

# The Burger Court Opinion Writing Database

*Meachum v. Fano*

427 U.S. 215 (1976)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 7, 1976

Re: 75-252 - Meachum v. Fano

Dear Byron:

Please join me in your circulation of

June 2.

Regards,  
*WB*

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 22, 1976

RE: No. 75-252 Meachum v. Fano

Dear John:

Please join me in the dissenting opinion you  
have prepared in the above.

Sincerely,

*Bill*

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 2, 1976

Re: No. 75-252, Meachum v. Fano

Dear Byron,

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

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

J

To: The Chief Justice ✓  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 6-2-76

Recirculated: \_\_\_\_\_

## 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-252

Larry Meachum et al., Petitioners, <i>v.</i> Arthur Fano et al.	On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.
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[June —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question here is whether the Due Process Clause of the Fourteenth Amendment entitles a state prisoner to a hearing when he is transferred to a prison the conditions of which are substantially less favorable to the prisoner, absent a state law or practice conditioning such transfers on proof of serious misconduct or the occurrence of other events. We hold that it does not.

## I

During a two and one-half month period in 1974, there were nine serious fires at the Massachusetts Correctional Institution at Norfolk—a medium security institution. Based primarily on reports from informants, the six respondent inmates were removed from the general prison population and placed in the Receiving Building, an administrative detention area used to process new inmates. Proceedings were then had before the Norfolk prison classification board with respect to whether respondents were to be transferred to another institution—possibly a maximum-security institution, the living conditions at which are substantially less favorable than those at Norfolk. Each respondent was notified of the classification

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 22, 1976

Re: No. 75-252 -- Meachum v. Fano

Dear John:

Please join me in your dissent.

Sincerely,

  
T. M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 7, 1976

Re: No. 75-252 - Meachum v. Fano

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 4, 1976

No. 75-252 Meachum v. Fano

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 3, 1976

Re: No. 75-252, Meachum v. Fano

Dear Byron:

Please join me in your opinion for the Court.

Sincerely,

*W*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 2, 1976

Re: 75-252 - Meachum v. Fano

Dear Byron:

In due course I shall circulate a dissent.

Sincerely,



Mr. Justice White

Copies to the Conference

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

No. 75-252 - Meachum v. Fano

From: Mr. Justice Stevens

Circulated: Mar 21 1976

MR. JUSTICE STEVENS, dissenting. Recirculated: \_\_\_\_\_

The Court's rationale is more disturbing than its narrow holding. If the Court had merely held "that the transfer of a prisoner from one penal institution to another does not cause a sufficiently grievous loss to amount to a deprivation of liberty within the meaning of the Due Process Clause of the <sup>1/</sup> Fourteenth Amendment," I would disagree with the conclusion but not with the constitutional analysis. The Court's holding today, however, appears to rest on a conception of "liberty" which I consider fundamentally incorrect.

The Court indicates that a "liberty interest" may have either of two sources. According to the Court, a liberty interest may "originate in the Constitution," ante, at 11, or it may have "its roots in state law." Ibid. Apart from those two possible origins, the Court is unable to find that a person has a constitutionally protected interest in liberty.

If man were a creature of the state, the analysis would be correct. But neither the Bill of Rights nor the laws of

<sup>1/</sup> "No State shall . . . deprive any person of life, liberty, or property, without due process of law; . . ." U.S. Const. art. XIV, § 1.

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

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

1st DRAFT

Recirculated: 6/23/76

SUPREME COURT OF THE UNITED STATES

No. 75-252

Larry Meachum et al.,  
 Petitioners,  
 v.  
 Arthur Fano et al. } On Writ of Certiorari to the  
 United States Court of Appeals for the First Circuit.

[June —, 1976]

MR. JUSTICE STEVENS, with whom MR. JUSTICE MARSHALL joins, dissenting.

The Court's rationale is more disturbing than its narrow holding. If the Court had merely held "that the transfer of a prisoner from one penal institution to another does not cause a sufficiently grievous loss to amount to a deprivation of liberty within the meaning of the Due Process Clause of the Fourteenth Amendment,"<sup>1</sup> I would disagree with the conclusion but not with the constitutional analysis. The Court's holding today, however, appears to rest on a conception of "liberty" which I consider fundamentally incorrect.

The Court indicates that a "liberty interest" may have either of two sources. According to the Court, a liberty interest may "originate in the Constitution," *ante*, at 11, or it may have "its roots in state law." *Ibid.* Apart from those two possible origins, the Court is unable to find that a person has a constitutionally protected interest in liberty.

If a man were a creature of the State, the analysis would be correct. But neither the Bill of Rights nor the laws of sovereign States create the liberty which the Due Process Clause protects. The relevant constitutional provisions are limitations on the power of the sovereign

<sup>1</sup> "No State shall . . . deprive any person of life, liberty, or property, without due process of law; . . . U. S. Const. Art. XIV, § 1.