

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy

From: **Justice Brennan**

Circulated: FEB 17 1989

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 86-1088

**CITY OF CANTON, OHIO, PETITIONER v.
GERALDINE HARRIS ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT**

[February —, 1989]

JUSTICE BRENNAN, concurring.

The Court's opinion, which I join, makes clear that the Court of Appeals is free to remand this case for a new trial.

I join Parts I, II, and all of Part III of the Court's opinion except footnote 11, as well as, at 11, n. 11. I thus agree that where municipal policy makers are confronted with an obvious need to train city personnel to avoid the violation of constitutional rights and they are deliberately indifferent to that need, the lack of necessary training may be appropriately considered a city "policy" subjecting the city itself to liability under our decision in *Mandell v. New York City Dept. of Special Services*, 485 U.S. 828 (1978). As the Court observes, "only where... acts a 'deliberate' or 'conscious' choice by a municipality—a 'policy' as defined by our prior cases—302 U.S. 412 (1942) for such a failure under § 1983." 485 U.S. 828 (1978). I agree that a § 1983 plaintiff pressing a "failure to train" claim must prove that the lack of training was the "cause" of the constitutional injury at issue and that this entails more than simply showing "but-for" causation. *Ante*, at 11-12. Lesser requirements of fault and causation in this context would "open municipalities to pervasive serious federal-state suits." *Ante*, at 12, and would be a single point of disagreement with the majority is that a small one. Because I believe, as the majority strongly holds