7

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

CHAMBERS OF
JUSTICE ANTHONY M. KENNEDY

December 30, 1988

No. 86-1088, City of Canton v. Harris

Dear Byron,

My strong view is that we should reverse outright. I think the need for police training in the diagnosis of mental disorders is, as a matter of law, not "obvious." As to the possibility that respondent could prevail by showing a pattern of police misbehavior, the record makes plain that respondent's proof could not support a finding of gross negligence, much less deliberate indifference. Entry of judgment outright is the correct result as to these parties, and the clarity of our guidance to courts and litigants will be enhanced by this more definitive disposition.

Also, I think a requirement that the plaintiff identify the relevant policymaker is consistent with the deliberate indifference standard we apply. Deliberate indifference connotes actual knowledge on the part of the defendant, and it is difficult to imagine an inquiry into a party's actual knowledge in which the party is not identified. In most instances, as in the Circuit cases cited in Sandra's letter, the inquiry will turn on the municipality's actual knowledge of a pattern of improper behavior by municipal employees. I think the simplest and best way to address this fact is to reiterate that part of the necessary showing in any §1983 claim based on municipal policy is identification of the relevant policymaker.

Sincerely,

AMK, 1/4/89

Justice White
Copies to the Conference