

HAB

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 1, 1988

Re: 86-1088 City of Canton v. Harris

Hold memo for 86-772 City of St. Louis v. Praprotnik

MEMORANDUM TO THE CONFERENCE:

In this case, respondent brought a \$1983 action for damages that she alleged were the result of the unreasonable denial of medical care while she was incarcerated at petitioner's city jail. A jury found petitioner liable. In its motion for j.n.o.v., petitioner stated: "There was no evidence of a custom, policy, or practice on the part of the City of Canton that it denies medical treatment to prisoners of its jail." Cert. Pet. App. 13a. Relying on circuit precedent, the district court denied the motion: "A municipality may be found liable by a jury when it permits decisions concerning the medical treatment of prisoners to be rendered by supervisors exercising only their common sense." Id., at 16a (citation omitted).

CA6 reversed and remanded for a new trial because the jury instructions would have allowed the jury to impose liability merely because a supervisory police officer participated in a decision that violated respondent's rights. On the "inadequate training" theory, however, CA6 held that the evidence "raised a valid jury issue of municipal liability . . . for grossly negligent failure to train." Id., at 6a.

This case raises the same issue on which we granted cert in City of Springfield v. Kibbe, writ dismissed as improvidently granted (Feb. 25 1987). Respondent's brief in opposition to certiorari does not contend that petitioner failed to preserve the issue on which cert is sought. Oklahoma City v. Tuttle, 471 U.S. 808, 815-816 (1985), indicates that we should therefore be free to assume that the issue was properly preserved. I recommend that we GRANT the petition in order to reach the issue we were unable to reach in Kibbe.

Sincerely,

Sandra

and the issue is?