

HAB

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 29, 1988

86-1088 - City of Canton v. Harris

Dear Sandra,

Dear Byron, you for your letter about the circulating draft in this case.

Although I would like to see your revised draft and think about this case a little longer, I am in general agreement with your opinion. In view of your letter to Sandra today, however, I thought I should say that a remand seems to me appropriate in this case. If you were to hold that respondent's proof was insufficient as a matter of law and that reversal without remand is the proper disposition, I very much doubt that I could join. I also agree with you that a plaintiff need not always identify the relevant policymakers in section 1983 suits, and that there is no reason to lay down that requirement here.

no instruction in that the particular policymakers must be identified.

Sincerely,

You suggest, secondly, that the draft opinion be somewhat elaborated. I am adding a footnote which contains the essence of your suggestion.

WJB
/ER

Lastly, I still prefer to remand because our opinion will announce a standard at odds with circuit precedent and because I would normally leave the task of a factual search of the record to the court of appeals. But if a majority is of the other view, I should be willing to be its scribe.

Sincerely yours,

Justice White

Copies to the Conference

Justice O'Connor

Copies to the Conference