



Legal Survival

1.5 Hour Webinar

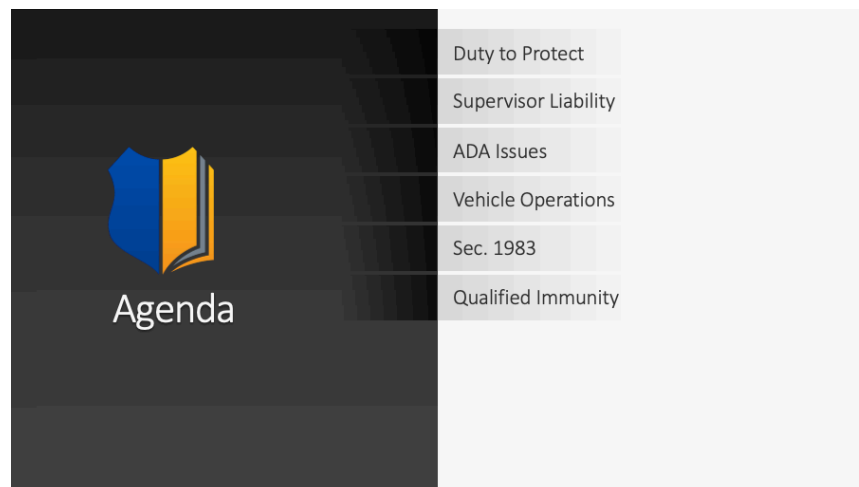
Course Outline

Blue to Gold Law Enforcement Training
1818 W. Francis Ave #101, Spokane Washington 99205
888-579-7796 | bluetogold.com | info@bluetogold.com

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Module One: Course Introduction – 10 minutes

- 1) Instructor introduction.
- 2) Explain the course objective.
- 3) Encourage attendees to ask questions and share feedback with other attendees.
- 4) Explain that certificates will be emailed after the class.
- 5) Go over the three disclaimers:
 - a) Laws and agency standard operating procedures may be more restrictive. Blue to Gold is teaching the federal standard unless otherwise stated. Therefore, students must know their state and local requirements in addition to the federal standard.
 - b) If students have any doubts about their actions, ask a supervisor or legal advisor.
 - c) The course is not legal advice, but legal education. Therefore, nothing we teach should be interpreted as legal advice. Check with your agency's legal advisor for legal advice.



Module Two: Duty To Protect - 15 minutes

- 1) **Legal Rule:** Generally, police have no obligation to protect people from harm unless there is a **special relationship**

- 2) In *DeShaney v. Winnebago County*, the Supreme Court held that “nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors.”
- 3) **Video:** What is the Liability?”
- 4) **What would you do?** What if someone was killed in the meantime?

Blue to Gold Law Enforcement Training
Legal Survival

Exception: Special Relationships

The diagram illustrates the concept of 'Exception: Special Relationships'. It features three main elements: 1) An icon of a person in a striped shirt and handcuffs, labeled 'Detained and arrested suspects'. 2) A blue arrow pointing from the first icon to the second. 3) An icon of a magnifying glass over a red circle, labeled 'Affirmative conduct that creates foreseeable harm'. The entire diagram is enclosed in a light gray box with a logo in the top left corner.

- 5)
- 6) In the absence of warrants and probable cause, the legitimate privacy interests of public schoolchildren are protected by requiring that searches and seizures must be “reasonable” under all circumstances. [New Jersey v. T.L.O., 469 U.S. 325, 341, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 \(1985\)](#). To satisfy this requirement a student search must be:
 - *Justified at its inception.* Officials must “reasonably” suspect that evidence indicating that a student has violated or is violating the law, or a school rule will be found in a particular place. [New Jersey v. T.L.O., 469 U.S. 325, 342, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 \(1985\)](#). Such a “reasonable” suspicion requires only sufficient probability, not absolute certainty. [New Jersey v. T.L.O., 469 U.S. 325, 346, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 \(1985\)](#). The requirement for at least a reasonable suspicion applies to any student search no matter how serious or relatively minor the suspected infraction may be. [New Jersey v. T.L.O., 469 U.S. 325, 342 n.9, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 \(1985\)](#).

• *Reasonable in scope.* Student searches are gauged in relation to the circumstances that originally justified them. Thus, the scope, intensity, and methods of a search as it is actually conducted must be consistent with its original objective and not excessively intrusive in relation to the nature of a suspected infraction or the student's age and sex. [New Jersey v. T.L.O., 469 U.S. 325, 342, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 \(1985\).](#)

- 7) **Legal Rule:** Generally, rendering assistance to citizens will only result in liability if the officer was grossly negligent or reckless.
- 8) **Example:** An officer who takes physical control of an incapacitated person may be liable for negligence. However, police conduct towards such persons may be immunized by law. Particular state statutes may authorize, or rarely require, the police to take custody of individuals who apparently cannot take care of themselves. Failure to exercise such authority is rarely actionable.

Common law and statutes also provide that the police may take custody of the apparently mentally ill who appear to be dangerous. If the police rely on these statutes, they may be immune for their actions or inaction. Thus, *Trimper v. Headapohl*, applying Michigan's strong immunity principles, held that a police decision to leave an inebriated person in a building vestibule after responding to a 911 call was discretionary, not ministerial, and therefore was immunized under state law. A Washington decision, *Peterson v. State*, immunized an involuntary commitment based upon good-faith statutory compliance when there was no gross negligence. A federal court has been held that there is no federal constitutional right to first aid at an accident scene, at least where only negligence was claimed

- 9) **Case Sample:** Victim was assaulted and told police he did not want medical attention despite being told by police he should seek it. Officers helped him get back to hotel where he was found two days later with permanent brain damage. **Synopsis:** The trial court properly granted summary judgment for defendants in plaintiff's action alleging that two defendants were negligent in their duties as police officers in that they failed to render first aid or cause first aid to be rendered by others where plaintiff at no time was unconscious, semiconscious, or other than coherent; one defendant approached plaintiff on the

street and attempted to investigate when plaintiff told her he had been assaulted; she told plaintiff it was her opinion that he needed medical attention; in each instance plaintiff affirmatively refused help and stated that all he wanted was to go to his motel room; defendant took plaintiff to his motel room where he was found unconscious two days later; plaintiff suffered irreparable brain damage and was totally disabled; and defendant police officers could have done no more than offer assistance. *Doemer v. Asheville* **Held:** No liability where officer did not take victim in custody and did not prevent aid.

- 10) **Case Sample:** In a bizarre case in the extreme, police detained a naked and beaten minor during an investigation, then released him to his assailant, Jeffrey Dahmer (before police knew who he really was). After police left, victim was killed. **Synopsis:** Konerak Sinthasomphone was one of Jeffrey Dahmer's 17 victims, killed on March 26th, 1991. He agreed to come to Dahmer's apartment when offered money in exchange for allowing Dahmer to photograph him. Little did he know, this was the same man who had molested his older brother three years prior. Acting in accordance with his malicious nature, Dahmer returned to prey on the family yet again after completing a short sentence.

After taking as little as two photographs of Sinthasomphone, Dahmer drugged him then proceeded to perform oral sex on his unconscious body and inject muriatic acid into his brain with a drill. Dahmer believed that this chemical, when injected into the frontal lobe, would retract the victim's ability to act aggressively or escape. Again, acting in accordance with his nature, Dahmer was overconfident that this plan would be successful, and he left Sinthasomphone unconscious in his apartment and left to get a drink.

Dazed, bloodied, and disoriented, Sinthasomphone managed to escape from Dahmer's apartment. He came across two 17-year-old girls from the neighborhood who immediately recognized him. They called the police, and before the officers arrived, Dahmer returned from the bar and attempted to convince the girls that Sinthasomphone was his lover. While the girls attempted to intervene and not allow Dahmer to take the boy back into his apartment, the police officers who had then arrived showed no intention of helping him. Dahmer's statements that the boy was actually his 19-year-old lover were taken more seriously than the girls' pleas to take Sinthasomphone away

from Dahmer, and the officers went so far as to tell the girls to stay out of the incident as it was a “domestic dispute”.

The officers failed to even look up Dahmer’s name at the scene, considering if they did, they would have found that he had recently been convicted for child molestation. Recordings were discovered of the officers joking about “reuniting lovers” back together and were heard making derogatory, homophobic comments. While they had been terminated from their positions at one point, they later regained them. One officer even went on to be the Milwaukee Police Association’s president. **Held:** Court found special relationship existed and parents could sue police. Whoops.

- 11) **Video:** Lover’s Quarrel”
- 12) **Legal Rule:** Also, detained and arrested suspects may successfully sue if the officer was negligent.
- 13) **Example:** An officer who takes physical control of an incapacitated person may be liable for negligence. However, police conduct towards such persons may be immunized by law. Particular state statutes may authorize, or rarely require, the police to take custody of individuals who apparently cannot take care of themselves. Failure to exercise such authority is rarely actionable.
Common law and statutes also provide that the police may take custody of the apparently mentally ill who appear to be dangerous. If the police rely on these statutes, they may be immune for their actions or inaction. Thus, *Trimper v. Headapohl*, applying Michigan’s strong immunity principles, held that a police decision to leave an inebriated person in a building vestibule after responding to a 911 call was discretionary, not ministerial, and therefore was immunized under state law. A Washington decision, *Peterson v. State*, immunized an involuntary commitment based upon good-faith statutory compliance when there was no gross negligence. A federal court has been held that there is no federal constitutional right to first aid at an accident scene, at least where only negligence was claimed
- 14) **Pro Tip:** You may be liable if you engaged in affirmative conduct that creates a foreseeable danger
- 15) **Case Sample:** Police did not arrest husband for warrant after TPO hearing. He then stabbed his pregnant wife to death on the

courthouse steps. **Synopsis:** A man stabbed and killed his pregnant wife and their unborn child, right outside a courthouse where she had just gotten a protective order against him. The plaintiffs, including the decedent's estate and guardian of her surviving children, sued the defendant police officer, claiming that he was responsible for the deaths because he enabled the husband to postpone his self-surrender on a misdemeanor arrest warrant, providing him with an opportunity to commit the assault. A federal appeals court previously upheld the denial of qualified immunity to the defendant in *Robinson v. Lioi*, #12-1922, 536 F. App'x 340, 2013 U.S. App. Lexis 15458, 2013 WL 3892803 (4th Cir. 2013), after which the plaintiffs added a second defendant officer and the trial court granted both defendants summary judgment.

A federal appeals court upheld this result. The plaintiffs failed to present sufficient evidence for reasonable jurors to find by a preponderance of the evidence that the defendants undertook any "affirmative acts" that would support liability for a state-created danger substantive due process claim. The court noted that the threat that the husband posed to the victim existed prior to and independent of the officers' interactions with the husband. *Graves v. Lioi*, #17-1848, 2019 U.S. App. Lexis 21005, 2019 WL 314375 (4th Cir.). **Held:** Police did not engage in affirmative conduct nor was the murder foreseeable.

- 16) **Sample Case:** Police investigated DV involving off-duty officer. Allegedly, officers told suspect that victim deserved the abuse and refused to make an arrest despite PC. The abuse continued. **Holdings:** The Court of Appeals, Lasnik, District Judge, sitting by designation, held that:
1. officer's alleged conduct was sufficient to support victim's § 1983 substantive due process claim under the state-created danger theory.
 2. officers were entitled to qualified immunity from liability for their alleged conduct.
 3. in a matter of apparent first impression, state-created danger doctrine under the due process clause applies when officer reveals domestic violence complaint made in confidence to abuser while simultaneously making disparaging comments about victim in a manner that reasonably emboldens the abuser to continue abusing victim with impunity; and
 4. as a matter of apparent first impression, state-created danger doctrine applies when officer praises abuser in abuser's presence after abuser has been protected from arrest, in manner

that communicates to the abuser that the abuser may continue abusing the victim with impunity. **Held:** Police helped create the danger by praising abuser and refusing to make an arrest. *Martinez v. City of Clovis*

- 17) **Case Sample:** Police ejected unruly patron from bar during winter. Patron asked to get his jacket, but police refused. Police found the patron frozen to death in alley six hours later. **Held:** Police created foreseeable harm and were liable.

Module Three: Supervisor Liability – 15 minutes

- 1) **Legal Rule:** Supervisors are **not strictly liable** for subordinate's unlawful actions
- 2) **Case Sample:** Supervisor was monitoring a stand-off over the radio. The suspect was killed, and the estate also sued the supervisor. **Synopsis:** Overview; Appellee, individually and as the administratrix her son's estate, brought an action against appellant police lieutenants and others, in connection with a shooting incident that resulted in her son's death. Appellee asserted both federal and state civil rights claims. Appellants sought interlocutory review of the district court's denial of their qualified immunity defense on summary judgment. The court reversed. The first appellant, who was supervising the incident by radio, had no opportunity to intercede in the struggle during which the shot was fired. It was objectively reasonable for him to believe that his conduct in supervising the officers at the scene did not violate any of the decedent's constitutional rights. With regard to the alleged cover-up by both appellants, there was no clearly established constitutional law requiring appellants to make sure that police officers wrote individual reports of the incident, where appellants reasonably believed the incident did not involve a criminal investigation. The evidence was wholly insufficient to create a factual dispute as to whether appellants joined an alleged cover-up or failed to act in an objectively reasonable manner. Outcome; Order was reversed and remanded with instructions to dismiss the complaint as to appellants. Plaintiff's claims against both appellants were either legally deficient as pleadings, unsupported by evidence of a constitutional violation, or otherwise barred by the defense of qualified immunity. Since the federal claims failed, appellants were also entitled to dismissal of the pendent claims. **Held:** Supervisor

did not give unlawful order or have an opportunity to intervene in the alleged shooting and therefore dismissed from suit.

- 3) **Legal Rule:** Supervisors may be liable when:
Participate in the unlawful action
Deliberately indifferent to training, supervision, or discipline.
Supervisor can violate federal law and be held individually liable under § 1983 for conduct of subordinates only when supervisor personally participates in alleged constitutional violation or when there is causal connection between actions of supervisor and alleged constitutional deprivation
- 4) **Video:** "Supervisor Liability"
- 5) Failure to discipline, maintain accurate and complete records about a rogue officer, or recommend remedial training, may demonstrate deliberate indifference.

Module Four: The ADA - 15 minutes

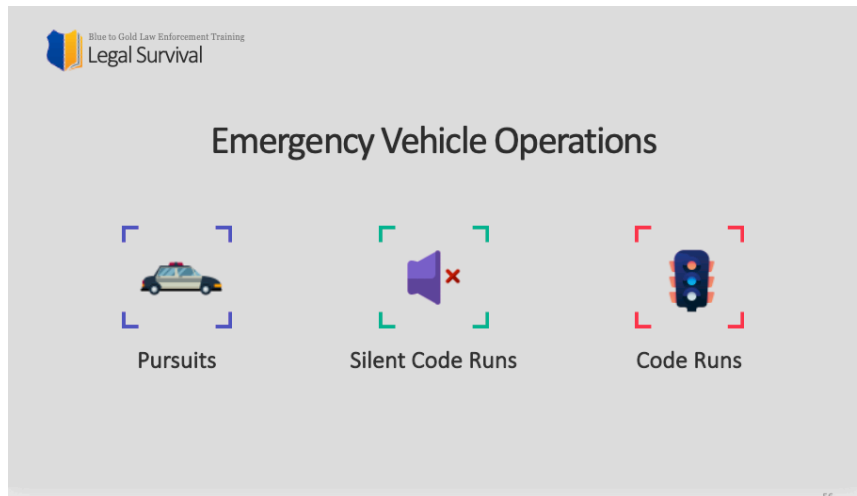
- 1) **Legal Rule:** The Americans with Disabilities Act provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
- 2) **Legal Rule:** A disability is a mental or physical impairment that **substantially limits a major life activity.**
- 3) **Pro Tip:** Courts struggle with applying the ADA to police services, but here are best practices:
During **emergencies** apply normal rules; During **non-emergencies**, make reasonable accommodations and document them.
- 4) **Case Sample:** Deaf citizen discovered boyfriend non-responsive and had neighbor call 911. Officers refused to call professional interpreter to communicate with citizen and have the department pay for it. **Law:** A disabled plaintiff can succeed in an action under Title II of the Americans with Disabilities Act of 1990 if she can show that, by reason of her disability, she was either excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was otherwise subjected to discrimination by any such entity. A municipal police department qualifies as a public entity. The broad language of the statute and the absence of any stated

exceptions has occasioned the courts' application of Title II protections into areas involving law enforcement. **Held:** Deafness falls under the ADA and plaintiff can move forward with claim against officers. *Salinas v. New Braunfels*

- 5) **Case Sample:** Driver refused to exit unregistered and unlicensed car because she had PTSD. She was forcibly removed and sued under the ADA. **Law:** Arrestee's failure to allege that she was limited in any major life activity precluded her claims against municipality, police department, and police officers for alleged violations of Americans with Disabilities Act. *Zhai v. Cedar Grove Municipality*. **Held:** Driver failed to prove that her PTSD limited a major life activity.
- 6) **Pro Tip:** Use common sense with **non-violent** people claiming to have **significant disabilities**.
- 7) **Case Sample:** Passenger in stolen car twice told officers that he was paralyzed and could not exit vehicle. Officers then forcibly removed him and put a knee in his neck and back causing a fractured neck and sprained hip. **Synopsis:** Plaintiff is a partial quadriplegic. On the evening of October 11, 1993, he was riding as a passenger in an automobile driven by Lloyd Gildon. Mr. Gildon's wife had reported the automobile stolen. Officer Gilpatrick of the Altus, Oklahoma, police department saw the Gildon vehicle and called in a request to run the tag number, which came back showing that the vehicle was stolen. Officer Gilpatrick stopped the Gildon vehicle. According to plaintiff, the following events occurred after Officer Gilpatrick stopped the vehicle. After the driver and another passenger were removed, Officer Gilpatrick ordered plaintiff out of the vehicle. Plaintiff told Officer Gilpatrick that he could not get out because he was paralyzed. Gilpatrick and Howland yelled at plaintiff to get out of the car. Gilpatrick chambered his shotgun and told plaintiff "I've been waiting to pop you." Plaintiff finally was able to roll down the window whereupon he informed Gilpatrick that he was paralyzed and could not get out of the car on his own. *Paul v. City of Altus*. **Held:** Officers were not entitled to summary judgement. This was not an ADA case, but it's a good reminder to use common sense.

- 8) **Legal Rule:** Agencies also have a duty to properly train their officers to **recognize** and accommodate **disabled persons** if it can be done safely.
- 9) **Case Sample:** Officer responded to accident and observed that the driver had slurred speech and unsteady gait. The driver told the officer that he was not intoxicated but recently suffered a stroke. Driver was arrested then released when he passed chemical tests. Jackson v. Town of Sanford. **Held:** Because the officer had no training in identifying disabled people the ADA claim could move forward.

Module Five: Emergency Vehicles Operations - 15 minutes



- 1)
- 2) **Note:** I do not discuss any state-related claims which are often **more viable** than claims falling under the Federal Constitution.
- 3) **Legal Rule:** Under the Fourth Amendment, **fleeing** suspects are not seized and civil-rights liability often does not attach unless police set up **roadblocks, ram, or box-in suspect**.
- 4) **Case Sample:** Victor Harris fled Georgia officers at over 90 MPH, crossed double yellows, ran red lights, and struck patrol cars. Scott v. Harris
- 5) Video: "Tim Scott v. Victor Harris"
- 6) We are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he

accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights.

- 7) Instead, we lay down a more sensible rule: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.
- 8) **Pro Tip:** Even if the Fourth Amendment allows using deadly force to terminate dangerous pursuits, these lawsuits are very expensive to defend.
- 9) **Case Sample:** Police chased vehicle at over 100 MPH for over five minutes, passed more than 24 vehicles, and posed grave danger. Officer fired 15 shots while vehicle was trying to get away again. **Ruling:** Police officers acted reasonably under Fourth Amendment in using deadly force to terminate a dangerous high-speed chase; chase exceeded 100 miles per hour and lasted for over five minutes, suspect passed more than 24 vehicles, several of which were forced to alter course, his reckless driving posed a grave public safety risk, and although his vehicle eventually collided with a police car and came temporarily to a standstill, less than three seconds later he resumed maneuvering in an attempt to escape. Plumhoff v. Rickard. **Held:** Officers' conduct in firing 15 shots into suspect's vehicle did not amount to excessive force.
- 10) **Video:** Vance Plumhoff v. Whitne Rickard
- 11) **Case Sample:** On March 23, 2010, officers in the [Tulia, Texas](#) Police Department engaged Israel Leija, Jr. in a high-speed pursuit where Leija's vehicle reached speeds between 85 and 110 miles per hour. During the pursuit, Leija made two telephone calls to the Tulia, Texas police dispatcher stating that he had a gun and that he would shoot officers if they did not abandon the pursuit. The dispatcher relayed these calls to pursuing officers, as well as an additional report that Leija may have been intoxicated. [Texas Department of Public Safety](#) trooper Chadrin Mullenix responded to the pursuit and positioned himself on an overpass above the freeway on which Leija was traveling. In an attempt to disable Leija's vehicle, Mullenix fired six shots in the direction of Leija's vehicle. Four of

those shots struck and killed Leija. **Held:** The Supreme Court held that trooper did not violate clearly established law.

- 12) **Pro Tip:** Abide by your policies and use **good judgement**.
- 13) Legal Rule: Liability for non-emergency driving falls under typical **negligence and state law claims**.
- 14)



Content: A person's body and their clothes is highly protected, and police must use caution before going "hand's on." Illegal persons, in general, receive the same protections, especially during typical police confrontations.

Key points: Person's include their bodies and clothes.


Content: Houses includes apartments, hotel rooms, garages, business offices, and warehouses.

Key points: Almost every physical structure, unless abandoned, is protected by the Fourth. Activity that is "private," "intimate," or "familial" is more protected than commercial areas.

Content: Effects include automobiles, cell phones, luggage and so forth. It includes most personal property but not every piece of real property. For example, not all real estate is covered by the Fourth or property that is disclosed "to the world."

Key points: The Fourth covers effects, but usually only those where the person has a reasonable expectation of privacy.

- 15) **Video:** "Negligent Driving"
- 16) **Video:** "Silent Code Run"
- 17) **Legal Rule:** Every officer needs to understand the limits of their emergency vehicle statutes and policy restrictions.

 Compliance with Statute

Gross negligence or reckless conduct

 Non-Compliance

Negligence and state-law claims

18)

19) **Pro Tip:** Most emergency vehicles statutes require that you exercise due care under the circumstances – meaning you have to consider the safety of bystanders

20) **Case Sample:** Trooper was exceeding the speed limit without lights and siren and a driver crossed into the trooper's path. **Synopsis:** The court found that the state trooper's negligence in driving a police car at an excessive rate of speed without using flashing lights or siren was the cause of the accident but stated that the question was whether the son was contributorily negligent in crossing a highway in front of the oncoming police car. The court noted that the vehicle belonging to the son was visible to the state trooper, so it was assumed that the son saw or should have seen the police car. In crossing a street in front of an oncoming automobile, the test was whether a driver acted as a reasonably prudent and cautious person under the circumstances. Because of the excessive rate of speed of the trooper's vehicle and the location of the collision, the court held that defendants, a state trooper insurer, and the State of Louisiana through the Department of Public Safety, failed to prove that the son was contributorily negligent. The court reversed the judgment of the trial court and entered judgment of \$ 20,000 to each parent, plus interest against defendants individually and in solido. **Moore v. Travelers Indem. Co. Held:** Trooper was liable.

21) **Case Sample:** Deputy was responding to alarm call without lights and sirens. He was reading MDT and when he looked-up he slammed into stopped traffic. **Procedural Posture:**

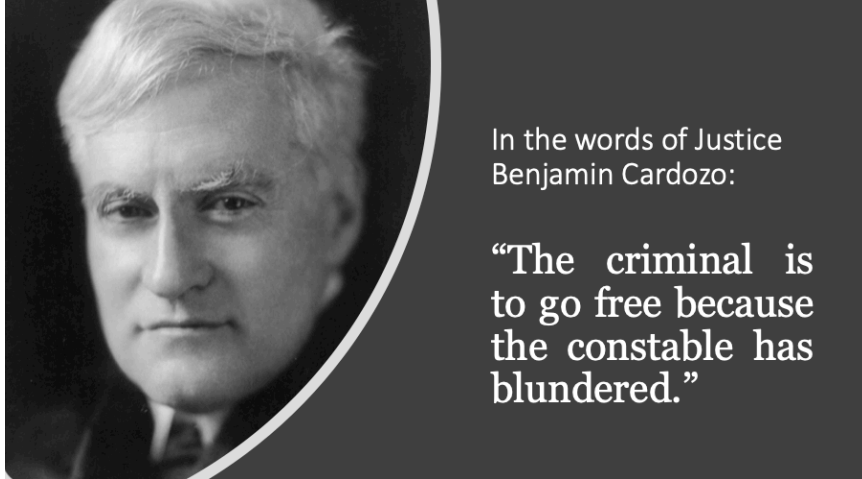
Respondent motorist sued, among others, appellants county and deputy, seeking damages for injuries arising from a traffic accident involving the deputy. The trial court found that the deputy's conduct was covered by Vehicle and Traffic Law § 1104 and entered summary judgment for the county and the deputy. The Supreme Court of New York, Appellate Division, Fourth Department, reversed. The county and the deputy appealed.

Overview: While patrolling in a marked police vehicle, the deputy received a radio dispatch requesting response to a burglary alarm. The deputy told the dispatcher that he would assist with the burglary alarm but did not activate the vehicle's emergency lights or siren. The deputy glanced down at his terminal display to view the names of the cross streets of the location of the burglary alarm, and when he lifted his gaze, he realized that traffic had slowed, and he rear-ended the motorist. The issue was whether § 1104 applied, making the deputy liable only if he acted with reckless disregard for the safety of others under § 1104(e). The appellate court held that § 1104(c) set out prerequisites or conditions upon the exercise of the privileges listed in § 1104(b). Except in the case of police vehicles or bicycles, the exemptions therein granted were available only when the authorized emergency vehicle was making use of prescribed audible and visual signals. The reckless disregard standard of care in § 1104(e) was limited to accidents or incidents caused by exercise of a privilege identified in § 1104(b). The decision of the intermediate appellate court was correct. **Held:** Emergency driving statute did not apply to reading MDT and deputy held liable.

- 22) **Pro Tip:** Policies cannot enlarge the scope of the emergency vehicle statute, but they can be used to prove recklessness.

Module Six: The Exclusionary Rule – 15 minutes

- 1) **Legal Rule:** Obtaining evidence in **violation** of the 4th Amendment means it will likely be **excluded** at trial – and you may be **successfully sued**.



2)

3) **Video:** "What is the Exclusionary Rule?"

4) **Legal Rule: Inevitable discovery** is an exception to the Exclusionary Rule



5)

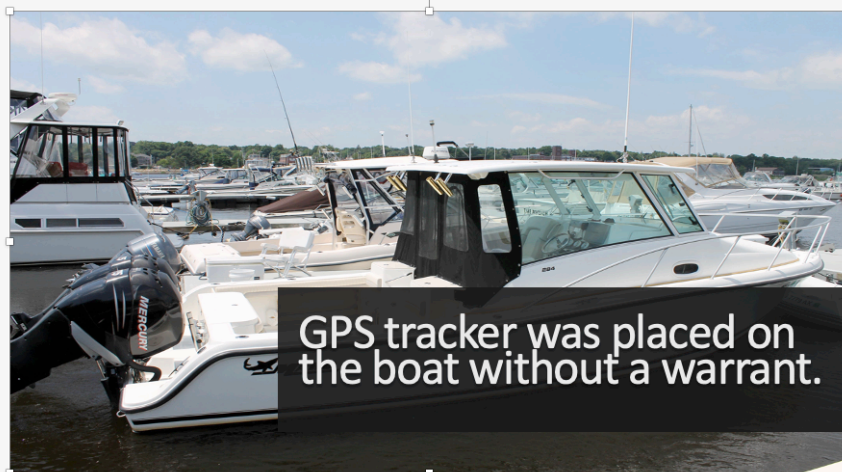
Holdings: The Court of Appeals, Beam, Circuit Judge, held that:
1. defendant voluntarily consented to the seizure and subsequent search of tote bag, and
2. inevitable discovery doctrine applied to officer's warrantless search of defendant's bag.
Affirmed. United States v. Sallis

6) Video: "Eric Sallis Shooting Crime Scene"



7)

A sergeant involved in the surveillance decided at that time to apply for a search warrant for the apartment based on all of the information then-available, including what the officers' observed during surveillance, their knowledge that firearms are tools of the drug trade, Sallis's involvement with the shooting in late November, and the fact that officers did not recover a firearm during the earlier search of Sallis's residence. Upon request, Sallis gave the officers the phone number of the woman who lived in the apartment. But, when the sergeant called the number, the female who answered was evasive when asked if she lived in the particular apartment and ultimately hung up during the conversation. While officers applied for a search warrant, the sergeant decided to secure the apartment and check on the children that the CI said were present. Officers placed Sallis in a police car and advised him of his constitutional rights. **Held:** Inevitable discovery applied to search of bag. Could this Federal Appeals case have been avoided?



8)

9) **Case Sample:** The United States Coast Guard officials encountered Defendant Richard Senese aboard his vessel, which

was disabled and offshore near West Palm Beach, Florida. The vessel was towed by a commercial salvage company to a marina, where it was boarded by members of the Coast Guard and officials from United States Customs and Border Protection ("CBP") to conduct an inbound border search of the vessel. The CBP agent also performed a records check, which revealed that the vessel had been seen at a location associated with a known narcotics trafficker, the vessel had been interdicted about a year previously, and its previous owner was a convicted narcotics trafficker. After discovering this information and encountering a variety of irregularities, the agents placed a GPS tracking device on the vessel to determine if it was involved in drug trafficking. About a month later using information from the GPS tracking device, a CBP air patrol unit spotted Senese's vessel entering the waters of the United States, and soon thereafter, the vessel again became inoperable and was unable to proceed on its own. When the vessel was located by two CBP marine patrols, the agents observed Senese waving his arms over his head as if calling for help. When asked if he needed a tow, Senese said that he did, because he was broken down, was out of cell phone range, and did not have any way of calling for assistance. Once onboard, agents asked questions regarding the nature of his trip, and according to the agents, Senese provided evasive and inconsistent answers to some of the questions. In a cursory border search of the vessel, the agents also noticed some anomalies about its condition, including loose screws and bolts around the leaning post near the center console and the deck cover, as well as missing and/or peeled caulking around the deck cover that demonstrated signs of recent tampering. Adding to the agents' suspicion was the overall poor condition of the vessel, which did not seem well-equipped for that type of voyage



10)

First, there was a "reasonable probability that the evidence in question would have been discovered by lawful means." *Jefferson*, 382 F.3d at 1296. Here, the GPS tracker provided the coordinates of the vessel. However, as the vessel returned to the United States on March 18, 2018, it became disabled and completely inoperable. Importantly, both Defendant and the CBP agents testified that Defendant *was unable to call for assistance as he was out of cell phone range*. Thus, even if the GPS tracker had not been installed, there is a reasonable probability that either the Coast Guard or CBP would have encountered Defendant given that (1) CBP had an air unit and two marine units conducting their normal, scheduled patrols covering the precise area where the vessel entered the United States, and (2) the vessel was in fact encountered by the Coast Guard on a routine patrol on February 20, 2018, after it became disabled within American waters as it returned from the Bahamas. In other words, the vessel was encountered on February 20, 2018, under the exact same circumstances that Defendant found himself in on March 18, 2018—drifting in American waters on the way back from Bimini in an area routinely patrolled by government agents without any means of calling for assistance. And, as analyzed above, once Defendant was encountered by CBP, the search of the vessel and discovery of cocaine was lawful in light of the particularized facts, independent of any information provided by the GPS tracker,¹⁷ giving rise to reasonable suspicion. *United State v. Senese*

11) **Legal Rule:** The Attenuation Doctrine is an exception to the Exclusionary Rule

Courts Evaluate Three Factors



Time Proximity



Intervening Circumstances



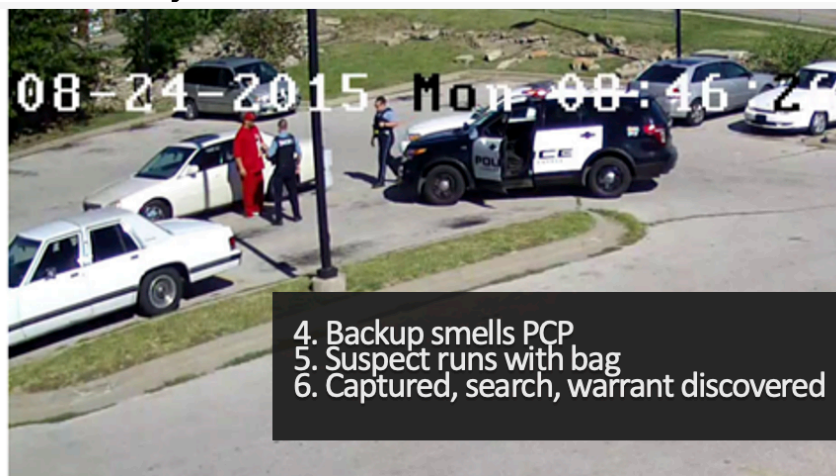
Officer's Motive

12)

13) Police got an anonymous tip suspect was selling PCP in parking lot. Officers intended to make a "consensual" encounter.



14) **What would you do:** Is this a consensual encounter?



15)

- 16) **What would you do?** Will the attenuation doctrine save the day? **No**, because the search came after discovering the search warrant – nothing “intervened” the unlawful search.
- 17) **Case Sample:** Officer with 18 years of experience stops suspect because he made a quick stop at suspected drug house. That’s it. Reasonable suspicion?
- 18) **What would you do?** Will the attenuation doctrine save the day? **Yes**, because the arrest warrant “intervened” and that’s why the search occurred.

Module Seven: Civil Rights Liability – 15 minutes

- 1) **Legal Rule:** A 1983 civil suit can be commenced whenever an officer violates a person’s Fourth Amendment rights.
 - ✓ Damages can be **minimal**, like \$1
 - ✓ Plaintiff will receive **attorney’s fees**.
- 2) **Video:** “1983 Suit: Excessive Force”
- 3) **Case Sample:** Suspect was stopped without RS and ordered out of car, which revealed handgun that came back stolen. Suspect spent 65 days in jail before case dismissed and he sued for 110k for lost income. **Synopsis:** However, since he won a jury trial his attorney gets fees, which would be tens of thousands of dollars. Chicago Officers stopped Martin for non-functioning tail and brake lights. Martin claims he had not committed any traffic violations. Martin explained that he did not have his driver’s license. The officers asked Martin to step out of the car as additional officers arrived. Martin claims the officers forced him from the car, conducted a pat-down search, handcuffed him, put him into a police car, then searched his car, where they recovered a semiautomatic handgun with a defaced serial number and a baggie of crack cocaine. Martin had previously been convicted of first-degree murder and unlawful use of a weapon by a convicted felon. Martin was charged with various crimes under Illinois law and spent 65 days incarcerated. The state court granted Martin’s motion to suppress the evidence. The charges were dismissed. Martin filed suit under 42 U.S.C. 1983. The officers argued that even if the stop was unlawful, once officers saw the handgun and cocaine, they had probable cause for Martin’s arrest, which limited Martin’s damages to the

period between his stop and his arrest. The district court agreed. The jury awarded him \$1.00. The Seventh Circuit affirmed. The jury concluded that the officers unlawfully seized Martin without reasonable suspicion but found against Martin on the claim that officers either arrested him or searched him or his car without probable cause. The only Fourth Amendment injury being redressed is the brief initial seizure before officers asked for Martin's license. *Martin v. Marinez*. **Held:** Jury awarded suspect \$1 for unlawful stop, but arrest supported by PC – no damages. But how much did his attorney make? We don't know how much the attorney made. But it was certainly more than a dollar.

- 4) **Case Sample:** Driver was acquitted for motor vehicle violation. Does this subject the officer to liability? (acquittal for underlying viol does not invalidate stop). **Held:** No. As long as the arrest or citation was based on P.C. it's constitutional.
- 5) **Legal Rule:** Officers may be sued under **bystander liability** if they:
Watch another officer clearly **violate rights**,
Have an **opportunity** to intervene,
Do not **intervene**
- 6) **Video:** "Failure to Intervene"
- 7) **Case Sample:** Deputy knew that a trooper was performing a roadside "cavity" search and did not intervene. **Synopsis:** On Memorial Day weekend in 2012, Hamilton and Randle were pulled over by DPS Officer Turner for speeding. Turner smelled marijuana and asked the women to exit the vehicle. Hamilton was wearing a bikini bathing suit, and Randle was similarly dressed. Turner did not allow the women to cover themselves before exiting the vehicle. He used his radio to request help from local law enforcement and a female officer to conduct a search of the women. On the radio, Turner stated that the car smelled like marijuana and that one of the women "had the zipper open on her pants, or Daisy Duke shorts, whatever they are." Turner handcuffed and separated the women before ordering Hamilton to sit in the front passenger seat of his patrol car. He then conducted a search of the vehicle. When Kindred arrived, Turner asked him to identify the drivers of several other cars that had arrived near the scene. When Bui arrived, she parked next to Turner's patrol car. When he had completed the vehicle search, Turner informed Bui and Kindred that he had finished the search but wanted Bui to search the

women. Bui asked the men if they had any gloves, and Turner gave her the gloves he had used to search the vehicle.

At that point, Kindred asked Turner, "Do you want me to make this easier and go in the back?" Turner agreed that Kindred should stand behind the car. Kindred stood behind Turner's patrol car and can be seen in that position in the video. Turner told Hamilton: "[Bui] is going to search you, I ain't going to do that ... cause I ain't getting up close and personal with your women areas." Turner and Kindred stood together behind the car while Bui performed the body cavity search. During the search, Turner told Kindred: "I don't know if she stuck something in her crotch or this one did."

After the search, Turner asked Bui if Hamilton had "nothing on her," and then requested she search Randle because "she is the one who had the zipper open." Hamilton immediately asked, "Do you know how violated I feel?" and said she felt so embarrassed. Turner replied that if they "hadn't had weed in the car they wouldn't be in this situation." Randle, who had been standing by Hamilton's car, was escorted to Bui's patrol car. Kindred was still standing behind Turner's vehicle. When Bui performed the body cavity search on Randle, Randle began to scream: "That is so fucked up! I am so done!" Hamilton yelled at her a couple times to "calm down" and "be quiet." Randle sounded as if she was crying when she again said, "Man, this is so fucked up!" After the searches were complete, Hamilton stated to Turner that "it was going to the extreme" to have someone "put their fingers up your stuff." In their complaint, Hamilton and Randle describe Bui's actions as "forcibly searching in their vaginas and anuses against protest," and explain that the search was "physically and emotionally painful." *Hamilton v. Kindred*. **Held:** Deputy may be held liable for "excessive force" under bystander liability along with the troopers

- 8) **Video:** "Roadside Cavity Search"
- 9) **Pro Tip:** Qualified immunity is the main defense:
Did a violation occur?
If so, was it clearly established?
- 10) **Legal Rule:** P.C. for any offense is an absolute defense for false arrest. And remember, PC is objectively determined meaning that as long as there is PC to arrest for any offense, the arrest is valid even if the officer arrested for some other offense for

which he or she lacked PC. “Because probable cause is an objective standard, an arrest is lawful if the officer had probable cause to arrest for any offense, not just the offense cited at the time of arrest or booking.” *District of Columbia v. Wesby*.

- 11) **Case Sample:** One person was shot, and several others were taken into custody in South Los Angeles Tuesday morning. (Credit: KTLA)

The shooting took place at West Florence Avenue and 10th Avenue when detectives conducting a “follow-up” investigation spotted a person with a gun, according to Officer Liliana Preciado of the Los Angeles Police Department.

The alleged gunman was shot and taken by ambulance to a local hospital, Preciado said.

Aerial video from Sky5 showed a man getting into an ambulance. The man appeared to be alert and stood up at one point before being taken to the ambulance.

The alleged gunman was later listed in stable condition, according to Officer Luis Garcia.

Police detained at least four other people in an alley before taking them into custody just after 8 a.m., video showed.

No officers were injured in the shooting, which was under investigation, Preciado said. West Florence Avenue between 9th Avenue and 11th Avenue was closed during the investigation. LAPD detained his five friends in handcuffs for five hours. *Nicholson v. Gutierrez*. **Held:** Circuit Court denied qualified immunity and suit can move forward against officers.

- 12) **Case Sample:** Cops pursued a suicidal person to his parent’s house. Cops shot and killed the person after he exited with a 2-inch knife. Cops were 28 feet away. Cops detained grieving parents for 90 minutes while ordering them to provide a statement. **Synopsis:** Plaintiffs’ primary objection to the detention here involves its allegedly excessive duration. We have located no federal court precedent establishing a specific time limit for witness detention. However, even if a brief detention could be justified in this case to attempt to obtain names and addresses of the witnesses (and statements if they were willing to provide them), a ninety-minute detention for this purpose was unreasonable. See *United States v. Place*, 462 U.S. 696, 709-10, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) “Although we decline to adopt any outside time limitation for a permissible Terry stop, we have never approved a seizure of the person for the prolonged 90-minute period involved here and cannot do

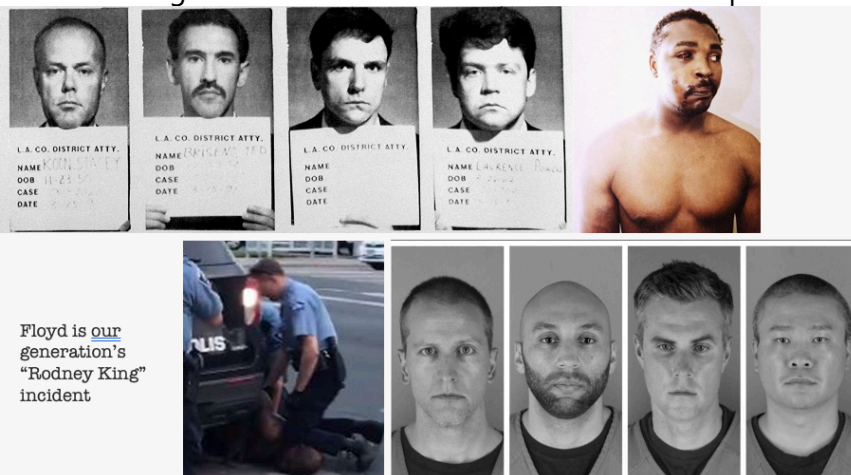
so on the facts presented by this case.”) (footnote omitted). There is no indication in plaintiffs' complaint that any exigencies were present in this case, justifying the lengthy detention involved here for investigative purposes. We therefore conclude that the detention alleged in plaintiffs' complaint could not reasonably be justified using an investigative rationale.

The other rationale offered for the extended detention identified in plaintiffs' complaint is the need to establish control over the crime scene. The question is whether detaining plaintiffs in their home, and in particular, detaining them for ninety minutes as alleged in their complaint, could be considered “reasonable” as a means of controlling the crime scene.

We note that detaining the plaintiffs is a different matter from excluding them from the crime scene itself. Thus, even if plaintiffs had no right to cross the crime scene tape to be with David before he died, this does not necessarily mean that the police had the right to detain them, even in their own home. *Walker v. City of Orem*. **Held:** Circuit Court stated that a 90-minute detention was a violation, but not clearly established.

- 13) **Legal Rule:** A § 242 is a criminal charge for civil rights violations.
- 14) **Video:** “Rodney King”
- 15) **Case Sample:** On August 4, the grand jury returned indictments against the three officers for “willfully and intentionally using unreasonable force” and against Sergeant Koon for “willfully permitting and failing to take action to stop the unlawful assault” on King. **Ruling:** “Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the

acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.” Rodney King Federal Trial. **Outcome:** Outcome: Ofc. Powell and Sgt. Koon were sentenced to 30 months in prison.



Module Eight: Takeaways – 5 minutes

End of class.