To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1919

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

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

[February ——, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

In *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658 (1978), this Court held that municipalities are "persons" subject to damages liability under § 1 of the Ku Klux Klan Act of 1871, 42 U. S. C. § 1983, for violations of that Act visited by municipal officials. The Court noted, however, that municipal liability could not be premised on the mere fact that the municipality employed the offending official. Instead, we held that municipal liability could only be imposed for injuries inflicted pursuant to government "policy or custom." *Id.*, at 694. We noted at that time that we had "no occasion to address . . . the full contours of municipal immunity under § 1983 . . . ," and expressly left such development "to another day." Today we take a small but necessary step toward defining those contours.

I

On October 4, 1980, Officer Julian Rotramel, a member of the Oklahoma City police force, shot and killed Albert Tuttle outside the We'll Do Club, a bar in Oklahoma City. Officer Rotramel, who had been on the force for ten months, had responded to an all points bulletin indicating that there was a robbery in progress at the Club. The bulletin, in turn, was the product of an anonymous telephone call. The caller had reported the robbery in progress, and had described the rob-

ber and reported that the robber had a gun. The parties stipulated at trial that Tuttle had placed the call.

Rotramel was the first officer to reach the bar, and the testimony concerning what happened thereafter is sharply conflicting. Rotramel's version was that when he entered the bar Tuttle walked toward him, and Rotramel grabbed Tuttle's arm and requested that he stay within the bar. Tuttle matched the description contained in the bulletin. Rotramel proceeded to question the barmaid concerning the reported robbery, but while doing so he once again had to restrain Tuttle from leaving, this time by grabbing Tuttle's arm and holding it. The barmaid testified that she told Rotramel that no robbery had occurred. Rotramel testified that while he was questioning the barmaid Tuttle kept bending towards his boots, and attempting to squirm from the officer's grip. Tuttle finally broke away from Rotramel, and, ignoring the officer's commands to "halt," went outside. When Rotramel cleared the threshold to the outside door, he saw Tuttle crouched down on the sidewalk, with his hands in or near his boot. Rotramel again ordered Tuttle to halt, but when Tuttle started to come out of his crouch Rotramel discharged his weapon. Rotramel testified at trial that he believed Tuttle had removed a gun from his boot, and that his life was in danger. Tuttle died from the gunshot wound. When his boot was removed at the hospital prior to surgery, a toy pistol fell out.

Respondent Rose Marie Tuttle is Albert Tuttle's widow, and the administratrix of his estate. She brought suit under § 1983 in the United States District Court, Western District of Oklahoma, against Rotramel and the city, alleging that their actions had deprived Tuttle of certain of his constitutional rights. At trial respondent introduced evidence concerning the facts surrounding the incident, and also adduced testimony from an expert in police training practices. The expert testified that, based upon Rotramel's conduct during

the incident in question and the expert's review of the Oklahoma City police training curriculum, it was his opinion that Rotramel's training was grossly inadequate. Respondent introduced no evidence that Rotramel or any other member of the Oklahoma City police force had been involved in a similar incident.

The case was presented to the jury on the theory that Rotramel's act had deprived Tuttle of life without due process of law, or that he had violated Tuttle's rights by using "excessive force in his apprehension." J. A. 38. With respect to respondent's suit against Rotramel individually, the jury was charged that Rotramel was entitled to qualified immunity to the extent that he had acted in good faith and with a reasonable belief that his actions were lawful.[1] Respondent also sought to hold the city liable under *Monell*, presumably on the theory that a municipal "custom or policy" had led to the constitutional violations. With respect to municipal liability the trial judge instructed the jury:

> "If a police officer denies a person his constitutional rights, the city that employs that officer is not liable for such a denial of the right simply because of the employment relationship. . . . But there are circumstances under which a city is liable for a deprivation of a constitutional right. Where the official policy of the city causes an employee of the city to deprive a person of such rights in the execution of that policy, the city may be liable.
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> "It is the plaintiff's contention that such a policy existed and she relies upon allegations that the city is grossly negligent in training of police officers, in its failure to supervise police officers, and in its failure to re-

[1] This case was tried some three weeks prior to our decision in *Harlow* v. *Fitzgerald*, 457 U. S. 800 (1982), which modified the standard for qualified executive immunity. An executive official is now entitled to immunity unless he violated "clearly established constitutional rights of which a reasonable person would have known." *Id.*, at 818.

view and discipline its officers. The plaintiff has alleged that the failure of the city to adequately supervise, train, review, and discipline the police officers constitutes deliberate indifference to the constitutional rights of the decedent and acquiescence in the probability of serious police misconduct. . . .

. . . . .

"Absent more evidence of supervisory indifference, such as acquiescence in a prior matter of conduct, official policy such as to impose liability under the federal Civil Rights Act cannot ordinarily be inferred from a single incident of illegality such as a first excessive use of force to stop a suspect; *but a single, unusually excessive use of force may be sufficiently out of the ordinary to warrant an inference that it was attributable to inadequate training or supervision amounting to 'deliberate indifference' or 'gross negligence' on the part of the officials in charge.* The city cannot be held liable for simple negligence. Furthermore, the plaintiff must show a causal link between the police misconduct and the adoption of a policy or plan by the defendant municipality." (Emphasis supplied.)

The jury returned a verdict in favor of Rotramel but against the city, and awarded resp $1,500,000 in damages. The city appealed to the Court of Appeals for the Tenth Circuit, arguing, *inter alia*, that the trial court had improperly instructed the jury on the standard for municipal liability. In particular, petitioner claimed it was error to instruct the jury that a municipality could be held liable for a "policy" of "inadequate training" based merely upon evidence of a single incident of unconstitutional activity. The Court of Appeals rejected petr's claims. 728 F. 2d 456 (1984).

Viewing the instructions "as a whole," that court first determined that the trial court properly had instructed the jury that proof of "gross negligence" was required to hold the city liable for inadequate training. The court then addressed pe-

titioner's contention that the trial court nevertheless had erred in instructing the jury that petr could be held liable based on proof of a single unconstitutional act. It distinguished cases indicating that proof of more than a single incident is required, and decided that where, as here, the act "was so plainly and grossly negligent that it spoke out very positively on the issue of lack of training . . .," the "single incident rule is not to be considered as an absolute . . . ." *Id.*, at 460–461. The instruction at issue was therefore "proper." *Id.*, at 459. The court also referred to "independent evidence" of inadequate training, and concluded that the "action, coupled with the clearly inadequate training," were sufficient to justify municipal liability. *Ibid.* We granted certiorari because the Court of Appeals' holding that proof of a single incident of unconstitutional activity by a police officer could suffice to establish municipal liability seemed to conflict with the decisions of other Courts of Appeals. See, *e. g.*, *Languirand* v. *Hayden*, 717 F. 2d 220, 228–230 (CA5 1983); *Wellington* v. *Daniels*, 717 F. 2d 932, 936–937 (CA4 1983). But cf. *Owens* v. *Haas*, 601 F. 2d 1242, 1246–1247 (CA2 1979).[1] We reverse.

II

Before proceeding to the merits, we must address respondent's procedural argument that petitioner failed to object at trial to the "single incident" instruction with sufficient speci-

[1] The actual "question presented" in the petition for certiorari is:

"[W]hether a single isolated incident of the use of excessive force by a police officer establishes an official policy or practice of a municipality sufficient to render the municipality liable for damages under § 1983."

Although much of the petition for certiorari was directed to pointing out the general uncertainties concerning municipal liability for "inadequate training" of its police force, and although respondent's brief in opposition said nothing to dispel the notion that this general question was presented, we confine our holding to the above question. In reaching our conclusion, however, we find it necessary to discuss the many unanswered questions concerning municipal liability that we must assume have an answer in order to properly address this question.

ficity to satisfy Fed. Rule Civ. Proc. 51, and that therefore the question is not preserved for our review. We disagree. Respondent first referred to the requirements of Rule 51 in one sentence of its brief on the merits in this Court, at which time respondent did not even suggest that the "single incident" question was not preserved. The issue was raised again at oral argument, and respondent has filed a supplemental post-argument brief on the question. But respondent's present protests cannot obscure her prior failures. In the Court of Appeals petitioner argued that proof of a single incident of the use of unreasonable force was insufficient to justify municipal liability, and specifically referred to the trial court's single incident instruction highlighted above. The claim was rejected on the merits, and the Court of Appeals' opinion does not even mention the requirements of Rule 51, so it seems clear that respondent did not refer to the Rule below. The petition for certiorari again centered on the single incident issue, but respondent's brief in opposition did not hint that the "questions presented" might not be properly preserved. Respondent's attempt to avoid the question now comes far too late.

We do not mean to give short shrift to the provisions of Rule 51. Indeed, respondent's argument might have prevailed had it been made to the Court of Appeals.[3] But we do not think that judicial economy is served by invoking the Rule at this point, *after* we have granted certiorari and the case has received plenary consideration on the merits. Our decision to grant certiorari represents a commitment of scarce judicial resources with a view to deciding the merits of

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[3] Fed. Rule Civ. Proc. 51 requires counsel objecting to a jury instruction to "stat[e] distinctly the matter to which he objects and the grounds for his objection." Apparently, the only objection to the single incident instruction contained in the record consists of the statement: "we make a second objection, your honor, particularly to the one, the Oklahoma City language, the language in the light of the City of Oklahoma City, which is the single occurrence language."

one or more of the questions presented in the petition. Nonjurisdictional defects of this sort should be brought to our attention *no later* than in respondent's brief in opposition to the petition for certiorari; if not, we consider it within our discretion to deem the defect waived. Here we granted certiorari to review an issue squarely presented to and decided by the Court of Appeals, and we will proceed to decide it. Cf. *On Lee* v. *United States*, 343 U. S. 747, 749–750, n. 3 (1952).

III

Respondent's lawsuit is brought pursuant to 42 U. S. C. § 1983. Although this Court has decided a host of cases under this statute in recent years, it can never hurt to embark on statutory construction with the Act's precise language in mind. The statute states:

> "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. . . ."

By its terms, of course, the statute creates no substantive rights; it merely provides remedies for deprivations of rights established elsewhere. See *Baker* v. *McCollan*, 443 U. S. 137, 140, 144, n. 3 (1979). Here respondent's claim is that her husband was deprived of his life "without due process of law," in violation of the Fourteenth Amendment, or that he was deprived of his right to be free from the use of "excessive force in his apprehension"—presumably a right secured by the Fourth and Fourteenth Amendments.[4] Having estab-

[4] The trial court correctly charged the jury that a federal right—here a constitutional right—had to be violated to establish liability under § 1983. Petitioners did not object to the trial court's description of the rights at

lished a deprivation of a constitutional right, however, respondent still must establish that the city was the "person" who "cause[d] [Tuttle] to be subjected" to the deprivation. *Monell* teaches that the city may only be held accountable if the deprivation was the result of municipal "custom or policy."

In *Monell*, the plaintiffs challenged the defendant's policy of compelling pregnant employees to take unpaid sick leave before such leave was necessary for medical reasons, on the ground that the policy violated the Due Process or Equal Protection Clauses of the Fourteenth Amendment. Since the defendant was a municipal entity, this Court first addressed whether such an entity was a suable "person" as that term is used in § 1983. The Court's analysis focused on § 1983's legislative history, and in particular on the debate surrounding the proposed "Sherman amendment" to the 1871 Ku Klux Klan Act, from which § 1983 is derived. The Sherman amendment would have held municipalities responsible for damage to person or property caused by *private* persons "riotously or tumultuously assembled." Cong. Globe, 42d Cong., 1st Sess., 749 (1871). Congress' refusal to adopt this amendment, and the reasons given, were the basis for this Court's holding in *Monroe* v. *Pape*, 365 U. S. 167, 187–192 (1961), that municipalities were not suable "persons" under

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issue, and we do not pass on whether the jury was correctly charged on this aspect of the case. The facts of this case are, of course, very similar to the facts of *Tennessee* v. *Garner*, —— U. S. —— (1985), in which we recently held that "[w]here the officer reasonably believes that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force." Here the jury's verdict in favor of Rotramel must have been based upon a finding that he acted in "good faith and with a reasonable belief in the legality of his actions." We note that this Court has never held that every instance of use of "unreasonable force" in effecting an arrest constitutes a violation of the Fourth Amendment; nor has this Court held under circumstances such as these that there has been a deprivation of life "without due process of law."

§ 1983; a more extensive analysis of the Act's legislative history led this Court in *Monell* to overrule that part of *Monroe*. The principal objections to the Sherman amendment voiced in the Forty-second Congress were that the section appeared to impose a federal obligation to keep the peace—a requirement the Congressmen thought was of doubtful constitutionality, but which in any event seemed to place the municipalities in the position of insurers for harms suffered within their borders. The *Monell* court found that these concerns, although fatal to the Sherman amendment, were nevertheless consistent with holding a municipality liable "for *its own* violations of the Fourteenth Amendment." *Monell*, 436 U. S., at 683 (emphasis supplied).

Having determined that municipalities were suable "persons," the *Monell* Court went on to discuss the circumstances under which municipal liability could be imposed. The Court's holding that a city could not be held liable under § 1983 based upon theories akin to *respondeat superior* was based in part upon the language of the statute, and in part upon the rejection of the proposed "Sherman amendment" mentioned above. The Court noted that § 1983 only imposes liability for deprivations "cause[d]" by a particular defendant, and that it was hard to find such causation where liability is imposed merely because of an employment relationship. It also considered Congress' rejection of the Sherman amendment to be telling evidence that municipal liability should not be imposed when the municipality was not itself at fault. Given this legislative history, the *Monell* Court held that only deprivations visited pursuant to municipal "custom" or "policy" could lead to municipal liability. This language tracks the language of the statute; it also provides a fault-based analysis for imposing municipal liability.

The *Monell* Court went on to hold that the sick-leave policy at issue was "unquestionably" "the moving force of the constitutional violation found by the District Court," and that it therefore had "no occasion to address . . . what the full con-

tours of municipal liability may be." Subsequent decisions of this Court have added little to the *Monell* Court's formulation, beyond reaffirming that the municipal policy must be "the moving force of the constitutional violation." *Polk Co.* v. *Dodson*, 454 U. S. 312, 326 (1981). Cases construing *Monell* in the Courts of Appeals, however, have served to highlight the full range of questions, and subtle factual distinctions, that arise in administering the "policy" or "custom" standard. See, *e. g.*, *Bennett* v. *City of Slidell*, 728 F. 2d 762 (CA5); *City of Atlanta* v. *Gilmere*, 737 F. 2d 894 (CA11 1984), reheard en banc, January, 1985; *Languirand*, *supra*, 717 F. 2d 220.

With the development of municipal liability under § 1983 in this somewhat sketchy state, we turn to examine the basis upon which respondent seeks to have liability imposed upon the city. Respondent has not claimed that Oklahoma City has a "custom" or "policy" of authorizing its police force to use excessive force in the apprehension of suspected criminals. The Court of Appeals in its opinion commented that Rotramel "admitted at trial that he violated Police Department policy in shooting Mr. Tuttle." Rather, respondent's theory of liability seems to be that the "policy" in question is the city's policy of training and supervising police officers, and that this "policy" resulted in inadequate training, and the constitutional violations alleged. Respondent in her brief says:

> "Respondent offered direct evidence that the shooting was caused by municipal policies. The officer who shot Tuttle testified that city training policies were inadequate and had led to Tuttle's death. The official who was Chief of Police when Tuttle was shot insisted that the shooting was entirely consistent with city policy." Brief for Respondent 13–14.

The District Court apparently accepted this theory of liability, though it charged the jury that the city's "policy makers" could not merely have been "negligent" in establishing

training policies, but that they must have been guilty of "gross negligence" or "deliberate indifference" to the "police misconduct" that they could thus engender.

Respondent then proceeds to argue that the question presented by petitioner—whether a single isolated incident of the use of excessive force by a police officer establishes an official custom or policy of a municipality—is in truth not presented by this record because there was more evidence of an official "policy" of "inadequate training" than might be inferred from the incident giving rise to Tuttle's death. But unfortunately for respondent, the instruction given by the District Court allowed the jury to impose liability on the basis of such a single incident without the benefit of the additional evidence. The trial court stated that the jury could "infer," from "a single, unusually excessive use of force . . . that it was attributable to inadequate training or supervision amounting to 'deliberate indifference' or 'gross negligence' on the part of the officials in charge."

We think this inference unwarranted; first, in its assumption that the act at issue arose from inadequate training, and second, in its further assumption concerning the state of mind of the municipal policymakers. But more importantly, the inference allows a § 1983 plaintiff to establish municipal liability without submitting proof of a single action taken by a municipal policymaker. The foregoing discussion of the origins of *Monell*'s "policy or custom" requirement should make clear that, at the least, that requirement was intended to prevent the imposition of municipal liability under circumstances where no wrong could be ascribed to municipal decisionmakers. Presumably, here the jury could draw the stated inference even in the face of uncontradicted evidence that the municipality scrutinized each police applicant and met the highest training standards imaginable. To impose liability under those circumstances would be to impose it simply because the municipality hired one "bad apple."

The fact that in this case respondent introduced independent evidence of inadequate training makes no difference, because the instruction allowed the jury to impose liability even if it did not believe respondent's expert at all. Nor can we read this charge "as a whole" to avoid the difficulty. There is nothing elsewhere in this charge that would detract from the jury's perception that it could impose liability based solely on this single incident. Indeed, that was the intent of the charge, and that is what the Court of Appeals held in upholding it. The Court of Appeals' references to "independent evidence" in portions of its opinion are thus irrelevant; the general verdict yields no opportunity for determining whether liability was premised on the independent evidence, or solely on the inference sanctioned by the instruction. Cf. *Stromberg* v. *California*, 283 U. S. 359, 367–368 (1931).

Respondent contends that *Monell* suggests the contrary result, because it "expressly provided that an official 'decision' would suffice to establish liability, although a single decision will often have only a single victim." But this very contention illustrates the wide difference between the municipal "policy" at issue in *Monell* and the "policy" alleged here. The "policy" of the New York Department of Social Services that was challenged in *Monell* was a policy that by its terms compelled pregnant employees to take mandatory leaves of absence before such leaves were required for medical reasons; this policy in and of itself violated the constitutional rights of pregnant employees by reason of our decision in *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632 (1974). Obviously, it requires only one application of a policy such as this to satisfy fully *Monell*'s requirement that a municipal corporation be held liable only for constitutional violations resulting from the municipality's official policy.

Here, however, the "policy" that respondent seeks to rely upon is far more nebulous, and a good deal further removed from the constitutional violation, than was the policy in *Monell*. To establish the constitutional violation in *Monell*

no evidence was needed other than a statement of the policy by the municipal corporation, and its exercise; but the type of "policy" upon which respondent relies, and its causal relation to the alleged constitutional violation, are not susceptible to such easy proof. In the first place, the word "policy" generally implies a course of action consciously chosen from among various alternatives;[8] it is therefore difficult in one sense even to accept the submission that someone pursues a "policy" of "inadequate training," unless evidence be adduced which proves that the inadequacies resulted from conscious choice—that is, proof that the policymakers deliberately chose a training program which would prove inadequate. And in the second place, some limitation must be placed on establishing municipal liability through policies that are not themselves unconstitutional, or the test set out in *Monell* will become a dead letter. Obviously, if one retreats far enough from a constitutional violation some municipal "policy" can be identified behind almost any such harm inflicted by a municipal official; for example, Rotramel would never have killed Tuttle if Oklahoma City did not have a "policy" of establishing a police force. But *Monell* must be taken to require proof of a city policy different in kind from this latter example before a claim can be sent to a jury on the theory that a particular violation was "caused" by the municipal "policy." At the very least there must be an affirmative link between the policy and the particular constitutional violation alleged.

Here the instructions allowed the jury to infer a thoroughly nebulous "policy" of "inadequate training" on the part of the municipal corporation from the single incident described earlier in this opinion, and at the same time sanctioned the inference that the "policy" was the cause of the incident. Such an approach provides a means for

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[8] One leading Dictionary, for example, defines "policy" as "a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions." Webster's Seventh New Collegiate Dictionary.

circumventing *Monell*'s limitations altogether. Proof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker. Otherwise the existence of the unconstitutional policy, and its origin, must be separately proved. But where the policy relied upon is not itself unconstitutional, considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality,[6] and the causal connection between the "policy" and the constitutional deprivation.[7] Under the charge upheld here the jury could properly have imposed liability on the city based solely upon proof that it employed a non-policymaking officer who violated the Constitution. The decision of the Court of Appeals is accordingly

Reversed.

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[6] We express no opinion on whether a policy that itself is not unconstitutional, such as the general "inadequate training" alleged here, can ever meet the "policy" requirement of *Monell*. In addition, even assuming that such a "policy" would suffice, it is open to question whether a policymaker's "gross negligence" in establishing police training practices could establish a "policy" that constitutes a "moving force" behind subsequent unconstitutional conduct, or whether a more conscious decision on the part of the policymaker would be required.

[7] In this regard, we cannot condone the loose language in the charge leaving it to the jury to determine whether the alleged inadequate training would likely lead to "police misconduct." The fact that a municipal "policy" might lead to "police misconduct" is hardly sufficient to satisfy *Monell*'s requirement that the particular policy be the "moving force" behind a *constitutional* violation. There must at least be an affirmative link between the training inadequacies alleged, and the particular constitutional violation at issue.