

CHAS' COVER PAGE FOR



Civil Liability Law Section – December 2008

Restraint and Asphyxia

Part One –Restraint Ties

AELE is the acronym for “Americans for Effective Law Enforcement”: <http://www.aele.org/>
Restraint and Asphyxia Part One can be found on the Internet at:
<http://www.aele.org/law/2008ALL12/2008-12MLJ101.pdf>

CHAS' REVIEW of Part One

Part One of this **AELE** article presents a TON of information that must be **very carefully read** in order to appreciate its overall warning **AGAINST** law enforcement officers (and all other restrainers) employing forceful-prone-restraint. If it isn't carefully read, it could easily be misinterpreted.

Within its End Note references, the vast majority of the books and articles it encourages people to read are **enormously inaccurate and significantly biased** – books and articles that entirely fail to admit that restraint-asphyxia-related “studies” performed on healthy human beings in controlled circumstances have absolutely no legitimate relationship with the reality of field situations involving sudden in-custody deaths.

In fact, End Note number 9 contains a LIE: “Dr. Reay has publicly conceded that Dr. Neuman's study is more credible than his 1988 findings.” To read the **truth** about Dr. Reay's opinion of Neuman's (Chan et al's) study, go to: <http://www.charlydmiller.com/LIB/1998HogTiedRevisited.pdf>

CONCLUSION:

Part One of this AELE article is NOT HELPFUL to the education of law enforcement personnel or other restrainers.

- It contains far too much confusing information and fails to clearly summarize its overall warning **AGAINST** restrainers employing forceful-prone-restraint
- Its End Note references primarily promote the reading of enormously inaccurate and significantly biased books and articles.

HOWEVER!

There are several links within this document that attorneys *may* find helpful when seeking to hold restrainers liable for having caused a restraint asphyxia death.

Unfortunately, many of these links also could be used by attorneys seeking MISINFORMATION with which to **absolve** restrainers from the responsibility for having caused a restraint asphyxia death.

When FINISHED with this PDF, USE YOUR BACK BUTTON or

Click below to **Return to the Restraint Asphyxia LIBRARY:**

<http://www.charlydmiller.com/RA/RAlibrary.html#2008AELEpart1>



Cite as: 2008 (12) AELE Mo. L. J. 101

ISSN 1935-0007

Civil Liability Law Section – December 2008

**Restraint and Asphyxia
Part One –Restraint Ties**

Contents - Part One

1. Introduction
2. Definitions
3. The hobble restraint
4. Use of force training
5. Endnotes
6. Specimen police policies

Contents - Part Two (next month)

1. Compressional asphyxia
2. Conclusions
3. References
4. List of judicial decisions

1. Introduction:

Some criminals aggressively resist arrest because they want to avoid a long prison term. Others are substance abusers; they are delusional or confused; they instinctively fight officers, paramedics and others who are only seeking to help them. Depending on what drugs they have ingested, they might exhibit great strength. A few may be suffering *excited delirium* and could die before they receive treatment. (1)

Substance abusers who flee apprehension have been killed by vehicular traffic, or have fallen to their deaths. The resulting lawsuits are likely to claim that officers negligently failed to protect them, due to inadequate training or policies.

Many well-meaning people believe that drug-dependent persons are victims, not criminals – and cite studies by healthcare professionals, social workers and others. Regrettably, police officers of all ranks have struggled with raising substance-dependent children. (2)

Once a combative person is apprehended, whether he or she is headed for the hospital, a detoxification center, a temporary holding cell or the county jail – the person must be restrained to avoid his or her escape, to avoid injuries to officers or paramedics, and to prevent damage to transport vehicles.

A recent article noted that:

“Capture and restraint technologies and techniques used by law enforcement, correctional, emergency medical services, and hospitals are easy targets for overly simplistic and misplaced blame by the media and others as a possible cause of death. These technologies and techniques include, but are not limited to pepper spray, ECDs, hobble restraints, neck restraints, and hog-tying.” (3)

Part one of this two-part article addresses the use of restraint ties; part two discusses compressional asphyxia (with or without restraints).

Hogtying has a bad name. Does calling it something else matter? Only if the type of restraint and method of transport is safe. First, a few definitions:

2. Definitions:

- ***Asphyxia*** (Greek: pulse, heartbeat) is a condition of severely deficient supply of oxygen that arises from being unable to breathe normally, resulting in *hypoxia*, which affects the brain.
- ***Compressional asphyxia*** is caused by kneeling, sitting, or standing on a person’s chest or back while attempting to restrain him, or after the person is secured. See, United States v. Livoti, 22 F.Supp.2d 235 (S.D.N.Y. 1998). The person may or may not be in restraints, e.g., handcuffs, rope or belting.

- **Hobble restraint:** Typically a lightweight webbed belt – often constructed of polymer thermoplastic, 42 to 52 inches long and an inch wide – with a loop and self-locking clip – for use on the ankles, knees or elbows. The restraint allows for transporting prisoners in a seated, upright position – preventing them from kicking officers, paramedics, or car windows. The strap is long enough to bind the ankles to handcuffed wrists of an individual, with a length of 24 inches or more.

Some agencies, such as the LAPD, authorize the restraint, but only to bind the ankles, and officers are not allowed to attach the restraint to a person’s wrists.



- **Hogtying** (spelled with or without a hyphen) involves placing the suspect in a prone position with his or her hands secured by handcuffs, and legs held together with restraints. The hand and leg restraints are then connected, resulting in the slight elevation of the suspect’s upper and lower body. See, Tofano v. Reidel, 61 F.Supp.2d 289 (1999); Gutierrez v. City of San Antonio, 139 F.3d 441 (5th Cir. 1998); Vizbaras v. Prieber, 761 F.2d 1013 (4th Cir. 1985). In many agencies, the nomenclature has been changed to the “hobble” restraint. (4)
- **Positional or postural asphyxia** occurs when someone’s body position prevents them from breathing adequately. Restraints may or may not have been used.
- **Total Appendage Restraint Procedure (TARP):** A procedure that consists of simultaneously securing all of a person’s arms and legs with belting and cuffs. The individual’s wrists are immobilized with handcuffs, and their legs are immobilized with the Ripp™ hobble (or similar) restraint device. A belt end can be dangled over the bottom door jamb, and secures a prisoner’s ankles when the car door is closed. It also can be attached to the wrists, prior to transport.

3. The hobble restraint

Why is a hobble used? Combative people need to be restrained for transport to a

detention or medical facility. Some will kick violently, smashing car windows and assaulting officers and paramedics. The hobble is lightweight, inexpensive and effective.

But it also has been used immediately before a person dies, which has prompted speculation and even accusations that somehow it caused or contributed to the death of a prisoner or mentally ill person.

- Whenever possible, medical examiners and coroners collect a detailed history of what the deceased was doing or experiencing on the day of death. If the deceased was hogtied, pepper-sprayed or subjected to multiple Taser® applications before expiring, there is a risk that fact (or facts) could be listed as a “contributing” cause of death – irrespective of whether that assessment has any scientific basis or logical validity.
- The determinations of pathologists who prepare reports for a coroner or medical examiner’s office are simply professional opinions – but they tend to take on a “life of their own” in the media and with community activists, if those opinions attribute a death to police tactics or officer indifference.

A timeline is important. In 1988, Donald Reay, M.D., published an article (5) which indicated that blood oxygen levels decrease after exercise. He first hypothesized the concept of positional asphyxia after conducting experiments. He concluded that after exercise, such as a violent struggle with officers, blood oxygen levels decrease. Dr. Reay found that the hogtie restraint prevents oxygen levels from rising again because the restraint impairs the mechanical process of inhaling and exhaling.

In 1992 the San Diego Police and County Medical Examiner released an unpublished report on custodial deaths. (6) It noted that of 142 police agencies that responded to a survey, 43 (30.1%) authorized officers to use a hogtie procedure. The San Diego Police Dept. discontinued the practice of transporting individuals in the hogtied prone position.

In 1998, a federal court decided [Price v. County of San Diego](#), #94-cv-1917, 990 F.Supp. 1230 (S.D. Cal.). In addition to Dr. Reay, the plaintiffs called Dr. John W. Eisele, a county medical examiner. He testified that that the deceased experienced lactic acidosis – which is a natural bodily reaction to exercise in which the body produces lactic acid

(C₃H₆O₃). To compensate for the increased acidity of the blood, the body then produces extra carbon dioxide. (7)

Dr. Eisele testified that because the hogtie restraint impairs the mechanical process of exhaling, it prevents the body from “blowing off” excess carbon dioxide. He claimed that the deceased suffered from asphyxia (an increase in carbon dioxide levels) and, because of the hogtie, his body could not correct for the deficiency.

Thomas Neuman, M.D. (and others) at the University of California at San Diego Medical Center conducted a sophisticated study of positional asphyxia and the hogtie restraint. (8) The study found, contrary to Dr. Reay’s findings, that blood oxygen levels do **not** decrease after exercise *in healthy adults*. He also found that, although the hogtie restraint impairs the mechanical process of inhaling and exhaling to an extent, the hogtie does not affect blood oxygen or carbon dioxide levels. (9)

The court concluded that the hogtie restraint did not inflict a constitutional injury on the deceased. Moreover, the Sheriff’s Dept. “did not show deliberate indifference by not teaching its deputies about nonexistent dangers.”

Also in 1998, the Fifth Circuit found that the 1992 San Diego Police study presented sufficient evidence that hog-tying may create a substantial risk of death or serious bodily injury. [Gutierrez v. San Antonio](#), #97-50082, 139 F.3d 44 (5th Cir. 1998).

In 2001, the Tenth Circuit created an exception for people of “diminished capacity” due to “severe intoxication, the influence of controlled substances, a discernible mental condition, or any other condition, apparent to the officers at the time, which would make the application of a hog-tie restraint likely to result in any significant risk to the individual’s health or well-being.” [Cruz v. Laramie](#), #99-8045, 239 F.3d 1183 (10th Cir. 2001).

- The appellate panel said it was not persuaded by the UCSD/MC study, because “it focused on healthy adult males.”

In the Laramie case, the city claimed that the deceased was hobbled, rather than hogtied, because the officers claimed that the distance between the deceased’s hands and feet was

approximately two feet. However, the district court found sufficient evidence to support the plaintiff's contention that the distance was 12 inches or less.

A hobble belt is typically 42-52 inches long, which includes the portion used to bind a person's feet. Many agencies in the 10th Circuit have abandoned the use of hobble restraints, even though the court appeared to limit its decision to restraints that are 12 inches or less (between cuffed wrists and ankles). (10)

4. Use of force training

In order to establish a failure to train case, the plaintiff must satisfy the following requirements:

1. Police actions violated the plaintiff's constitutional rights;
2. The injury or death arose under circumstances which constitute a usual and recurring situation with which police officers must deal;
3. There is a direct causal link between the alleged constitutional deprivation and the inadequate training; and
4. The agency's failure to train demonstrates a deliberate indifference to the constitutional rights of its citizens. [Zuchel v. C&C of Denver](#), 997 F.2d 730 at 734-35 (10th Cir. 1993).

In Delaware, a federal court reviewed the insufficient training allegations raised by the next of kin of a man who died while secured in a prone position. The autopsy report indicated that the cause of death was "acute intoxication by the combined effects of cocaine and ethanol with excited (agitated) delirium..." complicated by, among other things, prone restraint, and pepper spray injury. The judge wrote:

"... Plaintiffs' complaint is that the County and the Town failed to train and supervise their police officers on the risk of death associated with excited delirium or positional asphyxia, which lack of training resulted in the application of excessive force against [the deceased], in violation of the Fourth and Fourteenth Amendments of the United States Constitution. ...

“Plaintiffs argue in response that the evidence clearly establishes that ... the County actually had within its possession since 2001, studies reflecting upon the serious health consequences of a prone restraint as well as studies addressing the medical diagnosis of cocaine induced excited delirium, but that the County failed to train in such matters its officers who had completed the Academy Training Curriculum prior to September 7, 2000. Plaintiffs assert that the County’s failure to train its veteran officers in such matters resulted in the Officer Defendants’ failure to check Officer G_’s use of the prone restraint technique in securing [the deceased], and that such a failure was a contributing factor in [his] death

“The evidence presented by Plaintiffs is sufficient to create a genuine issue of material fact as to whether the County may be liable for failure to train under section 1983. First, the autopsy report indicates that ‘prone restraint’ and ‘excited delirium’ were amongst the causes of [his] death. Second, Plaintiffs may be able to establish that the County acted with ‘deliberate indifference,’ under *City of Canton* (11), by the fact that it included discussions of positional asphyxia and cocaine-induced excited delirium in its training materials for new officers but allegedly did not require its veteran officers to undergo similar training.”

The court found, however, that the Town, as a separately named defendant, lacked information about the risks of a cocaine-induced excited delirium and the potential serious consequences of the prone restraint of a prisoner. Therefore, it did not act with “deliberate indifference” in failing to train its officers concerning such circumstances. [Watkins v. New Castle County](#), # Civ.A.03-791, 374 F. Supp.2d 379 (D. Del. 2005).

In South Carolina, a suit claimed that a county should have trained detention officers to deal with multiple-officer takedowns and, the county's failure to address this specific deficiency in the program constituted deliberate indifference to the constitutional right of inmates to be free from excessive force. The judge, disagreed, writing:

“We view this contention as merely an assertion that the County should have made its officers engage in group exercises, involving different numbers of officers confronting a single inmate, when the County trained the officers how to take an inmate to the floor and to avoid placing a knee on the back of an inmate's neck while applying full restraints.”

The judge noted that the plaintiff could point to no prior instance where an inmate died from compression asphyxiation due to pressure being applied to the back or neck during a multiple-officer takedown. [Sims v. Greenville County](#), #99-1732, 2000 U.S. App. Lexis 6846 (Unpub. 4th Cir. 2000).

In an Oklahoma case involving a 2002 death, a federal court found that the plaintiff failed to show that the training of police officers was inadequate. The judge wrote:

“In September, 1992, in the OCPD Training Bulletin, an article was published concerning the potential danger of hog-tying and positional asphyxia. In a special 1993 issue of the OCPD Training Bulletin, the September 1992 article was republished.

“In the annual OCPD in-service training for either 1994 or 1995, a class was given on custody and control, which included a section on In-Custody Death Conditions. The potential dangers of positional asphyxia were discussed.”

[Glasco v. Oklahoma City](#), #5:2004cv00019, 2006 U.S. Dist. Lexis 57592 (W.D. Okla. 2006).

While use of force training helps protect officers from lawsuits, it also can be the basis for declining to grant an officer the defense of qualified immunity. The Tenth Circuit had this to say in a Wyoming case:

“Numerous training materials provided to the troopers addressed the risks of putting weight on an individual’s back when the person is lying on his stomach. During the troopers’ use-of-force training ... they were provided with extensive written materials, oral lectures, and audiovisual presentations regarding the dangers of Sudden Custody Death Syndrome and positional asphyxiation.”

The panel said there was evidence that for three minutes state troopers subjected the plaintiff to force that they knew was unnecessary to restrain a person and that a reasonable officer would have known presented a significant danger of asphyxiation and death. “If true, this constitutes an unreasonable use of force under the Fourth Amendment.” [Weigel v. Broad](#), #05-8094, 2008 U.S. App. Lexis 21877 (10th Cir. 2008).

In Ohio, the estate of man who died from asphyxia, after being placed face down while hog-tied, received a \$805,000 settlement from the city on allegations of inadequate

supervision and training. Kinneer v. Gall, # C2-95-504 (S.D. Ohio 1996), settlement reported in 40 ATLA L. Rptr. 132 (May 1997).

- Courts might recognize a viable claim for disability discrimination under the Americans with Disabilities Act, [42 U.S. Code §12132](#), based on an alleged failure to provide adequate training for officers in handling encounters with mentally ill persons. Arnold v. City of York, #4:CV-03-1352, 340 F.Supp.2d 550 (M.D. Pa. 2004).
- There is substantial national training available on the use of force and in-custody deaths. (12)

5. Endnotes:

1. Excited delirium is a major topic, and cannot be addressed in this article. See, *Excited Delirium Syndrome*, by Theresa and Vincent Di Maio, CRC Press (2006); ISBN 13: 978-0-8493-1611-1; Lib. Cong. # 2005049423. (Positional asphyxia and hogtying are mentioned at pp. 20-30 and 36-37).

Also see articles listed on the *Institute for the Prevention of In-Custody Deaths* website at www.ipicd.com -- especially, [Excited Delirium: What Every Chief Needs to Know](#), by John G. Peters, Jr., Ph.D., 23 (5) *Police and Security News* 1-4 (2007), and the *University of Miami* website at www.exciteddelirium.org

2. *Chief: My Life in the L.A.P.D.* (1993) by Daryl F. Gates (chapter relating to Scott Gates, and his son's drug abuse problems); more recently, "Ex-LAPD Chief Gates' Son Arrested," *L.A. Times*, Oct. 11, 2004, p. B-8. Also, "The son of Miami police chief ___ was sentenced Wednesday to 18 months in federal prison for trying to buy 400 pounds of marijuana from an undercover agent," *St. Petersburg Times* (Dec. 14, 2006).

3. Sudden Death, Excited Delirium, and Issues of Force: Part I. John Peters. Ph.D., 22 (2) *Police and Security News* 1 (Mar.-Apr. 2006).

4. A prominent police defense attorney wrote, "The techniques involved are generally described more accurately as maximal restraint or total appendage restraint procedure (T.A.R.P.) and descriptions other than 'hog-tying' or 'hobbling' should be utilized." *Endnote* in "Do Maximal Restraints Violate Clearly Established Law?" Edwin H. Byrd, III, 67 (11) *The Police Chief* (Nov. 2000).

5. Effects of Positional Restraint on Oxygen Saturation and Heart Rate Following Exercise. Donald T. Reay, M.D., et al., 9 (1) Amer. Jour. of Forensic Medicine and Pathology (*NAME*) 16-18 (1988), PMID: 3354518.
6. Final Report of the Custody Task Force, San Diego Police Dept./San Diego County Medical Examiner, Krosch, Binkerd & Blackburne (1992).
7. See, Biochemistry of Exercise-Induced Metabolic Acidosis, Robergs, Ghiasvand & Parker, 287 (3) Amer. Jour. of Physiology R502–16 (2004); PMID 15308499.
9. Restraint Position and Positional Asphyxia. Chan, Vilke, Neuman & Clausen, 30 (5) Annals of Emerg. Med. 578-586 (1997); PMID 9360565.
9. Drs. Eisele and Neuman were not adversaries – in 2004 they co-authored a scholarly article. Dr. Reay has publicly conceded that Dr. Neuman’s study is more credible than his 1988 findings.
10. See, for example, Pueblo, Colorado, Police Dept. Policies, §110-2.3.1 - Restraining Prisoners During Transport:

“In light of the ruling in *Cruz v City of Laramie, Wyoming* [239 F.3d 1183 (10th Cir. 2001)] hog-tie restraints are prohibited in all cases. To further ensure compliance with the Court’s ruling, Department policy shall prohibit binding a subject’s ankles to the wrists, behind the back, regardless of the length of separation between the ankles and wrists.” Adopted March 10, 2006.
11. [City of Canton v. Harris](#), 489 U.S. 378, 109 S.Ct. 1197 (1989).
12. AELE has a 2½-day [seminar](#) on the *Legal, Psychological and Biomechanical Aspects of Officer-Involved Lethal and Less Lethal Force*. The Institute for Prevention of In-Custody Deaths has an annual 2½-day training [conference](#); the speakers include many of the best-known medical experts in their fields. Both courses qualify for the AELE [Certified Litigation Specialist](#) designation.

There is a textbook on excited delirium (see note 1) and a highly-regarded textbook on in-custody deaths, *Sudden Deaths in Custody*, by Darrell Ross, Ph.D. & Ted Chan, M.D. (eds.), Humana Press (2006); ISBN 1-58829-475-7. See ch. 4, *Positional and Restraint Asphyxia*, by Dr. Tom Neuman, UCSD/MC, and defense expert in [Price v. County of San Diego](#).

There also are videos on excited delirium and positional asphyxia. AELE does not endorse branded products.

6. Specimen police policies: *

Birmingham, Ala., Police: [Temporary Restraining Devices](#)

Charlotte-Mecklenburg, N.C., Police: [Positional Asphyxia](#)

Chicago, Ill., Police (1995): [Training Bulletin – Positional Asphyxia](#)

Garden Grove, Cal., Police: [Use of the “Hobble” Restraint](#)

Lincoln, Cal., Police: [Leg Restraint Device](#)

Los Angeles County, Cal., Sheriff: [TARP and Hobbling Policy & Procedures](#)

Los Angeles, Cal., Police: [Transporting violent persons - Use of leg restraining devices](#)

Miscellaneous policy suggestion: [The “Wrap” restraint](#)

Pueblo, Colo., Police: [Restraining Prisoners During Transport](#)

Twin Falls, Idaho, Police: [Leg Restraint Device](#)

University of Florida Police: [Prisoner Transport](#)

West Palm Beach, Fla., Police: [Restraining Devices](#)

* Specimen policies are just that – they are not intended as models.

AELE Monthly Law Journal
Wayne W. Schmidt
Associate Police Liability Editor
P.O. Box 75401
Chicago, IL 60675-5401
E-mail: wws@aele.org
Tel. 1-800-763-2802

© 2008, by the AELE Law Enforcement Legal Center
Contents may be downloaded, stored, printed or copied,
but may not be republished for commercial purposes.

[AELE Home Page](#) – [Publications Menu](#) – [Seminar Information](#)