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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1985

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 83-1919 Oklahoma City v. Tuttle

Three cases were held for Oklahoma City v. Tuttle:

(3) Pembaur v. City of Cincinnati, et al, no. 84-1160. Petitioner, a doctor operating a medical clinic, was under investigation by respondent county for alleged welfare fraud. Two deputy sheriffs arrived at the clinic, without warrants, to execute capiases to bring two of petitioner's employees before a grand jury. When petitioner refused to allow the deputies to enter the deputies called the county prosecutor, who, through a subordinate, told the deputies to "go in and get them." This they did, with the aid of a fire axe.

Petitioner sued various individuals and the county under §1983, alleging a violation of his Fourth Amendment rights. The DC ruled in favor of the county on the ground that the deprivation was not pursuant to official policy. The CA6 affirmed. The court noted that the sheriff and the prosecutor, who authorized the entry, were public officials who could establish county policy under certain circumstances. However, the CA6 noted that in this case petitioner "has failed to establish ... anything more than that, on this one occasion, the Prosecutor and the Sheriff decided to force entry into his office. ... That single, discrete decision is insufficient, by itself, to establish

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that the Prosecutor, the Sheriff, or both were implementing a governmental policy." (Emphasis in original.)

Once again, the principal issues in this case do not involve the "inadequate training" scenario of Tuttle, but instead center on identifying when a particular official can be said to have set municipal policy. I think the CA6's decision is consistent with Bennett on that score; Bennett requires proof that the county governing body delegated authority to establish a certain course of action before the political subdivision can be held liable for the official's acts. To the extent that this is a "single incident" case, I think the CA6's analysis is consistent with the plurality opinion in Tuttle. That opinion establishes that a single incident can be enough to justify municipal liability if there is also proof of an "existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker." The CA6 merely held that a single action by someone who might be a municipal policymaker does not establish that he was guided by a "policy" intended to apply in a certain class of situations. There was no indication that the county governing body had decided to break doors down to execute capiases under these or any other circumstances, nor was there any indication that the prosecutor or sheriff were authorized to adopt such a policy. Because I find the CA6 opinion consistent with Tuttle, and because I regard it as consistent with Bennett and the evolving law on identifying a muncipal policy, I will vote to deny.

Sincerely,

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