Astic Changes Throughout

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Stevens
Justice Scalia
Justice Kennedy

From: **Justice O'Connor**

Circulated: _____

Recirculated: MAR 1 1988

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 86–772

CITY OF ST. LOUIS, PETITIONER *v.*
JAMES H. PRAPROTNIK

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

[March ——, 1988]

JUSTICE O'CONNOR announced the judgment of the Court and delivered an opinion, in which CHIEF JUSTICE REHNQUIST, JUSTICE WHITE, and JUSTICE SCALIA join.

This case calls upon us to define the proper legal standard for determining when isolated decisions by municipal officials or employees may expose the municipality itself to liability under 42 U. S. C. § 1983.

I

The principal facts are not in dispute. Respondent James H. Praprotnik is an architect who began working for petitioner city of St. Louis in 1968. For several years, respondent consistently received favorable evaluations of his job performance, uncommonly quick promotions, and significant increases in salary. By 1980, he was serving in a management-level city planning position at petitioner's Community Development Agency (CDA).

The Director of CDA, Donald Spaid, had instituted a requirement that the agency's professional employees, including architects, obtain advance approval before taking on private clients. Respondent and other CDA employees objected to the requirement. In April 1980, respondent was suspended for 15 days by CDA's Director of Urban Design, Charles Kindleberger, for having accepted outside employment without prior approval. Respondent appealed to the city's Civil Service Commission, a body charged with review-

ing employee grievances. Finding the penalty too harsh, the Commission reversed the suspension, awarded respondent back pay, and directed that he be reprimanded for having failed to secure a clear understanding of the rule.

The Commission's decision was not well received by respondent's supervisors at CDA. Kindleberger later testified that he believed respondent had lied to the Commission, and that Spaid was angry with respondent.

Respondent's next two annual job performance evaluations were markedly less favorable than those in previous years. In discussing one of these evaluations with respondent, Kindleberger apparently mentioned his displeasure with respondent's 1980 appeal to the Civil Service Commission. Respondent appealed both evaluations to the Department of Personnel. In each case, the Department ordered partial relief and was upheld by the city's Director of Personnel or the Civil Service Commission.

In April 1981, a new mayor came into office, and Donald Spaid was replaced as Director of CDA by Frank Hamsher. As a result of budget cuts, a number of layoffs and transfers significantly reduced the size of CDA and of the planning section in which respondent worked. Respondent, however, was retained.

In the spring of 1982, a second round of layoffs and transfers occurred at CDA. At that time, the city's Heritage and Urban Design Division (Heritage) was seeking approval to hire someone who was qualified in architecture and urban planning. Hamsher arranged with the Director of Heritage, Henry Jackson, for certain functions to be transferred from CDA to Heritage. This arrangement, which made it possible for Heritage to employ a relatively high-level "city planning manager," was approved by Jackson's supervisor, Thomas Nash. Hamsher then transferred respondent to Heritage to fill this position.

Respondent objected to the transfer, and appealed to the Civil Service Commission. The Commission declined to hear

the appeal because respondent had not suffered a reduction in his pay or grade. Respondent then filed suit in federal district court, alleging that the transfer was unconstitutional. The city was named as a defendant, along with Kindleberger, Hamsher, Jackson (whom respondent deleted from the list before trial), and Deborah Patterson, who had succeeded Hamsher at CDA.

At Heritage, respondent became embroiled in a series of disputes with Jackson and Jackson's successor, Robert Killen. Respondent was dissatisfied with the work he was assigned, which consisted of unchallenging clerical functions far below the level of responsibilities that he had previously enjoyed. At least one adverse personnel decision was taken against respondent, and he obtained partial relief after appealing that decision.

In December 1983, respondent was laid off from Heritage. The lay off was attributed to a lack of funds, and this apparently meant that respondent's supervisors had concluded that they could create two lower-level positions with the funds that were being used to pay respondent's salary. Respondent then amended the complaint in his lawsuit to include a challenge to the layoff. He also appealed to the Civil Service Commission, but proceedings in that forum were postponed because of the pending lawsuit and have never been completed. Tr. Oral Arg. 31–32.

The case went to trial on two theories: (1) that respondent's First Amendment rights had been violated through retaliatory actions taken in response to his appeal of his 1980 suspension; and (2) that respondent's layoff from Heritage was carried out for pretextual reasons in violation of due process. The jury returned special verdicts exonerating each of the three individual defendants, but finding the city liable under both theories. Judgment was entered on the verdicts, and the city appealed.

A panel of the Court of Appeals for the Eighth Circuit found that the due process claim had been submitted to the

jury on an erroneous legal theory and vacated that portion of the judgment. With one judge dissenting, however, the panel affirmed the verdict holding the city liable for violating respondent's First Amendment rights. 798 F. 2d 1168 (1986). Only the second of these holdings is challenged here.

The Court of Appeals found that the jury had implicitly determined that respondent's layoff from Heritage was brought about by an unconstitutional city policy. *Id.*, at 1173. Applying a test under which a "policymaker" is one whose employment decisions are "final" in the sense that they are not subjected to *de novo* review by higher-ranking officials, the Court of Appeals concluded that the city could be held liable for adverse personnel decisions taken by respondent's supervisors. *Id.*, at 1173–1175. In response to petitioner's contention that the city's personnel policies are actually set by the Civil Service Commission, the Court of Appeals concluded that the scope of review before that body was too "highly circumscribed" to allow it fairly to be said that the Commission, rather than the officials who initiated the actions leading to respondent's injury, were the "final authority" responsible for setting city policy. *Id.*, at 1175.

Turning to the question of whether a rational jury could have concluded that respondent had been injured by an unconstitutional policy, the Court of Appeals found that respondent's transfer from CDA to Heritage had been "orchestrated" by Hamsher, that the transfer had amounted to a "constructive discharge," and that the injury had reached fruition when respondent was eventually laid off by Nash and Killen. *Id.*, at 1175–1176, and n. 8. The court held that the jury's verdict exonerating Hamsher and the other individual defendants could be reconciled with a finding of liability against the city because "the named defendants were not the supervisors directly causing the lay off, when the actual damages arose." *Id.*, at 1173, n. 3. Cf. *Los Angeles* v. *Heller*, 475 U. S. 796 (1986).

The dissenting judge relied on our decision in *Pembaur* v. *Cincinnati*, 475 U. S. 469 (1986). He found that the power to set employment policy for petitioner city of St. Louis lay with the mayor and aldermen, who were authorized to enact ordinances, and with the Civil Service Commission, whose function was to hear appeals from city employees who believed that their rights under the city's Charter, or under applicable rules and ordinances, had not been properly respected. 798 F. 2d, at 1180. The dissent concluded that respondent had submitted no evidence proving that the mayor and aldermen, or the Commission, had established a policy of retaliating against employees for appealing from adverse personnel decisions. *Id.*, at 1179–1181. The dissenting judge also concluded that, even if there were such a policy, the record evidence would not support a finding that respondent was in fact transferred or laid off in retaliation for the 1980 appeal from his suspension. *Id.*, at 1181–1182.

We granted certiorari, 479 U. S. —— (1987), and we now reverse.

II

We begin by addressing a threshold procedural issue. The second question presented in the petition for certiorari reads as follows:

> "Whether the failure of a local government to establish an appellate procedure for the review of officials' decisions which does not defer in substantial part to the original decisionmaker's decision constitutes a delegation of authority to establish final government policy such that liability may be imposed on the local government on the basis of the decisionmaker's act alone, when the act is neither taken pursuant to a rule of general applicability nor is a decision of specific application adopted as the result of a formal process?" Pet. for Cert. *i*.

Although this question was manifestly framed in light of the holding of the Court of Appeals, respondent argues that

petitioner failed to preserve the question through a timely objection to the jury instructions under Federal Rule of Civil Procedure 51. Arguing that both parties treated the identification of municipal "policymakers" as a question of fact at trial, respondent emphasizes that the jury was given the following instruction, which was offered by the city itself:

> "As a general principle, a municipality is not liable under 42 U. S. C. 1983 for the actions of its employees. However, a municipality may be held liable under 42 U. S. C. 1983 if the allegedly unconstitutional act was committed by an official high enough in the government so that his or her actions can be said to represent a government decision." App. 113.

Relying on *Oklahoma City* v. *Tuttle*, 471 U. S. 808 (1985), and *Springfield* v. *Kibbe*, 480 U. S. —— (1987), respondent contends that the jury instructions should be reviewed only for plain error, and that the jury's verdict should be tested only for sufficiency of the evidence. Declining to defend the legal standard adopted by the Court of Appeals, respondent vigorously insists that the judgment should be affirmed on the basis of the jury's verdict and petitioner's alleged failure to comply with Rule 51.

Petitioner argues that it preserved the legal issues presented by its petition for certiorari in at least two ways. First, it filed a pretrial motion for summary judgment, or alternatively for judgment on the pleadings. In support of that motion, petitioner argued that respondent had failed to allege the existence of any impermissible municipal policy or of any facts that would indicate that such a policy existed. Second, petitioner filed a motion for directed verdict at the close of respondent's case, renewed that motion at the close of all the evidence, and eventually filed a motion for judgment notwithstanding the verdict.

Respondent's arguments do not bring our jurisdiction into question, and we must not lose sight of the fact, stressed in *Tuttle*, that the "decision to grant certiorari represents a

part to give lower courts and litigants a fairer chance to craft jury instructions that will not require scrutiny on appellate review.

III

A

Section 1 of the Ku Klux Klan Act of 1871, Rev. Stat. § 1979, as amended, 42 U. S. C. § 1983, provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities 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. . . ."

Ten years ago, this Court held that municipalities and other bodies of local government are "persons" within the meaning of this statute. Such a body may therefore be sued directly if it is alleged to have caused a constitutional tort through "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658, 690 (1978). The Court pointed out that § 1983 also authorizes suit "for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." *Id.*, at 690–691. At the same time, the Court rejected the use of the doctrine of *respondeat superior* and concluded that municipalities could be held liable only when an injury was inflicted by a government's "lawmakers or by those whose edicts or acts may fairly be said to represent official policy." *Id.*, at 694.

Monell's rejection of *respondeat superior*, and its insistence that local governments could be held liable only for the results of unconstitutional governmental "policies," arose

from the language and history of § 1983. For our purposes here, the crucial terms of the statute are those that provide for liability when a government "subjects [a person], or causes [that person] to be subjected," to a deprivation of constitutional rights. Aware that governmental bodies can act only through natural persons, the Court concluded that these governments should be held responsible when, and only when, their official policies cause their employees to violate another person's constitutional rights. Reading the statute's language in the light of its legislative history, the Court found that vicarious liability would be incompatible with the causation requirement set out on the face of § 1983. See *id.*, at 691. That conclusion, like decisions that have widened the scope of § 1983 by recognizing constitutional rights that were unheard of in 1871, has been repeatedly reaffirmed. See, *e. g.*, *Owen* v. *City of Independence*, 445 U. S. 622, 633, 655, n. 39 (1980); *Polk County* v. *Dodson*, 454 U. S. 312, 325 (1981); *Tuttle*, 471 U. S., at 818, and n. 5 (plurality opinion); *id.*, at 828 (BRENNAN, J., concurring in part and concurring in judgment); *Pembaur* v. *Cincinnati*, 475 U. S., at 478–480, and nn. 7–8. Cf. *Newport* v. *Fact Concerts, Inc.*, *supra*, at 259 ("[B]ecause the 1871 Act was designed to expose state and local officials to a new form of liability, it would defeat the promise of the statute to recognize any preexisting immunity without determining both the policies that it serves and its compatibility with the purposes of § 1983").

In *Monell* itself, it was undisputed that there had been an official policy requiring city employees to take actions that were unconstitutional under this Court's decisions. Without attempting to draw the line between actions taken pursuant to official policy and the independent actions of employees and agents, the *Monell* Court left the "full contours" of municipal liability under § 1983 to be developed further on "another day." 436 U. S., at 695.

In the years since *Monell* was decided, the Court has considered several cases involving isolated acts by government

officials and employees. We have assumed that an unconstitutional governmental policy could be inferred from a single decision taken by the highest officials responsible for setting policy in that area of the government's business. See, *e. g.*, *Owen* v. *City of Independence*, *supra*; *Newport* v. *Fact Concerts, Inc.*, *supra*. Cf. *Pembaur*, *supra*, at 480. At the other end of the spectrum, we have held that an unjustified shooting by a police officer cannot, without more, be thought to result from official policy. *Tuttle*, 471 U. S., at 821 (plurality opinion); *id.*, at 830–831, and n. 5 (BRENNAN, J., concurring in part and concurring in judgment). Cf. *Kibbe*, 480 U. S., at —— (dissenting opinion).

Two terms ago, in *Pembaur*, *supra*, we undertook to define more precisely when a decision on a single occasion may be enough to establish an unconstitutional municipal policy. Although the Court was unable to settle on a general formulation, JUSTICE BRENNAN's plurality opinion articulated several guiding principles. First, a majority of the Court agreed that municipalities may be held liable under § 1983 only for acts for which the municipality itself is actually responsible, "that is, acts which the municipality has officially sanctioned or ordered." 475 U. S., at 480. Second, only those municipal officials who have "final policymaking authority" may by their actions subject the government to § 1983 liability. *Id.*, at 483. Third, whether a particular official has "final policymaking authority" is a question of *state law*. *Ibid.* Fourth, the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in *that area* of the city's business. *Id.*, at 482–483, and n. 12.

The Courts of Appeals have already diverged in their interpretations of these principles. Compare, for example, *Williams* v. *Butler*, 802 F. 2d 296, 299–302 (CA8 1986) (en banc), cert. pending *sub nom. City of Little Rock* v. *Williams*, No. 86–1049, with *Jett* v. *Dallas Independent School Dist.*, 798 F. 2d 748, 759–760 (CA5 1986) (dictum). Today,

we set out again to clarify the issue that we last addressed in *Pembaur*.

B

We begin by reiterating that the identification of policymaking officials is a question of state law. "Authority to make municipal policy may be granted directly by a legislative enactment or may be delegated by an official who possesses such authority, and of course, whether an official had final policymaking authority is a question of state law." *Pembaur* v. *Cincinnati*, 475 U. S., at 483 (plurality opinion).[1] Thus the identification of policymaking officials is not a question of federal law and it is not a question of fact in the usual sense. The States have extremely wide latitude in determining the form that local government takes, and local preferences have led to a profusion of distinct forms. Among the many kinds of municipal corporations, political subdivisions, and special districts of all sorts, one may expect to find a rich variety of ways in which the power of government is distributed among a host of different officials and official bodies. See generally C. Rhyne, The Law of Local Government Operations §§ 1.3–1.7 (1980). Without attempting to canvass the numberless factual scenarios that may come to light in litigation, we can be confident that state law (which may include valid local ordinances and regulations) will al-

[1] Unlike JUSTICE BRENNAN, we would not replace this standard with a new approach in which state law becomes merely "an appropriate starting point" for an "assessment of a municipality's actual power structure." *Post*, at ——. Municipalities cannot be expected to predict how courts or juries will assess their "actual power structures," and this uncertainty could easily lead to results that would be hard in practice to distinguish from the results of a regime governed by the doctrine of *respondeat superior*. It is one thing to charge a municipality with responsibility for the decisions of officials invested by law, or by a "custom or usage" having the force of law, with policymaking authority. It would be something else, and something inevitably more capricious, to hold a municipality responsible for every decision that is perceived as "final" through the lens of a particular factfinder's evaluation of the city's "actual power structure."

ways direct a court to some official or body that has the responsibility for making law or setting policy in any given area of a local government's business.[2]

We are not, of course, predicting that state law will always speak with perfect clarity. We have no reason to suppose, however, that federal courts will face greater difficulties here than those that they routinely address in other contexts. We are also aware that there will be cases in which policymaking responsibility is shared among more than one official or body. In the case before us, for example, it appears that the mayor and aldermen are authorized to adopt such ordinances relating to personnel administration as are compatible

---

[2] JUSTICE STEVENS, who believes that *Monell* incorrectly rejected the doctrine of *respondeat superior*, suggests a new theory that reflects his perceptions of the congressional purposes underlying § 1983. See *post*, at ——, n. 1. This theory would apparently ignore state law, and distinguish between "high" officials and "low" officials on the basis of an independent evaluation of the extent to which a particular official's actions have "the potential of controlling governmental decisionmaking," or are "perceived as the actions of the city itself." *Post*, at ——. Whether this evaluation would be conducted by judges or juries, we think the legal test is too imprecise to hold much promise of consistent adjudication or principled analysis. We can see no reason, except perhaps a desire to come as close as possible to *respondeat superior* without expressly adopting that doctrine, that could justify introducing such unpredictability into a body of law that is already so difficult.

As JUSTICE STEVENS acknowledges, see *post*, at ——, n. 1, this Court has repeatedly rejected his interpretation of Congress' intent. We have held that Congress intended to hold municipalities responsible under § 1983 only for the execution of official policies and customs, and not for injuries inflicted solely by employees or agents. See, *e. g.*, *Monell*, 436 U. S., at 694; *Pembaur* v. *Cincinnati*, 475 U. S. 469, 478–480 (1986). Like the *Pembaur* plurality, we think it is self-evident that official policies can only be adopted by those legally charged with doing so. See *supra*, at ——, and n. 1. We are aware of nothing in § 1983 or its legislative history, and JUSTICE STEVENS points to nothing, that would support the notion that unauthorized acts of subordinate employees *are* official policies because they may have the "potential" to become official policies or may be "perceived as" official policies. Accordingly, we conclude that JUSTICE STEVENS' proposal is without a basis in the law.

with the City Charter. See St. Louis City Charter, art. XVIII, § 7(b), App. 62–63. The Civil Service Commission, for its part, is required to "prescribe . . . rules for the administration and enforcement of the provisions of this article, and of any ordinance adopted in pursuance thereof, and not inconsistent therewith." § 7(a), App. 62. Assuming that applicable law does not make the decisions of the Commission reviewable by the mayor and aldermen, or vice versa, one would have to conclude that policy decisions made either by the mayor and aldermen or by the Commission would be attributable to the city itself. In any event, however, a federal court would not be justified in assuming that municipal policymaking authority lies somewhere other than where the applicable law purports to put it. And certainly there can be no justification for giving a jury the discretion to determine which officials are high enough in the government that their actions can be said to represent a decision of the government itself.

As the plurality in *Pembaur* recognized, special difficulties can arise when it is contended that a municipal policymaker has delegated his policymaking authority to another official. 475 U. S., at 482–483, and n. 12. If the mere exercise of discretion by an employee could give rise to a constitutional violation, the result would be indistinguishable from *respondeat superior* liability. If, however, a city's lawful policymakers could insulate the government from liability simply by delegating their policymaking authority to others, § 1983 could not serve its intended purpose. It may not be possible to draw an elegant line that will resolve this conundrum, but certain principles should provide useful guidance.

First, whatever analysis is used to identify municipal policymakers, egregious attempts by local government to insulate themselves from liability for unconstitutional policies are precluded by a separate doctrine. Relying on the language of § 1983, the Court has long recognized that a plaintiff may be able to prove the existence of a widespread practice that,

although not authorized by written law or express municipal policy, is "so permanent and well settled as to constitute a 'custom or usage' with the force of law." *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 167–168 (1970). That principle, which has not been affected by *Monell* or subsequent cases, ensures that most deliberate municipal evasions of the Constitution will be sharply limited.

Second, as the *Pembaur* plurality recognized, the authority to make municipal policy is necessarily the authority to make *final* policy. 475 U. S., at 481–484. When an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality. Similarly, when a subordinate's decision is subject to review by the municipality's authorized policymakers, they have retained the authority to measure the official's conduct for conformance with *their* policies. If the authorized policymakers approve a subordinate's decision and the basis for it, their ratification would be chargeable to the municipality because their decision is final.

C

Whatever refinements of these principles may be suggested in the future, we have little difficulty concluding that the Court of Appeals applied an incorrect legal standard in this case. In reaching this conclusion, we do not decide whether the First Amendment forbade the city from retaliating against respondent for having taken advantage of the grievance mechanism in 1980. Nor do we decide whether there was evidence in this record from which a rational jury could conclude either that such retaliation actually occurred or that respondent suffered any compensable injury from whatever retaliatory action may have been taken. Finally, we do not address petitioner's contention that the jury verdict exonerating the individual defendants cannot be reconciled with the verdict against the city. Even assuming that all these issues were properly resolved in respondent's favor,

we would not be able to affirm the decision of the Court of Appeals.

The city cannot be held liable under § 1983 unless respondent proved the existence of an unconstitutional municipal policy. Respondent does not contend that anyone in city government ever promulgated, or even articulated, such a policy. Nor did he attempt to prove that such retaliation was ever directed against anyone other than himself. Respondent contends that the record can be read to establish that his supervisors were angered by his 1980 appeal to the Civil Service Commission; that new supervisors in a new administration chose, for reasons passed on through some informal means, to retaliate against respondent two years later by transferring him to another agency; and that this transfer was part of a scheme that led, another year and a half later, to his lay off. Even if one assumes that all this was true, it says nothing about the actions of those whom the law established as the makers of municipal policy in matters of personnel administration. The mayor and aldermen enacted no ordinance designed to retaliate against respondent or against similarly situated employees. On the contrary, the city established an independent Civil Service Commission and empowered it to review and correct improper personnel actions. Respondent does not deny that his repeated appeals from adverse personnel decisions repeatedly brought him at least partial relief, and the Civil Service Commission never so much as hinted that retaliatory transfers or lay offs were permissible. Respondent points to no evidence indicating that the Commission delegated to anyone its final authority to interpret and enforce the following policy set out in article XVIII of the city's Charter, § 2(a), App. 49:

> "Merit and fitness. All appointments and promotions to positions in the service of the city and all measures for the control and regulation of employment in such positions, and separation therefrom, shall be on the sole basis of merit and fitness . . . ."

The Court of Appeals concluded that "appointing authorities," like Hamsher and Killen, who had the authority to initiate transfers and layoffs, were municipal "policymakers." The court based this conclusion on its findings (1) that the decisions of these employees were not individually reviewed for "substantive propriety" by higher supervisory officials; and (2) that the Civil Service Commission decided appeals from such decisions, if at all, in a circumscribed manner that gave substantial deference to the original decisionmaker. 798 F. 2d, at 1174–1175. We find these propositions insufficient to support the conclusion that Hamsher and Killen were authorized to establish employment policy for the city with respect to transfers and layoffs. To the contrary, the City Charter expressly states that the Civil Service Commission has the power and the duty:

> "To consider and determine any matter involved in the administration and enforcement of this [Civil Service] article and the rules and ordinances adopted in accordance therewith that may be referred to it for decision by the director [of personnel], or on appeal by any appointing authority, employe, or taxpayer of the city, from any act of the director or of any appointing authority. The decision of the commission in all such matters shall be final, subject, however, to any right of action under any law of the state or of the United States." St. Louis City Charter, art. XVIII, § 7(d), App. 63.

This case therefore resembles the hypothetical example in *Pembaur:* "[I]f [city] employment policy was set by the [mayor and aldermen and by the Civil Service Commission], only [those] bod[ies'] decisions would provide a basis for [city] liability. This would be true even if the [mayor and aldermen and the Commission] left the [appointing authorities] discretion to hire and fire employees and [they] exercised that discretion in an unconstitutional manner . . . ." 475 U. S., at 483, n. 12. A majority of the Court of Appeals panel determined that the Civil Service Commission's review

of individual employment actions gave too much deference to the decisions of appointing authorities like Hamsher and Killen. Simply going along with discretionary decisions made by one's subordinates, however, is not a delegation to them of the authority to make policy. It is equally consistent with a presumption that the subordinates are faithfully attempting to comply with the policies that are supposed to guide them. It would be a different matter if a particular decision by a subordinate was cast in the form of a policy statement and expressly approved by the supervising policymaker. It would also be a different matter if a series of decisions by a subordinate official manifested a "custom or usage" of which the supervisor must have been aware. See *supra*, at 13. In both those cases, the supervisor could realistically be deemed to have adopted a policy that happened to have been formulated or initiated by a lower-ranking official. But the mere failure to investigate the basis of a subordinate's discretionary decisions does not amount to a delegation of policymaking authority, especially where (as here) the wrongfulness of the subordinate's decision arises from a retaliatory motive or other unstated rationale. In such circumstances, the purposes of § 1983 would not be served by treating a subordinate employee's decision as if it were a reflection of municipal policy.

JUSTICE BRENNAN's opinion, concurring in the judgment, finds implications in our discussion that we do not think necessary or correct. See *post*, at ——. We nowhere say or imply, for example, that "a municipal charter's precatory admonition against discrimination or any other employment practice not based on merit and fitness effectively insulates the municipality from any liability based on acts inconsistent with that policy." *Post*, at ——, n. 7. Rather, we would respect the decisions, embodied in state and local law, that allocate policymaking authority among particular individuals and bodies. Refusals to carry out stated policies could obviously help to show that a municipality's actual policies were

different from the ones that had been announced. If such a showing were made, we would be confronted with a different case than the one we decide today.

Nor do we believe that we have left a "gaping hole" in § 1983 that needs to be filled with the vague concept of "*de facto* final policymaking authority." *Post*, at ——. Except perhaps as a step towards overruling *Monell* and adopting the doctrine of *respondeat superior*, ad hoc searches for officials possessing such "*de facto*" authority would serve primarily to foster needless unpredictability in the application of § 1983.

IV

We cannot accept either the Court of Appeals' broad definition of municipal policymakers or respondent's suggestion that a jury should be entitled to define for itself which officials' decisions should expose a municipality to liability. Respondent has suggested that the record will support an inference that policymaking authority was in fact delegated to individuals who took retaliatory action against him and who were not exonerated by the jury. Respondent's arguments appear to depend on a legal standard similar to the one suggested in JUSTICE STEVENS' dissenting opinion, *post*, at ——, which we do not accept. Our examination of the record and state law, however, suggests that further review of this case may be warranted in light of the principles we have discussed. That task is best left to the Court of Appeals, which will be free to invite additional briefing and argument if necessary. Accordingly, the decision of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE KENNEDY took no part in the consideration or decision of this case.