To: Mr. Justice Blackmun  
From: KE  
Re: No. 75-1914, Monell v. New York City Dept. of Social Services  

Although I expect that you will eventually want to join Justice Brennan's opinion, I recommend that you wait until he responds to the valid criticisms expressed by Justice Stevens in his memorandum of April 10, 1978. I agree completely with Justice Stevens' observation that the opinion goes unnecessarily far in concluding that "... Congress intended to exercise its full power under the Fourteenth Amendment ..." when it enacted what is now §1983. See p. 25 of the opinion. Although I am not exactly sure what it means to say that Congress intended to exercise its "full power" in this context, I assume that this would involve, at least, eliminating judicial and official immunity as well as all limits on vicarious liability.

More generally, I wish Justice Brennan had not gone on at such length, particularly in the discussion of the legislative history in section 1. Much of this could, I think, have been put in the Appendix or eliminated without material loss. However, I doubt that this is the kind of editing that other Justices can or should indulge in.

To reiterate, I think the draft will ultimately prove acceptable but that, as now written, it is too broad.