

LAW ENFORCEMENT MANAGEMENT INSTITUTE

LIABILITY RISKS ASSOCIATED WITH VEHICLE PURSUITS  
BY LAW ENFORCEMENT AGENCIES

A LEARNING CONTRACT  
SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR  
MODULE I

BY  
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In the quiet, still dark of the night, you hear those three little magic words, "I'm in chase". Everyone's adrenaline flows, affecting officers in different ways. These three little words have transformed the patrol officer's shift from routine police calls for service into excitement, fast driving, catch the bad guys and forget about everything else. To most supervisors, these words cause his stomach to knot because he's caught between being an officer and the supervisor, who will be held responsible for the results of this pursuit. He's torn between the "Catch the Guy" syndrome and the "is the risk to the officers, citizens and City worth the potential risk?" There are as many responses to these situations as there are supervisors and department policies, whereas each pursuit is unique to itself and the resulting liability.

Decisions on policy and procedures would be greatly simplified if there were sufficient empirical research data from which to formulate guidelines. The few studies that are available lack standardization as to the information and statistics compiled. To compound the situation, courts render conflicting verdicts in different regions on pursuit litigation.

### Suspects

Available information indicates that the majority of suspects flee because of traffic or vehicle code violations.<sup>1</sup> The Houston Police Department reported that 59.1% of

all their vehicle pursuits originated from Class "C" misdemeanor traffic violations.<sup>2</sup> During 1989 the Garland Police Department reported 67% of their vehicle pursuits originated from traffic violation stops. These pursuits lasted an average of 4.10 minutes each, which was down from 4.31 minutes for 1987.<sup>3</sup>

A 1987 study by Metro Dade Police Department showed 54% were initiated for traffic offenses, 16% were from "Be on Lookout for" (BOLO) vehicles of known criminals. The length of time of each pursuit in 73% of the pursuits was five minutes or less.<sup>4</sup>

Why do these drivers flee the police? Professor of Criminal Justice at Michigan State University, Eric Beckman, says "Most are in teens or 20's and panic over minor infractions. They run because they're driving Uncle Freddie's car, when Uncle Freddie told them not to, or they have a six pack of beer in the car and they're under age, or they have an expired license, or they have an outstanding warrant for nonsupport".<sup>5</sup>

During the spring of 1981, a car driven by a 13 year old boy went out of control and struck a concrete pillar while being chased by a police car, killing six teenagers. Police explained that the youths had tried to outrun a pursuing police car and that they were traveling at an extremely high rate of speed.<sup>6</sup>

In 1989 the Dallas Police Department was involved in a pursuit with a stolen

vehicle. The police vehicle lost control in the rain and collided with another vehicle. The suspect vehicle escaped. The two officers in the squad car were killed, a recruit riding with officers for observation was severely injured. The two occupants in the struck vehicle were also severely injured. The abandoned pursued vehicle was later recovered, and the two responsible arrested. The deaths of two police officers and severe injury to three others is a high price to pay for two juvenile car thieves.

### Duty Required

The courts have ruled, in general, that police have no duty to refrain from chasing a criminal suspect even when the risk of harm to the public arising from the chase is foreseeable and the subject being chased is for a misdemeanor.<sup>7</sup> The courts also have ruled that police have no duty to pursue a fleeing criminal unless the department has a policy stating otherwise.....<sup>8</sup>

The courts have ruled that police are authorized to give pursuit to violators, but further rule that they are under no requirement to pursue. However, the courts stress an obligation and duty with respect to the manner in which they conduct the pursuit. Most courts have translated the reasonable care standard into a duty to drive with care which a reasonable prudent officer would exercise in the discharge of official duties of a like nature.<sup>9</sup>

When a pursuit-related accident involves the fleeing motorist and not the police, most courts conclude that the proximate cause was not the manner in which the police

conducted the pursuit, but rather the manner in which the pursued driver negligently operated his vehicle.<sup>10</sup>

In Galas v. McKee, a pursued driver crashed and brought a 42 U.S.C. 1983 civil rights lawsuit to recover for his injuries. The court held that the police decision to continue the pursuit at high speed was not an unreasonable seizure because no seizure had in fact occurred; a vehicle pursuit does not constitute a seizure by physical force or show of authority.<sup>11</sup>

A 1984 case, Biscoe v. Arlington County, the Arlington County, Virginia police were in pursuit of a suspected bank robber. The pursuit originated on the Virginia side of the Potomac River and proceeded into the District of Columbia. The vehicle operated by the robber eventually went out of control, struck another vehicle, and then struck Biscoe, who was walking on a sidewalk. As a result of the accident, Biscoe lost both his legs. Biscoe filed suit and was awarded \$5 million. The United States Supreme Court upheld the lower court decision.<sup>12</sup>

A 1981 case, Dent v. City of Dallas, a police officer attempted to arrest a forgery suspect who fled. The pursuit was less than a mile and one minute in length and ended when the suspect ran a stop sign and collided with a vehicle being operated by Dent. Dent's wife and parents filed suit. The court found the City of Dallas liable for \$100,000 for Dent's wife and son, but denied all relief sought by parents under a 42 U.S.C. 1983 suit. Both spouse and parents appealed. The courts

reversed the lower court's decision giving nothing in judgment. The court ruled the city could not be held liable for the officer's discretionary decision as to if, how and when to arrest a person suspected of attempting to pass a forged prescription. Upholding this liability would force officers to arrest all persons stopped by them for whatever reason, lest these persons attempt escape and cause injury to someone. Sound jurisprudence, as well as the public interest, would not tolerate such a holding. The sole proximate cause of the accident was the suspect's negligent conduct.<sup>13</sup> Simply stated, the courts will not make police officers the insurers for the conduct of the suspects they pursue.

Departments are responsible for public safety with regard to policies and procedures, written or established by tradition. Generally, these policies and procedures are admissible as evidence in lawsuits to show violations or negligence of the department or officers. Officers involved in pursuits have a statutory duty to drive with due regard for the safety of others.

### Policy

Advocates continue to discuss the advantages and disadvantages of written department policy and procedures governing vehicle pursuits. The U.S. Court of Appeals for the Seventh Circuit stated a pursuit policy is a discretionary act for which the agency is immune from liability. However, most experts recommend agencies adopt policies that establish guidelines and controls relating to pursuits. Legal commentators point out that the absence of strong and convincing policy on

pursuits forces officers to react intuitively, which may increase the likelihood of unnecessary accidents and liability.<sup>14</sup>

The organizational mission and statement should be defined in these policies. The policy should define the acceptable operational parameters in a manner which allows the officer instant recall when instigating and participating in a pursuit.

### Training

All officers should receive training in established department policy and procedures relating to vehicle pursuits. Officers and agencies, facing the multitude of situations and conditions today, can no longer be content with just driving. Considering the liability factor, a driving program stressing driving skills, awareness, and knowledge of vehicle capabilities should be implemented. Departmental differences are not a valid defense argument against liability resulting from the failure to adequately train officers due to a lack of resources or training facilities.<sup>15</sup>

Continuous use of emergency lights and sirens is critical for all vehicles involved during a pursuit. Court decisions are being returned against agencies for failure to use these devices. Officers should always remember that red lights and sirens only request the right of way, not grant it.

Important training can be obtained from critiques held after the pursuit. These should be conducted quickly when the details are still fresh in the officer's memory.

Areas in which improvement is needed can be identified with a discussion of ways in which the pursuit could have been conducted differently by those involved. These critiques should be addressed in the agency's policy. The critiques also could serve as a means of providing statistics for the agency relating to pursuits.

### Deadly Force

- ' The use of deadly force includes firearms, roadblocks, ramming, tire spikes, etc. Author Gordon Misner states few, if any, states allow the use of deadly force for the apprehension of misdemeanants or traffic-law violations; therefore, it seems logical to place any pursuit over the posted speed limit into the category of using deadly force. If the circumstances don't reasonably permit the use of deadly force, they also do not warrant engaging in a high speed pursuit.<sup>16</sup> The Texas penal code does not address deadly force in relationship to vehicle pursuits.

### Road Blocks

The use of roadblocks requires special care, resulting in some agencies prohibiting their use. In the Texas case of Langley v. City of Amarillo, officers in a pursuit set up a roadblock across traffic lanes without using emergency lights on the roadblock vehicle, which caused the suspect vehicle to collide with the roadblocks. The court ruled the roadblock was a constitutional violation of substantive due process because it was concealed. If used, roadblocks have to be placed in a highly visible and lighted area to provide the approaching driver sufficient time in which to stop.<sup>17</sup>



A 1987 case, Brower v. County of Inyo, a 20 mile high speed pursuit ended when the fleeing suspect was killed when his vehicle hit a tractor-trailer which police had placed across the road for a roadblock. The court held that police use of a roadblock could constitute a constitutional violation of substantial due process if it was designed as an intentional deathtrap where the approaching driver does not have a clear option to stop because the roadblock concealed around a curve or inadequately illuminated.<sup>18</sup>

In Tennessee v. Garner, the constitutionally permissible use of force standard was violated when a passenger in a fleeing vehicle was injured when the vehicle hit a roadblock after officers allegedly shined a bright light into the driver's eyes as the vehicle approached the roadblock.<sup>19</sup>

Roadblocks should be used only when authorized by a supervisor, and only as a last resort when the danger of allowing the pursuit to continue creates an inappropriate danger to others. Information concerning roadblocks must be communicated to all participating units involved in the pursuit as well as approaching motorists. This directive should be included in any written departmental pursuit policy.

### Conclusion

Liability associated with police vehicle pursuits are enormous although the average pursuit lasts only 4 to 5 minutes. The greater the time and distance, the greater the

liability. Almost without exception, police pursuits are no win situations, and each agency has to establish some type policy ranging from "no chases", to "chase them until.....". An organizational philosophy should be adopted which allows officers and supervisors to assess if "the risk is worth the possible consequences under the existing conditions justified?". Unfortunately, some accidents and pursuit liabilities are an inevitable consequence of vehicle pursuits, even with the best policy and officer decisions. Pursuits are inherently dangerous, stressful, and potential liability nightmares. Knowing this, the organization has to develop a philosophy from little empirical data.

<sup>1</sup>Erik Beckman, A Report To Law Enforcement on Factors in Police Pursuits, (Michigan: Michigan State University. 1985), pp. 1-27.

<sup>2</sup>James O'Keefe, Highspeed Pursuits in Houston, The Police Chief, July 1989, pp. 32-40.

<sup>3</sup>Garland Police Department, Analysis of Patrol Pursuits 1989, January 1990.

<sup>4</sup>Geoffrey P. Alpert & Roger G. Dunham, Policing Hot Pursuits: The Discovery of Aleatory Elements, The Journal of Criminal Law & Criminology, Vol. 80, No. 2., 1989, pp. 407.

<sup>5</sup>Anastasia Touflexis, The Perils of Hot Pursuit, Time, November 14, 1988, pp. 96-97.

<sup>6</sup>The Flint Journal, Chase Ends in 6 Deaths, 13 Year Old at Wheel, May 31, 1981, P. A-3

<sup>7</sup>Jackson v.. Olson, 712 P2d 128 (Or App. 1985).

<sup>8</sup>David S. LaBrec, Risk Management: Pursuit Driving Litigation, Liability and Policy, presented to: Southwestern Law Enforcement Institute, Southwestern Legal Foundation, Dallas, Texas, November 21, 1989.

<sup>9</sup>Daniel L. Schofield, Legal Issues of Pursuit Driving, FBI Law Enforcement Bulletin, May 1988, pp. 23-29.

<sup>10</sup>OBERkramer v. City of Ellisville, 706 S.W. P2d 440 (Mo. 1986).

<sup>11</sup>Galas v. McKee, 801 F.2d, 200 (6th Cir. 1986).

<sup>12</sup>Biscoe v. Arlington County et al. 438 F2d: 1352, (DC Cir. 1984).

<sup>13</sup>Dent v. City of Dallas, 729 S.W. P2d. 114.

<sup>14</sup>Schofield, pp. 23-29.

<sup>15</sup>Schofield, pp. 23-29.

<sup>16</sup>Gordon Misner, High-Speed Pursuits: Police Perspectives, C.J. The Americas, Vol. 2, No. 6, December-January 1990 pp. 15-17.

<sup>17</sup>City of Amarillo v. Langley, 651 S.W. P2d 906 (Tex-App. 7 Dist. 1983), pp. 906-918.

<sup>18</sup>Bower v. County of Inyo, 812 F.2d 540 (9th Cir. 1987).

<sup>19</sup>Tennessee v. Garner, 105 5 ct. 1964 (1985).