

REDUCING THE RISKS OF POLICE PURSUIT

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One of the most difficult law enforcement activities to manage is that of motor vehicle pursuit. Each year in the United States, several hundred persons (including some police officers) are killed, and many others are injured during the course of pursuits. Pursuit-related accidents, injuries and deaths cause significant emotional distress for officers, and frequently result in very negative public relations for departments. Occasionally, officers are criminally prosecuted following pursuit-related crashes. Of course, one of the most common negative outcomes of pursuit is litigation arising from the attendant crashes, injuries and/or deaths. Clearly, both street officers and police managers need to take steps to reduce the risks inherent in motor vehicle pursuits.

Key Terms

Motor Vehicle Pursuit – The act of attempting apprehension of a fleeing vehicle, once the operator has given some indication of his or her intent not to stop or yield. This indication can be by increasing speed, bypassing traffic control devices, or other means.

Resistive Behavior – Negative behavior exhibited by an individual after an officer has indicated intent to control the individual. The negative behavior can be psychologically or physically intimidating actions or words, passive refusal to cooperate, or active resistance (physical)—including the use of weapons.

Reasonableness – That which another person or officer, with similar training, would do under similar circumstances.

Constitutional Deprivation – Government actions that are contrary to the rights and assurances granted by the Constitution of the United States. Deprivations may be either reasonable or unreasonable.

Resistance/Control Continuum – A graphic representation of the relationship between levels of resistance and levels of control. Sometimes referred to as a “Use of Force Continuum”.

Public Harm Risk – The degree of risk to the public posed by the actions of a suspect, usually equated with the initial act that gives rise to a pursuit. Generally comprised of two elements: the risk inherent in the initial act or crime committed by the suspect, and the risk faced by the public should the suspect be allowed to escape and remain at large. This is different that the degree of risk to the public posed by the pursuit itself.

Pursuit Management Continuum – A specific type of Resistance/Control Continuum, reflecting the relationship between pursuit causation factors and the tactics and techniques that may reasonably be used in the apprehension of a fleeing suspect.

Initial Interaction – Techniques that represent a relatively low risk of injury to officers and the public. Often naturally occurring, these techniques do not require any special resources or personnel.

Active Intervention – Techniques that require additional personnel, specialized equipment or training, and/or advanced planning. These tactics represent a greater degree of risk to officers and the public. Additionally, these techniques usually constitute “seizures” under the Fourth Amendment to the U.S. Constitution.

Critical Interdiction – Techniques that represent the greatest degree of risk to officers. These techniques approach the use of deadly force, and should only be undertaken when high levels of control are necessary.

REDUCING THE RISKS OF POLICE PURSUIT

Consider this: You’re working midnights. It’s a couple of hours past the time you usually get your nightly “drunk driver arrest”, but it’s a slow night, so you’re doing some property checks. Suddenly, a vehicle coming toward you on a quiet residential street swerves up over the curb, and knocks down a string of mailboxes, continuing on. You turn around, and attempt to stop the swaying, slow moving vehicle. Instead of pulling over to the right, the driver accelerates, and turns down a side street. You notify dispatch, and begin to pursue.

Both your emergency lights and siren are operating, but the bad guy’s ignoring them. As the vehicle begins to come into the downtown area, early morning commuters are out and about. The fleeing vehicle swerves through the traffic, narrowly missing several vehicles and one pedestrian. Your heart’s pounding, because you realize that if the vehicle gets into the congestion of morning traffic, there’s likely to be an accident.

You can see vehicles stopped at a red light up ahead, but the fleeing vehicle doesn’t seem to be slowing down. You know that he doesn’t have room to get through, but that doesn’t seem to matter to the bad guy. You see an opportunity to ram the vehicle off the road before he hurts someone, but you’re not sure if you should take it. While you’re trying to decide on your next move, a vehicle backs out of a driveway, directly into the path of the fleeing violator. There is a loud crash, and both vehicles spin out of control into a bus-stop full of morning commuters. . . .

Its three hours later and you’re sitting in the Squad Room, trying to do your report. As your mind runs over the events of the pursuit, you begin to wonder whether you did the right thing, but you can’t quite see how you could have responded any differently. After all, he decided to run, didn’t he? You were just doing your job.

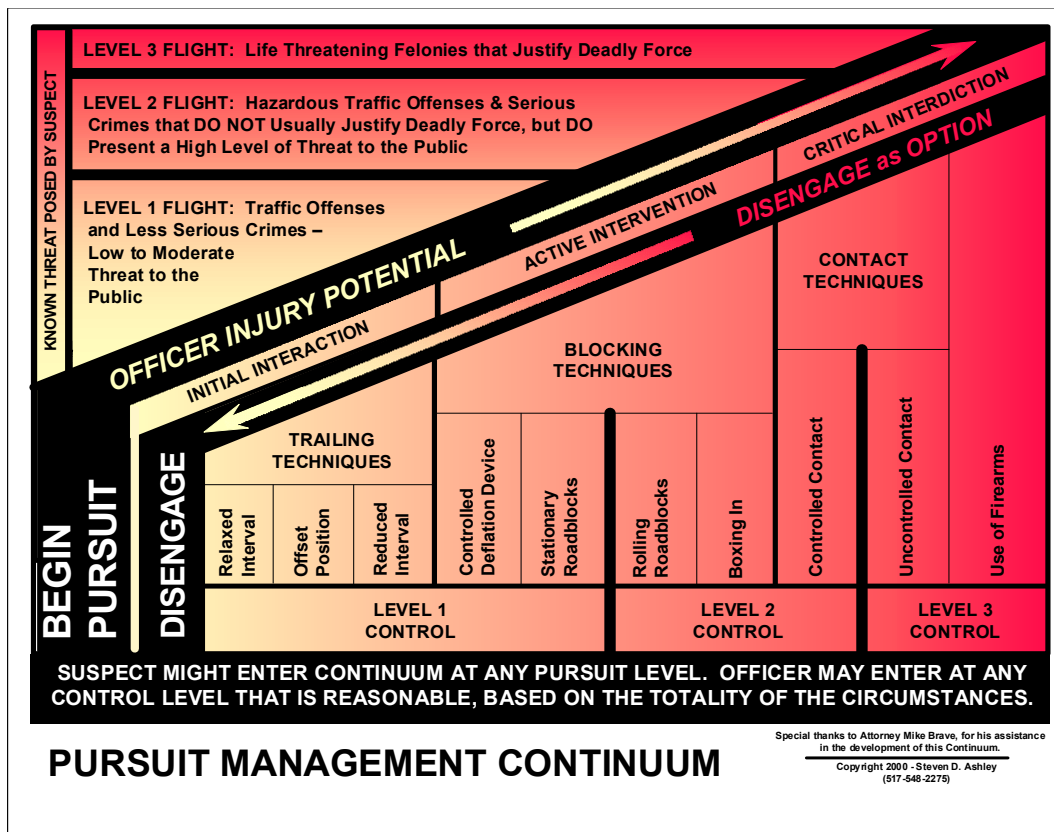
Wouldn’t it be great, you think to yourself, if there was a more concrete way to figure these things out before things blew up in your face?

A police officer that engages in the pursuit of a motor vehicle participates in one of the most hazardous of all police duties. Pursuit has been vilified by plaintiff’s

attorneys and the media as irresponsible, reckless and unnecessarily dangerous, while at the same time the practice is defended by police officers as necessary for the apprehension of many suspects that are unwilling to immediately yield to an officer's signal to stop. Police administrators are caught in the middle, wanting to provide essential options for their officers, while meeting their obligation to direct and control a potentially hazardous activity.

The practice of vehicular pursuit is fraught with contradictions, and is therefore difficult to manage both administratively and operationally. There are many aspects of pursuit that must be considered and weighed prior to, during, and immediately following the actual occurrence of a pursuit. Each of these aspects harbors the potential for different interpretations by various elements of society.

For example, it is not uncommon for a police administrator to state in writing that his department's policy is to never allow a pursuit to be hazardous to officers or citizens. Generally the same policy document calls for the immediate abandonment of any pursuit that rises to the level of "hazardous". However, from a practical standpoint, most pursuits involve various hazardous elements, such as speed in excess of the posted limit, or disobedience of traffic control devices.



When this situation occurs, officers are put in the position of either deciding to never pursue, or of violating the policy statements of the department. Neither of these alternatives is satisfactory, and both present different types of risk for the agency. Failing to pursue violators could give rise to charges of failure to perform the mission of the department, while violation of the department's policies subjects the officer to disciplinary action—and the department to potential litigation.

Obviously, it is necessary to develop a different approach to this and other pursuit issues.

PURSUIT AS FORCE

Whenever a law enforcement officer uses force to control resistive behavior, the legal system will attempt to answer two questions. Of these, the most fundamental is whether or not there was an appropriate and reasonable *balance* between the degree to which society would be exposed to harm should the force not be used and the degree of harm to society inherent in the level of force used.

The system will also attempt to determine if the officer's use of force resulted in an *unreasonable constitutional deprivation*. In order to answer this question, a two-tiered test will be applied.

First, the Court will determine if an actual constitutional deprivation occurred. In other words, was there a seizure through the mechanism of force? If so, the Court will examine the seizure to determine if it was reasonable. This test will go beyond an examination of the justification for the use of force, and will also look at the *degree* of force that was used.

This balance test, and the evaluation of the degree and reasonableness of any constitutional deprivation apply to any use of force by a law enforcement officer. Increasingly, they are being applied to the conduct of police pursuits, as well. While there is no existing legal definition of pursuit as force, per se, it is clear that many aspects of a police pursuit verge on the use of force, and many times the outcome of a pursuit is similar to the outcome of a physical use of force.

Police officers use force to control resistive behavior, and to gain control of individuals for the purpose of taking them into custody. This is frequently what occurs during a pursuit. A pursuit involves the use of a vehicle in order to capture and control a resistive individual, and once that individual is controlled, they are usually taken into custody.

Some tactics utilized to bring a pursuit to a satisfactory conclusion involve physically *blocking* the path of the fleeing vehicle, or even *striking* the fleeing vehicle with a police vehicle. The parallel between these tactics and other types of force is unmistakable.

Many of the tactics commonly employed by police officers during a pursuit contain some vestige of force. While this force is present to a greater or lesser degree, depending on the tactic used, the use of any generally accepted technique or method of pursuit presents a degree of risk consistent with the amount of force being used.

STANDARDS FOR PURSUIT

One of the most significant problems faced by administrators in their attempts to manage pursuit is the lack of applicable standards and terminology. The United States Supreme Court has provided guidelines for the use of force¹, and the use of deadly force², but has not provided clear standards and guidelines for police pursuit. Some States have case law on the subject of pursuit³, but of course that case law is not binding on other States.

There have been some notable attempts to provide guidelines for pursuit training⁴, but these attempts have generally focused on the organizational details of driver training programs, and have not focused on pursuit itself. If pursuit is addressed at all, it is as one limited aspect of an overall training program.

In order to provide a systematic approach to the management of police pursuit, it is necessary to develop and utilize a continuum similar to those developed for management of the use of force. Such a Pursuit Management Continuum[®] can be utilized to show the relationship between the degree of threat posed to the general public by vehicles engaging in different types of pursuit, and the tactics and techniques typically used by police officers to control those pursuits.

Additionally, a pursuit continuum can be utilized to indicate the escalation and de-escalation of force and control inherent in various techniques, and the degree of exposure to risk presented by each, particularly in the areas of officer injury and the potential violation of civil rights.

Lastly, a pursuit continuum can offer a graphic representation of levels of resistive behavior (Types of Pursuit) and levels of control. This will aid officers and their departments in classifying pursuits and pursuit control techniques so as to make them more operationally specific.

PUBLIC HARM AND REASONABLENESS

The most critical element of any pursuit is the need to match the level of control exerted to the degree of risk posed by the fleeing individual. In other words, what is the degree of risk posed to the public by the offense committed by the individual, and what is the degree of risk posed to the public should the fleeing individual make good his or her escape, and be free to commit the offense again?

This *public harm risk* is different than the degree of risk posed by the pursuit itself. Most pursuits involve dangerous activities by their very nature. While some are less hazardous than others, the very act of engaging in motor vehicle pursuit involves vehicular operation outside the generally accepted parameters established for normal vehicle movement and control.

At issue is the *reasonableness* of an officer's actions in pursuing a fleeing violator. If an officer's actions are reasonable in light of the public harm risk that exists, then the officer's actions should be defensible in a court of law.

A PURSUIT MANAGEMENT CONTINUUM

The use of such a Pursuit Management Continuum must be based on several fundamental concepts:

- ◆ Officer's can disengage from pursuit, or de-escalate the control mechanisms being used, at any time they reasonably believe it to be necessary.
- ◆ Control alternatives presuppose proper utilization of the tactics, based on reasonable decision-making on the part of officers and supervisors, not the worst possible result scenario. While its possible to envision a scenario where lethal harm results from the application of lower level control methods, it is not the officer's intended result. Therefore, the actual outcome should

have nothing to do with the reasonableness or unreasonableness of an officer's actions, given that the technique or tactic was properly and judiciously applied.

Just as one should not place firearms low on a use of force continuum, based on the fact that most shots fired by officers miss, and therefore there is no harm—one should not place stationary roadblocks high on the Pursuit Management Continuum because a suspect may choose to ram the roadblock, and die in the attempt.

- ◆ Escalation and de-escalation on the Continuum is keyed to the level of pursuit causation factor at work. Additionally, officers must evaluate the totality of the circumstances in which they find themselves, when making decisions regarding the use of any control or force option.

Just as an officer should not use deadly force against a suspect who has indicated an intent to surrender, and who does not offer an immediate threat of serious harm to anyone—an officer should not implement a high level control option against an individual who may have started a pursuit by committing a life threatening act, but is now apparently slowing as if to stop.

- ◆ Officers should stay at, or below, the control level that matches the pursuit level (i.e. Level Two pursuit, Level Two Control). It should be the *suspect's* actions in escalating the pursuit level that prompts the officer to escalate the control level utilized.
- ◆ Decisions regarding the use of particular pursuit control tactics should not be based solely on the likely liability exposure, but should give significant consideration to the degree of risk faced by the involved officers. Officers should only utilize tactics and techniques with which they have been trained.

PURSUIT AND CONTROL

The degree of public harm risk can be classified at three levels, as can the techniques and tactics utilized to control pursuits. Generally speaking, pursuits at a certain level reasonably justify use of control techniques from the corresponding control level (i.e. Level One Pursuit - Level One Control).

The various control techniques can be grouped as to their general traits and common elements.

Initial Interaction Techniques -- Largely because of body alarm response (sometimes referred to as "Fight or Flight Syndrome"), these techniques can be naturally occurring—that is, they may occur without the officer intending to use them. It is not uncommon for officers to use a reduced interval, or to swing out to one side or the other (Pursuit Position), in their desire to capture the fleeing suspect. While they may be natural in some cases, officers must guard against the tendency to allow these techniques to be applied to excess. Reduced interval trailing can easily become dangerous tail-gating, and the Pursuit Position can lead to pulling alongside, thereby exposing the officers to heightened hazards.

Active Intervention Techniques – These control techniques are not naturally occurring. Active Intervention Techniques require physical intervention by officers. They therefore typically require the presence of specialized equipment, more than one police vehicle, or advanced planning.

Critical Interdiction Techniques – These higher risk techniques constitute the use of potential or actual deadly force. They possess the same traits as Active Intervention Techniques, with the added caveat that they place the officers in significant physical peril.

Level One Pursuit/Level One Control

A Level One Pursuit is a pursuit initiated to apprehend an individual fleeing after committing a simple traffic offense or a less serious crime. Generally, such offenses as vandalism, minor theft, and disorderly conduct, while misdemeanors, are considered to present a low degree of risk to the public. Pursuit for these offenses can be justified, yet many of the more hazardous pursuit tactics should not be used, due to the minimal potential for public harm posed by the offense. Techniques and tactics that are generally acceptable in these instances are:

Trailing -- The simple act of following along behind the violator while giving both visual and audible indication that the violator should stop, and advising dispatch and other units of the violator's location and actions. Care should be taken to maintain a safe interval between the violator's vehicle and the police vehicle.

Pursuit Position (Offset) -- Moving the police vehicle approximately one half vehicle width to either side (similar to the position traditionally taken when parking during a traffic stop), while continuing to Trail. This offset position allows the officer to see oncoming traffic, and to expose emergency warning lights to the view of oncoming vehicles. It should also allow the officer to more readily anticipate the violator's actions, due to the enhanced visibility offered by the position. Lastly, when approaching an intersection, the offset position may allow the officer to encourage the violator to turn in the desired direction.

Reduced Interval -- More closely following the violator, either while trailing or while utilizing the pursuit position. While this technique can present greater risk of collision, it does facilitate greater visibility of the violator's vehicle and its occupants. It can also be utilized to apply psychological pressure.

Controlled Deflation Devices – When a department has equipped and trained officers in the use of these devices (sometimes called “spike strips”), such equipment can be deployed as a method for establishing a relatively low risk “roadblock”. Officers should take care to plan adequately when selecting a location for deployment, and should move a safe distance from the deployment zone.

Stationary Road Block -- The placement of one or more police vehicles in the traveled portion of the roadway, in order to partially block the road, and to indicate a denial of passage to the violator's vehicle. Although not absolutely necessary, officers frequently leave a restricted route through the roadblock. When the road is totally blocked, so that even a slow moving vehicle cannot go around—or through—safely, the degree of risk is heightened. When a complete blockage of the roadway is undertaken, officers should ensure that the oncoming

suspect has a clear view of the roadblock, and has ample time to stop safely, should he or she decide to do so. This complete blockage usually represents a higher level of control, and could be constitutionally unreasonable⁵ unless properly managed.

Level Two Pursuit/Level Two Control

Level two pursuits are those which are initiated for very hazardous traffic offenses, such as driving while intoxicated or reckless driving, or for more serious crimes, such as assault. Level two pursuits are initiated for offenses that present a high level of danger to the public, but not such a high level of danger that deadly force is routinely justified in the apprehension attempt. Techniques and tactics that are generally acceptable in these instances are:

Rolling Road Block -- The placement of one or more police vehicles in the path of the violator's vehicle, in order to cause it to slow and/or stop. This is sometimes done by one vehicle, swerving back and forth from lane to lane (difficult, as it requires anticipation of the violator's movements), and sometimes by two or three vehicles, moving along the highway in echelon or abreast.

Boxing In -- A technique whereby two or more police units move into positions around the fleeing vehicle, forming a "box". Once the box is formed, all police vehicles slow, causing the violator in the box to slow as well. Because Boxing In, or "channeling" as it is sometimes called, requires the placement of one or more police vehicles in the path of the violator's vehicle, it is considered a form of Rolling Road Block.

Controlled Contact -- Intentional contact between a police vehicle and the violator's vehicle. Generally, Controlled Contact is undertaken at lower speeds, and is frequently intended to cause the violator to spin out of control or to leave the roadway in a slow, but uncontrolled manner. While this is the intended result, Controlled Contact collisions are sometimes unpredictable, and may be viewed as a form of Ramming by the legal system. They therefore involve application of potentially deadly force. One technique that has been developed to attempt to allow for safer Controlled Contact collisions is the *Precision Immobilization Technique*, or PIT Maneuver. The use of such techniques calls for training, planning, opportunity, and careful timing.

Level two control techniques are more aggressive in nature, and call for police vehicles to move in front of a fleeing violator. For this reason, they are more hazardous to the officers, and require time to plan, develop and execute.

Level Three Pursuit/Level Three Control

Level three pursuits are those initiated following the commission of life threatening felonies that usually justify the use of deadly force in the apprehension of the fleeing violator. Examples include armed robbery, assault with a deadly weapon, and murder. Techniques and tactics that are generally acceptable in these instances are:

Uncontrolled Contact -- Sometimes referred to as "Ramming". This represents a higher level of intentional contact between a police vehicle and a violator's vehicle. Uncontrolled Contact is frequently attempted at higher speeds than intentional collisions. Because it is so unpredictable, Uncontrolled Contact

presents a high degree of risk to the officers involved, and may constitute deadly force, depending on the circumstances of the incident.

Use of Firearms – There are some situations where firing a weapon at a fleeing violator may be necessary in the immediate defense of the officer or another. In most cases, however, this is generally not good practice, due to the low likelihood of success, and the hazard posed to the public by missed shots. Additionally, if a bullet should strike the violator, his vehicle is now pilotless, and presents a significant hazard in and of itself. If the violator is not alone in the vehicle, then passengers against whom deadly force may be inappropriate are put at great risk. While some recent court decisions have indicated that police officers do not owe a duty to passengers in a fleeing vehicle, this is by no means clear in every jurisdiction.

Level three control techniques can be extremely hazardous to the officers that attempt them, and should only be utilized in emergency situations, where a human life is already at great risk. In essence, level three control techniques are almost indistinguishable from the use of deadly force, and therefore officers who are going to use them should ask themselves if the death of the violator is acceptable as an outcome to the event. If the answer is anything but an unqualified yes, then the control technique should not be used.

UTILIZATION OF THE CONTINUUM

There are three primary uses for the Pursuit Management Continuum; policy development, training, and supervision.

Policy Development and Support

The Pursuit Management Continuum contains a classification system for pursuit causation activities which, if incorporated into a department's policy, can be utilized as an aid to decision-making on the part of street officers and supervisors.

Additionally, key elements of policy can be linked to the classification system. For example, it is fairly common for a department to restrict by policy the number of police vehicles that may engage in a pursuit. The theory is that the fewer vehicles there are involved, the lower the risk and therefore the lower the liability exposure.

However, this does not take into account the nature of the pursuit causation or the number of suspects involved. Restricting a pursuit of three armed robbery suspects to two single officer patrol units may be safer for the motoring public, but it is not safer for the officers.

Departmental policy should indicate that the nature of the pursuit causation should be considered when controlling the number of units in a pursuit. By classifying the pursuit as a Level Three pursuit, with multiple suspects, a safe number of police units and officers can be assigned to the pursuit.

Training

Utilization of the Pursuit Management Continuum as a training aid can assist in linking the concept of escalation/de-escalation of control methods to the conduct of a police pursuit. Additionally, the relationship between the pursuit causation factors (the

previously mentioned *public harm risk*) and the techniques that are reasonable and proper should become more obvious to officers.

The Continuum can also be used to illustrate the increase in *Officer Injury Potential* that is inherent in escalation through pursuit control levels. As officers begin to take more aggressive actions to attempt the apprehension of a violator, they increase the degree of risk to themselves.

Lastly, the Continuum can be used to explain the potential civil rights ramifications of escalation through the various pursuit control levels. As each succeeding level is utilized, the degree of intrusion into the suspect's existence increases. While this increasing invasiveness may be reasonable and proper under the circumstances, it still may give rise to questions regarding potential civil rights violations.

Supervision

The vague descriptions of pursuit activity that are commonly used during radio transmissions could be replaced with the descriptive Pursuit Levels. Once this is done, then all parties involved would be aware of the acceptable techniques. The enhanced ability to communicate causation factors and approved techniques will eliminate some of the confusion that typically surrounds police pursuit radio communications.

An example of supervisory application of the Continuum might involve a Level Two Pursuit through heavy traffic or some other type of high risk environment. Supervisory personnel may choose to limit the officers to Control Level One, and so advise them. Use of the control levels makes direction clear and concise.

Utilization of the Continuum provides a series of benchmarks for the supervision and direction of pursuits by the first-line supervisor. By utilizing these benchmarks, the supervisor can more successfully manage the conduct of pursuits by officers, while at the same time, more accurately evaluate the performance of officers engaging in pursuit.

CONCLUSION

Police pursuit as it is currently practiced in the United States is a relatively dangerous, inexact undertaking. Officers, violators and the public are frequently at considerable risk even when management control measures are attempted. Current methods of managing pursuits are cumbersome and difficult to utilize. Communication during pursuits is hampered by the lack of a system for classification of pursuit causation factors, and the reasonable relationship of those factors to available control techniques.

Implementation of the Pursuit Management Continuum should allow many of these difficulties to be controlled. Reasonable application of pursuit control techniques, as described in the various control levels of the Continuum, should help to manage the potential for officer injury or litigation arising from police pursuit activity.

¹ *Graham v. Connor*, 109 S. Ct. 1865 (1989) -- In *Graham*, the Court set forth standards for evaluating the reasonableness of the use of force. There were three criteria stated: the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by fleeing.

² *Tennessee v. Garner*, 105 S.Ct. 1694 (1985) -- In *Garner*, the Court opined that deadly force could be used to protect officers or others from the immediate threat of serious physical harm, or to prevent the escape of

dangerous individuals, after other means have been exhausted, and a warning has been given, where feasible.

³ *Fiser v. City of Ann Arbor*, 417 Mich. 461 (1983) -- In *Fiser*, the Michigan Supreme Court provided guidelines for evaluating the reasonableness of a police pursuit.

⁴ *National Driver Training Reference Guide* -- International Association of Directors of Law Enforcement Standards and Training, in cooperation with the U.S. Department of Transportation, 1989.

⁵ *Brower v. County of Inyo*, 109 S.Ct. 1378 (1989) -- The *Brower* Court held that a seizure is a, "...governmental termination of freedom of movement through means *intentionally* applied..." (emphasis added), and further opined that a seizure has occurred when force is used. The Court defined force as an intentional act which leads to a stop or an arrest.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of an incident, it will not eliminate all possibility of an incident.

Further, as always, the reader is encouraged to consult with an attorney for specific legal advice.