

[DRAFT]

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

Dear Bill,

Your letter of April 25 convinces me that our differences are deeper than I had been willing to acknowledge, even to myself.

In sum, I think I take a much more restrictive view of what we should decide or even discuss in this case/ than do you.

Specifically, I would decide only that, for the basic reasons discussed in Part I of your opinion, it now appears that the Court was mistaken in Monroe v. Pape, in holding that municipal corporations ^(can) ^(be) ~~are~~ never within the ambit of §1983.

I would hold that a municipal corporation is within its ambit in an action at law or suit in equity, when, through the affirmative, deliberate, knowing official action of its governing body, it is

alleged to have deprived any person of any rights, privileges, or immunities secured by the Constitution or federal law. That, as I understand it, is the scope of the question presented by this case.

I would not imply, even by way of discussion ^{that leaves} ~~leaving~~ the matter open, that a municipal corporation could ever be liable under §1983 for indifference, inaction, or through the actions of its agents when not carrying out affirmatively authorized municipal policy. I would not get into a discussion of the law of respondeat superior or the law of torts. I would certainly not make use of the word "fault" which in the tort law of many states and in admiralty law is no more than a loose synonym for negligence.

It seems to me that, in view of the very thorough and exhaustive opinion you have written, it would be quite unfair of me to keep asking you to chip away at it -- a process that might lead ultimately to the distortion of your views without the real satisfaction of mine. Accordingly, ~~rather than compound your problems in trying to reconcile what may ultimately be irrecon-~~

~~cilable~~ *(in the language of Part II of your opinion)* I think the true interest of each of us would be better served if I ^{filed} wrote a brief ~~expressing my separate concurring~~ ^{statement saying I do} opinion ~~concurring in the judgment.~~ *not join that Part II of your opinion*

Sincerely yours,

P. S. -- I have just read John's note, and it may be that he has said more briefly what I have tried to say above.

Mr. Justice Brennan

Copies to the Conference