

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

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CHAMBERS OF
JUSTICE ANTONIN SCALIA

January 3, 1989

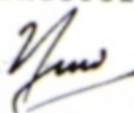
Re: No. 86-1088 - City of Canton v. Harris

Dear Byron:

I cannot go along with a remand here. There was nothing to the plaintiff's case, even under a gross negligence standard. To make the City go through another trial, with a higher standard of proof than that which the plaintiff already failed to meet, would be grossly unfair, if not deliberately indifferent.

I also agree with Sandra and Tony that step #1 in all of these cases is to identify the relevant policymaker. The need for that is obvious where the plaintiff is using "knowledge of custom" to establish deliberate indifference. I think it also exists, however -- though it may rarely make any difference -- when the plaintiff is using the "antecedent obviousness" prong. A legal requirement obvious to the Chief of Police may not always be obvious to the Mayor. If we really mean deliberate indifference, as opposed to respondeat superior, we should require identification of a deliberator. While my strong preference is to mention (even if briefly) the need for identifying the policymaker, I can join if the opinion at least does not contradict that requirement.

Sincerely,



Justice White

Copies to the Conference