No. 09-571

In the Supreme Court of the United States

HARRY F. CONNICK, in his official capacity as District Attorney; ERIC DUBELIER, in his official capacity as Assistant District Attorney; JAMES WILLIAMS, in his official capacity as Assistant District Attorney; LEON A. CANNIZZARO, JR., in his official capacity as District Attorney; ORLEANS PARISH DISTRICT ATTORNEY'S OFFICE,

Petitioners,

v.

JOHN THOMPSON,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONERS' BRIEF ON THE MERITS

JAMES D. "BUDDY" CALDWELL
Louisiana Attorney General
S. KYLE DUNCAN
Counsel of Record
Appellate Chief
ROSS W. BERGETHON
ROBERT ABENDROTH
Assistant Attorneys General
LOUISIANA DEPARTMENT OF JUSTICE
P.O. Box 94005
Baton Rouge, LA 70804
(225) 326-6716
duncank@ag.state.la.us

LEON A. CANNIZZARO, JR.
Orleans Parish District Attorney
GRAYMOND F. MARTIN
First Assistant District Attorney
DONNA R. ANDRIEU
Chief of Appeals
ORLEANS PARISH DISTRICT ATTORNEY'S OFFICE
619 South White Street
New Orleans, LA 70119
(504) 822-2414

Counsel for Petitioners

June 7, 2010

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED FOR REVIEW

A municipality may be liable under 42 U.S.C. § 1983 for a failure to train employees that shows deliberate indifference to, and actually injures, the rights of citizens. *City of Canton v. Harris*, 489 U.S. 378, 389-91 (1978). A history of employee wrongdoing is ordinarily necessary to prove failure-to-train liability, but a single incident may suffice in rare cases. The Court has hypothesized only one—a failure to train armed police officers on using deadly force. The question presented in this case is:

Whether failure-to-train liability may be imposed on a district attorney's office for a prosecutor's deliberate violation of *Brady v. Maryland*, 373 U.S. 83 (1963), despite no history of similar violations in the office.

PARTIES TO THE PROCEEDING

All parties to the proceeding are set forth in the case caption. *See* SUP. CT. R. 24.1(b).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

OPINIONS BELOW

The *en banc* decision and opinions of the United States Court of Appeals for the Fifth Circuit, Pet. App. 1a-50a, are reported at 578 F.3d 293 (CA5 2009). The panel opinion, Pet. App. 51a-113a, is reported at 553 F.3d 836 (CA5 2008). The unpublished memorandum opinion of the United States District Court for the Eastern District of Louisiana, Pet. App. 114a-144a, is unofficially reported at 2005 WL 3541035.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on August 10, 2009. Pet. App. 1a. This Court has jurisdiction to review this judgment by writ of certiorari pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Title 42, section 1983, of the United States Code provides, in relevant part:

> 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.

STATEMENT OF THE CASE

In 1985, prosecutors in the Orleans Parish District Attorney's Office convicted John Thompson of attempted armed robbery. Aided by that conviction, prosecutors then convicted Thompson of capital murder in a separate case. A month before his execution in 1999, evidence came to light that exonerated Thompson for the robbery. With it came a stunning revelation: a prosecutor had deliberately buried the exculpatory evidence. Thompson's execution was stayed, his robbery conviction vacated, and his murder conviction eventually reversed. Pet. App. 10a.

Thompson then sued the district attorney's office and won a $14 million civil rights judgment. The basis of that judgment was not that an official policy had caused the evidence suppression. The jury rejected that theory. Pet. App. 11a. Nor was the basis that an official policymaker had ordered the suppression. The district court found no evidence supporting that theory. Pet. App. 61a. The judgment depended on a subtler premise. The jury found that the suppression occurred because the district attorney, Harry F. Connick, had been "deliberately indifferent" to the need to train prosecutors.

The district court did not require Thompson to prove that any history of *Brady* violations should have warned Connick to adjust office training. Pet. App. 138a-142a. Affirming the judgment, a Fifth Circuit panel held that—whereas "Thompson did not establish a pattern of *Brady* violations by the DA's Office," and indeed "d[id] not argue that there

was evidence of a pattern"—no such pattern was necessary to establish failure-to-train liability. Pet. App. 72a, 76a, 79a-80a.[1]

The end result was that a district attorney's office was found liable for a prosecutor's single *Brady* violation. In failure-to-train cases, however, a "pattern of injuries [is] ordinarily necessary to establish municipal culpability and causation." *Bd. of Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 409 (1997). Liability may be based on a single constitutional violation only "in a narrow range of circumstances." *Id.*

Those narrow circumstances should not include a *Brady* violation. By ruling otherwise, the lower courts allowed a jury to find a district attorney's office liable, not for its own wrongdoing, but for wrongdoing by its employee. That imposition of vicarious liability contravenes the Court's precedents, which "have consistently refused to hold municipalities liable under a theory of *respondeat superior*." *Id.*, at 403 (and collecting cases).

A. CONNICK'S INNOVATIONS IN OFFICE STRUCTURE, SUPERVISION, AND TRAINING

Connick was already an experienced criminal defense attorney and prosecutor when he defeated incumbent Jim Garrison in 1974 to become district attorney of Orleans Parish, Louisiana's largest parish. App. 424-26. Connick would hold that

---

[1] The *en banc* Fifth Circuit vacated the panel opinion, but ultimately split 8-8 and thus affirmed the district court's judgment. Pet. App. 2a.

position for almost 29 years. App. 145. During his tenure, Connick "completely restructured the office." App. 425. He vastly improved how the office processed its massive caseload, and how it mentored the more than 700 prosecutors who would work there over the years. Legal scholars have singled out Connick's systemic innovations as path-breaking. *See* Ronald Wright & Marc Miller, *The Screening/Bargaining Tradeoff*, 55 STAN. L. REV. 29, 58-84 (2002).

For instance, Connick re-imagined the system by which prosecutors "screen" potential cases, dramatically lowering the office's acceptance rate. This not only enhanced efficiency but also protected the rights of arrestees, who would be far less likely to languish in jail on flimsy charges. The most experienced prosecutors were typically designated for this critical screening function. App. 187, 202-03, 381, 387.

Connick also fundamentally changed how prosecutors were mentored. At the beginning of his tenure, he brought in eight former Assistant United States Attorneys, "specifically … to help [him] set this office up to train these people." App. 426. Connick redeployed his predecessor's best prosecutors in order to station two lawyers in each court section—a "junior" and a "senior" prosecutor. This functioned as an "excellent teaching tool" for young prosecutors, who were mentored by experienced attorneys as they progressed through various trial divisions and levels of responsibility. App. 377-79, 426-28. Young prosecutors would also be better advised on the technical aspects of

criminal investigations since, by Connick's express order, a police officer was posted as an investigator in each court section. App. 425-27. Connick's office structure, in sum, was designed to allow prosecutors to amass experience of the most intensive and practical kind in a short period. App. 200-03.

Connick created an in-house system of mooting cases to reinforce this structure. App. 428-29. These "pre-trials" functioned as a rigorous training regime for all prosecutors below the supervisory level, and were personally overseen by the chief or deputy chief of trials. App. 193, 461. Pre-trials "covered just about every aspect of trial," from the prosecutor's theory of the case to any anticipated evidentiary problems. App. 387-89, 461-62. Supplementing this system, prosecutors met weekly with the chief of trials to review all pending cases. App. 389-90, 428-29.

Connick also instituted numerous practices to alert prosecutors to developments in criminal law. For example, regular "Saturday morning sessions" were designed to train prosecutors on technical legal issues, everything from law enforcement technology to "specialized training on rape cases." App. 463. Connick also fostered the practice of circulating advance sheets, intended to "constantly get[] [attorneys] to read and to understand what was new in the law." App. 429. Moreover, Connick insisted that supervising attorneys—principally the chief of appeals—prepare and circulate regular inter-office memoranda highlighting legal developments. App. 389-91, 430-31. Those

memoranda were the precursors to the "formal" policy manual Connick had prepared in 1987. App. 391-93, 467-68. At that time, a formal policy manual was itself an innovation in district attorneys' offices. App. 429.

In sum, Connick oversaw a marked evolution—spanning nearly three decades—in the supervision and training of prosecutors in the Orleans Parish District Attorney's Office. Connick sought to create a culture that encouraged prosecutors to understand and obey their legal obligations. He even inspired an intensive study published in a widely-cited *Stanford Law Review* article. The authors concluded that Connick's "principled screening practices … make [his] one of the most interesting prosecutor's offices in the country," meriting "widespread attention from other prosecutors and scholars." Wright & Miller, *supra*, at 60. Such farsighted policies created what Connick's chief of trials from 1984 to 1986, Bridget Bane, called a "system of tremendous checks and balances." App. 460-61. Timothy McElroy—a senior prosecutor in 1985 who would become chief of screening in 1990 and eventually first assistant—summarized Connick's approach this way: "Harry was very energetic, very innovative and training was an important part of what he did. In fact, training was a very substantial part of Harry's office." App. 396.

B. CONNICK'S POLICIES ON EVIDENCE DISCLOSURE

Connick's disclosure policies were no mystery: turn over what was required by state and federal

law, but no more. App. 38-45, 90-91, 169-70, 199-200, 439-41. Connick did not lightly reject an "open-file" policy. In New Orleans, revealing too much about an investigation would put cooperating witnesses in mortal danger. App. 433. This wisely cautious approach went hand-in-hand with prosecutors' obligations to make disclosures required by the Sixth Amendment and *Brady*, as well as the Louisiana Code of Criminal Procedure. *See, e.g.,* App. 90-91, 199-200, 338, 440-41, 469.

Awareness of *Brady*'s strictures was ingrained in office culture. McElroy emphasized that "*Brady* in a prosecutor's world is something you study all the time." App. 377. In Connick's office, he explained, "[w]hen you walk in the door … [y]ou're instructed on *Brady* from the very beginning." App. 393. This was quite literally true. Bane recounted that any attorney interviewing for a position had to write essays on two topics that never varied: one on the exclusionary rule "and another … on *Brady* material." App. 465-66. Unsurprisingly, then, multiple witnesses testified without contradiction that the office's policy was to disclose all *Brady* materials, always and without exception. App. 158-60, 194, 198, 199-200, 338, 433-34, 438-41, 469. Moreover, regardless of whether they fell within *Brady*, office policy was to turn over *all* scientific reports, such as the lab report in this case. App. 199-200, 209, 282-84, 438, 486.

Prosecutors' compliance with *Brady* was not simply left up to chance, but was reinforced at multiple levels by Connick's office structure. App.

382-93, 464-65. Naturally, the decision to disclose particular evidence lay ultimately with the senior attorney in any case. But *Brady* questions would pass initially through an experienced screening attorney—who would flag potential *Brady* issues on a "Screening Action Form"—and proceed to review by an investigator, the junior attorney, and the senior attorney. App. 382-85, 464-65. The "pre-trial" exercises to which most cases were subjected reinforced this multi-level review of *Brady* issues. App. 387-89, 464-65.

Brady was also addressed outside the ambit of trying particular cases. Weekly "trial meetings," for instance, would scrutinize every facet of pending cases, including *Brady* matters. App. 389-90. Nor were prosecutors left to shift for themselves in keeping abreast of legal developments. In addition to his practice of circulating advance sheets, Connick instructed his chief of appeals to prepare regular intra-office memoranda highlighting the evolution of prosecutors' legal and ethical obligations. App. 429-31, 448-50. That system of ongoing legal education extended to developments in *Brady*. App. 389-91.

In these ways, Connick's office structure reinforced prosecutors' professional obligations to comply with *Brady*. In the 1990s, Connick would add more formalized instruction to his office, such as in-house CLE programs. App. 391. But such "formal" *Brady* training—in the sense of classroom lectures on *Brady* and its progeny—was never the cornerstone of the office's system. *See, e.g.,* App.

171, 247. Connick took a different tack, crafting what he and his office supervisors believed was a far more practical and effective means of enabling prosecutors to honor their duties under *Brady*. Transcript Vol. IV, pp. 785-86. Undermining *Brady* was, as Bane put it, "the farthest thing from my knowledge and understanding of Harry Connick that I could conceive of." App. 469.

C. THE SUPPRESSION OF BLOOD EVIDENCE IN THOMPSON'S ROBBERY CASE

Connick had been in office for a decade when the events surrounding Thompson's *Brady* violation occurred in late 1984 and 1985. At that time, Connick estimated that there were roughly 70 to 75 assistant district attorneys working in the office, and that the office was screening about 15,000 cases a year and accepting roughly half for prosecution. Transcript Vol. IV, pp. 831, 840-41.

1. The *Brady* violation

On December 6, 1984, Raymond T. Liuzza Jr. ("Liuzza") was robbed, shot, and killed outside of his home in New Orleans. About three weeks later, siblings Jay, Marie, and Michael LaGarde were the victims of an attempted armed robbery while in their car in New Orleans. Jay LaGarde fought off the perpetrator, and, in the struggle, some of the robber's blood stained the cuff of Jay's pants. As part of the police investigation, crime scene technicians took a swatch of the pants with the robber's blood on it. Pet. App. 53a.

In January 1985, Thompson and Kevin Freeman were arrested for the Liuzza murder. The

LaGardes saw Thompson's picture in the newspaper and believed he was the man who had attempted to rob them. They contacted the district attorney's office and identified Thompson. Pet. App. 53a-54a.

In February 1985, the armed robbery case was screened by assistant district attorney Bruce Whittaker, who received the police report, approved the case for prosecution, and filled out a Screening Action Form indicating that armed robbery charges should be brought. After noting that a technician had taken a bloody swatch of Jay LaGarde's pants, Whittaker wrote on the form that the state "[m]ay wish to do blood test." App. 647. He also recommended that the case be handled by Eric Dubelier as a special prosecutor because it involved the same defendant (Thompson) as the Liuzza murder case, which Dubelier was already handling. App. 46-54.

In March 1985, assistant district attorney James Williams handled a suppression hearing in Thompson's robbery case. Noting the reference to a blood test on the screening form, Williams stated in open court—and in the presence of Thompson's defense attorney—that "it's the state's intention to file a motion to take a blood sample from the defendant, and we will file that motion—have a criminalist here on the 27th." App. 47, 51, 82-83, 92-93. About one week before the armed robbery trial, the bloody pants swatch was sent for testing. The record does not reveal who ordered the test. Pet. App. 55a, 35a; App. 65.

Two days before trial, Whittaker received a crime lab report, addressed to his attention, that showed the armed robber's blood was type B. App. 68-69, 178, 655. The report was never turned over to Thompson's attorneys. Pet. App. 55a. Whittaker claimed he placed the report on Williams' desk. App. 179. Williams, however, denied discussing the report with Whittaker or even seeing it until the report surfaced in 1999. App. 68-70. Dubelier also could not remember ever seeing it. App. 284. But he explained what he would have done with such a report:

> ... I prosecuted thousands of case[s] ... and turned over thousands of these type[s] of report. If I had the report, I would have turned it over. […] [W]e were obligated to turn over a crime lab report. That's the way it was. That was standard operating procedure in the office.

Id.

On April 11 and 12, 1985, Thompson was tried for armed robbery by Williams and assistant district attorney Gerry Deegan. App. 31, 77-78. Some time before trial, Dubelier had asked Williams to act as lead prosecutor. The Fifth Circuit panel described what happened as the trial began:

> On the first day of trial, Deegan checked all of the evidence out of the police property room, including the bloody swatch from Jay LaGarde's pants. Deegan then checked the

> evidence into the court property room, but never checked in the pants swatch.

Pet. App. 56a; App. 55, 238-39. The prosecutors relied only on the three eyewitness identifications by the LaGardes. App. 71-72. During the trial, Deegan questioned the crime-scene technician, but did not ask him about the bloody pants swatch. App. 78-80. The jury found Thompson guilty of attempted armed robbery, and he was sentenced to forty-nine and one-half years in prison. Pet. App. 56a.

From May 6 to 8, 1985, Dubelier and Williams tried Thompson for the first-degree murder of Liuzza and sought the death penalty. At trial, Freeman testified that Thompson shot Liuzza. An acquaintance of Thompson testified that Thompson made incriminating statements about the Liuzza murder and that he had sold Thompson's gun for him. Pet. App. 56a-57a. Realizing the prosecution would use his robbery conviction to impeach him, Thompson elected not to testify on his own behalf. The jury convicted Thompson of first-degree murder. During sentencing, Dubelier argued that Thompson's prior robbery conviction supported giving him the death penalty. The jury sentenced Thompson to death. Pet. App. 57a.

In the ensuing fourteen years, Thompson exhausted his appeals and his execution was set for May 20, 1999. Then, in late April 1999, an investigator in Thompson's habeas proceedings received, through a public records request, a microfiche copy of the lab report containing the blood type of the robbery perpetrator. Thompson

was tested and found to be type O, definitively ruling him out as the LaGardes' attacker. Thompson's attorneys presented this information to Connick, who immediately moved to stay Thompson's execution. Pet. App. 57a-58a; Transcript Vol. IV, p. 769.

The ensuing investigation revealed what had happened. In April 1994, nearly a decade after Thompson's convictions, Deegan had confessed privately to a fellow prosecutor, Michael Riehlmann, that he had "intentionally suppressed blood evidence in the armed robbery trial of John Thompson." App. 367; Pet. App. 58a. Deegan, who was suffering from terminal cancer, divulged this shortly after learning he had only months to live. Deegan died about three months later. Riehlmann kept silent until the evidence was discovered five years later, in 1999. At Connick's instigation, Riehlmann was sanctioned by the Louisiana Supreme Court for failing to report Deegan's misconduct. *See In Re Riehlmann*, 2004-0680 (La. 1/19/05); 891 So.2d 1239; App. 362-67.

In 2002, the Louisiana Fourth Circuit Court of Appeal vacated Thompson's murder conviction, holding that the tainted robbery conviction had unconstitutionally deprived him of his right to testify in his own defense at his murder trial. *See State v. Thompson*, 2002-0361, pp. 8-9 (La. App. 4 Cir. 7/17/02); 825 So.2d 552, 557-58; App. 19. Thompson was retried for Liuzza's murder in 2003 although the main witness against him in 1985, Kevin Freeman, was now dead. Thompson was found not guilty. Pet. App. 59a-60a.

2. Thompson's civil rights suit

After his release, Thompson brought suit under § 1983 in the United States District Court for the Eastern District of Louisiana, alleging that the district attorney's office[2] violated his rights by failing to train prosecutors on their *Brady* obligations. *See generally Monell v. Dep't of Social Services*, 436 U.S. 658 (1978) (recognizing municipal liability under § 1983); *Canton*, 489 U.S., at 389-91 (recognizing municipal liability under limited circumstances for failing to train employees).[3]

In denying summary judgment, the district court rejected petitioners' argument that a pattern of similar violations was necessary to prove the office's "deliberate indifference" to *Brady* training. Pet. App. 138a-139a. After the close of evidence,

---

[2] Thompson also sued, in their individual and official capacities, Connick, Williams, and Dubelier, as well as Eddie Jordan, who held the position of Orleans Parish District Attorney in 2003. Pet. App. 60a. His official capacity claims against the prosecutors are identical to his claim against the office itself. *See Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985); Pet. App. 132a. In the certiorari petition and this brief, Jordan's name has been substituted with that of the current Orleans Parish District Attorney, Leon Cannizzaro.

[3] Thompson's additional state and federal claims were dismissed at various stages. Pet. App. 60a-61a. For instance, after Thompson rested, the district court dismissed his conspiracy claim under 42 U.S.C. § 1985(3). Pet. App. 61a. At the close of evidence, the district court ruled that Dubelier and Williams were not "policymakers" and thus could not create § 1983 liability on behalf of the office. *Id.* The only claim that proceeded to trial was Thompson's § 1983 claim against the office.

petitioners again raised this issue by proposing a jury instruction that "deliberate indifference to training requires a pattern of similar violations." Transcript Vol. IV, p. 1013. Thompson's counsel told the court: "That's not the law, your Honor." *Id.* The court refused the proposed language, explaining that it had already rejected this argument at the summary judgment stage. *Id.*

The court instructed the jury that the failure to disclose the blood evidence violated *Brady* as a matter of law. App. 825. As to deliberate indifference, the court instructed the jury that Thompson was required to prove the following:

> First, that the district attorney was certain that prosecutors would confront the situation where they would have to decide which evidence was required by the Constitution to be provided to the accused.
>
> Second, that the situation involved a difficult choice or one that prosecutors had a history of mishandling, such that additional training, supervision or monitoring was clearly needed.
>
> Third, that the wrong choice by a prosecutor in that situation would frequently cause a deprivation of an accused's constitutional rights.

App. 828.[4] The court further explained that, in assessing those issues, the jury was "not limited to

---

[4] The three questions were drawn from the Second Circuit's analysis in *Walker v. City of New York*, 974 F.2d 293, 300 (CA2 1992). *See also infra* Part I.A.2.

the nonproduced blood evidence and the resulting infringement of Mr. Thompson's right to testify," but could "consider all of the evidence presented during this trial." *Id.*

Based on these instructions, the jury was asked two questions about what caused "the *Brady* violation in the armed robbery case or any infringements of John Thompson's rights in the murder trial." App. 562. First, it was asked whether those injuries were "substantially caused by an official policy of the district attorney." *Id.* The jury answered "no." *Id*. Second, it was asked whether those injuries were "substantially caused by the district attorney's failure through deliberate indifference to establish policies and procedures to protect one accused of crime from these constitutional violations." *Id.* The jury answered "yes." *Id.*; Pet. App. 61a-64a. Based on its affirmative answer to the second question, the jury awarded Thompson $14 million. App. 562, Pet. App. 64a-65a.[5] Petitioners subsequently moved for judgment as a matter of law on the basis that Thompson had not proven any pattern of similar *Brady* violations, but the district court denied the motion. Mem. in Supp. of Mot. for J.M.O.L. (Doc 147-1), pp. 3-5; Order and Reasons (Doc 169), pp. 1, 5-6.

On December 19, 2008, a panel of the United States Court of Appeals for the Fifth Circuit affirmed. Pet. App. 71a-113a. The panel

---

[5] The court later added over $1 million in attorneys' fees. June 18, 2007 Order (Doc 182).

specifically rejected petitioners' argument about the required pattern of similar *Brady* violations. *Id.* at 72a-80a. Noting that "Thompson does not argue that there was evidence of a pattern," *id.* at 72a, the panel agreed with Thompson that a *Brady* violation fell within a narrow single-incident exception to the pattern requirement. *Id.* at 73a-79a. The panel thus held:

> Thompson did not need to prove a pattern of *Brady* violations to demonstrate that the failure to train was deliberately indifferent, and the district court did not err in denying Thompson's motion for judgment as a matter of law.

Id. at 80a (citing *Walker v. City of New York*, 974 F.2d 293, 300 (CA2 1992)). "Consequently," the panel explained, "the fact that Thompson did not establish a pattern of *Brady* violations by the DA's Office is not dispositive of his claims." *Id.* at 76a.

On March 11, 2009, the Fifth Circuit granted *en banc* rehearing and vacated the panel decision.[6] By separate order, the court asked counsel to brief several specific issues, including whether a single incident can give rise to failure-to-train liability. Mar. 13, 2009, Ltr. of Advisement; App. 10. On August 10, 2009, the equally divided *en banc* court

---

[6] Since the panel decision has been vacated, the judgment erroneously naming Connick, Dubelier, Williams and Jordan still remains. *See* Pet. App. 112a n.27 (explaining these defendants should not have been named because they no longer hold office); *see also, e.g., Castro Romero v. Becken*, 256 F.3d 349, 355 (CA5 2001) (explaining that official-capacity claims are duplicative of claims against government entities).

affirmed, with two separate dissents. Pet. App. 2a, 2a-7a, 9a-44a.[7] Writing for six members of the court, Judge Edith Brown Clement would have held that Thompson's evidence of a single violation, accompanied only by "diffuse evidence of *Brady* misunderstanding among several assistant district attorneys," failed to meet the "heightened standards for culpability and causation" for failure-to-train liability. Pet. App. 13a-14a, 32a, 39a.[8]

This Court granted certiorari on March 22, 2010.

SUMMARY OF THE ARGUMENT

A municipality is liable under § 1983 for injuries attributable to its own actions, but not for those attributable to employee wrongdoing. *Monell*, 436 U.S., at 690-94. In limited circumstances, a failure to train employees may trigger municipal liability. *Canton*, 489 U.S., at 389-91. Because it raises the specter of vicarious liability, however, a failure-to-train claim demands stringent proof of fault and causation: inadequate training must show a municipality's deliberate indifference to, and must

---

[7] Judge Prado wrote a concurrence for five judges explaining why the judgment should be affirmed. Pet. App. 45a-50a.

[8] Agreeing with Judge Clement, Chief Judge Edith Jones wrote separately to highlight "the troubling tension between this unprecedented multimillion dollar judgment against a major metropolitan District Attorney's office and the policies that underlie the shield of absolute prosecutorial immunity." Pet. App. 2a-3a (discussing *Van de Kamp v. Goldstein*, 129 S. Ct. 855 (2009)).

actually injure, the rights of citizens. *Id.* A history of employee wrongdoing is ordinarily necessary to prove fault and causation, but a single incident may suffice in rare cases. *Bryan County*, 520 U.S., at 409. The Court has hypothesized only one—when a city passes out guns to police offices but forgets to train them on the proper use of deadly force. *Canton*, 489 U.S., at 390 n.10.

This case asks whether that single-incident hypothesis should extend to a district attorney's alleged failure to train prosecutors on *Brady v. Maryland*, 373 U.S. 83 (1963). The lower courts ruled that it should—and allowed the case to go to the jury on that basis—but they were mistaken. Without a history of similar violations, a district attorney's allegedly deficient *Brady* training cannot meet the rigorous fault and causation requirements for failure-to-train liability. *See infra* Part I.A.

Prosecutors are not typical employees. They are trained professionals, equipped by education and ethics to assess their *Brady* obligations. A district attorney reasonably relies on prosecutors obeying the standards of their own profession. Absent powerful indications to the contrary, then, a district attorney cannot be deliberately indifferent for failing to "train" prosecutors. *See infra* Part I.A.1. Nor can a lack of training directly cause a *Brady* violation. In most cases, what actually causes a violation is the prosecutor's own lapse, not a district attorney's failure to train the prosecutor on what he was already equipped to know and do. *See infra* Part I.B.

The lower courts misapplied *Canton* by extending its single-incident scenario to prosecutors' *Brady* compliance. The two situations are worlds apart. In *Canton*, untrained police officers were asked to intuit deadly force standards. A municipal employer who places its officers in that dilemma is, by definition, callously indifferent to the rights of citizens those officers will apprehend. But a district attorney who relies on prosecutors' professional ability to assess *Brady* material is not in remotely the same position. The lower courts simply missed the obvious: training police to arrest criminals is nothing like training lawyers to interpret the law. *See infra* Parts I.A.2 & I.B.

Based on this flawed analysis, the jury was allowed to impose liability on Connick's office for a single *Brady* violation unaccompanied by any pattern of previous violations. This case illustrates that extending *Canton* so far dissolves municipal into vicarious liability. *See infra* Part II. First, the basic premise of failure-to-train liability—deficient training—was never proven. Despite an absence of classroom-style *Brady* training, Connick's innovative office structure was itself a practical and effective way of monitoring *Brady* compliance, far more so than converting his office into a miniature law school. *See infra* Part II.A. Second, there was no proof of any conscious decision by Connick to ignore obvious *Brady* problems. Far from besmirching Connick's *Brady* record, the evidence showed a minuscule number of reported violations out of tens of thousands of prosecutions during the period covering Thompson's trial. *See infra* Part II.B. Third, the moving force behind the violation

in Thompson's case had nothing to do with any training deficiency in Connick's office. Instead, Thompson's rights were violated when a prosecutor knowingly concealed the blood evidence, a flagrant disregard of the law that Connick had no reason to foresee and no amount of training could have prevented. *See infra* Part II.C.

This case extends failure-to-train liability where it was never meant to go. Years ago, Justice O'Connor warned what would follow: "Allowing an inadequate training claim such as this one to go to a jury based upon a single incident would only invite jury nullification of *Monell*." *Canton*, 489 U.S., at 399 (O'Connor, J., concurring in part and dissenting in part). So far, this case has fulfilled Justice O'Connor's prediction. The Court should overturn that result by clarifying that single-incident liability does not extend to a prosecutor's *Brady* violation.

ARGUMENT

I. A DISTRICT ATTORNEY'S OFFICE MAY NOT BE LIABLE UNDER § 1983 FOR FAILING TO TRAIN PROSECUTORS ON *BRADY*, ABSENT A HISTORY OF VIOLATIONS.

A municipality is liable under § 1983 only for its own actions, and not for actions by its employees. *See, e.g., Bryan County*, 520 U.S., at 403; *Monell*, 436 U.S., at 690-94. A municipality acts illegally when its own policy is unconstitutional, or its policymaker orders illegal action. *Bryan County*, 520 U.S., at 404-05; *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483-84 (1986). Finding municipal

action is far more difficult, however, when liability is premised on a municipality's *failure* to act that supposedly causes an employee to inflict injury. *Bryan County*, 520 U.S., at 406; *see also City of Springfield v. Kibbe*, 480 U.S. 257, 268 (1987) (O'Connor, J., dissenting) (describing the causal connection as "an inherently tenuous one"). In such cases, "rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee." *Bryan County*, 520 U.S., at 405 (citing *Canton*, 489 U.S., at 391-92; *Oklahoma City v. Tuttle*, 471 U.S. 808, 824 (1985) (plurality opinion)).

Those rigorous standards govern claims alleging a municipality has inadequately trained its employees. *See generally Canton*, 489 U.S., at 390-92. It is not enough to show that an employee was poorly trained, that better training would have thwarted his bad act, or that "an otherwise sound program has occasionally been negligently administered." *Id.*, at 390-91. Rather, inadequate training must demonstrate a municipality's "deliberate indifference"—its callous and conscious disregard for rights. *Id.*, at 388-89 & n.7; *Bryan County*, 520 U.S., at 407. Additionally, an identified flaw in training must "actually cause" the particular injury. *Canton*, 489 U.S, at 391; *Bryan County*, 520 U.S., at 404. "Where a court fails to adhere to rigorous requirements of causation and culpability, municipal liability collapses into *respondeat superior* liability." *Bryan County*, 520 U.S., at 415.

Failure-to-train liability ordinarily requires an underlying pattern of employee wrongdoing. *Bryan County*, 520 U.S., at 409. Otherwise, a municipality's mere failure to adjust its training would not ordinarily show deliberate indifference, nor directly cause employee wrongdoing. *See, e.g., id.*, at 407 (explaining that "[i]f a [training] program does not prevent constitutional violations, municipal decisionmakers *may eventually* be put on notice that a new program is called for") (emphasis added). Culpability and causation thus generally require proving a municipality's "continued adherence" to training whose flaws are exposed by repeated wrongdoing. *Id.*, at 407 (citing *Canton*, 489 U.S., at 390 n.10).

In "a narrow range of circumstances," however, liability may be premised on an employee's single violation. *Bryan County*, 520 U.S., at 409. The theory emerges from this hypothetical in *Canton*:

> For example, city policymakers know to a moral certainty that their police officers will be required to arrest fleeing felons. The city has armed its officer with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of deadly force can be said to be "so obvious," that failure to do so could properly be characterized as "deliberate indifference" to constitutional rights.

489 U.S., at 390 n.10 (citing *Tennessee v. Garner*, 471 U.S. 1 (1985)). Single-incident liability was thus posed as a situation that glaringly demands

targeted training because, without it, violations are inevitable. A city that blindly relies on armed officers' ability to obey the constitution announces a callous indifference that needs no confirmation by a history of incidents. The Court has never expanded this hypothetical, however, nor actually held a municipality liable under it. *See Bryan County*, 520 U.S., at 409 (noting that *Canton* had "simply hypothesized" its single-incident scenario).

This case asks whether *Canton*'s single-incident hypothesis may be pushed from police to prosecutors. Specifically, it raises the question whether a district attorney's office shows deliberate indifference by failing to formally "train" prosecutors to comply with *Brady*, where no history of similar violations should have alerted the office to a persisting problem.

For municipal liability purposes, training police officers and prosecutors occupy starkly different realms. Unless a pattern of incidents warns that prosecutors have been violating *Brady*, it is logically impossible for a district attorney's office to *consciously* ignore an obvious need to adjust *Brady* training. The training *Canton* envisioned is, to begin with, ill-suited to a putative failure to "train" prosecutors in their own profession. But basing liability on a single *Brady* violation stretches *Canton* past its breaking point. It transforms *Canton*'s culpability and causation standards into vicarious liability, a result the Court has consistently forbidden since *Monell* and which would therefore contravene § 1983. *See, e.g., Bryan County*, 520 U.S., at 403 (explaining that "[w]e

have consistently refused to hold municipalities liable under a theory of *respondeat superior*").

A. Faced with no history of violations, a district attorney cannot consciously ignore an obvious need for *Brady* training.

(1). District attorneys are entitled to rely on prosecutors' adherence to the standards of their own profession.

Prosecutors are trained professionals, subject to a licensing and ethical regime designed to reinforce their duties as officers of the court. Absent powerful evidence to the contrary, a district attorney is entitled to rely on prosecutors' adherence to these standards. Making a district attorney liable for failing to "train" prosecutors in their own profession is, consequently, an awkward extension of *Canton* to begin with. Awkwardness becomes absurdity, however, where a pattern of violations has not alerted a district attorney to a persisting problem demanding a specific solution. Finding a failure-to-train under such circumstances divorces the theory from any notion of actual fault and instead imposes liability "*solely* because [the district attorney] employs a tortfeasor." *Monell*, 436 U.S., at 691 (emphasis in original).

The failure-to-train theory emerged solely from police training cases. Thus, while speaking to some extent of training "employees,"[9] *Canton* cast its

---

[9] *See, e.g., Canton*, 489 U.S., at 389 (deeming deficient training actionable for "a municipality's failure to train *employees*"); *id.* (observing that *Monell* "will not be satisfied

holding in terms of "police training":

> We hold today that the inadequacy of *police training* may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom *the police* come into contact.

Id., at 388 (emphasis added). The Court in *Canton* drew chiefly from circuit cases considering alleged failures to train police on the standards for arrests,[10] detention and interrogation,[11] searches,[12] and executing warrants,[13] and also cited two of its own cases addressing deadly force training. *See Tuttle*, 471 U.S., at 829-31 (Brennan, J., joined by Marshall and Blackmun, JJ., concurring in part

---

by merely alleging that the existing training program for *a class of employees, such as police officers*, represents a [city] policy") (emphasis added).

[10] *See Canton*, 489 U.S., at 383 n.3, 387 n.6 (relying on *Rymer v. Davis*, 754 F.2d 198 (CA6 1985); *Hays v. Jefferson Cty.*, 668 F.2d 869 (CA6 1982); *Spell v. McDaniel*, 824 F.2d 1380 (CA4 (1987); *Wierstak v. Heffernan*, 789 F.2d 968 (CA1 1986); *Fiacco v. Rensselaer*, 783 F.2d 319 (CA2 (1986); *Gilmere v. City of Atlanta*, 774 F.2d 1495 (CA11 1985); *Rock v. McCoy*, 763 F.2d 394 (CA10 1985); *Languirand v. Hayden*, 717 F.2d 220 (CA5 1983); *Lenard v. Argento*, 699 F.2d 874 (CA7 1983)).

[11] *See Warren v. City of Lincoln*, 816 F.2d 1254 (CA8 1987).

[12] *See Colburn v. Upper Darby Tp.*, 838 F.2d 663 (CA3 1988).

[13] *See Bergquist v. Cty of Cochise*, 806 F.2d 1364 (CA9 1986). *Canton* also drew on one circuit decision regarding training police to avoid retaliatory prosecution. *See Haynesworth v. Miller*, 820 F.2d 1245 (CA DC 1987).

and concurring in judgment); *Springfield*, 480 U.S., at 268-70 (O'Connor, J., joined by Rehnquist, C.J., and Powell and White, JJ., dissenting). *Canton* itself involved an alleged failure to train police on providing medical attention to detainees. *See* 489 U.S., at 381-82. These sources indicate the genre of "training" uppermost in the Court's mind: instructing police on the constitutional strictures governing their interactions with citizens.

Training police to arrest criminals, however, is a far cry from training lawyers to interpret law. Police officers often need expert guidance on conforming to constitutional rules they themselves have no expertise in finding or interpreting. In those cases, officers require specialized training from their employer. Thus, *Canton* plausibly hypothesized liability for a municipal employer who ignores a glaring need for training officers on constitutional standards.

But prosecutors—and attorneys in general—have a distinctly different relationship to their municipal employers. Attorneys are professionals in the traditional sense of "person[s] … whose occupation requires a high level of training and proficiency." BLACK'S LAW DICTIONARY (8th ed. 2004). "Training," as Judge Clement's dissent observed, "is what differentiates attorneys from average public employees." Pet. App. 29a. Unlike police officers, prosecutors are extensively educated to discern the constitutional limits on their conduct. Simply to become attorneys, they must have graduated law school, passed a rigorous bar exam, and satisfied exacting character and fitness

standards. *See, e.g.,* LA. SUP. CT. RULE XVII (2010). They are thereafter personally subject to continuing-education requirements and an ethical regime designed to reinforce the profession's standards. *See, e.g.,* LA. SUP. CT. RULE XXX (2010). As attorneys, prosecutors are officers of the court,[14] and accordingly have a "duty to seek justice, not merely to convict." ABA STANDARDS FOR CRIMINAL JUSTICE 3-1.1(b) (2d ed. 1980).

Violating these obligations subjects lawyers to severe consequences. They may be suspended or disbarred by the profession's governing body. *See, e.g., Hernandez v. Mukasey*, 524 F.3d 1014, 1019 nn.1 & 2 (CA9 2008) (discussing varied state regulation of the legal profession). They may face contempt sanctions. Indeed, one of the prosecutors involved in the suppression in Thompson's robbery trial was disciplined by the Louisiana Supreme Court at the instigation of Connick himself. *See In re Riehlmann*, 2004-0680 (La. 1/19/05); 891 So.2d 1239; App. 365-67.

This Court routinely recognizes these professional standards. Justice Frankfurter once observed, "[f]rom a profession charged with [constitutional] responsibilities there must be

---

[14] As Justice Cardozo (then-Chief Judge of the New York Court of Appeals) once noted: "Membership in the bar is a privilege burdened with conditions. [A lawyer is] received into that ancient fellowship for something more than private gain. He [becomes] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *People ex rel. Karlin v. Culkin*, 248 N.Y. 465, 470-71, 162 N.E. 487 (1928).

exacted ... qualities of truth-speaking, of a high sense of honor, of granite discretion." *Schware v. Board of Bar Examiners of New Mexico,* 353 U.S. 232, 247 (1957). The landmark *Strickland v. Washington* opinion presupposed attorneys' professional obligations, including "a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." 466 U.S. 668, 688 (1984); *see also Hernandez*, 524 F.3d, at 1018-19 (contrasting attorneys and non-lawyer immigration consultants). Justice O'Connor, dissenting from a decision to strike down certain state bans on lawyer solicitation, noted that, "[w]hile some assert that we have left the era of professionalism in the practice of law…, substantial state interests underlie many of the provisions of the state codes of ethics, and justify more stringent standards than apply to the public at large." *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 677 (1985) (O'Connor, J., dissenting) (internal citation omitted).

Bearing in mind this overarching professional regime, it is implausible to charge a district attorney's office with precisely the same duty to "train" prosecutors that *Canton* recognized with respect to police officers. *Canton* itself does not suggest that *every* employment relationship triggers an equivalent training duty for which a municipality may be liable. *See, e.g.,* 489 U.S., at 387 (holding "there are *limited circumstances* in which … a 'failure to train' can be the basis for liability under § 1983"); *id.*, at 390 (explaining that liability may arise "in light of the duties assigned to *specific officers or employees*") (emphases added).

As Judge Clement explained, "it is highly unlikely that a municipality could be held liable for failing to train a doctor it employed in diagnostic nuances." Pet. App. 29a. In the same way, prosecutors have an orientation to the laws governing their duties fundamentally different from typical municipal employees.

Prosecutors should therefore not be lumped unthinkingly under *Canton*'s stringent fault standard, as though they were any other employee. "To hold a public employer liable for failing to train professionals in their profession is an awkward theory," as Judge Clement aptly observed. Pet. App. 29a. The theory is indeed awkward that puts a district attorney in the position of crafting a "training program" to prevent lapses by employees already professionally trained to detect and avoid them.

Canton does not direct a municipality to undertake such an overbroad and likely counter-productive approach to training. *Cf. Canton*, 489 U.S., at 392 (cautioning that diluting failure-to-train liability would "engage the federal courts in an endless exercise of second-guessing municipal employee-training programs"). Rather, a training program may trigger liability only when, in light of particular employees' duties,

> the need for more or different training is *so obvious*, and the inadequacy *so likely* to result in the violation of constitutional rights, that the policymakers … can reasonably be said to have been deliberately indifferent to the need.

Canton, 489 U.S., at 390 (emphasis added). One strains to imagine, however, when it should *ever* be "obvious" to a district attorney that he needs to train prosecutors to know and obey the law. The opposite is true. Absent powerful indications to the contrary, a district attorney "is entitled to assume that attorneys will abide by the standards of the profession." Pet. App. 29a.

In sum, *Canton*'s training duty grew out of the police context and extends awkwardly to professionally trained employees such as prosecutors. Its only conceivable application to a putative failure to "train" prosecutors, then, is when a history of violations alerts the office to a specific problem that demands a targeted solution. Only that approach takes *Canton*'s stringent fault standard seriously. Only then can a district attorney plausibly be accused of a "continued adherence to an approach that [it] know[s] or should know has failed to prevent tortious conduct by employees." *Bryan County*, 520 U.S., at 407. Reading *Canton* any other way would unmoor it from *actual* municipal fault and would essentially direct district attorneys, on pain of § 1983 liability, to run their offices like a law school, a board of ethics, or a bar association.

(2). Canton's *single-incident scenario is nothing like a* Brady *situation.*

Given the implausibility of holding a district attorney culpable for not "training" prosecutors on what they are already equipped to know and do, one wonders what theory allowed Thompson's case to survive a motion to dismiss. It was this: the

lower courts equated prosecutors' *Brady* compliance to the extreme scenario *Canton* had hypothesized for single-incident liability. The lower courts thus expanded single-incident liability far beyond anything *Canton* envisioned.

Failure-to-train liability ordinarily requires an underlying history of employee wrongdoing. *See, e.g., Bryan County*, 520 U.S., at 409. Otherwise, a municipality's failure to adjust training would seldom indicate its "continued adherence to an approach that [it] know[s] or should know has failed to prevent tortious conduct by employees." *Id.*, at 407 (citing *Canton*, 489 U.S., at 390 n.10). An employee's single violation would therefore establish municipal failure-to-train liability only in the rarest case. The Court has imagined only one: an excessive force violation that occurs because a city has passed out guns to officers but forgotten to train them on using deadly force. *Canton*, 489 U.S., at 390 n.10 (citing *Tennessee v. Garner*, 471 U.S. 1 (1985)).

The Court has shown no inclination to expand this hypothetical and, indeed, has never actually held a municipality liable under it. *See Bryan County*, 520 U.S., at 409 (explaining that *Canton* had "simply hypothesized" single-incident liability for a "narrow range of circumstances"). *Canton*'s extreme police-training scenario thus remains the lone benchmark for single-incident liability. The key question is whether it plausibly extends to a district attorney's office that fails to "formally train" prosecutors on *Brady*.

Both lower courts concluded that it does, but only by abstracting the hypothetical from its peculiar facts. *See* Pet. App. 72a-80a, 141a-142a. For instance, the district court found the *Brady* scenario implicated single-incident liability because the office "knew to a moral certainty" that prosecutors would acquire *Brady* material; because "without training it is not always obvious what *Brady* requires"; and because withholding *Brady* material "will virtually always lead" to constitutional violations. *Id.* at 141a. The panel opinion relied on the same reasoning, along with expert testimony that "[e]very district attorney knows" that prosecutors will acquire *Brady* material and that not disclosing it will violate constitutional rights. *Id.* at 76a-79a.[15]

Both courts patterned their analysis on the Second Circuit's opinion in *Walker v. City of New York*, 974 F.2d 293 (CA2 1992), which had first suggested that single-incident liability may apply to a *Brady* violation. *See* Pet. App. at 142a, 80a (both citing *Walker*). The jury instructions were also drawn directly from *Walker*. To assess Connick's deliberate indifference, the jury was asked to consider:

1) whether "the district attorney was certain that prosecutors would confront" *Brady* decisions;

---

[15] The panel added the details that certain prosecutors testified that *Brady* had "gray areas" or was "an elastic thing," and that many prosecutors "were only a few years out of law school." *Id.* at 77a-78a.

2) whether those situations "involved a difficult choice or one that prosecutors had a history of mishandling, such that additional training, supervision or monitoring was clearly needed"; and

3) whether "the wrong choice by a prosecutor in that situation would frequently cause a deprivation of an accused's constitutional rights."

App. 828.

Based on this chain of reasoning, both lower courts ruled that a district attorney's purported failure to train on *Brady* fell within *Canton*'s single-incident scenario. *See, e.g.,* Pet. App. 80a (concluding that "Thompson did not need to prove a pattern of *Brady* violations to demonstrate that [Connick's] failure to train was deliberately indifferent"). The jury was thus explicitly allowed to base deliberate indifference on a *Brady* violation unaccompanied by any pattern. To be sure, that was the only basis on which the jury *could* have found culpability, since, as the panel explained, "Thompson did not establish a pattern of *Brady* violations" and indeed "d[id] not argue that there was evidence of a pattern." *Id.* at 76a, 72a.[16]

The analysis adopted by the lower courts to shoehorn *Brady* into single-incident liability was grievously flawed. It illogically expanded the

[16] Furthermore, as explained in Part II.B, *infra*, the evidence adduced at trial did not permit any inference of the "pattern of constitutional violations" typically required to prove failure-to-train liability.

"narrow range" of single-incident circumstances far beyond anything *Canton* could have envisioned. Under this approach, a district attorney's liability for "training" is indistinguishable from vicarious liability.

The lower courts' chief mistake was to divorce *Canton*'s hypothetical from its facts. *Canton* imagined an extreme case in which city police officers find themselves with new firearms but no indication how to use them legally. By contrast, the lower courts merely asked whether municipal employees face a situation that "presents a difficult choice" that "will frequently cause" constitutional violations. That abstraction scarcely does justice to *Canton*'s hypothetical, which dealt not with "difficult choices" that "frequently" cause violations, but with impossible choices that inevitably cause them. *Canton*'s untrained officers were essentially asked to intuit deadly force standards. Saying they faced a "difficult choice" hardly captures the problem. A municipal employer who places its officers in that dilemma is, by definition, callously indifferent to the rights of citizens those officers will apprehend.

Going well beyond that scenario, the lower courts expanded single-incident liability to a far broader and more commonplace range of employee missteps. For a district attorney's office, such liability would extend not only to *Brady*, but also prosecutors' decisions on "search and seizure, *Miranda*, evidence of a defendant's other crimes, expert witnesses, sentencing, or many more." Pet. App. 27a. This converts a rare form of municipal

liability into the norm, with particularly ruinous implications for prosecutorial offices.

The lower courts simply missed the obvious: failing to train police officers to arrest criminals is nothing like "failing to train" prosecutors to interpret the law. The former shows callous indifference, the latter a sensible reliance on professional safeguards. By sending Thompson's case to the jury without any proof of a history of similar violations, the lower courts expanded single-incident liability far beyond the "narrow range" *Canton* and *Bryan County* delineated, and thus breached the high wall around failure-to-train liability. The consequences were predictable: "Where a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into *respondeat superior* liability." *Bryan County*, 520 U.S., at 415.

B. Faced with no history of violations, a district attorney's *Brady* training cannot be the moving force behind a violation.

Because the causal link in such cases "is an inherently tenuous one," *see Springfield*, 480 U.S., at 268 (O'Connor, J., dissenting), the Court has underscored that a failure-to-train claim demands an ironclad connection between an injury and a flawed training program. The Court has recited a litany of warnings to this effect. "[T]he identified deficiency in a city's training program," *Canton* said, "must be closely related to the ultimate injury" and must have "actually caused" it." 489 U.S., at 391. But-for causation is insufficient.

Bryan County, 520 U.S., at 410. Rather, a "direct causal link" must exist between training and injury, and a pattern of violations is usually necessary to prove it. *Id.*, at 404, 407-08. It is not enough to show that a program has sometimes been badly supervised, or that certain employees could have been better equipped to avoid the misconduct. *Canton*, 489 U.S., at 391. The "moving force" behind the injury must be the training program *itself*, and not "factors peculiar to the officer involved in the particular incident." *Bryan County*, 520 U.S., at 407-08.

A purported flaw in a district attorney's system of *Brady* compliance—such as a lack of "formal" training—cannot typically be the moving force behind a *Brady* violation for two reasons. First, the far more obvious cause of a violation lies with the professionally trained prosecutor himself. The only thing that could conceivably change this calculus is a history of *Brady* violations sufficient to alert a district attorney to a problem that demands a targeted solution. Second, the extreme police-training failure in *Canton*'s single-incident hypothesis does not remotely embrace the *Brady* scenario faced by a professionally trained prosecutor.

In most cases, what *actually* causes a *Brady* violation is the prosecutor himself. Many things might explain the lapse. The prosecutor may have simply neglected his duties. He may have made a mistake about the materiality of particular evidence. *See, e.g., United States v. Bagley*, 473 U.S. 667 (1985) (defining materiality with respect

to impeachment evidence). He may have had a defective understanding of *Brady*. He may have been misinformed about the existence of evidence because of his own laziness or the police's. *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (explaining that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police"). Conceivably, an office's structural mechanisms might have failed in a given case. Normal checks and balances may not have functioned properly. Evidence might have slipped through the cracks in an otherwise reliable system. *See, e.g., Strickler v. Greene*, 527 U.S. 263 (1999) (involving undisclosed potential *Brady* material that surfaced after trial despite open file policy). And, of course, one must not rule out the disturbing scenario that unfolded in Thompson's case: a prosecutor may have knowingly buried *Brady* material. *See, e.g., Banks v. Dretke*, 540 U.S. 668 (2004) (involving suppression of impeachment evidence that would have revealed government coaching of witness).

Consequently, someone investigating a *Brady* violation would suspect, first and foremost, that the prosecutor betrayed *his own* professional standards—*not* that he should have received better training from the district attorney. By definition, a prosecutor is a licensed professional already equipped to assess what to do with potential *Brady* material. *See supra* Part I.A.1. Only in the most unusual case would a *Brady* violation be traced to anything other than an individual prosecutor's lapse of judgment.

Thus, the same reasons that counsel against attributing the requisite fault to a district attorney for a prosecutor's single *Brady* violation, *see supra* Part I.A, also counsel against finding the requisite causation. There is little reason to think that a district attorney's inadequate training *actually* causes a professional to betray the standards of his own profession. None of the plausible explanations for a *Brady* violation—a prosecutor's mistake, for instance, or faulty administration of an office system—establish a direct link between the injury and deficient training. Accurately diagnosed, the moving force will instead be "factors peculiar to the officer involved in the particular incident." *Bryan County*, 520 U.S., at 408.

Causation becomes even more tenuous when a *Brady* violation results not from a prosecutor's negligence—or even recklessness—but instead from his intentional misdeed. By analogy, a municipality's inadequate sexual harassment training cannot have been the moving force behind a police officer's rape of a detainee.[17] As one court explained, "while it may have been wise to tell officers not to sexually assault detainees, it is not so obvious that not doing so would result in an officer actually sexually assaulting a female detainee." *Parrish*, 594 F.3d, at 999. For the same reasons, whatever insufficient *Brady* training a district attorney's office may have provided could

---

[17] *See, e.g., Andrews v. Fowler*, 98 F.3d 1069 (CA8 1996); *Sewell v. Town of Lake Hamilton*, 117 F.3d 488, 490 (CA11 1997); *Currie v. Haywood County*, 2007 WL 1063277, 4 (CA6 Apr. 10, 2007); *Parrish v. Ball*, 594 F.3d 993, 999 (CA8 2010).

not directly cause a prosecutor's knowing violation of *Brady*.

In sum, nothing about a *Brady* violation suggests that it escapes the rule that a "pattern of injuries [is] ordinarily necessary to establish municipal culpability and causation." *Bryan County*, 520 U.S., at 409. *Canton*'s single-incident hypothesis confirms this. In that scenario, the city employer had no reason to think officers are equipped to interpret or even locate the proper constitutional standards for deadly force. *See* 489 U.S., at 390 n.10. Denying police officers those "specific tools," the Court explained, will lead to constitutional violations "with a high degree of predictability." *Bryan County*, 520 U.S., at 409-10. A resulting excessive force injury can therefore be directly linked to the city's lack of training. *See supra* Part I.A.2 (discussing *Canton*'s single-incident hypothesis).

A chasm lies between that scenario and a prosecutor's *Brady* violation, however. Unlike police officers, prosecutors are professionally trained to understand what *Brady* requires of them. *See supra* part I.A.1. A district attorney reasonably relies on their ability and integrity. That a district attorney may not provide "formal" *Brady* training to reinforce prosecutors' professional acumen does not, by any stretch of the imagination, put him in the same category as the city official who hands out firearms to untrained officers and hopes for the best.

*****

As Justice O'Connor predicted years ago, "[a]llowing an inadequate training claim such as this one to go to the jury based on upon a single incident would only invite jury nullification of *Monell*." *Canton*, 489 U.S., at 399 (O'Connor, J., concurring in part and dissenting in part). Absent a history of similar incidents, a prosecutor's *Brady* violation simply does not support an inference of culpable municipal action that *Monell* and *Canton* require. The facts of this case, as discussed below, illustrate that stretching single-incident liability to include this kind of employee malfeasance will dissolve the distinction between municipal and vicarious liability and "open municipalities to unprecedented liability under § 1983." *Canton*, 489 U.S., at 391.

II. THIS CASE EXEMPLIFIES THE DANGERS OF EXPANDING FAILURE-TO-TRAIN LIABILTY TO A PROSECUTOR'S *BRADY* VIOLATION.

The facts of this case highlight the flaws of extending failure-to-train liability to a *Brady* violation. First, they reveal how awkward the notion is of "training" prosecutors in their own profession. Despite not having formalized *Brady* instruction, Connick's office structure was itself a practical and effective way of monitoring *Brady* compliance—far more so than converting his office into a miniature law school. Second, the facts show how *Canton*'s rigorous fault standard was diluted. The office was found liable without proof of any conscious decision by Connick to ignore obvious or persisting problems with *Brady*. Third, the facts show how *Canton*'s stringent causation

requirement was bypassed. The moving force behind Thompson's violation had nothing to do with a putative training deficiency in Connick's office. Instead, Thompson's rights were violated when a prosecutor knowingly concealed the blood evidence.

This case thus demonstrates the inevitable consequence of expanding *Canton*'s single-incident theory to include a district attorney's putative failure to train prosecutors on *Brady*. The office will be held liable "*solely* because [it] employs a tortfeasor." *Monell*, 436 U.S., at 691 (emphasis in original).

A. Connick's system of checks and balances was a sensible way of approaching *Brady* compliance.

By the time of the violation in this case, Connick had already instituted a practical and effective system for monitoring prosecutors' compliance with *Brady*. Connick's system did not comfortably equate to a "training program" under *Canton*, but that is just the point. As explained above, *Canton* applies awkwardly to training prosecutors in their own professional obligations to begin with. *See supra* Part I.A.1. Yet Thompson's case proceeded on this implausible basis. He could therefore sidestep evidence of the office's compliance mechanisms and claim instead that a lack of "formal *Brady* training" showed Connick's deliberate indifference. Thompson was thus allowed to argue a failure-to-train claim without even establishing the basic premise that there was

inadequate training to begin with.[18]

The reality was quite different. Despite an absence of classroom-style training, Connick introduced numerous structural measures designed to instruct and monitor prosecutors:

- He revolutionized the "screening" process.
- He established a system of junior and senior prosecutors in each court section.
- He created an in-house system of "pre-trying" cases.
- He instituted regular sessions for review of cases and for specialized instruction.
- He fostered the circulation of advance sheets and intra-office memoranda highlighting developments in criminal law.

Beginning in 1974, then, Connick oversaw the evolution of a "system of tremendous checks and balances" designed to reinforce his prosecutors' compliance with their legal and ethical obligations. App. 425-30, 460-63; *see generally supra* Statement, Part A.

Prosecutors' *Brady* compliance was therefore not left to chance. The office compliance structure was designed to—and actually did—address *Brady*. To be sure, no conceivable system could monitor

---

[18] *See, e.g., Canton*, 489 U.S., at 390 (explaining that "[t]he issue in a case like this one … is whether that training program is adequate"); *Bryan County*, 520 U.S., at 411 (assuming that "a jury could properly find … that Sheriff Moore's assessment of Burns' background was inadequate").

every one of the thousands of *Brady* decisions prosecutors would make in a given year. And yet *Brady* was reinforced at multiple levels by the office-wide supervision and instruction that Connick instituted. Specific *Brady* questions would pass initially through screening and proceed—along with myriad other issues requiring prosecutors' judgment—up the chain through an investigator, a junior prosecutor, and a senior prosecutor. Internally supervised "pre-trials," weekly trial division meetings, and regular intra-office memoranda would each flag *Brady* issues and highlight doctrinal developments. Connick himself instituted or refined each of these mechanisms. *See generally supra* Statement, Part B.

Thompson was never required to prove that these practices were inadequate. Instead, he proceeded on the facile assumption that Connick's training *must* have been flawed because there were no "formal" training sessions addressing *Brady*. The lower courts accepted this premise. The district court reasoned that "no deponent could identify any training sessions on *Brady*," and that "several deponents conceded that they were not formally trained, and that no one in the office received formal training." Pet. App. 140a. The panel agreed. Pet. App. 89a-91a. This simplistic view made "inadequate training" a foregone conclusion: the petitioners themselves stipulated there were no formal *Brady* training sessions. App. 27.

The lower courts uncritically assumed that the kinds of training lapses for which municipalities

may be liable under *Canton* apply to a district attorney's purported duty to train prosecutors on their professional obligations. This case shows just how flawed that premise is. Connick more than responsibly fulfilled his institutional role as a district attorney by overhauling how his office was structured and how his prosecutors were supervised and instructed. At the same time, however, Connick was "entitled to assume that attorneys [would] abide by the standards of the profession." Pet. App. 29a. *Canton* did not impose on Connick an obligation to run his office as if it were a law school, a board of ethics, or a bar association. Only by taking such an unrealistic view of *Canton* could Connick be held liable for a failure to sponsor formal *Brady* training sessions.

B. The evidence showed no deliberate choice by Connick to ignore an obvious *Brady* compliance problem.

The expansion of *Canton*'s single-incident theory to this case resulted in imposing liability under a diluted fault standard. The evidence failed to demonstrate any conscious decision by Connick to ignore obvious or persisting problems with *Brady* compliance, which is precisely the kind of fault *Canton* demands. Nothing better illustrates that this case should never have been treated under the single-incident hypothesis to begin with.

Heightened culpability demands, as Judge Clement's dissent explained, that Connick ignored an obvious need to train prosecutors about the undisclosed evidence at issue. Pet. App. 14a-18a, 22a-24a. After all, *Canton* was premised on failing

to train an officer, not on the general requirements of his position, but rather on a "specific skill necessary to the discharge of his duties." *Bryan County*, 520 U.S., at 410. *Canton*'s single-incident hypothesis is even more context-specific. It depends on "[t]he likelihood that a situation will recur and the predictability that an officer lacking *specific tools to handle that situation* will violate citizens' rights." *Id.*, at 409 (emphasis added).[19] Thus, the correct fault inquiry is not whether the office failed to train prosecutors about "*Brady* in general," which would be like asking whether the city in *Canton* failed to train officers about "arrests in general." Rather, the right question is whether Connick consciously "fail[ed] to train [prosecutors] on how to handle specific types of evidence such as the crime report at issue." Pet. App. 24a.[20]

The evidence showed nothing approaching such fault on Connick's part, and indeed it demonstrated quite the reverse. As Judge Clement emphasized, in thousands of cases handled by Connick's office in the decade preceding Thompson's violation, "only four convictions were overturned based on *Brady* violations … and there was not a single instance involving the failure to disclose a crime lab report

---

[19] *See also Canton*, 489 U.S., at 389 (describing a municipality's "failure to train its employees *in a relevant respect*") (emphasis added).

[20] *Cf. Walker*, 974 F.2d, at 300 (reserving question of how deliberate indifference applies "with respect to other kinds of exculpatory evidence").

or other scientific evidence." Pet. App. 25a.[21] Connick himself testified about these isolated incidents, App. 436-37, 452-53, and Thompson did not attempt to argue that they formed a "pattern of constitutional violations"[22] with the incident in his case. *See, e.g.,* Pet. App. 72a (explaining that "Thompson does not argue that there was evidence of a pattern").

Far from casting doubt on Connick's *Brady* record, the one circuit decision to scrutinize his record actually *approved* it. In *Cousin v. Small*, the Fifth Circuit surveyed the period covering Thompson's violation and found Connick's "enforcement of the [*Brady*] policy was not patently inadequate or likely to result in constitutional violations." 325 F.3d 627, 637-38 (CA5 2003). Given the high caseload in Connick's office during that period, the court

---

[21] *See State v. Perkins*, 423 So.2d 1103, 1105-08 (La. 1982) (overturning conviction based on failure to disclose exculpatory witness statement); *State v. Curtis*, 384 So.2d 396, 397-98 (La. 1980) (overturning conviction for failure to disclose impeachment evidence); *State v. Evans*, 463 So.2d 673, 675-76 (La. App. 4 Cir. 1985) (ordering trial judge on remand to inspect obscured page of coroner's report to determine if it contained *Brady* material); *State v. Rosiere,* 476 So.2d 816, 820 (La. App. 4 Cir. 1985) (noting failure to disclose two exculpatory witness statements).

[22] *See, e.g., Canton*, 389 U.S., at 397 (O'Connor, J., concurring in part and dissenting in part) (observing that failure-to-train liability may exist where "policymakers were aware of, and acquiesced in, a pattern of constitutional violations involving the exercise of police discretion").

> agree[d] with the [district] court's conclusion that citation to a small number of cases, out of thousands handled over twenty-five years, does not create a triable issue of fact with respect to Connick's deliberate indifference to violations of *Brady* rights.[23]

Id. Thompson's evidence did not add anything to contradict the Fifth Circuit's conclusion about Connick's *Brady* record.

To finesse the absence of persistent *Brady* infringement in Connick's office, Thompson adduced evidence purportedly showing that the same group of prosecutors withheld other *Brady* material in his murder trial. *See, e.g.,* Pet. App. 22a n.41 & 38a n.67 (discussing and rejecting this argument). The problems with this argument were manifold, however. First and foremost, even assuming other *Brady* violations occurred in his subsequent trial, they could not substitute for the "pattern of constitutional violations" ordinarily required by *Canton* and *Bryan County*. Such a "pattern" refers to a history of *prior* violations a training program has failed to prevent, such that "municipal decisionmakers may eventually be put

---

[23] Judge Prado's panel opinion distinguished *Cousin* on the ground that the plaintiff had conceded that Connick's *Brady* training was adequate in 1995, which "says nothing of the training, supervision, and monitoring that existed when the DA's Office tried Thompson in 1985." Pet. App. 88a-89a. But that misses *Cousin*'s significance. As Judge Clement explained, *Cousin* "sustained the district court's conclusion that twenty-five years of records involving this District Attorney's Office (covering the time period of Thompson's trial) reveal no pattern of *Brady* violations." Pet. App. 25a.

on notice that a new program is called for." *Bryan County*, 520 U.S., at 407.[24] Moreover, even on their own terms, Thompson's alleged additional violations had no connection to what led to the blood suppression. They instead concerned disputes about the materiality of inconsistent witness descriptions and impeachment evidence. *See, e.g.,* App. 293-306, 312-336. Thus, even if such non-disclosures occurred and violated *Brady*, they did not establish the sort of pattern that could support a finding of heightened culpability.

Even more fundamentally, these alleged non-disclosures have never been adjudicated *Brady* violations to begin with. To the contrary, many of them—*i.e.*, claims that suppressed evidence showed witness bias—were rejected in Thompson's federal habeas proceedings. *See Thompson v. Cain*, 161 F.3d 802, 805-08 (CA5 1998); *Thompson v. Cain*, 1997 WL 79295, at *9-*19 (E.D. La. Feb. 24, 1997) (unpublished); *see also* Pet. App. 22a n.41 (discussing these adjudications). Others were simply presented as disconnected facts in Thompson's civil rights case. *See, e.g,* App. 94-108, 210-215, 220-22, 293-306, 312-36. The jury, however, was instructed only that the blood suppression violated *Brady* as a matter of law, and not whether other claimed non-disclosures violated *Brady*. Instead, the jury was merely told it was "not limited to the nonproduced blood evidence" in

---

[24] *See also id.* (explaining that municipal decisionmakers' "continued adherence to an approach that they know or should know has failed to prevent tortious conduct by employees may establish" deliberate indifference).

assessing Connick's fault. *Compare* App. 825 *with* App. 826.[25]

Whether a particular non-disclosure violates *Brady* is a legal question a jury cannot determine. *See, e.g.*, *United States v. Oruche*, 484 F.3d 590, 595-96 (CA DC 2007) (explaining that "once the existence and content of undisclosed evidence has been established, the assessment of [its] materiality … under *Brady* is a question of law"). In a failure-to-train case, then, only courts are equipped to assess whether a plaintiff has shown additional constitutional violations and whether they constitute the pattern *Canton* and *Bryan County* require. Here, indeed, when the lower courts squarely addressed that issue, both ruled that Thompson's case should be exempted from the typical pattern requirement.[26] Those rulings would

---

[25] The district judge was unclear about why the jury was allowed to consider additional alleged non-disclosures in the murder trial. While explaining to counsel that he "was not going to ask the jury … was this other stuff also *Brady*," the judge said he would allow it to prove "the cumulative nature of and impact [of] evidence, that is, … whether or not it all goes to the training and deliberate indifference arguments." Transcript Vol. IV, p. 1003. Thompson's counsel urged, somewhat differently, that the evidence "reflected on the adequacy of the training *or whether there was a pattern or a policy*." *Id.* at 1004 (emphasis added). When petitioners' counsel urged an instruction that "deliberate indifference to training requires a pattern or similar violations and … more than a single isolated act," Thompson's counsel flatly stated, "That's not the law," and the court rejected the proposed instruction. *Id.* at 1013.

[26] *See, e.g.,* Pet. App. 76a (finding that "the evidence developed at trial clearly demonstrates that this case falls within the … narrow range of situations that do not require a

have been nonsensical had the courts thought Thompson's supposed additional violations established a pattern. In fact, the panel confirmed that "Thompson did not establish a pattern of *Brady* violations by the DA's Office." Pet. App. 76a.

Since Thompson could not prove a genuine pattern, he merely sought to impugn the office's reputation for *Brady* compliance. For instance, Eddie Jordan, the district attorney who succeeded Connick, testified that during Jordan's political campaign "some of the candidates, including myself, raised questions about" Connick's *Brady* record and "thought that … more could be done." App. 129-30. Jordan justified his opinion, however, only by referring to "several cases that had been reversed" (whose names he could not recall), and by mentioning a study by "[s]ome kind of national group or national report" (which was not part of the record) App. 130, 133. Finally, Jordan referred to a two-page letter from an Orleans criminal court judge—written in 1998, 13 years *after* Thompson's violation—expressing vague concerns about the office's *Brady* record and advocating an open-file policy. App. 133-35.[27]

---

pattern of misconduct"); *id.*, at 141a (finding that this case falls within *Canton*'s "so obvious" exception and therefore "a pattern is not necessarily required").

[27] Connick testified that the letter was "very vague … didn't name anyone … [and] didn't name any specific transgression." Nonetheless, Connick personally looked into the problem and counseled the prosecutor in the judge's section about managing his caseload. App. 434-35.

Thompson also attempted to paint certain statements by Connick and other prosecutors as indicative of a conscious failure to address *Brady* issues. But, as Judge Clement rightly explained, this evidence amounted to no more than "generic generalizations" that "could … support a deliberate indifference finding against any prosecutor's office for nearly any error that leads to a reversal of a conviction." App. 27a-28a. For instance, the lower courts pointed to evidence that Connick was "aware" prosecutors would "confront *Brady* issues on a regular basis" and that mishandling such issues "would result in constitutional violations." Pet. App. 76a; *see also id.* at 141a. There was also evidence that "many of the attorneys in [Connick's] office were only a few years out of law school." Pet. App. 78a. Finally, some prosecutors testified that *Brady* had "gray areas," *id.* at 77a, and that "*Brady* issues are complex and ambiguous," *id.* at 139a. *See* App. 171, 218-20.

Such evidence proves nothing about the need for targeted *Brady* training in Connick's office, much less Connick's culpable indifference to such a need. That Connick knew prosecutors faced *Brady* issues, and that *Brady* implicates constitutional rights, are stunningly obvious to *any* district attorney. That Connick employed young attorneys as prosecutors is equally unremarkable. Besides, Connick had carefully structured his office precisely to shepherd young attorneys through various levels of responsibility. Finally, the fact that prosecutors thought *Brady* had "gray areas" proved, not that they were unfamiliar with *Brady* but that they were *familiar* with it. As any criminal law

hornbook elucidates, *Brady* has always had "gray areas." *See, e.g.*, WAYNE R. LAFAVE, JEROLD H. ISRAEL, NANCY J. KING & ORIN S. KERR, CRIMINAL PROCEDURE § 24.3(b), at 1145 & 1144-50 (5th ed. 2009) (discussing "troublesome issue[s]" persisting under *Brady* and its progeny). Thompson's own expert witness apparently agreed: he explained that "*Brady* is an evolving concept." App. 256.

Thompson's evidence thus suggests exactly nothing about Connick's "indifference" to *Brady*, deliberate or otherwise. If it did, it would impugn *every* district attorney's office and transform *every* discretionary issue their prosecutors confront into a mother-lode of potential liability. And, as Judge Clement pointed out, that liability would not stop with *Brady*, but would include "search and seizure, *Miranda*, evidence of a defendant's other crimes, expert witnesses, sentencing, [and] many more." App. 26a-27a.[28]

---

[28] Thompson also relied on a 1987 office policy manual, which he claimed confined *Brady*, as a matter of official policy, to exculpatory evidence only. *See, e.g.,* Pet. App. 139a-140a (discussing policy manual). But the jury explicitly rejected the theory that Thompson's violation was caused by official policy. App. 562. Thompson cannot coherently rely on evidence of official policy, then, to establish Connick's failure to train. Furthermore, the one paragraph devoted to *Brady* in the lengthy policy manual does not purport to exhaustively instruct prosecutors about *Brady* legal contours. That is why the same paragraph admonishes that "each Assistant [District Attorney] must be familiar with the law regarding exculpatory information possessed by the State." App. 265.

C. The moving force behind the violation was a prosecutor's knowing misdeed, not Connick's flawed training.

Canton's expansion in this case also resulted in bypassing the stringent causation critical to failure-to-train liability. Thompson's violation was simply not linked to a putative office-wide training deficiency, but instead to a prosecutor's knowing misdeed. Against this reality, Thompson advanced the theory that the suppression was the product of prosecutors' poor *Brady* understanding, which was itself supposedly the product of poor training. Thus did Thompson strive to shoehorn the facts into a failure-to-train. The theory does not fit, however. The evidence may have permitted, at most, the inference that there were four bad apples in Connick's office instead of one. What it did not permit was the transparent fiction that the *Brady* violation had any link to poor training.

As already explained, failure-to-train demands an ironclad connection between an injury and a deficient training program, because the causal link in such cases "is an inherently tenuous one." *Springfield*, 480 U.S., at 268 (O'Connor, J., dissenting); *see generally supra* Part I.B. Thompson had to prove that the moving force behind his injury was prosecutors' confusion about how *Brady* applied to the undisclosed report *and* that their confusion was directly linked to Connick's training system. It was not enough to show diffuse uncertainty about *Brady*, nor that certain prosecutors should have been better schooled on *Brady*. *See e.g.,* Pet. App. 32a-33a

(emphasizing the specificity of the causal inquiry). Such evidence could not show that a specific deficiency in office training actually caused what happened. *See, e.g., Canton*, 489 U.S., at 391 (asking whether "the injury would have been avoided had the employee been trained under a program that was not deficient *in the identified respect*") (emphasis added).

Meeting that standard confronted Thompson with a severe challenge. His own attorneys, after all, had uncovered the evidence that shockingly explained what caused his injury. Almost ten years after Thompson's conviction, one of the prosecutors on the robbery case, Gerry Deegan, was diagnosed with terminal cancer and told he had months to live. App. 362. In a bar one night, Deegan confessed to a fellow prosecutor the unconscionable thing he had done to Thompson. *Id.* Deegan had "intentionally suppressed blood evidence" that would have exonerated Thompson for the robbery. App. 367. Soon after that, Deegan died. His confession left it somewhat vague whether any of the other three prosecutors—Whittaker, Williams or Dubelier—were in on the suppression.[29] App. 362. But there was no question that Deegan was unburdening his conscience of something he had knowingly done.

---

[29] During a subsequent grand jury investigation initiated by Connick, indictments were prepared against Whittaker and Williams for obstruction of justice. Connick suspended the investigation, however, because he feared that there was insufficient evidence against anyone but Deegan, and that the charges may have prescribed. App. 456.

Deegan's own words proved the violation of Thompson's civil rights. Ironically, however, Thompson's attorneys had to distance his civil rights case from the confession. Their central theory demanded they directly link Thompson's injury, not to a single bad act, but to Connick's failure to train prosecutors *in general*. Any such link would have been obliterated by accepting the plain implications of Deegan's confession. For if Deegan, with or without help, had knowingly suppressed the evidence, then no training flaws Thompson might uncover could have actually caused his injury. Deegan, after all, did not confess to poor training. He did not confess that, a decade later, he achieved a better grasp of *Brady* and realized what he had done. Rather, Deegan came clean because what he had *knowingly* done was gnawing at his conscience.

The alternate theory Thompson settled on was that the four prosecutors withheld the report because they misunderstood their obligation to produce it, and that *Brady* training would have prevented that. Pet. App. 35a-36a. But Thompson supported that implausible version of events merely with a few suggestive answers from individual prosecutors on the stand. For instance, Thompson's attorneys got Williams to fumble over whether *Brady* applied to impeachment evidence and whether it applied to a lab report that was only potentially exculpatory. App. 61-64, 216-18, 229-32. They were able to induce similar confusion from the office representative, Val Solino. App.

248-49, 483-84; Pet. App. 37a-38a.[30] Finally, a prosecutor who later investigated the suppression, Jerry Glas, claimed that Connick had argued with him in 1999 about whether the lab report was *Brady* material. App. 550-51. Connick, of course, denied ever saying any such thing, and insisted that *Brady* obviously covered the report. App. 154.

Skillful cross-examination cannot substitute for actual proof, however. Thompson's evidence may support the inference that prosecutors like Williams or Solino "occasionally make mistakes," or even that they were "unsatisfactorily trained." *Canton*, 489 U.S., at 391. At most, it may have suggested that some unspecified *Brady* problem may have been avoided if those attorneys "had had better or more training." *Id.* But these are black-letter failures to meet *Canton*'s causation standard. Thompson simply failed to adduce the kind of broad, systemic proof *Canton* demands to forge a solid link between an office-wide training deficiency and the suppression in his case.

To find that Thompson proved causation with evidence like this would require stacking one weak inference on top of another. Take, for instance, the possible confusion about *Brady*'s application to impeachment evidence. One would have to assume that passing confusion by two prosecutors on the stand in 2007 actually reflected a far broader misunderstanding in the office over twenty years

---

[30] Both witnesses, it should be said, immediately backtracked and stated categorically that both the law and office policy would have mandated turning over the lab report. App. 61-64, 216-18, 229-32, 248-49, 486-89.

before. One would have to assume further that such confusion arose from Connick's failure to train prosecutors. But even assuming all that, the evidence would still fail to establish causation for a simple reason: any purported confusion about impeachment evidence would have been irrelevant to Thompson's *Brady* violation, because the lab report was exculpatory, not impeaching. Thus, even disregarding the most obvious explanation for what happened—that Deegan buried the report—purported confusion about *Brady*'s application to impeachment evidence *could not have caused* the suppression in Thompson's case.

Or take the claimed uncertainty about how *Brady* applied to potentially exculpatory lab reports. One would have to assume that two prosecutors' doubts on the stand in 2007 established systemic confusion in the office in 1985, and, again, that such confusion arose from Connick's training. Or one would have to assume that Connick's alleged argument with a prosecutor in 1999 proved a particular deficiency in the office's *Brady* compliance in 1985. But even these clusters of implausible assumptions would not establish causation.

It was uncontradicted that office policy demanded turning over *all* scientific reports regardless of whether a prosecutor thought a particular report fell within *Brady*. Pet. App. 31a. As Judge Clement explained, even the same witness (Williams) who testified that *Brady* might not reach every report also "stated unequivocally that *all* technical or scientific reports, like the lab

report, were required to be turned over to a defendant." Pet. App. 38a (emphasis in original); *see* App. 63-64, 199-200, 209, 230-32. Solino said the same: he "would have expected a prosecutor to turn that lab report over, period." App. 486. Dubelier, the senior prosecutor on Thompson's murder case, was the most explicit, testifying that he had

> turned over thousands of these type of reports. If I had the report, I would have turned it over. … [W]e were obligated to turn over a crime lab report. That's the way it was. That was standard operating procedure in the office.

App. 284. There was simply no evidence that a purported confusion about *Brady* could have overridden this consistent office policy of disclosing crime lab reports. Whatever caused the report's suppression in Thompson's case, it could not have been confusion about *Brady*.

Given the inherent weakness of his causation arguments, Thompson was left to insist that the jury could have rejected the theory that a "single rogue prosecutor" was responsible for hiding the evidence. *See* Pet. App. 36a-37a. But Thompson had to do much more than that. He had to forge a direct causal link between the nondisclosure and *office policy*. Thompson did not meet that burden merely by suggesting that three or four prosecutors, instead of just one, were involved. Nor did he meet it merely by suggesting that certain prosecutors should have had a better grasp of *Brady*. Rather, Thompson was required to prove

that a specific, systemic flaw in Connick's approach to *Brady* compliance actually caused the violation in his case. Thompson produced no such evidence, and the wisps of testimony he did produce could not obscure what really happened. A prosecutor—perhaps acting with others, perhaps acting alone—knowingly buried evidence that would have cleared Thompson. Nothing Connick's office did could have conceivably caused that evil act.

*****

Beginning with *Monell*, this Court has cautioned that "a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, … on a *respondeat superior* theory." 436 U.S., at 691 (emphasis in original). Both *Canton* and *Bryan County* reissued that warning. *See Canton*, 489 U.S., at 391-92; *Bryan County*, 520 U.S., at 415. Justice O'Connor even predicted that allowing certain inadequate training claims "to go to the jury based upon a single incident would only invite jury nullification of *Monell*." *Canton*, 489 U.S., at 399 (O'Connor, J., concurring in part and dissenting in part).

This case is now poised to fulfill Justice O'Connor's prediction. The essence of vicarious liability is to make an employer answerable for an employee's wrongdoing simply by virtue of the employment relationship. That can be the only fair description of the basis for liability in this case. No history of similar violations should have alerted Connick that he needed training targeted to this sort of *Brady* problem. Nothing warned him not to rely on his prosecutors' professionally formed

judgment in obeying *Brady*. And nothing warned him that the existing office policy—to turn over *all* lab reports, regardless of whether they fell under *Brady*—would not resolve exactly the situation presented in a case like Thompson's.

In sum, no evidence showed that Connick had the callous, conscious disregard *Canton* demands. No evidence established a direct link between the mechanisms Connick had instituted for *Brady* compliance and the suppression in Thompson's case. Because Gerry Deegan—the prosecutor who buried the blood evidence—is now dead, the precise events surrounding the suppression are impossible to reconstruct. But one thing is clear: the office's *training policy* did not cause it.

What allowed the lower courts to shoehorn Deegan's knowing misdeed into a "failure-to-train" claim is *Canton*'s single-incident theory—*i.e.*, its suggestion that certain duties so obviously cry out for targeted training that a municipality's failure to do so creates liability, even absent a pattern of violations. *See Canton*, 489 U.S., at 390 & n.10. The Court should clarify what should have been apparent already: *Canton*'s narrow hypothesis has no application to cases like this one. Absent a warning history of particular violations, there can be no obvious need to train prosecutors who are themselves professionally trained to understand and apply the law. Nor could the lack of such training directly cause a prosecutor's intentional violation. No training could prevent such flagrant disrespect for the law by a lawyer himself.

CONCLUSION

The Court should reverse the judgment of the district court and render judgment dismissing respondent's failure-to-train claim.

Respectfully submitted,

JAMES D. "BUDDY" CALDWELL
Louisiana Attorney General
S. KYLE DUNCAN
Appellate Chief Counsel of Record
ROSS W. BERGETHON
ROBERT ABENDROTH
Assistant Attorneys General
LOUISIANA DEPARTMENT OF JUSTICE
P.O. Box 94005
Baton Rouge, LA 70804
(225) 326-6716
DuncanK@ag.state.la.us

LEON A. CANNIZZARO, JR.
Orleans Parish District Attorney
GRAYMOND F. MARTIN
First Assistant District Attorney
DONNA R. ANDRIEU
Chief of Appeals
ORLEANS PARISH DISTRICT ATTORNEY'S OFFICE
619 South White Street
New Orleans, LA 70119
(504) 822-2414

Counsel for Petitioners