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Title: Practical Aspects of Assessing Liability in a Police Pursuit Case

by

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I. Introduction

High-speed police pursuits continue to garner massive media attention, especially through popular "real life" police shows and the nightly news. Beyond the superficial appeal of watching a high-speed pursuit from the comfort of one's living room, police pursuits are dangerous and implicate a vast array of difficult legal and law enforcement issues. This article addresses these issues from the practical perspective of assessing potential liability.

II. The Statistics

The available national statistics are limited because most states do not have mandatory reporting requirements.[1] One study based on National Highway Traffic Safety Administration (NHTSA) statistics from 1982 to 2004 concluded that 881,733 fatal crashes were reported to NHTSA, leading to 987,523 fatalities.[2] Of the fatal crashes, 6,336 (0.7%) were secondary to police pursuits, leading to 7,430 (0.8%) fatalities, a mean of 323 per year. At least based on this study, less than one percent of all vehicular fatalities from 1982 to 2004 involved police pursuits.

Breaking down the pursuit-related fatalities, occupants of chased vehicles accounted for 5,355 (72%) of the fatalities; law enforcement officers for 81 (1%) of

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[1] *See* Geoffrey P. Alpert et al., *Police Pursuits: What We Know*, Police Executive Research Forum (2000).

[2] Robert M. Miller et al., *A Review of Police Pursuit Fatalities in the United States from 1982 to 2004*, Academic Emergency Medicine, Vol. 13, No. 5 (2006).

the fatalities; and those uninvolved in the pursuit for 1,994 (27%) of the fatalities. Males accounted for 6,074 (82%) of the fatalities; children and adolescents accounted for 2,092 (28%) of the fatalities. Mean age of death was 24 years. Collisions with other moving vehicles accounted for 1,283 (24%) of the deaths in chased vehicles and 1,434 (80%) in vehicles uninvolved in pursuits. The majority, 3,130 (62%), of the crashes were on urban roadways.

Unfortunately, these statistics only address fatal crashes and do not address crashes that result in serious injuries. Practically speaking, only those pursuits resulting in death or catastrophic injury will typically result in a lawsuit given the high costs of such litigation - e.g., numerous depositions, experts, etc.

III. The "Dilemma"

There is one basic dilemma that permeates the legal and law enforcement issues implicated by high-speed pursuits -- whether the benefits of apprehending the fleeing suspect outweigh the inherent risks of endangering the public, the officers, and the suspect.[3] On the one hand, too many restrictions (legal and agency-imposed) placed on the law enforcement officer's ability to initiate, continue, and terminate a pursuit could place the public at risk from dangerous

[3] *See* Geoffrey P. Alpert, *Police Pursuit: Policies and Training*, U.S. Dept. of Justice, National Institute of Justice (May 1997) (addressing the "basic dilemma" associated with high-speed pursuits, particularly policies and training).

offenders escaping apprehension. On the other hand, insufficient restrictions and controls on pursuits could result in tragic accidents, injuries, and death.

This "dilemma" should always be kept in mind when analyzing the factual and legal liability issues.

IV. The Legal Landscape

Of course, one of the keys to assessing liability in a police-pursuit case is having an understanding of the applicable federal and state liability standards. Suffice it to say, police-pursuit cases can involve numerous federal- and state- law claims against individual officers as well as the relevant governmental entity, with each claim implicating different liability standards and defenses. Given the breadth of the potential legal issues, this article primarily addresses the legal standards for liability under the Fourth and Fourteenth Amendments while offering a framework for analyzing potential liability under these standards.

A. Federal Law

Section 1983 claims involving police pursuits implicate either the unreasonable seizure clause of the Fourth Amendment or the substantive due process clause of the Fourteenth Amendment. Of the two, the Fourth Amendment is clearly more attractive to plaintiffs because its standard of fault is that of "reasonableness" as opposed to the more stringent "intent-to-harm" standard of the Fourteenth Amendment. Thus, the initial legal inquiry is whether the Fourth

Amendment or the Fourteenth Amendment will be applicable to the particular facts of the case. If neither the Fourth nor Fourteenth Amendment is applicable, a plaintiff may still have an avenue of recourse through a state-law claim as provided by the particular jurisdiction.

1. Was there a "seizure"?

For a Fourth Amendment claim to arise, there first must have been a "seizure." In *Brower v. County of Inyo*, 489 U.S. 593 (1989), the Supreme Court (at least in *dicta*) had an occasion to address whether the Fourth Amendment is implicated when a suspect in a high-speed pursuit simply loses control of his vehicle and crashes into another car, causing injury to himself or some innocent third-person.

In *Brower*, police officers seeking to stop the driver of a stolen car set up a roadblock consisting of an eighteen-wheel truck completely straddling the highway. They also positioned their police cruisers in such a fashion so as to allow their headlights to shine directly into the eyes of the driver as he approached, thereby blinding him. These tactics had the intended result of causing the driver to crash into the roadblock, and he died as a result. The driver's estate then sued under the Fourth Amendment, contending that the decedent had been "seized" by reason of the conduct of the police. The Court agreed.

The Court reasoned that where there is a "governmental termination of freedom of movement *through means intentionally applied*," there has been a Fourth Amendment seizure. *Id.* at 597. To further illustrate the underpinnings of its decision, the Court went on to set forth a series of examples in which a seizure would or would not occur.

> Thus, if a parked and unoccupied police car slips its brake and pins a passerby against a wall, it is likely that a tort has occurred, but not a violation of the Fourth Amendment. And the situation would not change if the passerby happened, by lucky chance, to be a serial murderer for whom there was an outstanding arrest warrant--even if, at the time he was thus pinned, he was in the process of running away from two pursuing constables. It is clear, in other words, that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement (the innocent passerby), nor even whenever there is a governmentally caused and governmentally *desired* termination of an individual's freedom of movement (the fleeing felon), but only when there is a governmental termination of freedom of movement *through means intentionally applied.*

Id. at 596-97; *see also Latta v. Keryte,* 118 F.3d 693 (10th Cir. 1997) (seizure occurred where fleeing suspect stopped by roadblock that police had set up to prevent further travel along interstate); *Seekamp v. Michaud,* 109 F.3d 802 (1st Cir. 1997) (seizure occurred where state troopers placed tractor-trailer across highway and other tractor-trailers along side of road to stop suspect); *Donovan v. City of Milwaukee*, 17 F.3d 944 (7th Cir. 1994) (seizure occurred where police officer intentionally backed car into path of fleeing motorcyclist); *Adams v. St. Lucie County Sheriff's Dep't*, 962 F.2d 1563 (11th Cir. 1992) (seizure occurred when

police officer intentionally slammed into fleeing vehicle to halt its flight); *Campbell v. White*, 916 F.2d 421 (7th Cir. 1990) (no seizure when officer unintentionally struck plaintiff after he started to walk into median after motorcycle skidded out of control). Thus, a violation of the Fourth Amendment requires an intentional seizure by physical means.

Some other physical means of terminating a pursuit include the use of a precision immobilization technique ("P.I.T.") or tactical vehicle intervention ("T.V.I.") maneuver; ramming; tire deflation devices (mechanical or radio controlled); net/entangler system (use of a net deployed in a "speed bump"); vehicle taggers (use of radio frequency transmitter embedded in a projectile); chemical systems (use of a chemical to stop engine); and cooperative systems (use of a laser to activate pre-installed system to stop engine). If any of these methods were intentionally applied to terminate the pursuit, then liability would have to be assessed under the rubric of the Fourth Amendment.

Before assessing liability under the reasonableness standard of *Graham v. Connor*, 490 U.S. 386 (1989), another issue to consider under the seizure analysis deals with the plaintiff that was not the intended target of the seizure. Although the Supreme Court did not directly address this issue in *Brower*, it noted that "[a] seizure occurs even when an unintended person or thing is the object of the detention or taking, but the detention or taking itself must be willful." *Brower*, 489

U.S. at 596 (citations omitted). This language would suggest that had the driver of the stolen car in *Brower* had an accomplice in the vehicle with him, the passenger also would have been "seized" within the meaning of the Fourth Amendment. *Compare Vaughan v. Cox*, 343 F.3d 1323 (11th Cir. 2003) (criminal suspect who was passenger in vehicle was "seized" when struck by shot fired at driver), *with Rucker v. Harford County*, 946 F.2d 278 (4th Cir. 1991) (bystander not seized by police bullet aimed at fleeing vehicle), *Childress v. City of Arapaho*, 210 F.3d 1154 (10th Cir. 2000) (hostage wounded by police bullet aimed at suspect not seized), *and Medeiros v. O'Connell*, 150 F.3d 164 (2d Cir. 1998) (same).

2. Was the use of force objectively reasonable?

If a seizure occurred to implicate the Fourth Amendment, the next inquiry is whether the use of force to terminate the pursuit was objectively reasonable under the standard set out in *Graham v. Connor*. Under the *Graham* analysis, which applies to all Fourth Amendment use-of-force claims, the inquiry is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intention or motivation." *Id.* at 397. In reviewing such claims, the Court provided the following guidance:

> The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . **The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are**

tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

Id. at 396-97 (citations omitted) (emphasis added). The highlighted language is particularly applicable to high-speed pursuits given the very nature of such law enforcement conduct.

It goes without saying that a police officer must constantly evaluate and monitor multiple variables in order to successfully negotiate the pitfalls and dangers that are inherent in all high-speed pursuits. Thus, it is not surprising that most modern pursuit policies require an officer to constantly evaluate these "rapidly evolving" factors, including the location, traffic conditions, weather conditions, road conditions, knowledge of the area, capabilities of the vehicles, the underlying offense, capability of capturing the fleeing suspect at another time, and the conduct of the fleeing suspect in determining whether to continue or terminate the pursuit. These are also the same factors that must be assessed in determining whether the officer's use of force to terminate the pursuit was objectively reasonable under the **particular** facts and circumstances of the case. *See, e.g.*, *Graves v. Thomas*, 450 F.3d 1215 (10th Cir. 2006); *Harris v. Coweta County*, 433 F.3d 807 (11th Cir. 2005); *Vaughan v. Cox*, 343 F.3d 1323 (11th Cir. 2003); *Scott v. Clay County*, 205 F.3d 867 (6th Cir. 2000); *Cole v. Bone*, 993 F.2d 1328 (8th Cir. 1993); *Smith v. Freland*, 954 F.2d 343 (6th Cir. 1992).

With the prevalent use of in-dash video cameras, the facts and circumstances

from the perspective of the pursuing officer should be undisputed for purposes of assessing the reasonableness of the force used under the *Graham* standard. In addition, the video may prove to be instrumental in establishing the officer's entitlement to qualified immunity, even if the plaintiff is able to establish a Fourth Amendment violation.

> The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. It is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. An officer might correctly perceive all of the relevant facts but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances. If the officer's mistake as to what the law requires is reasonable, however, the officer is entitled to the immunity defense.

Saucier v. Katz, 533 U.S. 194, 205 (2004). The Court then summed up the distinction between the *Graham* and qualified immunity reasonableness standards as follows:

> Officers can have reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause or exigent circumstances, for example, and in those situations courts will not hold that they have violated the Constitution. Yet, even if a court were to hold that the officer violated the Fourth Amendment, . . . *Anderson [v. Creighton]* still operates to grant officers immunity for reasonable mistakes as to the legality of their actions. The same analysis applies in excessive force cases, where in addition to the deference officers received on the underlying constitutional claim, qualified immunity can apply in the event the mistaken belief was reasonable.

Id.; see also Brosseau v. Haugen, 543 U.S. 194, 198-99 (2004) (applying *Saucier* to police officer's use of deadly force to prevent a pursuit).

In sum, the Fourth Amendment remains a viable theory in police-pursuit cases **if** a "seizure" occurred. It will not apply, however, where the suspect accidentally leaves the roadway and crashes, nor will it apply where it is the innocent victim who is struck by the fleeing suspect or the pursuing officer. Given these limitations, plaintiffs who were not "seized" may seek redress against the police under the Fourteenth Amendment and the applicable state law.

B. *Sacramento v. Lewis* and the Fourteenth Amendment

During the same term in which the Supreme Court decided *Brower v. County of Inyo*, it also decided *Graham v. Connor*. *Graham* was an excessive use-of-force case brought under the Fourteenth Amendment for violation of the plaintiff's substantive due process rights. In rejecting this approach, the Supreme Court harkened back to its decision in *Tennessee v. Garner*, 471 U.S. 1 (1985) and held:

> Today we make explicit what was implicit in *Garner's* analysis, and hold that *all* claims that law enforcement officers have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other "seizure" of a free citizen should be analyzed under the Fourth Amendment and its "reasonableness" standard, rather than under a "substantive due process" approach. Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of

> "substantive due process," must be the guide for analyzing these claims.

Graham, 490 U.S. at 395.

This is not to say all police pursuit cases must be brought under the Fourth Amendment; but "if a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997). Thus, after *Graham*, the Fourteenth Amendment remained a viable option in pursuit cases, but only if there were no Fourth Amendment "seizure."

In *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), the Supreme Court adopted the "intent-to-harm" standard of liability for police-pursuit cases brought under the substantive due process clause of the Fourteenth Amendment. *Lewis* involved the pursuit of two individuals on a motorcycle by a Sacramento County sheriff's deputy for failure to comply with his command to stop. For 75 seconds, over a course of 1.3 miles, the motorcycle wove in and out of oncoming traffic through a residential neighborhood, forcing two cars and a bicycle off the road. The posted speed limit in the area was 30 miles per hour; the motorcycle and patrol car reached speeds of up to 100 miles an hour, with the deputy following at a distance as short as 100 feet. When the motorcycle tipped over as the operator of

the motorcycle tried a sharp left turn, the deputy slammed on his brakes, but was unable to stop before striking and killing the passenger on the motorcycle.

The Court began its opinion by stating: "The issue in this case is whether a police officer violated 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." *Id.* at 836. The Court answered this question in the negative, holding 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.**" *Id.* (emphasis added).

To say that *Lewis* set the bar for plaintiffs at a high level would be a gross understatement. A particularly instructive case is the Eighth Circuit's application of the "intent-to-harm" standard in *Helseth v. Burch*, 258 F.3d 867 (8th Cir. 2001) (en banc). In that case, the officer spotted a car driving at a speed estimated to be well over 100 mph. The officer activated his lights and siren and began a pursuit, which lasted for several miles, during which time the vehicles ran stop signs and stoplights at speeds between 60 and 80 mph. At several points along the pursuit, the officer attempted to stop the suspect through the use of three P.I.T. maneuvers, which are intended to cause the fleeing vehicle to spin to a stop. While each of the P.I.T. maneuvers caused the suspect to spin off of the road, each time he was

successful in regaining control and re-entering the highway. Finally, just over six minutes after the chase was initiated, the suspect ran a red light and collided with a pickup truck driven by Helseth. The crash killed Helseth's passenger, seriously injured three juvenile passengers in the suspect's car, and left Helseth a quadriplegic.

Accepting the police officer's petition for en banc review, the Eighth Circuit rejected a previous decision that attempted to dilute the level of evidence necessary to meet the "intent-to-harm" standard by noting that:

> Since *Lewis*, all other circuits that have examined the issue have applied the intent-to-harm standard in high-speed police pursuit cases, without regard to the potentially limiting factors identified by the panel in [our previous decision] -- the length of the pursuit, the officer's training and experience, the severity of the suspect's misconduct, or the perceived danger to the public in continuing the pursuit.

Id. at 871; *see, e.g., Epps v. Lauderdale County*, 45 Fed. Appx. 332 (6th Cir. 2002); *Trigalet v. City of Tulsa*, 239 F.3d 1150 (10th Cir. 2001); *Davis v. Township of Hillside*, 190 F.3d 167 (3d Cir. 1999); *Onossian v. Block*, 175 F.3d 1169 (9th Cir. 1999); *Salamacha v. Lynch*, No. 98-7205, 165 F.3d 14 (Table), 1998 WL 743905 (2d Cir. 1998). Applying the "intent-to-harm" standard, the Eighth Circuit rejected the plaintiff's claim by reasoning:

> [T]he undisputed evidence is that [the officer] employed the PIT maneuvers in an attempt to stop the fleeing [suspect's] vehicle and apprehend the driver. The only harm intended by this conduct was incidental to [the officer's] legitimate objective of arresting [the

> suspect]. The intent does not, as a matter of law, establish a substantive due process violation.
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> [The suspect] was a fleeing criminal, whose irresponsible high-speed driving endangered countless citizens and ultimately killed one innocent bystander and maimed another, [the plaintiff]. [The defendant officer] and the other police officers who risked their lives to remove this menace from the public highways were not guilty of a conscience-shocking intent to harm.

Id. at 872.

Thus, unless a plaintiff can satisfy the stringent "intent-to-harm" harm standard, liability under the Fourteenth Amendment will be precluded and the plaintiff's only recourse will be under the applicable state law.

C. State Law

A state-by-state analysis of the various state-law liability standards is beyond the scope of this article. To say the least, the liability standards vary widely from state to state and often involve issues of sovereign and statutory immunity. Although the liability standards may differ, many of the practical liability issues discussed below are the same under both federal and state law.

V. Common Liability Issues

As noted, the overall liability assessment should be considered in the context of the "dilemma" -- whether the benefits of apprehending the fleeing suspect outweigh the inherent risks of endangering the public, the officers, and the suspect. If the claims are not disposed of on a dispositive motion, this is the primary jury

issue for trial.[4] Accordingly, assessing the liability issues in this context will aid in determining potential exposure.

A. Fact-Specific Analysis

Regardless of whether the plaintiff asserts a federal- or state-law claim, the liability analysis should obviously start with the particular facts of the pursuit at issue. The analysis of the facts is often based on common sense. For example, an officer would be hard-pressed to justify a high-speed pursuit of a minor traffic offender through an active school zone, especially if the policy at issue prohibited such pursuits. Even if the pursuit policy provided the officer with broad discretion, the potential danger to the public clearly outweighs the need to cite or apprehend the minor traffic offender. In cases where the facts are more involved, most plaintiffs will utilize experts to establish their view of "proper police procedures" and whether the officer's conduct was justified within the context of the particular pursuit.

What constitutes "proper police procedures" is often open for debate. Most experts will concede that there are no national law enforcement standards for every

[4] Given the "dilemma" issue, close attention should be given to the local views on law enforcement - i.e., public opinion, as well as voir dire in the event the case proceeds to trial.

aspect of high-speed pursuits, which results in a "battle of the experts."[5] Again, for purposes of a practical analysis, the facts should be assessed from the viewpoint of whether the officer can justify the decision to initiate, continue, and terminate the pursuit.

In particular, the factual inquiry should focus on the following factors:

(1) emergency lights/sirens activated;

(2) the severity of the underlying crime;

(3) presence of others in the fleeing vehicle and the officer's vehicle;

(4) traffic conditions (vehicular and pedestrian);

(5) location;

(6) time of day;

(7) weather conditions;

(8) speeds involved in the pursuit;

(9) performance capabilities of the fleeing suspect's vehicle;

(10) officer's knowledge of the area;

(11) following distances;

(12) site distances;

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[5] It is critical to retain an expert that has the practical experience to render an opinion that the jury will find credible in accessing the "dilemma" issue. Of course, the expert must also be able to overcome any admissibility challenges under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) or its state-law counterpart.

(13) whether the identity of the fleeing suspect is known;

(14) whether the suspect can be apprehended at a later time;

(15) communication;

(16) supervisor involvement; and

(17) conduct of the fleeing suspect.

Although these factors are not exhaustive, they represent the vast majority of factors that should be considered in assessing liability. Indeed, these are the same factors that the court or jury will consider in rendering a decision.

B. Pursuit Policy

In assessing liability, the existence and substance of a pursuit policy is a critical issue. The complete absence of a written pursuit policy is problematic for obvious reasons. At the same time, an overly extensive (and burdensome) written policy poses problems as well, since an officer may have difficulty complying with every aspect of the policy during the heat of a high-speed pursuit.[6] Suffice it to say, there is no universally accepted pursuit policy.[7]

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[6] During a high-speed pursuit, adrenalin levels run high, which may result in "tunnel vision" and impact the decision-making process. Accordingly, high-speed pursuit training and supervisor involvement from a more detached perspective are important from a risk management perspective.

[7] There are many state and national associations and private vendors that provide "model" pursuit policies for its members. For example, the International Association of Chiefs of Police's model policy is available at http://www.theiacp.org.

Unfortunately, many agencies have written policies that have not been updated for some time. Policies should be reviewed and, if necessary, updated to address the issues raised by the "dilemma" and the jurisdiction's particular views on high-speed pursuits. Current pursuit policies generally fall within three self-explanatory categories (1) officer discretion; (2) restrict pursuits to specifically defined offenses; and (3) no pursuit. Regardless of the type of policy, the liability assessment should address the following areas and issues:

(1) conform to any specific requirements of state law;

(2) factors to consider in initiating the pursuit;

(3) communications;

(4) pursuit tactics specific to the agency;

(5) continuation of the pursuit;

(7) termination of the pursuit;

(8) supervisory controls;

(9) reporting/review process; and

(10) training.

Of course, each agency must consider other factors as well when developing and implementing its pursuit policy. These factors may include the overall crime rate of the jurisdiction, the nature of crime within the jurisdiction, the overall

consequences for not pursuing, the jurisdiction's tolerance for potential liability exposure, and the level of public support for such actions.

C. Training and Supervisory Controls

From a liability assessment standpoint, training and supervisory controls are not necessarily critical issues **unless** the plaintiff can first establish liability for the underlying pursuit.[8] Nevertheless, plaintiffs will focus on these areas to establish liability of the governmental entity at issue. Accordingly, it is important to examine whether the agency required specific training on the pursuit policy and whether the jurisdiction ensured the enforcement of the policy through effective supervisory controls.

In assessing liability, the following areas should be examined:

(1) compliance with state law;

(2) training records;

(3) classroom training on pursuit policy;

(4) on-the-course training;

(5) supervisory controls;

(6) post-pursuit reporting and reviews; and

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[8] In limited circumstances, a local government's "failure to train" its officers can give rise to a cause of action, but only if the failure "amounts to deliberate indifference to the rights of persons with whom the police come into contact." *Canton v. Harris*, 489 U.S. 378, 388 (1989).

(7) system for record keeping on prior pursuits.

An examination of these areas will reveal whether the plaintiff will be able to establish a claim against the governmental entity based on a failure-to-train or failure-to-supervise theory of recovery. It is only within the past few years that classroom instruction included training on the decision-making process - i.e., the factors to consider in initiating, continuing, and terminating a pursuit; various vehicle pursuit tactics that are currently utilized; and potential liability.[9] Many agencies and academies continue to teach pursuit-driving techniques - i.e., how to drive fast - as part of the emergency vehicle operation training without accompanying classroom training. Although many agencies have increased or added pursuit training, most have done so only for new officers. Therefore, many veteran officers may lack contemporary pursuit training and still subscribe to the unwritten "chase them until your wheels fall off" policy.

VI. Alternatives to Pursuits

To state the obvious, the most effective way to reduce the risks associated with a high-speed pursuit is to terminate the pursuit. In fact, some jurisdictions have adopted a "no pursuit" policy. Others, in an effort to reduce the risks to the public while at the same time apprehending the fleeing suspect, have developed

[9] For example, the federal government began providing a police pursuit seminar through the Federal Law Enforcement Training Center, National Center for State and Local Law Enforcement Training, in 2002.

and implemented alternatives to high-speed pursuits. From a risk-management perspective, these alternatives should be considered in light of the priorities of the specific jurisdiction.

Spiked strips ("stop sticks") can be deployed in the path of a fleeing suspect to force a controlled loss of air (not a blowout) from the suspect's tires. Once the suspect crosses the strips, the deploying officer quickly pulls them from the roadway to allow other pursuing police vehicles to safely pass. Agencies have begun to use these strips with increasing effectiveness.

Helicopters are being used to observe the fleeing suspect, which allows the pursuing officers to pursue at a slower speed, increase the chase distance, and, at times, retreat completely to reduce the risk of accidents. While most agencies may not be able to afford the costs associated with staffing and maintaining a helicopter, they can consider developing a regional inter-agency assistance plan to share the costs.

The P.I.T. ("precision immobilization technique" or "pursuit intervention technique") is a tactic where the pursuing officer uses his or her vehicle to ram the back quarter panel of the fleeing suspect's vehicle, while turning into the suspect car, which causes a loss of tire traction. Although this technique is effective, it can only be used at lower speeds. The maximum speed is open to debate.

There are electronic devices in research that may ultimately allow a law enforcement officer to terminate a pursuit with a touch of a button. Unfortunately, the technology is not currently available.

VII. Conclusion

With the advent of new technologies to safely and immediately terminate pursuits, claims related to high-speed pursuits may eventually become nonexistent. In the meantime, there are limited avenues remaining open for plaintiffs in police-pursuit cases, especially after *Lewis*. As for unintended victims, they may have not been "seized" under the Fourth Amendment, and only in the rarest of circumstances will they be able to show the kind of conscience-shocking behavior which is actionable under the Fourteenth Amendment. For the innocent victims of such pursuits, their remedy will almost certainly be under state law. Regardless of the theory of recovery, the liability assessment will typically hinge on whether the officer can justify his or her conduct in light of the "dilemma."