The role of the prosecutor is to see that justice is done. It is as much [a prosecutor's] duty to refrain from improper methods calculated to produce wrongful convictions as it is to use every legitimate means to bring a just one.


In Connick v. Thompson the Supreme Court held that a district attorney's office cannot be held liable under Section 1983 for the failure to train prosecutors based on a single Brady violation.

In a five to four opinion, the court reversed a fourteen-million dollar award in favor of John Thompson. In 1985, Thompson was arrested and charged with murder in New Orleans. The murder case generated publicity that led victims in an unrelated armed robbery to identify Thompson as the attacker. He was then charged with attempted armed robbery. As part of the robbery investigation, a technician collected a swatch from the victim's pants stained with the robber's blood. One week before trial, the swatch was sent to the crime laboratory for testing.

Two days before trial, the assistant district attorney received the test results that indicated that the assailant had blood type B. There is no evidence that the prosecutor ever tested Thompson's blood or knew his blood type. The report was never disclosed to Thompson's attorney.

The robbery case was tried first and Thompson was convicted. The prosecutor neither disclosed the information regarding the swatch to Thompson nor introduced it at trial. Because of the armed robbery conviction, Thompson chose not to testify at his subsequent murder trial. Thompson was ultimately convicted and sentenced to death.

In 1999, Thompson's private investigator discovered the crime lab report from the armed robbery investigation. Thompson was tested and found to have type O blood, proving that the blood on the swatch was not his. After the evidence was presented, a motion to stay the execution and vacate the armed robbery conviction was filed. A State Court of Appeals reversed the murder conviction concluding that the armed robbery conviction unconstitutionally deprived Thompson of his right to testify in his own defense at the murder trial.

In 2003, the district attorney's office retried Thompson for the murder. During the second trial Thompson testified and presented evidence that suggested another man committed the crime. The other man, who had been a key witness in the first murder trial, died in the time between the first and second trials and was thereby unavailable.

Thompson then brought an action against the district attorney's office, District Attorney Connick, the Assistant District Attorney and others alleging that their conduct caused him to be wrongfully convicted. The claim brought under Section 1983 was whether the nondisclosure was common practice in the district attorney's office or a deliberate failure to train the office's prosecutors.

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Those seeking to impose Section 1983 liability on local governments must prove (1) that District Attorney Harry Connick Sr. as the policy maker for the DA’s office was deliberately indifferent to the need to train his prosecutors on *Brady* (2) that the lack of training actually caused the Brady violation in *Thompson* case. Plaintiff has to show that the injury was caused by “actions pursuant to official municipal policy,” which includes the decisions of a government’s lawmakers, the acts of its policy making officials, and practices so persistent and widespread as to practically have the force of law. On some level the decision not to train certain employees about their legal duty to avoid violating citizen’s rights may rise to the level of an official government policy under Section 1983. However, the failure to train must amount to “deliberate indifference to the rights of persons with whom the [untrained employees] come into contact.” The court focused on the rigorous nature of a deliberate indifference claim, such claims require that city policy makers disregarded the known or obvious consequence that a particular omission in their training program would cause a violation. In this case, the court found that a single incident liability that constituted the *Brady* violation did not rise to the level necessary to establish municipality culpability.

The court rejected Thompson’s argument that the case fit under the *Canton* holding, which requires showing a pattern of similar constitutional violations by untrained employees “that is subsequently ignored by policy that failing to train employees constituted a deliberate indifference to constitutional violations.” It does not follow that because *Brady* has gray areas and some *Brady* decisions are difficult, prosecutors will make wrong decisions that failing to train them amounts to “a decision by the city itself to violate the Constitution.” The court reasoned that because prosecutors are generally familiar with *Brady* even if the application was flawed in this case, District Attorney Connick was not on notice that violations were highly predictable. Thompson would have to show that failing to train the prosecutors amounted to conscious disregard for the defendant’s *Brady* rights.

Justice Ginsberg writing the dissent reasons that the Thompson does fail under the single-incident-failure-to-train liability. The dissent conducted a review of the record and finds that the DA’s office did not properly train new attorneys on the requirements under *Brady* and that there was also an established pattern of violations.

Justice Scalia wrote a concurring opinion that sought to refute several issues highlighted in the dissent. He thought that because the issue presented before the case was a legal one the dissent spent too much time focused on the reviewing and commenting on the record. Justice Scalia reasons that Thompson failed to meet the rigorous standard of causation required for a Section 1983 violation. Moreover, the failure to withhold evidence was caused not by a failure to give prosecutors specific training, but by a willful suppression of evidence.

1. Angela Downes is a senior attorney with NDAA’s National Center for the Prosecution of Child Abuse. Her practice focuses on child abuse issues, including the interrelationship between child abuse and domestic violence, human trafficking and victims’ issues.
2. 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, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. 42 U.S.C. Section 1983, Civil Action for Deprivation of Rights.
3. In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Supreme Court held that due process requires the prosecution to turn over evidence favorable to the accused and material to his guilt or punishment.
7. Id. at 5.
8. Id. at 4.
9. Id. at 7.
10. Id. at 15.
14. Id. at 388.
15. Id. at 19.
16. Id. at 19.
17. Bryan Cty., 520 U.S. at 409; Canton at 389.
18. Id. at 16-18.
19. Id. at 5.