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Do “Maximal Restraints” Violate Clearly Established Law?

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In determining whether an officer is entitled to qualified immunity from a constitutional claim, the court must first determine whether the officer's conduct violated clearly established law and whether that conduct was objectively reasonable. In recent cases, courts have struggled with application of this standard to claims that maximal restraint techniques, usually referred to by courts as “hog-tying,” resulted in positional asphyxia.¹ Courts have been presented with conflicting studies examining the physiological effect, if any, of these restraints. The conflicting studies and cases may warrant additional review of these issues. Consistent and clearly defined policies are important, as evidenced by the conflicting opinions regarding whether these procedures violate clearly established law and are objectively reasonable.

Studies conducted in the 1980's concluded that maximal restraints after a violent struggle caused “positional asphyxia.” Asphyxia is a decrease in blood oxygen levels or an increase in blood carbon dioxide levels. Researchers suggested that maximal restraints could prevent oxygen levels from rising after a violent struggle by impairing the mechanical process of inhaling and exhaling. The combination of excited delirium with positional asphyxia has also been described as “sudden custody death syndrome.” Cases examining these issues consistently involve detainees placed in a prone position, with the exact method of restraint varying from case to case. While initial research attributed this syndrome to the method of restraint, more recent research has suggested that maximal restraints under these circumstances may be “physiologically neutral” and questions the underlying research involved in the initial studies.

In Price v. County of San Diego, et al, 990 F. Supp. 1230 (S.D. Cal. 1998), the court concluded that “little evidence is left that suggests that the hog-tie restraint can cause asphyxia.” According to the court, Dr. Donald T. Reay, M.D. first hypothesized the concept of positional asphyxia. The court concluded that “every scientist who has sanctioned the idea that the method of restraint causes asphyxia,” relied on Dr. Reay's studies. 990 F. Supp. at 1237. According to the Price decision, even Dr. Reay now concedes that the restraint at issue is “physiologically neutral.” 990 F. Supp. at 1238. In addition, according to that case, studies conducted subsequent to Dr. Reay's studies

indicate that “although the hog-tie restraint impairs the mechanical process of inhaling and exhaling to an extent, the hog-tie does not affect blood oxygen or carbon dioxide levels. In other words, the impairment is so minor that it does not lead to asphyxia, and in fact has no practical significance.” Id. at 1237-1238.

Relying primarily upon a more recent study conducted by the University of California at San Diego, as well as Dr. Reay’s testimony that the maximal restraint is “physiologically neutral”, the court found that “little evidence is left that suggests that the hog-tie restraint can cause asphyxia.” According to the court, “all of the scientists who have sanctioned the concept of positional asphyxia have relied to some degree on Dr. Reay’s work, ...which impugns the scientific articles that followed it.” Id. at 1238. The court finally concluded that, “the evidence for positional asphyxia has fallen completely.” Id. at 1238. The court then found that “[i]n light of the U.C.S.D. study, the hog-tie restraint in and of itself does not constitute excessive force — when a violent individual has resisted less severe restraint techniques, applying a physiological neutral restraint that will immobilize him is not excessive force.” Id.

Despite the Price decision, other researchers purport to rely upon their own research to support opinions that the method of restraint of an agitated or excited person can lead to asphyxia. See, Johnson v. City of Cincinnati, 39 F. Supp.2d 1013 (S.D. OH. 1999). Nevertheless, the description by the court in Price of the scientific evidence is obviously significant.

Courts have struggled not only with an examination of the scientific evidence regarding this issue, but are currently struggling with the effect of this conflict on claims that it is “clearly established” that maximal restraints cannot be used under certain circumstances. According to the Price opinion, in response to Dr. Reay’s research, agencies have banned certain restraints or trained officers regarding precautions, but “the vast majority of law enforcement agencies have not done likewise” 990 F. Supp. at 1237. Nevertheless, in denying summary judgment in a similar case another court concluded that after receiving one agency’s study of this issue, “police departments nationwide began to ban hog-tying.” Gutierrez v. City of San Antonio, 139 F.3d 441, 450 (5th Cir. 1998). Evidence was apparently submitted to that court suggesting that “at least 70 percent of the nations largest police departments...have banned hog-tying”. Id. While the agency in Gutierrez denied that it had banned the technique, plaintiff offered evidence suggesting to the contrary. The court found the Reay study and the response of other agencies to be significant in determining whether the officers at issue were entitled qualified immunity from suit.

The court first determined whether the plaintiff alleged the violation of a clearly established constitutional right. Although there was no controlling case that specifically prohibited the restraint used, the court examined whether there was evidence that the specific action was unlawful “in light of pre-existing law.” Relying exclusively on one agency’s study, which utilized Dr. Reay’s research, and the defendant departments’ alleged banning of “hog-tying,” the court determined that the plaintiff had offered sufficient evidence that “hog-tying may create a substantial risk of death or serious bodily

injury in these circumstance and therefore becomes deadly force.” Id. at 446. Under the procedural posture of that case, the issue was merely whether the evidence was sufficient to permit the claim to proceed.

The court did not find that use of the technique was unlawful; the opinion is significant, however, because it demonstrates that the conflict regarding the research and the early response of departments in light of that research was sufficient to require that the involved officers proceed to trial. Again, the evidence relied upon was the initial studies and the purported treatment of this issue by other departments. “Assuming this evidence to be true, hog-tying in these circumstances would have violated law clearly established....” Id. The opinion is significant because it demonstrates the effect of an overly broad response to the initial studies, the alleged “banning” of all maximal restraint procedures by some departments.

It is obviously far from “clearly established” that restraint position causes asphyxia in light of the research and testimony described in the Price opinion. In fact, that court specifically found that much of the evidence that has caused concern was refuted both by the initial researcher and subsequent studies.

Endnote:

1. 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.