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Canada's National Law Enforcement Magazine

April 2001



**RESPONSE 2001
TRADE SHOW EDITION**

Examining police pursuits

Part I

by Keith A. Gehrand

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 50 per cent 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 defence of pursuits based on a fear of increasing the number of accidents.

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

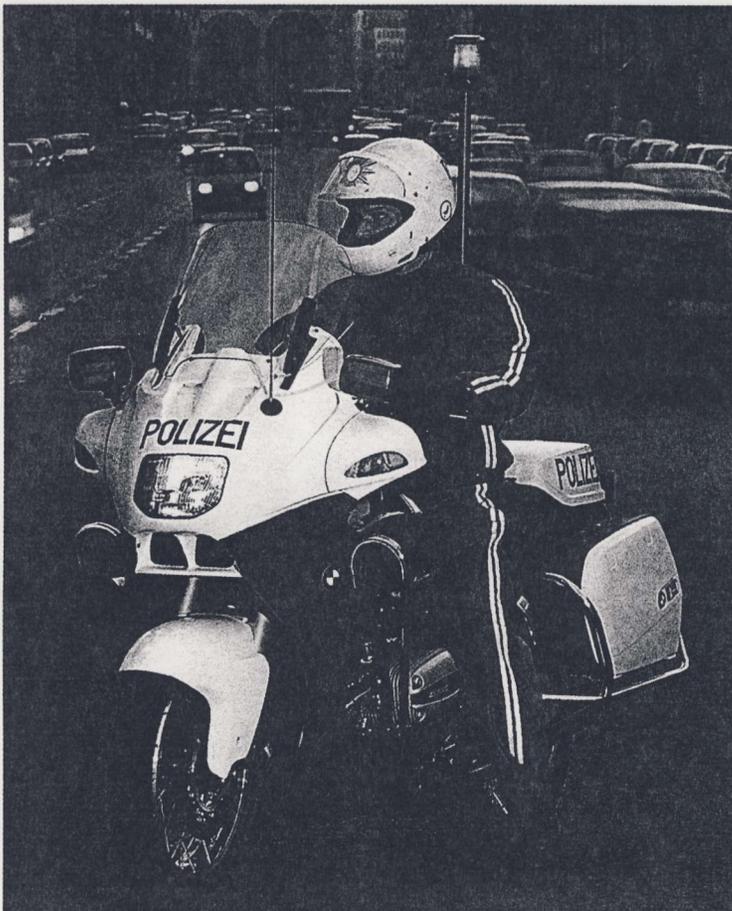


THE CHASE: There are many questions surrounding police pursuits including when to initiate them, when is the public at risk and who should be held accountable?

to establish some form of operational definition that most parties will agree upon.

One commonly accepted definition of a

police vehicular pursuit is: "an active attempt by a law enforcement officer on duty in a patrol car to apprehend one or more occupants of a



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moving motor vehicle, providing the driver of such vehicle is aware of the attempt and is resisting apprehension by maintaining or increasing his speed or by ignoring the law officer's attempt to stop him."

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 10 or so of his fellow officers on a 45 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 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?

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 per cent of the respondents enjoyed the challenge of police work; with 84 per cent agreeing that a good officer had to be willing to take chances.

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 behaviour 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

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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 "officers 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 that 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).

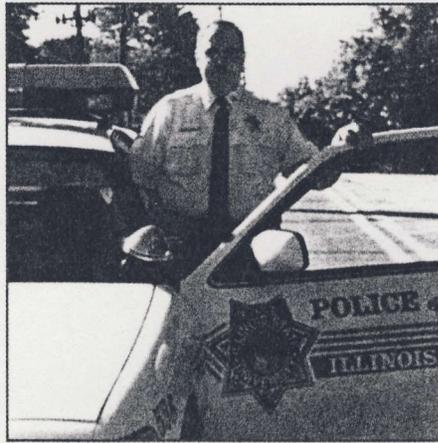
Police officers are expected to enforce laws and serve the public interest. Officers are required to make split second decisions that often involve a balancing between enforcing the law and protecting the public's safety. However, does the public see high speed vehicular pursuits the same way that police 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, "Eighty-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 favour police pursuits. The same respondents overwhelmingly (62.8 per cent) 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 danger-



Capt. Keith Gehrand

ous 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 per cent of the respondents stated they would not be more likely to flee if a no-pursuit policy was implemented and of the 15 per cent who stated they would be tempted, only four per cent 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.

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 involved in a police pursuit, or emergency response where there is an accident involving injury or death, they stand a better than 75 per cent 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:

- 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.
- Intentional torts - The defendant deliberately intends to injure another person, their prop-

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erty, or protected rights.

- Constitutional tort - 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 "indirect legal responsibility; the liability of an employer for the acts of an employee."

Berger 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.

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.

The fastest growing category of tort actions being brought against the police is negligence. Franklin (1993) states that for negligence to be shown, 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 endeavouring to promote his principals' business without the scope of the actual or apparent authority conferred upon him for that purpose... The tortious 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).

"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."

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 super-

rior, 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.

Reprinted from *Campus Law Enforcement Journal*. Keith Gehrand is a captain with the Illinois State University Police.



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