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Daniels, Davidson and the Unlearned Lesson of *Parratt v. Taylor:* Eliminating Simple Negligence as a Basis for Procedural Due Process Claims (If at First You Don't Succeed, Overrule It)

> No problem so perplexes the federal courts today as determining the outer bounds of section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, the ubiquitous tort remedy for deprivations of rights secured by federal law (primarily the Fourteenth Amendment) by persons acting under color of state law.[1]

Thus Judge Posner, writing for the United States Court of Appeals for the Seventh Circuit, related the continuing confusion facing courts two years after the Supreme Court, in *Parratt v. Taylor*,[2] "put [its] shoulder to the wheel hoping to be of greater assistance"[3] to federal courts litigating section 1983[4] claims based on ordinary negligence. In *Parratt*, the Supreme Court held that negligent action of a state official, acting under color of state law, could deprive an individual of property. However, a negligent deprivation would only support a section 1983 claim where the loss was suffered without due process of law. The Court stressed that the availability of a postdeprivation remedy, which might enable the injured party to redress his claims, might satisfy the due process requirement.[5]

Judge Posner was not alone in his confusion. The judicial and academic reaction to the Court's attempt in *Parratt* to clarify the law demonstrates that the decision only complicated the law, leaving many issues unresolved and raising new questions.[6] It remained true, as it was before *Parratt*, that:

> [T]he question of whether an allegation of simple negligence is sufficient to state a cause of action under § 1983 is more elusive than it appears at first blush. It may well not be susceptible of a uniform answer across the entire spectrum of conceivable constitutional violations which might be the subject of a § 1983 action.[7]

The Court has acknowledged this confusion in its subsequent con-

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1 Jackson v. City of Joliet, 715 F.2d 1200, 1201 (7th Cir. 1983), *cert. denied*, 465 U.S. 1049 (1984).

2 451 U.S. 527 (1981).

3 *Id.* at 533-34. *See also infra* notes 20-23 and accompanying text.

4 The relevant portion of 42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

5 451 U.S. at 536-37, 543-44.

6 *See infra* notes 19-35 and accompanying text.

7 Baker v. McCollan, 443 U.S. 137, 139-40 (1979).

sideration of section 1983 claims based on simple negligence. In yet another attempt to provide some guidance to the lower federal courts, the Supreme Court partially overruled *Parratt,* holding that the "Due Process Clause [of the fourteenth amendment] is simply not implicated by a negligent act of [a state] official causing unintended loss of or injury to life, liberty or property."[8] Unfortunately, the new holding leaves many of the same questions unresolved.[9]

This note will examine the decisions in *Daniels v. Williams*[10] and *Davidson v. Cannon,*[11] the companion cases which partially overrule *Parratt v. Taylor.* Part I sketches the already well-documented judicial confusion and academic controversy that occurred before and after *Parratt.* Part II sets out the facts of *Daniels* and *Davidson,* and examines the reasoning of the lower federal courts and the Supreme Court. Part III asserts that the sharper focus and explicit language of *Daniels* and *Davidson* evidence the Court's attempt to present a precise holding and clarify the issues muddied by *Parratt.* Part IV will show that, in spite of this attempt, the Court has again failed to provide the guidance needed in this controversial area of constitutional law.

I. *Parratt*: The Confusion Before and After

Before the Supreme Court decided *Parratt v. Taylor* in 1981, no legal consensus existed setting forth the level of tortious conduct required to establish a due process violation under section 1983.[12] Indeed, the Court noted in *Parratt,* that the "diversity in approaches is legion."[13] The Court granted certiorari on two occasions prior to *Parratt* to decide the issue, but in each instance disposed of the case on different grounds. In *Procunier v. Navarette,*[14] the Court held that the defendants' qualified

8 Daniels v. Williams, 106 S. Ct. 662, 663 (1986).

9 *See infra* notes 109-120 and accompanying text.

10 106 S. Ct. 662 (1986).

11 106 S. Ct. 668 (1986).

12 Justice White, in his dissent to denial of certiorari in Jackson v. City of Joliet, 465 U.S. 1049 (1984), cited the following cases to illustrate the inconsistent approaches taken by the circuit courts dealing with § 1983 actions brought by plaintiffs injured because of state officials' negligence: Clark v. Taylor, 710 F.2d 4 (1st Cir. 1983); Morrison v. Washington County, 700 F.2d 678 (11th Cir.), *cert. denied,* 464 U.S. 864 (1983); Hull V. City of Duncanville, 678 F.2d 582 (5th Cir. 1982); Hirst v. Gertzen, 676 F.2d 1252 (9th Cir. 1982); Doe v. New York City Dep't of Social Servs., 649 F.2d 134 (2d Cir.), *after remand,* 709 F.2d 782 (2d Cir. 1981), *cert. denied sub nom.,* Catholic Home Bureau v. Doe, 464 U.S. 864 (1983). *See also infra* note 13 and accompanying text.

13 451 U.S. at 533 (citing Williams v. Kelly, 624 F.2d 695 (5th Cir. 1980), *cert. denied,* 451 U.S. 1019 (1981); Beard v. Mitchell, 604 F.2d 485 (7th Cir. 1979); Fulton Mkt. Cold Storage Co. v. Cullerton, 582 F.2d 1071 (7th Cir. 1978), *cert. denied,* 439 U.S. 1121 (1979); O'Grady v. Montpelier, 573 F.2d 747 (2d Cir. 1978); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3d Cir. 1976); Jones v. Marshall, 528 F.2d 132 (2d Cir. 1975); Diamond v. Thompson, 523 F.2d 1201 (5th Cir. 1975); Kimbrough v. O'Neil, 523 F.2d 1057 (7th Cir. 1975); Carter v. Estelle, 519 F.2d 1136 (5th Cir. 1975); Pitts v. Griffin, 518 F.2d 72 (8th Cir. 1975); Bonner v. Coughlin, 517 F.2d 1311 (7th Cir. 1975), *modified en banc,* 545 F.2d 565 (1976), *cert. denied,* 435 U.S. 932 (1978); Russell v. Bodner, 489 F.2d 280 (3d Cir. 1973); Johnson v. Glick, 481 F.2d 1028 (2d Cir.), *cert. denied,* 414 U.S. 1033 (1973); McCray v. Maryland, 456 F.2d 1 (4th Cir. 1972); Carter v. Carlson, 447 F.2d 358 (D.C. Cir. 1971), *rev'd,* District of Columbia v. Carter, 409 U.S. 418 (1973); Madison v. Manter, 441 F.2d 537 (1st Cir. 1971); Howard v. Swenson, 426 F.2d 277 (8th Cir.), *cert. denied,* 400 U.S. 948 (1970); Whirl v. Kern, 407 F.2d 781 (5th Cir. 1968), *cert. denied,* 396 U.S. 901 (1969); Striker v. Pancher, 317 F.2d 780 (6th Cir. 1963)).

14 434 U.S. 555 (1978).

immunity prevented recovery, regardless of whether the allegation of negligence would have supported a claim for relief.[15] In *Baker v. McCollan*,[16] the Court did not reach the issue of simple negligence as the basis for section 1983 liability because the plaintiff had failed to meet the threshold jurisdictional requirement. The Court noted that the plaintiff had not shown deprivation of a right "secured by the Constitution and laws" of the United States.[17]

The Court granted certiorari in *Parratt*, recognizing that its earlier decisions in *Procunier* and *Baker* had not "aided the various Courts of Appeals and District Courts in their struggle to determine the correct manner in which to analyze claims"[18] for the negligent deprivation of constitutional rights. The Court apparently intended *Parratt* to resolve the controversy.[19]

In *Parratt*, Bert Taylor, an inmate in a state prison, brought suit in federal district court under 42 U.S.C. section 1983. He argued that the prison official's negligent loss of the hobby kit he had ordered constituted a deprivation of property without due process of law, and thus violated the fourteenth amendment. The Court concluded that Taylor's complaint satisfied the prerequisites of a due process claim: The defendants had acted under color of state law, the hobby kit was considered "property," and "the alleged loss, *even though negligently caused, amounted to a deprivation*."[20] The Court held, however, that the fourteenth amendment protects only against those deprivations which occur "without due process of law."[21] Because the state's postdeprivation tort remedy would have satisfied procedural due process requirements, the Court found no violation of section 1983.[22] Thus, *Parratt* stands for two propositions: (1) the negligent act of a state official can result in a deprivation (at least of property) within the meaning of the fourteenth amendment; and (2) in the event of a deprivation, an adequate postdeprivation remedy can satisfy the procedural due process requirement of the fourteenth amendment.

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15 *Id.* at 562-63, 566 n.14. Chief Justice Burger dissented because the majority failed to address the very question upon which certiorari had been granted: "Whether negligent failure to mail certain of a prisoner's outgoing letters states a cause of action under Section 1983?" *Id.* at 567 (Burger, C.J., dissenting). Burger, contrary to the majority opinion with which he agreed in *Parratt*, asserted that such a negligent deprivation was not actionable. *Id.*

16 443 U.S. 137 (1979).

17 *Id.* at 140.

18 *Parratt*, 451 U.S. at 533.

19 Academic commentators also noted the controversy: "[T]he issue of the proper basis of Section 1983 liability—ranging from intent on the one hand to strict liability on the other—has percolated in the federal courts for years. Specifically, the question of whether negligence is actionable under Section 1983 has caused much confusion." Nahmod, *Constitutional Accountability in Section 1983 Litigation*, 68 IOWA L. REV. 1, 3 (1983).

20 451 U.S. at 536 (emphasis added). It is the italicized clause which was overruled in *Daniels*. 106 S. Ct. at 663.

21 *Id.* at 537 (citing *Baker*, 443 U.S. at 145).

22 451 U.S. at 544.

Unfortunately, the *Parratt* decision resolved little.[23] It generatedmore controversy and criticism than it did praise.[24] Commentators accused the Court of unfairly attempting to narrow the federal docket by eliminating plaintiffs with potential state tort claims.[25] Several commentators also criticized the *Parratt* decision for its ambiguity.[26]

Lower courts continued to split in determining what level of negligence would support a section 1983 claim.[27] Courts also differed in determining whether the *Parratt* doctrine of "postdeprivation remedies"[28] applied to the negligent deprivation of life and liberty, as well as property interests.[29] *Parratt* concerned only the negligent deprivation of property (Bert Taylor's hobby kit). Some courts, however, expanded *Parratt* to support holdings that an adequate postdeprivation remedy would satisfy procedural due process in the event of a negligent deprivation of life or liberty, as well as property.[30]

The Court made several initial attempts to clarify some of the questions which arose in response to *Parratt*. In *Logan v. Zimmerman Brush Company*,[31] the Court stated that the *Parratt* doctrine, which held that a postdeprivation remedy can satisfy due process, should not extend to negligent deprivations suffered because of established state procedure.[32] The Court further clarified *Parratt* in *Hudson v. Palmer*,[33] where it held that the postdeprivation remedy doctrine would apply to intentional, as well as negligent deprivations.[34] Even these later modifications, however, failed to provide lower federal courts with the guidance needed to determine when tortious conduct rises to the level of a constitutional vio-

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23 "The Court obviously hoped to resolve some of the previous confusion about the connection between negligence and Section 1983 by its discussion in *Parratt*. Unfortunately, it did not do so, except at a superficial level." Nahmod, *supra* note 19, at 4.

24 *See, e.g.*, Eaton and Wells, *Substantive Due Process and the Scope of Constitutional Torts*, 18 GA. L. REV. 201, 203 nn.8-9 (1984) ("*Parratt* has been both hailed and condemned.").

25 *See, e.g.*, Kirby, *Demoting 14th Amendment Claims to State Torts*, 68 A.B.A. J. 166, 167 (1982) (describing *Parratt* and the "dramatic narrowing of the sort of 'state action' that will trigger the 14th Amendment"). *See also* Shapiro, *Keeping Civil Rights Actions Against State Officials in Federal Court: Avoiding the Reach of* Parratt v. Taylor *and* Hudson v. Palmer, 3 J. L. & INEQUALITY 161 (1985).

26 *See* Nahmod, *supra* note 19, at 4; Note, *Due Process and Section 1983: Limiting* Parratt v. Taylor *to Negligent Conduct*, 71 CALIF. L. REV. 253, 257 (1983) ("Extracting a precise holding from the various opinions is difficult."); Note, *Basis of Liability in a Section 1983 Suit: When is the State-of-Mind Analysis Relevant?*, 57 IND. L.J. 459, 460 (1982) ("The Court ambiguously acknowledged that negligence may be actionable under Section 1983.").

27 *See, e.g.*, Davidson v. O'Lone, 752 F.2d 817 (3d Cir. 1984); Daniels v. Williams, 748 F.2d 229 (4th Cir. 1984); Begg v. Moffitt, 555 F. Supp. 1344, 1354 n.33 (N.D. Ill. 1983).

28 The *Parratt* doctrine of postdeprivation remedies refers to the second aspect of the Court's holding: In the event of a negligent deprivation of property, an adequate postdeprivation remedy can satisfy procedural due process requirements. 451 U.S. at 543-44.

29 *See, e.g.*, Moore, Parratt, *Liberty and the Devolution of Due Process: A Time for Reflection*, 13 WAYNE ST. U.L. REV. 201 (1985); Note, Parratt v. Taylor: *Limitations on the* Parratt *Analysis in Section 1983 Actions*, 59 NOTRE DAME L. REV. 1388, 1402-05 (1984).

30 *See supra* note 27. In *Parratt*, Taylor's postdeprivation remedy was a state tort claims procedure. This procedure could have compensated Taylor for the loss he suffered because of the negligence of the state officials. 451 U.S. at 538-44. *See also* Mann v. City of Tucson, 782 F.2d 790 (9th Cir. 1986) (refusing to extend the postdeprivation remedies doctrine to claims for violations of substantive due process).

31 455 U.S. 422 (1982).

32 *Id.* at 435-36.

33 104 S. Ct. 3194 (1984).

34 104 S. Ct. at 3203.

lation remediable under section 1983.[35]

II. *Daniels* and *Davidson*

The opinions of the appellate courts in *Daniels v. Williams*[36] and *Davidson v. O'Lone*[37] illustrate several of the justifications that courts have used to expand, limit, and explain Justice Rehnquist's deceptively simple statement in *Parratt* that "the alleged loss, even though negligently caused, amounted to a deprivation."[38]

A. Daniels v. Williams

Roy Daniels, an inmate at the Richmond City Jail in Virginia, brought a section 1983 claim against Deputy Sheriff Andrew Williams. Daniels alleged that the deputy sheriff deprived him of his fourteenth amendment liberty interest in freedom from bodily harm. Daniels had slipped and fallen on a pillow and newspapers that the deputy sheriff had negligently left on a prison stairway.[39]

The district court in *Daniels* granted the sheriff's motion for summary judgment. On appeal, the Fourth Circuit affirmed the summary judgment dismissal, holding that *Parratt* applied to the negligent deprivation of a liberty interest (freedom from bodily injury).[40] In extending the *Parratt* analysis to the deprivation of a nonproperty interest, the court held that bodily injury caused by a state official's negligence was a deprivation within the meaning of, and thus protected by, the fourteenth amendment. However, the court found that the Virginia Tort Claims Act[41] provided the inmate with an adequate postdeprivation remedy.[42]

The Fourth Circuit reconsidered Daniels' petition en banc, and again denied the inmate's claim, but for very different reasons. On reconsideration the court rejected the prior decision's extension of *Parratt* to the negligent deprivation of nonproperty interests.[43] The court, however, did not note the important distinction between the two rationales. In the first case, the court found that an adequate postdeprivation remedy, such as Virginia's tort claims procedure, may satisfy due process where the state's negligence deprives an individual of a nonproperty interest. In contrast, the en banc court found that where the negligence of a state official results in bodily injury, the victim is not deprived of an interest which demands due process.

Thus, the court asserted that negligence can "deprive" an individual

35 *See infra* notes 63-67 and accompanying text.
36 720 F.2d 792 (4th Cir. 1983), *aff'd en banc*, 748 F.2d 229 (4th Cir. 1984).
37 752 F.2d 817 (3d Cir. 1984) (en banc).
38 451 U.S. at 536-37.
39 *Daniels*, 720 F.2d at 794.
40 *Id.* at 795.
41 VA. CODE ANN. §§ 8.01-195.1 - 8.01-195.8 (Supp. 1982).
42 720 F.2d at 795-97. The court found that the possibility that the sheriff might assert a sovereign immunity defense was not a denial of due process, because the *Parratt* holding does not require that every plaintiff be compensated for the deprivation he has suffered. According to the circuit court, due process does not guarantee a remedy; opportunity for a hearing "appropriate to the nature of [the] claim" will satisfy procedural due process requirements. *Id.* at 798.
43 748 F.2d at 231.

(and trigger fourteenth amendment protections) of property, but not liberty. The court read *Parratt* strictly, finding that negligence can result in the deprivation of one fourteenth amendment interest (property), but not others (life and liberty). This holding corresponds with Justice Blackmun's concurrence in *Parratt.* Blackmun had asserted in *Parratt* that the holding should be restricted to its facts, and apply only in those instances where the plaintiff suffered a negligent deprivation of property.[44]

Ironically, the result of the en banc decision in *Daniels* affords an inmate's property more protection than it does his person.[45] The court's holding implies that negligence triggers fourteenth amendment protections for deprivations of property, but that because an individual cannot be "deprived" of these constitutionally protected interests by a negligent act, negligence does not trigger protections for loss of life or liberty. The *Daniels* court, justifying this distinction, stated:

> The demands of prison safety, life, and discipline make it obligatory for prison officials to have possession of, and search at some time or another, all of the property belonging to every prisoner . . . . Because the state of necessity has such complete control of the prisoner's property, calling it to account for the unexplained loss thereof is not inconsistent with demands of the Fourteenth Amendment. No such reasons exist, however, to set the prisoner above the ordinary citizen in the protection of his person.[46]

The Fourth Circuit also based its dismissal of Daniels' claim on a second, alternative ground. The court found that even if the deputy sheriff's negligence had deprived Daniels of a liberty interest protected by the fourteenth amendment, the inmate had a remedy under Virginia law which satisfied due process requirements. The court held that the defendant exercised no discretionary duty when he negligently left the pillow on the stairway. Therefore, he would have been unable to invoke sovereign immunity as a defense to a suit for negligence in the performance of ministerial duties.[47] Thus, the court did consider whether an immunity defense would have denied Daniels due process and afforded him a valid claim under section 1983.[48]

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44 451 U.S. at 545 (Blackmun, J., 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 . . . . I do not read the Court's opinion as applicable to a case concerning deprivation of life or of liberty.").

45 This distinction is "highly questionable," asserted one commentator, given that "the state also has complete control over a prisoner's person for security reasons." Moore, *supra* note 29, at 236. By granting property more protection than life or liberty, the Fourth Circuit violated "the fundamental truth that life and liberty are far more precious than property." *Id.* at 236-37. The dissent in *Daniels* argues along these same lines. *See* 748 F.2d at 235 (Phillips, J., dissenting).

46 748 F.2d at 231.

47 *Id.* at 232.

48 Judge Phillips, in his dissent, disagreed with the majority's assertion that *Parratt* did not apply to the negligent deprivation of liberty interests. While admitting that *Parratt* dealt specifically with the negligent deprivation of property, Judge Phillips argued that the "critical principles that emerged from *Parratt*" should not be so "narrowly confined." *Id.* at 234 (Phillips, J., dissenting). He asserted that a negligent act can deprive a person of a protected liberty interest, just as a negligent act can deprive an individual of a protected property interest. *Id.* at 234-35. For a discussion of those courts that have extended *Parratt* to liberty interests, see Moore, *supra* note 29.

B. Davidson v. O'Lone

Plaintiff Robert Davidson, like Daniels, was an inmate in a state prison. He intervened in a fight between two other inmates and, after a disciplinary hearing, McMillian, one of the inmates, threatened Davidson. Davidson wrote a note to the hearing officer, exonerating himself in the event that McMillian acted on his threat.[49] Prison officials either forgot or disregarded this note as it was passed up the official hierarchy.[50] Two days later, McMillian attacked Davidson with a fork.[51] Davidson sustained a broken nose and stab wounds on his face, head, neck, and body.[52]

Because the New Jersey Tort Claims Act[53] precluded Davidson from bringing a claim against the individual defendants or the state in state court, Davidson brought suit in federal district court under 42 U.S.C. section 1983. He named Prison Superintendent Edward O'Lone, Assistant Superintendent Cannon, Corrections Sergeant James, and Arthur Jones, the civilian hearing officer, as defendants in the action. The district court granted summary judgment in favor of defendant Superintendent O'Lone. The court found no violation of the eighth amendment prohibition against cruel and unusual punishment because the plaintiff did not establish the requisite intent—the defendants had not acted with "deliberate or callous indifference."[54] However, the court concluded that the negligence of Cannon and James had deprived Davidson of his "constitutionally protected liberty interest in freedom from assault while in prison."[55] Because the New Jersey immunity provision had denied Davidson a hearing (and thus denied him of liberty without due process), the district court awarded Davidson $2000 compensatory damages.[56]

The Court of Appeals for the Third Circuit reversed the decision of the district court and ordered a judgment for the defendants. Judge Sloviter, writing for the majority, agreed that the prison officials were negligent in failing to protect Davidson,[57] and that Davidson did have a constitutionally protected liberty interest in freedom from attack.[58]

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49 The note read:

> 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 f— you up you old mother-f— 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.

752 F.2d at 819.

50 Jones, the hearing officer, forwarded the note to Cannon, the assistant superintendent of the prison. Cannon did not consider the situation urgent and forwarded the note to Sergeant James, the corrections officer. James attended to other matters and forgot about the note. *Id.*

51 Neither James nor Cannon was on duty the day before or the day of the attack. They failed to notify those officials on duty. *Id.*

52 *Id.*

53 N.J. STAT. ANN. § 59:5-2(b)(4) (West 1982).

54 752 F.2d at 820.

55 *Id.*

56 *Id.*

57 *Id.* at 821.

58 *Id.* at 822.

Judge Sloviter found, however, that Davidson was not "deprived" of this interest. According to Judge Sloviter, *Parratt* did not hold that "merely negligent conduct by state officers constitutes a constitutionaldeprivation encompassed by § 1983."[59]

Judge Sloviter acknowledged that under *Parratt*, section 1983 was not limited to intentional deprivations. However, she asserted that this "proposition is not the obverse of one stating that § 1983 encompasses suits for negligence by state officials, because there is a broad range of action between the two poles."[60]

As Judge Gibbons pointed out in his dissent, Judge Sloviter ignored some very explicit language in *Parratt* in order to reach this interpretation.[61] Justice Rehnquist clearly stated in *Parratt* that the loss of property, "even though negligently caused, amounted to a deprivation."[62]

C. *The Supreme Court rationale in* Daniels *and* Davidson

The Supreme Court granted certiorari in *Daniels* and *Davidson* because it recognized that the lower federal courts had adopted inconsistent approaches in determining when tortious conduct "rises to the level of a constitutional tort."[63] Despite its efforts in *Procunier v. Navarette*,[64] *Baker v. McCollan*,[65] and *Parratt v. Taylor*,[66] the Court acknowledged that it had provided an "apparent lack of adequate guidance" on this issue.[67] The Court thus accepted some responsibility for the confusion in the circuits.

In *Daniels* and *Davidson*, the Court attempted, yet again, to identify the type of state action that would constitute a violation of the due process clause of the fourteenth amendment and afford an individual the right to sue under section 1983. In affirming the circuit court opinion in *Daniels*, Justice Rehnquist concluded "that the Due Process Clause is simply not implicated by a *negligent* act of an official causing unintended loss of injury to life, liberty or property."[68] Thus, the Court overruled *Parratt v. Taylor* to the extent that it held to the contrary.[69]

The Court approached *Daniels* in a straightforward manner. Rather

59 *Id.* at 826.

60 *Id.*

61 *Id.* at 846 (Gibbons, J., dissenting). For criticism of Judge Sloviter's opinion, see Moore, *supra* note 29, at 229-32; Comment, *Civil Rights—Under Section 1983 Prison Officials are not Liable to Prisoner for Injuries Inflicted as a Result of Officials' Negligence*, 30 VILL. L. REV. 958, 976-79 (1985).

62 451 U.S. at 536-37.

63 *Daniels*, 106 S. Ct. at 664.

64 434 U.S. 555 (1978). *See also supra* notes 14-19 and accompanying text.

65 443 U.S. 137 (1979). *See also supra* notes 16-19 and accompanying text.

66 451 U.S. 527 (1981). *See also supra* notes 12-35 and accompanying text.

67 *Daniels*, 106 S. Ct. at 664. The Court rejected an earlier opportunity to consider this same issue in Jackson v. City of Joliet, 715 F.2d 1200 (7th Cir. 1983), *cert. denied*, 465 U.S. 1049 (1984). Justice White, dissenting from the denial of certiorari, stated that the inconsistent results in the lower federal courts were "attributable, at least in part, to the lack of definitive guidelines for determining when tortious conduct by state officials rises to the level of a constitutional tort. This Court should attempt to resolve this 'perplexing' issue, and this case provides us with an opportunity to do so." 465 U.S. at 1049-50 (White, J., dissenting).

68 106 S. Ct. at 663 (emphasis in the original).

69 In writing for the Court in *Daniels* and *Davidson*, Justice Rehnquist overruled the majority decision he wrote for *Parratt* less than five years earlier.

than limiting *Parratt*'s application to property interests (Daniels alleged deprivations of *liberty*), or distinguishing *Parratt* from the instant case, the Court simply abandoned the notion that the "lack of due care by a state official could 'deprive' an individual of life, liberty or property under the Fourteenth Amendment."[70] This apparent abandonment of *Parratt* is not a complete turnabout. Justice Rehnquist drew on Justice Powell's and Justice Stewart's concurring opinions in *Parratt* to support the *Daniels* ruling. Quoting Powell, Justice Rehnquist stated that mere negligence should not amount to "a deprivation in the *constitutional sense*."[71] Rehnquist then added that the due process clause should only be invoked when an affirmative abuse of power occurs.[72]

Justice Rehnquist's approach in *Daniels* makes his own holding in *Parratt* seem an historical anomoly:

> No decision of this Court before *Parratt* supported the view that negligent conduct by a state official, even though causing injury, constitutes a deprivation under the Due Process Clause. This history reflects the traditional and common-sense notion that the Due Process Clause, like its forebear in the Magna Carta . . . was "intended to secure the individual from the arbitrary exercise of the powers of government."[73]

Rehnquist noted that the Court has historically applied the guarantee of due process to cases where government officials made deliberate decisions to deprive individuals of protected interests. He felt that leaving a pillow on prison stairs and misplacing an inmate's property were actions remote from the concerns of governmental oppression and abuse of power against which the fourteenth amendment protects.[74] Rehnquist concluded that judicial and legislative history supported his assertion that no procedure for compensation is constitutionally required where the state official's act is no more than negligent.[75]

Justice Rehnquist dealt briefly with Daniels' arguments. First, he found unpersuasive Daniels' assertion that some negligence claims fall within the reach of section 1983.[76] Second, Rehnquist rejected Daniels' contention that litigants could avoid the holding simply by pleading a state official's actions were intentional rather than negligent. Despite the "elusive" meaning of the various degrees of intent, Rehnquist asserted that the difference between negligent and intentional conduct is "abun-

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70 106 S. Ct. at 665.

71 *Id.* at 664 (citing *Parratt*, 451 U.S. at 547 (Powell, J., concurring in the result)) (emphasis in the original).

72 *Id.* at 665.

73 *Id.* (citations omitted).

74 *Id.* Paraphrasing Stewart's concurrence in *Parratt*, Rehnquist stated:

> Far from an abuse of power, lack of due care suggests no more than a failure to measure up to the conduct of a reasonable person. To hold that injury caused by such conduct is a deprivation within the meaning of the Fourteenth Amendment would trivialize the centuries-old principle of due process of law.

Id. See Parratt, 451 U.S. at 545-46 (Stewart, J., concurring).

75 *Id.* at 666 (citing *Parratt*, 451 U.S. at 548 (Powell, J., concurring in the result)).

76 Even if negligence could support a constitutional claim in some cases, Rehnquist asserted that mere lack of due care would not trigger the particular constitutional protections afforded by the due process clause. *Id.*

dantly clear."[77]

Finally, Rehnquist rejected the idea that common law duties (in this case, the special duty of care owed by a sheriff to those in his custody) "were constitutionalized by the Fourteenth Amendment."[78] He asserted that a negligent tort does not rise to the level of a constitutional violation merely because the defendant is a government official.[79]

In *Davidson*, Justice Rehnquist, again writing for the majority, simply reiterated the holding of *Daniels*.[80] Because Davidson alleged only that respondents negligently failed to protect him from another inmate, Rehnquist found no deprivation within the meaning of the fourteenth amendment. "*Daniels* therefore controls," he asserted, affirming the result of the Third Circuit.[81]

Rehnquist conceded that the negligence had led to serious injury, but maintained that "lack of due care simply does not approach the sort of abusive government conduct that the Due Process Clause was designed to prevent."[82] He stated that due process does not guarantee due care.[83] Applying this analysis, he reasoned that no deprivation occurred because respondents' actions were merely negligent.[84] Accordingly, Rehnquist summarily dismissed petitioner's demand that New Jersey provide him with a remedy in state court.

Justice Stevens filed a separate concurring opinion which discussed both *Daniels* and *Davidson*.[85] He objected to the majority's redefinition of "deprivation," and disagreed that *Parratt* had to be overruled to support the holdings. Stevens argued that the bodily injury in each case was a deprivation of liberty. "Deprivation" describes the "victim's infringement or loss," not the actor's state of mind. Thus, Stevens asserted that any action—negligent or intentional—could deprive a petitioner of a protected constitutional right.[86]

Justice Stevens felt that both petitioners had shown deprivation of their constitutionally protected rights, and had thus satisfied the first element of a procedural due process claim.[87] Petitioners failed, however, to establish the second element: that the state procedure which allegedly denied them due process was constitutionally defective.[88] According to Stevens, Daniels failed to show that the applicable Virginia tort claims procedure was constitutionally inadequate. Thus, under Stevens' analy-

77 Rehnquist stated further that "[i]n any event, we decline to trivialize the Due Process Clause in an effort to simplify constitutional litigation" by eliminating the nice distinctions between varying degrees of intent. *Id.* at 667.

78 *Id.*

79 *Id.* at 666 (citing *Baker*, 443 U.S. at 146).

80 "Where a government official is merely negligent in causing an injury, no procedure for compensation is constitutionally required." 106 S. Ct. at 670.

81 *Id.*

82 *Id.* (citing *Daniels*, 106 S. Ct. at 665-66).

83 106 S. Ct. at 670.

84 *Id.* at 670-71.

85 106 S. Ct. at 677 (Stevens, J., concurring).

86 *Id.* at 680.

87 Stevens distinguished procedural due process claims from substantive due process claims and claims that allege violations of specific constitutional guarantees. *Id.* at 677-79.

88 *Id.* at 680.

sis, "a straightforward application of *Parratt* [that there is no denial of due process where the state provides an adequate postdeprivation remedy] defeat[ed] Daniels' claim."[89]

Stevens felt the *Davidson* case presented a novel question: whether "a state policy of noncompensability for certain types of harm, in which state action may play a role, renders a state procedure constitutionally defective."[90] Stevens thus addressed a question which the majority, by holding that no deprivation occurred, did not reach.[91]

The result in *Daniels* generated no dissent, but Justices Brennan, Blackmun, and Marshall disagreed with the holding in *Davidson*.[92] Justice Blackmun (joined by Marshall) agreed with the result in *Daniels*, but refused to extend the principles stated there to *Davidson*.[93] Like the other Justices, Blackmun began his analysis by asking two questions: (1) was there a deprivation within the meaning of the fourteenth amendment; and, if so, (2) what procedures constitute due process?[94] He agreed that mere negligence does not ordinarily constitute an abuse of state power and work a constitutional deprivation. He objected, however, to the "inflexible constitutional dogma" of a rule which held that "negligent activity can *never* implicate the concerns of the Due Process Clause."[95] Blackmun insisted that in some cases, "governmental negligence is an abuse of power."[96] He distinguished the *Daniels* case, where the negligently placed pillow did not amount to such an abuse:

> In *Daniels*, the negligence was only coincidentally connected to an inmate-guard relationship; the same incident could have occurred on any staircase. . . . The State did not prohibit him from looking where he was going or from taking care to avoid the pillow.
>
> In contrast, where the State renders a person vulnerable and strips him of his ability to defend himself, an injury that results from a state official's negligence in performing his duty is peculiarly related to the governmental function.[97]

In Blackmun's view, the negligent failure to protect Davidson was an

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89 *Id.*

90 *Id.*

91 By revising *Parratt* and holding that negligence will not result in a deprivation, and thus, not require compensation, the majority neatly sidestepped the constitutional issue Stevens defined. Perhaps the Court was unwilling to rule on the constitutionality of the state procedures challenged in *Daniels* and *Davidson*. Clearly, the Court will not be able to avoid this issue when a plaintiff challenges a state procedure of noncompensability for injury which does amount to a "deprivation."

92 Justice Brennan agreed that merely negligent conduct does not constitute a deprivation of liberty within the meaning of the due process clause. He felt, however, that the prison officials' failure to protect Davidson from attack rose above the level of simple negligence displayed by the deputy who left a pillow on a stairway. Brennan asserted 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." *Davidson*, 106 S. Ct. at 671 (Brennan, J., dissenting). Accordingly, he would have remanded *Davidson* to the Court of Appeals for a review of the District Court's holding that the respondents had been merely negligent. *Id.*

93 *Id.* at 671 (Blackmun, J., dissenting).

94 *Id.* at 673 (citing Ingraham v. Wright, 430 U.S. 651, 672 (1977)).

95 *Id.* (emphasis in the original).

96 *Id.*

97 *Id.* at 674.

abuse of power, and deprived the inmate of his constitutionally protected liberty interest.

Even if he had agreed that negligence could never work a deprivation within the meaning of the fourteenth amendment, Blackmun would have remanded *Davidson* for review. Like Brennan, Blackmun felt that recklessness would support a claim for a constitutional deprivation. He believed that the officials' actions in disregarding Davidson's note could easily be considered reckless.[98]

Having established that Davidson suffered a deprivation, Blackmun was convinced the deprivation occurred without due process of law. Assuming that *Parratt* controlled in the event of a deprivation of a nonproperty interest, and that a state could therefore satisfy procedural due process with a meaningful postdeprivation remedy, New Jersey's immunity statute would nevertheless have barred any state court action.[99] While agreeing that a state has the right to define defenses to state law causes of action, Blackmun felt that a state defense should not control in a section 1983 action. To permit a state immunity defense to control in a section 1983 action "would transmute a basic guarantee into an illusory promise."[100] Blackmun would have reversed the decision of the court of appeals, and would have reinstated the district court's award of $2000.[101]

The differences of opinion as expressed by the dissents to *Davidson* are easily attributed to the facts of each case. The facts of *Daniels v. Williams* lent themselves to the result the Supreme Court wished to reach. A misplaced pillow and a relatively minor fall do not raise the spectre of governmental oppression or "rise to the dignified level of a constitutional violation."[102] To uphold Daniels' claim would justify the Supreme Court's earlier warning against allowing the fourteenth amendment to become a "font of tort law to be superimposed on whatever systems may already be administered by the states."[103]

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98 *Id.* at 675.

99 N.J. STAT. ANN. § 59:5-2(b)(4). *See also supra* note 53.

100 106 S. Ct. at 676 (quoting Martinez v. California, 444 U.S. 277, 284 n.8 (1980) (quoting Hampton v. Chicago, 484 F.2d 602, 607 (7th Cir. 1973), *cert. denied*, 415 U.S. 917 (1974))).

101 *Id.* at 677. *See also* Blackmun, *Section 1983 and Federal Protection of Individual Rights—Will the Statute Remain Alive or Fade Away?*, 60 N.Y.U. L. REV. 1 (1985). Blackmun's opinion is consistent with concerns he expressed in this article. Blackmun traced the history of § 1983 and identified the statute as a "source of controversy." He felt that pressure for restrictions on the scope of the statute came from sources alleging that § 1983 claims were overburdening the federal courts and emphasizing the "tension between section 1983 and traditional values of American federalism." *Id.* at 2. Blackmun was skeptical of further attempts to limit the scope of the statute, asserting that the Supreme Court gave "ample evidence of being able to devise protective measures for itself and other federal courts" with the decisions in *Parratt*, Hudson v. Palmer, 468 U.S. 517 (1984), and Pennhurst St. School and Hosp. v. Halderman, 465 U.S. 89 (1984). *Id.* at 21, 28.

102 *Davidson*, 106 S. Ct. at 671 (Blackmun, J., dissenting).

103 Paul v. Davis, 424 U.S. 693, 701 (1976) (quoted in *Parratt*, 451 U.S. at 544, and *Daniels*, 106 S. Ct. at 666). Indeed, one commentator termed the facts of *Daniels* "almost as insipid as those in *Parratt*." Moore, *supra* note 29, at 235 n.279. Had the Supreme Court granted certiorari and agreed to hear Jackson v. City of Joliet, *supra* note 1, overruling *Parratt* would have been more difficult. In *Jackson*, the Court of Appeals for the Seventh Circuit held that an attempt by a police officer and firemen to assist at an accident, where the attempt failed due to negligence, did not deny the decedents of life without due process. Plaintiffs alleged that decedents died because the police officer, coming upon the scene of the accident, directed traffic away from the burning car rather than attempting to ascertain whether anyone was in the vehicle. The complaint alleged that the occupants of the car, a young man and a pregnant woman, would not have died if the police officer had not

In *Davidson*, however, the plaintiff was seriously injured as a result of an attack by another—an event the victim had brought to the attention of the prison officials.[104] Thus, Justice Blackmun's separate analysis of *Davidson*[105] is more faithful to the facts of the case than is Justice Rehnquist's summary extension of the *Daniels* holding to cover the *Davidson* facts. Why, then, was Rehnquist, writing for the majority, so quick to extend *Daniels* to a very different factual setting?

III. The Lesson of *Parratt*: Acknowledged, but Unlearned

By declaring *Daniels* controlling in *Davidson*, a case which involved relatively serious bodily injury, the Court showed that it intended its holding to apply to a broad spectrum of fact situations. The Court emphasized that mere negligence can no longer support a section 1983 claim for deprivation of a constitutionally protected interest, regardless of the extent of the injury or loss caused by the negligence.[106]

Thus, the Court acknowledged the necessity of making explicit decisions in this "perplexing"[107] area of law. Without this guidance, lower federal courts expand and limit the Court's holdings far beyond their intended scope. The confusion generated by *Parratt* certainly illustrates this tendency.[108]

The *Daniels* and *Davidson* opinions provide some guidelines suggesting the intended scope of the decisions. Justice Rehnquist's judgment in *Daniels* is brief, but explicit. He clearly states that the negligence of a state official does not implicate the due process clause when the act causes unintended loss of *life, liberty or property*. Thus, the holding explicitly applies to these interests, which are protected by the fourteenth amendment.[109] The *Parratt* majority opinion, keeping to the facts of the case, discussed only property interests. Some lower federal courts responded by applying *Parratt* to nonproperty interests, supporting their conclusions by drawing on the rationales of the separate opinions.[110]

In *Daniels*, Rehnquist indicated precisely what the decision did, and did not, hold. He stated that the decision applies not to any constitutional violation alleged under section 1983, but only to alleged violations of the due process clause.[111] Thus, the Court left open the possibility

diverted traffic (and thus potential rescuers) away from the scene, or if the firemen had discovered the car was occupied before they extinguished the fire. 715 F.2d at 1201-02. Obviously the tragic loss of life and the deliberate judgments made by the police and fire officers made this a more difficult case on which to overrule *Parratt* and hold that negligence does not support a § 1983 claim.

104 *See supra* notes 49-52 and accompanying text.

105 *See supra* text accompanying notes 93-101.

106 "Respondents lack of due care in this case led to serious injury, but that lack of due care simply does not approach the sort of abusive government conduct that the Due Process Clause was designed to prevent." *Davidson*, 106 S. Ct. at 670.

107 *Jackson*, 465 U.S. at 1049 (White, J., dissenting from denial of certiorari).

108 *See supra* notes 19-35 and accompanying text.

109 *Daniels*, 106 S. Ct. at 663.

110 *See supra* note 29 and accompanying text.

111 "[W]e need not rule out the possibility that there are other constitutional provisions that would be violated by mere lack of due care in order to hold, as we do, that such [negligent] conduct does not implicate the Due Process Clause of the Fourteenth Amendment." *Daniels*, 106 S. Ct. at 663.

that simple negligence may support a claim alleged under section 1983, if the claimant alleges a constitutional violation other than the denial of due process (and which does not carry an underlying intent requirement).[112]

The Court also indicated that it has not decided what more than simple negligence is necessary to implicate due process protections:

> Despite his claim about what he might have pleaded, petitioner concedes that respondent was at most negligent. Accordingly, this case affords us no occasion to consider whether something less than intentional conduct, such as recklessness or "gross negligence," is enough to trigger the protections of the Due Process Clause.[113]

Ironically, by explaining what the Court has not decided, Rehnquist acknowledges the Court's failure to delineate a clear standard.

The Court also indicated, in both decisions, that it had not decided whether a defendant's immunity defense might result in a denial of due process by precluding a plaintiff from presenting his case in state court. In *Daniels*, Justice Rehnquist emphasized that when an official merely acts negligently, no procedure for compensation is constitutionally required. Therefore, the Court did not reach the question of whether an immunity defense would render a state tort remedy unconstitutional.[114]

Justice Rehnquist restated this reasoning in *Davidson*. The defendants' negligence did not cause a deprivation within the meaning of the fourteenth amendment. Since no deprivation occurred, the negligent action did not trigger due process protections or warrant a remedy. Because the plaintiff's complaint did *not* warrant a remedy, the fact that prison officials had absolute immunity under the New Jersey statute (and thus an absolute defense to the potential tort claim) was irrelevant. Under the Court's analysis, the State can not be liable for denying someone a process that is not due.[115]

It remains for the lower courts to decide the fate of the plaintiff who, having suffered a loss at the hands of a state official, finds his state tort claim dismissed because of an immunity defense. Has the loss become a constitutional violation—a deprivation of a protected interest suffered without due process of law? Justice Stevens provided some guidance on this issue in his concurring opinion:

> Those aspects of a State's tort regime that defeat recovery are not constitutionally invalid so long as there is no fundamental unfairness in

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112 In *Parratt*, Justice Powell criticized the majority for avoiding the question of whether intent is an essential element of a due process claim. *Parratt*, 451 U.S. at 547 nn.2-3 (Powell, J., concurring). The Court has settled the question with respect to the equal protection clause. *See* Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976). The Court has also settled the intent question with respect to the eighth amendment prohibition against cruel and unusual punishment. *See* U.S. CONST. amend. VIII; Estelle v. Gamble, 429 U.S. 97 (1976).

113 *Daniels*, 106 S. Ct. at 667 n.3. *See also* Doty v. Carey, 626 F. Supp. 359 (N.D. Ill. 1986). "[The Court] expressly left open the question of whether an official's grossly negligent conduct would infringe a substantive right guaranteed by the due process clause of the Fourteenth Amendment." *Id.* at 361 n.2.

114 106 S. Ct. at 666 n.1 (citing *Parratt*, 451 U.S. at 548 (Powell, J., concurring in the result)).

115 *Davidson*, 106 S. Ct. at 670-71.

their operation. . . . [T]he mere fact that a State elects to provide some of its agents with a sovereign immunity defense in certain cases does not justify the conclusion that its remedial system is constitutionally inadequate.[116]

IV. The Questions Remain

The Supreme Court hoped to eliminate some of the confusion surrounding *Parratt* by partially overruling the decision.[117] Unfortunately, the new holding may only create different problems for the lower courts. If a state official's simple or ordinary negligence does not deprive an individual of a constitutionally protected interest, it is unclear precisely what level of state action is required to trigger fourteenth amendment protections.[118] Courts which view *Daniels* and *Davidson* as unfairly eliminating valid section 1983 claims may draw upon the reasoning of the Blackmun and Brennan dissents.[119] Where the facts indicate gross negligence or recklessness, the courts can find a constitutional deprivation and still pay lip service to the majority holding that no liability exists under section 1983 where the plaintiff alleges only simple negligence.

The *Daniels* majority adhered to one basic principle announced in *Parratt*—that section 1983 "contains no state of mind requirement independent of that necessary to state a violation of the underlying constitutional right."[120] Thus, while merely negligent conduct may not support a claim under section 1983, presumably something more than simple negligence may be sufficient.[121]

Even after *Daniels* and *Davidson*, much of the *Parratt* decision has been left intact. The Court still abides by its holding that an adequate postdeprivation remedy will satisfy the fourteenth amendment guarantee of due process.[122] While *Parratt* survives, so do the questions. It is still

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116 106 S. Ct. at 680-81 & 681 n.20.

117 Several courts, perhaps relieved to have some guidance in this area, have cited *Daniels* and *Davidson* to support assertions that there can be no liability under § 1983 where the plaintiff has alleged no more than simple or ordinary negligence. *See* McClary v. O'Hare, 786 F.2d 83, 85 (2d Cir. 1986) (Because plaintiff's complaint alleged defendant's conduct was at least reckless, the court refused to dismiss the complaint on the basis of *Daniels* and *Davidson*); McKenna v. City of Memphis, 785 F.2d 560, 562 (6th Cir. 1986); Love v. King, 784 F.2d 708, 713 (5th Cir. 1986); McIntyre v. Portee, 784 F.2d 566, 567 (4th Cir. 1986); Williams v. City of Boston, 784 F.2d 430, 433 (1st Cir. 1986); King v. Massarweh, 782 F.2d 825, 827 (9th Cir. 1986); Lewis v. O'Leary, 631 F. Supp. 60, 62 (N.D. Ill. 1986); Mazzilli v. Doud, 485 So. 2d 477, 480 (Fla. Dist. Ct. App. 1986).

118 *See* Janan v. Trammell, 785 F.2d 557 (6th Cir. 1986). "This action may well be one intended to be controlled by *Daniels*." *Id.* at 559. However, because the court was able to review the case and dismiss it on other grounds, they "decline[d] to deal with the amorphous issues of where on the spectrum this case falls and whether that amount of negligence is sufficiently close to the 'mere negligence' end of the spectrum so as to be precluded by *Daniels*." *Id.*

119 *See supra* notes 92-101 and accompanying text.

120 *Daniels*, 106 S. Ct. at 664 (citing *Parratt*, 451 U.S. at 534-35).

121 *But see* Whitney v. Albers, 106 S. Ct. 1078 (1986). In *Whitney*, the Supreme Court held that the due process clause affords a prison inmate no greater protection than the cruel and unusual punishment clause of the eighth amendment. *Id.* at 1088. Thus, at least in the prison inmate context, the Court intimated that the plaintiff must allege at least deliberate indifference on the part of the defendant to establish a cause of action for violation of either the eighth or fourteenth amendments. *See also* Estelle v. Gamble, 429 U.S. 97 (1976).

122 The *Parratt* holding, partially overruled, resembles the decision in Hudson v. Palmer, 468 U.S. 517 (1984) (a post deprivation remedy may satisfy due process requirements in the event of an intentional deprivation of property).

not clear whether the *Parratt* doctrine of postdeprivation remedies applies to deprivations of life and liberty interests in the same way that it applies to deprivations of property interests.[123]

Courts and commentators will react to *Daniels* and *Davidson* as they did to *Parratt*.[124] Some will interpret the decisions as further limiting the claims brought under section 1983, and thus a dangerous limitation of an individual's right to sue in federal court.[125] Others will view the cases as a return to the intent of section 1983, enacted to guard against government oppression and abuse of power, and not to provide a remedy where negligent conduct results in unintentional loss or injury.[126] The *Daniels* and *Davidson* opinions will not remove section 1983 from the realm of academic and judicial criticism and controversy.[127] Perhaps Justice Blackmun's assessment embodies the hopes of those on both sides of the controversy: "Whatever is the fate of § 1983 in the future, I do hope that it survives both as a symbol and as a working mechanism for all of us to protect the constitutional liberties we treasure."[128]

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123 In McClary v. O'Hare, 786 F.2d 83 (2d Cir. 1986), the court noted that the Supreme Court had not decided whether *Parratt* applies to life and liberty interests. *Id.* at 86. The court cited Blackmun's concurring opinion in *Parratt*, which limited the *Parratt* holding to deprivations of property interests. *Parratt*, 451 U.S. at 545 (Blackmun, J., concurring).

124 *See supra* notes 23-29 and accompanying text.

125 *See* Mann v. City of Tucson, 782 F.2d 790, 799 (9th Cir. 1986) ("*Daniels* and *Davidson* restrict the scope of section 1983 by holding 'that the Due Process Clause of the Fourteenth Amendment is not implicated by the lack of due care of an official causing unintended injury to life, liberty or property.' ") (citing *Davidson*, 106 S. Ct. at 670 (Sneed, J., concurring in the result)).

126 *See* Love v. King, 784 F.2d at 713; Williams v. City of Boston, 784 F.2d at 433-34. Both cases, in following *Daniels* and *Davidson*, emphasized that § 1983 was enacted to guard against government oppression and abuse of official power.

127 One judge asserted: "In sum, *Daniels* and *Davidson* overruled that portion, and only that portion, of *Parratt v. Taylor* that held that a negligent loss of property by state officials acting under color of state law was a 'deprivation' of property within the meaning of the Due Process Clause of the Fourteenth Amendment. The circumstances under which it is appropriate to refer to post-deprivation state remedies remain the same as before—frustratingly imprecise." *Mann*, 782 F.2d at 799 (Sneed, J., concurring in the result).

128 *See* Blackmun, *supra* note 101, at 29.