MUNICIPAL LIABILITY

MUNICIPAL LIABILITY UNDER SECTION 1983—WILLIAMS v. BUTLER

INTRODUCTION

Civil rights actions based on section 1983\(^1\) constitute almost one-third of all federal question litigation brought by private parties in federal courts.\(^2\) The United States Supreme Court has not addressed the “full contours of municipal liability under section 1983. . . .”\(^3\) This is significant in light of the fact that one commentator has characterized municipal liability cases as “among the most visible instances of [section 1983] doctrinal confusion.”\(^4\)

Recently, the Court of Appeals for the Eighth Circuit addressed the “novel question in this circuit,”\(^5\) in the case of Williams v. Butler.\(^6\) With the Williams case as its focus, this Note provides the reader with a research tool to aid in the analysis of a municipal liability problem under section 1983. The Note presents a brief history of municipal liability, a survey of the case law, a comparative analysis of the rationales which various courts have employed in deciding this issue, and an in-depth analysis of the municipal liability issue in Williams.\(^7\)

FACTS AND HOLDING

In Williams v. Butler, plaintiffs Debbie Williams and Linda Stanley were court clerks for Little Rock, Arkansas, Municipal

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   Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.
6. 746 F.2d 431 (8th Cir. 1984).
7. Id. The other issues in Williams v. Butler, directed verdict, admissibility of evidence, improper closing remarks, attorneys' fees, and punitive damages awards, are beyond the scope of this Note, and are not addressed. See id. at 439-44.
Judge William R. Butler. Both plaintiffs had observed the judge intentionally destroy traffic tickets. Pursuant to her first amendment rights, plaintiff Williams reported the observed event to the police. Upon Judge Butler's appraisal of Williams's statements, he discharged her from her employment. Then, during a 1981 grand jury investigation into the judge's activities, plaintiff Linda Stanley revealed her knowledge of the destroyed traffic tickets to officers of the court. Plaintiff Stanley made two additional required appearances before the grand jury. Subsequent to these appearances, Stanley alleged that she experienced such a high degree of harassment by her coworkers that she felt forced to resign.

The lawsuit commenced when plaintiffs Williams and Stanley filed a section 1983 official capacity suit against Judge Butler. The plaintiffs sought injunctive relief, reinstatement, and actual and punitive damages. Judge Butler filed a third-party complaint against the City of Little Rock, seeking payment by the city of any judgment returned against him.

The jury awarded plaintiff Williams $40,000 in compensatory damages and $60,000 in punitive damages. The jury found against plaintiff Stanley. The trial court ruled in favor of Judge Butler on his third-party complaint against the city. The trial court eliminated the punitive damages award to Williams and awarded her costs and attorneys' fees reduced by twenty-five percent due to plaintiff Stanley's failure to win her claim. The city appealed the trial court's ruling in favor of Judge Butler on his third-party complaint, and plaintiff Williams cross-appealed the dismissal of her punitive damages award and the decrease in her award for attorneys' fees.

8. Id. at 434.
9. Id.
10. Id.
11. Id.
13. Williams, 746 F.2d at 434.
14. Id.
16. Id.
17. Williams, 746 F.2d at 434. Prior to this, Judge Butler had his own private defense counsel for over 16 months, and had not pursued assistance from the city. Brief for Appellant at 2 n.1, Williams v. Butler, 746 F.2d 431 (8th Cir. 1984).
19. Williams, 746 F.2d at 434.
20. Id.
21. Id.
23. Williams, 746 F.2d at 434.
25. Williams, 746 F.2d at 434.
Upon appeal, the city contended that it was not liable for Judge Butler's unconstitutional act of firing plaintiff Williams. The city argued that the trial court erroneously concluded that Judge Butler's unconstitutional act established city policy. The plaintiff maintained that the trial court had properly held that Judge Butler's act of discharging plaintiff Williams established city policy.

Senior Circuit Judge Floyd Gibson wrote the majority opinion for the court and held that the City of Little Rock was liable for Judge Butler's unconstitutional act. In a strong dissent, Circuit Judge McMillian contended that the majority incorrectly analyzed the issue. The essence of his dissenting opinion was that the constitutional injury-inflicting act (the wrongful firing of an employee, in violation of her first amendment rights) itself was not a city policy or custom. His analysis of the issue focused on the injury-inflicting act and city policy and custom.

BACKGROUND

Legislative History

In order to analyze the Eighth Circuit's treatment of the municipal liability issue in Williams v. Butler, an examination of the legislative history of section 1983 and the applicable case law

26. Id.
29. Id. at 435. The court admitted that its holding was extremely narrow. Id. at 438. The specific holding demanded that the following criteria be met to establish municipal liability:

1) intentional
2) unconstitutional act
3) taken for the city
4) by a city official
5) who was given the final authority
6) pursuant to a custom or policy
7) established by the city
8) to make the decision which led to that act.

Id.
31. Id. at 444 n.1 (McMillian, J., dissenting).
32. Id. at 438-39 n.10 (quoting the dissenting opinion, id. at 444). See also notes 62-92 and accompanying text infra, regarding discussion of the city policy or custom requirement.
33. Id. at 444.
34. 746 F.2d 431 (8th Cir. 1984).
35. This discussion of the legislative history is based upon the format utilized by Sheldon H. Nahmod in his book, CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION: A GUIDE TO SECTION 1983, at § 1.03 (1979) (history and purposes of § 1983). For further background material on the history of § 1983, see generally Freilich, Rushing & No-
interpreting the issue must first occur. The origins of section 1983 are in section one of the Ku Klux Klan Act of April 20, 1871. The title of section one, “An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes,” clearly established the intent of Congress to exercise the power vested in it by the enabling clause of the fourteenth amendment to enforce the provisions of that amendment. Section 1983 was also modeled on section two of the Civil Rights Act of 1866. That Act made criminal certain acts committed by persons “under color of any law, statute, ordinance, regulation, or custom.” Congress codified preexisting law in 1874 and expanded section one of the 1871 Act to include not only constitutionally secured rights but also to embody rights derived from federal laws. This expansion matches the present text of section 1983.

The Supreme Court has enunciated the purposes of section 1983 as:

1) to interpose the federal courts as guardians of the people’s rights—to protect the people from unconstitutional action taken under color of state law;

2) to prevent the states from violating the fourteenth amendment;

3) to compensate injured plaintiffs for deprivations of their federal rights; and

37. Id.
41. Id. See note 1 supra, regarding the inclusion of the District of Columbia in the text of the statute.
42. S. NAHMOD, supra note 35, at 4.
45. Id. at 254.
4) to protect federal rights in federal courts because state laws might not be enforced and the fourteenth amendment claims of citizens might be denied.46

Landmark Supreme Court Cases

In *Monroe v. Pape*,47 the Supreme Court held that a municipal defendant was not a "person" under section 1983.48 The Supreme Court reversed its stance on municipal liability seventeen years later, holding that a municipality is a "person" for purposes of section 1983 litigation in the landmark case of *Monell v. Department of Social Services*.49 The test for municipal liability under *Monell* is two-tiered. The first tier determines whether or not the alleged unconstitutional act implemented or executed a "policy statement, ordinance, regulation, or decision officially adopted and promulgated" by the city's governing body.50 If this question is answered affirmatively, the city is liable. If it is answered negatively, the analysis must proceed to the second tier. The second tier questions whether or not the alleged unconstitutional act was taken pursuant to governmental custom, even if the custom had not been formally approved through the city's official decisionmaking channels.51 If this question is answered affirmatively, the city is liable. If it is answered negatively, the city is free from liability.52

The Court refused to acknowledge a *respondent superior* theory of municipal liability: a municipality will not be liable "solely because it employs a tortfeasor."53 Rather, the plaintiff must show that "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury [for which] the government as an entity is responsible under § 1983."54

However, as acknowledged in Justice Powell's concurring opinion,55 "[t]here are substantial line-drawing problems in determining 'when execution of a government's policy or custom' can be said to

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47. 365 U.S. 167 (1961).
48. See id. at 187-92.
50. Id. at 690.
51. Id. at 691.
52. See id.
53. Id.
54. Id. at 694. *See also Payment, Civil Rights Liability of Municipalities in the Wake of Monell*, 53 N.Y. St. B.J. 56 (Dec. 1981) (discussion of *Monell* case and test for municipal liability).
55. *Monell*, 436 U.S. at 704.
inflict constitutional injury such that ‘government as an entity is responsible under § 1983.’ The Court seemed to make an advance in regard to this “line-drawing” problem in its decision in Polk County v. Dodson. The Court held that the plaintiff’s constitutional deprivation must be caused by a “constitutionally forbidden rule or procedure.” The Polk County approach demonstrates that municipal liability follows when the deprivation is caused by an unconstitutional policy or custom. In other words, a “cause-in-fact relationship between a plaintiff’s constitutional deprivation and a valid official policy or custom is . . . insufficient for section 1983 liability purposes.”

Case Law Developments After Monell

In light of these Supreme Court cases, the federal appellate and district courts have rendered many decisions on the issue of municipal liability under section 1983. These courts have employed various rationales from which several identifiable standards have evolved.

First, an examination of how “official policy or custom” has been interpreted in the courts is in order. The scope of municipal “policy” or “custom” was left open by the Monell court. The Monell case

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56. Id. at 713 ((Powell, J., concurring) quoting majority opinion, id. at 694). See also notes 62-92 and accompanying text infra.
58. Id. at 326. The Polk County case involved a public defender’s representation of an indigent criminal defendant. The plaintiff alleged: 1) the public defender injured plaintiff by acting pursuant to administrative rules and procedures for handling appeals; and 2) the “county ‘retains and maintains, advocates out of law school’ who have on numerous occasions moved to withdraw from appeals of criminal convictions.” Id. The Court held:

[The respondent failed to allege any policy that arguably violated his rights. . . . [A] policy of withdrawal from frivolous cases would not violate the Constitution. . . . [There was] no impermissible policy pursuant to which the withdrawals might have occurred. Respondent further asserted that he personally was deprived of a Sixth Amendment right to effective counsel. Again, however, he failed to allege that this deprivation was caused by any constitutionally forbidden rule or procedure.

Id. (emphasis added).
60. Id. at 27.
61. See notes 62-113 and accompanying text infra.
62. Monell, 436 U.S. at 695. The Monell case fact pattern involved an official policy, therefore the question of the scope of policy or custom did not have to be resolved. Id. at 660-61. In Monell, female employees of New York City’s Department of Social Services and Board of Education brought a § 1983 action, alleging that defendants (department, board, chancellor, city and mayor) unconstitutionally forced pregnant employees to take unpaid leaves of absence despite no medical necessity for such leaves. The defendants’ official policy on maternity leaves was not disputed. Id. at 660-63.
did, however, provide a foundation for determining what "policy" or "custom" means. The Court noted that "customs" have not "received formal approval through the body's official decisionmaking channels."\(^\text{63}\) In Monell, the Court quoted an earlier Supreme Court decision, Adickes v. Kress & Co.\(^\text{64}\) which said that Congress had included customs in the section 1983 definition "because of the persistent and widespread discriminatory practices of state officials in some areas."\(^\text{65}\) The Court went on to say:

> "Even where the laws are just and equal on their face, yet, by a *systematic* maladministration of them, . . . a portion of the people are denied equal protection under them."
> Although not authorized by written law, such practices of state officials could well be so *permanent* and *well-settled* as to constitute a "custom or usage" with the force of law.\(^\text{66}\)

In discussing "custom," the Adickes Court used such phrases as "settled practices,"\(^\text{67}\) "long-standing practice,"\(^\text{68}\) "[s]ettled state practice,"\(^\text{69}\) "[d]eeply embedded traditional ways of carrying out state policy,"\(^\text{70}\) "predominant attitude backed by some direct or indirect sanctions inscribed in law books,"\(^\text{71}\) "[so] deeply entrenched [that it was] . . . 'at least as powerful as any law,'"\(^\text{72}\) "the unwritten commitment by which men live and arrange their lives,"\(^\text{73}\) "widespread habitual practices or conventions regarded as prescribing norms for conduct, and supported by common consent, or official or unofficial community sanctions,"\(^\text{74}\) "widespread and enduring,"\(^\text{75}\) and "commonly regarded as prescribing norms for conduct."\(^\text{76}\) These quota-

\(^{63}\) Id. at 691.
\(^{64}\) 398 U.S. 144 (1970). The Adickes case was concerned with a private restaurateur's refusal to serve a white person accompanied by blacks. Id. at 146. The Court required proof of a state custom of racial segregation for the plaintiff's claim to stand. The Court said the state custom could be proven via police toleration of violence directed against plaintiff and others in her position. Id. at 147-48. Justice Brennan, concurring in part and dissenting in part, acknowledged that the legislative history of § 1983 failed to provide guidance for the interpretation of "custom or usage." There was some support that "custom" was not the same as "law." Id. at 215. Policy, custom, and usage have often been used interchangeably by many courts, see note 78 and accompanying text infra.
\(^{65}\) Id. at 167.
\(^{66}\) Id. at 167-88 (quoting Rep. Garfield, CONG. GLOBE, 42d Cong., 1st Sess. app. 153 (1871)) (emphasis added).
\(^{67}\) Id. at 168.
\(^{68}\) Id.
\(^{69}\) Id.
\(^{70}\) Id.
\(^{71}\) Id. at 179 (Douglas, J., dissenting in part).
\(^{72}\) Id. at 181 (quoting Garner v. Louisiana, 368 U.S. 157, 181 (1961)).
\(^{73}\) Id.
\(^{74}\) Id. at 222 (Brennan, J., concurring in part and dissenting in part).
\(^{75}\) Id.
\(^{76}\) Id. at 224.
tions indicate that custom is something that occurs more than once.

Even though "policy" is usually formal and official and "custom" is more on the level of informal practices of the officials, the two terms often overlap and are often treated as one or as policy encompassing custom. Custom, usage, and policy are frequently used interchangeably by the courts.7 In Knight v. Carlson, the court defined custom as "deeply imbedded [sic] traditional ways of carrying out . . . policy" and usage as "the regular and repeated response to a situation."8 In Rizzo v. Goode, the Supreme Court stated that random abuses of the law were not "official policy."9

In applying Monell and Rizzo, a federal court held that if the city "impliedly or tacitly authorized, approved or encouraged [the unlawful act], it promulgated an official policy."10 Additionally, the same court held that "a policy could not ordinarily be inferred from a single incident of illegality."11 Many courts have agreed that a single, isolated incident is insufficient to establish an official policy or custom which would trigger municipal liability.12 The rationale for re-

77. See Monell, 436 U.S. at 691. See also Monroe v. Pape, 365 U.S. 167, 236 (1961) (custom is a systematic pattern of official action); Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 369 (1940) (unbroken as a rule, systematically accepted practices constitute custom); Rucker v. Martin, 505 F. Supp. 20, 21-23 (W.D. Okla. 1980) (if a policy is not formally adopted, uniform adherence to it must exist).
78. Note, supra note 35, at 1230.
80. Id. at 59.
82. Id. at 366-70. The plaintiffs in Rizzo sought relief under § 1983 from defendants (city, mayor, and city police officials) to institute police training programs and disciplinary measures which would decrease the alleged widespread police brutality. Id. at 364-65 n.1.
84. Id. at 202.
85. Parratt v. Taylor, 451 U.S. 527, 541 (1981) (when established state procedure exists and constitutional deprivation occurs because of a "random and unauthorized act," it is not the result of custom or policy); Adickes v. S.H. Kress & Co., 398 U.S. 144, 219-20 (1970) (Brennan, J., concurring in part and dissenting in part) (federal government did not undertake to provide a federal remedy for every isolated act); Dick v. Watonwan County, 738 F.2d 939, 942-43 (8th Cir. 1984) (isolated incident of unconstitutionality based on a constitutional policy or custom is insufficient to hold municipality liable); Losch v. Borough of Parkesburg, 736 F.2d 903, 911 (3d Cir. 1984) (policy not ordinarily inferred from single occurrence of illegality); Bennett v. City of Slidell, 728 F.2d 762, 768 (5th Cir. 1984) (policy or custom requires "[s]ufficient duration or frequency of abusive practices"); Sanders v. St. Louis County, 724 F.2d 665, 667-68 (8th Cir. 1983) (isolated incident not evidence of acting pursuant to city policy or custom); Wellington v. Daniels, 717 F.2d 932, 936 (4th Cir. 1983) (isolated act is insufficient to establish § 1983 liability); McLaughlin v. City of LaGrange, 662 F.2d 1385, 1388 (11th Cir. 1981) (isolated incident does not establish city custom); Turpin v. Mallet, 619 F.2d 196, 202 (2d Cir. 1980) (policy cannot be inferred from single incident of illegality); Rivera v. Farrell, 538 F. Supp. 291, 294 (N.D. Ill. 1982) (policy or custom must be evidenced by more than a single wrongful act); Hamrick v. Lewis, 515 F. Supp. 983, 986 (N.D. Ill. 1981) (allegation of a single wrongful incident allegedly perpetrated pursuant
fusing to extend liability to the "isolated incident" cases appears to be that, if extended, respondeat superior theory\textsuperscript{87} would be the basis of liability.\textsuperscript{88} The Monell Court expressly rejected that theory of liability, asserting that section 1983's language mandates a causal link between the "person's" conduct and the plaintiff's constitutional deprivation.\textsuperscript{88} The rejection of the respondeat superior theory view is based upon the policy that

when an individual official breaks with official policy, and in doing so violates the constitutional rights of another, then that official, and not the municipality whose policies he breached, should be made to bear the liability. Conversely, when an official performs his duties according to established policies or practices, but in doing so violates another's rights, then it is the municipal entity, which established or perpetuated the practices, that should be held liable.\textsuperscript{89}

Municipal liability based on a single isolated wrong of an employee, amounts to invocation of the respondeat superior theory.\textsuperscript{90} When an act involves "personal gain" by the official or is personally motivated rather than a municipal custom, it is not sufficient to invoke municipal liability. To do so would require that the respondeat superior theory be invoked.\textsuperscript{90}

A difficulty occurs in applying Monell, however, because after the discussion rejecting a respondeat superior liability theory, the Court used the following language:

[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts

to city policy or custom is insufficient to invoke Monell liability); Magayanes v. City of Chicago, 496 F. Supp. 812, 814 (N.D. Ill. 1980) (a § 1983 action cannot be predicated on a single incident without evidence of the required "pattern").

\textsuperscript{86} See generally Restatement (Second) of Agency §§ 219-49 (1957) (on respondeat superior theory of liability—masters liable for torts of their servants within scope of employment).

\textsuperscript{87} Fabrizio v. Storey County, 543 F. Supp. 573, 576 (D. Nev. 1982) (individual instance of harassment does not constitute custom or policy, but liability would occur if a respondeat superior theory of liability was accepted). See also Comment, supra note 35, at 1043 n.88. (Monell Court's respondeat superior limitation can be viewed as an indication that a municipality is not liable for isolated unconstitutional deprivations committed by its employees); Federer v. County of Sacramento, 190 Cal. Rptr. 187, 189, 141 Cal. App. 3d 184, 186 (1983) (citing with approval Monell's rejection of respondeat superior theory of liability).

\textsuperscript{88} Monell, 436 U.S. at 691-92.

\textsuperscript{89} Powe v. City of Chicago, 664 F.2d 639, 649 (7th Cir. 1981) (emphasis added).

\textsuperscript{90} See Sterling v. Village of Maywood, 579 F.2d 1350, 1357 (7th Cir. 1978), cert denied, 440 U.S. 913 (1979) (allegation insufficient because it amounted to endorsing a respondeat superior theory; plaintiff only alleged a single unconstitutional incident. 579 F.2d at 1355-57.).

the injury that the government as an entity is responsible under § 1983.92

The Court failed to articulate which persons fall under this categorization or what the words specifically mean.93 As a solution, several courts have adopted an interpretation of the above-emphasized words as meaning officials with “final authority.”94 Even if an appeals process exists by which an aggrieved party can contest the city official’s decision, some courts still have held the official to be the “final authority” if the aggrieved parties rarely use the appeals process available to them.95 The courts strongly rely on this “final authority” analysis as a determinative factor in their decisions on municipal liability under section 1983.96

The section 1983 litigation in Monell’s aftermath focused on two issues: 1) what activities 2) participated in by which officials would compel section 1983 municipal liability.97 Additionally, the issue of whether or not the alleged activity fell within the respondeat superior exception was frequently litigated.98 Factual patterns appear to be controlling in the courts’ resolutions of these issues.99 Two main factual patterns emerge: one deals with employment dismissals,100

92. Monell, 436 U.S. at 694.
93. See id.
94. Losch v. Borough of Parkesburg, 736 F.2d 903, 911 (3d Cir. 1984) (final authority to make official policy); Thomas v. Sams, 734 F.2d 185, 192 (5th Cir. 1984) (city policy occurs when an official has authority to make policy from governing authority); Wilson v. Taylor, 733 F.2d 1539, 1545 (11th Cir. 1984) (quoting Familias Unidas v. Briscoe, 619 F.2d 391, 404 (5th Cir. 1980)) (one is a “final authority” when acts necessarily represent official policy); McKinley v. City of Eloy, 705 F.2d 1110, 1116 (9th Cir. 1983) (if city official alone is ultimate repository of power, his official acts are those of a final authority falling under the Monell language of “whose edicts or acts may fairly be said to represent official policy”); Bowen v. Watkins, 669 F.2d 979, 989 (5th Cir. 1982) (“at some level . . . there must be an official whose acts reflect governmental policy, for the government necessarily acts through its agents. . . . [M]unicipal liability attaches to acts performed pursuant to that policy”); Black v. Stephens, 662 F.2d 181, 191 (3d Cir. 1981) (final authority’s acts represent official city policy); Schneider v. City of Atlanta, 628 F.2d 915, 920 (5th Cir. 1980) (final authority’s acts may invoke municipal liability); Familias Unidas v. Briscoe, 619 F.2d 391, 404 (5th Cir. 1980) (one who is not accountable to another is a final authority for whom acts may invoke liability). See also Goode, The Changing Nature of Local Governmental Liability Under Section 1983, 22 URB. L. ANN. 71, 85-94 (1981) (official at highest level of authority is almost invariably viewed as making official policy through his acts); Schnapper, Civil Rights Litigation after Monell, 79 COLUM. L. REV. 213, 217-27 (1979) (original formulation of the “final authority” analysis).
95. E.g., Wilson v. Taylor, 733 F.2d 1539, 1546-47 (11th Cir. 1984); Berdin v. Duggan, 701 F.2d 909, 914 (11th Cir. 1983); Bowen v. Watkins, 669 F.2d 979, 989-90 (5th Cir. 1982).
96. See note 94 supra. See also notes 119-23 and accompanying text infra.
98. Id.
99. Id.
100. See note 108 infra.
while the other encompasses allegations of police misconduct, such as illegally forceful arrests or harrassment. 101

The employment dismissal cases have centered on firings committed by a municipality or local governmental body or official allegedly motivated either by racial discrimination or in retaliation for the employee's exercising of first amendment rights. 102 The courts have attempted to determine whether the dismissals were caused by "execution of some official policy." 103 Additionally, courts have viewed the facts to determine whether they demonstrated that general policies chilled the exercise of first amendment rights by punishing those who spoke out or whether general patterns of discrimination existed. 104 In Rookard v. Health & Hospital Corp., 105 a nurse was fired for disclosing illegal practices at the hospital which employed her. 106 The court based its test for municipal liability on whether or not the city had a policy to chill exercise of first amendment rights by punishing those who dared to complain of corruption. 107 The court further required that either an official policy of punishing "whistle blowers" existed or that those who fired her had the "final authority" to do so. 108

Cases involving the second factual pattern, police misconduct, approach the municipal liability issue in the following manner. The court begins by determining the alleged official city policy. 109 Following the policy and custom criteria set forth in Adickes, 110 "persis-
tent practices” may constitute official policy or custom. If that policy or custom is established, then the court must determine whether a causal link between the policy and the deprivation exists. In the police misconduct cases, the direct causal link is often missing so that liability follows only where the city or official has adopted a policy by which a constitutional right is denied as a natural consequence of the policy.

Most section 1983 cases involving possible municipal liability fall within the two main factual patterns. In those cases which do not, the court is generally required to address an official city policy adopted via ordinance or regulation. The issues inherent in those cases are distinct from the issues present in cases involving either of the two main factual patterns and are generally beyond the scope of this discussion.

ANALYSIS

Although many factors must be examined in analyzing the Eighth Circuit’s decision in Williams v. Butler, the essential focus is on whether the Monell language, “[i]t is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983,” should be interpreted narrowly or broadly. The majority position in Williams supports a broad interpretation, fearing that a narrow interpretation will render Monell meaningless. The Williams majority justifies its stance by adopting the “final authority” rationale, citing many circuit cases to support its position. The problem with this position, however, is that many of the cases relied on by the majority do not base the “final authority” rationale on independent case law but, as the dissent in Williams points out, base the rationale on a law review article alluded to in the dissenting opinion in Williams. The law review article, written by the attor-

111. See note 60 and accompanying text supra.
112. 456 F. Supp. at 1135. See, e.g., Sala v. County of Suffolk, 604 F.2d 207, 209 (2d Cir. 1979) (official policy of strip searching all persons who were to be delivered to the County Sheriff’s Department).
114. See, e.g., Truck Drivers and Helpers Local Union v. City of Atlanta, 468 F. Supp. 620, 621 (N.D. Ga. 1979) (official city policy to refuse to negotiate with police union and to institute a system of dues checkoff).
115. 746 F.2d 431 (8th Cir. 1984).
117. See Williams, 746 F.2d at 437.
118. See cases cited in Williams, 746 F.2d at 436 nn.3-8. See also note 94 supra.
119. Williams, 746 F.2d at 444 n.2, which states:
I am somewhat troubled by the fact that the source of this reading of Monell
ney who represented the plaintiffs in *Monell* draws many conclusions as to what the *Monell* language means but does not cite case law authority for the following conclusions:

[T]here must be one person . . . who in the ordinary course of government business can make the final decision over what will occur. . . . [W]hen the progression of possible appeals reaches a level over which no other government employees exercises [sic] line authority, the official at that level necessarily exercises the final authority of the city. . . . The issue is not whether the specific action taken is legally authorized . . . as long as there is no one in the same branch of government with the legal power to directly control an official's conduct, he or she is a final authority. This category of employees, . . . may well be what the Court had in mind in *Monell* when it referred to a "body's officers."  

The conspicuous absence of case support in light of the language emphasized above indicates that the "final authority" interpretation of *Monell* had its genesis in Mr. Schnapper's article. Many of the cases upon which the *Williams* majority based its decision founded their rationales on this law review article rather than on an independent analysis of the "final authority" rationale. The *Williams* court, despite its holding, recognized that the Fifth Circuit, which had previously based its position on the afore-

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appear to be a law review article rather than sound, independent judicial reasoning. More important, of course, is my belief that this theory represents a misreading of *Monell* and, in this case leads to an erroneous result.

*Id.* (emphasis added). It is apparent from a reading of the parties' briefs that the law review article that Judge McMillian refers to is Schnapper, *Civil Rights Litigation after Monell*, 79 COLUM. L. REV. 213 (1979). See Brief for Appellant at 5, Williams v. Butler, 746 F.2d 431 (8th Cir. 1984); Brief for Appellee at 2, Williams v. Butler, 746 F.2d 431 (8th Cir. 1984).

120. Schnapper, *supra* note 119, at 213.

121. *Id.* at 215-18.

122. See note 119 and accompanying text *supra*.

123. See, e.g., Wilson v. Taylor, 733 F.2d at 1545 (quoting *Familias Unidas* which cites to Schnapper, *supra* note 119, at 215-19); Berdin v. Duggan, 701 F.2d at 914 (citing Schneider which quotes Schnapper); Bowen v. Watkins, 669 F.2d at 989-90 (citing Schneider and Schnapper); Rookard v. Health Hosp. Co., 710 F.2d at 45 (citing Schnapper); McKinley v. City of Eloy, 705 F.2d at 1116-17 (citing Schnapper, and *Familias Unidas* and Schneider which quote Schnapper); Black v. Stephens, 662 F.2d at 191 (citing Schneider which cites Schnapper); Schneider v. City of Atlanta, 628 F.2d at 920 (citing *Familias Unidas* which relies on and cites Schnapper); *Familias Unidas* v. Briscoe, 619 F.2d at 404 (citing Schnapper's final authority analysis, Schnapper, *supra* note 119, at 215-219). The author of this casenote is not saying that Mr. Schnapper's article is invalid; rather, that his conclusions are not supported by case law authority. Further, the cases that rely on his article do not appear to independently analyze the issue, and thus only cite an article in which the specific comments relied upon do not have the same authority as case law. Additionally, as Mr. Schnapper represented the plaintiffs in *Monell*, the courts might have objectively addressed the issue in all fairness to municipalities.
mentioned law review article, recently revised its stance in *Bennett v. City of Slidell.* The *Bennett* court focused on the policymaking authority of the official. The court determined that municipal liability must rest on official policy, meaning the city government's policy and not the policy of an individual official. The policy is that of the city, however, where it is made by an official under authority to do so given by the governing authority. Hence culpable policy is attributable to the governing body of the city where the policy was made by an official to whom the governing body had given policymaking authority. . . . [T]he delegation of policymaking authority requires more than a showing of mere discretion or decision-making authority on the part of the delegee [sic].

Despite this revision of the Fifth Circuit's previous position, the *Williams* majority chose to disagree with the Fifth Circuit's latest pronouncement.

The dissenting opinion in *Williams* supports the *Bennett* decision, and in view of the purposes of section 1983 and the *Monell* fairness requirement, it is more persuasive than the majority opinion. Judge McMillian's dissent demonstrates that a narrow reading of *Monell* does not render it meaningless. By focusing on the policy and custom issue and the fact that fifteen years of constitutional hiring and firing comprised municipal policy, it became evident that the one isolated incident of unconstitutional firing was not municipal policy but rather an individual vendetta carried out by Judge Butler. Judge McMillian, in his dissent, succinctly stated: "The question is not whether Butler 'customarily' hired and fired his own staff, but whether the constitutional injury-inflicting act, i.e., firing an employee in violation of her first amendment rights, was a city custom."

The dissent's analysis of the policy and custom issue continued with the rationale that the central inquiry must "always be whether the injury-inflicting act was a city policy or custom." Judge McMillian explained that the official's actions must be taken pursu-
ant to “delegated policymaking authority,” not solely decisionmaking authority. Judge McMillian’s conclusion after examining the evidence presented in the Williams case was that “Butler had discretion to hire and fire his own personal staff and that termination of Williams was the result of a personal vendetta and not the result of a decision made on behalf of the city.” The analysis that Judge McMillian formulated does not render Monell meaningless. Rather, it properly follows Monell, for if liability is imposed upon a city for an individual’s purposeful vendetta based on personal motivation, liability is imputed via respondeat superior theory which is expressly rejected by Monell.

Other policy considerations which should have surfaced in the Williams case include: 1) the purpose of section 1983 as protection of a wronged individual; 2) the likelihood of a wronged individual’s recovery from the offending individual versus the city (deep-pocket doctrine); and 3) the result that lends the most incentive to city officials to refrain from constitutional violations against individuals. These considerations would have served to focus the court’s attention on the practical implications of municipal liability under section 1983.

CONCLUSION

The majority opinion in Williams based its extremely narrow holding on a number of cases which lacked complete independent judicial analysis. Although the line distinguishing the majority and dissenting opinions is quite subtle, the dissenting opinion utilizes

133. Id. This position is supported by language in the recent Bennett decision: “[T]he delegation of policymaking authority requires more than a showing of mere discretion or decisionmaking authority on the part of the delegee [sic].” Bennett, 728 F.2d at 769 (emphasis added).

134. Williams, 746 F.2d at 444.

135. King v. Ware, 522 F. Supp. 1206, 1210 (W.D. Pa. 1981) (policy or custom must be shown, rather than individual aberrant act, otherwise respondeat superior liability is imputed to the city). The individual aberrant act committed by Judge Butler is more like the “isolated incident” cases, see note 85 supra. It should not be treated as the employment dismissal cases, unless a custom or policy of unconstitutional firings can be shown. See Judge McMillian’s dissenting opinion in Williams, 746 F.2d at 444-45.


139. See note 30 supra.

140. See note 118 supra.

141. See notes 118-23 and accompanying text supra.
a rationale which incorporates sound, autonomous judicial reasoning and reflects the latest federal appellate decision. Until the United States Supreme Court has the occasion to address directly the type of municipal liability issue presented in Williams, dealing with the "substantial line-drawing" problems previously recognized by the Court, perhaps the analysis proffered by Judge McMillian in the Williams dissenting opinion, along with a strong consideration of the policies involved, could be applied to the individual facts of each section 1983 municipal liability case.

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142. See Polk County, 454 U.S. 312 (1981); Bennett, 728 F.2d 762 (5th Cir. 1984).