
  - Intent to Cause Harm unrelated to the legitimate object of arrest
  - Deliberate Indifference
Defining Key Terms

• Summary Judgment- Looking at the case in the best light most favorable to the plaintiff, and there is no genuine issue of material fact. The applicable substantive law will determine whether or not there is a material fact in dispute.
Defining Key Terms

- Qualified Immunity- Where the law is not clearly established at the time of the conduct, an individual officer may be entitled to qualified immunity. Taken in a light most favorable to the party asserting the injury, do the facts show that the officer violated a constitutional right? If the answer is yes, the next question is whether the law was clearly established at the time?
Defining Key Terms

• Qualified immunity shields an officer from suit when he/she makes a decision, even if constitutionally deficient, and reasonably misapprehends the law governing the circumstances he/she confronted. (Saucier v. Katz, 533 U.S. 194 (2001).
Defining Key Terms

• Deliberate Indifference - An agency demonstrates a deliberate indifference to the constitutional rights of another when they knew or should have known of the need to do something and failed to do it; that is, they made a “deliberate choice.”
Litigation Strategy

• As supervisors and command personnel, where does our duty rest? Dog Loyalty vs. Cat Loyalty
• What is better for officer?
• Sympathetic Officer that jury identifies with.
• Deep Pockets Organization.
• Trainers and Policy Makers sometimes respond out of loyalty to officer rather than agency and hurt both in doing so.
Avoiding Liability and Managing Risks

• Proactive
  – Policy
  – Training
  – Self Audit/Self Assessment
  – Early Intervention Systems
Avoiding Liability and Managing Risks

• Active
  – Supervision

• Understanding Supervisory Liability
  – Actual (knew) or Constructive (should have known) knowledge of unconstitutional conduct;
  – Failure to respond to the conduct (amounts to deliberate indifference); and
  – Causal link between the failure to respond and the constitutional injury
Avoiding Liability and Managing Risks

• Reactive
  – Discipline
  – New Policy
  – New Training
  – Subsequent Remedial Measures
State Law Claims
The driver of an authorized emergency vehicle or an official vehicle of a regulatory agency, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, or a vehicle escorting a funeral procession, may:

(a) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.

(b) Exceed any speed limits so long as the driver does not endanger life or property, except that a vehicle escorting a funeral procession may not exceed the speed limit by more than 15 miles per hour to overtake the procession and direct traffic at the next intersection.
• **(c)** Disregard regulations governing direction of movement or turning in specified directions. The driver of a vehicle escorting a funeral procession may direct the movements of the vehicles in the procession in a similar manner and may direct the movements of other vehicles.

2. The privileges granted in subsection 1 apply only when the vehicle is making use of:

(a) Audible and visual signals; or

(b) Visual signals only,

as required by law.
3. The driver of an authorized emergency vehicle or an official vehicle of a regulatory agency may park or stand without regard to the provisions of chapters 484A to 484E, inclusive, of NRS, if the driver makes use of a warning lamp.

4. The provisions of this section do not relieve the driver from the duty to drive with due regard for the safety of all persons and do not protect the driver from the consequences of the driver's reckless disregard for the safety of others.
Emergency Vehicle Operation
Pursuits-State Law

- High Risk/High Frequency Task
- Must be supported by policy and training
- Must be supervised and disciplined
- Every state has controlling statute
- Statutes also apply to pursuits
- Statute generally reduce liability by reducing the duty of care owed.
Policy Types

• Discretionary
• Restrictive
• Prohibitive
### Pursuit Decision-Making Matrix

<table>
<thead>
<tr>
<th>Degree of Seriousness</th>
<th>Decision Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Violent Felony - Imminent Threat</strong></td>
<td>May pursue: continue to assess risks</td>
</tr>
<tr>
<td><strong>Felony - Violent</strong></td>
<td>May pursue: continue to assess risks</td>
</tr>
<tr>
<td><strong>Felony - Property</strong></td>
<td>May pursue: continue to assess risks</td>
</tr>
<tr>
<td><strong>Misdemeanors</strong></td>
<td>May pursue: continue to assess risks</td>
</tr>
<tr>
<td><strong>Infractions</strong></td>
<td>Do not pursue</td>
</tr>
</tbody>
</table>

### Degree of Risk

- Low
- Moderate
- High

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High Risk Factors to Consider

• Frequent intersecting streets
• Poor weather, slippery streets, low visibility
• Blind curves, intersections, narrow roads
• Numerous pedestrians
• Heavy, congested roadways
• Speeds twice the posted speed limit or greater than 80 m.p.h.
• Unmarked police vehicles, SUVs, motorcycles
Additional High Risk Factors

• Extremely hazardous maneuvers (e.g. driving against oncoming traffic, busting red lights by violator)
• Numerous police vehicles in pursuit (above authorized number)
• Officer excited, not in full control of emotions
• No supervisor involved or ineffective supervisory oversight
• Special circumstances (e.g. school district)
Moderate Risk Factors

- Unmarked sedans, motorcycles
- Some intersecting streets (e.g. residential area)
- Light pedestrian traffic
- Moderate traffic, little congestion
- Speed 20 m.p.h. greater than posted limit
- Officer generally calm, under control
Additional Moderate Risk Factors

• Some hazardous, but not extreme maneuvers (e.g. crossing center line to pass vehicles, sudden lane changes) by the violator
• Supervisor involved and effective
• Authorized number of vehicles involved in the pursuit
Low Risk Factors

• Straight road, good surface, clear lines of sight
• Few intersections
• Few or no pedestrians
• Good weather
• No hazardous maneuvers by violator
Additional Low Risk Factors

• Speeds at or less than 20 m.p.h. over the posted speed limit
• Supervisor involved and effective
• Authorized number of police vehicles involved in the pursuit
• Officer calm, in full control
• Marked Cruiser
Policy

• Fundamental question: Does the need to apprehend the suspect outweigh the risk of harm?

• If the risk of harm outweighs the need to apprehend the suspect- Terminate the Pursuit!
Considerations

• Is the officer utilizing all equipment?
• Reasonably apparent subject is aware and is resisting by:
  – Increasing speed
  – Violating rules
  – Evasive maneuvers
Additional Considerations

• Nature of the crime suspected (Graham)
• Current driving behavior (pre-pursuit...)
• Time of day, weather, road and vehicle condition
• Risk of the pursuit itself
• Likelihood that subject could be arrested otherwise
More Considerations..

- Knowledge of the offender’s identity, possible destination, and previous activities.
- The risk of harm to others if allowed to escape
- Any other factors bearing on the risk of the pursuit to others
- NO Pursuits through school zones
Roadblocks or blocking road

• Rolling-using innocent motorists
• Brower type
Deadly Force

• Tactics likely to cause serious bodily harm or death must meet Graham reasonableness standard

• Firearms-directed toward driver with consideration for passengers when deadly force is necessary (Consider Vaughn v. Cox 11th Cir.)

• Supervisory authorization
Quick Review of Garner

• The Facts of the Case
• Balancing individual interests against those of the government considering the “totality of the circumstances”
• Where the suspect is non-violent the government’s interest in effecting an arrest is insufficient to warrant deadly force
• It’s important to note, Garner dealt only with deadly force situations.; and then only in the context of the fleeing felon. It’s holding is very narrow in application.
Garner (Continued)

• The reasonableness of the officer’s actions must be considered from the perspective of the situation that the officer faced at the time taking into consideration the “tense, uncertain, and rapidly evolving nature of the circumstances in which police use force.”

• Consider this is the context of the department’s subsequent review of the force incident.
Lewis, Garner, Scott, State Law, Officer Injury or Death, Social Capital

• The considerations
• The Balancing
• State Interests
• Innocent Third Parties
• Officers making it Home
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