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## Supervisory Liability in Section 1983 Cases

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# SUPERVISORY LIABILITY IN SECTION 1983 CASES<sup>1</sup>

*Kit Kinports*<sup>2</sup>

*Honorable George C. Pratt:*

At this point, we are going to go into the area of supervisory liability, where we will hear from Professor Kinports from the University of Illinois Law School. We will hear first from her and then from John Boston. Kit Kinports, you are on.

*Professor Kit Kinports:*

Thank you. The topic of this presentation is supervisory liability in Section 1983<sup>3</sup> cases. Assume for present purposes that a plaintiff's constitutional rights have been violated – that some state official has acted in violation of the Constitution. The question to be addressed here is whether that state official's supervisors can be held liable for damages stemming from the constitutional violation.

Unfortunately, there is not much guidance on the question of supervisory liability in any of the Supreme Court opinions, or in the language or legislative history of Section 1983. The language of Section 1983 creates a cause of action against anyone acting under color of state law who subjects another person to a constitutional violation, or who causes that person to be subjected to a constitutional violation.<sup>4</sup>

Although Section 1983 expressly includes a requirement of causation – there must be a causal link between the defendant and the violation of the plaintiff's rights – the language of the statute

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<sup>1</sup> A more complete treatment of this subject is available in Kit Kinports, *The Buck Does Not Stop Here: Supervisory Liability In Section 1983 Cases*, 1997 U. ILL. L. REV. 147 (1997).

<sup>2</sup> Professor of Law, University of Illinois College of Law. A.B. 1976, Brown University; J.D. 1980, University of Pennsylvania.

<sup>3</sup> See 42 U.S.C. § 1983 (1994); see generally 1A, 1B & 1C MARTIN A. SCHWARTZ & JOHN E. KIRKLIN, SECTION 1983: CLAIMS AND DEFENSES (3d ed. 1997).

<sup>4</sup> See 42 U.S.C. § 1983.

seems to envision that a supervisor could be held liable for a subordinate's constitutional misdeeds.<sup>5</sup> But the statute does not point to any particular standard of liability that should be imposed in those cases. Likewise, Section 1983's legislative history, which in general is very meager, is silent on the question of the extent to which supervisors can be held liable for their subordinates' constitutional misconduct.

There is only one Supreme Court case that directly addresses the question of when supervisors may be held liable in Section 1983 cases: *Rizzo v. Goode*, which was decided in 1976.<sup>6</sup> *Rizzo v. Goode* involved an injunctive suit against a number of high-ranking officials in the Philadelphia mayor's office and the Philadelphia police department.<sup>7</sup> The basis of the plaintiff's suit was a series of improper actions on the part of the Philadelphia police.<sup>8</sup> The plaintiffs won in the district court, and a relatively broad injunction was issued against the defendants.<sup>9</sup> The Supreme Court, clearly disapproving of that injunction, reversed.<sup>10</sup> The Supreme Court's opinion lists a number of reasons why it disapproved of that injunction.

Thus, *Rizzo* is somewhat murky for our purposes given that the Court gave a number of reasons for reversing the injunction. But in the portion of the opinion that is relevant to the issue at hand -- the portion that dealt with supervisory liability -- the Court indicated that there must be "an affirmative link" between the supervisor and the constitutional violation.<sup>11</sup>

Two years following *Rizzo*, the Supreme Court decided *Monell v. Department of Social Services*,<sup>12</sup> the first Supreme Court opinion to address the standard of liability for cities in Section 1983 cases. The *Monell* opinion contains dictum that is relevant for present purposes. That dictum suggests that when the Court rejected

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<sup>5</sup> *See id.*

<sup>6</sup> 423 U.S. 362 (1976).

<sup>7</sup> *Id.* at 366.

<sup>8</sup> *Id.* at 367.

<sup>9</sup> *Id.* at 365.

<sup>10</sup> *Id.* at 380.

<sup>11</sup> *Id.* at 371.

<sup>12</sup> 436 U.S. 658 (1978).

*respondeat superior* liability for cities -- which it did in *Monell* -- it was also unwilling to impose *respondeat superior* liability on supervisors.<sup>13</sup> Specifically, the Court said in *Monell* that *Rizzo*, which had been decided two years earlier, appeared to reject the argument that Section 1983 liability can be premised on “the mere right to control without any control or direction having been exercised and without any failure to supervise.”<sup>14</sup> Those two opinions from twenty years ago -- *Rizzo* and *Monell* -- are the only statements the Supreme Court has made on the question of supervisory liability. The Court has provided no specific guidelines as to exactly what sort of “affirmative link” the *Rizzo* Court was looking for, or how egregious a “failure to supervise” the *Monell* Court thought was necessary to impose liability on supervisors.

Given the lack of guidance from the statute itself, the legislative history, and the Supreme Court, it is not surprising that the Federal Courts of Appeals have come up with various standards to impose in cases involving supervisors. Before focusing on the areas of disagreement, there are some areas in which the Federal Courts of Appeals agree. First, they all agree that the “affirmative link” language from *Rizzo* is important -- that the key is whether or not the supervisor who is being sued can be said to have had an affirmative link to the constitutional violation alleged by the plaintiff.<sup>15</sup> The Courts of Appeals have also uniformly rejected the two extreme positions on this question. On the one hand, they have uniformly rejected strict liability -- holding supervisors liable on a *respondeat superior* basis for subordinates’ constitutional violations, -- and, in addition, they have now all rejected the negligence standard of liability.

On the other extreme, the courts have uniformly said that supervisors may be held liable even though they did not directly participate in the violation, or directly order their subordinates to violate the Constitution even if they were not present to witness the particular violation. But between those two extremes, the courts have come up with three standards of liability for cases involving

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<sup>13</sup> *Id.* at 694 n.58.

<sup>14</sup> *Id.*

<sup>15</sup> *Rizzo*, 423 U.S. at 371.

supervisors. Before turning to the three standards, it is interesting to note that there are discrepancies even within some of the Circuits as to which of the three standards they adopt. Some courts apply different standards from case to case.

Two predominant standards of liability can be found in the Federal Courts of Appeals' opinions. One is a standard of "recklessness or deliberate indifference." Language can be found in cases from nine Federal Circuits adopting this standard of "recklessness or deliberate indifference."<sup>16</sup> The recklessness/deliberate indifference standard provides that supervisors are liable if they acted recklessly or with deliberate indifference to the plaintiff's constitutional rights.

The second standard is a "knowledge and acquiescence" standard. Language can be found in cases from seven Courts of Appeals adopting that standard.<sup>17</sup> Under the knowledge and acquiescence standard, supervisors are liable if they knew of and acquiesced in the constitutional violation. It may seem odd that *nine* Courts of Appeals have adopted the recklessness/deliberate indifference standard, and *seven* have adopted the knowledge and acquiescence standard. The explanation is that in six Circuits *both* standards are being applied in different cases.

The third standard, to the extent it is in effect at all, is applied only in the Second Circuit. It is the most pro-plaintiff standard --

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<sup>16</sup> See, e.g., *Febus-Rodriguez v. Betancourt-Lebron*, 14 F.3d 87, 92 (1st Cir. 1994); *Black v. Indiana Area Sch. Dist.*, 985 F.2d 707, 712 (3d Cir. 1993); *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994); *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 453-54 (5th Cir. 1994) (en banc); *Starzenski v. City of Elkhart*, 87 F.3d 872, 880 (7th Cir. 1996); *White v. Holmes*, 21 F.3d 277, 280 (8th Cir. 1994); *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991); *Gates v. Unified Sch. Dist. No. 449*, 996 F.2d 1035, 1041 (10th Cir. 1993); *Hill v. Dekalb Reg'l Youth Detention Ctr.*, 40 F.3d 1176, 1192 (11th Cir. 1994).

<sup>17</sup> See, e.g., *Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1293 (3d Cir. 1997); *Sanders v. English*, 950 F.2d 1152, 1159-60 (5th Cir. 1992); *Walton v. City of Southfield*, 995 F.2d 1331, 1340 (6th Cir. 1993); *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995); *Ripson v. Alles*, 21 F.3d 805, 809 (8th Cir. 1994); *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991); *Jojola v. Chavez*, 55 F.3d 488, 490 (10th Cir. 1995).

gross negligence.<sup>18</sup> In *Wright v. Smith*,<sup>19</sup> decided in 1994 – and actually it goes back before that – the Second Circuit held that supervisors could be held liable if they were grossly negligent in managing their subordinates. The Second Circuit has continuously reaffirmed that gross negligence standard, most recently in *Spencer v. Doe*,<sup>20</sup> decided earlier this year.

Thus, there are three standards of supervisory liability used in Section 1983 cases: recklessness or extreme indifference, knowledge and acquiescence, and possibly, in the Second Circuit, gross negligence.

It is fair to ask how these standards differ. If one reads the cases in which the various courts have applied these standards, it is not evident that there really is much difference in the outcome of the cases. That is, it is not clear that the standard the court purports to be using really makes much difference in terms of how they decide on the facts of a particular case whether the supervisor is liable for the employee's constitutional misconduct. As a general matter, however, the knowledge and acquiescence standard is deemed the most pro-defendant, the most protective of defendants. The recklessness/deliberate indifference standard falls in the middle, and the gross negligence standard is the most pro-plaintiff.

One possible difference between the three standards relates to the question whether the supervisor must actually have been aware of the constitutional violation – whether the plaintiff must prove that the supervisor had *actual* notice of the problem, or whether the court is satisfied with evidence of constructive notice. The Federal Courts of Appeals conflict on that question as well, taking three different positions.

Some courts have required proof of actual awareness – that the supervisor was actually aware of the constitutional misconduct. A middle position that several Courts of Appeals have adopted is a recklessness standard, requiring only proof that the supervisor was

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<sup>18</sup> See, e.g., *Black v. Coughlin*, 76 F.3d 72, 74 (2d Cir. 1996) (construing the term “personal involvement” for Section 1983 purposes to include “gross negligence” in managing subordinates); *Wright v. Smith*, 21 F.3d 496, 501 (2d Cir. 1994).

<sup>19</sup> 21 F.3d 496 (2d Cir. 1994).

<sup>20</sup> 139 F.3d 107, 112 (2d Cir. 1998).

aware of a risk that the subordinate was acting in an unconstitutional way. Finally, the third and most pro-plaintiff position, which is the position taken in the Second Circuit, is that constructive knowledge suffices. If the supervisor *should* have been aware of the problem, that is enough to impose liability; actual notice or even awareness of a risk are not required. Again, differences can be found in the court opinions within a given Circuit as to which of those three standards is applied.

It is also interesting to note that the position the courts take on the notice issue -- whether they require actual notice, awareness of a risk, or constructive notice -- is not necessarily tied to the standard of liability they have imposed, whether they have chosen the recklessness/deliberate indifference approach or the theoretically stricter "knowledge and acquiescence" approach. Given this outline of the legal standards that the courts purport to be applying in supervisory liability cases, consideration can now be given to the factors that are used in deciding, on the facts of a particular case, whether or not the plaintiff is entitled to recover damages from the supervisor.

There are five factors that the courts tend to agree are relevant in assessing a supervisor's liability. Those five factors are:

- (1) Whether there were any prior incidents similar to the constitutional violation alleged by the plaintiff;
- (2) How adequate the supervisor's response was to those prior incidents;
- (3) How the supervisor responded to the violation alleged by this particular plaintiff;
- (4) To what extent the supervisor can be said to have been a causal factor in contributing to the constitutional violation; and
- (5) To what extent the supervisor was aware of the constitutional misconduct.

Although there is general agreement about the relevance of those five factors, the courts come to conflicting results when applying the factors and determining how much weight they should be given in particular cases.

Factor One: Prior similar incidents. It is generally true that prior instances where this particular subordinate acted unconstitutionally - - or even where other of the supervisor's subordinates acted in a

similar manner -- help the plaintiff establish that the supervisor met whatever standard of liability the court is applying. Generally, the courts have said that if the plaintiff can show only one prior incident or a series of unrelated prior incidents, that is not enough to trigger supervisory liability. There must be a stronger pattern of prior constitutional misconduct by the supervisor's subordinates. But even where there is evidence of a stronger pattern of prior violations, the courts come to conflicting results. Despite this inconsistency in outcomes, this first factor is a very significant factor in the courts' decisions.

The second factor, which is linked to the first, is how the supervisor responded to the prior instances of constitutional misconduct -- the adequacy of the remedial steps that were taken. As a general rule, the courts are much more likely to impose liability on a supervisor who did not take adequate steps to respond to previous instances of misconduct. But that is not to say that ineffective responses necessarily translate into supervisory liability. There are a substantial number of cases where the courts acknowledge that the supervisor may not have responded as completely as she could have, or as effectively as she could have. Nevertheless, the courts conclude that because the supervisor tried to do *something* in response to the prior misconduct, her actions cannot be deemed constitutionally inadequate. Thus, even an "ineffective response" is not necessarily a guarantee that a plaintiff will win a Section 1983 case.

The third factor which some Courts of Appeals, but not all, take into account is how appropriately the supervisor responded in this particular case -- how adequately the supervisor responded when this particular plaintiff's rights were violated. But the courts conflict on the relevance of this third factor. For example, in *Watkins v. City of Oakland*, a recent Ninth Circuit case, the court thought it relevant in imposing liability on the Chief of Police that he had not responded adequately to the plaintiff's case.<sup>21</sup> Not all courts would agree, however. Some courts take the position that something that happens after the violation -- i.e., the supervisor's adequate or inadequate response to it -- could not have contributed

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<sup>21</sup> 145 F.3d 1087, 1093-94 (9th Cir. 1998).

to the subordinate's violation of the plaintiff's rights and therefore is not relevant in assessing the supervisor's liability.<sup>22</sup>

The fourth factor that the courts take into account is the question of causation -- the extent to which the supervisor can be deemed to be a cause of the constitutional violation suffered by the plaintiff. Causation issues often arise in supervisory liability cases. The supervisor often alleges that the causal link required by the language of Section 1983 is not present because the supervisor is at least one, and possibly more, steps removed from the subordinate who actually inflicted the constitutional injury. Often this causation issue is not discussed as a separate factor, but instead is addressed in connection with one of the three factors set out above -- most notably, the adequacy of the supervisor's response to prior similar incidents.

Some courts have indicated that the causal link can be established by a history of abuse in the past, combined with an inadequate response on the part of the supervisor. According to these courts, when state officials learn that they can violate rights without suffering any consequences, they are encouraged to continue acting in constitutionally impermissible ways and, therefore, the supervisor's ineffectual response in the past can be said to have contributed to the injury suffered by the plaintiff.<sup>23</sup> In other cases, however, the courts seem to find that causal link argument too tenuous.<sup>24</sup> But there are at least some courts that are willing to find the requisite causal link in a situation where the supervisor was on notice of prior violations and failed to respond adequately.

The fifth and final factor that the courts tend to take into account in imposing liability on supervisors is the extent to which the supervisor was aware of the constitutional violation. The greater the awareness on the part of the supervisor, the more likely the court is to impose liability. Obviously, this is a crucial factor in

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<sup>22</sup> See *Febus-Rodriguez v. Betancourt-Lebron*, 14 F.3d 87, 95 n.11 (1st Cir. 1994).

<sup>23</sup> See, e.g., *Hale v. Tallapoosa County*, 50 F.3d 1579, 1584-85 (11th Cir. 1995); *LaMarca v. Turner*, 995 F.2d 1526, 1539 (11th Cir. 1993); *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720, 730 (3d Cir. 1989).

<sup>24</sup> See, e.g., *Febus-Rodriguez v. Betancourt-Lebron*, 14 F.3d 87, 94 (1st Cir. 1994); *Busby v. City of Orlando*, 931 F.2d 764, 782 (11th Cir. 1991).

those Circuits that require proof of awareness in order to impose liability on a supervisor. But regardless of what standard of supervisory liability the courts apply, the extent of the supervisor's awareness is an important factor that they take into account.

Again, just as with issues of causation, some courts do not analyze the supervisor's awareness as a separate factor, but instead link the question of awareness to one of the first three factors, most notably, how appropriately the supervisor responded either to prior similar incidents or to this particular incident. But "awareness" is an issue that crops up in a substantial number of supervisory liability cases.

There are two ways in which plaintiffs can try to demonstrate awareness of the problem on the part of the supervisor: direct evidence of the supervisor's awareness, and indirect evidence of the supervisor's awareness. Direct evidence of the supervisor's awareness arises in those cases where the supervisor was told about the problem either by the plaintiff, by other people in the plaintiff's position, or by the supervisor's subordinates.

One of the leading Second Circuit cases is a case involving direct evidence of awareness, *Wright v. Smith*.<sup>25</sup> In that case, the Second Circuit concluded that the prison superintendent was put on notice of the constitutional violation suffered by a prisoner because the prisoner had filed a habeas corpus petition against the superintendent.<sup>26</sup> In this case, direct evidence of awareness came from the plaintiff himself.

Another interesting case involving direct evidence of a supervisor's awareness is a recent Fifth Circuit opinion, *Smith v. Brenoettsy*.<sup>27</sup> In that case, which stemmed from the killing of a prisoner by a prison guard, the Fifth Circuit denied the warden's summary judgment motion.<sup>28</sup> The warden argued that his failure to investigate the letters he had received from the prisoner was objectively reasonable, given that more than six thousand complaints were filed at the prison each year.<sup>29</sup> The Fifth Circuit

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<sup>25</sup> 21 F.3d 496 (2d Cir. 1994).

<sup>26</sup> *Id.* at 502.

<sup>27</sup> 158 F.3d 908 (5th Cir. 1998).

<sup>28</sup> *Id.* at 913.

<sup>29</sup> *Id.* at 912.

disagreed, noting that there was "no authority to support his argument that the number of prisoner complaints itself makes a failure to investigate an objectively reasonable response to a specific complaint."<sup>30</sup> At least at the summary judgment stage, therefore, the plaintiff prevailed because there was some evidence that the warden had received notice from the plaintiff about the problem.

The second way that plaintiffs prove awareness on the part of supervisors is through indirect evidence. Typically this indirect evidence involves prior similar incidents -- a history of abuse on the part of the office or the particular state official that was so widespread that the superior must have been aware of the problem. In some cases, the courts have used a history of abuse to infer awareness on the part of a supervisor.<sup>31</sup>

There are cases involving other types of indirect evidence of awareness, but these are mostly older cases. One such case out of the Second Circuit is *Meriwether v. Coughlin*.<sup>32</sup> However, since it was decided in 1989, one should be careful in relying on it. In that case, the Second Circuit was willing to infer that the supervisor, once again a prison superintendent, knew or should have known of the dangers facing the plaintiff prisoners based upon statements his press secretary had made to the press, in addition to statements found in media reports, and rumors circulating at the prison.<sup>33</sup>

Again, however, one can find cases that are factually similar to those described above, where the courts have been unwilling to find sufficient evidence of awareness on the part of the supervisor, even though the plaintiff presented proof that presumably other courts would have considered adequate.<sup>34</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *See, e.g.*, *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1479 (3d Cir. 1990); *Hinshaw v. Doffer*, 785 F.2d 1260, 1263 (5th Cir. 1986); *cf. Wilson v. City of Chicago*, 6 F.3d 1233, 1240 (7th Cir. 1993) (making this argument vis-à-vis superintendent of police in context of suit against city), *modified on other grounds*, 1993 U.S. App. LEXIS 31896 (7th Cir. Dec. 8, 1993).

<sup>32</sup> 879 F.2d 1037 (2d Cir. 1989).

<sup>33</sup> *Id.* at 1048.

<sup>34</sup> *See, e.g.*, *Jojola v. Chavez*, 55 F.3d 488, 490-91 (10th Cir. 1995) (finding insufficient evidence that principal and school superintendent sued in sexual assault case had either actual or constructive knowledge of custodian's sexual contact with students, despite evidence that other school officials had received

The final topic to be considered is potential areas where the question of supervisory liability might be confused with other elements of a plaintiff's Section 1983 case. The first – and this is a relatively common area of confusion among Circuit courts – is the relationship between supervisory liability and the state of mind requirement.

In many Section 1983 cases, plaintiffs, in order to prove a constitutional violation, must prove that the state official who violated their rights acted with a particular state of mind.<sup>35</sup> In a number of cases, the Courts of Appeals have conflated the question of what state of mind is necessary to establish the particular constitutional violation with the question of what standard of liability ought to be imposed on the supervisor.<sup>36</sup> For example, a number of courts have reasoned that because the Supreme Court has held that negligence is insufficient to make out a due process violation, negligence cannot be enough in the completely different context of determining what standard of liability ought to apply to supervisors in general in Section 1983 cases.

A second area where the courts confuse two different issues involves the relationship between supervisory liability and municipal liability. In order to sue a city, the plaintiff must prove that the constitutional violation was caused by an official policy or

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complaints about the custodian and rumors had circulated about him; also dismissing the plaintiffs' allegation that the superintendent had made a statement to them admitting that "problems involving [the custodian] had arisen prior to the attack" on their daughter as only "one nonspecific statement.").

<sup>35</sup> See *Washington v. Davis*, 426 U.S. 229 (1976).

<sup>36</sup> See, e.g., *Jojola v. Chavez*, 55 F.3d 488, 490 (10th Cir. 1995) (rejecting negligence as the standard for supervisory liability because the Supreme Court held in *Daniels v. Williams*, 474 U.S. 327 (1986), and *Davidson v. Cannon*, 474 U.S. 344 (1986), that a due process violation requires a state of mind more culpable than negligence); *Boyd v. Knox*, 47 F.3d 966, 968 n.1 (8th Cir. 1995) (suggesting that the subjective standard of deliberate indifference adopted by the Supreme Court in *Farmer v. Brennan*, 511 U.S. 825 (1994), for Eighth Amendment claims governed the standard of supervisory liability); *Jones v. City of Chicago*, 856 F.2d 985, 992 (7th Cir. 1988) (holding similarly to *Jojola*).

custom.<sup>37</sup> That “official policy or custom” requirement should not apply, however, when a plaintiff is suing a supervisor in her individual capacity. Nevertheless, courts often use that “official policy or custom” requirement<sup>38</sup> or some of the other Supreme Court rulings on municipal liability,<sup>39</sup> and transfer those standards and requirements over into cases where supervisors have been sued in their *personal* capacity.

A recent Eighth Circuit opinion seemed to recognize the inappropriateness of this line of reasoning. The Eighth Circuit commented that supervisors need not be policy-makers (one of the requirements for imposing liability on a city) in order to be held personally liable for a subordinate’s constitutional wrongdoing.<sup>40</sup>

The last area of confusion -- and this is one of the new, evolving issues in Section 1983 cases involving supervisors -- is the relationship between supervisory liability and qualified immunity, and the extent to which a supervisor can prevail on a qualified immunity claim. There is not much case law on this question. It is

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<sup>37</sup> See *Monell v. Department of Soc. Services*, 436 U.S. 658, 690-95 (1978).

<sup>38</sup> See, e.g., *Mackinney v. Nielsen*, 69 F.3d 1002, 1008 (9th Cir. 1995); *Hill v. Dekalb Reg'l Youth Detention Ctr.*, 40 F.3d 1176, 1194 (11th Cir. 1994); *Strickler v. Waters*, 989 F.2d 1375, 1387 (4th Cir. 1993).

<sup>39</sup> A number of courts have interpreted the Supreme Court’s holding in *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) -- that cities may be held liable for failing to train the employee who violated the plaintiff’s rights only if “the failure to train amounts to deliberate indifference” -- as requiring proof of deliberate indifference in order to impose liability on supervisors. See, e.g., *Tilson v. Forrest City Police Dep’t*, 28 F.3d 802, 807 (8th Cir. 1994); *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 453 (5th Cir. 1994) (en banc); *Wilks v. Young*, 897 F.2d 896, 898 (7th Cir. 1990); *Greason v. Kemp*, 891 F.2d 829, 837 (11th Cir. 1990); see also *Southard v. Texas Bd. of Criminal Justice*, 114 F.3d 539, 551 (5th Cir. 1997) (relying in a supervisory liability case on the Supreme Court’s ruling in *Board of County Comm’rs. v. Brown*, 117 S. Ct. 1382, 1391 (1997), that the deliberate indifference necessary to impose municipal liability is “a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.”).

<sup>40</sup> *Springdale Educ. Ass’n v. Springdale Sch. Dist.*, 133 F.3d 649, 653 (8th Cir. 1998).

an issue that is evolving slowly. Nevertheless, several courts have already taken different positions on this question.<sup>41</sup>

A relatively recent First Circuit opinion contains an extensive discussion of the intersection between supervisory liability and qualified immunity.<sup>42</sup> According to the First Circuit, a supervisor is entitled to qualified immunity unless the court is convinced that there was a clearly established constitutional violation on the part of the subordinate; that it was clearly established that the supervisor would be held liable for constitutional violations committed by a subordinate in that context; and that the supervisor's conduct was not objectively reasonable.<sup>43</sup>

In adopting that three-part standard for qualified immunity, the First Circuit has imposed a fairly rigorous burden on plaintiffs, combining some of the approaches that the other courts had previously taken. The qualified immunity question is one that is likely to receive further attention from the courts in the future.

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<sup>41</sup>Some courts have suggested that a supervisor is entitled to qualified immunity unless the reasonable public official in her position would have realized that her own conduct violated the plaintiff's rights. *See, e.g.*, *Dolihite v. Maughon*, 74 F.3d 1027, 1054 (11th Cir. 1996); *Greason v. Kemp*, 891 F.2d 829, 836 (11th Cir. 1990); *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720, 726 (3d Cir. 1989).

Other courts have indicated that a supervisor is entitled to qualified immunity if the standard of supervisory liability was not clearly established. *See, e.g.*, *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 454-56 (5th Cir. 1994) (en banc); *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720, 726 (3d Cir. 1989).

<sup>42</sup> *Camilo-Robles v. Hoyos*, 151 F.3d 1 (1st Cir. 1998).

<sup>43</sup> *Id.* at 6.

