To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Stevens
Justice Scalia
Justice Kennedy

From: **Justice O'Connor**

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# 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

[February ——, 1989]

JUSTICE O'CONNOR, concurring in part and dissenting in part.

I join Parts I, II, and all of Part III of the Court's opinion except footnote 11, see *ante*, at 11, n. 11. I thus agree that where municipal policy makers are confronted with an obvious need to train city personnel to avoid the violation of constitutional rights and they are deliberately indifferent to that need, the lack of necessary training may be appropriately considered a city "policy" subjecting the city itself to liability under our decision in *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658 (1978). As the Court observes, "[o]nly 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 be liable for such a failure under § 1983." *Ante*, at 10. I further agree that a § 1983 plaintiff pressing a "failure to train" claim must prove that the lack of training was the "cause" of the the constitutional injury at issue and that this entails more than simply showing "but for" causation. *Ante*, at 11–12. Lesser requirements of fault and causation in this context would "open municipalities to unprecedented liability under § 1983," *ante*, at 12, and would pose serious federalism concerns. *Ante*, at 13.

My single point of disagreement with the majority is thus a small one. Because I believe, as the majority strongly hints, see *ibid*, that respondent has not and could not satisfy the

fault and causation requirements we adopt today, I think it unnecessary to remand this case to the Court of Appeals for further proceedings. This case comes to us after a full trial during which respondent vigorously pursued numerous theories of municipal liability including an allegation that the city had a "custom" of not providing medical care to detainees suffering from emotional illnesses. Respondent thus had every opportunity and incentive to adduce the type of proof necessary to satisfy the deliberate indifference standard we adopt today. Rather than remand in this context, I would apply the deliberate indifference standard to the facts of this case. After undertaking that analysis below, I conclude that there is no evidence in the record indicating that the city of Canton has been deliberately indifferent to the constitutional rights of pretrial detainees.

I

In *Monell*, the Court held that municipal liability can be imposed under § 1983 only where the municipality, as an entity, can be said to be "responsible" for a constitutional violation committed by one of its employees. "[T]he touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution." 436 U. S., at 690. The Court found that the language of § 1983, and rejection of the "Sherman Amendment" by the 42nd Congress, were both strong indicators that the framers of the Civil Rights Act of 1871 did not intend that municipal governments be held vicariously liable for the constitutional torts of their employees. Thus a § 1983 plaintiff seeking to attach liability to the city for the acts of one of its employees may not rest on the employment relationship alone, both fault and causation *as to the acts or omissions of the city itself* must be proved. The Court reaffirms these requirements today.

Where, as here, a claim of municipal liability is predicated upon a failure to act, the requisite degree of fault must be shown by proof of a background of events and circumstances

which establish that the "policy of inaction" is the functional equivalent of a decision by the city itself to violate the Constitution. Without some form of notice to the city, and the opportunity to conform to constitutional dictates both what it does and what it chooses not to do, the failure to train theory of liability could completely engulf *Monell*, imposing liability without regard to fault. Moreover, absent a requirement that the lack of training at issue bear a very close causal connection to the violation of constitutional rights, the failure to train theory of municipal liability could impose "prophylactic" duties on municipal governments only remotely connected to underlying constitutional requirements themselves.

Such results would be directly contrary to the intent of the drafters of § 1983. The central vice of the Sherman Amendment, as noted by the Court's opinion in *Monell*, was that it "impose[d] a species of vicarious liability on municipalities since it could be construed to impose liability even if the municipality *did not know* of an impending or ensuing riot or did not have the wherewithal to do anything about it." 436 U. S., at 692, n. 57 (emphasis added). Moreover, as noted in *Monell*, the authors of § 1 of the Ku Klux Klan Act did not intend to create any new rights or duties beyond those contained in the Constitution. *Id.*, at 684–685. Thus, § 1 was referred to as "reenacting the Constitution." Cong. Globe, 42 Cong., 1st Sess., 569 (1871) (Rep. Edmunds). Representative Bingham, the author of § 1 of the Fourteenth Amendment, saw the purpose of § 1983 as "the enforcement of the Constitution on behalf of every individual citizen of the Republic . . . to the extent of the rights guaranteed to him by the Constitution." *Id.*, at App. 81. See also *Chapman* v. *Houston Welfare Rights Organization*, 441 U. S. 600, 617 (1979) ("[Section] 1 of the Civil Rights Act of 1871 did not provide for any substantive rights—equal or otherwise. As introduced and enacted, it served only to insure that an individual had a cause of action for violations of the Constitution"). Thus § 1983 is not a "federal good government act"

for municipalities. Rather it creates a federal cause of action against persons, including municipalities, who deprive citizens of the United States of their constitutional rights.

Sensitive to these concerns, the Court's opinion correctly requires a high degree of fault on the part of city officials before an omission that is not in itself unconstitutional can support liability as a municipal policy under *Monell*. As the Court indicates, "it may happen that . . . 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 policy makers of the city can reasonably be said to have been deliberately indifferent to the need." *Ante*, at 10–11. Where a § 1983 plaintiff can establish that the facts available to city policy makers put them on actual or constructive notice that the particular omission is substantially certain to result in the violation of the constitutional rights of their citizens, the dictates of *Monell* are satisfied. Only then can it be said that the municipality has made "'a deliberate choice to follow a course of action . . . from among various alternatives.'" *Ante*, at 10, quoting *Pembaur* v. *Cincinnati*, 475 U. S. 469, 483–484 (1986).

In my view, it could be shown that the need for training was obvious in one of two ways. First, a municipality could fail to train its employees concerning a clear constitutional duty implicated in recurrent situations that a particular employee is certain to face. As the majority notes, see *ante*, at 10, the constitutional limitations established by this Court on the use of deadly force by police officers present one such situation. The constitutional duty of the individual officer is clear, and it is equally clear that failure to inform city personnel of that duty will create an extremely high risk that constitutional violations will ensue.

The claim in this case—that police officers were inadequately trained in diagnosing the symptoms of emotional illness—falls far short of the kind of "obvious" need for training that would support a finding of deliberate indifference to con-

stitutional rights on the part of the city. As the Court's opinion observes, *ante*, at 9, n. 8, this Court has not yet addressed the precise nature of the obligations that the Due Process Clause places upon the police to seek medical care for pretrial detainees who have been *physically* injured while being apprehended by the police. See *Revere* v. *Massachusetts General Hospital*, 463 U. S. 239, 246 (1983) (REHNQUIST, J., concurring). There are thus no clear constitutional guideposts for municipalities in this area, and the diagnosis of mental illness is not one of the "usual and recurring situations with which [the police] must deal." *Ante*, at 11–12. The lack of training at issue here is not the kind of omission that can be characterized, in and of itself, as a "deliberate indifference" to constitutional rights.

Second, I think municipal liability for failure to train may be proper where it can be shown that policy makers were aware of, and acquiesced in, a pattern of constitutional violations involving the exercise of police discretion. In such cases, the need for training may not be obvious from the outset, but a pattern of constitutional violations could put the municipality on notice that its officers confront the particular situation on a regular basis, and that they often react in a manner contrary to constitutional requirements. The lower courts that have applied the "deliberate indifference" standard we adopt today have required a showing of a pattern of violations from which a kind of "tacit authorization" by city policy makers can be inferred. See, *e. g.*, *Fiacco* v. *City of Rensselaer*, 783 F. 2d 319, 327 (CA2 1986) (multiple incidents required for finding of deliberate indifference); *Patzner* v. *Burkett*, 779 F. 2d 1363, 1367 (CA8 1985) ("[A] municipality may be liable if it had notice of prior misbehavior by its officers and failed to take remedial steps amounting to deliberate indifference to the offensive acts"); *Languirand* v. *Hayden*, 717 F. 2d 220, 227–228 (CA5 1983) (municipal liability for failure to train requires "evidence at least of a pattern of similar incidents in which citizens were injured or endangered");

*Wellington* v. *Daniels*, 717 F. 2d 932, 936 (CA4 1983) ("[A] failure to supervise gives rise to § 1983 liability, however, only in those situations where there is a history of widespread abuse. Only then may knowledge be imputed to the supervisory personnel").

The Court's opinion recognizes this requirement, see *ante*, at 11, and n. 10, but declines to evaluate the evidence presented in this case in light of the new legal standard. *Ante*, at 13. From the outset of this litigation, respondent has pressed a claim that the city of Canton had a custom of denying medical care to pretrial detainees with emotional disorders. See Amended Complaint ¶ 28, App. 27. Indeed, up to and including oral argument before this Court, counsel for respondent continued to assert that respondent was attempting to hinge municipal liability upon "both a custom of denying medical care to a certain class of prisoners, and a failure to train police that led to this particular violation." Tr. of Oral Arg. 37–38. At the time respondent filed her complaint in 1980, it was clear that proof of the existence of a custom entailed a showing of "practices . . . so permanent and well settled as to constitute a 'custom or usage' with the force of law." *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 168 (1970); see also *Garner* v. *Memphis Police Department*, 600 F. 2d 52, 54–55, and n. 4 (CA6 1979) (discussing proof of custom in light of *Monell*).

Whatever the prevailing standard at the time concerning liability for failure to train, respondent thus had every incentive to adduce proof at trial of a pattern of violations to support her claim that the city had an unwritten custom of denying medical care to emotionally ill detainees. In fact, respondent presented no testimony from any witness indicating that there had been past incidents of "deliberate indifference" to the medical needs of emotionally disturbed detainees or that any other circumstance had put the city on actual or constructive notice of a need for additional training in this regard. At trial, David Maser, who was Chief of Police of

the city of Canton from 1971 to 1980, testified without contradiction that during his tenure he received no complaints that detainees in the Canton jails were not being accorded proper medical treatment. 4 Tr. 347–348. Former Officer Cherry, who had served as a jailer for the Canton Police Department, indicated that he had never had to seek medical treatment for persons who were emotionally upset at the prospect of arrest, because they usually calmed down when a member of the department spoke with them or one of their family members arrived. *Id.*, at 83–84. There is quite simply nothing in this record to indicate that the city of Canton had any reason to suspect that failing to provide this kind of training would lead to injuries of any kind, let alone violations of the Due Process Clause. None of the Courts of Appeal that already apply the standard we adopt today would allow respondent to take her claim to a jury based on the facts she adduced at trial. See *Patzner* v. *Burkett*, 779 F. 2d, at 1367 (summary judgment proper under "deliberate indifference" standard where evidence of only single incident adduced); *Languirand* v. *Hayden*, 717 F. 2d, at 229 (reversing jury verdict rendered under failure to train theory where there was no evidence of prior incidents to support a finding that municipal policy makers were "consciously indifferent" to constitutional rights); *Wellington* v. *Daniels*, 717 F. 2d, at 937 (affirming judgment n.o.v. for municipality under "deliberate indifference" standard where evidence of only a single incident was presented at trial); compare *Fiacco* v. *City of Rensselaer*, 783 F. 2d, at 328–332 (finding evidence of "deliberate indifference" sufficient to support jury verdict where a pattern of similar violations was shown at trial).

Allowing an inadequate training claim such as this one to go to the jury based upon a single incident would only invite jury nullification of *Monell*. "To infer the existence of a city policy from the isolated misconduct of a single, low-level officer, and then to hold the city liable on the basis of that policy, would amount to permitting precisely the theory of strict

*respondeat superior* liability rejected in *Monell*." *Oklahoma City* v. *Tuttle*, 471 U. S. 808, 831 (1985) (BRENNAN, J., concurring). As the authors of the Ku Klux Klan Act themselves realized, the resources of local government are not inexhaustible. The grave step of shifting of those resources to particular areas where constitutional violations are likely to result through the deterrent power of § 1983 should certainly not be taken on the basis of an isolated incident. If § 1983 and the Constitution require the city of Canton to provide detailed medical and psychological training to its police officers, or to station paramedics at its jails, other city services will necessarily suffer, including those with far more direct implications for the protection of constitutional rights. Because respondent's evidence falls far short of establishing the high degree of fault on the part of the city required by our decision today, and because there is no indication that respondent could produce any new proof in this regard, I would reverse the judgment of the Court of Appeals and order entry of judgment for the city.