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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

|                               |                     |
|-------------------------------|---------------------|
| * * * * *                     | * C.A. NO. 01-288ML |
| LEISA YOUNG, individually and | *                   |
| in her capacity as            | *                   |
| Administratrix of the Estate  | *                   |
| of Cornel Young, Jr.          | *                   |
| VS.                           | * NOVEMBER 5, 2003  |
|                               | * 10:00 A.M.        |
| CITY OF PROVIDENCE, by and    | *                   |
| through its Treasurer,        | *                   |
| Stephen Napolitano; MICHAEL   | *                   |
| SOLITRO, individually;        | *                   |
| CARLOS SARAIVA, individually; | *                   |
| URBANO PRIGNANO, JR.,         | *                   |
| individually and in his       | *                   |
| official capacity as          | *                   |
| Providence Chief of Police;   | *                   |
| RICHARD SULLIVAN,             | *                   |
| individually; JOHN RYAN,      | *                   |
| individually; and KENNETH     | *                   |
| COHEN, individually           | *                   |
| * * * * *                     | * PROVIDENCE, RI    |

BEFORE THE HONORABLE MARY M. LISI,  
DISTRICT JUDGE

(Rulings on Motions)

E X C E R P T

1 APPEARANCES:

2 FOR THE PLAINTIFF: ROBERT B. MANN, ESQ.  
Mann & Mitchell  
3 501 Turks Head Building  
4 Providence, RI 02903

5 FOR THE DEFENDANT,  
CITY OF PROVIDENCE,  
6 PRIGNANO & SULLIVAN: KEVIN F. MCHUGH, ESQ.  
City of Providence  
7 Law Department  
275 Westminster Street, Suite 200  
8 Providence, RI 02903

9 JOSEPH F. PENZA, JR., ESQ.  
Olenn & Penza  
10 530 Greenwich Avenue  
Warwick, RI 02886

11

12 FOR THE DEFENDANTS,  
RYAN & COHEN: MICHAEL J. COLUCCI, ESQ.  
13 Olenn & Penza  
530 Greenwich Avenue  
14 Warwick, RI 02886

15 Court Reporter: Karen M. Zinni, RPR-RMR-CRR  
16 One Exchange Terrace  
Providence, RI 02903

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21 Proceeding reported and produced by computer-aided  
22 stenography

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1 5 NOVEMBER 2003 -- 10:00 A.M.

2 BEGINNING OF EXCERPT

3 THE COURT: Before I begin, I wish to address  
4 all present, including our many spectators this  
5 morning. The Court is about to render a series of  
6 rulings on motions that are now pending before the  
7 Court. I ask all spectators to respect the dignity of  
8 the Court by not commenting or speaking during the  
9 course of the Court's issuance of these rulings.

10 At the conclusion of the Plaintiff's  
11 presentation of evidence, the defense in this case  
12 filed its motion pursuant to Rule 50 of the Rules of  
13 Civil Procedure. When a party makes such a motion, the  
14 Court is called upon to make a determination based on  
15 the evidence at that point in time without drawing any  
16 credibility determinations as to whether or not the  
17 Plaintiff's evidence sufficiently sets forth each and  
18 every element of the claim made.

19 In this case, the claim that was submitted to  
20 the jury in the first instance was the question as to  
21 whether or not the actions of Mr. Solitro and  
22 Mr. Saraiva in shooting Mr. Young on January 28th in  
23 the year 2000 violated Mr. Young's constitutional right  
24 to be free from an unreasonable seizure under the  
25 Fourth Amendment.

1           The evidence presented by the Plaintiff included  
2           the following facts: First, from Mr. Diaz, the  
3           statement that when he last saw Mr. Young, Mr. Young  
4           was not pointing his gun at him; second, that  
5           Mr. Saraiva was, on that evening, acting as  
6           Mr. Solitro's training officer, and as well he was a  
7           senior officer; that Mr. Saraiva did not give any  
8           direction to Mr. Solitro to maintain cover; that  
9           Mr. Solitro broke cover, thereby creating the exigency  
10          that forced both Mr. Solitro and Mr. Saraiva to fire.

11          Plaintiff also presented the expert opinion of  
12          Dr. Fyfe, who stated that Saraiva's failure to give  
13          direction was in dereliction of nationally approved  
14          standards and that Solitro's leaving of cover under the  
15          circumstances he described also violated national  
16          standards.

17          From these facts, the jury could find that the  
18          Plaintiff had made out each element of her claim; and  
19          for those reasons, the Court denies the Rule 50 motion  
20          made at the conclusion of the Plaintiff's case.

21          That motion was renewed at the conclusion of all  
22          the evidence in the case; but for the same reasons as I  
23          have set forth now, the Rule 50 motion made at the  
24          conclusion of all the evidence is also denied.

25          This case presents a scene of enormous tragedy

1 with unimaginable and deep emotional response on all  
2 sides. For the Plaintiff here, the loss of a son; for  
3 Solitro and Saraiva, having to live with knowing that  
4 they caused Mr. Young's death; and for the other  
5 Defendants as well who have suffered the loss of a  
6 colleague.

7 The Court, however, cannot and must not be  
8 swayed by sympathy for either side. Rather, the Court  
9 must analyze the facts and apply the law to those facts  
10 to reach a just resolution under the law of the claims  
11 before it.

12 It is important to note that before trial  
13 commenced in this matter, the Plaintiff moved to  
14 voluntarily dismiss all claims as to Solitro and  
15 Saraiva with prejudice. The Court will not comment on  
16 the wisdom of making such a choice, which was  
17 presumably made after full consultation with counsel.  
18 That action, however, has significant legal  
19 consequences which affect the claims Plaintiff has made  
20 as to the remaining Defendants in this case.

21 I first deal with those claims made pursuant to  
22 Section 1983 that are based on Saraiva's actions.  
23 Because the jury has determined that Saraiva did not  
24 violate Cornel Young, Jr.'s constitutional rights under

1 Supreme Court and the First Circuit, more specifically  
2 the City of Los Angeles v. Heller, Hayden v. Grayson,  
3 Jarrett v. Town of Yarmouth, Plaintiff's supervisory  
4 liability claims and municipal liability claims must be  
5 dismissed as a matter of law.

6 I now turn to those claims against the city and  
7 the individual Defendants that are based on Solitro's  
8 conduct. The jury determined that Solitro did violate  
9 Cornel Young, Jr.'s Fourth Amendment right to be free  
10 from an unreasonable seizure of his person.

11 The Plaintiff's claims against Solitro in his  
12 individual capacity have been dismissed at the request  
13 of the Plaintiff; and she is, therefore, forever barred  
14 from seeking or collecting any monetary damages from  
15 him. Solitro's actions on January 28th, 2000, against  
16 Cornel Young, Jr., however, form only one element of  
17 the Plaintiff's claims as against the remaining  
18 Defendants.

19 These are commonly called municipal liability  
20 and supervisory liability claims, and a Plaintiff's  
21 burden in pressing such claims is very high.

22 With respect to municipal liability claims under  
23 the United States Supreme Court decision of Monell and

24 its progeny, a Plaintiff seeking to hold a municipality  
25 liable under Section 1983 must identify a municipal

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1 policy or custom that caused Plaintiff's injury. The  
2 municipality may not be held liable simply because it  
3 employs a tort-feasor.

4 The Plaintiff must show that the municipality,  
5 through its deliberate conduct, was the moving force  
6 behind the injury alleged. Further, Plaintiff must  
7 show a causal link between the municipal action and the  
8 alleged deprivation of a federal right.

9 The Plaintiff's burden on a claim of supervisory  
10 liability is equally demanding. Under controlling  
11 First Circuit and Supreme Court case law, a superior  
12 officer cannot be held liable for acts of a subordinate  
13 on a respondeat superior theory.

14 Liability for a supervisor under Section 1983  
15 must be based on that supervisor's own acts or  
16 omissions. The Plaintiff must show that the  
17 supervisor's behavior demonstrates a deliberate  
18 indifference to conduct that is violative of  
19 Plaintiff's constitutional rights.

20 To succeed on her 1983 claim as against the  
21 supervisors, the Plaintiff must also affirmatively  
22 connect the supervisor's conduct to the subordinate's

23 violative act or omission.

24 In this case, the city, Defendants Ryan and  
25 Cohen have filed Motions for Summary Judgment pursuant

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1 to Rule 56 of the Rules of Civil Procedure. This Court  
2 earlier in the action ruled on a similar motion filed  
3 by Prignano and Sullivan.

4 Because the record facts as set forth in the  
5 city's and Ryan and Cohen's motions augment those that  
6 were available to the Court at the time of ruling on  
7 Prignano and Sullivan's motion, the Court has reviewed  
8 that motion and the Court's ruling on it.

9 In light of what I find to be, as I must under  
10 Rule 56, the material and undisputed facts of this  
11 case, the Plaintiff's claims based on Solitro's conduct  
12 are twofold. One is for a deficiency alleged in his  
13 hiring. The other is for a deficiency alleged in his  
14 training.

15 I first turn to the claim with respect to  
16 hiring. Under the holding of the United States Supreme  
17 Court decision in Board of County Commissioners of  
18 Bryan County v. Brown, the Plaintiff's claims as to  
19 Solitro's hiring cannot, as a matter of law, be  
20 maintained.

21 I turn now to the Plaintiff's claim as it

22 relates to Solitro's training. The Plaintiff's claim  
23 as it relates to the training of Solitro must be viewed  
24 in light of the constitutional claim alleged, here the  
25 use of deadly force by a uniformed officer.

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1 Having reviewed all of the pleadings in this  
2 case and having weighed the material undisputed facts  
3 in the light most favorable to the Plaintiff as I must  
4 do under Rule 56, I find that the Plaintiff has failed  
5 to demonstrate that the training with respect to  
6 Solitro, that is, regarding the use of force, that she  
7 has failed to demonstrate that that training was  
8 constitutionally deficient.

9 Plaintiff has incorporated into the training  
10 claim a claim that no training or deficient training  
11 was provided with respect to off-duty action. The  
12 argument on this point at times appears to be conflated  
13 with the training claim with respect to Fourth  
14 Amendment violations.

15 I find that this argument with respect to  
16 off-duty training more appropriately fits with  
17 Plaintiff's claim that Cornel Young, Jr., had a  
18 constitutional right to such training since he in this  
19 case was the off-duty officer who took action.

20 That claim also fails as a matter of law under

21 the United States Supreme Court decision of Collins v.  
22 City of Harker Heights, Texas.

23 For these reasons, all of the remaining federal  
24 claims as to all of the Defendants, both city and  
25 individually, must be dismissed as a matter of law.

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1 Plaintiff has also asserted claims against the  
2 same Defendants sounding in negligence under the Rhode  
3 Island Wrongful Death Act. The Defendants here have  
4 argued that the Plaintiff's claims under the Wrongful  
5 Death Act must be dismissed because the Rhode Island  
6 injured-on-duty statute is the exclusive remedy for  
7 claims made on behalf of deceased police officers  
8 killed in the line of duty.

9 In *Kaya v. Partington*, the Rhode Island Supreme  
10 Court held that the IOD statute is the exclusive remedy  
11 for police officers injured in the line of duty with  
12 respect to claims made as to their employers.

13 In so ruling, the Court set forth its rationale.  
14 The Court stated, "In our opinion, it would create a  
15 result not intended by the legislature for this Court  
16 to hold that, in addition to IOD benefits, police  
17 officers should have a right to sue their municipal  
18 and/or state employers.

19 "It would be productive of near chaos if we

20 should recognize a right of action for police officers  
21 to sue their superior officers and fellow employees.  
22 In a paramilitary organization, nothing could be more  
23 detrimental to good order and discipline than the  
24 encouragement of civil actions by police personnel  
25 against their employers and their superior officers

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1 arising out of perceived shortcomings in preparing them  
2 for dangerous circumstances that they must encounter on  
3 a daily basis.

4 "It is for this reason, in our opinion, that IOD  
5 legislation was originally adopted as an exclusive  
6 substitute for the speculative rights of action that  
7 they might have had against their employers and the  
8 community whose members they serve."

9 In a later decision, *Hargreaves v. Jack*, the  
10 Court reiterated the general rule that IOD provides the  
11 exclusive remedy in such cases. In that case, however,  
12 the Rhode Island Supreme Court carved out what I view  
13 as a very narrow exception to the general rule, and  
14 that is an exception for a surviving spouse to bring a  
15 claim under the Wrongful Death Act for pecuniary  
16 damages.

17 The Court recently, in *Strynar v. Rahill*,  
18 reiterated its holding in *Kaya*, and it stated, "The IOD

19 statute was intended to provide the exclusive remedy  
20 for claims against the police officer's employer,  
21 fellow officers, superior officers and officers of the  
22 municipal corporation."

23 This Court finds that the Plaintiff's claims do  
24 not fall within the narrow exception created by the  
25 Court in Hargreaves. The Court further finds that if

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1 it were to permit this action to go forward under the  
2 Wrongful Death Act, it would have the undesirable  
3 result the Rhode Island Supreme Court sought to avoid  
4 by holding that IOD is the exclusive remedy in such  
5 cases. For these reasons, Plaintiff's Wrongful Death  
6 Act claims must also be dismissed as a matter of law.

7 Because there are so many motions involved here  
8 and so many facts, this Court will issue a written  
9 opinion that sets forth in greater detail the basis for  
10 each of these rulings. The Court will direct the clerk  
11 not to enter judgment for the Defendants until that  
12 written memorandum is filed. This Court stands  
13 adjourned.

14 (Adjourned)

15 END OF EXCERPT

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C E R T I F I C A T I O N

I, Karen M. Zinni, RPR-RMR-CRR, do hereby  
certify that the foregoing pages are a true and  
accurate transcription of my stenographic notes in the  
above-entitled case.

Karen M. Zinni, RPR-RMR-CRR

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Date

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