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THE SUPREME COURT AND CORRECTIONS

**The Landmark Cases That Have Shaped
America's Prisons and Jails**

**By
William C. Collins**



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*To Fred Cohen. Lawyer, teacher, author, advocate, colleague,
and the man who many years ago called me to ask “would you like
to do a correctional newsletter together.”*

Acknowledgment

This book would not have come to pass but for the persuasion, patience, and persistent pressure from Mark Peel, my editor, my friend, and the guiding hand behind Civic Research Institute and its stable of publications.

As I was retiring from co-editing *Correctional Law Reporter*, Mark asked me to pick twenty major Supreme Court decisions involving corrections and write about one case at a time for the *Corrections Managers' Report* with the eventual goal being this book.

It took us awhile, but we made it. So, thank you, Mark, for encouraging me to take on this task and nudging me ever forward. It turned out to be rewarding in ways I didn't expect.

Preface

This volume includes relatively detailed discussions of twenty major Supreme Court decisions affecting corrections (indicated in the table of contents in **bold face**), supplemented by shorter reviews of dozens of less profound but still very important decisions. *The Supreme Court and Corrections* also reviews Supreme Court decisions interpreting various federal statutes and judicial rules and procedures that impact inmates, such as the Americans with Disabilities Act and the Prison Litigation Reform Act.

The Supreme Court and Corrections is not a stodgy academic review of Supreme Court jurisprudence but more of a personal memoir from someone whose legal career went from nearly 15 years of representing a state corrections agency to 25 more years of providing commentary and analysis of case law developments and trends to nationwide correctional audiences through hundreds of formal presentations, extensive writing, and consulting.

About three years out of law school, I began representing Washington State's corrections agency, first as an assistant attorney general defending routine inmate lawsuits, then as the head of a team defending a major conditions of confinement lawsuit against the Washington State Penitentiary in Walla Walla, and finally to serving as the chief counsel to a newly formed Department of Corrections.¹

It may have taken representing many of the staff of the Washington State Penitentiary in Walla Walla through the ordeal of a major conditions of confinement lawsuit for me to realize that in order to be able to provide useful legal guidance to my Department of Corrections clients (as well as later for a roomful of prison security chiefs at a National Institute of Corrections seminar or 200 jail administrators at an American Jail Association national conference) I had to understand both what the courts were saying and how a prison or jail worked. I had to be able to translate court decisions from legalese into plain English and to gain the trust of persons in my audience by showing I understood how a new court decision might impact their operations.

I moved from AG's office in 1985 to a niche career as a correctional law expert doing training, lecturing, consulting, and writing about the often controversial relationship between federal courts and America's prisons. While the primary consumers of my services were correctional professionals, I did not see my role as defense counsel, but rather that of an honest broker, providing my best assessment of what court decisions and legal trends meant for those operating jails and prisons. This meant giving people information that they may not have wanted to hear, but needed to hear and understand.

Drawing on 45 years of experience in correctional law, this book offers my "take" on what the Supreme Court has said, and sometimes not said, about the interface between the Constitution and prisons and jails.

The reviews of twenty major cases in these pages describe the issue(s) in the case, the Court's reasoning and the case holding, and the implications of the holding for correctional institutions. The book also looks at the various cases in relation to one

¹ In Washington State in the 1970s and '80s, the AG's office provided all the legal representation for state agencies. Agencies could not hire in-house counsel. My "chief counsel" role came as the Senior Assistant AG heading the Corrections Division of the AG's office.

another. How, for example did the Court's approach to applying the Due Process Clause to inmates change over the years? (Short answer: the Court's initial approach led it down into a labyrinthine, convoluted tunnel to the point where the Court abandoned that approach altogether for something completely different. The Supreme Court does not often admit total defeat on an issue, but it did with inmate due process. See Chapter 2 for the rest of the story.)

These pages are interspersed with my opinions and occasional attempts at humor but they should provide the reader with an understanding of the distance the Supreme Court has moved on correctional issues from the 1970s, when correctional cases first became a staple of the Supreme Court's docket, through 2015 and the decision in *Kingsley v. Hendrickson*, a case which may turn out to have a surprisingly liberal result for an otherwise increasingly conservative court.

—Bill Collins
Olympia Washington
April, 2019

Table of Contents

<i>Acknowledgments</i>	v
<i>Preface</i>	vii
<i>About the Author</i>	xv
<i>Introduction</i>	xvii
<i>Glossary</i>	xxxiii
Chapter 1: Access to the Courts	1-1
SECTION 1: COURT DECISIONS	1-2
Habeas Petitions	1-2
Ex parte Hull 312 U.S. 546 (1941).....	1-2
Johnson v. Avery 393 U.S. 492 (1969).....	1-2
Law Libraries	1-3
Younger v. Gilmore 404 U.S. 15 (1971).....	1-3
Access to Courts System.....	1-3
Cruz v. Hauck 404 U.S. 59 (1971).....	1-3
Pro Se Filing	1-4
Haines v. Kerner 404 U.S. 519 (1972).....	1-4
Access to the Courts and Due Process	1-4
Wolff v. McDonnell 418 U.S. 539 (1974)	1-4
Bounds v. Smith 430 U.S. 817 (1977)	1-5
Pro Se Litigation	1-16
Hughes v. Rowe 449 U.S. 5 (1980)	1-16
Lewis v. Casey 518 U.S. 343 (1996)	1-16
Inmate Law Clerks and First Amendment	1-25
Shaw v. Murphy 532 U.S. 223 (2001)	1-25
SECTION 2: THE PRISON LITIGATION REFORM ACT	1-26
Attorneys' Fees for Pre-PLRA Work	1-28
Martin v. Hadix 527 U.S. 343 (1999).....	1-28
Termination of Court Orders.....	1-28
Miller v. French 530 U.S. 327 (2000).....	1-28
Exhaustion of Remedies	1-29
Booth v. Churner 532 U.S. 731 (2001).....	1-29
Porter v. Nussle 534 U.S. 516 (2002).....	1-30
Statute of Limitations	1-30
Woodford v. Ngo 548 U.S. 81 (2006).....	1-30
Exhaustion of Remedies—Burden of Proof	1-31
Jones v. Bock 549 U.S. 199 (2007).....	1-31

Three Strikes 1-32
 Coleman v. Tollefsen 135 S. Ct. 1759 (2015). 1-32
 Payment of Filing Fees 1-32
 Bruce v. Samuels 136 S. Ct. 627 (2016). 1-32
 Exhaustion of Administrative Remedies. 1-33
 Ross v. Blake 136 S. Ct. 1850 (2016). 1-33

Chapter 2: Due Process and the Fourteenth Amendment.....2-1

Overview. 2-2

Wolff v. McDonnell 418 U.S. 539 (1974) 2-2

Due Process and Inmate Discipline 2-13
 Baxter v. Palmigiano 425 U.S. 308 (1976). 2-13
 Right to Call Witnesses. 2-14
 Ponte v. Real 471 U.S. 491 (1985) 2-14
 Disciplinary Hearings—Evidence 2-14
 Superintendent, Massachusetts Correctional Institution v. Hill
 472 U.S. 445 (1985) 2-14
 The Transfer Cases 2-15
 Meachum v. Fano 427 U.S. 215 (1976) 2-16
 Montanye v. Haymes 427 U.S. 236 (1976). 2-16
 Enomoto v. Wright 434 U.S. 1052 (1978) 2-17
 Revisiting ‘State-Created Liberty Interest’ 2-18

Hewitt v. Helms 459 U.S. 460 (1983) 2-18
 Olim v. Wakinekona 461 U.S. 238 (1983) 2-25

Kentucky Department of Corrections v. Thompson 490 U.S. 454 (1989) 2-27

Sandin v. Conner 515 U.S. 474 (1995) 2-35

Wilkinson v. Austin 545 U.S. 209 (2005) 2-44

The Mental Health Cases 2-53
 Involuntary Transfer 2-53
 Vitek v. Jones 445 U.S. 480 (1979) 2-53
 Involuntary Medication. 2-54
 Washington v. Harper 494 U.S. 210 (1990) 2-54
 Due Process and Prison Staff Negligence. 2-55
 Property Loss 2-55
 Parratt v. Taylor 451 U.S. 527 (1981). 2-55
 Negligence 2-56
 Daniels v. Williams 474 U.S. 327 (1986). 2-56
 Davidson v. Cannon 474 U.S. 344 (1986) 2-56

Chapter 3: Inmate Rights v. Prison Interests—The Balancing Test	3-1
SECTION 1: CONSTITUTIONAL ISSUES	3-2
Cruz v. Beto 405 U.S. 319 (1972).....	3-2
Procunier v. Martinez 416 U.S. 396 (1974)	3-3
First Amendment—Media Access	3-13
Pell v. Procunier 417 U.S. 817 (1974)	3-13
Saxbe v. Washington Post 417 U.S. 843 (1974).....	3-13
Houchins v. KQED, Inc. 438 U.S. 1 (1978)	3-14
First Amendment Right of Association and Inmate Unions	3-15
Jones v. N.C. Prisoners’ Labor Union, Inc. 433 U.S. 119 (1977).....	3-15
Turner v. Safley 482 U.S. 78 (1987)	3-15
O’Lone v. Estate of Shabazz 482 U.S. 342 (1987).....	3-22
Thornburgh v. Abbott 490 U.S. 401 (1989)	3-23
Overton v. Bazzetta 539 U.S. 126 (2003).....	3-30
Beard v. Banks 548 U.S. 521 (2006)	3-31
SECTION 2: CONGRESS AND CORRECTIONAL LAW.....	3-32
Congress and Religion	3-33
Cutter v. Wilkinson 544 U.S. 709 (2005)	3-34
Sossamon v. Texas 563 U.S. 277 (2011).....	3-34
Holt v. Hobbs 135 S. Ct. 853 (2015)	3-35
Chapter 4: Fourth Amendment – Searches	4-1
Bell v. Wolfish 441 U.S. 520 (1979).....	4-1
Hudson v. Palmer 468 U.S. 517 (1984).....	4-3
Block v. Rutherford 468 U.S. 576 (1984).....	4-3
Florence v. Board of Chosen Freeholders 566 U.S. 318 (2012)	4-11
Chapter 5: Eighth Amendment.....	5-1
SECTION 1: CONDITIONS OF CONFINEMENT	5-2
Sellars v. Beto 409 U.S. 968 (1972)	5-2
Estelle v. Justice 426 U.S. 925 (1976)	5-4
Estelle v. Gamble 429 U.S. 97 (1976)	5-5
Hutto v. Finney 437 U.S. 678 (1978)	5-13
Alabama v. Pugh 438 U.S. 781 (1978).....	5-15
Bell v. Wolfish 441 U.S. 520 (1979).....	5-16

Rhodes v. Chapman 452 U.S. 337 (1981)	5-30
Wilson v. Seiter 501 U.S. 294 (1991)	5-40
Threat of Serious Harm.	5-46
Helling v. McKinney 509 U.S. 25 (1993).....	5-46
Farmer v. Brennan 511 U.S. 825 (1994)	5-47
Brown v. Plata 563 U.S. 493 (2011)	5-54
SECTION 2—USE OF FORCE.....	5-67
Whitley v. Albers 475 U.S. 312 (1986).....	5-67
Dudley v. Stubbs 489 U.S. 1034 (1989)	5-68
Hudson v. McMillian 503 U.S. 1 (1991)	5-69
Use of Force (Police)	5-78
Graham v. Connor 490 U.S. 386 (1989).....	5-78
Wilkins v. Gaddy 559 U.S. 34 (2010).....	5-78
Kingsley v. Hendrickson 135 S. Ct. 2466 (2015).....	5-79
Chapter 6: Discrimination Cases	6-1
Lee v. Washington 390 U.S. 333 (1968)	6-1
Title VII and Sexual Discrimination in Prison Employment	6-2
Dothard v. Rawlinson 433 U.S. 321 (1977)	6-2
Johnson v. California 543 U.S. 499 (2005)	6-3
THE AMERICANS WITH DISABILITIES ACT	6-12
Pennsylvania Department of Corrections v. Yeskey 524 U.S. 206 (1998).....	6-12
United States v. Georgia 546 U.S. 151 (2006)	6-13
Chapter 7: Litigation, Pleadings, and Procedure	7-1
Inmate Pro Se Cases	7-2
Neitzke v. Williams 490 U.S. 319 (1989).....	7-2
42 United States Code Section 1983.	7-3
West v. Atkins 487 U.S. 42 (1988)	7-3
Rowland v. California Men’s Colony, Unit II Men’s Advisory Council 506 U.S. 194 (1993)	7-3
Statute of Limitations	7-4
Hardin v. Straub 490 U.S. 536 (1989)	7-4
Counsel in §1983 Cases	7-4
Mallard v. United States District Court for Southern District 490 U.S. 296 (1989).....	7-4
Qualified Immunity.	7-6
Procunier v. Navarette 434 U.S. 555 (1978).....	7-7

Judicial Immunity and Disciplinary Hearing Officers	7-7
Cleavinger v. Saxner 474 U.S. 193 (1985)	7-7
Qualified Immunity - Employees of Private Prison Companies.	7-8
Richardson v. McKnight 521 U.S. 399 (1997)	7-8
Qualified Immunity in Jail Suicide	7-8
Taylor v. Barks 135 S. Ct. 2042 (2015)	7-8
Hope v. Pelzer 536 U.S. 730 (2002)	7-10
Modification of Consent Decree	7-11
Rufo v. Inmates of Suffolk County Jail 502 U.S. 367 (1992).	7-11
<i>Afterword: Looking Ahead</i>	A-1
<i>Table of Cases and Statutes</i>	C-1
<i>Index</i>	I-1

About the Author

Bill Collins's immersion in correctional law and inmate rights began in the early 1970s. As an assistant attorney general in Washington state he litigated on behalf of correctional staff, ranging from line officers to agency directors, and from 1980-1985 served as general counsel to a newly formed Department of Corrections. He also helped develop, draft, and implement jail standards as counsel to the State Corrections Standards Board, and served as counsel to the state parole board. Collins's involvement with correctional law on a national level began in the late 1970s when he organized a series of regional conferences around the country on inmate rights for high ranking correctional officials and their legal counsel in a project conducted under the auspices of the American Correctional Association and the National Institute of Corrections. He has lectured and written on a wide range of legal issues involving prisons and jails, including cross-gender supervision, supermax prisons, inmate disciplinary procedures, women in jail, and privatization, and has made presentations to over 10,000 correctional professionals in various forums. Collins has written extensively on correctional law. With Fred Cohen, he co-founded *Correctional Law Reporter* in 1989 and was its co-editor for more than 25 years. He is the author of *Practical Guide to Inmate Discipline*, now in its second edition, for Civic Research Institute, and of *Correctional Law for the Correctional Officer*, published by the American Correctional Association. He has also written materials for the U.S Department of Justice on such topics as private prisons, supermax prisons, women in jail, the constitution and jail design and operation plus numerous other articles and chapters for correctional magazines and books.