

1. Rely on leg. hist of 1983 - 12

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

2. No "tradition of immunity for municipal corps" - 15

3. Liable for breach of CTT - ~~16~~ 16

4. At time 1983 was adopted, no "good faith" immunity - 17

From: Mr. Justice Brennan

Circulated: MAR 27 1980

5. Secondary authorities seem to support WJB - 17
6. No mention of "good faith" immunity in the "hundreds

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 78-1779

7. Thayer - 19

George D. Owen, Petitioner,

8. Refer to absence of any reference to immunity - 20
City of Independence, Missouri, et al.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

9. Recognize "two doctrines" March -, 1980]

that afforded "some protection from suit" - 21

But WJB says

there are

irrelevant - 21

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Monell v. New York City Dept. of Social Services, 436 U. S.

658 (1978), overruled Monroe v. Pape, 365 U. S. 167 (1961),

insofar as Monroe held that local governments were not

among the "persons" to whom 42 U. S. C. § 1983 applies and

were therefore wholly immune from suit under the statute.¹

MONELL reserved decision, however, on the question whether

local governments, although not entitled to an absolute im-

munity, should be afforded some form of official immunity

in § 1983 suits. 436 U. S., at 701. In this action brought

by petitioner in the District Court for the Western District

of Missouri, the Court of Appeals for the Eighth Circuit held

that the independent city of Independence, Mo., "is entitled to

qualified immunity from liability" based on the good faith

of its officials: "We extend the limited immunity the district

court applied to the individual defendants to cover the City

10. An "avert

fourth head

for immunity

- that is

"necessarily

multiplied" - 22

11. Rely on Professor

- who says

"immunity" existed for "well over century" - 23

12. David - see

p 24 for most

13. Answer is "compelled" by "legislative purpose" (only

discovered in 1978 - over 100 yrs after 1983) & by

"public policy" (anybody's guess - or nothing in

custom; or usage, of any State or Territory, subjects, or causes to be

subjected to the jurisdiction thereof to the deprivation of any rights, privileges, or immu-

nities secured by the Constitution and laws, shall be liable to the party

injured in an action at law, suit in equity, or other proper proceeding for

redress."

discovered in 1978 - over 100 yrs after 1983) & by

"public policy" (anybody's guess - or nothing in

leg history or any subsequent action of Congress

indicator that "public policy" was perceived until today - 27

(because there was absolute immunity - at least for actions taken in governmental capacity - as in this case

David - Use this

cite

I understand it correctly

(only

27