

# PROCEDURAL DUE PROCESS CLAIMS

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## I. INTRODUCTION

This morning I will be talking about procedural due process. The Fifth and Fourteenth Amendments provide that neither the federal or state government can deprive a person of life, liberty or property without due process of law.<sup>1</sup>

As you know, the Supreme Court has interpreted these two clauses of the Constitution as giving rise to a couple of doctrines, substantive due process and procedural due process. Substantive due process concerns whether the government has an adequate reason for taking away a person's life, liberty or property. While procedural due process, which is my focus, concerns whether the government has followed adequate procedures in taking away a person's life, liberty or property.

All procedural due process questions can be broken down into three sub-issues. First, is there a deprivation? Only if there is a deprivation does the court need to go any further in its procedural due process analysis. Second, is there a deprivation of life, liberty or property? Only if a person is deprived of life, liberty or property does the court need to proceed with a procedural due process analysis. Third, what procedures are required? Only if the procedures of the government are inadequate is there a deprivation of due process. The combination of these three sub-issues, phrased somewhat differently, is that there is a denial of procedural due process only if there is a deprivation of life, liberty or property without adequate procedures.

In any given case, as few as one or possibly all three of these might be at issue, but, the three steps are analytically always present in procedural due process cases. I will deal with these

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<sup>1</sup> See, U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part that: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ." *Id.*; N.Y. CONST. art. I, § 6. This provision states that: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

three questions individually. First, is there a deprivation; second, does the deprivation constitute a deprivation of life, liberty or property; and third, what procedures are required?

## II. DEPRIVATION

As to the first question of whether this is a deprivation, usually this is clear. Often, it is obvious from the fact that the person has lost life, liberty or property. However, sometimes the issue is litigated and most frequently two questions arise.

One is what mental state is required in order to have a deprivation? The key Supreme Court case here is *Daniels v. Williams*<sup>2</sup> from 1986. *Daniels* involved a prisoner who slipped on a pillow that had been negligently left on a prison step.<sup>3</sup> He sued the prison officials, claiming that their negligence had deprived him of his liberty, his bodily safety, without due process of law.<sup>4</sup> The Supreme Court ruled that negligence is insufficient to state a claim under the due process clause.<sup>5</sup> The court said generally, not just in the prison context, negligence is insufficient to have a constitutional deprivation.<sup>6</sup>

The companion case decided with *Daniels* was *Davidson v. Cannon*<sup>7</sup>, which involved a prisoner who was threatened by another prisoner.<sup>8</sup> The prisoner left a note for the warden saying, "I've been threatened. I need protection."<sup>9</sup> Subsequently, the warden left on a long weekend and did not do anything to provide protection.<sup>10</sup> The prisoner was assaulted by the prisoner who

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<sup>2</sup> 474 U.S. 327 (1986). The Court revisited *Parratt v. Taylor*, where the Court determined that "the alleged loss, even though negligently caused amounted to a deprivation." *Id.* at 328. (quoting *Parratt v. Taylor*, 451 U.S. 527 (1981)).

<sup>3</sup> *Id.* at 328.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 332.

<sup>6</sup> *Id.* at 328. The Court concluded that the Due Process Clause is not triggered when an official's negligent act causes "unintended loss of or injury to life, liberty, or property." *Id.*

<sup>7</sup> 474 U.S. 344 (1986).

<sup>8</sup> *Id.* at 345.

<sup>9</sup> *Id.* The Court took no further action, aside from writing the note to inform prison authorities of the danger of an attack, petitioner did not ask to be put into protective custody. *Id.* at 346.

<sup>10</sup> *Id.* at 345-46.