

To: Mr. Justice Blackmun
From: KE
Re: Mr. Justice Powell's concurrence in Monell, No. 75-1914

Justice Powell's opinion, though not of cosmic importance, does serve as a useful summary of the Court's holding in this case. I think you should seriously consider a "join" of it as well as Justice Brennan's majority opinion.

Part I of the opinion offers a synopsis of the reasons that the Court has concluded Monroe v. Pape was incorrect on the municipal immunity issue. This short section is particularly helpful in view of the excessive length of Justice Brennan's corresponding section on §1983's legislative history.

Part II is a statement of Justice Powell's reasons for departing from stare decisis. The only arguably novel point is contained in footnote 6: "We owe somewhat less deference to a decision that was rendered without benefit of a full airing of all the relevant considerations." This is a logical and a valid observation.

Part III simply emphasizes a few of the questions still open for development and resolution in later cases.