PRISONERS' RIGHTS

THE STATE-OF-MIND REQUIREMENT FOR PRISONERS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT: DANIELS v. WILLIAMS AND DAVIDSON v. CANNON

"[N]o body politic calling itself humane should assert that the custodians of the involuntarily committed may be relieved of the duty to take reasonable care to prevent harm from befalling their charges."*

INTRODUCTION

In 1982, almost half a million men and women were incarcerated in our nation's prisons. From within the walls of these prisons, inmates filed over 16,922 causes of action comprising over seven percent of the federal judicial civil workload. Many of these cases were made possible because prisoners retain some inalienable rights,* for the Supreme Court has "repeatedly held that prisons are not beyond the reach of the Constitution." The fourteenth amendment of the United States Constitution, which guarantees that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law," has specifically been recognized as protecting prisoners' rights. How the fourteenth amendment is implicated has been the subject of some debate. In particular, the existence of a state-of-mind requirement necessary to invoke the due process clause of the fourteenth amendment has

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3. Estelle v. Gamble, 429 U.S. 97, 102 (1976) (stating that prisoners retain eighth amendment protection from cruel and unusual punishment); Pell v. Procunier, 417 U.S. 817, 822 (1974) (recognizing that prisoners' retention of first amendments free speech rights is not inconsistent with their status as prisoners); Cruz v. Beto, 405 U.S. 319, 322 (1972) (holding that prisoners must be provided reasonable opportunities to exercise their first amendment religious freedom).


5. U.S. CONST. amend. XIV, § 1.


elicited further debate. For the large population of prisoners in the United States, this issue is particularly important.

Two recent decisions by the United States Supreme Court attempt to put the state-of-mind issue to rest. In Daniels v. Williams, the Court held that allowing the negligent acts of prison officials to fall within the scope of the fourteenth amendment would "trivialize" the due process clause. Similarly, in Davidson v. Cannon, the Court held that a prisoner's injury which resulted from a lack of due care on the part of his caretakers did not "approach the sort of abusive government conduct that the Due Process Clause was designed to prevent."

This Note examines the rights and remedies of prisoners in their claims against actions taken by state officials. This Note then explores the state-of-mind requirement necessary to invoke the due process clause of the fourteenth amendment. Finally, this Note discusses the implication of alternative state remedies for causes of action based on a due process violation.

FACTS AND HOLDING

Daniels v. Williams

Roy Daniels was a prisoner in the Richmond city jail on January 23, 1982. On that day, Daniels slipped on a pillow and newspapers, falling and injuring his back and ankle. Daniels alleged that Deputy Sheriff Andrew Williams had negligently left the articles on some stairs, and that Williams' negligence had caused Daniels' injuries.
Daniels brought a federal action against Williams under 42 U.S.C. § 1983 to avoid Williams' sovereign immunity defense in state court.\footnote{21} The district court granted summary judgment for Williams, reasoning that Virginia had provided a meaningful postdeprivation remedy, and holding that Daniels failed to state a procedural due process claim.\footnote{22}

The Fourth Circuit Court of Appeals held that the rights protected by the fourteenth amendment “include the right to be free from ‘unjustified intrusions on personal security.’”\footnote{23} The court stated that “bodily injury resulting from a state officials's negligence


Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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.

\textit{Id.} This Note examines § 1983 only to the extent that § 1983 is used to invoke the due process clause in a prisoner's cause of action. As such, § 1983 and the due process clause may, for purposes of this Note, be viewed as one and the same. Davidson v. O'Lone, 752 F.2d 817, 823 n.3 (3d Cir. 1984), \textit{aff'd sub nom.} Davidson v. Cannon, 106 S. Ct. 668 (1986) (stating that "the questions whether negligent conduct by state officials is a deprivation of Fourteenth Amendment rights and whether it can be redressed by suit under § 1983 appear to be mirror images of each other.").

Under the "hands-off" doctrine, which was prevalent until the mid 1960's, the resolution of prisoner disputes was seen not as a legal, but as an administrative function. \textsc{Advisory Comm'n on Intergov'tal Relations, Jails: Intergov'tal Dimensions on a Local Problem} 144 (1984). The collapse of the "hands-off" doctrine was matched by an increase in the use of 42 U.S.C. § 1983 in prisoner-related judicial actions. \textit{Id.} Under § 1983, a prisoner who has been deprived of a constitutional right may sue the state official who has violated the prisoner's right. \textit{Id.} Since 1961, the courts have liberally interpreted § 1983 in order to facilitate prisoners' claims against their caretakers. \textit{Id.} at 144-45.

Under § 1983, prison officials "need not be personally present or have personally violated . . . an inmate['s] rights to be held liable." \textit{Id.} (quoting Swanson, \textit{Is Your Jail a Liability Trap?}, \textsc{Georgia County Gov't Magazine} 56 (Dec. 1981)). A prisoner may show that a prison official was responsible for the constitutional deprivation by proving an official deficiency, such as negligent supervision. \textit{Id.}

The jurisdictional counterpart to § 1983 is 28 U.S.C. § 1343 (3) (1982). Section 1343 provides that federal district courts shall have original jurisdiction over certain categories of civil actions, including § 1983 actions, without regard to the amount in controversy. \textit{Id.} This has led the United States Supreme Court to remark that suits involving insignificant monetary losses are being brought in federal court. Parratt v. Taylor, 451 U.S. 527, 529 (1981). However, if a "frivolous" or "malicious" suit is brought, the federal court may dismiss the suit under 28 U.S.C. § 1915(d) (1982). Section 1915(d) applies only to actions brought "in forma pauperis." \textit{Id.} §§ 1915(a), (d). In this way, should the courts believe that a prisoner's claim is malicious or frivolous because the monetary remedy is relatively insignificant, the claim may be dismissed.


\footnote{23. \textit{Id.} at 795 (quoting Ingraham v. Wright, 430 U.S. 651, 673 (1977)).}
therefore deprives a person of a liberty interest protected by the fourteenth amendment.\textsuperscript{24} The Fourth Circuit went on to hold, however, that even if Williams could assert a valid immunity defense in state court, Daniels would not be deprived of a meaningful opportunity to be heard because of the availability of a remedy under Virginia's common law tort action.\textsuperscript{25} Accordingly, the circuit court affirmed the district court's decision, concluding that Daniels had not been deprived of liberty without due process of law.\textsuperscript{26}

The Fourth Circuit, sitting en banc, granted a rehearing and held that Daniels' action failed for two distinct reasons.\textsuperscript{27} First, the majority held that the negligent injury to Daniels' person did not come within the scope of a liberty interest under the due process clause.\textsuperscript{28} Second, the court held that even if Daniels' injury had implicated a valid liberty interest, he would not have been deprived of that interest without due process of law because of the existence of another remedy in Virginia state court.\textsuperscript{29}

Due to the lower courts' varied approaches to the problem, and because of a perceived lack of guidance from the Supreme Court, certiorari was granted.\textsuperscript{30} In deciding the case, the Court held that the Constitution should apply only to the important concerns of the state, and should not be involved with supplanting tort law or "laying down rules of conduct to regulate liability for injuries that attend living together in society."\textsuperscript{31} The majority noted that none of its previous decisions had held that a state's negligent conduct, even though causing injury, could implicate the due process clause.\textsuperscript{32}

Using this reasoning, the Court held that slipping on a pillow, when caused by state negligence, could not implicate the due process clause.\textsuperscript{33} Writing for the majority, Justice Rehnquist stated that "to hold that injury caused by such conduct is a deprivation within the meaning of the fourteenth amendment would trivialize the centuries-old principle of due process of law."\textsuperscript{34}

Justice Rehnquist then addressed the argument that "artful liti-
gants, undeterred by a requirement that they plead more than mere negligence, will often be able to allege sufficient facts to support a claim of intentional deprivation." \(^{35}\) Justice Rehnquist noted that, even if this were true, the law abounds with such "nice" distinctions as negligence and intent. \(^{36}\) Further, Justice Rehnquist maintained that the difference between negligence and intent was "abundantly clear." \(^{37}\)

**DAVIDSON V. CANNON**

On December 17, 1980, Robert Davidson, an inmate at Leesburg State Prison in New Jersey, intervened in a fight between two other inmates. \(^{38}\) One of the inmates involved in the scuffle, McMillian, threatened Davidson. \(^{39}\) Davidson wrote a note intended for Arthur Jones, a prison disciplinary hearing officer, repeating the threat which Davidson had received from McMillian. \(^{40}\)

The note reached the desk of Joseph Cannon, assistant superintendent of the prison. \(^{41}\) The note was then passed from Cannon to corrections sergeant Robert James. \(^{42}\) No further action was taken regarding the contents of the note. \(^{43}\) Two days later, McMillian carried out his threat. \(^{44}\) Using a fork as his weapon, McMillian brutally attacked Davidson, inflicting multiple wounds on Davidson's head and neck. \(^{45}\)

Davidson, naming Cannon and James as defendants, brought suit

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35. *Id.* at 666.
36. *Id.* at 667.
37. *Id.* (citing O. Holmes, *The Common Law* 3 (1923)).
39. *Id.*
40. *Id.* The note read:
   
   When I went back to the unit after seeing you McMillian was on the steps outside the unit. When I was going past him he told me "I'll fuck you up you old mother-fucking fag." Go up to your cell, I be right there.
   
   I ignored this and went to another person's cell and thought about it. Then I figured I should tell you so "if" anything develops you would be aware. I'm quite content to let this matter drop but evidently McMillian isn't.
   
   Thank you, R. Davidson.
41. *Id.* Davidson wrote the note to motivate prison officials to take action as well as to exonerate himself in advance. *Davidson*, 106 S. Ct. at 672.
42. *Id.*
43. *Id.*
44. *Id.* Davidson wrote his note on December 19, 1980, the same day he received the threat. McMillian attacked Davidson on December 21, 1980. *Id.*
45. *Id.* At the time of the appellate court trial, Davidson continued to suffer from pain and other residual effects of the attack. *Davidson*, 752 F.2d at 819.
in the United States District Court for the District of New Jersey. The suit was brought under § 1983, because the New Jersey Tort Claims Act would have provided immunity for the defendants in state court. The district court awarded Davidson compensatory damages after holding that the defendants' negligence had deprived Davidson of a liberty interest. The court held that Davidson was deprived of his liberty interest without due process of law because of the existence of New Jersey's immunity defense.

On appeal, the United States Court of Appeals for the Third Circuit reversed the district court's decision and held for the defendants. The majority acknowledged that the defendants had been negligent, conceding that the attack on Davidson implicated a recognized liberty interest. However, the court maintained that the defendants' negligence had not worked a deprivation of Davidson's liberty interest within the meaning of the due process clause.

The Supreme Court granted certiorari and found that the same principles under which Daniels was decided applied in Davidson. Justice Rehnquist, again speaking for the majority, held that no violation of the due process clause exists when state officials act negligently. The fourteenth amendment was therefore not implicated by Davidson's claim.

Justice Stevens, concurring in both Daniels and Davidson, characterized the deprivation of Davison's liberty interest as well within the scope of the due process clause. Justice Stevens determined

46. Davidson, 752 F.2d at 819-20. Davidson also named Jones and Edward O'Lone, the prison superintendent, as defendants. Id. The district court granted summary judgment for O'Lone, and concluded that Jones had not acted negligently in failing to protect Davidson. Id. at 820.

47. Id. at 819-20. N.J. STAT. ANN. § 59:5-2(b)(4) (West 1982) provides: "Neither a public entity nor a public employee is liable for... any injury caused... a prisoner to any other prisoner."

48. Davidson, 752 F.2d at 820.

49. Id.

50. Id. at 831.

51. Id. at 821-22.


53. Davidson, 752 F.2d at 829 (quoting Rochin v. California, 342 U.S. 165, 172 (1952)).

54. Davidson, 106 S. Ct. at 670.

55. Id.

56. Id.

57. Id. at 680 (Stevens, J., concurring).
that because state action was present and because freedom from bodily harm was a recognized liberty interest, the only question was whether a negligent deprivation of this interest could implicate the due process clause. Justice Stevens wrote:

"Deprivation," it seems to me, identifies, not the actor's state of mind, but the victim's infringement or loss. The harm to a prisoner is the same whether a pillow is left on a stair negligently, recklessly, or intentionally; so to, the harm resulting to a prisoner from an attack is the same whether his request for protection is ignored negligently, recklessly, or deliberately. In each instance, the prisoner is losing—being "deprived" of an aspect of liberty as the result, in part, of a form of state action.

Justice Brennan, dissenting, agreed with the majority that negligent state behavior, even though causing injury, does not constitute a liberty deprivation under the due process clause. Justice Brennan's disagreement with the Davidson majority was on the Court's characterization of the prison officials' actions as negligent. Justice Brennan saw the prison officials' actions as reckless, not negligent. Because Justice Brennan believed that state action that causes injury

58. Id. Justice Stevens began by identifying three different kinds of constitutional protection under the due process clause. Id. at 677 (Stevens, J., concurring). First, the due process clause incorporates provisions of the Bill of Rights. Id. If a state violates the due process clause under this category, a plaintiff may sue in federal court under the Constitution, regardless of any state remedy available to the plaintiff. Id. at 677-78 (Stevens, J., concurring). Second, the due process clause envelops a substantive component known as "substantive due process." Id. at 678 (Stevens, J., concurring). Under substantive due process, "the constitutional violation is complete as soon as the prohibited action is taken." Id. Therefore, a plaintiff may bring suit in federal court claiming a substantive due process violation, regardless of the availability of a state remedy. Id. The third and final category in Justice Stevens' definition of a due process claim is procedural due process. Under a procedural due process claim, a state may legitimately deprive someone of a right. Id. Similarly, the deprivation may stem from a mistake or negligence. Id. at 678-79 (Stevens, J., concurring). Justice Stevens then stated that in a procedural due process claim, the constitutional violation arises from a lack of adequate procedures rather than from the deprivation itself. Id. at 679 (Stevens, J., concurring). Thus, unlike the previous two categories, if a procedural due process claim does not contain a valid objection as to the adequacy of the state remedy, then no due process violation has been established. Id.

Justice Stevens stated that neither Daniels' nor Davidson's claims were due process claims under the Bill of Rights category, or under the substantive due process category. Instead, Daniels and Davidson had claimed that Virginia and New Jersey, respectively, had failed to provide them with adequate postdeprivation remedies. Therefore, both Daniels and Davidson claimed procedural due process violations. Id.

In contrast to Justice Stevens' approach, Justice Blackmun breaks the due process clause into two parts. See infra note 70.

59. Davidson, 106 S. Ct. at 680 (Stevens, J., concurring).
60. Id. at 671 (Brennan, J., dissenting).
61. Id.
62. Id.
due to reckless or deliberate indifference constitutes a deprivation, he asserted that Davidson had been deprived of his liberty interest within the meaning of the due process clause.\textsuperscript{63}

Justice Blackmun, joined by Justice Marshall in dissent, concluded that Davidson's claim fell within the due process clause, regardless of whether New Jersey would have provided immunity for these state officials.\textsuperscript{64} Justice Blackmun began his dissent by outlining Davidson's lack of ability to defend himself in prison.\textsuperscript{65} If attacked, Davidson was forbidden to fight back and was forced to rely solely upon the prison guards for his protection.\textsuperscript{66} When Davidson was threatened by another inmate, prison officials ignored his request for help.\textsuperscript{67}

While Justice Blackmun agreed with the Daniels holding, which indicated that an ordinary slip and fall did not rise to the "dignified level of a constitutional violation," he disagreed with the Davidson holding, which stated that negligence that permits an anticipated attack on a prisoner does not violate the due process clause.\textsuperscript{68} Because the state deprived Davidson of any means of self defense, the state assumed some responsibility to protect Davidson from known dangers.\textsuperscript{69} Justice Blackmun asserted that under these circumstances, Davidson was deprived of liberty within the meaning of the due process clause by the negligence of the prison officials.\textsuperscript{70}

\textsuperscript{63} Id. Justice Brennan would have vacated the judgment and remanded the cases to the court of appeals for a review of the district court's holding that the prison officials' conduct was not reckless. \textit{Id.}

\textsuperscript{64} \textit{Id.} at 676 (Blackmun, J., dissenting).

\textsuperscript{65} \textit{Id.} at 671 (Blackmun, J., dissenting).

\textsuperscript{66} \textit{Id.}

\textsuperscript{67} \textit{Id.}

\textsuperscript{68} \textit{Id.} Justice Blackmun discussed the difference between deliberate action and negligence, stating:

\textquote{It is important not to confuse negligence with the absence of deliberate action. Negligent acts are often deliberate. Respondents Cannon and James did not act inadvertently. They deliberately decided that the threat to Davidson was not serious. Whether conduct is denominated negligent or intentional can be a function of the likelihood that harm will occur. Where occurrence of the harm is substantially certain, the law imputes to the actor an intent to cause it. Where harm is less certain, we may call the actor negligent. In some circumstances, the risk of injury is so high that the government's failure to make efforts to avoid the injury is unacceptable, even if its omission still might be categorized as negligence.} \textit{Id.} at 673 n.2 (Blackmun, J., dissenting) (citations omitted).

\textsuperscript{69} \textit{Id.} at 671 (Blackmun, J., dissenting).

\textsuperscript{70} \textit{Id.} Justice Blackmun then stated that "the acts of the state officials in this case may well have risen to the level of recklessness." \textit{Id.} at 671-72 (Blackmun, J., dissenting). Justice Blackmun noted that the liberty interest to be free from personal injury is well established. \textit{Id.} at 672-73 (Blackmun, J., dissenting). \textit{See infra} notes 101-08 and accompanying text. Justice Blackmun stated that this due process liberty interest specifically protects prisoners from attack by other inmates. Davidson, 106 S. Ct. at 673 (Blackmun, J., dissenting). \textit{See infra} notes 109-20. Justice Blackmun explained
Justice Blackmun acknowledged "that mere negligent activity ordinarily will not amount to an abuse of state power." However, he stated that the majority erred in elevating a practical "rule of thumb to the status of constitutional dogma." Thus, Justice Blackmun disagreed with the Court's view that negligent state action never violates the due process clause.

Arguing in the alternative, Justice Blackmun maintained that even if negligence is insufficient to cause a deprivation under the due process clause, "recklessness must be sufficient." Under the eighth amendment, recklessness or indifference is all that a prisoner need prove to show a violation of the eighth amendment's prohibition of cruel and unusual punishment. Justice Blackmun reasoned that because the due process clause provides broader protection than does the eighth amendment, "a violation of the Due Process Clause certainly should not require a more culpable mental state."

BACKGROUND

PRISONERS' RIGHTS IN FEDERAL COURT

The due process clause of the fifth amendment has been incorporated into the fourteenth amendment of the Constitution. The fifth amendment "was intended to give Americans at least the protection against governmental power that they had enjoyed as Englishmen against the power of the Crown." Under the thirty-ninth article of the Magna Carta, one could not be deprived of personal security "except by the legal judgment of his peers or by the law of the land."

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that due process analysis involves two stages: first, a court must determine whether the individual's interests constitute life, liberty, or property within the meaning of the fourteenth amendment; and second, a court must decide what constitutes due process of law.

Davidson, 106 S. Ct. at 673 (Blackmun, J., dissenting).

71. Davidson, 106 S. Ct. at 673 (Blackmun, J., dissenting).

72. Davidson, 106 S. Ct. at 673 (Blackmun, J., dissenting).

73. Davidson, 106 S. Ct. at 673 (Blackmun, J., dissenting).

74. Davidson, 106 S. Ct. at 673 (Blackmun, J., dissenting).

75. Davidson, 106 S. Ct. at 673 (Blackmun, J., dissenting).

76. See supra notes 132-35 and accompanying text.


78. Id. at 672-73. The article, translated from Latin, provides: "No free man shall be taken, or imprisoned, or disseized, or outlawed, or banished, or in any way destroyed; nor will we pass upon him, nor send upon him, unless by the legal judgment of his peers, or by the law of the land." Shattock, The True Meaning of the Term "Liberty," 4 HARV. L. REV. 365, 372 (1881).

79. Ingraham, 430 U.S. at 673, n.41 (quoting R. PERRY & J. COOPER, SOURCES OF OUR LIBERTIES 17 (1939)).
The fourteenth amendment prohibits state deprivation of life, liberty, or property without due process of law.\(^8\) Nevertheless, for many years the federal courts refused to hear prisoners' complaints under the fourteenth amendment or any other constitutional provision.\(^8\) During this "hands-off" period of judicial history, the courts maintained that prisoners had forfeited their constitutional rights.\(^8\)

Though the United States Supreme Court entertained some cases regarding prisoners' constitutional rights,\(^8\) the Court did not specifically address prisoners' due process liberty interests until its decision in \textit{Wolff v. McDonnell}.\(^8\) \textit{Wolff} signaled the end of the "hands-off" era with the Court's first endorsement of the general principles of prisoners' rights.\(^8\) Specifically, the \textit{Wolff} Court established that prisoners do have definite rights under the fourteenth amendment.\(^8\)

In \textit{Wolff}, prisoners of the Nebraska Penal and Correctional Complex raised three complaints.\(^8\) First, the prisoners claimed that prison regulations violated the due process clause by depriving them of "good-time credit," thereby extending their expected period of confinement, without due process of law.\(^8\) Second, the prisoners argued "that the inmate legal assistance program did not meet constitutional standards."\(^8\) Finally, the prisoners claimed that the prison's practice of inspecting mail to and from prisoners' attorneys violated the first, sixth, and fourteenth amendments.\(^9\)

Justice White, writing for the majority, emphasized that prisoners do indeed maintain constitutional rights, rejecting the Nebraska prison officials' argument that prison procedures constituted "matters of policy raising no constitutional issue."\(^9\) However, the Court reasoned that these rights must be balanced against institutional se-
curity needs, which may at times infringe on prisoners' constitutional rights. The outcome of this compromise spawned what Justice White called "mutual accommodation." Justice White proceeded to apply this idea of mutual accommodation to the prisoners' complaints. Regarding the deprivation of good-time credits, Justice White concluded that, although prisoners have a definite liberty interest in being afforded disciplinary hearings, the standards of due process for prisoners are not the same as those for nonprisoners. Ultimately, however, Justice White left the final decisions as to hearing procedures to prison officials, reasoning that the due process clause has "this much play in [its] joints." Under Justice White's theory of mutual accommodation, the right of prisoners to due process is balanced against the need of prison officials to conduct effective disciplinary hearings.

In summary, the Wolff Court stated that prisoners keep many of their constitutional rights, particularly their due process rights. Wolff is also important with regard to the action which the Court did not take. The Court did not devise a set of rules, a "constitutional straitjacket," which would limit the scope of the Court's review of a prisoner's due process claim. Once a deprivation of a prisoner's due process rights was shown, the Court sought to render a mutually accommodating decision, one which would protect the prisoner's rights while protecting the prison officials' interests in prison security. Thus, Wolff established a balancing process which recognized the rights of prisoners and prison officials in the context of prisoner disputes.

**DUE PROCESS: TOWARD A PRISONER'S LIBERTY INTEREST**

Under the due process clause, the Court has found certain fundamental rights within the doctrine of substantive due process. One of these is the right to be free from bodily harm, a right which is protected under the liberty interest of the due process clause. Institutions are wholly without the protections of the Constitution and the Due Process Clause, it is plainly untenable." Id. at 566.

92. *Id.* at 556.
93. *Id.*
94. *Id.* at 558.
95. *Id.* at 557, 560. The Court found this liberty interest to be state-created, by virtue of the good-time credits offered by the state. *Id.* at 557.
96. *Id.* at 566-67.
97. *Id.*
100. *Id.*
102. See *infra* notes 103-07 and accompanying text.
graham v. Wright, the Supreme Court held that there is a protected right to be free from bodily injury inflicted by a state official without due process of law. The Ingraham Court reasoned that even though the Court's previous rulings had not defined "liberty" precisely, freedom from bodily restraint had always been thought to be encompassed by the due process clause.

Justice Powell, writing for the majority, believed that this liberty interest had a de minimis level at which the Constitution was not implicated. Nonetheless, in Ingraham, a case which involved corporal punishment of children in grade school, Justice Powell wrote: "But at least where school authorities, acting under color of state law, deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, we hold that Fourteenth Amendment liberty interests are implicated."

With the due process clause construed to protect citizens from bodily harm by state action, the Court in Youngberg v. Romeo appeared to extend this constitutional safeguard to prisoners.

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104. Id. at 672-74.
105. Id. at 673-74. Several cases support the Court's statement that "liberty" has not been precisely defined. See, e.g., Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) (regarding sterilization); Jacobson v. Massachusetts, 197 U.S. 11, 25 (1905) (regarding quarantine and health laws); Union Pac. R.R. v. Botsford, 141 U.S. 250, 251-53 (1891) (regarding physical examinations).

The fourth amendment has also been integrated into the fourteenth amendment. Ingraham, 430 U.S. at 673 n.42. The fourth amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

106. Ingraham, 430 U.S. at 674.
107. Id.
108. Id. at 673-74.
109. 457 U.S. 307 (1982). As explained below, Youngberg dealt with an involuntarily committed claimant. Id. at 309. However, the Court found this claimant's situation similar to that of a prisoner. Id. at 315. See also RESTATEMENT (SECOND) OF TORTS § 320 (1977). Section 320 imparts a duty to prison officials to protect prisoners from assault by third persons. Section 320 provides:

One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal power of self-protection or to subject him to association with persons likely to harm him, is under a duty to exercise reasonable care so to control the conduct of third persons as to prevent them from intentionally harming the other or so conducting themselves as to create an unreasonable risk of harm to him, if the actor

(a) knows or has reason to know that he has the ability to control the conduct of the third persons, and
(b) knows or should know of the necessity and opportunity for exercising such control.

Id.
Nicholas Romeo was a thirty-three year old, profoundly retarded man. He was involuntarily committed, at the request of his mother, to the Pennhurst State School and Hospital in Pennsylvania. Ms. Romeo, Nicholas’ mother, claimed that during Nicholas’ time at Pennhurst, he often suffered injuries through the hospital’s failure to provide adequate care for her son. While suit was pending on this claim, Ms. Romeo became aware that hospital officials had ordered prolonged periods of restraint for Nicholas. Accordingly, she amended her petition praying for damages stemming from the hospital’s failure to provide adequate treatment.

The Court noted that “the right to personal security constitutes a ‘historic liberty interest’ protected” by substantive due process, and that this right remains with the confined, even when the confinement is for penal purposes. Thus, the Court established the principle that the involuntarily confined retain a liberty interest in personal safety. However, the Court indicated that this liberty interest was not absolute. The Court stated that in order to determine whether a substantive right protected by the due process clause has been violated, the rights of the confined must be balanced against any relevant state interests. Although the confined has an interest in care and safety, the state has an interest in implementing administrative decisions necessary for the functioning of the custodial system.

TORTIOUS STATE CONDUCT AND THE STATE-OF-MIND REQUIREMENT

Along with the protections provided by the due process clause and § 1983, prisoners have long enjoyed the protections of the eighth amendment. The eighth amendment protects prisoners from cruel

111. Id. Romeo had the mental capacity of an eighteen-month-old child, with an I.Q. between eight and ten. Id. at 309. Because Romeo was mute and lacked the most basic self-care skills, upon the death of his father Romeo’s mother felt incapable of continuing to care for him. Id.
112. Id. at 310. Ms. Romeo alleged that Nicholas had suffered injuries at least sixty-three times. Id.
113. Id. at 311.
114. Id. The restraints were ordered by a hospital doctor, supposedly to protect Nicholas and his fellow patients, “some of whom were in traction or were being treated intravenously.” Id. at 310-11.
115. Id. at 315 (quoting Ingraham v. Wright, 430 U.S. 651, 673 (1977)).
116. Id. at 315.
117. Id. at 319.
118. Id. at 319-20.
119. Id. at 321.
120. Id. at 324.
121. U.S. CONST. amend. VIII provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
and unusual punishment. Yet, as straightforward as this prohibition may seem, the Court has complicated it by attaching a state-of-mind requirement to a prisoner's claim that the amendment has been violated.

In *Estelle v. Gamble*, the Court faced the issue of whether a prison's allegedly inadequate medical care for a prisoner's injury implicated the eighth amendment prohibition of cruel and unusual punishment. J.W. Gamble, an inmate of the Texas Department of Corrections, had injured his back while performing a prison work assignment. Though seen by prison doctors and other medical personnel at least seventeen times, Gamble brought suit, alleging that the treatment he received had been inadequate.

The Supreme Court interpreted Gamble's handwritten pro se complaint as charging the prison doctors and administrators with cruel and unusual punishment in violation of the eighth amendment, made applicable to the states by the fourteenth amendment. The Court emphasized that the eighth amendment "embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and decency.'" The Court outlined the elementary principles that obligate a government "to provide medical care for those whom it is punishing by incarceration."

Justice Marshall, writing for the majority, stated:

An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical "torture or a lingering death," the evils of most immediate concern to the drafters of the [eighth] amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose.

The Court reasoned that "deliberate indifference to serious med-

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122. *Id.*
125. *Id.* at 101.
127. *Estelle*, 429 U.S. at 98, 107. On appeal, the Fifth Circuit reluctantly heard Gamble's claim, noting that "[f]ederal courts have traditionally been reluctant to interfere with the administration of prison systems, especially those of the States; nevertheless, we note that there has been a steady increase of cases in the federal courts involving attacks on the medical, as well as the disciplinary, procedures followed in prisons." *Gamble*, 516 F.2d at 940.
129. *Id.* at 102 (quoting Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968)).
130. *Id.* at 103.
131. *Id.* (quoting *In re Kemmler*, 136 U.S. 436, 447 (1980)).
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medical needs of prisoners’ violates the eighth amendment by inflicting “unnecessary and wanton” pain upon inmates. However, the Court carefully distinguished deliberate indifference from merely negligent treatment. Medical negligence in diagnosing or treating a prisoner “does not state a valid claim of medical mistreatment under the Eighth Amendment.” Accordingly, the Court instructed that “[i]n order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.”

While Estelle established that the negligent acts of prison doctors do not invoke the eighth amendment, still undecided was which actions on the part of state officials were necessary to implicate the fourteenth amendment. In Parratt v. Taylor, the Supreme Court stated that a wrong negligently committed will not bar a prisoner’s claim under § 1983 that the prisoner’s due process rights have been violated. The relevant statement in Parratt was that a state deprivation of property without due process constitutes a violation of the due process clause even if the loss is negligently caused.

In Parratt, Bert Taylor, a prisoner at a Nebraska penal institution, sued to recover damages sustained when a hobby kit he had ordered for a price of twenty-three dollars and fifty cents was lost in the prison mail system. Taylor was not permitted to receive or sign for the package because he was in segregation at the time the hobby kit arrived. Taylor claimed that the prison warden and an-

132. Id. at 104 (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976)).
133. Id. at 105-06.
134. Id. at 106. The Court added: “Medical malpractice does not become a constitutional violation because the victim is a prisoner.” Id. For more information regarding prisoners’ rights to medical treatment, see Comment, Right to Treatment for the Civilly Committed: A New Eighth Amendment Basis, 45 U. CHI. L. REV. 731, 735-52 (1978).
135. Estelle, 429 U.S. at 106.
137. Id. at 534. The Court had twice before attempted to deal with this issue. Id. at 532. In both cases, the facts dealt with claims of negligence against supervisory defendants. Id. In Procunier v. Navarette, 434 U.S. 555 (1978), a prisoner claimed “wrongful interference with [his] outgoing mail.” Id. at 567. The Court never reached the negligence question, however, because the case was decided on another basis. Id. at 566 n.14. In Baker v. McCollan, 443 U.S. 137 (1979), a man, through mistaken identity, was imprisoned over a long weekend. Id. at 140-41. Again, the Court never reached the negligence issue. Id. at 146.
139. Parratt, 451 U.S. at 529.
140. Id. at 530. Normal prison procedures allowed that upon the arrival of a package, the package was to be delivered to the prisoner, who was to sign a receipt for it.
other prisoner negligently allowed Taylor’s hobby kit to be signed for and delivered to someone other than Taylor. Taylor maintained that the prison official’s negligence had deprived him of property without due process of law.

The Court held that Taylor’s claim easily came within the bounds of the due process clause, even though Taylor’s claim was based on negligence. Justice Rehnquist wrote that “[u]nquestionably, [Taylor’s] claim satisfies three prerequisites of a valid due process claim: the petitioners acted under color of state law; the hobby kit falls within the definition of property; and the alleged loss, even though negligently caused, amounted to a deprivation.” With these words and little more explanation, the Court decided that a state’s deprivation of a right without due process of law, even if done negligently, infringed upon the due process clause of the fourteenth amendment.

Justice Powell, however, in a concurring opinion, disagreed with the majority’s holding regarding negligence. According to Justice Powell, because Taylor’s claim was based on negligence, he had not been deprived of property in the constitutional sense. Justice Powell defined “deprivation” as “an intentional act denying something to someone, or, at the very least, a deliberate decision not to act to prevent a loss.”

The majority’s favorable conclusion would not suffice to grant a verdict for Taylor. Though the Court had decided that Taylor had been deprived of property in violation of the fourteenth amendment, the Court had yet to decide whether Taylor’s deprivation of property was procedurally void of due process of law.

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Or, the prisoner was to be notified to sign the receipt and thereby receive the package. Only the prisoner to whom the package was addressed was to sign the receipt. Id.

141. Id.
142. Id. Even though Nebraska provided a remedy for tortious loss of property caused by the state, Taylor brought his suit in federal district court. Id. The district court granted Taylor’s motion for summary judgment, and the circuit court affirmed. Id. at 529-30.
143. Id. at 536-37.
144. Id. (emphasis added) (footnote omitted). The prison officials argued that even if the Court did find a negligent deprivation of Taylor’s property, the prison officials were not themselves responsible. Id. at 536-37 n.3. The Court found merit in this point, noting that the theory of respondeat superior has not been accepted under § 1983 claims. However, the Court disregarded the claim, as it had not been considered by the district court. Id.
145. Id. at 536-37.
146. Id. at 546 (Powell, J., concurring).
147. Id. at 548 (Powell, J., concurring).
148. Id. (footnote omitted).
149. Id. at 544.
150. Id. at 537.
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ALTERNATE STATE REMEDIES

The most salient point in Parratt involved the issue of alternative remedies. Under Parratt, if the federal courts recognize a substantive due process violation, but a remedy exists in state court for that deprivation, then the courts will disallow a remedy in federal court, deferring to the alternate state remedy. In Parratt, the Court concluded that Nebraska’s tort claims procedure “could have fully compensated [Taylor] for the property loss he suffered . . . sufficient[ly] to satisfy the requirements of due process.” Thus, Taylor had proved that through the state’s negligence, he had been deprived of property within the meaning of the due process clause. However, the Court found that Nebraska law provided all the process due him for that deprivation.

In Hudson v. Palmer, the Court considered the existence of an adequate state remedy where a prison official intentionally deprived a prisoner of property. Palmer was a prisoner in the Bland Correctional Center in Bland, Virginia. On September 16, 1981, Hudson, a prison officer, conducted a “shakedown” search of Palmer’s

152. Parratt, 451 U.S. at 537. The Court has held that due process requires a predeprivation hearing before the state interferes with a citizen’s liberty or property interest. Id. However, the Court recognizes that when a predeprivation hearing is impractical, or when quick state action is needed, an adequate postdeprivation hearing will suffice. Id. at 538-39. In explaining the difference, Justice Rehnquist wrote for the majority:

The fundamental requirement of due process is the opportunity to be heard and it is an “opportunity which must be granted at a meaningful time and in a meaningful manner.” However . . . we have rejected the proposition that “at a meaningful time and in a meaningful manner” always requires the State to provide a hearing prior to the initial deprivation of property. This rejection is based in part on the impracticability in some cases of providing any preseizure hearing under a state-authorized procedure, and the assumption that at some time a full and meaningful hearing will be available. Id. at 540-541 (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)) (footnote omitted).

Because Taylor’s loss was not a result of an established state procedure, and because the state could not predict precisely when the loss would occur, the Court found that the state need not have provided a predeprivation hearing. Id. at 541.
157. Id. at 3204-05.
158. Id. at 3196. Palmer was “serving sentences for forgery, uttering, grand larceny and bank robbery convictions.” Id.
prison cell, during which some of Palmer's noncontraband property was destroyed. Palmer brought suit claiming that because of Hudson's intentional act, the state had deprived Palmer of his property interest in violation of the due process clause. In a reference to Parratt, the Court reasoned:

If negligent deprivations of property do not violate the Due Process Clause because predeprivation process is impracticable, it follows that intentional deprivations do not violate that Clause provided, of course, that adequate state postdeprivation remedies are available. Accordingly, we hold that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available.

Palmer established that the state does not violate the due process clause if the state provides an adequate postdeprivation remedy. Accordingly, the Palmer Court paid particular attention to the state remedy in order to be assured of the remedy's adequacy. The circuit court had found that Palmer's claim would not be barred by sovereign immunity. Palmer himself had acknowledged that Virginia would probably not allow Hudson an immunity defense. With these facts in mind, the Court found the state postdeprivation remedy adequate. Thus, the state's deprivation of Palmer's property interest did not violate the fourteenth amendment, as Virginia would have provided Palmer an adequate postdeprivation remedy.

In Palmer, the Court did not address the issue of whether the postdeprivation remedy would have been adequate had Virginia granted immunity to its prison officials. A state may grant immunity

159. Id. at 3196-97. As a result of the search, prison officials found a ripped pillowcase. Id. at 3196. Palmer was charged and found guilty of destroying state property. Id. Prison officials conduct "shakedown searches" as a surprise tactic to discover contraband material hidden by inmates. Note, Unauthorized Conduct of State Officials Under the Fourteenth Amendment: Hudson v. Palmer and the Resurrection of Dead Doctrines, 85 COLUM. L. REV. 837, 838 n.8 (1985).
160. Palmer, 104 S. Ct. at 3197. Palmer also claimed that his fourth amendment right to privacy had been violated. Id. at 3198. However, the Court decided that prisoners essentially have no fourth amendment right to privacy, as that right must yield to the needs of institutional security. Id. at 3200.
161. Id. at 3204.
162. Id.
163. Id. at 3204-05.
164. Id. at 3205.
165. Id.
166. Id. The Court stated: "In sum, it is evident here, as in Parratt, that the State has provided an adequate postdeprivation remedy for the alleged destruction of property." Id.
167. Id.
to its officials for their commissions of some state torts. However, if the state official violates a federal right, the official's state-granted immunity will no longer serve as protection from suit. One case that reiterated this rule is *Scheuer v. Rhodes*.

*Scheuer* arose out of incidents which took place at Kent State University, when National Guard troops shot and killed students during a period of civil disorder. The personal representatives of the estates of the three students who died in that tragedy brought suit against various state and Ohio National Guard officials. The representatives alleged that state action had "deprived the decedents of their lives and rights without due process of law." The case came to the United States Supreme Court on appeal from the Sixth Circuit. The only issue to be addressed was whether the district court had erroneously dismissed the complaint. As the defendants named in the suit were state officials, the Sixth Circuit dismissed the case, holding that the eleventh amendment barred recovery. Reversing, the Supreme Court found that the district court had acted prematurely in dismissing the complaint. Though the Court made no decision as to the merits of the complaint, it did discuss the immunity issue. The Court wrote:

[When a state officer violates the Constitution, the official] "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected *in his person* to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."
Therefore, public officials may in some cases be stripped of their immunity and held liable. In fact, under § 1983, government officials may not be totally exempt from suit by virtue of absolute immunity.

ANALYSIS

Justice Rehnquist's majority opinions in *Daniels* and *Davidson* may have dealt a serious blow to prisoners' rights. In the past, during the "hands-off" period, prisoners had no recourse in federal courts for their constitutional deprivations. *Wolff v. McDonnell* helped to end this era by holding that prisoners do have some constitutional rights which the federal courts have an obligation to protect. However, the Court's holdings in *Daniels v. Williams* and *Davidson v. Cannon* effectively bar any due process claims based on negligent state action. These holdings may have begun a trend that will return the courts to the pre-*Wolff* days of ignoring prisoners' complaints.

Justice Rehnquist, in his majority opinions in *Daniels* and *Davidson*, relied heavily on Justice Powell's concurring opinion in *Parratt v. Taylor*. In *Parratt*, Justice Powell suggested that limiting § 1983 actions to intentional deprivations "would avoid trivializing the right of action provided in § 1983." Justice Rehnquist agreed, concluding in *Daniels* that the fourteenth amendment would be trivialized if negligent state action were allowed to implicate the due process clause. The holdings in *Daniels* and *Davidson*, however, may have somehow equated negligence with triviality. In *Davidson*, a prisoner prohibited from defending himself was attacked by a fellow prisoner who used a fork as a weapon. The attack was foreseen, and prison officials had been warned. But, because the state im-

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180. *Id.* at 238.
181. *Id.* at 243. Because of an insufficient factual record, the Court was unable to apply these principles to the case. *Id.* at 249. The case was remanded for further proceedings consistent with the Court's opinion. *Id.* at 250.
182. *See supra* notes 81-82 and accompanying text.
184. *See supra* notes 85-86 and accompanying text.
190. *Id.* at 549 (Powell, J., concurring). Justice Powell was referring to Parratt's claim for his hobby kit valued at twenty-three dollars and fifty cents. *Id.* at 529.
192. *Davidson*, 106 S. Ct. 669; *Id.* at 671 (Blackmun, J., dissenting).
193. *Id.* at 677 (Blackmun, J., dissenting).
munized its prison officials from suit, and because the Supreme Court has decided that the Constitution cannot be trivialized by such a claim, the prisoner was left without a remedy.\textsuperscript{194} By excusing the state prison officials' behavior in \textit{Davidson}, the Court did not avoid trivializing the fourteenth amendment, but instead "demean[ed] both the Fourteenth Amendment and [the prisoner's] individual dignity."\textsuperscript{195}

Justice Stevens, concurring, criticized the majority for redefining "deprivation" as it relates to the due process clause.\textsuperscript{196} In both \textit{Daniels} and \textit{Davidson}, according to Justice Stevens, there was state action and an infringement on a recognized liberty interest to be free from bodily injury.\textsuperscript{197} The only issue presented in these cases was "whether negligence by state actors can result in a deprivation."\textsuperscript{198} However, it is irrelevant to a prisoner whether the harm was negligently or intentionally caused. The resulting injury is the same, whether or not the prisoner's plea for protection is denied.\textsuperscript{199} A finding of deprivation should not be dependent upon the actor's state of mind, but rather should depend upon whether a prisoner has been deprived of life, liberty, or property.\textsuperscript{200} In regard to a deprivation of property, a deprivation of five dollars may constitute all the money a prisoner has. A prisoner must rely on prison authorities for any medical needs.\textsuperscript{201} The prisoner looks to prison officials for defense against attack.\textsuperscript{202} In general, a prisoner is at a disadvantage in prison and must often look to prison officials for care and protection. Thus, while the Court's rule that negligent state action cannot implicate a due process deprivation may be appropriate in its application to non-prisoners, the rule unduly burdens and penalizes prisoners, who already suffer from a disadvantageous situation.\textsuperscript{203}

In reaching its decisions, the Court ignored earlier decisions which sought "mutual accommodation"\textsuperscript{204} and balancing approaches\textsuperscript{205} to prisoner due process claims. If the Court had used the traditional approach, it may have reached a different decision in \textit{Dan-
iel's and Davidson. The Court "elevated the sensible rule of thumb," that ordinary negligence does not violate the fourteenth amendment, "to the status of inflexible constitutional dogma."206

Further, under the eighth amendment, a prisoner need only show recklessness or deliberate indifference to prove a violation of the amendment's prohibition of cruel and unusual punishment.207 Yet, the due process clause protects a much broader field of rights.208 Justice Blackmun believed that this broader protection should allow the due process clause to also be implicated with at least the same culpable state of mind.209 However, it is suggested that because of the due process clause's broader base of protection, and because of a prisoner's dependent situation, the due process clause should be implicated by a less culpable state of mind: negligence.

In Daniels, Justice Rehnquist wrote that the distinction between negligence and intent is "abundantly clear."210 However, what is not clear is the state of mind necessary to constitute a due process violation. Justice Brennan would have found a constitutional deprivation in Davidson, were the state action reckless, as he suspected it was.211 Thus, while the "rule of thumb" that negligence on the part of state officials does not amount to an abuse of power provides a standard for the Court, the ultimate outcome should not be dependent on the difficult assessment of the state of mind of the actor. Instead, the Court should simply look for a deprivation of a protected interest. Upon finding a deprivation, the Court's focus should then shift to the question of remedy.

ALTERNATE STATE REMEDY

Had the Court found that Davidson and Daniels had been deprived of their liberty interests, the next step would have been to determine the available state remedy. In Parratt, after finding that the negligent loss of the hobby kit had deprived the prisoner of his due process property interest, the Court held that the state court offered the prisoner all the process he was due, and that, therefore, his remedy did not lie in federal court.212 In Hudson v. Palmer,213 the Court held that the state must provide a litigant with an adequate

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206. Davidson, 106 S. Ct. at 673 (Blackmun, J., dissenting).
207. See supra notes 132-35 and accompanying text.
208. Davidson, 106 S. Ct. at 675 (Blackmun, J., dissenting).
209. Id. at 675-76 (Blackmun, J., dissenting) (arguing that because the due process clause provides broader protection than does the eighth amendment, a due process violation should not require more than recklessness).
210. Daniels, 106 S. Ct. at 667 (citing O.W. Holmes, THE COMMON LAW 3 (1923)).
211. Id. at 671 (Brennan, J., dissenting).
212. Parratt, 451 U.S. at 536-37.
remedy.\textsuperscript{214}

In one sentence, Justice Rehnquist addressed Daniels' claim that if his action were brought in state court, the defendant would be immune from suit.\textsuperscript{215} In overruling \textit{Parratt}, Justice Rehnquist wrote that when a state's action negligently causes injury to life, liberty, or property, the person deprived has no constitutional right to a state or federal remedy.\textsuperscript{216} Accordingly, the \textit{Daniels} Court did not address whether Daniels would have had an adequate state remedy in the Virginia state courts.\textsuperscript{217}

Davidson hoped to limit his claim to a procedural due process violation.\textsuperscript{218} New Jersey would have provided an immunity defense for its prison employees, had Davidson brought a state action.\textsuperscript{219} Again, the majority held that the fourteenth amendment does not require a postdeprivation remedy.\textsuperscript{220} As in \textit{Daniels}, the \textit{Davidson} Court held that when the state acts negligently, no deprivation actually occurs.\textsuperscript{221} Therefore, no remedy is constitutionally mandated.\textsuperscript{222}

Justice Stevens believed that since the claims raised only procedural due process issues, it was only necessary to examine the state's postdeprivation remedies.\textsuperscript{223} In \textit{Daniels}, the circuit court had found that sovereign immunity would not defeat Daniels' claim.\textsuperscript{224} Applying \textit{Parratt}, Justice Stevens deferred to the circuit court's decision that Daniels' claim would not be barred by an immunity defense and found the state remedy to be adequate.\textsuperscript{225} In \textit{Davidson}, the claim presented a more difficult question. New Jersey law was certain to grant immunity to the defendants in the Davidson suit.\textsuperscript{226} Justice Stevens saw the issue as whether a state policy of immunity, which bars recovery for injuries inflicted upon prisoners, "renders a state procedure constitutionally defective."\textsuperscript{227} Justice Stevens reasoned that state tort law is constitutional when such defenses as contributory negligence or statutes of limitation are allowed to bar recov-

\begin{footnotesize}
\textsuperscript{214} Id. at 3205.
\textsuperscript{215} Daniels, 106 S. Ct. at 663.
\textsuperscript{216} Id. at 666.
\textsuperscript{217} Id.
\textsuperscript{218} Brief for Petitioner at 14, Davidson v. Cannon, 106 S. Ct. 668 (1986).
\textsuperscript{219} Davidson, 106 S. Ct. at 670.
\textsuperscript{220} Id.
\textsuperscript{221} Id.
\textsuperscript{222} Id.
\textsuperscript{223} Id. at 679-80 (Stevens, J., concurring).
\textsuperscript{224} Id. at 680 (Stevens, J., concurring).
\textsuperscript{225} Id. Justice Stevens stated that "a straightforward application of \textit{Parratt} defeats Daniels' claim." Id.
\textsuperscript{226} Davidson, 106 S. Ct. at 670.
\textsuperscript{227} Daniels, 106 S. Ct. at 680 (Stevens, J., concurring).
\end{footnotesize}
Similarly, Justice Stevens stated that a state decision to allow immunity to some of its employees does not make its court remedy constitutionally inadequate. Because Davidson's challenge was only to the state's sovereign immunity defense, Justice Stevens maintained that Davidson had failed to make a valid due process claim.

On the other hand, Justice Blackmun stated that the deprivation of Davidson's liberty interest violated the due process clause, because the deprivation occurred without due process of law. A state may create immunity defenses to state causes of action, but not if they conflict with federal law. Justice Blackmun maintained that "conduct that is wrongful under §1983 surely cannot be immunized by state law." To allow a state employee immunity in the face of §1983 "would transmute a basic guarantee into an illusory promise; and the supremacy clause of the Constitution insures that the proper construction may be enforced."

Justice Blackmun noted two reasons for which Davidson should be allowed to bring suit in federal court, even though New Jersey would have granted immunity to the prison officials. First, a constitutional violation, due to its more serious nature, deserves a different remedy than does a violation of a state right. Second, §1983 was implemented by Congress in order to provide a federal remedy when an adequate state remedy was not available. Justice Blackmun noted that "[t]he very purpose of §1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights."

In conclusion, Justice Blackmun argued that Davidson had been denied an opportunity to be heard. New Jersey did not provide a meaningful postdeprivation remedy. Therefore, Justice Blackmun

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228. Id. at 680-81 (Stevens, J., concurring).
229. Id. at 681 (Stevens, J., concurring).
230. Id. Because Davidson did not challenge the immunity defense as unfair, Justice Stevens did not address this issue. Id. The New Jersey immunity defense applied only to prisoners assaulted by a prisoner, not to a prisoner assaulted by a nonprisoner. See supra note 47.
231. Davidson, 106 S. Ct. at 676 (Blackmun, J., dissenting).
232. Id.
233. Id.
234. Id. (quoting Martinez v. California, 444 U.S. 277, 284 n.8 (1980)).
235. Id.
236. Id. Justice Blackmun stated that a federal versus a state remedy is mandated "even though the same act may constitute both a state tort and the deprivation of a constitutional right." Id. (quoting Monroe v. Pape, 365 U.S. 167, 196 (1961) (Harlan, J., concurring)).
237. Id.
238. Id. (quoting Mitchum v. Foster, 407 U.S. 225, 242 (1972)).
239. Id. at 676-77 (Blackmun, J., dissenting).
240. Id. at 677 (Blackmun, J., dissenting).
maintained that Davidson had been deprived of liberty without due process of law.241

Daniels may have had the chance to receive an adequate remedy in the Virginia state courts, as it is likely that the prison officials, whose negligence caused Daniels' injury, would not have been immune to suit.242 Davidson, however, could not recover in a New Jersey court due to that state's grant of immunity to the prison officials who negligently allowed his injury.243 Had the Court found that Davidson had been deprived of his liberty interest, they then would have had to grant him a remedy in federal court as the immunity defense in the New Jersey state court would have rendered the state remedy inadequate. Moreover, in Scheuer v. Rhodes,244 the Court held that when a state official violates the fourteenth amendment, the official surrenders immunity to the superior authority of the Constitution.245 Therefore, had the Court found the prison officials' negligence in violation of the Constitution, their state-granted immunity would have been voided.246

CONCLUSION

With respect to constitutional rights, prisoners are in a class distinct from all others. Prisoners are stripped of many of their rights. Thus, those constitutional rights that are left to prisoners can be important to the prisoners' very survival. The Court's rule in Daniels and Davidson limits a prisoner's due process remedies to those fourteenth amendment violations caused by reckless or intentional state action.

While the Court's holdings might serve well as a general rule for nonprisoners, the nexus between prisoners and the state is such that the rule applied strictly could limit severely the ability of prisoners to find redress for legitimate constitutional rights violations inflicted by state authorities. The Court, in its attempt to prevent the trivial-

241. Id. Justice Blackmun would have reversed the judgment of the circuit court and ordered that the district court award of $2,000 be reinstated. Even if Justice Blackmun had agreed with the majority rule announced in Daniels, he would have vacated the judgment and remanded the case to review the district court's decision that the respondents were not reckless. Id.


245. Id. at 232, 237.

246. See id.
ization of the due process clause, may have instead trivialized the na-
ture of the duty owed to prisoners by the state.

Paul K. Charlton — '88