

High-Speed Pursuits: Police Officer and Municipal Liability for Accidents Involving the Pursued and an Innocent Third Party

I. INTRODUCTION

An automobile is being chased by the police at high speeds. Suddenly, the driver of the pursued vehicle loses control and collides with another automobile, causing severe injury or death to an innocent third party. Although the preceding scenario seems to describe an event relatively rare in contemporary society, it occurs far more often than the average citizen might suspect.¹ Furthermore, in New Jersey, police officers have traditionally been immune from civil liability to third parties who were injured by the fleeing suspect.² The Appellate Division of the New Jersey Superior Court recently examined the foundations of this immunity in *Smith v. Nieves*.³

Despite contrary prior law, the *Smith* court held that law enforcement officials may be liable for injuries inflicted on innocent victims by the driver of a pursued vehicle.⁴ The court further held that a municipality may also be vicariously liable for a police officer's negligence, or directly liable for failing to train officers properly for participation in high-speed pursuits.⁵ The *Smith* rul-

¹ See generally Physicians for Automotive Safety, *Rapid Pursuit by the Police: Causes, Hazards, Consequences* 6, 14 (c. 1968) (unpublished study listing statistics that demonstrate large number of injuries and deaths caused by high-speed pursuits); Struck, *Police Taking the Heat for Hot-Pursuit Policies*, *The Sun* (Baltimore), Jan. 20, 1985, at 10A, col.3 (study by California Highway Patrol found that 29% of high-speed pursuits culminated in accidents, 11% resulted in injuries, and 1% ended in death); *Herald-News* (New Jersey), Dec. 30, 1984, at A8, col. 1 ("[m]ore than 500 Americans die and more than 1,000 sustain major injuries each year as a result of rapid police pursuit of law breakers"); *More Cops Die in Car Chases than by Guns*, *Bergen Record* (New Jersey), Aug. 12, 1979, at A18, col.1 (survey by New Jersey Police Traffic Officers Association revealed that motor vehicle accidents were the overwhelming cause of state police fatalities). But see Beckman, *High-Speed Chases: In Pursuit of a Balanced Policy*, *POLICE CHIEF*, Jan. 1983, at 34 (questioning validity of existing research on high-speed chases).

² See *Blanchard v. Town of Kearny*, 145 N.J. Super. 246, 248-49, 367 A.2d 464, 465 (Law Div. 1976), *aff'd*, 153 N.J. Super. 158, 379 A.2d 288 (App. Div. 1977) (interpreting *Roll v. Timberman*, 94 N.J. Super. 530, 229 A.2d 281 (App. Div. 1967)); see also *infra* notes 11-42 and accompanying text (discussion of the *Roll* and *Blanchard* cases).

³ 197 N.J. Super. 609, 485 A.2d 1066 (App. Div. 1984).

⁴ *Id.* at 612-13, 485 A.2d at 1067-68.

⁵ See *id.* at 613-14, 485 A.2d at 1068. High-speed pursuits are sometimes re-

ing is significant because it provides a remedy for innocent victims⁶ and draws attention to the necessity of preventing the needless tragedies that can result from high-speed pursuits.⁷

This comment, however, does not contend that high-speed pursuits are always unnecessary.⁸ Society has compelling interests in both the apprehension of lawbreakers and the protection of the innocent public. Because these interests often conflict with one another during a high-speed chase, police pursuit presents several difficult public policy questions.⁹ This comment will attempt to suggest answers to these questions by first reviewing New Jersey law in the area of high-speed pursuits.¹⁰ It will then examine the necessity of high-speed pursuits and the possible alternatives that exist. The comment will also discuss the various policies and guidelines that are currently used by police departments. Finally, it will analyze potential police and municipal liability for injuries that occur as a result of negligent high-speed pursuits.

ferred to as hot pursuits. See, e.g., *Hot Pursuit*, Transcript of 60 Minutes, Nov. 9, 1980 (available from CBS Television Network) [hereinafter cited as 60 Minutes].

⁶ See *Smith*, 197 N.J. at 612-14, 485 A.2d at 1067-68 (holding police officers and municipalities potentially liable for injuries sustained by innocent third parties during high-speed pursuits).

⁷ The *Smith* court dealt only with the legal issue of negligence and failed to examine any of the public policy aspects of high-speed chases—such as the benefits and shortcomings of pursuit and the possible alternatives to pursuit. See *infra* notes 71-81 and accompanying text (discussing the rationale of the *Smith* decision). By imposing potential liability upon municipalities and police officers, however, the opinion compels police departments to reexamine their current practices. See generally Goode, *The Imposition of Vicarious Liability to the Torts of Police Officers: Considerations of Policy*, 10 MELB. U.L. REV. 47 (1975) (discussing imposition of vicarious liability as a deterrent to the makers of police policy).

⁸ When a chase does become necessary, adequate training in high-speed pursuits and detailed pursuit policies are needed to ensure that the chance of injury to an innocent person is kept to a minimum. See generally *infra* notes 96-147 and accompanying text (discussing the need for guidelines and training programs).

⁹ See Craig, *The Innocent Victims of a Police Action*, 26 U. NEW BRUNSWICK L.J. 34 (1977). The author notes that police officers have a general duty to preserve the peace and, when necessary, to arrest offenders. *Id.* at 36. To be effective in the performance of these duties, the officer must sometimes act in a way that would normally qualify as a tort, such as driving over the speed limit to catch a fleeing criminal. *Id.* at 34. While this often involves risk to the general public, the officer's effectiveness would be undermined if he was not granted some protection from tort liability. *Id.* Thus, a police officer is "insulated from . . . civil liability . . . as long as he acts on reasonable . . . grounds." *Id.* The author states that a problem arises in determining whether the officer has overstepped his authority and is no longer acting reasonably. *Id.*

¹⁰ See *infra* notes 11-81 and accompanying text. Although this comment will focus on the law in New Jersey, the problems and possible remedies inherent in high-speed pursuits are applicable to every jurisdiction.

II. THE LAW IN NEW JERSEY

In 1967, the appellate division decided *Roll v. Timberman*,¹¹ the leading case in New Jersey concerning police liability for injuries caused by the pursued during a high-speed chase.¹² On March 14, 1964, Wesley Martin, a Harrison Township part-time police officer, approached an automobile parked with its lights off.¹³ As Martin drew nearer, the driver of the car, Bruce Timberman, turned on the car's lights and drove off at an excessive rate of speed.¹⁴ Timberman then drove through a stop sign, and Martin began his pursuit.¹⁵ Although Martin drove at speeds of ninety to one hundred miles per hour, he could not overtake Timberman.¹⁶ When Timberman attempted to elude Martin by passing a small truck, he collided head-on with a vehicle driven by Charles Roll.¹⁷ Roll suffered personal injuries, and his wife was killed.¹⁸

In a lawsuit against Martin and Harrison Township,¹⁹ a jury awarded Charles Roll damages against both defendants.²⁰ The

¹¹ 94 N.J. Super. 530, 229 A.2d 281 (App. Div. 1967).

¹² *Id.* at 536, 229 A.2d at 284. *Roll* was the first New Jersey case to deal with the issue of police liability for damage caused by the pursued. *See id.*

¹³ *Id.* at 533-34, 229 A.2d at 282. While Martin was on patrol duty, he used his own car, which Harrison Township had equipped with a siren, a police radio, and a flashing red light. *Id.*

¹⁴ *Id.* at 534, 229 A.2d at 282-83.

¹⁵ *Id.*, 229 A.2d at 283. Timberman testified that although he saw a car pursuing him, he did not know it was the police. *Id.*

¹⁶ *Id.*

¹⁷ *Id.* Timberman was driving in the southbound lane of a two-lane road in Mantua Township. *Id.* at 532, 229 A.2d at 282. When he attempted to pass the truck, Timberman cut into the northbound lane and smashed into Roll's oncoming vehicle. *Id.*

¹⁸ *Id.*

¹⁹ *See id.* at 532-33, 229 A.2d at 282. Roll also included Timberman in the action, but settled with Timberman's insurance company before trial. *Id.* at 532, 229 A.2d at 282. The complaint against the remaining defendants alleged negligence by Martin and active wrongdoing by Harrison Township. *Id.* It further alleged that the municipality was liable for Martin's negligence under a theory of respondeat superior. *Id.* Martin died prior to the suit, and Roll named the officer's estate as a defendant. *Id.* The municipality instituted a third party action for indemnification and contribution against Martin's estate, and the estate made a similar cross-claim against Timberman. *Id.*

²⁰ *Id.* at 533, 229 A.2d at 282. At the conclusion of the trial, the judge dismissed the active wrongdoing claim against the township. *Id.* Thus, the jury decided only the questions of Martin's negligence and the municipality's vicarious liability. *Id.* The jury awarded Roll \$12,500. *Id.* The trial court reduced the award to \$6250, however, because of the settlement with Timberman. *Id.* In the third party indemnification action against Martin's estate, the trial judge awarded Harrison Township \$6250. *Id.*

appellate court reversed, however, reasoning that Martin should escape tort liability because police officers have a duty to apprehend reckless drivers.²¹ Although the court recognized that Martin's pursuit instigated Timberman's flight, it found that "the legal or proximate cause of the accident" was Timberman's reckless driving.²² The *Roll* court concluded that Martin had not acted negligently in the high-speed pursuit.²³ In adopting the above reasoning, the court rejected the view that police liability is a question of fact for the jury.²⁴ Because it found Martin not liable, the court also reversed the judgment against Harrison Township,²⁵ which was based on the doctrine of respondeat superior.²⁶

The first published case to interpret the *Roll* decision was *Blanchard v. Town of Kearny*,²⁷ a case decided almost ten years after *Roll*.²⁸ On July 14, 1974, James Heslen of the Kearny Police De-

²¹ See *id.* at 536, 229 A.2d at 284. Police officers have a statutory duty to enforce the motor vehicle laws. See N.J. STAT. ANN. § 39:5-1 (West Cum. Supp. 1984-1985). When a violation of the motor vehicle laws takes place in the presence of a police officer, the officer may arrest the violator without a warrant. *Id.* § 39:5-25.

²² See *Roll*, 94 N.J. Super. at 537-38, 229 A.2d at 284-85.

²³ *Id.* at 538, 229 A.2d at 285. The *Roll* court noted that police officers are exempt from speed regulations in certain circumstances. *Id.* at 535-36, 229 A.2d at 283-84. A New Jersey statute specifically provides that "all police officers, while the officers are engaged in the apprehension of violators of the law, or of persons charged with, or suspected of, a violation, are exempt from the provisions of this chapter relating to speed." N.J. STAT. ANN. § 39:4-103 (West Cum. Supp. 1984-1985).

²⁴ See *Roll*, 94 N.J. Super. at 537, 229 A.2d at 284. The *Roll* court noted that the majority view "holds that the police officer is not liable" for injuries caused by the pursued. *Id.* at 536, 229 A.2d at 284. The court recognized two reasons behind the majority view:

(1) it is the duty of a police officer to apprehend those whose reckless driving makes use of the highway dangerous to others; (2) the proximate cause of the accident is the reckless driving of the pursued, notwithstanding recognition of the fact that the police pursuit contributed to the pursued's reckless driving.

Id. The court stated that it was "in accord with the majority view as above expressed." *Id.* at 537, 229 A.2d at 284.

²⁵ *Id.* at 538, 229 A.2d at 285.

²⁶ See *infra* note 42 (definition of respondeat superior in context of public entity liability).

²⁷ 145 N.J. Super. 246, 367 A.2d 464 (Law Div. 1976), *aff'd*, 153 N.J. Super. 158, 379 A.2d 288 (App. Div. 1977).

²⁸ See *id.* at 246, 367 A.2d at 464. *Blanchard* and *Roll* contained the identical issue of whether the police were liable for injuries caused by the pursued during a high-speed chase. See *id.* at 248-49, 367 A.2d at 465. The two cases differed only in that the plaintiff in *Blanchard* was a passenger in the vehicle being pursued. See *id.* at 247, 367 A.2d at 464. By contrast, the plaintiff in *Roll* was driving a third car. See *Roll*, 94 N.J. Super. at 532, 229 A.2d at 282.

partment was operating a marked patrol car.²⁹ Heslen observed an automobile driven by John Barnowski make a wide turn and almost hit another vehicle.³⁰ Heslen tried to stop Barnowski, and a high-speed chase ensued.³¹ Barnowski passed a red light and reached speeds of eighty to ninety miles per hour before colliding with several parked cars.³² Barnowski was killed and his passenger, Larry Blanchard, sustained injuries.³³

Blanchard initiated a personal injury suit against both the police officer and the Town of Kearny.³⁴ The trial court, however, granted the defendants' motion for summary judgment.³⁵ The court interpreted the *Roll* case as granting complete immunity to police officers for damages caused by a police-pursued vehicle.³⁶ Thus, the only issue before the court was whether the New Jersey Tort Claims Act³⁷ had disposed of that immunity.³⁸ Although the Act provides that public employees may be liable for their negligence,³⁹ the court found that the legislature had preserved existing immunities established by case law.⁴⁰ The

²⁹ *Blanchard*, 145 N.J. Super. at 247, 367 A.2d at 464.

³⁰ *Id.*, 367 A.2d at 464-65.

³¹ *Id.* at 247-48, 367 A.2d at 465. The court noted that even if Heslen had not observed a possible motor vehicle violation, he had a right to stop Barnowski. *Id.* at 248 n.1, 367 A.2d at 465 n.1. When *Blanchard* was decided, police officers were "authorized to stop motor vehicles at random and demand production of the operator's driver's license and motor vehicle registration." *State v. Gray*, 59 N.J. 563, 567, 285 A.2d 1, 3 (1971); *cf.* N.J. STAT. ANN. § 39:3-29 (West Cum. Supp. 1984-1985) (driver must exhibit license and registration when requested to do so by an officer in the performance of his duties). Police officers are no longer permitted to take such action, however. *See Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (police officer may not stop vehicle at random to check license and registration; he must have "articulable and reasonable suspicion" that driver has violated the law).

³² *Blanchard*, 145 N.J. Super. at 248, 367 A.2d at 465.

³³ *Id.*

³⁴ *Id.* at 247, 367 A.2d at 464.

³⁵ *Id.* at 249, 367 A.2d at 466.

³⁶ *Id.* at 248-49, 367 A.2d at 465.

³⁷ Ch. 45, 1972 N.J. Laws 140 (codified at N.J. STAT. ANN. §§ 59:1-1 to: 12-3 (West 1982)). The Legislature passed the Tort Claims Act approximately five years after the *Roll* decision. *See Roll*, 94 N.J. Super. at 530, 229 A.2d at 281.

³⁸ *Blanchard*, 145 N.J. Super. at 249, 367 A.2d at 465.

³⁹ N.J. STAT. ANN. § 59:3-1(a) (West 1982). This section states: "[e]xcept as otherwise provided by this act, a public employee is liable for injury caused by his act or omission to the same extent as a private person." *Id.*

⁴⁰ *Blanchard*, 145 N.J. Super. at 249, 367 A.2d at 465; *see also Steward v. Borough of Magnolia*, 134 N.J. Super. 312, 320, 340 A.2d 678, 683 (App. Div. 1975) (Tort Claims Act preserves immunities granted by case law). The Act specifically provides that "[t]he liability of a public employee established by this act is *subject to any immunity of a public employee provided by law* and is subject to any defenses that would be available to the public employee if he were a private person." N.J. STAT. ANN. § 59:3-1(b) (West 1982) (emphasis added).

court therefore held the police officer immune from liability.⁴¹ The court also dismissed the case against the municipality because the Act stipulated that a municipality could not be vicariously liable when its employee was not liable.⁴²

After the *Roll* and *Blanchard* decisions, police officers and municipalities were presumed to be immune from liability when third parties were injured by a fleeing driver.⁴³ A few months after the *Blanchard* decision, however, a superior court assignment judge recognized that a municipality could be held liable for its negligence in improperly training its employees to conduct high-speed pursuits.⁴⁴ In *Swellick v. Mottola*,⁴⁵ two North Arlington police officers observed a Buick driven by Anthony Mottola pass another vehicle on the right.⁴⁶ Mottola ignored the officers' request to pull over, and a chase began.⁴⁷ The patrol car traveled in excess of eighty miles per hour, yet the officers were unable to catch Mottola.⁴⁸ The chase ended with Mottola's car smashing head-on into a Chevrolet Vega driven by William Swellick.⁴⁹

Swellick commenced an action against the police officers for

⁴¹ *Blanchard*, 145 N.J. Super. at 249, 367 A.2d at 465.

⁴² *Id.* The Act provides that "[a] public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable." N.J. STAT. ANN. § 59:2-2(b) (West 1982). The doctrine of vicarious liability, or respondeat superior, was expressly incorporated in the Tort Claims Act: "A public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances." *Id.* § 59:2-2(a). See generally *McAndrew v. Mularchuk*, 33 N.J. 172, 190-96, 162 A.2d 820, 830-33 (1960) (discussion of principles of vicarious liability).

⁴³ See *Smith v. Nieves*, 197 N.J. Super. 609, 611-12, 485 A.2d 1066, 1067 (App. Div. 1984).

⁴⁴ *Swellick v. Mottola*, No. L-24285-75, slip op. at 2-3 (N.J. Super. Ct. Law Div. Apr. 19, 1977). The law division decided the *Blanchard* case on November 23, 1976. See *Blanchard*, 145 N.J. Super. at 246, 367 A.2d at 464. The case was affirmed by the appellate court, however, on October 19, 1977, approximately six months after the *Swellick* opinion was rendered. See *Blanchard v. Town of Kearny*, 153 N.J. Super. 158, 379 A.2d 288 (App. Div. 1977).

⁴⁵ No. L-24285-75 (N.J. Super. Ct. Law Div. Apr. 19, 1977).

⁴⁶ Plaintiff's Brief in Opposition to Defendants' Motion for Summary Judgment at 1, 2, *Swellick v. Mottola*, No. L-24285-75 (N.J. Super. Ct. Law Div. Apr. 19, 1977) [hereinafter cited as Plaintiff's Brief].

⁴⁷ *Id.* at 2. The officers in the pursuing patrol car activated the domelight and siren before commencing pursuit. *Id.* at 1, 2.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 7. A second North Arlington patrol car had joined the chase and also traveled at 80 miles per hour at a distance of 15 to 20 feet behind the first patrol car. *Id.* at 6. Mottola was traveling north when he crashed into Swellick's car in the southbound lane. See *id.* at 7.

negligence.⁵⁰ He also sued the Borough of North Arlington, pleading vicarious liability and negligence for failing to train its officers.⁵¹ During the discovery process, Swellick learned that the North Arlington Police Department did not have a policy regarding high-speed pursuits.⁵² Furthermore, the only instruction regarding high-speed pursuits received by the driver of the patrol car occurred on his first day of work, when he was told by a lieutenant to "use caution."⁵³ Notwithstanding these facts, both defendants moved for summary judgment.⁵⁴

Judge Trautwein, following *Roll* and *Blanchard*, held that the police officers were immune from liability.⁵⁵ He ruled, however, that *Roll* was not determinative of the direct claim of negligence against the municipality.⁵⁶ Judge Trautwein held that the municipality could be responsible for failing to train and supervise its officers.⁵⁷ He therefore denied summary judgment on that issue.⁵⁸ The issue never reached trial, however, because Swellick settled with the municipality.⁵⁹

Recently, in *Smith v. Nieves*,⁶⁰ the appellate division effected a dramatic change in New Jersey law without overruling *Roll*.⁶¹ The *Smith* case involved a high-speed pursuit on May 15, 1980 between police officers of Nutley and Belleville and a car driven by Rosendo Nieves.⁶² The Nutley officers claimed that Nieves was driving erratically and that they thought he was drunk.⁶³ The

⁵⁰ See Complaint at 3, *Swellick v. Mottola*, No. L-24285-75 (N.J. Super. Ct. Law Div. Apr. 19, 1977).

⁵¹ See *id.*

⁵² Plaintiff's Brief, *supra* note 46, at 7.

⁵³ *Id.* at 8.

⁵⁴ *Swellick*, slip op. at 1.

⁵⁵ See *id.* at 2 n.1, 3.

⁵⁶ See *id.* at 3. With respect to the vicarious liability claim, Judge Trautwein pointed out that under § 59:2-2(b) of the New Jersey Tort Claims Act, a public entity is not liable for an employee's acts if the employee is not liable. *Id.* at 2 n.1; see N.J. STAT. ANN. § 59:2-2(b) (West 1982). He further stated that the statute appears to give total immunity to a municipality because the police officer cannot be found liable. *Swellick*, slip op. at 2 n.1. The judge held, however, that § 59:2-2(b), in conjunction with *Roll*, only grants immunity to a municipality from vicarious liability and not from actual wrongdoing. *Id.* at 3.

⁵⁷ *Swellick*, slip op. at 2.

⁵⁸ See *id.* at 3.

⁵⁹ *Herald-News* (New Jersey), Oct. 19, 1978, at B12, col.6. Swellick instituted a one million dollar lawsuit against the Borough of North Arlington, but settled the case for \$65,000. *Id.*

⁶⁰ 197 N.J. Super. 609, 485 A.2d 1066 (App. Div. 1984).

⁶¹ See *id.* at 612-13, 485 A.2d at 1067-68.

⁶² *Id.* at 611, 485 A.2d at 1067.

⁶³ *Star-Ledger* (Newark), Dec. 25, 1984, at 18, col. 6.

chase between Nieves and the police reached speeds of sixty to ninety miles per hour⁶⁴ before Nieves crashed into an automobile driven by Sion Smith.⁶⁵ Smith was killed as a result of the accident.⁶⁶

Smith's family sued the police officers and their municipalities under several different negligence theories.⁶⁷ The trial court, however, granted the defendants' motion for summary judgment.⁶⁸ In reaching its decision, the court relied on *Roll* and used the same analysis employed by the *Blanchard* court.⁶⁹ On appeal, the summary judgment was reversed, and the case was remanded for trial.⁷⁰

The appellate division in *Smith* expressly disagreed with the *Blanchard* court's interpretation of *Roll*.⁷¹ The *Smith* court posited that *Roll* was decided on a negligence theory rather than an immunity theory.⁷² The court stated that *Roll* did not establish absolute nonliability for police officers in high-speed chases; it only determined that the officers under the particular circumstances of *Roll* had not been negligent.⁷³ Thus, the court held that an officer may be liable for acting negligently in the execution of a high-speed pursuit.⁷⁴

The *Smith* court also examined the issue of whether the New Jersey Tort Claims Act provided the municipality with immunity when the municipality was directly negligent.⁷⁵ The plaintiff's complaint charged the municipalities with failure to train their police officers to execute high-speed pursuits properly.⁷⁶ The

⁶⁴ *Smith*, 197 N.J. Super. at 611, 485 A.2d at 1067.

⁶⁵ *Star-Ledger* (Newark), Dec. 25, 1984, at 1, col. 4.

⁶⁶ *Smith*, 197 N.J. Super. at 611, 485 A.2d at 1067.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *See id.* at 611-12, 485 A.2d at 1067; *see also supra* note 36 and accompanying text (*Blanchard* court's interpretation of *Roll*).

⁷⁰ *Smith*, 197 N.J. Super. at 615, 485 A.2d at 1069. The appellate court's ruling was a unanimous decision written by Judge Antell and joined by Judges Coleman and Simpson. *Id.* at 611, 485 A.2d at 1067.

⁷¹ *Id.* at 612, 485 A.2d at 1067.

⁷² *Id.* at 612-13, 485 A.2d at 1067-68. The *Smith* court found support for its contention by examining the cases cited by *Roll*. *See id.* The court stated that all of these cases were resolved in terms "of negligence and proximate cause, not in terms of immunity." *Id.* at 613, 485 A.2d at 1067.

⁷³ *See id.* at 612, 485 A.2d at 1067. The court noted that the *Roll* opinion did not suggest that the police would have been immune if the record had shown some evidence of negligence. *Id.*

⁷⁴ *Id.*

⁷⁵ *See id.* at 613-14, 485 A.2d at 1068.

⁷⁶ *Id.* at 613, 485 A.2d at 1068.

municipalities countered that the Tort Claims Act barred direct claims against them for their discretionary acts,⁷⁷ such as the establishment of training programs.⁷⁸ The *Smith* court, however, held that public entities could be liable if the discretionary action was "palpably unreasonable."⁷⁹ The court stated that palpably unreasonable action could be established by determining how the municipality had utilized its resources when faced with competing priorities.⁸⁰ Because the record was barren of any relevant information from which such a determination could be made, this issue was remanded to the trial court.⁸¹

III. THE LAW IN OTHER JURISDICTIONS

The case law in other jurisdictions is split on the issue of police liability when an accident occurs between the pursued and an innocent third party.⁸² The cases ruling that there was no police liability can be interpreted in two ways. Either the court limited its holding to the particular facts of the case, or the court

⁷⁷ *Id.* at 614, 485 A.2d at 1068. The municipalities relied on the following provision of the Tort Claims Act:

A public entity is not liable for the exercise of discretion when, in the face of competing demands, it determines whether and how to utilize or apply existing resources, including those allocated for equipment, facilities and personnel unless a court concludes that the determination of the public entity was palpably unreasonable. Nothing in this section shall exonerate a public entity for negligence arising out of acts or omissions of its employees in carrying out their ministerial functions.

N.J. STAT. ANN. § 59:2-3(d) (West 1982).

⁷⁸ See *Smith*, 197 N.J. Super. at 614, 485 A.2d at 1068.

⁷⁹ See *id.* (citing *Brown v. Brown*, 86 N.J. 565, 578-79, 432 A.2d 493, 500 (1981); *Longo v. Santoro*, 195 N.J. Super. 507, 518, 480 A.2d 934, 940 (App. Div. 1984)); see also *infra* notes 177-179 (discussion of the term "palpably unreasonable").

⁸⁰ *Smith*, 197 N.J. Super. at 614, 485 A.2d at 1068.

⁸¹ See *id.* at 614, 615, 485 A.2d at 1068, 1069.

⁸² The following cases support liability of a police officer or municipality: *Myers v. Town of Harrison*, 438 F.2d 293 (2d Cir.) (applying New York law), *cert. denied*, 404 U.S. 828 (1971); *Schatz v. Cutler*, 395 F. Supp. 271 (D. Vt. 1975) (applying Vermont law); *City of Sacramento v. Superior Court*, 131 Cal. App. 3d 395, 182 Cal. Rptr. 443 (1982); *Gibson v. City of Pasadena*, 83 Cal. App. 3d 651, 148 Cal. Rptr. 68 (1978); *Sparks v. City of Compton*, 64 Cal. App. 3d 592, 134 Cal. Rptr. 684 (1976); *Tetro v. Town of Stratford*, 189 Conn. 601, 458 A.2d 5 (1983); *Reed v. City of Winter Park*, 253 So.2d 475 (Fla. Dist. Ct. App. 1971); *Town of Mount Dora v. Bryant*, 128 So.2d 4 (Fla. Dist. Ct. App. 1961); *Sundin v. Hughes*, 107 Ill. App. 2d 195, 246 N.E.2d 100 (1969); *Fiser v. City of Ann Arbor*, 417 Mich. 461, 339 N.W.2d 413 (1983); *Selkowitz v. County of Nassau*, 58 A.D.2d 888, 396 N.Y.S.2d 885 (1977), *aff'd on other grounds*, 45 N.Y.2d 97, 379 N.E.2d 1140, 408 N.Y.S.2d 10 (1978); *Alexander v. City of New York*, 53 A.D.2d 846, 385 N.Y.S.2d 788 (1976), *aff'd*, 43 N.Y.2d 659, 371 N.E.2d 534, 400 N.Y.S.2d 816 (1977); *Thain v. City of New York*, 35 A.D.2d 545, 313 N.Y.S.2d 484 (1970), *aff'd*, 30 N.Y.2d 524, 280 N.E.2d 892, 330 N.Y.S.2d 67 (1972); *Jansen v. State*, 60 Misc. 2d 36, 301

ruled that as a matter of law the police officers' actions could never be the proximate cause of the plaintiff's injuries. Although the decisions are unclear as to which interpretation is correct, the current trend is to view the facts on a case-by-case basis in order to determine whether the police officers were negligent.⁸³

Another factor that has had an effect on the question of police liability has been the enactment of tort claims acts and similar statutes in many states.⁸⁴ These statutes range from granting almost total immunity to municipalities and their employees⁸⁵ to abolishment of the doctrine of sovereign immunity in certain circumstances.⁸⁶ Some statutes provide that a police officer is immune unless his actions are grossly negligent.⁸⁷ Others stipulate

N.Y.S.2d 811 (Ct. Cl. 1968), *aff'd*, 32 A.D.2d 889, 302 N.Y.S.2d 1016 (1969); *Mason v. Bitton*, 85 Wash. 2d 321, 534 P.2d 1360 (1975).

The courts refused to impose liability on a police officer or municipality in the following cases: *United States v. Hutchins*, 268 F.2d 69 (6th Cir. 1959) (applying Tennessee law); *West Virginia v. Fidelity & Casualty Co.*, 263 F. Supp. 88 (S.D.W. Va. 1967) (applying West Virginia law); *Bratt v. City of San Francisco*, 50 Cal. App. 3d 550, 123 Cal. Rptr. 774 (1975); *Pagels v. City of San Francisco*, 135 Cal. App. 2d 152, 286 P.2d 877 (1955); *Draper v. City of Los Angeles*, 91 Cal. App. 2d 315, 205 P.2d 46 (1949); *Chambers v. Ideal Pure Milk Co.*, 245 S.W.2d 589 (Ky. 1952); *Morris v. Combs' Adm'r*, 304 Ky. 187, 200 S.W.2d 281 (1947); *Taylor v. City of Alexandria*, 261 So.2d 92 (La. Ct. App. 1972); *Dunn v. State*, 29 N.Y.2d 313, 277 N.E.2d 647, 327 N.Y.S.2d 622 (1971); *Wrubel v. State*, 11 Misc. 2d 878, 174 N.Y.S.2d 687 (Ct. Cl. 1958).

⁸³ Earlier cases granted summary judgment against a cause of action based on a police officer's negligence. *See, e.g.*, *Wrubel v. State*, 11 Misc. 2d 878, 174 N.Y.S. 2d 687 (Ct. Cl. 1958). Recent cases, however, tend to let the jury decide the issue of negligence. *See, e.g.*, *Selkowitz v. County of Nassau*, 58 A.D.2d 888, 396 N.Y.S.2d 885 (1977), *aff'd on other grounds*, 45 N.Y.2d 97, 379 N.E.2d 1140, 408 N.Y.S.2d 10 (1978).

⁸⁴ *See, e.g.*, *infra* notes 85-88. While many states have enacted some kind of tort claims act relating to sovereign immunity, there are still some states that rely solely on their common law. *See Gauvin v. City of New Haven*, 187 Conn. 180, 445 A.2d 1 (1982) (immunity from lawsuit depends on whether employee was performing a governmental or ministerial function).

⁸⁵ *E.g.*, ARK. STAT. ANN. § 12-2901 (1979); *see also Matthews v. Martin*, 280 Ark. 345, 658 S.W.2d 374 (1983) (immunity granted to municipalities by statute extends to city officials and employees acting in their official capacity). *See generally Harrington v. City of Greenbrier*, 262 Ark. 773, 561 S.W. 2d 302 (1978) (holding municipal corporation immune from tort action); *Chandler v. Pulaski County*, 247 Ark. 262, 445 S.W.2d 96 (1969) (holding county immune from tort action).

⁸⁶ *See, e.g.*, D.C. CODE ANN. § 1-1212 (1981) (abolishing the defense of sovereign immunity when the District is sued for negligent operation of a motor vehicle by an employee). The District of Columbia also provides, however, that actions against employees for negligent operation of a vehicle within the scope of their employment are generally barred. *Id.* § 1-1215.

⁸⁷ *E.g.*, VT. STAT. ANN. tit. 23, § 1015 (1978). This statute states that a police officer in pursuit of a suspect is not protected "from the consequences of his reckless disregard for the safety of others." *Id.* In Vermont, "[r]eckless disregard for the

that an officer can never be liable, even though the municipality can be accountable for the officer's negligence under the doctrine of respondeat superior.⁸⁸

The great disparity among the various jurisdictions on the issue of liability for high-speed chases can lead to anomalous results. For example, in *Biscoe v. Arlington County*,⁸⁹ a police officer from Arlington County, Virginia chased a bank robber across a bridge into a crowded District of Columbia street.⁹⁰ The fleeing vehicle collided with another car before pinning the plaintiff against a lamppost.⁹¹ The plaintiff, who lost both his legs,⁹² was able to win a judgment of \$4.35 million⁹³ because the District of Columbia does not recognize the doctrine of sovereign immunity in automobile cases.⁹⁴ If the accident had occurred on the other side of the bridge, however, recovery would have been prohibited because Virginia retains the principle of sovereign immunity.⁹⁵

IV. POLICY ISSUES

A. Criteria for High-Speed Pursuit Policies

Lawsuits against police officers, police departments, and municipalities have increased dramatically over the past few years.⁹⁶

safety of others is the equivalent of gross negligence." *Schatz v. Cutler*, 395 F. Supp. 271, 274 (D. Vt. 1975) (citing *Rivard v. Roy*, 124 Vt. 32, 35, 196 A.2d 497, 500 (1963)).

⁸⁸ E.g., CAL. VEH. CODE § 17004 (West 1971). This statute specifically grants immunity to a public employee "in the immediate pursuit of an actual or suspected violator of the law." *Id.* The Vehicle Code also provides that a public entity is liable for the negligent acts of an employee operating a vehicle within the scope of his employment. *Id.* § 17001; see also *Brummett v. County of Sacramento*, 21 Cal. 3d 880, 582 P.2d 952, 148 Cal. Rptr. 361 (1978) (examining the issue of police liability under California statutes).

⁸⁹ 738 F.2d 1352 (D.C. Cir. 1984), *cert. denied*, 105 S. Ct. 909 (1985).

⁹⁰ See *id.* at 1354-55; Wash. Post, Jan. 15, 1985, at B3, col. 5.

⁹¹ *Biscoe*, 738 F.2d at 1355. The plaintiff, Alvin Biscoe, was walking during his lunch hour at the time of the accident. Wash. Post, Jan. 15, 1985, at B3, col.5.

⁹² *Biscoe*, 738 F.2d at 1355.

⁹³ See *id.* at 1356. The jury awarded \$4 million to the plaintiff, Alvin Biscoe, and \$1 million to his wife, Eleanor. *Id.* The award to the wife was reduced to \$350,000 on remittitur. *Id.*

⁹⁴ See *supra* note 86. District of Columbia law was applied because application of Virginia law would have frustrated the District's policy against sovereign immunity in automobile cases. See *Biscoe*, 738 F.2d at 1357.

⁹⁵ Wash. Post, Jan. 15, 1985, at B3, col.6.

⁹⁶ See *Blodgett, People v. Police*, 71 A.B.A.J., Feb. 1985, at 36, 36; Territo, *Citizen Safety: Key Element in Police Pursuit Policy*, 18 TRIAL, Aug. 1982, at 30, 31; see also *Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978) (municipalities liable for violations of the Civil Rights Act of 1871). See generally Hagglund, *Liability of Police Officers*

According to Dr. George Kirkham, a criminal justice consultant,⁹⁷ one of the main categories of lawsuits against police "involves a high-speed police chase in which the pursued driver hits someone else."⁹⁸ In response to these actions, some police departments have developed policies and guidelines for engaging in high-speed pursuits.⁹⁹ Previously, written guidelines regarding high-speed chases were almost nonexistent.¹⁰⁰

In New Jersey, the question of whether a police officer should pursue a suspect has traditionally been left to the discretion of the officer.¹⁰¹ Without training or guidelines regarding

and Their Employers, 26 FED'N INS. COUNS. Q. 257 (1976) (police susceptible to civil actions based on common law intentional torts and deprivation of civil rights).

⁹⁷ Dr. Kirkham has experience in over 325 civil actions involving police officers. Blodgett, *supra* note 96, at 36.

⁹⁸ *Id.*

⁹⁹ See Territo, *supra* note 96, at 31. The Baltimore police department has instituted a strict policy providing that "[i]t is the policy of this department not to become involved in high-speed pursuit driving." Struck, *supra* note 1, at 10A, col.5. The department instead uses five helicopters, which the police say "can get over any part of the city within 90 seconds." *Id.* at col. 6; see also INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, THE PATROL OPERATION 42 (3d ed. 1977) (discussing the advantages of helicopters over police cars during a pursuit).

It has also been suggested that roadblocks could be used as an alternative to high-speed pursuits. See, e.g., McDermott, *Police in Pursuit*, Sunday Herald-News (New Jersey), Jan. 6, 1985, at B1, col.1. Using police cars as a roadblock, however, can be as dangerous as a high-speed pursuit and should only be used when absolutely necessary. See generally J. SCHWARZ, POLICE ROADBLOCK OPERATIONS (1962) (detailed discussion of when and how to use roadblocks).

¹⁰⁰ See Physicians for Automotive Safety, *supra* note 1, at 3. One of the few statements on high-speed pursuits appeared in 1966 by the International Association of Chiefs of Police (IACP). *Id.* The statement advocating the use of high-speed chases read as follows:

WHEREAS, Police agencies are established to preserve the peace and defend the public welfare against the lawless, and are legally committed to achieve these objectives; and

WHEREAS, The accomplishment of such missions often requires the immediate apprehension of the lawless by means of pursuit; and WHEREAS, Such activity must not be arbitrarily limited; now, therefore, be it.

RESOLVED, That the International Association of Chiefs of Police reaffirm its conviction that pursuit is justified if required to accomplish the legitimate objectives of law enforcement.

Id.

In 1973, the IACP modified its position, issued a comprehensive model pursuit policy, and urged local agencies to adopt written pursuit policies. Beckman, *supra* note 1, at 36.

¹⁰¹ See Marques, *Bergen Chiefs Debate Worth: Chases Cause Tragedy*, Herald-News (New Jersey), Oct. 23, 1975, at 17, col.3. Furthermore, Arthur J. Sills, a former New Jersey attorney general, noted that in certain circumstances it would be necessary for state troopers to exercise their judgment on whether to pursue a fleeing offender. Physicians for Automotive Safety, *supra* note 1, at 17.

pursuits,¹⁰² it is not surprising that police chases often culminated in accidents.¹⁰³ Nonetheless, many police departments have neglected to institute written policies.¹⁰⁴ Thus, accidents will continue to occur unless detailed policies are promulgated to cover adequately all aspects of a police pursuit.¹⁰⁵ Policies that give general statements discouraging high-speed pursuits, while laudable, fail to provide sufficient criteria to follow when a chase becomes necessary.

A good police pursuit policy should list the various factors that must be considered by an officer when making a pursuit decision.¹⁰⁶ These factors should include the following: the seri-

¹⁰² New Jersey police academies were not required to instruct officers on the dangers of high-speed pursuits until 1979. See N.J. STAT. ANN. § 52:17B-71(o) (West Cum. Supp. 1984-1985); see also *infra* notes 117-143 and accompanying text (discussion of police training in high-speed tactics).

¹⁰³ See *supra* note 1. An analysis of the cases reported to the Physicians for Automotive Safety revealed the following:

1. . . . One out of five pursuits ends in death
2. Five out of ten pursuits end in serious injuries
3. . . . Seven out of ten pursuits end in an accident
4. One out of 25 killed is a policeman
5. . . . Four out of five pursuits are for minor offenses
6. More than 500 Americans die each year as a result of rapid pursuit by police.

Physicians for Automotive Safety, *supra* note 1, at 14.

¹⁰⁴ Detective Thomas Brennan, an instructor at the Newark Police Academy on high-speed pursuits, estimates that many smaller police departments have no written pursuit policy. Interview with Thomas Brennan, Detective, Newark Police Department, in Newark, New Jersey (Apr. 9, 1985) [hereinafter cited as Interview with Detective Thomas Brennan].

¹⁰⁵ According to New Jersey's Police Training Commission, a police officer "[w]ithout a clearly defined agency policy . . . is more likely to . . . [o]ver-react and disregard proper caution or . . . [h]esitate and fail to respond to the situation." Police Training Commission, N.J. Div. of Criminal Justice, Basic Course, Instructional Unit 7.3, Pursuit and Emergency Driving 4 (undated) [hereinafter cited as Police Training Commission].

Criticism against establishing policies and guidelines focuses on the advantages to criminals inherent in a restrictive pursuit policy. See G. PAYTON, PATROL PROCEDURE AND ENFORCEMENT CONCEPTS 321 (6th ed. 1982). One author claims that a total prohibition of pursuits would "invite wholesale escape attempts." D. SCHULTZ, POLICE PURSUIT DRIVING HANDBOOK 1 (1979). Another notes that a restrictive policy would give notice "to every nut behind a steering wheel that all he has to do to evade apprehension is put his foot on the gas." Struck, *supra* note 1, at 10A, col.5 (quoting Robert Angrisani, an official of the International Association of Chiefs of Police). A good, detailed policy, however, does not have to restrict the officer when he feels he must pursue a suspect. The purpose of a policy is to improve the officer's awareness and handling of the various factors that must be considered throughout a high-speed pursuit. See generally Newark Police Department, General Order No. 76-4, Pursuit Driving (June 25, 1976) (example of a good high-speed pursuit policy).

¹⁰⁶ See Territo, *supra* note 96, at 32.

ousness of the offense; the road, traffic, and weather conditions; the condition and type of police vehicle involved; the number of pedestrians in the vicinity; the type of area—such as school, residential, or business district; the possibility of apprehension in the future; the officer's familiarity with the area; the officer's training and experience in high-speed driving; and the possibility of successfully apprehending the suspect.¹⁰⁷ The officer should constantly reevaluate these factors in order to decide how fast to pursue the fugitive and when to terminate the pursuit.¹⁰⁸ If the level of danger to innocent persons outweighs the importance of an immediate apprehension, then the pursuit should end.¹⁰⁹

The number of police vehicles to be used during a high-speed chase should also be addressed by a pursuit policy.¹¹⁰ As more police cars become involved, the chance of an accident involving innocent persons increases.¹¹¹ Generally, a pursuit should be limited to one or two police vehicles with additional units assisting by placing themselves in strategic locations.¹¹²

Additional guidelines must be formulated for chases involv-

¹⁰⁷ *Id.* These factors were compiled from the results of a national survey conducted by the Department of Criminal Justice of the University of South Florida in Tampa. *Id.* at 31. Forty-five police departments from 37 states submitted copies of their policies on emergency response and high-speed pursuit. *Id.* at 32. For a more extensive outline of these factors, see Police Training Commission, *supra* note 105, at 12-14. See also G. PAYTON, *supra* note 105, at 323-26 (listing additional factors to remember during a high-speed pursuit).

The same factors should also be considered at trial by the jury in order to determine whether a police officer was negligent or reasonable in his execution of a high-speed pursuit. See *infra* notes 162-164 and accompanying text. It should be noted that this list is not intended to be exhaustive.

¹⁰⁸ See T. ADAMS, *POLICE FIELD OPERATIONS* 65 (2d ed. 1985). In determining how fast to pursue a suspect, the Physicians for Automotive Safety recommend a maximum of 20 miles per hour over the speed limit. Physicians for Automotive Safety, *supra* note 1, at 13. Establishing a maximum speed, however, may be too arbitrary because of the different circumstances that may arise during a police pursuit. See Territo, *supra* note 96, at 32. Of the 45 police departments that responded to the University of South Florida survey, only one provided "a cap on the maximum speed for high speed pursuit." *Id.*; see also *supra* note 107 (explaining the circumstances of the University's survey).

¹⁰⁹ See Territo, *supra* note 96, at 34.

¹¹⁰ See *id.*

¹¹¹ *Id.* at 32-33. An inadvertent collision is easy to visualize when many police cars are approaching the same area at high speeds. See *id.* An example of such a collision occurred in New Jersey in 1979, when police cars from Paramus and Fort Lee, together with two Bergen County patrol cars, chased a suspect in a stolen car. Bergen Record (New Jersey), Aug. 14, 1979, at A6, col.1. Although the suspect was caught, the chase ended in a collision between three of the police cars. *Id.*

¹¹² The policies studied in the University of South Florida survey consistently stated that no more than two police vehicles were to be directly involved in the high-speed pursuit. See Territo, *supra* note 96, at 32; see also T. ADAMS, *supra* note

ing unmarked police cars.¹¹³ The lack of distinctive police markings increases the risk of an accident; thus, stricter standards for conducting a pursuit are needed.¹¹⁴ Both unmarked and marked police cars should be required to use emergency lights and sirens throughout the pursuit as a warning to other vehicles.¹¹⁵ Activating these devices should be a police officer's first reaction when beginning a high-speed pursuit.¹¹⁶

B. Police Training in High-Speed Pursuit Tactics

When a high-speed pursuit situation arises, a police officer must make split-second judgments.¹¹⁷ Relevant factors must be examined instantaneously in order to determine whether the danger to innocent persons outweighs the need for immediate arrest of the suspect.¹¹⁸ The dilemma in finding the proper balance between letting violators of the law escape and insuring the safety of innocent persons is difficult to resolve.¹¹⁹ If a high-speed pursuit does ensue, the officer must be extremely alert and at peak efficiency throughout the chase.¹²⁰ He must remain aware of the necessity of objectively evaluating his pursuit of a sus-

108, at 66 (no more than two or three police cars need be directly involved in a pursuit).

¹¹³ See Territo, *supra* note 96, at 33. Most of the policies submitted to the University of South Florida survey did not discuss the question of unmarked cars. *Id.*

¹¹⁴ See *id.* One police department's policy states: "If the pursuit is initially created by an unmarked unit, the unit shall abandon the pursuit when a marked unit is in a position to assume the pursuit." *Id.*

¹¹⁵ *Id.* at 32. Unmarked police cars are frequently equipped with portable lights and sirens attached to a magnet for deployment on the roof. *Id.* at 33. When using a siren, a police officer must remember that not all individuals will be able to hear it because of hearing loss or loud radio playing. Police Training Commission, *supra* note 105, at 20. In addition, the faster the police officer travels, the less effective the warning becomes. *Id.*

¹¹⁶ Police Training Commission, *supra* note 105, at 7; cf. G. PAYTON, *supra* note 105, at 324 (only the police cars in direct pursuit should use sirens). A number of lawsuits have arisen because the officer failed to use either the lights or the siren. See, e.g., Pagels v. City of San Francisco, 135 Cal. App. 2d 152, 286 P.2d 877 (1955) (officer failed to use red lights or sirens); Butler v. Russell, 101 Ga. App. 826, 115 S.E.2d 194 (1960) (vehicle not equipped with siren and officer failed to use emergency lights); Moore v. Travelers Indem. Co., 352 So.2d 270 (La. Ct. App. 1978) (officer failed to use siren and emergency lights); Herron v. Silbaugh, 436 Pa. 339, 260 A.2d 755 (1970) (officer failed to use siren).

¹¹⁷ Struck, *supra* note 1, at 10A, col.6 (quoting Calvin A. Beacock, a veteran police officer who compiled a survey on high-speed pursuits for the Ontario Police Commission).

¹¹⁸ See T. ADAMS, *supra* note 108, at 64-65; see also *supra* note 107 and accompanying text (listing the factors to be examined).

¹¹⁹ See 60 Minutes, *supra* note 5, at 5; D. SCHULTZ, *supra* note 105, at 1.

¹²⁰ T. ADAMS, *supra* note 108, at 64.

pect.¹²¹ All too often, an officer becomes so personally involved in the capture of a suspect that the safety of others is forgotten.¹²² The chase then becomes a matter of professional pride in driving skill; the officer concentrates only on winning.¹²³ Therefore, police officers must have training in high-speed driving in order to make the sudden decisions that are necessary.¹²⁴

A driver in a high-speed pursuit will also undergo physiological changes as a result of the danger and excitement of a chase.¹²⁵ His heartbeat and blood pressure will rise, and large amounts of adrenalin will flow into his bloodstream.¹²⁶ This will create an illusion of slow motion, producing an erroneous perception of the speeds of the vehicles and a tendency to be overconfident in executing the chase.¹²⁷ Unless an officer receives training, he may be unaware of the potential psychological and physiological changes within him, and he may take reckless chances that could otherwise be avoided.¹²⁸

¹²¹ See *id.* at 67. An officer must avoid the "macho" element in a pursuit. See Struck, *supra* note 1, at 10A, col.6. When a patrolman's peers hear what is happening over the radio, it is not easy for the officer to abandon the pursuit and let the suspect escape. *Id.* New Jersey's Police Training Commission instructional manual on pursuit driving states that there should not "be any suggestions or implication that by dropping the pursuit the officer is lacking in courage or determination." Police Training Commission, *supra* note 105, at 11.

¹²² D. SCHULTZ, *supra* note 105, at 41.

¹²³ T. ADAMS, *supra* note 108, at 67. Detective Thomas Brennan, the high-speed pursuit instructor at the Newark Police Academy, believes that the police officer's need to catch the suspect at all costs is derived from a "T.V. chase mentality." Interview with Detective Thomas Brennan, *supra* note 104. Television shows often portray the hero as engaging in dangerous chases with little regard for innocent persons. Detective Brennan feels that written policies and training are needed to "eliminate the unnecessary chases—the T.V. chases." *Id.*

¹²⁴ In a survey of Tennessee law enforcement officers, it was "found that officers who received emergency/pursuit driver's training were significantly less frequently involved in on-duty police motor vehicle accidents than officers who had not received this training." Miller, *Police Motor Vehicle Accidents: An Administrative Concern*, POLICE CHIEF, Jan. 1983, at 25, 26.

¹²⁵ See D. SCHULTZ, *supra* note 105, at 41.

¹²⁶ *Id.*; see 60 Minutes, *supra* note 5, at 5.

¹²⁷ D. SCHULTZ, *supra* note 105, at 42; see also Struck, *supra* note 1, at 10A, col.5 ("[y]our brain is moving so fast that things seem to go into slow motion") (quoting Brian Traynor, veteran police officer and now an official of the National Highway Traffic Safety Administration).

¹²⁸ See D. SCHULTZ, *supra* note 105, at 42. Because a police officer may become personally involved in a high-speed pursuit, some police departments have placed responsibility for pursuit on supervisory personnel. Territo, *supra* note 96, at 34; see, e.g., Newark Police Department, *supra* note 105, at 5, 7. Supervisors are removed from the excitement of the pursuit and should be able to decide objectively whether a pursuit should be terminated. Interview with Detective Thomas Brennan, *supra* note 104. One commentator states, however, that "[t]here is little evi-

High-speed pursuit training should consist of lectures, movies, and behind-the-wheel training.¹²⁹ In New Jersey, the law requires that courses on high-speed chases be included in the regular training curriculum.¹³⁰ Although no behind-the-wheel training for high-speed pursuits is mandated,¹³¹ some police academies offer courses in defensive driving, which can be applied to high-speed situations.¹³² Most officers, however, will not receive behind-the-wheel training because of the high cost of establishing training areas.¹³³ Individual municipalities lack the funds necessary to set up extensive training courses.¹³⁴ Paradoxically, large sums of money may be expended as a result of civil litigation arising from high-speed pursuits.¹³⁵

dence to support the notion that police supervisors regularly intercede and order officers to terminate a high speed pursuit." Territo, *supra* note 96, at 34.

¹²⁹ See Miller, *supra* note 124, at 27.

¹³⁰ See N.J. STAT. ANN. § 52:17B-71(o) (West Cum. Supp. 1984-1985). This section provides as follows: "The commission is vested with the power, responsibility and duty . . . [t]o furnish approved schools, for inclusion in their regular police training courses and curriculum with information concerning the advisability of high speed chases, the risk caused thereby, and the benefits resulting therefrom." *Id.* Pursuant to this statute, the Police Training Commission has established guidelines for a course on pursuit driving. See generally Police Training Commission, *supra* note 105. Each police academy is required to provide at least two hours of classroom instruction on high-speed pursuit. Interview with Detective Thomas Brennan, *supra* note 104.

¹³¹ Telephone interview with Captain Robert Herb, Traffic Safety Supervisor and DWI Strike Force Coordinator for New Jersey's Bergen County Police Department (Apr. 8, 1985) [hereinafter cited as Telephone interview with Captain Robert Herb].

¹³² The New Jersey State Police Academy in Sea Girt provides a rigorous defensive driving course for state police cadets. See McDermott, *supra* note 99, at B2, col.2-3. It includes "22 hours in behind-the-wheel training and a National Safety Council course on evasive driving." *Id.* at col.3. Cadets from municipal police departments who train at Sea Girt, however, do not receive this training. *Id.* The Bergen County Police and Fire Academy in Mahwah, New Jersey provides behind-the-wheel training in defensive driving on a specially designed course. *Id.* at col.4. The course instructors receive their training at the National Academy for Professional Driving in Dallas, Texas. *Id.*

¹³³ For example, the Passaic County Police Academy in Pompton Lakes, New Jersey has no behind-the-wheel training and does not plan to institute such training because of the lack of both facilities and funds. *Id.* at col.3-4. Leo A. Culloo, the executive director of the Police Training Commission, states that providing behind-the-wheel training can be a "very expensive proposition." *Id.* at col.1. Factors such as the need for a large area equipped with skid pans, instructors for each vehicle, and the wear and tear on the vehicles add to the cost of the program. *Id.*

¹³⁴ See, e.g., 60 Minutes, *supra* note 5, at 7 (a Detroit police officer gets very little training in pursuit driving because of costs involved).

¹³⁵ E.g., *Biscoe v. Arlington County*, 738 F.2d 1352 (D.C. Cir. 1984) (\$4.35 million awarded to plaintiffs), *cert. denied*, 105 S. Ct. 909 (1985); see also 60 Minutes, *supra* note 5, at 7 (verdicts from high-speed pursuit accidents in Detroit far exceed cost of training all police officers).

A possible remedy for alleviating the costs of training in New Jersey can be borrowed from California's Commission on Peace Officer Standards and Training (POST).¹³⁶ Under the POST programs, a five dollar fee is charged for every ten dollars assessed in fines, penalties, or forfeitures for criminal offenses.¹³⁷ These charges are deposited in a Penalty Assessment Fund.¹³⁸ POST receives 27.75% of the money in the fund and uses it for law enforcement training purposes.¹³⁹ So long as POST's training standards are met, local governments are reimbursed for their officers' training.¹⁴⁰ Thus, police training programs are funded by violators of the law rather than by law-abiding citizens.¹⁴¹ A program similar to POST could be implemented in New Jersey to finance training areas for behind-the-wheel training.¹⁴² If the program is organized by a state agency, such as the Police Training Commission, only a few training locations would be needed throughout the state.¹⁴³

C. Conclusion

Regardless of the cost, the establishment of a comprehensive high-speed pursuit training program would benefit municipalities and police departments. Civil litigation against municipalities for

¹³⁶ For a detailed summary of the POST program, see COMMISSION ON PEACE OFFICER STANDARDS & TRAINING, 1983-84 ANNUAL REPORT "SERVICE AND PROGRESS" 1-3.

¹³⁷ *Id.* at 4.

¹³⁸ *Id.* The five-dollar fee includes fines for moving violations of California's Vehicle Code. *Id.*

¹³⁹ *Id.* POST provides training that is applicable to various stages of a police officer's career. *Id.* at 3. Training is required for all new officers, supervisors, and managers. *Id.* Periodic training in advanced officer courses is also required. *Id.*

¹⁴⁰ *Id.* at 3. POST is a voluntary program that not only establishes training opportunities, but reimburses municipalities for training costs, including salary, tuition, travel, and subsistence. *Id.* at 3, 5.

¹⁴¹ *Id.* at 4. Under the POST reimbursement program, more than \$22.2 million was allocated in the 1983-1984 fiscal year. *Id.* at 5. In 1983, the training costs for 30,258 officers were reimbursed. *Id.*

¹⁴² A POST-type program should be established by the Legislature. A statewide program not only provides resources for training, but encourages uniform standards throughout a state. *See id.* at 3.

¹⁴³ Telephone interview with Captain Robert Herb, *supra* note 131. Captain Herb proposes the establishment of a state program run by the Police Training Commission. *Id.* According to Captain Herb, the program would consist of a one-day course. *Id.* Locations would be established at three sites on appropriate state property, such as airports or National Guard runways. *Id.* A date would be selected and a police academy would bring its trainees to the location. *Id.* Foam would be used to simulate hydroplaning, and vehicles would be provided with roll bars. *Id.* This training would coincide with classroom indoctrination on high-speed pursuits. *Id.*

injuries caused in a high-speed pursuit is usually based on negligence in training the police officers involved.¹⁴⁴ The establishment of a good training program would greatly reduce such causes of action. A detailed pursuit policy is similarly beneficial in litigation. If an officer understands the factors behind his decisions during the pursuit, he will be able to demonstrate why he was correct in the execution of the pursuit.¹⁴⁵

Well-formulated policies and training programs will reduce the number of accidents caused by high-speed pursuits. Injuries will be further curtailed if communication between police departments is coordinated.¹⁴⁶ Pursuits often begin in one township and end in another, causing police officers from different municipalities to become directly involved in the chase. If these police officers cannot communicate with each other, the possibility of an accident increases. The organization of a coordinated communication system between hundreds of independent municipal police departments is a formidable task, however. Consequently, in order to create a proficient communication network, it might be beneficial to centralize New Jersey's police structure into regional police departments.¹⁴⁷

¹⁴⁴ *E.g.*, *Smith v. Nieves*, 197 N.J. Super. 609, 485 A.2d 1066 (App. Div. 1984); *Swellick v. Mottola*, No. L-24285-75 (N.J. Super. Ct. Law Div. Apr. 19, 1977).

¹⁴⁵ *Schultz, High Speed Chases: Vehicle Pursuit vs. the Lawsuit*, POLICE CHIEF, Jan. 1983, at 32, 33.

¹⁴⁶ Radio communication can be used effectively to pursue a suspect in coordination with other police cars within the same police department. T. ADAMS, *supra* note 108, at 65. Communication between police cars from different municipalities, however, can often be convoluted. For example, if a Bloomfield police officer pursues a suspect into the neighboring city of Newark, he must notify the Bloomfield dispatcher, who then places a phone call to the Newark dispatcher, who in turn notifies the appropriate Newark police car of the chase. Interview with Detective Thomas Brennan, *supra* note 104. Joseph Delaney, Chief of Police in Paramus, New Jersey believes that the State Police Emergency Network (SPEN) radio can be used effectively to capture fleeing suspects. McDermott, *supra* note 99, at B2, col.5. A single SPEN broadcast can notify all surrounding communities of a pursuit in progress. *Id.* While the use of the SPEN radio can cut down on communication time, it still requires the coordination of officers from different municipalities by separate dispatchers.

¹⁴⁷ New York's Nassau County is an example of a centralized police department. In Nassau County, most of the county is divided into police districts patrolled by the county police department. Telephone interview with Sergeant Pete Matuza, Public Information Officer of the Nassau County Police Department (Apr. 26, 1985).

V. LEGAL ANALYSIS

A. Negligence

Smith v. Nieves held that a police officer could be liable for his negligence during a pursuit when the pursued vehicle was involved in an accident.¹⁴⁸ This decision was based on the court's interpretation of *Roll v. Timberman*.¹⁴⁹ The *Smith* court focused on the *Roll* court's statement that there was "no evidence of actionable negligence" by the defendant police officer.¹⁵⁰ Based on this language, and on the fact that the *Roll* court did not hold that the officer could not be liable if he had been negligent, the *Smith* court determined that police officers were subject to civil liability for a negligent pursuit.¹⁵¹ This interpretation of *Roll* is supported by the *Roll* court's statement that the defendant's motion for "involuntary dismissal made at the close of the case should have been granted."¹⁵² The phrase "at the close of the case" implied that the case correctly went to trial, but then should have been dismissed because of its particular facts.¹⁵³

A large part of the *Roll* dictum, however, appeared to adopt the view that police officers were immune from liability because they could not be the proximate cause of injuries caused by the pursued vehicle.¹⁵⁴ For example, the *Roll* court noted that there are two different theories on the proximate cause issue.¹⁵⁵ The minority view holds that a pursuing officer's liability is a question for the jury.¹⁵⁶ The majority view "holds that the police officer is not liable."¹⁵⁷ Because the *Roll* court expressly rejected the minority view,¹⁵⁸ it seems clear that the *Roll* court believed the issue should never go to trial. Despite these implications, the *Smith* court chose not to overrule *Roll*; instead, it limited the *Roll* hold-

¹⁴⁸ *Smith*, 197 N.J. Super. at 612-13, 485 A.2d at 1067-68.

¹⁴⁹ See *id.*; see also *supra* notes 71-74 and accompanying text (explaining the *Smith* court's interpretation of *Roll*).

¹⁵⁰ *Smith*, 197 N.J. Super. at 612, 485 A.2d at 1067 (quoting *Roll*, 94 N.J. Super. at 538, 229 A.2d at 285).

¹⁵¹ See *Smith*, 197 N.J. Super. at 612, 485 A.2d at 1067.

¹⁵² *Roll*, 94 N.J. Super. at 538, 229 A.2d at 285.

¹⁵³ It is unknown whether the defendant in *Roll* made a motion for summary judgment before the trial. If this motion was made in addition to the involuntary dismissal motion at the end of the trial, the *Roll* appellate court would have had a choice as to which motion should have been granted.

¹⁵⁴ See *Roll*, 94 N.J. Super. at 536-37, 229 A.2d at 284.

¹⁵⁵ See *id.*

¹⁵⁶ *Id.* at 537, 229 A.2d at 284.

¹⁵⁷ *Id.*

¹⁵⁸ See *id.*

ing to the facts of that case.¹⁵⁹

The *Smith* court's ruling that an officer could be liable for injuries caused by a fleeing suspect was ultimately correct. Even if the officer is not involved in the actual collision, it is possible that his conduct can satisfy the traditional elements of a negligence claim.¹⁶⁰ The first step in establishing negligence is to determine whether a reasonable person under the circumstances would have acted in the same manner as the defendant.¹⁶¹ In a negligence suit arising from a high-speed chase, the totality of the surrounding circumstances should be examined.¹⁶² The factors considered should not be limited to whether an officer used his emergency lights and siren or acted pursuant to statutory law.¹⁶³ An officer can act within the law and still behave unreasonably and negligently.¹⁶⁴

Once an officer's conduct is found to be unreasonable, he

¹⁵⁹ See *Smith*, 197 N.J. Super. at 612-13, 485 A.2d at 1067-68. An examination of the majority cases cited in *Roll* reveals at least one case that supports the *Smith* court's interpretation of *Roll*. See *Wrubel v. State*, 11 Misc.2d 878, 174 N.Y.S.2d 687 (Ct. Cl. 1958). In *Wrubel*, the court specifically stated that an officer is not liable for using "whatever means necessary to make an arrest . . . unless he exceeds proper and rational bounds or acts in a negligent, careless or wanton manner." *Id.* at 880, 174 N.Y.S.2d at 689 (emphasis added).

¹⁶⁰ The traditional formula for establishing negligence includes the following elements:

1. A duty, or obligation, recognized by the law, requiring the person to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
2. A failure on the person's part to conform to the standard required: a breach of the duty. . . .
3. A reasonably close causal connection between the conduct and the resulting injury. This is what is commonly known as "legal cause," or "proximate cause," and which includes the notion of cause in fact.
4. Actual loss or damage resulting to the interests of another.

W. KEETON, D. DOBBS, R. KEETON & D. OWEN, *PROSSER AND KEETON ON THE LAW OF TORTS* 164-65 (5th ed. 1984) [hereinafter cited as *PROSSER & KEETON*].

¹⁶¹ See *id.* at 175.

¹⁶² See *supra* note 107 and accompanying text (list of criteria that should be used to determine if officer's actions were reasonable).

¹⁶³ See generally *id.* Courts may be tempted to allow liability against the police officer only if he disregards the basic duties required in high-speed pursuits, such as failure to use emergency devices when engaging in a pursuit. See, e.g., *Moore v. Travelers Indem. Co.*, 352 So.2d 270 (La. Ct. App. 1978) (police officer liable for failure to use siren and emergency lights); *Herron v. Silbaugh*, 436 Pa. 339, 260 A.2d 755 (1970) (police officer liable for failure to use siren). Under a negligence cause of action, however, the test is one of reasonableness, not job performance. See *PROSSER & KEETON*, *supra* note 160, at 175.

¹⁶⁴ See, e.g., *Wrubel v. State*, 11 Misc. 2d 878, 880, 174 N.Y.S.2d 687, 689 (Ct. Cl. 1958) (possible for police "officer to be negligent or reckless in the performance of his duties").

will not be liable unless his conduct is the "proximate cause" of the injury.¹⁶⁵ To prove proximate cause, it must first be shown that the injuries probably would not have occurred without the defendant's actions—a concept known as "causation in fact."¹⁶⁶ This burden of proof can easily be met in many high-speed pursuit accidents. Ordinarily, the pursued driver's reckless behavior is a direct result of being chased by a police officer; if there were no chase, there would be no accident.¹⁶⁷

If causation in fact is established, the plaintiff must still demonstrate the defendant's legal liability in order to satisfy the issue of proximate cause.¹⁶⁸ This determination of proximate cause has been based on various theories.¹⁶⁹ The most widely used test is that of foreseeability—the defendant is liable if a reasonable person could have foreseen the consequences of the conduct in question.¹⁷⁰ The same factors used to determine the reasonableness of the defendant's conduct should be used to de-

¹⁶⁵ See PROSSER & KEETON, *supra* note 160, at 263.

¹⁶⁶ See *id.* at 264-66. The concept of causation in fact has evolved into a rule, commonly designated as the "but for" or "sine qua non" rule. *Id.* at 266. This rule states that "[t]he defendant's conduct is a cause of the event if the event would not have occurred but for that conduct; conversely, the defendant's conduct is not a cause of the event, if the event would have occurred without it." *Id.* In applying the above rule, care must be taken that the rule, by itself, is not used to decide the question of liability. See *id.* Other considerations may prevent liability because one act may set an infinite number of events in motion. See *id.*

¹⁶⁷ Even when the defendant police officers were found not to be the proximate cause of the accident, some courts have acknowledged that the officers were the "cause in fact" of the pursued's reckless driving. See, e.g., *Chambers v. Ideal Pure Milk Co.*, 245 S.W.2d 589, 591 (Ky. 1952). In situations where the pursued had been driving recklessly before the chase began, however, the police officer should rarely be the "cause in fact" of the pursued's reckless driving.

¹⁶⁸ See PROSSER & KEETON, *supra* note 160, at 272-73.

¹⁶⁹ *Id.* at 273. Among the various theories of proximate cause, there are two theories that occur most often. *Id.* One theory states "that the scope of liability should ordinarily extend to but not beyond the scope of the 'foreseeable risks.'" *Id.* A contrasting theory states "that the scope of liability should ordinarily extend to but not beyond all 'direct' (or 'directly traceable') consequences and those indirect consequences that are foreseeable." *Id.* Under the latter approach, a defendant is liable for all consequences that follow in direct sequence from his act, even if those consequences were unforeseeable. *Id.* at 294; e.g., *In re Polemis*, [1921] 3 K.B. 560 (defendant employer liable when its workman dropped plank into ship's hold, causing spark, which ignited petrol vapor and destroyed ship and cargo). This "direct consequences" theory appears to be losing ground to the "foreseeable risks" approach, especially since foreseeability is often used as a factor in considering whether consequences were direct. See PROSSER & KEETON, *supra* note 160, at 295.

¹⁷⁰ See PROSSER & KEETON, *supra* note 160, at 297. Some cases have held that the defendant is liable if any risk of harm to the plaintiff was reasonably foreseeable, even if the specific harm was unforeseeable. E.g., *In re Kinsman Transit Co.*, 338 F.2d 708, 726 (2d Cir. 1964), *cert. denied*, 380 U.S. 944 (1965).

cide whether the consequences of his conduct were foreseeable.¹⁷¹ At least in some instances, it is clear that a police officer should foresee that a high-speed chase will more likely than not result in an injury to an innocent person.

In accidents between the pursued and an innocent third party, it may also be argued that the pursued is an intervening cause that precludes the police officer's liability.¹⁷² This argument is weak, however, because the term "intervening" refers to events that occur *after* a defendant has acted negligently.¹⁷³ In a high-speed pursuit, the fleeing suspect is part of the chase from the outset. The pursued's intervention, therefore, does not occur after the officer's negligent act. The pursued is a part of the event and cannot be considered an intervening cause. In any event, courts have generally extended a defendant's liability to those intervening events that were foreseeable.¹⁷⁴ As stated previously, in some circumstances, it will be foreseeable that a pursued automobile is likely to be involved in an accident.

B. New Jersey Tort Claims Act

In New Jersey, the state's Tort Claims Act must be considered when examining the potential civil liability of a municipality. The defendant municipalities in *Smith v. Nieves* argued that sec-

¹⁷¹ See *supra* note 107 and accompanying text (list of factors that may be used to determine if the consequences of a police officer's action were foreseeable).

¹⁷² An intervening cause that precludes liability for a defendant's negligent act is sometimes termed a "superseding cause." See PROSSER & KEETON, *supra* note 160, at 301. The Restatement of Torts defines a superseding cause as "an act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about." RESTATEMENT (SECOND) OF TORTS § 440 (1965). The Restatement also defines an intervening force as "one which actively operates in producing harm to another after the actor's negligent act or omission has been committed." *Id.* § 441. In New Jersey, a superseding cause has been defined as a negligent act that "so entirely supersedes the operation of the defendant's negligence that it alone, without his negligence contributing thereto in the slightest degree, produces the injury." *Daniel v. Gielly Trucking Co.*, 116 N.J.L. 172, 174, 182 A. 638, 639 (N.J. 1936).

¹⁷³ PROSSER & KEETON, *supra* note 160, at 301. The following example is useful in understanding the relation of time to intervening causes:

If the defendant sets a fire with a strong wind blowing at the time, which carries the fire to the plaintiff's property, the wind does not intervene, since it was already in operation; but if the fire is set first, and the wind springs up later, it is then an intervening cause.

Id. (footnote omitted).

¹⁷⁴ *Id.* at 302; see, e.g., *Rappaport v. Nichols*, 31 N.J. 188, 156 A.2d 1 (1959); *Martin v. Bengue, Inc.*, 25 N.J. 359, 136 A.2d 626 (1957); *Torsiello v. Whitehall Laboratories*, 165 N.J. Super. 311, 398 A.2d 132 (App. Div.), *certif. denied*, 81 N.J. 50, 404 A.2d 1150 (1979).

tion 59:2-3(d) of the Act barred the plaintiff's direct claim of negligence for improperly training its police officers to conduct high-speed pursuits.¹⁷⁵ This provision, however, does not *per se* provide immunity.¹⁷⁶ As the *Smith* court noted, a municipality is not immune from liability if its discretionary action in allocating its resources when faced with competing priorities was palpably unreasonable.¹⁷⁷ Although the *Smith* court did not define palpably unreasonable conduct,¹⁷⁸ it placed the burden of proving that its conduct was not palpably unreasonable upon the defendant municipality.¹⁷⁹ Therefore, in a negligence action against a municipality for failure to train its police officers properly in high-speed

¹⁷⁵ *Smith*, 197 N.J. Super. at 614, 485 A.2d at 1068; see *infra* note 77 (text of the relevant section of the Tort Claims Act). The Act also provides immunity for public employees when performing a discretionary act as opposed to a ministerial act. See N.J. STAT. ANN. § 59:3-2 (West 1982). In examining the discretionary-ministerial dichotomy, one court noted that almost every "act, no matter how directly ministerial, [involves] some discretion in the manner of its performance." *Czyzewski v. Schwartz*, 110 N.J. Super. 255, 260, 265 A.2d 173, 176 (App. Div. 1970) (quoting *Ham v. County of Los Angeles*, 46 Cal. App. 148, 162, 189 P. 462, 468 (1920)). Therefore, a police officer's actions in the regular course of his duties will be considered ministerial functions. *Id.* at 261, 265 A.2d at 176. When an officer observes a motor vehicle violation, he has a duty to act. See N.J. STAT. ANN. § 39:5-25 (West Cum. Supp. 1984-1985). Once he does act, his actions are ministerial, even if there is discretion as to how to perform that duty. See *Ritter v. Castellini*, 173 N.J. Super. 509, 513-14, 414 A.2d 614, 616-17 (Law Div. 1980). Thus, an officer who is engaged in a high-speed pursuit is performing a ministerial function and is subject to liability if he is negligent.

¹⁷⁶ *Brown v. Brown*, 86 N.J. 565, 578, 432 A.2d 493, 500 (1981).

¹⁷⁷ *Smith*, 197 N.J. Super. at 614, 485 A.2d at 1068 (citing *Brown v. Brown*, 86 N.J. 565, 578-79, 432 A.2d 493, 500 (1981)). Although it appears several times in the statute, the term "palpably unreasonable conduct" is not defined by the Tort Claims Act. See N.J. STAT. ANN. §§ 59:2-3(d), :3-2, :4-2(b) (West 1982). The Legislature recognized that the New Jersey Supreme Court established the "palpably unreasonable" standard in *Bergen v. Koppenal*, 52 N.J. 478, 246 A.2d 442 (1968). See N.J. STAT. ANN. §§ 59:2-3 comment, :4-2 comment (West 1982). The *Bergen* court, however, also failed to define the term. See *Bergen*, 52 N.J. at 480, 246 A.2d at 444. The appellate division, though, has described "palpably unreasonable conduct" as imposing a tougher standard of proof than ordinary negligence. *Williams v. Town of Phillipsburg*, 171 N.J. Super. 278, 286, 408 A.2d 827, 831 (App. Div. 1979).

¹⁷⁸ See *Smith*, 197 N.J. Super. at 614, 485 A.2d at 1068. The court remanded the case without discussing what might constitute "palpably unreasonable conduct" because the municipalities made no showing of the competing demands for their resources. *Id.* at 614, 615, 485 A.2d at 1068, 1069.

¹⁷⁹ See *id.* at 614, 485 A.2d at 1068. By contrast, in an earlier case, the appellate division imposed the burden of demonstrating "palpably unreasonable conduct" on the person seeking recovery from a municipality. See *Williams v. Town of Phillipsburg*, 171 N.J. Super. 278, 286, 408 A.2d 827, 831 (App. Div. 1979). The *Williams* court interpreted § 59:4-2 of the Tort Claims Act, which expressly requires the plaintiff to establish a public entity's liability. See *id.* at 281, 408 A.2d at 829; N.J. STAT. ANN. § 59:4-2 (West 1982). Section 59:2-3 of the Act, however, does not

pursuit tactics, the municipality must demonstrate that its resources were used on projects more important than pursuit training. If the municipality is unable to make such a showing, a court may conclude that the municipality's exercise of discretion was palpably unreasonable and that the municipality is therefore liable.

In determining whether high-speed pursuit training deserves priority over competing demands, it is important to note that New Jersey requires certain information concerning high-speed chases to be included in police training courses.¹⁸⁰ The *Smith* court, by pointing out the relevancy of this requirement, apparently believed that high-speed training should be given a high priority.¹⁸¹ Moreover, public policy considerations require a municipality to give high-speed training a high priority. The danger to innocent persons is greatly increased when a high-speed chase arises.¹⁸² In addition, more police injuries occur in motor vehicle accidents than in any other police activity.¹⁸³ Clearly, high-speed training deserves high priority, and municipalities should be found liable for the plaintiff's injuries if they fail to train their officers properly.

VI. CONCLUSION

Police officers and municipalities should be liable when their negligent actions in high-speed pursuits contribute to the injuries or deaths of innocent persons.¹⁸⁴ This is not a criticism of all high-speed pursuits, but a condemnation of current policies and practices, which allow unreasonably dangerous chases to occur. Just as a police officer should not be allowed to carry a gun unless he is properly trained and certified, a police officer should not be allowed to operate a police vehicle unless he is properly trained and prepared for all possible situations.¹⁸⁵ The *Smith* court's imposition of potential liability should prompt the establishment of detailed written policies and comprehensive training in pursuit

specifically allocate the burden of proof. See N.J. STAT. ANN. § 59:2-3(d) (West 1982).

¹⁸⁰ N.J. STAT. ANN. § 52:17B-71(o) (West Cum. Supp. 1984-1985); see *supra* note 130 (text of provision requiring inclusion of high-speed chase information).

¹⁸¹ See *Smith*, 197 N.J. Super. at 614, 485 A.2d at 1068-69.

¹⁸² See *supra* note 1.

¹⁸³ See Miller, *supra* note 124, at 25.

¹⁸⁴ Cf. Davis, *An Approach to Legal Control of the Police*, 52 TEX. L. REV. 703, 717-22 (1974) (advocating municipal liability rather than police liability for torts committed by police officers).

¹⁸⁵ Beckman, *supra* note 1, at 36.

tactics. This will help ensure that a police officer will act reasonably when confronted with a pursuit situation. The effect will be a saving of lives—the officer's, the pursued's, and the innocent bystander's—and a decrease in burdensome lawsuits against police officers and municipalities.

Sean M. Carlin