No. 07-854

IN THE
Supreme Court of the United States

JOHN VAN DE KAMP AND CURT LIVESAY,
Petitioners,
v.
THOMAS LEE GOLDSTEIN,
Respondent.

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

BRIEF OF THE NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, COUNCIL OF STATE GOVERNMENTS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, AND U.S. CONFERENCE OF MAYORS AS *AMICI CURIAE* SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether respondent can subject the former District Attorney and former Chief Deputy District Attorney of Los Angeles County to discovery and trial under §1983 for allegedly failing to implement, in 1979, a data management system for sharing information about benefits received by jailhouse informants and informants' history of working with law enforcement.

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county, and municipal governments and officials throughout the United States.[1] *Amici* have a compelling interest in the legal standards that govern §1983 personal-capacity actions against the directors of very large municipal agencies for mistakes allegedly committed by line employees. Unless cabined by appropriate standards, such damages actions will frequently subject senior officials to discovery and trial in violation of the longstanding rule that "a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). *Amici* accordingly submit this brief to assist the Court in its resolution of this case.

SUMMARY OF ARGUMENT

A. Contrary to the ruling of the court below, petitioners John Van de Kamp and Curt Livesay are not subject to respondent's personal-capacity damages claims. Respondent's complaint fails to satisfy the applicable pleading standard, most recently summarized by this Court in *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007). Because respondent's complaint does not support a plausible inference of unconstitutional conduct by petitioners, he should not be permitted to subject them to discovery and trial.

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[1] The parties have consented to the filing of this *amicus* brief and their consent letters have been filed with the Clerk. This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than *amici* and their members, has made a monetary contribution to the preparation or submission of this brief.

A §1983 claim that supervisory officials are liable for the mistakes of their subordinates must allege that the defendants were deliberately indifferent to a serious risk that the plaintiff's constitutional rights would be deprived. *City of Canton v. Harris*, 489 U.S. 378 (1989). When pleading the claim against top-level officials of large government agencies in their personal (rather than official) capacities, the requirement that a plaintiff allege sufficient facts to plausibly suggest a right to relief is particularly important. It is very easy for plaintiffs to contrive allegations of what agency heads did not do, and similarly easy to make bare allegations of willfulness or knowledge. In order for such supervisor liability claims to reach the discovery and trial phases of litigation, these assertions must be supported by specific and non-conclusory factual allegations.

Thus, when a plaintiff bases a §1983 claim on a supervisor's failure to act, he must allege facts that plausibly suggest that the defendant actually knew of the risk that his asserted inaction would cause a deprivation of rights. Respondent has failed to do so in this case. None of the allegations in his complaint plausibly demonstrate that petitioners had personal knowledge of the "risk" at issue: that the line prosecutors who worked on his case would fail to obtain information from one another about promises made to the informant Fink, in breach of the constitutional obligations that all prosecutors have under *Brady v. Maryland*, 373 U.S. 83 (1963).

Nowhere in his complaint does respondent allege that prosecutors lacked the ability to acquire information regarding jailhouse informants, or that they were unwilling or unable to share such information with one another, much less that Van de Kamp and

Livesay were aware of such a risk. Indeed, from the face of the complaint it is highly implausible that the top two officials of the nation's largest prosecutor's office, with almost 1000 attorneys in 1979, were aware that their failure to create a database concerning jailhouse informants created or perpetuated this risk. In view of the contrived and conclusory nature of his allegations, respondent is not entitled to pursue his claims against Van de Kamp and Livesay through discovery and trial.

This conclusion is fully supported by important policy considerations. On one hand, no systemic purpose is served by allowing this case to go forward against the former District Attorney of Los Angeles County and his Chief Deputy because the County has used such a system for almost 20 years. And any viable monetary damages claims that respondent may have are appropriately litigated in an action against the two municipalities involved.

Conversely, permitting conclusory allegations of inaction to go forward against former heads of large government agencies will "dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties." *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982). As this Court has long recognized, "[c]ompetent persons could not be found to fill [senior government] positions . . . if they knew that they would be held liable for all the torts and wrongs committed by a large body of subordinates. . . ." *Robertson v. Sichel*, 127 U.S. 507, 515 (1888). The judgment of the court of appeals should accordingly be reversed.

B. The foundational element of causation is fatally absent from respondent's allegations against Van de Kamp and Livesay. To state any claim for re-

lief under §1983, a plaintiff must plausibly allege that a defendant acting under color of state law caused him to be deprived of a federal right. As this Court has instructed, "rigorous standards of culpability and causation must be applied" in order to prevent §1983 liability from "collaps[ing] into *respondeat superior* liability." *Bd. of County Comm'rs v. Brown*, 520 U.S. 397, 405, 415 (1997). Consequently, there can be no §1983 liability if the defendant's conduct was not a proximate cause of the alleged deprivation. *See Martinez v. California*, 444 U.S. 277, 285 (1980). Because respondent's wrongful conviction was allegedly caused by the failure of line prosecutors to produce impeachment evidence pursuant to their *Brady* obligations, the existence *vel non* of an information database could not have been its proximate cause.

By conceding that petitioners adequately trained prosecutors regarding their *Brady* obligations, Opp. 11, respondent effectively acknowledges that petitioners' actions or inactions regarding the creation of an indexing system could not have been the proximate cause of his asserted injury. Since *Brady* was decided in 1963, line prosecutors have had a fundamental duty to disclose to defense counsel evidence tending to negate the defendant's guilt. As this Court has repeatedly made plain, "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." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (emphasis added).

Whatever the conjectural advantages of a "database" of information about jailhouse informants, the underlying individual obligation to produce such evidence to the defense has existed in full force since

long before computers existed to facilitate efficient information storage and dissemination. Indeed, in trial practice, the duty created by *Brady* will ordinarily be fulfilled by the basic case preparation of line prosecutors.

In view of the fact that any asserted *Brady* failure in this case—which respondent concedes was not the result of lack of training on *Brady* obligations and thus was, at worst, the result of negligence by line prosecutors, Opp. 11—there is no legal basis for his claims against petitioners. Nor is this surprising: "many claims directed at prosecutors, of the sort that are based on acts not plainly covered by the conventional . . . privileges, are probably not actionable under §1983, and so may be dismissed at the pleading stage without regard to immunity." *Buckley v. Fitzsimmons*, 509 U.S. 259, 281 (1993) (Scalia, J., concurring).

Contrary to respondent's allegations and the judgment below, the Constitution did not require petitioners "to implement a data management system that would allow individuals within the District Attorney's Office . . . to share *with one another* information about benefits informants received in exchange for testifying, and informants' history of working with law enforcement." Opp. 11-12. The judgment below should accordingly be reversed.

ARGUMENT

PETITIONERS ARE NOT SUBJECT TO RESPONDENT'S §1983 PERSONAL-CAPACITY DAMAGES CLAIMS.

A. Respondent's Allegations Produce No Plausible Inference That Petitioners Were Deliberately Indifferent to His Constitutional Rights.

Under the pleading standard of *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007), respondent's Second Amended Complaint for Damages fails to support his claim that petitioners were deliberately indifferent to his constitutional rights. Because his complaint therefore does not give rise to a plausible inference of petitioners' unconstitutional conduct, he should not be permitted to subject them to discovery and trial.

Though §1983 itself imposes no blanket state-of-mind requirement, *see Parratt v. Taylor*, 451 U.S. 527, 534 (1981), a claim of supervisory liability requires a state-of-mind amounting to deliberate indifference to a serious risk that the plaintiff's constitutional rights will be deprived. *City of Canton v. Harris*, 489 U.S. 378, 389 (1989); *see Bd. of County Comm'rs v. Brown*, 520 U.S. 397, 410 (1997) (deliberate indifference is a "stringent standard of fault"). Moreover, in a personal-capacity suit,[2] "the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm [to the plaintiff] exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

[2] In suits involving municipalities, by contrast, an objective standard for knowledge applies. *Farmer*, 511 U.S. at 840-41.

In *Bell Atlantic*, this Court summarized the standard for civil pleading under Fed. R. Civ. P. 8(a)(2). In holding that a plaintiff failed to state a claim for conspiracy under the Sherman Act, the Court articulated a "plausibility standard" requiring more than "labels and conclusions" to support allegations of actionable wrongdoing. *Id.* at 1964-66. To survive a motion to dismiss under Rule 12(b)(6), a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.* at 1965.

The requirement that a plaintiff allege sufficient facts to plausibly suggest a right to relief is particularly important when pleading a personal-capacity claim of supervisory liability for a "failure to act." Because such a claim concerns the defendant's deliberately indifferent *inaction*, it is easy for a plaintiff to contrive an allegation of what an agency head did not do. Likewise, it is easy for a plaintiff to make a bare allegation of willfulness or knowledge.[3] But in order for the case to move into discovery and trial, these assertions must be supported by specific and non-conclusory factual allegations.

Thus, when a plaintiff asserts a personal-capacity "failure to act" claim against a former agency head—where the key element of the claim is the defendant's personal knowledge, *see Farmer*, 511 U.S. at 837—a plaintiff must allege facts that plausibly suggest that the defendant *actually knew* of the

[3] Because a failure-to-act claim requires personal knowledge, the claim cannot be established by the same factual specifications that govern a negligence claim. *See Bell Atlantic*, 127 S. Ct. at 1970 n.10.

risk that his alleged inaction would cause a deprivation of rights.[4]

Respondent has pleaded no specific facts that plausibly demonstrate petitioners' personal knowledge, prior to his trial, of the risk at issue: *i.e.*, that the line prosecutors who worked on his case were unable to obtain information from one another regarding promises made to the informant Fink—in breach of the *Brady* obligations which respondent concedes they had been trained to follow. *See* Opp. 11. Instead, respondent makes a handful of bare allegations against petitioners that are either consistent with lawful conduct[5] or too vague and conclusory to proceed to discovery and trial. *See Bell Atlantic*, 127 S. Ct. at 1965-66.

For example, respondent alleges that former District Attorney Van de Kamp and his Chief Deputy had "substantial notice that false testimony by informants had occurred repeatedly," ER 34 ¶ 92, and had "considered the creation of a system to track the benefits provided to jailhouse informants."[6] *Id.* at

[4] As noted above, *supra* p. 2 n.2, this requirement of personal knowledge does not exist as to municipalities, two of which are defendants in the ongoing litigation of respondent's claims. *See Goldstein v. City of Long Beach & County of Los Angeles,* 2006 U.S. App. LEXIS 27481 (9th Cir. 2006).

[5] Respondent alleges that petitioners, as the District Attorney of Los Angeles County and Chief Deputy District Attorney, were "the primary policy makers who would make the administrative decisions of that office . . . . includ[ing] the training of Deputy District Attorneys throughout the office as a whole." ER 33-34 ¶ 91.

[6] The allegation that petitioners considered the creation of a system, in the absence of factual support specifying when or how petitioners considered such a system, makes it particularly difficult for petitioners to respond. *See Bell Atlantic*, 127 S. Ct.

34-35 ¶ 94. But when deciding motions to dismiss, courts are not "bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *cf. Scott v. Harris*, 127 S. Ct. 1769, 1776 (2007). Likewise, as this Court explained in *Bell Atlantic*, "a formulaic recitation of the elements of a cause of action will not do." 127 S. Ct. at 1965. These boilerplate allegations, which do no more than restate the requirement that petitioners had personal knowledge of a risk, do not suffice to state an actionable §1983 claim against petitioners.

Respondent also makes allegations about petitioners that are irrelevant to his claims. For example, he alleges that "improper conduct" by office personnel had been the subject of agency investigations, ER 34 ¶ 89, and that petitioners "were aware that police officers and Deputy District Attorneys were providing case information orally and in writing to informants to make sure the informants knew the facts of the offense that a criminal defendant was charged with." *Id.* ¶ 93. These allegations of "improper conduct" are irrelevant to respondent's theory of liability because he expressly disclaims that "anyone in the prosecutor's office *intentionally* suppressed exculpatory evidence in his case[,]" or "that Petitioners created a policy directing line district at-

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at 1970 n.10 ("[T]he pleadings mentioned no specific time, place, or person involved in the alleged conspiracies."); *see also id.* at 1965 n.3 ("Rule 8(a) 'contemplate[s] the statement of circumstances, occurrences, and events in support of the claim presented'" (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1202, at 94, 95 (3d ed. 2004))). Furthermore, this allegation suggests, if anything, that petitioners were not deliberately indifferent to the risks of using jailhouse informants.

torneys to suppress exculpatory evidence," that "Petitioners failed to provide adequate training and supervision to line district attorneys regarding their duties to disclose exculpatory evidence." Opp. 11. Thus, even if true, respondent's allegation that petitioners were aware that some prosecutors were engaging in intentional manipulation of informant testimony is irrelevant to a showing that petitioners were aware that impeachment information regarding informants was inaccessible to prosecutors who should have been seeking it.

Similarly, respondent's allegations regarding petitioners' knowledge of the risk that jailhouse informants might provide false testimony are beside the point. *See* ER 34 ¶ 92 ("[I]n January of 1979, prior to Mr. Goldstein's trial, [petitioners] received letters from a jailhouse informant alleging that the informant and another informant provided false information in several criminal cases [and] [t]his information was never indexed or widely distributed within the . . . Office."). The relevant predicate for a deliberate-indifference claim in this case is, as noted above, that petitioners were aware of the risk that subordinates would not be able to access informant information in the absence of an information management system.

Nowhere in the complaint does respondent allege that prosecutors lacked the ability to acquire information regarding jailhouse informants, or that they were unwilling or unable to share such information with one another, much less that petitioners were aware of such a risk. It is improper to assume what the plaintiff has not alleged. *See Bell Atlantic*, 127 S. Ct. at 1969 n.8; *see also Wilson v. Schnettler*, 365 U.S. 381, 383 (1961) ("In the absence of . . . an allegation [that an arrest was made without probable

cause] the courts below could not, nor can we, assume that respondents arrested petitioner without probable cause to believe that he had committed . . . a narcotics offense."). When respondent's factual allegations are taken together, they consist of nothing more than speculation that petitioners knew that subordinates did not always share information about the benefits promised to jailhouse informants. Opp. 11.

Indeed, from the face of the complaint it is not plausible that the head officials of the largest prosecution office in the country, totaling almost 1000 deputy district attorneys, were conscious in 1979 that their inactivity regarding the creation of a database was perpetuating this risk. As respondent himself observes in the complaint, it was not until 1989 that a grand jury investigation described various abuses involving jailhouse informants. In fact, with regard to petitioners' knowledge, the report of the grand jury concludes only that "[b]y January 1987"—almost ten years after respondent's trial—"senior management of the Los Angeles County District Attorney's Office was cognizant of a concern within the office that a central repository of information on informants should be established."[7] Report of the

[7] Of course, it is not enough to suggest that petitioners should have known of an unreasonable risk that prosecutors were failing to obtain informant information. While negligence and agency principles suffice to establish a constitutional violation under *Brady*, "[a] showing of simple or even heightened negligence will not suffice" to establish supervisory liability for that violation under §1983. *Brown*, 520 U.S. at 407; *Farmer*, 511 U.S. at 835 ("[D]eliberate indifference describes a state of mind more blameworthy than negligence."); *see also Rizzo v. Goode*, 423 U.S. 362, 371, 377 (1976) (finding no §1983 liability against individual supervisory officials where subordinates deviated

1989-90 Los Angeles County Grand Jury, Investigation of the Involvement of Jail House Informants in the Criminal Justice System in Los Angeles County 111 (1990), *available at* http://www.ccfaj.org/rr-use-official.html.

Finally, policy considerations underscore the need to enable courts to dispose of patently deficient personal-capacity claims against former department heads at the earliest possible time. First, there is no need for damages actions to police the conduct at issue—the failure to create information management systems. *See Butz v. Economou*, 438 U.S. 478, 512 (1978) ("[T]he safeguards built into the judicial system tend to reduce the need for private damages actions as a means of controlling unconstitutional conduct."). This damages action, against the former head of the largest District Attorney's office in the country, is a particularly unsuitable means because Los Angeles County has used such a system for almost 20 years, ER 36-37 ¶ 101, and as respondent himself observes, presumably most prosecution offices in the country have adopted similar systems. Opp. 4; *see also* Br. *Am. Cur.* Los Angeles County 7-9 & n.5. Moreover, the high bar for holding high-ranking officials liable in their personal capacity for alleged failures has not prevented respondent from seeking damages from two large municipalities and other individual defendants.

Conversely, to allow such conclusory allegations against the former heads of large government agencies to proceed to discovery and trial will "dampen the ardor of all but the most resolute, or the most ir-

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from prescribed conduct to cause a deprivation of rights and the supervisors "played no affirmative part.").

responsible [public officials], in the unflinching discharge of their duties."[8] *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982) (alteration in original) (internal quotation marks omitted). As this Court has long cautioned, "[c]ompetent persons could not be found to fill positions . . . if they knew they would be held liable for all the torts and wrongs committed by a large body of subordinates . . . ." *Robertson v. Sichel*, 127 U.S. 507, 515 (1888). The court below thus erred in allowing respondent's claims to go forward against petitioners and the judgment below should be reversed.

B. Petitioners' Alleged Failure to Create an Information Management System Did Not Proximately Cause Respondent To Be Deprived of Any Rights.

To state any claim for relief under §1983, a plaintiff must allege that a person acting under color of law caused him to be deprived of a federal right. There can be no liability under §1983 if a public official's conduct was not a proximate cause of the alleged deprivation. *See Martinez v. California*, 444 U.S. 277, 285 (1980); Martin A. Schwartz & John E. Kirklin, 1 Section 1983 Litigation: Claims, Defenses, and Fees § 1.4 (2d ed. 1991). Because respondent's wrongful conviction was allegedly caused by the failure of the line prosecutors to produce impeachment evidence, the existence *vel non* of an information database could not have been its proximate cause. Indeed, any causal connection between the alleged fail-

[8] The Solicitor General has recently expressed similar concerns about conclusory allegations in a *Bivens* action against a former Attorney General. *See* Petition for Certiorari, *Ashcroft v. Iqbal*, No. 07-1015, *cert. granted*, June 16, 2008.

ure of petitioners to create such a database and respondent's injury is purely speculative and cannot form the basis for liability against petitioners under any set of facts. *See Martinez*, 444 U.S. at 284-85 (dismissing a §1983 claim where the asserted injury was "too remote a consequence" of the challenged conduct).

First, because respondent concedes that petitioners adequately trained prosecutors regarding their *Brady* obligations, Opp. 11, respondent effectively concedes that petitioners' failure to disseminate impeachment information was not the proximate cause of his injury. Since *Brady v. Maryland*, 373 U.S. 83 (1963), all prosecutors have had a fundamental duty to disclose to defense counsel all evidence tending to negate the guilt of the defendant.[9] The Court elaborated the contours of this obligation in *Giglio v. United States*, where it confronted a situation, similar to this one, in which one assistant federal prosecutor promised a co-conspirator immunity from prosecution in exchange for his testimony, while the assistant who tried the defendant's case failed to disclose the promise to defense counsel. 405 U.S. 150, 152-53 (1972). For purposes of establishing a *Brady* violation, the Court held that "whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor." *Id.* at 154 (citing Restatement (Second) of Agency § 272).[10]

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[9] It is not a violation of *Brady* if nondisclosed evidence is not material, *see United States v. Agurs*, 427 U.S. 97 (1976), or if nondisclosed evidence is already known to defense counsel before trial and the defense fails to use it. *See, e.g.*, *United States v. De Leo*, 422 F.2d 487 (1st Cir. 1970).

[10] *Giglio* says nothing about liability under §1983. Of course, a *Brady* violation that is imputed to the entire prosecution of-

The Court in *Giglio* thus recognized that a prosecutor's duty to obtain impeachment information known by others in the office is subsumed within the basic duty of *Brady* to disclose that information to the defense. In *Kyles v. Whitley*, the Court likewise instructed 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." 514 U.S. 419, 437 (1995) (emphasis added). As already noted, respondent does not allege that petitioners failed to adequately train subordinate prosecutors regarding these duties.[11] *See* Opp. 11 ("Mr. Goldstein did not allege . . . that the Petitioners failed to provide adequate training and supervision to line district attorneys regarding their duties to disclose exculpatory evidence.").

While *Giglio* and *Whitley* establish the basic responsibility of the individual prosecutor to obtain and disclose exculpatory evidence, this Court has never—in *Giglio* or elsewhere—mandated the creation of an information management database to effectuate *Brady* obligations. *Cf. Cafeteria Workers v. McElroy*, 367 U.S. 886, 896 (1961) ("[T]he Government has traditionally been granted the widest latitude in the 'dispatch of its own internal affairs.'"). Contrary to respondent's assertion, Opp. 4, 6; ER 34

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fice does not mean that §1983 liability is also imputed to the entire office. *See Brown*, 520 U.S. at 407; *City of Canton*, 489 U.S. at 389 n.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.").

[11] Nor has respondent alleged that "anyone in the prosecutor's office *intentionally* suppressed exculpatory evidence in his case[,]" or "that Petitioners created a policy directing line district attorneys to suppress exculpatory evidence." Opp. 11.

¶ 92, *Giglio* did not create a constitutional obligation to establish an information management system. Rather, the Court recommended in dicta that in order to alleviate burdens on large prosecution offices, "procedures and regulations *can be* established to carry that burden and to insure communication of all relevant information on each case to every lawyer who deals with it." *Giglio*, 405 U.S. at 154 (emphasis added).

Equally important, no system is required for a prosecutor to discharge their *Brady* obligations, which are compulsory. It is self-evident that every prosecutor must fulfill this obligation to obtain and disclose impeachment evidence as an integral part of representing the State in a criminal prosecution. Both before and since the advent of computer databases this responsibility has existed and been carried out in the vast majority of cases through the fundamentals of lawyering. As applied to prosecution witnesses, these fundamentals include consulting colleagues and police officers who have previously worked with the witness, reviewing all relevant files, and interviewing the witness. After all, *Brady* was decided in 1963, long before it was practical to use computerized systems to efficiently store and disseminate information.

Thus, even if the line prosecutors who handled respondent's case were ignorant of the fact that Fink was receiving benefits in exchange for his testimony, *see* AER 12-13; Opp. 5, they had an elementary "duty to learn of [this] favorable evidence" that was known to the Long Beach police and other deputy district attorneys. *Whitley*, 514 U.S. at 437; *see* ER 30, 32; Opp. 5. The prosecutors' alleged departure from such a prescribed duty cannot be replaced in the

causal chain by a hypothetical information management system that may or may not have prevented respondent's injury. For this reason, respondent's §1983 personal-capacity damages claims against petitioners, based on line prosecutors' alleged negligence, are grounded in an impermissible theory of *respondeat superior* liability and should not be allowed to proceed beyond the pleadings.

Indeed, not only was petitioners' alleged failure to create an information management system not the proximate cause of respondent's injury, it is entirely speculative whether such a system would have resulted in the disclosure of *Brady* evidence. Given that the line prosecutors who handled respondent's case were apparently unaware of Fink's history of felonies and police-informant activities, there is no reason to believe that if an information management system had existed, they would have used it to obtain background information on Fink that was readily available through simple inquiry.[12]

Respondent's §1983 claim is thus fundamentally different from the claim in *City of Canton*. In that case the Court held that there were "limited circumstances in which an allegation of a 'failure to train'" could be the basis for §1983 liability. *City of Canton*, 489 U.S. at 387. But the failure alleged in *City of Canton* was the failure of the city to train its employees to provide medical care to persons in custody, and the injury from the lack of medical care was directly traceable to inadequate training. *See id.* at 385 ("[O]ur first inquiry . . . is the question whether there is a direct causal link between a municipal pol-

[12] Respondent makes no allegation that prosecutors in the Los Angeles County District Attorney's office lacked access to informant information and were unable to obtain it.

icy or custom and the alleged constitutional deprivation."). By contrast, though the injury here is the nondisclosure of *Brady* information, the alleged failure is *not* inadequate training on *Brady* obligations. *See* Opp. 11. Rather, it is the failure to create a parallel system that would allow prosecutors to obtain informant information—an ability prosecutors already had, and pursuant to a duty they were already adequately trained to follow.

The speculative nature of respondent's claim demonstrates why it is an improper basis for supervisory liability: because no system is error-free, a plaintiff can always posit that a superior system could have prevented his injury. As the *Canton* Court noted, "[i]n 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." 489 U.S. at 392. Yet the essence of respondent's claim is that the Los Angeles County District Attorney's office was constitutionally required to have an information management system and that petitioners are personally liable for failing to create one. This Court, however, has squarely held to the contrary: "Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person." *Patterson v. New York*, 432 U.S. 197, 208 (1977).

Contrary to the holding below, §1983 does not provide a damages remedy against high-ranking government officials for failing to take all conceivable steps to eliminate the risks of harm that attend the duties of every employee in their office. *Accord, e.g.*, *Martinez*, 444 U.S. at 284-85; *Rizzo*, 423 U.S. at 375-

76. In *Baker v. McCollan*, for example, this Court declined to hold a sheriff liable under §1983 for arresting the wrong man and holding him in custody for several days. 443 U.S. 137, 141 (1979). Though the plaintiff argued that the sheriff intentionally "fail[ed] to institute adequate identification procedures" that would have disclosed the error, *id.* at 142, the Court held that the sheriff was not "required by the Constitution to perform an error-free investigation" of every claim of innocence or mistaken identity. *Id.* at 146. Neither did the Constitution require petitioners "to implement a data management system that would allow individuals within the District Attorney's Office . . . to share *with one another* information about the benefits informants had received in exchange for testifying, and informants' history of working with law enforcement." Opp. 11-12.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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