

File

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 24, 1978

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

Dear Bill,

I spent a large part of yesterday carefully reading your circulation of April 21. Although I hope ultimately to be able to join you, the present draft contains several statements that cause me considerable concern. My law clerk, Bob Litt, has talked to Whit Peters about several of these concerns, and this is simply to let you know, without going into all the details, that Bob is in every respect speaking for me.

I give specific emphasis to only two of my concerns, one of which may not have been conveyed by Bob. First, footnote 57 on page 32 seems to me a veritable time bomb, particularly when it is read in the light of the last sentence in the text on page 33. Although we have never decided that there can ever be a §1983 action based on negligence alone, it seems to me that this footnote and sentence of text amount to a virtual invitation to not so ingenious lawyers to sue municipalities upon the ground that the municipalities were at fault with respect to hiring, training, or directing their erring policemen or other agents. Secondly, I could never agree that Estelle v. Gamble, an Eighth Amendment case involving a plaintiff who was imprisoned by the state, can be read as announcing the broad constitutional rule set out in the last part of your footnote 55 on page 30, and incorporated by reference in footnote 60 on page 34.

Sincerely yours,

P.S.  
✓

Mr. Justice Brennan

Copies to the Conference