

The Burger Court Opinion Writing Database

Cleavinger v. Saxner

474 U.S. 193 (1985)

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

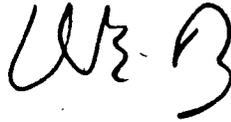
November 21, 1985

Re: No. 84-732 - Cleavinger v. Saxner

Dear Bill:

I join your dissent.

Regards,

Handwritten signature of William Rehnquist, consisting of stylized initials 'WR' followed by a large 'B'.

Justice Rehnquist

Copies to the Conference

Don't bother to write, just give
me a call!

Supreme Court of the United States
Memorandum

84-732

-----, 19-----
Lewis
Here are my
"talking notes" on
this case.

Do the notes
persuade you
I am faithful
to your Butts?
WRB

SUITS.
ERISON
JUDICIAL FUNCTION: e

7c

SUMMARY

84-732 - Cleavinger v. Saxner
October 17, 1985

THE QUESTION HERE IS WHETHER MEMBERS OF PRISON DISCIPLINARY COMMITTEES ^{MADE UP OF PRISON COUNSELORS AND STAFF MEMBERS} ARE ENTITLED TO ABSOLUTE IMMUNITY FROM PERSONAL DAMAGE LIABILITY FOR ACTIONS TAKEN IN A QUASI-JUDICIAL CAPACITY.

WE HAD GOOD ARGUMENTS HERE ON BOTH SIDES, BUT THE PRISON IS MORE THEORETICAL THAN REAL.

I DO NOT ACCEPT THE IDEA THAT BECAUSE THE HEARING OFFICERS ^{ARE} "FOR THE SYSTEM" IT IS DIFFERENT FROM ALJ. THE ALJ'S ON THE STAFF PAYROLL OF THE AGENCIES THEY DEAL WITH ^{AND THESE} PRISON HEARING PEOPLE NO MORE "ADVERSARIES" THAN THE ALJ'S ARE TO THE PEOPLE REGULATED.

I SEE THREE BASIC ISSUES HERE: (1) WHETHER THE DEFENDANT'S DECISIONS ARE ^{//} FUNCTIONALLY COMPARABLE TO THE TYPE OF DECISIONS MADE BY A JUDGE; (2) WHETHER THE CONTROVERSIES WHICH ^{THESE HEARINGS PASS} ~~THE OFFICIAL PROCEEDINGS~~ ^{THAT IS OR IN FACT} SUFFICIENTLY INTENSE TO PROVOKE LITIGATION, INTENDED TO INTIMIDATE WHETHER THE ~~OFFICIAL~~ ^{THESE PRISON STAFFS} ~~PROCEEDINGS~~ OVER WHICH ~~THE OFFICIAL PROCEEDINGS~~ CONTAINS SUFFICIENT SAFEGUARDS TO LESSEN THE NEED FOR DAMAGES SUIT

1. ^{THESE} FUNCTIONAL EQUIVALENT OF A JUDGE. MEMBERS OF PRISON DISCIPLINARY COMMITTEES ARE INVOLVED IN THE CLASSIC JUDICIAL FUNCTION

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 31, 1985

No. 84-732

Cleavinger v. Saxner

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 31, 1985

Re: 84-732 - Cleavinger v. Saxner

Dear Harry,

My Conference vote was not all that firm, and I am sufficiently impressed with your opinion that I may ultimately be with you. But I would like to see what the dissent has to say.

Sincerely yours,



Justice Blackmun

Copies to the Conference

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

AM 019 4-100 28

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 4, 1985

84-732 - Cleavinger v. Saxner and Cain

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 30, 1985

Re: No. 84-732-Cleavinger, Marcadis and Lockett v.
Saxner and Cain

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

From: **Justice Blackmun**

Circulated: OCT 20 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-732

**THEODORE CLEAVINGER, MARVIN MARCADIS, AND
 TOM P. LOCKETT, PETITIONERS v. DAVID
 SAXNER AND ALFRED CAIN, JR.**

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

[November —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether members of a federal prison's Institution Discipline Committee, who hear cases in which inmates are charged with rules infractions, are entitled to absolute, as distinguished from qualified, immunity from personal damages liability for actions violative of the United States Constitution.

I

Respondents David Saxner and Alfred Cain, Jr., in January 1975 were inmates at the Federal Correctional Institution at Terre Haute, Ind. They were serving 4- and 5-year sentences, respectively, and each was within 18 months of a possible release date. Each was soon to appear before the parole board. The prison-conduct record of each was good.

On January 6, 1975, William Lowe, a Negro inmate at Terre Haute died in the prison hospital. He was the first of four Negro inmates to die there within the ensuing 7-month period. A work stoppage to protest Lowe's death took place at the prison on January 7 and 8. Respondent Saxner, a white inmate, who had served as a "jailhouse lawyer," and respondent Cain, a Negro inmate, who was the librarian for the Africa and New World Cultural Society, assert that neither of them participated in the stoppage. See Brief for Re-

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

STYLISTIC CHANGES
J P. 13

From: **Justice Blackmun**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-732

**THEODORE CLEAVINGER, MARVIN MARCADIS, AND
TOM P. LOCKETT, PETITIONERS v. DAVID
SAXNER AND ALFRED CAIN, JR.**

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

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 26, 1985

Re: No. 84-732, Cleavinger v. Saxner

Dear Lewis:

This is in response to your letter of November 22. The remarks in the last primary paragraph of the opinion, I had thought, were concerned with a Bivens action against a federal, not a state, official, although perhaps the opinion could have a spillover effect on an action against the latter. Certainly, I know of no Bivens action that has not been lodged in the federal court either directly or, as might be the case, by removal under 28 U.S.C. §1442(a).

Nevertheless, subject to objection from those who have joined, I am willing to try to accommodate your concerns by (a) changing the word "usually," in the eighth line from the bottom on page 15 to "often," and (b) in the sixth line from the bottom on that page, replacing the word "could" with the words "might decide to."

I hope these changes will be acceptable to you.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 11, 1985

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 84-732, Cleavinger v. Saxner

There are two holds for Cleavinger:

1. No. 84-1800, Walters v. Spruytte. CA6 applied a qualified-immunity standard in this case, so Cleavinger does not affect the result. Petitioners, two prison psychologists who presided over a prison administrative hearing, were found personally liable by CA6, reviewing the DC's dismissal of respondent's complaint. The prison administrative hearing was conducted to review a decision of other prison officials forbidding respondent to receive a paperback dictionary from his mother. A Michigan Department of Corrections policy directive permits prisoners to receive books only from publishers or authorized vendors. This Court has upheld such "publisher only" rules. Bell v. Wolfish, 441 U.S. 520, 550 (1979). Petitioners denied respondent's claims based on the policy directive. Prior to the hearing, respondent requested that a staff assistant obtain a copy of a Marquette Circuit Court decision which had found the "publisher only" policy directive to be inconsistent with a Michigan Administrative Rule permitting inmates to obtain any book that does not threaten prison security. CA6 held that the Administrative Rule conferred on respondent a constitutionally protected property right. For this reason and because the policy directive was not promulgated in accordance with the Michigan Administrative Procedure Act, the policy directive was invalid. Petitioners therefore relied on a policy directive that was invalid as a matter of state law in depriving respondent of a constitutionally protected interest, and further violated due process by not making a specific determination that the book was a threat to prison security.

CA6 found that respondent's conduct violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Respondents should have known of the invalidity of the policy directive and of respondent's right under the Administrative Rule to a specific determination whether the dictionary threatened security. CA6 distinguished Davis v. Scherer, 104 S.Ct. 3012, 3019-3020 (1984), which held that a procedural violation by an official did not automatically lead to a waiver of constitutional immunity, on the ground that the violation here is of a state regulation that defines the substantive right. One judge concurred.

Whatever the merits of CA6's analysis, the result is in accord with Cleavinger. I shall vote to deny.

6

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 31, 1985

84-732 Cleavinger v. Saxner

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
 JUSTICE LEWIS F. POWELL, JR.

November 22, 1985

84-732 Cleavinger v. Saxner

Dear Harry:

In taking a second look at your fine opinion (that I have joined), I have a suggestion that I would appreciate your considering.

In the last paragraph of the opinion (p. 15) you note that "in a case of this kind [a defendant] is usually represented . . . by government counsel." I am not at all sure that this is the "usual" situation. In Virginia the Attorney General is not required to undertake such representation and his office has been careful not to commit itself to do so.

I also was told by a former partner of mine that he resigned from the Richmond School Board because of threatened suits, and the absence of adequate indemnification. The premiums are simply too high, and often indemnification policies customarily limit coverage in various ways, e.g., to "negligent" conduct.

In view of these thoughts, perhaps you could simply change the word "usually" to "often", and omit the clause that refers to indemnification or qualify it in some respects. These changes would still leave the essence of what you intended to convey.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 31, 1985

Re: No. 84-732 Cleavinger, Marcadis and Lockett v.
Saxner and Cain

Dear Harry,

In due course I will circulate a dissent in this case.

Sincerely,

WHR

Justice Blackmun

cc: The Conference

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

From: **Justice Rehnquist**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-732

THEODORE CLEAVINGER, MARVIN MARCADIS, AND
 TOM P. LOCKETT, PETITIONERS *v.* DAVID
 SAXNER AND ALFRED CAIN, JR.

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

[November —, 1985]

JUSTICE REHNQUIST, dissenting.

The Court concludes that the members of the Institution Discipline Committee of a federal prison are more like school board members than they are like administrative law judges or members of a parole board, and that therefore they are not entitled to absolute immunity from liability for damages. Concededly the hearings in which these officials perform their adjudicatory function do not include all of the procedural safeguards or the adherence to written precedent that surround the function of an administrative law judge, but I do not read *Butz v. Economou*, 438 U. S. 478 (1978), as making these factors dispositive against a claim for absolute immunity. I also think that the factors peculiar to the prison environment counsel in favor of such an immunity for these officials.

Litigation before administrative law judges is generally conducted by lawyers, who are trained to suppress their dislike of, or contempt for, the particular judge before whom they try their case. The lawyers and their clients come from their homes and hotels to a government building in the morning, present their case to the judge, go and have lunch, return in the afternoon and again present their case. When the court recesses for the day, the parties and their lawyers return to their homes and hotels. At least one side will be

STYLISTIC CHANGES THROUGHOUT

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

From: Justice Rehnquist

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89 144

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-732

THEODORE CLEAVINGER, MARVIN MARCADIS, AND
 TOM P. LOCKETT, PETITIONERS *v.* DAVID
 SAXNER AND ALFRED CAIN, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[November —, 1985]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE
 joins, dissenting.

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

From: Justice Rehnquist

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-732

THEODORE CLEAVINGER, MARVIN MARCADIS, AND
TOM P. LOCKETT, PETITIONERS *v.* DAVID
SAXNER AND ALFRED CAIN, JR.

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

[December —, 1985]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and
JUSTICE WHITE join, dissenting.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 30, 1985

Re: 84-732 - Cleavinger v. Saxner

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 30, 1985

Re: 84-732 Cleavinger and Lockett v. Saxner and Cain

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference