

SERVE WITH HONOR  
 PROTECT WITH COURAGE  
 TRAIN WITH PASSION

LEGAL  
 ISSUES

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Goal

IMPRESS UPON THE OFFICER THE  
 RESPONSIBILITY, LIABILITY, AND PERSONAL  
 RISKS OF EMERGENCY VEHICLE OPERATION.

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LEWIS v. SACRAMENTO

- Incident occurred May 22, 1990. SJC decision handed down on May 28, 1998
- 42 USC §1983, 14th amendment - deprivation of due process rights
- District Court granted summary judgment for Deputy Smith reasoning that:
  - “. . . even if he violated the Constitution, he was entitled to qualified immunity. . .”
- 9th Circuit reversed, holding that:
  - “. . . the appropriate degree of fault to be applied to high-speed police pursuits is deliberate indifference to, or reckless disregard for, a person's right to life and personal security.”

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 **LEWIS v. SACRAMENTO** 

- Motorcycle being driven by 18yoa Brian Willard, was speeding.
- Back passenger was Philip Lewis 16yoa.
- Willard slowly maneuvered his MC between two police cars and sped off.
- Smith (SCSO) began pursuit.
- Lasted 75 seconds over a 1.3 miles in a residential neighborhood in and out of oncoming traffic. Forcing two cars and bicycle to swerve off the road.
  - » The motorcycle reached speeds of 100mph
  - » Smith followed at as short of a distance as 100 feet.
  - » Willard tried a sharp left turn and tipped over his MC.
  - » Smith slammed on his brakes running over Lewis.
  - » Propelling him 70 feet down the road inflicting massive injuries.

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 **Lewis v. Sacramento (cont'd)** 

- The 9th Circuit’s contention was that Deputy Smith violated, or disregarded, the Sacramento County Sheriff’s General Order (policy) on pursuits. In doing this, the court reasoned that Smith’s conduct showed deliberate indifference.
  - Had this decision stood, violation of your department’s pursuit policy would have been sufficient evidence to show deliberate indifference or reckless disregard on your part.
- Point of Interest: We’re in the 9th Circuit Court of Appeals

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 **Lewis v. Sacramento (cont'd)** 

- In this court case the SJC tells us that:
  - “. . . high-speed chases with no intent to harm suspects physically or to worsen their legal flight do not give rise to liability under the Fourteenth Amendment, re-dressible by an action under §1983.”
  - Conduct must not “Shock the Conscience”

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 **Graham v. Conner** 

- Pursuit is an attempt to effect a seizure;
- Force used must be OBJECTIVELY REASONABLE, Considering;
  - SEVERITY OF THE CRIME,
  - IMMEDIATE THREAT,
  - ACTIVE RESISTANCE TO ARREST OR ATTEMPTING TO AVOID ARREST BY FLIGHT.

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 **BROWER v. INYO COUNTY** 

- SETS STANDARDS FOR ROADBLOCKS AS SEIZURES UNDER 4TH AMENDMENT
- USE OF FORCE MUST BE REASONABLE
- It was used to terminate the pursuit of a stolen vehicle, no out stop or crash!

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 **SEEKAMP v. MICHAUD** 

- Used roadblock to end pursuit.
- Roadblock was established correctly according to law.
- Suspect still struck roadblock.
- Roadblock was found to be a reasonable use of force under the circumstances.

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**IDAHO VEHICLE CODE**  
**49-623**

- 49-623. Authorized emergency or police vehicles.
- (1) The driver of an authorized emergency or police vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions stated.
- (2) The driver of an authorized emergency or police vehicle may:
  - (a) Park or stand, irrespective of the parking or standing provisions of this title;
  - (b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
  - (c) Exceed the maximum speed limits so long as he does not endanger life or property;
  - (d) Disregard regulations governing direction of movement or turning in specified directions.
- (3) The exemptions granted to an authorized emergency or police vehicle shall apply when necessary to warn and to make use of an audible signal having a decibel rating of at least one hundred (100) at a distance of ten (10) feet and/or is displaying a flashing light visible in a 360 degree arc at a distance of one thousand (1,000) feet under normal atmospheric conditions. (Lights and/or Siren)

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**49-623 SUB (4)**

- THE FOREGOING PROVISIONS SHALL NOT RELIEVE THE DRIVER OF AN AUTHORIZED EMERGENCY OR POLICE VEHICLE FROM THE DUTY TO DRIVE WITH DUE REGARD FOR THE SAFETY OF ALL PERSONS, NOR SHALL THESE PROVISIONS PROTECT THE DRIVER FROM THE CONSEQUENCES OF HIS RECKLESS DISREGARD FOR THE SAFETY OF OTHERS.

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**Kyle Athay**

**v.**

**Dale M. Stacey and Rich  
County, UT; Chad  
Ludwig, Gregg Athay  
Brent Bunn and Bear Lake  
County, ID.**

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### Facts & History

- June 10, 1999
- Pursuit of violator begins in Rich County, UT.
- Pursuit initiated for suspicion of DUI by the Sheriff of Rich County
  - At the time pursuit is initiated, the suspect's license plate, ID. 3C 1086 was known to be correct.
- The suspect, later identified as 18 year-old Darrell Ervin, accelerates to speeds in excess of 96 mph.
- Sheriff Stacey's Chevy truck is governed @ 96 mph
- He falls behind

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### Facts & History (cont'd)

- Sheriff Stacey briefly catches up to the suspect near Cokeville, WY.
  - Sheriff Stacey falls behind again after the suspect speeds up, again.
- Sheriff Stacey calls Bear Lake County, ID. For assistance.
- Deputy Chad Ludwig uses spike strips on the suspect southeast of Montpelier, ID.

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### Facts & History (3)

- Deputy Ludwig deflated the right front tire; suspect slows to about 50 mph.
  - This allows Sheriff Stacey to catch up, again, briefly.
- Suspect speeds up to 96+ again, passing Deputy Gregg Athay (Plaintiff's half-brother), who was stopped on the highway two miles from where the spike strips were deployed.

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 Beginning of the end. . . 

- As the suspect speeds through Montpelier, ID. he is being pursued by Sheriff Stacey, Deputy Athay and Deputy Ludwig
- The suspect has his lights off and is traveling at least 94 mph.
  - Two miles north of Montpelier the suspect narrowly misses colliding with a semi-truck. The driver of the semi testified that he didn't even see the suspect's vehicle.

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 End of the pursuit. . . 

- One mile past the truck stop, Kyle Athay (plaintiff) had stopped to assist two teenage girls whose car had hit a deer.
- Athay was just pulling away from the scene of that accident when his vehicle was struck in the rear by the suspect's vehicle.
  - The suspect hit Kyle Athay's vehicle at an estimated speed of 104 mph, with his lights off.
  - Kyle Athay will never walk again.

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 What is 'reckless disregard?' 

- One of the issues on appeal to the Idaho Supreme Court:
  - Does Idaho Code §49-623 establish a "due regard" or "reckless disregard" standard of care for police pursuits?

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- Two terms became the center of the dispute in this case:
  - “due regard”
  - “reckless disregard”
- According to Black’s Law Dictionary:
  - Due regard = consideration in a degree appropriate to demands of the particular case.
    - Due regard does not equate to negligence.
    - The Court reasoned that as long as we are showing “. . . due regard for the safety of all persons. . .” our actions would not amount to reckless disregard.

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**Reckless disregard:**  
 “. . .the type of conduct engaged in by the driver when he actually perceives the danger and continues his course of conduct.”

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- Lower Court Confusion
  - There are not two standards in §49-623. The Athay’s argument was that a “due regard” or negligence standard applied to our actions if we or the suspect collided with a third party during a pursuit.
  - Then, the “reckless disregard” standard applied if the vehicle being pursued strikes a third party vehicle.
    - » However, the ID Supreme Court corrected the District Court’s error, telling us that “due regard” IS a “reckless disregard” standard AND that it applies to both situations. Further to say it deals solely with the conduct of the person driving an emergency vehicle or police vehicle.

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 Athay Awarded 

- \$2,720,126.00
  - Jury found Sheriff Stacey, as an agent of Rich County was 30% at fault and Ervin (suspect) was 70% at fault.
  - Sheriff Stacey did NOT have immunity because of his Reckless Disregard.
  - Sheriff Stacey on the hook for \$816,037

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 Scott v Harris 

- 2001 Coweta County Georgia
- 19 yoa Victor Harris 73mph in a 55mph zone (facts and PC)
- Deputy Timothy Scott took over the pursuit.
  - Requested to PIT the suspect, even though he was not trained in PIT. Which, the request was approved.
  - Decided Speeds to fast so he rammed the vehicle.
  - Harris lost control, left the roadway, into an embankment and crashed.
  - Harris was rendered a quadriplegic.

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 Scott v Harris 

- Harris argued he was just trying to pass his drivers test.
- Justice Scalia, in a powerful section of his majority opinion, writes:
- “The court rules that 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.”
  - VIDEO EVIDENCE, Dash Camera played a HUGE role.

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 **Scott v Harris** 

- While this ruling sides with law enforcement and its efforts to apprehend criminals that flee in vehicles, it should not give agencies carte blanche authority to engage in high-speed pursuits and tactical maneuvers without the **proper training**.
  - While the court did not address that issue, they did discuss "reasonableness." Providing officers with frequent training in vehicle pursuits is not only reasonable, but crucial as it will reduce the inherent risks involved in police pursuits.

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 **STATE v. BARSNESS** 

- **FACTS:** Barsness charged and convicted of violation of I.C. § 49-645 for failure to yield to an authorized emergency vehicle. Boise Police Department officer running lights, but no siren on felony in progress call, strikes Barsness' vehicle turning left in front of emergency vehicle.
- **HELD:** Idaho Supreme Court holds that whether the driver of the emergency vehicle was driving with due regard for the safety of other persons, I.C. §49-606 (later emended to 49-623), was a question for resolution by the trier of the fact and will not be disturbed upon appeal.
  - » Did the officer exercise Due Regard? This is a JURY Question !!!

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 **DRIVER JUDGMENT** 

- A mature driver uses prior experiences and skills to avoid potentially dangerous situations.
- Attitude is critical to a mature judgement process
  - Knowledge of personal and vehicle limits is critical

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 PROFESSIONAL POLICE DRIVING 

- Judgment
- Attitude
- Environment
- Vehicle
- Pro-active

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ATTITUDE HAS THE GREATEST INFLUENCE ON AN OFFICER'S DRIVING PERFORMANCE AND JUDGEMENT PROCESS !!!

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 DRIVER ATTITUDE 

The controlling factor in applying skill and avoiding accidents.

You are at risk when your mind is preoccupied with something other than the driving.

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**ATTITUDES**



- Do we have a desire to learn new or improved techniques and skills?
- Traffic laws -- Do we obey and believe in them?
- Our job - Is it just a job or do we accept it as an extremely important task...a profession? ... a career?
  - » Do we respect those we work for and with?

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**DOES "AUTHORITY" DICTATE DRIVING HABITS?**

We must be courteous drivers.  
We must set an example for others.

- Above all we must be professional.
- The public has a right to expect this from us.

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**Attitudes Can be Changed**



- Self Discipline
- It takes desire and Work

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 PERSONAL AND VEHICLE LIMITATIONS 

- Leave room for mechanical and human error - sometimes things break
- Drive at 80% of your personal skill level
- Drive the vehicle at 80% of its overall capability

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 Environment 

- We drive in all types of conditions
  - Good and bad roads
  - Hills, mountains and flat areas
  - Assorted types of vision obstructions
  - All types of weather
- We have little or no control over our assigned area

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 *SERVE WITH HONOR  
PROTECT WITH COURAGE  
TRAIN WITH PASSION*

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**PRO-ACTIVE POLICE DRIVING**

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 **PRO-ACTIVE DRIVING** 

Instead of driving around waiting for something to happen that forces you to react, drive in a manner which influences and controls the driving environment, encouraging other drivers to make anticipated movements

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 **PRO-ACTIVE DRIVING** 

- You must still be ready to react to unanticipated actions of other drivers but a proactive mind tends to eliminate lag time and shorten the time to analyze a situation and act on it.
- Remember PRO-ACTIVE is driving to achieve a desired outcome. It should not be bothersome or offensive to others.

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 **EYE PLACEMENT** 

- Looking as far ahead as you can gives you the ability to plan ahead and anticipate situations before they occur
- PRO-ACTIVE
- A driver surprised by sudden changes in conditions will find it virtually impossible to respond in a smooth manner and inputs to the car are sudden and reflective of surprise

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 **DRIVING TECHNIQUES** 

- Maintain a “Cushion of Safety” around your vehicle
- Look well ahead of your driving
- Allows you to be alert to potentially dangerous situations -- brake lights, clouds of dust, etc.
- LOOKING AHEAD GIVES YOU MORE TIME TO REACT

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 **Escape Routes** 

- Places to go that are safer than becoming involved in an accident
- If you do not look for escape routes now, this exercise will be a conscious effort
  - EVENTUALLY YOU WILL FIND YOURSELF DOING THIS AT A SUBCONSCIOUS LEVEL

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 **FOLLOWING DISTANCE** 

- Maintain a cushion of safety
- Police Officers should use a three second rule

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 FOLLOWING 

- Normal driving -- daytime and dry roads (3 sec)
- Adverse Conditions
  - Nighttime or wet roadway (6 sec)
  - Winter or gravel roads (9 sec)

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 ADVERSE CONDITIONS 

- Slow Down
- Increase Following Distances

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 COVER THE BRAKE 

- Negotiating intersections and when unsure of other driver's actions
- Will reduce reaction time

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 MIRRORS 

- Check your mirrors every three to five seconds
- You should be completely aware of all of the traffic around you

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 STOPPING IN TRAFFIC 

- You should be able to see the rear tires of the vehicle in front of you
- If there is no traffic, you should still develop the habit of stopping back from stop lines and intersections

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 USE OF HEADLIGHTS 

- Should be turned on anytime when visibility is reduced
- A good guideline is to turn them on anytime you activate you windshield wipers

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 **HYDROPLANING** 

- Can occur at speeds as low as 30 mph
- Watch for a tire patch in your rear view mirror
- Best way to prevent hydroplaning is to slow down

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 **WHEN TO GO CODE 3** 

- Code 3 is authorized at the discretion of the deputy and/or at the discretion of a supervisor when there is reason to believe an emergency situation is at hand and such a response is appropriate.
- Remember: At all times, deputies are required to exercise sound judgment and care with due regard for life and property.

Examples of when Code 3 is generally appropriate:

- Imminent danger to citizens, and the officers arrival might save lives.
- Another officer requires assistance to control a volatile situation.
- Reliable information exists of a felony in progress
- Actual pursuit.

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 **SPEED** 

- Even with good visual horizon, too much speed will get you into trouble.

- With your closure rate happening so fast the impact will occur within a fraction of a second after you identify the threat.

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### FACTS ABOUT UNSAFE SPEED



The majority of vehicle-related officer fatalities occur while en route to a call for service, where driving at a high rate of speed may not be necessary.

Wear your seatbelt, watch your speed, and practice SAFE driving!

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SPEED

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SPEED

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 **TURNING AROUND** 

- There are 3 types of accepted turn arounds
  - U-TURNS
  - TWO POINT
  - THREE POINT

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 **PRIMARY FACTOR** 

- THE PRIMARY FACTOR TO CONSIDER FOR ANY TURN AROUND IS GOOD VISIBILITY
- AVOID CURVES, HILLS, INTERSECTIONS
- IS IT EVEN SAFE TO TURN AROUND?

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 **U-TURN** 

- Executed on a roadway that is wide enough to accommodate a continuous turn without stopping

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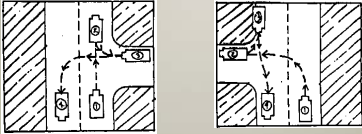
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**TWO POINT TURNS**

- UTILIZE DRIVEWAYS OR AREAS WHERE THE ROAD IS NOT WIDE ENOUGH FOR A U-TURN



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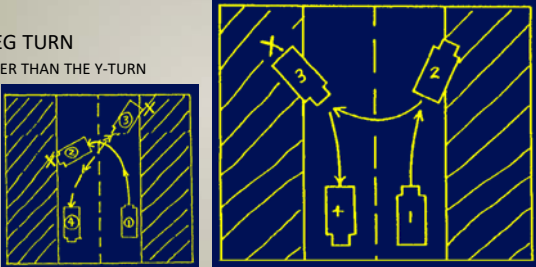
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**THREE POINT TURNS**

- Y TURN
- BOOTLEG TURN
  - SAFER THAN THE Y-TURN



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**Safest Turn Around**

- U-turn
- the less you expose yourself to risk is the factor to consider

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 INTERSECTIONS 

- Most likely areas for patrol car collisions
- nationwide 37% of all vehicle crashes occur within intersections
- 80% of all emergency vehicle accidents occur w/in intersections
- We place ourselves at a higher degree of risk as we traverse intersections

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 REASONS FOR INTERSECTION COLLISIONS 

- Restricted visibility
- Operator misjudging clearances
- Operator misjudging patrol car speed approaching intersection
- Confused motorist
  - they may stop in front of you
- Motorists or pedestrians fail to hear or see you
- Two or more emergency vehicles meet at an intersection

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 RISK REDUCTION AT INTERSECTIONS 

- Avoid dangerous or congested intersections as much as possible
- Slow down when approaching and traversing an intersection
- Know what your speed is at all times
- Cover brake when crossing

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 **RISK REDUCTION AT INTERSECTIONS** 

- The speedometer is the most important gauge you have for safe vehicle operations
- Signaling your intentions to turn well in advance of the turn will help confused motorists know what to do
  - Avoid using oncoming lanes or turn lanes
  - Avoid using passing on the right, even if the lane is open
  - Consider running with the traffic flow and not using emergency equipment
  - Increase distance when following another emergency vehicle

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 **PASSING ON THE RIGHT** 

- **NOT RECOMMENDED!!!**
  - Reducing your speed is critical.
    - If you bring your speed down enough, you can adjust for an ever-changing environment.
      - » Spotting the warning signs is necessary to avoid a crash.

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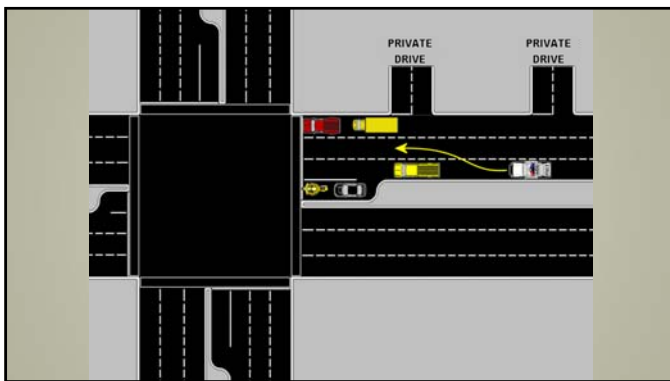
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 **GOING LEFT OF CENTER** 

Going left of center should be a last resort when shutting down is not an option.

- » Low speed is critical.
- » Avoid lane #3.

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 CLEARING AN INTERSECTION 

- On a red light you must clear each and every lane before proceeding. This also ensures you have complete control of the vehicle
  - Stay toward the center of the intersection so that you remain visible.
  - We NEVER have the absolute right of way.

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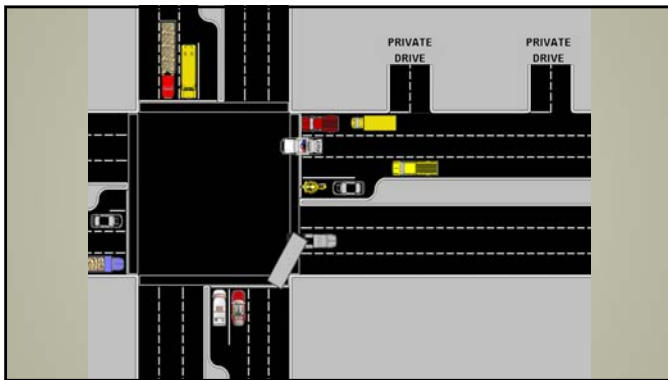
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 DUE CARE 

- No call or request for assistance is more important than your life or the life of an innocent citizen.
  - IF YOU DON'T ARRIVE
  - YOU CAN'T HELP.

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 **DEPUTY SAFETY** 

As a Deputy/Officer you are at times allowed to exceed the speed limit. To maximize safety during your response, you should do two things.

- 1. Warn the public with lights and/or siren.
- 2. Never exceed 80% of your driving ability.

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 **READING THE ROAD** 

- **CONCRETE ROADWAYS:**

Concrete is a supportive surface. When it is new, the surface is very abrasive and provides excellent traction. As it ages, concrete becomes less adherent and more conducive to hydroplaning. Concrete is very light, almost white when it is new. As it ages the color becomes darker as the rubber from vehicles builds up on it.

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 **READING THE ROAD** 

- **ASPHALT ROADWAYS**

Asphalt is a distributive surface. When it is new, the surface is slick and oily and not conducive to good traction. As it ages the aggregate rock comes up to the surface and the traction increases. New asphalt surfaces are dark, often black. As it ages, the color lightens to gray.

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 **READING THE ROAD** 

- Read the road surface as you are driving...

During a rainstorm, a driver of a vehicle in a code three run notices the road is a light colored asphalt. As the driver looks down the road, the driver sees the roadway color change to a dark color. The driver can anticipate a change in traction and proactively reduce speed.

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 **READING THE ROAD** 

Generally, the lighter the driving surface is in color, the better your traction will be.

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 **NIGHT DRIVING ADJUSTMENTS** 

- Night Driving...
- EVERYTHING IS ARTIFICIALLY ENHANCED WITH REFLECTIVE PAINT, ETC
- NIGHT EYESIGHT IS NOT AS EFFECTIVE AS DAY EYESIGHT
- SLOW DOWN NIGHT

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 ROAD HAZARDS 

- Road Hazards (animals, debris, pothole, etc.)
- Attempt to slow down and maneuver around them
- If unable to avoid, DO NOT DRIVE OFF OF THE ROAD TO AVOID THEM.
- Go to the brakes hard and “pop off” of them at impact

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**IF YOU DON'T  
ARRIVE YOU CAN'T  
HELP!**

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