

To: Mr. Justice Blackmun

4/10/78

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. fhr

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. yo  
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. ✓