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# The Vicarious Liability of Public Officials Under the Civil Rights Act

James R. Schirott

Sherry K. Drew

# THE VICARIOUS LIABILITY OF PUBLIC OFFICIALS UNDER THE CIVIL RIGHTS ACT

JAMES R. SCHIROTT* AND SHERRY K. DREW**

## INTRODUCTION

LAWSUITS INVOLVING LABOR DISPUTES filed in the United States district courts in 1961 totaled 2,484. In the same year, the number of civil rights cases filed was only 296. Within the next decade, however, the number of civil rights cases filed in the district courts had risen to 6,133 in 1972, a dramatic percentage increase of 1,972.[1] The only area of civil litigation in the federal courts registering a higher tally in 1972 was the closely related area of prisoner petitions. From the briefest perusal of these startling statistics, it becomes readily apparent that civil rights litigation is not only "here to stay," but indeed occupies a substantial percentage of the federal courts' civil trial calendar across the country.

As in the days when the parameters of the law of products' liability were first being established, there is presently a great deal of parrying between the plaintiff's bar and defense counsel to ascertain the exact limits of liability in this rapidly growing field, as well as to determine the direction of the law.

One of the most hotly contested areas of civil rights litigation is the question of whether the doctrine of *respondeat superior* has application to actions brought under the Civil Rights Act, 42 U.S.C. section 1983. This doctrine is of early common law origin.[2] It includes the concept that a master may be liable for the conduct of his servant even though such acts were not previously authorized. Additionally, liability may be established against the master even though he had no personal participation in the illicit act. Liability is imposed merely because the servant committed the tort while engaged in the scope of his employment.[3]

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* J.D.; member of the Illinois, Iowa and Wisconsin bars. Author of IN FEDERAL COURTS. Mr. Schirott is a partner in the firm of Judge, Hunter & Schirott, Ltd., Park Ridge, Illinois.

** J.D.; member of the Illinois Bar. Ms. Drew is an associate of the firm Judge, Hunter & Schirott, Ltd., Park Ridge, Illinois.

1 ANNUAL REPORT OF THE DIRECTORS OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS (1972).

2 *See* Royal Indemnity Co. v. Becker, 122 Ohio St. 582, 173 N.E. 194 (1930); Darman v. Zilch, 56 R.I. 413, 186 A. 21 (1936).

3 RESTATEMENT (SECOND) OF AGENCY § 219 (1957); W. SEAVEY, HANDBOOK OF THE LAW OF AGENCY, § 83 (1964); 6 INDIANA L. REV. 509 (1973).

The modern day justification for the existence of the doctrine of *respondeat superior* is that public policy demands the allocation of the risk to the employer, and that the employer, in turn, will make the risk part of the cost of doing business. It is the employer who profits by the acts of the employee, and it is the employer who is able to absorb the losses caused by the wrongful acts of his employees. The employer is the individual who is able to distribute the losses, through prices, rates, or liability insurance to the public. In addition, the doctrine is an incentive to the employer to take care in the selection and supervision of his employees.[4]

The very basis of the rule underlies the reason why it should have no application to cases involving supervisory public officials. Such officials are *not* in a superior position to absorb, distribute or shift the losses because, very simply, public employers are *not* engaged in the type of endeavor which would support such type of activity. In *Jennings v. Davis*,[5] the Eighth Circuit of the United States Court of Appeals commented on this very point:

> With such justification in mind the "master" of course, is and can only be the municipality employing the appellees. It is the city who set the enterprise in motion, who "profits" from the appellees' labor and who, if held liable in such instances, can by its powers of taxation spread the resulting expenditures amongst the community at large.

Thus, if there is a "master" in the domain of public employment, it is the city, county, state or subdivisions thereof. Ordinarily, the question would end with such a logical analysis, and the plaintiff would sue the municipal employer under the doctrine of *respondeat superior* as it is the "master." However, the courts have almost unanimously held that a municipal corporation is *not* a "person" within the meaning of the Act so as to allow the maintenance of a Civil Rights action against such a municipal corporation.[6]

Consequently, plaintiffs' attorneys continue to initiate actions against supervisory public officials inasmuch as vicarious liability cannot be sought against the corporate body which employs the supervisory official and his culpable subordinate.

## APPLICATION OF RESPONDEAT SUPERIOR UNDER SECTION 1983

The vast majority of the courts which have considered the question, have held that the doctrine of *respondeat superior* has *no* application to actions brought under section 1983 of the Civil Rights Act against

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[4] W. PROSSER, HANDBOOK OF THE LAW OF TORTS 458, 459 (4th ed. 1971).

[5] 476 F.2d 1271, 1275 (8th Cir. 1973).

[6] City of Kenosha v. Bruno, 412 U.S. 507 (1973); Monroe v. Pape, 365 U.S. 167 (1961); Hampton v. City of Chicago, 484 F.2d 602 (7th Cir. 1973); Evain v. Conlisk, 364 F. Supp. 1188 (N.D. Ill. 1973).

supervisory officials.[7] On the theory that personal involvement is contemplated under the Civil Rights Act, the federal district courts have held that *absent direct personal participation,* there can be no liability. Thus, police supervisory personnel have not been held liable for damages caused by their subordinates in a number of federal district court decisions. On this basis, a trial court, when confronted with the question, should sustain a motion to dismiss where plaintiff sues supervisory public officials under the Civil Rights Act, on a theory of vicarious liability.[8]

Despite the overwhelming weight of authority which holds that the doctrine of *respondeat superior* has no application to actions maintained under the Civil Rights Act, virtually every case alleging police brutality or false arrest includes one count embracing the theory of vicarious liability joining a supervisory police official as a defendant. For the most part, the general rule of non-applicability of the doctrine of *respondeat superior* can be raised with a motion to dismiss.

Nevertheless, the occasion may arise, where due to the posture of plaintiff's complaint, it may be expeditious to move for a dismissal of supervisory officials, not with a motion to dismiss, but rather with a motion for summary judgment brought pursuant to Federal Rule of Civil Procedure 56(b). In furtherance of this end, the court will accept affidavits which show that no material question of fact exists as to the extent of participation of the said official and that such non-participation entitles the movant to a judgment as a matter of law. An affidavit which proved to be sufficient and which seemingly contains all the necessary elements for the dismissal by summary judgment of a supervisory officer can be found in *Jarosiewicz v. Conlisk.*[9] In that case, the body of the affidavit presented in support of defendant's motion for summary judgment stated as follows:

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[7] Richardson v. Snow, 340 F. Supp. 1261 (D. Md. 1972); Bichrest v. School Dist. of Philadelphia, 346 F. Supp. 249 (E.D. Pa. 1972); Boreta v. Kirby, 328 F. Supp. 670 (N.D. Cal. 1971); Campbell v. Anderson, 335 F. Supp. 483 (D. Del. 1971); Bennett v. Gravelle, 323 F. Supp. 203 (D. Md. 1971); Palermo v. Rockefeller, 323 F. Supp. 478 (S.D.N.Y. 1971); Barrows v. Faulkner, 327 F. Supp. 1190 (N.D. Okla. 1971); Mack v. Lewis, 298 F. Supp. 1351 (S.D. Ga. 1969); Sanberg v. Daley, 306 F. Supp. 277 (N.D. Ill. 1969); Runnels v. Parker, 263 F. Supp. 271 (C.D. Cal. 1967); Salazar v. Dowd, 256 F. Supp. 220 (D. Colo. 1966); 6 INDIANA L.R. 509 (1973).

[8] Jennings v. Davis, 476 F.2d 1271 (8th Cir. 1973); Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971), *cert. denied,* 404 U.S. 1049 (1972); Lathan v. Oswald, 359 F. Supp. 85 (S.D.N.Y. 1973); Candelaria v. Valdez, 353 F. Supp. 1096 (D. Colo. 1973); Ammlung v. City of Chester, 355 F. Supp. 1300 (E.D. Pa. 1973); Landman v. Royster, 354 F. Supp. 1302 (E.D. Va. 1973); Ryan v. New Castle County, 365 F. Supp. 124 (D. Del. 1973); Boyden v. Troken, 358 F. Supp. 906 (N.D. Ill. 1973); Lathon v. Parish of Jefferson, 358 F. Supp. 558 (E.D. La. 1973); Harty v. Rockefeller, 338 F. Supp. 367 (S.D.N.Y. 1972); Battle v. Lawson, 352 F. Supp. 156 (W.D. Okla. 1972); Palermo v. Rockefeller, 323 F. Supp. 478 (S.D.N.Y. 1971); Campbell v. Anderson, 335 F. Supp. 483 (D. Del. 1971); Arroyo v. Walsh, 317 F. Supp. 869 (D. Conn. 1970); Salazar v. Dowd, 256 F. Supp. 220 (D. Colo. 1966); Jordan v. Kelly, 223 F. Supp. 731 (W.D. Mo. 1963).

[9] 60 F.R.D. 121, 123 (N.D. Ill. 1973).

> I have never known the plaintiff . . . and I have no *personal knowledge* of any of the occurrences which were alleged to have taken place involving the plaintiff . . . and the other defendants, or other persons who are employed by the . . . Department of Police, on various dates referred to in the plaintiff's complaint and at all other times relative to the plaintiff's complaint. (emphasis added).

By approving the contents of the affidavit, the court tacitly indicated that before there can be liability on the part of a supervisory police official, there must be direct participation—or at the very least direct personal knowledge.

The United States Supreme Court in *Pierson v. Ray*,[10] held that the Civil Rights Act should be read against a backdrop of common law tort liability. This mandate has been interpreted by the various courts to mean that in actions brought under the Civil Rights Act, the defendant may rely upon any defense which was available to him in the equivalent common law cause of action.[11] Consequently, it could be argued that an action may not be maintained against a supervisory government official under a theory of *respondeat superior* unless such action could have been maintained at common law on facts *in pari materia*. But as pointed out previously, under the common law, the overwhelming majority of the jurisdictions which have considered the question have held that the doctrine of *respondeat superior* had no application to actions brought against public officials.[12] In *Barker v. C., P. & St. L. Ry. Co.*,[13] the court stated:

> The principle is well recognized that public officers and agents of the government are exempt, as such, from liability to answer for the acts of their subordinates. They are liable for their own personal negligence or defaults in the discharge of their duties but not for the acts or defaults of inferior officials in the public service, whether appointed by them or not. (*Robertson v. Sichel*, 127 U.S. 507.)

Public officials should also be exempted from liability for the negligence and wrongful acts of their subordinates on a public policy basis. The common law has long taken into consideration the concept that competent persons would be unwilling to accept the public position which would impose upon them liability for wrongs committed by subordinates whom they did not appoint and could not discharge. It is, therefore, to the

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[10] 386 U.S. 547 (1967).

[11] Jenkins v. Averett, 424 F.2d 1228 (4th Cir. 1970); Whirl v. Kern, 407 F.2d 781 (5th Cir. 1968), *cert. denied*, 396 U.S. 901 (1969); Joseph v. Rowlen, 402 F.2d 367 (7th Cir. 1968); Laverne v. Corning, 354 F. Supp. 1402 (S.D.N.Y. 1972); Jenkins v. Meyers, 338 F. Supp. 383 (N.D. Ill. 1972).

[12] Marshall v. County of Los Angeles, 131 Cal. App. 2d 812, 281 P.2d 544 (1955); Tate v. National Security Corp., 58 Ga. App. 874, 200 S.E. 314 (1938); Kebert v. Board of County Comm'rs, 134 Kan. 401, 5 P.2d 1085 (1931); Lunsford v. Johnson, 132 Tenn. 615, 179 S.W. 151 (1915); Stinnet v. Sherman, 43 S.W. 847 (Tex. Civ. App. 1897).

[13] 243 Ill. 482, 486 (1910).

benefit of the public that responsibility for acts be imposed only on the perpetrator of those acts, and not upon his innocent superior. Thus, the general common law rule is that the doctrine of *respondeat superior* does not, in the absence of a statute, make a public official liable for the acts of his subordinates;[14] and the doctrine has no application to actions maintained under section 1983 because public officials are not "masters" within the ambit and meaning of this common law doctrine. The only "master" of a public official within the common law meaning of the doctrine would be the corporate body employing him.[15]

The *respondeat superior* issue in the relationship of a public employee and his superior can also be approached from the "fellow-servant" theory.[16] Using this reasoning, police chiefs and other high municipal officials would not be "masters" within the *respondeat superior* doctrine, but would only be fellow-servants of the lower public employees. Moreover, liability could not rest with police chiefs or other high municipal officials because they would be considered to be only servants of the municipality, and not the masters of their subordinates.

## ADDITIONAL THEORIES OF INVOLVEMENT

In an effort to show personal involvement by a public supervisory official, and thereby keep the official a "named" defendant in a civil rights action, and thus, give the case the sort of notoriety that plaintiffs' attorneys may desire, more than one plaintiff has alleged in his complaint that the defendant has constructive knowledge of the events which gave rise to the action. Under this theory, the plaintiff is not proceeding under the doctrine of *respondeat superior* at all. However, this tactic cannot be countenanced, since it has been held that the defendant must have *actual knowledge* of the actions of his subordinates, and must acquiesce to these actions.[17] The plaintiff's complaint, to withstand a motion to dismiss based on the non-applicability of the doctrine of *respondeat superior*, must contain allegations of direct involvement by the defendant. Absent such allegations, the plaintiff's complaint must fall.[18]

Nor will it rectify fatal defects in the plaintiff's complaint to allege that the supervisory officials knew (or should have known) that the psychological condition of the defendant police officer was of such

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[14] Puett v. City of Detroit, 323 F.2d 591 (6th Cir. 1963), *cert. denied*, 376 U.S. 957 (1964); Middleton v. Pearman, 305 F. Supp. 1203 (D.S.C. 1969); Klikowski v. Ziegler, 16 Ill. App. 2d 583, 149 N.E.2d 773 (1958); 67 C.J.S. *Officers* § 128 (1950); Annot. 14 A.L.R.2d 345 (1950).

[15] E. MCQUILLIN, MUNICIPAL CORPORATIONS 208-211 (3d ed. 1949). *See* Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973).

[16] 6 INDIANA L. REV. 509 (1973).

[17] *See* cases cited note 8 *supra.*

[18] Evain v. Conlisk, 364 F. Supp. 1188 (N.D. Ill. 1973); Boyd v. Adams, 364 F. Supp. 1180 (N.D. Ill. 1973); Candelaria v. Valdez, 353 F. Supp. 1096 (D. Colo. 1973).

a nature as to make him prone to the erratic behavior which gave rise to a violation of a private citizen's constitutional rights.[19]

## NEGLIGENT HIRING AND TRAINING

The maintenance of an action against supervisory personnel because of their negligence in failing to properly train subordinates was allowed in *Carter v. Carlson.*[20] However, Judge Abraham Lincoln Marovitz, when confronted with this argument in *Boyd v. Adams,*[21] responded by stating that the doctrine of *respondeat superior* requires personal involvement and that an allegation of injury *not resulting from the direct action of a named defendant* will not be permitted. This requirement of personal involvement is recognized not only by the reported case law, but also by the commentators.[22]

In *Jordan v. Kelly,*[23] the court held that a police chief would be responsible for the wrongful acts of an officer only if he was present at the time the acts were committed, or if it could be shown that he directed such acts or personally cooperated in them.

Thus, the complaint must contain allegations of *participation,* and a negligence theory will not be allowed.

The court in *Jennings v. Davis,*[24] held that to extend the general duty of these supervisory personnel to prudently select, educate and supervise employees with regard to an isolated, spontaneous incident would be beyond reason. Allegations of this type have been held to be defective when they consist solely of the base assertion that the plaintiff's injuries resulted from alleged gross failure to properly train, restrain and supervise the activities of the offending policemen, since these allegations fail to state the personal, specific and factual involvement in the complained of attack necessary to impose liability.[25]

A police chief may have as one of his duties the selection of members of the force. He is not responsible, however, for their acts unless he has directed such acts to be done, or has personally cooperated in the offense.

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[19] Jarosiewicz v. Conlisk, 60 F.R.D. 121 (N.D. Ill. 1973).

[20] 447 F.2d 358 (D.C. 1971), *rev'd,* 404 U.S. 1014 (1972).

[21] 364 F. Supp. 1180 (N.D. Ill. 1973).

[22] Ammlung v. City of Chester, 355 F. Supp. 1300 (E.D. Pa. 1973); Burnett v. Short, 311 F. Supp. 586 (S.D. Tex. 1970); Mack v. Lewis, 298 F. Supp. 1351 (S.D. Ga. 1969); Patrum v. Martin, 292 F. Supp. 370 (W.D. Ky. 1968); Runnels v. Parker, 263 F. Supp. 271 (C.D. Ca. 1967); Pritchard v. Downie, 216 F. Supp. 621 (E.D. Ark. 1963); C. J. ANTIEAU, FEDERAL CIVIL RIGHTS ACTS § 90 (1971); 57 GEO. L.J. 1270 (1969).

[23] 223 F. Supp. 731 (W.D. Mo. 1963).

[24] 476 F.2d 1271 (8th Cir. 1973).

[25] Boyd v. Adams, 364 F. Supp. 1180 (N.D. Ill. 1972); Sanberg v. Daley, 306 F. Supp. 277 (N.D. Ill. 1969).

The "fellow-servant" doctrine would argue that a police chief, like each individual police officer, is just another public servant.[26]

In most cases, it is the city, county or state government that is the employer of each public servant. Supervisory personnel ordinarily lack the power or control to hire and fire employees for the government. Thus, they lack the discretion of a "master" within the doctrine of *respondeat superior*. It is, in most jurisdictions, an administrative board which discharges civil service employees, and then, only after a hearing. It can thus be argued that *respondeat superior* cannot be applied to the supervisory personnel under such circumstances, although there is some limited authority for acceptance of such a theory.[27] The greater weight of authority states that liability under section 1983 may *not* be predicated upon the theory that a public official was negligent in supervising the work of his assistants.[28] By proceeding under such a theory, the plaintiff falls prey to yet another pitfall; he pleads mere negligence, which does not give rise to a cause of action under section 1983. When faced with such a complaint, the defendant must merely state that no person has a federally protected constitutional or statutory right to be free from injury to his person resulting from simple negligence.[29] Negligence is commonly defined as a breach of duty which one person owes to another and it may take the form of a positive act or omission to act. The courts have recognized that to give rise to a cause of action under section 1983, a certain result *must be intended* and the act accomplishing that result must be a *conscious one*, although there need be no conscious intent to deprive plaintiff of his constitutional rights.[30]

Consequently, it is stated that mere negligence does not give rise to a deprivation of rights secured by the fourteenth amendment.[31] One court has very recently warned that it is in error to speak in terms of negligence with respect to a section 1983 action where, for instance, the action is one for assault, battery or false imprisonment.[32] It has further been recognized that negligence in failing to protect a prisoner is not sufficient to state a cause of action under section 1983.[33]

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[26] Ashenhurst v. Carey, 351 F. Supp. 708 (N.D. Ill. 1972); Jordan v. Kelly, 223 F. Supp. 731 (W.D. Mo. 1963).

[27] Carter v. Carlson, 447 F.2d 358 (D.C. Cir. 1971), *rev'd*, 404 U.S. 1014 (1972); Roberts v. Williams, 456 F.2d 819 (5th Cir. 1971); Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971); Sheridan v. Williams, 333 F.2d 581 (9th Cir. 1964); Nesmith v. Alford, 318 F.2d 110 (5th Cir. 1963); Lucas v. Kale, 364 F. Supp. 1345 (W.D. Va. 1973).

[28] Hamilton v. Jamieson, 355 F. Supp. 290 (E.D. Pa. 1973).

[29] Beishir v. Schanzmeyer, 315 F. Supp. 519 (W.D. Mo. 1969).

[30] Jenkins v. Meyers, 338 F. Supp. 383 (N.D. Ill. 1972).

[31] Kent v. Prasse, 265 F. Supp. 673 (W.D. Pa. 1967), *aff'd*, 385 F.2d 406 (3d Cir. 1967).

[32] Mullins v. City of River Rouge, 338 F. Supp. 26 (E.D. Mich. 1972).

[33] Wright v. Mill County, Civil No. 73-1614 (N.D. Ill., filed June 21, 1973).

It is apparent then, that the plaintiff in circumventing the non-applicability of the *respondeat superior* rule, "jumps from the frying pan into the fire" when he seeks to impose liability on supervisory officials on the theory that such officials were negligent in hiring and training their employees. Simple negligence does not give rise to a violation of a right, privilege, or immunity secured by the fourteenth amendment,[34] and section 1983 protects only federal rights that are violated under color of state law. Ordinary tortious conduct, without more, committed by a state official acting under color of law, is insufficient to show a deprivation of rights under the Civil Rights Act,[35] since recovery under the Civil Rights Act can be had only where the conduct involved amounted to either a deprivation of life or liberty without due process of law, or cruel or unusual punishment.[36] In this regard, allegations of negligent hiring or training will probably fail to satisfy the constitutional requirements.

## THE APPLICATION OF STATE VICARIOUS LIABILITY LAW

In *Hesselgesser v. Reilly*,[37] the United States Court of Appeals gave recognition to the laws of the various states in determining whether or not vicarious liability should be applied in an action arising under the Civil Rights Act. Under this rule, vicarious liability could be applied in the type of circumstances where the state in which the action arose imposed common law vicarious liability for the acts of various public officials for common law torts.

Any such analysis is subject to potential flaws. The initial defect is a potential misinterpretation of the statute supposedly imposing vicarious liability. For instance, in Illinois, the statutory liability of the sheriff is codified as follows: "The sheriff shall be liable for any neglect or omission of the duties of his office, when occasioned by a deputy, in the same manner as for his own personal neglect or omission."[38] However, the Illinois court, in interpreting this statute, was quick to point out that, despite the impression that a cursory reading of the statute may imply the statute can be a vehicle for liability, such was not the statute's intended purpose. In *De Correvant v. Lohman*,[39] the court stated:

> *The plaintiff cannot utilize this section to further the allegations of his complaint which charged,* not neglect or omission, but *intentional*

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[34] Kent v. Prasse, 385 F.2d 406 (3d Cir. 1967); Wood v. Maryland Casualty Co., 322 F. Supp. 436 (W.D. La. 1971); Hurley v. Field, 282 F. Supp. 34 (C.D. Ca. 1968); Cullum v. Calif. Dept. of Corrections, 267 F. Supp. 524 (N.D. Ca. 1967).

[35] United States ex rel. Gittlemacker v. County of Philadelphia, 413 F.2d 84 (3d Cir. 1969), *cert. denied*, 396 U.S. 1046 (1970); Gittlemacker v. Prasse, 428 F.2d 1 (3d Cir. 1970); Ammlung v. City of Chester, 355 F. Supp. 1300 (E.D. Pa. 1973).

[36] *See, e.g.*, Howell v. Cataldi, 464 F.2d 272 (3d Cir. 1972).

[37] 440 F.2d 901 (9th Cir. 1971).

[38] ILL. REV. STAT., Ch. 125, § 13 (1955).

[39] 84 Ill. App. 2d 221, 227-28, 228 N.E.2d 592, 595 (1967).

*misconduct* by the deputies. Section 16 imposes liability for the sheriff's disobedience to perform the command of any writ legally issued to him. This section is inapplicable since the deputies were not acting pursuant to a writ. Thus, there was no basis for recovery from Lohman. (emphasis added).

There is recent authority to the effect that the determination of whether a state statute affects liability under the Civil Rights Act may be determined by the contemplation of the framers in drafting such legislation.[40] Thus, it must be established that the framers of the statute intended that certain public officials should be vicariously liable for the common law torts of certain fellow employees. Applying this principle to the Civil Rights Act, vicarious liability of high officials would seem to subvert the very purpose of the various Civil Rights Statutes. The United States District Court in *Sandburg v. Daly*[41] followed this type of analysis and found: "[T]hese statutes are aimed at those who subject others to a deprivation of their constitutional rights, rather than at the state or city which employs them or the official with ultimate authority over them in the governmental hierarchy."

The purpose of the Civil Rights Act is seemingly frustrated if liability can be imposed upon the innocent supervisor rather than the perpetrator of an act merely as a consequence of a legislative enactment, the framers of which, in all likelihood, never contemplated liability in such circumstances.

In *Candelaria v. Valdez*,[42] the court stated that the Civil Rights Act contemplates personal involvement, and personal involvement requires that the person charged be present at the time of the wrongful act, or that the person charged directed or cooperated in the violation. If the Court in *Candelaria* was correct and personal involvement is contemplated by the Civil Rights Act, then it would seem that such prerequisite should be controlling *even if* local law might provide liability for the sheriff for the acts of his deputies.[43]

## THE LIABILITY OF SPECIFIC PUBLIC OFFICIALS

While the overwhelming number of cases involving the doctrine of *respondeat superior* have dealt with the question of whether a supervising police officer or other municipal officer is liable for the actions of subordinate policemen, the raising of the issue is not exclusive to police officers. Other public officials, including county auditors, court administrators, prison supervisors, and city mayors have been named as defendants under a vicarious liability theory.

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[40] Luker v. Nelson, 341 F. Supp. 111 (N.D. Ill. 1972).
[41] 306 F. Supp. 277, 278 (N.D. Ill. 1969).
[42] 353 F. Supp. 1096 (D. Colo. 1973).
[43] *See* Battle v. Lawson, 352 F. Supp. 156 (W.D. Okla. 1972).

It should be noted, however, that the mere holding of a public office cannot give rise to the assumption of actual knowledge of a conspiracy. In *Hampton v. City of Chicago*,[44] the court held that a complaint which alleged that the city mayor, by virtue of his position, has knowledge of the alleged conspiracy was insufficient to state a cause of action.

In *Veres v. County of Monroe*,[45] the court stated that more than mere authority by the defendant over others who violated the plaintiff's rights must be shown. In *Veres* the court stated that at least one specific act or omission by the county auditor, which was a factor in depriving the plaintiff of his civil rights, must be alleged.

Likewise, it has been held that where there is no indication that the administrator of the court was personally responsible for the negligence of one of his employees, the court should properly dismiss an action maintained against him.[46]

Where there is no evidence that a prison supervisor had any knowledge as to the alleged defective condition of certain punch press machines, liability may not be imposed upon him under the Civil Rights Act, for the reason that the requisite culpability and the requisite personal involvement do not exist.[47]

Just as a police supervisor incurs no liability for the acts of his subordinates where he is not present, so too, can an arresting officer claim freedom from liability for alleged civil rights violations after the arrested person has been brought to the police station and is in the custody and control of others.[48]

In many instances, the named defendant was not even employed by the municipal body when the alleged occurrence took place. In most of these cases, the defense of *respondeat superior* is available to any such defendant. The question becomes more complex, however, where the defendant is a county official, such as the county auditor. In such instances, it is really the office which is often the true party in interest, and the named defendant should look to the complaint to ascertain whether or not this is a suit brought against the individual county official in his personal capacity, or whether it is brought against the office of that county official. If the latter is true, there is authority for the proposition that the mandate of *Monroe v. Pape*[49] prevents such a suit, to wit:

> Plaintiffs also attempt to distinguish *Monroe* on the ground that the individual defendants in this case were dismissed only in their

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[44] 484 F.2d 602 (7th Cir. 1973), *cert. denied*, No. 73-814 (1974).

[45] 364 F. Supp. 1327 (E.D. Mich. 1973).

[46] Davis v. Quarter Sessions Court, 361 F. Supp. 720 (E.D. Pa. 1973).

[47] Matthews v. Brown, 362 F. Supp. 622 (E.D. Va. 1973).

[48] Jennings v. Davis, 476 F.2d 1271 (8th Cir. 1973).

[49] 365 U.S. 167 (1961).

> individual capacities, with the suit proceeding against the individual defendants in their official capacities as well as against the district. Courts that have had occasion to apply *Monroe* in this situation have uniformly held that suits may be maintained only against the officials individually, and that governmental boards and governmental officials in their official capacities are not persons within the meaning of section 1983. This is only reasonable.[50]

While the factual situation may change, the applicable rule seems to be the same. For example, a state's attorney is not liable for the actions of his assistant where it is shown that the state's attorney had no direct participation in the activities of his assistant, and where there is such showing, there can be no liability predicated upon the doctrine of *respondeat superior*.[51]

It is often stated that the doctrine of *respondeat superior* has no application to actions seeking damages.[52] However, this seems to assume that a municipality is not subject to suit for money damages, while implying that it is subject to suit under this section for injunctive relief.[53] Perhaps any such distinction has been obviated by the United States Supreme Court ruling in *Bruno v. City of Kenosha*,[54] where the Supreme Court held that 42 U.S.C. section 1983 was never intended to have a bifurcated meaning.

In *Bruno*, the court indicated that a municipality is not a "person" under section 1983 for any purpose:

> We find nothing in the legislative history discussed in *Monroe*, or in the language actually used by Congress, to suggest that the generic word "person" in section 1983 was intended to have a bifurcated application to municipal corporations depending on the nature of the relief sought against them. Since, as the Court held in *Monroe*, "Congress did not undertake to bring municipal corporations within the ambit of" section 1983 [365 U.S.], at 187, they are outside of its ambit for purposes of equitable relief as well as for damages.[55]

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[50] Harkless v. Sweeny Ind. School Dist., 300 F. Supp. 794, 807 (S.D. Tex. 1969), *cert. denied*, 400 U.S. 991 (1971).

[51] Hampton v. Gilmore, 60 F.R.D. 71 (E.D. Mo. 1973); Hamilton v. Jamieson, 355 F. Supp. 290 (E.D. Pa. 1973).

[52] Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973), *cert. denied*, ..... U.S. ..... (1974).

[53] C. ANTIEAU, FEDERAL CIVIL RIGHTS ACTS § 90 (1971).

[54] 412 U.S. 507 (1973).

[55] *Id.* at 513.

## CONCLUSION

Where civil rights actions are brought against supervisory public officials, such officials are not without a defense. A substantial portion of those courts which have considered the question hold that vicarious liability cannot be countenanced under the Civil Rights Act, 42 U.S.C. section 1983, because personal involvement is contemplated under that section.

Additionally, defenses available under the common law are also available in actions brought under the Civil Rights Act, because under the prevailing rule *respondeat superior* could not be relied upon to found liability under the common law and likewise cannot form the basis of liability under the Civil Rights Act.