

Mr. Justice,
Justice Brennan's clerk informs me that
the problem sentence in f.n. 4 of Tuttle
has been removed. There was a second
draft of the opinion circulated last week,
but for some reason, we did not receive
it. Neither you nor I have a copy in our
files and it is not logged in to our book.
Attached is an extra copy I got from the
Brennan chambers. Thanks, Vicki

Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: MAY 22 1985

SUPREME COURT OF THE UNITED STATES

No. 83-1919

CITY OF OKLAHOMA, PETITIONER *v.* ROSE MARIE
TUTTLE ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

[May —, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,
concurring in the judgment.

Monell v. New York Dept. of Social Services, 436 U. S. 658
(1978), held that municipalities, like other state actors, are
subject to liability under § 1983 when their policies "subject[],
or cause[] to be subjected, any citizen of the United States
. . . to the deprivation of any rights, privileges, or immuni-
ties secured by the Constitution . . ." 42 U. S. C. § 1983. I
agree with the Court that today we must take a "small but
necessary step," *ante*, at —, toward defining the full con-
tours of municipal liability pursuant to § 1983.¹ However,
because I believe that the Court's opinion needlessly compli-
cates this task and in the process unsettles more than it clari-
fies, I write separately to suggest a simpler explanation of
our result.

I

Given the result in this case, in which a jury verdict in
favor of the respondent is overturned, it is useful to keep in

¹ See *Monell v. Department of Social Services*, 436 U. S. 658, 695 (1978).
Since *Monell*, of course, the contours of municipal liability have become
substantially clearer. See, e. g., *Newport v. Fact Concerts, Inc.*, 453
U. S. 247 (1981) (punitive damages not permitted); *Owen v. City of In-
dependence*, 445 U. S. 622 (1980) (qualified immunity not available to
municipalities).