Urban Law Annual ; Journal of Urban and Contemporary Law

Volume 32 *Supreme Court Symposium*

January 1987

Municipal Liability for Police Misconduct: Rymer v. Davis {754 F.2d 198}

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MUNICIPAL LIABILITY FOR POLICE MISCONDUCT: *RYMER v. DAVIS*

Courts are showing an increased willingness to find municipalities liable for police misconduct that violates citizens' constitutional rights. Under the section 1983 civil rights statute,[1] municipalities are liable when improperly trained, supervised, or disciplined police officers violate an individual's civil rights.[2] Courts have not responded uniformly to the problem of municipal liability. Some courts require a pattern of police misconduct before holding a municipality liable, while other courts are willing to extend liability for reckless or grossly negligent training of police officers.[3] Municipalities particularly fear exposure to liability for police officer training and supervision. In *Rymer v. Davis*[4] the Sixth Circuit strongly discouraged municipalities from bestowing carte blanche authority to its police officers[5] and held a municipality liable for its complete failure to teach the police force constitutional

1. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983 (Supp. V 1981).

2. The Supreme Court's 1978 decision in Monell v. Department of Social Servs., 436 U.S. 658 (1978), held a municipality liable for civil rights violations under § 1983. Since *Monell* the federal courts have resolved the issue of municipal liability and its limitations in a variety of ways. *See infra* notes 15-19 and accompanying text. *See generally* Zoufal, *Municipal Liability and 42 U.S.C. § 1982*, 73 ILL. B.J. 98 (1984) (general discussion of remedies available under § 1983).

3. *See* Penland & Boardman, *Section 1983-Contemporary Trends in the Police Misconduct Arena*, 20 IDAHO L. REV. 661 (1984) (analysis of various judicial approaches to post-*Monell* interpretations of municipal liability). For a recent Supreme Court decision on municipal liability involving police misconduct, see City of Oklahoma City v. Tuttle, 471 U.S. 808 (1985).

4. 754 F.2d 198 (6th Cir.), *vacated*, 105 S. Ct. 3517 (1985).

5. *Id.* at 201.

procedures.[6]

Paul Rymer, a truck driver, was arrested when law enforcement officials stopped his convoy.[7] During his arrest, a police officer beat and kicked Rymer violently, hitting him in the stomach and head with a nightstick.[8] The police officer rejected an emergency medical technician's recommendation that Rymer receive X-ray treatment at a hospital. Instead, the officer jailed Rymer for the night.[9] Rymer later filed a complaint in district court pursuant to 42 U.S.C. § 1983,[10] claiming deprivation of his civil rights as a result of the mistreatment and injuries sustained during his arrest. The court upheld Rymer's claim[11] and awarded compensatory and punitive damages.[12] The Sixth Circuit Court of Appeals affirmed, holding that the city's complete failure to train police officers inferred the presence of a municipal custom that authorized or condoned police misconduct.[13]

Congress enacted section 1983[14] to provide a remedy to persons de-

6. *Id.* at 199.

7. *Id.* at 200.

8. *Id.*

9. *Id.* at 199.

10. *See supra* note 1.

11. 754 F.2d at 200. The evidence at the trial showed that at the time of Rymer's arrest, the City of Shephardsville failed to provide either pre-employment training for its officers or rules and regulations on officer conduct. *Id.* The city required each officer to complete forty hours of training each year, but the officer in *Rymer* never received instructions on arrest procedures or on treatment of injured persons. *Id.* The city allowed its police officers to use their own judgment concerning the arrest and treatment of suspected criminals. *Id.*

The court instructed the jury that it should find for Rymer if it found by a preponderance of the evidence that the city trained its police officers in a way that was so reckless or grossly negligent that future police misconduct was almost inevitable or substantially certain to result. *Id.*

12. *Id.* at 199. The jury awarded $32,000 in compensatory damages and $50,000 in punitive damages against the police and $25,000 in compensatory damages against the city. *But see* City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981) (municipality may not be held liable for punitive damages under § 1983). *See also* Zoufal, *supra* note 2, at 99 (general discussion of remedies available under § 1983).

13. 754 F.2d at 201.

14. 42 U.S.C. § 1983 (Supp. V 1981) (originally enacted as Act of April 20, 1871, ch. 22, § 1, 17 Stat. 13). Congress enacted § 1983 as part of the Civil Rights Act of 1871, originally known as An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States and for Other Purposes. For a detailed analysis of the legislative history of § 1983, see Comment, *A Survey of Organizational and Supervisory Liability Under 42 U.S.C. Section 1983 and 42 U.S.C. Section 1985(3)*, 46 MO. L. REV. 371, 372 n.1 (1981).

prived of any rights, privileges, or immunities guaranteed under the Constitution and laws of the United States.[15] The Supreme Court, however, refused to recognize municipal liability under section 1983 until 1978, when it decided *Monell v. Department of Social Services.*[16] In *Monell* the Court changed its earlier position[17] and subjected municipalities to liability when official policy or custom violated civil rights.[18] The Court indicated that informal policy or custom[19] may also give rise to liability under section 1983.[20]

15. 42 U.S.C. § 1983 (Supp. V 1981). In Maine v. Thiboutot, 448 U.S. 1 (1980), the Supreme Court ruled that denial of rights under federal statutory law raises a cause of action under § 1983.

16. 436 U.S. 658 (1978). In *Monell* city employees brought an action against a municipality claiming that an official governmental policy violated their civil rights. The Court held that local governing bodies and local officials sued in their official capacities are "persons" within the language of § 1983 and therefore may be sued for constitutional deprivations effected by governmental policy or custom. *Id.* at 690-91.

17. In Monroe v. Pope, 365 U.S. 167 (1961), *rev'd*, 436 U.S. 663 (1977), the Supreme Court held that individuals did not have direct causes of action against municipalities for a § 1983 violation. The Court based its decision in both *Monroe* and *Monell* on its interpretation of the debate during the Forty-Second Congress' enactment of the Civil Rights Act of 1871. 17 Stat. 13 (1871). For a comparison of the interpretations that the *Monroe* and *Monell* Courts gave to the legislative and judicial histories of § 1983, see Comment, *The Supreme Court Rewrites a Law: Municipal Liability Under Section 1983*, 15 URB. LAW. 503 (1983).

18. 436 U.S. at 694. The Court declared that "when execution of a government's policy or custom, whether made by its lawmakers or by those edicts or acts may fairly be said to represent official policy, inflicts the injury," the municipality as a whole is liable under § 1983. *Id.*

19. 436 U.S. at 691. Because *Monell* involved a situation in which "official policy" was the cause of the violation, the Court devoted little attention to a definition of custom or policy. The Court relied on a definition previously used in Adickes v. S. H. Kress & Co., 398 U.S. 144, 167-68 (1970), which stated that "Congress included customs and usages [in § 1983] because of the persistent and widespread discriminatory practices of state officials . . . Although not authorized by written law, such practices of state officials could well be so permanent and well settled as to constitute a 'custom or usage' with the force of law." 436 U.S. at 691. Even in the recent decision of City of Oklahoma City v. Tuttle, 471 U.S. 808 (1985), the Court failed to provide specific giudelines as to "policy or custom." Among the lower federal courts, a wide variety of interpretations of policy or custom exists. *See, e.g.*, Wellington v. Daniels, 717 F.2d 932 (4th Cir. 1983) (past history of similar incidents required); Herrera v. Valentine, 653 F.2d 1220 (8th Cir. 1981) (continuing pattern of police misconduct required to satisfy custom or policy).

20. 436 U.S. at 691. The Court concluded that a municipality is not liable solely because the municipality employs a tortfeasor. *Id.* In reaching this conclusion, the Court rejected three justifications for imposing liability under a *respondeat superior* theory. *Id.* at 693. First, the Court rejected the theory that accidents might be reduced if employers, though blameless, had to bear the cost of accidents. *Id.* The Court also

Two later Supreme Court decisions, *Owen v. City of Independence*[21] and *Polk County v. Dodson*,[22] further defined the scope of municipal liability. In *Owen* the Court ruled that while a municipality cannot claim immunity from damages if held liable under section 1983,[23] government employees can claim protection from personal liability under the good faith immunity doctrine.[24] In *Polk County* the Court reaffirmed its ruling in *Monell* and held that the official policy must be the cause of the constitutional violation before a municipality can be liable under section 1983.[25] The Court further indicated that no liability will be imposed unless the disputed official custom or policy is found unconstitutional.[26]

The trilogy of Supreme Court cases outlining the contours of municipal liability—*Monell, Owen*, and *Polk County*—failed to give specific guidelines on the "policy or custom" restriction on municipal liability.[27] In the recent decision of *City of Oklahoma City v. Tuttle*,[28] the

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rejected the proposal that the community at large should bear the accident costs under an insurance theory. *Id.* at 693-94. Because both of these justifications were insufficient to sustain the Sherman amendment to the Civil Rights Act, the Court reasoned that they were also insufficient to sustain liability on the basis of *respondeat superior. Id.* at 694. Finally, the Court rejected the third justification, the argument that liability follows the right to control a tortfeasor's actions. The Court stated: "By our decision in Rizzo v. Goode, 423 U.S. 362 (1976), we would appear to have decided that the mere right to control without any control or direction having been exercised and without any failure to supervise is not enough to support § 1983 liability." 436 U.S. at 694.

21. 445 U.S. 622 (1980), *reh'g denied*, 446 U.S. 993 (1979).

22. 454 U.S. 312 (1981).

23. 445 U.S. at 651.

24. The common law doctrine of good faith immunity provides protection from personal liability to an employee or official who acts in good faith. *See generally* Penland & Boardman, *supra* note 3, at 684-92 (analysis of the subjective and objective tests that the courts use to establish good faith immunity).

25. 454 U.S. at 326 (quoting Monell v. Department of Social Servs., 436 U.S. 658 (1978)). The Court emphasized the *Monell* ruling that a § 1983 claim will not survive if it rests on a *respondeat superior* theory of liability. 454 U.S. at 325. A municipality will be held liable only when its officials act pursuant to official policy or custom. *Id.* at 326. The Court stressed the importance of a causal link between the policy or custom and the deprivation of civil rights. *Id.*

26. *Id.* at 326. Claimant alleged that his attorney from the county's public defender office withdrew from his case, causing a violation of his rights under the sixth, eighth, and fourteenth amendments. *Id.* Claimant failed, however, to allege any administrative policy as the cause of the constitutional rights violation. *Id.* Unless the policy itself is unconstitutional, the municipality cannot be held liable for depriving an individual of civil rights. *Id.*

27. *See supra* notes 17-18.

only other Supreme Court decision dealing with municipal liability for police officer misconduct, the Court similarly failed to articulate what constitutes a custom or policy.[29] Consistent with the vast majority of lower federal rulings,[30] the Court held that a single incident of excessive force by a police officer does not establish an official policy or practice.[31] The Court, however, specifically noted that it failed to address the issue of whether inadequate training of police officers meets the *Monell* custom or policy requirement.[32]

Two problems surface when the lower federal courts apply the general principles established by these Supreme Court cases to the police misconduct context. First, the courts seek to define the limits of the *Monell* policy or custom restriction. Second, the courts examine the causal relationship between the policy or custom and the constitutional violation.[33]

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28. 471 U.S. 808 (1985). In *Tuttle* the Court addressed the question of whether a single isolated incident of a police officer's use of excessive force establishes a municipal policy or practice. The Court emphasized that more than a single incident of misconduct is necessary to constitute a municipal custom. *Id.* at 812. The Court noted:

> Where the policy relied upon is not itself unconstitutional [such as inadequate training], considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality, and the causal connection between the policy and the constitutional definition.

Id.

Tuttle thus overruled Owens v. Haas, 602 F.2d 1242 (2d Cir.), *cert. denied*, 444 U.S. 980 (1979), in which the court held that a single incident of misconduct can meet the policy or custom requirement. *Id.* at 1246-47. *Owens* concluded that a municipality is liable when the single incident of misconduct is a causal link between the municipality's deliberate indifference in training its officials and the violation of the citizen's constitutional rights. *Id.*

29. 471 U.S. at 808. The Court left unanswered the important question of whether inadequate training could meet the *Monell* policy or custom requirement. *Id.*

30. *See infra* note 43. *See also* Powe v. City of Chicago, 664 F.2d 639, 650 (7th Cir. 1981) (the "mere allegation of a single act of unconstitutional conduct by a municipal employee will not support the inference that such conduct was pursuant to official policies"). *See also* Penland & Boardman, *supra* note 3, at 679-80 (discussion of cases holding that a single misconduct is insufficient to establish liability).

31. 471 U.S. at 808.

32. The Court also left unanswered the question of whether a policymaker's "gross negligence" in establishing police training practices is sufficient to constitute a "policy" that is the "moving force" behind subsequent unconstitutional conduct or whether the policymaker must make a more conscious decision before a policy or custom is established. *Id.*

33. Many of these decisions allow § 1983 recovery against a municipality for its failure to adequately train, control, or discipline police officers, but require evidence of a pattern of misconduct. *See, e.g.*, Herrera v. Valentine, 653 F.2d 1220 (8th Cir. 1981)

Lower courts interpreting the *Monell* policy or custom requirement have found municipal liability in a number of factual situations involving a municipality's failure to supervise, control, or train its officers.[34] In *Herrera v. Valentine*[35] the Eighth Circuit held that a municipality's continuous failure to remedy the known unconstitutional conduct of its police officers satisfied the policy or custom requirement.[36] The *Herrera* court explained that such a continuing failure to remedy constitutes the type of informal policy or custom that is grounds for a cause of action under section 1983.[37] The court found a pattern of miscon-

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(continuing pattern of police misconduct resulted in municipal liability for injuries sustained by victims of misconduct). *See infra* notes 35-39 and accompanying text. Other decisions indicate that a pattern of misconduct is not necessary. Rather, recovery may be available for injury resulting from a complete failure to train or grossly inadequate training of the city's police force. *See, e.g.*, Hays v. Jefferson County, 668 F.2d 869, 874 (6th Cir.), *cert. denied*, 459 U.S. 833 (1982) (municipal liability when either a complete failure to train or reckless or grossly negligent training of the police force exists). *See infra* notes 44-51 and accompanying text.

One author suggests that the absence of rigid internal policies prohibiting police misconduct should constitute a prima facie case of municipal liability. *See* Schnapper, *Civil Rights Litigation After Monell*, 79 COLUM. L. REV. 213 (1979).

34. For situations other than the police misconduct context in which official inaction is the basis of § 1983 liability, see Withers v. Levine, 615 F.2d 158 (4th Cir.), *cert. denied*, 449 U.S. 849 (1980) (failure to provide sufficient living conditions for prison inmates); Doe v. New York City Dep't of Social Servs., 649 F.2d 134 (2d Cir. 1981), *cert. denied*, 464 U.S. 864 (1983) (failure to supervise in foster care home); Thompson v. New York, 487 F. Supp. 212 (N.D.N.Y. 1979) (failure to provide police and fire protection for Indian reservations).

Other recent decisions have based liability on a failure to make policy when affirmative guidelines are necessary. *See* Avery v. County of Burke, 660 F.2d 111 (4th Cir. 1981) (failure to provide sufficient guidelines for sterilization counseling by public agencies). *See also* Note, *Municipal Liability Under § 1983: The Failure to Act as "Custom or Policy,"* 29 WAYNE L. REV. 1225, 1234 (1983) (author discusses how a "policy of no policy" in situations requiring affirmative guidelines may encourage employee misconduct involving no less than a failure to supervise).

35. 653 F.2d 1220 (8th Cir. 1981).

36. *Id.* at 1225.

37. *Id.* at 1224. The plaintiff had previously complained to the City about the police department's use of excessive force, sexual misconduct, racist conduct, and selective enforcement of the laws. *Id.* at 1225. After the City failed to remedy these complaints, the Nebraska Indian Commission twice convened a hearing on the police misconduct. *Id.* The Commission received over forty complaints of police misconduct. *Id.* In addition, the City Council and the Mayor heard the complaints of police misconduct but failed to remedy the problem or report back to the plaintiff. *Id.*

The court relied on the *Monell* ruling that a well-settled practice of government officials may be a "custom" even though this custom is unwritten law. *Id.* at 1224. Thus, the court had a basis to conclude that the municipality's failure to correct the misconduct of its police officers was a well-settled practice or an informal custom. *Id.*

duct in the city's failure to respond to notifications that the police force needed closer supervision.[38] According to the court in *Herrera*, this pattern of failing to properly train, supervise, and control the city's police officers directly caused injuries to the arrestee, thus establishing a causal link between the policy or custom and the constitutional violation.[39]

The Fourth Circuit expanded upon the *Herrera* court's use of the *Monell* policy or custom requirement in *Wellington v. Daniel*.[40] The court in *Wellington* required a history of widespread abuse[41] in the supervision and training of police officers before holding a municipality liable under section 1983.[42] The court emphasized that a municipality is liable only for omissions that manifest government policy or custom

38. *Id.* at 1225.

39. *Id.* The court relied on Owen v. City of Independence, 445 U.S. 622, 655 n.39, *reh'g denied*, 446 U.S. 993 (1979) (discussed *supra* notes 22-24 and accompanying text) to establish municipal liability. The court found that the city's failure to train, discipline, and control the police officers breached a duty to the plaintiff, thereby resulting in a deprivation of the plaintiff's constitutional rights. 653 F.2d at 1224. *Id. See* Butler, *Liability of Municipalities for Police Brutality*, TENN. B.J., May 1983, at 21 (general history of Supreme Court's decisions on municipal liability).

40. 717 F.2d 932 (4th Cir. 1983).

41. *Id.* at 936. The facts of *Wellington* support the strict standard applied in the court's interpretation of an official policy or custom. The plaintiff suffered severe injuries during an arrest by an officer who used a special type of flashlight to physically subdue the plaintiff. *Id.* at 934. Evidence existed that the chief of police was aware that the use of these flashlights in other jurisdictions had caused serious and even fatal injuries. *Id.* at 935. The police chief was also aware that his subordinate officers sometimes used the flashlights as a weapon. *Id.* The court's focus, however, was on the police chief's lack of awareness regarding actual problems in his force's previous use of the flashlight. *Id.* The court stated that the police chief's acts and omissions reflected government policy and municipal liability may attach to acts or omissions performed pursuant to that policy. *Id.* at 936. Even though the police chief was aware of the harmful consequences of his inaction, he did not have knowledge of a history of actual problems from his officer's misuse of their flashlights. *Id.* at 937. Thus, the court held no official policy or custom of failure to properly train or supervise existed. *Id.* As a result, the court had no basis to impose liability on the municipality. *Id.*

42. *See* Penland & Boardman, *supra* note 3, at 683. The authors suggest that the *Wellington* court's strict definition of a policy overly accommodates municipalities. "[The court's] indication that the police chief could only be liable if similar incidents had occurred in his precinct, even though he was aware of the serious consequences of his inaction, seems to put the proverbial cart before the horse." *Id.* The authors also discuss the unfair policy implications of *Wellington* in comparison to the more realistic approach of *Herrera*. *Id.* According to the authors, the *Wellington* requirement of specific past incidents of misconduct in the police jurisdiction, which disregards the police chief's knowledge of the harmful effect of the action or inaction in dispute, breeds an "ostrich" approach to policy supervision. *Id.*

and not for single acts of misconduct.[43]

The court in *Hays v. Jefferson County*[44] took a different approach. Rather than focus on the limitations of the policy or custom requirement as in *Herrera* and *Wellington*, the *Hays* court concentrated on the liability aspect and established municipal liability when there is either a complete failure to train the police force or recklessness or gross negligence in training.[45] The court concluded that under either condition future police misconduct is inevitable.[46] In *Hays* the Sixth Circuit ruled that the causal relationship between the failure to train the officer and the officer's misconduct is equivalent to the *Monell* requirement of an existing custom or policy of police misconduct.[47] The *Hays* majority, however, failed to indicate whether a municipality's encouragement of or direct participation in the unconstitutional conduct of its officers would permit an interference of a custom or policy of police misconduct.[48]

The dissenting justice in *Hays* questioned whether the lack of a policy or custom fairly indicated the municipality's approval of police mis-

43. 717 F.2d at 936. *See, e.g.*, Gillmere v. City of Atlanta, 737 F.2d 894 (11th Cir. 1984), *cert. denied*, 106 S. Ct. 1970 (1985) (no municipal liability for an isolated incident in which the police officers used excessive force); Baker v. McCoy, 739 F.2d 381 (8th Cir. 1984) (single beating by police officer is not a custom); Berry v. McLemore, 670 F.2d 30 (5th Cir. 1982), *rev'd*, 790 F.2d 1181 (5th Cir. 1986) (single improper arrest is not a custom); McClelland v. Facteau, 610 F.2d 693 (10th Cir. 1979) (isolated incident of misbehavior does not constitute a custom or policy).

44. 668 F.2d 869 (6th Cir. 1982), *cert. denied*, 459 U.S. 833 (1983).

45. 668 F.2d at 874. The same court that decided *Hays*, however, later noted in Brandon v. Allen, 719 F.2d 151, 153-54 (6th Cir. 1983), *cert. granted*, 467 U.S. 1204 (1984), that the Supreme Court had undermined the *Hays* decision in Parratt v. Taylor, 451 U.S. 527 (1981). Consistent with the Court's views in *Parratt*, the court in *Brandon* held that simple negligence, in addition to the higher standards of gross negligence or recklessness, is sufficient to support § 1983 liability. *Cf.* Hirst v. Girsten, 676 F.2d 1252, 1263 (9th Cir. 1982) (court ruled that the reasoning in *Parratt* controls cases in which § 1983 liability is sought for simple negligence). *Compare* Rhiner v. City of Clive, 373 N.W.2d 466 (Iowa 1985) (municipality cannot be held liable for simple negligence in training or supervising its police officers).

46. 668 F.2d at 874.

47. *Id.* at 872. The *Hays* court relied on Rizzo v. Goode, 423 U.S. 362 (1976), in which the Supreme Court held that a direct causal link must exist between the acts of the supervisory officials and the individual officers. *Id.* at 371. Because the supervisory official is responsible for implementing municipal policies and procedures, municipal liability attaches to acts or omissions performed pursuant to that policy. *Id.* at 370-71.

48. 668 F.2d at 872. In the dissent, however, Judge Merritt argued no evidence existed that an injury resulted from a municipal policy or custom "tacitly or expressly adopted or followed by the county or its officials." *Id.* at 876.

conduct.[49] The dissent argued that the plaintiff must prove that the municipality followed a custom or policy of encouraging or condoning police brutality before he may recover under section 1983.[50] In addition, the dissent failed to find any evidence that the plaintiff's injury resulted from municipal policy or custom.[51]

In *Rymer v. Davis*[52] the Sixth Circuit attempted to clarify the concerns raised in the *Hays* dissent.[53] The court focused on three criteria for determining municipal liability: the policy or custom requirement, the basis of liability, and the causal link between the failure to train and the police officer misconduct.[54] First, the *Rymer* court addressed the *Monell* policy or custom requirement.[55] The court stated that a municipality's failure to train or gross negligence in training its police force implies a municipal custom that authorizes or condones police misconduct.[56] The *Rymer* court thus ruled on the exact issue that the Supreme Court had refused to address in *Tuttle*.[57] The court did not infer policy or custom from a single incident of police misconduct.[58] Rather, the court found that the overall inadequate training of the municipality's police officers met the policy or custom requirement of

49. *Id.* at 876 (Merritt, J., dissenting).

50. *Id.*

51. *Id.* The dissent pointed out that to establish a policy or custom, the plaintiff must show that "the city had notice of a prior pattern of police misconduct likely to recur if no steps were taken to prevent it." *Id.* This requirement of a pattern of misconduct is the approach of *Herrera*. *See supra* notes 35-39 and accompanying text.

52. 754 F.2d 198 (6th Cir.), *vacated and remanded sub nom.* City of Shephardsville v. Rymer, 105 S. Ct. 3518, *reaff'd sub nom.* Rymer v. Davis, 775 F.2d 756 (1985).

53. *See supra* notes 48-51 and accompanying text.

54. 754 F.2d at 200-01.

55. *Id.* at 200. The *Hays* ruling failed to state specifically that a municipality's failure to train implies a custom of authorizing or condoning police misconduct. Rather, the *Hays* court discussed the necessity of a causal link between the municipality's inaction and the officers' misconduct, which is "essentially the same concept" as the policy or custom requirement. 668 F.2d at 872.

56. 754 F.2d at 201.

57. After *Tuttle*, the Supreme Court vacated and remanded *Rymer*. City of Shephardsville v. Rymer, 105 S. Ct. 3518 (1985). On remand, the Sixth Circuit reaffirmed its decision. Rymer v. Davis, 775 F.2d 756 (6th Cir. 1985). The court noted that *Tuttle* did not control because *Rymer* presented the exact issue upon which the Supreme Court in *Tuttle* did not express its opinion. *Id.* at 757.

58. 775 F.2d at 757. The court noted that its decision was not based on an inference from a single incident but was based on "a finding by the jury that the City of Shephardsville inadequately trained its police officers." *Id.*

Monell.[59]

Second, *Rymer* followed the same theory of liability established in *Hays*.[60] The *Rymer* court recognized the existence of municipal liability because the plaintiff demonstrated that the municipality was so reckless or grossly negligent in training its officers that future police misconduct was almost inevitable or substantially certain to result.[61]

The *Rymer* court's third criteria for determining municipal liability was a causal link between the municipality's failure to train and the police officer's misconduct.[62] The court held that the city's failure to train its police officers together with the broad authority given its officers for purposes of effecting arrests directly caused Rymer's injuries.[63] According to the court, the municipal practice of allowing officers to use their own discretion in arrest procedures made the city liable for any civil rights violations arising from that custom.[64]

In *Rymer* the court attempted to resolve a question the Supreme Court has never answered: whether inadequate training of a police force satisfies the *Monell* policy or custom requirement.[65] The court found that the city's grant of carte blanche authority to its police officers regarding arrest procedures sufficiently demonstrated the presence of a municipal custom.[66] Because *Rymer* involved an extreme

59. 754 F.2d at 200-01.

60. *Id.* at 200. The *Rymer* court recognized that the *Hays* court was questioned for its failure to recognize negligence as a basis for municipal liability. *See supra* note 45 (discussion of cases allowing negligence as a basis for liability under § 1983). In *Rymer* the district court instructed the jury on gross negligence. Thus, the Sixth Circuit did not consider the issue of negligence as a basis of liability. 754 F.2d at 200.

61. 754 F.2d at 200.

62. *Id.* at 201.

63. *Id.* The court found that the City's custom of allowing its police officers to use their own discretion in arrests, without the benefit of any regulations or training on arrest procedures, was directly related to the abuse Rymer received during his arrest. *Id.* Without this causal relationship, a municipality cannot be held liable for officer misconduct. *Id.* at 201. *See supra* note 25. *But see* Bennett v. City of Slidell, 728 F.2d 762 (5th Cir. 1984) (no causal link between city policy and delay of license and permit for a building), *cert. denied*, 105 S. Ct. 3476 (1985); Means v. City of Chicago, 535 F. Supp. 455, 462 (N.D. Ill. 1982) (no causal link between failure to provide crowd control training and single injury incident).

64. 754 F.2d at 201.

65. *See supra* notes 29-32 and accompanying text.

66. 754 F.2d at 201. The court pointed out that it had previously interpreted *Monell* to hold "that a municipal custom that authorizes or condones police misconduct can be inferred when the municipality has failed to train or has been grossly negligent in training its police force." *Id.* In *Rymer* the court found that the municipality had a

example of failure to adequately train police officers in a vital area of public work,[67] the decision offers little guidance in determining specifically what other forms of inadequate training might constitute a policy or custom.[68]

Rymer discourages a municipality from according wide authority to its police officers and encourages it to provide a competent, well-trained police force for its citizens. A poorly trained police force spawns lawsuits against the municipality, the cost of which the taxpayers must eventually bear through higher taxes. *Rymer* focuses on the necessity of a causal relationship between the failure to train and the police officer's misconduct[69] rather than emphasizing the municipality's liability for its employees under the *respondeat superior* theory.[70] This approach avoids the potential problem of determining whether an incident of misconduct arose from the officer's lack of training or from his personal actions.[71] Unfortunately, the court failed to formulate specific guidelines for determining when this causal relationship exists between the municipality's inaction and the officer's misconduct.[72] Determining the presence of a causal relationship on a case by case basis will result in inconsistent decisions among jurisdictions.

Rymer also failed to examine the question of whether negligence is a proper basis for municipal liability.[73] The court did, however, recog-

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custom of giving its police officers unlimited authority to determine when and how to arrest. *Id.*

67. *Id.* at 200. The municipality had no rules or regulations governing its police force and did not require any pre-employment training. *Id.* The initial training that the officers received was on-the-job training. *Id.* Furthermore, the police officers used their own discretion in the arrest and treatment of criminal suspects. *Id.*

68. The court noted that the type or amount of training necessary to constitute a "custom" was a jury question. 754 F.2d at 201 n.1. The court recognized available resources that municipalities could use as guides to supervise police officers. *Id.*

69. 754 F.2d at 201.

70. *See supra* note 19 (discussion of *Monell* Court's basis for rejecting the *respondeat superior* theory).

71. One author proposes that the official who actually made the policy is liable for any constitutional violations under § 1983. *See* Schnapper, *supra* note 33, at 223 (municipality should be held to a strict standard in insuring proper departmental regulations and minimal abuse).

72. *Id.* The court focused solely on the facts of the instant case and concluded that a causal link existed. The court emphasized that the municipality's bestowal of carte blanche authority to its officers "was directly related to the ultimate abuse Rymer received during the arrest." *Id.*

73. *Id.* at 200. Because the district court instructed the jury on gross negligence, the circuit court did not consider negligence as a basis for liability. *Id.*

nize concerns raised regarding other courts' failure to recognize negligence as a basis for liability.[74] *Rymer* leaves open the possibility that mere negligence in police officer training may provide the basis for municipal liability.[75] If courts impose liability on the basis of negligence, municipalities could be forced to insure that the training and supervision of their police officers is flawless. Citizens will certainly benefit from the effect of such training and supervision.

Rymer is likely to have a positive and far-reaching impact on community safety. The decision places a great burden on municipalities to insure that they properly train police officers. Under *Rymer*, municipalities are liable if a municipal practice of allowing officers to use their own discretion in arrest procedures exists and these procedures violate a citizen's civil rights.[76] The likely result of this ruling is that municipalities, fearing liability, will no longer bestow unlimited authority on their officers and will establish standard procedures in police training and supervision. Courts will thus be able to determine with greater accuracy whether liability lies with the municipality or with the individual officer.

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74. *Id.* at 200. Several courts questioned the *Hays* ruling, which failed to recognize negligence as the basis for municipal liability. *See supra* note 45.

75. For an example of the court's implication that municipalities should be held liable for the negligent training of their officers, see 754 F.2d at 200.

76. 754 F.2d at 200-01.