But at other points JUSTICE REHNQUIST's draft suggests that even when policymakers are involved, an "existing" policy rather than an isolated act is required for liablility to be imposed. The final paragraph of the proposed draft now circulating states:

> Proof of a single incident of unconstitutional activity is not sufficient to impose liablity 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.

Because the form that Tuttle takes will bear on the disposition of this case, I recommend calling for a response, then holding for Tuttle.

There is no response.

March 11, 1985 Campbell Ops in petn

The quotes from J. Rehnquist's draft are the dicta that I have suggested you should not join. This case provides the best example of why the dicta is inappropriate - like Mr Campbell, the lower cts may seize on such words as "existing" to limit the law of municipal liability.

The question when the acts of a high-level official with policy-making authority constitute a policy under Monell is raised in Bennett v. City of Slidell, which is being held for Tuttle. I suggest that this case be held as well, with an eye toward granting either Bennett or this case after Tuttle is decided

CJR / Hold for Tuttle

VB 3/12/85