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## POLICE PURSUITS

# Police Pursuits

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The last thirty years had a tremendous impact upon the law enforcement profession. Styles of policing have changed from traditional policing established in 1829 by Sir Robert Peel (Walker, 1999, 21), through the concepts of Herman Goldstein's Problem Oriented Policing and ultimately evolving into the current trend toward community policing (Walker, 1999, 39-40). Policing has gone from focusing on responding to individual crimes to an examination of crime and disorder and attacking the problems in a broader spectrum.

Technology used by police has also seen a dramatic change. Police departments once used surplus military weapons and tactics; eventually turning 180 degrees to the military looking to the police for training and experience with less-than-lethal weapons. Police weapons went from the six-shot revolver and trusty shotgun to high-capacity, laser-sighted semi-automatic pistols, rifles and shotguns. The shotgun evolved into a sophisticated weapon of lethal force, or less-than-lethal force by launching small beanbag projectiles that will incapacitate a suspect. Military surplus mace and tear gas have been replaced by oleoresin capsicum spray that can be carried by individual officers or in large canisters designed to deploy the effective irritant to large crowds of people. Reports once handwritten by officers, then typed on a manual typewriter, then typed on a correcting typewriter, are now written on computers with specialized software; some police officers write reports and communicate with other officers via laptop computers in their squad cars.

Some of the most dramatic changes have been in how police function and interact with the public. The traditional "beat cop" of Sir Robert Peel's "bobbies" used traditional policing methods, relied on a centralized command structure, and had officers who wanted "just the facts ma'am." Policing practices have moved from the traditional reactive model through problem oriented policing and team policing, in which special teams of officers are assigned to a special problem district or specific crime. We have come full circle and ended the millennium with community oriented policing in which the entire management philosophy has changed to a less structured organization with decentralized control and individual officers in decision making roles. No longer are special officers trained in "public relations" and *all* officers are trained in problem solving.

Policing in America, in addition to all of the technical and management advances cited above, is distinct from policing in any other part of the world. According to Bayley (1998, 1-3) policing in America has three distinct characteristics. First, American policing is responsive to citizen demands. Second, police in America are accountable through multiple institutions (e.g., political, criminal and civil courts, the press, and civilian review). Third, in America police are open to evaluation and that policy must be based on accurate and factual information.

Bayley's observations hold true for many facets of policing, especially for one of the most visible and dramatic circumstances police officers can be involved in: the high-speed chase. When the public hears a news broadcast or reads a newspaper article on police pursuits it visualizes police chases they see in movies like *The Blues Brothers* in which several dozen police cars are chasing a vehicle at a high rate of speed across town for an extended period. The chase ends in a spectacular accident, but no one is seriously hurt. Police high-speed vehicular pursuits are portrayed on television as exciting "cops and robbers" action and occupy prime-time television network slots.

In reality, police pursuits are not the same as portrayed on television, and unfortunately some pursuits end with fatalities to innocent motorists or pedestrians. In 1996, an estimated 1,000 police vehicular pursuits occurred each month in Los Angeles alone (Kieran, 1996, 24). Many pursuits go unreported and the true number is only a matter of speculation (Wells & Falcone, 1997, 729). Without a complete and accurate record, the public and the police have no factual data for drawing conclusions.

Unlike many who have only viewed the Hollywood creations, the author has participated in high-speed vehicular pursuits both as a police officer and as a police supervisor. Many times those who examine and critique police pursuits come from academia, with a perspective from a world of research and documents. Re-

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searchers typically have never been in the situation of trying to balance their sworn duty to arrest criminal offenders and a police officer's implicit duty to protect the public.

This is not to imply there is no productive purpose for academic study in relation to police pursuits. Alpert and Fridell (1992) point out that empirical research must be done to assess the risk factors associated with police pursuits. Researchers can analyze the results of pursuits and "discriminate statistically between those factors which affect the negative outcomes of pursuits" (Alpert & Fridell, 1992, 31). The court commented in *Pincock v. Dupnik* on the usefulness of expert witnesses and limited their expertise to gathering of statistics, stating that it is within the knowledge of the jurors to decide when a pursuit is reasonable (Alpert & Fridell, 1992, 31). The author's frame of reference is studying police pursuits from the academic viewpoint, as well as from the perspective of the officer who must apprehend the suspect and protect society as a whole.

Police pursuits first became a topic of concern to the public and the police in the 1960s. Several influential groups became concerned with the effects of police pursuits and began a campaign against them. Both sides of the issue debated high-speed vehicular pursuits with rhetoric and unsubstantiated facts. The Physicians for Automobile Safety released a report in 1968 that shocked the public and the law enforcement community. They claimed that one in five pursuits ended in death, and fifty percent of pursuits ended in serious injuries. Immediately after the anti-pursuit groups gave their version of the facts, the pro-pursuit camp, law enforcement, came out with their defense of pursuits based on a fear of increasing the number of accidents (Alpert and Fridell, 1992, 99-100). Knowing who was correct was difficult. No scientific studies or empirical data were available on what was fast becoming a major concern for the police and public.

## What Is a Police Pursuit?

The first problem of analyzing a problem is to establish some form of operational definition that most parties will agree upon. Falcone cites Fennessy et al. (1970) and provides one commonly accepted definition of a police vehicular pursuit: "[a]n active attempt by a law enforcement officer on duty in a patrol car to apprehend one or more occupants of a moving motor vehicle, providing the driver of such vehicle is aware of the attempt and is resisting apprehension by maintaining or increasing his [her] speed or by ignoring the law officer's attempt to stop him [her]." By examining this definition we can see there is still a considerable amount of latitude on what is a vehicular pursuit.

Some pursuits may consist of the young driver who does not want to be stopped by the police because he/she is out after curfew. The driver increases the vehicle's speed upon seeing the squad car lights and makes several quick turns after extinguishing the headlights. The officer pursues the young offenders and finds them parked along the road several blocks away.

Other pursuits may be more dramatic such as the ex-convict who is wanted on warrants for a series of crimes and has vowed not to return to prison. Upon seeing the squad car's red and blue lights he increases his speed and begins to drive recklessly. The offender takes the initial pursuing officer and ten or so of his fellow officers on a forty-five minute chase through three counties. The chase ends in a spectacular accident where the ex-convict hurls his car into another vehicle carrying a young mother and two infant children, killing all three.

Both pursuits fit the operational definition we have provided, but there are dramatic differences between the two examples. One pursuit ends quickly without injury or accident; the other involves a large amount of time, several squad cars, and an accident that kills three innocent people.

High-speed pursuits are the topic of considerable controversy in police organizations and the public—in part because of the disparity of what a pursuit is, and in part because of the consequences that can result from a high-speed chase. The public and the police often have very different viewpoints on the justification of pursuits and the price they are willing to pay to apprehend criminal violators. "Pursuits have a cost attached to them, and those costs include human suffering and a financial burden. Hundreds of thousands of dollars have been awarded to plaintiffs seeking redress against a municipality for pursuit-related accidents" (Charles & Falcone, 1992, 69). There will always be some debate over the definition of a pursuit, but what is the attitude of the police, and more importantly the public, toward high-speed vehicular pursuits?

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## Attitudes on Police Pursuits

Police officers are concerned with high-speed vehicular pursuits because pursuits are part of the occupational risks they expect. People who are risk takers or sensation seekers are often drawn to police work because of its inherent risks (Homant, Kennedy, & Howton, 1994, 213). Therefore it would be logical to assume that police officers, by the nature of their personality, would be more prone to engage in activities such as police pursuits that provide increased risks or thrills. Homant et al. (1994) further found in their study of police officers that 90% of the respondents enjoyed the challenge of police work; with 84% agreeing that a good officer had to be willing to take chances.

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However, Homant et al. found that despite police officers being thrill seekers, the occurrence of police pursuits was a complex construct and subject to several variables, not just the thrill-seeking trait.

Charles and Falcone (1992) found three factors which influence police officers engaging in police pursuits.

- a well-articulated pursuit policy and procedure
- the amount of training in pursuit vehicle operation received by the officers
- the command supervision of the department.

Each of these factors influenced the behavior of police officers in high-speed vehicular pursuits, despite their thrill seeking traits.

Falcone (1994) found that an alarming number of police agencies have established policies based on the assumption that disallowing pursuits would encourage offenders to flee from the police, causing a breakdown in the deterrence value of the law. He further found that some agencies have gone on record as stating that pursuits are worth the inherent risks they pose to public safety. In fact Maury Hannigan, former commissioner of the California Highway Patrol was quoted in *Traffic Safety:* "unless there is a compelling reason not to pursue a suspect, officers have a moral obligation to do so" (Smith, 1993). Hannigan justifies his belief, saying "[o]fficers never know why they're chasing or why they decided to run. Several mass murders — including serial killers Randy Craft and Ted Bundy — were apprehended after pursuits tha[t] began for traffic violations" (Smith, 1993). Falcone (1994) found similar beliefs in field interviews conducted with police officers. "Officers overwhelmingly responded that they believed a no-pursuit policy would result in increased numbers of pursuits and attempts to elude"(Falcone, 1994, 148).

Police officers are expected to enforce laws and serve the public interest. Officers are required to make split second decisions that often involve a balancing between enforcing the law and protecting the public's safety. However, does the public see high speed vehicular pursuits the same way that police officers do? *Traffic Safety* conducted a survey in January 1993 on their reader's attitudes about police pursuits. Generally, the readers who responded did not think vehicular pursuits should be banned and respondents expressed the same concern for public safety if vehicular pursuits were banned. In the survey *Traffic Safety* found, "[E]ighty-seven percent of the respondents believe that eliminating pursuits would give criminals an unfair advantage. Some believed doing so would encourage criminals to flee" (*Traffic Safety*, 1993, 26). In their work, Homant and Kennedy (1994) cited a study on public attitudes about police pursuits from the late 1960s. In Fairfax County, Virginia a study was conducted and one-third of the respondents did not favor police pursuits. The same respondents overwhelmingly (62.8%) supported the loss of license for a fleeing motorist.

In their research on citizen attitudes toward police pursuits Homant and Kennedy (1994) found that most respondents believed officers use good judgment; however, the respondents thought pursuits should be limited to dangerous criminals. The one conclusion reached by Homant and Kennedy (1994) was that attitudes toward police pursuits are quite divided, and their research provided no clear conclusions.

Homant and Kennedy (1994) also examined the question of whether or not a no-pursuit policy would encourage motorists to flee from police. Falcone (1994) found many police departments have established policies on police high-speed pursuits based on the beliefs that people would be more likely to flee if they knew the police would not pursue. In the work done by Homant and Kennedy, 75% of the respondents stated they would not be more likely to flee if a no-pursuit policy was implemented, and of the 15% who stated they would be tempted, only 4% strongly agreed that they would be tempted to flee.

No conclusive evidence either supporting or discouraging high-speed police pursuits could be found. There is, however, considerable controversy on the issue especially when a police vehicular pursuit results in the death of an innocent third party. When violators are injured because of a pursuit, many have no sympathy for them, believing that they got what they deserved. When an officer is injured from a pursuit, the public assumes it just goes with the job and is an acceptable risk. However, when an innocent motorist or pedestrian is injured or killed, people look for someone to hold accountable for the incident. Many believe the police are accountable for the unfortunate consequences of the high-speed pursuit. This often results in civil litigation and the plaintiffs will often sue those with the greatest amount of money. Violators often are poor and unable to pay for damages. Police officers are public servants and typically do not have the financial resources to pay for the victim's compensation. Consequently police departments are involved because they have the greatest financial resources from which the victim can be paid.

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## Police Liability

"America has more lawyers than any civilized country in the world. Americans are quick to sue when they feel they have been wronged. Police officers need to accept that lawsuits are one of the occupational hazards associated with the job" (Barker, 1998, 23). Barker further states that the number of lawsuits as a result of police pursuits fall immediately behind the number of lawsuits filed because of the use of force by police officers. In fact, Barker suggests that if an officer is in-

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volved in a police pursuit, or emergency response where there is an accident involving injury or death, they stand a better than 75% chance of being sued (Barker, 1998, 23). Police officers, by virtue of their sworn duty and obligations, are in some circumstances exempt from laws regulating the operation of motor vehicles, so long as that operation is done regarding the welfare and safety of others. When a citizen perceives that an officer has been negligent in performing his/her duties and has violated some statutory, civil or constitutional right of an individual, then the citizen files a civil suit against the officer and the department. The citizen is attempting to prove that the officer, and typically the police department, is civilly liable; that the police have a legal obligation to compensate the person they have injured (Barker, 1998, 24). These private wrongs, or torts, are based on one of three categories.

1. **Negligence**—Unintentional torts caused by a departure from the duty to exercise due care.

   A person is liable if they should have anticipated that their actions would result in an injury.

2. **Intentional torts**—The defendant deliberately intends to injure another person, their property, or protected rights.

3. **Constitutional torts**—The defendant or agency has failed to recognize and uphold the constitutional rights, privileges, and immunities of others.

In addition to the individual police officer being sued, the plaintiff will also list as co-defendants the city, police chief, and immediate supervisors of the accused officer. They often list the police department and the local unit of government as co-defendants because of a practice called "deep pockets"—the plaintiff will include in the suit those with the largest amount of money to cover the financial compensation sought. Often the defendant will be insolvent, or at least lack sufficient funds to compensate the plaintiff for their injuries (Schwartz, 1996, 1744). They hold units of government, police executive officers and immediate supervisors liable from one of two legal doctrines, respondeat superior or vicarious liability. Black's Law Dictionary (1979) defines vicarious liability as "[i]ndirect legal responsibility; . . . the liability of an employer for the acts of an employee." Berringer (1994) cites the *Atlantic Law Review:* vicarious liability is ". . . a liability imposed upon one person because of the act or omission of another, such as his employee . . . which they may impose on one who is without personal fault or complicity in the violations complained of, simply because of a particular relationship of responsibility he bears toward the person who actually performed the act or omission on which suit is based." Berringer explains the difference between the principle of vicarious liability and that of respondeat superior; the latter being indirect liability placed on a corporation, rather than on a person as with vicarious liability. Liability is attached to a person (i.e., supervisor) when the supervisor fails to exercise proper control over the performance of his agent (Ginnow, 1997, 423). Even when the tort, a civil wrong from which the court will provide a remedy (Black, 1979, 1355), is done in the absence of the superior, or without the superior's consent or knowledge, the supervisor can be held liable.

Vicarious liability has been present to some degree since the United States was first founded. During the early 1700s in England, the doctrine of vicarious liability became part of common law. Before that time if the injured attempted to sue an employer for the actions of their employees, the case would have failed. A series of opinions rendered by the courts of England provide the underlying principles of employer liability for the actions of employees. In the early 1800s American courts began accepting the doctrine of holding employers accountable. Some states and courts were initially hesitant to accept the doctrine of vicarious liability; however, it was soon ingrained in our legal system (Schwartz, 1996, 1746).

The issue of vicarious liability is seen from one of two schools of thought. The first school consists of those who see tort law as a means of achieving various social goals, including the deterrence of dangerous conduct. A minority of scholars comprise the second school of thought, which would use tort laws as a means of corrective justice. Schwartz believes that the minority school of thought has failed to defend their premise adequately that employers are liable for the actions of their employees, even if the employee acts outside the parameters established by the employer. The second justification in the corrective justice school of thought is that employers can recover their losses from the negligent employee. This argument is flawed in that few employers are willing to file a claim against the negligent acts of their employees. Many employees are not as solvent as the employer and an indemnification suit would be a waste of time.

The majority of scholars see vicarious liability as a means of social change, and that economic justifications, or more accurately a deterrence justification, is the purpose of tort laws and vicarious liability (Schwartz, 1994, 1764). This school of thought places the burden upon the employer to shrewdly select employees and effectively supervise them. It also provides an incentive for employers to discipline employees who have committed negligent acts. The third rationale is that vicarious liability would encourage employers to consider alternatives to employee efforts, such as mechanizing particular tasks or reducing the workload of the employee (Schwartz, 1994, 1758).

How does vicarious liability, which originated in British common law and American case law dealing with factories and other traditional fellow-servant relationships, come to affect police departments today? Historically police have derived their authority from the sovereign, either the federal government or state government. Police are expected to provide for the protection of society as a whole, as long as they abide by the expectations placed upon them by the society. Police were initially protected by sovereign immunity, based on the premise that the government, and its agents, were immune from lawsuits

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(Franklin, 1993, 157). The basic premise under sovereign immunity is that a person cannot sue the sovereign unless the sovereign grants them permission to file claim. The protection under sovereign immunity has slowly been eroded by laws enacted by the legislature and case law from the courts. The changes began when individual officers were held liable for actions that were found to be outside the scope of their employment. Additional changes in liability came with the social changes that occurred in the United States as part of the civil rights movement. Today governments, individual entities, and its employees can be civilly sued upon proof of certain claims involving torts.

Torts are best described as an umbrella covering a jumble of legal theories that have little in common (Franklin, 1993, 158). Franklin describes the three major categories of torts against police officers as (1) torts against the person, (2) torts against property, and (3) negligence. Torts against the person are the oldest of the tort theories and are commonly associated with similar actions in criminal law. Many of these intentional torts are recoverable from the person directly and not through criminal action. Examples of torts against the person are battery, assault, false imprisonment, and inflicting of emotional distress. Torts to property involve the retention of property by the police, destruction of property, and trespass. The fastest growing category of tort actions being brought against the police is negligence. Franklin (1993) states that for negligence to be shown, that four conditions must be met. First, a duty or obligation under the law must be present. Second, that duty must have been broken or they must demonstrate a breach of duty. Third, there must have been some injury to the plaintiff. The injury may take the form of actual physical injury or economic injury. Finally, the plaintiff must demonstrate that the breach of duty must have caused the injury by the defendant, either as direct cause or as an intervening cause. Franklin (1993) defines a direct cause as "the active motion of chain of events that create the injury." Franklin further defines an intervening cause as when the defendant causes one chain of events to occur, and other events occur that lead to injury to the plaintiff.

For vicarious liability to attach the main question becomes, "Was the act done in the course of the agency and by virtue of the authority as agent with a view to the principal's business. . . . It may be stated broadly that the tort of an agent is within the course of his employment where the agent performing it is endeavoring to promote his principals' business without the scope of the actual or apparent authority conferred upon him for that purpose . . . The tortuous conduct of the agent must be committed in the course of the agent's appointed duties, to render the principal liable or be of the same general nature as those so authorized or be incidental to the authorized conduct" (Ginnow, 1997, 283). This is not to say that employers, or principals, are totally accountable for the conduct of their employees. If the employee disobeys the express instructions of his employer, is acting outside the scope of their employment or is no longer conducting business for the employer, the principal is no longer liable for the employee's conduct (Ginnow, 1997, 283, 288).

When dealing specifically with governmental bodies there are times that respondeat superior, the governmental unit liability, does not apply. "A municipal corporation is not liable for the acts of its officers in attempting to enforce police regulations, nor is it liable for the wrongful or negligent acts of police officers while acting in the performance of public duties" (Ludes, 1997, 77). Police officers are generally recognized as enforcing state laws and their powers are granted from the state government to the city as a convenience for regulating public conduct. In short, the states do not have the capacity to establish a single police force to govern the whole state. States, through legislation, have empowered local units of government to appoint police officers to enforce the state enacted laws. Therefore, units of local government do not automatically assume liability for actions of its officers (Ludes, 1997, 77-78). Units of local government do, however, hold some accountability based on any special legislative act or other special duty that has been established. In other words if there is a law that requires the unit of government to be accountable, liability attaches. In the latter case, if a special duty has been established, then the governmental unit is accountable.

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## What Can Police Departments Do to Reduce Their Risk?

Police officers and their departments must perform a balancing act between the immediate apprehension of a fleeing suspect and the safety of the public. Police officers are not inherently capable of nor expected to arrest every criminal violator they observe. Police officers are viewed as having an obligation to protect society as a whole rather than a duty to individual citizens. Many states, including Illinois, have statutes that specifically protect police officers and departments from civil litigation for failing to arrest a suspect, unless that failure is willful and wanton. The officers, and consequently the department that employs them, have statutory immunity for not enforcing all laws (Immunity of the public employees, 745 ILCS 10/2-205). This then protects the police from civil litigation should a fleeing criminal not be apprehended during a police high-speed vehicular pursuit. It is therefore incumbent upon police officers and their departments to be aware of the criteria the court will use to determine if the officer's actions are reasonable. The court, and juries, will use a "reasonable man standard" to determine if the actions taken by the individual police officer were justified. The reasonable man standard asks, "Would a reasonable per-

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son of ordinary prudence in the position of the defendant have behaved the way the defendant did?" (Barker, 1998, 25). Some factors used to determine the characteristics of the reasonable person are the officer's age, experience in police work, previous police high-speed pursuit training and experience, and work history.

There has been debate within criminal-justice organizations that juries and the court are not able to understand fully police officer's (defendant's) true nature because they have never been police officers and have never experienced the stresses of police work. The debate has centered around if the constitutional guarantee of a jury of one's peers can truly be possible without police officers comprising the jury. It is, therefore, incumbent upon police administrators to establish for the department's personnel, and ultimately the court, a set of clear and understandable standards that officers will follow during pursuits. This will not only provide guidance for how an officer will conduct a pursuit, but also set a standard of behavior the court and a jury can use in determining what "reasonable" is.

In examining police pursuits the court has examined four broad categories of factors to decide if there was negligent operation of a police vehicle during the chase. These categories are:

"1. **The justification of the chase**—The court will look into such matters as (1) whether there existed a real or apparent emergency, (2) whether the offender's conduct was serious enough to justify the chase, (3) whether alternatives to pursuit were available to the officer, and (4) whether apprehension of the suspect was feasible.

2. **The actual physical operation of the vehicle**—The courts will look at such considerations as (1) speed at which the vehicle was operated, (2) the use of emergency equipment, (3) violations of traffic regulations, and (4) disregard of traffic control devices.

3. **The circumstances surrounding the operation**—The courts will look into such items as (1) the physical conditions of the roadway, (2) the weather conditions, (3) the density of traffic, (4) the presence of pedestrians, (5) the presence of audio or visual warning devices, and (6) the area of pursuit.

4. **Departmental considerations**—The courts will look into such concerns as (1) whether there was a violation of departmental policy regarding police pursuits, (2) whether the officer had been trained in pursuit driving, and (3) the physical and visual condition of the police vehicle" (Barker, 1998, 26-7).

Police administrators, and ultimately the police officers, must constantly examine the pursuit based on a totality of the circumstances and balance the immediate need to apprehend the suspect with the danger the pursuit will place upon the public. This balancing act is initially done in a split-second by the police officer initiating the pursuit. The decision-making process then continues as new variables enter the equation until the chase ends.

As stated above, the courts will examine a number of factors to determine the reasonableness of the pursuit. Scholars, police professionals and legal experts have examined these issues, and they have developed similar strategies that police departments can use to limit their liability. Schofield (1988) suggests a four-part approach to reducing the department's exposure to liability. First, the department must establish a well-written pursuit policy. The policy should establish the ground rules for the exercise of the officer's discretion, and inform the officers of the specific factors they should consider during the pursuit. The policy will provide a set of guidelines officers will follow during a pursuit. A well-written policy will also provide a basis for holding the police officers involved in the pursuit accountable for their actions. Barker (1998) further suggests that a written policy should always emphasize safety first. He further suggests that the pursuit policy should be distributed to all personnel who should read and sign the policy in the presence of a supervisor.

***In addition to making the department liable under civil litigation, the lack of proper training may lead to many other pursuit related problems including additional avoidable accidents.***

Finally Barker suggests that all written directives be thoroughly discussed with all personnel through the chain of command. This will provide an opportunity to address any questions on the policy the officers may have.

The second part of the approach suggested by Schofield is to provide officers with adequate training in pursuit related activities. This not only includes reinforcing the departmental policy but also educates the officers on the proper techniques of high-speed vehicle operation and the limits of their vehicles. Training is especially important since the court's ruling in *City of Canton (OH) v. Harris* in which a department's deliberate indifference to properly training their officers made the department liable in civil action (Alpert & Smith, 1991, 22). Morris (1993) cautions police administrators that since *Canton v. Harris* they ". . . are under close scrutiny of legal precedent to provide training in the duties that are a condition of employment. Failure to do so would be considered 'deliberately indifferent' to the rights of citizens with whom the officer will likely have contact. . . . if an officer is going to engage in such an activity as a pursuit, then that officer must be given some training on how to carry out that responsibility" (Morris, 1993, 4). In addition to making the department liable under civil litigation, the lack of proper training may lead to many other pursuit-related problems including additional avoidable accidents. One defense often cited by the defendants in

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litigation is that the failure to adequately train their officers was because of a lack of funding or facilities to conduct the training. Schofield (1988) cautions that this does not constitute an acceptable defense within the courts, and police administrators are still liable for the actions of their employees.

The third part Schofield suggests is the command supervision within the department. As stated previously police officers are prone to be sensation seekers and risk takers. Proper supervision is essential to keep the emotionalism and psychology associated with pursuits in check. It is imperative that someone not associated with the pursuit be responsible for controlling the pursuit. Schofield suggests that an officer who is not directly involved in the pursuit would be in a better position to decide objectively if the pursuit should be continued or terminated. This part of the decision-making process can succeed only if effective communication is maintained between those involved in the pursuit and those overseeing it. It is therefore essential that command officers closely monitor pursuits and effectively communicate with their officers during all phases of the pursuit.

***The documentation will not only provide a complete record of what transpired, but also a complete accounting of any corrective actions taken.***

The fourth and final part of Schofield's proposal is to establish and maintain an ongoing process of evaluation and documentation of pursuit-related incidents. This documentation should include a complete record of the activities of all officers involved in the pursuit, all conditions surrounding the pursuit, any accidents because of the pursuit, all remedial action recommended or initiated because of the pursuit, and any other records associated with the pursuit training or supervision of those involved. This documentation is important for two reasons. First, civil litigation is often initiated years after the incident occurs. The documentation will not only provide a complete record of what transpired, but also a complete accounting of any corrective actions taken. Second, documentation can identify any deficiencies that may be present in the police officers involved, departmental policies, training, or supervision of officers. By conducting ongoing analysis of police pursuits, the department can identify and correct any problems before they lead to litigation, thus reducing the potential for future civil remedies against a department. As Morris (1993) states, "Track pursuits and use resulting data as a basis for training and formulating a pursuit policy."

Several police-affiliated organizations have also provided guidance to police administrators on how to reduce liability associated with police pursuits. The Commission on Accreditation for Law Enforcement Agencies has provided the following in addition to their recommendations on police pursuits. "The agency should have clear-cut policy and procedures for pursuits. The policy should be cross-referenced with the agency's deadly force policy . . . All sworn personnel should be provided with this written directive. Agencies may wish to consider frequent discussion and review of these policies/procedures during roll-call and/or in-service training sessions" (Standards for law enforcement agencies, 1994, 41-2).

The Commission on Accreditation for Law Enforcement Agencies further recommends that a written directive on police pursuits contain the following sections.

1. Evaluating the circumstances
2. Initiating officer's responsibilities
3. Designating secondary unit's responsibilities
4. Assigning dispatcher's responsibilities
5. Describing supervisor's responsibilities
6. Using forcible stopping/roadblocks
7. Specifying when to terminate pursuit
8. Engaging in inter- and intrajurisdictional pursuits involving personnel from the agency and/or other jurisdictions
9. Detailing a procedure for a critique of the pursuit as soon as possible.

The Commission on Accreditation for Law Enforcement Agencies is not associated with any governmental body and has no enforcement powers. In fact, many circles question the Commission's ability to provide knowledgeable and useful guidance. Many wonder what level of expertise the Commission has.

This question cannot be asked of another large police organization that has taken a stand on police pursuits. The International Association of Chiefs of Police (IACP), established in 1893, is the oldest and one of the largest professional police organizations in the world. The IACP is comprised primarily of police administrators and senior level command officers. In 1996 the IACP adopted its model policy on police pursuits. The model policy incorporates many of the same issues discussed by Schofield. The policy states, "Vehicular pursuit of fleeing suspects can present a danger to the lives of the public, officers, and suspects involved in the pursuit. It is the responsibility of the agency to assist officers in the safe performance of their duties. To fulfill these obligations, it shall be the policy of this law enforcement agency to regulate the manner in which vehicular pursuits are undertaken and performed" (IACP model policy, 1996). The policy consists of four broad sections: (1) Purpose, (2) Policy, (3) Definitions, and (4) Procedures. Under the procedures section, the IACP discussed when to initiate a pursuit, how vehicles should be operated during a pursuit, supervisory responsibilities, tactics used during the pursuit, when the pursuit should be terminated, inter-jurisdictional pursuits, reporting procedures and training concerns that should be addressed by the department.

In addition to the CALEA and the IACP standards, there is concern from at least one member of the United States Senate on how and why police are conducting

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high speed pursuits. The National Police Pursuit Policy Act of 1997, Senate Bill 1236, was introduced by Senator Byron Dorgan from South Dakota. The bill would require that police departments establish and comply with police pursuit policies that conform to the standards set by the Secretary of Transportation (Wilding, 1998, 11). The bill is currently assigned to the Senate's Commerce, Science and Transportation Committee and no further action has been taken (Bill Tracking Report, 105th Congress).

To focus the discussion from a broad spectrum of national organizations and their recommendations, the State of Illinois, via the Illinois Law Enforcement Training and Standards Board, issued a set of model guidelines for police pursuits in 1994. The areas discussed in the Illinois model are in greater detail but closely resemble those previously discussed from the IACP (State of Illinois Model Guidelines for Police Pursuits, 1994). Although these guidelines are included in Public Act 88-637, compliance is not mandated by the Illinois legislature.

Illinois is not the only state legislature that has examined how police pursuits are conducted. In 1988 California adopted legislation regarding police pursuits. Rather than enacting recommendations for high-speed pursuits as Illinois has done, California enacted an immunity statute that shields police departments from civil suits. The only requirement for this immunity clause to be enacted is that the department must have adopted a police pursuit policy that conforms with certain minimum standards (California Vehicle Code 17004.7), which include supervisory controls, procedures for designating a primary unit and limiting the number of assisting units, procedures for interjurisdictional assistance, and guidelines for pursuits initiated or terminated. The statute has been part of California law since 1988. Lawsuits being filed against police departments are not contesting the legality of the law; rather, they attack the way police departments are writing their policies and enforcing their own departmental standards (Fick, 1997, 37). The standards set by the California legislature are similar to those proposed by both the IACP and CALEA, and those established by the model guidelines under Illinois law. None of the standards suggest police high-speed pursuits be eliminated, only that they are controlled to avoid unnecessary accidents, injuries, and deaths.

## Conclusions

Mastrofski, in his work for the Police Foundation (1999, 2-3), found that the public expected police officers to exhibit certain traits, among them providing responsive and competent service in a tangible way the public can observe. While the public expects police officers to apprehend criminals, they do not expect police officers to create a greater risk to the public safety. High-speed police pursuits are one of the many duties the public expects police officers to perform. Pursuits are inherently dangerous for the police officer, the suspect, and the public in general. Many times police pursuits are equated with the use of deadly force. Techniques such as a dead-man roadblock, bumper taps, or discharging a firearm at a fleeing motorist can easily end in death for the fleeing suspect or innocent members of the public. Police officers are asked to balance the immediate need to apprehend the suspect with the overall safety of the public.

In the 1960s police pursuits began to draw criticism from groups that disliked police pursuits and the unfortunate consequences they often brought. Pro-pursuit forces defended the actions of the police in apprehending fleeing suspects. Police officials did not want to establish a precedent where violators of the law knew they would not be pursued. Police departments and officers alike mistakenly believed this would result in a greater number of fleeing suspects, which would ultimately result in a greater number of injuries and deaths to innocent persons.

Police officers, and the departments that employ them, historically enjoyed the protection of the law from the legal doctrine of sovereign immunity. This doctrine, established under British common law, gave police their authority from the sovereign, (i.e., the state and federal government), making them immune to civil litigation. Units of government that employed police officers also enjoyed protections from civil litigation and were not held accountable for the actions of their police officers. Legislatures and the courts began to diminish the protections of sovereign immunity through new laws and rulings in court actions. In time, police officers began to be held accountable in civil court and their actions no longer had immunity. Today, when an officer acts outside the scope of his employment, or his/her actions are such that they "shock the conscience" (Podgers, 1994, 47), the officer will be held civilly liable for damages his or her actions have incurred.

Police departments have seen reductions in their protections under sovereign immunity as well. Police administrators and supervisors are being held personally responsible for the actions of their subordinates under the legal principle of vicarious liability and respondeat superior, where an employer is held responsible for the actions of an employee. Departments and the command staff are being held liable for their acts, or omissions, in controlling pursuits by the police. Just as *Collins v. City of Harker Heights* (112 S. Ct. 1061, 1992) established the standard of an officer's action "shocking the conscience," *City of Canton v. Harris* (109 S. Ct. 1197, 1989) established that a department's deliberate indifference to the training of its officers can make a department civilly liable.

The public and the courts are holding police administrators more accountable for the actions of the officers they supervise. In the new era of community policing and community involvement in a police department, police administrators no longer are insulated from public scrutiny. Police administrators must respond to the handwriting on the wall: "You are responsible for the control and training of your officers."

Police pursuits are never going to be eliminated from police work. It is incumbent upon police administrators to reduce their liability in civil action as much as possible. Police officers must be provided with an understandable and enforceable policy that provides guidelines on when, where, and in what manner police pur-

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suits will be conducted. Officers must be trained in the proper operation of police vehicles in high-speed police pursuits. Pursuits that do occur must be studied and analyzed in order to learn from previous mistakes or problems. And above all, officers must be encouraged to not allow their desire to apprehend a fleeing motorist to interfere with the officer's duty to protect the public. Only in this manner are the police truly going to be protectors of the public, conservators of the peace, and a welcome part of the community.

## References


Alpert, G.P., & Fridell, L.A. (1992). *Police vehicles and firearms: Instruments of deadly force.* Prospect Heights, IL: Waveland Press, Inc.

Alpert, G. P. & Smith, W.C. (1991). Beyond city limits and into the woods: A brief look at the policy impact of City of Canton v. Harris and Wood v. Ostrander. *American Journal of Police.* 19-40.

Barker, T. (1998). *Emergency vehicle operations. Emergency calls and pursuit driving.* Springfield, IL: Charles Thomas Publishers.

Berringer, H.G. (1994). Civil liability and the police (2nd ed.). Evanston, IL: Traffic Institute, Northwestern University.

Bayley, D.H. (1998). Policing in American: Assessment and prospects. *Ideas in American Policing.* Washington D.C., United States Department of Justice.

Black, H.C. (1979). *Black's Law Dictionary* (5th ed.) St. Paul, MN: West Publishing Company.

Bill Tracking Report, 105th Congress (1998). Lexis-Nexis [On-Line]. Available: http://web.lexis-nexis.com/congcomp/docum...5a3&_md5=ee340be71c9863259b445c9c05df4cf3.

Charles, M.T., & Falcone, D.N. (1992). Illinois police officers' opinions on police pursuit issues. *American Journal of Police Vol. 11.* 69-88.

Falcone, D.N. (1994). Police pursuits and officer attitudes: Myths and realities. *American Journal of Police, 13.* 143-155.

Fennessy, E., Hamilton T., Joscely, K., & Merritt (1970). *A study of the problem of hot pursuit by the police. (Contract No. FH-11-7220).* Hartford, CT. The Center for the Environment of Man, Inc.

Fick, R. (1997, February). California's police pursuit immunity statute: Does it work? *Police Chief 64.* 36-43.

Franklin, C.J. (1993). *The police officer's guide to civil liability.* Springfield, IL: Charles Thomas Publishers.

Ginnow, A.O., & Gordon, G. (Eds.). (1973-1997). *Corpus Juris Secundum.* St. Paul, MN: West Publishing. Vol. 3, 279-295.

Homant, R.J. & Kennedy, D.B. (1994). Citizen preferences and perceptions concerning police pursuit policies. *Journal of Criminal Justice 22.* 425-435.

Homant, R.J., Kennedy, D.B., & Howton, J.D. (1994). Risk taking and police pursuit. *The Journal of Social Psychology 134(2).* 213-221.

Immunity of Public Employees. 745 Illinois Compiled Statutes 10/2-205 (1998).

International Association of Chiefs of Police. (1996). *Vehicular Pursuit, Model Policy.* (Policy No. 2.24). Alexandria, VA: International Association of Chiefs of Police.

Kiernan, V. (1996, November 9). Stop now or the car gets it. *New Scientist, 2055.* 24-26.

Let's get serious about police pursuits! Readers want tougher penalties, clearer policies and better police training. (1993, May/June). *Traffic Safety,* 26-27.

Ludes, F.J. (Ed.). (1950-1997). *Corpus Juris Secundum* (Vol 63). St. Paul, MN: West Publishing. 77-81.

Mastrofski, S.D. (1999). Policing for people. *Ideas in American Policing.* Washington, D.C. United States Department of Justice.

Morris, E.R. (1993, January). Modifying pursuit behavior: The 9Ts approach. *FBI Law Enforcement Bulletin.* 1-6.

Podgers, J. (1994). Sanctioning the chase: Two courts reject suits for injuries suffered during police pursuits. *ABA Journal 80.* 47-48.

Schofield, D.L. (1988, May). Legal issues of pursuit driving. *FBI Law Enforcement Bulletin.* 23-29.

Schwartz, G.T. (1994). The hidden and fundamental issue of employer vicarious liability. *Southern California Law Review 69.* 1739-1767.

Smith, M.A. (1993, January/February). The perils of police pursuits. *Traffic Safety* 93. 14-17.

*Standards for law enforcement agencies: The standard manual of the law enforcement agency accreditation program.* (1994). Fairfax, VA: Commission on accreditation for law enforcement agencies.

State of Illinois, Illinois Law Enforcement Training and Standards Board. (1994). *State of Illinois Model Guidelines for Police Pursuit.* Springfield, IL.

Wells, L.E. & Falcone, D.N. (1997). Research on police pursuits: Advantages of multiple collection strategies. *Policing: An international journal of police strategy and management 20.* 729-748.

Wilding, M. (1998, March). National Police Pursuit Act of 1997. *The Police Chief 65.* 11.