

Tues

Jett v. Dallas Indep. School District;
Dallas Indep. School District v. Jett

Nos. 87-2084; 88-214
Law Clerk: Lisa

Argued: Mar. 28, 1989
For Conference Mar. 31

Vote: No. 87-2084: Reverse

No. 88-214: Affirm

I would reverse in No. 87-2084 because I believe that local governments may be held liable under §1981 on a theory of respondeat superior. I do not accept respondent's argument that §1983 alone creates a cause of action for violations of §1981, and that therefore §1981 must exclude respondeat superior liability because §1983 does so. In Moor v. County of Alameda, we stated explicitly that §3 of the 1866 Act--not §1983--established federal jurisdiction to hear civil actions brought to enforce §1 of that Act, the current §1981. Also, since we are reaffirming Runyan in Patterson, and since the cause of action against private parties acknowledged in Runyan obviously does not arise from §1983, it cannot be that the same limitations on §1983 actions necessarily apply to §1981 actions.

Nor do I accept respondent's argument that we should interpret §1981 just like §1983. Unlike §1983, §1981 does not contain the "subjects or causes to be subjected to" language that we found so important in Monell, nor does its history include the rejection of the Sherman Amendment, also crucial to our analysis in Monell. And, unlike the cause of action created by §1983, the cause of action under §1981 is contractual in nature. Contracts run to the employer, here the school district. The fact that Congress did not intend in §1983 to impute the constitutional

torts of local governments' employees to the governments themselves does not mean that it did not intend to impute the racially motivated contractual actions of employees to those governments.

I would affirm in No. 88-214. After finding that the district judge had incorrectly instructed the jury on the question whether the superintendent of the school district was a policy-making official, CA5 remanded the case to the District Court for reconsideration of that question. Given the posture of this case and the undeveloped state of the facts, a remand seems to be the most appropriate disposition for this aspect of the case.