

CONSTITUTIONAL LAW

POSTDEPRIVATION REMEDIES DON'T BAR SECTION 1983 ACTIONS BASED ON NON-RANDOM ACTS: *HAYGOOD V. YOUNGER*

The Ninth Circuit Court of Appeals concluded in *Haygood v. Younger*¹ that prisoners have a cause of action under 42 U.S.C. § 1983² where the state fails to provide a hearing before utilizing established policies or procedures to deprive prisoners of major liberty interests.³ In *Parratt v. Taylor*,⁴ the United States Supreme Court held that meaningful postdeprivation remedies in state courts preclude section 1983 actions for the negligent, random and unauthorized deprivation of property by state officials.⁵ *Parratt's* underlying premise is that the state cannot provide hearings prior to deprivations that are unforeseeable.⁶ The Supreme Court held in *Logan v. Zimmerman*⁷ that this premise did not apply where the state utilized predictable internal policies or procedures to deprive individuals of property interests.⁸ In such cases the due process clause requires a hearing before the state may deprive the individual of the protected interest.⁹

The *Haygood* court found that the state's internal procedures and policies had deprived Haygood of a major liberty interest.¹⁰ Consequently, the court rejected the *Parratt* rationale and held that *Logan* required a hearing before this deprivation took place.¹¹ The state's failure to do so gave rise to a cause of action under section 1983.¹² This Comment examines the reasoning of *Haygood v. Younger* and analyzes the decision's potential impact on the scope of due process available to state prisoners.

THE FACTUAL AND JUDICIAL BACKGROUND OF *HAYGOOD*

Haygood spent more than twenty years in California prisons before ob-

1. 769 F.2d 1350 (9th Cir. 1985).

2. 42 U.S.C. § 1983 (1976 & West Supp. 1985). Section 1983 was originally part of the Civil Rights Act of 1871, "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes," 17 STAT. 13 (1871). The statute provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other 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 the proper proceeding for redress.

For a discussion of the background of § 1983 actions, see Nahmod, *Section 1983 and the "Background" of Tort Liability*, 50 IND. L.J. 5 (1974).

3. *Haygood*, 769 F.2d at 1357.

4. 451 U.S. 527 (1981).

5. *Id.* at 538. State law remedies, for example, may satisfy due process requirements.

6. *Id.* at 541.

7. 455 U.S. 422 (1982).

8. *Id.* at 435-36.

9. *Id.* at 436.

10. *Haygood*, 769 F.2d at 1358.

11. *Id.*

12. *Id.*

taining his release pursuant to a habeas corpus action in state court.¹³ In this action, he challenged the formula by which the California Adult Authority calculated his prison sentence. The California Supreme Court determined that the Adult Authority had made a calculation error that caused Haygood to spend five extra years in prison.¹⁴ Haygood served seventeen months of this additional time after making his objections known to prison administrators.¹⁵

After obtaining his release from prison, Haygood brought a section 1983 action against California prison administrators in federal district court.¹⁶ He alleged that by erroneously prolonging his detention, the prison officials had deprived him of his liberty without due process and had subjected him to cruel and unusual punishment. The jury agreed that the calculation error violated Haygood's constitutional rights and awarded him damages and attorneys' fees against two California prison records officers.¹⁷ The Ninth Circuit Court of Appeals reversed, holding that *Parratt* applied to liberty interests as well as to property interests.¹⁸ Under *Parratt*, the court stated, the lack of a predeprivation hearing did not violate Haygood's due process rights because it would not have been feasible or practicable for the state to provide such a hearing.¹⁹

The Ninth Circuit reconsidered Haygood's petition *en banc* and reversed.²⁰ *Parratt* did not apply, the court decided, because Haygood's unlawful detention was neither random nor unauthorized.²¹ Applying *Logan*, the court found that Haygood had a cause of action under section 1983 be-

13. *In re Haygood*, 14 Cal. 3d 802, 537 P.2d 880, 122 Cal. Rptr. 760 (1975).

14. The facts of this case appear in 14 Cal. 3d 805-10, 537 P.2d 881-85, 122 Cal. Rptr. 761-65.

While serving time for escape, forgery and carrying of a concealed weapon, Haygood escaped from prison and committed a robbery. The state convicted him of both the robbery and the escape. His robbery sentence was ten years and his escape sentence was five years. The prison authorities relied on Section 669 of the California Penal Code which provides that where the state convicts a defendant of two crimes, the second sentencing judge has the discretion to make the terms of the two convictions either concurrent or consecutive. *Haygood*, 769 F.2d at 1352. The prison authorities, relying on this section, believed that Haygood's escape term was consecutive to his robbery term; and therefore, they did not fix the commencement of his escape term until after his robbery term expired.

In Haygood's habeas corpus action, the California Supreme Court agreed with Haygood that an escape term commences at the time the prison authorities would have discharged the escapee from the terms he was serving had he not escaped. *Id.* at 1353. Therefore, Haygood's escape term should have been consecutive to the two prison terms he was serving at the time of the escape not consecutive to the term for the robbery he committed after he escaped. His escape term should have commenced when the other two terms had expired and should have been concurrent to the robbery term. *Id.* at 1352-53.

15. *Haygood*, 769 F.2d at 1352-53.

16. *Haygood v. Younger*, 527 F. Supp. 808 (E.D. Cal. 1981).

17. *Id.* at 824. At the close of Haygood's case, the district court judge directed a verdict in favor of the warden of Folsom prison, the administrative officer of the California Adult Authority, and the correctional counselor. The case went to the jury. The jury found that these defendants caused Haygood to be subjected to deprivation of rights in that confinement constituted a deprivation of liberty without due process. See *Haygood*, 769 F.2d at 1353.

18. *Haygood v. Younger*, 718 F.2d 1472 (9th Cir. 1983), *withdrawn*, 729 F.2d 613 (9th Cir. 1984).

19. *Id.* at 1480.

20. *Haygood*, 769 F.2d at 1350. The Ninth Circuit Court of Appeals heard *Haygood* a second time with two other prisoner rights cases, *Piatt v. McDougall*, 773 F.2d 1032 (9th Cir. 1985) and *Bretz v. Kelman*, 773 F.2d 1026 (9th Cir. 1985).

21. *Haygood*, 769 F.2d at 1357-59.

cause the state failed to provide him with a hearing before using procedures within the state's control to deprive him of his liberty.²²

THE STATUS OF EXISTING LAW

A. *Monroe v. Pape and Its Progeny Provide Guidelines for Section 1983 Litigation*

In 1871, Congress, by enacting 42 U.S.C. § 1983, created a federal cause of action for individuals who suffer violations of their fourteenth amendment rights at the hands of persons acting under color of state law.²³ In *Monroe v. Pape*,²⁴ the United States Supreme Court made it clear that for purposes of section 1983 persons act under color of state law whenever they exercise authority that they possess pursuant to state law.²⁵ Under *Monroe*, section 1983 encompasses the conduct of persons exercising such authority whether they act in accordance with or in violation of state law.²⁶

Monroe also delineated the "no-exhaustion" doctrine of section 1983 litigation.²⁷ In formulating this doctrine, the Court determined that Congress created the federal remedy, section 1983, as an independent supplement to adequate state law remedies.²⁸ Consequently, individuals seeking to redress violations of constitutional rights caused by persons acting under color of state law need not exhaust state law remedies prior to invoking section 1983.²⁹

Monroe provided the impetus for litigants to bring increasing numbers of section 1983 actions.³⁰ Three cases following *Monroe* indicated the Court's growing concern over the increasing volume of section 1983 litigation.³¹ In *Paul v. Davis*³² and *Baker v. McCollan*,³³ the Court distinguished common law torts from constitutional violations. There is not a cause of action under section 1983 for common law torts committed by state officials.³⁴ In *Ingraham v. Wright*,³⁵ the Court held that state law procedures

22. *Id.* at 1358-59.

23. See *supra* note 2 and U.S. CONST. amend. XIV.

24. 365 U.S. 167 (1961).

25. *Id.* at 184.

26. *Id.* at 172.

27. *Id.* at 183. The Court reaffirmed the "no-exhaustion" doctrine for § 1983 litigation in *Patsy v. Board of Regents*, 457 U.S. 496 (1982).

28. *Monroe*, 365 U.S. at 183.

29. *Id.*

30. See generally Blum, *The Implications of Parratt v. Taylor for Section 1983 Litigation*, 16 URB. LAW. 363, 364 (1984); *Developments in the Law-Section 1983 and Federalism*, 90 HARV. L. REV. 1172 (1977).

For an examination of the growth of prisoner civil rights suits, the federal courts' treatment of these cases, and the grievances plaintiffs allege in 1983 complaints, see TURNER, *When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts*, 92 HARV. L. REV. 610, 612 (1979).

31. See generally, Blum, *supra* note 30, at 364; Friedman, *Parratt v. Taylor: Opening and Closing the Door on Section 1983*, 9 HASTINGS CONST. L.Q. 545 (1982); Smolla, *The Displacement of Federal Due Process Claims by State Tort Remedies: Parratt v. Taylor and Logan v. Zimmerman Brush Company*, 1982 U. ILL. L. REV. 831.

32. 424 U.S. 693 (1976).

33. 443 U.S. 137 (1979).

34. In *Paul v. Davis*, a newspaper reporter brought a § 1983 action against police officers who circulated his name and picture among local merchants and described him as a local shoplifter. Davis claimed that the officials had deprived him of a liberty or property interest in his reputation

can satisfy due process requirements when the state deprives individuals of constitutionally-protected interests.³⁶ The Court's rationale in these cases led directly to its decision in *Parratt v. Taylor*.

B. *Parratt v. Taylor Precludes Section 1983 Actions for Random Deprivations Where State Law Provides Adequate Postdeprivation Remedies*

In *Parratt v. Taylor*,³⁷ decided twenty years after *Monroe*, the Court attempted to delineate the circumstances in which the availability of state tort law remedies satisfies due process. In *Parratt*, an inmate sued prison administrators, claiming that prison employees had negligently lost the hobby materials he had ordered.³⁸ Although Nebraska's tort law would have provided relief, the inmate instead sued under section 1983.³⁹

The Court first noted that the alleged conduct unquestionably met the "under color of state law" requirement crucial to section 1983 actions.⁴⁰ The Court found more problematic the question of whether the inmate had suffered a deprivation of property without due process within the meaning of the fourteenth amendment. The hobby kit, the Court determined, fell within the definition of property.⁴¹ Its loss, although negligently-caused, amounted

without due process. The Supreme Court refused to find that Davis had a constitutionally-protected interest in his reputation. It also rejected the proposition that any common law tort that a state official commits automatically gives rise to a cause of action under § 1983 and the Due Process Clause of the U.S. Constitution. According to the Court, Davis' complaint constituted no more than a claim for defamation under state law. *Paul*, 424 U.S. at 701-10.

In *Baker v. McCollan*, police held the wrong man in custody over a long holiday weekend because of negligent police identification procedures. McCollan brought a § 1983 action claiming that the police had deprived him of liberty without due process. The Court classified the challenged conduct as a breach of the duty of care arising out of tort law, rather than as a violation of a constitutionally-protected right. *Baker*, 443 U.S. at 146.

35. 430 U.S. 651 (1977).

In *Ingraham*, the plaintiffs brought a class action on behalf of junior high school students in Dade County Florida. Public officials had severely paddled these students for alleged disciplinary violations. The students claimed that the paddling violated their eighth amendment rights and that the officials' failure to provide a hearing prior to the deprivation violated due process. The Court first held that the eighth amendment prohibition was not applicable outside the penal system. *Id.* at 671. Unlike *Paul*, the *Ingraham* Court acknowledged that a liberty interest was involved where school officials corporally punished students. The Court held that Florida's preservation of common law constraints and remedies satisfied the fourteenth amendment's requirement of procedural due process. *Id.* at 682. The Court made it clear that even when officials intentionally violate property or liberty interests, state law remedies can serve as adequate substitutes for other due process safeguards.

36. *Id.* at 682-83. In *Monroe*, *Paul*, *Baker*, and *Ingraham*, the Court attempted to limit the proliferation of § 1983 suits, essentially by redefining the circumstances in which the deprivation of a constitutionally-protected interest without due process occurs. According to the *Ingraham* Court, although corporal punishment in public schools did implicate a liberty interest, common law remedies satisfied "due process of law." *Id.* at 672. A deprivation of a protected interest occurs, then, when there is no common law remedy.

37. 451 U.S. 527 (1981).

38. The loss occurred at the Nebraska Penal and Correctional Complex. The hobby materials arrived at the prison, and two employees signed for them. The respondent was in segregated detention at the time. When the defendant was entitled to receive the packages, prison officials could not find them. *Parratt*, 451 U.S. at 529-30.

39. *Id.* at 529.

40. *Id.* at 536.

41. *Id.*

to a deprivation. The inmate did not receive notice and an opportunity to be heard before this deprivation occurred.

Focusing on whether the inmate suffered a deprivation without due process, the Court reasoned that the fundamental right of an opportunity to be heard at a meaningful time and in a meaningful manner does not always require that the state provide a hearing before the deprivation occurs.⁴² Where the deprivation is the result of unpredictable behavior on the part of state officials, it is impossible for the state to provide a predeprivation hearing. Consequently, the Court held that where the deprivation of property is the result of random, unauthorized, or negligent official conduct, an adequate postdeprivation state tort law remedy satisfies the fourteenth amendment's due process requirement. As a result, the state remedy precludes section 1983 actions in such cases.

Parratt only involved negligent deprivations of property interests by state officials.⁴³ The court recently applied the *Parratt* analysis to intentional deprivations of property in *Palmer v. Hudson*.⁴⁴ In *Palmer*, the Court held that a prison guard's unauthorized intentional deprivation of property did not constitute a due process violation because a meaningful postdeprivation remedy was available under state law.⁴⁵

The related question that *Parratt* left unanswered is whether the loss of liberty demands greater protection than the taking of property. *Parratt* held that a negligent loss of property could implicate section 1983 only when there was no adequate state law remedy. *Parratt* never addressed the issue of whether a negligently-caused loss or injury can amount to a "deprivation" of liberty within the meaning of the due process clause. A sharp division among the lower federal courts concerning whether the *Parratt* analysis applies to negligent deprivations of liberty as well as property led the Supreme Court to consider this question in two recent cases that partially overrule *Parratt*.⁴⁶

42. *Id.* at 540.

43. *Parratt*, 451 U.S. at 529. Justice White and Blackmun would explicitly confine *Parratt* to that context. Justice Blackmun states:

I do not read the Court's opinion as applicable to a case concerning deprivation of life or liberty. . . . Most importantly, I do not understand the Court to suggest that the provision of "postdeprivation remedies" . . . within a state would cure the unconstitutional nature of a state official's intentional act that deprives a person of property.

Id. at 545-46 (Blackmun, J., concurring). See also *id.* at 545 (White, J., concurring).

44. 104 S. Ct. 3194 (1984).

45. *Id.* at 3204.

46. There is confusion on this issue among the circuits. See, e.g. *Patterson v. Coughlin*, 761 F.2d 886, 892 (2nd Cir. 1985) cert. denied, 106 S. Ct. 879 (1986) (*Parratt* does not apply to authorized, non-random deprivations of liberty); *Davidson v. O'Lone*, 752 F.2d 817, 828 (3rd Cir. 1984), aff'd *Davidson v. Cannon*, 106 S. Ct. 668 (1986) (although inmate has a constitutionally-protected liberty interest in personal security while in prison, this does not mean that "mere negligence" can constitute a deprivation that § 1983 can redress); *Daniels v. Williams*, 720 F.2d 792, 796 (4th Cir. 1983), aff'd on reh. 748 F.2d 229 (4th Cir. 1984), aff'd *Daniels v. Williams*, 106 S. Ct. 662 (1986) (*Parratt* applies to negligent deprivations of the liberty interest in freedom from bodily injury); *Thibodeaux v. Bordelon*, 740 F.2d 329, 339 (5th Cir. 1984) (*Parratt* applies to negligent deprivations of liberty); *Wilson v. Beebe*, 743 F.2d 342, 350 (6th Cir. 1984) (life and liberty are inherently more important than property); *Haygood v. Younger*, 718 F.2d 1472, 1480 (9th Cir. 1983), withdrawn, 729 F.2d 613 (9th Cir. 1984) rev'd, *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (*Parratt* applies to situations in which process prior to deprivation of liberty would not be feasible or practicable); *Thomson v. City of Portland*, 612 F. Supp. 390, 392 (D.C. Me. 1985) (*Parratt* does not apply to

C. The Court Partially Overrules *Parratt*: *Negligent Losses No Longer Constitute Deprivations Within the Meaning of the Fourteenth Amendment*

In *Daniels v. Williams*,⁴⁷ and *Davidson v. Cannon*,⁴⁸ the Court considered the question of whether a physical injury that state officials negligently cause constitutes a deprivation of liberty within the meaning of the due process clause.⁴⁹ In both cases, state prison inmates proceeded under section 1983 against corrections officials who allegedly were negligent in protecting them against physical injuries.⁵⁰ In *Daniels*, the Court partially overruled *Parratt*, holding that a loss resulting from mere negligence on the part of state officials does not amount to a deprivation within the meaning of the fourteenth amendment.⁵¹ Unintended losses of or injuries to life, liberty, or property, the Court concluded, do not implicate the due process clause.⁵² Significantly, the Court left unanswered the question of which interest, property or liberty, deserves greater protection. The Court short-circuited this question by holding that a negligent loss could never amount to a depriva-

liberty interests). See generally Note, *Defining the Parameters of Section 1983: Parratt v. Taylor*, 23 B.C.L. REV. 1219 (1982) (the author takes the view that *Parratt* should not apply to liberty interests); Note, *Parratt v. Taylor: Don't Make a Federal Case Out of It*, 63 B.U.L. REV. 1187 (1983) (arguing that *Parratt* should apply to liberty interests); Note, *Due Process: Application of the Parratt Doctrine to Random and Unauthorized Deprivation of Life and Liberty*, 52 FORDHAM L. REV. 887 (1984) (arguing that the *Parratt* doctrine should apply to liberty interests).

47. 106 S. Ct. 662 (1986).

48. 106 S. Ct. 668 (1986).

49. *Davidson*, 106 S. Ct. at 669. The *Davidson* Court found the principles enunciated in *Daniels* controlling. *Davidson*, 106 S. Ct. at 663. It is interesting to note that in *Daniels*, six Justices joined in the majority opinion, which Justice Rehnquist authored. The majority included Justices Burger, Brennan, White, Powell, and O'Connor. Justice Marshall concurred in the opinion. Justices Blackmun and Stevens each wrote concurring opinions. Justice Rehnquist also wrote the opinion in *Davidson*. The majority included Justices Burger, White, Powell, and O'Connor, but in this case Justice Brennan dissented from the majority along with Justices Blackmun and Marshall. It appears as though Brennan, Marshall and Blackmun switched to the dissent because of the factual differences between the two cases. In *Daniels*, the inmate slipped on a pillow negligently left on the stairs by a correctional deputy. In *Davidson*, the inmate suffered injuries when prison officials failed to protect him from another inmate. Brennan, Blackmun and Marshall seemed to agree with the Court that mere negligent conduct does not rise to the level of constituting a deprivation of liberty under the due process clause. On the other hand, official conduct that causes injury due to recklessness or deliberate indifference does deprive the victim of liberty within the meaning of the fourteenth amendment.

According to the dissenters:

It is one thing to hold that a commonplace slip and fall, or the loss of a \$123.50 hobby kit, see *Parratt v. Taylor*, *supra*, does not rise to the dignified level of a constitutional violation. It is a different thing to say that negligence that permits anticipated inmate violence resulting in injury, does not implicate the Constitution's guarantee of due process. *When the State incarcerated Daniels, it left intact his own faculties for avoiding a slip and a fall. But the state prevented Davidson from defending himself, and therefore assumed some responsibility to protect him. . . . In these circumstances, I feel that Davidson was deprived of liberty by the negligence of the prison officials.* (emphasis added).

Davidson, 106 S. Ct. at 670.

50. In *Daniels*, the inmate injured himself when he tripped over a pillow that a deputy negligently left on a jail stairway. A fellow inmate injured the plaintiff in *Davidson* after prison officials neglected to follow up on the plaintiff's warning that the inmate had threatened him. A more complete statement of the facts in each case is set forth in the proceedings of the Court of Appeals. *Daniels v. Williams*, 720 F.2d 792, 794 (4th Cir. 1983), *aff'd on rehearing*, 748 F.2d 229 (4th Cir. 1984); *Davidson v. O'Lone*, 752 F.2d 817, 819-20 (3rd Cir. 1984).

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

52. *Id.*

tion within the meaning of the due process clause. Essentially, defining what will not constitute a deprivation for due process purposes, the Court remedies the liberty versus property question moot. The Court leaves intact the part of the *Parratt* decision that holds there is no denial of due process where the state provides an adequate postdeprivation remedy.⁵³

D. *Logan v. Zimmerman Limits the Postdeprivation Concept to Unauthorized and Random Acts*

The most significant limitation upon the postdeprivation concept appears in *Logan v. Zimmerman Brush Co.*,⁵⁴ decided one year after *Parratt*. In *Logan*, the plaintiff filed a discrimination claim with the Illinois Fair Employment Practices Commission, stating that the Zimmerman Brush Company had dismissed him allegedly because a physical handicap made his job performance inadequate.⁵⁵ The Illinois statutory scheme required a person claiming discrimination to file a claim with the commission within 180 days of the occurrence of the allegedly discriminatory incident. Following the filing of the claim, the statute gave the commission 120 days within which to hold a factfinding conference. Through its own inadvertence, the commission scheduled the conference five days after the 120-day period expired.⁵⁶ The Illinois Supreme Court refused Logan relief, holding that the Commission could no longer hear the claim because the 120-day time limit was jurisdictional.⁵⁷

The United States Supreme Court found that Logan's cause of action for discriminatory employment practices concerned a property interest.⁵⁸ The state's deprivation of this interest without a meaningful hearing, violated Logan's due process rights.⁵⁹

The Court distinguished *Parratt*, stating that adequate postdeprivation remedies satisfy due process only where the deprivation is the result of random, unauthorized and unpredictable conduct on the part of state officials.⁶⁰

53. *Id.* One year after *Parratt*, the Court limited the adequacy of postdeprivation remedies to cases involving random or unauthorized official misconduct in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

54. 455 U.S. 422 (1982).

55. *Id.* at 426.

56. *Id.* at 426. At the conference, Zimmerman Brush moved to dismiss Logan's claim because the commission had failed to abide by the 120-day statutorily mandated time limitation. When the Commission denied its motion, the company sought a writ of prohibition from the Illinois Supreme Court.

57. *Zimmerman Brush Co. v. Fair Employment Practices Comm'n*, 82 Ill. 2d 99, 411 N.E.2d 277 (1980).

58. *Logan*, 455 U.S. at 428-33.

59. *Id.* at 434-35.

60. The *Logan* Court stated:

In *Parratt*, the Court emphasized that it was dealing with a "tortious loss of . . . property as a result of a random and unauthorized act by a state employee. . . not a result of some established state procedure." 451 U.S. at 541. Here, in contrast, it is the state system itself that destroys a complainant's property interest, by operation of law, whenever the Commission fails to convene a timely conference—whether the Commission's action is taken through negligence, maliciousness, or otherwise. *Parratt* was not designed to reach such a situation. See *id.*, at 545 (second concurring opinion).

Id. at 435-36.

In *Logan*, the deprivation was the result of an established state procedure.⁶¹ According to the Court, the state cannot utilize an established policy or procedure to deprive an individual of a constitutionally-protected interest unless it provides a meaningful opportunity to be heard.⁶²

EXPLANATION OF THE CASE

The *Haygood* court began its analysis by focusing on the appropriateness of a section 1983 action as a remedy for the alleged wrong. The court concluded that the first essential element of a section 1983 action was present because the records officers were acting under color of state law.⁶³ In reaching this conclusion, the court found it unnecessary to determine whether the defendants' challenged actions exceeded the scope of their authority. Individual state officials, the court noted, can act under color of state law for purposes of section 1983 even where they negligently abuse their authority or intentionally commit unauthorized acts.⁶⁴

The court next considered whether *Haygood* had established the second element essential to a section 1983 action by demonstrating that state officials had deprived him of a protected right. When the state creates a statutory right to release from prison, the court reasoned, it also creates a liberty interest. Before depriving an individual of this interest, the state must satisfy minimum due process requirements.⁶⁵

The type of process that a state must provide depends upon the nature of the individual's interest.⁶⁶ In order to determine whether the process accorded *Haygood* was sufficient, the court applied the balancing test that the Supreme Court enunciated in *Mathews v. Eldridge*.⁶⁷ This test required the court to weigh the state's interest in not providing certain procedures against both the strength of *Haygood's* interest and the risk of erroneous deprivation by the procedure currently in use.⁶⁸

Haygood's five-year wrongful detention, the court concluded, constituted a major deprivation of liberty. Consequently, due process required that the state provide him with a meaningful hearing at a meaningful time.⁶⁹

In examining the question of whether *Haygood's* hearing occurred at a

61. *Id.* at 436.

62. *Id.* at 437.

63. *Haygood*, 769 F.2d at 1354. In a footnote, the Court noted that *Haygood* had an alternative remedy under California state law, which provides an action in tort for prisoners whose release is unlawfully delayed. *Monroe v. Pape*, 365 U.S. 167 (1961), allowed *Haygood* to proceed under § 1983 to seek compensation for the constitutional injury without first exploring state remedies. *Haygood*, 769 F.2d at 1353, n.4. See *supra* text accompanying notes 27-29.

64. *Haygood*, 769 F.2d at 1354.

65. *Id.* at 1355.

66. *Id.*

67. 424 U.S. 319 (1976).

68. The court in *Mathews v. Eldridge* enunciated a three-pronged test, which balances 1) the private interest that the procedures will affect, 2) the risk of erroneous deprivation of that interest by the procedures currently in use, and finally, 3) the government's interest in providing or failing to provide specific procedures. *Id.* at 335. In balancing the interests involved, the court weighed *Haygood's* liberty interest against the state's interest in the efficient administration of its indeterminate sentence scheme and concluded that the balance weighed more heavily in favor of *Haygood's* liberty interest. *Haygood*, 769 F.2d at 1357.

69. *Haygood*, 769 F.2d at 1356.

meaningful time, the court recognized that previous United States Supreme Court cases distinguished predeprivation process from postdeprivation process. Predeprivation process is the preventive process the state must provide before depriving an individual of a constitutionally-protected right. This process applies to deprivations that are predictable. Postdeprivation process, on the other hand, is the remedial process that satisfies due process requirements in cases like *Parratt*, where the state cannot predict that the deprivation will occur.⁷⁰

The *Haygood* court believed that these terms were meaningless where official state policies or procedures caused a deprivation of liberty.⁷¹ In this context, process prior to the deprivation satisfies constitutional requirements, while process after the deprivation can only provide a substitute remedy.⁷²

The court determined that Haygood's remedial hearing before the California Supreme Court, which he obtained after serving five extra years, was constitutionally inadequate.⁷³ The court refused to apply the *Parratt* rationale because Haygood was not challenging a random, unauthorized deprivation that the state could not prevent.⁷⁴ Instead, the court relied upon *Logan* because Haygood was challenging the deficiency of an authorized procedure. Under *Logan*, the state had to provide Haygood with an opportunity to be heard before using the challenged procedure to deprive him of his liberty.⁷⁵

Seventeen months before his habeas corpus action established his right to release, Haygood had questioned the method officials used to calculate his sentence. In his initial complaint the plaintiff relied upon established interpretations of the regulations concerning release dates. The defendants did not give Haygood an opportunity to be heard before determining his complaint was without merit and extending the period of his confinement.⁷⁶ In so doing, the court held, the records officers deprived Haygood of his liberty without due process.⁷⁷ As a result, Haygood's cause of action under section 1983 arose when the defendants rejected his initial complaint.⁷⁸

SCOPE OF THE CASE

The United States Supreme Court decided *Daniels*⁷⁹ and *Davidson*⁸⁰

70. *Id.* at 1356-57.

71. *Id.* at 1357. The Court emphasized:

When we speak of a denial of liberty by official state policy or procedure, however, it is confusing and perhaps meaningless to speak of predeprivation or postdeprivation process, because if a challenged loss of liberty was preceded by a due process hearing, there has been no constitutional deprivation. *Process which precedes a loss of liberty obviously prevents a constitutional violation. Process which follows the loss of liberty can only provide a substitute remedy, usually money damages.* (Emphasis added).

Id.

72. *Id.*

73. *Id.* at 1358.

74. *Id.* at 1357-58.

75. *Id.*

76. *Id.*

77. *Id.* at 1359.

78. *Id.* at 1358.

79. *Daniels*, 106 S. Ct. 662 (1986).

80. *Davidson*, 106 S. Ct. 668 (1986).

after the Ninth Circuit Court of Appeals decided *Haygood v. Younger*. In these cases, the Court partially overruled *Parratt* and held that negligent conduct on the part of state officials did not implicate the due process clause.⁸¹ The *Haygood* court predicated its decision upon the premise that Haygood was challenging authorized rather than negligent official conduct.⁸² Therefore, it is unlikely that the *Daniels* and *Davidson* decisions would have changed the result in *Haygood*.

As *Haygood* demonstrates, the crucial issue in section 1983 actions is the characterization of the challenged official conduct. Where the court characterizes the conduct as random and unauthorized, it will apply a *Parratt* analysis and adequate postdeprivation state law remedies will preclude a section 1983 action.⁸³ When the Ninth Circuit initially considered *Haygood*, it applied a *Parratt* analysis and went out of its way to distinguish *Logan*.⁸⁴ The court held that the postdeprivation remedies accorded Haygood satisfied due process because it would not have been feasible for the state to provide him with a hearing before the deprivation occurred.⁸⁵

Civil rights plaintiffs will obviously try to avoid this type of outcome by demonstrating that all challenged official conduct is the result of established state policies and procedures. If the court agrees, it will apply a *Logan* analysis and require due process prior to the deprivation.⁸⁶ When the Ninth Circuit Court of Appeals reconsidered *Haygood en banc*, it characterized the official conduct as the result of an established state procedure.⁸⁷ Consequently, the court applied a *Logan* analysis and held that the remedy the state provided Haygood, after depriving him of his liberty, did not satisfy due process requirements.⁸⁸ As the Ninth Circuit's two resolutions of Haygood's claim illustrate, the characterization of the official conduct as authorized or unauthorized may lead to drastically different results under *Logan* or *Parratt*.

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81. *Daniels*, 54 106 S. Ct. at 663.

82. *Haygood*, 769 F.2d at 1359.

83. *Id.* at 1357.

84. *Haygood v. Younger*, 718 F.2d 1472, 1480 (9th Cir. 1983).

85. *Id.* at 1481.

86. *Haygood*, 769 F.2d at 1357.

87. *Id.* at 1358.

88. *Id.* at 1359.