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Civil Liability Law Section – February 2015

Civil Liability for Use of Distraction Devices Part 2

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❖ Use in Street Settings

While the most common use for flashbangs and other distraction devices is to facilitate a dynamic entry by officers into a home, business, or other building, some agencies have used them in large open spaces and in streets and other public venues as a part of crowd control or dispersal, particularly in the context of large unruly crowds, including street demonstrations.

In 2014, Portland, OR, officers faced a crowd of anti-police activists who attempted to block streets. Officers threw at least two flashbangs at night to try to move the crowd away from the downtown area. A warning to disperse was first given near the courthouse.

Officers said the use of the devices was justified as orders to disperse or move were ignored, and some demonstrators threw bottles and were confrontational, approaching the officers rather than leaving. One person also jumped on top of a police vehicle. See [“Portland police lob 'flash bang' grenades to force Ferguson verdict protesters out of downtown,”](#) by Bray Denson, *The Oregonian*, November 29, 2014.

Some commenting on this, including at least one journalist who claimed to have been singed by a flashbang during a prior incident, were critical – characterizing the devices as “military style” weapons and arguing as to how they could best be used safely and appropriately.

- See “[‘Less Lethal’ FlashBangs Used in Ferguson Leave Some Feeling the Burn](#),” by Abbie Nehring, *Pro Publica*, Aug. 22, 2014.

Law enforcement personnel interviewed in the article stressed the importance of adequate training in using the device, and that officers in Saint Louis County, MO, receive four hours of training in the use of flashbangs.

❖ **Damage Awards**

The severe heat that a flashbang device can cause (up to 4,900° F) can burn people that it comes into contact with it. Additionally, it can cause fires in a household when it comes into contact with a couch, bed, other furniture, paper, or clothing.

The thermal event associated with a flashbang has a short duration but people or objects in close proximity can suffer severe burns. They should not be deployed near combustible or volatile materials such as in a clandestine drug lab. The fumes present in such circumstances can cause a secondary explosion that may be more destructive and larger.

- It is no surprise, that in some instances, lawsuits or claims over damages, injuries or deaths caused by the use of flashbangs have resulted in large damage awards or settlements.

In February of 2010, a flashbang device used by a Minneapolis police officer during a search warrant drug raid caused severe third degree burn injuries to the legs of a woman named Rickia Russell who was present on the premises at the time. Officers knocked down the door to her boyfriend’s apartment and set off the flashbang, causing her legs to catch on fire while she was being handcuffed. The legs were burned almost down to the bone. No drugs were found.

Despite departmental requirements that officers deploying flashbangs be equipped with fire extinguishers, it was not clear if the officers had such an extinguisher available and they extinguished the flames engulfing her legs with dirty dish towels found in the apartment. The Minneapolis City Council subsequently granted her a \$1 million settlement on her injury claims in December of 2011. See “[Disquiet builds nationwide over police flashbang use](#),” by Corey Mitchell, *Minneapolis Star-Tribune*, Dec. 13, 2011.

The same article indicated that damage lawsuits and payouts to persons injured or killed by flashbangs previously occurred in California, Michigan, New York, and a number of other states. Minneapolis itself reached a settlement for an undisclosed amount after two people died of smoke inhalation in an apartment in which a flashbang device had been activated in 1989.

The article also states that the city of Oakland, California paid \$1.2 million to settle a lawsuit filed by another woman who also suffered third degree burns and permanent disfigurement when a flashbang grenade detonated in close proximity to her during a police raid.

On May 28, 2014, in a tragic accident, a flashbang device deployed by officers in Habersham County, Georgia during a drug raid landed in the crib of a 19-month-old boy. The crib was blocking the doorway on the inside of the home, and no lights were on in the home, so that the officers could not see the child.

An informant had told the officers that there were no children or dogs present in the home, while there actually were several children, but there was information that there could be automatic weapons, so the flashbang was tossed in to provide an additional measure of safety for the officers' entry to serve the search warrant. The child suffered severe burns and was placed in a medically induced coma. See "[Toddler severely burned by flash bang in Habersham Co. drug raid](#)," by Mandi Milligan, *CBS46.com*, May 30, 2014.

The child subsequently had to undergo eight surgical procedures, including an operation to reattach his nose, incurring over \$1 million in medical debt, with no end in sight. See "[Life After a Police Grenade Landed in 19-Month-Old's Playpen \(Video\)](#)," *Huffington Post*, November 20, 2014. The severity of the injuries that occurred to this child underscores the extreme importance of making every effort before deploying a flashbang device inside a premises to determine, to the extent possible, just who is present.

❖ Injuries to Officers

Many police agencies, including Los Angeles in the early 1980s, use diversionary devices – equipping SWAT and other tactical units with them. Since that time, police use of flashbangs has been associated with a minimum of seven deaths in the U.S., including a Charlotte, North Carolina SWAT team member, Fred Thornton, who died on February 25, 2011 while attempting to secure flashbang equipment in his car's trunk.

News reports indicate that he improperly tried to replace the pin in his flashbang grenade in the trunk of his car in his home garage. When he did so, the device exploded. See "[Police: Error led to veteran SWAT Officer's death](#)," by WCNC staff, March 17, 2011.

The pin had been removed while the officer prepared to deploy the device during the serving of a search warrant at a home. The officer decided that he did not need to use the device and put part of the pin back in. Evidently doing so violated the department's SWAT training and procedure, with the recommended way of disposing of the flashbang in such circumstances after having pulled out the pin being to throw the grenade into a safe location, activating it.

One article that discusses the potential of injuries to officers notes:

“Officers have been injured by distraction devices that have been thrown against solid objects and bounced back at the persons throwing them. With the short time delay, the individual has no time to get away from an activated flashbang. Numerous reports of injuries and damage have been the result of flashbangs being thrown, intentionally and unintentionally at persons, with devices functioning in direct contact with or in close proximity to the person's body. The intentional deployment of one of these devices at a person amounts to an application of deadly force due to the nature of distraction devices. All efforts should be made to deploy distraction devices a distance of at least six feet from any person.”

[Less Lethal...But Still Lethal](#), by Vic Sikes, *FLETC Journal*, page 48 (Spring 2007).

❖ Some Suggestions

Flashbang devices can be extremely valuable tools for law enforcement in a variety of circumstances when used properly by adequately trained and equipped officers. Used carelessly or without adequate training and equipment, they can be extremely dangerous and cause fires as well as serious injury and even death to suspects, their family members, innocent bystanders, and even to officers themselves. The following, while far from comprehensive, are some suggestion worth considering.

1. Written policy and procedures on the subject of both the practical and legal deployment of flashbangs should be developed and periodically reviewed.
2. Flashbangs should not be used in close proximity to combustible or volatile material, such as may be present in a clandestine drug lab.
3. Officers equipped with flashbangs must anticipate and be equipped to deal with fires and be supplied with **multiple fire extinguishers**, gloves, eye and ear protection, and protective clothing to avoid injuries to officers.
4. When, on a rare occasion, a flashbang or other distraction device fails to function, the requirements of promoting safety and avoiding liability mandate developing and

implementing misfire procedures, including a specified time during which the device should not be approached or handled as the burning time delay in it may be burning or smoldering.

5. Once the objectives of a raid are accomplished and suspects secured, personnel should evacuate the area of the misfired device, with any additional handling of it done by trained bomb squad personnel.
6. Flashbangs are distraction devices, designed to give officers an opportunity to gain the advantage and an opportunity, if needed, to utilize needed force against a suspect. It is ordinarily thrown at a low trajectory along the ground or floor. They are not intended for the direct application of force against a person and should not be thrown directly at a person. They have only a one to two second time delay, and are intended to function swiftly without there being an opportunity for a suspect to approach, handle it, or throw it back.
7. Extreme caution should be exercised before using such devices in small enclosed spaces, such as, in a correctional context, a small cell, and it should only be done with highly exigent circumstances when it is thought to be necessary to prevent serious injury or death to someone. The effects of such a device can be magnified greatly when placed in a 7x10 foot cell with concrete walls, ceiling, and floors, easily leading to injuries such as blown eardrums and shrapnel burns/wounds.
8. It has been suggested tactically that one way to avoid liability with just throwing in the diversionary device is to use a pole. A 6-10 foot pole (which looks like a golf ball retriever) can be put into the door or window and the officer then does not lose control of the device.

❖ Resources

The following are some useful resources related to the subject of this article.

- [Assault and Battery: Flash Bang Devices](#). AELE Case Summaries.
- [Liability in Tactical Operations](#), PowerPoint by Eric Daigle, Esq. at the 2014 IACP annual conference
- Policy: [Gas Guns and Grenades](#), Columbus, OH, Police.
- [Stun grenade](#). Wikipedia article.
- [Civil Liability for Use of Distraction Devices](#), Part 1, 2015 (1) AELE Mo. L. J. 101.

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