

Police Pursuits and Civil Liability

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As many as 40 percent of all motor vehicle police pursuits end in collisions¹ and some of these result in nearly 300 deaths each year of police officers, offenders, or innocent third party individuals.² Because many police pursuits result in accidents and injuries, agencies and officers become subjects of civil lawsuits. Initiated in state or federal courts, these lawsuits have resulted cumulatively in case law that directs law enforcement agencies to develop pursuit policies. The U.S. Supreme Court recently issued a ruling that has changed the threshold of negligence before an agency or officer can be held liable, which will impact

police agencies across the United States.³

Because of the critical nature of police pursuit situations, chief executive officers (CEOs) of law enforcement agencies must establish an appropriate policy governing the actions of their personnel during such incidents. In doing so, CEOs first must consider the constraints and allowances set forth by state and federal statutes and court decisions applicable within their jurisdiction. They must create a policy that balances the need to apprehend offenders in the interests of justice with the need to protect citizens from the risks associated with police pursuits. Additionally, the

policy must protect the financial interests of the community based upon potential losses of taxpayer dollars following successful litigation against the agency as a result of law enforcement actions deemed inappropriate by the courts. Adopting a policy similar to that of another agency does not easily resolve the CEO's dilemma because a variety of philosophies exists among the pursuit policies of law enforcement agencies. U.S. federal courts have reviewed numerous police pursuit cases using different standards of conduct and the courts routinely have reviewed the agency's pursuit policy before rendering a decision. The policy, or lack of same, could

impact the outcome of a civil action.

LITERATURE REVIEW

The published literature regarding police pursuit is voluminous, and individual studies focus on a variety of elements associated with the issue.⁴ Some experts categorize pursuit policies as either restrictive or judgmental where, in the former case, the officer may only pursue given the existence of certain well-defined criteria, or, in the latter, where the officer may decide whether or not to pursue based upon certain factors.⁵ Other experts prefer to label judgmental policies as discretionary, and further subdivide restrictive policies into two categories—restrictive and discouraging.⁶ They define a restrictive policy as one that places only certain restrictions on the judgments of officers, and a discouraging policy as one that severely cautions against or prohibits pursuits except in extreme circumstances.⁷

One study discussed four factors that police officers and supervisors must consider when making the decision to pursue or to continue or terminate pursuit: the nature of the violation (e.g., traffic offense, felony); the characteristics of the area (e.g., freeway, commercial, residential); traffic conditions (e.g., congested or not congested); and weather conditions (e.g., wet or dry).⁸ Among both officers and supervisors, the nature of the offense represented the most important variable involved in the decision to pursue, followed by the level of traffic congestion.⁹ The study focused on the attitudes of the officers

and supervisors independent of the actions that those individuals actually took in observance of policies in conflict with their personal beliefs.¹⁰

Other research describes the attitudes of the public with regard to police pursuit and some conclude that the public overwhelmingly supports pursuits for serious criminal offenses.¹¹ The data also suggest that public support for police diminishes proportionate to the seriousness of the offense, especially when the public is educated about the dangers of pursuit.¹²

Another study used data gleaned from interviews with prison inmates that attempted to describe attitudes toward police pursuit from the offenders' perspectives.¹³ These findings concluded that the average individual who makes the decision to flee is a male in his mid-20s, and that few differences exist between the thoughts going through the minds of those offenders who eventually escaped

and those who law enforcement captured.¹⁴

Lawsuits stemming from police pursuits allege civil rights violations pertaining to Title 18, Section 1983, U.S. Code. Traditionally, suits allege violations of the Fourth and Fourteenth Amendments. Police pursuits relate to the Fourth Amendment as to the citizens' rights against unreasonable seizures. The Fourteenth Amendment relates to citizens' right to treatment by governmental entities that is fundamentally fair.

DISCUSSION

Relevant Court Cases

Brower v. County of Inyo

The respondents in this case, which involved the use of police roadblocks to stop a fleeing vehicle, "allege the police acting under color of law, violated Brower's Fourth Amendment rights by effecting an unreasonable seizure using excessive force. Specifically, the



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complaint alleges that respondents placed an 18-wheel truck completely across the highway in the path of Brower's flight, behind a curve, with a police cruiser's headlights aimed in such fashion as to blind Brower on his approach."¹⁵ The U.S. Supreme Court ruled in favor of Brower, which led many police agencies to restrict the use of roadblocks to stop fleeing vehicles. In its brief, the U.S. Supreme Court identified to the law enforcement community its interpretation of a seizure as it pertains to police pursuits. *Brower v. County of Inyo* states a seizure occurs "when there is a governmental termination of freedom of movement through means intentionally applied."¹⁶

Brower v. County of Inyo concerns an instance in which police activity brought about an intended result. The courts have rejected Fourth Amendment claims when action by the police during a pursuit brings about unintended results. Thus, third-party victims are not able to bring Fourth Amendment claims alleging unreasonable seizure arising from an action taken by police.

City of Canton, Ohio v. Harris

In its ruling in *City of Canton, Ohio v. Harris*, the U.S. Supreme Court dealt with another arena that directly affects law enforcement agencies and the duty to train employees.¹⁷ Although this case did not involve a police pursuit, many subsequent cases involving pursuits mention it. The Court held that "the inadequacy of police training may serve as the basis for 1983 liability only where the failure to train

amounts to deliberate indifference to the rights of persons with whom the police come into contact."¹⁸

Galas v. McKee

The U.S. Court of Appeals for the Sixth Circuit examined the issue of whether police agencies can use police pursuits to apprehend traffic violators. In *Galas v. McKee*, the court reviewed a case based in Nashville, Tennessee involving the police pursuit of a 13-year-old traffic violator.¹⁹ On March 16, 1983, Officer McKee of the Metropolitan Nashville-Davidson County Police

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Department, observed a vehicle exceeding the speed limit. Officer McKee gave chase, which, at times, reached 100 miles per hour, on a police motorcycle. The pursuit culminated when the vehicle left the road and crashed. The driver sustained serious and life-long injuries. The district court ruled in favor of the police officer and the police department. The parents of the driver appealed the decision. The court of appeals held the following: "We conclude that the minimal intrusion on a traffic offender's Fourth Amendment right occasioned by the officers participation in a

high-speed pursuit does not outweigh a longstanding police practice which we consider essential to a coherent scheme of police powers...the use of high speed pursuits to apprehend traffic violators is not unreasonable and, thus, not violate of the Fourth Amendment."²⁰ Clearly, officers may engage in high-speed pursuits as an acceptable method to apprehend traffic violators. The court further reviewed the department's policy concerning traffic violators and police pursuits and held that, "The policy provides, at most, that officers may pursue, that is, follow, suspects. The policy of following traffic offenders who refuse to obey an officer's directive to pull to the side of the road does not infringe on the right to life."²¹ This court affirmed the use of police pursuits to capture traffic violators.

Fagan v. City of Vineland

The U.S. Court of Appeals for the Third Circuit in *Fagan v. City of Vineland* reviewed a police pursuit, which resulted in the injury of several persons and the death of three others.²² The court argued this case once, and then chose to reargue the case again to review the standard applied to police pursuits. On March 6, 1988, an officer with the City of Vineland, New Jersey, Police Department was on patrol when a vehicle with a t-top roof drove by. The car, which held several passengers, was not speeding, but a passenger in the vehicle was standing up through the roof. The officer intended to stop the vehicle to issue a warning concerning the person standing up and hanging out of the

roof. At this point, no violation or crime had occurred. When the officer activated his overhead lights to stop the vehicle, it began to pull away from the officer at speeds between 35 and 40 miles per hour. The vehicle failed to stop at several stop signs and began to increase in speed. A sergeant was notified and could have terminated the pursuit. In fact, the sergeant requested that the dispatch center contact the officer to find out why the officer was pursuing the vehicle. The officer never responded. The vehicle then increased its speed to between 70 and 80 miles per hour. Another officer attempted to block an intersection but the vehicle continued past the officer. The vehicle ran a red light and collided with a pickup truck resulting in a major crash. Two occupants in the pickup truck and one in the vehicle the officer had pursued were killed.

A federal civil lawsuit was initiated against the officers and the Vineland Police Department, including the chief of police. The plaintiffs argued that “the City and Police Chief violated section 1983 and the Fourteenth Amendment by following a policy of not properly training and supervising police officers in the conduct of high speed pursuits, and by following a policy of not enforcing the pursuit guidelines.”²³ The lower court ruled in favor of the city and the police officers. The appeals court in *Fagan v. Vineland* reversed the judgment against the city stating, “A municipality can be liable under section 1983 and the Fourteenth Amendment for failure to train its police officers with respect to high speed automobile chases,

even if no individual officer participating in the chase violated the Constitution.”²⁴

The complete Third Circuit reargued the case under *Fagan v. Vineland* on only one issue.²⁵ The issue dealt with the legal standard to be applied to police pursuits. The majority ruled that the appropriate standard describes police behavior that “shocks the conscience.” The dissenting opinion called for a lesser standard—“reckless or callous indifference.” This latter standard, of course, represents a much lower threshold. The dissenting

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opinion was extensive in attempting to justify this lower standard in police pursuit cases. The majority, however, concluded that the police conduct in this case did not “shock the conscience” and ruled in favor of the police.

State courts have applied different standards in reviewing police pursuit cases. The Appellate Court of Illinois in *Nelson v. Thomas*²⁶ and *Urban v. Village of Lincolnshire*²⁷ referred to “wilful and wanton conduct.” The Court of Appeals of Georgia in *Wilson v. City of*

*Atlanta*²⁸ and *Thompson et al. v. Payne*²⁹ considered “whether, officer’s act of pursuing suspect’s vehicle was performed with requisite regard for safety of all persons.” The District Court of Appeals of Florida in *Porter v. State Department of Agriculture* asked “if defendant’s conduct creates foreseeable ‘zone of risk’ that poses general threat of harm to others and whether it was foreseeable that defendant’s conduct would cause specific injury that actually occurred.”³⁰ Clearly, prior to *Fagan*, federal courts had no clear direction from state courts in defining the standard by which to judge police behavior during pursuits.

County of Sacramento v. Lewis

In the U.S. Supreme Court decision in *County of Sacramento v. Lewis*,³¹ the Court has clarified the federal standard that must be met by plaintiffs who allege police misconduct during vehicle pursuits. The Court held that “the issue in this case is whether a police officer violates the Fourteenth Amendment’s guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high speed automobile chase aimed at apprehending a suspected offender. We answer no, and hold that in such circumstances only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation.”³²

On May 22, 1990, Sacramento County sheriff’s deputies responded to a call regarding a fight. After handling the call, a

motorcycle with a driver and a passenger approached the officers at a high rate of speed. The officers attempted to stop the motorcycle, but the driver chose to flee. A high-speed pursuit commenced with the vehicles reaching speeds of 100 miles per hour in a residential neighborhood. The pursuit ended when the motorcycle crashed. Unable to stop, the police vehicle ran over the passenger, who died at the scene. The district court ruled in favor of the police. The court of appeals reversed the decision based upon the standard of deliberate indifference. That court based its decision, in part, on the fact that the deputy violated his agency's general order concerning police pursuits. The Supreme Court held that the failure of the deputy to adhere to his agency's pursuit policy was irrelevant. This ruling, in effect, has given police agencies more protection from federal civil litigation generated by police pursuits.

Research and Review of Several Policies

Formal studies reflect that the general public believes police pursuits remain necessary for the apprehension of persons suspected of committing serious offenses, and that the need for pursuit to capture any offender should be balanced against the risk of danger to the innocent public.³³ These findings are consistent with the directives set forth in nine pursuit policies reviewed by the authors. Four of the agencies' policies and the IACP model policy can be characterized as judgmental, allowing pursuit for any offense as long as the danger to

the officers and public created by the pursuit does not outweigh the necessity to capture the offender.³⁴ Three of the policies can be described as restrictive, based upon Alpert's definition³⁵ allowing pursuits only in the cases of felonies (one policy) or in the case of serious violent felonies (two policies).³⁶ One agency policy, of the West Midlands Police of Birmingham, England,³⁷ takes into account police driver proficiency as indicated by level of completion of a hierarchy of available driving courses. Depending upon current conditions and the seriousness of the offense,

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drivers who obtain advanced driving grades may pursue. All other drivers may pursue only in the event of serious, violent offenses.³⁸

The Pennsylvania State Police, which has a "pursuit continuum" similar in many ways to the force continua that are components of many department use of force policies, characterizes another novel approach by an agency.³⁹ The Pennsylvania State Police Continuum provides clear direction for

the consideration of supplementary tactics including the use of stop strips, roadblocks, induced stops, rolling roadblocks, ramming, and firearms.

Apparently few, if any, studies exist that attempt to determine if an offender, in deciding whether or not to flee, takes into account any chase prohibitions placed on officers by their agency's policy. Unfortunately, the often-heard argument against a restrictive policy states that once the members of a community learn that a local agency's policy prohibits pursuit except in the event of felonies, officers will suffer an increase in the number of offenders who choose to flee. While the empirical evidence in support of, or rebuttal against, this argument is insufficient, the anecdotal evidence suggests that such policies do not result in a change in the number of suspects who choose to flee.⁴⁰

CONCLUSION

In *County of Sacramento v. Lewis*, the Supreme Court clearly defined the standard to be met when considering the liability of police agencies associated with vehicle pursuit. This standard is a much higher benchmark than previous rulings. However, this should not cause complacency.

Chief executive officers of every law enforcement agency must promulgate a written vehicle pursuit policy that provides clear guidance for that agency's officers. Such policy should include, at minimum, statements that officers will not continue pursuit once the risk of danger to the officer and public created by the pursuit exceeds the

potential danger to the public should the suspect remain at large. Also, officers assessing the danger must consider the nature of the violation committed by the offender, as well as environmental conditions such as type of area, weather, and level of traffic congestion. Further, based upon the characteristics of the particular agency, the area it encompasses, and the people it serves, CEOs may desire to restrict pursuit to cases in which the offender has been involved in serious offenses. Additionally, CEOs also must heed state statutes and state-level court decisions applicable within their jurisdiction. Finally, although civil lawsuits likely will continue to be filed, CEOs can protect their agencies by proactively reassessing their agency's pursuit policy and providing adequate training regarding the policy and motor vehicle pursuit in general. ♦

Endnotes

¹ R. G. Dunham, G. P. Alpert, D. J. Kenney, and P. Cromwell, "High-Speed Pursuit: The Offenders' Perspective," *Criminal Justice and Behavior*, (March 1998): 30-45; C. Eisenberg and C. Fitzpatrick, "An Alternative to Police Pursuits," *FBI Law Enforcement Bulletin*, August 1996, 16-19.

² Supra note 1 (Eisenberg and Fitzpatrick).

³ *County of Sacramento v. Lewis* at 118 S. Ct. 1708 (1998).

⁴ The authors of this article reviewed pursuit policies of eight agencies, as well as the model policy of the International Association of Chiefs of Police (IACP). For an example of a model police pursuit policy, contact the IACP National Law Enforcement Policy Center, 515 North Washington Street, Alexandria, VA 22314-2357; telephone 800-THE-IACP; Web site: <http://www.theiacp.org/pubinfo/>.

⁵ G. P. Alpert, "A Factorial Analysis of Police Pursuit Driving Decisions: A Research Note," *Justice Quarterly*, June 1998, 348-359.

⁶ H. Nugent, E. F. Connors, J. T. McEwen, and L. Mayo, *Restrictive Policies for*

High-Speed Police Pursuits, (Washington, DC: Institute of Law and Justice, Inc., 1988).

⁷ Ibid.

⁸ Supra note 5.

⁹ Supra note 5.

¹⁰ Supra note 4. All of the policies reviewed by the authors, as well as the model IACP policy, advised personnel of the environmental factors when making decisions related to pursuit.

¹¹ J. M. MacDonald and G. P. Alpert, "Public Attitudes Toward Police Pursuit Driving," *Journal of Criminal Justice* 26 (1998), 185-194.

¹² Ibid.

¹³ Supra note 1, (Dunham, Alpert, Kenney, and Cromwell).

¹⁴ Supra note 1, (Dunham, Alpert, Kenney, and Cromwell).

¹⁵ *Brower v. County of Inyo*, 109 S.Ct. 1378 (1989).

¹⁶ Ibid.

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¹⁷ *City of Canton, Ohio v. Harris*, 109 S. Ct. 1197 (1989).

¹⁸ Ibid.

¹⁹ *Galas v. McKee*, 801 F.2d 200 (1986).

²⁰ Ibid.

²¹ Ibid.

²² *Fagan v. City of Vineland*, 22 F.3d 1296 (C.A. 3 1994)(en banc).

²³ *Fagan v. City of Vineland*, 22 F.3d 1283 (1994).

²⁴ Ibid.

²⁵ *Fagan v. City of Vineland*, 22 F.3d 1296 (1994).

²⁶ *Nelson v. Thomas*, 668 N.E.2d 1109 (1996).

²⁷ *Urban v. Lincolnshire*, 651 N.E.2d 683 (1995).

²⁸ *Wilson v. City of Atlanta*, 476 S.E.2d 892 (1996).

²⁹ *Thompson et al. v. Payne*, 453 S.E.2d 803 (1995).

³⁰ *Porter v. State Department of Agriculture*, 689 So.2d 1152 (1997).

³¹ *County of Sacramento v. Lewis*, S.Ct. No. 96-1337 (1998); available from <http://www.findlaw.com>; accessed on November 7, 2000.

³² Ibid.

³³ Supra note 11.

³⁴ "Operation of Sheriff's Office Vehicles," *Erie County Sheriff's Office General Orders Manual*, (unpublished, 1990), 1-6; "Emergency Vehicle Response/Pursuit," Marion County Sheriff's Office (unpublished, 1992), 1-10; "Police Pursuits, Legal Intervention, Roadblocks, Pennsylvania Police Pursuit Reporting System, and Pursuit Analysis," *Pennsylvania State Police Department Directives*, (unpublished 1996), 1-21; E. M. Sweeney, "Vehicular Pursuit: A Serious and Ongoing Problem," *Police Chief*, January 1997, 16-21; "Vehicular Pursuits," *Washington State Patrol Regulation Manual* (unpublished, 1999), 50-58.

³⁵ Supra note 5.

³⁶ "High Speed Pursuits," *City of Chesterfield Police Department General Orders Manual*, (unpublished, 1995), 1-5; "Vehicle Pursuit, Stop, Emergency Response, and Surveillance Driving," *Florida Department of Law Enforcement Policy Manual* (unpublished, 1999), 1-5; "Emergency Vehicle Operation/Vehicle Pursuit," *Odessa Police Department General Orders Manual* (unpublished, 2000), 1400-1406.

³⁷ "Pursuit Policy," *West Midlands Police Department Directives* (unpublished, 1998), 1-12.

³⁸ The number of the sample of agency policies revealed here is not large enough to be statistically valid as an indicator for which types of policies are most prevalent, nationally or internationally.

³⁹ "Police Pursuits, Legal Intervention, Roadblocks, Pennsylvania Police Pursuit Reporting System, and Pursuit Analysis," *Pennsylvania State Police Department Directives* (unpublished, 1996), 1-21.

⁴⁰ Supra note 11.

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