JOHN W. PALMER

CONSTITUTIONAL RIGHTS OF PRISONERS

FOURTH EDITION

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This book is dedicated to my wife, Caryl, sons, Scott and Stephen, and daughter, Cristy Ann.

CONSTITUTIONAL RIGHTS OF PRISONERS, Fourth Edition

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PREFACE TO THE FIRST EDITION

Never before in the history of corrections have correctional staffs and administrators faced legal challenges to their actions as they do today. The number of suits filed in both state and federal courts seeking monetary damages and equitable relief will soon number in the thousands. Some wardens have claims amounting to millions of dollars filed in court against them.

There are many reasons for the deluge of legal actions. Filing fees, court costs, fear of malicious prosecution actions and cost of legal counsel do not act as a deterrent to inmates, the vast majority of whom are indigent. In effect, the taxpayers subsidize these legal actions.

Further, increasing numbers of activist lawyers are turning to corrections and the courts as vehicles to institute their concepts of social reform now that the Vietnam war is in its terminal stage. Some would use the courts as the vehicle to destroy the existing social order. Only too often these lawyers seek out clients and issues rather than observing the traditional legal ethic of lawyers only representing clients in litigation after a dispute has arisen.

Can correctional staffs and administrators withstand the pressure? There are many reasons why protracted litigation can be counterproductive to the correctional process. First, due to liberalized rules of discovery in both state and federal courts, correctional staff can find themselves inundated with depositions, interrogatories, motions to produce, and other fact-finding methods. Overworked staff can find themselves spending the bulk of their time preparing for litigation rather than working with inmates toward their rehabilitation. Morale suffers when inmates file spurious claims, asking for millions of dollars in damages for alleged injuries suffered. It becomes a game with some inmates as to who can add more zero's to the damage figure. Many states do not provide free counsel to their employees, except for those executives at the cabinet level and above. Further, when provided, the attorneys are on the state payroll. A warden, or his family who looks to him for financial security, does not feel too confident when

represented by a young assistant Attorney General one year out of law school. Also, the interests of state political leaders in settling a law suit can conflict with the interests of an individual defendant.

Meaningful reform in a correctional system is brought about as a result of legislation and administrative rule-making, *i.e.*, the political process. Judicial decisions themselves may lead to administrative changes, but they do not themselves result in broad-based reform. One can only speculate as to whether correctional litigation in the past decade has encouraged, or retarded administrative reform. Since so much time and energy is devoted toward litigation within correctional systems, one can again only speculate as to what could have been accomplished if that effort had been directed toward more direct rehabilitative ends.

Speculation aside, litigation is here to stay. This book is an attempt to provide the people who are involved or will become involved in the correctional process with a basic introduction into this emerging field of law, the rights of prisoners. It is not intended to be a scholarly analysis of the many cases in this field. It is not aimed at the law student. Rather it is hoped that the book will serve as a useful guide and reference manual for those actively involved in the correctional process.

The author serves as a consultant to the Ohio Department of Rehabilitation and Correction, and has during the past two years, used the substance of the book in seminar discussions with various members of the Ohio correctional system, from correctional officers to the Director. Staff personnel have found it to be useful and comprehendible.

We must realize that the Supreme Court of the United States is the final interpreter of the Federal Constitution. Unfortunately, there are few Supreme Court decisions in the field of correctional law. Consequently, new law will constantly emerge as cases work their way up through the judicial system.

The judicial cases cited in this book tell only a small part of the correctional story. Statutes and administrative rules often far exceed constitutional minimums. As an example, in the summer of 1971, Ohio adopted an administrative policy which abolished mail censorship of first class letters. This decision was made by an enlightened administration, not because it was legally required,

but because the administration felt it to be right, and to be a useful tool in the rehabilitative process. Ohio is again currently issuing sweeping administrative rules which should far exceed constitutional minimums.

The role of legislative and administrative rule-making must be left to another book. The reader is only cautioned here that the cases and decisions used in this book reflect, primarily, past history —past practices which have either been constitutionally approved or rejected by the courts.

Part I, Chapter 1, of the book gives the reader a basic introduction into the legal system—hopefully, a perspective through which the individual cases, and their effect on local practices, can be measured. Chapters 2 through 8 deal with the substantive law in several critical areas. Chapter 9 outlines the remedies available to a successful plaintiff or the liabilities to which an unsuccessful defendant may be subjected. It, perhaps, should be the most interesting chapter for the correctional worker.

Part II of the book contains leading decisions decided by the courts. Cases were selected not only for their importance, but also for the policies or judicial thinking that is represented. In any case, the facts are of critical importance. "Bad facts make bad law." If the facts are exceptionally bad—often worse than appears in print—a judge will stretch and strain precedent in order to grant appropriate relief. Again, the facts of a case are critical in understanding why the court reached the decision it did. For this reason, the facts of the cases are included in depth.

Appreciation is extended to Deborah Edmonston, Bill Eachus, Michael Velotta, Tom Young, research assistants; Miss Marie Deweese, typist; and above all to members of the Ohio Department of Rehabilitations and Corrections, Director Bennet J. Cooper, former Assistant Commissioner, M. J. Koloski, Martha Wheeler, Suprintendent of the Women's Reformatory and President of the American Correctional Association, and the Committee on Correctional Law composed of Warden Harold Cardwell and Superintendents E.B. Haskins and P. Perini in particular, without whose support and encouragement this book could not have been possible.

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JOHN W. PALMER

PREFACE TO THE FOURTH EDITION

The Fourth Edition contains all of the significant United States Supreme Court cases involving prisoners' rights through January, 1990.

The past five years have been significantly affected by the conservative nature of the United States Supreme Court, and its policy of returning the running of America's jails and prisons from the federal courts to the administrators.

The Third Edition left off with *Procunier v. Martinez*, which described the principles that framed judicial analysis of prisoners' constitutional claims.

The first of these principles is that federal courts must recognize the valid constitutional claims of prison inmates. Prison walls do not form a barrier separating prison inmates from the protections of the Constitution.

A second principle was the recognition that courts are ill-equipped to deal with the increasingly urgent problems of prison administration and reform. The Court acknowledged that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by judicial decree. It was further recognized that the running of a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. It became obvious to a majority of the Justices that prison administration was a task that has been committed to the responsibility of those branches, and separation of powers concerns counselled a policy of judicial restraint. Where a state penal system is involved, federal courts have additional reason to accord deference to the appropriate prison authorities.

The Supreme Court's task was to formulate a standard of review for prisoners' constitutional claims that was resposive both to the policy of judicial regarding prisoner complaints and to the need to protect the constitutional rights of prisoners.

In the cases following *Martinez*, the Supreme Court addressed many questions of prisoners rights. *Pell v. Procunier* involved a constitutional challenge to a prison regulation prohibiting face-to-face media interviews with individual inmates. The Court rejected the inmate's First Amendment challenge to the ban on media interviews, noting that judgments regarding prison security were peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.

In *Jones v. North Carolina Prisoners' Union*, the prisoners' constitutional challenge was rejected, because the administrative action was rationally related to the reasonable, indeed to the central, objectives of prison administration.

Bell v. Wolfish upheld restrictions on pre-trial detainees, because the restrictions were a rational response to a clear security problem. Because there was no evidence that officials had exaggerated their response to the security problem, the Court held that the considered judgment of these experts must control.

In *Block v. Rutherford*, a ban on contact visits was upheld on the ground that responsible, experienced administrators had determined, in their sound discretion, that such visits would jeopardize the security of the facility, and the regulation was reasonably related to these security concerns.

Finally, in *Thornburgh v. Abbott*, the Court held that regulations that affect First Amendment rights are valid if they are reasonably related to legitimate penological interests. Prison officials are given due considerable deference in regulating the delicate balance between prison order and security and the legitimate demands of "outsiders" who seek to enter the prison environment. The less deferential standard articulated in *Martinez* was overruled in this regard.

In these five "prisoners' rights" cases the Court inquired whether a prison regulation that burdens fundamental rights is "reasonably related" to legitimate penological objective, or whether it represents an "exaggerated response" to those concerns. The present state of the law is that when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.

Such a standard became necessary, in the view of the Court, if prison administrators, and not the courts, are to make the difficult judgments concerning institutional operations. Subjecting the day-to-day judgments of prison officials to an inflexible judicial review would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration. Judicial interference would also distort the decision making process, for every administrative judgment would be subject to the restrictive way of solving the problem at hand. Courts inevitably would become the primary arbiters of what constitutes the best solution to every administrative problem, thereby unnecessarily perpetuating the involvement of the federal courts in affairs of prison administration. This the Supreme Court refused to permit the federal judiciary to do.

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Chapter 1

AN OVERVIEW OF THE JUDICIAL SYSTEM

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§1.1 Introduction

Law is the set of rules that governs the conduct of individuals or entities in our society. The rules are applied in cases or controversies by the judicial branch of government in the United States. There are three principal sources of laws: federal and state constitutions, federal and state statutes, and the common law, or judge-made law. Taken collectively, these sources establish what is known as "the law."

The federal Constitution is the product of a balance of power between the sovereign states in the late eighteenth century. It established the basic form of the federal government of the United States as we know it today.

It divided federal power among three branches of government: the legislative, the executive, and the judicial. Only limited power is granted by the sovereign states to the federal government. All power not expressly or implicitly granted to the federal government is reserved to the states. Congress is given the duty of legislating in areas of national interest, the executive branch is to carry out the execution of federal laws, and the judicial branch is entrusted with the administration of federal justice and laws. Each branch of government has specifically enumerated functions and powers under the federal Constitution. Thus, the federal Constitution is law, as it provides the basic rules for the functioning of the national government. It also governs the relationships between the states and the federal government, between the sovereign states themselves, and between states and foreign governments. *The federal Constitution, then, is the Supreme Law of the Land.*

State constitutions, on the other hand, are limitations on the power of the states. Whereas the federal government can act only in those areas where the federal Constitution specifically or implicitly so provides, state governments can legislate in any area, except where state or federal constitutions limit their power. State consti-

tutions also provide for the organization of the state government and for the duties and powers of the members of government that they create.

Federal and state statutes are other sources of law. Congress is entrusted with enacting law for the national good, while state legislatures provide for the welfare of the citizens of their respective states. The statutes enacted for these purposes become the law, subject only to the limitations of the state and federal constitutions. Statutory laws are enacted to specifically guide the conduct of affected individuals or entities. The courts, both federal and state, apply the rules thus established, which are then enforced by the executive branch of government.

The other major source of law in the United States is a body of rules called the *common law.* Common law, in the sense used here,[1] is the rule of law which has its origins in the courts rather than in the legislatures.

§ 1.2 The American Common Law

The "common law" is called such because originally it was the law common to all of England. It was the law that the English courts used in deciding cases where there was no legislative enactment.

The common law has never been regarded as static. It is "the wisdom, counsel, experience, and observation of many ages of wise and observing men."[2]

The common law for many centuries was oral and there were in olden times no reports of the judicial decisions. Thus, it was often known as the "unwritten law." With the practice of reporting decisions,[3] the written opinions of the judges in deciding actual cases provided a starting point in determining the legal principles applicable to new factual situations which faced the courts. The "old" law was applied when the facts of a "new" case were the same as they were in the "old" case. If the facts were different, a new rule often developed.

The English common law was transplanted to America through English colonization. The charters of colonies provided for the protection of the rights of free men according to the laws of England.[4] Several state constitutions such as Massachusetts, New York, New Jersey and Maryland, specifically adopted the English com-

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[1] The term *common law* has many meanings, dependent usually upon context. In its very broadest sense, "common law" refers to the entire Anglo-American system of law, contrasted with the civil law (entirely code-based) systems of most non-English speaking nations. It also can refer to the body of law originating in the courts of common law rather than the courts of equity.

[2] 1 KENT'S COMMENTARIES 472 (12th ed. 1873).

[3] Some of the first reports were made during the reign of Henry III (1216-1272) with the first volume of reports, called the Year Books, which began in the latter part of the reign of Edward II (1307-1326) and continued until Henry VIII (1509-1547). However, the Year Books were first printed during the reign of James I (1603-1625) and reprinted in 1679. Parts of the Year Books were incorporated in the treatises of the legal scholars of the times, such as Statham, Fitzherbert and Brooke. When the practice of reporting cases for the Year Books was discontinued by the Crown, English lawyers made reports for their own uses. Legal scholars then began to make their commentaries serve the function of the reporter of the common law.

[4] *The law in the Massachusetts Bay Colony,* READINGS IN AMERICAN LEGAL HISTORY 101-102 (M. Howe, ed. 1949).