



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

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 23, 1986

From: Justice Brennan

Circulated: _____
Re-circulated: FEB 19 1986

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

Dear Bill:

Please join me.

Sincerely,

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
[January —, 1986]

Justice Brennan
cc: The Conference

JUSTICE BRENNAN delivered the opinion of the Court.
Howell v. New York City Dept. of Social Services, 426 U. S. 658 (1975), held 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.

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 Lois, 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

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JUSTICE MARSHALL
SUPREME COURT, U.S.
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