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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 23, 1988

Re: City of Canton v. Harris, 86-1088

Dear Byron,

I am in general agreement with your approach in this case, and in particular I agree that a city can be held liable for a lack of training under the "policy" prong of Monell in certain circumstances. As the proposed opinion indicates, "it may happen that the need for training is so obvious, and the inadequacy so likely to threaten injury to the public, that policy makers of the city can reasonably be said to have been deliberately indifferent to the need." Slip op., at 10-11. For purposes of clarity, I suggest that you consider replacing "threaten injury to the public" in this phrase with "result in the violation of constitutional rights."

To my mind, it could be shown that the need for training was obvious in one of two ways. First, a municipality could fail to train its employees concerning a clear constitutional duty implicated in recurrent situations which the employee is certain to face. For example, the city policymakers know to a moral certainty that their officers will be required to arrest fleeing felons. The city has armed its officers with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of deadly force, see Tennessee v. Gardner, 471 U.S. 1 (1985), can be said to be "so obvious," that failure to do so could properly be characterized as "willful indifference" to constitutional rights.

I think that the claim in this case, that police officers were inadequately trained in diagnosing the symptoms of emotional illness, falls far short of the kind of "obvious" need for training, which in my view would support municipal liability. There are no clear constitutional obligations in this area, and the diagnosis of mental illness is not normally associated with police encounters with the citizenry. In my view, the lack of training at issue here is not the kind of omission that can be characterized, in and of itself, as a "deliberate indifference" to constitutional rights.

Second, I think municipal liability for failure to train may be proper where it can be shown that policymakers were aware of, and acquiesced in, a pattern of constitutional violations involving the exercise of police discretion. Here, the need for training may not be obvious from the outset, but a pattern of constitutional violations has put the municipality on notice that its officers do confront the particular situation on a regular basis, and that they often react in a manner contrary to a constitutional duty. The lower courts which have applied the "deliberate indifference" standard adopted by the proposed opinion require a pattern of violations from which a kind of "tacit authorization" by the policymaker can be inferred. See, e.g., Fiacco v. City of Rensselaer, 783 F.2d 319, 327 (CA2 1986) (multiple incidents required for finding of deliberate indifference); Patzner v. Burkett, 779 F.2d 1363, 1367 (CA8 1985) ("[A] municipality may be liable if it had notice of prior misbehavior by its officers and failed to take remedial steps amounting to deliberate indifference to the offensive acts."); Wellington v. Daniels, 717 F.2d 932, 936 (CA4 1983) ("[A] failure to supervise gives rise to § 1983 liability, however, only in those situations where there is a history of abuse. Only then may knowledge be imputed to supervisory personnel.").

I think the evidence respondent presented in this case fails to meet the "deliberate indifference" standard as a matter of law. As I indicated above, in my view the need for special police training in the detection of emotional illness to avoid infringement of constitutional rights is not so "obvious" in itself, as to support a finding of willful indifference. Nor has respondent adduced any evidence to indicate that the relevant policymaker was a aware of pattern of violations of this sort, such that the need for training was "obvious." In fact, respondent has not even identified the relevant policymaker under state law who has the authority to institute police training in this area. See City of Saint Louis v. Praprotnick, 108 S.Ct. 915, 924-926 (1988) (plurality opinion).

Although respondent clearly alleged "failure to train" liability in her second amended complaint, see app, at 24-25, 27, and there is no indication that the trial judge limited respondent's proof in this regard, respondent adduced no evidence that other incidents of this kind had occurred and that the relevant policymakers were "willfully indifferent" in the face of a course of violations. Moreover, respondent pursued a "custom" claim below, and presumably adduced as much evidence as she could muster concerning prior police practice in the face of the emotional needs of detainees. Thus, under the standard adopted by the proposed opinion, I see no need for a remand to the Sixth Circuit, rather I would find that respondent's proof is insufficient as a matter of law and reverse with

instructions to enter judgment for the city. See Patzner v. Burkett, 779 F.2d, at 1367 (summary judgment proper under "deliberate indifference" standard where evidence of only single incident adduced); Wellington v. Daniels, 717 F.2d, at 937 (affirming JNOV for municipality under "deliberate indifference" standard where evidence of only a single incident was presented at trial); compare Fiacco v. City of Rensselaer, 783 F.2d, at 328-332 (finding evidence of "deliberate indifference" sufficient to support jury verdict where a pattern of similar violations was shown at trial).

In sum, I hope you will consider making it clear (1) that under Praprotnick a plaintiff in a "failure to train" case must identify the relevant policymaker with the power to adopt new training procedures and that this has not been done here; (2) that the plaintiff must either show that the constitutional duty is so clearly implicated by the employees' daily activity that it is "obivous" that a failure to train will lead to constitutional violations, or that a pattern of violations has made the need for training obvious; and (3) that respondent's proof in this case is insufficient as a matter of law to meet the standard we adopt in this case.

Apologies for unloading these suggestions on the eve of Christmas, have a wonderful holiday.

Sincerely,

Sandra/asm

Justice White

Copies to the Conference