

HAB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM J. BRENNAN JR.
CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 4, 1989

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86-1088 City of Canton v. Harris

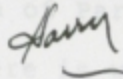
Dear Byron,

Re: No. 86-1088, City of Canton v. Harris

Dear Byron:

I have already joined you, but I would go along with the suggestion Bill Brennan sets forth in his letter of today.

Sincerely,



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 ground on which respondent can prevail. See Tr. of Oral Arg. 57-58. Because the standard of proof the District Court imposed on respondent (which was consistent with Sixth Circuit precedent) was a lesser one than the one we lay down today, see Trial Tr. 4-389-390, we decline to adopt petitioner's suggestion. In our view, respondent should have an opportunity to prove her case under the "deliberate indifference" rule, because the evidence she adduced at trial was offered against the background of circuit precedent we now repudiate.

If you would revise the opinion along these lines (I am not attached to the foregoing language), I would be pleased to join.

Justice White

cc: The Conference

Copies to the Conference

Sincerely,

