MUNICIPAL CORPORATIONS—ADMINISTRATIVE LAW—RIGHT TO A HEARING GRANTED WHERE DEFAMATION OCCURS IN CONNECTION WITH TERMINATION OF EMPLOYMENT—Owen v. City of Independence, 560 F.2d 925 (8th Cir. 1977).

INTRODUCTION

In Owen v. City of Independence, the United States Court of Appeals for the Eighth Circuit held that a claimant may recover damages against city officials who damaged his reputation in connection with his termination of employment. The court was confronted with difficult questions pertaining to proper subject matter jurisdiction and possible immunity of municipal corporations. In addition, due process claims concerning liberty and property interests were also raised. While not allowing recovery for damaged reputation alone, the court seemingly enlarged the framework within which recovery will be allowed. This note will analyze the court's holding and reasoning, and suggest that the court has properly extended the definitional boundaries concerning reputation as a protected liberty interest.

In Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, the United States Supreme Court held that the fourth amendment creates a right of action for damages against federal officials acting in an unconstitutional manner. This decision, coupled with cases finding federal courts to be the proper forum for such damage actions, has led litigants to seek the jurisdiction of federal courts on a variety of claims.

The courts have been reluctant, at best, to find proper jurisdiction. While several statutes would appear to provide a federal

1. 560 F.2d 925 (8th Cir. 1977).
2. 403 U.S. 388 (1971).
3. See, e.g., Bell v. Hood, 327 U.S. 678, 684 (1946); Swafford v. Templeton, 185 U.S. 487, 491-92 (1902); Wiley v. Sinkler, 179 U.S. 58, 64-65 (1900). In each of these cases the Supreme Court found that the federal courts had jurisdiction to hear claims against federal officials. The basis of the claims were similar to that in Owen—deprivation of a constitutional right.
5. 28 U.S.C. § 1331(a) (Supp. 1977) provides: “The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1343 (1970) provides:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
forum, courts have given a narrow construction to the jurisdictional scope of such statutes. In Owen, the Eighth Circuit Court of Appeals found that the subject matter jurisdiction of the district court had been properly invoked under 42 U.S.C. § 1331; the court concluded that Owen had established a claim on an implied right of action arising out of the constitution itself.

The court was also faced with a due process issue. Owen sought relief based upon a fourteenth amendment claim—deprivation of both a property and a liberty interest without due process of law. The liberty involved was his right to continue employment unfettered by stigma to his reputation; the property was his job. No case has held that reputation, standing alone, is a protected liberty interest. In addition, past decisions construing untenured employment as a protected property interest appeared to foreclose that avenue of redress.

However, the court found that the damage to Owen’s reputation was sufficiently connected to his termination of employment as to deprive Owen of a protected liberty interest. The case was therefore remanded to
district court for determination of the appropriate relief.

FACTS AND HOLDING

George Owen was hired in 1967 as chief of police of Independence, Missouri. Under provisions of the city charter, Owen’s status as an employee was subject to the discretion of the city manager. The city manager had the sole and complete authority to dismiss the police chief any time he thought the police chief was not properly doing the job. The city council had no authority to direct dismissal or to interfere with the city manager’s performance of that function.

City Manager Lyle Alberg and Owen had several sharp disagreements during Owen’s tenure as police chief, due primarily to appointments Owen had made to various positions in the police department and to Owen’s administration of the police property room. In March, 1972, a hand gun reported to have been destroyed was found in the hands of a felon. Alberg decided that an investigation of the property room was necessary. The investigation found no evidence of criminal acts nor violations of municipal ordinances.

Alberg called Owen on April 10 and met with him on April 11. Alberg told Owen that he was not satisfied with the way Owen was performing his job. He asked Owen to resign as chief of police and to accept another position with the police department, and told him that he would be fired if he refused. Owen refused, claiming he would fight to keep his job. On April 13, Alberg released a pub-

12. Independence City Charter, § 3.3(1) vests the city manager with the sole power to “[a]ppoint, and when deemed necessary for the good of the service, lay off, suspend, demote, or remove all directors, or heads of administrative departments and all other administrative officers and employees of the city . . . .” See 560 F.2d at 927.

13. Section 2.11 provides that:
[N]either the council, the mayor, nor any of its other members may direct the appointment of any person to, or his removal from office or employment by the city manager or by any other authority, or, except as provided in this charter, participate in any manner in the appointment or removal of officers and employees of the city. Except for the purpose of inquiry, the council, the mayor, and its other members shall deal with the administrative service solely through the city manager. . . . If the mayor or any other councilman violates any provision of this section, he shall be guilty of a misdemeanor, and upon conviction thereof, shall cease to be a councilman.

14. 560 F.2d at 928. Alberg was particularly upset that a hand gun, which was supposedly destroyed, was found in the hands of a felon in Kansas City, Missouri.

15. Id.
16. Id.
17. Id. at 928.
lic statement concerning the investigation just completed, stating
that no evidence of criminal misconduct had been found.\textsuperscript{18} Alberg
decided on April 15 that he would dismiss Owen, though Owen did
not receive his termination letter until April 18.\textsuperscript{19}

Unknown to Alberg, City Councilman Paul Roberts obtained a
copy of the police investigation report and prepared a statement
which he read at a city council meeting on April 17. The statement
contained criminal accusations against Owen and a recommendation
that the city manager take action to correct the situation.\textsuperscript{20}
The city council adopted the statement and recommendation.

All this took place before Alberg publicly announced his deci-
sion to dismiss Owen. Thus, the accusations against Owen came
before the official announcement, but only \textit{after} that decision had
already been made by Alberg. The next day, April 18, Owen re-
ceived his termination letter.\textsuperscript{21}

Both the statement at the city council meeting and Owen's
subsequent dismissal received prominent coverage in the local
newspapers.\textsuperscript{22} The newspaper stories linked the events of the in-
vestigation and Owen's dismissal. The actual firing was reported
under a banner headline, "Probe Culminates in Chief's Dismiss-
Alberg's statement, read in part: "Discrepancies were found in
the administration, handling, and security of recovered property. There appears to
be no evidence to substantiate any allegations of a criminal nature." Alberg's state-
ment received prominent coverage in local newspapers.

\textsuperscript{19} \textit{Id} at 929.

\textsuperscript{20} \textit{Id} The statement alleged that Owen had taken two television sets from
the property room for his own personal use, that firearms in the custody of the
police department had "found their way into the hands of others including un-
desirables"; that narcotics being held by the department had "mysteriously disap-
peared"; that traffic tickets had been manipulated; that inappropriate requests had
been made by "high ranking police officials to the police court"; "that things have
occurred causing the unusual release of felons"; and the reports had disclosed
"gross inefficiencies on the part of a few of the high ranking officers of the police
department." \textit{Id}

\textsuperscript{21} \textit{Id} at 929-30. Owen received a letter which stated only that his job had been
terminated pursuant to § 3.3(1) of the city charter. \textit{See note 12 supra} A list of spe-
cific reasons for the dismissal was not included.

\textsuperscript{22} The Independence Examiner, March 25, 1972, at 1, col. 1; April 18, 1972, at 1,
Col. 1, April 19, 1972, at 1. \textit{The Kansas City Times}, April 18, 1972, at 1, col. 1.

\textsuperscript{23} The Independence Examiner, April 19, 1972, at 1, col. 1.


\textsuperscript{25} \textit{See note 5 supra} Owen also filed a tort action in state court against both
Roberts and Alberg. Owen's action against Alberg was later dismissed. His action
against City Councilman Roberts was subsequently settled out of court.
Owen claimed he was deprived of both a liberty and a property interest without due process, since he was not given an opportunity for a hearing. Owen contended that the public assumed his dismissal had been due to a scandal arising from the administration of the police property room.

The district court determined that jurisdiction was proper under 28 U.S.C. § 1331, but denied Owen relief on both claims. The court ruled that, since Owen was an untenured employee, he did not have a property interest in his job. Nor was he deprived of a liberty interest because the court concluded, the city's dismissal had not stigmatized Owen's reputation. Owen appealed the court's rulings on his constitutional claims; the city appealed the findings of proper jurisdiction under 28 U.S.C. § 1331.

The Eighth Circuit Court reversed the district court's decision in part, ruling that Owen was deprived of a liberty interest without due process. The court affirmed the denial of Owen's property interest claim and dismissed the jurisdictional appeal of the city. The case was remanded to district court solely to determine the proper amount of damages Owen was entitled to recover.

THE JURISDICTION QUESTION


A. SECTIONS 1343 AND 1983

The common purpose of these two statutes is to provide a means for private litigants to vindicate constitutional rights having no pecuniary valuation. The scope of federal jurisdiction under these statutes has been limited by the United States Supreme


27. Id. at 1120-21.
28. Id. at 1122.
29. 560 F.2d at 931.
30. Id. at 937. "Accordingly, we hold that the actions of the City of Independence deprived Owen of liberty without due process of law, in violation of Owen's rights under the fourteenth amendment." Id.
31. Id. at 938. After noting that state law interpretations control this issue, the court rejected Owen's claim for deprivation of a property interest, based upon the Missouri Supreme Court decision in State v. Crandall, 269 Mo. 44, 190 S.W. 889 (1916).
32. Id. at 933.
33. Id. at 941.
34. 560 F.2d at 931. See text of statutes quoted in note 5 supra.
Court in *Monroe v. Pape*\(^{36}\) and *City of Kenosha v. Bruno*.\(^{37}\)

In *Monroe*, the Court attempted to define which actions would be considered "under color of" state authority,\(^ {38}\) though this definition is limited by various immunities stated in cases both previous and subsequent to *Monroe*.\(^ {39}\) Perhaps the most restrictive of these subsequent decisions was *City of Kenosha*, in which the Court held that a municipal corporation is not a "person" under section 1983 and, therefore, jurisdiction cannot properly be invoked under section 1343.\(^ {40}\)

In accordance with the holdings in *Monroe* and *City of Kenosha*, the Eighth Circuit concluded that Owen's suit could not be maintained against the city of Independence under these statutes.\(^ {41}\) Because of its decision that the jurisdiction of the district court was properly invoked under section 1331, the court declined to decide whether Owen's suit against the individual city officials could also be maintained under sections 1983 and 1343.\(^ {42}\)

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39. The Supreme Court has found a range of official immunities in § 1983 and has elaborated the standards of liability under that section. In *Tenney v. Brandhove*, 341 U.S. 367 (1951), the Court announced a rule of absolute immunity from civil liability for state legislators acting in their official capacities. *Id.* at 379. It is clear that this rule of immunity was not abrogated by enactment of § 1983. *Morgan v. Sylvester*, 125 F. Supp. 380 (S.D.N.Y. 1954), *aff'd* 220 F.2d 758 (2d Cir. 1955), *cert. denied* 350 U.S. 867 (1955). In *Pierson v. Ray*, 386 U.S. 547 (1967), an analogous immunity for judges was implied by the court, while also stating that police officers may assert a defense of "good faith" in § 1983 actions. *Id.* at 553-54, 557. Though the Court has rejected an absolute executive immunity, discussions of defenses available to executive officials are stated in *Wood v. Strickland*, 420 U.S. 308 (1975), and *Scheuer v. Rhodes*, 416 U.S. 232 (1974).
41. 560 F.2d at 931.
However, we need not choose between the conflicting approaches to Owen's claims that he may obtain monetary relief from the City through the individual city officials in their official capacities under section 1983, because we are convinced that Owen has established a claim on his second theory, that an implied right of action arising [sic] from the Constitution itself.

42. 560 F.2d at 932.
The court concluded that jurisdiction was proper under the general "federal question" statute, 28 U.S.C. § 1331(9), which provides in part: "The district courts shall have original jurisdiction of all civil actions where in the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States. . . ."

The principal case relied upon by Owen in asserting jurisdiction under section 1331 was *Bivens.*\(^4\) In *Bivens,* the plaintiff sought relief against federal narcotics officers who allegedly violated the plaintiff's constitutional rights under the fourth amendment.\(^4\) The Court allowed recovery, thereby creating a civil damages remedy against federal officials acting in an unconstitutional manner, stating:

> [W]e cannot accept respondents' formulation of the question as whether the availability of money damages is necessary to enforce the Fourth Amendment. For we have here no explicit congressional declaration that persons injured by a federal officer's violation of the Fourth Amendment may not recover money damages from the agents, but must instead be remitted to another remedy, equally effective in the view of Congress. . . . Having concluded that petitioner's complaint states a cause of action under the Fourth Amendment, . . . we hold that petitioner is entitled to recover money damages for any injuries he has suffered as a result of the agents' violation of the Amendment.\(^4\)

Thus, the court may choose among traditional remedies available where it is deemed necessary or appropriate to adjudicate a claim, unless specifically prohibited by Congress.

The court in *Owen* was therefore faced with three preliminary questions: (1) whether Owen's complaint stated a cause of action arising under the fourteenth amendment; (2) whether monetary relief is necessary to the vindication of a constitutional right; and (3) whether Congress intended to preclude monetary recovery from municipal corporations.

The court held that Owen's complaint stated a constitutional

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43. 403 U.S. 388 (1971).
44. *Id* at 389. "The agents manacled petitioner in front of his wife and children, and threatened to arrest the entire family. They searched the apartment from stem to stern. Thereafter, petitioner was taken to the federal courthouse in Brooklyn, where he was interrogated, booked, and subjected to a visual strip search." *Id*
45. *Id* at 397. The court held the petitioner's claim entitled him to money damages for any injuries he suffered in the deprivation of his constitutional rights.
claim as described in *Bivens*. Although *Bivens* dealt specifically with a fourth amendment claim, the Supreme Court had not limited its rationale solely to such a claim. The circuit court held that, by not providing Owen a due process hearing, the city had denied Owen a constitutional right protectable under *Bivens* and its progeny.

The court quickly disposed of the second question: whether an award of damages would be an appropriate remedy. The court noted that, by the date of suit, Owen’s age would bar him from further service as chief of police and, therefore, that “vindication of his good name could not restore Owen” to his job. Thus, the court concluded that merely awarding a due process hearing would amount to no relief at all.

Finally, the court held that municipal corporation immunity did not preclude an award of damages in this case. Although some courts have held that the immunity of municipal corporations from suit under section 1983 indicates the congressional intent to preclude damages under section 1331 as well, the court noted that the Supreme Court has not specifically decided the issue. The court therefore concluded that, since the Supreme Court did not specifically deny all forms of recovery against a municipal corporation when presented with the opportunity, jurisdiction under section 1331 was not foreclosed.

Since it appeared from the outset that Owen’s claim could result in an award in excess of the ten thousand dollar jurisdictional

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46. 560 F.2d at 932.
47. 403 U.S. at 397, quoted in text at note 45 supra. The Court in *Bivens* had not been specific as to what types of claims would be allowed. As Mr. Justice Harlan explained in a concurring opinion, “courts of law are capable of making the types of judgment concerning causation and magnitude of injury necessary to accord meaningful compensation for invasion of Fourth Amendment rights, whereas this may not be true with respect to other types of constitutionally protected interests.” 403 U.S. at 409 (Harlan, J. concurring). Thus the courts were left with a fair amount of discretion in deciding whether the claim fit within the *Bivens* rationale.
48. 560 F.2d at 939.
49. Id.
50. Id at 932-33.
51. See 560 F.2d at 933 and cases there cited.
52. Id The court concluded that since the Supreme Court in the *City of Kenosha* case, supra note 4, apparently did not view § 1983 as limiting the power of federal courts to imply remedies from the Constitution against a municipal corporation, it would not be proper for the circuit court to draw an opposite conclusion. Furthermore, in *Mt. Healthy Bd. of Educ. v. Doyle*, 429 U.S. 274, 279 (1977), the Court was again confronted with a dismissed employee who sought relief for his damaged reputation. The Court had the chance to deny recovery from municipal corporations under § 1331 once and for all, but instead resolved the case without expressly solving the jurisdictional question.
minimum, the court concluded that Owen’s suit met all jurisdictional requirements of section 1331 and accordingly denied the city’s cross-appeal.54

**THE PROPERTY INTEREST**

Owen asserted that he had a constitutionally protected property interest in his job.55 This claim relied principally upon *Arnett v. Kennedy,*56 a case based upon a federal statute. The Court in *Arnett* held that, under the Civil Service Act, an untenured employee could be dismissed only upon a showing of cause.57 Owen, asserted that the Independence city charter entitled him to a “show cause” hearing mandated by *Arnett.*58

Relying on the rationale of *Bishop v. Wood,*59 the court ruled that the untenured position held by Owen did not amount to a protected property interest.60 The court stated, “*Bishop* teaches that the Supreme Court’s interpretation of a federal statute does not control the interpretation of similarly worded state laws.”61 Thus, state law controls the status of state employees.62

Though several Missouri cases appeared to support Owen’s claim,63 the court determined that the Missouri Supreme Court’s opinion in *State v. Crandall*64 was dispositive. The court explained: “The city manager’s power to discharge seems analogous to that of the governor in *Crandall,* who could discharge ‘upon his being fully satisfied’ that there was misconduct. Under Missouri law, such language confers the power to discharge at will.”65 Find-
ing no Missouri cases to the contrary, the court affirmed the district court’s decision denying the property interest claim.

THE LIBERTY INTEREST
A. BACKGROUND OF CASE LAW

An exhaustive list of recognized liberty interests has never been delineated by the Supreme Court. Some early guidance as to what will be considered a protected liberty interest was given in Meyer v. Nebraska. The Court later expanded the boundaries, stating in Joint Anti-Fascist Refugee Committee v. McGrath: "Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. ... [It] is compounded of history, reason, the past course of decisions. ..."

Despite this broad language, the liberty interest asserted by Owen—damage to reputation—has not, standing alone, been recognized by the Supreme Court. The Court has recognized claims for injury to reputation only when that injury has been connected with the deprivation of a different, protected right.

In Wisconsin v. Constantineau, the United States Supreme Court came close to defining reputation as a protected liberty interest without actually doing so. In Constantineau, the police chief pursuant to a state statute, posted a notice in all retail liquor stores stating that sales of liquor to Constantineau were prohibited for one year. Such posting was authorized upon determination that a person becomes dangerous to the peace of the community if allowed to purchase liquor. The Court stated: "Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." Yet, in the final analysis, the Court based its ruling that Constantineau was entitled to a hearing on the fact that he had been deprived of an opportunity to purchase

66. 262 U.S. 390 (1923). Meyer contained a broad reading of liberty that has taken on new significance in some of the more recent cases extending substantive due process to noneconomic fundamental rights. See, e.g., Griswold v. Connecticut, 381 U.S. 479 (1965).
68. Id. at 162-63 (Frankfurter, J., concurring).
69. See, e.g., Goss v. Lopez, 419 U.S. 565 (1975) (damage to reputation due to charge of misconduct may interfere with the right to attend school); Wisconsin v. Constantineau, 400 U.S. 433 (1971) (damaged reputation found to deprive the plaintiff of the right to purchase liquor); Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961) (damaged reputation connected to right to work).
70. 400 U.S. 433 (1971).
71. Id. at 437.
liquor, not because his reputation had been damaged.\textsuperscript{72}

In \textit{Board of Regents v. Roth},\textsuperscript{73} the Supreme Court recognized that future employment opportunities are aspects of a person's right to work such that damage to one's reputation may require a hearing prior to termination of employment. In \textit{Roth}, a teacher alleged that he had been fired because of statements he had made which were critical of the administration. This, he asserted, deprived him of constitutionally protected rights of free speech and procedural due process in that he had been fired without first having had an opportunity to clear his name at a hearing. The Court stated that a pretermination hearing may be required where there has been a denial of a liberty interest protected by the fourteenth amendment\textsuperscript{74} but concluded that this did not apply to \textit{Roth}.\textsuperscript{75}

The Court in \textit{Roth} alluded to circumstances which might compel a due process hearing, such as the state charging an employee with dishonesty or immorality in a way which "might seriously damage his standing and association in his community."\textsuperscript{76} By refusing to re-employ an individual without granting a hearing under such circumstances, the state infringes upon his liberty by imposing on him "a stigma or other disability that foreclose[s] his freedom to take advantage of other employment opportunities."\textsuperscript{77}

In \textit{Paul v. Davis},\textsuperscript{78} plaintiff's name was placed on a list of active shoplifters and circulated among local merchants, though he had never been convicted of shoplifting. The Court observed that where previous claimants had invoked a due process claim successfully, a recognized right had been taken away.\textsuperscript{79} In \textit{Paul}, no denial of due process occurred because a person's interest in a good reputation is not by itself a protected liberty interest.\textsuperscript{80} Mr. Justice Brennan wrote a strong dissent, stating that it was time for the Court to recognize reputation alone as a constitutionally-pro-

\textsuperscript{72} Id. at 436. The Court has since placed stringent limitations on the broad dicta in \textit{Constantineau} concerning reputation as a protected interest. See, e.g., \textit{Paul v. Davis}, 424 U.S. 693 (1976), discussed in text at note 78 infra.
\textsuperscript{73} 408 U.S. 564 (1972).
\textsuperscript{74} Id. at 573.
\textsuperscript{75} Id.
\textsuperscript{76} Id. at 573.
\textsuperscript{77} Id. The Court also stated that the requirements for a meaningful hearing would be determined by balancing the interests of the parties involved. Id. at 570. For a discussion of the balancing tests involved in such a hearing, see, \textit{Arnett v. Kennedy—A Dubious Approbation of Adverse Action Procedures}, 16 Wm. \\& MARY L. REV. 133 (1974).
\textsuperscript{78} 424 U.S. 693 (1976).
\textsuperscript{79} Id. at 706-10.
\textsuperscript{80} Id. at 701. "Reputation alone, without some connection to other liberty or property such as employment, is not actionable under the due process clause."
tected right.\textsuperscript{81}

In Bishop v. Wood,\textsuperscript{82} an untenured policeman was fired. The reasons for the action were explained to him in private. He then commenced suit alleging his termination without a hearing deprived him of a property interest in continued employment. During pretrial discovery, the reasons for his discharge were made public.\textsuperscript{83} Petitioner then filed an affidavit alleging the grounds for his dismissal to be untrue and that making such charges in public imposed a stigma on his reputation.\textsuperscript{84} The Court held that answers given to questions posed by an employee prior to his termination cannot thereafter be used to create a stigma attached to the actual dismissal.\textsuperscript{85} In addition, the Court ruled in Codd v. Velger,\textsuperscript{86} that a person seeking a due process hearing concerning his job termination must first allege the falsity of the reasons stated for his dismissal.\textsuperscript{87}

\textbf{B. Liberty Interest Analysis in Owen}

With the Roth, Paul, Bishop and Codd cases serving as guidelines, the circuit court found that Owen had indeed been deprived of a liberty interest without due process.

The district court had given three reasons for disposing of Owen's liberty interest claim. First, the only official reason given for Owen's discharge was that given by the city manager pursuant to powers granted under the city charter. Second, there was no causal connection between Owen's discharge and Councilman Roberts' statement, due to the fact that the city manager had already decided to fire Owen. Third, Owen was completely exonerated by the previous statements that the investigation had uncovered no evidence of illegal conduct.\textsuperscript{88}

\textsuperscript{81} Id. at 723. In his dissent, Mr. Justice Brennan states that police should not be allowed to label and categorize an accused person, explaining that such conduct constitutes a serious deprivation of constitutional rights. Id. at 729 (Brennan, J. dissenting).

\textsuperscript{82} 426 U.S. 341 (1976).

\textsuperscript{83} Id. at 343. The reasons given for the dismissal included failure to follow orders, poor attendance at police training classes and "conduct unsuited to an officer."

\textsuperscript{84} Id. at 343, 347.

\textsuperscript{85} Id. at 348. The Court reasoned that "since the latter communication was made in the course of a judicial proceeding which did not commence until after petitioner had suffered the injury for which he seeks redress, it surely cannot provide retroactive support for his claim." Id.

\textsuperscript{86} 429 U.S. 624 (1977).

\textsuperscript{87} Id. at 627.

\textsuperscript{88} 560 F.2d at 934-35.
Agreeing with the district court that there was no causal connection between Roberts' statement and City Manager Alberg's decision to dismiss Owen, the circuit court nonetheless disagreed with the conclusion that Owen had not been stigmatized. The court held that Owen had in fact been stigmatized and that the stigma had been imposed "in connection with" the termination of his employment.

In reaching this conclusion, the court focused upon the totality of the circumstances surrounding Owen's dismissal. While noting that the official discharge notice by itself had not cast a stigma upon Owen, the court reasoned that the announcement of Owen's dismissal contemporaneously with Roberts' statements had cast a stigma on Owen's reputation in the eyes of the public. The court stated, "the crucial issue is whether the government employer, in connection with the termination of government employment, including a refusal to rehire or reemploy, makes a charge which might seriously damage the employee's standing and reputation in the community." The court found that the stigma upon Owen's reputation had indeed occurred in connection with the termination of his employment:

That the stigmatizing charges did not come from the city manager and were not included in the discharge notice is immaterial, because the official actions of the city council released charges against Owen contemporaneous and, in the eyes of the public, connected with that discharge. It is the fact of the City's public accusation which is of prime importance, not which official made the accusation.

The court distinguished Owen from Bishop, since there had been damaging public disclosure in Owen due to the statement read at the city council meeting. The Codd case was also distinguishable since Owen had alleged the falsity of the statement from the outset. Finally, the court ostensibly fit the case within the rationale of Roth and Paul, based upon its conclusion that Owen had been defamed in connection with the termination of his employment. In so doing the court appears to have expanded the

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89. Id at 936-37.  
90. Id.  
91. Id at 936.  
92. Id at 935.  
93. Id at 937.  
94. Id at 935-36. Roberts' public statement is quoted in note 20 supra.  
95. Id at 936. The court explained that a hearing is justified only when a factual dispute exists. In Owen, the dispute was over the truth of the statements made by Councilman Roberts.  
96. See discussion of Roth and Paul in text accompanying notes 73-81 supra.
boundaries established in those two cases, which required a finding that the stigma was imposed in the “course of termination.”

The close proximity of events and the magnitude of publicity they received seem to be the foundation upon which the court based its decision. This case seemingly expands the Roth and Bishop interpretations as to what actions will be considered in the course of termination of employment. The fact that a “stigma” had been thrust upon Owen due to the circumstances surrounding his dismissal was readily apparent97 and supportable by past decisions that had construed what circumstances create a stigma.98 The point of departure from prior cases exists in the court’s apparent rejection of the requirement that the defamatory statements be causally related to the decision to dismiss. Thus, the requirement that the stigma be imposed “in the course of” termination has been expanded to include situations in which it can fairly be concluded that the stigma attached “in connection with” the termination. Owen does not define the outer limits of its rationale, but merely provides an illustration. The court appears to have said that when a stigma is imposed upon a government employee by official action and, in the eyes of the public, the stigma is reasonably linked with his discharge, the employee must be afforded an opportunity to clear his name.

THE GOOD FAITH DEFENSE AND DAMAGES

Upon finding that Owen had indeed been damaged by the lack of a hearing, the court had to decide whether the asserted good faith of the city would nevertheless defeat his claim.99 The court gave three reasons why it felt the good faith defense did not apply. First, a municipality does not have this defense available when a

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97. See notes 20 & 22 supra. It was apparent that the press had publicized the series of events to the extent that the police inventory investigation and Owen's dismissal were indelibly linked in the public mind. It is likewise clear that this notoriety affected Owen's reputation. The court noted, for instance, that “the record shows that Owen sought other similar employment opportunities and that at least one such opportunity was denied him because of the adverse publicity surrounding his discharge.” 560 F.2d at 939.


99. 560 F.2d at 940. The city relied upon both Monroe v. Pape, 365 U.S. 167 (1961), and City of Kenosha v. Bruno, 412 U.S. 507 (1973), in arguing that it would run afoul of the Court's reasoning in those cases if equitable relief was granted in this case. The city contended that it had acted in good faith by offering Owen other employment, once again relying on the general principles announced in Monroe. It was contended that Owen was dismissed under authority granted in the city charter, and that the city must therefore have acted in good faith. 560 F.2d at 931.
monetary award is an element of equitable relief.\textsuperscript{100} Second, the city, and not the individuals, would bear the burden of any monetary award, thereby defeating the policy arguments announced in \textit{Wood v. Strickland}.\textsuperscript{101} Finally, a lack of good faith by the city was evidenced by Councilman Roberts' unfair attack on Owen at the city council meeting.\textsuperscript{102} Therefore, the court held the good faith defense was unavailable to the city as a matter of law.\textsuperscript{103}

In determining the amount of damages that Owen should recover, the court cited \textit{Wellner v. Minnesota State Junior College},\textsuperscript{104} in which the court held that back pay would be an adequate remedy. However, since the court did not want to award Owen a windfall benefit or place an unjust burden on the taxpayer,\textsuperscript{105} the case was remanded to the district court to determine what amount of compensatory relief would be equitable, in light of the various factors present.

\textbf{THE DISSENT}

Senior Judge Van Oosterhaut dissented. While assuming that jurisdiction was proper, he did not agree that Owen was deprived of a protected liberty interest.\textsuperscript{106} Incorporating the rationale of \textit{Paul}, the dissent argued that only the city manager had the power to dismiss Owen and that he, in fact, had done so prior to Councilman Roberts' defamatory statement.\textsuperscript{107} Since the city council was prevented by law from interfering with the appointment or discharge of the police chief,\textsuperscript{108} Judge Van Oosterhaut reasoned that the subsequent statement could not be connected to the termina-

\textsuperscript{100} 560 F.2d at 940.
\textsuperscript{101} 420 U.S. 308, 319-21 (1975). The primary reason for the good faith defense allowed in \textit{Wood} was to insure that public officials will not fear personal monetary liability in performing their duties. Since the city would pay the award in \textit{Owen}, the \textit{Wood} rationale did not apply. 560 F.2d at 940.
\textsuperscript{102} 560 F.2d at 941.
\textsuperscript{103} Id
\textsuperscript{104} 487 F.2d 153 (8th Cir. 1973).
\textsuperscript{105} 560 F.2d at 939-40. The Court felt it would be unfair to force the city to pay for two men in the same position (Owen and his replacement).
\textsuperscript{106} Id The district court was instructed to mitigate this award by taking into account the amount of damages Owen received from Roberts in his state tort suit, as well as other factors that could limit Owen's ultimate recovery from the city. Id at 941.
\textsuperscript{107} Id at 942. "Plaintiff had been fully advised on April 10 and 11 that he would be discharged if he did not resign and arrangements for a successor were made on April 13 by the city manager, all prior to the April 17 council meeting."
\textsuperscript{108} Id Section 2.11 of the city charter prohibited the mayor or city council members from interfering with the appointment or discharge of an officer. Violation of the charter provision constitutes a misdemeanor and grounds for removal. \textit{See also} note 13 \textit{supra}.
tion of employment. Therefore, the rule in Paul precluded recovery for damage to reputation alone.\textsuperscript{109}

CONCLUSION

Faced with difficult questions as to both proper jurisdiction and the definition of a liberty interest, the court in Owen resolved both issues in a manner that allowed recovery of damages against the city. The court seems to have enlarged the scope of activities that will be considered "in the course of" termination (the liberty interest standard defined in Roth\textsuperscript{110}) by its careful choice of words, stigma "in connection with" termination of employment.\textsuperscript{111} In finding proper jurisdiction under section 1331, the court has also clarified the amenability of municipal corporations to damage actions for violating its employees' constitutional rights.

The decision may be feared as a basis for creating a federal tort claims forum. The case should, however, be read as a realistic extension of prior law. In arriving at its decision, the court exhibited sound judgment in tying together the events surrounding Owen's dismissal and concluding that a protected liberty interest had been denied. On its facts, the case is strikingly similar to Bishop v. Wood; yet, due to the adverse and hostile public opinion fostered by the newspaper reports, a contrary result was warranted.

The court has not misapplied the holding in Paul v. Davis that damage to reputation alone is not grounds for recovery. However, Owen seemingly enhances the prospects for recovery in federal court for a damaged reputation related to one's employment status. It is well that it does, for as Mr. Justice Brennan stated, "the enjoyment of one's good name and reputation has been recognized repeatedly in our cases as being among the most cherished of rights enjoyed by a free people . . . ."\textsuperscript{112} By its decision in Owen, the Eighth Circuit Court of Appeals has taken a step toward the realization of that ideal.

\textit{James C. Zalewski—'79}

\textsuperscript{109} Id
\textsuperscript{110} 408 U.S. 564, 573 (1972).
\textsuperscript{111} 560 F.2d at 935.