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

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CHAMBERS OF
JUSTICE BYRON R. WHITE

December 29, 1988

86-1088 - City of Canton v. Harris

Dear Sandra,

Thank you for your letter about the circulating draft in this case.

The change suggested in your first paragraph will be made in a second draft.

As for your numbered suggestions on page three of your letter, I had thought that under the draft's approach, and yours, too, liability turns on whether the need for additional training is sufficiently obvious to the policymakers, whoever they are. Thus, in your Garner example, if there has been no instruction in the use of firearms, the city if responsible, and I'm not sure that the particular policymakers must be identified.

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

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,

Byron

Justice O'Connor

Copies to the Conference