

# The Burger Court Opinion Writing Database

## *Procunier v. Martinez*

416 U.S. 396 (1974)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



✓  
M  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

December 18, 1973

MEMORANDUM TO THE CONFERENCE:

Re: 72-1465 - Procunier v. Martinez

I have reassigned the above case to Lewis Powell.

Regards,

WEB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

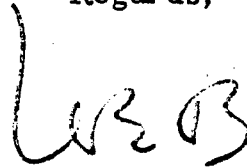
April 9, 1974

Re: No. 72-1465 - Procunier, et al v. Martinez, et al

Dear Lewis:

Please join me.

Regards,

A handwritten signature in dark ink, appearing to read "LB Powell", is written over the typed name "Mr. Justice Powell". The signature is fluid and cursive.

Mr. Justice Powell

Copies to the Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Wm  
SUPREME COURT OF THE UNITED STATES

No. 72-1465

Raymond K. Procunier)

v. )

Robert Martinez )

Reed  
4/26/77  
r2  
On Appeal from the United States District  
Court for the Northern District of  
California

Mr. Justice Douglas, concurring.

I have joined Mr. Justice Marshall's opinion because I think it makes abundantly clear that foremost among the Bill of Rights of prisoners in this country, whether under state or federal detention, is the First Amendment. Prisoners are still "persons" entitled to all Constitutional rights except and unless their liberty has been constitutionally curtailed in the procedures that satisfy all of the ~~other~~ requirements of due process.

While Chief Justice Hughes in Stromberg v. California, 283 US stated that the First Amendment was applicable to the states by reason of the due process clause of the Fourteenth, it has become customary to rest on the broader foundation of the entire Fourteenth Amendment, ~~and~~ free speech and press, within the meaning of the First Amendment is, in my judgment, <sup>one</sup> of the preeminent privileges and immunities of all citizens.

all its in



To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Black  
Mr. Justice White  
Mr. Justice Rehnquist  
Mr. Justice Souter  
Mr. Justice Ginsburg  
Mr. Justice Breyer

## SUPREME COURT OF THE UNITED STATES

No. 72-1465

Raymond K. Procunier, Director,  
California Department  
of Corrections, et al.,  
Appellants,

v.

Robert Martinez et al.

On Appeal from the  
United States District  
Court for the North-  
ern District of Cali-  
fornia.

4-26

[April 29, 1974]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, concurring.

I have joined MR. JUSTICE MARSHALL's opinion because I think it makes abundantly clear that foremost among the Bill of Rights of prisoners in this country, whether under state or federal detention, is the First Amendment. Prisoners are still "persons" entitled to all constitutional rights except and unless their liberty has been constitutionally curtailed in the procedures that satisfy all of the requirements of due process.

While Chief Justice Hughes in *Stromberg v. California*, 283 U. S. 359, stated that the First Amendment was applicable to the States by reason of the Due Process Clause of the Fourteenth, it has become customary to rest on the broader foundation of the entire Fourteenth Amendment. Free speech and press within the meaning of the First Amendment is, in my judgment, one of the preeminent privileges and immunities of all citizens.

Part II of

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 4, 1974

RE:No. 72-1465 Procunier v. Martinez

Dear Lewis:

Thank you very much for your consideration  
of my suggestion. I am very happy to join your  
opinion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 25, 1974

RE: No. 72-1465 Procunier v. Martinez

Dear Thurgood:

Please join me in your concurring  
opinion in the above.

Sincerely,

Mr. Justice Marshall

cc: The Conference

COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

March 6, 1974

Re: No. 72-1465, Procunier v. Martinez

Dear Lewis,

I am glad to join your opinion for the Court  
in this case.

Sincerely yours,

*P.S.*

Mr. Justice Powell

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

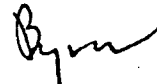
March 5, 1974

Re: No. 72-1465 - Procunier v. Martinez

Dear Lewis:

Please join me in your very good opinion  
in this case.

Sincerely,



Mr. Justice Powell

Copies to Conference

COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Circulated: APR 24 1974

No. 72-1465

Recirculated: \_\_\_\_\_

Raymond K. Procunier, Director,  
California Department  
of Corrections, et al.,  
Appellants,  
v.  
Robert Martinez et al.

On Appeal from the  
United States District  
Court for the North-  
ern District of Cali-  
fornia.

[April —, 1974]

MR. JUSTICE MARSHALL, concurring.

I concur in the opinion and judgment of the Court. I write separately only to emphasize that I do not join in any implication in the Court's opinion that prison authorities have a general right to open and read all incoming and outgoing prison mail. The issue of the First Amendment rights of inmates is, of course, explicitly reserved by the Court. I believe, however, that a brief recital of my views on that subject is necessary to dispel any suggestion that by joining the Court's opinion today I subscribe to the proposition that prison authorities may read inmate mail as a matter of course.

As Mr. Justice Holmes observed over a half century ago, "the use of the mails is almost as much a part of free speech as the right to use our tongues." *Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U. S. 407, 437 (1921), quoted with approval in *Blount v. Rizzi*, 400 U. S. 410, 416 (1971). See also *Lamont v. Postmaster General*, 381 U. S. 301, 305 (1965). A prisoner does not shed such basic First Amendment rights at the prison gate.<sup>1</sup> Rather, he "retains all the rights of an

<sup>1</sup> See, e. g., *Cruz v. Beto*, 405 U. S. 319 (1972); *Cooper v. Pate*, 378 U. S. 546 (1964); *Brown v. Peyton*, 437 F. 2d 1228, 1230 (CA4 1971).

I concur in the opinion and judgment of the Court.

I write separately only to emphasize my view that prison authorities do not have a general right to open and read all incoming and outgoing prison mail. The issue of the First Amendment rights of inmates is, of course, explicitly reserved by the Court, but I would reach that issue to hold that prison authorities may not read inmate mail as a matter of course.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 4, 1974

Re: No. 72-1465 - Procunier v. Martinez

Dear Lewis:

Please join me.

Sincerely,

*H. C. B.*

Mr. Justice Powell

cc: The Conference

INTRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

For: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Rehnquist  
 Mr. Justice Powell  
 Mr. Justice Stevens  
 Mr. Justice Souter  
 Mr. Justice Ginsburg  
 Mr. Justice Breyer

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: [redacted]

Circulated: 3-1-74

No. 72-1465

Recirculated: [redacted]

Raymond K. Procunier, Director,  
 California Department  
 of Corrections, et al.,  
 Appellants.  
 v.  
 Robert Martinez et al.

On Appeal from the  
 United States District  
 Court for the North-  
 ern District of Cali-  
 fornia.

[February —, 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case concerns the constitutionality of certain regulations promulgated by appellant Procunier in his capacity as Director of the California Department of Corrections. Appellees brought a class action on behalf of themselves and all other inmates of penal institutions under the Department's jurisdiction to challenge the rules relating to censorship of prisoner mail and the ban against the use of law students and legal paraprofessionals to conduct attorney-client interviews with inmates. Pursuant to 28 U. S. C. § 2281 a three-judge United States District Court was convened to hear appellees' request for declaratory and injunctive relief. That court entered summary judgment enjoining continued enforcement of the rules in question and ordering appellants to submit new regulations for the court's approval. 354 F. Supp. 1092 (ND Cal. 1973). Appellants' first revisions resulted in counterproposals by appellees and a court order issued May 30, 1973, requiring further modification of the proposed rules. The second set of revised regulations

MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

*new footnote 12*  
*Subsequent footnotes renumbered*  
*changes 8, 9, 11, 12, 14, 15, 18*

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1465

By: Powell, J.

Circulated: \_\_\_\_\_

Recirculated: ~~MAR 6~~ 1974

Raymond K. Proenier, Director,  
California Department  
of Corrections, et al.,  
Appellants,

Robert Martinez et al

On Appeal from the  
United States District  
Court for the North-  
ern District of Cali-  
fornia.

[February -- 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case concerns the constitutionality of certain regulations promulgated by appellant Proenier in his capacity as Director of the California Department of Corrections. Appellees brought a class action on behalf of themselves and all other inmates of penal institutions under the Department's jurisdiction to challenge the rules relating to censorship of prisoner mail and the ban against the use of law students and legal paraprofessionals to conduct attorney-client interviews with inmates. Pursuant to 28 U. S. C. § 2281 a three-judge United States District Court was convened to hear appellees' request for declaratory and injunctive relief. That court entered summary judgment enjoining continued enforcement of the rules in question and ordering appellants to submit new regulations for the court's approval. 354 F. Supp. 1092 (ND Cal. 1973). Appellants' first revisions resulted in counterproposals by appellees and a court order issued May 30, 1973, requiring further modification of the proposed rules. The second set of revised regulations

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

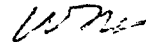
March 8, 1974

Re: No. 72-1465 - Procunier v. Martinez

Dear Lewis:

You have written a good opinion, and I don't think legal literature would be enriched by my dissenting on the basis of my Conference vote. Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference