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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 4, 1989

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86-1088 City of Canton v. Harris

Re: 86-1088

Dear Byron,

Dear Byron,

I would be happy to join your opinion if you would make one small change in Part IV. I believe that we should defer to the lower courts' familiarity with the case and send it back without saying that the evidence before us is insufficient to sustain a finding of liability. Such a statement would in my view be superfluous, since I also think that we should say plainly that respondent should be granted a new trial because at the time of her trial she had no reason to anticipate the tougher standard for municipal liability we are laying down in here. I therefore suggest the following revision of Part 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 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.

Sincerely,

Justice White

Copies to the Conference