

# The Burger Court Opinion Writing Database

## *Parratt v. Taylor*

451 U.S. 527 (1981)

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

October 3, 1980

Re: 79-1734 - Parratt and Lugenbill v. Taylor

MEMORANDUM TO THE CONFERENCE:

I was one of four to grant. Silly as the holding is, I conclude to "let it go." There were two "discretionary" denials, four to grant and two relisted.

If the two "discretionary" denials are disposed to join a summary reversal, I would join that.

Regards,

WRB

Brennan 80

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

CHAMBERS OF  
THE CHIEF JUSTICE

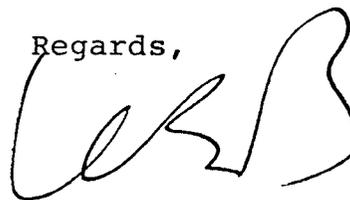
April 1, 1981

RE: 79-1734 - Parratt and Lugenbill v. Taylor

Dear Bill:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WRB', written in a cursive style.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 6, 1981

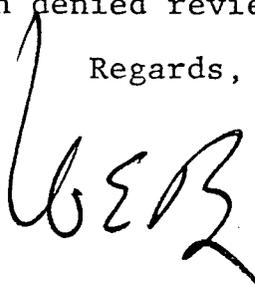
RE: 79-1734 - Parratt and Lugenbill v. Taylor

Dear Bill:

Having labored over a scintillating concurring opinion I now decide not to add to the "folly" and it goes (along with Carter v. Kentucky) into the unpublished opinion file!

In short, I "stay hitched," restraining my urge to declaim on the business of allowing the great purposes of the Civil Rights Act and the 14th Amendment to be prostituted. Our time ought not be absorbed on such "de minimis" claims when deserving cases have been denied review.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 2, 1981

RE: No. 79-1734 Parratt & Lugenbill v. Taylor

Dear Bill:

I agree.

Sincerely,

*Bill*

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 15, 1980

Re: No. 79-1734, Parratt v. Taylor

Dear Byron,

Please add my name to your dissenting opinion. Please also add the following at the foot of your dissenting opinion:

In joining this dissenting opinion, Mr. Justice Stewart adds only that he believes there is a serious question whether even a purposeful taking of the hobby kit would have amounted to a deprivation of any right secured to the respondent by the Constitution of the United States.

Sincerely yours,

P.S.  
/

Mr. Justice White

Copies to the Conference

File

No. 79-1738<sup>4</sup>, Parratt v. Taylor

JUSTICE STEWART, concurring.

It seems to me extremely doubtful that the  
property loss here, even though presumably caused by  
the negligence of state agents, is the kind of  
deprivation of property to which the Fourteenth  
Amendment is addressed. If it is, then so too would be  
damage to a person's automobile resulting from a  
collision with a vehicle negligently operated by a  
state official. To hold that this kind of loss is a  
deprivation of property within the meaning of the  
Fourteenth Amendment seems not only to trivialize, but  
grossly to distort the meaning and intent of the  
Constitution.

But even assuming that Nebraska in this case  
"deprived" the respondent of his property within the

i.S. sent this  
to me for  
comment.

I suggested  
that he not  
join at this  
time, & see  
what I write  
4/2

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Stewart  
Circulated: 3 APR 1981

No. 79-1734

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

Robert Parratt and Francis }  
Lugenbill, Petitioners, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
Bert Taylor, Jr. } peals for the Eighth Circuit.

[April —, 1981]

JUSTICE STEWART, concurring.

It seems to me extremely doubtful that the property loss here, even though presumably caused by the negligence of state agents, is the kind of deprivation of property to which the Fourteenth Amendment is addressed. If it is, then so too would be damages to a person's automobile resulting from a collision with a vehicle negligently operated by a state official. To hold that this kind of loss is a deprivation of property within the meaning of the Fourteenth Amendment seems not only to trivialize, but grossly to distort the meaning and intent of the Constitution.

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

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_  
Recirculated: 21 APR 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1734

Robert Parratt and Francis }  
Lugenbill, Petitioners, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
Bert Taylor, Jr. } peals for the Eighth Circuit.

[April —, 1981]

JUSTICE STEWART, concurring.

It seems to me extremely doubtful that the property loss here, even though presumably caused by the negligence of state agents, is the kind of deprivation of property to which the Fourteenth Amendment is addressed. If it is, then so too would be damages to a person's automobile resulting from a collision with a vehicle negligently operated by a state official. To hold that this kind of loss is a deprivation of property within the meaning of the Fourteenth Amendment seems not only to trivialize, but grossly to distort the meaning and intent of the Constitution.

But even if Nebraska has deprived the respondent of his property in the constitutional sense, it has not deprived him of it without due process of law. By making available to the respondent a reparations remedy, Nebraska has done all that the Fourteenth Amendment requires in this context.

On this understanding, I join the opinion of the Court.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 6, 1980

Re: 79-1734 - Parratt and Lugenbill  
v. Taylor

---

Dear Chief,

I shall dissent from denial of  
certiorari in this case.

Sincerely yours,



The Chief Justice  
Copies to the Conference  
cmc

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: 10-14-80

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

ROBERT PARRATT AND FRANCES LUGENBILL <sup>I</sup> v.  
 BERT TAYLOR, JR.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
 COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 79-1734. Decided October —, 1980

MR. JUSTICE WHITE, dissenting.

Because I believe this case raises important questions regarding the scope of § 1983, I dissent from denial of the petition for writ of certiorari.

Respondent, Bert Taylor, Jr., a prisoner at the Nebraska Penal and Correctional Complex (NPCC), filed suit in Federal District Court under 42 U. S. C. § 1983 against petitioner Robert F. Parratt, the warden of NPCC, and petitioner Francis Lugenbill, the hobby manager at NPCC. Taylor sought damages in the amount of \$23.50 to compensate him for a hobby kit he ordered through the mail that arrived at the prison but was never delivered to him. It appears that when the packages arrived at NPCC, two inmates assigned to the hobby center signed receipts for them. Later, upon Taylor's inquiry, the packages could not be found. The policy of NPCC did not permit one inmate to sign a receipt for another inmate's packages.

Taylor's complaint asserted that the defendant prison officials violated § 1983 by depriving him of property without due process of law. The District Court granted Taylor's motion for summary judgment, holding that a negligent deprivation of property by state officials is a proper basis for an action under § 1983; that the prison officials were not immune from suit because they knew or reasonably should have known that their actions would result in a violation of Taylor's rights; and that the stipulated facts established that Taylor was deprived of property without due process. The Court of Appeals for the Eighth Circuit affirmed *per*

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: \_\_\_\_\_

Recirculated: 16 OCT 1980

1-2  
 2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

ROBERT PARRATT AND FRANCIS LUGENBILL *v.*  
 BERT TAYLOR, JR.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
 COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 79-1734. Decided October —, 1980

MR. JUSTICE WHITE, with whom MR. JUSTICE STEWART  
 and MR. JUSTICE REHNQUIST join, dissenting.

Because I believe this case raises important questions regarding the scope of § 1983, I dissent from denial of the petition for writ of certiorari.

Respondent, Bert Taylor, Jr., a prisoner at the Nebraska Penal and Correctional Complex (NPCC), filed suit in Federal District Court under 42 U. S. C. § 1983 against petitioner Robert F. Parratt, the warden of NPCC, and petitioner Francis Lugenbill, the hobby manager at NPCC. Taylor sought damages in the amount of \$23.50 to compensate him for a hobby kit he ordered through the mail that arrived at the prison but was never delivered to him. It appears that when the packages arrived at NPCC, two inmates assigned to the hobby center signed receipts for them. Later, upon Taylor's inquiry, the packages could not be found. The policy of NPCC did not permit one inmate to sign a receipt for another inmate's packages.

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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: 4/30/81

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

No. 79-1734 - Robert Parratt and Francis  
Lugenbill v. Bert Taylor, Jr.

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Justice White, concurring.

I join the opinion of the Court but  
with the reservations stated by my  
Brother Blackmun in his concurring  
opinion.

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: 15 MAY 1981

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1734

Robert Parratt and Francis Lugenbill, Petitioners,  
v.  
Bert Taylor, Jr. } On Writ of Certiorari to the  
United States Court of Appeals for the Eighth Circuit.

[May —, 1981]

JUSTICE WHITE, concurring.

I join the opinion of the Court but with the reservations stated by my Brother BLACKMUN in his concurring opinion.

9 APR 1981

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-1734

<p>Robert Parratt and Francis Lugenbill, Petitioners, v. Bert Taylor, Jr.</p>	}	<p>On Writ of Certiorari to the United States Court of Ap- peals for the Eighth Circuit.</p>
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[April —, 1981]

JUSTICE MARSHALL, concurring in part and dissenting in part.

I join the opinion of the Court insofar as it concludes that negligent conduct by persons acting under color of state law may be actionable under 42 U. S. C. § 1983. *Ante*, at 6-7. I also agree with the majority that in cases involving claims of *negligent* deprivation of property without due process of law, the availability of an adequate post-deprivation cause of action for damages under state law may preclude a finding of a violation of the Fourteenth Amendment. I part company with the majority, however, over its conclusion that there was an adequate state law remedy available to respondent in this case. My disagreement with the majority is not because of any shortcomings in the Nebraska tort claims procedure.<sup>1</sup> Rather, my problem is with the majority's application of its legal analysis to the facts of this case.

It is significant, in my view, that respondent is a state prisoner whose access to information about his legal rights is necessarily limited by his confinement. Furthermore, there is no claim that either petitioners or any other officials informed respondent that he could seek redress for the alleged

<sup>1</sup>To be sure, the state remedies would not have afforded respondent all the relief that would have been available in a § 1983 action. See Maj. op., *ante*, at 16. I nonetheless agree with the majority that "they are sufficient to satisfy the requirements of due process." *Ibid*.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 7, 1981

Re: No. 79-1734 - Parratt v. Taylor

Dear Bill:

Please join me. I am, however, writing a brief separate concurring opinion. It should be around within a day or so.

Sincerely,

*HAB.*

Mr. Justice Rehnquist

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: APR 8 1981

1st DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

No. 79-1734

Robert Parratt and Francis Lugenbill, Petitioners, v. Bert Taylor, Jr.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Eighth Circuit.
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[April —, 1981]

JUSTICE BLACKMUN, concurring.

While I join the Court's opinion in this case, I write separately to emphasize my understanding of its narrow reach. This suit concerns the deprivation only of property and was brought only against supervisory personnel, whose simple "negligence" was assumed but, on this record, not actually proved. I do not read the Court's opinion as applicable to a case concerning deprivation of life or of liberty. Cf. *Moore v. City of East Cleveland*, 431 U. S. 494 (1977). I also do not understand the Court to intimate that the sole content of the Due Process Clause is procedural regularity. I continue to believe that there are certain governmental actions that, even if undertaken with a full panoply of procedural protection, are, in and of themselves, antithetical to fundamental notions of due process. See, e. g., *Boddie v. Connecticut*, 401 U. S. 371 (1971); *Roe v. Wade*, 410 U. S. 113 (1973).

Most importantly, I do not understand the Court to suggest that the provision of "postdeprivation remedies," *ante*, at 11, within a state system would cure the unconstitutional nature of a state official's intentional act that deprives a person of property. While the "random and unauthorized" nature of negligent acts by state employees makes it difficult for the State to "provide a meaningful hearing before the deprivation takes place," *ante*, at 13, it is rare that the same can be said of intentional acts by state employees. When it is possible for a State to institute procedures to contain and

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 15, 1980

79-1734 Parratt v. Taylor

Dear Byron:

I have been interested for some time in finding a "pure negligence" § 1983 case to grant where we could be reasonably sure that that issue would be reached.

I agree that the issue is presented in this case, but I am not sure that we would reach it. The defendants below (petitioners here) are the warden and hobby manager, but neither of these was personally involved in the alleged negligence except, arguably, on some respondeat superior theory. It is not clear - at least not to me - that they were guilty of any negligence. In any event, I had thought that the case might go off on this ground without our reaching the primary negligence issue.

If I could be persuaded that I am wrong about this, I would be happy to join you in a grant.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 3, 1981

79-1734 Parratt v. Taylor

Dear Bill:

In accord with the view I expressed at Conference, I do not believe that mere negligence - certainly of the kind involved in this case - constitutes a deprivation of property in a constitutional sense.

Accordingly, although I will join you in the judgment, I will write a separate opinion in due time.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

② Brennan 86

Mr. The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

981734G, 14-APR-81 DRB

Mr. Justice Powell

Circulated: APR 20 1981

1st DRAFT

Uncirculated

**SUPREME COURT OF THE UNITED STATES**

No. 79-1734

ROBERT PARRATT AND FRANCIS LUGENBILL,  
PETITIONERS, v. BERT TAYLOR, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

[April —, 1981]

JUSTICE POWELL, concurring in the result.

This case presents the question whether a state prisoner may sue to recover damages under 42 U. S. C. §1983, alleging that a violation of the Due Process Clause of the Fourteenth Amendment occurred when two shipments mailed to him were lost due to the negligence of the prison's warden and "hobby manager." Unlike the Court, I do not believe that such negligent acts by state officials constitute a deprivation of property within the meaning of the Fourteenth Amendment, regardless of whatever subsequent procedure a State may or may not provide. I therefore concur only in the result.

The Court's approach begins with three "unquestionable" facts concerning respondent's 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." *Ante*, at 9. It then goes on to reject respondent's claim on the theory that procedural due process is satisfied in such a case where a State provides a "postdeprivation" procedure for seeking redress—here a tort claims procedure. I would not decide this case on that ground for two reasons. First, the Court passes over a threshold question—whether a negligent act by a state official that results in loss of or damage to

✓ pgs 4, 5

Stylistic Changes Throughout.

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

From: Mr. Justice Powell

4-21-81

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

2nd DRAFT

Recirculated: APR 21 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1734

Robert Parratt and Francis  
 Lugenbill, Petitioners,  
 v.  
 Bert Taylor, Jr.

On Writ of Certiorari to the  
 United States Court of Ap-  
 peals for the Eighth Circuit.

[April —, 1981]

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Stylistic Changes Throughout.

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

4-23-81

From: Mr. Justice Powell

3rd DRAFT

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

Recirculated: APR 23 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1734

Robert Parratt and Francis Lugenbill, Petitioners, v. Bert Taylor, Jr.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Eighth Circuit.
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[April —, 1981]

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⊙ Brennan 80

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

79-1734 Parratt

Chief -

I had overlooked, until this afternoon, that you have joined W H R's opinion in this case.

In view of your desire to limit 1983 petitions (suits), I would have thought you would agree with me. W H R's theory depends on existence of an adequate state remedy - which will

not always be present.

I would hold that ordinary negligence is not a Constitutional deprivation.

The Court again has missed a large opportunity to limit the abuse of § 1983.

Sincerely,

Lewis

April 30, 1981

Pg 4

The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

5-1-81

From: Mr. Justice Powell

4th DRAFT Circulated: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES

MAY 1 1981

No. 79-1734

Robert Parratt and Francis }  
Lugenbill, Petitioners, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
Bert Taylor, Jr. } peals for the Eighth Circuit.

[April —, 1981]

JUSTICE POWELL, concurring in the result.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 15, 1980

Re: No. 79-1734, Parratt v. Taylor

Dear Byron,

Please add my name to your dissenting opinion, with the same addition as Potter has requested.

Sincerely yours,

*WRW*

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 Stevens

From: Mr. Justice Rehnquist

Circulated: APR 1 1981

1st DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

No. 79-1734

Robert Parratt and Francis Lugenbill, Petitioners, v. Bert Taylor, Jr.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Eighth Circuit.
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[April —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

The respondent is an inmate at the Nebraska Penal and Correctional Complex who ordered by mail certain hobby materials valued at \$23.50. The hobby materials were lost and respondent brought suit under 42 U. S. C. § 1983 to recover their value. At first blush one might well inquire why respondent brought an action in federal court to recover damages of such a small amount for negligent loss of property, but because 28 U. S. C. § 1343, the predicate for the jurisdiction of the United States District Court, contains no minimum dollar limitation, he was authorized by Congress to bring his action under that section if he met its requirements and if he stated a claim for relief under 42 U. S. C. § 1983. Respondent claimed that his property was negligently lost by prison officials in violation of his rights under the Fourteenth Amendment to the United States Constitution. More specifically, he claimed that he had been deprived of property without due process of law.<sup>1</sup>

<sup>1</sup> As we explained in *Board of Regents v. Roth*, 408 U. S. 564 (1972), property interests "are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure benefits and that support claims of entitlement to those benefits." *Id.*, at 577. It is not contended that under

Pp 15-17

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

From: Mr. Justice Rehnquist

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

Recirculated: **APR 8 1981**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-1734

Robert Parratt and Francis Lugenbill, Petitioners, v. Bert Taylor, Jr.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Eighth Circuit.
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[April —, 1981]

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<sup>1</sup> As we explained in *Board of Regents v. Roth*, 408 U. S. 564 (1972), property interests "are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure benefits and that support claims of entitlement to those benefits." *Id.*, at 577. It is not contended that under

H

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 2, 1981

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 79-1734 Parratt v. Taylor

The only case held for Parratt is No. 80-1419 Hamilton v. Stover. The question presented for review is whether "allegations of willful, reckless, deliberately indifferent or grossly negligent conduct on the part of a municipal police officer acting within the scope of his authority state a cause of action under 42 U.S.C. § 1983 and 28 U.S.C. § 1343," and whether such allegations state a "cause of action" in violation of the "constitutional rights to life, liberty and personal security ... under the United States Constitution." Pet. i, ii. Petr asserts that Ohio law grants immunity to an individual police officer operating a police vehicle responding to an emergency call, and therefore petitioners' suit against the particular officer was wrongfully dismissed by the District Court with an opinion which stated that the question of whether an emergency existed was one of fact, and concluded with this language:

"Accordingly, this cause is dismissed without prejudice to pursuing the proper state remedies, and to refileing if the proper constitutional deprivation of facts developed." Pet., B-3.

The Court of Appeals for the Sixth Circuit (Engel, Merritt, and Kennedy) affirmed by order without oral argument. It stated that "[a]lthough plaintiff has alleged that the conduct was in reckless disregard of decendent's safety, we do not believe that this isolated incident of negligence rises to the level of a constitutional tort." Pet. A-3.

Petitioner also argues for the creation of a Bivens-type remedy, but my understanding is that these are limited

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 1, 1981

Re: 79-1734 - Parratt v. Taylor

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference