

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 26, 1978

Re: No. 75-1914 - Monell v. New York  
City Dept. of Social Services

Dear Bill,

Your letter of April 25 convinces me that our differences are deeper than I had been willing to acknowledge, even to myself. In sum, I think I take a much more restrictive view of what we should decide or even discuss in this case than do you.

Specifically, I would decide only that, for the basic reasons discussed in Part I of your opinion, it now appears that the Court was mistaken in Monroe v. Pape, in holding that municipal corporations can never be within the ambit of §1983. I would hold that a municipal corporation is within its ambit in an action at law or suit in equity, when, through the affirmative, deliberate, knowing official action of its governing body, it is alleged to have deprived any person of any rights, privileges, or immunities secured by the Constitution or federal law. That, as I understand it, is the scope of the question presented by this case.

I would not imply, even by way of discussion that leaves the matter open, that a municipal corporation could ever be liable under §1983 for indifference, inaction, or through the actions of its agents when not carrying out affirmatively authorized municipal policy. I would not get into a

4/27/78  
While I agree that the last seven lines in n. 55, n. 57 and n. 60 could be omitted, WJB has indicated that he would make clear that the Court reserves decision on these points. I am not troubled by WJB's use of "fault" which in context refers to official policy and

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discussion of the law of respondeat superior or the law of torts. I would certainly not make use of the word "fault" which in the law of many states and in admiralty law is no more than a loose synonym for negligence.

It seems to me that, in view of the very thorough and exhaustive opinion you have written, it would be quite unfair of me to keep asking you to chip away at it -- a process that might lead ultimately to the distortion of your views without the real satisfaction of mine. Accordingly, I think the true interest of each of us would be better served if I filed a brief statement saying I do not join Part II of your opinion.

Sincerely yours,

P.S.  
1.5.

P. S. -- I have just read John's note, and it may be that he has said more briefly what I have tried to say above.

Mr. Justice Brennan

Copies to the Conference

Mr. Justice Brennan

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It seems clear from context that the Court is referring to government policies, not negligence.  
(See pp 33-34).

official authorization. The "fault" principle ~~emerges~~ emerges from a careful reading of the legislative history. I am somewhat perplexed, however, by PS willingness to join an opinion overruling Monroe without, at the same time, joining the respondent superior discussion. I do not recommend that you follow suit.

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Mr. Justice Brennan  
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