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Panel 4: Pursuit Policies: Compliance and Immunity in a Post-Ramirez World

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Law Enforcement: Use of Force & Liability Conference

Pursuit Policies: Compliance and Immunity in a Post-Ramirez World



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WHY DO WE CARE??

- State and local law enforcement agencies conduct an estimated 68,000 vehicle pursuits each year in the U.S..
- In 2016, there were a total of 8,554 police vehicle pursuits in California alone – an average of 23 pursuits every single day.
- In 2016, 25% of California pursuits resulted in a collision including 762 injury collisions and 24 fatal collisions.
- Although many pursuits begin as infraction traffic stops, suspects were charged with a felony or misdemeanor beyond evading arrest in over 80% of all apprehensions.



HISTORY OF SECTION 17004.7

- Vehicle Code 17004.7 was first added in 1987. Under the original version, the immunity was extremely broad providing immunity to any agency simply for adopting a pursuit policy.
- However, over time, the number of vehicle pursuits steadily increased, as did the number collisions resulting from them, and it became clear that Section 17004.7 was doing little to nothing to reduce the number of injuries and deaths resulting from vehicle pursuits.
- The Legislature considered several different bills imposing varying limitations on pursuit immunity eventually codifying the current version of Section 17004.7.

VEHICLE CODE SECTION 17004.7 – PURSUIT IMMUNITY

- Pursuant to Section 17004.7(b)(1), a public entity is immune from liability for civil damages resulting from a police pursuit provided the entity “adopts and promulgates a written policy on, and provides regular and periodic training on an annual basis for, vehicular pursuits...”
- “Promulgation” is defined in Section 17004.7(b)(2) as including “a requirement that all peace officers of the public agency certify in writing that they have received, read, and understand the [pursuit] policy”.
- Section 17004.7(c)(1) thru (12) contains a detailed list of topics a pursuit policy must address.

MORGAN v. BEAUMONT POLICE DEP'T

(2016) 246 Cal.App.4TH 144

- Morgan involved a wrongful death action brought by the family of a driver who was killed when a suspect crashed head on into the driver's vehicle as the suspect was fleeing a City of Beaumont police officer during a vehicle pursuit.
- Beaumont's policy complied with the minimum standards set forth in in Section 17004.7 and the policy included a requirement that all its officers review and acknowledge the policy.
- The Court denied Section 17004.7 immunity finding that (1) The Beaumont officers merely acknowledged receipt of the policy – not that they had received, read and understood it and (2) Less than 100% of the officers had even acknowledged receipt.
- Most significantly, the Morgan Court held that Section 17004.7 immunity should be denied absent 100% compliance with the certification requirement.

RAMIREZ v. CITY OF GARDENA

(2017) 14 Cal.App.5TH 811

- A year after Morgan, the 2nd District addressed this same issue. Ramirez involved a wrongful death action brought by the family of a passenger in a vehicle that was the subject of a pursuit by Gardena PD. The passenger was killed when, after a PIT maneuver by the pursuing officer, the vehicle spun into a pole.
- Like the Beaumont policy in Morgan, Gardena's policy complied with the minimum standards set forth in in Section 17004.7 and also included a requirement that all its officers review and acknowledge the policy.
- In contravention of the Morgan decision, the Ramirez court affirmed that Gardena was entitled to immunity despite the fact that only 81 of the City's 92 officers had completed the annual training on the City's pursuit policy and despite the City being able to produce written certifications for only 64 officers.
- In Ramirez, the court found that “promulgation” meant that to obtain immunity, an agency must require its peace officers certify receipt, reading and understanding in writing; however, complete compliance by the officers themselves is not required to obtain immunity.

RAMIREZ v. CITY OF GARDENA

(2018) 5 Cal.5TH 995

- The California Supreme Court granted the petition for review on a single limited issue: “Is the immunity provided by Vehicle Code section 17004.7 available to a public agency only if all peace officers of the agency certify in writing that they have received, read, and understand the agency’s vehicle pursuit policy?”
- Morgan and Ramirez were in direct conflict with one another with the Morgan decision being exceedingly more demanding upon agencies in order for them to obtain Section 17004.7 immunity.
- The Ramirez case was closely watched by entities and law enforcement agencies because denying immunity absent 100% officer compliance with the certification requirement would, practically speaking, make it nearly impossible for an agency to qualify for Section 17004.7 immunity—especially large agencies employing thousands of sworn officers.

CON'T

- The Supreme Court affirmed the Court of Appeal decision in Ramirez and specifically rejected the reasoning in Morgan.
- In affirming the grant of immunity despite a lack of 100% compliance with the certification requirement, the Supreme Court focused on the actions of the **agency** rather than the actions of the individual officers.
- The Supreme Court found that the purpose behind Section 17004.7 was to encourage public entities to have detailed pursuit policies and to actually train their officers according to those policies in the hopes of reducing pursuits and the number of collisions resulting from them.
- The Court also noted that adopting a pursuit policy is discretionary – not mandatory – and that Section 17004.7 was designed as an incentive to encourage agencies to do so. In rendering its decision, the Court doubted the Legislature intended to create an incentive that was nearly impossible to achieve.

MOVING FORWARD...

- The Ramirez decision was a victory for public entities in that the interpretation of “promulgation” adopted by the Supreme Court grants immunity in a wider set of circumstances and permits at least some leeway in the training certification process.
- The amount of leeway is an open question. At the end of the Ramirez opinion, the Court specifically noted that they were **not** deciding at which point a lack of compliance with the certification requirement indicates that an agency has not satisfied Section 17004.7.
- In Ramirez, the City of Gardena was able to provide evidence that 88% (81 of 92) of its officers had been trained on the pursuit policy and was able to provide written certifications for 70% (64 of 92) of its officers.
- Under Ramirez, we know achieving those percentages will be sufficient to ensure an entity is granted Section 17004.7 immunity. However, we do not know at what percentage an entity will be said to have failed to “promulgate” their pursuit policy.



CLA Conference
November 16th, 2018

Police Pursuits



California Vehicle Code Section 21055

- **F.E.R.P.**
 - **Fire**
 - **Emergency**
 - **Rescue**
 - **Pursuit**
- **Steady Red Light**
- **Siren as Necessary**




Pursuit Definition

- **An event involving one or more law enforcement officers attempting to apprehend a suspect who is operating a motor vehicle while the suspect is attempting to avoid arrest by using high speed driving or other evasive tactics, such as driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to the officers signal to stop. (POST LD-19 Workbook)**



California Vehicle Code Section 17004.7

- **Immunity Provided to LE Agency**
- **Adopts and Promulgates Written Policy**
- **Annual Training**
- **Officers Certify In Writing**
 - **Received**
 - **Read**
 - **Understand**



CVC 17004.7(c)


PC 13519.8(b)

- **(1) When to initiate a pursuit.**
- **(2) The number of involved law enforcement units permitted.**
- **(3) Responsibilities of primary and secondary law enforcement units.**
- **(4) Driving tactics.**
- **(5) Helicopter assistance.**
- **(6) Communications.**
- **(7) Capture of suspects.**
- **(8) Termination of a pursuit.**
- **(9) Supervisory responsibilities.**
- **(10) Blocking, ramming, boxing, and roadblock procedures.**
- **(11) Speed limits.**
- **(12) Interjurisdictional considerations.**
- **(13) Conditions of the vehicle, driver, roadway, weather, and traffic.**
- **(14) Hazards to uninvolved bystanders or motorists.**
- **(15) Reporting and post-pursuit analysis**



LE Vehicle Operations Training

- **Academy- 24 Hours Minimum**
- **In-Service**
 - **Annual Update- Policy**
 - **PSP- 4 Hours Every 24 Months**
 - **EVOC**
 - **LEDS**
- **As Compared to UK LE Driver Training**
 - **Basic- 80 Hours**
 - **Standard- 200 Hours (Pursuit Qualified)**

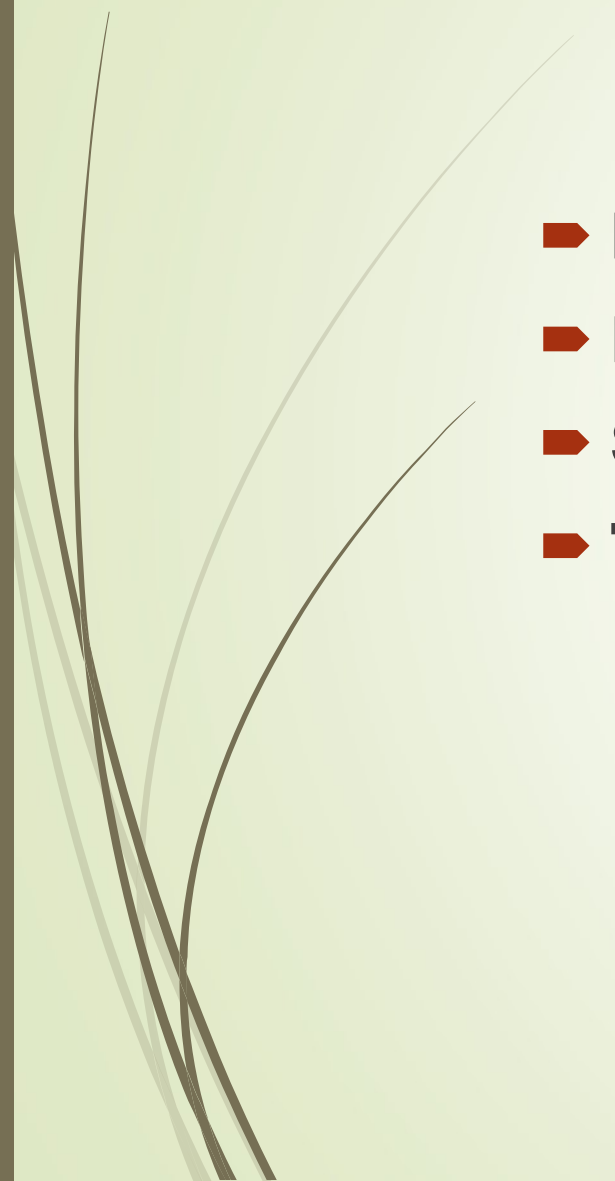


The Pursuit “Environment”- VUCA-T

- **Volatile**
- **Uncertain**
- **Complex**
- **Ambiguous**
- **Threatening**



Volatile

- **Frequent,**
 - **Rapid, and**
 - **Significant Change in Conditions**
 - **Time “Compression”**
- 



Uncertain

- **Events/Outcomes are Unpredictable**
- **Prospects for Surprise**
- ****Relevant Information is Unavailable and Unknown****



Complex

- **Large Number of Interconnected and Changing Parts**
 - **Confounding Issues- Confusion and Surprise**
 - **Many Moving Parts**
- 



Ambiguous

- **Mixed Meanings**
- **Multiple Interpretations**
- **Cause and Effect Confusion**
- **** Relevant Information is Available but the Meaning is Unknown ****



Threatening

- **Danger to Officer**
 - **Danger to Civilians**
 - **Danger to Suspects**
- 



Human Factors- Capabilities and Limitations

- **POST Study**
- **No instruction on “Mind Set” or the Human Factors involved in Emergency Driving**
- **Sensation/Perception**
- **Attention**
- **Memory**
- **Motor Skill**
- **Stimulus-Response**



Human Factors- Capabilities and Limitations

- **Anxiety**
- **Arousal**
- **Stress**
- **Sensory “Distortions”**
- **Judgment**
- **Decision Making**
- **Errors**
- ***SITUATION AWARENESS***



Decision Support Tools

➤ Task/Standards/Conditions

- Task: Protect the Public

- Standard: Balancing Act- What is the Biggest Threat?

 - The Pursuit, or

 - The Escape?

- Conditions

 - Crime

 - Environment

 - Behaviors

 - Suspect

 - Civilians

 - Officer



Decision Support Tools

➤ **i-TrACED**

- **Immediate Threat**
- **Active Resistance**
- **Crime**
- **Escape/Evasion**
- **Decision Time**
- **Damage Potential**



Decision Support Tools

- **METT-TC**
 - **Mission**
 - **“Enemy”**
 - **Troops**
 - **Terrain**
 - **Time**
 - **Civilians**



Decision Support Tools

3QFC- Sgt. Jeff Martin, SJPD, Ret.

- **1. Is Suspect an Immediate or Future Threat?**
 - **Based on Pre-Pursuit Crimes**
 - **Yes- Pursue and go to #3**
 - **No- Go to #2**

- **2. Is the Violator Driving w/ Regard for the Safety of Others?**
 - **Yes- Pursue and go to #3**
 - **No- Terminate**


- **3. What is the Plan to End the Pursuit?**



Decision Support Tools

Who-Why-What-How?

- **Who are you Pursuing?**
 - **Crime and Threat**
- **Why are you Pursuing?**
 - **Balance**
- **What are the Conditions?**
 - **Driving Behaviors, Environment**
- **How are you Planning on Ending the Pursuit?**
 - **Crash, PIT, RAM, Spikes, Surrender**



Bottom Line- Initial and On Going Training

- **Law**
- **Policy**
- **Human Factors**
- **Human Performance Limitations- Interventions and Mitigation**
- **Exposure**
 - **S.E.T**
 - **Hands On- Time on Task Training**
- **Supervisor Oversight**

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- **Steve “Pappy” Papenfuhs**
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Biography of Noah G. Blechman, Esq.

Partner at McNamara, Ney, Beatty, Slattery, Borges & Ambacher, Pleasant Hill, CA

Since 2004, Mr. Blechman has specialized in civil rights defense litigation on behalf of public entities, police officers and departments while practicing in most jurisdictions in the Bay Area, including his home court of Federal District Court. He has been an active member of the Defense Research Institute's ("DRI") Civil Rights and Governmental Tort Liability Committee since 2004 and is their Ninth Circuit Case Law Liaison. Mr. Blechman has argued in front of the Ninth Circuit on several occasions and has handled various Federal civil rights appeals. He has given presentations to numerous groups since 2007 on civil rights defense topics in police cases, annual presentations to police chiefs and command staff, risk management and pooling authority groups. He has also published various materials on civil rights defense issues. He has led and/or assisted in over a dozen jury trials, all with positive outcomes. He was also selected as a Federal mediator for the U.S. District Court for the Northern District of California starting in 2010.

Mr. Blechman received his J.D. (1998) from the University of the Pacific, McGeorge School of Law in Sacramento, being awarded honors in Trial Advocacy, and was admitted to the California Bar in 1998. Prior to law school, he received his B.S. in Criminal Justice Administration from the California State University at San Diego (1995). He formerly clerked at the U.S. Attorney's Office in both the criminal and civil divisions while in law school, including working to prosecute the Unabomber (Ted Kaczynski). He is a principal partner at the McNamara Law Firm in Pleasant Hill, California.

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Steve Papenfuhs Bio

Steve “Pappy” Papenfuhs is the President of Insight Training Strategies and provides law enforcement training and Police Practices Expert Consultant services. Pappy retired as a sergeant after serving 29 years with the San Jose, California Police Department. During his career he worked Patrol, Field Training (FTO), Street Crimes, SWAT, Auto Theft, Sexual Assaults, Narcotics, Family Violence, and supervised the department’s in-service Training Division. He holds a Force Analysis certification from the Force Science Research Center, and is a certified instructor with the California Commission on Peace Officers Standards and Training (POST) in several disciplines including: Firearms, Defensive Tactics, Baton, Force Options, and Emergency Vehicle Operations (EVOC).