

# The Burger Court Opinion Writing Database

## *Davidson v. Cannon*

474 U.S. 344 (1986)

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

January 7, 1986

Re: No. 84-6470 - Davidson v. Cannon

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

92 711-8 10.71

2001 JAN 10 10 20 AM '86  
U.S. SUPREME COURT

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 7, 1986

No. 84-6470

Davidson v. Cannon

Dear Bill,

While I agree with the Court that merely negligent conduct by a state official does not constitute a deprivation of liberty under the Due Process Clause, I do think that reckless conduct does work such a deprivation. Because I agree with Harry that the record in this case suggests that respondents' conduct was reckless, I would vacate the judgment of the Court of Appeals and would remand for review of the District Court's holding that the conduct at issue was not reckless. Accordingly, I will soon circulate a brief dissent.

Sincerely,

*Bill*

Justice Rehnquist

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82 JAN -1 6 1 32

20655

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

From: **Justice Brennan**

Circulated: JAN 7 1986

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-6470

**ROBERT DAVIDSON, PETITIONER v. JOSEPH  
CANNON ET AL.**

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

[January —, 1986]

**JUSTICE BRENNAN, dissenting.**

I agree with the Court that merely negligent conduct by a state official, even though causing personal injury, does not constitute a deprivation of liberty under the Due Process Clause. I do believe, however, that official conduct which causes personal injury due to recklessness or deliberate indifference, does deprive the victim of liberty within the meaning of the Fourteenth Amendment.

As JUSTICE BLACKMUN persuasively demonstrates in his dissent, the record in this case strongly suggests that the prison officials' failure to protect the petitioner from attack was reckless and not merely negligent. Accordingly, like JUSTICE BLACKMUN, I would vacate the judgment and remand this case so that the Court of Appeals may review the District Court's holding that respondents' conduct was not reckless.

10:29 P.M. '86

10:29 P.M. '86

(1)

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 20, 1985

84-6470 - Davidson v. Cannon

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

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82 DEC 23 10:30

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DEC 23 1985

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 2, 1986

Re: No. 84-6470 - Davidson v. Cannon

Dear Bill:

I await the dissent.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 6, 1986

Re: No. 84-6470-Davidson v. Cannon

Dear Harry:

Please join me in your dissent.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 23, 1985

Re: No. 84-6470, Davidson v. Cannon

Dear Bill:

I am preparing a dissent in this case which should be  
around in due course.

Sincerely,

*H.A.B.*  
*by wsm*

Justice Rehnquist

cc: The Conference

84 DEC 23 1985

2023

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

From: Justice Blackmun

JAN 4 1986

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-6470

ROBERT DAVIDSON, PETITIONER *v.* JOSEPH  
CANNON ET AL.

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

[January —, 1986]

JUSTICE BLACKMUN, dissenting.

When the State of New Jersey put Robert Davidson in its prison, it stripped him of all means of self protection. It forbade his access to a weapon. N. J. Dept. of Corrections Standard 251.4.a.201 and .202. It forbade his fighting back. Standard 251.4.a.002, .003 and .004. It blocked all avenues of escape. The State forced Davidson to rely solely on its own agents for protection. When threatened with violence by a fellow inmate, Davidson turned to the prison officials for protection, but they ignored his plea for help. As a result, Davidson was assaulted by another inmate. He suffered stab wounds on his face and body as well as a broken nose that required surgery.

The Court nevertheless excuses the prison officials from liability under 42 U. S. C. § 1983, holding that because the officials were "merely negligent in causing the injury" there was no "deprivation" of liberty without due process of law. *Ante*, at 3. It relies for this proposition and result on the easier companion case, *Daniels v. Williams, ante*, p. —, which overrules in part *Parratt v. Taylor*, 451 U. S. 527 (1981). In *Daniels*, also a § 1983 suit, the Court holds that a pretrial detainee, allegedly injured when he slipped on a pillow negligently left on the jail stairs by a deputy, as a matter of law suffered no deprivation under the Fourteenth Amendment.

*Handwritten initials:* JMB

(3)

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 21, 1985

84-6470 Davidson v. Cannon

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Justice Rehnquist

lfp/ss

cc: The Conference

DEC 23 10:14

20543  
JAN 13 1986

10. The Supreme Court

- Justice Brennan
- Justice White
- Justice Marshall
- Justice Blackmun
- Justice Powell
- Justice Stevens
- Justice O'Connor

From: Justice Rehnquist

Circulated: DEC 20 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6470

ROBERT DAVIDSON, PETITIONER v. JOSEPH CANNON ET AL.

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

[December —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner sued prison officials seeking damages under 42 U. S. C. § 1983 for injuries he suffered when they negligently failed to protect him from another inmate. On December 19, 1980, petitioner was threatened by one McMillian, a fellow inmate at the New Jersey State Prison at Leesburg. Petitioner sent a note reporting the incident that found its way to respondent Cannon, the assistant superintendent of the prison, who read the note and sent it on to respondent James, a corrections sergeant.\* Cannon subsequently testified that he did not view the situation as urgent because on previous occasions when petitioner had a serious problem he had contacted Cannon directly.

James received the note at about 2:00 P.M. on December 19, and was informed of its contents. James then attended to other matters, which he described as emergencies, and left

\*The note, addressed to a civilian hearing officer, said:

"When I went back to the unit after seeing you McMillian was on the steps outside the unit. When I was going past him he told me 'I'll fuck you up you old mother-fucking fag.'" Go up to your cell, I be right there.

I ignored this and went to another person's cell and thought about it. Then I figured I should tell you so 'if' anything develops you would be aware.

I'm quite content to let this matter drop but evidently McMillian isn't. Thank you, R. Davidson." App. 98-99.

*Rehnquist*  
*12/20/85*

STYLISTIC CHANGES THROUGHOUT

Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Stevens  
 Justice O'Connor

From: **Justice Rehnquist**

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

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-6470

ROBERT DAVIDSON, PETITIONER *v.* JOSEPH  
 CANNON ET AL.

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

[January —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

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"I ignored this and went to another person's cell and thought about it. Then I figured I should tell you so 'if' anything develops you would be aware.

"I'm quite content to let this matter drop but evidently McMillian isn't. Thank you, R. Davidson." App. 98-99.

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

  
CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

December 20, 1985

No. 84-6470 Davidson v. Cannon

Dear Bill,

Please join me.

Sincerely,

*Sandra*

Justice Rehnquist

Copies to the Conference

22 DEC 23 10:30

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