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Tower v. Glover

467 U.S. 914 (1984)

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



(H)

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHAL

CHAMBERS OF
THE CHIEF JUSTICE

May 30, 1984

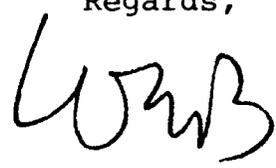
'84 MAY 30 P4:0

Re: 82-1988 - Tower v. Glover

Dear Sandra:

I join.

Regards,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 1, 1984

Tower v. Glover, No. 82-1988

MEMORANDUM TO THE CONFERENCE

I would vote against the suggestion in Sandra's letter that we fashion an exhaustion requirement for certain types of §1983 damage actions in this case -- despite the contrary interpretation of the statute we enunciated in Preiser v. Rodriguez, 411 U.S. 475, 494 (1973), and reaffirmed only two Terms ago in Patsy v. Florida Board of Regents, 457 U.S. 496, 500-501 (1982).

Whatever the merit of the suggestion as a general matter (and I recall that we have previously considered and rejected similar proposals), it is clear that in this case the issue was never pressed below, nor briefed and argued in this Court. More importantly, the record before us does not indicate one way or the other whether Glover has already sought habeas relief on grounds similar to those advanced in his §1983 damage action and so it is impossible to tell whether the suggestion would even apply to the facts of this case.

Accordingly, I believe that this is clearly not a case for consideration of the suggestion.

Sincerely,


W.J.B., Jr.

Supreme Court of the United States
SUPREME COURT OF THE UNITED STATES
Washington, D. C. 20543
JUSTICE THOMAS

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

'84 MAR 30 A10:24

March 30, 1984

No. 82-1988

Tower v. Glover

Dear Sandra,

I have no objection to your
proposed letter to the parties.

Sincerely,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 25, 1984

Tower v. Glover
No. 82-1988

Dear Sandra:

I fully agree with the first three sections of your opinion in the above. However, like John, I am afraid that some of the observations in Part IV of the opinion are unnecessary to our judgment. It is conceded that Glover has exhausted all available state court remedies and that there is no jurisdictional bar to an adjudication on the merits of his §1983 claim. I therefore fail to see why the opinion needs even to mention that this case provides "no occasion to decide if a Federal District Court should abstain from deciding a §1983 suit for damages stemming from an unlawful conviction pending the collateral exhaustion of state court attacks on the conviction itself." This observation seems particularly gratuitous in light of the fact that the point was not pressed or passed upon below, nor briefed or argued in this Court.

If you could see your way clear to omitting the first paragraph of Part IV, I would be happy to join.

Sincerely,

Justice O'Connor
Copies to the Conference

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

From: **Justice Brennan**

Circulated: 6/18/84

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WJB
Please see me in your
Concurring opinion
M

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1988

**BRUCE TOWER, ETC., ET AL., PETITIONERS v.
BILLY IRL GLOVER**

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

[June —, 1984]

JUSTICE BRENNAN, concurring in part and concurring in
the judgment.

I agree fully with both the Court's judgment and the reasoning used to arrive at its conclusion. Ordinarily, such complete agreement would make further writing quite unnecessary. But this is not an ordinary case. Although the issue was never raised by the parties, and although, as the Court properly concedes, the issue has absolutely no bearing on the disposition of this case, the Court nevertheless has seen fit to observe that it "ha[s] no occasion to decide" whether federal courts should "abstain" from deciding a state prisoner's § 1983 suit for damages stemming from an unlawful conviction pending that prisoner's exhaustion of collateral state-court challenges to his conviction. *Ante*, at 8. The reasons why the Court has no "occasion" to decide this question are clear enough: The question was never pressed or passed upon below, never briefed or argued in this Court, and, because respondent Glover has already exhausted all state-court remedies, the issue has no bearing whatsoever on the proper resolution of the controversy we have been called upon to decide. Accordingly, I join all of the Court's opinion except the unnecessary paragraph at the beginning of Part IV.

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

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JUSTICE MARSHALL

84 JUN 19 P1:32

From: Justice Brennan

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1988

BRUCE TOWER, ET AL., PETITIONERS *v.*
BILLY IRL GLOVER

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

[June —, 1984]

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

I agree fully with both the Court's judgment and the reasoning used to arrive at its conclusion. Ordinarily, such complete agreement would make further writing quite unnecessary. But this is not an ordinary case. Although the issue was never raised by the parties, and although, as the Court properly concedes, the issue has absolutely no bearing on the disposition of this case, the Court nevertheless has seen fit to observe that it "ha[s] no occasion to decide" whether federal courts should "abstain" from deciding a state prisoner's § 1983 suit for damages stemming from an unlawful conviction pending that prisoner's exhaustion of collateral state-court challenges to his conviction. *Ante*, at 8. The reasons why the Court has no "occasion" to decide this question are clear enough: The question was never pressed or passed upon below, never briefed or argued in this Court, and, because respondent Glover has already exhausted all state-court remedies, the issue has no bearing whatsoever on the proper resolution of the controversy we have been called upon to decide. Accordingly, I join all of the Court's opinion except the unnecessary paragraph at the beginning of Part IV.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 1, 1984

Re: 82-1988 - Tower v. Glover

Dear Sandra,

You understand my suggestion re exhaustion correctly. It may not "write" in the end, but it is worth pursuing.

Sincerely yours,



Justice O'Connor

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cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

'84 MAR 30 A9:45

March 30, 1984

Re: 82-1988 - Tower v. Glover

Dear Sandra,

I have no objection to your suggested
inquiry.

Sincerely yours,



Justice O'Connor
Copies to the Conference
cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

'84 APR 27 P2:44

April 27, 1984

Re: 82-1988 - Tower v. Glover

Dear Sandra,

Please join me.

Sincerely yours,



Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1984

Re: No. 82-1988-Tower v. Glover

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

J.M.
T.M.

Justice Brennan

cc: The Conference

RECEIVED
SUPREME COURT OF THE UNITED STATES
JUSTICE
Washington, D. C. 20543

'84 MAR 30 A9:35

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 30, 1984

Re: No. 82-1988 - Tower v. Glover

Dear Sandra:

I have no objection to the proposed letter from our Clerk to counsel in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry", with a horizontal line underneath.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1984

Re: No. 82-1988, Tower v. Glover

Dear Sandra:

I find myself about where John and Bill Brennan are. If you could see your way clear to omit the first paragraph of Part IV of your opinion, you have my joinder.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 31, 1984

Re: No. 82-1988 - Tower v. Glover

Dear Sandra:

Will you please show me as joining the judgment and all of your opinion in this case except the first paragraph of part IV thereof.

Sincerely,



Justice O'Connor

cc: The Conference

SCOM 1-71, AB

Supreme Court of the United States
RECEIVED
Washington, D.C. 20543
SUPREME COURT U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1984

84 JUN 18 P1:08

Re: No. 82-1988, Tower v. Glover

Dear Sandra:

Inasmuch as Bill Brennan has written separately in this case, I shall join his opinion. You should, therefore, ignore the request contained in my letter of May 31.

Sincerely,



Justice O'Connor

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 18 P1:08

June 18, 1984

Re: No. 82-1988, Tower v. Glover

Dear Bill:

Please join me in your opinion concurring in part
and concurring in the judgment.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 26, 1984

82-1988 Tower v. Glover

Dear Sandra:

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Lewis".

Justice O'Connor

lfp/ss

cc: The Conference

3

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 23, 1984

Re: No. 82-1988 Tower v. Glover

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

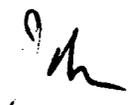
March 1, 1984

Re: 82-1988 - Tower v. Glover

Dear Sandra:

Although there is no doubt a good deal of merit in the suggestion that you and Byron have put forward, since it would result in a reversal of the judgment of the court below on a ground not argued and not considered by the courts below, I doubt if I would be able to join an opinion disposing of the case on that ground.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 25, 1984

Re: 82-1988 - Tower v. Glover

Dear Sandra:

If you could see your way clear to omitting the first paragraph of Part IV of your opinion, I would be happy to join you.

It seems to me that the paragraph is unnecessary to the decision and not germane to the question presented by the certiorari petition.

Apart from that paragraph, I think the opinion is fine and will in all events join Parts I through III as well as your judgment.

Respectfully,



Justice O'Connor

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 18 P1:08

June 18, 1984

Re: 82-1988 - Tower v. Glover

Dear Bill:

Please join me in your separate opinion.

Respectfully,



Justice Brennan

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 29, 1984

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JUSTICE SANDRA DAY O'CONNOR

'84 FEB 29 AM 11:40

No. 82-1988 Tower v. Glover

MEMORANDUM TO THE CONFERENCE

At Conference several of us expressed discomfort with the tentative conclusion required by Dennis v. Sparks that suits of the type brought by the respondent against his public defender were cognizable under §1983 merely by alleging a conspiracy with the trial judge and the prosecutor. Byron suggested the possibility that exhaustion of state remedies should be required.

I had not thought about an exhaustion requirement. It seemed to me Patsy v. Board of Regents, 457 U.S. 496 (1982) rejected that approach. There is no doubt, however, that a §1983 suit for damages based on the type of claim involved here - a conspiracy violating due process in a state criminal trial - engages many of the same concerns that counsel in favor of exhaustion of state remedies in the habeas context.

It is inconceivable that a federal court could find in favor of respondent Glover on his §1983 conspiracy claim without casting the gravest doubt on the validity of his criminal conviction. Thus, if Glover establishes the merits of his §1983 claim, there is little doubt he would be entitled to have his conviction set aside.

In Preiser v. Rodriguez, 411 U.S. 475 (1973) this Court held that the federal habeas statute was the exclusive federal remedy for obtaining specific relief against unconstitutional incarceration. The Court acknowledged that if §1983 injunctive relief were available as an alternative to federal habeas relief the exhaustion requirements of 28 U.S.C. §2254 would be nullified. Exhaustion of state remedies before the federal habeas court takes action serves

the valuable purpose of giving the state courts the first opportunity to recognize and correct errors committed in a state criminal trial.

Rodriguez went on to note, however, that exhaustion requirements are inappropriate in a §1983 damages action because a prisoner seeking damages "is attacking something other than the fact or length of his confinement, and he is seeking something other than immediate or speedy release..." 411 U.S. at 494. Nevertheless, because a successful prosecution of §1983 damages action would surely result in setting aside the conviction as well, perhaps in the exercise of our supervisory power over federal courts we could direct that consideration of the §1983 action in the federal district court be suspended until the conviction is attacked in all available state proceedings. This would avoid parallel or duplicative resolution of identical factual and legal questions in the state and federal courts, and would also assure state courts the first chance to correct their own errors.

I suppose such a suspension requirement is not really an exhaustion requirement. It is the nature of an exhaustion requirement that if full relief is granted in the first proceeding, relief in the second is foreclosed. With suspension the opposite is true. If respondent Glover can prove in state proceedings that his conviction was obtained by the conspiracy he alleges, his §1983 claim will almost certainly also be successful. If, however, he fails to obtain relief from his conviction in the state proceedings, summary resolution of the §1983 action, against Glover, should be possible. See Allen v. McCurry, 449 U.S. 90 (1980).

If there is any interest in such an approach, or if this is what Byron had in mind, I would be disposed to pursue it or join in such a holding.

Sincerely,

Sandra

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

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'84 MAR 30 A9:27

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 29, 1984

Re: No. 82-1988 Tower v. Glover

MEMORANDUM TO THE CONFERENCE:

The opinion for the Court in this case has been assigned to me. There is a point in the record that, I believe, requires clarification from the parties. Attached is a copy of a letter that I would like to have sent to the parties. Please let me know if there are any objections.

Sincerely,



Attachment

Pr. 3, 8

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

From: Justice O'Connor

Circulated: APR 24 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1988

**BRUCE TOWER, ETC., ET AL., PETITIONERS v.
BILLY IRL GLOVER**

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

[April —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

Petitioners are two public defenders working in the State of Oregon. Petitioner Bruce Tower, the Douglas County Public Defender, represented respondent Billy Irl Glover at one of Glover's state trials on robbery charges, at which Glover was convicted. Petitioner Gary Babcock, the Oregon State Public Defender, represented Glover in Glover's unsuccessful state court appeal from this and at least one other conviction.

In an action brought under 42 U. S. C. § 1983, Glover alleges that petitioners conspired with various state officials, including the trial and appellate court judges and the former Attorney General of Oregon, to secure Glover's conviction. Glover seeks neither reversal of his conviction nor compensatory damages, but asks instead for \$5 million in punitive damages to be awarded against each petitioner. App. 5, 9. We conclude that public defenders are not immune from liability in actions brought by a criminal defendant against state public defenders who are alleged to have conspired with state officials to deprive the § 1983 plaintiff of federal constitutional rights.

I

Glover was arrested on February 1, 1976, in Del Norte County, California. Pet. for Cert. in *Glover v. Dolan*, O.T. 1978, No. 78-5457, p. 3. The State of California extradited

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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April 26, 1984

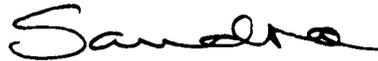
No. 82-1988 Tower v. Glover

Dear Bill and John,

You have each written me to request that I omit the first paragraph of Part IV of the draft opinion. If a majority agree with you I will, of course, do so. I hope, however, it will not be necessary.

The facts of this case illustrate graphically the abuse of the legal process involved in allowing simultaneous and parallel actions by prisoners in state and federal courts attacking the underlying conviction in one and seeking damages in the other pursuant to §1983 based on identical allegations. It fairly cries out for some comment or resolution, and I thought it not inappropriate to at least acknowledge the problem with citation to relevant authorities.

Sincerely,



Justice Brennan
Justice Stevens

Copies to the Conference

Stylistic Changes Throughout

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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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1988

**BRUCE TOWER, ETC., ET AL., PETITIONERS v.
BILLY IRL GLOVER**

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

[June —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

Petitioners are two public defenders working in the State of Oregon. Petitioner Bruce Tower, the Douglas County Public Defender, represented respondent Billy Irl Glover at one of Glover's state trials on robbery charges, at which Glover was convicted. Petitioner Gary Babcock, the Oregon State Public Defender, represented Glover in Glover's unsuccessful state-court appeal from this and at least one other conviction.

In an action brought under 42 U. S. C. § 1983, Glover alleges that petitioners conspired with various state officials, including the trial and appellate court judges and the former Attorney General of Oregon, to secure Glover's conviction. Glover seeks neither reversal of his conviction nor compensatory damages, but asks instead for \$5 million in punitive damages to be awarded against each petitioner. App. 5, 9. We conclude that public defenders are not immune from liability in actions brought by a criminal defendant against state public defenders who are alleged to have conspired with state officials to deprive the § 1983 plaintiff of federal constitutional rights.

I

Glover was arrested on February 1, 1976, in Del Norte County, Cal. Pet. for Cert. in *Glover v. Dolan*, O.T. 1978, No. 78-5457, p. 3. The State of California extradited Glover

Stylistic Changes Throughout

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JUSTICE MARSHALL

'84 JUN 22 P1:14

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

From: Justice O'Connor

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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SUPREME COURT OF THE UNITED STATES

No. 82-1988

BRUCE TOWER, ETC., ET AL., PETITIONERS *v.*
BILLY IRL GLOVER

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

[June 25, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

Petitioners are two public defenders working in the State of Oregon. Petitioner Bruce Tower, the Douglas County Public Defender, represented respondent Billy Irl Glover at one of Glover's state trials on robbery charges, at which Glover was convicted. Petitioner Gary Babcock, the Oregon State Public Defender, represented Glover in Glover's unsuccessful state-court appeal from this and at least one other conviction.

In an action brought under 42 U. S. C. § 1983, Glover alleges that petitioners conspired with various state officials, including the trial and appellate court judges and the former Attorney General of Oregon, to secure Glover's conviction. Glover seeks neither reversal of his conviction nor compensatory damages, but asks instead for \$5 million in punitive damages to be awarded against each petitioner. App. 5, 9. We conclude that public defenders are not immune from liability in actions brought by a criminal defendant against state public defenders who are alleged to have conspired with state officials to deprive the § 1983 plaintiff of federal constitutional rights.

I

Glover was arrested on February 1, 1976, in Del Norte County, Cal. Pet. for Cert. in *Glover v. Dolan*, O.T. 1978, No. 78-5457, p. 3. The State of California extradited Glover

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