To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy

From: **Justice White**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 86-1088

CITY OF CANTON, OHIO, PETITIONER *v.*
GERALDINE HARRIS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[December ——, 1988]

JUSTICE WHITE delivered the opinion of the Court.

In this case, we are asked to determine if a municipality can ever be liable under 42 U. S. C. § 1983[1] for constitutional violations resulting from its failure to train municipal employees. We hold that, under certain circumstances, such liability is permitted by the statute.

I

In April, 1978, respondent Geraldine Harris was arrested by officers of the Canton Police Department. Harris was brought to the police station in a patrol wagon.

When she arrived at the station, Harris was found sitting on the floor of the wagon. She was asked if she needed medical attention, and responded with an incoherent remark. After she was brought inside the station for processing, Mrs. Harris slumped to the floor on two occasions. Eventually, the police officers left Mrs. Harris lying on the floor to pre-

[1] 42 U. S. C. § 1983 provides, in relevant part, that:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage . . . 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. . . ."

~~42 U. S. C. § 1983 (1982).~~

vent her from falling again. No medical attention was ever summoned for Mrs. Harris. After about an hour, Mrs. Harris was released from custody, and taken by an ambulance (provided by her family) to a nearby hospital. There, Mrs. Harris was diagnosed as suffering from several emotional ailments; she was hospitalized for one week, and received subsequent outpatient treatment for an additional year.

Some time later, Mrs. Harris commenced this action alleging many State law and constitutional claims against the City of Canton and its officials. Among these claims was one seeking to hold the City liable under 42 U. S. C. § 1983 for its violation of Mrs. Harris' right, under the Due Process Clause of the Fourteenth Amendment, to receive necessary medical attention while in police custody.

A jury trial was held on Mrs. Harris' claims. Evidence was presented that indicated that, pursuant to a municipal regulation,[2] shift commanders were authorized to determine, in their sole discretion, whether a detainee required medical care. Trial Tr. 2-139—2-143. In addition, testimony also suggested that Canton shift commanders were not provided with any special training (beyond first aid training) to make a determination as to when to summon medical care for an injured detainee. *Ibid.*; Petn. App. 4a.

At the close of the evidence, the District Court submitted the case to the jury, which rejected all of Mrs. Harris' claims except one: her § 1983 claim against the City resulting from its failure to provide her with medical treatment while in custody. In rejecting the City's subsequent motion for

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[2] The City regulation in question provides that a police officer assigned to act as "jailer" at the City Police Station:

"shall, when a prisoner is found to be unconscious or semi-unconscious, or when he or she is unable to explain his or her condition, or who complaints of being ill, have such person taken to a hospital for medical treatment, with permission of his supervisor before admitting the person to City Jail." Jt. App. 33.

judgment notwithstanding the verdict, the District Court explained the theory of liability as follows:

> "The evidence construed in a manner most favorable to Mrs. Harris could be found by a jury to demonstrate that the City of Canton had a custom or policy of vesting complete authority with the police supervisor of when medical treatment would be administered to prisoners. Further, the jury could find from the evidence that the vesting of such *carte blanche* authority with the police supervisor without adequate training to recognize when medical treatment is needed was so grossly negligent or so reckless that future police misconduct was almost inevitable or substantially certain to result." Petn. App. 16a.

On appeal, the Sixth Circuit affirmed this aspect of the District Court's analysis, holding that "a municipality is liable for failure to train its police force, [where] the plaintiff . . . prove[s] that the municipality acted recklessly, intentionally, or with gross negligence." Petn. App. 5a.[3] The Court of Appeals also stated that an additional prerequisite of this theory of liability was that the plaintiff must prove "that the lack of training was so reckless or grossly negligent that deprivations of persons' constitutional rights were substantially certain to result." *Ibid.* Thus, the Court of Appeals found that there had been no error in submitting Mrs. Harris' "failure to train" claim to the jury. However, the Court of Appeals reversed the judgment for respondent, and remanded this case for a new trial, because it found that certain aspects of the District Court's jury instructions might have led the jury to believe that it could find against the City on a mere *respondeat superior* theory. Because the jury's ver-

[3] In upholding Mrs. Harris' "failure to train" claim, the Sixth Circuit relied on two of its previous decisions which had approved such a theory of municipal liability under § 1983. See *Rymer* v. *Davis*, 754 F. 2d 198 (CA6), *vacated sub. nom.*, 473 U. S. 901, *reinstated*, 775 F. 2d 756, 757 (CA6 1985); *Hays* v. *Jefferson County*, 668 F. 2d 869, 874 (CA6 1982).

dict did not state the basis on which it had ruled for Mrs. Harris on her § 1983 claim, a new trial was ordered.

The City petitioned for certiorari, arguing that the Sixth Circuit's holding represented an impermissible broadening of municipal liability under § 1983. We granted the petition. —— U. S. —— (1988).

II

We first address respondent's contention that the writ of certiorari should be dismissed as improvidently granted, because "petitioner failed to preserve for review the principal issues it now argues before this Court." Brief for Respondent 5.

We think it clear enough that petitioner's three "Questions Presented" in its petition for certiorari encompass the critical question before us in this case: Under what circumstances can inadequate training can be found to be a "policy" that is actionable under § 1983? See Petition for Certiorari. The petition itself addressed this issue directly, attacking the Sixth Circuit's "failure to train" theory as inconsistent with this Court's precedents. See *Id.*, at 8–12. It is also clear—as respondent conceded at Argument, Tr. of Oral Arg. 34; 54—that her Brief in Opposition to our granting of certiorari did not raise the objection that petitioner had failed to press its claims on the courts below.

As to respondent's contention that the claims made by petitioner here were not made in the same fashion below, that failure, if it occurred, does not affect our jurisdiction; and because respondent did not oppose our grant of review at that time based on her contention that these claims were not pressed below, we will not dismiss the writ as improvidently granted. "[T]he 'decision to grant certiorari represents a commitment of scarce judicial resources with a view to deciding the merits . . . of the questions presented in the petition.'" *City of St. Louis* v. *Praprotnik*, —— U. S. ——, —— (1988) (quoting *City of Oklahoma City* v. *Tuttle*, 471 U. S. 806, 816 (1985)). As we have expressly admonished

litigants in respondent's position: "Nonjurisdictional defects of this sort should be brought to our attention *no later* than in respondent's brief in opposition to the petition for certiorari; if not, we consider it within our discretion to deem the defect waived." *Tuttle*, *supra*, at 816.

It is true that petitioner's litigation posture with respect to the questions presented here has not been consistent; most importantly, petitioner conceded below that "'inadequate training' [is] a means of establishing municipal liability under Section 1983." Reply Brief of Petitioner 4 n. 3; see also Petition for Rehearing 1. However, at each stage in the proceedings below, petitioner contested any finding of liability on this grounds, with objections of varying specificity. It opposed the District Court's jury instructions on this issue; claimed in its j.n.o.v. motion that there was "no evidence of a . . . policy or practice on the part of the City . . . [of] den[ying] medical treatment to prisoners;" and argued to the Court of Appeals that there was no basis for finding a policy of denying medical treatment to prisoners in this case. See Trial Tr. 4–369; Motion for Judgment Notwithstanding Verdict 1; Brief of Appellant City of Canton, No. 85–3314 (CA6 1985) 26–29. Indeed, petitioner specifically contended that the Sixth Circuit precedents that permitted inadequate training to be a basis for municipal liability on facts similar to these, see *supra* n. 2, were in conflict with our decision in *Tuttle*. Brief of Appellant, *supra*, at 29. These various presentations of the issues below might have been so inexact that we would have denied certiorari had this matter been brought to our attention at the appropriate stage in the proceedings here. But they were at least adequate to yield a decision by the Sixth Circuit on the questions presented for our review now.

Here the Sixth Circuit held that where a plaintiff proves that a municipality, acting recklessly, intentionally, or with gross negligence, has failed to train its police force—resulting in a deprivation of constitutional rights that was "substan-

tially certain to result"— § 1983 permits that municipality to be held liable for its actions. Petitioner's petition for certiorari challenged the soundness of that conclusion, and respondent did not inform us prior to the time that review was granted that petitioner had arguably conceded this point below. Consequently, we will not abstain from addressing the question before us.

III

In *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658 (1978), we held that a municipality can be found liable under § 1983 only where the municipality *itself* causes the constitutional violation at issue. *Respondeat superior* or vicarious liability will not attach under § 1983. *Monell*, *supra*, at 694–695. "It is only when the 'execution of the government's policy or custom . . . inflicts the injury' that the municipality may be held liable under § 1983." *City of Springfield, Mass.* v. *Kibbe*, 480 U. S. 257, 267 (1987) (O'CONNOR, J., dissenting) (quoting *Monell*, *supra*, at 694).

Thus, our first inquiry in any case alleging municipal liability under § 1983 is the question of whether there is a direct causal link between a municipal policy or custom, and the alleged constitutional deprivation. The inquiry is a difficult one; one that has left this Court deeply divided in a series of cases that have followed *Monell*;[4] one that is the principal focus of our decision again today.

A

Based on the difficulty that Court has had defining the contours of municipal liability in these circumstances, petitioner urges us to adopt the rule that a municipality can be found liable under § 1983 only where "the policy in question [is] itself unconstitutional." Brief of Petitioner 15. Whether such a rule is a valid construction of § 1983 is a question the

[4] See, *e. g.*, *Praprotnik* v. *City of St. Louis*, —— U. S. —— (1988); *City of Springfield* v. *Kibbe*, 480 U. S. 257 (1987); *City of Los Angeles* v. *Heller*, 475 U. S. 796 (1986); *City of Oklahoma City* v. *Tuttle*, 471 U. S. 806 (1985).

Court has left unresolved. See, *e. g.*, *City of St. Louis* v. *Praprotnik*, —— U. S. ——, —— (1988) (BRENNAN, J., concurring); *City of Oklahoma City* v. *Tuttle*, 471 U. S., at 824 n. 7. Under such an approach, the outcome here would be rather clear: we would have to reverse and remand the case with instructions that judgment be entered for petitioner.[5] There can be little doubt that on its face the City's policy regarding medical treatment for detainees is constitutional. The policy states that the City Jailer "shall . . . have [a person needing medical care] taken to a hospital for medical treatment, with the permission of his supervisor. . . ." Jt. App. 33. It is difficult to see what constitutional guarantees are violated by such a policy.

Nor, without more, would a city automatically be liable under § 1983 if one of its employees happened to apply the policy in an unconstitutional manner, for liability would then rest on *respondeat superior*. The claim in this case, however, is that if a concededly valid policy is unconstitutionally applied by a municipal employee, the City is liable if the employee has not been adequately trained and the constitutional wrong has been caused by that failure to train. For reasons explained below, we conclude, as have all the Courts of Ap-

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[5] In this Court, in addition to suggesting that the City's failure to train its officers amounted to a "policy" that resulted in the denial of medial care to detainees, respondent also contended the City had a "custom" of denying medical care to those detainees suffering from emotional or mental ailments. See Brief of Respondent 31–32; Tr. of Oral Arg. 38–39. As respondent described it in her brief, and at Argument, this claim of an unconstitutional "custom" appears to be little more than a restatement of her "failure-to-train as policy" claim. See *Ibid.*

However, to the extent that this claim poses a distinct basis for the City's liability under § 1983, we decline to determine whether respondent's contention that such a "custom" existed is an alternate grounds for affirmance. The "custom" claim was not passed on by the Court of Appeals—nor does it appear to have been presented to that court as a distinct grounds for its decision. See Brief of Appellee Geraldine Harris, No. 85–3314 (CA6 1985) 4–9; 11. Thus, we will not consider it here.

peals that have addressed this issue,[6] that there are limited circumstances in which an allegation of a "failure to train" can be the basis for liability under § 1983. Thus, we reject petitioner's contention that only unconstitutional policies are actionable under the statute.

B

Though we agree with the court below that a city can be liable under § 1983 for inadequate training of its employees, we cannot agree that the District Court's jury instructions on this issue were proper, for we conclude that the Court of Appeals provided an overly broad rule for when a municipality can be held liable under the "failure to train" theory. Unlike the question of whether a municipality's failure to train employees can ever be a basis for § 1983 liability—on which the Courts of Appeals have all agreed, see n. 6, *supra*,—there is substantial division among the lower courts as to what *degree of fault* must be evidenced by the municipality's inaction be-

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[6] In addition to the Sixth Circuit decisions discussed, *supra*, n. 2, most of the other Courts of Appeals have held that a failure to train can create liability under § 1983. See, *e. g.*, *Spell* v. *McDaniel*, 824 F. 2d 1380, 1389–1391 (CA4 1987); *Haynesworth* v. *Miller*, 820 F. 2d 1245, 1259–1262 (CADC 1987); *Warren* v. *City of Lincoln*, 816 F. 2d 1254, 1262–1263 (CA8 1987); *Bergquist* v. *County of Cochise*, 806 F. 2d 1364, 1369–1370 (CA9 1986); *Wierstak* v. *Heffernan*, 789 F. 2d 968, 974 (CA1 1986); *Fiacco* v. *City of Rensselaer*, 783 F. 2d 319, 326–327 (CA2 1986); *Gilmere* v. *City of Atlanta*, 774 F. 2d 1495, 1503–1504 (CA11 1985) (*en banc*); *Rock* v. *McCoy*, 763 F. 2d 394, 397–398 (CA10 1985); *Languirand* v. *Hayden*, 717 F. 2d 220, 227–228 (CA5 1983). Two other Courts of Appeals have stopped short of expressly embracing this rule, and have instead only implicitly endorsed it. See, *e. g.*, *Colburn* v. *Upper Darby Twp.*, 838 F. 2d 663, 672–673 (CA3 1988); *Lenard* v. *Argento*, 699 F. 2d 874, 885–887 (CA7 1983).

In addition, six current members of this Court have joined opinions in the past that have (at least implicitly) endorsed this theory of liability under § 1983. See *City of Oklahoma City* v. *Tuttle*, *supra*, at 829–831 (BRENNAN, J., joined by BLACKMUN and MARSHALL, JJ., concurring); *City of Springfield* v. *Kibbe*, *supra*, 480 U. S. at 268–270. (O'CONNOR, J., joined by THE CHIEF JUSTICE and WHITE, J., concurring).

fore liability will be permitted.[7] 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 within the city's domain.[8] This rule is most consistent with our admonition in *Monell*, *supra*, 436 U. S., at 694, and *Polk County* v. *Dodson*, 454 U. S. 312, 326 (1981), that a municipality can be liable under § 1983 only where its policies are the "moving force [behind] the constitutional violation." Only where a municipality's failure to train its employees in a relevant respect evidences a "deliberate indifference" to the rights of its

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[7] Some courts have held that a showing of "gross negligence" in a city's failure to train its employees is adequate to make out a claim under § 1983. See, *e. g.*, *Bergquist* v. *County of Cochise*, 806 F. 2d 1364, 1370 (CA9 1986); *Herrera* v. *Valentine*, 653 F. 2d 1220, 1224 (CA8 1981). But the more common rule is that a city must exhibit "deliberate indifference" towards the constitutional rights of persons in its domain before a § 1983 action for "failure to train" is permissible. See, *e. g.*, *Fiacco* v. *City of Rensselaer*, *supra*, 783 F. 2d, at 326; *Patzner* v. *Burkett*, 779 F. 2d 1363, 1367 (CA8 1985); *Wellington* v. *Daniels*, 717 F. 2d 932, 936 (CA4 1983); *Languirand* v. *Hayden*, *supra*, 717 F. 2d, at 227.

[8] The "deliberate indifference" standard we adopt for § 1983 "failure to train" claims does not turn upon the degree of fault (if any) that a plaintiff must show to make out an underlying claim of a constitutional violation. For example, this Court has never determined what degree of culpability must be shown before the particular constitutional deprivation asserted in this case—a denial of the Due Process right to medical care while in detention—is established. Indeed, in *Revere* v. *Massachusetts General Hospital*, 463 U. S. 229, 243–245 (1983), we reserved decision on the question of whether something less than Eighth Amendment's "deliberate indifference" test may be applicable in claims by detainees asserting violations of their Due Process right to medical care while in custody.

We need not resolve here the question left open in *Revere* for two reasons. First, petitioner has conceded that, as the case comes to us, we must assume that respondent's constitutional right to receive medical care was denied by city employees—whatever the nature of that right might be. See Tr. of Oral Arg. 8–9. Second, the proper standard for determining when a municipality will be liable under § 1983 for constitutional wrongs does not turn on any underlying culpability test that determine when such wrongs have occurred. Cf. Brief for Respondent 27.

inhabitants can such a shortcoming be properly thought of as a city "policy or custom" that is actionable under § 1983. As JUSTICE BRENNAN's plurality opinion in *Pembaur* v. *Cincinnati*, 475 U. S. 469, 483–484 (1986) put it: "[M]unicipal liability under § 1983 attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives" by city policy makers. See also *City of Oklahoma City* v. *Tuttle*, *supra*, 471 U. S. at 823. (Opinion of REHNQUIST, J.) Only where a failure to train reflects a "deliberate" or "conscious" choice by a municipality—a "policy" as defined by our prior cases—can a city by liable for such a failure under § 1983.

Monell's rule that a city is not liable under § 1983 unless a municipal policy causes a constitutional deprivation will not be satisfied by merely alleging that the existing training program for a class of employees, such as police officers, represents a policy for which the city is responsible.[9] That much may be true. The issue in a case like this one, however, is whether that training program is adequate; and if it is not, the question becomes whether such inadequate training can justifiably be said to represent "city policy." It may seem contrary to common sense to assert that a municipality will actually have a policy of not taking reasonable steps to train its employees. But it may happen that the need for more or different training is so obvious, and the inadequacy so likely to threaten injury to the public, that the policy makers of the city can reasonably be said to have been deliberately indiffer-

[9] The plurality opinion in *Tuttle* explained why this must be so:

"Obviously, if one retreats far enough from a constitutional violation some municipality 'policy' can be identified behind almost any . . . harm inflicted by a municipal official; for example, [a police officer] would never have killed Tuttle if Oklahoma City did not have a 'policy' of establishing a police force. But *Monell* must be taken to require proof of a city policy different in kind from this latter example before a claim can be sent to a jury on the theory that a particular violation was 'caused' by the municipal 'policy.'" *Tuttle*, *supra*, at 823.

Cf. also *Id.*, at 833 n. 9 (Opinion of BRENNAN, J.).

ent to the need. In that event, the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury.[10]

In resolving the issue of a city's liability, the focus must be on adequacy of the training program in relation to the tasks the particular officers must perform. That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the City, for the officer's shortcomings may have resulted from factors other than a faulty training program. See *City of Springfield* v. *Kibbe*, *supra*, 480 U. S. at 268 (O'CONNOR, J., dissenting); *Oklahoma City* v. *Tuttle*, *supra*, 471 U. S., at 821 (Opinion of REHNQUIST, J.). It may be for example, that an otherwise sound program has occasionally been negligently administered. Neither will it suffice to prove that an injury or accident could have been avoided if an officer had had better or more training, sufficient to equip him to avoid the particular injury-causing conduct. Such a claim could be made about almost any encounter resulting in injury, yet not condemn the adequacy of the program to enable officers to respond properly to the usual and recurring situations with which they must deal. And plainly, adequately trained officers occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding the City liable.

Moreover, for liability to attach in this circumstance the identified deficiency in a city's training program must be closely related to the ultimate injury. Thus in the case at hand, respondent must still prove that the deficiency in training actually caused the police officers' indifference to her

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[10] The record indicates that city did train its officers and that its training included first-aid instruction. See Petn. App. 4a. Petitioner argues that it could not have been obvious to the City that such training was insufficient to administer the written policy, which was itself constitutional. This is a question to be resolved on remand. See Part IV, *infra*.

medical needs.[11] Would the injury have been avoided had the employee been trained under a program that was not deficient in the identified respect? Predicting how a hypothetically well-trained officer would have acted under the circumstances may not be an easy task for the factfinder, particularly since matters of judgment may be involved, and since officers who are well trained are not free from error and perhaps might react very much like the untrained officer in similar circumstances. But judge and jury, doing their respective jobs, will be adequate to the task.

To adopt lesser standards of fault and causation would open municipalities to unprecedented liability under § 1983. In virtually every instance where a person has had his or her constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city "could have done" to prevent the unfortunate incident. See *Oklahoma City* v. *Tuttle*, *supra*, 471 U. S., at 823 (Opinion of REHNQUIST, J.). Thus, permitting cases against cities for their "failure to train" employees to go forward under § 1983 on a lesser standard of fault would result in *de facto respondeat superior* liability on municipalities—a result we rejected in *Monell*, 436 U. S. at 693–694. It would also engage the federal courts in an endless exercise of second-guessing municipal employee-training programs. This is an exercise we believe the federal courts are ill-suited to undertake, as well as one that would implicate serious questions of federalism. Cf. *Rizzo* v. *Goode*, 423 U. S. 362, 378–380 (1976).

Consequently, while claims such as respondent's—alleging that the City's failure to provide training to municipal employees resulted in the constitutional deprivation she suffered—are cognizable under § 1983, they can only yield liability against a municipality where that city's failure to train

[11] Respondent conceded as much at Argument. See Tr. of Oral Arg. 50–51; cf. also *Oklahoma City* v. *Tuttle*, *supra*, 471 U. S., at 831 (Opinion of BRENNAN, J.).

reflects deliberate indifference to the constitutional rights of its inhabitants.

IV

The final question here is whether this case should be remanded for a new trial, or whether, as petitioner suggests, we should conclude that there is no possible grounds on which respondent can prevail. See Tr. of Oral Arg. 57–58. It is true that there is nothing in the record thus far that meets the standard of § 1983 liability we have set forth above. But, the standard of proof the District Court ultimately imposed on respondent (which was consistent with Sixth Circuit precedent) was a lesser one than the one we adopt today. See Trial Tr. 4–389–390. Whether respondent should have an opportunity to prove her case under the "deliberate indifference" rule we have adopted is a matter for the Court of Appeals to deal with on remand.

V

Consequently, for the reasons given above, we vacate the judgment of the Court of Appeals and remand this case for further proceedings consistent with this opinion.

It is so Ordered.