# Significant Prisoner Rights Cases

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*This book is dedicated to everyone in the struggle for social justice.*
JFA

*Dedicated to the memory of my father, Jack Mangels, and my companion, Zeffar, both of whom were committed to championing the causes of the less fortunate.*
NJM

# Contents

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# Introduction

Prior to the 1960s, U.S. courts generally practiced a "hands-off" approach to matters related to the corrections system. During this time, inmate complaints went unheard by the courts. Judicial officials believed that decisions on issues related to corrections were better left to penal administrators since they were familiar with prisoners and inmates (Dilulio, 1987). This belief was best captured in 1958 by Justice Felix Frankfurter in *Gore v. United States* (357 U.S. 386, 1958), when he stated, "in effect, we are asked to enter the domain of penology … [T]his Court has no such powers." The philosophy of nonintervention from the judiciary meant that correctional administrators decided every facet of life within prisons, because there was no judicial oversight that would challenge the legality of their practices and policies.

Penologists and historians reported that nearly every penal institution in the country subjected inmates to insufferable conditions. Physical abuse such as corporal punishment by guards and elite cons, such as "building tenders" and "floorwalkers," was common. In addition, inmate lease systems allowed prison officials to lease prisoners to outside contractors, who often failed to provide adequate food, clothing, shelter, and medical care, which resulted in the deaths of many prisoners (see Walker, 1988). Moreover, the prison experience for many inmates, especially those in southern and western states, was tantamount to slavery, since forced labor was the norm in correctional institutions that were reported to be self-sufficient (Dilulio, 1987). In some prisons, rapes, suicides, and murders were common. Yet the courts did not intervene holding that prisoners were not entitled to any rights or redress because they were merely "slaves of the State" (see *Ruffin v. Commonwealth*, 62 Va. 790, 1871 and *Stroud v. Swope*, 187 F.2d 850, 9th Circuit, 1951).

However, during the 1960s, America experienced a number of social and political changes that challenged institutions and traditional ways of thinking. Many of the proponents for change questioned the existing social order. Minority groups and other oppressed people started to demand inclusion in all areas of mainstream society. Young Americans protested U.S. involvement in

the Vietnam War and fought for equality and access to public education, housing, voting rights, employment opportunities, and the full protection of the U.S. Constitution for all citizens. Those arrested and imprisoned for engaging in antigovernment demonstrations and other crimes took with them into the nation's jails and prisons the philosophy of penal reform and human dignity, and fought to rid themselves and others of institutional oppression that ran counter to rights guaranteed by the Constitution.

Though there were several riots that resulted from prisoners' struggles for equal rights and justice, the 1971 riot that occurred in upstate New York at Attica, which resulted in the deaths of forty-three people, dramatized the inhumanity that was widespread in the corrections system and galvanized the prison rights movement of the 1970s. The Attica riot was televised for four days into the homes of Americans. The aftermath of the riot revealed that the inhumane conditions the inmates were protesting had reached a boiling point with no remedy in place for negotiation or mediation. Adler, Mueller, and Laufer (2006) report that the tragic events at Attica occurred because inmates were denied basic human rights and constitutional guarantees, such as religious freedom, adequate nutrition, procedures to resolve complaints, recreation, medical treatment, humane discipline, and contact with the outside world. Prison riots and other violent incidents exposed the problems within the correctional system, and forced prison officials and the justice system to address the issue of prisoners' rights.

The shift from a "hands-off" to "hands-on" philosophy in the courts can be traced to one particular case, *Cooper v. Pate* (378 U.S. 546, 1964). In *Cooper*, the petitioner brought an action under the Civil Rights Act of 1871, alleging that Illinois prison officials denied him the right to purchase certain religious publications so that he could worship in a manner consistent with his religion. He argued that this right was afforded to other inmates. The U.S. Supreme Court reversed the judgment of the District Court and agreed with the prisoner. *Cooper* signaled that a prisoner could sue a warden for a violation of his or her civil rights. Prisoners now had rights guaranteed by the Constitution and could therefore seek assistance from the courts to challenge the conditions of their confinement. As such, *Cooper* opened the door to other issues that inmates faced as consequences of their incarceration. These issues include the rights to freedom of communication; correspond with counsel; access the courts; political expression; freedom of religion, right to marry, reasonable expectation to privacy, right to be free from strip searches, right to have access to law libraries, right to be free from cruel and unusual punishment, right to due process in prison disciplinary hearings, and right to recourse when prop-

erty is damaged. Despite being a prisoner, one does not surrender the constitutional protections guaranteed to citizens.

As a result of *Cooper*, prisoners are protected by the Constitution, but not to the same extent as citizens in free society. Prisoners' rights are limited because the conditions and circumstances of confinement require correctional officials to conduct a balancing act between ensuring the safety and security of employees and prisoners and preserving prisoners' constitutional rights. Issues where rights and security and/or safety must be balanced include denial of contact visits; cell searches; the right to engage in non-Christian worship; access to court; equal treatment for homosexual inmates; disciplinary hearings for prison rule infractions; the right of unmarried inmates to participate in Family Reunion Programs; freedom from inmate violence; and denial of medical care. Some other issues may include denial of Family Reunion Programs because of AIDS status; mandatory blood tests for AIDS; freedom from corporal punishment committed by correctional guards; freedom from sexual harassment by prison guards; freedom from the infliction of the death penalty; journalists interviewing prisoners; the right to possess nude photos of a spouse; access to clergy; mandatory body cavity searches; wrongful death in suicides; administrative segregation without a hearing; denial of special diets; conversations between inmate and visitors electronically recorded; denial of law libraries; prison transfer; segregation of inmates diagnosed with the AIDS virus; free association in prison; revocation of good time credit; and more.

Correctional experts argue that the majority of lawsuits filed by prisoners that involve correctional officials (i.e., line officers, wardens, directors, and superintendents) are brought under federal statute, Title 42 U.S. Code Section 1983 or the Civil Rights Act. The Civil Rights Act was passed by Congress in 1871. It states the following:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizens of the United States or other persons 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.

Though the Act was created to correct the injustices committed by the Ku Klux Klan in the post-Civil War South, it was rarely used until rediscovered by the prisoners' rights movement during the 1950s and 1960s (see del Carmen, 1991; Collins, 2001). Section 1983 protects against violations of individuals'

constitutional rights and specific rights protected by federal statute. Some experts argue the latter is rare because very few federal statutes protect prisoners (see Collins, 2001). Prisoners prefer to use Section 1983 lawsuits for several reasons. First, they can bring declaratory and injunctive relief along with requiring a defendant to pay damages to plaintiffs. Second, these civil rights lawsuits are typically filed in the federal court system (yet they can be filed in state courts), where the judiciary has historically been more receptive to hearing inmate complaints. The same cannot be said for inmate claims filed in the state court system. Third, because these cases are usually filed in federal court, these lawsuits do not have to exhaust the range of state remedies that could delay justice for prisoners seeking relief. Finally, successful civil rights cases allow plaintiffs to recover attorney fees under the Attorney Fees Act (Cripe, 1997).

When prisoners file a Section 1983 claim, they must establish two basic requirements. First, the defendant must have been *acting under color of law.* Second, there must be a violation of a constitutional or federally protected right (see Chemerinsky, 2007; del Carmen, 1991; Collins, 2001). Where the first requirement is concerned, the prisoner needs to demonstrate that the person who deprived him or her of a constitutional or federally protected right was an official employed at a correctional institution and misused his or her authority. The phrase "acting under color of law" means that the official engaged in the constitutional violation while working within the scope of his or her employment with the state. These suits target governmental employees. However, Section 1983 claims do not apply to federal officers. Where the second requirement is concerned, the prisoner has to demonstrate that he or she was deprived of a right given by the Constitution or by federal law. Therefore, prisoners who allege a violation of the First, Fourth, Fifth, Sixth, Eighth, or Fourteenth Amendments or several of these amendments typically file lawsuits under Section 1983 for relief. If the prisoner (plaintiff) is successful in the lawsuit, the violator (defendant) can be liable for either having to pay damages to the offended party, grant other forms of court-ordered relief, or a combination of these (Collins, 2001). Although prisoners can bring a number of issues before the court, they usually claim that correctional employees violated either their First, Fourth, Eighth, or Fourteenth Amendment right or a combination of them. A brief discussion of these amendments and the likely challenges that inmates could bring from them follows.

## The First Amendment

The First Amendment states in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Inmates who bring claims under the First Amendment often allege that they were prohibited from worshipping in a manner consistent with their religious beliefs. They contend that if they do not have traditional Christian beliefs shared by penal administrators, and they are discriminated against by not being afforded the same opportunities and resources as Christian prisoners. They argue that prison officials violate the First Amendment by respecting Christianity yet preventing non-Christians from freely engaging in the religion of their choice. When inmates argue for relief under the First Amendment, they also attach the Fourteenth Amendment, which extends equal protection to the state level.

The argument of discrimination and religious freedom is complex in an institutional setting. For example, prisoners' claims often include the denial of religious practices or observance, access to clergy members, proper dietary needs, and required grooming or personal appearance (Cripe and Pearlman, 2005). Inmates who challenge religious discrimination contend that the tenets of their beliefs often require that they engage in rituals that are essential to their faith. For example, their religion may require them to worship several times a day, which conflicts with a penal schedule that prohibits the slightest deviation. Inmates also may argue that their religion requires diets that are not provided at some institutions. For example, Muslim and Jewish inmates may not eat pork, and depending on their beliefs, may be required by their religion to adhere to a special diet.

Another common claim in complaints that allege religious discrimination is that correctional institutions do not allow prisoners to observe their particular religious practices related to personal grooming. For example, some religious practices of Native Americans require them to wear long hair, and some Jews are required to grow a beard, which can create security problems, according to correctional officials. Because of these types of complaints filed under the First Amendment, the courts must do a balancing test between the inmate's freedom to worship in a manner consistent with his or her "true" religious beliefs and correctional policies that promote legitimate penological interests.

## The Fourth Amendment

The Fourth Amendment states in part that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated." Inmates who bring challenges under the Fourth Amendment believe that even within the prison setting, they should be afforded some level of privacy. Inmates differ from the courts as to what they feel is reasonable within the context of a search in prison. Prisoners do not enjoy the same level of protection as citizens in the free community, who could argue that a warrant is needed to make a legal search. This could never be the case for jail or prison inmates. Rather, the courts are concerned with the following issues where searches are conducted in penal setting: (1) Is the area of the search protected by the Constitution? and (2) Was the search conducted in a reasonable or unreasonable manner?

According to Cripe and Pearlman (2005), there are two types of searches in places of confinement: those of an inmate's cell and those of the inmate's person. Where the latter is concerned, the method can be performed in a number of ways that include frisk search, strip searches, digital instrument searches, urine testing, x-ray examination, and even blood tests. Moreover, searches are also made in recreation areas, work areas, and in all areas that surround an institution (Cripe and Pearlman, 2005). Where the former is concerned, the Supreme Court has ruled that inmates do not enjoy any reasonable expectations to privacy in their prison cells. Therefore, searches of cells and their contents cannot be deemed unreasonable or off-limits. When inmates bring lawsuits in which the Fourth Amendment is at issue, the courts must consider the type of search and balance the interest of the inmate to be free from unreasonable searches and seizures, and the correctional institution's need to enforce legitimate penological interests, such as safety, stopping the flow of contraband, and preventing escapes. Essentially, the courts have said that prison officials must have the freedom and latitude to search prisoners, prison cells, guards, and visitors and to seize items that may be used to harm inmates, correctional guards, penal administrators, or items designed to undermine legitimate institutional interests.

## The Eighth Amendment

The Eighth Amendment states in part that "Excessive bail should not be required, nor excessive fines imposed, nor cruel and unusual punishments in-

flicted." Inmates who bring an Eighth Amendment challenge allege that their punishment is excessive and is disproportionate to the offense they have committed. For example, inmates who are denied access to health care and treatment for injuries, pain, or AIDS often bring this challenge. Other inmates who were physically beaten with whips and those subjected to sexual harassment by correctional guards have initiated claims of cruel and unusual punishment. When such claims are filed, the courts have to determine whether prisoners are being treated in a manner that does not reflect the standards of an evolving society. At the same time, prison officials may be required to demonstrate that they have not acted in a manner that is "deliberately indifferent" to the plight of offenders in their custody. This is especially true in suicides or attempted suicide cases, when surviving family members or the inmate alleged that the warning signs were there, but no efforts were made to prevent the suicide or its attempt. This issue is more complicated in cases where inmates challenge the total conditions of their confinement.

## The Fourteenth Amendment

The Fourteenth Amendment states in part that "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person on this its jurisdiction the equal protection of the law."

This amendment has a twofold purpose: due process and equal protection under the law. The amendment was created to protect newly freed slaves. It was adopted after the Civil War to ensure that every citizen of the United States would be afforded the same constitutional protections and safeguards. The amendment requires that every citizen of the United States receives due process and equal protection on the state level. Citizens were already given due process protection on the federal level by the Fifth Amendment, but states were not legally compelled to extend constitutional protection until the passage of the Fourteenth Amendment. Essentially, the amendment requires that before any citizen can be deprived of life, liberty or property, he or she must be afforded due process. That is to say, before a U.S. citizen can be put to death, imprisoned, or have property taken, there must be a trial or legal proceeding so that his or her legal interests are safeguarded every step of the way. Usually, a host of other amendments attach, such as the Fourth, Fifth, and Sixth Amendments (i.e., search/arrest warrant, right to remain silent or not self-incriminate, and the right to have legal assistance). Where the equal protection clause is concerned, it states that all citizens of the United States, regardless

of race, ethnicity, place of natural origin, or gender, must be afforded equal or the same treatment. It is highly unusual for an inmate to bring a Fourteenth Amendment challenge alone. It is usually filed along with another alleged constitutional violation. For example, when prisoners allege that they have been denied the right to the First Amendment free exercise of religion, they also will include the Fourteenth Amendment. In doing so, they allege that other inmates who practice traditional religions are allowed to exercise their religious faith, while they are subjected to unequal treatment in violation of the Fourteenth Amendment guarantee to equal protection under the law. Similarly, same-sex married inmates who are not allowed to participate in conjugal visitation programs may argue that such a penal policy violates their First and Fourteenth Amendment rights to enter into and maintain association. They would have to argue that because the practice is extended to one group, heterosexual married couples, but denied to homosexual married couples, the practice constitutes disparate treatment in violation of the equal protection clause. Furthermore, prisoners often claim that when they are accused of rule infraction and face the prospect of losing accumulated good time, there should be a procedure in place to ensure that their due process interest (the loss of good time) is protected. When these issues emerge, courts must weigh the balance of the inmates' interest and the need for correctional institutions to enforce certain policies. Because the federal courts have historically been more receptive to hearing complaints from prisoners than state courts, a brief discussion of the federal court system is warranted.

## The Structure of the Federal Judicial System

The federal system derives its power from Article III, Section I, of the U.S. Constitution, where it states in part: "Congress shall establish one Supreme Court and inferior courts as the Congress may from time to time establish." Therefore, the federal court system represents the culmination of a series of congressional mandates that can be characterized as a three-tier system: district courts, courts of appeals, and one Supreme Court. They are referred to as constitutional courts because they are authorized by Article III of the Constitution (Goldman and Jahnige, 1985; Schmalleger, 2001).

## *District Courts*

District courts are the federal judicial trial courts. They are the lowest of the federal courts. There are approximately ninety-four district courts that geographically serve fifty states. Each state has at least one district court. However, some of the larger states, such as California and New York, have as many as four district courts. These courts address federal cases that could be presided over by a jury or a judge, if a bench trial takes place. These courts can hear civil or criminal matters (Scheb and Scheb, 1999). Their subject matter jurisdiction can include a broad range of civil and criminal offenses, including tort suits, commerce, contracts, antitrusts, and others (Wasby, 1989). In a district court, the decision of a case is made by one judge. However, in special situations, these courts have used three judges to preside over hearings. When this occurs, a district court can have two district judges and one from a court of appeals. Most decisions made by district courts are final. These decisions are typically not appealed. If they are appealed, they go to one of the U.S. Circuit Courts of Appeals. District court judges are appointed by the President, confirmed by the Senate, and serve a life term.

## *Courts of Appeals*

Courts of Appeals are also referred to as Circuit Courts. They are intermediate federal appellant courts. They review matters from the district courts of their geographic regions, tax courts, and federal administrative agencies (Goldman and Jahnige, 1985). There are approximately twelve Circuit Courts of Appeals and one federal circuit encompassing the United States (Scheb and Scheb, 1999). The First Circuit contains the states of Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island, and is located in Boston. The Second Circuit contains the states of Connecticut, New York, and Vermont, and is located in New York. The Third Circuit contains the states of Delaware, New Jersey, Pennsylvania, and the U.S. Virgin Islands, and is located in Philadelphia. The Fourth Circuit is composed of the states of Maryland, North Carolina, South Carolina, Virginia, and West Virginia, and is located in Richmond. The Fifth Circuit is composed of the states of Louisiana, Mississippi, and Texas, and is located in New Orleans. The Sixth Circuit is composed of the states of Kentucky, Michigan, Ohio, and Tennessee, and is located in Cincinnati. The Seventh Circuit is composed of the states of Illinois, Indiana, and Wisconsin, and is located in Chicago. The Eighth Circuit is composed of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and

South Dakota, and is located in St. Louis. The Ninth Circuit is composed of the states of Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington, and is located in San Francisco. The Tenth Circuit is composed of the states of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming, and is located in Denver. The Eleventh Circuit is composed of the states of Alabama, Florida, and Georgia, and is located in Atlanta. The Twelfth Circuit hears cases arising in the District of Columbia and has appellate jurisdiction over legislation concerning many departments of the federal government. The Thirteenth Circuit is composed of the U.S. Court of Appeals for the federal circuit. The court includes the U.S. Court of Claims and the U.S. Court of Customs and Patent Appeals. Both the Twelfth and Thirteenth Circuits are located in Washington, D.C.

By law, federal circuit courts are required to hear cases brought to them. They have what is referred to as mandatory jurisdiction. Their primary purpose is to correct errors of laws. They handle federal laws. These courts emerged in response to increasing federal court caseload and the fact that it was impractical to have Supreme Court Justices sit on circuit (Wasby, 1989). Circuit courts have significant input in the judicial system because they bring uniformity to regional laws. Unlike the federal district courts, which typically rely on a single judge to hear a case (except in special situations), appeals courts use panels of three judges who vote to affirm, reverse, or modify decisions under review from the lower court. However, there are times when all judges assigned to the court may participate in a decision. This process is referred to as an *en banc* hearing (Scheb and Scheb, 1999). Circuit court judges are appointed by the President, and confirmed by the Senate. They serve a life term.

## *The Supreme Court*

The U.S. Supreme Court is the highest appellate court in the federal structure. Its rulings are the final say on matters of the law, and it is known as the highest court in the land. There is only one Supreme Court and it has nine members: one Chief Justice and eight Associate Justices. Supreme Court Justices are appointed by the President, confirmed by the Senate, and serve a life term. The Court is located in Washington, D.C. Unlike the other courts in the system, the Supreme Court has both original and appellate jurisdictions. As a result, the Court can hear any case it chooses to hear. Its original jurisdiction is derived from the Constitution and is found in Article III, Section II. Original jurisdictions refer to cases that are brought directly to the Court. They ac-

count for a small amount of the Court's workload. As illustrated in *Marbury v. Madison* (5 U.S. 137, 1803), the Court has historically limited its jurisdiction. Legal experts argue that because the Court has avoided using its original jurisdiction to hear cases, original jurisdiction is primarily used to hear matters between two states. Unlike its original jurisdiction, the Constitution makes the Court's appellate jurisdiction open and only subject to change by Congress (Wasby, 1989). It is important to note that when the Court had to hear all the cases within its appellate jurisdiction, cases came to the Court on a writ of error, which allowed only review of the law and not the facts in a case (Wasby, 1989). Today, almost all cases come to the Court in one of two ways: appeal and certiorari (Scheb and Scheb, 1999). Historians report that after the courts of appeals were created, the Court was given the authority to select the cases it wanted to hear—essentially, its certiorari jurisdiction. Cases are also brought to the Court on appeal. Though theoretically a mandatory action in that the Court is obliged to hear all cases in this category of jurisdiction, the reality is that the Court has made this jurisdiction a matter of discretion. Mandatory jurisdiction creates problems because it could force the Court to deal with an issue when it is not ready or prefers not to hear cases. Cases that are eligible for appeal to the Court include the following:

- The highest state court invalidates a federal law or treaty as unconstitutional or upholds a state law or state constitutional provision against a challenge that it violates a federal law, treaty, or the U.S. Constitution.
- A court of appeals declares a state law or state constitution provision as unconstitutional or declares a federal law constitutional when the federal government is a party to a case.
- A federal district court declares a federal law unconstitutional when the United States is a party.
- A three-judge district court has granted or denied an injunction in cases required to be brought before such a court (Wasby, 1989, p. 74).

Another avenue by which cases can reach the Supreme Court (though rare) is called certification. When this occurs, a lower court faced with a new legal question certifies (rather than resolves the matter) the question for answer by the Supreme Court. When this action is taken, the Court has three options: (1) It can refuse the certificate, thus forcing the lower court to decide the question; (2) It can provide an answer, which the lower court applies; or (3) It can take the case and render a decision directly without returning it to the lower court (see also Wasby, 1989).

## *Writ of Certiorari*

The writ of certiorari is the most popular means for a case to reach the Supreme Court. In fact, the majority of state and federal cases that reach the Court are heard on certiorari (Wasby, 1989). However, the overwhelming majority of cases that are petitioned to the Court for review are rejected. The Court has the power to either grant or deny certiorari due to its discretionary power (Scheb and Scheb, 1999). This power has led some to wonder if the Court is political because it has the authority and power to hear what it wants to hear. Certiorari is granted when at least four Justices vote to hear a case. This is referred to as the "rule of four." Even when the rule of four has been exercised, those same Justices can decide later not to hear the case. They can simply change their minds. This process is referred to as the DIG "escape" or disposing of the writ by dismissing it as "improvidently granted" (Wasby, 1989). The Court has been known to engage in such action, for example, when briefs or legal arguments present a different picture from the one painted in the petition for certiorari, which contained less information. However, when certiorari is granted as a matter of discretion, the Court does not have to give any reasons for granting, denying, or dismissing review. Nevertheless, the Supreme Court is inclined to grant the writ of certiorari when:

1. A federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; has decided a federal question in a way that is in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision.
2. A state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or a federal court of appeals.
3. A state court or federal court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided a federal question in a way that is in conflict with applicable decisions of this Court.

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