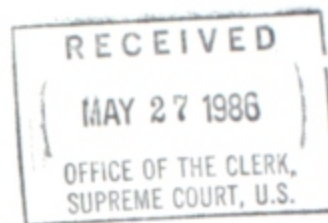


Supreme Court of the United States
Reporter of Decisions
Washington, D. C. 20543

June 3, 1986



PHONE (513) 281-5527

Larry Kramer

Re: Pembaur v. Cincinnati, No. 84-1160

Dear Larry:

The attached letter from Dr. Pembaur regarding Justice Brennan's opinion in the above case was referred to me by the Clerk's Office. While I have some difficult reading the doctor's writing, he seems to say on page 1 that June, not April, was the correct month of the indictment against him. On page 3, he seems to say that his conviction was reversed twice by two different panels of the Ohio Court of Appeals.

I would appreciate it if you would check this out and let me know whether any changes are called for.

Sincerely,

Henry C. Lind

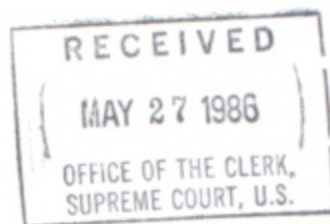
Henry C. Lind
Reporter of Decisions

Attachment

R-52

Pembaur
ur, M.D.

ROCKDALE MEDICAL CENTER
430 ROCKDALE AVENUE
CINCINNATI, OHIO 45229



BERTOLD J. PEMBAUR, M.D., F.A.A.F.P.
MEDICAL DIRECTOR

May 23, 1986

PHONE (513) 281-5527

Office of the Clerk
Supreme Court of the United States
1 First Street, North East
Washington, D.C. 20543

Dear Sir:

Enclosed I am forwarding two corrections which may apply
to the opinion of the Supreme Court of the United States.
(No. 84-1160, March 25, 1986)

Very truly yours,

Bertold J. Pembaur
Bertold J. Pembaur, M.D.

BJP:sc

Enclosures

R-52

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 84-1160

BERTOLD J. PEMBAUR, PETITIONER *v.* CITY OF
CINCINNATI ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[March 25, 1986]

JUSTICE BRENNAN delivered the opinion of the Court, except as to Part II-B.

In *Monell v. New York City Dept. of Social Services*, 436 U. S. 658 (1978), the Court concluded that municipal liability under 42 U. S. C. § 1983 is limited to deprivations of federally protected rights caused by action taken "pursuant to official municipal policy of some nature . . ." *Id.*, at 691. The question presented is whether, and in what circumstances, a decision by municipal policymakers on a single occasion may satisfy this requirement.

I

Bertold Pembaur is a licensed Ohio physician and the sole proprietor of the Rockdale Medical Center, located in the city of Cincinnati in Hamilton County. Most of Pembaur's patients are welfare recipients who rely on government assistance to pay for medical care. During the spring of 1977, Simon Leis, the Hamilton County Prosecutor, began investigating charges that Pembaur fraudulently had accepted payments from state welfare agencies for services not actually provided to patients. A grand jury was convened, and the case was assigned to Assistant Prosecutor William Whalen. In April, the grand jury charged Pembaur in a six-count indictment.

During the investigation, the grand jury issued subpoenas for the appearance of two of Pembaur's employees. When

June 24, 77

him of the situation. Whalen conferred with County Prosecutor Leis, who told Whalen to instruct the Deputy Sheriffs to "go in and get [the witnesses]." Whalen in turn passed these instructions along to the Deputy Sheriffs.

After a final attempt to persuade Pembaur voluntarily to allow them to enter, the Deputy Sheriffs tried unsuccessfully to force the door. City police officers, who had been advised of the County Prosecutor's instructions to "go in and get" the witnesses, obtained an axe and chopped down the door. The Deputy Sheriffs then entered and searched the clinic. Two individuals who fit descriptions of the witnesses sought were detained, but turned out not to be the right persons.

After this incident, the prosecutor obtained an additional indictment against Pembaur for obstructing police in the performance of an authorized act. Although acquitted of all other charges, Pembaur was convicted for this offense. The Ohio Court of Appeals reversed, reasoning that Pembaur was privileged under state law to exclude the deputies because the search of his office violated the Fourth Amendment. *State v. Pembaur*, No. C-790380 (Hamilton County Court of Appeals Nov. 3, 1982). The Ohio Supreme Court reversed and reinstated the conviction. *State v. Pembaur*, 9 Ohio St.3d 136, 459 N. E. 2d 217 (1984), cert. denied, 467 U. S. 1219 (1984). The supreme court held that the state law privilege applied only to bad-faith conduct by law enforcement officials, and that, under the circumstances of this case, Pembaur was obliged to acquiesce to the search and seek redress later, in a civil action for damages. 9 Ohio St. 3d, at 138, 459 N. E. 2d, at 219.

On April 20, 1981, Pembaur filed the present action in the United States District Court for the Southern District of Ohio against the city of Cincinnati, the county of Hamilton, the Cincinnati Police Chief, the Hamilton County Sheriff, the members of the Hamilton Board of County Commissioners (in their official capacities only), Assistant Prosecutor Whalen,

reversed twice by 2 different panels of the appeals court for the 1. district

① 2/18/1981 No. C-790380
 ② 11/3/1982 No. C-790380
 judges of the 8th appellate district sitting by assignment.

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