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Examining police pursuits

Part II

by Keith A. Gehrand

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 wilful 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 person 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, work history, experience in police work, previous police high-speed pursuit training and experience.

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 ad-



SHOULD YOU PURSUE?: Many agencies have developed guidelines to deal with this questions and help ease the threat of civil litigation resulting from police chases.

ministrators 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 behaviour 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:

- 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
- 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.
- 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.
- Departmental considerations. The courts will look into such concerns as
 - (1) whether there was a violation of departmental policy regarding police pursuits,

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- (2) whether the officer had been trained in pursuit driving, and
- (3) the physical and visual condition of the police vehicle. (Barker, 1998, 267)

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 if the pursuit was initiated for a sound reason. 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. 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).

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 defence often cited by the defendants in 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 defence within the courts, and police administrators are still liable for the actions of their employees.

The third topic Schofield touches on 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 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 documen-

tation will not only provide a complete record of what transpired, but also a complete account 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.

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 recommends that a written directive on police pursuits contain the following sections:

- Evaluating the circumstances.
- Initiating officer's responsibilities.
- Designating secondary unit's responsibilities.
- Assigning dispatcher's responsibilities.
- Describing supervisor's responsibilities.
- Using forcible stopping/roadblocks.
- Specifying when to terminate a pursuit.
- Engaging in inter-jurisdictional and intra-jurisdictional pursuits involving personnel from the agency and/or other jurisdictions.
- 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 com-

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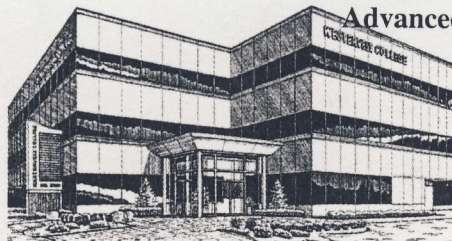
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mission's ability to provide knowledgeable and useful guidance. Many wonder what level of expertise the commission has.

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 fulfil 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.

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.

"Police officers must be provided with an understandable and enforceable policy that provides guidelines on when, where, and in what manner, police pursuits will be conducted."

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, limiting the number of assisting units, procedures for inter-jurisdictional 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 pursuits began to draw criticism from groups that disliked police chases 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.

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.

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 pursuits 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 analysed in order to learn from previous mistakes or problems. 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.

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

The Great Mac Attack

by Tony MacKinnon



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