CHAPTER SIX

MODULE 1

LEGAL ASPECTS OF LAW ENFORCEMENT DRIVING

Goal

Make law enforcement officers aware of the legal ramifications of law enforcement driving, with special attention to tort and constitutional liability for improper actions.

Curriculum Objectives

1.1 Identify statutory law, case law, agency policy, and principles of liability governing non-emergency driving.

1.2 Identify statutory law, case law, agency policy, and principles of liability governing emergency driving.

1.3 Identify constitutional law, statutory law, and case law governing civil liability for emergency driving that “shocks the conscience” in its deprivations of constitutional rights.

1.4 Identify constitutional law, statutory law, and case law governing emergency driving as use of deadly force in terminating pursuits.

An Overview of General Rules

Unless a statutory exemption applies, an officer driving an authorized emergency vehicle is subject to the same traffic laws that govern a private citizen driving a personal vehicle.

- Law enforcement officers are never exempt from all civil and criminal law governing vehicle operation.

- Even the most serious emergency does not legally excuse a reckless disregard of the safety of others.

- Emergency exemption statutes allow officers to disregard some traffic laws under limited circumstances. Failure to meet the requirements of an exemption statute means the officer may be subject to civil and criminal penalties.

- Emergency exemption statutes typically apply only while the officer is responding to an emergency or enforcing the law.
• Emergency exemption statutes typically require operation of warning lights and a siren at all times while the exemption is claimed.

• Emergency exemption statutes typically require due regard for the safety of others and do not excuse reckless disregard of the safety of others.

Negligence in law enforcement driving is the failure to use the care a reasonable officer would use under like circumstances. Willful recklessness is a disregard of a clear risk of serious harm.

• Negligent driving may result in civil liability against the officer, the officer's supervisor, and the officer's employing agency, although many states grant immunity from civil liability based on ordinary negligence.

• Willful, reckless driving causing a fatality may result in an officer's conviction for felonious involuntary manslaughter, and may disqualify the officer from employment in law enforcement.

In many states, negligence or recklessness in failing to terminate a dangerous pursuit may result in civil liability if the fleeing suspect's car hits an innocent bystander.

Officers who conduct pursuits that “shock the conscience” in the potential harm to the public, risk liability under federal law.

Use of a law enforcement vehicle as an instrumentality of force to affect an arrest of a fleeing suspect may be deadly force. Roadblocks and ramming may be violations of constitutional rights if the use of force is unreasonable under the circumstances.
OBJECTIVE 1.1 Identify statutory law, case law, agency policy, and principles of liability governing non-emergency driving.

Non-Emergency Driving Under State Law

Introduction

All traffic laws that govern the general public apply with equal force to on-duty law enforcement officers in non-emergency driving. Non-emergency driving is all law enforcement driving that does not meet the requirements of state emergency exemption statutes. Officers involved in collisions during non-emergency driving may be liable for damages under negligence tort law. Officers involved in collisions during non-emergency driving may claim immunity from liability under state governmental immunity statutes but this governmental immunity has been restricted or even abolished in many states. Violation of agency policy regarding non-emergency and emergency driving may provide evidence of negligence.

Non-Emergency Driving

Non-emergency driving is all law enforcement driving that does not comply with the provisions of state emergency exemption statutes. Typical state emergency exemption statutes have two primary requirements: (1) warning lights and/or a siren must be activated; and (2) the officer must be engaged in enforcing the law. If warning devices are not activated, or if the officer is not enforcing the law, the emergency exemption statute does not protect the officer. Cases addressing whether a particular state emergency exemption statute applies are discussed in Objective 1.2.

Negligence is the failure to use reasonable care. Drivers who are negligent and cause an injury to another may be required to pay damages to the injured person which is commonly referred to as civil liability. The branch of law that deals with civil liability is called tort law. Officers involved in collisions during non-emergency driving may be responsible for damages under negligence tort law.
Governmental Immunity

Many states give limited immunity to governmental units and governmental employees against negligence lawsuits arising out of governmental activities. Governmental immunity means a lawsuit for money damages will not be allowed even though the governmental employee is admittedly negligent. Governmental immunity, however, has been severely restricted in many states and substantially abolished in others. Some states, such as Illinois, grant immunity for negligence, but not for "willful and wanton" or "outrageous" misconduct. Other states, such as Colorado and Ohio, specifically allow negligence claims against a city or county if the negligence involved operation of a motor vehicle under non-emergency conditions. This type of exception to governmental immunity is often called the “motor vehicle exception.”

The specific language of the state governmental immunity statute is critical to the determination of whether an officer is entitled to immunity from negligent driving claims. For some states such as Indiana and Illinois, the issue of whether an officer is entitled to governmental immunity against negligent driving claims turns on whether the officer was engaged in “executing and enforcing the law” at the time of the collision. In other states such as Texas and Virginia, the issue of whether an officer is entitled to governmental immunity against negligent driving claims turns on whether the activity engaged in at the time of the collision is “ministerial” or “discretionary” in nature. In general, officers engaged in routine elements of their official duties will not be immunized from negligent driving claims. The following five cases illustrate this point.

Routine Patrol

Case One: Inattentive Officer On Traffic Patrol

CITY OF WAKARUSA v. HOLDEMAN, 582 N.E.2d 802 (Ind. 1991).

A police officer was checking for invalid registration tags in an area where he recently cited a number of motorists for invalid registration. As he drove along a city street at 35 mph, the officer looked in his outside driver’s side mirror to check on cars as they passed in the opposite direction. The officer did not notice that traffic in his travel lane had stopped until it was too late. He hit the rear of the car ahead of him.

The driver of the damaged car brought a civil lawsuit against the officer and the city that employed him. The lawsuit alleged negligence - failure to use reasonable care under the circumstances. Under a rule of tort law called vicarious liability, employers are liable for the actions of their employees if their employees were negligent and caused the injury while working within the course and scope of employment. Accordingly, both the city and the officer could be found liable if it was determined that the officer failed to use reasonable care while on patrol.
The Supreme Court of Indiana said:

"It is undisputed that a person operating a motor vehicle on a public roadway has a duty to operate such vehicle with reasonable care. A question of fact exists as to whether or not [the officer] exercised such care under the circumstances."

The Supreme Court of Indiana rejected the officer’s argument that he was immune from a negligence lawsuit because he was on-duty and engaged in the enforcement of the criminal law at the time of the collision. The court held that the Indiana immunity statute is restricted to arrest activities and does not provide protection for general law enforcement activities like traffic patrol. The immunity statute does not eliminate liability for "willful and wanton" negligence.


Case Two: Officer Negligent In Transporting Prisoner


A city officer in Illinois was transporting a prisoner from a neighboring town to a detention facility in his city. The officer was not in a hurry and was not using warning lights or sirens. The officer's car collided at an intersection with another vehicle. The driver of that vehicle later filed a negligence lawsuit against the officer and the city.

The officer claimed he was protected from civil liability under the terms of the Illinois immunity statute for governmental activity. The officer argued that transporting a prisoner was an essential part of law enforcement activity and should be covered by governmental immunity.

The Illinois Supreme Court rejected the officer's claim of immunity. The court noted that the officer was not in an emergency since he had not activated his warning lights or siren. The officer testified that he was in "no hurry."

The court ruled that the Illinois immunity statute does not protect officers from negligent driving while transporting a prisoner. The statute prevents negligence liability only for conduct in the execution or enforcement of the law, which does not include transporting prisoners.
**Case Three: Officer Negligent In Leading Funeral Procession**


At the instruction of his lieutenant, a city officer in Indiana was proceeding to the front of a funeral procession when he collided with a car that was turning right onto the road. The driver of that car filed a complaint seeking recovery for injuries and damages. The officer claimed he was protected from liability under Section 3(7) of the Indiana Tort Claim Act which immunizes governmental entities and employees against losses resulting from enforcement of a law.

The Supreme Court of Indiana held that there is no immunity under Section 3(7) unless the plaintiff seeks recovery for injuries arising out of police activities attendant to effecting an arrest. Since the parties did not dispute that the officer was not involved in effecting an arrest, immunity did not protect the city and the officer, and there remained a question of fact as to whether the officer exercised due care under the circumstances.

See also *Bell v. Boklund*, 712 P.2d 1126 (Colo. Ct. App. 1985) (holding that officer leading funeral procession is not exempted from obeying municipal traffic regulations). In contrast, the Nevada emergency exemption statute specifically grants vehicles escorting funerals the same privileges afforded authorized emergency vehicles. See also Fla. Stat. ch. 316.072(5)(a)(3) (allows “driver of an authorized law enforcement vehicle, when conducting a non-emergency escort, to warn the public of an approaching motorcade” to exercise privileges of emergency vehicles). Therefore, it is important that those involved in law enforcement driving consult their particular state emergency exemption statute as well as the relevant state governmental immunity provisions. See Objective 1-2 for a detailed discussion of state emergency exemption statutes.

**Case Four: Negligent Officer On County Business**


While driving on-duty, a county officer worried that a clipboard on the car’s floorboard would become dangerously lodged under the brake. When the officer reached to pick up the clipboard, his foot slipped off the brake and he struck the car ahead of him.

The driver of that car sued for negligence, and the county, the sheriff’s department, and the officer all claimed governmental immunity.

Under Texas law, government employees are entitled to official immunity from suit arising from the good faith performance of discretionary duties when they act within the scope of their authority. An action is discretionary if it involves personal deliberation, decision and judgment. The driver argued that the officer’s actions were ministerial rather than discretionary. *The Texas Court of Appeals said:*
“Unlike high speed chases or traffic stops, operating a car in a non-emergency situation does not involve personal deliberation or the exercise of professional expertise, decision, or judgment... Thus, absent special circumstances that suggest the officer was performing a discretionary function, such as engaging in a high speed chase, we hold that an officer driving a motor vehicle while on official, non-emergency business is performing a ministerial act.”

Case Five: Officer Negligent While Serving Judicial Process


A deputy sheriff served process at a residence and returned to his car which was parked on the shoulder of the road. As he pulled out, his car collided with a motorcycle traveling in the same direction. The driver of the motorcycle filed a negligence suit against the deputy sheriff; the deputy sheriff asserted the defense of sovereign immunity.

The Supreme Court of Virginia held that the deputy sheriff was not entitled to immunity:

“While every person driving a car must make myriad decisions, in ordinary driving situations the duty of care is a ministerial obligation. The defense of sovereign immunity applies only to acts of judgment and discretion which are necessary to the performance of the governmental function itself. In some instances, the operation of an automobile may fall into this category, such as the discretionary judgment involved in vehicular pursuit by a law enforcement officer... However, under the circumstances of this case, the simple operation of an automobile did not involve special risks arising from the governmental activity, or the exercise of judgment or discretion about the proper means of effectuating the governmental purpose of the driver's employer.”

Calls to Investigate or Assist

When an officer is responding to a call to investigate or assist, however, it is less predictable whether an officer will be entitled to governmental immunity or not. A Kentucky court of appeals held that immunity does not attach to an officer negligent in responding to a burglary.

Similarly, a Connecticut court held that an officer on his way to investigate a discharge of fireworks was not entitled to immunity, and a Missouri court of appeals held that immunity does not attach to an officer responding to a call to assist another officer. In contrast, an Illinois court of appeals granted immunity to an officer responding to a call of shots fired, and a Virginia circuit court held that an officer going to assist another officer in a vehicular stop was entitled to immunity. Case summaries of these five decisions appear below.
Case Six: Officer Negligent In Responding To Burglary

SPECK v. BOWLING, 892 S.W.2d 309 (Ky. Ct. App. 1995).

While driving to the scene of a burglary, a state trooper crossed the center line of the highway and collided with an oncoming vehicle. The state trooper had his blue lights on but not the siren. The driver of the vehicle and his granddaughter were injured as a result of the collision and sued for negligence. In an appeal from a judgment for the driver, the state trooper argued that his actions in responding to a burglary were discretionary in nature.

The Kentucky Court of Appeals, however, disagreed and stated:

"[W]e disagree that an officer is free to operate his vehicle negligently or to put others on the roadways in danger in carrying out those duties...we hold Speck's actions were ministerial and that, as he was not engaged in a discretionary governmental function at the time he collided with the appellee, he is not entitled to assert a qualified immunity."

Case Seven: Officer Negligent In Investigating Discharge of Fireworks


On his way to investigating a discharge of fireworks, an officer took his eyes off the road when he heard another explosion of fireworks. The officer then struck plaintiff's car in the rear. Plaintiff sued the town and the officer for negligence. The officer conceded negligence but asserted the defense of governmental immunity. The officer argued that his “operation of his cruiser was a discretionary act because he was investigating a crime...at the time and because his attention was diverted by yet another crime...when the accident happened.”

The Connecticut Superior Court disagreed. The court deemed the officer’s operation of the cruiser to be ministerial and not subject to immunity. The court stated: “Of course the decision as to which crime scene to investigate is a discretionary act. If the claim against [the officer] was that he had negligently selected the crime scene that he was investigating the defendants would have a compelling defense of governmental immunity. But the act of driving to a crime scene is different.”

Case Eight: No Immunity For Officer Responding to Call to Assist

BROWN v. TATE, 888 S.W.2d 413 (Mo. Ct. App. 1994).
While responding to a call to assist, an officer entered an intersection with a flashing yellow light. The officer’s paddy wagon collided with a truck that entered the intersection against a red flashing light. The driver of the truck died in the collision. The driver’s parents and child brought suit against the officer and the police department.

The officer admitted that she was not on an emergency run, but she argued that she was nonetheless entitled to governmental immunity. The Missouri Court of Appeals disagreed and stated:

“The doctrine of official immunity shields a police officer from liability for negligence in the performance of his discretionary, as opposed to ministerial, duties…We hold that a police officer, driving on the public streets and highways, in a non-emergency situation, has no blanket immunity from liability for negligence in the operation of his car. His driving does not ‘involve policymaking or the exercise of professional expertise and judgment.’”

Case Nine: Officer Responding To Call Of Shots Fired Entitled To Immunity


Near the end of his shift, an officer heard over the radio a report of shots fired in the Diamond Lake area. Although three other deputies were dispatched to the area, the officer stated that he would respond. The officer was on his way to the scene when his police car hit a pedestrian crossing the road. The officer was not using his siren or flashing lights, and he did not consider the situation an “emergency.”

The pedestrian sued the county and the officer for negligence. The county and the officer argued that they were immune from liability because the officer was executing or enforcing a law at the time of the collision.

The Illinois Court of Appeals agreed and stated:

“In the present case, [the officer] was responding to a call of shots fired. He clearly was being called upon to execute or enforce a law. The facts that he was not specifically dispatched to the scene, did not have his emergency lights and siren activated, and did not subjectively consider the situation to be an emergency do not alter this conclusion. The cases in which immunity has been found applicable do not require that the officer be engaged in an emergency response.”

But see Sanders v. City of Chicago, 306 Ill. App. 3d 356, 714 N.E.2d 547 (Ill. App. Ct. 1999) (holding that immunity does not attach where officer was responding to emergency that had already passed).
Case Ten: Officer Called To Assist Entitled To Immunity

SMITH v. DANIEL, 47 Va. Cir. 541 (Va. Cir. Ct. 1999).

While a deputy sheriff was on duty, a call came over his patrol car radio that another deputy had stopped a vehicle and “believed that a weapon was involved and had several suspects and needed some assistance.” After receiving the call, the deputy sheriff got in his car and proceeded to drive to the other deputy’s location. On the way, he collided with another car. The driver of that car sued for negligence, and the deputy sheriff asserted the defense of sovereign immunity.

The Virginia Circuit Court granted immunity and stated:

“In the case at bar, defendant was unquestionably performing a governmental function at the time of the collision: going to assist another sheriff’s deputy in a vehicular stop. He had even been told that a gun might be involved...At the least, the present defendant had to decide how quickly he had to get to the other deputy’s location, what route to take, what action was needed to protect the public, whether to alert the occupants of the stopped vehicle of his approach by employing his flashing lights and siren, whether to call for additional backup, whether to have his weapon in hand, and so on.”

See also Gilbert v. Richardson, 264 Ga. 744, 452 S.E.2d 476 (Ga. 1994) (holding that police officer rushing to back-up another officer in response to emergency call was performing discretionary function and entitled to immunity).

Exceptions to Exceptions to Immunity

Several states that provide motor vehicle exceptions to governmental immunity also provide specific exceptions to these exceptions. Pennsylvania, for example, provides a “flight” exception to the motor vehicle exception that immunizes a local agency from liability to a plaintiff who was injured while in flight or fleeing apprehension or resisting arrest by a police officer. See 42 Pa. C.S. §8542(b)(1). See Forgione v. Heck, 736 A.2d 759 (Pa. Commw. Ct. 1999), appeal denied, 1999 Pa. LEXIS 3705 (Pa. 1999) (holding that officer whose car struck fleeing offender was entitled to immunity).

Ohio provides an “emergency call” exception to the motor vehicle exception to governmental immunity. This exception somewhat resembles the emergency exemption statutes discussed in the next section, Objective 1.2. However, as the following case demonstrates, Ohio courts have typically interpreted this exception as not requiring the use of lights and sirens.
Case Eleven: Officer Called To Scene of Burglary Entitled To Immunity


An officer on routine patrol received a dispatch to report to the scene of a burglary at a local high school. On the way, the officer collided with another vehicle at an intersection. The officer was traveling approximately 40 mph, five miles over the posted speed limit. The officer was not operating the cruiser’s emergency flashers or siren but he considered himself to be on an emergency call.

The occupants of the other vehicle sued the officer and the city. The officer and the city claimed immunity under the “emergency call” exception to the “motor vehicle” exception to the Ohio governmental immunity statute. The plaintiffs argued that the “emergency call” exception applies only to “inherently dangerous situations.”

The Ohio Court of Appeals granted immunity and stated that there “is no requirement in the statute which would limit the ‘emergency call’ exception only to those occasions where there is an inherently dangerous situation or when human life is at danger.” Regarding the plaintiff’s argument that the officer’s failure to use lights and sirens rendered the call a non-emergency, the court stated:

“R.C. 2744.02 simply does not require that the police officers operate their sirens or overhead lights in order to be deemed to be responding to an ‘emergency call,’ for purposes of invoking immunity from liability.”

Summary

Law enforcement officers engaged in non-emergency driving must comply with the traffic laws that govern the general public. Non-emergency driving includes all law enforcement driving that does not meet the requirements of state emergency exemption statutes. Officers involved in collisions during non-emergency driving may be liable for damages under negligence tort law. Governmental immunity rarely shields officers from such liability.
Legal Aspects of Law Enforcement Driving  

Objective 1.1

Suggested Instructional Methodology

Lecture with Slides

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

Lecture and Class Discussion

Utilize case summaries to present legal principles and involve students in discussion of relevant issues.

Small Groups with Case Studies

In groups of 3-6, present each group with the cases provided above and additional fact situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.

Resources and Aids

• Relevant state statutes.

• Agency policies.

Suggested Evaluation Methodology

Students

• Written or verbal response to questions regarding legal principles.

• Observation of strategies, decisions, or methods used by a driver when exposed to various driving scenarios.

Course

• Observe the driving of officers during the simulations of non-emergency and emergency vehicle operations.

• Review agency collision reports for failure to heed legal considerations.
OBJECTIVE 1.2 Identify statutory law, case law, agency policy, and principles of liability governing emergency driving.

Emergency Driving Under State Law

Introduction

All states give officers a limited exemption from certain traffic laws for emergency driving. This exemption recognizes the social importance of rapid response and apprehension of fleeing criminals. Any driving at high-speeds and contrary to normal rules of the road carries a risk of injury to others. That risk of injury is weighed against the need for quick response and arrest of violators. Emergency exemption statutes reflect this balancing of competing social needs: safety on public roadways balanced against protecting against criminals.

Emergency Exemption Statutes

Pursuit of a violator and going to the scene of an emergency are the two categories of emergency driving most common to law enforcement. Important differences exist for each category, but state statutory law usually covers both categories in a single emergency exemption statute. A typical emergency exemption statute is patterned after §11-106 of the Uniform Vehicle Code and has these features:

- The vehicle must be an authorized emergency vehicle equipped with specified warning lights and siren. Law enforcement vehicles often are given the exclusive right to display colored lights, but many states specify red lights for fire, rescue, ambulance, and law enforcement vehicles.

- To claim the exemption, the authorized emergency vehicle must be responding to an emergency call or in pursuit of an actual or suspected violator of the law.

- The exemption may allow the authorized emergency vehicle to park or stand, exceed speed limits, proceed past red traffic signals and stop signs, and disregard rules governing direction of travel or turning.

- The exemption applies only if required warning devices are being operated. Depending on the state, the required warning devices may be BOTH warning lights and a siren, or warning lights but not a siren, or a siren but not warning lights. In a few states, the speed exemption does not require either warning lights or a siren, but the right-of-way exemption requires activation of both warning lights and a siren.
Nearly all emergency exemption statutes provide for a “duty to drive with due regard for the safety of others,” and many of the statutes go on to deny protection from the consequences of a reckless disregard for the safety of others. In many states, the statute grants the privilege to disregard speed limits but only "so long as the driver does not endanger life or property," and grants the privilege to proceed past red traffic lights and stop signals, "but only after slowing down as necessary for safe operation."

Two conditions found in a typical state emergency exemption statute are critically important for law enforcement drivers:

- Failure to activate required warning devices - warning lights and/or a siren – often disqualifies an officer from the exemption.
- Even if required warning devices are activated, driving that disregards a clear danger to the safety of others may subject the officer to liability.

**Warning Devices**

State emergency exemption statutes differ on the warning devices required during law enforcement emergency driving. Some states, like Alabama and New York, require both warning lights and a siren. Other states, such as Arizona and Connecticut, require activation of a siren but not warning lights. And still other states, such as Illinois and Indiana, require activation of either warning lights or a siren. Finally, a few states, such as North Carolina, require one or both for claiming the right-of-way at intersections but do not require either lights or a siren for the speed limit exemption. A listing of emergency exemption provisions for the 50 states and the District of Columbia appears in Appendix B.

For those states requiring some form of warning devices, failure to activate the requisite warning devices may cause the officer to lose the protection of the emergency exemption statute.
Case Twelve: Responding To Call Without Lights Or Siren


Two New York detectives were responding to the scene of a buy-and-bust operation where a suspect was being held. The detective who was driving made a left turn and collided with an oncoming car. The driver of that car sustained personal injuries.

Observing that the record showed the detective was not operating lights or a siren at the time of the collision and that his car was unmarked, the New York appellate court stated:

“On these facts, the privilege afforded to operators of authorized emergency vehicles engaged in an emergency operation pursuant to Vehicle and Traffic Law §1104 is inapplicable...this was not such an emergency operation.”

The court found the detective negligent as a matter of law.

See also Williams v. Crook, 741 So.2d 1074 (Ala. 1999) (holding that officer responding to domestic disturbance report loses immunity since he exceeded speed limit without complying with audible and visual signal requirements of state emergency exemption statute).

Case Thirteen: Passing Motorist Without Lights Or Siren


While on routine patrol, a county police officer received an urgent “Code 2” call to respond to a scene of domestic disturbance. The officer attempted to pass a motorist on the left as the motorist began making a left turn. The officer struck and injured the motorist. The motorist sued the county and the police officer, alleging that the officer was operating his vehicle with reckless disregard for the safety of others at the time of the collision.

The Court of Appeals of Georgia departed from earlier appellate decisions which held that an officer’s failure to use both lights and sirens when responding to calls did not amount to an act of reckless disregard. The court held:

“A jury must decide whether [the officer’s] decision to overtake [the motorist’s] vehicle, without activating his emergency lights or siren, was merely negligent or whether it constituted a reckless disregard for the safety of others.”
Legal Aspects of Law Enforcement Driving

Objective 1.2

See also *Beatty v. Charles*, 936 S.W.2d 28 (Tex. Ct. App. 1996) (holding that jury must resolve factual dispute over whether officer ran red light without lights and siren while responding to request to assist shot officer). But see *Young v. Woodall*, 343 N.C. 459, 471 S.E.2d 357 (N.C. 1996) (holding evidence that officer exceeded speed limit and failed to activate lights and siren while in pursuit of vehicle with only one working headlight did not amount to gross negligence).

In those states requiring that emergency vehicles use *both* lights and sirens, courts typically find the use of one without the other does not meet the requirements of the state emergency exemption statute. In the next case, a St. Louis police officer loses the protection of the Missouri emergency vehicle statute, which requires both lights and a siren, when he activates his lights but fails to use his siren during an emergency run.

*Case Fourteen: Running Red Light With Lights But No Siren*

**MCGUCKIN v. CITY OF ST. LOUIS**, 910 S.W.2d 842 (Mo. Ct. App. 1995).

> **Responding to an emergency call,** a St. Louis police officer proceeded through an intersection with the intention of making a left turn when he struck a motorist driving through the intersection. The motorist sustained multiple injuries and sued.

> **At trial,** the motorist’s evidence showed that the officer proceeded through the intersection against a red light with his emergency lights flashing but without any siren sounding. The officer, on the other hand, claimed that he had both lights and sirens activated and that he proceeded through the intersection with a green light. The jury returned a verdict for the motorist, and the St. Louis board of police commissioners appealed.

> **The Missouri Court of Appeals examined the Missouri emergency vehicle statute and found that** “an emergency vehicle can proceed past a red stop signal, after slowing as may be necessary to ensure safety, while operating both its flashing lights and its audible signal.” The court further stated:

> “The statute thus places limitations on an officer’s ability to operate his vehicle in whatever manner he deems necessary, as it requires he use both light and siren before he can disregard traffic rules that bind all drivers...Once an officer complies with those two mandates, he brings himself under the protective umbrella of the statute and can then exercise his judgment in responding to the situation as the circumstances may warrant. However, until an officer is in compliance with the statute, he is bound by the same rules of the road as other drivers, and is afforded no special immunity for negligent acts or omissions committed by him.”

> The court held that, in finding for the motorist, the jury believed the evidence showing the officer proceeded through a red traffic signal without the use of his audible signal. Therefore, the officer was not protected by the exemptions of the emergency vehicle statute, and the motorist properly recovered against the board of police commissioners.
Legal Aspects of Law Enforcement Driving

Objective 1.2

See also Bradshaw v. City of Metropolis, 293 Ill. App. 3d 389, 688 N.E.2d 332 (Ill. App. Ct. 1997) (holding that officer responding to 9-1-1 call with lights but no siren may be liable for negligence); Taylor v. City of Oklahoma City, 914 P.2d 1073 (Okla. Ct. App. 1995) (holding that officer responding to emergency call with lights but possibly without a siren may be liable for negligence); Berz v. Ohio Department of Highway Safety, 66 Ohio Misc.2d 66, 643 N.E.2d 181 (Ohio Ct. Cl. 1992) (holding officer partially at fault for injuries to motorist struck by patrol car where officer turned on lights but not siren in high-speed response to collision).

States differ in how soon an officer engaged in an emergency run or pursuit needs to begin activating warning devices to be protected by the state emergency exemption statute. In the next case, the Alabama Supreme Court ruled that the exemption statute requiring operation of warning lights and siren also applies during the initial "catch-up" phase of a pursuit.

Case Fifteen: Fatality During Catch-Up

SMITH v. BRADFORD, 512 So.2d 50 ( Ala. 1987).

An Alabama officer struck and killed a 13-year-old child on a bicycle after the officer turned around and sped up to catch a violator in the opposite travel lane. The officer was not operating warning lights or a siren at the time of the collision.

The estate of the deceased child brought a lawsuit against the officer on two counts: negligence and wantonness.

At trial, the officer was allowed to prove that he was trained by his agency to delay activating warning lights and a siren until the officer could read the violator's license plate. This “catch-up” policy was intended to reduce the likelihood a violator would try to flee upon seeing distant warning lights. The jury returned a verdict for the officer on both counts.

The child’s estate appealed to the Alabama Supreme Court, claiming that the delay in activating the warning devices could not be justified by training or policy of the law enforcement agency.
The court agreed that Alabama statutory law on emergency driving was violated by not activating required audible and visual signals. The exemption from normal speed limits applies only if both warning lights and an audible signal are being used. Not activating this equipment could constitute wantonness. The child’s estate argued that evidence of the catch-up policy was irrelevant to wantonness. The court agreed and ruled that the admission of the evidence was prejudicial:

“We fail to see how the evidence of ‘catch-up’ training or instruction could be at all relevant to this count of wantonness...The prejudice which can result from the admission of such evidence is obvious.”

The court reversed the judgment of the trial court and remanded.

Similarly, an Ohio court held that an officer’s “eleventh hour” activation of his cruiser’s lights and siren was too late to be of any use in warning other motorists.

**Case Sixteen: Eleventh Hour Activation of Lights And Siren**


While off-duty and on the way to work, an Ohio officer overheard a dispatch on his police radio concerning a burglary in progress. The officer called dispatch and offered assistance. Even though dispatch did not answer, the officer considered himself on duty and responding to an emergency call.

The officer proceeded to the scene of the burglary in progress. A few blocks before an intersection, the officer accelerated in speed and turned on his flashing lights and siren. Upon entering the intersection against a red light, the officer collided with a pickup truck. A passenger in the pickup truck brought a suit in negligence.

The Ohio Court of Appeals held that a jury must decide whether the officer was on an emergency call or not since there is a question as to whether the officer was actually called to duty. However, even if it is determined that the officer was engaged in an emergency call, there is a question of fact as to whether the officer’s conduct in response to the emergency call was wanton or willful conduct. The court stated:
“Here, when viewing the evidence most strongly in favor of [the plaintiff], a trier of fact could conclude that [the officer’s] eleventh hour activation of his emergency lights and siren, just prior to entering the intersection, was too late to be of any use to [the plaintiff] or the other truck occupants. Though it appears undisputed that [the officer] did activate his warning devices, the circumstances under which they were employed could lead to different conclusions.”

However, some states such as Ohio do not always require activation of warning devices for the run or pursuit to be deemed an emergency. See Moore v. City of Columbus, 98 Ohio App. 3d 701, 649 N.E.2d 850 (Ohio Ct. App. 1994), discretionary appeal not allowed, 72 Ohio St. 3d 1422, 648 N.E.2d 514 (Ohio 1995) and Hall-Pearson v. City of South Euclid, 1998 Ohio App. LEXIS 4796 (Ohio Ct. App. 1998). Moore is discussed in Objective 1.1. Moreover, several states including Michigan and Texas have formally recognized the necessity for a silent run in certain emergency situations. For example, the Michigan emergency exemption statute specifically allows an officer to retain the emergency exemptions without sounding an audible signal “if the police vehicle is engaged in an emergency run in which silence is required.” Mich. Comp. Laws §257.603(5).

Due Regard/Reckless Disregard Standard

The state emergency exemption statutes impose a duty to drive with due regard for the safety of others and typically do not protect emergency drivers from the consequences of a reckless disregard of the safety of others. Even if warning lights and siren are operating, an officer cannot drive in a manner that unduly risks death or serious injury for others. Many factors directly influence the risk created by emergency driving, and these factors include:

- Speed of vehicles
- Traffic density
- Weather conditions
- Obstructions to vision
- Road surface and design
- Frequency of signaled street and highway intersections
- Condition of emergency vehicle's brakes, steering, and suspension
- Training and experience of the emergency driver

A pursuit that starts under reasonably safe conditions can become willfully reckless if speeds are too high, traffic density increases, major intersections are approached, and rain or snow begins to fall. A change in any one or more of these variables may change the reasonableness of the pursuit.
Even if lights and sirens are activated, excessive speed may create an undue risk of injury to the public, as the following two cases demonstrate.

**Case Seventeen: Excessive Speed in Swerving to Exit Ramp**


An officer joined the pursuit of a fleeing stolen car and soon became the primary chase vehicle. The dispatcher informed the chase vehicles that a weapon was involved and that the car was wanted for a shooting. Going eastbound on an interstate, the pursuit reached speeds of approximately 80 mph in the vicinity of Exit 58.

A motorist traveling eastbound in the right lane of the interstate saw the flashing lights of the police cars in her rearview mirror. Aware of her obligation to move as close to possible to the right-hand edge of the roadway, the motorist decided to enter Exit 58.

At this moment, the fleeing car was traveling in the left lane of the interstate in front of the officer. The fleeing car suddenly turned right in front of a tractor trailer to attempt to exit at Exit 58. The fleeing car struck the motorist in the gore area of Exit 58 before she could stop or exit. The motorist’s vehicle spun out of control down the exit ramp and struck the metal guard of the breakdown lane.

Seconds later, the officer attempted to turn across the right lane of the interstate to pursue the fleeing car into Exit 58. Confronted with the dust and debris from the collision, the officer lost control of his vehicle and skidded into the breakdown lane, striking the motorist’s vehicle. The impact of this collision caused the motorist’s car to roll over an embankment, coming to rest upside down on its roof in a body of water. The motorist was rescued and subsequently brought suit against the officer and his employing town.

In his defense, the officer claimed that he was exempted from the motor vehicle statutes and regulations cited by the motorist because at the time of the collision he was operating an emergency vehicle with its lights and siren activated in compliance with the state emergency vehicle statute. In ruling for the motorist, the Superior Court of Connecticut stated:
“…[the officer] was traveling at approximately 80 miles per hour, entering a ramp, which was limited to a 25 mile per hour entry speed…[The officer] was authorized to exceed the speed limit imposed by law only so long as he did not endanger life or property before so doing…Due regard for the safety of all persons was required of him by [the state emergency exemption statute]. The officer was negligent in that he failed to keep and maintain a proper lookout with regard to his speed and with regard to the weather, traffic and road conditions there obtaining. The officer was also negligent in that his speed exceeded the speed which a reasonably prudent police officer engaged in a high speed chase would have maintained in making such a sudden turn across traffic.”

See also City of Worthington v. O’Dea, 115 Ohio App. 375, 185 N.E.2d 323 (Ohio Ct. App. 1962) (holding officer’s speed of 65 mph in approaching flashing yellow light to be excessive and beyond reasonable control).

Case Eighteen: Excessive Speed In Responding To Alarm


A deputy received a radio call informing him that a silent alarm had gone off at a local nightclub. Another sheriff’s department unit had already been dispatched as the primary unit, and the deputy was to be the backup. The dispatcher ordered him to proceed to the nightclub under “Code 2” which required the use of flashing lights with only intermittent use of the siren.

Traveling at a high rate of speed, the deputy spotted plaintiff’s car stopped in the turn lane across an approaching intersection. When plaintiff began to turn out of the center lane, the deputy applied his brakes but the speed of his patrol car prevented him from braking in time. The plaintiff sued the deputy, the sheriff’s department, and the department’s insurer.

At trial, the deputy testified that he was traveling between 50 and 60 mph. However, a credible eyewitness testified that the deputy was traveling in excess of 75 mph right before the collision. The posted speed limit on that street where the collision occurred is 40 mph, and the sheriff’s department’s own policy does not allow the operation of a patrol car at more than 20 mph above the posted speed limit.

The Louisiana Court of Appeals held that the deputy breached his duty to drive his patrol car with due regard for the safety of others by “driving at an excessive rate of speed even for an emergency vehicle responding to an emergency call.”
Even in criminal cases where the state emergency exemption statute is not specifically at issue, excessive speed during a fatal pursuit may be a factor in a jury’s decision to convict a pursuing officer of reckless homicide.

**Case Nineteen: Reckless Homicide Conviction for Excessive Speed**

COMMUNEAL OF KENTUCKY v. ALEXANDER, 5 S.W.3d 104 (Ky. 1999).

While responding to an emergency call, a county deputy activated his cruiser’s lights and siren and traveled at a high rate of speed. A motorist failed to yield the right-of-way to the deputy by not stopping at a stop sign before turning left onto the road on which the deputy was traveling. The cruiser and the motorist’s vehicle collided, and the motorist was killed.

At the time of the collision, the dispatcher and the county police department had canceled the emergency call, but it was disputed whether the deputy heard the radio transmissions of the cancellation.

At trial, a jury convicted the deputy of reckless homicide. An appellate court reversed, but the Supreme Court of Kentucky reinstated the judgment of the trial court.

The court reviewed the evidence, in particular, reports and testimony from members of the county accident reconstruction unit (ARU) who investigated the collision:

“After reviewing the videotape from [the deputy’s] cruiser, which had recorded the events leading up to the accident, the ARU concluded that [the deputy] had been traveling between 95 and 100 miles per hour at the time he approached the intersection...Therefore, [the deputy] caused the collision due to his excessive speed.”

The court also recounted the testimony of several ARU members who stated their belief that the deputy “was at fault due to his excessive speed in an urban area.” The court disagreed with the appellate court and held that this opinion did not go to the ultimate issue of whether the deputy was guilty of reckless homicide and therefore the opinion did not invade the province of the jury.

Failure to slow down, particularly before proceeding against a red light or stop sign as cautioned by many state emergency exemption statutes, may also create undue risk of injury to others.
Case Twenty: Failure To Slow In Approaching Red Light


A New York officer heard a broadcast over the police radio that a fellow officer and an ambulance had been dispatched to a medical emergency at a nearby church. Since he was in the vicinity, the officer proceeded toward the scene at a high rate of speed and collided with plaintiff’s car. Plaintiff suffered personal injuries and sued.

The New York appellate court held that, in light of the facts that the officer “did not engage his emergency siren before colliding with plaintiff’s car, and although he was approaching a red light he did not attempt to decelerate…a rational juror could conclude that the officer acted with reckless disregard for the safety of others.”

See also Andrews v. Jitney Jungle Stores of America, Inc., 537 So.2d 447 (Miss. 1989) (holding that officer had duty to slow down as necessary for safety upon approaching a red light at intersection).

Buildings, trees, signs, or hills may prevent motorists from seeing an approaching emergency vehicle. No matter how many flashing lights are activated, a blind intersection is dangerous. Large buildings or other obstructions can also make a siren difficult to hear. Emergency lights and sirens are much less effective as a warning to others when used in an urban setting or on roadways with hills and curves that could block views and muffle sounds.

Case Twenty-One: Obstructed Vision At An Intersection


A Louisiana officer on an emergency call was operating warning lights and a siren as he approached an intersection controlled by a traffic light. The traffic light was yellow as the officer approached but turned to red before the officer entered the intersection.

A motorist on the intersecting street with the green light proceeded into the intersection and collided with the officer.
A tall building on a corner of the intersection obstructed the vision of both the officer and the motorist. The motorist with the green light could not see or hear the approaching police car with its flashing lights and siren. The officer did not see the motorist until just before impact.

The Louisiana Court of Appeals ruled the officer was negligent in proceeding through the intersection without being able to see whether or not cars were approaching. The officer’s failure to see the motorist before entering against a red light was the cause of the collision.

The court observed:

"[The officer] approached a blind corner on a red light and failed to drive with due regard for the safety of others.... [The officer] should have proceeded with extreme caution due to the high degree of risk created by entering an intersection against a red light."

Case Twenty-Two: Obstructed Vision Around A Curve


While responding to an emergency dispatch call for all units for a burglary in progress, an officer was rounding a curve at over 60 miles per hour curve when he struck a cyclist crossing the street.

At the time of the collision, the officer had activated the blue strobe light on his dashboard and was manually blinking his headlights. The cyclist suffered extensive injuries and sued the city and the officer.

The Louisiana Court of Appeals was less concerned with the fact that the patrol car was not equipped with overhead lights and did not have the siren activated than with the officer’s failure to reduce his rate of speed until he could see that his path was clear:

“When responding to a burglary in progress, both speed and silence are important as a police officer approaches the scene. Therefore, a police officer should be ever alert and observant to insure that his way is clear. Responding to an emergency call does not relieve a police officer of his duty to drive with due regard for the safety of others.”

The court ruled that the officer “breached the duty to [the cyclist] to drive with due regard for the safety of others by driving at an excessive speed around a curve without determining that his path was clear.”
Legal Aspects of Law Enforcement Driving  Objective 1.2

See also Wright v. City of Knoxville, 898 S.W.2d 177 (Tenn. 1995) (holding that officer’s diagonal turn at red light at congested intersection made it difficult for other motorists to see her approaching police car despite her use of lights and sirens and her moderate rate of speed).

Most emergency exemption statutes allow officers a limited right to disregard certain traffic laws bearing on speed limits, parking, and direction of travel and turn lanes. But does the typical state emergency exemption also allow an officer to pass where passing is otherwise prohibited? The next case answers that question.

Case Twenty-Three:  Passing In A No-Passing Zone


While on duty, an officer observed a vehicle whose driver he suspected was driving with a suspended license. The officer confirmed his suspicion with the dispatcher and, after following the vehicle for some distance, the officer activated his emergency equipment.

As the officer passed a tractor-trailer that was between him and the suspect vehicle, he noticed a car approaching in the oncoming lane. The driver of that oncoming car testified that the police car missed hitting him by a foot or two.

The trial court convicted the officer of reckless driving. The officer appealed, claiming that the trial court erred in not applying the higher standard of gross negligence applicable to drivers of authorized emergency vehicles under the state emergency exemption statute.

The Virginia Court of Appeals disagreed with the officer and stated:

“The conduct at issue, passing on a double yellow line, is not exempted behavior. Thus, the officer is subject to criminal prosecution as would be any other citizen...Further, no heightened standard of care is merited in a situation where no exemption applies.”

Agency Policies Regarding Emergency Driving

Many law enforcement agencies have standard policy manuals covering emergency and non-emergency driving. The written policy of an agency is a statement of rules set by the employer to guide officers in the performance of duty. Sometimes a rule in agency policy incorporates a rule of law. Some policy rules have nothing to do with rules of law. Many agencies have a policy rule prohibiting speeds over 15 mph above the posted speed limit while driving to the scene of a call. Speed exemption statutes prohibit unsafe speeds, but do not always specify a maximum speed limit for emergency driving. Therefore, driving 16 mph in excess of the speed limit may violate agency policy but may not violate state law.

Violation of agency policy can lead to disciplinary action, including job loss. Even if state law is not violated, a violation of agency policy in many agencies is insubordination - failure to obey orders. Officers have been fired for violating policy related to emergency and non-emergency driving. Disciplinary action may be taken for violating agency policy even though the officer was not charged or convicted of violating state or local traffic law.

Even though agency policy is not law, a violation of agency policy may be evidence of negligence in a civil or criminal trial. Agency policy sets a standard of due care which a jury is entitled to consider. An injured party bringing a lawsuit will argue the officer's violation of agency policy shows a disregard for the safety of the public. See *City of Pharr v. Ruiz*, 944 S.W.2d 709 (Tex. Ct. App. 1997) (evidence that police officers failed to adhere to department pursuit policy countered officers’ evidence of good faith).

On the other side, the officer may try to minimize a violation of policy by offering evidence that many other officers violated the same policy on a regular basis without suffering any disciplinary action. Essentially, the officer claims the written policy is not followed in the field. That effort is not always successful. As the following case demonstrates, agency written policy is powerful evidence in court if it appears an officer ignored it with disastrous consequences.
Case Twenty-Four: Agency Speed Cap Policy Violated In Fatal Collision


A Charlotte, N.C., officer responding to an "assist officer" call collided with a car at an intersection, killing three of the four occupants. The officer testified he was going 45 to 50 mph and had a green light as he approached an intersection. Other witnesses estimated his speed at 60 to 70 mph and said the officer had a red light on his travel lane.

The posted speed limit at the intersection was 35 mph. The Charlotte Police Department had a General Order prohibiting speeds more than 10 mph over the limit. The officer testified that officers routinely ignored this 10 mph speed cap when going to assist another officer. North Carolina’s emergency exemption statute for speed did not have a maximum speed limit but did require officers to drive with due regard for the safety of others.

The officer was convicted of involuntary manslaughter and sentenced to three years in prison. The North Carolina Court of Appeals reversed the conviction and ordered a new trial because of an error in jury instructions. To be guilty, the officer's driving must be in reckless disregard of the consequences, a higher standard than simple negligence. At trial after remand, the jury may conclude the officer was guilty of involuntary manslaughter even with a correct instruction on the law.

(After remand for a new trial, the officer pled guilty in exchange for a probated sentence instead of imprisonment.)

Usually agency policy restricts officers in the exercise of authority given by state law. But occasionally agency policy fails to consider the requirements of state law. In many states, emergency warning equipment must be activated to claim the emergency exemption from speed or right-of-way laws. Agency policy that authorizes speeding over the limit without activating required emergency equipment cannot justify a violation of the statute. See Smith v. Bradford, 512 Sp.2d 50 (Ala. 1987) discussed earlier and Brown v. Kreuser, 38 Colo. App. 554, 560 P.2d 105 (Colo. Ct. App. 1977) (holding that trial court did not err in excluding evidence of departmental silent run policy that required officers to respond to crimes in progress without activating warning lights or siren).
Collisions Between Fleeing Suspects and Innocent Bystanders

Courts increasingly are finding pursuing officers civilly liable for injuries suffered by a member of the public who is struck by the fleeing suspect. In these cases, courts hold that the officer's decision to continue a pursuit under dangerous conditions is negligence. A negligent failure to terminate a pursuit has been deemed by the court to be a joint cause of the collision between the fleeing suspect and the innocent bystander.

Case Twenty-Five: Liability For Suspect's Collision With Innocent Bystanders

DAY v. STATE OF UTAH BY AND THROUGH UTAH DEPT OF PUBLIC SAFETY, 1999 Utah 46, 980 P.2d 1171 (Utah 1999).

While monitoring traffic on an interstate, a Utah Highway Patrol (UHP) officer clocked a passing motorist at 10 mph over the speed limit. Intending to stop the motorist, the UHP drove up behind the vehicle. The motorist increased his speed and exited the interstate, ignored a stop sign and turned onto a heavily traveled two-lane road, and proceeded through several towns at speeds up to 120 mph. The UHP officer and other officers followed in close pursuit.

At one point, the fleeing motorist drove onto a freeway exit ramp and collided with a semi-trailer truck. The fleeing motorist's vehicle spun 240 degrees and temporarily came to a stop. Close behind, the UHP officer also stopped but did not draw his gun or otherwise disable the fleeing motorist's vehicle. The UHP officer did get close enough to read the vehicle's license plate number.

The fleeing motorist eluded the UHP officer and again entered the freeway traveling at speeds in excess of 100 mph. After entering an off-ramp at high speed, the fleeing motorist ran a red light and struck another vehicle. The driver of that vehicle died and his wife sustained severe injuries. The wife sued the Utah Department of Public Safety, the UHP, the UHP officer, several other law enforcement officers, and several cities for wrongful death.

The trial court granted summary judgment against the wife on the ground that her claims for severe personal injuries and the death of her husband were barred by a now repealed provision of the Utah Governmental Immunity Act. The Utah Court of Appeals affirmed but the Utah Supreme Court reversed and remanded. For the first time, the Utah Supreme Court recognized a cause of action for negligent pursuit where the pursued vehicle strikes and injures an innocent third party. The court first stated:
“Although law enforcement officers have a general duty to apprehend those who break the law, that duty is not absolute, especially where the violation is only a misdemeanor or an infraction—such as driving ten miles per hour over the speed limit—and the attempt to apprehend the person creates a serious risk of death or injury to third persons or the fugitive.”

The court went on to state:

“After initially clocking [the fleeing motorist] at ten miles per hour above the speed limit, [the UHP officer] commenced pursuit and also inquired over the radio whether [the] vehicle was stolen. The dispatcher reported that there was no indication it was stolen, yet [the UHP officer] continued the pursuit at speeds on and off the freeway in urban areas up to 120 miles per hour. The fact finder on remand will have to determine whether it was or should have been reasonably foreseeable to [the UHP officer] that the high-speed pursuit through highly populated areas would endanger the lives of others on the road and whether, if he had terminated the pursuit, [the fleeing motorist] would likely have substantially reduced his speed and terminated his otherwise reckless driving. [The UHP officer] had a statutory duty to use care for the safety of other persons on the road...Whether he failed to comply with the statute and breached his duty is a question for the jury...”

In Day, the Utah Supreme Court emphasized that its decision should not be read to suggest that police officers are never justified in engaging in high-speed pursuits. Rather, the court cautioned that pursuing officers must always weigh the need to apprehend a suspect against the risks that a high-speed pursuit poses to innocent third parties.

Case Twenty-Six: Liability For Suspect’s Collision With Innocent Bystanders

HAYNES v. HAMILTON COUNTY, 883 S.W.2d 606 (Tenn. 1994).

At 7 p.m. on a highway fronting a commercial strip, a Tennessee officer pulled in behind a Corvette with no taillights. The officer watched the Corvette accelerate to 55 mph in a 45 mph zone as it passed a car. When the officer activated his blue lights and siren, the Corvette increased its speed, reaching 100 mph or more. The pursuing officer and the fleeing suspect passed a number of cars, oncoming and in the same travel lane.
The officer slowed when they encountered heavy traffic about three miles into the pursuit. At that point, the officer saw a burst of flames ahead of him. The Corvette had crossed the center line and struck a car head-on. Three teenagers in an oncoming car were killed. The trial court dismissed a lawsuit filed by the estates of the victims against the Tennessee officer on a claim the officer was negligent in continuing a pursuit that a reasonably careful officer would have terminated.

On appeal, the Supreme Court of Tennessee reversed the trial court and remanded the case for retrial. For the first time, Tennessee recognized the possibility that a Tennessee officer might be liable, along with the fleeing suspect, for negligence that causes injury to a third person who collides with a fleeing suspect. The court stated:

“Accordingly, we conclude that an officer’s decision to commence or continue a high-speed chase is encompassed within the statutory term “conduct” and may form the basis of liability in an action brought by a third party who is injured by the fleeing suspect, if the officer’s decision was unreasonable.”

In Haynes, the Supreme Court of Tennessee discussed the factors an officer should consider in deciding to start and stop a pursuit. These factors include:

- Speed
- Area of the pursuit
- Weather and road conditions
- Vehicular and pedestrian traffic
- Alternative methods of apprehension
- Danger posed to the public by the suspect being pursued
- Applicable police regulations

A decision to continue a high-speed pursuit can be negligence like a failure to brake or careless steering. A decision to continue a pursuit is negligent if a reasonably careful officer would not do so under like circumstances. Unusual circumstances may justify a high-speed pursuit at great risk to the public but, as the courts in Day and Haynes and other similar cases recognize, the need to arrest that violator must be sufficient to justify the danger to the public.
With Day and Haynes, Utah and Tennessee join the growing ranks of states that recognize a claim against a police officer for the injuries sustained by innocent bystanders in collisions with pursued vehicles. Courts in the following jurisdictions have recognized a cause of action for negligent conduct of a high-speed chase where the pursued vehicle strikes and injures an innocent third party: Alabama, Arizona, Arkansas, Connecticut, District of Columbia, Florida, Michigan, Mississippi, Nebraska, Oregon, Pennsylvania, Tennessee, Texas, Utah, and Washington. A number of other jurisdictions also recognize such a claim but allow recovery only if the officer is grossly negligent or reckless: Colorado, Georgia (by statute), Illinois, Iowa, Maryland, New York, North Carolina, and West Virginia. Several states that have addressed the issue but have yet to recognize liability for such a claim include: Kansas, Kentucky, Minnesota, Missouri, New Jersey, Ohio, Oklahoma, Wisconsin, and Wyoming. For a listing of jurisdictions along with citations to cases or statutes, see Appendix C.

In those states which require a showing of gross negligence, a high-speed pursuit ending in a fatal crash may not create liability.

**Case Twenty-Seven: No Reckless Disregard In Pursuit Fatal To Bystanders**


> **A pursuit started in Greensboro, NC, early in the morning when a car weaving in the travel lane refused to stop for blue lights and siren. The fleeing suspect continued on for eighteen miles at speeds up to 100 mph, forcing several cars off the two lane rural road north of the city. **Traffic was light and the road surface dry.**

> **Two officers continued the pursuit at a distance of about 100 yards behind the suspect’s car. By radio, a supervisor authorized continuing the chase.**

> **The suspect pulled into the opposing travel lane to pass a car and collided with an oncoming vehicle, killing its driver. At the time, the suspect was driving with headlights off.**

> **The Supreme Court of North Carolina reversed a jury verdict for the driver of the oncoming car and ruled that the pursuing officers were not negligent.**
First, the court concluded the appropriate standard for liability if a suspect collides with an innocent bystander is gross negligence or reckless disregard of the safety of others, not simply negligence, the failure to use due care. The emergency exemption statute expresses a policy of permitting pursuits except those that show a reckless disregard of the safety of others. A collision between a suspect and an innocent bystander is not a failure by the officer to control the officer’s vehicle.

Second, the officers did not violate any of the rules of the road in this pursuit. The suspect was unknown to the officers and acting in a manner consistent with drunk driving, a serious threat to public safety requiring an immediate arrest. Although the pursuit was conducted at high speeds over a long distance, traffic was light over the rural road early in the morning. The officers continually operated their emergency equipment and kept their vehicles under control at all times. The court held that there was no evidence of negligence, let alone gross negligence.

Central to the decision to terminate a pursuit is a balancing process: Given all the prevailing conditions - speed, traffic density, weather, intersections, etc. - how likely is it that an innocent third person will be injured? That likelihood must be weighed against the need to protect the public by making an immediate arrest of the violator. As speed, traffic density, and intersections increase, the danger to innocent bystanders increases. As the seriousness of the crimes committed by the violator increases, the need to protect the public by making an immediate arrest also increases. That decision may be difficult for any officer.

Significantly, even where an officer terminates a pursuit, the officer may still be liable for injuries to third parties in collisions with the fleeing suspect that occur shortly after termination of the pursuit. See Creamer v. Sampson, 700 So.2d 711 (Fla. Ct. App. 1997) (holding that fatal collision between fleeing suspect and innocent motorist that occurred 45 seconds after pursuing officer terminated pursuit of car displaying improper tag have been proximately caused by officer’s negligence conducting pursuit for minor infraction at high speed over crowded city streets).

In addition to filing claims under state law, third parties injured in collisions with fleeing vehicles sometimes bring suit against the pursuing officers and their agencies under federal law as well. A very different and much higher standard applies in these federal cases. For discussion of negligent pursuit cases under federal law, see Objective 1.3.
Legal Aspects of Law Enforcement Driving  

Objective 1.2

Duty to Occupants of Fleeing Car

Although courts increasingly are finding pursuing officers civilly liable for injuries suffered by an innocent third party who is struck by the fleeing suspect, courts remain less willing to find pursuing officers liable for injuries sustained by the fleeing suspect where there is no contact between the police car and the fleeing vehicle. See *Tyree v. City of Pittsburgh*, 669 A.2d 487 (Pa. Commw. Ct. 1995) (holding that pursuing officer owed no duty to fleeing suspect who ran red light and drove at excessive speed before fatally crashing into utility pole); *Estate of Day by Strosin v. Willis*, 897 P.2d 78 (Ala. 1995) (holding that pursuing officer owed no duty to fleeing suspect who ran off road and fatally crashed after officer terminated pursuit). See also *Vince v. City of Canton*, 1998 Ohio App. LEXIS 1899 (Ohio Ct. App. 1998) (holding that, while duty to refrain from operating police car in willful and wanton manner extends to persons being pursued, pursuit of motorcycle which ended with motorcyclist fatally crashing was not willful or wanton). For discussion of cases involving collisions between police cars and fleeing vehicles, see Objective 1.4 which addresses roadblocks and ramming.

However, courts are less united on the issue of whether officers owe a duty to passengers in fleeing vehicles injured in collisions with structures or other vehicles during high-speed pursuits and, if so, what standard applies. Some courts hold a pursuing officer liable for death or injury to passengers of fleeing cars only where gross negligence or wanton and willful misconduct is shown. See *Parish v. Hill*, 350 N.C. 231, 513 S.E.2d 547 (N.C. 1999); *Jackson v. Poland Township*, 1999 Ohio App. LEXIS 4703 (Ohio Ct. App. 1999); *Urban v. Village of Lincolnshire*, 272 Ill.App.3d 1087, 651 N.E.2d 683 (Ill. App. Ct 1995), appeal denied, 163 Ill.2d 591, 657 N.E.2d 641 (Ill. 1995); *Jones v. Ahlberg*, 489 N.W.2d 576 (N.D. 1992).


Agency Pursuit Policies

Many police agencies have recognized the high risk of harm to the public posed by high-speed chases and consequently have adopted specific policies regarding police pursuits. As the next case demonstrates, violation of an agency pursuit policy may provide evidence of a negligent pursuit.
Case Twenty-Eight: Violation of Hot Pursuit Policy Evidence Of Negligence


For several miles and on several streets, two police cars engaged in a high-speed chase of a reckless driver suspected in a hit-and-run collision earlier. At some point during the chase, a police helicopter arrived at the scene. After running a red light, the pursued vehicle collided with another vehicle and killed the driver.

The estate of the decedent filed a wrongful death action against the city, alleging that the police failed to comply with department procedures regarding hot pursuits. The trial court granted summary judgment to the city, but the Arizona Court of Appeals reversed.

The Arizona Court of Appeals held that there was a question of material fact on the issue of whether the police pursuit of the fleeing vehicle was conducted in a negligent manner. Among the items of evidence offered by decedent’s estate that precluded summary judgment was evidence that the officers violated specific departmental policy in continuing pursuit after the arrival of the helicopter.

The section on air support unit assistance in the city department procedures manual section on hot pursuits provided that, once ground units are advised that the air support unit has visual contact with the suspect vehicle, then the air support unit will coordinate the remainder of the pursuit and pursuing ground units are to immediately slow down and respond to the directions of the air support unit.

See also D’Alessandro v. Westhall, 972 F.Supp. 965 (W.D. N.C. 1997) (holding that pursuing officers’ admitted violation of departmental rules regarding pursuits may be evidence of negligence or even gross negligence). However, other courts are more reluctant to consider an officer’s violation of agency pursuit policy as evidence of negligence. See Morton v. City of Chicago, 286 Ill. App.3d 444, 676 N.E.2d 985 (Ill. App. Ct. 1997), appeal denied, 173 Ill.2d 527, 684 N.E.2d 1336 (Ill. 1997) (holding that violation of internal guidelines does not impose a legal duty, let alone constitute evidence of negligence).

Several states, including California, Utah, and Wisconsin, have a statutorily imposed requirement that agencies adopt pursuit policies. California Vehicle Code §17004.7, for example, conditions governmental immunity on an agency’s adoption of a written pursuit policy and provides minimum standards for such pursuit policies.
In cases involving police pursuits, California courts closely examine agency pursuit policies to determine whether they adhere to the statutory requirements of California Vehicle Code §17004.7(c). See McGee v. City of Laguna Beach, 56 Cal. App. 4th 537, 65 Cal. Rptr. 2d 506 (Cal. Ct. App. 1997), review denied by 1997 Cal. LEXIS 7612 (Cal. 1997) (holding that pursuit policy complied with minimum standards of statute so officer was immunized from liability for striking motorist and leaving young boy a quadriplegic); Payne v. City of Perris, 12 Cal. App. 4th 1738, 16 Cal. Rptr. 2d 143 (Cal. Ct. App. 1993), review denied by, (Apr. 29, 1993) (holding that pursuit policy failed to provide detailed objective guidelines so officer was not immunized from liability for death of third party killed by fleeing suspect); Berman v. City of Daly City, 21 Cal. App. 4th 276, 26 Cal. Rptr. 2d 493 (Cal. Ct. App. 1993) (holding that pursuit policy was deficient in giving nearly complete discretion to officers to initiate and terminate high-speed pursuit and therefore could not invoke governmental immunity).

**Summary**

State emergency exemption provisions offer authorized emergency vehicles limited exemptions from ordinary traffic laws. To enjoy these exemptions, law enforcement officers engaged in emergency driving must comply with the warning device requirements of these provisions. Moreover, even when complying with the warning device requirements, law enforcement officers engaged in emergency driving must still exercise due regard for the safety of others or risk liability. Under the law of many states, law enforcement officers engaged in emergency driving are not only potentially liable to a third party injured or killed in collisions with police cruisers but also to third parties injured or killed in collisions with fleeing suspects. Consequently, law enforcement officers engaged in emergency driving must become familiar with the requirements of their state emergency exemption provisions. In addition, law enforcement officers engaged in emergency driving should know and understand their agency’s policies regarding emergency calls and pursuits. Significantly, violation of agency policy may be considered evidence of negligence.

**Suggested Instructional Methodology**

*Lecture with Slides*

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

*Lecture and Class Discussion*

Utilize case summaries to present legal principles and involve students in discussion of relevant issues.
Small Groups with Case Studies

In groups of 3-6, present each group with the cases provided above and additional factual situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.

Resources and Aids

• Relevant state statutes

• Agency policies

Suggested Evaluation Methodology

Students

• Written or verbal response to questions regarding legal principles.

• Observation of strategies, decisions, or methods used by a driver when exposed to various driving scenarios.

Course

• Observe the driving of officers during the simulations of emergency vehicle operations.

• Review agency collision reports for failure to heed legal considerations.
OBJECTIVE 1.3 Identify constitutional law, statutory law, and case law governing civil liability for emergency driving that “shocks the conscience” in its deprivation of federal constitutional rights.

Emergency Driving That Shocks The Conscience

Introduction

The federal constitution may impose liability on officers who conduct police pursuits in a manner that “shocks the conscience” in the risk created for the public. The officer’s degree of fault must exceed mere recklessness before liability is created under the “shocks the conscience” standard adopted by the United States Supreme Court in County of Sacramento v. Lewis, 523 U.S. 833, 140 L. Ed. 2d 1043, 118 S. Ct. 1708 (1998) which is discussed at Case Twenty-Nine below. Pursuits that “shock the conscience” may also give rise to liability of the governmental employer or the supervising officer for an unconstitutional policy or custom or for failure to train.

Historical Context

As discussed in Objectives 1.1 and 1.2, law enforcement officers must be mindful of various state laws that bear on emergency and non-emergency law enforcement driving. State tort laws may apply to non-emergency law enforcement driving. State laws often grant emergency driving exemptions and limited immunities to law enforcement officers. These state emergency exemption statutes may impose special duties on law enforcement emergency driving. Each state is largely free to legislate as it sees fit in defining the conditions that govern emergency vehicle operation.

The federal constitution and federal statutes define another set of legal rights and obligations. Law enforcement officers employed by state and local governments cannot, under the authority of state law, violate rights secured to people under the federal constitution. Section 1983 of title 42 of the U.S. code allows persons to sue governmental defendants, such as law enforcement officers and agencies, for deprivation of rights, privileges or immunities under the federal constitution. The Fourteenth Amendment of the federal constitution, in particular, guarantees the right to substantive due process. The Fourteenth Amendment provides, in part, that “no State shall...deprive any person of life, liberty, or property, without due process of law. Persons injured during a police pursuit may claim that the pursuit deprived them of their right to substantive due process under the Fourteenth Amendment.
Over the years, several U.S. Supreme Court decisions have paved the way for individuals to sue law enforcement officers and their employing towns, cities, or counties for deprivation of federal constitutional rights. In 1961, the Supreme Court ruled that an individual could sue state and local law enforcement officers who violated a right guaranteed by the federal constitution. Monroe v. Pape, 365 U.S. 167, 5 L. Ed. 2d 492, 81 S. Ct. 473 (1961), overruled by Monell v. Dep't of Social Services, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978), overruled in part by Canton v. Harris, 489 U.S. 378, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989). For the first time, money damages could be recovered from individual officers who violate federal rights.

In 1978, the Supreme Court extended the right to recover money damages for a constitutional deprivation to allow suits against towns, cities, and counties with a policy or custom that violated a federal constitutional right. Monell v. Dep't of Social Services, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978). Under Monell, liability is imposed on a town, city, or county government only if the injured party can prove an official policy or unofficial custom caused the deprivation of a federal right. However, a local governmental employer is not liable simply because one of its law enforcement officers violates a federal right. The constitutional deprivation must be the product of a governmental policy or custom.

In 1989, the Supreme Court recognized a suit against a town, city, or county for having a policy of deliberate indifference to inadequate training of its law enforcement officers. City of Canton v. Harris, 489 U.S. 378, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989). If officers receive little or no training to the point constitutional violations are almost inevitable, the employing town, city, or county may be liable for “failure to train.”

**Substantive Due Process Claims**

By 1998, it was well-established that persons injured or killed in high speed pursuits could bring suits against police officers and municipalities alleging violation of substantive due process rights under the Fourteenth Amendment. However, federal courts were divided on what standard of culpability should apply to the conduct of the police in these pursuit cases. Most circuit courts had adopted one of the following standards: (1) gross negligence; (2) recklessness or deliberate indifference; or (3) shocks the conscience. Compare Jones v. Sherrill, 827 F.2d 1102 (6th Cir. 1987), later proceeding, 1991 Tenn. App. LEXIS 372 (1991) (gross negligence); Medina v. City & Cty of Denver, 960 F.2d 1493 (10th Cir. 1992) (recklessness or deliberate indifference); Medeiros v. Town of South Kingstown, 821 F. Supp. 823 (D.R.I. 1993) (recklessness or deliberate indifference); Temkin v. Frederick Cty Comm'rs, 945 F.2d 716 (4th Cir. 1991), cert. denied, 502 U.S. 1095, 117 L. Ed. 2d 417, 112 S. Ct. 1172 (1992) (shocks the conscience); Fagan v. Vineland, 22 F.3d 1296 (3rd Cir. 1994) (shocks the conscience); Evans v. Avery, 100 F.3d 1033 (1st Cir. 1996), cert. denied, 520 U.S. 1210, 137 L. Ed. 2d 820, 117 S. Ct. 1193 (1997) (shocks the conscience).
In 1998, the Supreme Court decided *County of Sacramento v. Lewis* and settled the issue: the shocks the conscience standard applies to police conduct in pursuit cases brought under the Fourteenth Amendment.

**Shocks the Conscience Test**

In *County of Sacramento v. Lewis*, the Supreme Court addressed when high speed pursuits may constitute substantive due process violations. The Court held that an officer is liable for a substantive due process violation for persons injured in high speed chases only where the officer’s conduct “shocks the conscience.” Conscience-shocking behavior for pursuits can be found only where the officer has “an intent to harm suspects physically or to worsen their legal plight.”

**Case Twenty-Nine: Fatal Pursuit Doesn’t Shock the Conscience**


Returning to their patrol cars after responding to a call regarding a fight in progress, a deputy sheriff and a police officer saw a motorcycle approaching at a high rate of speed. An 18-year-old was driving the motorcycle with the 16-year-old owner of the motorcycle as his passenger. The officer activated his cruiser’s emergency lights, yelled at the boys to halt, and pulled his cruiser closer to the other patrol car in an attempt to block the path of the motorcycle. Instead of stopping, the driver slowed down, maneuvered the motorcycle between the patrol cars, and then sped away. The deputy turned on his cruiser’s siren and emergency lights and pursued the motorcycle.

During the chase, the motorcycle wove in and out of oncoming traffic for 75 seconds over 1.3 miles in a residential neighborhood, forcing a bicyclist and at least two cars to veer off the road. The motorcycle also made three sharp left turns and ran four stop lights. Both the motorcycle and the patrol car reached speeds of up to 100 mph, and the deputy followed as close as 100 feet. The pursuit ended when the driver lost control while trying to make a sharp left turn and the motorcycle flipped over. Although the deputy slammed on his brakes, he was unable to stop and crashed into the motorcycle. The patrol car skidded and hit the passenger who suffered extensive injuries and died at the scene. The driver managed to get out of the way and was not hit by the patrol car.

The passenger’s parents brought suit against the county, the county sheriff’s department, and the deputy alleging a deprivation of their son’s substantive due process rights under the Fourteenth Amendment in violation of 42 U.S.C. §1983.
The Ninth Circuit Court of Appeals held that the appropriate standard of conduct to apply to law enforcement officers in the context of high-speed vehicular pursuits was “deliberate indifference” or “reckless disregard” for an individual’s right to life and liberty. Reversing the Ninth Circuit, the Supreme Court held that a much higher standard of fault than “deliberate indifference” must be shown for officer liability in a police pursuit. The Court adopted the “shocks the conscience” standard and stated:

“Accordingly, we hold that high-speed chases with no intent to harm suspects physically or to worsen their plight do not give rise to liability under the Fourteenth Amendment, redressible (sic) by an action under §1983.”

The Court then explained why the deputy’s fault failed to meet the “shocks the conscience” test:

“[The deputy] was faced with a course of lawless behavior for which the police were not to blame. They had done nothing to cause [the driver’s] high-speed driving in the first place, nothing to excuse his flouting of the commonly understood law enforcement authority to control traffic, and nothing (beyond a refusal to call off the chase) to encourage him to race through traffic at breakneck speed forcing other drivers out of their travel lanes. [The driver’s] outrageous behavior was practically instantaneous, and so was [the deputy’s] instinctive response. While prudence would have repressed the reaction, [the deputy’s] instinct was to do his job as a law enforcement officer, not to induce [the driver’s] lawlessness, or to terrorize, cause harm, or kill. Prudence, that is, was subject to countervailing considerations, and while [the deputy] exaggerated their demands, there is no reason to believe that they were tainted by an improper or malicious motive on his part.”

The “shocks the conscience” test adopted in Lewis poses a high standard for plaintiffs in police pursuit cases brought under the Fourteenth Amendment. Since Lewis, several federal and state courts have addressed the issue of whether a police pursuit violated the injured party’s substantive due process rights under the Fourteenth Amendment. These courts have applied the “shocks the conscience” test, and most have found that a reasonable jury could not find that the officer’s conduct shocks the conscience. For example, see Courville v. City of Lake Charles, 720 So.2d 789 (La. Ct. App. 3d Cir. 1998) (late night high speed chase of suspected burglar which ended with suspect crashing into telephone pole did not shock the conscience); Davis v. Township of Hillside, 190 F.3d 167 (3rd Cir. 1999), cert. denied, 120 S. Ct. 982, 200 U.S. LEXIS 863 (2000) (high speed chase which ended with suspect colliding with two other cars and one of those cars hitting and severely injuring pedestrian did not shock the conscience).
Several federal courts have also held that the “shocks the conscience” test applies not only to harm caused to those pursued in a high speed chase but also to harm caused to other drivers or pedestrians. See the Davis case above, and Onossian v. Block, 175 F.3d 1169 (9th Cir. 1999), cert. denied, Torres v. Bonilla, 145 L. Ed. 2d 385, 120 S. Ct. 498, 1999 U.S. LEXIS 7543 (1999) (high speed chase of reckless driver which ended with reckless driver crashing into another car and injuring occupants did not shock the conscience). And at least one federal court has suggested that the Lewis decision and its “shocks the conscience” standard applies not only in pursuits but also in other emergency driving situations. See Gillyard v. Stylios, 1998 U.S. District LEXIS 20251 (E.D. Pa. 1998) (“shocks the conscience” standard applied where officers responding to fellow officer’s request for emergency assistance hit and killed pedestrian and his 7-month-old son).

While the “shocks the conscience” test may pose a difficult hurdle for plaintiffs in pursuit cases brought under the Fourteenth Amendment, the standard is not impossible to meet as evidenced by the district court decision in the next case.

Case Thirty: Fatal Pursuit May Shock the Conscience

FEIST v. SIMONSON, 36 F. Supp. 2d 1136 (D. Minn. 1999).

A Minneapolis police officer stopped a car fitting the reported description of a stolen vehicle. When the officer requested the suspect and his passenger put their hands in the air, the driver refused and sped away. The officer pursued the suspect through the streets of Minneapolis as the suspect turned the wrong way down one-way streets and nearly caused several collisions. At one point, the suspect entered a highway, exited the highway over a grassy median, and then re-entered the highway going in the opposite direction of traffic. The driver drove erratically, forcing several cars off the road to avoid being hit. The officer, along with three other patrol cars that had joined the pursuit, shadowed the suspect’s driving pattern.

The pursuing officers were no longer calling out the traffic conditions and, concerned that the chase had gone on so long under dangerous conditions, the chase supervisor left the precinct and headed for the highway. The chase supervisor claimed that he was about to call off the chase because of the dangers of an upcoming tunnel. Before the chase could be called off, however, a crash occurred. As traffic on the highway slowed to a halt, a limousine driver swerved onto a shoulder to avoid hitting the car in front of him. As he turned onto the shoulder, the suspect struck the limousine driver at a closing speed estimated at 97-104 mph. The limousine driver was crushed and killed in the crash.
The limousine driver’s mother filed suit against the officers and the city, alleging a deprivation of her son’s substantive due process rights under the Fourteenth Amendment in violation of 42 U.S.C. §1983.

The Minnesota district court applied the “shocks the conscience” test from Lewis, but distinguished the facts of this case from the facts of Lewis. The district court held that, while the initial decision to pursue was justified, the situation “escalated into one of greater and greater potential for harm to the general public.” The court stated:

“What began as a chase down residential roads soon escalated to a high-speed run through stop lights and down the wrong way of busy one-way streets. What then became a dangerous pursuit entering a busy interstate eventually became a deadly pursuit back onto the same interstate, this time heading at break-neck speeds the wrong direction against heavy traffic.”

The court went on to say that the officer had many opportunities during the chase to balance the need to catch the suspect against the threat to the public. The court pointed out that there was no indication that, had the officer suspended the chase, the police department would not have eventually apprehended the suspect. The court held that the officer’s conduct reveals genuine issues of material fact as to whether his actions “shocked the conscience” for the purpose of a substantive due process claim.

**Governmental or Supervisory Liability**

Police pursuits that “shock the conscience” may not only expose the pursuing officers to liability but also may expose the governmental employer and the pursuit supervisor to liability. An employing town, city, or county may be directly responsible under 42 U.S.C. §1983 when an employee executes a governmental policy or custom that inflicts constitutional injury. See Monell v. Dep’t of Social Services, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978), also discussed earlier. Third parties injured in collisions during a police pursuit may claim that the police department had an official policy or an unofficial custom of encouraging high-speed chases of suspects at the expense of the safety of the public, that is, that the policy or custom was a product of deliberate or reckless indifference.
To succeed on a claim based on an unconstitutional policy or custom, the plaintiff must prove the following: (1) an official policy or unofficial custom of unconstitutional misconduct, (2) a deliberate indifference to or tacit authorization of such misconduct; and (3) the policy or custom was the moving force behind the constitutional violation. *Feist v. Simonson*, 36 F. Supp. 2d 1136, 1149 (D. Minn. 1999), also discussed earlier at **Case Thirty**. These requirements present a formidable burden for plaintiffs. See *Feist v. Simonson*, 36 F. Supp. 2d 1136 (D. Minn. 1999) (“statistics regarding the number of past pursuits and the lack of resulting disciplinary action is not sufficient to prove a policy or custom”); *Fulkerson v. City of Lancaster*, 801 F. Supp. 1476 (E.D. Pa. 1992), *affirmed without opinion*, 993 F.2d 876 (3d Cir. 1993)(simply citing fact that department’s officers have pursued minor traffic offenders at high speeds in past without evidence of injuries or collisions is not sufficient). But see *Gillyard v. Stylios*, 1998 U.S. Dist. LEXIS 20251 (E.D. Pa. 1998) (plaintiff’s evidence of large number of preventable collisions during pursuits, failure of police department to discipline officers causing preventable collisions, violation of city directive on safe driving and state traffic laws, and ignored internal requests to enforce safe driving techniques more strictly held sufficient evidence of implicit policy sanctioning reckless driving to present a jury issue).

A governmental employer (or a supervising police officer) may also be liable under 42 U.S.C. §1983 for constitutional injuries caused by the failure to train police officers. Third parties injured in collisions during a police pursuit may claim that the employing town, city, or county, and/or the police officer supervising the pursuit failed to train the pursuing officers in high-speed chases.

However, an action for failure to train will lie “only where the failure amounts to deliberate indifference to the rights of persons with whom the police come into contact.” The failure to train must be coupled with a deliberate or conscious choice in order to rise to the level of a governmental policy or custom. In other words, “the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy-makers of the city can reasonably be said to have been deliberately indifferent to the need.” Finally, the failure to train must be the cause of the constitutional violation. See *City of Canton v. Harris*, 489 U.S. 378, 389-390, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989), also discussed earlier.
Again, this deliberate indifference standard can be difficult for plaintiffs to meet. In 
*Canton*, the Supreme Court was careful to note that governmental liability for failure to 
train will not be had merely because an individual officer is insufficiently trained or 
because an individual officer makes a mistake. See *Williams v. Musser*, 1997 U.S. Dist. 
LEXIS 10388 (N.D. Ill. 1997) (where written pursuit policy prohibits intentionally 
damaging suspect’s car and lists factors to consider during pursuits, and officers received 
basic police training in compliance with state law, plaintiff’s assertion that city should have 
provided practical training on how to interpret and apply pursuit policy is insufficient 
evidence of failure to train); *Smith v. City of New Baltimore*, 1999 U.S. Dist. LEXIS 20196 
(E.D.S.D. Mich. 1999) (plaintiff’s assertions that department failed to discipline pursuing 
officer for previous collisions and failed to give dispatcher copy of pursuit policy were not 
sufficient to state a claim for failure to train).

Whether the liability of a governmental employer for failure to train or for an 
unconstitutional policy or custom depends on the liability of the pursuing officer is in 
dispute. Some courts hold that a governmental employer can only be liable for failure to 
train or for an unconstitutional policy or custom if the police officer violates the federal 
constitution. That is, if a pursuing officer’s conduct during a pursuit does not shock the 
conscience, then the officer has not violated the constitution and the officer’s governmental 
employer cannot be held liable for an unconstitutional policy or custom or for failure to 
train. For example, see *Hildebrandt v. City of Fairbanks*, 957 P.2d 974 (Ala. 1998) 
(pursuing officer’s conduct did not shock the conscience so employing city cannot be held 
liable for failure to train). Other courts hold that independent claims for failure to train and 
for unconstitutional policy or custom can be maintained against a governmental employer 
despite the exoneration of the involved police officers. See *Smith v. City of New Baltimore*, 
train is not automatically terminated by the officer’s exoneration); *Gillyard v. Stylios*, 1998 
U.S. Dist. LEXIS 20251 (E.D. Pa. 1998) (governmental employer can be liable for failure to 
train even if no individual officer participating in the pursuit violated the federal 
constitution).

**General Principles**

General principles of federal constitutional law relating to law enforcement emergency 
driving include the following:

- Law enforcement driving that is negligent or reckless under state tort law is not 
necessarily a deprivation of federal constitutional rights under the Fourth Amendment.
Legal Aspects of Law Enforcement Driving  
Objective 1.3

- A collision between officer and bystander, or between officer and suspect, or between suspect and bystander, is not a deprivation of constitutional rights unless the conduct of the officer is so outrageously dangerous as to "shock the conscience," the substantive due process standard. Plaintiffs find that standard difficult to prove since it requires almost intentional disregard of a near unavoidable risk of serious injury.

- A governmental employer may not be liable for an unconstitutional policy or custom simply because departmental policy allows high-speed chases. Constitutional liability requires that the policy or custom require or implicitly sanction unconstitutional conduct.

- A local governmental employer or supervisory officer may not be liable for failure to train simply because a particular officer was inadequately trained in pursuit driving. Constitutional liability requires deliberate indifference to the need for more or better training.

**Summary**

In addition to filing state claims, persons injured during police pursuits may also seek redress against the pursuing officers and their agency under federal constitutional law. These plaintiffs argue that the pursuit deprived them of their right to substantive due process under the Fourteenth Amendment. However, a much higher standard—the “shocks the conscience” standard—applies in these federal cases. Under the “shocks the conscience” standard, the officer’s conduct must exceed mere recklessness before liability is created. Police pursuits that “shock the conscience” may not only expose the pursuing officers to liability but also may expose the governmental employer and the supervisory officer to liability for failure to train or for an unconstitutional policy or custom.

**Suggested Instructional Methodology**

*Lecture with Slides*

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

*Lecture and Class Discussion*

Utilize case summaries to present legal principles and involve students in discussion of relevant issues.
Small Groups with Case Studies

In groups of 3-6, present each group with the cases provided above and additional fact situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.

Resources and Aids

- Relevant federal constitutional and statutory provisions.
- Agency policies.

Suggested Evaluation Methodology

Students

- Written or verbal response to questions regarding legal principles.
- Observation of strategies, decisions, or methods used by a driver when exposed to various driving scenarios.

Course

- Observe the driving of officers during the simulations of emergency vehicle operations.
- Review agency collision reports for failure to heed legal considerations.
OBJECTIVE 1.4 Identify constitutional law, statutory law, and case law governing emergency driving as use of deadly force in terminating pursuits.

Emergency Driving As Use of Deadly Force

Introduction

Using a vehicle to block or ram a fleeing suspect may be deadly force, subject to the same laws that apply to firing a gun to prevent escape of a suspect. The United States Supreme Court discussed this principle in *Brower v. County of Inyo*, 489 U.S. 593, 103 L. Ed. 2d 628, 109 S. Ct. 1378 (1989). Use of a roadblock or ramming may be a “seizure” subject to the reasonableness standard under the Fourth Amendment of the federal constitution.

Historical Context

As discussed in Objectives 1.1 and 1.2, law enforcement officers must be mindful of various state laws that bear on emergency and non-emergency law enforcement driving. State tort laws may apply to non-emergency law enforcement driving. State laws often grant emergency driving exemptions and limited immunities to law enforcement officers. These state emergency exemption statutes may impose special duties on law enforcement emergency driving. Each state is largely free to legislate as it sees fit in defining the conditions that govern emergency vehicle operation.

The federal constitution and federal statutes define another set of legal rights and obligations. Law enforcement officers employed by state and local governments cannot, under the authority of state law, violate rights secured to people under the federal constitution. Section 1983 of title 42 of the U.S. code allows persons to sue governmental defendants, such as law enforcement officers and agencies, for deprivation of rights, privileges or immunities under the federal constitution. The Fourth Amendment provides, in part, that “the right of the people to be secure in their persons..., against unreasonable searches and seizures, shall not be violated.” Persons injured as a result of a police roadblock or intentional ramming may claim that the roadblock or ramming was an unreasonable seizure in violation of the right to be free of unreasonable seizures under the Fourth Amendment.

For the first time, money damages could be recovered from individual officers who violate federal rights.

In 1978, the Supreme Court extended the right to recover money damages for a constitutional deprivation to allow suits against towns, cities, and counties with a policy or custom that violated a federal constitutional right. *Monell v. Dep’t of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978). Under *Monell*, liability is imposed on a town, city, or county government only if the injured party can prove an official policy or unofficial custom caused the deprivation of a federal right. However, a local governmental employer is not liable simply because one of its law enforcement officers violates a federal right. The constitutional deprivation must be the product of a governmental policy or custom.

In 1989, the Supreme Court recognized a suit against a town, city, or county for having a policy of deliberate indifference to inadequate training of its law enforcement officers. *City of Canton v. Harris*, 489 U.S. 378, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989). If officers receive little or no training to the point constitutional violations are almost inevitable, the employing town, city, or county may be liable for “failure to train.”

**Use of Deadly Force**

The Supreme Court has held that a law enforcement officer can use deadly force to prevent the escape of a fleeing suspect only where the officer has probable cause to believe the suspect poses a threat of death or serious physical harm to the officer or to others. Apprehension of a suspect by use of deadly force is a “seizure” subject to the reasonableness requirement of the Fourth Amendment. Courts determine the “reasonableness” of a Fourth Amendment seizure by balancing “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” See *Tennessee v. Garner*, 471 U.S. 1, 85 L. Ed. 2d 1, 105 S. Ct. 1694 (1985), cert. denied, *Memphis Police Dep’t v. Garner*, 510 U.S. 1177, 127 L. Ed. 2d 565, 114 S. Ct. 1219 (1994).
A suspect driving in a motor vehicle at high speeds in a reckless manner jeopardizes public safety. Where the suspect refuses to stop driving that endangers the public, and other efforts to make a suspect stop are ineffective, courts have approved deadly force directed toward the fleeing vehicle's driver.

In *Smith v. Freeland*, 954 F.2d 343 (6th Cir. 1992), *cert. denied*, 504 U.S. 915, 118 L. Ed. 2d 557, 112 S. Ct. 1954 (1992), a speeding driver refused to stop, accelerated up to 90 mph, and finally stopped on a dead end street. Although blocked in by the officer, the driver rammed the officer's car twice and went around it. The officer fired one shot at the driver as the car went by him, killing the driver. The court of appeals concluded the officer acted reasonably in shooting since the driver already threatened many people and would have threatened more, including other officers, had he escaped.

In *Cole v. Bone*, 993 F.2d 1328 (8th Cir. 1993), a tractor-trailer driver went on a 50 mile rampage at speeds up to 90 mph. Over 100 cars were forced off the road in heavy holiday traffic before officers shot and killed the driver as the truck continued on. The court of appeals approved this use of deadly force as reasonable and necessary. The threat to the public was immediate and substantial. Other ways to stop the truck - roadblocks and shooting out the tires - did not work. See also *Puglise v. Cobb County*, 4 F. Supp. 2d 1172 (N.D. Ga. 1998) (shooting to stop driver who drove at excessive speeds and rammed truck at police officers not constitutionally unreasonable use of force).

Roadblocks and ramming, like shooting, may be lawful, valid deadly force in limited and extreme circumstances. The burden of proof on the officer is substantial: The threat to the public must be extremely high and alternatives to deadly force should be unsuccessful or clearly impractical. Otherwise, the roadblock or intentional ramming may be considered an unreasonable seizure in violation of the Fourth Amendment.

*Unreasonable Seizure Claims*

In its seminal decision in *Brower v. County of Inyo*, the Supreme Court addressed the question of whether a “deadman's roadblock” is an unreasonable seizure in violation of the Fourth Amendment.
Case Thirty-One: Deadman’s Roadblock


The driver of a stolen vehicle was killed at the end of a high speed chase when he crashed into a police roadblock. Members of the driver’s family brought an action under 42 USC §1983 claiming that the roadblock amounted to an unreasonable seizure of the driver in violation of the Fourth Amendment. The family claimed that police had erected a “deadman’s roadblock” by positioning an 18-wheel tractor-trailer across both lanes of the driver’s escape route, concealing the roadblock behind a curve in the road and leaving it unilluminated, and aiming a police car’s headlights in such a fashion as to blind the driver on his approach.

Reversing the Ninth Circuit, the Supreme Court held that the allegations in the complaint sufficiently alleged a “seizure.” The Court stated:

“It is clear...that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual’s freedom of movement..., nor whenever there is a governmentally caused and governmentally desired termination of an individual's freedom of movement..., but only when there is a governmental termination of freedom of movement through means intentionally applied.”

The Court held that it was enough for a seizure that the driver “was meant to be stopped by the physical obstacle of the roadblock...and that he was so stopped.” However, the Court went on to say that the seizure must be evaluated for reasonableness:

“Seizure” alone is not enough for 1983 liability; the seizure must be “unreasonable.”

...Thus, the circumstances of this roadblock, including the allegation that headlights were used to blind the oncoming driver, may yet determine the outcome of this case.

The Court remanded the case to the Ninth Circuit to consider whether the district court properly dismissed the Fourth Amendment claim on the basis that the alleged roadblock did not effect a seizure that was “unreasonable.”

Since Brower, several federal and state courts have addressed the issue of whether a police roadblock or ramming effected an unreasonable seizure in violation of the Fourth Amendment. These courts employ the analysis in Brower and essentially ask two questions: (1) did the roadblock or ramming constitute a seizure under the Fourth Amendment? and (2) if so, was the seizure unreasonable?
Roadblocks

In the following case, the court employed the two-part analysis in Brower to determine whether a rolling roadblock was an unreasonable seizure under the Fourth Amendment.

Case Thirty-Two: Rolling Roadblock May Be Unreasonable Seizure

HAWKINS v. CITY OF FARMINGTON, 189 F.3d 695 (8th Cir. 1999).

A dispatcher informed a city police officer that the state highway patrol was in pursuit of a speeding motorcyclist and had requested assistance. The officer positioned his police car in the median of a highway and waited for the southbound motorcycle to appear.

When the officer spotted a motorcycle coming around the bend at a high rate of speed, he activated his emergency lights and siren. The officer also decided to try to slow or stop the motorcyclist by pulling slowly into the passing lane of the southbound highway. The police car slowly moved out onto the highway at an idle. Believing the police car was going to turn left and travel southbound, the motorcyclist changed lanes to the right. However, the police car kept traveling across the highway and struck the motorcyclist who sustained severe injuries in the collision.

The motorcyclist brought suit and claimed that the rolling roadblock effected an unreasonable seizure in violation of the Fourth Amendment.

The Eighth Circuit Court of Appeals held that there is ample evidence for a jury to find that the rolling roadblock constituted a seizure and ample evidence for a jury to find that the officer's conduct was unreasonable. Regarding the issue of reasonableness, the court stated:

“Reasonableness of the seizure must be determined on the totality of the circumstances and is to be judged from the perspective of a reasonable officer on the scene without regard to the underlying intent or motivation. An officer’s evil intentions will not make a Fourth Amendment seizure out of an objectively reasonable use of force, nor will an officer’s good intentions make an objectively unreasonable use of force constitutional.”

See also Buckner v. Kilgore, 36 F.3d 536 (6th Cir. 1994), reh’g, en banc, denied by 1994 U.S. App. LEXIS 33075 (6th Cir. 1994) (claim that roadblock was created only seconds before speeding motorcycle collided with roadblock sufficient to allege unreasonable seizure). But see Carter v. Lucas, 1994 U.S. App. LEXIS 18235 (4th Cir. 1994) (rolling roadblock not a seizure where no contact between fleeing car and cruiser and no attempt to run fleeing car off road).

In other instances, such as in the following case, the courts find the roadblock to be a “seizure” but do not find the use of force to be unreasonable under the circumstances.
Case Thirty-Three: Roadblock A Seizure But Reasonable Use Of Force

SEEKAMP v. MICHAUD, 109 F.3d 802 (1st Cir. 1997).

During a late night chase, a speeding motorist ignored pursuing vehicles, drove through a toll plaza without stopping, and recklessly evaded a rolling roadblock. A state trooper was ordered to set up a roadblock north of a toll plaza at the end of a straightaway.

The trooper commandeered a flatbed tractor-trailer loaded with lumber and parked it across the three southbound lanes. The trooper completed the roadblock by parking his cruiser at the rear of the tractor-trailer and shined the cruiser’s headlights in the direction the motorist would be approaching. Other tractor-trailers were parked along the breakdown lane parallel to the blocked travel lanes. A fifty-foot gap left between two of the tractor-trailers allowed vehicular traffic to proceed around the roadblock. Street lights, lights from the cruiser, and lights from the tractor-trailer lit the entire roadblock area.

In approaching the roadblock, the motorist seemed to brake several times but failed to come to a complete stop. The motorist collided with the tractor-trailer parked across the southbound lanes and suffered injuries. The motorist sued under 42 USC §1983 claiming that the roadblock effected an unreasonable seizure in violation of the Fourth Amendment.

The First Circuit Court of Appeals first determined that the roadblock constituted a seizure under the Fourth Amendment because the motorist was meant to be stopped by the physical object of the roadblock and he was so stopped.

The court next addressed the question of whether the seizure was unreasonable. Citing Graham v. Connor, 490 U.S. 386 (1989), the court identified three factors for evaluating whether the force used to effect a seizure was objectively reasonable: “(1) severity of the crime; (2) whether there was ‘an immediate threat to the safety of the officers or others;’ and (3) whether the suspect was ‘actively resisting arrest or attempting to evade arrest by flight.’” The court then observed:

“The Fourth Amendment reasonableness test requires careful attention to the circumstances in the particular case...Unlike the ‘deadman’s roadblock’ in Brower,...[this] roadblock was brightly illuminated and located at the end of a long straightaway. The undisputed evidence established that it was visible from approximately 1500 feet to the north and the [motorist’s car] could have been brought to a complete stop without contacting the roadblock equipment but for its malfunctioning brakes. An adequate corridor for circumvention, though not readily apparent to vehicles approaching at excessive speed, had enabled many motorists to bypass the roadblock before [the motorist] arrived.”

The court concluded that the district court correctly ruled that no rational jury could have found this roadblock unreasonable in the circumstances.
Legal Aspects of Law Enforcement Driving

In still other cases, the courts do not find the roadblock to be a seizure under the Fourth Amendment.

**Case Thirty-Four: Roadblock Not A Seizure**


A few hours after a mother called the sheriff’s department to report that her 13-year-old daughter took the family van without permission, a police officer spotted the van traveling 84 mph in a 40 mph zone. A high speed chase on US 81 ensued. During the high speed chase, the van ignored pursuing vehicles, evaded a rolling roadblock, and appeared to attempt to ram several police cars from behind.

As the van approached Bowie, Texas, the Bowie police positioned their cars to block off the road into which US 81 ended in a “T” intersection to prevent any cars from entering the intersection from the west or east. A warning sign, two large stop signs, and two sets of alternating red lights alerted drivers traveling south on US 81 that the road ended in a “T” intersection. Pursuing officers slowed down a mile from the “T” intersection.

The van entered the intersection at approximately 87 mph and crashed into a car dealership. The 13-year-old girl driver was ejected from the van and killed. The girl’s father brought a suit under 42 USC §1983 claiming that the officers unreasonably seized the girl in violation of the Fourth Amendment.

In determining that a seizure had not occurred, the court stated:

“In this case, the officers’ assertion of authority (their pursuit of Alysia with lights and siren activated, their placement of their police cars in various ways to attempt to slow down or stop her) did not cause her to submit or stop. Rather, she stopped only when she entered the “T” intersection at a high rate of speed, despite warnings that she needed to stop, lost control of the van and crashed. In sum, her freedom of movement was not stopped by ‘means intentionally applied.’”

See also Morais v. Yee, 162 Vt. 366, 648 A.2d 405 (1994) (no seizure where motorcyclist fatally crashes in attempt to avoid rolling roadblock); Roddel v. Town of Floro, 580 N.E.2d 255 (Ind. Ct. App. 1991) (no seizure where motorist collides with tree in attempt to avoid roadblock).
Where the suspect has simply lost control of his vehicle during a high speed chase, a Fourth Amendment claim will usually fail. In *Brower*, the court specifically stated that no seizure occurs when pursuing police seek to stop the suspect “only by show of authority represented by flashing lights and continuing pursuit” because the suspect’s freedom of movement is not terminated. A pursuit alone does not constitute a seizure.

When plaintiffs have tried to raise unreasonable seizure claims in situations where the suspect has simply lost control of his vehicle during a high speed chase, the courts typically follow *Brower* and find that there was no governmental termination of the suspect’s freedom of movement and, therefore, no seizure prohibited by the Fourth Amendment. See *Estate of Story v. McDuffie County, Georgia*, 929 F. Supp. 1523 (S.D. Ga. 1996), *affirmed without opinion*, 110 F.3d 798 (11th Cir. 1997) (no seizure where suspected gasoline thief fatally crashes when rounding a curve during chase); *Wozniak v. Cavender*, 875 F. Supp. 526 (N.D. Ill. 1995) (no seizure where pursued ATV crashes into ditch); *Carroll v. Borough of State College*, 854 F. Supp. 1184 (M.D. Pa. 1994), *affirmed without opinion*, 47 F.3d 1160 (3d Cir. 1995) (no seizure where fleeing motorcyclist fails to negotiate curve and crashes); *Rosado v. Deters*, 5 F.3d 119 (5th Cir. 1993) (pursuit alone cannot constitute a seizure); *Montgomery v. County of Clinton*, 743 F. Supp. 1253 (W.D. Mich. 1990), *affirmed without opinion*, 940 F.2d 661 (6th Cir. 1991) (no seizure where speeding teen driver fatally crashes into utility pole during chase); *Patterson v. City of Joplin*, 878 F.2d 262 (8th Cir. 1989) (no seizure where speeding motorcyclist fatally crashes into car during high speed chase); *Roach v. City of Fredericktown*, 882 F.2d 294 (8th Cir. 1989) (no seizure where suspected car thief fatally collides with oncoming car during chase).

Of course, those injured in high speed chases can still bring suit under state or federal law. See Objective 1.2 for discussion of negligent pursuit claims under state law and Objective 1.3 for discussion of pursuit claims under federal law alleging violation of substantive due process rights under the Fourteenth Amendment.

And finally, a few decisions involving roadblocks have not applied the *Brower* two-part test because the incidents took place before the Supreme Court decided *Brower*. See *Donovan v. City of Milwaukee*, 17 F.3d 944 (7th Cir. 1994); *Horta v. Sullivan*, 4 F.3d 2 (1st Cir. 1993), *certified question answered*, 418 Mass. 615, 638 N.E.2d 33 (Mass. 1994), *answer remanded*, 36 F.3d 210 (1st Cir. 1994).
Ramming

Like roadblocks, police ramming of a fleeing suspect’s car may be subject to unreasonable seizure claims. Central to a determination of whether a police ramming is an unreasonable seizure is the intention of the officer accused of ramming. As the next case demonstrates, merely colliding with a suspect’s vehicle during a pursuit does not necessarily amount to an unreasonable seizure in violation of the Fourth Amendment.

Case Thirty-Five: Unintentional Ramming Not A Seizure


While driving home from a local club, a driver noticed an officer’s blue lights in her rear view mirror. The driver believed the officer was chasing a group of young boys standing alongside the road. The driver drove her car around an S-shaped curve in the road, and the officer rear-ended her car with his police car.

According to the officer’s version of the facts, the officer observed the driver run a stop sign. The officer followed the car and, when he observed the car run another stop sign, the officer turned on his emergency blue lights. Instead of stopping, the driver accelerated and a high speed chase ensued. The chase ended when the officer crashed into the rear of the driver’s car.

The driver brought suit under 42 USC §1983 claiming that the officer’s rear end collision of her car amounted to an unreasonable seizure in violation of the Fourth Amendment.

The Alabama district court determined that the collision was not a seizure under the Fourth Amendment. The court stated:

“Because [the driver] has neither pleaded nor offered any evidence to prove that [the officer’s] ramming was intentional, nor, according to [the driver], was the action taken in an attempt to apprehend her, the Court finds that the accident does not amount to a seizure and, thus, does not implicate the Fourth Amendment.”
However, intentional and successful use of force to stop a fleeing suspect’s vehicle would constitute a seizure under the Fourth Amendment. In considering a hypothetical scenario, the Brower court stated that if the “police cruiser had pulled alongside the fleeing car and sideswiped it, producing the crash, then the termination of the suspect’s freedom of movement would have been a seizure.” But even if an intentional ramming is deemed a seizure, the use of force may be considered reasonable. The next case features an intentional ramming that is found to be a reasonable seizure.

Case Thirty-Six: Intentional Ramming A Seizure But Reasonable Use Of Force


A 14-year-old boy who agreed to wash a neighbor’s car took the car joyriding with several friends. The next day the boy replaced the car’s rear license plate with another plate and took a friend driving. When police tried to stop the car, the juvenile driver fled onto a freeway. The pursuit was then continued by a unit of the California Highway Patrol (CHP).

After the pursuit had lasted over an hour and had covered several freeways, a CHP officer and his supervisor heard a radio dispatch regarding the fleeing stolen vehicle and joined the chase. The supervisor directed the officer to take over the pursuit in the primary position, and the supervisor took up the position behind the officer. At this time, officers from other CHP units backed off the chase, and a Los Angeles Sheriff’s helicopter overhead had the fleeing car in view.

Soon after, the juvenile driver exited the freeway and circled streets in residential areas at speeds ranging from 15 mph to 70 mph. At one point, the juvenile driver pulled into a residential driveway and stopped. The officer pulled in behind him but, fearing the driver would back up into him, the officer moved his cruiser back. The driver backed out of the driveway after striking the front bumper of the officer's cruiser.

Several times during the pursuit through the residential areas, the supervisor directed the officer to use a pursuit immobilization technique (PIT) maneuver, but the officer declined because he believed the conditions were not safe. Although both the officer and the supervisor had received training on the use of the PIT maneuver, the officer had never used it to stop a suspect before. According to the CHP manual, the PIT maneuver is a form of ramming that should not be used at speeds in excess of 35 mph.

When the fleeing car was traveling on a frontage road near the freeway where there were no pedestrians and no traffic, the officer rammed the rear of the fleeing car, causing it to spin out and hit an abutment wall. There was a factual dispute as to how fast the cars were traveling at the time of the ramming. The passenger in the fleeing car was seriously injured. In addition to state claims, the passenger brought suit under 42 USC §1983 claiming that the officer’s ramming of the fleeing car constituted an unreasonable seizure in violation of the Fourth Amendment.

The California Court of Appeals first determined that the ramming was a seizure under the Fourth Amendment:
“In this case, we conclude that the evidence is undisputed that [the passenger] was subject to a seizure within the meaning of the Fourth Amendment. It was without dispute that [the officer and the supervisor] knew that there were two individuals in the [fleeing car] and intended that [the officer] employ the PIT maneuver...Thus, the officers admittedly intended to stop the [fleeing car]...The fact that [the officer and the supervisor] may not have intended any injury to [the passenger] as a result of the PIT maneuver is irrelevant to the issue of whether a seizure occurred because there was nevertheless an intentional acquisition of physical control over the [fleeing car].”

Next, the court looked at the reasonableness of the seizure:

“We conclude as a matter of law no rational jury could find the instant seizure unreasonable under the circumstances here. A 14-year-old driver who has led police on a 2-hour pursuit over several freeways and through residential neighborhoods at unsafe speeds and in disregard of the traffic laws clearly lacks the skills and judgment of a mature driver. [The driver] exhibited a wanton disregard for public safety and a willingness to persist in violent conduct to evade the police, even ramming a police car in his attempt to escape when he clearly had an opportunity to stop the pursuit in a safe manner when he pulled into a driveway. According to the officers, so many bystanders had come out of their homes while [the driver] was circling through the residential streets that the area resembled a ‘parade route.’ With so many vulnerable bystanders in the area, and an unpredictable, youthful driver who had clearly expressed a willingness to engage in violent conduct to continue his flight, the officers acted reasonably in employing deadly force to stop [the driver].”

**Governmental or Supervisory Liability**

Police roadblocks and ramming that amount to unreasonable seizures may not only expose the involved officers to liability but also may expose the governmental employer and the pursuit supervisor to liability. An employing town, city, or county may be directly responsible under 42 U.S.C. §1983 when an employee executes a governmental policy or custom that inflicts constitutional injury. See *Monell v. Dep’t of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978), also discussed earlier. Persons injured as a result of a police roadblock or intentional ramming may claim that the police department had a policy or custom of encouraging unreasonably deadly roadblocks and ramming at the expense of the safety of the public, that is, that the policy or custom was a product of deliberate or reckless indifference.
To succeed on a claim based on an unconstitutional policy or custom, the plaintiff must prove the following: (1) an official policy or unofficial custom of unconstitutional misconduct, (2) a deliberate indifference to or tacit authorization of such misconduct; and (3) the policy or custom was the moving force behind the constitutional violation. *Feist v. Simonson*, 36 F. Supp. 2d 1136, 1149 (D. Minn. 1999), also discussed in Objective 1.3 at Case Thirty. These requirements present a formidable burden for plaintiffs.

A governmental employer (or a supervising police officer) may also be liable under 42 U.S.C. §1983 for constitutional injuries caused by the failure to train police officers. Third parties injured as the result of roadblocks or ramming may claim that the employing town, city, or county, and/or the police officer supervising the pursuit failed to train the involved officers in the use of deadly force to terminate a pursuit.

However, an action for failure to train will lie “only where the failure amounts to deliberate indifference to the rights of persons with whom the police come into contact.” The failure to train must be coupled with a deliberate or conscious choice in order to rise to the level of a governmental policy or custom. In other words, “the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy-makers of the city can reasonably be said to have been deliberately indifferent to the need.” Finally, the failure to train must be the cause of the constitutional violation. See *City of Canton v. Harris*, 489 U.S. 378, 389-390, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989), also discussed earlier.

Again, this deliberate indifference standard can be difficult for plaintiffs to meet. In *Canton*, the Supreme Court was careful to note that governmental liability for failure to train will not be had merely because an individual officer is insufficiently trained or because an individual officer makes a mistake. *Seekamp v. Michaud*, 109 F.3d 802 (1st Cir. 1997) (evidence that subordinate officers received training on high speed pursuits and roadblocks defeats claim against supervisor for failure to train). But see *Frye v. Town of Akron*, 759 F. Supp. 1320 (N.D. Ind. 1991) (allegations that town provided no training on use of deadly force held sufficient to state claim for failure to train).
Whether the liability of a governmental employer for failure to train or for an unconstitutional policy or custom depends on the liability of the pursuing officer is in dispute. Some courts hold that a governmental employer can only be liable for failure to train or for an unconstitutional policy or custom if the police officer violates the federal constitution. That is, if an officer’s roadblock or ramming is considered a reasonable seizure or not a seizure at all, then the officer has not violated the constitution and the officer’s governmental employer cannot be held liable for an unconstitutional policy or custom or for failure to train. See *Montgomery v. County of Clinton*, 743 F. Supp. 1253 (W.D. Mich. 1990), *affirmed without opinion*, 940 F.2d 661 (6th Cir. 1991) (pursuit not a seizure so plaintiff’s action against employing county for failure to train and for unconstitutional policy or custom must fail); *Roddel v. Town of Floro*, 580 N.E.2d 255 (Ind. Ct. App. 1991) (roadblock not a seizure so plaintiff’s failure to train action against employing town and county must fail); *Roach v. City of Fredericktown*, 882 F.2d 294 (8th Cir. 1989) (pursuit neither a seizure nor shocks the conscience so employing city cannot be liable for failure to train).

Other courts hold that independent claims for failure to train and for unconstitutional policy or custom can be maintained against a governmental employer despite the exoneration of the involved police officers. See *Carroll v. Borough of State College*, 854 F. Supp. 1184 (M.D. Pa. 1994), *affirmed without opinion*, 47 F.3d 1160 (3d Cir. 1995) (fleeing motorcyclist’s crash not a seizure but plaintiff can still maintain failure to train action against police chief and employer); *Frye v. Town of Akron*, 759 F. Supp. 1320 (N.D. Ind. 1991) (collision between officer and fleeing suspect not a seizure but plaintiff can still maintain failure to train claim against employing town).

**General Principles**

Some general principles of federal law relating to emergency vehicle operation as a use of deadly force are as follows:

- A roadblock that terminates a suspect’s freedom of movement constitutes a seizure subject to the reasonableness test under the Fourth Amendment. Ramming that intends to terminate a suspect’s freedom of movement constitutes a seizure subject to the reasonableness test under the Fourth Amendment.

- Some roadblocks and some ramming may not be considered seizures.

- Even if a particular roadblock or ramming is deemed a seizure, its use may be reasonably necessary for immediate apprehension of a violent felon, or a suspect who is threatening harm in the course of an extremely hazardous pursuit.
A governmental employer may be liable if it offers little or no training in use of deadly force. Training in the intentional use of force must be sufficient to enable an officer to perform normal and recurring duties without violating constitutional rights.

Summary

Using a vehicle to block or ram a fleeing suspect may be deadly force, subject to the same laws that apply to firing a gun to prevent escape of a suspect. Persons injured as a result of a police roadblock or ramming may claim that the roadblock or ramming deprived them of their right to be free from unreasonable seizures under the Fourth Amendment of the federal constitution. Some roadblocks and ramming are not seizures under the Fourth Amendment. Even if a roadblock or ramming is considered a seizure, the use of deadly force may be reasonable under the circumstances. A roadblock or ramming resulting in injury or death may also expose the governmental employer or the supervisory officer to liability for failure to train or for an unconstitutional policy or custom.

Suggested Instructional Methodology

Lecture with Slides

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

Lecture and Class Discussion

Utilize case summaries to present legal principles and involve students in discussion of relevant issues.

Small Groups with Case Studies

In groups of 3-6, present each group with the cases provided above and additional fact situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.

Resources and Aids

• Relevant federal constitutional and statutory provisions

• Agency policies
**Legal Aspects of Law Enforcement Driving**

**Objective 1.4**

**Suggested Evaluation Methodology**

**Students**

- Written or verbal response to questions regarding legal principles.
- Observation of strategies, decisions, or methods used by a driver when exposed to various driving scenarios.

**Course**

- Observe the driving of officers during the simulations of emergency vehicle operations.
- Review agency collision reports for failure to heed legal considerations.
Module 1 Questions

Emergency Exemption Statutes: Questions For Your State.

Check your state emergency exemption statute and determine what the law requires in your state to qualify for the emergency exemption:

1. What warning devices must be activated to claim the emergency exemption?
   a. Lights and siren both in operation at all times?
   b. Lights only but not siren, or siren only but not lights?
   c. Neither in operation for exceeding speed limits, but some activated for claiming right-of-way?
   d. Must emergency equipment meet certain standards - i.e., siren must be audible at 1000 feet - or of a type approved by a governmental authority?

2. Exactly which traffic laws are covered by your emergency exemption statute?
   a. Speed limits and right-of-way laws?
   b. The above plus parking and passing restrictions?
   c. The above plus exemption from one-way streets and driving to left of center line?

3. What is the language used to impose a duty of due care at intersections and exceeding the speed limit? Often the restrictive "safety" language of an exemption statute takes away much of the authority to use the exemption - "you may cross against a signal, but only if that can be done with safety to others."

4. Somewhere in the exemption statute will appear language mandating "due regard for the safety of others." What does that mean in your state?
Tort Immunity Statutes: Questions That Need Answers For Your State

Governmental tort immunity means a negligent law enforcement driver will not be required to pay damages to persons injured by the negligent driving. Immunity from tort liability for government employees assumes the employee has committed a negligent act that would subject a private citizen to tort liability. The injured citizen is simply denied the legal right to maintain the negligence lawsuit against a governmental entity and its employees.

Some states have abolished the doctrine of governmental immunity for all tort claims, making governmental employees equal to private citizens in their responsibility for negligent traffic crashes. A few states have kept governmental immunity almost wholly intact, for the entire range of governmental activities. Most states have modified governmental immunity so certain kinds of activity are not exempt but other activities are exempt.

Liability for negligent driving by governmental employees, which includes law enforcement officers, often is removed from governmental immunity statutes. In many states, officers who are negligent are subject to lawsuits and not exempt by governmental immunity. In other states, officers are immune from simple negligence, but not gross negligence or "willful and wanton" negligence. In some states, negligence during the course of an arrest is protected by an immunity statute while other law enforcement activity is not immune.

Notice that governmental immunity laws exempting officers from a lawsuit are not the same as emergency exemption statutes, giving officers a legal right to ignore certain traffic laws. An officer who exceeds the speed limit in a safe manner that complies with the emergency exemption statute is not negligent in the first place. State immunity statutes are designed to protect the guilty government employee, not the injured citizen.

Some states have unusual governmental immunity statutes just for law enforcement driving. In California, driving immunity for individual officers is given by California statutory law if the employing agency has adopted an adequate written policy restricting emergency driving. Knowledge of your state tort immunity statute is essential for teaching new officers about their individual liability for civil damages.
Agency Policy: Questions That Need Answers For Your State

Written policy restricts emergency driving in almost every agency. Of particular importance is use of warning lights and sirens, maximum speeds, and special rules for crossing intersections against prevailing signals. Rookie officers may be under special restrictions, and pursuits usually are limited in agency policy.

Violations of agency policy have important legal consequences. Safety provisions in agency policy - i.e., don't exceed 10 mph over the posted limit going to a call - can be admitted as evidence in court to prove negligence. Thus, a safety policy violation can be used to prove an officer was guilty of criminal negligence in a fatal accident, resulting in a criminal conviction. Violations of agency policy also can lead to loss of employment. A fundamental responsibility of administrators and supervisors is ensuring all officers know and understand agency written policy.

If all students in a training class are employees of the same agency, their written policy should be used as part of instructional material. Students should be tested on their knowledge of agency policy and its important restrictions.

Decision-Making As The Best Protection Against Liability.

For all law enforcement activities, poor decision-making is the primary cause of civil liability. Liability for improper use of a pistol seldom comes from a lack of reasonable accuracy. Liability comes from shooting when use of deadly force is not authorized by the facts and circumstances. It is not a lack of skill but rather a lack of judgment that results in liability.

The same is true for emergency vehicle operation. Liability is found less in the ability to control a law enforcement vehicle at high speeds and more in failing to recognize great danger and react in time to reduce the risk of harm. It is less the ability to drive at high speeds and more the failure to slow down that causes tragic accidents. Good decisions protect an officer more than good skills.

A sad reality in emergency vehicle operation is the willingness of many officers to ignore obvious safety rules during an emergency run. The emotions generated by a chase are powerful. Letting someone get away is hard to do for many officers. Driving to the scene of an emergency call for help almost always results in extremely dangerous driving.
And the danger is not just to an innocent bystander, but also to the officer driving the car. Suppose every time an officer shot his handgun that an equal chance existed for hitting not only the criminal suspect but also of hitting an innocent bystander and hitting the officer who fired the gun - that is the danger in emergency vehicle operation.

A good instructor will stress driving dangers that can be easily identified in that locality. Major intersections controlled by signals are prime locations for traffic crashes. Hilly roads, narrow roads, residential areas, schools, and hospitals require special care. High speeds may be relatively safe on an interstate but entirely too fast for a commercial district.

Students should examine their own locality and identify its danger points for law enforcement driving. Students must know the safety rules and understand the importance of compliance and they should realize that even the most skillful driver cannot ignore safety rules and obvious dangers. Students and officers who demonstrate an inability to follow the rules of safe driving should be encouraged to leave the law enforcement profession.

**Doing Legal Research**

Every state has a law school with a reference librarian. Instructors should call and explain their need for court cases and any new statutes in this area. That may be quicker and easier than any other means of verifying the currency of legal information in the appropriate state(s).

**Suggested Instructional Methodology**

**Lecture with Video**

Utilize reenacted pursuits to present legal principles and involve students in discussion of relevant issues.

**Lecture and Class Discussion**

Utilize case summaries to present legal principles and involve students in discussion of relevant issues.

**Small Groups with Case Studies**

In groups of 3-6, present each group with the cases provided above and additional fact situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.
Legal Aspects of Law Enforcement Driving  Module 1 Questions

Suggestions for Classroom Instructors

Statute law in two areas varies considerably from one state to the next. Those areas are emergency exemption statutes and tort immunity statutes. A third variable is agency policy, different for any given agency within a particular state. All three of these legal variables must be confronted by the classroom instructor. This publication is not a comprehensive review of the law of each state. Even if it were, classroom instructors must assume the law changes over time with new statutes and new court decisions coming into being on a regular basis.

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

Resources and Aids

• Relevant state statutes
• Agency policies

Suggested Evaluation Methodology

Students

Written or verbal response to questions regarding legal principles

Course

A review of legal proceedings against the agency