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Fourth Amendment--Prison Cells: Is there a Right to Privacy

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FOURTH AMENDMENT—PRISON CELLS: IS THERE A RIGHT TO PRIVACY?

Hudson v. Palmer, 104 S. Ct. 3194 (1984).

I. INTRODUCTION

In *Hudson v. Palmer*,[1] the United States Supreme Court held for the first time that the fourth amendment does not protect prisoners from searches of their personal property by correctional officers.[2] The Court held that prisoners have no reasonable expectation of privacy in their prison cells that must be protected by the fourth amendment.[3] Although several circuits have recognized that prisoners have a "limited privacy right" in their prison cells entitling them to the protection of the fourth amendment,[4] the *Hudson* decision eliminates any possibility that prisoners could invoke the fourth amendment to protect their property from search or seizure by state employees.

The Court in *Hudson* also extended its decision in *Parratt v. Taylor*[5] to intentional deprivations of property by state employees.[6]

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1 104 S. Ct. 3194 (1984).

2 *Id.* at 3201.

3 *Id.* The fourth amendment to the United States Constitution provides, in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. CONST. amend. IV.

4 Several circuits have held that the fourth amendment guarantees prisoners the limited right to be free from unreasonable searches and seizures. *See, e.g.*, United States v. Chamorro, 687 F.2d 1 (1st Cir. 1982) (search of the prisoner's cell and seizure of a package label identical to one found on a bomb was conducted reasonably for valid security reasons); United States v. Hinckley, 672 F.2d 115, 129 (D.C. Cir. 1982) (indiscriminate search and reading of prisoner's confidential papers violates the fourth amendment's standard of reasonableness where such reading was not necessary to further institutional security); United States v. Lilly, 576 F.2d 1240 (5th Cir. 1978) (prior notice of body cavity searches conducted on prisoners is not necessary where prison officials have reason to believe that the inmate is concealing contraband); United States v. Stumes, 549 F.2d 831 (8th Cir. 1977) (the court would not suppress evidence obtained in a prison search where probable cause existed and where the prisoner openly kept his property in his cell); Bonner v. Coughlin, 517 F.2d 1311 (7th Cir. 1975), *cert. denied*, 435 U.S. 932 (1978) (shakedown searches may be conducted without a warrant, probable cause, or prisoner's consent; prisoner, however, may be entitled to compensation for the loss of his trial transcript where he can prove that the prison guards unreasonably seized his property).

5 451 U.S. 527 (1981).

The *Parratt* Court held that prison officials who negligently destroy prisoners' property do not violate prisoners' property rights under the fourteenth amendment's due process clause as long as the state provides postdeprivation remedies.[7] The *Hudson* decision further establishes that prison officials do not violate prisoners' fourteenth amendment rights even when they intentionally destroy prisoners' property.

This Note will examine the reasoning that underlies the Court's unwillingness to grant a reasonable expectation of privacy to prisoners. This Note also will argue that the severity of the Supreme Court's decision is justified by the legitimate institutional interests of the penal facility.

II. BACKGROUND

The fourth amendment protects individual rights to privacy, but its protection is not available to all members of society under all circumstances.[8] Most notably, the fourth amendment is not available to pretrial detainees or convicted prisoners to prevent searches or seizures within their prison cells.[9] The Supreme Court laid the foundation for this restriction of prisoners' fourth amendment rights in *Lanza v. New York*[10] when the Court held that a prison is not

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6 *See Hudson*, 104 S. Ct. at 3204.

7 451 U.S. at 543. The fourteenth amendment to the United States Constitution provides in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property without due process of law." U.S. CONST. amend. XIV.

8 *See, e.g.*, Coolidge v. New Hampshire, 403 U.S. 443, 489 (1969) (an accused cannot claim the protections of the fourth amendment where a police officer is not searching for evidence against the accused but nonetheless inadvertently comes across an incriminating object); United States v. Smallwood, 443 F.2d 535, 538 (8th Cir. 1971) (fourth amendment protection is not available to corporate officials to prevent the use of corporate records against them); United States v. An Article of Food, Etc., 477 F. Supp. 1185 (S.D.N.Y. 1979) (the exclusionary rule fashioned by the courts to protect the fourth amendment rights of individuals is not available to a claimant in a condemnation proceeding brought *in rem* concerning the contraband itself).

9 In a case decided on the same day as *Hudson*, the Supreme Court held that the jailer's practice of conducting shakedown searches of pretrial detainees' cells in the absence of the detainees was a reasonable response to legitimate security concerns and did not violate due process. Block v. Rutherford, 104 S. Ct. 3227 (1984). The Supreme Court enunciated the underlying reasoning for this decision in Bell v. Wolfish, 441 U.S. 520 (1979), where it held that pretrial detainees could not invoke the fourth amendment to prevent room searches when the detainees remained outside their rooms while the searches were conducted. The Supreme Court stated that "the room-search rule simply facilitates the safe and effective performance of the search which all concede may be conducted. The rule itself, then, does not render the searches 'unreasonable' within the meaning of the Fourth Amendment." 441 U.S. at 557.

10 370 U.S. 139 (1962). In *Lanza*, the Supreme Court stated that a prisoner's due process rights were not violated when state officials secretly taped an incriminating conversation between the prisoner and his brother and later used a transcript of that taped

an area protected by the Constitution.[11] The *Lanza* decision noted that because of the continual surveillance of inmates, a prison does not meet the expectation of privacy inherent in a home or an office.[12] Although the Court in *Lanza* was not required to decide the applicability of the fourth amendment to prison inmates, it stated that to give prisoners fourth amendment immunity from search or seizure of their personal property is "at best a novel argument."[13]

The Supreme Court in *Katz v. United States*[14] and *Smith v. Maryland*[15] established that the applicability of the fourth amendment is contingent upon whether the individual can claim that a "legitimate expectation of privacy" has been invaded by government actions.[16] Justice Harlan's concurrence in *Katz* stated that the test of reasonableness for prison searches is "whether a prisoner's expectation of privacy in his prison cell is the kind of expectation that 'society is prepared to recognize as "reasonable." ' "[17]

The Supreme Court has determined the reasonableness of prison searches in several different ways. Prior to its decision in *Bell v. Wolfish*,[18] the Supreme Court applied a case-by-case test of reasonableness to searches conducted by state employees to determine whether they violated the fourth amendment.[19] The Court decided the reasonableness of each search by balancing the need for the particular search against the personal rights that the search invaded.[20]

The Court in *Bell*, however, rejected the case-by-case reasonableness test. Instead, the Court determined the reasonableness of the contested searches in a categorical fashion. The Court argued that "when an institutional restriction infringes a specific constitu-

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conversation to interrogate the prisoner's brother before a legislative committee. *Id.* at 144.

11 *Id.* at 143.

12 *Id.*

13 *Id.*

14 389 U.S. 347 (1967). In *Katz*, the Supreme Court decided that the fourth amendment protects people from unreasonable searches and seizures despite the lack of physical intrusion into the area being searched. *Id.* at 353. Consequently, the Government's wiretapping of the complainant's telephone booth violated the fourth amendment because complainant reasonably relied on the privacy of his conversation. *Id.* For further discussion of the Supreme Court's test in *Katz*, see *infra* text accompanying note 67.

15 442 U.S. 735 (1978). Justice Blackmun's opinion noted that police did not violate the complainant's fourth amendment rights by installing a pen register on the complainant's phone line without a warrant. *Id.* at 746. The Court noted that the complainant had no actual or legitimate expectation of privacy in the phone numbers he dialed. *Id.* at 742.

16 *Id.* at 740.

17 *Hudson*, 104 S. Ct. at 3199 (quoting *Katz*, 389 U.S. at 361).

18 441 U.S. 520 (1979).

19 *See, e.g.*, Terry v. Ohio, 392 U.S. 1, 17 n.15 (1968).

20 *Bell*, 441 U.S. at 559.

tional guarantee . . . the practice must be evaluated in the light of the central objective of prison administration, safeguarding institutional security."[21] The Court found that shakedown searches of prison cells help maintain security and preserve internal order and discipline.[22] Relying on the categorical determination that prison searches fulfill the government's objectives regarding prison security, the Supreme Court in *Bell* held that the shakedown searches of pretrial detainees are reasonable.[23] The Court in *Bell* also acknowledged the plausibility of the argument that "a person confined in a detention facility has no reasonable expectation of privacy with respect to his room or cell and that therefore the fourth amendment provides no protection for such a person."[24]

Despite the Supreme Court's suggestion in *Bell* that prisoners have no reasonable expectation of privacy in their cells, several circuit courts have held that prisoners possess a "limited privacy right" in their prison cells that prohibits unreasonable searches and seizures.[25] The Supreme Court in *Wolff v. McDonnell*[26] noted that prisoners are not "wholly stripped of constitutional protections when [they are] imprisoned for crime."[27] From this statement, several circuits reasoned that prisoners retain some fourth amendment rights that are consistent with the legitimate demands of prison security.[28] In *United States v. Hinckley*,[29] the District of Columbia Circuit held that under the fourth amendment, the reasonableness of the search depends "on a balance between the public interest [in maintaining institutional security] and the individual's right to personal security free from arbitrary interference."[30] The Court also

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21 *Id.* at 547 (citations omitted).

22 *Id.* at 546; *see* Pell v. Procunier, 417 U.S. 817, 823 (1974); Martinez v. Procunier, 416 U.S. 396, 404 (1974). Justice Rehnquist noted in *Bell* that "central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves." 441 U.S. a 546-47 (quoting *Pell*, 417 U.S. at 823).

23 *Bell*, 441 U.S. at 557.

24 *Id.* at 556-57.

25 *See supra* note 4 and cases cited therein.

26 418 U.S. 539 (1974).

27 *Id.* at 555. The *Wolff* decision allows prisoners to enjoy due process rights. *See also* Pell v. Procunier, 417 U.S. 817 (1974) (retention of first amendment rights of free speech that do not inhibit legitimate instutional objective); Estelle v. Gamble, 429 U.S. 97 (1976) (eighth amendment protection is given to prisoners to prevent cruel and unusual punishment); Cruz v. Beto, 405 U.S. 319 (1972) (per curiam) (guarantees reasonable opportunities to exercise religious freedom); Johnson v. Avery, 393 U.S. 483 (1969) (reasonable access to the courts is guaranteed); Lee v. Washington, 390 U.S. 333 (1968) (per curiam) (prohibits invidious racial discrimination, except where necessary for the prison's security needs).

28 *See supra* note 4 and cases cited therein.

29 672 F.2d 115 (D.C. Cir. 1982).

30 *Id.* at 129 (quoting Terry v. Ohio, 392 U.S. 1, 19 (1968)).

held that any deference given to prison administrators by courts must be tempered by the fourth amendment's prohibition on unreasonable invasions of privacy.[31]

A related issue to the constitutionality of prison cell searches and seizures is the constitutionality of postdeprivation remedies for prisoners whose property was negligently or intentionally destroyed by state employees. In *Parratt v. Taylor*,[32] the Supreme Court confronted the question of the adequacy of postdeprivation remedies for prisoners whose property was negligently destroyed by prison officials. In *Parratt*, an inmate alleged a violation of the due process clause of the fourteenth amendment when a state employee negligently lost the inmate's hobby materials.[33] The *Parratt* Court held that although a prison inmate was deprived of his property by the negligent acts of a state employee, there was no violation of the due process clause where the state provides adequate postdeprivation remedies.[34]

III. FACTS

Petitioner Hudson, a correctional officer at Bland Correctional Center in Virginia, conducted a "shakedown" search[35] of the locker and cell occupied by Respondent Palmer, an inmate. During the search, Hudson destroyed some of Palmer's legal materials and correspondence.[36] Subsequently, Palmer brought an action[37] against Hudson under 42 U.S.C. § 1983,[38] alleging that Hudson violated his fourteenth amendment right by depriving him of his property with-

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31 *Id.*

32 451 U.S. 527 (1981).

33 *Id.* at 531.

34 *Id.* at 541. In *Parratt*, the Court held that Nebraska's postdeprivation remedy for persons who assert tort losses committed by the state is sufficient to defeat due process challenges. *See* NEB. REV. STAT. §§ 81-8,209-8,239 (1976). "Through this tort claims procedure the state hears and pays claims of prisoners housed in its penal institutions." *Parratt*, 451 U.S. at 543.

35 Brief on Behalf of Petitioner at 3, Hudson v. Palmer, 104 S. Ct. 3194 (1984). A shakedown search is a security measure used by prison administrators. During a shakedown search, inmates are cleared from their cells and a team of guards thoroughly searches each room for contraband.

36 Brief for Respondent and Cross-Petitioner at 2, *Hudson*.

37 Palmer brought a pro se action against Hudson in United States District Court. Palmer v. Hudson, No. 81-0290-A, mem. op. at 28 (W.D. Va. Nov. 17, 1981).

38 42 U.S.C. § 1983 (1976), provides in pertinent part that:

> 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 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 other proper proceeding for redress.

out due process of law.[39] Palmer asserted that Hudson searched and intentionally destroyed his personal possessions in an attempt to harass him.[40]

The United States District Court for the Western District of Virginia entered summary judgment against Palmer.[41] The court found that even if Palmer's allegations were true, Hudson had not violated the due process clause of the fourteenth amendment.[42] The district court recognized that the *Parratt* decision, which held that a negligent deprivation of property by state officials does not violate the fourteenth amendment if an adequate postdeprivation state remedy exists, was applicable to the *Hudson* case.[43] The district court extended the holding of *Parratt* to a state employee's random and unauthorized intentional destruction of a prisoner's property.[44] The court held that the postdeprivation remedies available to Palmer under Virginia state law afforded him with adequate means of redress for the lost property.[45]

The United States Court of Appeals for the Fourth Circuit affirmed the district court's holding that Hudson did not violate Palmer's due process rights.[46] Relying on *Parratt*, the court held that postdeprivation remedies for state employees' random and unauthorized intentional acts satisfy the requirements of procedural due process.[47] The court determined that, as with negligent acts committed by state employees, predeprivation remedies for intentional acts are not feasible because of the spontaneous nature of such occurrences.[48] The postdeprivation remedies available to Palmer under Virginia law adequately satisfy the mandates of proce-

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The purpose of § 1983 is to "afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies." Monroe v. Pape, 365 U.S. 167, 180 (1961).

39 *Hudson*, 104 S. Ct. at 3197.

40 *Id.*

41 *Palmer*, No. 81-0290-A, mem. op. at 34.

42 *Id.* at 30.

43 *Id.*

44 *Id.* at 31.

45 *Id.* When prisoners use Virginia's inmate grievance procedure, their claims may be heard by an inmate-employee grievance committee or by the superintendent of the institution. *See* Department of Corrections, Commonwealth of Virginia, Inmate Grievance Procedures 6 (October 12, 1982). Tort and common law claims will be heard by the judiciary of Virginia.

46 Palmer v. Hudson, 697 F.2d 1220, 1221 (4th Cir. 1983).

47 *Id.* at 1223. Procedural due process requires that parties whose rights are involved in a controversy be given a hearing. Aggrieved parties also must be given adequate notice before their claims are adjudicated. *See* Fuentes v. Shevin, 407 U.S. 67 (1971).

48 *Palmer*, 697 F.2d at 1222. The state cannot provide a predeprivation hearing

dural due process.[49] The court found that Virginia's postdeprivation remedies provide parties whose rights are affected with a forum that addresses grievances, thus fulfilling the requirement of procedural due process that parties in interest be given a hearing.[50]

Because of a factual conflict regarding whether Hudson conducted the search to harass Palmer,[51] the court of appeals reversed the district court's finding that Palmer was without any rights to privacy and remanded the case for further factual determinations.[52] The court of appeals held that prisoners have a limited privacy interest,[53] and consequently that they are protected from unreasonable searches and unjustifiable confiscations.[54] Noting that the fourth and fourteenth amendments protect inmates from arbitrary and oppressive invasions of personal privacy that harass the prisoners and serve no legitimate institutional concerns,[55] the court concluded that prisoners should be stripped only of those constitutional rights that impair prison security or administration.[56]

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before negligent or intentional deprivations of property occur because the state cannot foresee when such acts will occur. *Id.* at 1223.

49 *Id.* The postdeprivation remedies available to prisoners in Virginia are state tort law and common law remedies. The Supreme Court in *Hudson* noted that Virginia has adopted a new inmate grievance procedure that will afford prisoners relief for any destruction of their property. 104 S. Ct. at 3202 n.9.

50 *Palmer*, 697 F.2d at 1222.

51 *Id.* at 1224.

52 *Id.* at 1225.

53 *Id.* at 1223-25; *see* United States v. Hinckley, 672 F.2d 115, 129 (D.C. Cir. 1982).

54 *Id.*

55 *Id.* at 1224; *see* Delaware v. Prouse, 440 U.S. 648 (1979) (Delaware's interest in discretionary spot checks as a means of ensuring highway safety does not outweigh the resulting unreasonable intrusion on the fourth amendment privacy interests of the persons detained).

56 *Palmer*, 697 F.2d at 1224. The Supreme Court, for example, has approved of prison officials' interference with prisoners' mail. The Supreme Court in *Wolff v. McDonnell* held that the prison officials' practice of opening inmates' mail in their presence does not constitute censorship where the mail is read only by the inmates. 418 U.S. 539, 577 (1974). The Court stated that the possibility that contraband could be enclosed in correspondence represents a sufficient security threat to the prison to justify an infringement on any first amendment rights the prisoners may have in receiving their mail. *Id.* The Court will allow censorship of mail if it furthers the substantial governmental interests of security, order, and rehabilitation. In another case, the Court held that limitations of first amendment freedoms must be no greater than are necessary or essential to the particular governmental interest involved. Martinez v. Procunier, 416 U.S. 396, 413 (1974).

The Supreme Court also has allowed restrictions on the free exercise of religion where the application of a state regulation is necessary to accomplish a compelling state interest. *See* United States v. Lee, 455 U.S. 252, 257-58 (1982) (imposition of social security taxes on Amish people who object on religious grounds to receipt of public benefits and to payment of taxes to support public benefit funds is not unconstitutional). Although the Supreme Court has not determined what restrictions can be placed on free exercise within prisons, the Seventh Circuit in Madyun v. Franzen, 704 F.2d 954 (7th

The court of appeals acknowledged that spontaneous shakedown searches are an effective means of limiting the amount of contraband smuggled into prisons.[57] The court, however, identified only two situations in which prison officials may search the property of specific individuals in their cells.[58] First, prison officials may conduct random searches pursuant to an established program that is reasonably designed to deter or discover contraband.[59] Second, prison officials may conduct individual searches when "some reasonable basis exist[s] for the belief that the prisoner possess[es] contraband."[60]

The United States Supreme Court granted certiorari to consider two issues. The first issue is whether prison inmates have a reasonable expectation of privacy in their prison cells entitling them to the protection of the fourth amendment against unreasonable searches and seizures.[61] The second issue is whether the Supreme Court's decision in *Parratt* should extend to intentional deprivations of property.[62]

IV. Supreme Court Opinions

In *Hudson v. Palmer*, a majority of the Supreme Court affirmed in part and reversed in part the decision of the Court of Appeals for the Fourth Circuit.[63] First, the Court determined that a prison inmate has no "reasonable expectation of privacy enabling him to invoke the protections of the Fourth Amendment."[64] Second, the majority found that intentional deprivations of property committed by state employees violate the fourteenth amendment due process clause if adequate postdeprivation remedies exist.[65]

To determine whether the prison officials interfered with the inmate's privacy rights, the Court applied the test established in *Katz*

Cir. 1983), upheld the practice of conducting frisk searches of male inmates by women, despite the fact that the practice violated the tenets of the inmate's Islamic religion. The Court stated that the prisoner could not "expect the same freedom from incidental infringement on the exercise of his religious practice that is enjoyed by those not incarcerated." *Id.* at 958.

57 *Palmer*, 697 F.2d at 1224.

58 The Court of Appeals for the Fourth Circuit stated in *Palmer* that if a prisoner questions the validity of a prison search, the judiciary will determine if adequate grounds existed to justify the search. *Id.* at 1221.

59 *Id.*

60 *Id.* at 1225.

61 *Hudson*, 104 S. Ct. at 3198.

62 *Id.* at 3202.

63 *Id.* at 3198.

64 *Id.* at 3202.

65 *Id.* at 3205.

v. United States.[66] Under this test, a person can invoke the fourth amendment right to privacy if the person demonstrates an actual expectation of privacy and if society is prepared to recognize the person's expectation as reasonable.[67]

To apply the *Katz* test, the majority in *Hudson* first looked at the circumstances of incarceration to determine whether prison inmates have a legitimate or reasonable expectation of privacy in their cells.[68] The *Hudson* Court concluded that because a prison "shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room,"[69] the fourth amendment right to privacy is "fundamentally inconsistent"[70] with prisoners' living situations. In the prison environment, inmates and their cells must be under close surveillance to ensure institutional security and internal order.[71] The *Hudson* Court found that the interest of prisoners in privacy within their cells must yield to the accepted belief that "loss of freedom of choice and privacy are inherent incidents of confinement."[72]

Next, the majority looked at the interests of society in maintaining the security of its penal institutions to determine whether society would accept a prisoner's expectation of privacy as reasonable.[73] The *Hudson* Court found that society places an obligation on prison administrators to provide an environment for inmates and prison employees that is both secure and sanitary.[74] In conjunction with this obligation comes the prison officials' authority to "take all necessary steps to ensure . . . safety" within the prison.[75] Because unfettered access to prisoners' possessions allows prison officials to detect contraband and thus reduce potential security problems, the majority held that society would not accept prisoners' expectation of privacy as reasonable.[76] A protectable privacy interest for prisoners would prevent prison officials from maintaining a secure prison.

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66 389 U.S. 347 (1967). For a discussion of the *Katz* opinion, see *supra* note 14.

67 *Katz*, 389 U.S. at 361 (Harlan, J., concurring).

68 104 S. Ct. at 3199.

69 *Id.* at 3201 (quoting Lanza v. New York, 370 U.S. 139, 143-44 (1962)). The *Lanza* Court found that privacy was incompatible with the prison environment. 370 U.S. at 143. Within prison facilities, inmates are subject to constant surveillance and supervision and thus cannot exercise dominion over their surroundings. Prison showers, toilet facilities, recreational areas, and sleeping quarters all are exposed to the general inmate population and to prison administrators. Prisoners do not have any private areas that are subject only to their individual control.

70 104 S. Ct. at 3198.

71 *Id.* at 3201.

72 *Id.* (quoting Bell v. Wolfish, 441 U.S. 520, 537 (1979)).

73 *Id.* at 3199.

74 *Id.* at 3200.

75 *Id.*

76 *Id.* at 3201.

The *Hudson* Court, therefore, concluded that prisoners' expectations of privacy cannot be deemed reasonable if society's interest in the security of its prisons outweighs the prisoners' interest in privacy within their cells.[77] The majority found that the court of appeals erred in holding that prisoners have even a "limited privacy right" in their cells.[78] The *Hudson* Court instead adopted a "bright line" rule that prisoners have no legitimate expectation of privacy in their cells.[79] Accordingly, the fourth amendment proscription against unreasonable search and seizure does not apply within the confines of prison cells.[80]

The second issue considered by the *Hudson* majority was whether the court of appeals was correct in holding that the Supreme Court's decision in *Parratt* should extend to intentional deprivations of property by state employees acting under color of state law.[81] Guided by the fundamental goal of due process inquiries—providing an opportunity for an aggrieved party to be heard at a meaningful time and in a meaningful manner[82]—the *Hudson* Court applied the rationale underlying the *Parratt* decision to intentional deprivations of property.[83]

The Supreme Court found that because the state could not anticipate random and intentional unauthorized conduct by its employees, the state could not provide remedies before the deprivation occurs.[84] In prior decisions, this Court has noted that "due process is flexible and calls for such procedural protections as the particular situation demands."[85] Guided by this principle, the *Hudson* Court gave judicial notice to the impracticability of traditional predeprivation remedies when random and unauthorized deprivations occur, and it did not require such remedies.[86] The *Hudson* majority held that when states provide adequate civil remedies for deprivations that are committed by state employees, the procedural requirements of the due process clause of the fourteenth amendment are fulfilled.[87]

The *Hudson* Court also refused to uphold the limitations placed

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77 *Id.*
78 *Id.* at 3197-98; *see supra* note 4 and cases cited therein.
79 *Hudson*, 104 S. Ct. at 3198.
80 *Id.* at 3205.
81 *Id.*
82 *See* Armstrong v. Manzo, 380 U.S. 545, 552 (1965).
83 104 S. Ct. at 3202.
84 104 S. Ct. at 3203.
85 Morrissey v. Brewer, 408 U.S. 471, 481 (1971).
86 104 S. Ct. at 3203.
87 *Id.* at 3204.

on prison officials' use of random searches by the Fourth Circuit.[88] As a result of its concern over the possibility that searches would be conducted solely to harass inmates, the Fourth Circuit Court of Appeals had required that prison officials conduct searches only when they followed an established policy or when they had a reasonable suspicion that prisoners were hiding contraband.[89] Concluding that the spontaneity of random searches increases their effectiveness, the *Hudson* majority rejected the Fourth Circuit's decision.[90] The Supreme Court held that any inquiries by prisoners into the reasonableness of prison searches need not be addressed by the Court because prisoners have no fourth amendment protection against unreasonable searches that are conducted by prison officials in a penal institution.[91]

Justice O'Connor concurred in part with the *Hudson* decision. Justice O'Connor agreed with the portion of the majority opinion that held that search and seizure of inmates' possessions is legitimate because incarceration eliminates individuals' fourth amendment rights to privacy and possessory interests in personal effects.[92] Justice O'Connor argued, however, that prisoners' property is protected by the fourteenth amendment due process clause and the fifth amendment takings clause.[93] These clauses mandate that the government provide due process of law and just compensation for any deprivations of property.[94] Finding, however, that Palmer had not demonstrated that Virginia's grievance procedure and state tort and common law remedies were inadequate means of compensation for the loss of Palmer's property, Justice O'Connor maintained that no valid constitutional claim existed.[95] Justice O'Connor thus agreed with the majority's holding.

In his dissent, Justice Stevens agreed with the majority's conclusion that Palmer's complaint did not allege a violation of his constitutional right to procedural due process.[96] Justice Stevens

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88 *Id.* at 3201.

89 *Palmer*, 697 F.2d at 1224; *see supra* text accompanying notes 58-60. *See generally* United States v. Ready, 574 F.2d 1009, 1014 (9th Cir. 1978) (prison searches do not require specific cause when done pursuant to a routine that is reasonably designed to promote institutional security).

90 *Hudson*, 104 S. Ct. at 3201.

91 *Id.* at 3202.

92 *Id.* at 3206 (O'Connor, J., concurring in part).

93 *Id.* The fifth amendment to the United States Constitution provides, in pertinent part: "[N]or shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

94 *Hudson*, 104 S. Ct. at 3207 (O'Connor, J., concurring in part).

95 *Id.*

96 *Id.* at 3208 (Stevens, J., dissenting).

disagreed, however, with the majority's conclusion that society is willing to accept the total revocation of the right to privacy and the right to possessions that do not threaten the security of the prison.[97]

Justice Stevens argued that even without a reasonable expectation of privacy, Palmer's possessory interests in his belongings are protected by the fourth amendment.[98] Justice Stevens stated that the issue of reasonableness is inherent in fourth amendment inquiries and should be decided by "balancing the intrusion on constitutionally protected interests against the law enforcement interests justifying the challenged conduct."[99] Justice Stevens also noted that the prison official asserted "dominion and control" over Palmer's property as a result of "taking and destroying it."[100] The dissent found that the prison official's conduct amounted to a seizure that the majority should have evaluated to determine its reasonableness.[101]

To determine if the seizure was reasonable, the dissent balanced the prisoner's privacy interests against the institutional interests fulfilled by seizures.[102] Justice Stevens first weighed the prison's interest in seizing Palmer's legal papers.[103] The correspondence and legal papers that Hudson seized from Palmer were not items of contraband and, therefore, posed no threat to the prison's security.[104] Justice Stevens argued that although it is reasonable for prison officials to conduct searches to ensure that a prisoner's cell does not contain contraband, seizures that serve no legitimate institutional interests are unreasonable.[105]

The dissent next weighed prison inmates' privacy interests. Justice Stevens found that nearly all correctional administrators discourage prison guards from either seizing or destroying noncontraband property[106] because institutional goals are not served when

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97 *Id.*

98 *Id.* at 3209 (Stevens, J., dissenting).

99 *Id.* at 3211 (Stevens, J., dissenting).

100 *Id.* at 3209 (Stevens, J., dissenting).

101 *Id.* at 3216 (Stevens, J., dissenting). The majority in *Hudson*, however, concluded that the Court need not decide the reasonableness of the prison search because the "Fourth Amendment's prohibition on unreasonable searches does not apply in prison cells." *Id.* at 3202.

102 *Id.* at 3211 (Stevens, J., dissenting).

103 *Id.* at 3212 (Stevens, J., dissenting).

104 *Id.*

105 *Id.* (Stevens, J., dissenting).

106 *Id.* at 3213 (Stevens, J., dissenting). Justice Stevens stated, "I am unaware that any responsible prison administrator has ever contended that there is a need to take or destroy noncontraband property of prisoners. . . . To the contrary, it appears to be the near-universal view of correctional officials that guards should neither seize nor destroy noncontraband property." *Id.* (Stevens, J., dissenting). The dissent found authority for

guards deprive inmates "of any residuum of privacy or possessory rights."[107] Without privacy, inmates lose their sense of individuality, they devalue themselves, and, consequently, they become more violent and resistant to rehabilitative efforts.[108] Justice Stevens argued that denying fourth amendment protection against unreasonable seizures to prisoners declares that they "are entitled to no measure of human dignity or individuality" and reduces them to "little more than chattels."[109] The dissent concluded by criticizing the majority for sacrificing the constitutional principle of protection of privacy rights for the sake of administrative expediency.[110]

V. ANALYSIS

A. PRISONERS' PRIVACY RIGHTS UNDER THE FOURTH AMENDMENT

In *Hudson v. Palmer*, the Court held for the first time that prisoners have no reasonable expectation of privacy in their prison cells entitling them to the protection of the fourth amendment.[111] The Supreme Court reached this result by correctly applying the two-fold test set forth by Justice Harlan in *Katz v. United States*[112] and by correctly evaluating the policies that support giving prison officials wide-ranging deference[113] in their attempts to seek out and confiscate contraband that threatens the internal security of the prison. Despite lower federal court decisons, *Hudson* is not a break with precedent.

The Court rejected the assertion that the fourth amendment could be invoked to protect the property of inmates from searches by prison officals.[114] In *Katz*, the Supreme Court adopted the view that the interests protected by the fourth amendment were based only upon an invasion of privacy rights; privacy rights can be protected under the fourth amendment only when individuals have a reasonable or legitimate expectation of privacy.[115] To determine

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this argument in the Federal Bureau of Prisons' regulations (only noncontraband items may be seized by prison officials). *Id.* (Stevens, J., dissenting); *see* 28 C.F.R. §§ 553.12-553.13 (1983).

107 104 S. Ct. at 3214 (Stevens, J., dissenting).

108 *Id.* (Stevens, J., dissenting). Justice Stevens refers generally to Schwartz, *Deprivation of Privacy as a "Functional Prerequisite": The Case of the Prison*, 63 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 229 (1972).

109 *Hudson*, 104 S. Ct. at 3215 (Stevens, J., dissenting).

110 *Id.* at 3217 (Stevens, J., dissenting). Administrative expediency can be viewed as unfettered access to the prison cells without a search warrant or probable cause.

111 104 S.Ct. 3194, 3200 (1984).

112 389 U.S. 347 (1967).

113 *See* Bell v. Wolfish, 441 U.S. 520, 547 (1979).

114 *Hudson*, 104 S. Ct. at 3200.

115 389 U.S. at 351; Smith v. Maryland, 442 U.S. 735, 740 (1979). The Court in *Smith*

whether prisoners' expectations of privacy are reasonable and are protected by the fourth amendment, the *Hudson* majority balanced society's interest in having a secure prison against the prisoners' interest in maintaining privacy within their cells.[116]

Although prisoners retain some of their constitutional rights while incarcerated,[117] society is not willing to accept the idea that prisoners' expectations of privacy within their cells are reasonable.[118] The confinement of potentially violent and dangerous individuals poses an obvious threat to the safety of prison officials, visitors, and other inmates.[119] In order to minimize the threat, the Virginia legislature authorized the use of random shakedown searches, the seizure of contraband, and the continual surveillance of prison inmates.[120] Although not all searches of prison cells will lead to the confiscation of contraband, they will act as a useful preventative measure to reduce potential security threats.[121] Society accepts the loss of privacy as a natural incident of incarceration.[122] Consequently, society is not prepared to acknowledge that prisoners have a reasonable expectation of privacy because this expectation may reduce the level of internal order and security in penal institutions.[123]

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held that "consistently with *Katz* . . . the application of the Fourth Amendment depends on whether the person invoking its protection can claim a 'justifiable,' a 'reasonable,' or a 'legitimate expectation of privacy' that has been invaded by government action." 442 U.S. at 740.

116 104 S. Ct. at 3200.

117 Wolff v. McDonnell, 418 U.S. 539, 555 (1974); *see also supra* note 4.

118 *Hudson*, 104 S. Ct. at 3200.

119 The *Hudson* Court noted that violence within prisons is a growing problem. Chief Justice Burger stated:

> During 1981 and the first half of 1982, there were over 120 prisoners murdered by fellow inmates in state and federal prisons. A number of prison personnel were murdered by prisoners during this period. Over 29 riots or similar disturbances were reported in these facilities for the same time frame. And there were over 125 suicides in these institutions. . . . Additionally, informal statistics from the U.S. Bureau of Prisons show that in the federal system during 1983, there were 11 inmate homicides, 359 inmate assaults on other inmates, 227 inmate assaults on prison staff, and 10 suicides. There were in the same system in 1981 and 1982 over 750 inmate assaults on other inmates and over 570 inmate assaults on prison personnel.

Id. Any security measure implemented by prison administrators can only decrease the amount of violence committed in prisons.

120 *See* VA. CODE §§ 53.1-25 to -26 (1950).

121 *See supra* note 9.

122 *Hudson*, 104 S. Ct. at 3200. The *Bell* Court held that "[w]hether it be called a jail, a prison, or a custodial center, the purpose of the facility is to detain. Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility." 441 U.S. at 537.

123 The Supreme Court in *Martinez v. Procunier* stated that one of government's primary functions is:

During the last decade, most federal courts erroneously concluded that the fourth amendment gives prisoners a "limited privacy right" that prohibits unreasonable search and seizure.[124] These decisions did not recognize that the retention of the constitutional right to privacy by prison inmates is inconsistent with the constant surveillance of prisoners that is characteristic of penal institutions. The Supreme Court in *Wolff v. McDonnell* held that although a prisoner's rights "may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime."[125] The *Wolff* majority, however, added that prisoners' rights may be restricted to accommodate the "institutional needs and objectives" of prisons.[126] A prison's need to maintain internal security certainly justifies a restriction on prisoners' privacy rights.

In an environment where constant surveillance is "the order of the day,"[127] any expectation of privacy maintained by prisoners is incompatible with the reasonable goals of the institution.[128] Unlimited access to the prisoner's personal belongings allows the prison officials to ferret out illegal drugs, weapons, or other contraband that may endanger the security of the prison.[129] Consequently, seizure of contraband materials helps prison officials maintain a secure facility.

The Supreme Court's decision to eliminate entirely a prisoner's right to privacy is not wholly without precedent. Language from previous Supreme Court decisions suggests the result in *Hudson*. Justice Rehnquist's opinion in *Bell v. Wolfish* stated the "[i]t may well be argued that a person confined in a detention facility has no reasonable expectation of privacy with respect to his room or cell and that therefore the Fourth Amendment provides no protection for such a person."[130] The *Lanza* Court also doubted that the claim of

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the preservation of societal order through enforcement of the criminal law, and the maintenance of penal institutions is an essential part of that task. The identifiable governmental interests at stake in this task are the preservation of internal order and discipline, the maintenance of institutional security against escape or unauthorized entry, and the rehabilitation of the prisoners.

416 U.S. 396, 412 (1974).

Society places its trust in government to ensure that these tasks are fulfilled. Any practice that limits prison officials' access to inmates' cells would be inconsistent with the completion of these tasks.

124 *See supra* note 4 and cases cited therein.

125 418 U.S. at 555.

126 *Id.*

127 Lanza v. New York, 370 U.S. 139, 143 (1962).

128 *Hudson*, 104 S. Ct. at 3201.

129 *Id.*

130 441 U.S. at 556-57.

constitutional immunity from search or seizure in a prison would succeed.[131]

In addition, the Supreme Court's approval of another more intrusive search technique suggests that the shakedown searches authorized by *Hudson* are neither an unprecedented and impermissible invasion of prisoners' fourth amendment rights nor an excessive response to the security needs of prisons. In 1979, the Supreme Court in *Bell v. Wolfish* upheld the practice of conducting routine body cavity searches of pretrial detainees following contact visits with individuals from outside the prison.[132] The *Bell* Court stated that body cavity searches were a way to discover and deter smuggling of weapons and drugs into the prison.[133] The Court held that the searches were a reasonable response to legitimate security concerns, even though there had been only one reported attempt to smuggle contraband concealed in a body cavity into the prison.[134] Because the body cavity searches were in response to prison security needs, the Court held that such searches were not excessive intrusions upon prisoners' fourth amendment privacy rights.

The shakedown searches at issue in *Hudson* cannot be considered as more excessive intrusions of privacy rights than the cavity searches upheld in *Bell*. The searches of prison cells involve only an interference with items of property, whereas cavity searches involve an examination of the internal areas of the human body.[135] Surely, if the Supreme Court accepts the greater intrusion on personal privacy rights as constitutional, the lesser intrusion must also be valid.

Several lower courts have held explicitly that prisoners do not have privacy rights that prohibit search and seizure by prison officials. The Virginia Supreme Court in *Marrero* v. *Commonwealth*[136] held that the retention of privacy rights by prisoners would be "inconsistent with the close and constant monitoring of inmates necessary to preserve an institution's security."[137] Both the Ninth Circuit[138] and the Second Circuit[139] decided that prisoners do not

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131 370 U.S. at 143.

132 441 U.S. at 560. Inmates are subject to body cavity searches when they are in contact with visitors or when they have been outside the close surveillance of prison officials. *Id.*

133 *Id.* at 559.

134 *Id.* at 558.

135 *See Bell*, 441 U.S. at 558 n.39.

136 222 Va. 754, 284 S.E.2d 809 (1981) (the trial court properly admitted into evidence marijuana and a pipe containing marijuana that were seized in a search of an inmate's dormitory locker).

137 *Id.* at 757, 284 S.E.2d at 811 (discussing *Bell*, 441 U.S. at 556-57).

138 *See, e.g.*, United States v. Hitchcock, 467 F.2d 1107 (9th Cir. 1972), *cert. denied*, 410 U.S. 916 (1973) (inmate was convicted of presenting fraudulent income tax refund

have sufficient privacy rights to prohibit search and seizure by prison officials. These decisons indicate that the denial of fourth amendment protection to prison inmates is an accepted practice.

The Supreme Court also based its decision in *Hudson* upon the prudent policy of permitting officials to exercise broad discretion in running the prisons.[140] Traditionally, courts afford wide-ranging deference to the security decisions made by prison officials.[141] The Supreme Court in *Hudson* was right to uphold the constitutionality of shakedown searches where the prison administrators use their discretionary power to order searches. In *Bell*, the Supreme Court held that it would not substitute its judgment on matters of institutional security and administration for that of "the persons who are actually charged with and trained in the running" of prisons.[142] The Court realizes, therefore, that state prison administrators are in a better position than the judiciary to assess the need for security measures in their prisons.

Although the seizure and destruction of Palmer's noncontraband materials were unfortunate occurrences, these events do not refute the conclusion that prisoners have no fourth amendment privacy rights in their prison cells. Palmer's legal materials and correspondence were not items of contraband.[143] As such, the materials posed no threat to the prison's internal security.[144] The arbitrary seizure and destruction of noncontraband items achieve no reasonable institutional purpose.[145] The specific facts in *Hudson*, however,

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claims to the Internal Revenue Service with documentary evidence obtained from a warrantless search of the inmate's cell).

139 *See, e.g.*, Christman v. Skinner, 468 F.2d 723 (2d Cir. 1972) (inmate's privacy rights were not violated by the monitoring of his conversations with visitors).

140 104 S. Ct. at 3200.

141 *Bell*, 441 U.S. at 547. *See also* Block v. Rutherford, 104 S. Ct. 3227 (1984) (the jail's policy of denying pretrial detainees contact visits is a reasonable means of restricting the introduction of drugs or weapons into the prison); Hewitt v. Helms, 459 U.S. 460 (1983) (prison officials have broad administrative and discretionary authority to determine whether inmates should be assigned to administrative segregation); Christman v. Skinner, 468 F.2d 723 (2d Cir. 1972) (prison officials can place inmates in isolation cells if they believe that it is necessary).

142 *Bell*, 441 U.S. at 562. The Supreme Court in *Martinez v. Procunier* stated that:

> [m]ost [problems in prisons] require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism.

416 U.S. at 405.

143 Palmer v. Hudson, No. 81-0290-A, mem. op. at 29 (W.D. Va. Nov. 17, 1981).

144 *Hudson*, 104 S. Ct. at 3212 (Stevens, J., dissenting).

145 *Id.*

do not justify abandoning the practice of conducting random shakedown searches and seizures.

Without unrestricted access to prison cells, prison officials will be hampered severely in their efforts to seize dangerous items of contraband.[146] Prison officials must be able to react immediately to the daily security problems that arise in prisons. This objective would be "literally impossible to accomplish" if inmates retained a right to privacy in their cells.[147]

Although the *Hudson* decision is broad, the Supreme Court is not condoning the destruction of materials that are in the legitimate possession of the prisoners. Chief Justice Burger states that *Hudson* does not mean that prisoners are without any remedies "for calculated harassment unrelated to prison needs. Nor does it mean that prison attendants can ride roughshod over inmates' property rights with impunity."[148] Prisoners still may invoke the protection of the eighth amendment against cruel and unusual punishment, various state tort and common law remedies, and grievance procedures within the prison.[149] Because a potential for abuse does exist as a result of the *Hudson* decision, state legislatures, not the judiciary, should enact stricter disciplinary actions against prison officials who seize and destroy inmates' noncontraband possessions. Restrictions on prison officials' access to prison cells, however, would be an extreme and unreasonable response to the possibility that abuses will occur.

B. EXTENSION OF THE *PARRATT* DECISION TO INTENTIONAL DEPRIVATIONS OF PROPERTY

The Court properly concluded that the random and unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the due process clause of the fourteenth amendment if a meaningful postdeprivation remedy for the loss is available.[150] By extending its decision in *Parratt* to intentional deprivations of property, the Supreme Court acknowledged that the spontaneous nature of both negligent and intentional acts makes the predeprivation process "impracticable."[151] The Court reached this conclusion because it found that states cannot anticipate or control the occurrence of such

146 *Marrero*, 222 Va. at 757, 284 S.E.2d at 811.
147 *Hudson*, 104 S. Ct. at 3200.
148 *Id.* at 3202.
149 *Id.*
150 *Id.* at 3204.
151 *See Parratt*, 451 U.S. at 541.

events.[152]

The Court in *Hudson* was guided by a desire to fulfill the procedural requirement of the fourteenth amendment due process clause.[153] Generally, the fourteenth amendment guarantees that people will have access to the judiciary before the state deprives them of their rights or property.[154] However, "due process is flexible and calls for such procedural protections as the particular situation demands."[155] A state cannot provide the normal predeprivation process where it cannot predict or anticipate the occurrence of spontaneous seizures.[156] Consequently, the availability of postdeprivation remedies to aggrieved parties satifies the mandates of procedural due process.

Palmer erroneously relied on *Logan v. Zimmerman*[157] to support the position that the deliberate seizure by Petitioner Hudson of Respondent Palmer's property violated due process despite the availability of postdeprivation remedies.[158] In *Logan*, the Illinois Fair Employment Practices Commission extinguished the complainant's claim to entitlements under the Fair Employment Practices Act by inadvertently scheduling his statutorily mandated factfinding conference to take place five days after the expiration of the 160-day statutory period.[159] In that situation, the Supreme Court found the postdeprivation hearings "constitutionally inadequate."[160] In *Logan*, the state, by operation of its laws, destroyed the complainant's property interests.[161]

Hudson, however, is not such a case because Palmer's property interests were not at stake. In *Hudson*, the deprivation occurred as a result of the random and unauthorized intentional conduct of a state employee. *Logan* is not controlling in a situation where a state employee, and not the operation of a state law, deprives an individual

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152 *Hudson*, 104 S.Ct. at 3204.

153 *See, e.g.*, Morrissey v. Brewer, 408 U.S. 471 (1972) (revocation of parole without a hearing is a violation of the parolee's liberty interests that are protected by the due process clause of the fourteenth amendment); Fuentes v. Shevin, 407 U.S. 67 (1972) (Pennsylvania's replevin provisions were not valid under the fourteenth amendment because they deprive a possessor of property without due process of law by denying the right to a prior opportunity to be heard before chattels are taken); Armstrong v. Manza, 380 U.S. 545 (1965) (failure to give a child's natural father notice of the pending adoption proceedings of his daughter deprived him of his rights without due process of law).

154 *Parratt*, 451 U.S. at 540.

155 *Morrissey*, 408 U.S. at 481.

156 *Hudson*, 104 S. Ct. at 3203.

157 455 U.S. 422 (1982).

158 *Hudson*, 104 S. Ct. at 3204.

159 *Logan*, 455 U.S. at 426.

160 *Id.* at 436.

161 *Id.*

of property because the fourteenth amendment places the obligation on the state, not on the individual employee, to provide procedural due process for aggrieved parties. The Court in *Hudson* was right to extend its decision in *Parratt* to intentional deprivations of property by state employees where adequate postdeprivation remedies are available.

The postdeprivation remedies available to Palmer will compensate him for the destruction of his property. Virginia provides tort law remedies for property intentionally destroyed by state employees.[162] Under state tort law, Palmer's legal matters and correspondence, which Hudson destroyed during the search, have little pecuniary value. Any compensation given to Palmer under Virginia's tort remedies would probably not be substantially greater than a recovery under 42 U.S.C. § 1983.[163] The Supreme Court held that the fact that Palmer might not recover that same amount under state tort law that he may have recovered under § 1983 is not "determinative of the adequacy of the state remedies."[164]

VI. CONCLUSION

Prisoners do not have a reasonable expectation of privacy in their prison cells entitling them to the protection of the fourth amendment. Although *Hudson v. Palmer* categorically denies a prison inmate the right to privacy, the decision fosters the legitimate interest of penal institutions by enhancing their internal security. The Supreme Court's extension of *Parratt v. Taylor* to random and unauthorized intentional deprivations of property by state employees ensures that states will provide remedies for any property loss

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162 104 S. Ct. at 3204; *see* Elder v. Hollard, 208 Va. 15, 155 S.E.2d 369 (1967) (defendant was not immune from liability for committing an intentional tort while performing his duties as a state police officer).

163 Under § 1983, Palmer may recover compensatory or punitive damages. *See* City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981); Carey v. Piphus, 435 U.S. 247 (1978). *See supra* note 38.

164 104 S. Ct. at 3204. Palmer also argued that Hudson, in his capacity as a state employee, could invoke sovereign immunity to bar Palmer's tort claims against him. This argument is not definitive. Under Virginia law, "a state employee may be liable for any intentional torts he commits." *Elder*, 208 Va. at 19, 155 S.E.2d at 372-73. The Virginia Supreme Court in *Elder* held that " 'as long as . . . [the state's] agents act legally and within the scope of their employment, they act for the state, but if they act wrongfully the conduct is chargeable to them alone.' " *Id.* at 18, 155 S.E.2d at 372 (quoting Sayers v. Bullar, 180 Va. 228, 22 S.E.2d 9, 11 (1942)). Sovereign immunity, therefore, probably would not bar Palmer from recovering against Hudson.

that may arise from improper, harassing searches in order to prevent fourteenth amendment violations.

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