



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

CHAMBERS OF  
Wm. J. BRENNAN, JR.

January 4, 1989

86-1088 City of Canton v. Harris

Byron,

I would be happy to join your opinion if you would make one  
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  
the respondent should be granted a new trial because at the time of  
the trial she had no reason to anticipate the tougher standard  
of 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  
bound to the foregoing language), I would be pleased to join.

Sincerely,

Bill

Justice White

Copies to the Conference

Further notes at conference to  
be made, but <sup>some</sup> immediately helpful better

to be in the CL of Am. also see

*of Denver out to get*  
*no idea had*  
*of trial*  
*of trial*

*Profession, deal in difference  
only in Part IV - Justice*

*At least I would be in CA send it new trial, because  
then would agree to new trial. I would suggest that  
the CA might do also to support at the trial,  
I think and also to further understand the standard.*

*of trial*