

The Burger Court Opinion Writing Database

District of Columbia v. Carter
409 U.S. 418 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 205439 AM
CHAMBERS OF
THE CHIEF JUSTICE

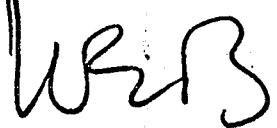
December 30, 1972

Re: No. 71-564 - District of Columbia v. Carter

Dear Bill:

I am prepared to join your proposed opinion in this case but I do not think we should volunteer legal advice so pointedly as in the final nine lines on page 15. I would prefer to say nothing at all on the subject, but I could join if the penultimate sentence read, "Whether a claim against officer Carlson, for alleged deprivation of constitutional rights is litigable in the federal courts of the District, we have no occasion to reach and we intimate no views on that score. See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U. S. 388 (1971); Bell v. Hood, 327 U. S. 678 (1946)." Continue with the final sentence, "But insofar as...."

Regards,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

January 2, 1973

Re: No. 71-564 - District of Columbia v. Carter

Dear Bill:

I have your note of January 2, 1973, and I wonder why we are dealing with any comment at all on whether there is or is not a claim by the respondent against Officer Carlson when that is not in issue?

I could join if you would substitute "a possible" for "respondent's" in the sentence in question.

• Regards,

WRB

Mr. Justice Brennan

Copies to the Conference

Please for me
J. J.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 12/19/72

No. 71-564

Recirculated: _____

District of Columbia, } On Writ of Certiorari to the
Petitioner, } United States Court of Appeals
v. } for the District of Columbia
Melvin Carter. } Circuit.

[January —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On February 12, 1969, respondent filed this civil action in the United States District Court for the District of Columbia alleging that in 1968 police officer John R. Carlson of the Metropolitan Police Department of the District of Columbia arrested him without probable cause and, while he was being held by two other officers, beat him with brass knuckles. The complaint alleged further that Carlson's precinct captain, the chief of police, and the District of Columbia each had negligently failed to train, instruct, supervise, and control Carlson with regard to the circumstances in which an arrest may be made and the extent to which various degrees of force may be used to effect an arrest. Respondent sought damages against each defendant upon several theories, including a common law theory of tort liability and an action for deprivation of civil rights pursuant to 42 U. S. C. § 1983, which provides:¹

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any

¹ Ku Klux Klan Act of 1871, Act of April 20, 1871, c. 22, § 1, 17 Stat. 13, Rev. Stat. § 1979, 42 U. S. C. § 1983 (1970).

B 15
You had suggested
a footnote

To: The _____
Mr. _____
Mr. _____
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

No. 71-564

Recirculated: 12-27-72

District of Columbia, Petitioner, } On Writ of Certiorari to the
v. Melvin Carter. } United States Court of Appeals
for the District of Columbia
Circuit.

[January —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On February 12, 1969, respondent filed this civil action in the United States District Court for the District of Columbia alleging that in 1968 police officer John R. Carlson of the Metropolitan Police Department of the District of Columbia arrested him without probable cause and, while he was being held by two other officers, beat him with brass knuckles. The complaint alleged further that Carlson's precinct captain, the chief of police, and the District of Columbia each had negligently failed to train, instruct, supervise, and control Carlson with regard to the circumstances in which an arrest may be made and the extent to which various degrees of force may be used to effect an arrest. Respondent sought damages against each defendant upon several theories, including a common law theory of tort liability and an action for deprivation of civil rights pursuant to 42 U. S. C. § 1983, which provides:¹

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any

¹ Ku Klux Klan Act of 1871, Act of April 20, 1871, c. 22, § 1, 17 Stat. 13, Rev. Stat. § 1979, 42 U. S. C. § 1983 (1970).

Wm. J. Brennan, Jr.
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 2, 1973

RE: No. 71-564 District of Columbia v. Carter

Dear Chief:

Thank you for your note in the above. I have carefully considered your suggested revision of the penultimate sentence but it does seem to me that Bivens does create a cause of action against Officer Carlson. I added to the sentence the words "such as respondent's claim against Officer Carlson" in response to a suggestion of Bill Rehnquist who had written me he thought this limitation was necessary because as I had originally phrased the sentence it implied that a Bivens claim would lie against the Precinct Captain and the Police Chief which Bill thought would be an extension of the Bivens holding. Bill thought further that Bivens "does not bear directly at all" on a claim against the District of Columbia "on some theory of waiver of sovereign immunity." I would, therefore, prefer to leave the sentence as it is. I am comforted in my conclusion by the agreements to the opinion as circulated of all our colleagues.

Sincerely,

Wm. J. Brennan, Jr.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 3, 1973

Re: No. 71-564 District of Columbia v.
Carter

Dear Chief:

Thank you very much for your note of January 2 in response to mine. I have substituted "a possible" for "respondent's" in the sentence in question and will circulate a new print with that change some time today.

I do appreciate your help in working this out.

Sincerely,



The Chief Justice

cc: The Conference

P.15
 You suggested on 1/21 & said
 you would join if it were
 added
 I am still with you if it were
 added

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

3rd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

No. 71-564

Circulated: _____
 Recirculated: 1/3/73

District of Columbia, Petitioner, v. Melvin Carter. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[January —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On February 12, 1969, respondent filed this civil action in the United States District Court for the District of Columbia alleging that in 1968 police officer John R. Carlson of the Metropolitan Police Department of the District of Columbia arrested him without probable cause and, while he was being held by two other officers, beat him with brass knuckles. The complaint alleged further that Carlson's precinct captain, the chief of police, and the District of Columbia each had negligently failed to train, instruct, supervise, and control Carlson with regard to the circumstances in which an arrest may be made and the extent to which various degrees of force may be used to effect an arrest. Respondent sought damages against each defendant upon several theories, including a common law theory of tort liability and an action for deprivation of civil rights pursuant to 42 U. S. C. § 1983, which provides:¹

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any

¹ Ku Klux Klan Act of 1871, Act of April 20, 1871, c. 22, § 1, 17 Stat. 13, Rev. Stat. § 1979, 42 U. S. C. § 1983 (1970).

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 19, 1972

71-564 - D. C. v. Carter

Dear Bill,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

*I joined you
for the next*
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 21, 1972

Re: No. 71-564 - District of Columbia v.
Carter

Dear Bill:

Join me, please.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 21, 1972

Re: No. 71-564 - District of Columbia v. Carter

Dear Bill:

I am willing to join your opinion in this case; however, I would feel much better if you could add a footnote at the end of the next-to-last sentence in the opinion such as:

Our disposition of this case leaves unaffected much of the Court of Appeals' order remanding the case to the District Court. In the proceedings contemplated by that remand, respondent may seek leave to amend his complaint under Rule 15, Federal Rules of Civil Procedure, to allege a cause of action arising under the Constitution. 28 U.S.C. §1331(a).

Sincerely,

T.M.

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 4, 1973

Re: No. 71-564 - District of Columbia v. Carter

Dear Bill:

I am still with you.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 20, 1972

Re: No. 71-564 - District of Columbia v. Carter

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 19, 1972

No. 71-564 District of Columbia v. Carter

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Brennan

cc: To the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

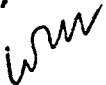
December 20, 1972

Re: No. 71-564 - District of Columbia v. Carter

Dear Bill:

Please join me in your opinion for the Court.

Sincerely,



Mr. Justice Brennan

Copies to the Conference



December 20, 1972

Re: No. 71-564 - District of Columbia v. Carter

Dear Bill:

Having already sent you a join letter, I feel somewhat sheepish in mentioning to you now a problem which one of the final sentences in your opinion seems to me to present. I nonetheless swallow my sheepishness and do make mention of it. You say, at the very end of the opinion:

"That is not to say, of course, that a claim, such as respondent's, of alleged deprivation of constitutional rights is not litigable in the federal courts of the District. See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971)."

As I understand the record there are really three different claims being asserted by the plaintiff: (a) against the policeman who actually beat him up; (b) against the precinct captain and the police chief who were allegedly negligent in supervising the actual perpetrator of the assault; and (c) the District of Columbia, on some theory of waiver of sovereign immunity.

Though I was not here when Bivens was decided, as I read it it clearly covers Claim (a), but could cover Claim (b) only if it were extended, and does not bear directly at all on Claim (c).



- 2 -

If I am wrong, I hope you will tell me so. If I am right, would you have any objection to adding, after the words "such as respondent's" in the sentence referred to above, the language "against Officer Carlson".

Sincerely,

WHR

Mr. Justice Brennan