

Supreme Court Tightens Section 1983 Liability for Failure to Train

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Apr 18, 2011

The Supreme Court recently tightened the liability standards for Section 1983 claims involving an alleged failure to train governmental employees. [*Connick v. Thompson*, 2011 U.S. LEXIS 2594 \(U.S. Mar. 29, 2011\)](#). The Court in *Connick* reversed a \$14 million verdict for plaintiff former prisoner, who had spent 18 years in prison, including 14 years on death row.

The former prisoner was initially tried and convicted of attempted armed robbery. But the prosecutors in that case failed to disclose the existence of exculpatory scientific evidence. Because of that conviction, the former prisoner did not testify in his own defense in a subsequent murder trial and was again convicted. One month before the former prisoner's scheduled execution, an investigator discovered the undisclosed evidence from the armed robbery trial. A reviewing court determined that because the evidence was exculpatory, both of the former prisoner's convictions should be vacated. The former prisoner then sued the Orleans Parish District Attorney for his alleged failure to train prosecutors about their obligation to produce exculpatory evidence pursuant to the holding in *Brady v. Maryland*, 373 U.S. 83; 83 S. Ct. 1194 (1963).

Courts have recognized that § 1983 training liability can arise in two potential scenarios. The first is where a series of constitutional violations makes the need for training obvious. A pattern of constitutional violations, however, is typically necessary to demonstrate that a governmental entity was "deliberately indifferent" to its citizens' constitutional rights. The Supreme Court also hypothesized that § 1983 training liability could arise in the absence of a pattern of violations when the need for training on a particular issue was obvious at the outset. The Court observed that a police officer's use of deadly force is an example where training should be provided in the absence of a pattern of constitutional violations. The former prisoner in *Connick* proceeded under the latter theory. The Court summarily rejected his claim, observing that it did not fall "within the narrow range of . . . hypothesized single-incident liability" scenarios where the need for training at the outset was obvious. The Court noted that armed police must make split-second decisions with life or death consequences, whereas prosecutors receive training in law school, and have ongoing mandatory continuing legal education requirements and ethical duties with which they must comply.

In the 10 years preceding the former prisoner's prosecution, four other convictions had been set aside due to the failure by prosecutors to produce exculpatory evidence. In the Court's view, this did not establish a pattern of violations sufficient to put the district attorney on notice of the need for additional training. None of those prior instances involved either a failure to produce scientific evidence or a failure similar to what occurred in the former prisoner's case.

The Supreme Court further explained that failure-to-train liability cannot be based upon "contemporaneous or subsequent" conduct. It also observed that such liability is concerned with the substance of the training, not its particular format, and rejected the notion that liability could be based on the theory that more or better training would have prevented the type of conduct in question from occurring. The Court concluded that failure-to-train liability does not provide courts with *carte blanche* to micromanage local units of government or their training programs.

Practice Note

The Supreme Court's decision clearly limits the circumstances in which failure-to-train liability can be imposed under § 1983. In virtually all instances, a plaintiff must demonstrate a pattern of prior constitutional violations of a similar nature before liability can attach under this theory. This should make pleading § 1983 training claims more difficult because the Court requires complaints to assert enough facts to demonstrate a plausible entitlement to relief. When a complaint fails to factually assert a pattern of similar constitutional violations, a motion to dismiss should be considered. Moreover, liability cannot be premised upon assertions that specialized training, or more or better training should have been provided. Thus, *Connick* should help to weed out § 1983 training claims at an early stage of the proceedings.

Download to read the [Intricacies of Federal Section 1983 Civil Rights Claim](#).

For further information, please contact [Steven Puiszis](#) or your regular Hinshaw attorney.

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