

High Speed Pursuit: Force Majeure or Deadly Force

“And it shall come to pass, that he who fleeth from the noise of the fear shall fall into the pit; and he that cometh up out of the midst of the pit shall be taken in the snare.” (Isaiah 24:18)

It is Friday, late afternoon. Yet another workweek is at an end and you are en route to your house after stopping to purchase a newspaper and drop off some dry cleaning. You can't wait to get home and play with your children, kiss your wife or husband and begin a weekend of much deserved leisure. You've got your favorite CD playing on the car deck as you come to a stop at a red light not more than a few miles from home. Your thoughts are on what restaurant you'll be taking the family to later on that evening, what time your son's baseball game is on Saturday, or perhaps the close of the market and how well your portfolio is doing.

The light turns green and you proceed through the intersection. In the twinkling of an eye your life and lives of your family and all that know you are forever changed. You never saw the vehicle, weaving in and out of cross-town traffic, which would ultimately take your life. Neither did you see the flashing lights or hear the siren on the police cruiser that pursued it. How could you, since the fleeing vehicle was traveling at ninety plus miles per hour and had quite some distance on the cop's car? Your life was not ended in vain however - - you did a good thing by stopping the car the police were chasing, your life served a great purpose by preventing the suspect from escaping the law and apprehension. At least your family can take solace in that.

High-speed police pursuits are deemed necessary and essential part of policing

Without the threat of apprehension and imprisonment there would be anarchy rampant throughout society. The cops have pages of policies and procedures governing their behavior during a pursuit, but they can no more account for the actions of a *runner* than they can a bull rider the direction of a bull out of the gate. Each situation is unique and the circumstances are never the same from one pursuit to the next. Technologies and legislation can only help assist the officer, but nothing can replace sound judgment and good old-fashioned common sense.

High speeds, ever-changing road, traffic and weather conditions and an inherent need for the person being chased to be free, combine to make a recipe of disaster. Add to that the sudden impact of a 2000-pound vehicle traveling at speeds in excess of the posted limit and you've just added a new definition to the term *Use of Deadly Force*. To better understand the difficulties presented law enforcement on the job concerning *Hot Pursuits*, I feel it necessary to delve into the human psyche and try to uncover the reasons why people run from the cops in the first place.

The obvious reason is that once a person sees those red and blues spiraling rapidly in their rear view, they know that some form of punishment or restriction on either their pocket book or their freedom is close at hand – so they flee. In an interview I conducted for this research paper I spoke with Detective Sergeant Nicholas Phillips, a 16-year veteran of the Campbell Police Department and the hot pursuit. I asked him

why he thought people ran from the cops. Detective Sergeant Phillips said plain and simple that “they feel they can get away, especially if the person is intoxicated or on drugs, they figure ‘well I can outrun them’, most of the time – they don’t, most of the time they end up getting caught. And if they do get away, we always get a license plate. Unless the vehicle is stolen, when they do go home there will be somebody waiting for them in their driveway...”

The officer’s explanation that a fleeing suspect feels they can get away, despite the overwhelming odds stacked against them, harkens to what noted behaviorist B.F. Skinner says in his book, “*Beyond Freedom and Dignity*”. Skinner essentially attributes the fleeing behavior and the struggle for freedom to innate tendencies that all humans have. He goes on to say that this propensity for freedom from constraint may be demonstrated as a genetic endowment and potentially is an evolutionary advantage to humans (29).

Escaping and avoidance of punishment coincides with social controls put in place from childhood through intentional aversive treatment, or treatment intended to turn one away from a certain behavior by persuasion (28). Aversive behavior then would seem to be the culprit. According to Skinner, parents for example may repeatedly nag their child to do some task around the home until the child complies and performs the task, thus avoiding the nagging. A teacher may threaten detentions or failure if the student doesn’t pay attention; therefore the student pays attention and so on. This form of escape from reprisals through compliance and adherence to the rules set forth by those in authority consequently is a positive way of implementing social control (28).

When personal power and perception of freedom is impeded, weakened or destroyed, as in attempted apprehension by the police, another form of innate behavior ensues and the result is aggression and the desire to escape or to counterattack kicks in (29). Skinner argues that the power to do whatever it is a person wants to do is the pursuit of liberty and freedom, but not due to a will to be free, only to the avoidance and escape of aversive controls placed on him by authoritative figures (43). In other words if someone, like a cop for example, in attempting to assert his authority to enforce the laws of society, in the process threatens to take away the liberty or freedom of a person, then avoidance of punishment will illicit an innate behavior to escape (29).

By this manner of thinking we can understand that independence is dependent upon freedom and therefore apply it to why people run from the police in the first place (62). Ever been pulled over for a traffic violation? If so, during your encounter with the officer, did you find the occasion to *lie* or embellish the facts so as to escape a ticket? Have you ever been in that situation and for the briefest moment considered trying to get away? The degree to which a person assumes responsibility for his or her own actions and the level to which a person will be compliant depends upon what Skinner refers to as “controllability” (73). To sum up what Skinner is saying and to apply it to the topic of high speed pursuits can be plainly stated as follows: *if you chase them, they will run.*

According to federal government figures obtained from The National Highway Traffic Safety Administration (NHTSA), as many as 400 people die from police chases every year (5,306 deaths over the last 16 years). Surprisingly, only 35 percent of those who run are dangerous felons, people who commit a serious crime, federal in nature, which is generally punishable by death or by incarceration in a state or prison facility as opposed to a jail. In fact, 44 percent have committed only a simple traffic offense (NHTSA Internet).

The International Association of Chiefs of Police (IACP) recommended that law enforcement agencies develop, adopt, and enforce formal, written directives tailored to the needs of each individual jurisdiction, with particular emphasis on public safety concerns. While the IACP has no official capacity to implement its recommendations, its findings are regarded as essential and considered as the model by which the National Law Enforcement Policy Center makes its decisions. The policy set forth defines the procedures to be used by officers for initiating, conducting, and terminating vehicular pursuits. However, they are far from uniform when it comes to the duration of the chase and for what crimes and under what circumstances to continue or break off a pursuit, leaving it up to the officer to use his discretion.

The problem of high speeds during pursuits is not directly addressed by the policy paper formulated by the IACP and according to the organizations official stance on the subject, “the pursuit ends when the motorist stops or when the officer discontinues the attempt to apprehend” (IACP Policy Center). The policy falls short of advising against high speed however, it does comment that it is “commonly understood” that the higher the speed the greater the risk of an accident occurring, but no more so than low speeds in heavily congested areas (IACP Policy Center). Speeds in excess of the posted limits are however deemed dangerous in Edward E. Dougherty’s book “Safety in Police Pursuit Driving” which clearly states, “accident prevention must start with the elimination of unsafe practices such as unnecessarily excessive speed....” (Dougherty 13)

“Unless it is a felony offense officers will avoid high speeds which endanger life and property...” according to Officer Phillips of the Campbell Police Department. He goes on to further state that “a chase can get out of hand quickly and especially at high speeds, so when a pursuit is warranted, every aspect of safety has to be exercised, so you have to take into consideration all of your surroundings, there is nothing more than precious than human life on the streets...”

Officer Phillips went on to say how important it is follow all existing laws, such as stopping at traffic lights and stop signs while a pursuit is underway, “due regard”, because as he put it “not everyone sees or hears you, even with sirens and lights going...” He commented on the factors of a pursuit and the adrenaline rush he gets during a hot pursuit. The officer told me how fear never really enters into the equation since “your senses are heightened and you get into a zone where everything must be considered...” referring to procedures and the surroundings. I asked him if it ever has become personal for him during a pursuit to which he replied, “it is always by the book...if it becomes personal then you better get yourself another job.” Pursuit driving should never be viewed as a contest between the violator and the officer (NHTSA) website Internet).

To combat the problems and help minimize the involvement and risk the public endures during hot pursuits, certain police agencies are testing new technologies. A summary of two of the technologies presented by Roger O'Neil in his article for MSNBC, appear to be a step in the right direction towards eradicating the necessity for overtly dangerous pursuits. A point and shoot laser gun is the latest weapon in the war against high-speed pursuits. The beam from the laser shuts down the automobile immediately and in time it loses power and comes to a safe stop. Unfortunately a special computer microchip would need to be installed in every car for the gun to work. Another promising technology is the "Road Patriot". From their cars police launch a mechanism that can move automatically to the fleeing vehicle and shut down the electrical system. (O'Neil MSNBC).

Whatever the reasons may be for suspects to flee, and no matter how many policies and procedures there are on the books governing hot pursuits and officer's behavior during them, nothing can take place of common sense and sound judgment. Experience in such situations along with intensive training can better prepare an officer to engage in pursuit driving, but nothing can prepare him or her for the unexpected nor the great lengths with which a fleeing suspect will go to in order to remain free.

I wrote about this topic because a lifelong friend of mine, Phillip Swantner, was a recent victim of a high-speed pursuit. He was in the wrong place at the wrong time and now he is dead. He was only 34. The suspect, who led police on a twelve mile, ninety mile per hour chase through heavily congested roadways at peak afternoon drive time, ran a red light while he was attempting to evade capture. His vehicle came to an abrupt halt when it crashed head-on into my friend's car. I will never cease to question the meaningless nature of his death or the circumstances leading up to it. I can only hope that Philly is in a better place and that something is done to address this problem soon so that yet another innocent life is not ended in such a tragic and senseless manner.

Protect and Serve: Safety and High Speed Police Pursuits

“In studies of patrol vehicle accidents, the excessive speed coupled with another specific violation is frequently a prominent cause” Edward E Dougherty

Based on the true story of two New York City police detectives and their investigation into a French heroin smuggling operation, *The French Connection* emerged as an instant classic in the early 1970's. Best known for its infamous chase scenes, in which the lead policeman recklessly drives a stolen car at dangerously high speeds through oncoming traffic, in pursuit of a fleeing felon. The film boasts one of the most harrowing high-speed pursuits ever portrayed by Hollywood filmmakers. In real life there are no stunt drivers and no scripts.

The International Association of Chiefs of Police (IACP) defines pursuit as “an active attempt by an officer in an authorized emergency vehicle to apprehend fleeing suspects who are attempting to avoid apprehension through evasive tactics” (IACP Policy Center). The policy set forth by the IACP oddly enough does not directly address the problem of speed during pursuits. The pursuit ends when the motorist stops or when the officer discontinues the attempt to apprehend. The policy falls short of advising against high speed however, commenting that it is “commonly understood” that the higher the speed the greater the risk of an accident occurring, but no more so than low speeds in heavily congested areas. “Accident prevention must start with the elimination of unsafe practices such as unnecessarily excessive speed....” (Dougherty 13)

Cops have to deal with a variety of criminals and social deviants on a daily basis and place their own lives in jeopardy. In the process, innocent people are often tragically injured, maimed and at times killed. Renowned behaviorist B.F. Skinner in his book, *“Beyond Freedom and Dignity”*, discusses the predictability of human behavior and the effects of environment and the innate need for freedom. When looking at the problem of hot pursuits as a symptom of society, one can conclude that those who flee the police do so because of this inborn sense that freedom from punishment and restraint is paramount to all other things (Skinner 61). To the criminal this is certainly a truism. No matter what the cost to the lives of others, a criminal will take any means necessary to avoid capture.

Throughout communities all across America, law enforcement officers have the unpleasant task of chasing and apprehending those who would break the law. When a perpetrator of a crime seeks to evade capture by trying to escape in a speeding motor vehicle anything can happen. For his article “New gadgets halt high-speed chases”, NBC News correspondent Roger O'Neil interviewed a Los Angeles county sheriff about what it is like to be involved in one of these chases. According to Deputy Steve Flamm, “Your adrenaline starts flowing, you become scared, you become nervous, you're excited, you don't know who is in that car you are pursuing” (O'Neil MSNBC News).

In order to perform their duties, officers undergo countless hours of training and studying of policies and procedures set forth by their respective departments, in the hopes of remaining within the boundaries of their authority, the law and common sense while

serving the public good. When instituting a policy on hot pursuits many of the same factors addressed by individual departments are generally summarized in The National Highway Traffic Safety Administration's (NHTSA) "*Manual of Model Police Traffic Services, Policies and Procedures*". Some of the items discussed in the policy range from the primary unit's responsibility, communication with dispatch, traffic and weather conditions, the amount of units to be involved and operations and tactics. (NHTSA 88)

The *Youngstown Police Department's* (YPD) pursuit policy mirrors that of many departments. It demands that their officers heavily weigh many considerations before deciding to initiate a high-speed pursuit. Common sense and consideration for the public's safety are first and foremost. It is for this reason that YPD's policy asks its officers to weigh the seriousness of the crime versus the likelihood of apprehending a suspect against the health and welfare of the public. Ensuring the public's safety and enforcing society's laws is the primary function of the police. (Youngstown Police Dept.)

According to federal government figures obtained from The National Highway Traffic Safety Administration, as many as 400 people die from police chases every year (5,306 deaths over the last 16 years). Those involved in the accidents resulting from such pursuits are somebody's father, mother, brother, sister. Real people, real families - lives are forever changed. Pursuit circumstances are highly stressful and demanding encounters for all involved. Summarizing what the NHTSA has to say about operating a law enforcement vehicle in a pursuit situation concludes that hot pursuits require critical decision-making and places the officer, the suspect, and the public in the maximum level of peril and risk of injury. Injuries and deaths that result from law enforcement vehicle crashes exceed those that result from armed confrontations. During the pursuit, officers must rely on their maturity, patience, experience, and training while being governed by statutory law and agency policy. All too often in the heat of the moment pride takes over and officers refuse to call off a chase. "Pursuit driving should never be viewed as a contest between the violator and the officer" (NHTSA Internet).

To combat the problems and help minimize the involvement and risk the public endures during hot pursuits, certain police agencies are testing new technologies. A summary of two of the technologies presented by Roger O'Neil in his article for MSNBC, appear to be a step in the right direction towards eradicating the necessity for overtly dangerous pursuits. A point and shoot laser gun is the latest weapon in the war against high-speed pursuits. The beam from the laser shuts down the automobile immediately and in time it loses power and comes to a safe stop. Unfortunately a special computer microchip would need to be installed in every car for the gun to work. Another promising technology is the "Road Patriot". From their cars police launch a mechanism that can move automatically to the fleeing vehicle and shut down the electrical system. (O'Neil MSNBC).

Whether through technological advances or stricter enforcement of existing policies and procedures, the individual officer at the exact moment a pursuit is underway, must exercise extreme prejudice when the public's safety is at stake. One pursuit, for all the good intentions to apprehend a criminal, if it goes bad and someone gets injured or

killed -- is one pursuit too many. Officers must use common sense and abandon the *capture at all costs* mentality which leaves so many lives destroyed in its wake.

No I'm Not a Cop, but I Did Watch an Episode of Law & Order Last Night...

It was around 1am on an evening in mid-October. I had a craving for butter pecan ice cream and was damned and determined to get some. Cravings, like a lot of things in life, need to be satisfied or ignored. Without regard for my dress or the messiness of my hair I slipped on my shoes and headed out the door. Walking out from the warmth and comfort of my home into the cold, breezy, cloudless, half-moonlit sky, I heard a car alarm repeating in the not too distant night. As I hurriedly made my way to my truck I thought "Ah some cat probably jumped on the hood, or maybe a strong gust of wind set it off..." Whatever the case I was not too concerned about it, if there was a real problem or treachery afoot, well that's what 911 is for, besides – I'm on a mission, there's butter pecan to be had.

Invigorated by the night air or the wanton lust for a tasty frozen treat, my mental acuity was in a state of high alert and as I drove away from the curb a multitude of scenarios played out in my head. At that time of the night it is quite a drive to an open store from where I reside, about 25 minutes, and through an industrial section of town long vacant of time whistles, workers or activity. The kind of scene from an episode of NBC's hit TV show "Law and Order". Having watched the program earlier that evening, my mind was in "cop mode" and my imagination ran wild as I pondered the blaring car alarm, which greeted me in the night.

Caryn James "Information Please" p.338, chief television critic of the *New York Times*, looks at the pseudo knowledge of the American public regarding popular television drama and the portrayal of facts and information which bombards nightly viewers of these televised programs. James contends that "watch a few television dramas and you can become an expert on..."(432) She may be right, given the fact that I was about solve a crime, (albeit make-believe), using logic derived from "Law and Order". My mind rang out with narration from the beginning of the show – "in the criminal justice system, the people are represented by two separate, yet equally important groups – the police who investigate crime and the district attorneys who prosecute the offenders..."

I put myself at the scene of the crime, 9:42am the morning after, and began speaking to my partner, Detective Eddie Green, as a gaggle of onlookers and thrill seekers curiously watched. "Looks like we got ourselves a female, mid 30's, 5'7, 125 pound, single blunt force trauma to the skull" "Yeah and judging by her clothes she was dressed for a night out at the clubs."

The young woman was lying amid shattered glass beside her black Honda Accord. Her keys still clutched in her hands and a small mini purse over her shoulder. Eddie said "apparently her attacker must've knew her judging by the proximity of the keys and the purse I checked with 65 dollars and credit cards still within." I replied, "the

perp struck her with the brick found on the front seat, appears to have struck the victim with a glancing blow to the temple and ricocheted off the skull breaking the car window, setting off the alarm that the 911 caller heard.” “I’ll get forensics to dust for prints but I wouldn’t hold out hopes of lifting any, he was smart enough to use a brick he may have worn gloves.” “Let’s canvas the area and see if we can find anyone who knew her and check her apartment for address books and the answering machine for messages.”

As I pulled up to the convenient store I put my little fantasy on hold and went straight through the doors and made a b-line for the coolers. Walking up to the counter I sized up the clerk who was thumbing through a tabloid. As he rang up my beloved ice cream and I hopped in my truck and began the trek home I allowed my investigation to continue, already in progress, after this brief commercial break. Turns out the ex-boyfriend was rejected by the victim and was on her way to meet a new boyfriend.

We tracked him down from the blowup of a license plate in a photo of him and the deceased found in the victim’s apartment. Detective Green and I apprehended the suspect at his workplace and after stern questioning back at the stationhouse we were able to obtain a full confession, but there was a hitch. Defense maintained that her client was enraged with jealousy and submitted a plea of temporary insanity. The judge upon arraignment rejected the proffer and the case went to a full jury trial where the D.A. proffered a charge of premeditated murder in the first degree. The jury handed down a verdict of guilty and the defendant received consecutive life sentences without possibility of parole due to the premeditation and the stalking coupled with the commission of the crime of murder.

A proffer is a proposal offered for acceptance or rejection. The fact that I am comfortable using words and phrases like suspect, plea, blunt force trauma, perpetrator, forensics and proffer goes to what James was trying to convey in her column. James maintains that” this is happening partly because so many non-fiction sources exist today” (432) She goes on to say that” an equally significant but less noted trend is moving in the opposite direction: facts are flooding into entertainment” (432). “How long will it be before the noun “proffer”... becomes as familiar as “judge” or “jury” on a legal drama like *Law and Order*?”(432)

In the climate of today’s entertainment culture, with the variety of fact based fictional programs available for consumption, it is no small wonder that the viewer thinks of him or herself as somewhat of an expert in a variety of capacities. Doctor, lawyer, detective, judge, and The list goes on and the viewer becomes immersed in the dramas as if the weekly hour long series are an indicator of the ease with which the duties of said professions are performed. We all become experts to a certain degree and for the most part have the attitude that if given the chance we can do that. Or as James says” they may not be art, but such popular fictions have an immense, sometimes ludicrous, impact” (433)

According to James” there are valuable side effects as well...The medical and legal professions in particular are being demystified through entertainment, a process that

fosters a healthy questioning of authority”(433) but she warns “it would be dangerous if viewers relied on fictional...(characters) (433) The observation is clear. Watch and enjoy these televised programs, extrapolate and incorporate the speak, but be prepared to evaluate them for what they really are. James offers up this observation” luckily television drama trades in personal dilemmas, not actual ...decisions” (434) As long the public continues to be enamored with the reality rich dramas and the factual use of the language associated with them, we can rest assure that the new primetime vocabulary permeating America’s conscientiousness is here to stay.