

**Tort Law—Diminishing the Burden Placed on Plaintiffs to Prove Municipality Liability—*Young v. City of Providence*, 404 F.3d 4 (1st Cir. 2005)**

42 U.S.C. § 1983 imposes civil liability on municipalities when a policy, or the execution of a policy, is found to be unconstitutional.<sup>1</sup> The United States Supreme Court has developed a stringent set of guidelines for determining municipality liability that excludes respondeat superior recovery.<sup>2</sup> In *Young v. City of Providence*,<sup>3</sup> the First Circuit considered whether the Providence Police Department’s training program met the strict standards of review for municipality liability so as for the city to be rightfully granted summary judgment.<sup>4</sup> The court concluded that a jury could find that the Providence Police Department had an inadequate training program for its “always armed/always on duty” policy, and that the deficient training resulted in the death of an off-duty officer.<sup>5</sup>

In the early morning hours of January 28, 2000, two Rhode Island police officers, Michael Solitro and Carlos Saraiva, shot and killed Cornel Young, an off-duty officer.<sup>6</sup> Solitro, an eight-day rookie, and Saraiva, Solitro’s training officer, responded to a call reporting a disturbance at Fidas Restaurant in Providence, where Young was dining.<sup>7</sup> Just as Solitro and Saraiva pulled into

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1. 42 U.S.C. § 1983 (2000). Section 1983 provides in part that “[e]very person . . . of any State . . . [that] subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . .” *Id.*; see also *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 688-89 (1978) (overruling holding stating local governments not included in “persons” definition). The Court re-examined its past interpretation of 42 U.S.C. § 1983 and determined that local governing bodies were intended to be included by the word “persons.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 688-89 (1978).

2. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978) (holding municipal liability cannot exist merely because municipality employs tortfeasor). The Court concluded that liability cannot be attached to a municipality “under § 1983 on a respondeat superior theory.” *Id.*; see also *City of Canton v. Harris*, 489 U.S. 378, 387 (1989) (explaining municipal liability can apply where constitutional wrong derives from failure to adequately train). The Court also determined that this type of liability only attaches where “failure to train amounts to deliberate indifference to the rights of persons with whom police come into contact.” *City of Canton v. Harris*, 489 U.S. 378, 388 (1978); see also Brian J. Serr, *Turning Section 1983’s Protection of Civil Rights Into an Attractive Nuisance: Extra-Textual Barriers to Municipal Liability Under Monell*, 35 GA. L. REV. 881, 892 (2001) (explaining court avoided application of strict standard to respondeat superior liability).

3. 404 F.3d 4 (1st Cir. 2005).

4. *Id.* at 9 (deciding whether to affirm district court’s grant of summary judgment).

5. *Id.* at 27-32 (describing “always armed/always on duty” policy). The policy required officers to always carry a weapon. *Id.* at 16. The policy also requires that a “member of the force shall be in ‘on duty’ status . . . for preservation of the peace and protection of life, liberty or property.” *Id.*

6. *Id.* at 13 (explaining all officers deployed to same incident).

7. 404 F.3d at 13-14 (detailing sequence of events leading to shooting). Headquarters dispatched Officers Solitro and Saraiva to Fidas Restaurant to respond to a report of females fighting. *Id.* The dispatch was designated Code 2, denoting a moderate degree of urgency. *Id.*

the lot, a man, later identified as Aldrin Diaz, entered a vehicle.<sup>8</sup> As Solitro and Saraiva pulled to a stop, they observed Diaz point a gun out of the window of his vehicle.<sup>9</sup>

The officers exited their patrol car and took cover, yelling at Diaz to drop his gun.<sup>10</sup> After taking cover for only a few seconds, Solitro left his position and walked directly in front of Diaz's vehicle.<sup>11</sup> Simultaneously, off-duty Officer Young walked out of the restaurant with his gun, yelling loudly "police, police" and "freeze."<sup>12</sup> Solitro and Saraiva testified that they believed Young's gun was aimed at Diaz, triggering both officers to fire numerous shots at Young, killing him.<sup>13</sup>

Young's estate filed a complaint pursuant to 42 U.S.C. § 1983, alleging that the city of Providence was liable for Young's death because the department failed to train its employees to properly identify off-duty officers.<sup>14</sup> Supervisors, officers, and the commissioner testified to the existence of a training policy regarding off-duty officers but disputed the extent of its application.<sup>15</sup> The district court granted summary judgment to the city of Providence.<sup>16</sup> The First Circuit reversed and remanded, holding that a lack of training for identifying off-duty officers could have resulted in the death of Cornel Young.<sup>17</sup>

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8. *Id.* (describing Diaz running into vehicle).

9. *Id.* at 14 (explaining deadly force demonstrated by suspect and officers' heightened awareness). Diaz pointed a gun out of the window of his Camaro, which caused Solitro to say "gun" to Saraiva. *Id.*

10. *Id.* (acknowledging officers aware of deadly force).

11. 404 F.3d at 14 (referencing testimony regarding Solitro leaving cover). The defendants admit that leaving cover in an armed situation is unreasonable. *Id.* at 22-23. Solitro stated he left cover for four reasons: the patrol car provided imperfect cover; he wanted to get a better view of the Camaro; he believed he could more rapidly arrest Diaz; and "he wanted to keep Diaz guessing." *Id.* at 14; *see also* *Allen v. Muskogee*, 119 F.3d 837, 843 (10th Cir. 1997) (stating expert testified leaving cover in deadly force situation inappropriate).

12. 404 F.3d at 14 (referring to Young's actions while exiting restaurant). Witnesses testified that Young ran through the restaurant at the time the police arrived, yelling "police, get out of the way!" *Id.*

13. *Id.* at 15 (stating both officers perceived Young as suspect, not officer). Yet numerous on-scene witnesses, including Diaz, testified that they identified Young as a police officer by his body movements, language, and the manner in which he handled his gun. *Id.* Furthermore, Diaz testified, "Solitro, he's like hysterical moving. [H]e was like running in place like . . . and he's like shooting with both hands, one hand. And he's just freaking out, screaming out at the top of his head." *Id.*

14. *Young v. City of Providence*, 301 F. Supp. 2d 163, 166 (D.R.I. 2004) (explaining Young's claim against Providence), *rev'd*, 404 F.3d 4 (2005). Young's estate sought damages pursuant to 42 U.S.C. § 1983 for the deprivation of decedent's Fourth Amendment right to be free from unreasonable search and seizure. *Id.*; *see also* U.S. CONST. amend. IV. The Fourth Amendment states that people have "[t]he right . . . to be secure in their persons . . . against unreasonable searches and seizures". U.S. CONST. amend. IV.

15. 404 F.3d at 17-19 (illustrating extent of employee training). Numerous members of the police department testified that the Range 2000 video training administered to all officers confronted officers with off-duty scenarios. *Id.* In addition, most officers testified that range training included shoot and no-shoot situations, in which some of these scenarios included off-duty officers. *Id.* Solitro stated that his training included Range 2000 training and that his trainers may have raised other off-duty issues. *Id.*

16. *Young v. City of Providence*, 301 F. Supp. 2d 163, 182-83 (D.R.I. 2004) (finding proper training and no causal relationship between training and Young's death).

17. 404 F.3d at 27 (reversing district court's finding regarding existence of adequate training). The court

To successfully establish a claim for failure to train pursuant to 42 U.S.C. § 1983, the plaintiff must prove that the municipality's deliberate indifference toward properly training their employees caused a constitutional violation.<sup>18</sup> Deliberate indifference exists when the plaintiff demonstrates that a municipality has ignored a pattern of unconstitutional behavior.<sup>19</sup> Deliberate indifference also occurs when a need for training is so obvious that if it is not addressed, injury will result.<sup>20</sup> An employee's mere failure to follow the training given cannot lead to a municipality's liability.<sup>21</sup> Many courts struggle to distinguish between an employee failing to follow proper training and the municipality inadequately training employees.<sup>22</sup>

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reasoned that from the testimony of the Commissioner and various officers a jury could infer that the department knew that absent particularized training, a friendly fire incident could occur. *Id.* at 28-29. A friendly fire incident had never taken place in the past. *Id.* A handful of off-duty officer misidentifications occurred, but none resulted in a serious altercation. *Id.* at 19.

18. See 42 U.S.C. § 1983 (2000) (granting persons remedy for deprivation of constitutional rights); see also *Bd. of County Comm'rs v. Brown*, 520 U.S. 397, 407 (1997) (suggesting inadequate training may be sufficient to prove causation); *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (holding deliberate indifference required to impose civil liability on municipalities); *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978) (concluding policy-approved action required as cause for § 1983 liability). *But cf.* Michael Rowan, *Leaving No Stone Unturned: Using RICO as a Remedy for Police Misconduct*, 31 FLA. ST. U. L. REV. 231, 246 (2003) (arguing deliberate indifference requirement makes establishing municipal liability difficult).

19. See *City of Canton v. Harris*, 489 U.S. 378, 388-89 (1989) (noting constructive notice of constitutional violations satisfies deliberate indifference requirement); see also *Barney v. Pulsipher*, 143 F.3d 1299, 1307 (10th Cir. 1998) (affirming liability attaches to municipalities when pattern of constitutional violations result from inadequate training); Peter A. Meisels, *Physical Force—Preparing the Defense of an Excessive Force Claim a Checklist*, 3238 PRAC. L. INST. LITIG. 749, 787 (2004) (reinforcing liability attaches to city if policymakers know about constitutional violations). The Court affirmed that a “continued adherence to an approach that [the municipality] know[s] or should know has failed to prevent tortuous conduct by employees may establish the conscious disregard for consequences of their action—deliberate indifference—necessary to trigger municipality liability.” *City of Canton v. Harris*, 489 U.S. 378, 388-89 (1989).

20. See *City of Canton v. Harris*, 489 U.S. 378, 390 (1989) (observing failure to provide additional training constitutes deliberate indifference because need so obvious); see also *Allen v. Muskogee*, 119 F.3d 837, 841 (10th Cir. 1997) (noting failure to train employees to handle recurring situation necessary to establish liability). *But cf.* *Swain v. Spinney*, 117 F.3d 1, 11 (1st Cir. 1997) (indicating plaintiff must do more than merely allege conduct to establish liability). See generally Heidi Boghosian, *Applying Restraints to Private Police*, 70 MO. L. REV. 177 (2005) (reasserting deliberate indifference attaches by failure to train employees in recurring situations). The *Swain* court held that the plaintiff cannot only identify conduct attributable to the city. *Swain v. Spinney*, 117 F.3d 1, 11 (1st Cir. 1997). In addition, the plaintiff must demonstrate, through deliberate conduct on behalf of the municipality, that the policy was the moving force behind the alleged injury. *Id.*

21. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691-92 (1978) (stating municipality not liable for torts committed by employees). The Court furthered this by holding that “a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *Id.* at 691.

22. See, e.g., *A.M. ex. rel. J.M.K. v. Luzerne County Juv. Det. Ctr.*, 372 F.3d 572, 588 (3d Cir. 2004) (reversing Pennsylvania district court's determination and ultimately finding juvenile detention center failed to train employees); *Swain v. Spinney*, 117 F.3d 1, 12 (1st Cir. 1997) (overruling district court grant of summary judgment and determining municipality liability could exist); *Walker v. City of New York*, 974 F.2d 293, 301 (2d Cir. 1992) (rejecting district's grant for summary judgment and allowing claim for municipality liability to proceed). *But cf.* Susan Bandes, *Not Enough Blame to Go Around: Reflections on Requiring Purposeful Government Conduct*, 68 BROOK. L. REV. 1195, 1199 (2003) (arguing recognizing vicarious liability for municipalities would resolve problems).

In *City of Canton v. Harris*,<sup>23</sup> the Court held that to establish municipal liability, evidence must exist that illustrates “the need for more or different training is so obvious . . . that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.”<sup>24</sup> The Court suggested that simply demonstrating an injury could have been evaded if more training existed was not enough to attach municipality liability.<sup>25</sup> The Court also determined that the alleged training deficiency must be the “moving force” behind the injury.<sup>26</sup>

A municipality cannot be held liable in a failure to train claim if a comprehensive training program is present and followed.<sup>27</sup> To prove municipality liability, evidence must demonstrate either an unconstitutional training policy existed, or a constitutionally valid training policy existed but was not enforced.<sup>28</sup> Other courts have determined that when the proper response to a situation is obvious to all without training that a failure to train claim is deficient.<sup>29</sup>

In *Young v. City of Providence*, the court held that it was the jury’s decision to find whether the city ignored an obvious risk by failing to develop a program that focused on identifying off-duty police officers.<sup>30</sup> The court concluded from officers’ testimony that the police department knew a high risk of a friendly fire incident existed if the department had an inadequate training

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23. 489 U.S. 378 (1989).

24. *City of Canton v. Harris*, 489 U.S. 378, 390 (1989) (defining method of fault required to hold city liable for single incident without prior notice).

25. *City of Canton v. Harris*, 489 U.S. 378, 391 (1989) (determining more training to prevent injury as insufficient to establish liability). Additionally, the Court held that neither inadequate training provided to a particular officer nor negligent administration of an otherwise sound program will prove municipality liability. *Id.* at 390-91. The Court reasoned that these high standards for liability were necessary to avoid “unprecedented liability.” *Id.*

26. *City of Canton v. Harris*, 49 U.S. 378, 389 (1989) (reaffirming liability attaches only when inadequate policy moving force behind rights violation); *see also* *Monell v. Dep’t of Soc. Services*, 436 U.S. 658, 694 (1978) (holding local government liability attaches if official policy moving force behind constitutional violation); *Brown v. Gray*, 227 F.3d 1278, 1290 (10th Cir. 2000) (explaining government policy must inflict injury for liability to attach).

27. *See Bordanaro v. McLeod*, 871 F.2d 1151, 1162 (1st Cir. 1989) (stating no liability attaches to city which generally adheres to facially valid policy). The Everett Police Department had an inadequate training program and therefore the city of Everett was liable to its citizens. *Id.*

28. *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 216 (3d Cir. 2001) (alleging insufficiency of purported evidence enabling municipality liability); Evan Sanford Schwartz, Comment, *A Plea for Help: Pleading Problems in Section 1983 Municipal Liability Claims*, 6 *TOURO L. REV.* 377, 391 (1990) (suggesting inadequate training results in liability only when police deliberately disregard citizen rights).

29. *Walker v. City of New York*, 974 F.2d 293, 299-300 (2d Cir. 1992) (recognizing wrong course of action in limited situations not enough for liability to attach to city). The court held that “[w]here the proper response . . . is obvious to all without training . . . then the failure to train . . . is generally not ‘so likely’ to produce a wrong decision as to support an inference of deliberate indifference.” *Id.*; *see also Carr v. Castle*, 337 F.3d 1221, 1224 (10th Cir. 2003) (holding obvious response prevents municipality liability to attach to city).

30. 404 F.3d at 32 (concluding sufficient evidence for jury to determine inadequate training policy).

policy.<sup>31</sup> The court reasoned that the witnesses' contradictory testimony illustrated that an adequate policy was not present.<sup>32</sup> Furthermore, the court held that sufficient facts existed for a jury to find a causal relationship between the training of Solitro and the death of Young.<sup>33</sup> The court asserted that if the city properly trained Solitro to identify off-duty officers, he could have utilized his training and recognized Young as an officer.<sup>34</sup>

The First Circuit incorrectly applied the United States Supreme Court's standard of review for holding municipalities liable in training situations.<sup>35</sup> By concluding that an inadequate training policy could exist, the court ignored evidence that the city incorporated a number of off-duty officer scenarios in every officer's training.<sup>36</sup> The Supreme Court held that the focus of municipality liability must be on the adequacy of the training program and not on a particular officer's actions.<sup>37</sup> The evidence failed to satisfy the Court's requirement that the department's training policy created a "highly predictable" or "so obvious" risk of a constitutional violation.<sup>38</sup>

The First Circuit failed to address the reasoning provided by several other circuit courts which have agreed that a failure to train claim is unlikely to succeed when the appropriate reaction to a situation is apparent to a layperson.<sup>39</sup> It should have been obvious to Solitro and Saraiva that Young was an off-duty officer, as many on-scene witnesses testified that Young appeared and acted like a police officer.<sup>40</sup> Nevertheless, the First Circuit extended liability and erroneously fastened "respondeat superior" liability to the city, which the United States Supreme Court has taken pains to avoid.<sup>41</sup>

Most importantly, even if the city had the requisite level of fault for deliberate indifference, the First Circuit mistakenly concluded that causation

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31. See *supra* note 17 and accompanying text (referring to testimony stating high risk of friendly fire devolves from inadequate training).

32. See *supra* note 15 and accompanying text (referencing variance in testimony among numerous officers regarding extent of off-duty identification training).

33. 404 F.3d at 29 (holding jury could find causation existed because proper training would make difference in Solitro's actions). The court relied on the testimony given by the plaintiff's expert witness that stated officers tend to fall back on their training in high stress situations. *Id.*

34. *Id.* at 29 (stating proper training would prevent Solitro's actions).

35. See *id.* at 27-29 (reversing district court's correct analysis of failure to train claim).

36. See *supra* note 15 and accompanying text (explaining training given to officers).

37. 404 F.3d at 17-20 (referencing testimony regarding existence of training including off-duty police officers); see also *supra* note 16 and accompanying text (detailing testimony to extent of training).

38. 404 F.3d at 28-29 (suggesting constructive departmental notice of friendly fire incidents). *But see* City of Canton v. Harris, 489 U.S. 378, 390 (1989) (acknowledging obvious need for different training); Allen v. Muskogee, 119 F.3d 837, 845 (1997) (Kelly, J., dissenting) (noting inadequate policy must present obvious potential for constitutional harm).

39. See *supra* note 29 and accompanying text (declaring obvious responses to high risk situations insufficient for municipality liability).

40. See *supra* note 13 (noting witnesses knew Young as police officer).

41. See *supra* note 2 and accompanying text (holding respondeat superior inadequate in determining municipal liability).

existed.<sup>42</sup> The First Circuit glossed over the Supreme Court's requirement that lack of training must be the "moving force behind the injury."<sup>43</sup> Solitro was aware of the national police standard not to leave cover in situations where deadly force could be used.<sup>44</sup> Although the plaintiff's expert testified that an officer will rely on his training in high stress situations, Solitro did not use his training in this instance, but instead acted on instinct when he left his cover in a deadly force incident.<sup>45</sup> The United States Supreme Court did not intend to extend municipality liability to cities for a mistake made by an adequately trained officer.<sup>46</sup> By extending liability to incidents where lack of training is not the moving force behind the injury, the First Circuit has facilitated the ability of plaintiffs to attach vicarious liability to municipalities.<sup>47</sup>

In *Young v. City of Providence*, the First Circuit had an opportunity to apply the Supreme Court's reasoning to determine municipality liability. Instead, the First Circuit diminished the burden placed on the plaintiff to prove municipality liability, moving closer toward respondeat superior, which is barred by the Court. The First Circuit erred in its analysis and failed to produce a logical opinion that will guide other courts in municipality liability cases.

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42. See *supra* note 2 (determining causation may exist because different training would make difference); see also *supra* note 34 and accompanying text (applying expert witness' testimony regarding officers' reliance on training in high stress situations).

43. See *supra* note 26 (declaring inadequate policy must be "moving force behind constitutional violation").

44. See *supra* note 12 (highlighting unreasonableness of abandoning cover).

45. See *supra* note 12 (contending leaving cover in combatant scenario unreasonable). But see 404 F.3d at 29 (noting proper department training may change Young's reaction).

46. See *supra* note 19 (defining stringent standards for municipality liability).

47. See *supra* note 25 and accompanying text (asserting city cannot be liable when employee applies policy unconstitutionally).