

# The Burger Court Opinion Writing Database

## *Hudson v. Palmer*

468 U.S. 517 (1984)

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



✓

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN -4 A9:52

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

Circulated: JUN 1 1984

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

*Handwritten notes and signatures on the left side of the page, including a large diagonal line and the name "Justice Marshall".*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-1630 AND 82-6695

82-1630  
TED S. HUDSON, PETITIONER  
*v.*  
RUSSELL THOMAS PALMER, JR.

82-6695  
RUSSELL THOMAS PALMER, JR., PETITIONER  
*v.*  
TED S. HUDSON

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[June —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari in No. 82-1630 to decide whether a prison inmate has a reasonable expectation of privacy in his prison cell entitling him to the protection of the Fourth Amendment against unreasonable searches and seizures. We also granted certiorari in No. 82-6695, the cross-petition, to determine whether our decision in *Parratt v. Taylor*, 451 U. S. 527 (1981), which held that a negligent deprivation of property by state officials does not violate the Fourteenth Amendment if an adequate postdeprivation state remedy exists, should extend to intentional deprivations of property.

I

The facts underlying this dispute are relatively simple. Respondent Palmer is an inmate at the Bland Correctional Center in Bland, Va., serving sentences for forgery, uttering, grand larceny, and bank robbery convictions. On September 16, 1981, petitioner Hudson, an officer at the Correc-

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

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
THE CHIEF JUSTICE

June 4, 1984

84 JUN -4 P4:00

MEMORANDUM TO THE CONFERENCE:

Re: 82-1630) Hudson v. Palmer  
82-6695) Palmer v. Hudson

John raises an interesting point in his recent memorandum which may require a short response. I would propose that we deal with his point either in a short textual paragraph or a footnote and simply say that the same reasons that lead us to conclude that the Fourth Amendment's proscription against unreasonable searches is inapplicable in a prison cell apply with controlling force to seizures. Arguably, prison officials could constitutionally deny a prisoner all possessory interests in material personal possessions during the time of imprisonment. If so, it follows that they must be free to seize from cells whatever articles in their view disserve legitimate institutional interests, unless a different constitutional right is thereby implicated.

This power, as with all power, of course is subject to abuse. That the Fourth Amendment does not protect against seizures in a prison cell, however, does not mean that property can be destroyed by officials with impunity. When all is said and done, this is the crux of respondent's complaint; his concern is plainly with the destruction, not with the seizure and we can concede that destruction raises a legitimate claim. But, as we have said, for destruction he has a state remedy, apart from inmate grievance procedures, which satisfies the Due Process Clause of the Fourteenth Amendment.

I am ready to add a paragraph to this effect if this will not cause "defections."

Regards,

WEB

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 12, 1984

PERSONAL

Re: 82-1630 & 82-6695 - Hudson v. Palmer

Dear Bill:

I will get to your points (your memo of June 7) and  
I see no problems.

Regards,



Justice Brennan

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 15 AM 11:15

CHANGES AS MARKED: 8, 10, 12, 15  
16, 18

STYLISTIC CHANGES

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

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

Recirculated: **JUN 15 1984**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-1630 AND 82-6695

82-1630  
TED S. HUDSON, PETITIONER  
*v.*  
RUSSELL THOMAS PALMER, JR.

82-6695  
RUSSELL THOMAS PALMER, JR., PETITIONER  
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TED S. HUDSON

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[June —, 1984]

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I

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HAL

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

7/2 - We called CJ's Office &  
obtained copies of these.  
wsm

June 29, 1984

CHAMBERS OF  
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE

Two cases were held for Hudson v. Palmer, No. 82-1630 and Palmer v. Hudson, No. 82-6695.

✓ 1. Wilkins v. Whitaker, No. 83-5504. In March 1978, Officer Powell of the High Point Police Department was called to investigate a shooting at High Point Memorial Hospital. Upon his arrival, he discovered Petitioner's wife in the front seat of Petitioner's car, which was parked by the emergency room door. Petitioner's wife had been murdered. Officer Powell and Officer Whitaker, who had arrived shortly after Powell, inventoried Petitioner's car at the Hospital. Inside the car were such items as a television set, two bags of clothes, a shotgun, and a box of soap. The officers then impounded the car and its contents at police headquarters. Petitioner was arrested later that day and charged with the murder of his wife.

Two days later, allegedly at Petitioner's request, Officer Whitaker removed the clothes from the car and gave them to two of Petitioner's relatives. Whitaker had the relatives sign a receipt for the clothes. Petitioner subsequently denied having authorized Whitaker to deliver the clothes to his relatives. He brought this action in federal district court against Whitaker and the Chief of Police, alleging, inter alia, that he had been deprived of his property without due process of law. The District Court granted summary judgment in Respondents' favor. The Fourth Circuit affirmed, reasoning that, at most, Whitaker had been negligent in relinquishing Petitioner's clothes to his relatives. Under Parratt v. Taylor, 451 U.S. 527 (1981), the court said, such negligence was insufficient to justify an award under 42 U.S.C. §1983 since Petitioner could bring a state action for conversion to regain possession of his property. The court went on to say that Parratt would bar recovery even if Whitaker had acted intentionally.

CONTINUED



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 13, 1983

No. 82-1630

Hudson v. Palmer

No. 82-6695

Palmer v. Hudson

---

Dear Thurgood, Harry and John,

We four are in dissent in the  
above. John, would you try your hand at  
the dissent?

Sincerely,

*Bill*

Justice Marshall

Justice Blackmun

Justice Stevens

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 7, 1984

Re: Hudson v. Palmer, Nos. 82-1630 & 82-6695

Dear Chief:

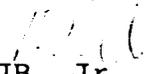
Although I am waiting for John's dissent on the Fourth Amendment issues in this case, I do plan eventually to join your Part IIB in which you hold that Parratt v. Taylor applies to intentional deprivations of property. Before doing so, however, I hope you will consider two very minor modifications that I think will help to clarify the convincing arguments you have made in that section.

First, would it be possible to modify the second full sentence on page 15 to read: "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." By adding the underlined words, it will be clearer that we are not addressing privacy or other due process guarantees of the Fourteenth Amendment that do not depend upon procedural requirements. You will recall that this was one of the concerns that led Harry to write separately in Parratt.

Second, would it be possible to pull out the sentence that carries over from page 15 to page 16. This too is merely a stylistic suggestion, but will help to eliminate any confusion as to whether a state employee is acting under color of state law.

I do appreciate your considering these minor suggestions.

Sincerely,

  
WJB, Jr.

The Chief Justice

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

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JUSTICE MARSHALL

84 JUN 19 AM 1:19

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 19, 1984

No. 82-1630) Hudson  
v. Palmer

No. 82-6695) Palmer  
v. Hudson

Dear John,

Please join me in your concurrence  
and dissent in the above.

Sincerely,

*Bill*

Justice Stevens

Copies to the Conference

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Washington, D. C. 20543

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JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 6<sup>th</sup> 1984  
84 JUN -6 M1 52

Re: 82-1630 and 82-6695 -

Hudson v. Palmer  
Palmer v. Hudson

---

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 6, 1984

Re: Nos. 82-1630 and 6695-Hudson v. Palmer and  
Palmer v. Hudson

Dear Chief:

I await further writing.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 19, 1984

Re: Nos. 82-1630 and 6695-Hudson v. Palmer and  
Palmer v. Hudson

Dear John:

Please join me in your concurring and dissenting  
opinion.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

84 JUN 25 09:55 June 22, 1984

Re: No. 82-1630) Hudson v. Palmer  
No. 82-6695) Palmer v. Hudson

Dear John:

Please join me in your opinion concurring in part and  
dissenting in part.

Sincerely,



Justice Stevens

cc: The Conference

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HAB

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 22, 1984

Re: No. 82-1630) Hudson v. Palmer  
No. 82-6695) Palmer v. Hudson

Dear John:

Please join me in your opinion concurring in part and dissenting in part.

Sincerely,



Justice Stevens

cc: The Conference

[P.S. to Justice Stevens only]

My joinder makes me wonder about the correctness of the word "five" in the fifth line of the paragraph beginning on page 9 of your opinion. There are really only four who join, but of course you are speaking of the perception of all five. Perhaps my confusion is unwarranted. But there is a misspelled word in the last line of the text on that page.



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 9, 1983

82-1630 Hudson v. Palmer  
82-6695 Palmer v. Hudson

MEMORANDUM TO THE CONFERENCE:

As I did not vote in this case, I have now taken a further look.

On the Fourth Amendment search issue, the state interest in locating weapons and contraband is compelling. Prison authorities must be free to make random searches. An inmate's interest in privacy with respect to property in his cell is minimal.

As to the procedural due process claim based on the alleged destruction of personal property, I conclude that Parratt does control where - as here - there are adequate state remedies.

Accordingly, my vote is to reverse 82-1630 and affirm 82-6695.

*L. F. P.*  
L.F.P., Jr.

SS

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 4, 1984

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JUSTICE MARSHALL

84 JUN -5 P1:16

82-1630 and 82-6695 Hudson

Dear Chief:

I agree that John has identified a question that should be answered, and think your proposed additional paragraph is appropriate.

With this addition, I will be glad to join your opinion. I may possibly add a brief concurring paragraph on another point.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

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JUSTICE WILLIAM H. REHNQUIST

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JUSTICE MARSHALL

'84 JUN 12 A9:39

June 11, 1984

Re: Nos. 82-1630 & 82-6695 Hudson v. Palmer

Dear Chief:

Please join me, on the assumption that the substance of your letter of June 4th will be added as a paragraph to the presently circulating opinion. I agree that the "seizures" against which the Fourth Amendment protects are in their nature temporary deprivations of the right to personally possess property.

When one turns from a "seizure"—which may deprive the owner temporarily of the right of immediate possession of an object—to its destruction, I think one moves from the Fourth Amendment to the Fifth Amendment. I cannot imagine a taking of private property for public use which would be "reasonable" under some sort of Fourth Amendment analysis, and therefore not violative of the Fifth Amendment. But as you point out, Virginia provides a remedy for the destruction of the property.

Sincerely,

*wm*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 13, 1983

Re: 82-1630 - Hudson v. Palmer  
82-6695 - Palmer v. Hudson

Dear Bill:

I'll be happy to take on the dissent.

Respectfully,



Justice Brennan

cc: Justice Marshall  
Justice Blackmun

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

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JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

'84 JUN -4 A9:52

June 1, 1984

Re: 82-1630 & 6695-Hudson v. Palmer

Dear Chief:

You have made a strong case for the holding that prisoners do not have any justifiable expectations of privacy, from which it follows that Palmer was not subjected to a "search" within the meaning of the Fourth Amendment. That holding, however, does not dispose of this case.

As you have pointed out in your recent circulation in Segura, and as the Court held in United States v. Jacobsen, the Fourth Amendment protects not only privacy interests, but also possessory interests. Hudson not only searched Palmer's property, he then took and destroyed it. That deprived Palmer of his possessory interests in the property; under both Segura and Jacobsen, it was a "seizure." Moreover, the seizure was plainly unreasonable, at least on the present state of the record. There is no contention that Palmer's property was contraband; to the contrary the allegation is that Hudson took and destroyed the property maliciously, for no reason at all. I cannot but conclude that taking and destroying property a prisoner is entitled to have under relevant prison regulations is an unreasonable seizure prohibited by the Fourth Amendment. In due course I shall circulate a separate opinion.

Respectfully,



The Chief Justice

Copies to the Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 19 A9:53

JRS  
Please give me in your  
concerning and documentary opinion

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1630 AND 82-6695

82-1630  
TED S. HUDSON, PETITIONER  
v.  
RUSSELL THOMAS PALMER, JR.

82-6695  
RUSSELL THOMAS PALMER, JR., PETITIONER  
v.  
TED S. HUDSON

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[June —, 1984]

JUSTICE STEVENS, concurring in part and dissenting in part.

This case comes to us on the pleadings. We must take the allegations in Palmer's complaint as true.<sup>1</sup> Liberally construing this pro se complaint as we must,<sup>2</sup> it alleges that after examining it, prison guard Hudson maliciously took and destroyed a quantity of Palmer's property, including legal materials and letters, for no reason other than harassment.<sup>3</sup>

<sup>1</sup> See *Hughes v. Rowe*, 449 U. S. 5, 10 (1980) (*per curiam*); *California Motor Transport Co. v. Trucking Unlimited*, 404 U. S. 508, 515-516 (1972); *Walker Process Equipment Co. v. Food Machinery & Chemical Corp.*, 382 U. S. 172, 174-175 (1965); *Cooper v. Pate*, 378 U. S. 546 (1964) (*per curiam*).

<sup>2</sup> See *Boag v. MacDougall*, 454 U. S. 364 (1982) (*per curiam*); *Haines v. Kerner*, 404 U. S. 519 (1972) (*per curiam*).

<sup>3</sup> "On 9-16-81 around 5:50 p.m., officer Hudson shook down my locker and destroyed a lot of my property, i. e.: legal materials, letters, and other personal property only as a means of harassment. Officer Hudson has violated my Constitutional rights. The shakedown was no routine shakedown. It was planned and carried out only as harassment. Hudson

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'84 JUN 20 P2:06  
STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES 7

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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

Recirculated: JUN 20 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1630 AND 82-6695

82-1630  
TED S. HUDSON, PETITIONER  
v.  
RUSSELL THOMAS PALMER, JR.

82-6695  
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v.  
TED S. HUDSON

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[June —, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and  
JUSTICE MARSHALL join, concurring in part and dissenting in  
part.

This case comes to us on the pleadings. We must take the  
allegations in Palmer's complaint as true.<sup>1</sup> Liberally con-  
struing this pro se complaint as we must,<sup>2</sup> it alleges that  
after examining it, prison guard Hudson maliciously took and  
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materials and letters, for no reason other than harassment.<sup>3</sup>

<sup>1</sup>See *Hughes v. Rowe*, 449 U. S. 5, 10 (1980) (*per curiam*); *California Motor Transport Co. v. Trucking Unlimited*, 404 U. S. 508, 515-516 (1972); *Walker Process Equipment Co. v. Food Machinery & Chemical Corp.*, 382 U. S. 172, 174-175 (1965); *Cooper v. Pate*, 378 U. S. 546 (1964) (*per curiam*).

<sup>2</sup>See *Boag v. MacDougall*, 454 U. S. 364 (1982) (*per curiam*); *Haines v. Kerner*, 404 U. S. 519 (1972) (*per curiam*).

<sup>3</sup>"On 9-16-81 around 5:50 p.m., officer Hudson shook down my locker and destroyed a lot of my property, i. e.: legal materials, letters, and other personal property only as a means of harassment. Officer Hudson has violated my Constitutional rights. The shakedown was no routine shake-down. It was planned and carried out only as harassment. Hudson

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

72, 9, 15  
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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 25 A11:58

From: Justice Stevens

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Recirculated: JUN 25 1984

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 82-1630 AND 82-6695

82-1630  
TED S. HUDSON, PETITIONER  
*v.*  
RUSSELL THOMAS PALMER, JR.

82-6695  
RUSSELL THOMAS PALMER, JR., PETITIONER  
*v.*  
TED S. HUDSON

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[June —, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL and JUSTICE BLACKMUN join, concurring in part and dissenting in part.

This case comes to us on the pleadings. We must take the allegations in Palmer's complaint as true.<sup>1</sup> Liberally construing this pro se complaint as we must,<sup>2</sup> it alleges that after examining it, prison guard Hudson maliciously took and destroyed a quantity of Palmer's property, including legal materials and letters, for no reason other than harassment.<sup>3</sup>

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<sup>2</sup>See *Boag v. MacDougall*, 454 U. S. 364 (1982) (*per curiam*); *Haines v. Kerner*, 404 U. S. 519 (1972) (*per curiam*).

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

4-1084 JUN 29 11:55

From: Justice Stevens

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

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## SUPREME COURT OF THE UNITED STATES

Nos. 82-1630 AND 82-6695

82-1630  
TED S. HUDSON, PETITIONER  
*v.*  
RUSSELL THOMAS PALMER, JR.

82-6695  
RUSSELL THOMAS PALMER, JR., PETITIONER  
*v.*  
TED S. HUDSON

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[July 3, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL and JUSTICE BLACKMUN join, concurring in part and dissenting in part.

This case comes to us on the pleadings. We must take the allegations in Palmer's complaint as true.<sup>1</sup> Liberally construing this pro se complaint as we must,<sup>2</sup> it alleges that after examining it, prison guard Hudson maliciously took and destroyed a quantity of Palmer's property, including legal materials and letters, for no reason other than harassment.<sup>3</sup>

<sup>1</sup>See *Hughes v. Rowe*, 449 U. S. 5, 10 (1980) (*per curiam*); *California Motor Transport Co. v. Trucking Unlimited*, 404 U. S. 508, 515-516 (1972); *Walker Process Equipment Co. v. Food Machinery & Chemical Corp.*, 382 U. S. 172, 174-175 (1965); *Cooper v. Pate*, 378 U. S. 546 (1964) (*per curiam*).

<sup>2</sup>See *Boag v. MacDougall*, 454 U. S. 364 (1982) (*per curiam*); *Haines v. Kerner*, 404 U. S. 519 (1972) (*per curiam*).

<sup>3</sup>"On 9-16-81 around 5:50 p. m., officer Hudson shook down my locker and destroyed a lot of my property, *i. e.*: legal materials, letters, and other personal property only as a means of harassment. Officer Hudson has violated my Constitutional rights. The shakedown was no routine shakedown. It was planned and carried out only as harassment. Hudson

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

July 2, 1984

Re: 82-1630 - Hudson v. Palmer  
82-6695 - Palmer v. Hudson

Dear Chief:

As I indicated at Conference this morning, I will make an oral announcement of my dissent in this case.

Respectfully,



The Chief Justice

Copies to the Conference

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

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

'84 JUN -6 P1:13

June 6, 1984

No. 82-1630 Hudson v. Palmer  
No. 82-6695 Palmer v. Hudson

Dear Chief,

Please join me in your opinion. I agree with you that John's concerns must be addressed; the privacy rationale which supports your holding on the search issue does not, without more, respond to the seizure question.

Sincerely,

*Sandra*

The Chief Justice

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JUSTICE MARSHALL

'84 JUN 27 A10:44

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

From: Justice O'Connor

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6/27/84

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1630 AND 82-6695

82-1630 TED S. HUDSON, PETITIONER  
v.  
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82-6695 RUSSELL THOMAS PALMER, JR., PETITIONER  
v.  
TED S. HUDSON

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR, concurring.

The courts of this country quite properly share the responsibility for protecting the constitutional rights of those imprisoned for the commission of crimes against society. Thus, when a prisoner's property is wrongfully destroyed, the courts must ensure that the prisoner, no less than any other person, receives just compensation. The Constitution, as well as human decency, requires no less. The issue in this case, however, does not concern *whether* a prisoner may recover damages for a malicious deprivation of property. Rather, this case decides only *what* is the appropriate source of the constitutional right and the remedy that corresponds with it. I agree with the Court's treatment of these issues and therefore join its opinion and judgment today. I write separately to elaborate my understanding why the complaint in this case does not state a ripe constitutional claim.

The complaint alleges three types of harm under the Fourth Amendment: invasion of privacy from the search, temporary deprivation of the right to possession from the seizure, and permanent deprivation of the right to possession

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