

The Burger Court Opinion Writing Database

Pell v. Procunier

417 U.S. 817 (1974)

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



Washington, D. C. 20540

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1974

Re: No. 73-754 - Procunier v. Hillery
No. 73-918 - Pell v. Procunier
No. 73-1265 - Saxbe v. Washington Post Co.

MEMORANDUM TO THE CONFERENCE:

This difficult case had few very clear cut and fixed positions but my further study over the weekend leads me to see my position as closer for those who would sustain the authority of the corrections administrators than those who would not! I would therefore reverse in 73-754, affirm in 73-918 and reverse in 73-1265.

This is another one of those cases that will depend a good deal on "how it is written." The solution to the problem must be allowed time for experimentation and I fear an "absolute" constitutional holding adverse to administrators will tend to "freeze" progress.

Regards,

W. B.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1974

Re: Nos. 73-754) - Procunier v. Hillery
73-918) - Eve Pell, Betty Segal and Paul Jacobs v. Procunier

Dear Potter:

Please join me.

Regards,

LB RB

Mr. Justice Stewart

Copies to the Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, BUREAU OF CONGRESS & COURTS LIBRARY

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Nos. 73-754, 73-918, AND 73-1265

Circulated: 6-12-74

Recirculated: _____

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

73-754

Booker T. Hillery, Jr., et al.

Eve Pell, Betty Segal and Paul
Jacobs, Appellants,

73-918

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

William B. Saxbe, Attorney
General of the United
States, et al.,
Petitioners.

73-1265

The Washington Post Co.
et al.

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

On Writ of Certiorari
to the United States
Court of Appeals for
the District of Colum-
bia Circuit.

[June —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

These cases involve the constitutionality, under the First and Fourteenth Amendments, of prison regulations limiting communication between state and federal prisoners and the press. No. 73-754 and No. 73-918 are cross-appeals from the judgment of a three-judge District Court for the Northern District of California. 364 F. Supp. 196. Suit was brought in that court by four Cali-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. June 20, 1974

RE: Nos. 73-754, 73-918 & 73-1265
Procunier v. Hillery & Pell &
Saxbe v. Washington Post

Dear Bill:

Please join me in your dissenting
opinion in the above.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

To: The Chief Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-754 AND 73-918

Circulated MAY 31 1974

Recirculated

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

73-754 v.
 Booker T. Hillery, Jr., et al.

Eve Pell, Betty Segal and Paul
 Jacobs, Appellants.

73-918 v.
 Raymond K. Procunier, Director,
 California Department
 of Corrections, et al.

On Appeals from the
 United States District
 Court for the Northern
 District of California.

[June -- 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

These cases are here on cross-appeals from the judgment of a three-judge District Court in the Northern District of California. The plaintiffs in the District Court were four California prison inmates—Booker T. Hillery, Jr., John Larry Spain, Bobby Bly, and Michael Shane Guile—and three professional journalists—Eve Pell, Betty Segal, and Paul Jacobs. The defendants were Raymond K. Procunier, Director of the California Department of Corrections, and several subordinate officers in that department. The plaintiffs brought the suit to challenge the constitutionality, under the First and Fourteenth Amendments, of § 415.071 of the California Department of Corrections Manual, which provides that

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P. 15

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Stewart
Mr. Justice Goldwater

3rd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulation: _____

Nos. 73-754 AND 73-918

Recirculation: **JUN 7**

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

73-754 v.

Booker T. Hillery, Jr., et al.

Eve Pell, Betty Segal and Paul
Jacobs, Appellants,

73-918 v.

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

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

[June —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE BYRON R WHITE

June 3, 1974

Re: Nos. 73-754 & 73-918 - Procunier v. Hillery

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1974

Dear Potter:

Re: No. 73-754 - Procunier v. Hillery
No. 73-918 - Pell v. Procunier

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 2, 1974

No. 73-754 Procunier v. Hillery
No. 73-918 Pell v. Procunier
No. 73-1265 Saxbe v. Washington Post

Dear Potter:

Although I think you have written fine opinions in these cases, I want to consider my own position further in light of what you have written and may circulate something.

As I am trying to get my bank opinions out first, it may be a week or so before I return to these cases.

Sincerely,

L. F. Powell

Mr. Justice Stewart

lfp/ss

cc: The Conference

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advised

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

No. 73-754, Procunier, et al v. Hillery,
et al.
No. 73-918, Pell, et al v. Procunier
et al.

From: Powell, J.

Circulated: JUN 17 1974

Recirculated:

MR. JUSTICE POWELL, concurring and dissenting.

These cross-appeals concern the constitutionality, under the First and Fourteenth Amendments, of a regulation of the California Department of Corrections that prohibits all personal interviews of prison inmates by representatives of the news media. This regulation is substantially identical to the United States Bureau of Prisons policy statement whose validity is at issue in Saxbe v. Washington Post Co., post. For the reasons stated in my dissenting opinion in that case, post at ___, I would hold that California's absolute ban against prisoner-press interviews impermissibly restrains the ability of the press to perform its constitutionally-established function of informing the people on the conduct of their Government. Accordingly, I dissent from the judgment of the Court.

The California cross-appeals differ from the Washington Post case in one significant respect. Here the challenge to the constitutionality of the interview ban comes from prisoners as well as newsmen. Thus these appeals

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 31, 1974

Re: No. 73-754 - Procunier v. Hillery; and No. 73-918 -
Pell v. Procunier

Dear Potter:

Please join me in your opinion for the Court in these cases.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference