

Dear Bill,

To the extent that it was understood that Monroe

Under your draft, a municipal government entity may be sued for under 1983 for its own transgression but not that of its employees not the fault purely of its employees or agents. The line between city policy for which the city may be sued and vicarious liability will be a fruitful source of litigation, I would think, and the line between official policy and vicarious liability for which the city may be sued and vicarious liability for the sins of others will be difficult to pick out. but I take it that the city would not be liable where under its policies, such as ordinances, its officials have are given general missions and some or a great deal of discretion as to how to carry them out, and the executing official in either good or bad faith purports to violate the- invades an individuals constitutional rights. Officers authorized for example to arrest-- on probable cause make mis inevitably make mistakes and in some instances it may be held that the the 4th amendment was violated. I would not think the city would be liable Under your draft, I would not think the city would be liable. since it was not its policy to make arrests except on probable cause.

Similarly, under a city wiretap ordinance, the city would not be liable for the policeman's mistaken view that the facts warranted applying for the for a warrant, ~~even-if-the-policeman-himself-might-be-liable-even-if-the-facts~~ but if the constitutionality of the ordinance itself unconstitutional and it is for this reason that it is held that a citizen's constitutional privacy protected privacy is held to have been invaded, the city would be liable unless protected by otherwise immune from damages suits for damages under 1983.

Although I am sure this oversimplifies it, I gather that the city would never be liable when an official of agent exceeds his authority under an ordinance and goes off on a frolic of his own, or when he does precisely with the kind of thing he is expected to do under the city policy, but mistakenly invades or when he invades the constitutional rights of others unless the city is itself a party to the city as a matter of policy is implicated in the constitutional wrong

or when he exercised discretionary authority of the kind given him by the city but in good or bad faith exercises it so as to invade constitutional rights. At least the It is only where the city policy is itself responsible for the specific act charged to the officer that

You apparently You are convinced, I gather, that foreclosing suits against the city for the faults of its own employees for their affirmative acts wrongful acts as well as shielding them for its failure to curb the lawlessness of its some of its citizens, is required by the the legislative history. I am frank to say that. As presently advised I think I believe that I am tentatively prepared tentatively, I am prepared to go along with, but will be very interested in the writing of Brother Stevens on this matter.